



## **ACCESS & BENEFIT-SHARING: CBD COP 5 and the Next Steps**

One of the key outcomes of COP 5 of the Convention on Biological Diversity (CBD) was the decision to take the issue of access to genetic resources and benefit-sharing (ABS) to a new and more political level. The successful completion of the negotiations of the Cartagena Protocol on Biosafety seems to have inspired the delegates to take this bold step.

### **Background**

ABS concepts were among the central themes in the negotiation of the CBD. Indeed, one of the Convention's three primary objectives is to promote "the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding." In the area of access, the Convention (Articles 1, 15, 16 and 19) institutionalizes several critical basic goals and principles including:

- National sovereignty and authority to determine access;

- A mandate to facilitate access;
- Prerequisites of prior-informed consent (PIC) and the establishment of mutually-agreed terms;
- Provider-country participation in scientific research;
- User-country measures (legislative, administrative or policy) for appropriate sharing of the results of R&D and the benefits arising from the utilisation of genetic resources;
- A mandate to facilitate access to and transfer of technologies for conservation and sustainable use of biodiversity or genetic resources;
- A mandate to facilitate access to and transfer of biotechnology, and especially to the results and benefits of biotechnologies arising out of genetic resources.

### **COPs 2, 3 and 4**

In the second and third CBD COPs, the Parties had considered the issue of access and benefit-sharing largely as a series of information-gathering exercises. Decision II/11 and III/15, for example, respectively called on the Executive Secretary to undertake

a survey of measures undertaken by governments to implement Article 15 and urged governments to submit relevant information on possible elements for guidelines and other measures for the implementation of Article 15. On the basis of these decisions, the Executive Secretary called for case-studies on ABS mechanisms and prepared a synthesis of experiences for COP 4.

COP 4, however, became a significant watershed in the work of the CBD on ABS. Decision IV/8 required the establishment of a regionally balanced Panel of Experts on ABS to discuss, clarify and develop a common understanding of the basic concepts, and to explore all options for

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# **Activities of the IUCN Environmental Law Programme in the IUCN World Conservation Congress in Amman**

The IUCN Environmental Law Programme will be well represented in Amman, where a full programme of activities are planned, which will be of interest to all IUCN Law Commission (CEL) members and other IUCN programmes.

The IUCN CEL Steering Committee will meet on 3 October, one day before the Congress officially begins. They will discuss the ELP draft Action Plan which will guide the work of the law programme in the years to come. The Committee will also discuss a number of outstanding new applications for membership to CEL, consider the appointment of new Vice-Chairs in Europe and Africa, and discuss the composition and direction of CEL working groups. The next day, all CEL members in Amman will meet to discuss the direction of the law programme and how it fits with the overall IUCN draft Quadrennial Programme. A landmark programming document for IUCN, the Quadrennial Programme will be presented during the plenary sessions of the Congress later in the week. Copies of it and all relevant law programme documents will be available at the ELP table, along with recent IUCN ELP publications.

Turning to thematic programmes to be presented during the Congress, legal officers from the Environmental Law Centre and CEL members will make presentations in interactive sessions on:

- ✓ coastal zone management (session 2: "Environmental Health of Island, Coastal and Marine Ecosystems"),
- ✓ environment and security (session 3),
- ✓ forests (session 4: "Forest Ecosystems Biodiversity and Environmental Security"),
- ✓ water (session 6: "Making Waves – Strategies for Averting the World Water Crisis"),
- ✓ biodiversity and education (session 7: Mobilizing Knowledge for Biodiversity),
- ✓ agro-biodiversity (session 8: "Sowing the Seeds for Sustainability – Agriculture, Biodiversity, Economy and Society")
- ✓ indigenous peoples (session 9: "The Role of Local Solutions, Cultural Diversity and Social Equity for Conservation"), and
- ✓ climate change (session 12: "The Ecological Limits of Climate Change").

ELC staff and CEL members will also be assisting on the Committees pertaining to Resolutions and Credentials, and will serve as Rapporteurs.

The Amman session will be an excellent opportunity to cement the continued growth of the law programme in the regional offices of IUCN, and to co-ordinate these activities with the growth of regional centres of excellence, such as those recently emerging in Brazil, China, Moscow, Singapore and the Arab region. In fact, just preceding Amman, there will be the opening of the Arab Regional Centre for Environmental Law in Kuwait.

The key to these efforts is outreach to all CEL members. Outreach is improving through the hard work of the CEL Chair, the Steering Committee and the ELC staff, including the staff's dedicated efforts in maintaining the electronic CEL forum and newsletter, and working to improve our ability to support the efforts of CEL members who are working on behalf of IUCN.

– CDL

## **Access and Benefit-Sharing**

This edition of the ELP Newsletter, and its focus on "Access and Benefit-Sharing" (A/BS) had a very definite source – the 15th Global Biodiversity Forum (see page 17), held in Nairobi last May, immediately prior to the 5th Conference of the Parties to the CBD. Like the CBD, this year's GBF identified A/BS as an issue for priority attention, and brought together some of the pre-eminent experts in the field to make substantive presentations and participate in deliberations concerning the issue and the way forward. While some of the authors featured in this edition made substantive presentations in those meetings, all were active participants in the formal and informal discussions which are the true benefit derived by GBF participants.

In recent years, many have complained that the current discussions of A/BS mirror the discussions of 1992 almost exactly, and that the status of the issue remains unchanged. Perusal of these pages may dislodge this illusion, however, since the ideas presented are fresh, innovative and earnestly presented.

We are grateful to all 9 contributors, who took time from busy schedules, in the midst of important projects to prepare thoughtful and challenging articles about the A/BS issue and the way forward. They represent an excellent blend of national representatives, ngos, and igos, and offer a variety of ideas, opinions and approaches – Shakeel Bhatti, WIPO; Michaela Figueira, Directorate of Environmental Affairs (Namibia); Alexander Haydendael, CBD Secretariat; Robert Lettington, International Centre of Insect Physiology and Ecology (Kenya); Mita Manek, African Centre for Technology Studies (Kenya); Dan B. Ogolla, CBD Secretariat; Elpidio "Ping" Peria, SEARICE (Philippines); and Krystyna Swiderska, IIED (Great Britain).

# Commission on Environmental Law

## CHAIRMAN'S LETTER "Ecosystem Management"

Last December, 2000, the United Nations General Assembly endorsed "ecosystem management" for use in different multinational environmental agreements and for advancing "sustainable development." Since the first World Conservation Congress in Montreal, IUCN's Commission on Ecosystem Management has been articulating different scientific policies to make this concept operational. The Conference of the Parties of the Convention on Biodiversity has adopted a resolution on the "ecosystem approach" which gives some guidance and direction on basic concepts of ecosystem management. Varying approaches to ecosystem management will be debated at the coming World Conservation Congress in Amman, Jordan, 4-11 October 2000.

But what is "ecosystem management?" Is there a role for law in its development?

These two words would appear to reference a body of scientific knowledge about ecosystems, or ecology, that can be incorporated into managerial decision-making. But what scientific knowledge? The core models of ecology have evolved significantly since ecology was recognized as a discipline in the late 19th century. In the early 1900s, study focused on communities of plants, and in the 1930s broadened into the study of animal and plant communities. By the 1950s, ecology embraced the study of energy flows through living and inert systems. For years, conservationists spoke of the "balance" of nature, and characterized nature as an ordered, stable system. Older ecological models, based on an evolution within communities to a climax state of equilibrium, apart from human impact, now have yielded to models in which disturbances, frequent change, and stochastic effects are deemed to shape communities of life. Human-induced change is an unavoidable part of contemporary ecological analysis. (See S.T.A. Pickett, R.S. Ostfeld, M. Shachak, and G.E. Likens, *The Ecological Basis of Conservation: Heterogeneity, Ecosystems, and Biodiversity* (Chapman and Hall, 1997) at [www.chaphall.com](http://www.chaphall.com).)

These new perceptions of Earth's nature as being in flux require that we rethink many of the assumptions underlying our previous work in nature conservation. Most existing management regimes embody prior (static) understandings of ecology. Much environmental law codifies these ecological ideas. Must we now revise these laws?

The evolving models of "Ecology" did not garner much attention at the UN Conference on Environment and Development. The Declaration of Rio de Janeiro on Environment and Development in Principle 7 provides that "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of Earth's ecosystems." Many States and international organizations already have enacted legal procedures for "environmental impact assessment" (EIA) that require decision-makers to evaluate how human actions can adversely impact on an ecosystem, and to identify alternative ways that the proposed actions can be conducted so as to avert or mitigate that impact. All States have established parks and protected areas to preserve ecosystems in situ. Most States have conservation authorities, to conserve species. Many States have effective water pollution laws, to restore the integrity of aquatic ecosystems, and many States participate in the Convention to Combat Desertification, to restore the health of soils and lands.

However, these environmental provisions offer no common standards giving content to the concept of "ecosystem management". Ecologists agree that different ecosystems are under stress (as seen in the effects of acid rain), and that many have collapsed (as seen in desertification trends or extinction of species), but would the elimination of the negative impacts alone solve the problems? What is ecosystem "health" or "integrity"?

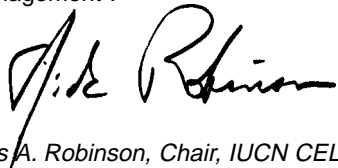
Existing environmental laws all serve important social goals. The evolving concepts of Ecology do not require us to renounce past legislation. Rather, what "ecosystem management" will require is that we fashion the means to integrate new scientific knowledge into our legal systems and decisions.

To do so, lawyers must work with scientists to translate ecological knowledge into agreed social norms that can guide management decisions by governments, land owners and users, and the private sector.

For instance, ecologists tend to agree that slow rates of change in ecosystems are more natural than fast rates. We humans have launched rapid change in ecosystems, with the depletion of stratospheric ozone, rise in sea levels, the melting of the polar ice caps (Norwegian scientists predict an ice-free North Pole during summers within 50 years), and the extinction of many species. From recorded time to 1930, the human population on Earth had grown to one billion. As of this year, we now add one billion additional people every twelve years. In doing so, we humans have irretrievably altered the Earth that our grandparents knew, and we know not what level of ecosystem "integrity" to restore, nor whether we could attain such levels even if we tried.

Since humans do and will change ecosystems, the need for common standards to guide our conduct is clear. Ecologist Daniel Botkin, in *Discordant Harmonies* (1990), observes that "Nature in the 21st century will be a nature that we make." By this, he means that ecologists and decision-makers must work together more systematically to manage an Earth, "in which we are a part of a living and changing system whose changes we can accept, use and control, to make the Earth a comfortable home, for us individually and for all of us collectively in our civilizations."

The challenge to IUCN is clear. New initiatives, working across and among the Commissions and Members of the Union, must be launched to deduce from ecological and the other Earth sciences, operational norms defining "Ecosystem management".



Nicholas A. Robinson, Chair, IUCN CEL

## ...COP 5 and the Next Steps

access and benefit-sharing on mutually-agreed terms. The experts, though appointed by Governments, were to include representatives from the public and private sectors as well as representatives from indigenous and local communities.

