



# Environmental LAW Programme

September-December 2000

## Rain Forest Conservation Under Review

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In the June 9<sup>th</sup> issue of *Science*, the authors of the report "Economic incentives for rain forest conservation across scales" (C. Kremen *et al.*, p. 1828) and the authors of the Perspective "Counting the cost of deforestation" (R. Bonnie *et al.*, *Science's Compass*, p. 1763) raise a troubling aspect of the economics of carbon sequestration and its link to foreign investment incentives. Kremen *et al.* note that the Malagasy government has trouble capturing rents from logging concessions. Therefore, the authors discount the rate (or rent) required to compensate for carbon conservation. Yet, the Malagasy government's inability to enforce its laws makes it a candidate to receive more than its (discounted) "base" rent calculated under the Kyoto Protocol. A country that enforces tough environmental laws would receive only its (undiscounted) base rent. This rent enhancement is because, for countries such as Madagascar, without higher rent or an appropriately calculated base rent, it would be even more difficult for them to put in place

the enforcement mechanisms to prevent the same deforestation the authors seek to avoid.

All agree that economic incentives should not discourage governments from environmental enforcement. But such a methodology has not yet been clearly enunciated under the Kyoto Protocol, nor by the authors. An analogy to the Madagascar case can be seen in Nigeria, whose law does not require the capture of flared natural gas. Is it realistic to expect Nigeria, like Madagascar, to accept less "Kyoto" rent from foreign investors to reduce gas emissions, simply because Nigeria's legislation does not meet international best practice? Although foreign investors should be encouraged to help Nigeria find ways to reduce emissions, what rules would ensure that the lure of such investment does not harm the incentive to enforce environmental law now? The same is true for countries that effectively ban unsound logging. Bonnie *et al.* note that "[emission baselines] must be established

that account for the rate of deforestation that would have occurred in the absence of the conservation project." Is the "deforestation" they refer to that which would have occurred with or without enforcement of forest legislation? If greenhouse gas emission baselines are set appropriately, they can provide developing countries the helping hand to enforce environmental law. But how do we set the baseline to be sure not to discount rates for those countries now using scarce resources trying to enforce their environmental laws, and at what rates?

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# DISAPPOINTMENT IN DEN HAAG

On 13 November 2002, at the opening session of the Hague Climate Conference, COP-6, Michael Zammit Cutajar, the Executive Secretary of the UNFCCC, stated his personal view that the meeting's success could be determined based on two results. First, that developing countries would leave The Hague feeling that there was both significant support for their efforts to address climate change and its impacts, and a recognition of their genuine efforts to fulfil their defined and proper role in the emerging global strategy. Second, that delegations from all Parties

would go home convinced that the Protocol could be effectively implemented, and that the way would be cleared for domestic processes towards ratification, where such processes are not already underway.

At the inception of the meeting, these aims were perceived by many to be clear and achievable. Yet, COP-6 failed to achieve them. After two years of efforts to develop binding text to implement the Buenos Aires Plan of Action, the delegations could not resolve several key issues. To many observers, it appeared that the

negotiators were, so far, unable to overcome political and financial differences between their respective constituencies. The meeting revealed an array of divergent national environmental, geographic, and financial circumstances that, taken together, make the climate conundrum one of the most complicated international issues.

On 21 November, as time began to wind down, Jan Pronk of the Netherlands, Chair of the meeting, launched four informal sub-groups, each to focus on one of the remaining "crunch

## About this Issue:

As we close out the year 2000, we can look back on a year which saw some of the most important new environmental law developments in recent history. Although not intended thus, our current issue has evolved into an examination of these developments, and might rightly be entitled "History-in-the-making: Current initiatives in the conceptual development of international environmental law" – and features articles written by people who were in the middle of these developments.

It begins with a view of the ongoing negotiation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change. **ELP Director Charles Di Leva** has been attending these negotiations and working on climate change issues since their inception, and offers an in-depth and thoughtful examination of the issues and controversies that suggest that the ultimate agreement (whenever it shall occur) will be both the most complex and the most significant development in international environmental law in the last decade. Next, **Clifton Curtis (WWF)** and **Etienne Sinatambou (CEL Vice Chair for Africa)** provide two perspectives on the recently concluded successful negotiations for the creation of a new convention – the International Legally Binding Instrument for Implementing Action on Certain Persistent Organic Pollutants (the "POPs Convention"). Mr. Curtis provides a concise, but thorough summary of the provisions of the new convention; while Mr. Sinatambou (who attended POPs INC-5 on behalf of IUCN-ELP) offers his report of the negotiations and underlying issues that forged the final document.

**Svitlana Kravchenko (CEL Vice Chair for Eastern Europe)** offers a first-hand account of the preparations for the Aarhus Convention's entry into force. She is a central participant in this process, as Project Leader of European ECO Forum.

It should be noted that there are a number of other major international developments in the offing, in which IUCN-ELP and its members are participating, including the preparatory meetings of the Cartagena Protocol on Biosafety (currently in the ratification process), and the Inter-American Convention on the Protection and Conservation of Sea Turtles (which will enter into force later this year.)

Another side of IUCN's role in international environmental law development is spotlighted in a special section of this edition, which focuses on the "**Regional Centres of Environmental Law**." The Commission on Environmental Law is justly proud of its work in support of the development of national and regional institutional networks and academic programmes in environmental law around the world.

Finally, CEL members **Eduardo Astorga** and **Samuel Yeye** offer new insights into EIA programmatic approaches in Latin America and Burkina Faso respectively, and **Götz Reichert**, Ph.D. candidate at University of Tübingen provides insights on recent developments in EU water law.

The editor and staff take this opportunity to thank all who have contributed to **ELP Newsletter 2000**. Thanks to your efforts, the newsletter has received many compliments and demand is increasing for wider circulation. We have even been approached about translating it into Chinese! We interpret these requests as a measure of our success. We sincerely hope, in 2001, to be able to convert that success into an even higher quality product, that is available more widely; however, this objective can only be accomplished through the maximum cooperation and participation between CEL, the ELC, and the IUCN Regional Offices and Regional Law Programmes.

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issues". His logic was to reduce the discussion to a manageable set of key unresolved points that could be resolved by the Ministers, many of whom arrived at the start of the second week of the meeting.

As of 22 November, it appeared each of these "crunch issue" groups had made considerable progress working from the latest versions of negotiated texts. While they were not actually removing brackets from the text *per se*, they seemed to be clarifying larger substantive themes.

Based on the "crunch groups" efforts, on Thursday, 23 November, Pronk distributed a fourteen-page issue paper, to identify and summarise the key unresolved issues for which consensus was necessary. The "Pronk Paper", also referred to as the "President's Note", was presented in the Chairman's "personal responsibility," and contained no reference to the UNFCCC Secretariat.

This extensive effort had an underlying difficulty. While the "issue paper approach" successfully consolidated the issues underlying many pages of bracketed text, the paper caused the negotiators to virtually abandon familiar texts with which they had been working for many months. As a result, they seemed unlikely to achieve a high degree of specificity on some key issues.

Within a few hours, delegates sensed they were running out of time. On 24 November, the newsletter "ECO", published by the Climate Action Network (CAN) reported that the meetings were in trouble, and had "closed out experts and experienced negotiators from the procedure and prevented progress." Indeed, the negotiators continued working well after the expected close of the meeting, calling matters off only after a last ditch effort failed to resolve differences between the United States and the European Union.

While some press "post-mortems" reported that the Parties had been very close to an agreement and that resolution was prevented only because of failure of the EU and US to

agree upon a specified tonnage of creditable carbon stocks from land use related activity, to many long-time observers that this press report was a gross oversimplification. Even if the valuation issue pertaining to US carbon stocks was resolved, there were still a series of other issues needing further negotiation. These issues revolve around four major topics.

## **1. Capacity-Building and Technology Transfer (Articles 4.8, 4.9)**

If the developing countries are expected to be serious partners in the implementation of the Convention, further breakthrough in the area of capacity building remains essential. The Minister of Environment from Nigeria, speaking on behalf of the G-77 and China, made it clear that the developing countries' highest priorities include resolution and clarification of the 1992 commitments pertaining to transfer of technology and resources (UNFCCC Article 4.8 and 4.9 and Kyoto Protocol Article 3.14 issues).

The President's Note contained some innovative proposals regard-



ing these issues. It proposed an Adaptation Fund as a new fund under GEF, and a Convention Fund, as a special window under GEF. The new window under GEF would be funded, in part, through Annex II assigned amounts.

Unfortunately, Parties had relatively little time to consider this proposal, and many relevant issues concerning it could not be fully hammered out. For example, the definition of "adaptation" activities in the President's Note is broad and would in-

clude health and water resources management.

In the consideration of a number of these innovative proposals, concerns were raised that they might foster a proliferation of new entities and administrative levels. Among the proposed new structures were the Climate Resources Committee (a consultative entity); and an "intergovernmental consultative group of technical and scientific experts." Another proposal would set up rapid response and information networks – a concept that could be especially interesting for IUCN, and that has been included in a related form in the IUCN work program endorsed at the Congress in Amman. Yet another proposal would establish a body to address national adaptation programs, which may also be key for IUCN.

## **2. Mechanisms**

The President's Note sought to resolve key outstanding issues with regard to the functioning of the clean development mechanism (CDM), joint implementation and emissions trading. It made clear that nuclear activities could not be included in the CDM, and provided a "safety net" to protect against possible losses through emission trading. It also proposed the structure of the Executive Board of the CDM, based on the five UN regional groupings, with equal numbers from each of the UN regional groups and one representative from the small island developing states.

Despite these clear suggestions, some key issues were still unresolved. Thus, for example, the Note proposed that "supplementarity" would be resolved by having countries meet their obligations "primarily through domestic action since 1990." The EU has proposed that a country be required to meet its obligations by a set numerical percentage of carbon reduction activities within its own borders. This assumption of domestic responsibility is considered by many environmentalists to be a key moral obligation, and important to the

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overall credibility of the "Kyoto" system. The US and some other countries have resisted numerical targets, arguing that, in seeking to make the "atmosphere whole," it would be economically risky to target a fixed domestic percentage. The US contends that it is better to maximise geographic flexibility in order to achieve emission reductions, taking cost into fullest consideration and providing the greatest incentives. This issue remained unresolved, even in a follow-up session among some key negotiators in December in Ottawa.

Regarding nuclear facilities, many environmentalists were pleased with the proposal that nuclear facilities could not be constructed within the context of the clean development mechanism. At the same time, they noted their concern that the nuclear issue was not addressed under the Article 6 Joint Implementation activities. In their view, the CDM approach should also exclude nuclear facilities from Article 6.

The President's Note also did not provide detail on baseline or "additionality" criteria. Without sufficient specificity, it may be difficult to cement financial support for certain projects seeking credit under the CDM. These matters are among the more complicated for the Kyoto Protocol.

### **3. Land use, land use change and forestry (LULUCF)**

The LULUCF issues may be the most pressing climate-related concerns for much of the IUCN network. Environmentalists have argued forcefully that any LULUCF activities which receive credit for carbon sequestration must be consistent with the Convention on Biological Diversity. The importance of consistency with the CBD was noted by then-IUCN-Director General Maritta von Bieberstein Koch-Weser in her speech to the COP 6 Plenary.

In this context, some contend that the President's Note does not go far enough to ensure consistency be-

tween the UNFCCC framework and the related environmental conventions. The proposal does state that under the CDM, LULUCF projects would "need to be in conformity with the objectives of other multilateral environmental agreements." Environmentalists want this statement applied across the board to all LULUCF related activities, and no lessening of environmental standards between projects considered to be under Articles 3.3, 3.4 and 12. Concerns were expressed that the President's Note should ensure environmental values are taken into account. For example, the President's Note accepted the FAO definition of "forest", noting "that there should be certain flexibility in applying FAO values in order to reflect national circumstances." To some, this flexibility is too vague.

The Note also calls for ensuring that CDM projects are consistent with "national strategies on sustainable development" – thereby presumably linking to the NBSAP processes in which IUCN has been active for several years. However, the text omitted any clear enunciation of biodiversity values, or reference to protection for native forests or the roles of indigenous and local communities. It did, however, mention the need to "investigate the feasibility of applying biome-specific forest definitions for future commitment periods."

Similarly, the Note recognises, but does not resolve, "concerns" regarding the application of the ecosystem approach in afforestation and reforestation programs. Unless that approach is included in a meaningful sense, the proposal will be problematic for many in the IUCN community.

### **4. Compliance**

The Parties also found it difficult to agree on how to ensure compliance, especially with regard to the obligations of the Annex I Parties. The Note sought to resolve outstanding compliance issues by providing, among other things, that the convention's operational structure would function through a Compliance Committee with two branches, enforcement and

facilitation. Each of these branches would be represented through 11 members, two from each of the five UN regional groupings, plus one from the group of small island developing states. It was not clear whether Annex I countries had agreed to this arrangement, under which representatives from countries having no enforcement obligations would take part in deciding enforcement measures.

Other controversial provisions included the proposal that consequences for compliance would be "agreed in advance" and "should not be subject to the discretion of the enforcement branch." This approach did not please those who sought a more mandatory compliance system with tough penalties.

In a few instances, however, specific consequences were proposed. For example, under one proposal, a Party that exceeds its emission obligations would be required in the next commitment period, to pledge a reduction of 1½ times the amount that would otherwise apply. Environmentalists, however, concerned that this approach lacked "teeth," favoured monetary penalties or possible trade sanctions. Some commentators also expressed surprise that the proposal did not include an appeals procedure.

### **Conclusion – Next Steps**

Since The Hague, formal talks have been proposed at "COP6.5" this 16-27 July, here in Bonn. Minister Jan Pronk, who remains President of the COP until the Chair is assumed by Morocco as host of COP-7 next year, is working to bring all parties together to get a final agreement in 2001. In the meantime, a series of smaller meetings are planned among key actors, focussing on key unresolved issues. In addition, 26 countries submitted written comments to the President's Note. These comments are summarised in a 159-page note prepared by the Secretariat and available at the UNFCCC Website, [www.unfccc.int](http://www.unfccc.int). Clearly, despite extensive, well-intentioned efforts, much work remains.

– CDL

# The Law Programme at the Second World Conservation Congress in Amman and Plans for Post-Amman

The World Conservation Congress in Amman, Jordan saw a number of important developments for IUCN, many of which relate to the Law Programme. In addition, two meetings of the Commission on Environmental Law (CEL) were held in Amman, which are reported on here. More information on any of these matters can be requested from your regional CEL Vice Chair or from the ELC.

## Commission and Standing Committee Meetings

The IUCN Commission on Environmental Law held two meetings during the Congress. The first was a meeting of the CEL Steering Committee, including a number of invitees, as well as the Legal Officers of the Environmental Law Centre. This meeting made special note of the inauguration of the Arab Regional Center of Environmental Law, to be opened in attractive and spacious facilities adjacent to the University of Kuwait Law School. Many thanks were offered to Dr. Badria Al-Awadhi and Dr. Fadhel Nasserallah for their contributions in making this possible. It is hoped that this centre can provide environmental law focus and support throughout the Arab countries of the world. Future activities concerning other centres in Brazil, China, Indonesia and Russia were also discussed. (Reports on the Regional Centres of Environmental Law are found at pages 24-28).

