

Barbara J. Lausche

Weaving a Web of Environmental Law

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Barbara J. Lausche

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The text of this book is printed on paper made from low chlorine pulp.

To my husband, Jose Antonio Garnham,
for his encouragement and his love of nature, which we share.

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PREFACE

Concern for the environment has become more prominent only since 1950. Yet in this time, it has captured worldwide attention. People in all cultures and economic circumstances have come to recognize that care of the environment is critical to human development and to the integrity of our planet. And it has also been accepted that law can play a major role in the protection and preservation of the environment.

Within the last few decades, environmental law has evolved considerably. Governments, international organizations, nongovernmental organizations, the private sector, *ad hoc* expert groups, and individuals are all involved in developing and implementing environmental law. The range of legal instruments has expanded: from a primary focus on binding international agreements and national legislation to a broader set of measures that includes nonbinding legal instruments, legal principles, local legislation and regulations, nongovernmental codes of conduct, guidelines and good practices, and the policies and procedures of international financial institutions. Environmental law has developed at the global, regional, national, and local levels. The subject matter of environmental law has also expanded, as trade, human rights, economic, and security law have come to take greater account of environmental issues. More importantly, effective environmental law is now considered critical to the attainment of sustainable development.

The Environmental Law Programme of the International Union for Conservation of Nature and Natural Resources (IUCN) has been central to the international development of environmental law. When the IUCN was established in 1948 as a hybrid governmental/nongovernmental organization, its constitution expressly provided for preparing drafts of international agreements, including a convention for the “Protection of Nature”, and for the gathering and analyzing of relevant legislative texts and other materials. Those who formed the IUCN could hardly have foreseen the enormously significant impact that the organization would have on environmental law in the ensuing 60 years. It has charted an ambitious and pioneering path that has had a more far-reaching impact on environmental law than any other nongovernmental institution.

Weaving a Web of Environmental Law provides the definitive historical record of how the IUCN has shaped and influenced the development and implementation of environmental law. The author, Barbara Lausche, deserves great credit for pulling together an enormous volume of material, painstakingly examining it, and writing a comprehensive volume that brings the history to life.

As the book makes clear, individuals do make a difference. Wolfgang Burhenne and Françoise Burhenne-Guilmin were the first guiding lights of the IUCN’s efforts. Their vision and dedication and those of their successors have sustained and nurtured the program over four decades. The book is filled with fascinating vignettes about individuals whose contributions deserve to be recognized.

The contributions of the IUCN Environmental Law Programme cover a broad range of activities, from the drafting of environmental agreements to publications

on diverse topics, advocacy for conservation, advice on legal issues and support for implementation of international agreements, technical assistance and environmental law training, and cooperative programs with those in trade and other relevant legal areas. The hallmark of IUCN's Environmental Law Programme is that it has been at the forefront in identifying emerging environmental issues, in developing new instruments to address them, and in helping to ensure that environmental law is carefully drafted and effectively implemented. The Programme demonstrates that an international institution can play a critical role in the evolution of environmental law.

We are very much indebted to Barbara Lausche for her dedication and skill in producing this invaluable record of the IUCN's Environmental Law Programme. It is an important legacy for the understanding of the evolution of environmental law.

Edith Brown Weiss

Alexandre Kiss

Tommy Koh

Thomas Mensah

February 2007

AUTHOR'S PREFACE and ACKNOWLEDGEMENTS

The idea of writing a history of the IUCN Environmental Law Programme (ELP) had been with the Steering Committee of IUCN's Commission on Environmental Law since the early 1990s. In spite of a few initial false starts because of the multi-faceted and complex nature of the project, Steering Committee members and many of ELP's friends and supporters, including Helga Haub and the Elizabeth Haub Foundations, had continued to press for a record of this 'amazing story'. My involvement started with an email from Françoise Burhenne-Guilmin in early 2000, wondering if I would be interested in undertaking this task in a voluntary capacity. My interest was aroused and by October 2000 arrangements had been made to begin interviews and research.