The Panel's agenda was set by the Intersessional Meeting on the Operations of the Convention (ISOC) which called on the Panel to focus on ABS arrangements for scientific and commercial purposes; legislative, administrative and policy measures at national and regional levels; regulatory procedures and incentive measures; and capacity building. ISOC also discussed issues relating to future work on pre-convention *ex situ* collections, and the relationship between intellectual property rights (IPRs) and the relevant provisions of the WTO's TRIPS agreement.

The Panel of Experts met in San José, Costa Rica, in October 1999 and managed to reach some initial consensus on the basic principles that should govern access and benefit-sharing arrangements and a common understanding of the key concepts such as prior-informed consent, mutually agreed terms, and fair and equitable sharing. The Panel also identified important information and capacity-building needs associated with access and benefit-sharing arrangements. Key recommendations of the Panel require action by Parties, Governments and the COP. In particular, the Panel recommended that each Party and Government should establish a national focal point and one or more competent national authorities, as appropriate, for access and benefit sharing arrangements, and that the COP may wish to consider the development of guidelines with respect to prior-informed consent and mutually-agreed terms based on the common understandings reached at the meeting.

The Panel was not able to reach any understanding on a number of critical topics, however. As a result, its

report was intentionally inconclusive in a number of areas including IPRs, both generally and in connection with the related issue of traditional knowledge related to genetic resources; PIC; and access and benefit-sharing agreements (scope, prior art and monitoring.)

### The Mandate of COP 5

In COP 5, Access to Genetic Resources was designated as an issue for detailed attention, and was addressed in detail over several days of deliberation by Working Group II, and a sizeable contact group. Using the report of the Panel of Experts as a starting point, these discussions focused on carrying forward this work, and culminated in decision V/26 which mandates that

(i) the Panel of Experts be reconvened, with a concrete mandate and agenda. The Panel will conduct further work on those issues on which it has not been able to come to any agreed conclusion. It will give special attention to the assessment of prior experience

with access arrangements and options, and stakeholder involvement.

(ii) to ensure that the work of the Convention is not impeded by the process of obtaining COP approval of the Panel's outputs, an Ad Hoc Open-ended Working Group be established to develop guidelines and other approaches, and to assist Parties and stakeholders in addressing specific elements relevant to ABS. The Working Group's work will be based on the Panel's reports, as and if available. The Working Group will be composed of national delegates and representatives, including experts, nominated by governments and regional economic integration organizations.

Although decision V/26 demonstrates real commitment on the part of Governments to promote the work of the Convention on ABS, the COP failed to reach consensus on issues such as role of the CBD in activities related to the TRIPS agreement; the treatment of pre-Convention *ex situ*

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collections, and the role of the Commission on Genetic Resources for Food and Agriculture. Decision V/26 makes some reference to each of these issues, but does not appear to authorize direct action.

### Observations

The COP's approach to the ABS issue has been systematic and structured. It has moved from a largely exploratory stage, through an examination of the pertinent issues by an expert panel, and has now entered a political, negotiating stage, as embodied by the Working Group. However, in light of the significant information gaps which still persist, the decision to concurrently reconvene the Panel, as well, was the logical way forward.

The decision to develop international guidelines for ABS was also a pragmatic step. Legislative and policy

developments in most countries are largely in their embryonic stages. International guidelines would, therefore, greatly assist Governments in developing effective national and regional ABS regimes.

More importantly, however, the political sensitivity of the issue and the lack of political consensus on a number of outstanding items militate against any global ambition for the development of a legally-binding instrument at present. Even so, the development of multilateral environmental agreements has often been preceded by the adoption of international soft-law regimes. Given a propitious political conjuncture, then, the contemplated international guidelines on ABS might in the foreseeable future crystallize into some legally-binding regime.

The issues of national ABS implementation are very complex and Governments will need to demonstrate sustained political commitment

in order to arrive at solutions that promote the fundamental objectives of the Convention. In this process, it will be essential to raise public awareness and enlist the participation and support of all stakeholders if they are to be successful in this task.

*The views expressed in this article are those of the authors in their personal capacity and do not reflect those of the Secretariat of the Convention on Biological Diversity or of any Party to the CBD.*

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## ***Intellectual Property Rights and Genetic Resources***

Recent months have been marked by an increasing confluence between policy debates on access to genetic resources and new developments in the field of intellectual property. This increasing convergence was tellingly reflected in May 2000, when interfaces between intellectual property and genetic resource policies were being negotiated simultaneously at the World Intellectual Property Organization (WIPO) in a Diplomatic Conference for the adoption of the new Patent Law Treaty (PLT) and at the fifth Conference of the Parties to the Convention on Biological Diversity (CBD), which established a new Working Group on Access to Genetic Resources under the CBD. The simultaneous consideration of genetic resources in discussions for a new intellectual property treaty and the discussion of technical intellectual property issues in a CBD Decision on access to genetic resources indicate that there are a growing number

of interfaces between policy development in both areas, intellectual property and genetic resources.

This article briefly reviews the discussions on genetic resources that have taken place at WIPO since September 1999, and then categorizes the intellectual property issues that have arisen according to their respective policy contexts.

Issues related to intellectual property and genetic resources were first discussed by WIPO Member States in the Standing Committee on the Law of Patents (SCP). At its third session in September 1999, the SCP invited WIPO to convene a separate meeting to consider intellectual property issues related to genetic resources.

In response to the invitation issued by the SCP, WIPO organized a Meeting on Intellectual Property and Ge-

netic Resources in April 2000. The Meeting addressed issues that arise in the context of access to, and *in situ* preservation of, genetic resources in their direct or indirect relationship with intellectual property. The Chairman's Conclusions from the Meeting state, *inter alia*, that the exchange of views which took place at the Meeting produced a consensus that, "WIPO should facilitate the continuation of consultations among Member States in co-ordination with the other concerned international organizations, through the conduct of appropriate legal and technical studies, and through the setting up of an appropriate forum within WIPO for future work."

During the Diplomatic Conference for the Adoption of the Patent Law Treaty (11 May to 2 June 2000), the Director General of WIPO conducted con-

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## ...Intellectual Property Rights

sultations concerning formalities in relation to the question of genetic resources. As the outcome of the consultations, the Member States agreed *inter alia* that, "Member State discussions concerning genetic resources will continue at WIPO. The format of such discussions will be left to the Director General's discretion, in consultation with WIPO Member States."

Following the Diplomatic Conference, consultations with Member States took place regarding the format and content of such discussions. As a result of the consultations, it was proposed that a distinct body should be established within WIPO to facilitate such discussions and that, in addition to the issue of genetic resources, the discussions should also include the results of WIPO's previous work on the related fields of traditional knowledge and expressions of folklore.

In general, it might be said that intellectual property questions related to access to genetic resources and benefit-sharing arise in four contexts. They concern the role of intellectual property rights in the context of developing

(a) contractual agreements for access to genetic resources. Access agreements for genetic resources, such as material transfer agreements (MTAs), raise questions on the role of intellectual property rights in respect of: ensuring control over *ex situ* use of genetic resources; technology transfer and joint research and development; possibilities of joint ownership of IPRs; ensuring continued customary use of genetic resources, etc. A useful step in this context may be the development of "best contractual practices", guidelines and model intellectual property clauses for MTAs and other access agreements.

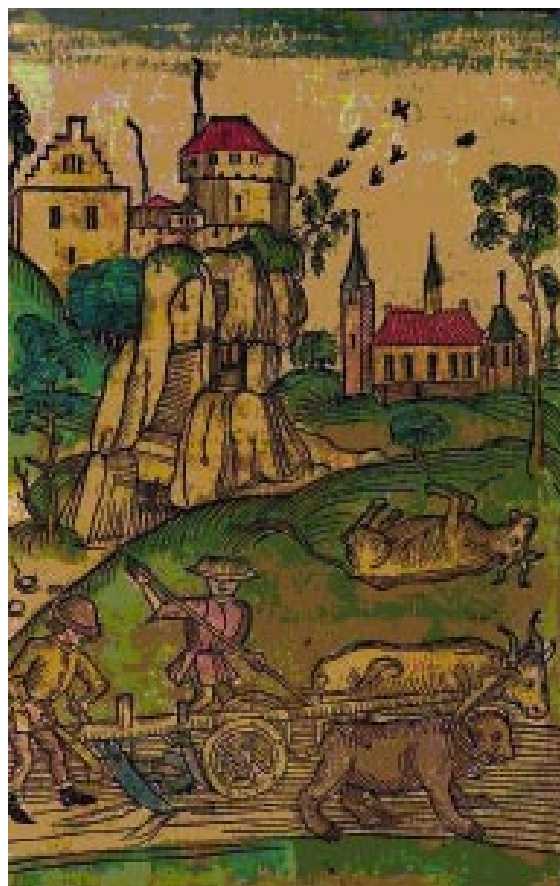
(b) legislative, administrative and policy measures to regulate ac-

cess to genetic resources and benefit-sharing. Issues arising in the development of national and regional access legislation include the role of intellectual property rights regarding prior informed consent procedures; ensuring the recording of ownership interests in inventions that arise from access to or use of genetic resources; transfer of and access to technology in the context of benefit-sharing; and joint research and development as a form of non-monetary benefit-sharing.

(c) multilateral systems for facilitated access to genetic resources and benefit-sharing. Multilateral systems, such as the system being developed in the current revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture of the UN Food and Agriculture Organization (FAO), raise numerous intellectual property issues, including possible intellectual property-based benefits-sharing mechanisms; acquisition of intellectual property rights over genetic resources placed in the multilateral system; access under the multilateral system to genetic resources covered by intellectual property rights; transfer of and access to technology under the multilateral system; and the rights of holders of traditional knowledge associated with genetic resources placed in the multilateral system.

(d) the protection of biotechnological inventions, including certain related administrative and procedural issues. Intellectual property

issues in the field of biotechnology include licensing and other issues related to the use of rights in biotechnological inventions; administrative and procedural issues related to the examination of patent applications directed at biotechnological inventions; the relationship between patents and



other forms of intellectual property protection involving genetic resources; and certain aspects, related to ethical and environmental issues, animal and human health.

*The views expressed in this article reflect exclusively the personal opinions of the author, not those of the World Intellectual Property Organization or any of its Member States.*

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# Genetic Resource IPRs:

## *A Crisis in Concepts of Discovery and Invention*

One of the fundamental problems with the application of intellectual property rights (IPR) systems to genetic resources does not arise out of IPRs themselves, but has rather developed as a result of perverse interpretations of IPRs. While there are other inherent difficulties with the application of IPRs in this context (as has been pointed out by many commentators), substantial advances in the fairness of intellectual property systems could be achieved through their correct interpretation.

For purposes of this discussion, we can identify a category of "Orthodox Intellectual Property Rights" (OIPRs), *i.e.*, those commonly found in modern intellectual property legislation such as patents, copyrights, trade secrets, etc. OIPRs can be distinguished from customary systems, and other special cases which, although they fit into internationally accepted definitions of IPRs, are rarely accorded any formal recognition. Two exceptions to this rule are the Philippines, which has enacted national legislation that recognises local customary systems under certain circumstances; and the Andean Pact countries, (collectively, as well as in the national legislation of Peru and Venezuela.)