The full Commission meeting was held the next day in open session, at which other IUCN Members were invited to attend a discussion on a wide range of environmental law topics and lectures. In addition, Commission Members and ELC Legal Officers played an active role in various activities taking place throughout the Congress. Several Commiss-

sion Members in particular were recognized for their contributions to the WCC, especially, Angela Cropper, who chaired the Resolutions Committee; Jorge Caillaux, who chaired the Finance and Audit Committee; Bill Futrell, who was a member of that committee; Grethel Aguilar, chair of the Credentials Committee; and Koh Kheng Lian and Donna Craig, who served on the Programme Committee. Nick Robinson worked tirelessly as the Legal Advisor to the Congress. All five ELC attorneys as well as one staff member were also involved in the work of the WCC.

## Awards

The Commission on Environmental Law conferred its first Wolfgang E. Burhenne Award on the late Cyrille de Klemm in October 2000, at the 2nd World Conservation Congress, in Amman, Jordan. The award recognized Cyrille de Klemm's life-time of extraordinary contributions to developing the law biodiversity. The Award was conferred posthumously by the Commission during a plenary session of the Congress. Dr. Françoise Burhenne-Guilmin delivered a remembrance of the accomplish-



*"ELP Summit" in the Middle East: ELP Director Charles Di Leva, CEL Vice Chair for Meso-America Grethel Aguilar, CEL Chair Nick Robinson, Former CEL Chair Parvez Hassan and Hazel Aguilar*

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ments of Cyrille de Klemm. The Award was presented by the Chair of the Commission, Prof. Nicholas A. Robinson, and was received on behalf of her late husband by his wife, Mme. Amalia Thaler de Klemm. Upon accepting the award, Mme Thaler announced the establishment of the Cyrille de Klemm Memorial Fund to promote research in the field of environmental law. (Please also see the IUCN Amman Web site at: <http://www.iucn.org/amman/index.html>).

In a separate ceremony, former CEL Chair Parvez Hassan (1990-1996) received one of four "Honorary IUCN memberships" granted for outstanding service in the field of conservation. The other recipients were Sir Martin Holdgate, former IUCN Director General; George Rabb, former Species Survival Committee (SSC) Chair; and Elizabeth Mann-Borgese, International Ocean Institute Chair since 1972. IUCN Director General Maritta Koch-Weser presented the awards.

## New Appointments to the Steering Committee

The Commission remembered and recognised the contribution of late Oleg Kolbasov, the Vice Chair for Eastern Europe, a champion of environmental law in Russia. Svitlana Kravchenko of Ukraine was named to fill the Vice Chair position for the CEE region. She is a leading light in the development of the Aarhus Convention and other extensive environmental law work, through the NGO she has established.

Both the Steering Committee and Commission meetings paid well-deserved tribute to Charles Okidi, who will be stepping down after two terms as Vice Chair for Africa. He will be replaced by Etienne Sinatambou of Mauritius. Professor Okidi has been a stalwart member of the IUCN Commission on Environmental Law. He will continue his work on environmen-

tal law with the UNEP headquarters in Nairobi.

Donna Craig also stepped down as Vice Chair of the Pacific region. Donna has worked tirelessly on environmental and indigenous peoples issues, working with commitment and enthusiasm. Mark Christensen of New Zealand, a well-known expert in environmental law who has recently assisted IUCN with work on global invasive species, will step into her position.

Andrew Waite, who practises environmental law in London, will serve as the new Vice Chair for Western Europe. He succeeds Professor Michael Bothe of the University of Frankfurt. Michael's chairmanship offered us all both friendship and collegiality and he will continue to work with the ELP in the field of climate change and environmental law in general.

The Law Programme is grateful to all four of the retiring and departed Vice Chairs, for their many contributions of time, energy and advice on behalf of the ELP, and looks forward to their continued contribution and friendship. We welcome the new additions to the Steering Committee and look forward to the opportunity to work with them.

## Planning and Development of the ELP

With many CEL members and ELC lawyers intensively involved in the work of the WCC, the Law Programme did not have the opportunity to hold a much needed in-depth discussion on the programme's future. The Law Programme has been in place for several decades and has grown in several respects. In addition, despite severe resource constraints, it remains the premier global environmental law network. Yet, it is recognized that the Commission still fails to reach and engage many of its Members, and that is does not fully integrate with the work of other IUCN programmes. For these reasons, there is a need to begin a plan-

ning process to address these issues and to include in this process not only the Steering Committee and the ELC, but also the IUCN Regional and Country Offices with legal programmes in place, and other Commission Members who have interest in participating in the planning of the Law Programme. With assistance from the Office of the Director General, especially with generous time from Simon Stuart as Acting Director General and Ed Wilson as head of Programme and Policy, the Law Programme has identified ways to



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develop and address its future plans and has taken the first step in a long and hopefully fruitful planning process. It will take considerable time and effort but is essential to the future of the Programme.

A bright note is that, in Amman, the ELC was able to unveil its "matrix" approach to environmental law issues throughout the IUCN Union. This approach will link law programme activities into the Union's new multi-year programme of activities and results – a new and exciting approach to focusing and maximising the effectiveness of IUCN's activities in all disciplines around the world.

The next Steering Committee meeting will be held in Bonn in late June 2001. The agenda is being planned, to which all CEL members are invited to provide input or suggestions.

- CDL

# Key Elements in the Global POPs Treaty

Shortly after 8 AM on Sunday 10 December 2000, a new treaty was born in Johannesburg, South Africa. The POPs treaty will, for the first time in history, eliminate or severely restrict the use and production of a pernicious group of chemicals that are directly toxic to wildlife, ecosystems and people. WWF, one of the lead NGOs participating in the more than two years' of important and sometimes very contentious negotiations, welcomes the treaty as a giant step forward. That positive assessment is especially true with respect to the treaty's emphasis on addressing toxic chemical issues at their source, by eliminating production, while also prohibiting or severely restricting use, and preventing the emergence of new chemicals with POPs-like characteristics.

The treaty calls for the elimination of some of the world's most dangerous chemicals. POPs pose a particular hazard because of four common characteristics: they are toxic; they are persistent, resisting the normal processes that break down contaminants in the body and the environment; they accumulate in body fat and are passed from mother to fetus in the womb; and they can travel great distances on wind and water currents. Most of the 12 targeted POPs are slated for immediate bans as soon as the treaty takes effect, which is likely to be three-to-four years after the May 2001 signing ceremony. For a few "intentional POPs" (DDT and PCBs) as well as the byproduct POPs (hexachlorobenzene, dioxins and furans), elimination remains a longer-term goal of the treaty.

Throughout the POPs treaty negotiations, WWF participated actively in the International POPs Elimination Network (IPEN), which grew to more than 300 participating NGOs (including the IUCN Environmental Law Programme) by the conclusion of the negotiations. IPEN served as an extremely important network for exchange of information, educational

awareness raising, and development of lobby positions and strategies as part of a broader effort by NGOs to achieve an ecologically sound and socially equitable treaty. Of special note, IPEN co-ordinated the preparation of and arrangements for NGO workshops immediately prior to each of the 5 negotiating sessions in Montreal, Nairobi, Geneva, Bonn and Johannesburg.

## ELIMINATION

### Intentionally produced POPs

Article D(1) of the treaty calls on all Parties to prohibit and/or take the legal and administrative measures necessary to eliminate the production and use of the chemicals listed in Annex A (all of the targeted chemicals except DDT and the byproduct POPs).

Separate provisions for listing DDT on Annex B (Restriction) include the goal of ultimate elimination and, in the interim, ensuring that the insecticide is used only for disease vector control in accordance with World Health Organization guidelines. The treaty calls for research, development, and implementation of safe, effective, and affordable alternatives to DDT.

In addition, each Party that has a regulatory and assessment scheme for new chemicals is called on to "take measures to regulate with the aim of preventing" the production and use of new POPs. The treaty urges Parties to take the POPs criteria into account, "where appropriate," when conducting assessments of chemicals currently in use. Article L reporting requirements accompany these provisions.

### Byproducts

The treaty calls on Parties to take measures to reduce the total releases from anthropogenic sources of dioxins and other byproduct POPs, "with the goal of their continuing minimisation and, where feasible, ultimate elimination." At the request of

the U.S. and South Africa, the treaty record will state that this language includes the notion of economic and technical feasibility.

Noteworthy among the measures Parties are called on to take is Article D3(c): "Promote the development and where it deems appropriate, require the use of substitute or modified materials, products and processes to prevent the formation and release of chemicals listed in Annex C."

### Wastes

Article D(4) calls on Parties to identify stockpiles, products, articles in use, and wastes containing or contaminated with POPs and to manage and dispose of such materials. They are to be either "disposed of in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed so that they do not exhibit the characteristics of persistent organic pollutants," or "otherwise disposed of in an environmentally sound manner when destruction or irreversible transformation does not represent the environmentally preferable option or the persistent organic pollutant content is low."

Strongly held views were expressed late in the week about whether the Basel Convention or the POPs treaty should be the final arbiter of decisions involving standards for levels of destruction and permanent transformation, or in determinations of the methods that would constitute environmentally sound disposal. In the end, the agreed compromise text called upon both the POPs Conference of Parties and the appropriate bodies of the Basel Convention to work "in close Cooperation" in addressing those and other waste-related issues.

### Trade

The Convention allows trade in POPs chemicals only in limited circumstances. Most notably, a Party that still retains country-specific exemp-

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tions may export to non-parties, but only for the purpose of environmentally sound disposal or where the importing State provides a certification that includes its environmental and human health commitments and its compliance with the Article D4 waste provisions.

Dating back to the 2<sup>nd</sup> and 3<sup>rd</sup> negotiating sessions (1999), the Australian delegation and the chemical industry trade associations, among others, advocated a treaty provision referred to by some treaty analysts as a World Trade Organization (WTO) “supremacy clause.” (The proposed wording stated that “[t]he provisions of this convention shall not affect the rights and obligations of any Party deriving from any existing international agreements.”) Such clauses are problematic because they can encourage States to go before the WTO, to challenge trade measures contained in other multilateral environmental agreements. Fortunately, efforts to include such a provision in the POPs Treaty failed, leaving only a reference in the Preamble to the relative rights and relationships among the conventions to the effect that “this Convention and other international agreements in the fields of trade and the environment are mutually supportive.”

## Exemptions

Exceptions to the control measures are dispersed throughout the treaty text, annexes, accompanying notes, meeting record, and registry. The record of the meeting encourages Parties to promote programs aimed at collecting small quantities of a POP in the possession of an end-user, e.g., “in the farmer’s barn,” through clean sweep and other initiatives. Article D(5) offers a general exemption for quantities of a chemical to be used for laboratory-scale research or as a reference standard. The footnotes to Annexes A and B include a general exemption for quantities of a chemical occurring as unintentional trace contaminants in products and articles. For POPs occurring as constituents of articles manufactured or already in use be-

fore or on the date of entry-into-force, the notes offer a modified general exemption process requiring notification to the treaty secretariat. This information will be publicly available. The footnotes also contain a renewable 10-year exemption for closed-system site-limited intermediates (HCB and DDT). This exemption requires notification to the secretariat including information on total production and use of the chemical, the nature of the process, and the amount of POPs contamination in the final product; this information will be publicly available.

All other exceptions are country-specific. The annexes list the types of specific exemptions available; countries electing these exemptions are listed on a registry. Given the close link between the Article D1bis trade restrictions and the continued use of country-specific exemptions, governments in Johannesburg made an effort to carve out transparent and accountable exemption formats that do *not* involve listing on the annexes or accompanying registries. This limitation on country-specific exemptions will enable the Article D trade bans to come into effect more quickly.

## PRECAUTION

As the sun was rising on Sunday morning, 10 December, the EU, US, Australia, Canada, Japan, Iceland, Switzerland, New Zealand, Norway, South Africa, Colombia and Chile finally reached agreement on the inclusion of precautionary language in the treaty. As a result, the objective now states: “Mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants.”

Precaution as well as transparency and public participation are operationalized throughout the Article F process for adding new chemicals to the treaty. Article F(5) states that: “If, on the basis of the risk profile conducted in accordance with Annex E, the Committee concludes that the

chemical is likely as a result of its long-range environmental transport to lead to significant adverse human health and/or environmental effects such that global action is warranted, the proposal shall proceed. Lack of full scientific certainty shall not prevent the proposal from proceeding.”

Article F(7) includes further reference to precaution: “The Conference of the Parties, taking due account of the recommendations of the Committee including any scientific uncertainty, shall decide, in a precautionary manner, whether to list the chemical, and specify its related control measures, in Annex A, B and/or C.” The preamble (Article A) and the determination of best available technologies (Annex C, Part II, A (2)) also include references to precaution.

## FINANCE

The treaty requires that developed country Parties “shall provide new and additional financial resources” to developing country Parties and Parties with economies in transition, and encourages contributions from other sources as well. Adequacy, predictability, and timely flow of funds are key elements. Special recognition is given to the difficult social and economic circumstances faced by developing countries, with the needs of the least developed countries and small island developing states receiving particular emphasis. The treaty calls for regular review, by the Conference of Parties, of both the level of funding and the effectiveness of performance of the institutional entities entrusted to operate the financial mechanism.

On an interim basis, the Global Environment Facility (GEF) is identified as the principal entity entrusted with the operations of the treaty’s financial mechanism up until the first Conference of Parties meeting, or until such time thereafter as the Parties decide which institutional structure will be designated on a permanent basis. The Parties called upon the GEF to fulfil that function “through operational measures related specifically to POPs taking into account that

new arrangements for this area may be needed."

Complementing the GEF's inclusion in the treaty as the interim financial mechanism, a draft resolution for consideration at the Stockholm diplomatic conference next May (prepared by the same governments that worked out final finance wording in the treaty) includes several pertinent "requests," i.e., that the GEF establish a new focal area for POPs; that the GEF Council establish as soon as possible and implement an Operational Program for POPs; that the GEF report to the 1<sup>st</sup> POPs COP on the measures it has taken to ensure the transparency of the GEF project approval process, and that the procedures for accessing funds are simple, flexible and expeditious; and that donors to the GEF Trust Fund contribute adequate additional financial resources through its third replenishment (during 2000-01) to enable the GEF to perform effectively its mandate in terms of the POPs Treaty.

## MISCELLANEOUS OTHER PROVISIONS

### Amendment of Annexes to Add New POPs

Upon recommendation by the POPs Review Committee and the Confer-

ence of Parties may add a new chemical to Annexes A, B, or C, pursuant to Article F. The Convention presumes that these amendments will apply to all Parties, unless they specifically "opt-out" in accordance with a specified procedure. To address the special concerns of the U.S. Senate, Article U provides that at the time of ratification of the treaty, a Party may declare that an expanded annex will not apply to them unless and until they deposit an instrument of ratification to include the particular new POP.