The result is this history, which traces the evolution of the Environmental Law Programme from its creation some 45 years ago through 2004. It relates main contributions in environmental law and highlights key partners, supporters, and friends who helped make it happen.

My principal aim has been to record major events and achievements in a factual and objective manner, relying on historical documents and accounts of main actors. Wherever possible, references and sources for more information are provided in footnotes. Anecdotes are scattered throughout to remind us of the human side of the story and, especially in the emerging years of environmental law, of how critical were the initiatives and persistence of individuals, sometimes almost fortuitously, for advancing the field.

Organization of the history was a major challenge because the Environmental Law Programme's development and main contributions did not always march in clear chronological step. In the end, it worked best for chapters to be clustered into Parts, roughly by decade and chronologically, with a few chapters on important international law and policy events spanning decades to keep the story intact. These special events were placed roughly into the decade in which they matured or were most connected.

Principal source materials were the extensive files and archives from IUCN headquarters in Gland, Switzerland, and the Environmental Law Centre in Bonn, Germany. These included proceedings of IUCN General Assemblies and World Conservation Congresses, minutes of executive meetings of IUCN, Environmental Law Programme reports, records of Law Commission meetings, including of its Steering Committee, treaty files, ELP newsletters, and the *Environmental Policy and Law* journal.

In addition, the project had valuable input from many individuals intimately involved in the day-to-day activities of the programme over the past 40 or so years, including three Commission Chairs (Wolfgang Burhenne, Parvez Hassan and Nicholas Robinson), Law Centre Head Françoise Burhenne-Guilmin and ELP Head John Scanlon, the Commission's first Executive Officer Dan Navid, and Frank Nicholls, IUCN Deputy Director General in the 1970s. These individuals not only gave graciously of their time to provide detailed comments on draft sections, but also helped guide me to additional supporting documents. The peer review phase,

where the draft was sent to more than 60 people connected with the ELP over the years, generated valuable additional material.

SPECIAL THANKS ARE DUE...

To Wolfgang Burhenne, Françoise Burhenne-Guilmin and Will Irwin, three persons to whom I am especially grateful for there would have been no document without their help and encouragement. Wolfgang Burhenne and Françoise Burhenne-Guilmin, principals of the programme from the early years, answered my questions and provided suggestions and contacts for sources throughout the process, and as the draft became ready for external review, undertook a critical reading of the entire document for gaps, errors, and readability. Will Irwin, long-standing CEL member, joined me on the initial interview/research trip to Bonn, helped with specialized research, and took on the laborious task of meticulously reading the various drafts for typos and style consistency.

Also, special thanks are due to the Commission on Environmental Law (CEL) and past CEL Chairs Nicholas Robinson and Parvez Hassan, both of whom encouraged the project. They arranged to be available for interviews and provided important insights and contributions, particularly related to the years and events of their Commission terms.

From the Environmental Law Centre in Bonn, the project enjoyed the full support and cooperation of successive Heads/Directors Charles Di Leva, John Scanlon, and Alejandro Iza. Jil Self (ELC Programme Assistant) provided logistic and administrative support, downloading electronic versions of the various drafts, keeping the hundreds of pages organized with each iteration, and processing the draft for distribution to the many peer reviewers. Anni Lukács (Senior Documentation and Information Officer) and Andrea Lesemann (Documentation Officer) responded promptly and helpfully with documents and data, and Ann DeVoy (Projects Assistant) provided project information.

Other folks at IUCN also are due special thanks for their help with supporting tasks. Fiona Hanson at IUCN Headquarters identified and copied numerous relevant portions of official IUCN reports located in Headquarters files so that I could work with key archives out of my home. Cécile Thiéry, IUCN Librarian now retired, helped locate specific decisions of some of the earliest IUCN General Assemblies.

The peer review produced a wealth of much appreciated additional views and information. Special thanks go to Michael Bothe, Malcolm Forster, Marlene Jahnke, Donald Kaniaru, Koh Kheng-Lian, Lee Kimball, Alexandre Kiss, Veit Koester, Maria Socorro Manguiat, Patricia Moore, Alfred Rest, Iwona Rummel-Bulska, Peter H. Sand, Patrick Széll, Richard Tarasofsky, Klaus Töpfer, and Mostafa Tolba.