The basic theory behind OIPRs is that creativity should be encouraged by means of a reward system based on limited monopoly rights. However, the application of OIPRs over the last two decades or so has increasingly been used to reward the investment of time and money, sometimes even in derogation of creativity. Since the landmark US case of *Diamond vs. Chakrabarty* in 1980 (extending US patent protection to live organisms), this has been particularly marked with regard to biological resources. This paradigm shift can most clearly be seen in the way that major patent offices have been interpreting the term 'invention'.

The basic question is – when can one be said to have actually 'invented' something rather than having discovered or adapted it? At its most extreme, this can be seen in the current flood of patent applications for genes, proteins and express sequence tags (ESTs). Very often these applications do not even accurately identify the function of their subject matter, they simply describe its nature. In what way is such an activity inventive? One has spent time, money and effort in identifying an element of nature, an activity that is more often than not of benefit to society, but what has one invented that was not there before?

In terms of access to genetic resources this problem is at its most poignant in pharmaceutical research where the chemical activity of one plant or microorganism may be the basis for a product – in a few cases an extremely profitable product such as Taxol. To develop these products, a company goes through a relatively well established process of screening plants for activity, isolating any active compounds and then testing and developing these compounds to create the final market product. Creativity was certainly present in developing the methods involved in this process, but it is difficult to see how their simple application constitutes creativity. What is going on is much like any other business and is a basic question of the investment of time and finance for the purpose of profit. Other businesses do not receive OIPRs for investing time and finance in new initiatives, so why should those based on biological resources be any different?

This paradigm shift in the distinction between invention and discovery creates severe problems for the field of access to genetic resources in terms of equity among stakeholders and in terms of the availability of informa-

tion and technical developments. In essence, anybody with easy access to existing technology and sufficient financial means can pick up any biological resource and create a monopoly over it. Since the majority of those who naturally have rights over biological resources live in the South and have limited access to the necessary technology or financing, the result is that the current application of OIPRs tends to alienate the resources of the South in favour of the North.

This phenomenon is at its most extreme with regard to indigenous and local community knowledge. Here the developer's "raw material" is knowledge regarding particular properties of biological resources – all that he does is further refine this knowledge in technocentric terms. This practice is even less worthy of inclusion in any comprehensible definition of invention.

In conclusion, interpretations of "invention," as applied by the world's major patent offices in addressing biologically-based patent applications, need to conform to the general definition utilized in other contexts. This would be a major step towards ultimate recognition of the rights of biological resource providers as established under articles 15 and 8(j) of the Convention on Biological Diversity.

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# THE ASEAN FRAMEWORK ACCESS AGREEMENT: *Access Instrument or Impediment?*

The ten member-countries of the ASEAN are well poised to maximize opportunities in the most critical resource of the new century: genetic resources. As a biodiversity powerhouse, it is one region that can truly benefit from the new way of utilizing biological resources where fair and equitable sharing of benefits is required as mandated by the CBD. It is hardly surprising, then, to note that bioprospecting activities are being conducted throughout the region. One of the more prominent examples is the National Cancer Institute of the US, which in 1986 initiated a systematic marine and plant collection program in Malaysia, the Philippines and Thailand.

With this background, it is generally expected that biotechnology will become a high-growth area of investment, in which ASEAN member-countries may well have a competitive edge because of the "mega-diversity" of biological resources in the region. But this is only one part of the equation. Real success will depend on whether, in the present and future collaborations between ASEAN research institutions and their foreign counterparts, the ASEAN institutions can truly make the leap to become competent in these technologies, and whether, in the process, they can be supported by legislative framework that is both effective and innovative.

## **Existing ASEAN Policies and Initiatives on Biodiversity Conservation**

The ASEAN is the world's first regional grouping to sign a landmark, binding Agreement on the Conservation of Nature and Natural Resources (9 July 1985), and it did so long before it became a trend worldwide. ASEAN backed up this effort

with Strategic Planning documents, and, more recently, with the establishment of the ASEAN Regional Center for Biodiversity Conservation in the Philippines as a flagship project to underscore the need to protect the region's biodiversity and to promote the sustainable use of its components. In addition, based on this documentation, the Association adopted seven Declarations and Resolutions on environment, development, heritage parks and reserves, from the Manila Declaration on the ASEAN Environment in 1981 to the Bandar Seri Begawan Resolution on Environment and Development in 1994. (All documents referred to in this paragraph are available online at <http://www.aseansec.org/function/>).

Unfortunately, the landmark Agreement itself has never received the requisite number of member-state ratifications, and is still not in effect. As a consequence, the member states have been working individually to implement environmental pri-

orities – particularly in the years since the CBD's entry into force in 1993. With the emergence of biopiracy as one issue that necessitated clear action, access regulations became prominent, as genetic resources came to be recognized as having a value that was worth regulating.

A number of governments in the region, including most notably the Philippines, certain Malaysian states (Sarawak and Sabah), and Indonesia have adopted or are in the process of developing, legislation on matters concerning natural resources utilization and conservation. Further, ASEAN started on the road towards regional access legislation in a 1997 meeting in the Philippines, where ASEAN Senior Officials on the Environment (ASOEN) agreed to develop a common protocol to regulate access to the region's biological resources, conserve biodiversity

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across the region and resolve the issue of bioprospecting.

### The Formulation of the Framework Agreement

In response to these concerns, in December, 1998, a workshop of Technical Experts of the ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB) was held in the Philippines to begin the work of preparing the first draft of the ASEAN Framework Agreement on Access to Genetic Resources. During this process civil society organizations participated from the very beginning. Last February, in Singapore, the Draft Agreement came out, and comments were solicited from public and private organizations, both directly and through a second meeting of the AWGNCB workshop.

In many ways, this new document represents an innovative departure from conventional thinking on how access and benefit-sharing issues should be addressed in legal instruments. Some of its most important innovations include –

- extension of the Agreement's scope to cover all "biological resources" rather than only "genetic resources;"
- specific inclusion of "traditional knowledge associated" with biological resources, and a provision that "access to these resources shall not automatically mean access to traditional knowledge associated with the resource";
- adoption of the FAO position that *ex situ* collections are "held in trust for the benefit of humankind";
- a prohibition on the patenting of plants, animals, and traditional knowledge, and a provision urging the establishment of a multilateral process to regulate various uses of human genetic material; and
- a categorical exclusion for traditional uses of biological re-

sources by local and indigenous communities.

In addition, the Agreement provides the basic components of critical elements of all biodiversity legislation, including guidelines on the manner of regulating and ensuring prior informed consent; and legislation to address biosafety concerns.

The Draft Agreement specifically recognizes the distinction between access and benefit-sharing, providing specific descriptions of the manner in which benefit-sharing arrangements shall be negotiated, and requiring that the affected people (including indigenous peoples and local communities embodying traditional lifestyles) shall be included in such negotiations. It specifically treats the rights of indigenous peoples to make determinations concerning access to various types of traditional knowledge, and to deny access if they choose. Finally, it offers concrete suggestions concerning specific types of activities and compensation that should be considered as part of the benefit-sharing negotiations.

The Framework Agreement in Article 5 lets each ASEAN member-state determine the nature of the access instrument that it will establish. This is in consonance with the principle of respect for sovereignty of each ASEAN member-country. The policies and laws should, however, meet the minimum standards represented by the terms and conditions of the Framework Agreement. Administrative structures at both the national and regional levels, and information-sharing tools such as clearinghouse mechanisms (which would specifically mandate the disclosure of all denied access applications and the reasons behind the denial) are designed to assist in this process.

### Instrument of Access or Impediment?

The provisions of the Framework Agreement are believed to be broad enough to accommodate the varying concerns and priorities of the ten

member-countries of the ASEAN from a struggling Myanmar to the embattled Philippines and the modern cyber-crazy Singapore and Malaysia. It is important to emphasize that this international instrument is not meant to close ASEAN off from potential users of its biological resources but rather, it is a means for the ASEAN member-countries to minimize competition with each other and promote co-operation with the potential users of these resources, either from within ASEAN or outside.

There might be items in the Framework Agreement that are difficult to implement particularly on prior informed consent and benefit-sharing mechanisms but these are the basic principles that must be respected by the players in the bioprospecting business as they have only one objective, promote and ensure legal certainty in the way biological and genetic resources in the region are utilized and managed. It is to be expected that as we go on through the years and each ASEAN member-country goes on its own to establish access regulations, it will always be heartening to investors and researchers that the basic principles are already laid down in this Agreement and what will be different are the nuances in each country's legislation taking into account each member-country's legal, political, economic, social and cultural milieu.

A Final Draft, incorporating the various comments received, has been presented to the 10th Meeting of the ASEAN Working Group on Nature Conservation and Biodiversity (AWGNCB) in June 2000, and is now receiving further attention from the ASOEN plus concerned ASEAN bodies, taking into account the broader concerns of each ASEAN member-state on sustainable development, environment protection, security and economic growth, among other cross-cutting concerns.

– Elpidio V. Peria  
South East Asia Regional Institute  
for Community Education  
(SEARICE)  
Philippines

## Access Policies that Work: *the Role of Public Participation*

Agenda 21 made it clear that achieving sustainable development would require a new approach to governance based on the widest possible participation in decision-making. Experience over the last decade has shown that policies and laws for sustainable development are most effective when civil society plays an active role in their design. Participation provides a tool for ensuring that policies address the needs of society, making trade-offs between the interests of different sectors or stakeholder groups, and obtaining the information required to address the complex challenges of sustainable development. It also serves to generate the legitimacy, acceptance and 'buy-in' that is required for policies to be implemented in practice.

Policies for access to genetic resources are no exception. Indeed, participation in their design is particularly important because of the wide range of interests affected, the need to promote fair and equitable benefit-sharing, and the practical complexities of regulating access. The interests of users of genetic resources, such as scientists and companies seeking access, need to be balanced with those of providers, including different government departments, protected area authorities, local authorities, and indigenous and local communities seeking recognition of their rights. The rights of different stakeholders over genetic resources and traditional knowledge also need to be recognised if policies are to provide a framework for benefit-sharing that is fair and equitable.

By building consensus and a sense of ownership of the access policy, participation generates the motivation required to bring about equitable benefit-sharing in practice. It also helps to build the understanding and trust between different stakeholders, such as companies and local communities, required to establish successful partnerships. Participation

should not be limited to national stakeholders, but should also involve those at regional and local level who have a key role to play in implementation, or whose interests may be affected.

Some might argue that effective access policy can be designed by consulting a few technical experts, and that the public only need be involved as recipients of information after a policy has been approved. This approach is unlikely to create the legitimacy and 'buy-in' amongst those whose motivation will be essential for implementation. Technical viability needs to be accompanied by political and social viability for policies to succeed. Moreover, there is a need to ensure that those groups that are less able to access information and influence decision-making, such as indigenous and local communities, can promote their interests as effectively as more powerful stakeholder groups.

Participation clearly has financial implications, but costs can be minimised by making use of existing consultation mechanisms and multi-stakeholder fora, targeting representatives of stakeholder groups and networks of organisations/individuals, and focusing on areas where genetic resources are most likely to be collected. Furthermore, the costs of participation are likely to be outweighed by increased benefit-sharing and lower policy implementation costs as a result of greater stakeholder awareness and policy ownership. Other benefits could include reduced conflict, improved natural resource management and strengthened democratic structures. In view of the limited success with the implementation of access regulations to date, investments in participatory policy making should be given serious consideration.