### Information Exchange

NGOs and some governments urged negotiators to ensure that Treaty Parties act in a transparent manner, so as to increase the exchange of relevant information regarding reduction or elimination of POPs, as well as alternatives thereto. Toward that end, a separate article on "Information Exchange" designates the Secretariat for the POPs Treaty to serve as a clearing-house mechanism for information on POPs. While industry representatives were able to get governments' support to include traditional wording about the need to protect confidential business information, the provision is noteworthy in two respects: for purposes of the Treaty, "information on health and

safety of humans and the environment shall not be regarded as confidential," and Parties that exchange other information pursuant to the Treaty shall protect any confidential information as "mutually agreed."

### Entry into force

The treaty will take effect 90 days after the 50th Party ratifies, accepts, approves or accedes to the POPs treaty – a number which is believed to be large enough to ensure a critical mass of developing and developed countries, but not so many as to unnecessarily delay entry into force. Estimates are that it will likely be at least 3-4 years before 50 countries have formally adopted the treaty, although the Intergovernmental Forum on Chemical Safety (Brazil in October 2000) urged countries to expedite this process so that the POPs treaty will enter into force no later than 2004.

*(This summary was prepared by WWF's Global Toxic Chemicals Initiative – 14 December 2000)*

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# Final Negotiations of the POPs Convention

The final (fifth) session of the Intergovernmental Negotiating Committee (INC) for the preparation of an International Legally Binding Instrument for Implementing International Action on Certain Persistent Organic Pollutants (POPs) was held 4-9 December 2000 in Johannesburg, South Africa. The path to its groundbreaking result was arduous, but interesting and, ultimately, fruitful.

INC Chair, John Buccini (Canada), opened the meeting by listing a "basket of issues" to be tackled by negotiators –

- Technical and Financial Assistance (Articles J and K);

- Control Provisions (Article D);
- Defining the "collectivity of unresolved issues without which there could not be a POPs Convention"; and
- Preparations for a diplomatic conference leading to the adoption of the POPs treaty.

The guiding principles for the negotiations were (i) openness, (ii) transparency, (iii) conclusiveness, and (iv) accountability. Indeed, the Chair insisted that the key to the success of the negotiations would lie in communications inasmuch as he saw the delegations present as agents of history-making change.

### Differentiated Responsibility/Technology Transfer

From the outset, the G77 and China group laid down a pillar of their position for the purposes of the negotiations – the notion of common but differentiated responsibility addressing their major disadvantage as regards levels of research and the development of requisite technologies. Control, restriction and elimination of POPs would depend on the availability of financial support and the existence of feasible alternatives, and bearing in mind the outcome of the

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Vevey Conference. Hence, draft Articles J and K would be of major importance in these negotiations. The sequence of events in the coming days proved this point.

## Exceptions and Exemptions

The first major controversy related to the control provisions to reduce or eliminate releases and exemptions thereto, (Articles D and D bis.) Unlike Annex A, which provides for country-specific exceptions, Article D bis provides a general exemption to the draft Convention for “quantities of a chemical to be used for laboratory-scale research or as a reference standard.”

Divergence started when the US delegation proposed to further exempt “quantities of a chemical occurring as (a) unintentional trace contaminants in products,” and (b) constituents of articles manufactured or already in use as of the implementation date of the relevant obligation. As opposed to seeking a substance-specific exemption (as proposed by the EU) or a country specific exemption under Annex A, this proposal would have created an unconditional exemption. In addition, it was feared that this kind of exemption would relieve Parties from the provisions of draft Article D.4 under which POPs wastes, must be (i) handled, transported and stored in an environmentally sound manner, and (ii) managed so that their persistent organic pollutant content is destroyed or otherwise transformed into chemicals that do not possess the properties of persistent organic pollutants.

As used by the United States the term “unintentional trace contaminant” can be illustrated by example, using the case of DDT in the pesticide “Dicofol.” DDT is used as an intermediate in the manufacture of Dicofol, but not an actual component of the final product. However, low or de minimis residues of DDT continue to exist in Dicofol (as a result of its use in manufacture) notwithstanding all control measures to eliminate them. These tiny amounts are con-

sidered “unintentional trace contamination”. The US proposal was also tied to two other proposed exemptions – for “closed-system site-limited intermediates” and “small amounts in the possession of an end user.”

Eventually, all but the fourth (small amounts in possession of the end user) were inserted as “chapeaux” to Annex A. This placement ensured that the subjects of these exemptions (particularly those for “quantities of a chemical occurring as constituents

further columns each, creating three groupings: developing countries, developed states and countries with economies in transition. This approach provided separate standards for exemptions and their expiration/review, depending on which group one belonged to.

At its fourth session, the INC had invited the Chair to clean up the draft text of the Convention and make the necessary editorial, placement and consistency changes to improve readability and help delegates focus



of articles manufactured or already in use,” and “closed-system site-limited intermediates,” but not “trace contaminants”) will be subject to Article D 1 bis dealing with import and export restrictions.

After protracted negotiations, the provisions for country-specific exemptions also can be said to have been diluted, if one examines the background of these provisions. Originally, in Annex A (the table of POPs’ status in member countries), individual columns addressed the “date of compliance” and the expiry/review dates of such exemptions. The latter were listed as “to be determined” – presumably on a country-by-country basis – while Part II of the Annex complemented the process by imposing obligations geared towards achieving a gradual elimination of the POPs concerned. A subsequent version divided this column and the “compliance date” columns into three

on major issues at the fifth session of the Committee. However, the edited version presented at the fifth session abandoned the three-column approach, returning to the “to be determined” country-specific approach as regards expiry/review dates. On the other hand, as regards the date of compliance with Annex A, the three-column approach was abandoned in favour of the date of entry into force being applied, across the board, to all Parties alike. Some suggest that this latter approach fails to give the degree of flexibility which a common but differentiated responsibility entails, and prevents the application of some form of benchmark regarding developing countries, developed states and countries with economies in transition. In any event, Annex A now deals with product-specific exemptions while country-specific exemptions are dealt with under a new article R bis which introduces a Register system.

## Precaution

The negotiations regarding the insertion of the precautionary principle in the instrument proper and in its preamble were not only protracted but verged on hostility. The draft prepared for INC 5 reaffirmed, in the Preamble, the precautionary approach as set forth in Principle 15 of the Rio Declaration. Furthermore, in dealing with submissions for the listing of chemicals for elimination or restriction under Annexes A, B and C, Article F proposed a bracketed paragraph 6 bis which stated that lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding a chemical would not prevent the procedure specified in this article from proceeding nor prevent the listing of chemicals in Annex A, B and/or C. This was opposed by an important group of countries including the USA, Australia, Canada and Japan.

In particular, the United States circulated a paper expressing its firm belief in a context-specific precautionary approach to protect human health and the environment but insisting that precaution must be exercised *as part of* a science-based approach to regulation, and *not as a substitute* for such an approach. The US's support for principle 15 was limited to advocating its inclusion in the preamble as a way to reaffirm the relationship between the science-based approach of Principle 15 and the treaty. However, additional references to precaution or references to a lack of scientific certainty could undermine the science-based approach developed in elaborating the screening criteria prepared for listing chemicals in Annexes A, B and C. US delegates even stated that the proposed references appeared to be an inappropriate attempt to renegotiate the term of Rio Principle 15 in INC 5.

The US approach contrasted starkly with the EU position, which advocated application of the precautionary principle in deciding upon the inclusion of chemicals in Annexes A, B and C. The EU circulated a paper recommending that the precautio-

ny principle be included within the objective of the convention – “the objective of this Convention is, through applying the precautionary principle, to eliminate persistent organic pollutants so as to protect human health and the environment”. The EU also favoured a new Article B bis, imposing a general obligation on Member States to apply the precautionary principle in order to avoid adverse effects on human health or the environment resulting from persistent organic pollutants.

Highly charged negotiation of this point even saw a member of the Australian delegation openly accusing the EU (in a plenary session) of hypocrisy. Ultimately, the Parties adopted substantial changes to the wording of the draft instrument in relation to the precautionary approach. In the Preamble, the expression reaffirming the precautionary approach as set forth in Principle 15 of the Rio Declaration has been deleted, replaced by a diluted expression, acknowledging that precaution underlies the concerns of all the Parties to the Convention and is embedded within it. Similarly, the above-mentioned express reference to the precautionary approach in Article F 6 bis has been deleted. Instead, pursuant to a new Article F.7, in considering whether to include a chemical in Annexes A, B and/or C, the Conference of Parties shall take due account of the recommendations of a POPs Review Committee “including any scientific uncertainty” and shall take its decision, “in a precautionary manner”.

Part II. A. 2 of Annex C, determining best available techniques (BAT) for the purposes of providing guidance on release reduction measures and requesting that “the principles of precaution and prevention be borne in mind” in such an exercise, has also been diluted. Henceforth, in determining BAT, special consideration should be given to a number of listed factors, bearing in mind the likely costs and benefits of a measure and consideration of precaution and prevention as opposed to “the principles” of precaution and prevention.

Finally, the application of the precautionary principle has also been stamped out of Article B which now states that “mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants”. Indeed, these negotiations do not seem to have done justice to the precautionary principle despite the official stand of the European Union to the effect that it is a concrete real concern that must be at the core of this convention. This is even more regrettable in light of a comment by the Panamanian delegate that if the precautionary principle had been applied a few decades ago there would not now be any need for a POPs convention.

## IUCN and POPs Implementation

With the POPs convention now a reality, it is important to begin to address the many issues relevant to its implementation. World Bank and UNEP studies have established that many countries do not have the required legislation to implement POPs, and that capacity building is going to be important for implementing the convention.

The IUCN-ELP is poised to take a major role in legislative drafting for implementing the POPs Treaty – the necessary groundwork has been done. In preliminary discussions with regional organisations, donor representatives, national delegations, and IUCN RCOs, it has become clear that the Programme will be called upon to provide assistance, if it is willing to do so. The Programme also has strong pre-existing relationships with the World Bank and UNEP, who have recently entered into an agreement to help countries reduce/eliminate the discharge of POPs, with financial support from Canada.

Attending INC 5 as an observer for IUCN was a unique experience whereby I had an opportunity of see-

*continued page 19*

# THE AARHUS CONVENTION ADVANCES PARTICIPATORY DEMOCRACY IN EUROPE

Participatory democracy is about to take a big a step forward in Europe — both West and East and in the Newly Independent States.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the “Aarhus Convention”) is expected to enter into force in Fall 2001. Although the original ambition was for entry into force at beginning of 2001, some countries have to change their national legislation in order to be able to ratify, so the process is slower than expected.

At time of writing, 11 states have already ratified the Convention, with 16 ratifications needed for entry-into-force. Even in advance of this event, however, it is possible to see significant changes coming to relationships between European governments and their citizens in the area of environmental policy.

It is hoped that the remaining ratifications will be received in time for a Preparatory Meeting for the First Meeting of Parties to take place in November 2001. In the meantime, a number of Task Forces and Intergovernmental Working Groups have been created and are working. Many key issues are being considered by these Groups.

The Aarhus Convention is significant because it will bring public participation, transparency, and access to justice to the forefront of environmental decision-making in Europe. The drafting, negotiation, adoption and ratification of the Convention are being accomplished with the active participation of non-governmental organisations (NGOs), every step of the way.

**NGO Documents Presented at the Second Meeting of Signatories:** The Second Meeting of Signatories to the Aarhus Convention took place in Cavtat, Croatia, in June 2000. A

delegation from the European ECO Forum, NGO Coalition, participated in the meeting. Prior to the Second Meeting, ECO Forum held a separate NGO meeting to formulate official positions, culminating in the Dubrovnik Declaration, which can be found on the Web at <http://www.participate.org>.

In advance of the Second Meeting of Signatories, ECO Forum also produced a leaflet “What is the Aarhus Convention?” published in three languages, English, Russian, and Ukrainian. This brochure attempts to explain the Convention in simple language and to encourage citizens to exercise their environmental rights. Even some government officials have asked for copies to educate their own staffs. The brochure can be downloaded from the Internet at <http://www.participate.org/publications/pamphlet.pdf>.

**Compliance Mechanism:** A Compliance Mechanism Task Force reported to the Second Meeting of Signatories that it developed two models of committee structure: one relying on independent experts, the other consisting of governmental representatives. This Task Force would address two critical issues – the functions of the committee, and confidentiality.

The Compliance Mechanisms and Rules of Procedure Task Force met in London in November 2000. This meeting was followed by an Intergovernmental Working Group (IWG) meeting in Geneva, February 12-16, 2001. The IWG is preparing a decision on a compliance mechanism for the Meeting in November 2001.

A proposed mechanism would allow citizens as well as governments to raise questions about compliance, although such a mechanism must, under the Convention, be non-judicial and non-adversarial. A relatively independent Committee will report to

the Meetings of Parties about compliance problems. One of the measures that the Compliance Committee could recommend to the Meeting of Parties is suspension of rights and privileges under the Convention in a case of major noncompliance.

Another issue for consideration is “optionality” (referred to in Article 15), i.e. whether the entire mechanism is optional, or just part of it? The Convention speaks of the compliance mechanism being “optional in nature.” The IWG considered whether and how a state could opt out of the compliance mechanism either completely or only relating to the provision for public complaints. The Working Group did not have the time to reach agreement, so that five bracketed alternatives will go to the Meeting of Parties.

**Rules of Procedure:** The Task Force and later the IWG also reviewed a draft of Rules of Procedure for the Meetings of Parties of the Convention.

ECO Forum successfully argued that notification of meetings under the Aarhus Convention should be distributed not only in English, but also in at least Russian and French. The Working Group also agreed on rules regarding confidentiality of documents and open meetings, making the process relatively transparent.

The issue of NGO participation remains bracketed. Denmark and some others took a strong and fundamental position in favor of NGO representation including specific representation at the MOP and on the Bureau of the Parties, which meets to address issues arising between Meetings. Some others objected. Given that the object of the Convention is public participation, this issue was surprisingly controversial.

The United Nations Economic Commission for Europe plans to post

documents coming out of the February meeting at <http://193.194.138.128/env/pp/compliance.htm>. The ECO Forum delegation of NGO leaders played an active role in the February Intergovernmental Working Group meeting.

**Pollutant Release and Transfer Registers (PRTR):** The PRTR Task Force focused on the value of the PRTR concept for industry, for citizens, and for international organisations such as UNECE, OECD, and EU. A comprehensive PRTR could be compatible with the European Union's Pollutant Emission Register (EPER), and accession countries could eventually establish a more comprehensive and progressive PRTR, using a step-by-step approach. Some of this work is already ongoing, supported by the US EPA and others. Some critical issues that arose in this discussion were the frequency of reporting under PRTR, and concerns about confidentiality. Another was the inclusion of GMOs in PRTR.