Special acknowledgement and thanks also are due to Helga Haub and the Elizabeth Haub Foundation for Environmental Law and Policy which supported my travels for research and consultations, and the history's final publication.

Barbara J. Lausche (Member, IUCN CEL)

Part 1

Forming a Conservation Union

From the late 1800s, international cooperation to address growing threats to nature from industrial development and expanding populations was beginning to emerge, especially in Europe. By the early 1900s, European and American conservationists were exchanging information and sharing common concerns through their respective nature conservation organizations. Some of the first calls for international wildlife regulation concerned protecting wild birds from the expanding international trade in birds and feathers which was threatening the survival of some species. Inspired by initiatives in the United States, organizations also began to be founded in Europe for national parks. International meetings provided opportunities for nature organizations and individuals to interact and support joint initiatives. As this network grew, the creation of a permanent international organization dedicated to conservation began to be explored by national organizations and conservation leaders. World War I, however, intervened to put these ideas on hold. 1

The 1920s and 1930s brought renewed efforts to promote an international mechanism for cooperation in nature conservation worldwide. Growing threats to wild fauna, especially from big game hunting in Africa, added urgency to the idea. U.S. President Theodore Roosevelt and others had popularized big game hunting in Africa. The sport was thriving without effective control. Scientists from Europe and the United States were sent to study the status of wildlife and found some big game species on the verge of extinction. Early trials to build an international organization for nature protection were lead by Switzerland and The Netherlands. American conservation organizations joined to provide financial support. 2

These early European trials launch the story of IUCN and its environmental law programme (Chapter 1). They were important predecessors for the permanent organization that eventually followed, in configuration, goals, and leadership, even though another world war intervened before those efforts could begin serious work. 3

Chapter 2 moves the story to the post World War II years when the world galvanized around international cooperation and receptivity for building new global institutions was high. The United Nations, created in 1945, was the new global framework for peace and security. The United Nations Educational, Scientific and Cultural Organization (UNESCO), founded in 1946, brought recognition to a role for science as part of this new cooperative framework. With continued persistence of those dedicated conservation leaders who had begun the work so many years earlier, encouraged by UNESCO and preoccupied with continuing concerns about the state of the world's fauna, an international conservation organization finally was founded in 1948. That organization grew to become today's International Union for Conservation of Nature and Natural Resources, IUCN – the World Conservation Union. 4

Chapter 1: Early Trials

By the late 1800s, European conservationists were exploring ways to increase regional and international collaboration in nature conservation. The immediate concern was bird protection as international trade in birds and their feathers was threatening the survival of some species. As early as 1872, the Swiss Federal Council put forth a proposal for an international commission to draft an international bird protection treaty.¹ While results were limited, the proposal generated interest and debate in international circles about the purpose for such a treaty and species that ought to be protected.

By the early 1900s, activity was well under way in several countries in Europe to create nature protection organizations, in part inspired by the success of organizations in the United States to expand its national parks system. The growing number of national nature protection organizations in Europe and North America provided a framework for increased interactions informally and at international scientific meetings. As non-governmental organizations formed, there also was more structure for interaction between conservation leaders and government agencies.

A small network of international conservationists emerged. As the network became more active, formation of a permanent international organization began to receive increased support from the countries. Two European organizations took the lead in mobilizing early trials toward that end: the Swiss League for Nature Protection (*Ligue Suisse pour la Protection de la Nature*) and the Netherlands' International Office for the Protection of Nature.