Access policies that have been or are being developed exemplify different

levels of participation. South Africa's access policy, developed as part of a broader Biodiversity Strategy, probably involved the most comprehensive public consultation process. Other fairly comprehensive examples include the Philippines Executive Order 247 on access to genetic resources, and the national biodiversity laws of India and Costa Rica. In some cases, the level of consultation has been unprecedented for the region or country concerned. These cases provide important examples for policy-making in other countries and other natural resource sectors.

In many cases, however, strategic planning and stakeholder participation have received little attention in the rush to get policies established. Even in the most comprehensive examples, the participation of companies, and stakeholders at regional and local level (e.g. indigenous and local communities and local authorities), has tended to be limited in scope and depth ('participation' can range from involvement in decision-making to the provision of information). In some cases there is a clear link between insufficient participation and problems at the implementation stage.

The need for guidance on stakeholder participation in access and benefit sharing processes was identified in Decision V/26 of the Fifth Conference of the Parties of the Convention on Biological Diversity, and in Decision V/16, concerning participation by indigenous and local communities in access and traditional knowledge issues.

Over the past year, IIED has been working with partners in developing countries to develop practical guidance for effective participation in the development of policies on access to genetic resources and traditional knowledge protection. The study,

*continued next page ...*

# PARTIES TO THE LUSAKA AGREEMENT HOLD THEIR THIRD GOVERNING COUNCIL

African governments, still eager to reduce and ultimately eliminate illegal trade in wild fauna and flora in the region, met for the third time this July in Nairobi to discuss the status of implementation of the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora (hereinafter referred to as the Lusaka Agreement). This regional law enforcement agreement (implementing CITES in Africa) was adopted in September 1994 and entered into force in December 1996. Six African countries (namely, Kenya, Uganda, Tanzania, Lesotho, Zambia and the Republic of Congo) are already parties, and Ethiopia, Swaziland and South Africa are signatories.

The third meeting of the Governing Council of the Parties to the Lusaka Agreement Council was attended by all the Parties as well as observers from the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), International Criminal Police Organization (INTERPOL) and the United Nations Environment

Programme (UNEP). Its proceedings were initiated by observing a one-minute silence in honour of the late Mr. Nick Carter, one of the experts behind the development of the Lusaka Agreement, who passed away in Zambia on 16th March 1999.

The Parties reviewed the status of payment of annual contributions and approved the budget of the LATF for the year 2000-2001, the status of nominations of field officers to be seconded to the LATF headquarters as well as status of designation or establishment of National Bureaus. The Parties appreciated the continued support to the LATF and to the Parties by UNEP and other donors, in particular, the Dutch and the UK, to mention but a few. UNEP and the Executive Director were particularly thanked for influencing support for the enforcement of the Agreement to date.

The Parties were delighted to hear the number of activities the newly launched LATF, which began its operational activities only in June 1999, had succeeded to achieve in the short period. In a short review of its activities, the Council was told that, in collaboration with national entities in Kenya, Uganda and Zambia it had undertaken work ranged from disseminating intelligence information from one national bureau to another, to conducting joint intelligence operations, and seizure of contraband specimens. Four joint overt operations between the LATF, the Tanzanian and Kenyan National Bureaus had been carried out, resulting in seizure of several elephant tusks, recovery of some ammunition, and the arrest and prosecution of several suspects.

The LATF's operational history was summarized as follows: Following the review of the budget by the Consultative Meeting of the Governing Council held in Nairobi on 21st and 22nd October 1998, and subsequent

payment by one Party of part of its assessed contribution, the Bureau Meeting of the Second Governing Council met in Nairobi on 15 May 1999. The Bureau met to appoint the field officers, including the Director and Intelligence Officers, for the LATF in readiness for its launch. Three field officers from Kenya, Tanzania and Zambia were nominated as the first field officers of the LATF and deployed to establish the office and serve at the LATF headquarters. Of the three, one (a Kenyan) was elected the Director, the other (a Tanzanian) became the Intelligence Officer and, one (a Zambian) is the field officer but deployed to remain at the National Bureau in Lusaka until when the financial situation improves for relocation. With the appointment of these core personnel, the LATF was ready to commence its operational activities, hence its launch on 1st June 1999.

A number of the Council's decisions aimed at further strengthening and facilitating the implementation of the Agreement. Among the decisions adopted, the Parties urged the LATF to establish and formalize co-operative working relations with other relevant enforcement bodies; and urged Parties that have not yet designated or established national bureaus and/or nominated national law enforcement officers to do so without further delay and to notify the Depositary of the Agreement as necessary. Only four Parties have informed the Depositary of their nomination of national bureaus. These are Kenya, Tanzania, Uganda and Zambia. The Bureau, on its part, was requested to make necessary arrangements for the appointment of field officers once nominated and seconded by the remaining Parties.

The Parties that had not paid their contributions towards the 1999-2000 budget were urged to do so and to

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funded by the UK Department for International Development and the J. D. MacArthur Foundation, has involved case studies in India, South Africa, the Philippines and Peru, less detailed reviews of Uganda, Mexico, Nigeria, Costa Rica and Bolivia, and an international workshop in London in March 2000. The final report will be available from IIED in October.

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# CALENDAR C

## As of 18 Sep

**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.

- |                  |                               |  |
|------------------|-------------------------------|--|
| 18-22 Sept.      | Cape Town, South Africa       | Global Invasive Species Programme Synthesis<br>Contact: Laurie Neville, Conference Coordinator, Global Invasive Species Programme, Stanford University; tel.: (1 650) 728-2614; fax: (1 650) 723-1530; e-mail: lneville@leland.stanford.edu; Internet: <a href="http://jasper.stanford.edu/gisp/">http://jasper.stanford.edu/gisp/</a>   |
| 25-29 Sept.      | Geneva, Switzerland           | 7th Session of the International Negotiating Committee (INC) for the Preparation of the Conference of the Parties of the Rotterdam Convention for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade<br>Contact: Niek Van der Graaf, FAO, Viale delle Terme di Caracalla 00100 Rome, Italy; tel.: (39 6) 5705 3441; fax: (39 6) 5705 6347; e-mail: Niek.VanderGraaf@fao.org; Internet: <a href="http://www.fao.org/waicent/FaolInfo/Agricult/AGP/AGPP/Pesticid/">www.fao.org/waicent/FaolInfo/Agricult/AGP/AGPP/Pesticid/</a> |
| 3-6 Oct.         | Cartagena, Colombia           | Regional Workshop on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade<br>Contact: Gerold Wyrwal, FAO; tel: (39 6) 5705 2753; fax: (39 6) 5705 6347; Internet: <a href="http://www.fao.org/waicent/FaolInfo/Agricult/AGP/AGPP/Pesticid/Default.htm">http://www.fao.org/waicent/FaolInfo/Agricult/AGP/AGPP/Pesticid/Default.htm</a>  |
| 4-11 Oct.        | Amman, Jordan                 | IUCN World Conservation Congress<br>Contact: Ursula Hiltbrunner, IUCN, Rue Mauverney 28, 1196 Gland, Switzerland; tel.: (41 22) 999-0001; fax: (41 22) 999-0020; e-mail: ursula.hiltbrunner@iucn.org; Internet: <a href="http://www.iucn.org">www.iucn.org</a>   |
| 9-20 Oct.        | Rome, Italy                   | 6th Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture<br>Contact: Clive Stannard, FAO, Viale delle Terme Caracalla, 00100 Rome, Italy; tel: (39 6) 5705-2287; fax: (39 6) 5705-3369; e-mail: clive.stannard@fao.org; Internet: <a href="http://www.fao.org/ag/cgrfa/">http://www.fao.org/ag/cgrfa/</a>   |
| 11-12 Oct.       | Washington, DC, USA           | 1st North American Symposium on Understanding the Linkages between Trade and Environment<br>Contact: Scott Vaughan, CEC, Montreal, Canada; tel.: (1-514) 350 4302; fax: (1 514) 350 4314; e-mail: svaughan@ccemtl.org; Internet: <a href="http://www.cec.org">http://www.cec.org</a>   |
| 16-20 Oct.       | San José, Costa Rica          | FAO Expert Consultation on Forest Change<br>Contact: Robert Davis, Senior Forestry Officer (Forest Resources Appraisal and Monitoring), Forestry Department, FAO; tel.: (39 06) 570-53596; e-mail: Robert.davis@fao.org; Internet: <a href="http://www.fao.org/forestry/Forestry.htm">http://www.fao.org/forestry/Forestry.htm</a>   |
| 22-27 Oct.       | Buenos Aires, Argentina       | 11th International Soil Conservation Organization Conference: ISCO 2000<br>Contact: Faculty of Agronomy - University of Buenos Aires; e-mail: isco2000@mail.uba.ar; Internet: <a href="http://www.isco2000.org.ar/ingles/index-ing.htm">http://www.isco2000.org.ar/ingles/index-ing.htm</a>  |
| 23-26 Oct.       | Porto Seguro da Bahia, Brazil | Forest 2000 – 6th International Congress and Exhibition on Forests<br>Contact: BIOSFERA - Brazilian Institute for the Environment, Av. Presidente Vargas, 435-Suite 1103, Centro 20077-900, Rio de Janeiro-RJ, Brazil; tel./fax: (55 21) 221-0155/221-7626; e-mail: biosfera@biosfera.com.br; Internet: <a href="http://www.biosfera.com.br/forest_2000.htm">http://www.biosfera.com.br/forest_2000.htm</a>  |
| 23-27 Oct.       | Athens, Georgia, USA          | Ethnobiology, Biocultural Diversity and Benefits-Sharing: 7th Congress of the International Society of Ethnobiology<br>Contact: 7th International Congress of Ethnobiology, c/o LaBau Bryan, Department of Anthropology, University of Georgia, 250 Baldwin Hall, Athens, GA 30602-1619 USA; tel.: (1 706) 542-3922; fax: (1 706) 542-3998; e-mail: lbryan@arches.uga.edu; Internet: <a href="http://guallart.dac.uga.edu/ISE/">http://guallart.dac.uga.edu/ISE/</a>   |
| 24-25 Oct.       | Geneva, Switzerland           | World Trade Organization Committee on Trade and Environment Meeting<br>Contact: Sabrina Shaw, Secretary of the CTE, WTO, 154 rue de Lausanne, 1211 Geneva 21, Switzerland; tel: (41 22) 739 5482; e-mail: sabrina.shaw@wto.org; Internet: <a href="http://www.wto.org/wto/environt/te030.htm">www.wto.org/wto/environt/te030.htm</a>   |
| 25-27 Oct.       | Madrid, Spain                 | Simposio Internacional: Legislación y Derecho Ambiental<br>Contact: Ilustre Colegio de Abogados de Madrid, Programa Internacional en Derecho Ambiental, Serrano Nº 11, 4ª Planta, 28001 Madrid, Spain; e-mail: zsogon@iies.es or zsogon@teleline.es  |
| 30 Oct. - 3 Nov. | Geneva, Switzerland           | 7th Session of the Intergovernmental Negotiating Committee (INC) for the Preparation of the Conference of the Parties of the Rotterdam Convention for the Application of the PIC Procedure for Certain Hazardous Chemicals and Pesticides in International Trade<br>Contact: Niek Van der Graaff, FAO, tel.: (39 6) 5705-3441; fax: (39 6) 5705-6347; e-mail: Niek.VanderGraaff@fao.org; Internet: <a href="http://www.fao.org/waicent/FaolInfo/Agricult/AGP/AGPP/Pesticid/Events">www.fao.org/waicent/FaolInfo/Agricult/AGP/AGPP/Pesticid/Events</a>  |