The Task Force recommended development of a legally binding instrument on PRTR and an integrated list of pollutants. This effort would be spearheaded by the Czech Republic, if additional financial assistance can be found. (The Czech Republic has a website addressing this issue at: <http://www.ecn.cz/prtr-tf/>. This also exists as a CD-ROM.)

The PRTR Intergovernmental Working Group held its first meeting 28 February to 2 March 2001 and two further meetings of the working group were envisaged during 2001. The secretariat had produced a working document, in consultation with various stakeholders, to facilitate the start of the negotiations.

**Genetically Modified Organisms (GMOs):** The Task Force on GMOs presented a report, and also circulated a note proposing that the Convention be amended to incorporate public participation principles with respect to GMO releases. ECO Forum noted that if the Convention were being negotiated now, GMOs would almost certainly be subject to PP pro-

visions, and that this amendment could remove this inconsistency in the text. The NGOs are also pressing for development of labelling requirements for GMOs under Article 5.8. This issue was very divisive, with several governments very strongly opposed to such a provision, and others strongly in favour. Although no consensus has been reached on this issue, a Working Group is attempting to produce a draft decision for the First Meeting of Parties.

A proposed definition of "deliberate release" would include planned releases from installations (such as research laboratories) and GMOs placed on the market. This provision is also controversial at this point.

The GMO task force held its second meeting in Vienna, 4-5 December 2000. The report of that meeting setting out various options for further action is to be transmitted to the first meeting of the working group on GMOs, provisionally scheduled to take place 10-12 October 2001.

**Access to Justice:** In response to a request by ECO Forum, a Task Force on the implementation of the third "pillar" of the Aarhus Convention was created during the Second Meeting of Signatories. Improving access to justice will be the most difficult job, in light of the financial barriers to access to justice, as well as the need to take "concrete steps" to broaden access to justice as a practical matter. The second meeting decided not to develop a harmonising legal instrument to address this objective.

The Task Force will focus on means of practical implementation, such as pilot projects, models, concrete solutions, and problem-solving approaches as well as measures to remove financial obstacles to those seeking access to justice, and consideration of assistance mechanisms. It will gather information on good practices and provide a forum for exchange of experience.

Estonia will lead the Task Force, with funding from Finland and the UK. The Regional Environmental Center

will coordinate the development of a best-practice handbook, with the cooperation and participation of the European ECO Forum, the Association of Environmental Lawyers of CEE/NIS, and others.

**Strategic Environmental Assessment:** ECO Forum (in conjunction with REC-CEE) had proposed another Task Force, to look at implementation of Articles 7 and 8, which extend beyond SEA (e.g. Article 8 on public participation in legislation). In lieu of another Task Force, Norway organised a workshop on SEA and Arts 7 and 8, and their potential input into the Espoo process, held in Karlovy Vary, Czech Republic, in October 2000. Another international workshop on SEA was held in Szentendre by REC, with participation of the Secretariats of the Aarhus and Espoo Convention and the World Health Organization.

Meanwhile, the UNECE Committee on Environmental Policy is preparing an SEA Protocol under the Espoo Convention, with input from participants in the Aarhus process. Advisory committees to the Secretariats of the two Conventions have held informal joint meetings to advance this process.

**Electronic Information:** The role of electronic information systems was the subject of a workshop held in March 2001 whose proceedings were (appropriately) broadcast live on the Internet.

**Environment and Health:** A delegate from WHO/EURO reported at the Second Meeting of Signatories of Aarhus about the Third European Ministerial Conference on Environment and Health (London, June 1999), where several actions had been initiated in the area of environment and health, directly linked to the SEA, electronic communications, pollutant registers and risk communication. The EEHC (Environment and Health Committee) will be following up on the decisions, and setting the agenda for its Budapest 2004 meeting.

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**Interlinkage among UNECE Conventions:** A roundtable addressing the interlinkage among various UNECE Conventions was held during the meeting of the Committee on Environmental Policy (CEP) in Geneva in September 2000.

Co-operation in public participation will be the theme of a one-day consultative meeting to be held in Geneva on 18<sup>th</sup> June 2001. It will consider the role of the themes of the Aarhus Convention – access to information, public participation and access to justice – in the context of the other Conventions.

**"Rio + 10":** Efforts are underway to make the Aarhus issues part of the Rio+10 meeting in Johannesburg, South Africa, in 2002. A number of initiatives are seeking to extend the model of the Aarhus Convention into other regions. UNEP and UNECE have already held awareness raising workshops in several non-UNECE countries. Both organisations are working in tandem to address the promotion of principle 10 of the Rio Declaration and the World Resources Institute is developing indicators to measure transparency.

The UN Secretary General has stated that the Aarhus Convention has "potential to serve as a global

framework for strengthening citizens' environmental rights." Already the issues of Aarhus are being recognized as important all over the world and a movement is growing to make them part of the Rio+10 meeting to be held in South Africa in 2002.

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## Hard at work conserving the world's wetlands: Current Activities of the Ramsar Convention

Oldest of the global conservation/biodiversity conventions, the Convention on Wetlands of International Importance (a.k.a. the Ramsar Convention) is well reputed, not least for the quality and quantity of its substantive outputs. In 2000, Ramsar's somewhat unique Scientific and Technical Advisory Panel (STRP), as well as its Standing Committee met to address a number of legal and institutional issues, as well as their customary full range of scientific and technical matters. The ELP has been active in working with Ramsar, addressing legal issues whose relevance may also extend to the other Multilateral Environmental Agreements.

It would be difficult, in a single newsletter article, to give a full account of the works of the active and productive parties, secretariat and subsidiary bodies of this Convention. (A full description can be found at [http://www.ramsar.org/index\\_key\\_docs.htm#sc](http://www.ramsar.org/index_key_docs.htm#sc).) The following is a brief account of some of the important law-related developments discerned

in the Standing Committee's and STRP's deliberations.

### **Revisions to Ramsar site boundaries and interpretation of Articles 2.5 and 4.2 of the Convention**

In furtherance of Decision SC24-10, early in 2000, the Ramsar Secretariat asked the ELC to study the concepts of 'urgent national interest' (as it appears in Article 2.5) and 'compensation' (as it appears in Article 4.2). In particular, the ELC was called upon to evaluate the meaning of these terms in international law and practice, and to advise on their specific application under current Ramsar documents and practices. ELC's analysis has been examined favourably by the Standing Committee which intends to disseminate it for comment among Ramsar member states. That analysis identifies a significant need for further work and the development of policies for the international operation of the Convention, as well as guidance to member states who might be considering adjusting the boundaries of declared

sites, both for urgent national interests and for other reasons.

### **Operations of the Convention, Conferences of Parties and Subsidiary Bodies**

Ramsar is also beginning a systematic evaluation of its operations and institutional organisation. The ELC has provided initial input into questions of the role and nature of COP operations and decisions. It is hoped that this work will continue.

In addition, the Ramsar subsidiary bodies are in the process of re-examining their own role and the level of demand that they have been called upon to satisfy. As noted above, these bodies have been prolific and are a major contributor to the impressive body of guidelines and guidance documents that have been developed and widely disseminated under the Convention.

### **Harmonisation**

The Ramsar Convention has been at the forefront of the efforts to har-

monise the work of the Multilateral Environmental Agreements (MEAs). It is now in the process of developing the third of the ground-breaking "Joint CBD-Ramsar Workplans." These workplans have become the model by which other conventions are seeking to develop complementary working arrangements with the CBD. Ramsar's first collaboration with the CBD, the "River Basin Initiative" (originally developed "to assist countries in getting good-practice information") continues to operate and has drawn significant interest, not only from the wetland community, but from the water management community as well, and has been an important mechanism for bringing these two sectors together.

Beyond this, Ramsar has been invited to participate in a special exercise aimed at harmonising the environmental conventions. In accordance with a recent CBD COP decisions, the CBD's Subsidiary Body on Technical and Technological Advice (SBSTTA) was instructed to work with the Ramsar STRP and other bodies, to address a suite of issues of importance to all agreements relating to impact assessment, inland waters, alien species and other is-

sues. Additional work proposed by Ramsar working groups will also focus on collaborative or complementary relationship with work of the CBD in these areas. Such work will include the development of proposals or possible guidelines on incentive measures.

The Ramsar Bureau has also been authorized to begin to develop direct cooperative efforts with the secretariats of other global treaties, as a prelude to eventually developing with each of these the level of cooperation currently enjoyed with the CBD. Ramsar Standing Committee members specifically offered to advance that process within their home countries by, for example, forging links with the national focal points of other conventions.

Ramsar is also a pioneer in efforts to broaden co-operation with observer bodies and other organizations. Its relationship with IUCN is, of course, particularly close (IUCN is specifically charged with particular responsibilities in the text of the Convention.) In addition, the Ramsar STRP considered a number of opportunities for collaboration with other entities, including the Interna-

tional Association for Impact Assessment, UNESCO Man and the Biosphere Programme, and the Barbados Programme of Action for the Sustainable Development of Small Island States.

### Water Allocation

Another critical area in which Ramsar is working is the allocation and management of water. Ramsar's involvement in this issue underscores the importance of consideration, within the allocation process, of the role of water and flow-rates for maintaining ecological functions. In many cases, the business model for water allocation (which often gives little or no consideration to ecosystem function) is taken as the basis for international agreements on transboundary watercourses. Ramsar hopes to develop links with regional agreements such as the Danube and Lake Chad initiatives and with the development of the River Basin Initiative's proposed case studies as well.

### Other Critical Issues

A number of other Ramsar working groups are actively addressing issues of legal as well as general environmental importance. Among these are working groups on integrated coastal zone management (ICZM), wetland restoration, invasive species, dams, migratory species and waterbirds, under-represented wetland types, climate change, and community and indigenous participation in wetland management (through a new Participatory Management Networking Service (PMNS), to be managed by IUCN's Social Policy Programme.) In most of these groups work is focusing on development of specific outputs in the form of guidelines and case studies, to support work in these areas.

The ELP expects to maintain its close working relationship with Ramsar, and hopes to aid the Convention and its parties in achieving their laudably ambitious workplan for the wetlands, species and people of the planet.



*Dr. Alejandro Iza giving a presentation on the IUCN ELP at the Workshop on Water Legislation in the Andean Community*

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**Info needed:**

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

# **CALENDAR As of 12 M**

12-16 March	Montreal, Canada	6 <sup>th</sup> Meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) of the Convention on Biological Diversity Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: secretariat@biodiv.org; Internet: <a href="http://www.biodiv.org">http://www.biodiv.org</a>
19-22 March	Montreal, Canada	2 <sup>nd</sup> Meeting of the Panel of Experts on Access and Benefit-sharing Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: secretariat@biodiv.org; Internet: <a href="http://www.biodiv.org">http://www.biodiv.org</a>
31 March	Washington D.C., USA	6 <sup>th</sup> International Wildlife Law Conference: "The Seas and International Law" Contact: Mr. Wil Burns, Co-chair, American Society of International Law - Wildlife Interest Group, tel.: (1 650) 703 3280, fax: (1 801) 838 4710; e-mail: <a href="mailto:SILWildlife@pacbell.net">SILWildlife@pacbell.net</a> ; Internet: <a href="http://www.eelink.net/~asilwildlife">http://www.eelink.net/~asilwildlife</a>
5-6 April	Manchester, UK	International Sustainable Development Research Conference 2001 Contact: Elaine White, tel: (44 1) 274-530408; fax: (44 1) 274-530409; e-mail: <a href="mailto:elaine@erpenv.demon.co.uk">elaine@erpenv.demon.co.uk</a> ; Internet: <a href="http://www.erpenvironment.org/cfrence/sd.htm">http://www.erpenvironment.org/cfrence/sd.htm</a>
8-11 April	Cambridge, UK	12 <sup>th</sup> Global Warming International Conference & Expo – Kyoto Compliance Review Contact: Sinyan Shen, The Global Warming International Center Headquarters, Naperville, Illinois, USA; tel: (1-630) 910-1551; fax: (1 630) 910-1561; Internet: <a href="http://www2.msstate.edu/~krreddy/glowar/gw12c.html">http://www2.msstate.edu/~krreddy/glowar/gw12c.html</a>
16-27 April	New York, USA	9 <sup>th</sup> Session of the Commission on Sustainable Development Contact: Andrey Vasilyev, Division for Sustainable Development; tel: (1 212) 963-5949; fax: (1 212) 963- 4260; e-mail: <a href="mailto:vasilyev@un.org">vasilyev@un.org</a> ; Internet: <a href="http://www.un.org/esa/sustdev/csd9/csd9_2001.htm#">http://www.un.org/esa/sustdev/csd9/csd9_2001.htm#</a>
30 April - 2 May	New York, USA	10 <sup>th</sup> Session of the Commission on Sustainable Development CSD-10 (PREPCOM I) Contact: Andrey Vasilyev, Division for Sustainable Development; tel: (1 212) 963-5949; fax: (1 212) 963- 4260; e-mail: <a href="mailto:vasilyev@un.org">vasilyev@un.org</a> ; Internet: <a href="http://www.un.org/rio+10/index.html">http://www.un.org/rio+10/index.html</a>
17-18 April	Washington, D.C., USA	International Conference on Equity and Global Climate Change Contact: Pew Center on Global Climate Change, Equity and Global Climate Change Conference, c/o Pilliod Meeting Planning, 1001 C Street, SE, Washington, DC 20003, USA; tel: (1 202) 544-7900, fax: (1 202) 544-7992, e-mail: <a href="mailto:pilliodmp@aol.com">pilliodmp@aol.com</a> ; Internet: <a href="http://www.pewclimate.org/events/spring_conf.cfm">http://www.pewclimate.org/events/spring_conf.cfm</a>
23-27 April	Edinburgh, Scotland	Technical Experts Group on Forests Contact: Ms. Frida Velarde, Convention on Biological Diversity Secretariat; tel: (1-514) 287-7001; fax: (1 514) 288-6588; e-mail: <a href="mailto:frida.velarde@biodiv.org">frida.velarde@biodiv.org</a> ; Internet: <a href="http://www.biodiv.org/conv/events/events.asp?cbd">http://www.biodiv.org/conv/events/events.asp?cbd</a>
9-11 May	Stockholm, Sweden	Bridging Sustainability Research and Sectoral Integration Contact: Swedish Environmental Protection Agency, Information Department, Attn: Ms. Ann-Mari Gårdlöv, SE-106 48 Stockholm, Sweden; fax: (46 8) 698 1510; e-mail: <a href="mailto:bridging@environ.se">bridging@environ.se</a> ; Internet: <a href="http://www.bridging.environ.se">www.bridging.environ.se</a>
21-23 May	Stockholm, Sweden	Persistent Organic Pollutants INC-5 – The Conference of the Plenipotentiaries Contact: UNEP Chemicals (IRPTC); tel: (41-22) 979-9111; fax: 797-3460; e-mail: <a href="mailto:dodgen@unep.ch">dodgen@unep.ch</a> ; Internet: <a href="http://irptc.unep.ch/pops/">http://irptc.unep.ch/pops/</a>
27 May - 2 June	Cartagena, Colombia	Impact Assessment in the Urban Context Contact: IAIA International Headquarters, Fargo, North Dakota, USA; tel: (1 701) 297-7908; fax: (1 701) 297-7917; e-mail: <a href="mailto:info@iaia.org">info@iaia.org</a> ; Internet: <a href="http://www.iaia.org">http://www.iaia.org</a>
4-7 June	São Paulo, Brazil	5 <sup>th</sup> International Conference on Environmental Law: "The Future of Pollution Regulation and Enforcement" Contact: Lawyers for a Green Planet Institute, Faculdade de Direito da USP, Av. Brigadeiro Luiz Antônio, 22, sala 104-i, CEP 01 401-002, São Paulo, Brazil: tel: (55 11) 606 7411, fax: (55 11) 607 3821
11-22 June	New York, USA	1 <sup>st</sup> Substantive Session of the UN Forum on Forests Contact: Secretariat, Intergovernmental Forum on Forests, Division of Sustainable Development, UN DESA, New York; tel: (1 212) 963-6208; fax: (1 212) 963-3463; e-mail: <a href="mailto:yahanen@un.org">yahanen@un.org</a> ; Internet: <a href="http://www.un.org/esa/sustdev/unff_2001_fsm.htm">http://www.un.org/esa/sustdev/unff_2001_fsm.htm</a>
25-29 June	Montreal, Canada	21 <sup>st</sup> Session of the Open-ended Working Group of the Parties to the Montreal Protocol Contact: Ozone Secretariat; tel: (254 2) 62-1234 or 62-3851; fax: (254 2)-62-3601 or 62-3913; e-mail: <a href="mailto:ozoneinfo@unep.org">ozoneinfo@unep.org</a> ; Internet: <a href="http://www.unep.org/ozone">http://www.unep.org/ozone</a>