# OF MEETINGS

## September 2000

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

- |            |                            |   |
|------------|----------------------------|---|
| 1-3 Nov.   | Sarawak, Malaysia          | Biodiversity 2000 Kuching: Prudent Biodiversity Management and Sustainable Development<br>Contact: Chua Tek Kheng, Sarawak Biodiversity Centre, KM 20 Jalan Puncak Borneo, Smengoh, 93250 Kuching, Sarawak, Malaysia; tel.: (60 82) 610610; fax: (60 82) 611535; e-mail: chuatk@sbc.org.my; Internet: www.sbc.org.my  |
| 6-10 Nov.  | Monaco                     | 3rd Global Meeting of Regional Seas Conventions and Action Plans<br>Contact: Jorge Illueca, Assistant Executive Director, Division of Environmental Conventions, UNEP, Nairobi, Kenya; tel: (254 2) 624 011; e-mail: Jorge.Illueca@unep.org   |
| 7-10 Nov.  | Accra, Ghana               | Third West Africa Water and Environment Conference<br>Contact: Water Africa 2000 Sub-Sahara, ACE Event Management, 37 Upper Duke Street, Liverpool L1 9DY, United Kingdom; tel.: (44 151) 709-9192; fax: (44 151) 709-7801/3262; Internet: http://www.ace-events.com/WA2000SConf.htm  |
| 10-13 Nov. | Potsdam, Germany           | National and Regional Climate Change Impact Assessments in the Forestry Sector<br>Contact: Marcus Lindner, Potsdam Institute for Climate Impact Research, Telegrafenberg, P.O. Box 601203, D-14412 Potsdam, Germany; tel: (49 331) 288 2677; fax: (49 331) 288 2695; e-mail: lindner@pik-potsdam.de; Internet: www.pik-potsdam.de                                     |
| 13-24 Nov. | The Hague, The Netherlands | 6th Conference of the Parties to the UNFCCC<br>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: www.unfccc.de   |
| 15-17 Nov. | Rome, Italy                | FAO Expert Meeting on Criteria and Indicators for Sustainable Forest Management<br>Contact: Christel Palmberg-Lerche, Chief, Forest Resources Development Service (FORM), Forestry Department, FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy; tel.: (39 06) 570-53841; e-mail: christel.palmberg@fao.org; Internet: http://www.fao.org/forestry/Forestry.htm |
| 4-9 Dec.   | Johannesburg, South Africa | 5th session of the Intergovernmental Negotiating Committee for an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (INC-5)<br>Contact: UNEP Chemicals (IRPTC); tel.: (41 22) 979-9111; fax: (41 22) 797-3460; e-mail: dodgen@unep.ch; Internet: http://irptc.unep.ch/pops/                     |
| 11-15 Dec. | Montpellier, France        | First Meeting of the Intergovernmental Committee on the Cartagena Protocol<br>Contact: Cyrie Sendashonga, CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec H2Y 1N9, Canada; tel.: (1 514) 288-2220; fax: (1 514) 288-6588; e-mail: cyrie.sendashonga@biodiv.org; Internet: http://www.biodiv.org/                             |
| 11-15 Dec. | Ougadougou, Burkina Faso   | 12th Meeting of the Parties to the Montreal Protocol<br>Contact: Ozone Secretariat, tel.: (254 2) 62 1234; fax: (254 2) 62 3601; e-mail: ozoneinfo@unep.org; Internet: www.unep.org/ozone/  |
| 11-22 Dec. | Bonn, Germany              | 4th Session of the Conference of the Parties to the Convention to Combat Desertification<br>Contact: CCD Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel.: (49 228) 815-2800, fax: (49 228) 815 2899; e-mail: secretariat@unccd.de; Internet: www.unccd.de   |

## 2001

- |           |                      |  |
|-----------|----------------------|--|
| 8-12 Jan. | San José, Costa Rica | World Congress of Environmental Law and Policy<br>Contact: CIACA, Oficina Europea, Villa Asunción, AV Alcalde Jose Elosegui, 275, 1ª Planta, 20015 Donostia San Sebastian. Gipuzkoa, Spain, tel. and fax: (34 943) 278888; e-mail: ciacaciv@sarenet.es; Internet: www.greenchannel.com/iceac     |
| 5-9 Feb.  | Nairobi, Kenya       | 21st Session of the UNEP Governing Council<br>Contact: B. Miller, UNEP, Nairobi, Kenya; tel.: (254 2) 62-3411; fax: (254-2) 62-3748; e-mail: millerb@unep.org; Internet: http://www.unep.org/Calendars   |
| April     | New York, USA        | 9th Session of the Commission on Sustainable Development (CSD-9)<br>Contact: Zehra Aydin-Sipos, Major Groups Focal Point, Division for Sustainable Development; tel.: (1 212) 963-8811; fax: (1 212) 963-1267; e-mail: aydin@un.org; Internet: http://www.un.org/esa/sustdev/csd9/csd9_2001.htm# |

## UPDATE: Namibia Work on Access Legislation

The Environmental Legislation Project in the Directorate of Environmental Affairs, Ministry of Environment and Tourism is tasked with the review and revision of Namibia's environmental legislation. Funded by NORAD, it is a joint project of the Ministry of Environment and Tourism, the Office of the Attorney General and the Legal Assistance Centre.

Under Article 95(l) of the Constitution of the Republic of Namibia, government must adopt policies aimed at the maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and the utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.

As a party to the Convention on Biological Diversity, Namibia is also obliged to ensure the equitable sharing of benefits arising from commer-

cial use of genetic resources and traditional knowledge.

As part of an ongoing environmental law reform programme, the Ministry of Environment and Tourism, in conjunction with the Ministry of Agriculture, Water and Rural Development embarked in 1998 on the development of legislation to regulate access to genetic resources and associated knowledge, innovations and practices in Namibia. This process has involved two meetings of the inter-ministerial Biotrade Focus Group, the circulation of a paper for stakeholder comment and two workshops, involving, as far as possible, all stakeholders, to ensure that the resultant legislation is appropriate for Namibia's current and long-term needs.

On the basis of input received from stakeholders during the course of this consultative process, proposals for policy to underpin new legislation

were developed, covering underlying principles, scope of application, access determination, export controls benefit sharing and the protection of traditional knowledge and financial mechanisms, and utilizing permit contract, and informed consent mechanisms.

Several issues still require further discussion and consultation. These include the issues of the establishment of a fund for the sharing of benefits and the definition of communities and beneficiaries. Whilst the sharing of benefits in respect of the genetic resources themselves does not present too much of a problem, the sharing of benefits in respect of associated traditional knowledge has proved to be extremely complicated, since traditional knowledge is not necessarily held only by one defined community.

The first draft of legislation based on the policy proposals is now being addressed in a series of community consultations, to resolve the issue of benefit sharing in respect of traditional knowledge and the definition of communities and beneficiaries. Once these consultations have been completed, the draft legislation will be revised to reflect the input received from communities in respect of these issues.

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## ...LUSAKA AGREEMENT

make necessary arrangements to pay their full contributions to the 2000-2001 budget as soon as possible. The Council also approved the LATF programme of work and the budget for the year 2000-2001. It equally approved, in principle, the establishment of a Trust Fund for the LATF pending a fully developed proposal to be submitted in due course.

The Executive Director of UNEP, in liaison with the Director of the LATF, was again requested to make necessary arrangements for the organization of training programmes for law enforcement officers at national and regional levels. He was also requested to solicit from donor community additional financial resources to assist and facilitate both the LATF and the National Bureaus in the implementation of the Lusaka Agreement.

A three-week-long training programme, with additional governments participating, took place in Naivasha, Kenya in July-August

2000. The course brought together enforcement officers from thirteen African Governments with instructors from the UN, Austria, Israel and Kenya. Non-Parties were invited to participate in the training so as to encourage their Governments to consider joining the Agreement and also to establish network of co-operation with them in the conduct of transboundary enforcement activities affecting their countries in combating illegal trade in endangered wildlife species. With the completion of the course, participants are expected to form a core of experts in their National Bureaus as well as act as trainers, in turn, to train other enforcement officers to join and support them in enforcement activities at national level.

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## ***Benefit-sharing and the Search for Common Understandings***

Although it is one of the three primary objectives of the Convention, in terms of implementation “fair and equitable sharing of the benefits arising out of the utilisation of genetic resources” has lagged well behind the others (biodiversity conservation and sustainable use.) This situation may be understandable, since this entire area is new and incompletely understood. It is clearly time, however, to begin making measurable advances in addressing the two basic goals of benefit-sharing –

- promoting equity in the distribution of the benefits from use of genetic resources; and
- recognising that new developments in the use of genetic resources offer financial potential which may provide added incentive for protecting those resources, where the benefits are felt by local people.

The CBD COP has taken steps that indicate that they are “clearing the way” for such action – addressing these issues in detail in the past two COPs and the past two SBSTTAs, and placing these issues on the agendas of COP 6, SBSTTA 6&7 as well.

In these deliberations, another difficulty arises due to the complex in-

terrelation of benefit-sharing with a great many other complex issues, including access to genetic resources (both commercial and scientific/academic); ownership of genetic resources, and related technologies and information (including IPR); distribution of benefits among providers of genetic resources (equity among nations); distribution of benefits among local and indigenous peoples – the *de facto* guardians of biodiversity (interpersonal equity); involvement of local residents in conservation and sustainable management; and the role of cost-sharing as a necessary element of the equity and benefit-sharing concepts.

While many of critical benefit-sharing issues are the subject of ongoing negotiations, many have never been resolved. In particular, the meaning of “genetic resources,” and associated concepts of their ownership have never achieved general consensus. Discussion of these points has often been avoided based on the claim that they should be decided under access contracts negotiated with the affected countries, and that through the application of contractual principles, sufficient common understandings would develop.

As a result of this choice, however, lack of consensus on these and other critical concepts has stymied efforts

to reach agreement on the non-contractual elements across this matrix of issues. In the meantime, basic benefit-sharing issues are decided, not by national governments, but by international and other courts addressing trade-related issues such as biopiracy and IPR. The result: Decisions that do not reflect CBD principles or the objectives of the countries in adopting the benefit-sharing provisions.

It appears then that, in addition to (or perhaps as a precondition to) political and commercial approaches and decisions, there remains a critical need for the development of “common understandings.” To reach such a goal, it will be necessary for work to be carried out in a variety of ways toward the development of common understandings. These activities, in turn, can feed into the various CBD and other processes of the development of overarching principles for the elaboration of access and benefit-sharing guidance and implementation.

IUCN looks forward to offering to provide a “platform” for the type of discussions, projects and other activities that may feed into the work of this decision-making process.

– TRY

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## **Observations on CBD COP-5**

This May, the 5th Conference of the Parties to the Convention on Biological Diversity was held in Nairobi, Kenya. IUCN was represented by more than 30 people (an official delegation of 27 plus several who were attending in their capacity as representatives of UN organs). Six ELP representatives were present, including three staff and three CEL members. Even with such an extensive team, however, it was difficult to give appropriate attention to all of the issues addressed in the meeting, or to take advantage of all the available

opportunities to obtain new information or make new connections. A detailed report of the Conference and its outputs would fill more than this publication, so this article will be confined to making a few observations, about a few of the decisions of greatest import from a legal perspective and the most salient trends and implications of COP-5.

The centerpiece of COP-5 was the Cartagena Protocol on Biosafety, which opened for signature during the high-level segment of the Conference.

Beyond this important ceremonial event, the COP worked diligently to begin the process of bringing the Protocol into operation, adopting the first components of a workplan for the Intergovernmental Committee for the Cartagena Protocol, and identifying several areas of concern and contention. This issue, particularly the creation and adoption of national legislation implementing the Protocol, was the most important of the COP, in the eyes of many delegates.

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In addition to the Protocol, three issues had been designated as "priority issues for review and guidance" in COP-5 –

1. Dryland, Mediterranean, arid, semi-arid, grassland and savannah ecosystems,
2. Sustainable use and ecotourism, and
3. Access to genetic resources.

Through comprehensive Working Group discussions over a full week of the Conference, the COP sought to develop a more detailed program of work, under which substantial progress can be made in each of these critical areas during the next two years.

In the area of drylands, for example, the COP programme of work begins with the establishment of an *ad hoc* group to assess international priorities, measures for resource management and sustainable livelihoods, and indicators and socio-economic impacts, including the relationship between biodiversity and poverty. Working through the Secretariat and a "roster of experts," the COP proposes to begin the process of collaborative work among countries sharing similar biomes, based upon an indicative list of geographic levels for activities, adopted by the COP to assist in the implementation process.

The COP issued three separate decisions on sustainable use and ecotourism. Among their provisions, the most critical is the exhortation to relevant organizations to assist the Executive Secretary in assembling case studies and lessons learned on sustainable use.

In the area of Access to Genetic Resources, the COP continues with major activities begun in COP-4 and carried out through the last two years. Beyond these specific streams of activity (described in detail in the article on page 1), the integrally related issue of Benefit-Sharing has already been designated for in-depth consideration in COP-6, suggesting a very long period for collaborative, high-priority work in this overall area.

In addition to comprehensive discussions and decisions in each of these areas, the COP's deliberations resulted in 29 decisions, including substantive decisions on inland waters, the ecosystem approach, forest biodiversity, agricultural biodiversity, monitoring an assessment, alien species, the Global Taxonomy Initiative, plant conservation, the GEF, the clearinghouse mechanism, incentives, traditional and indigenous knowledge, education, impact assessment, liability and redress mechanisms, sustainable use and Rio+10.

Among the most important law-related decisions of the COP were those related to the issue of alien invasive species. Recognizing and supporting the work of the Global Invasive Species Programme, the decision emphasized the need for comments and case studies relevant to further elaboration of the Interim Guiding Principles on Alien Invasive Species, which were included in its decision. The COP also considered several possibilities for future action in the area including work on a regional basis or through regional fora, as well as on the international level, through the development of formal guidelines and even the possibility of development of a more formal international instrument. This provision makes it clear that the Parties' work on aliens will definitely not end with COP-6, but has apparently already booked its place on the COP-7 agenda, as well. The decision notes clearly the relationship of this issue to other areas within the CBD's sphere (including COP-5 decisions on inland waters, and marine and coastal biodiversity, forests, and dry and sub-humid lands biodiversity), and to actions under other international agreements and bodies (such as IMO, IPPC, FAO, the WTO Agreements and Ramsar.)

Several trends are discernable from this year's CBD deliberations. First, is an increasing (or resurging) awareness of the important political nature of the CBD. This trend may be seen, for example, in the Parties' increasing resistance to the use of "Expert Panels," which are viewed as mechanisms by which a smaller group may "take control" of an issue, resulting

in recommendations and determinations which are not felt to reflect the Parties' needs or any sort of political agreement. As a consequence, a number of proposals for "expert" groups were challenged on this point, and some were changed to "*ad hoc* Working Groups" (i.e., groups consisting of formally approved national delegates from whichever Parties choose to send them.) Even where Expert Groups are recommended in COP-5 decisions, fewer of these activities have found national sponsors. (For example, while no financial support was offered for continuation of the work of the Access Expert Panel, Germany's offer to sponsor and host the Ad Hoc Working Group on Access was announced in Nairobi, and the meeting is already generally scheduled for early next year.)

A second trend may be found in the desire to develop case studies, as a primary mechanism for making informed decisions about future work. A strong message from the various deliberations indicates that this type of materials feeds into, and fosters, the national policy-making, legislative and implementation processes, but does not attempt to control those processes.

A third trend can be seen in the frequent reference to the development of action programs and instruments at the regional level. In recent years, many countries have begun to join together at the regional level to more effectively and efficiently combat environmental problems. An increased level of recognition of these activities within the COP is seen as the first step toward the development of CBD recommendations and guidance specifically aimed at assisting these processes.

In general, this conference was thought to have been an overwhelming success, both for the Parties, and for IUCN, which, directly and through its pivotal roles in the GBF and GISP, has been seen to have a beneficial effect on the work of the CBD.

(Copies of all COP-5 decisions can be found on the CBD website at [www.biodiv.org](http://www.biodiv.org)).

– FBG, NWI, TRY



# 15th Global Biodiversity Forum

The 15th Session of the Global Biodiversity Forum (GBF) was held in Nairobi over the weekend preceding CBD COP-5. Nearly 200 people from 46 countries participated in the meeting, which addressed the overall theme of "Sharing the Benefits of Biodiversity."

Organized around three basic workshops –

"Biodiversity for Poverty Alleviation,"

"Instruments for Access and Sharing the Benefits of Genetic Resources and Traditional Knowledge" and

"Agricultural Biodiversity and Sustainable Livelihoods: the Case of Dryland Ecosystems"

the GBF was able to find some new perspectives on the general theme, while addressing specific issues in a practical and focused way.

The Biodiversity and Poverty Alleviation workshop focused on practical issues of integration of human development issues, including poverty and the economic systems which create it, into the basic principles and objectives underlying environmental decision-making and the ecosystem approach. There is a great need for recognition that the global economy is a subsystem of the global ecological system. This necessarily implies a need to recognize and deal with the various pathways in which they impact one another. The workshop accorded significant attention to the patterns of overconsumption, which are part of this global economy and

form a major cause of both biodiversity loss and impoverishment, and the manner in which they can be brought to proper attention of national officials and decision-makers, as well as other pathways for change through international action (and co-ordination among major international agreements and IGOs).

The workshop on Instruments for Access and Benefit-Sharing explored issues related to the implementation of CBD articles 15 (access to genetic resources) and 8(j) (protection of traditional knowledge), and the linkages between them. Participants included representatives from governments, NGOs, indigenous organizations, research institutions, and inter-governmental institutions. An overriding theme of the workshop was the urgent need for the Parties to ensure that implementation of these two articles be fully co-ordinated and mutually supportive. In addition to discussions of urgent issues of national implementation, intellectual property rights, and the special needs of holders of traditional knowledge, the workshop fostered intense and fruitful discussions about regional implementation (an option not discussed within the CBD, or well supported by COP decisions, but which offers significant opportunities to address some of the most troubling aspects of the A/BS issue); integration of A/BS issues in strategic planning and impact assessment, and the special concerns that arise in ensuring public participation in the context of A/BS legislation and policy development.

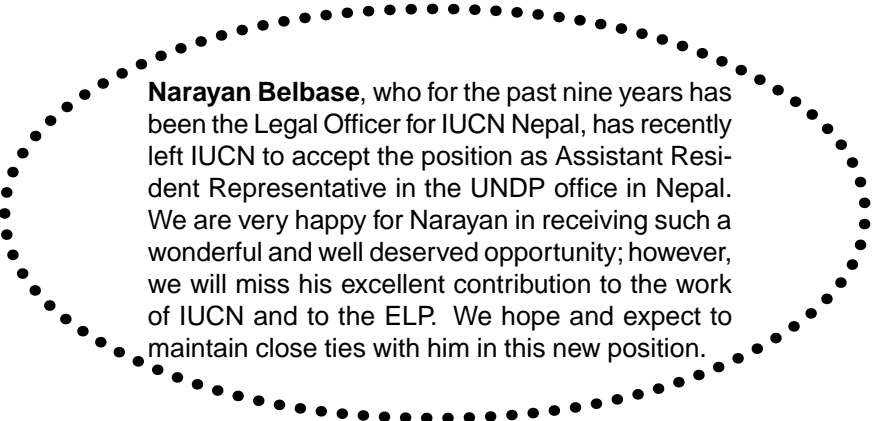
Participants in the workshop on the Agricultural Biodiversity and Drylands discussed the particularly important role of farmers as the main ecosystem managers in critically sensitive dryland ecosystems, and the impact of agriculture on terrestrial biodiversity. Their work resulted in perhaps the strongest political message to come out of the GBF, calling for full support to actions by farmers that conserve and sustainably use/maintain agricultural biodiversity and reflect such actions in the National Reports of CBD Parties. The empowerment of farmers is crucial in counteracting the spread of unsustainable agriculture technologies and practices that pose a major threat to agricultural biodiversity. This workshop was doubly challenging but also doubly rewarding, as it included within its deliberations representatives from farming co-operatives from several regions of Africa.

One identified need common to all three areas is for better documentation and case studies on which to base recommendations for change. Legal and legislative case studies are a critical component of this process. The ELP is actively developing exploring the means with which to respond to this need.

A Statement from the GBF was orally presented to the Opening Plenary of COP and was very well received. The Statement and workshop recommendations are available from the GBF web site ([www.gbif.ch](http://www.gbif.ch)).

In addition, the delegates of COP-5 gave overwhelming support to the GBF, both through their utilization of its outputs and especially in adopting a resolution recognizing the value of its contribution to the objectives of the CBD. As the GBF enters a new phase of its operations, it is hoped that this value will be recognized even more widely.

– Adapted and excerpted from the IUCN Delegation Report on COP-5 and GBF-15



**Narayan Belbase**, who for the past nine years has been the Legal Officer for IUCN Nepal, has recently left IUCN to accept the position as Assistant Resident Representative in the UNDP office in Nepal. We are very happy for Narayan in receiving such a wonderful and well deserved opportunity; however, we will miss his excellent contribution to the work of IUCN and to the ELP. We hope and expect to maintain close ties with him in this new position.