# OF MEETINGS

## March 2001

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

26-29 June (tentative)	Gland Switzerland	10 <sup>th</sup> Meeting of the Ramsar Scientific and Technical Review Panel Contact: Ramsar Secretariat, Rue Mauverney 28, Gland, 1196, Switzerland; tel: (41 22) 999 0170; fax: (41 22) 999 0169, e-mail: <a href="mailto:ramsar@ramsar.org">ramsar@ramsar.org</a> ; Internet: <a href="http://www.ramsar.org">www.ramsar.org</a>
5-6 July	Tokyo, Japan	Rio + 10 Global Round-table on Inter-linkages Contact: Jerry Velasquez, United Nations University; tel: (81 3) 5467-1301; fax: (81 3) 3407-8164; e-mail: <a href="mailto:jerry@geic.or.jp">jerry@geic.or.jp</a> ; Internet: <a href="http://www.unu.edu">http://www.unu.edu</a>
16-27 July	Bonn, Germany	Resumed 6 <sup>th</sup> Conference of the Parties/14 <sup>th</sup> Sessions of the Subsidiary Bodies of the UN Framework Convention on Climate Change Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: <a href="mailto:secretariat@unfccc.de">secretariat@unfccc.de</a> ; Internet: <a href="http://www.unfccc.de">http://www.unfccc.de</a>
6-8 August	Dundee, Scotland	5 <sup>th</sup> Annual International Water Law Conference: "Water 2001, Globalization and Water Management: The Changing Value of Water" Contact: Ranji Dhillon, Technical Program Co-ordinator, Water Law and Policy Program, University of Dundee, Department of Law, Dundee, Scotland; tel: (44 1382) 344 456; fax: (44 1382) 226 905; e-mail: <a href="mailto:r.h.o.s.dhillon@dundee.ac.uk">r.h.o.s.dhillon@dundee.ac.uk</a>
27-30 August	Penang, Malaysia	Asian Wetland Symposium Contacts: (1) AWS 2001, Secretariat (Japan) Reiko Nakamura, Ramsar Centre Japan, 2-10-3 Minanikugahara, Ota-ku, Tokyo 146-0084 Japan; tel.: (81.3) 3758 7926; fax: (81.3) 3758 7927; e-mail: <a href="mailto:ramsarj.nakamura@nifty.ne.jp">ramsarj.nakamura@nifty.ne.jp</a> ; (2) AWS2001 Secretariat (Malaysia); Ahyaudin B. Ali, Universiti Sains Malaysia, 11800 Minden, Penang, Malaysia; tel: (604) 860 3181; fax: (604) 656 5125; e-mail: <a href="mailto:ahyaudin@usm.my">ahyaudin@usm.my</a>
1-5 Oct	Montreal, Canada	2 <sup>nd</sup> Meeting of the Inter-governmental Committee for the Cartagena Protocol (ICCP-2) Contact: Secretariat of the Convention on Biological Diversity, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: <a href="mailto:chm@biodiv.org">chm@biodiv.org</a> ; Internet: <a href="http://www.biodiv.org">http://www.biodiv.org</a>
1-12 Oct	Geneva Switzerland	5 <sup>th</sup> Session of the Conference of the Parties to the UN Conference to Combat Desertification Contact: United Nations Convention to Combat Desertification, tel.: (49 228) 815 2800; fax: (49 228) 815 2899; e-mail: <a href="mailto:secretariat@uccd.de">secretariat@uccd.de</a> ; Internet: <a href="http://www.unccd.de">http://www.unccd.de</a>
8-12 Oct	Rome, Italy	8 <sup>th</sup> Session of the Intergovernmental Negotiating Committee (INC) for the Preparation of the Conference of Parties of the Rotterdam Convention for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (INC-8) Contact: Niek van der Graaff, FAO; tel: (39-6) 5705-3441; fax: (39-6) 5705-6347; e-mail: <a href="mailto:Niek.VanderGraaff@fao.org">Niek.VanderGraaff@fao.org</a> ; or Jim Willis, UNEP Chemicals; tel: (41-22) 917-8111; fax: (41-22) 797-3460; e-mail: <a href="mailto:chemicals@unep.ch">chemicals@unep.ch</a> ; Internet: <a href="http://www.pic.int/">http://www.pic.int/</a>
15-19 Oct	Colombo, Sri Lanka	13 <sup>th</sup> Meeting of the Parties to the Montreal Protocol (MOP-13) Contact: Ozone Secretariat; tel: (254 2) 62-1234 or 62-3851; fax: (254 2) 62-3601 or 62-3913; Internet: <a href="http://www.unep.org/ozone">http://www.unep.org/ozone</a>
22-26 Oct	Bonn, Germany	Ad-Hoc Open-ended Working Group on Access and Benefit Sharing Contact: Secretariat of the Convention on Biological Diversity, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: <a href="mailto:">; Internet: <a href="http://www.biodiv.org">http://www.biodiv.org</a></a>
24-26 Oct	Madrid, Spain	Simposio Internacional sobre Legislación y Derecho Ambiental: Legislación ambiental y conservación de la diversidad biológica. Casos y jurisprudencia Contact: Ilustre Colegio de Abogados de Madrid, Programa Internacional en Derecho Ambiental, Serrano Nº 11, 4º Planta, 28001 Madrid, Spain; e-mail: <a href="mailto:zsogon@iies.es">zsogon@iies.es</a> or <a href="mailto:zsogon@teleline.es">zsogon@teleline.es</a>
29 Oct - 9 Nov	Marrakech, Morocco	7 <sup>th</sup> Conference of the Parties of the UN Framework Convention on Climate Change Contact: UNFCCC Secretariat, Haus Carstanjen, Martin-Luther-King-Strasse 8, D-53175 Bonn, Germany; tel: (49 228) 815-1000; fax: (49 228) 815 1999, e-mail: <a href="mailto:secretariat@unfccc.de">secretariat@unfccc.de</a> ; Internet: <a href="http://www.unfccc.de">http://www.unfccc.de</a>
12-16 Nov	Montreal, Canada	7 <sup>th</sup> Meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity (CBD SBSTA-7) Contact: CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: (1 514) 288 2220; fax: (1 514) 288 6588; e-mail: <a href="mailto:secretariat@biodiv.org">secretariat@biodiv.org</a> ; Internet: <a href="http://www.biodiv.org">http://www.biodiv.org</a>
3-7 Dec	Gland, Switzerland	26 <sup>th</sup> Ramsar Standing Committee Meeting Contact: Ramsar Secretariat, Rue Mauverney 28, Gland, 1196. Switzerland; tel: (41 22) 999 0170; fax: (41 22) 999 0169, e-mail: <a href="mailto:ramsar@ramsar.org">ramsar@ramsar.org</a> ; Internet: <a href="http://www.ramsar.org">www.ramsar.org</a>

# THE SEVEN DEADLY SINS OF LATIN AMERICAN ENVIRONMENTAL IMPACT ASSESSMENT SYSTEMS

The development of “informed” environmental legislation, and particularly EIA systems – the primary tool of preventive environmental management – has endured a series of conceptual and technical problems. These problems are commonly shared among the various Latin American EIA laws, as might be expected given that their legislative systems share a continental origin.

**1. Inappropriate location of the EIA within the National Environmental System:** Within Latin America, it has been hard to properly recognize the EIA system as a “third level” management instrument, since this status pre-supposes that a National Environmental Policy (first level instrument) has been designed, and that technical standards, such as emission levels and development standards (second level) are in place. Without this legal foundation, the EIA process loses a significant part of its “virtue.”

This situation underlies nearly all environmental conflicts, because the EIA process calls for information which cannot be provided in the absence of the relevant design or plan (energy policy, land-use or regional plan, etc.) It becomes then a question of whether the EIA itself will be *the decision* or only an instrument to be used in deciding. From the institutional and procedural point of view, this error can be corrected or avoided only where the proper relationship exists between the environmental procedures and other, substantive, procedures.

**2. Uneven development of EIA processes with regard to other environmental management instruments:** Without consideration of other instruments, the EIA process loses much of its efficacy and efficiency. Thus, for example, it is important to develop the following, and

integrate them into EIA preparation and consideration:

- land-use planning instruments (town, urban or regional plans, etc.),
- watershed management plans, whose objective is to regulate the use and rational development of renewable resources;
- territorial environmental “baseline” assessments,
- Zoning by which competent authorities designate permissible use or potential for specifically identified geographical areas based on natural characteristics, environmental quality standards, protected area or species designations, landscape valuation based on uniqueness, scarcity, representative character, endemicity, biological diversity and current degree of conservation.

In addition, environmental evaluation of alternative proposals, which is the core of the EIA, is unfortunately not included in some countries’ EIA laws (e.g., the Chilean law.) Such evaluation must necessarily be based on comparative appraisal of the various options under consideration.

**3. Overbreadth:** One of the most frequent types of problematic provision in many Latin American EIA laws arises out of the use of lists or catalogues of projects for which an EIA is mandatory. Such lists are frequently overinclusive – based on the erroneous concept that the EIA is an instrument capable of tackling and resolving all problems. For example, in some instances the list of EIA-mandatory projects includes parking lots, hospitals, jails, water purification systems, large-scale application of chemicals, etc. In a similar fashion, confusion may arise where the EIA criteria include the use of non-environmental factors such as the level of production, or the existence and

content of other plans, programs, or Strategic EIAs.

**4. Lack of clarity and standards in applying supporting concepts:** One of the most valuable features of the North American EIA models is the role of the citizenry in the EIA process, and in particular, the requirement that the existence of relevant comments from the public, and popular opposition, or social conflict relating to the project, must be recognized and incorporated as criteria of the evaluation. Unfortunately, this concept has not been incorporated into any of the Latin American EIA systems.

Conversely, despite the fact that Latin America owes its vitality and development to its natural resources, the concept of biodiversity is clearly still the “little brother” among environmental issues and not adequately considered in the evaluation and assessment of impacts. Undervaluation of these impacts, may mean that the selection of remedies is adequate only in the short-term.

Finally, many Latin American EIA laws contain a profusion of undefined terms such as “human societies”, “proximity,” “landscape values,” “risk,” etc. The lack of definitional clarity here engenders an unacceptable level of indefiniteness and insecurity. These concepts must be construed or codified in a way that provides clear, final definition, sets appropriate boundaries for administrative discretion, and prevents arbitrary and capricious application of these standards.

**5. The utopian idea – a “one-stop permit shop”:** A reasonable and natural tendency of modern administrative law is embodied in the creation of mechanisms to avoid Kafkaesque administrative repetition and multiplicity of project approval and li-

censing requirements. However, in legislation that attempts to minimize the number of permitting steps, other errors have cropped up. The first is exemplified in the Chilean approach, and involves the establishment of a catalogue of "sectoral permit" forms, an artificially-created listing of the relevant **environmental** issues for projects within each sector. The second error, even worse than the first, as found in Colombia, is the establishment of a form of global environmental permit, which confuses the environmental one-stop-shop concept with the developer's more general desire for a single permit.

In effect, the objective behind the "environmental one-stop shop" can be understood as the desire to create a direct or streamlined linkage between the environmental evaluation of the project and some other governmental authorization, permit, concession or pronouncement. However, the EIA system itself should never become the public authority which grants the single necessary "birth certificate" for a project proposal.

**6. Public Participation:** One aspect of the EIA process that is not yet perfectly understood in Latin America is the role of EIA in fostering joint social responsibility and public participation in governmental decision-making. Where it exists at all, public participation in environmental issues in Latin America is limited to a much later stage in the evaluation procedure. There is no mechanism for participation in the deliberative process, absent which the legitimacy of

the entire process before becomes questionable with regard to the civil society.

This problem, coupled with the lack of extra-judicial dispute resolution mechanisms like mediation for EIA-related controversies, results in a surfeit of judicial actions. EIA processes thus create a bottleneck for development that could be avoidable. One approach to this issue would be to place the Universities in the role of arbitrator, instead of their current role as mere environmental consultants.

**7. Lack of assurance and oversight:** At the conclusion of the EIA process, the project proponent must provide some reliable assurance of his fulfilment of the required mitigation, compensation and restoration in the execution of the project or activity. To this end, modern EIA legislation should require explicit guarantees, and should mandate the use of independent auditors, and effective governmental oversight and control. Security instruments, sureties and bonding arrangements, such as are used in the environmental context with regard to contamination, should be applied to EIA-based commitments, and a legal regimen should be developed addressing and enforcing these responsibilities.

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This article  
was originally written in Spanish.

A Spanish-language version of every  
ELP newsletter is produced following the production  
of the English version, thanks primarily to the generous  
contribution of time and efforts by CEL Vice Chair Jorge  
Caillaux, and ELC Legal Officer Dr. Alejandro Iza. Readers  
wishing to examine the original text as written by Mr. Astorga  
are therefore referred to the Spanish version of the newsletter  
which will be out within a few weeks following the  
release of the edition you are now reading.  
(Copies may be requested from the ELC, or found  
on the IUCN-ELP website at  
<http://www.iucn.org/themes/law>.)