# The Many Challenges of Climate COP-6

On 13–24 November 2000, the Parties to the United Nations Framework Convention on Climate Change will meet in The Hague for their 6th Conference. Not since their meeting in Kyoto in December 1997 have they had such a challenging agenda. Whereas the Kyoto Protocol identified the means for achieving binding reductions in global greenhouse gas emissions, COP-6 is intended to spell out the rules for how these reductions are to be achieved. Thus, COP-6 should fulfill the list of decisions outlined in the Buenos Aires Plan of Action (BAPA) adopted during COP-4, November 1998. The UNFCCC Parties gave themselves a two-year deadline to implement the BAPA which identifies some 140 issues in need of resolution before the Kyoto Protocol can be fully implemented and enter into force.

The Kyoto Protocol provides for legally binding emission reduction commitments for UNFCCC Annex I Parties to be carried out by the 39 Parties listed in Annex B of the Kyoto Protocol (including the European Community). The Protocol is unique in international environmental law by the innovative mechanisms it provides to help achieve emission reductions (quantified emission limitation reduction commitments or “QELRCs”). The innovative mechanisms set up via the Protocol include those in Article 6 for joint implementation, in Article 12 for a Clean Development Mechanism (“CDM”), and in Article 17, for emissions trading.

Each of these “Kyoto Mechanisms” generates an array of legal issues in need of resolution. As an example of the magnitude of the issues, the Chairman’s Note on a Draft consolidated text on the Mechanisms prepared by Chairman Chow of the Working Group on Mechanisms is almost 100 pages long (10 June 2000). Under these mechanisms, “emission reduction units” or “ERUs” (as referred to in Article 6), also known as “certified emission reduc-

tions” or “CERs” (Art. 12) or “assigned allowance units” or “AAUs” (Art. 17) may be generated, transferred, sold and/or traded. Rules need to be agreed, *inter alia*, on how to monitor, verify and certify these transactions; the amount of these activities which can be “supplemental” to purely domestic reductions; how States will interact with the legal entities engaged in these transactions; and, in particular under Ar-

An issue of particular relevance for IUCN is the scope of CDM activities, especially pertaining to carbon sequestration. This issue received increased focus this past March when the Intergovernmental Panel on Climate Change issued a special report on land use, land-use change and forestry (LULUCF), paying attention, *inter alia*, to the role of forests in sequestering carbon. There are differing views on whether the CDM



ticle 12, how the CDM will raise revenues and how it will be governed.

The efforts to design and determine membership of the CDM and its Executive Board are reminiscent of negotiations leading to establishment of governance structures under the Montreal Protocol Executive Committee and the Global Environment Facility. An added complication here is the consideration negotiators must give to the role of private actors who engage in the underlying activities. In addition, many States have expressed concern at the prospect of the market incentives dominating the mechanisms at the expense of the least developed countries and the environment. At the same time, private investment is understood as critical to the success of the mechanisms.

should include carbon sequestration activities. To some, inclusion could be a powerful incentive to conserve biodiversity and reduce greenhouse-gas (GHG) emissions. To others, such activities threaten “green colonialism” and provide a way for those responsible for global warming to avoid expensive, but, in their view, necessary domestic measures. Some also view sequestration projects as more difficult to monitor and verify than traditional “clean energy” projects. Proponents of carbon sequestration challenge each of these assumptions. If sequestration activities are included in the CDM, there are areas of agreement on this issue, as IUCN has noted in a recent paper by the IUCN Climate

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Change Programme. IUCN notes that if LULUCF projects are included in CDM activities, they must be done in a way which focusses on accuracy of carbon sequestration projections, and protects the livelihoods of those dependent on forest ecosystems, as well as the long-term health of the ecosystem.

If these issues were not enough to occupy negotiators, COP-6 also needs to resolve a challenging set of other topics such as the development of a "system" for compliance (Art. 18); national policies and measures for calculating and achieving reductions, especially guidelines pertaining thereto (Art. 5, 7 and 8); the adequacy of Annex I Parties measures under UNFCCC Article 4 (such as the eagerly awaited technology transfer under Art. 4.5); and the rights of Kazakhstan and Turkey to change their Annex membership.

One of these issues, rich with legal implications, is the development of a compliance "system" to handle instances in which Parties have difficulties in fulfilling their obligations. Bracketed text in this topic includes

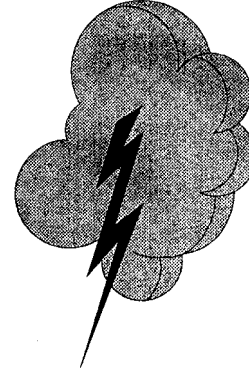
- the scope of the compliance issues (is the compliance

"system" limited to the Kyoto mechanisms or is it all-encompassing to include all potential acts of non-compliance under the Protocol?);

- whether to have one compliance body to handle all referrals or two (some Parties propose to have one handle facilitative issues, the other to deal with enforcement);
- the magnitude and methods of the consequences of non-compliance, such as penalties;
- how to structure compliance determination;
- voting;
- conflict of interest provisions for those engaged in determining compliance;
- the allowable "evidence" in compliance cases;
- when and how to allow for appeals; the selection of compliance "panel" members (a process of some similarity to the selection of the CDM Executive Board); and
- the relationship of this compliance system with the Convention's related provisions such as the multilateral consultative

process under Article 13 of the Convention and dispute resolution under Article 14 of the Convention.

In sum, the COP-6 process will be weighty and complicated. Still, while the Hague agenda is daunting, so was that handed to the negotiators upon arrival in Kyoto. The



success of that meeting, and the need for urgent action based upon continued scientific knowledge provide a basis for optimism for progress at The Hague. Key to success may simply be the ability of the different working groups

to coordinate their actions, to be sure that a resolution by one subsidiary body or working group of a "cross-cutting" issue does not come at the expense of political compromise on related issues. The elections in the United States the week preceding COP-6 throw an added element of drama to the setting and might also bear some influence on the outcome.

– CDL



The 6th Conference of the Parties to the UNFCCC will take place from 13-24 November in The Hague.

## Regional

### Africa

After the suspension of the project due to civil unrest, plans for phase 2 of the national environmental legislation project in **Guinea Bissau** are being finalized. The Environmental Law Centre is planning a mission to Guinea Bissau in the autumn of this year.

IUCN's Regional Office for East Africa (**EARO**), in conjunction with CEL, and the ELC organized the Eastern Africa Regionalisation planning meeting, held – thanks to the courtesy of UNEP – at UNEP Headquarters on 10-11 June. The meeting identified priority issues including: conservation and management of transboundary ecosystems and species; integrated coastal zone management; environmental governance; alien invasive species; armed conflict; forest management and conservation; water resources management; land and resource tenure; and capacity building. Several informal CEL Working Groups will now begin moving these issues forward.

The ELC has started drafting an internal agreement between the ELP and **EARO** on a possible review of legislation and institutional frame-

work on wetlands and alien invasive species in Eastern Africa. The goal of this activity is to review and analyze the regional, national and local legislation and institutional frameworks in several countries in the region.

In June, the ELC met in Nairobi with the team responsible for drafting a proposed Forestry Sector Protocol to the **SADC** Treaty. Recently authorized to continue its work for a second year, the team reviewed the history of the development of the project, and discussed the documents prepared during the first year's operations. Under a new workplan, the team will prepare a Draft Protocol for review and further development this Fall.

The ELC, CEL and the Faculty of Law at the University of **Kuwait** are preparing to host a conference on environmental law in the Arab world and the opening ceremony of the Arab Regional Centre for Environmental Law (ARCEL) on 30 September - 2 October 2000.

### Europe

On 4-5 June, the ELC participated in the Ministerial Meeting on Coop-

eration in the Carpathian Region and the Danube River Basin in **Bucharest**. This conference, attended by ministerial level environmental officials from 12 countries, focused on the final negotiations and signing of two new international legal documents – the Agreement on the Establishment and Joint Management of a Transfrontier Protected Area in the Lower River Prut; and a Declaration on the Creation of a Lower Danube Green Corridor.

The ELC is actively negotiating an agreement between IUCN, the Ministry of the Environment of **Spain**, and the Consejería de Medio Ambiente de la Junta de Andalucía for the establishment of an IUCN office in Malaga, Spain.

### Latin America

The ELP, CEDA (Centro Ecuatoriano de Derecho Ambiental) and the Fundación Antisana have entered the final stage of negotiations of an MOU for a study on water legislation in the **Member States of the Andean Community**. This study will identify the strengths and weaknesses of the national legislation of

*continued next page ...*



19th Technical Committee for Forestry Meeting, Lesotho, May 2000.

the Andean countries, and contribute to the improvement of water management throughout the region.

On 22 June, the workplan for an ELP activity in **Nicaragua**, under the ELS Netherlands Project, was approved. A collaboration between IUCN-ORMA, MARENA (Ministry for the Environment and Natural Resources of Nicaragua) and IUCN ELP, the project will involve the revision of the Nicaraguan draft Framework Law on Biological Diversity by international consultants, and a synthesis to be undertaken by consultants within the

region. Following a technical workshop, the project will culminate in the creation of a new draft, reflecting the results of the workshop as well as the technical reports.

The ELP and **IUCN-ORMA** have also made significant progress toward an internal agreement on the implementation of the IUCN Central America Wetlands Policy. This activity aims to support the Central American countries who are Parties to the Ramsar Convention in establishing the guidelines for the conservation and wise use of wetlands. Its primary

goal will be to support the development and implementation of a regional policy on conservation and management of wetlands and water.

On 25 May, representatives of **IUCN-ORMA**, **IUCN-SUR**, CEL, and the ELC met in the offices of INBIO in San José, Costa Rica. The attendees initiated the process of planning for a regional conference in 2001, to develop a strategic plan for the implementation of the IUCN Environmental Law Programme in Latin America.

– AOI, NWI, TRY

## New Parties to Major International Environmental Treaties

Ratification Status received as of July 2000\*

### Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 25.06.1998:

Azerbaijan	- 23.03.2000
Belarus	- 09.03.2000
Georgia	- 11.04.2000
Macedonia	- 22.07.1999
Moldova	- 09.08.1999
Romania	- 11.07.2000
Turkmenistan	- 25.06.1999
Ukraine	- 18.11.1999

Total number of Parties: 8

### United Nations Convention on the Law of the Sea, 10.12.1982:

Nicaragua	- 03.05.2000
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Total number of Parties: 133

### United Nations Framework Convention on Climate Change, 09.05.1992:

Angola	- 17.05.2000
Belarus	- 11.05.2000
Kyrgyzstan	- 25.05.2000

Total number of Parties: 184

### Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 22.03.1989:

Ethiopia	- 12.04.2000
Yugoslavia	- 18.04.2000

Total number of Parties: 136

### Protocol to the Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, 24.06.1998:

Luxembourg	- 01.05.2000
Netherlands	- 23.06.2000

Total number of Parties: 5

### Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 10.09.1998:

Bulgaria	- 25.07.2000
Czech Republic	- 12.06.2000
Kyrgyzstan	- 25.05.2000
Netherlands	- 20.04.2000
Suriname	- 30.05.2000

Total number of Parties: 8

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

# ***The Earth Charter: The Journey from The Hague 2000***

*NOTE: On 29 June 2000, delegates from around the world gathered in the Peace Palace at The Hague on the invitation of the Co-Chairs of the Earth Charter Commission, Mikhail Gorbachev and Maurice Strong, and in the distinguished presence of Her Majesty Queen Beatrix of The Netherlands, to officially launch the Earth Charter, declaring a compelling and universally valid ethical framework for nature conservation, environmental protection and sustainable development for the new millennium. The following is a brief excerpt from the remarks of Dr. Parvez Hassan at that event. We are grateful to Dr. Hassan for allowing us to reprint it. Ed.*

Over half a century ago, the vision and dedication of Eleanor Roosevelt, Rene Cassin and Charles Malik placed human rights on the international agenda when the UN General Assembly, in 1948, declared human rights as "universal" and as a "common standard of achievement". Today, on 29 June 2000, we are similarly inspired by the vision and dedication of Mikhail Gorbachev, Maurice Strong and Steven Rockefeller and several others, to launch the Earth Charter as a "common standard" by which the conduct of all individuals, organizations, businesses, governments, and transnational institutions is to be guided and assessed.

The IUCN World Conservation Congress which is to meet in Amman, Jordan in October this year is expected to endorse the Earth Charter and call upon its membership to support its wide dissemination. LEAD International, generously supported by the Rockefeller Foundation, will also centerpiece the Earth Charter in its future work.

The Universal Declaration of Human Rights was a resolution of the UN General Assembly; in spite of its moral force, it was not legally binding on states. It was, therefore, necessary to adopt, in 1966, eighteen years after the Universal Declaration, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights and the related Optional Protocol. These transformed the international protection of human rights into binding treaty commitments.

But I hope that it does not take the international community eighteen

years to transform the principles of the Earth Charter into binding obligations of states and societies. We at the IUCN have tried to accelerate and jump-start the process beyond the Earth Charter by proposing a comprehensive draft Covenant on Environment and Development to follow and supplement the Earth Charter. It is only when the lofty principles of the Earth Charter become binding legal obligations and are implementable by people all over the world will the Earth Charter have achieved its full potential.

When the United Nations Environment Programme put together earlier this year a group of environmental law experts from all parts of the world – North, South, East and West – to identify priorities for the coming decade – a process known as Montevideo III – we spoke with one voice that implementation and compliance are the biggest challenge in the years ahead. We must move – and soon – beyond formulation of principles to practically deliver fairness, equity and justice at the doorstep of the common man, particularly in the developing societies. Only then will we have fully succeeded.

The Earth Charter, in one of my favorite provisions, beckons a new beginning. Such renewal is the prom-

ise of the Earth Charter principles. The journey has just begun from The Hague. And, for me, the most important challenge to our dream is captured in the penultimate paragraph of the Earth Charter:

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

The IUCN Draft Covenant on Environment and Development will, hopefully, provide the framework and basis for such an instrument. I look forward to the day when Governments, led perhaps by the Netherlands, and supported by the irrepressible dedication, energy and goodwill present here at the Peace Palace today, will make that happen.

– Parvez Hassan  
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REQUEST FROM THE LIBRARY: The IUCN-ELC's Literature Library would appreciate copies of any literature on environmental law written, published or edited by CEL members. While books are always welcome, we would also be glad to accept reprints of individual articles. The library houses over 60,000 publications and is accessed by environmental lawyers, judges, legislators and academics around the world.

# The ELP Announces the Imminent Publication of the Latest in the “Guide” Series

***Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species***  
(Shine, C., Williams, N., & Gündling, L.) – expected publication date September 2000.

The expansion of global trade and transport has allowed modern society to gain greater access to and benefits from the world's biological diversity. As a result, our lives have become enriched through access to and introduction of different varieties of plant and animal species, including non-indigenous or alien species. These species have been used for agriculture, forestry, fishing, ornamental and recreational purposes. Often, however, the introduction to ecosystems of non-indigenous or alien species has carried a heavy price, especially in terms of loss of biodiversity and environmental and natural resource damage. As a result, the introduction of alien species has been recognised as one of the

most serious threats to our health, and to our ecological and economic well being.

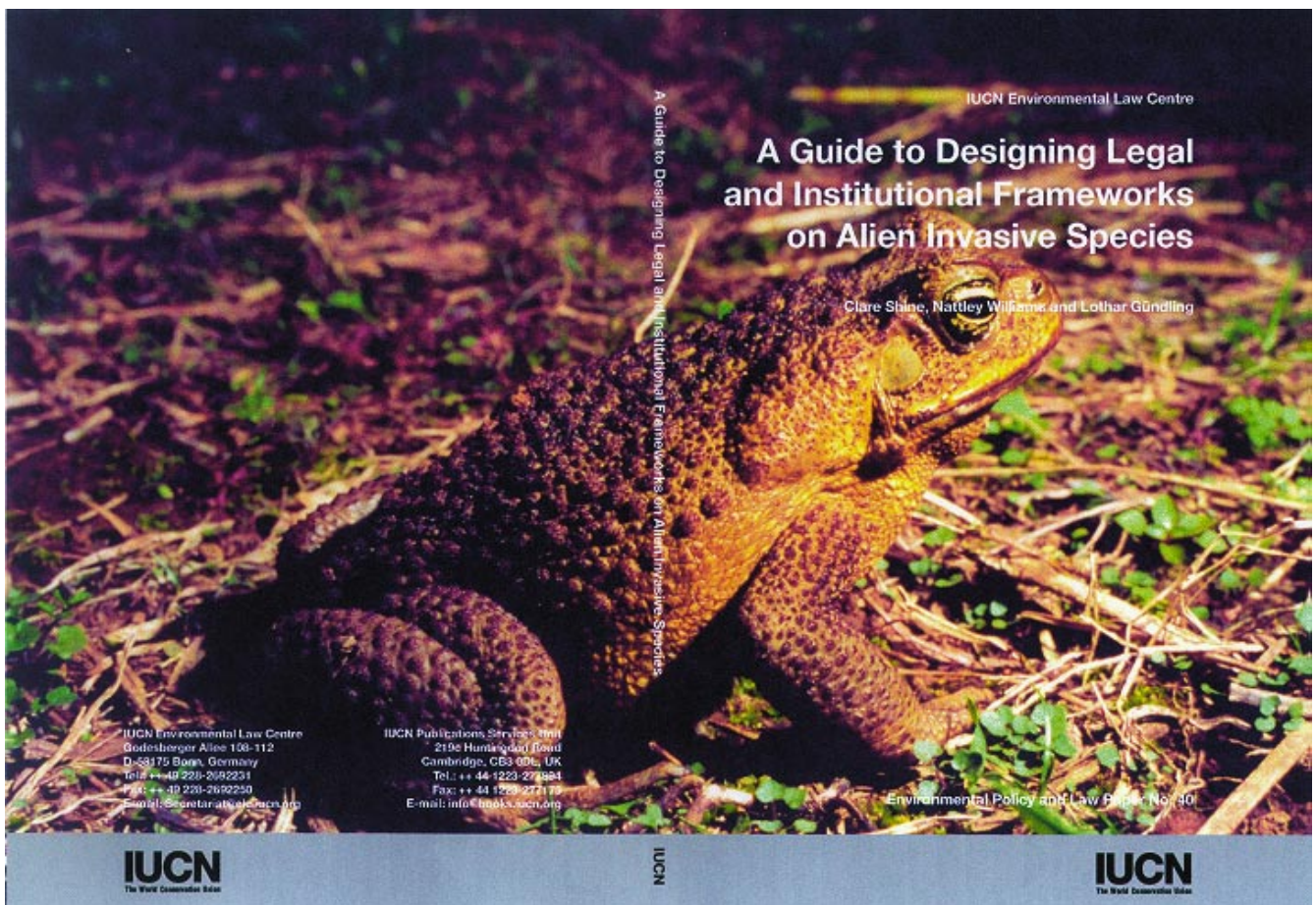
Almost every country is grappling with the problems caused by introduced alien species. Addressing the problem is urgent because the threats increase daily.

The newest entry into the ELP “Guide” series – the *Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species* – seeks to address the legal issues posed by this serious problem. It is a culmination of two years' work by the IUCN Environmental Law Programme, through its Environmental Law Centre and the Commission on

Environmental Law, representing a collaboration with the Global Invasive Species Programme and IUCN Invasive Species Specialist Group. This publication reaffirms IUCN's continuing commitment to assist Parties as they implement the Convention on Biological Diversity.

The Guide will be published in English, French and Spanish. For more information about it or to order books, you may contact the ELC, or write directly to the Publications Unit at 219c Huntington Road, Cambridge, CB3 0DL, United Kingdom. Tel.: ++44 (1) 223 277 894; fax: ++44 (1) 223 277 175; E-mail: [info@books.iucn.org](mailto:info@books.iucn.org).

– NWI



## Staff News

Documentation Assistant and brochure team member (and amanuensis) **Annette Baumann** left IUCN recently, to begin work toward her doctorate in the field of biotechnology and biotech industries at the University of Perth in Australia. We miss her many contributions to the work and life of the office, but are very happy for her, and wish her well in this new adventure.

Best wishes to Documentation Officer **Mrs. Alexandra Fante**, formerly Alexandra Zimmermann.

**Alexandra Maury** from Pantheon-Sorbonne University began her internship at the ELC in July. Alexandra is preparing background documentation in connection with the revision of the African Convention, and researching legal issues relating to CITES and CBD. In addition, she is assisting the ELC with the Global Invasive Species Project and the preparation of the Guide on Biosafety.

Good things come to those who wait ... Congratulations to **Raymond Narine**, Senior Documentation Assistant in Legislation Library, who is the proud father of Selma, a beautiful baby girl. Mother and daughter are doing well.

**Roland Stein**, a student at the Universität Heidelberg, is the ELC's newest intern. He will be doing legal research relating to the World Commission on Dams and assisting with a UNEP publication on clean energy and the Climate Change Convention. In addition, he will provide assistance in various Lusophone projects.

We would like to express our thanks to **Witold Tymowski**, who ended his internship at the ELC at the end of August. Witold assisted on work related to the Ramsar Convention and an extensive legal analysis on Environmental Impact Assessment.

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 650 international and environmental law specialists in 120 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 en-

vironmental law. Contributions should be no longer than 300-500 words and may be submitted in English, French or Spanish. All contributions will be proofread and, if necessary edited.

The ELP welcomes the opportunity to present a variety of viewpoints in these pages. In doing so, however, inevitably some of the views expressed will not be those of IUCN, the ELP or the Environmental Law Centre. Please send material to: Newsletter Editor, IUCN Environmental Law Centre, Godesberger Allee 108-112, 53175 Bonn, Germany; tel: (49-228) 2692-231; fax: (49-228) 2692-250; e-mail: [secretariat@elc.iucn.org](mailto:secretariat@elc.iucn.org).

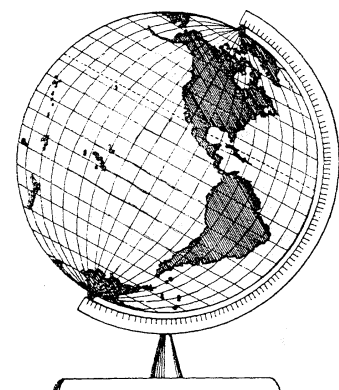
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