– TRY

## *...POPs Convention*

ing 122 countries negotiating hard to reach a consensus on the POPs issue. I believe I had a realistic view of where the balance of power really lies in international environmental law making. Indeed, while countries like the USA and Canada had 32 and 20 negotiators respectively, India and Nigeria had 3 representatives altogether (2 for India and 1 for Nigeria). The whole difference could be seen

not only at the level of the various contact groups but also overwhelmingly on the last day of the negotiations. It was even frustrating to observe the last round of the proceedings which lasted throughout the night until 8.45 a.m. on the 10<sup>th</sup> of December. Countries with high numbers of negotiators virtually stole the show, sometimes appearing to lengthen proceedings further than

needed, so that provisions were included or excluded through exhaustion rather than reasoned persuasion or genuine negotiation.

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# Elaboration et mise en oeuvre des décrets sur les Études d'Impact sur l'Environnement et les normes de rejets de polluants dans l'air, l'eau et le sol au Burkina Faso

Le Burkina Faso a adopté, par la Loi 005/97/ADP du 30 Janvier 1997, le Code de l'Environnement. Il s'agit d'une Loi d'orientation sur la gestion durable de l'environnement et des ressources naturelles.

L'article 17 du Code de l'Environnement dispose que les activités susceptibles d'avoir des incidences significatives sur l'environnement sont soumises à l'avis préalable du ministre chargé de l'environnement. L'avis est établi sur la base d'une Étude d'Impact sur l'Environnement (EIE) ou d'une Notice d'Impact sur l'Environnement.

Mais, l'absence jusqu'à présent de normes environnementales constitue un handicap majeur pour une bonne application des dispositifs de la loi d'orientation. Face à ces difficultés, le Projet Législation a, dans le cadre de ses activités de l'année 1999, procédé à l'élaboration des projets de décrets sur les deux questions susvisées.

## **De la méthodologie d'élaboration des textes**

La nouveauté du concept sur les EIE et les normes, ainsi que la difficulté qui sous-tend leur application, a nécessité une approche méthodologique visant à obtenir, à la fin du processus, un texte consensuel, capable de refléter les préoccupations des utilisateurs. Ainsi, en ce qui concerne les normes environnementales, une étude a été réalisée sur l'état de pollutions au niveau de l'eau, de l'air et du sol. L'étude sur l'eau et le sol a été faite par le Centre Régional de l'Eau Potable et de l'Assainissement dont le siège est basé à Ouagadougou. Les études sur la

pollution de l'air ont été réalisées par le Centre de Contrôle des Véhicules Automobiles. C'est sur la base de ces deux études que l'équipe de juristes du Projet Législation a élaboré les avant-projets de décrets.

Dans une seconde étape, les projets de décrets ont été soumis pour appréciation et amendement à une équipe interministérielle et pluridisciplinaire, regroupant le Ministère de l'Environnement et de l'Eau, le Ministère de l'Energie et des Mines, le Ministère de l'Agriculture, le Ministère de l'Industrie du Commerce et de l'Artisanat, le Ministère de la Santé, le Ministère des Transports et du Tourisme, la Ligue des consommateurs, et le Groupement Professionnel des Industriels.

Dans une troisième étape, les projets de décrets ont été soumis à l'appréciation du juriste de la FAO et de la Banque Mondiale. Les textes ont fait l'objet de quelques retouches du point de vue de la forme, et sont dans le circuit administratif pour adoption. Il convient de signaler que la mission de l'IUCN au Burkina Faso a beaucoup contribué à la finalisation de ces deux projets de textes.

## **De la structure du projet de décret sur les EIE**

Le projet de décret sur les EIE comprend trois parties:

- Le champ d'application
- Le contenu
- La procédure

Il est complété par une annexe contenant la liste des activités assujetties à l'étude ou la notice d'impact sur l'environnement.

Le champ d'application embrasse la sphère d'activités socio-économiques prévues et arrêtées par le Gouvernement par décret. Toutefois, les activités ayant trait à la construction des barrages, des routes, l'irrigation, l'installation des unités industrielles polluantes, sont celles qui ont davantage requis l'attention des rédacteurs.

Le contenu de l'EIE a trait à l'ensemble des éléments constitutifs qui la compose. Il part de l'examen initial de l'état de l'environnement, et va jusqu'à la proposition de mesures à même de préserver l'environnement.

La procédure de l'EIE concerne l'ensemble des étapes que doit franchir l'étude jusqu'à l'obtention de l'autorisation, matérialisée par un arrêté ministériel permettant ainsi au pétitionnaire de mettre en œuvre son projet.

L'enquête publique ainsi que la participation du public, qui constituent des pièces maîtresses de toute procédure d'étude d'impact sur l'environnement, a été volontairement extraite du projet de décret pour faire l'objet d'un décret séparé.

Pour élaborer le texte sur les EIE et les normes environnementales, l'équipe des juristes du Projet Législation s'est fondée sur l'approche participative. En faisant en sorte que tous les acteurs soient impliqués dans le processus de confection du décret, les juristes ont tout simplement voulu mettre en œuvre le principe de la participation qui est un des principes fondamentaux en matière de gestion de l'environnement. Il

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# The European Community's New Water Framework Directive

## A Watershed for European Water Policy

In September 2000, after years of intensive discussion and heated debates, the decision-making bodies of the European Community (EC) finally adopted a "Directive [2000/60/EC of the European Parliament and of the Council of 23 October 2000 of the Council] Establishing a Framework for Community Action in the Field of Water Policy". (Official Journal of the European Communities, L 327, Volume 43, 22 December 2000, p. 1-72; <<http://www.wwfffreshwater.org/initiatives/wfd-txt.html>>.) The new Water Framework Directive constitutes a

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s'agit d'une innovation en matière d'élaboration de textes réglementaires que les juristes du droit classique n'ont pas encore réussi à appréhender.

L'approche participative, qui est une approche méthodologique et holistique, et qui intègre dans sa démarche le concept de la dévolution, a été largement mise à profit dans l'élaboration de ces décrets. Les juristes ont, à l'occasion d'un atelier organisé en Avril 1999 en collaboration avec la Faculté de Droit de l'Université de Ouagadougou, tenté de conceptualiser cette approche, convaincus qu'elle peut être d'un secours inestimable au juriste de l'environnement.

– Samuel Yeye

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unique stage in the development of the water policy of the EC. It will rationalize the Community's highly fragmented water legislation under one framework document which takes an integrated approach towards water management in the countries of the European Union (EU).

### Background: Development of EC Water Policy

Water is one of the most comprehensively regulated areas of EC environmental legislation. The legal instrument most frequently used in this respect is the so-called "directive"; it regulates a subject matter by setting up legally binding objectives which have to be achieved by Member States within a certain timeframe. The individual Member States retain the power to choose the specific means and to draw up detailed provisions by which they put the directive into effect within their national jurisdiction. During the last 25 years, the EC has adopted a number of water-related directives – aimed at specific processes, industries, substances or uses.

Early European water policy began in the 1970s with the First Environmental Action Programme in 1973, followed by a first wave of water legislation. Starting in 1975 with the Surface Water Directive, these instruments mainly focused on water quality standards. A review of the existing regulations in 1988 triggered a second wave of water legislation, this time focusing on emission limitation.

In the course of this process, it became increasingly apparent that the different pieces of EC water legislation were fairly unrelated and represented a patchwork of incoherent – sometimes even contradictory – legal instruments which were fragmented in terms of both objectives

and means. Pressure to rethink EC water policy came to a head in mid-1995, when the institutions of the EC agreed that a fundamental revision and reform was needed.

### The EC's New Water Framework Directive

The Commission, the Council and the European Parliament entered into a wide-ranging consultation process, open to comment from all interested parties, such as local and regional authorities, water users and NGOs. All sides agreed on the need for a single piece of framework legislation. In response to this, the Commission presented a proposal for a Water Framework Directive (WFD) in February 1997 with the following goals:

- expanding the scope of water protection to all waters: surface waters and groundwater;
- achieving good status for all waters by a set deadline;
- integrated water management based on river basins;
- "combined approach" of emission limit values and water quality standards;
- setting adequate water prices;
- intensifying participation of citizens;
- streamlining water-related legislation.

The proposed WFD became the subject of controversy among European institutions involved in the law-making process.

Last year, the European Parliament and Council finally agreed on a compromise and adopted the "Directive of the European Parliament and of the Council 2000/60/EC Establishing a Framework for Community Action

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in the Field of Water Policy." With its publication in the Official Journal of the European Communities the WFD entered into force on 22 December 2000. EC Member States will have 3 years to reflect the directive into their national legislation. Some of the most innovative features of the WFD are outlined below.

### Purpose (WFD, Article 1)

The WFD creates an overall legislative framework for the protection and sustainable use of water in the EC (Preamble, para. 18). According to Article 1, its purpose is

- ✓ to prevent further deterioration and to protect and enhance the status of aquatic ecosystems and terrestrial ecosystems and wetlands directly depending on them;
- ✓ to promote sustainable water use based on a long-term protection of available water resources;
- ✓ to enhance protection and improvement of the aquatic environment, *inter alia* through specific measures for the progressive reduction of priority substances and the cessation or phasing-out of priority hazardous substances;
- ✓ to ensure the progressive reduction of pollution of groundwater and to prevent its further pollution; and
- ✓ to contribute to mitigating the effects of floods and droughts.

### Scope (WFD, Article 1)

The WFD takes a holistic and comprehensive approach towards water management as it covers the following relevant components of the water cycle: inland surface waters, transitional waters, coastal waters and groundwater. This will be the first

time surface waters and groundwater are managed in an integrated manner on the European level.

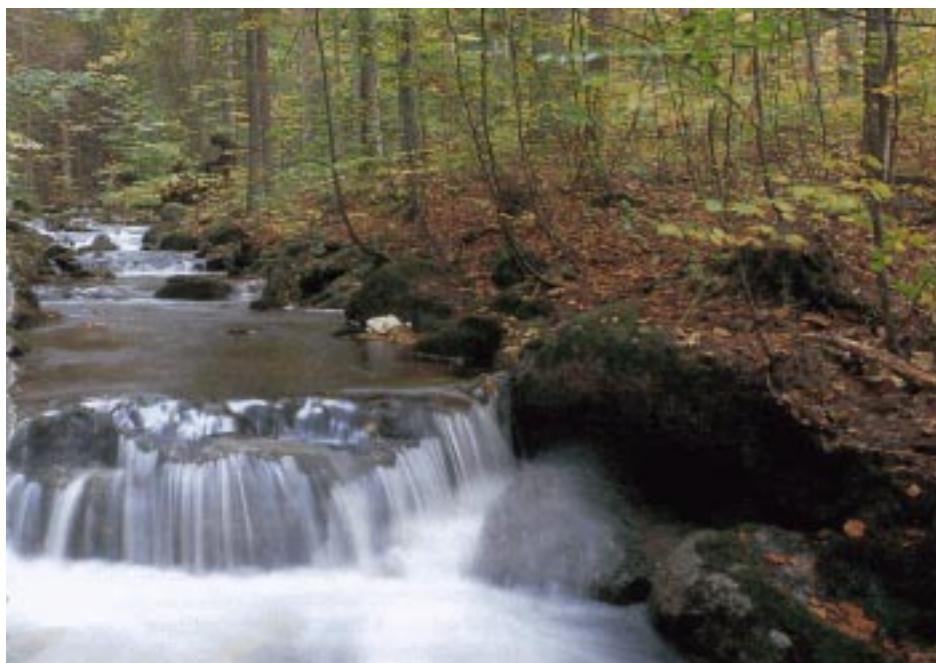
### Integrated River Basin Management (WFD, Articles 3, 5, 13)

In accordance with its character as a comprehensive framework, the WFD focuses on encouraging water protection by providing common objectives, principles, definitions and basic measures on the European level. The specific administrative arrangements to achieve the WFD's objectives take place within the EC Member States at the level of the national, sub-national, or local authorities. The basic reference unit for water management is the "river basin," defined as "the area of land from

their associated groundwaters and coastal waters" (Article 2, para. 15).

Transboundary water resources and river basins covering the territory of more than one Member State will be assigned to an international River Basin District (Article 3, para. 3). Where a River Basin District extends beyond the territory of the European Community, the Member States concerned "shall endeavour to establish appropriate coordination with the relevant non-Member States, with the aim of achieving the objectives of the Directive throughout the River Basin District" (Article 3, para. 5).

For each River Basin District (or for the portion of an international River Basin District) falling within its terri-



which all surface run-off flows through a sequence of streams, rivers and, possibly, lakes into the sea at a single river mouth, estuary or delta" (Article 2, para. 13). Disregarding existing administrative or political boundaries, Member States are obliged to establish specific River Basin Districts (Article 3, para. 1), which cover "the area of land and sea which make up one or more neighbouring river basins together with

tory, a Member State must undertake (i) an analysis of its characteristics, (ii) a review of the impact of human activity on the status of ground- and surface waters, and (iii) an economic analysis of water use. (Article 5, para. 1). The key managerial tool for the implementation of these objectives is the River Basin Management Plan (RBMP) (Article 13) which consists of a standardized set of programmes of measures (Annex VII).

## **Environmental Objectives (WFD, Article 4)**

The WFD's goal is to achieve "good status" of surface waters, groundwater and protected areas within 15 years. To this end, the environmental objectives regarding water protection and restoration are legally binding on the Member States. However, groundwater still remains less protected than surface waters, as the respective definitions of "good status" are different (Article 1, paras. 17-28). Whereas "good surface water status" is determined by ecological and chemical factors, "good groundwater status" merely refers to quantitative and chemical conditions. Extensions of the deadline and less stringent environmental objectives are also allowed for groundwater, under certain circumstances (Article 4, paras. 4-7).

## **Combined Approach to Pollution Prevention and Control (WFD, Article 10)**

One of the serious deficiencies of EC water policy in the past was the dichotomy in approach to pollution control. As mentioned before, some of the EC's water-related directives concentrated on what is achievable at the source of pollution through emission controls. Other instruments focused on the needs of the water body by the setting of water quality standards. Each approach has potential flaws. Where there is a concentration of polluters, emission controls at individual sources alone can allow a cumulative pollution load that is detrimental to the receiving water as a whole. On the other hand, water quality standards can underestimate the effect of a particular substance on the aquatic ecosystem.

Regarding discharges into surface waters, the WFD combines both approaches (Preamble, para. 40; Article 10, para. 1). It requires all existing emission controls to be implemented within 12 years (Article 10, para. 2), while it also coordinates all the environmental objectives in existing legislation and establishes "good status" of all waters as a new

overall objective. Where the control measures taken on the source side are not sufficient to achieve the water quality objectives, more stringent emission limitations are required (Article 10, para. 3).

## **Reduction, Cessation and Phase-out of Priority Substances (WFD, Article 16)**

The WFD requires that water pollutants which present a significant environmental risk (priority substances) must be reduced (Article 16, para. 1), and the discharge, emission and loss of especially problematic hazardous substances must be ceased or phased out within 20 years (Article 16, para. 6). The identification of priority substances has started recently, and a list of 32 pollutants has been proposed as Annex X of the WFD. This was a contentious component of the WFD, with much debate concerning hazardous-substance-related political commitments in regional seas agreements such as the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic. The ultimate endorsement of the OSPAR target is remarkable given the combined pressure of EC governments and the chemical industry against it.

## **Water Pricing (WFD, Article 9)**

The introduction of water pricing proved to be both critical and extremely controversial. In many EC Member States, prices do not represent the full cost of the water use, leading not only to hidden subsidies for certain water users (farmers, etc.), but also to inefficient and unsustainable water use. The full cost recovery principle seeks to internalize all costs of water supply, treatment, and management, as well as environmental costs associated with damage to the aquatic environment (environmental "externalities"), within charges for water services (Preamble, para. 38). According to Article 9 of the WFD, Member States must ensure by 2010 that water pricing policies provide adequate incentives for the efficient use of water resources. The polluter-pays principle

will be made operational for the reduction of pollution and inefficient water use. However, as economic and social consequences of water pricing can be quite substantial in some regions of the EC, the WFD provides for exceptions under certain conditions (Article 9, para. 4).

## **The EC Water Framework Directive and International Law**

Facilitated by the political integration in the European Union, the EC's new Water Framework Directive currently represents the most developed and detailed transnational instrument related to freshwater resources. Covering both national and transboundary water resources, the WFD epitomizes an unique interface between international and national water law, and the continuation of a gradual process of reciprocal refinement.

On the one hand, the WFD is shaped by earlier developments in international law, including the freshwater-related obligations of the EC and its Member States under international conventions (Preamble, para. 35; Article 1) – most notably the obligations and underlying concepts of the 1992 UN/ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes. On the other hand, the progressive provisions of the WFD itself will contribute to the refinement of integrated water management in international law.

The complex interconnection of freshwater-related legal instruments in Europe requires coherent concepts and compatible terminology. In the effort to harmonize policies for integrated water protection and management throughout Europe, new and existing international instruments will be synchronised with the WFD.

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## Regional Centres of Environmental Law

The "Regional Centres of Environmental Law" (sometimes also called "Centres of Excellence") have been a centerpiece among the recent accomplishments of the Commission of Environmental Law. Through the development of the RCEL programme, a network of relationships is emerging between CEL and a variety of institutions of environmental law education around the world, through which CEL members can provide assistance and advice in training, education and capacity-building, and can foster direct networking among the Centres themselves. Although the Centres are not part of IUCN, they have developed formal cooperative relationships with the ELP, usually memorialized by a joint agreement or MoU. Currently, there are five recognized Centres, and a sixth is seeking recognition.

– TRY

## The Asian-Pacific Center for Environmental Law (APCEL)

APCEL was established in February 1996 by the Faculty of Law, National University of Singapore (NUS), at the initiative of the Faculty and the IUCN-Commission on Environmental Law, in collaboration with UNEP. Guided by a 9-member Executive Committee, APCEL has played a critical role in developing courses on environmental law within NUS as well as conducting training courses, seminars, workshops and other training programmes on environmental law, management and governance for government officials and administrators both in Singapore and in the Asia-Pacific region. Many of these courses are conducted for and in collaboration with organisations such as IMO, UNITAR, the World Bank Institute, the Asian Development Bank, and the Singapore Ministry of Foreign Affairs.

The NUS Law Faculty now offers courses in Comparative Environmental Law, Environmental Law, International Environmental Law, Marine Environmental Law, and Trade, Environment and Labour, as well as Environmental Law for non-law students. The course on Comparative Environmental Law is taught jointly with Pace University's School of Law, via the Internet, using CUSeeMe

technology. An APCEL Deputy Director chairs the Steering Committee for NUS's new inter-disciplinary Masters program in Environmental Management.

In 1997 and 1998, supported by ADB and NUS funding, APCEL, IUCN and UNEP together with other institutions, conducted two intensive training programmes for law professors on *Teaching Environmental Law at University Level*. These courses provided a kick-start to APCEL, enabling it to build a library of resource materials from the region as well as develop linkages with resource participants from the region. Some par-

ronmental law, for the Ministry of the Environment and the Regional Institute for Environmental Technology. Its members have conducted some seven seminars with the Singapore Ministry of Foreign Affairs and the World Bank Institute, for senior government officers from the Asia-Pacific region, on various topics. APCEL Members have taught at the Asian Institute of Technology (Bangkok), Airlangga University (Indonesia), and the University of Sydney, and have participated as resource persons in workshops in China, India, Japan, Laos, Thailand, Philippines and Vietnam.



ticipants have returned to NUS to pursue graduate studies in law, further enhancing international linkages.

In Singapore, APCEL conducts courses, seminars, training programmes and workshops on envi-

APCEL's website-accessible database contains framework environmental laws of some ASEAN countries, a list of international conventions and their status, explanatory notes on words and phrases in international law, and links to important websites; all of which are intended to facilitate legal research. The site is particularly strong on marine environmental law, and can be accessed at <http://sunsite.nus.edu.sg/apcel>. There are, however, problems in keeping the site updated, due primarily to lack of funding for trained personnel to manage the site, and the problems of translation

# Arab Regional Centre for Environmental Law

On 12 February 2000, the Council of the Faculty of Law of Kuwait University approved a proposal establishing the Arab Regional Center for Environmental Law (ARCEL) as an autonomous institute.

Under the guidance of Dr. Badria Al-Awadi, Vice Chair of CEL, and Dr. Fadhel Nasserallah, Dean of the Law Faculty, ARCEL next concluded a Memorandum of Understanding with the IUCN Environmental Law Programme. From this foundation, the Faculty of Law has already launched co-operative programmes with CEL, co-hosting an academic conference

on "Comparative Experiences in Teaching Environmental Law in the Arab Region and Internationally." This conference was held from 30 September to 1 October 2000 at the Arab Fund in Kuwait. Participants included lawyers and legal scholars from throughout the Arab Region and IUCN-CEL. The conference offered comparative presentations from Southeast Asia, Australia, New Zealand, China, Europe, Latin America and North America.

In establishing ARCEL, the parties hope to undertake the following academic and professional activities:

1. *Educational and Professional Legal Advancement:* Short courses and training programs in continuing legal education and capacity building, for a wide range of legal audiences, beginning with judges with diplomats and with law professors.
2. *Environmental Law Research & Publications:* An on-going research programme to advance better understanding of environmental law and its implementation and effective operation. Within available resources, ARCEL will prepare and maintain and publish a research bibliography on Environmental Law References in the Arab Region.
3. *Establishing Environmental Law Reference Library:* environmental legislation of all States in the Arab Region will be organised into a searchable database to be published on the Internet in Arabic, with English translations.
4. *Interregional and International Co-operation in Environmental Law:* a network of environmental law experts to ensure that the Arab Region is well represented at international meetings on environmental law in all aspects, including joint research and training on such issues as the most effective legal implementation of regional seas conventions, or long-distance transport of persistent organic pollutants, or protection of habitat for migratory species.

5. *Research Fellows and Visitors:* Research facilities for visiting scholars and Fellows to work at the Center.

It is our hope and expectation, God willing, that IUCN-CEL and the Kuwait University Faculty of Law will formally launch ARCEL in March 2001. Thereafter, we expect to give attention to organising ARCEL institutionally, so that it will be ready to adopt a formal work plan, including both a long-term (ten-year) plan, and a short-term (three-year) plan. The three-year plans will be annually updated, to systematically take into account the new developments in Environmental Law, and to anticipate how to best address such matters and seek the appropriate funding. Our target date for adoption of our first long- and short-term plans is September 2001

We are grateful to IUCN-CEL and all those who have helped to establish ARCEL and to those who will come in the future to work with us in building the global environmental legal system.

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## **...APCEL**

where laws are written in native languages. In addition, some countries retain copyright in their laws which precludes their inclusion in the website.

Under a research grant from the National University of Singapore, APCEL is currently undertaking a study of implementation of international conventions and other instruments within ASEAN countries, including the possibilities for harmonisation and unification of selected environmental laws. The first monograph, *Environmental Law of the South-East Asian Countries: A Preliminary Assessment*, has been published.

APCEL is pleased to note the formation of other regional centres, and looks forward to collaboration with them.

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# CENTRE FOR ENVIRONMENTAL LAW “EURASIA” (Moscow, Russia)

The public group known as the Center for Environmental Law “Eurasia” was set up on 15 April 1998 (Registration Certificate # 9067) on the initiative of environmental lawyers under the leadership of the late Oleg Kolbasov – a famous Russian environmental lawyer, corresponding member of the Russian Academy of Sciences – who remained the President of the group up to his death in January 2000. The Center Eurasia has been founded with participation of the Russian non-governmental organisations – UNEPCOM and the National Association of Agrarian Law, Natural Resources and Environmental Law. It has entered into co-operative agreements with IUCN, IUCN CEL, UNEP/ROE and Pace University Center for Environmental Legal Studies.

The objectives of Center Eurasia are (i) to provide professional expertise in environmental law to governmental entities, NGOs, educational institutions and citizens, and (ii) to encourage, support and participate in comprehensive development of the theory and practice of environmental law in Russia, as well as regionally and globally. Its current program encompasses

- development of the computer data base of environmental and natural resource legislation in

Russia and Commonwealth of Independent States (CIS);  
➤ publishing activities;  
➤ setting up of a specialised collection of books on environmental law;  
➤ teaching and training on specific issues on environmental law;  
➤ promotion of and participation in law-making activities;  
➤ participation in the EIA of projects, consulting, environmental auditing;  
➤ scientific research, and participation in conferences on environmental protection issues.

Center Eurasia currently operates through voluntary participation by its members (five professional environmental lawyers.) It is seeking firm funding for its activities, through a gradual program of participation in individual projects, and entering into mutually beneficial agreements with governmental and non-governmental organisations. It is also planning efforts to enlarge the membership, while retaining professional criteria of selection, that will maintain and raise the Centre's reputation as a professional group of environmental law experts.

Under an IUCN project, Center Eurasia prepared a legislative manual on specially protected areas in Russia.

It is planning to publish the quarterly Bulletin of Environmental Law (addressing developments in Russia and outside), with partial funding of UNEP. It also plans to start collecting material for its environmental law library.

The members of the Center Eurasia teach intensively in various educational institutions, addressing environmental law, land use law, mining law and international environmental law.

The Center for Environmental Law “Eurasia” is based at the Academy of Justice of the Russian Federation – a state educational institution founded by the Supreme Court of the RF and the Higher Arbitration Court of the RF. It is headed by Irina Krasnova, doctor of juridical science, professor of environmental law at the Russian Academy of State Administration within the Office of the President of the RF and associate head of the Department of Environmental Law of the Academy of Justice.

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## Promoting Environmental Law in China (PELC)

The program, Promoting Environmental Law in China (PELC) was jointly launched by the Environmental Law Program (Commission on Environmental Law and Environmental Law Center), IUCN and the Wuhan University in Wuhan, China on 22 November 1999, as a Regional

Centre of Environmental Law. It is based on a Memorandum of Understanding signed by the representatives of Environmental Law Program, IUCN and Research Institute of Environmental Law, Wuhan University which states the goal of building up a network of institutions and experts

of environmental law and collectively implementing an Action Plan for the program. The PELC Program will be based in Wuhan University. The Coordinator for PELC is Professor Wang Xi, Vice Director of the University's Research Institute of Environmental Law.

In two meetings attended by representatives from the Commission on Environmental Law and the Environmental Law Center, and the UNEP Regional Office for Asia and Pacific, PELC successfully began creating the first network of Chinese institutions and experts in environmental law. The PELC network covers all the major Chinese environmental law centers, scholars and experts.

After extensive and in-depth discussion, the two meetings produced a Blue Print for PELC Program and its First Action Plan. Priority activities were identified in six areas –

1. Conceptual Development (promoting joint research on new concepts and principles of international environmental law and introducing them into Chinese environmental law);
2. Legislation (helping China to improve its environmental law system through legal research and law drafting projects);

3. Capacity-building (enhancing the capacity of governmental officials, corporate managers, judges, and environmental law teachers);
4. Information-development and information-sharing (improving communication, information-collection and dissemination);
5. Environmental Law Monitoring (monitoring and assisting in the implementation and enforcement of environmental law); and
6. International and domestic cooperation (promoting contact among Chinese environmental law centers and between Chinese environmental law centers and overseas environmental law centers).

PELC has made three interrelated project proposals based on the Blue Print: (i) launching an Environmental Law Training Program for environmental officials and environmental law teachers of the 10 west provinces of China; (ii) translating a

number of internationally well known environmental law textbooks and some of the ELC environmental law publications into Chinese; and (iii) publishing the first volume of the International and Comparative Environmental Law Review (Year 2000) (a annual Chinese translation and publication for selected environmental law articles around the world) in cooperation with CEL and ELC of IUCN.

PELC is working closely with the Environmental Law Program to bring these projects into being.

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## THE CENTER OF ENVIRONMENTAL LAW EXCELLENCE IN BRAZIL

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During the 3<sup>rd</sup> International Conference on Environmental Law, held in São Paulo, Brazil, In June 1999, Professor Nicholas Robinson, on behalf of the IUCN Commission on Environmental Law, signed a cooperation agreement with Lawyers for a Green Planet Institute (*Instituto "O Direito por um Planeta Verde"*). Their joint purpose is to include the Institute as a Centre of Environmental Law Excellence in Latin America.

The São Paulo-based Lawyers for a Green Planet Institute is Brazil's largest and most experienced independent academic institution dedicated to the development of Environmental Law. In addition to publishing the Environmental Law Review (*Revista de*

*Direito Ambiental*) – the only journal of its kind in Latin America – for nearly a decade now the Institute has organized regular training courses and seminars, research programs, and drafted policy and legislative recommendations and proposals. It has reached a broad constituency of environmental professionals in government, industry, the private bar, public interest groups, and academia.

Since the signing ceremony, the Centre has participated in lengthy and fruitful discussions among IUCN members in Brazil attended by Roberto Messias Franco, head of the IUCN Regional Office for South America (SUR) in Quito. The con-

sensus coming out of these discussions was for the Brazil Centre to focus primarily on sustainable rural development issues such as the relationship between agriculture and the spread of deforestation in Brazil, particularly in the Amazon region.

This vision for the Brazil Centre was endorsed by the Standing Committee of the Commission on Environmental Law, at its 17-19 April 2000. Since then, LGP has been engaged in developing an agreed institutional framework, and seeking partnerships and the host institution. To date, the Brazil Centre has secured the formal support and partnership

*continued next page ...*

# Mauritian Centre for Environmental Law

The Mauritian Centre for Environmental Law was created in November 1999 to address the country's lack of any non-public-sector institution dealing specifically with environmental

legal matters, despite the fact that the Mauritian environmental framework legislation goes back to 1991. The Centre has however been given a corporate structure because otherwise, as an NGO/Association under Mauritian law, its liability would have been unlimited.

Currently, the main objects of the Centre are (a) to provide environmental services and legal advice and services in any part of the world, and (b) to make surveys and provide services in the field of oceanography and the marine environment. The Centre has a regional vocation and has established links with several environmental experts (lawyers and others) and a few organisations, both nationally and abroad.

The Centre is presently involved in three projects –

- ✓ an institutional, legal and cost recovery study in connection with the World Bank/Government of Mauritius Environmental Solid Waste Management Programme;
- ✓ preparation of a new draft Environmental Protection Act for the Republic of Mauritius (in accordance with the recently adopted National Environmental Strategy (NES)), a project whose future may unfortunately be in jeopardy now in view of a recent change in government. In any event, the Centre will be in a position to contribute positively in some way, since the legal recommendations in the NES originate largely from the report of the Director of the Centre;
- ✓ a proposal to convert into electronic format the reports of cases litigated before the Environment Appeal Tribunal since its creation in 1993. This effort is motivated in part by fear that, for want of legal and

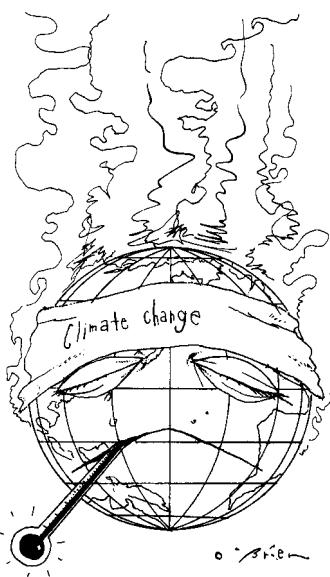
other environmental expertise, many of the decisions regarding EIA licences which have been taken by the authorities may be tainted with illegality.

The Centre is presently hosting an intern in environmental law from the IUCN Regional Office for Southern Africa (ROSA). It also provides legal advice to the Institute for Environmental and Legal Studies (IELS), an NGO.

For 2001–2003, the Centre has identified six priority issues:

- ✓ POPs,
- ✓ Climate Change,
- ✓ Transnational Application of Environmental Law,
- ✓ National implementation of MEAs,
- ✓ Atmospheric Pollution, and
- ✓ Alien Invasive Species.

The Centre aspires to become part of the network of Centres of Excellence co-ordinated by CEL. In this way, it hopes to provide environmental education to various echelons of the Mauritian society. It intends to host environmental conferences nationally and regionally, depending on the availability of funds, and anticipates contributing extensively to the capacity-building process which the development of environmental law in the region demands. It prides itself of trying to be an independent body which will spare no effort to ensure that Mauritius complies with its environmental obligations at all levels. Finally, it hopes to be able to participate to the maximum extent in the efforts towards the sustainable development of the Region.



Courtesy: Financial Times

## ...BRAZIL

of the Department of Agriculture of São Paulo, the Federal Ministry of the Environment, the University of São Paulo School of Law, the Getulio Vargas Foundation, the Federal Supreme Court, and the Office of the Attorney General.

The Brazil Centre will be launched officially on June 4-7, 2001, in São Paulo, during the 5<sup>th</sup> International Conference on Environmental Law. In November of 2001, the Centre will host its first educational activity – a one-week course on International Environmental Law for environmental public prosecutors and public interest lawyers.

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# Regional

## Meso America

Within the framework of the ELS Netherlands Project, a meeting took place in September in Managua, **Nicaragua** to revise the Nicaraguan Draft Law on Biodiversity. Meeting participants included a group of international consultants, three Nicaraguan consultants, officials of the Nicaraguan Ministry of the Environment, the CEL Vice Chair for Meso America, and an ELC Legal Officer

## Africa

The ELP fielded an evaluation mission to **Guinea Bissau** at the beginning of November. This mission was a prerequisite for the re-launching of this project, which aims to create an environmental legislation centre within the Ministry of the Environment and Natural Resources of Guinea Bissau. Participants included the former technical assistant, an international consultant, a national expert as well as an ELC legal officer. (The Guinea Bissau project was suspended in 1998 due to political unrest.)

From 18-30 September, the ELP participated in a DSE-sponsored train-

ing course in "Legal Issues and Land Rights Aspects of Managing Protected Area Systems." The course was held in Arusha and Lake Manyara, **Tanzania**, and was attended by 29 legal officers and agency heads from the conservation agencies of 9 countries in Eastern and Southern Africa. Future co-operation between DSE and ELP is already planned, based on the success of this meeting.

The second inter-agency meeting on the revision of the African Convention took place in **Addis Ababa** on 23 and 24 November. Representatives of IUCN-ELP, met with UNEP and OAU to discuss the issues involved in the revision and consider a first outline of a draft. Further consultation of individual experts may now proceed, and the ELP will take the lead, seeking advice within IUCN and also from outside experts.

## Asia

A Strategy Workshop organised by the IUCN Regional Environmental Law Programme, Asia, took place at the Asian Institute of Technology in Bangkok, **Thailand**, 4-5 September 2000. The purpose of this workshop

was to brainstorm the elements of a strategy for the Asia Regional Law Programme. The participants represented IUCN's three components (members, commissions, and staff) as well as IUCN partners in the region.

## South America

A technical workshop on the legal framework of water resources in the Andean Community took place in Quito, **Ecuador** on 28 November 2000. Country studies on the legal status of water law in Venezuela, Columbia, Ecuador, Peru, and Bolivia were presented at the workshop. This was followed by extensive discussions on possible amendments to the current water legislation in this region. Participants included the five project consultants, legal staff of the CEDA (*Centro Ecuatoriano de Derecho Ambiental*), policy-makers, NGOs, the Regional Director of IUCN-SUR and an ELC legal officer.

The Environment Law Centre and the CEL Vice Chair for South America are exploring the possibility of continuing this project at the level of the regional integration processes, such as the Andean Community.

## Europe

The ELP is currently working with IUCN's European Regional Office, in planning upcoming work on European Forests. ERO has identified a series of challenging and valuable contributions in this area, which will call upon the combined strength of several of IUCN's component programmes. A first step in this co-operation occurred last November, when the ELP participated in a 10-country workshop in **Warsaw**, given by the IUCN office for Central and Eastern Europe. This meeting focused on the manner in which conservation issues are addressed in newly privatised forests, and how these issues are further complicated as the EU accession processes gain momentum throughout CEE.

– AOI, TRY



IUCN ELC fields a team of legal experts in Guinea Bissau: Anildo Cruz, Alejandro Iza, Teresa Amador and Mauricio Cysne

## New Parties to Major International Environmental Treaties

### Ratification Status received as of November 2000\*

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

Denmark - 29.09.2000

Total number of Parties: 9

**Convention on Environmental Impact Assessment in a Transboundary context, 25.02.1991:**

Cyprus - 20.07.2000  
Portugal - 06.04.2000

Total number of Parties: 31

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

Bosnia and Herzegovina - 07.09.2000  
Equatorial Guinea - 16.08.2000

Total number of Parties: 186

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

Azerbaijan - 28.09.2000  
Barbados - 07.08.2000  
Ecuador - 13.01.2000  
Equatorial Guinea - 16.08.2000  
Guinea - 07.09.2000  
Honduras - 19.07.2000  
Kiribati - 07.09.2000  
Lesotho - 06.09.2000  
Mexico - 07.09.2000

Total number of Parties: 30

**United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. 14.10.1994:**

Albania - 27.04.2000  
Australia - 15.05.2000  
Bahamas - 10.11.2000  
Croatia - 06.10.2000  
Cyprus - 29.03.2000  
Czech Republic - 25.01.2000  
New Zealand - 07.09.2000  
Philippines - 10.02.2000  
Suriname - 01.06.2000  
Trinidad and Tobago - 08.06.2000  
United States of America - 17.11.2000

Total number of Parties: 171

**Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants, 24.06.1998:**

Switzerland - 14.11.2000

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

Dominican Republic - 10.07.2000  
Kenya - 01.06.2000  
Kiribati - 07.09.2000  
Lesotho - 31.05.2000  
Malta - 19.06.2000

Total number of Parties: 141

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

Guinea - 07.09.2000  
Hungary - 31.10.2000  
Panama - 18.08.2000  
Saudi Arabia - 07.09.2000

Total number of Parties: 12

**Convention on Biological Diversity, 05.06.1992:**

Azerbaijan - 03.08.2000  
Liberia - 08.11.2000

Total number of Parties: 179

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

Bulgaria - 13.10.2000  
Trinidad and Tobago - 05.10.2000

Total number of Parties: 2

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

Croatia - 01.10.2000  
Georgia - 01.06.2000  
New Zealand - 01.10.2000  
Uganda - 01.08.2000

Total number of Parties: 70

**Agreement on the Conservation of African-Eurasian Migratory Waterbirds, 16.06.1995:**

Croatia - 26.06.2000

Total number of Parties: 27

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

Macedonia - 04.07.2000

Total number of Parties: 152

– RAN

Total number of Parties: 6

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

# **CDG Fellowship Programme**

At the beginning of November 2000, the Law Center hosted four research Fellows – Ikechi Mgbeoji, Nazrul Islam, Isabel Martinez, and Wang Xi – for three months as part of a Fellowship program sponsored by the Carl Duisberg Gesellschaft (CDG), and implemented in co-operation with the ELC. The Fellows were selected from a pool of young professionals worldwide. IUCN-ELC and CDG hope that they will make meaningful contributions to the field of environment law.

## **Carl Duisberg Gesellschaft**

The CDG is a non-profit organisation, dedicated to international advanced training and human resource development with its headquarters in Cologne. Since 1949, 300,000 people from all over the globe have participated in CDG's various programmes. In a nutshell, CDG's programmes provide practical and professional experience for young professionals and executives from around world. Against this background, the Law Centre and the CDG entered upon a co-operative relationship, hoping to provide the Fellows with a valuable opportunity to work within an institution specialising in environmental law.

## **The Fellows**

The ELC's first group of CDG fellows consisted of four highly qualified attorneys:

**Dr. Nazrul Islam** (Bangladesh) is Assistant Professor at the Department of Law of the University of Dhaka in Bangladesh and recently finished his Ph.D. at the School of Oriental and African Studies in London.

**Ms. Isabel Martinez** (Venezuela) was formerly Legal Officer at the UNEP Regional Office for Latin America and Caribbean and is planning to resume her postgraduate studies.

**Mr. Ikechi Mgbeoji** (Nigeria), a lawyer affiliated to a law firm in Lagos, Nigeria, is currently doing his Ph.D. at Dalhousie University in Canada.

**Mr. Wang Xi** (China) is a Professor at the University of Wuhan and is also

the Vice-Director of the Institute on Environmental Law at the university.

## **Brief Account**

The Fellowships started with a three-week induction course in Saarbrücken designed to prepare the Fellows for life in Germany. From there they came to Bonn to begin their research on subjects chosen with the help and approval of IUCN-ELC, and CDG.

Once they settled in, each of the Fellows worked closely with one or more of the lawyers at the ELC, so that they could regularly consult and discuss their paper. Dr. Islam wrote on ISO 14001, Legal Challenges for Developing Countries. Ms. Martinez's research paper was on Access to Justice in Latin America. Mr. Mgbeoji worked on the Relationship between Patent Systems and Traditional Biological Inventions. Mr. Wang Xi researched the Implementation of the Climate Change Convention in the EU, and its potential as an example for China. The Fellows were a little overwhelmed at first, particularly by the extent of the Literature Library and the Legislation/Treaties department – something none of the four were really prepared to expect. Three months later, all four had completed their papers and made a joint presentation of them to CDG representatives.

I managed a brief interview with the Fellows before they left. We talked about their personal and professional experiences, their plans for the future and whether they felt their time here in Bonn and at the ELC was a success in terms of their objectives. The responses echoed in praise of the staff at ELC. "If all the people in Germany are as nice as the people at the ELC, then Germany is the best place I have been to" Dr. Islam said with the others nodding in agreement.

Most interesting were the Fellows' statements about the future and how significant their experiences in Bonn would prove in that regard. Mr. Wang Xi was keen to return to China to

share the practical things he had learned and observed about Climate Change policy and how it is being implemented. He felt that China's Open Door policy was ushering in a new era in China, with increased interest in learning from the achievements of others.

Ms. Martinez hoped to continue with her research into Access to Justice in Latin America, an important issue in Latin American affairs, which she felt had been neglected, and which therefore needs to be properly addressed now.

Dr. Islam felt the experiences gained and knowledge accumulated would be valuable in his capacity as a lecturer; would allow him to assist the environmental forum in Bangladesh with better information; and would enhance his existing relationship with IUCN-Bangladesh (he is a frequent advisor to this RCO).

Mr. Mgbeoji also felt that his time at the ELC had widened his perspective on environmental issues particularly regarding global environmental policy formulation. The practical aspects of his experience in Bonn, he believed, had provided him with valuable insights.

The standard set by these Fellows will remain the benchmark for the others who will follow in their footsteps. In addition to their contribution to international environmental law scholarship, their friendliness made it easy for everyone to approach them and start a conversation, most of the time in English, although they made valiant efforts to learn some German! And lest I forget, their cooking skills were also fully appreciated by the staff at ELC who had the enviable pleasure of sampling the delights of a special farewell meal consisting of traditional Chinese, Venezuelan, Bangladeshi and Nigerian cuisine. A truly memorable experience.

– Yaw Osafio  
Visiting Student, IUCN-ELC

## Staff News

**Thomas Dux**, a German lawyer, worked at the ELC as a visiting fellow from October through the end of the year. He worked on a project regarding Marine Protected Areas and legal problems attached to such measures in the EEZ. He has studied in Berlin and London and is currently writing a doctoral thesis at the University of Hamburg.

**Yaw Osafu**, a young professional from Ghana whose family resides in Bonn, has started working with the ELC as a volunteer for a number of months. He will assist the ELC staff in various tasks, in particular as a research assistant. He has so far worked with the Senior Counsel on the Biosafety Protocol Guide project, and with the ELP Director on incentive measures and the Kyoto Protocol.

**Tina Rhodes**, student assistant in the literature library, joined the ELC staff in November. Tina is a British citizen who graduated from the University of East Anglia, Norwich with a degree in Biological Sciences and Ecology this summer. She is now studying Spanish at the University of Bonn.

**Christian Viertel** has joined the ELC staff as a student assistant in the legislation library. He is pursuing Japanese studies at the University of Bonn.

**Nattley Williams**, Legal Officer, left in the ELC in December 2000 after working here for five years. Nattley is now Programme Officer at the UN Climate Change Secretariat. We wish Nattley all the best in her future endeavours.

**Samuel Yeye**, an official of Burkina Faso CONAGESE, spent three weeks in November at the ELC. Mr Yeye familiarised himself with the ELC Environmental Law Information System, and worked with the staff of the Centre to develop a project proposal to create an environmental law information node in his country, which would be linked to ELIS/ECOLEX.

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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 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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