Swiss and Netherlands' Initiatives

The Swiss League for Nature Protection was established in 1909 by a banker's son, Paul Sarasin, and his cousin, Fritz. Their immediate concern was environmental deterioration in the Alps. With inspiration from the national parks movement in the United States, their first major campaign was to promote creation of a national park in the Engadine region of Switzerland and to raise funds for it. In 1914, their campaign succeeded and the Swiss Federal Council created the Engadine National Park.² Goals of the League extended beyond nature protection in the Alps, however, and in the years leading up to the park's creation, Paul Sarasin also promoted urgent action at the international level to protect wild fauna being threatened with extinction, especially in developing countries. In 1910, one year after setting up the Swiss League, Sarasin proposed to the Eighth International Congress of Zoology the establishment of a committee to set up an international commission for the protection of nature through the auspices of the Swiss Federal Council, and the Congress agreed.³

Sarasin promoted both the park and this international commission in his interactions with the Swiss Federal Council and three years later the Council was ready to act. On November 19, 1913, in Berne, Switzerland, the Swiss Council created an organization called "Advisory Commission for International Protection of Nature"; delegates from 17 European countries signed the founding instrument.⁴ The Commission was to be located in Basle, Switzerland. It was to be "composed of two delegates for each State or self-governing Colony", delegates to be approved by

their respective Governments.⁵ Its main “assignments” were twofold: “1. The collecting, classifying and publishing of every item dealing with international protection of nature; [and] 2. Propaganda for the international protection of nature.”⁶

6 Progress to activate the Commission and pursue these assignments was difficult, however, as two world wars intervened to disrupt its development and operations. Not until 1946 after World War II could the Swiss League look to restoring the Commission.⁷

7 While the Swiss League was pursuing these measures, a parallel effort was under way in the Netherlands led by Pieter van Tienhoven, another recognized conservation leader in Europe.⁸ Van Tienhoven had been impressed by British efforts in 1924 to create a Committee for the Protection of Nature comprising representatives of Britain’s conservation groups. He began promoting a similar idea for the Netherlands, France and Belgium with a view to creating an umbrella union of national committees. In the late 1920s the French, Belgian, and Netherlands committees came together to form a Central Bureau of Information and Correlation with Van Tienhoven as its president. In 1934, the Bureau was reconstituted as a non-governmental organization with a new name, the International Office for the Protection of Nature (IOPN), to be governed by a General Council, with a broadened membership from France, Belgium, Great Britain, the Netherlands, Italy, Switzerland, and the USA. A separate Foundation for International Nature Protection was created to finance the organization.



Pieter van Tienhoven

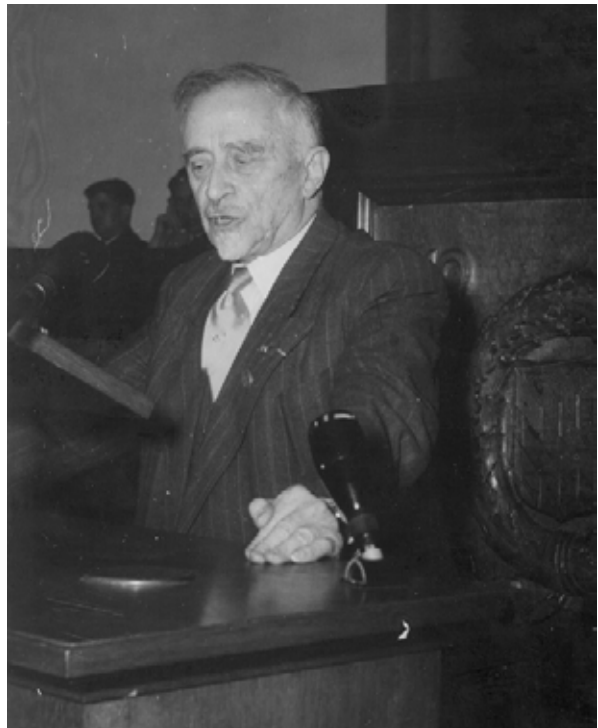
8 The Van Tienhoven initiative was the first of the two to explicitly recognize a role for law in nature conservation. Article 2 of IOPN’s objectives provided in part that the “object of the association is to work internationally for the progress of nature protection: ... By centralizing, by classifying, by publishing and by distributing to governments, institutions and persons interested in nature protection, documents, *legislative texts*, scientific studies, information and data of any kind regarding nature protection and especially the preservation of fauna, flora and natural scenery in a primitive state...(emphasis added).”⁹ Pursuant to this objective, legislative texts on nature conservation began to be collected.

Unfortunately, as had been the case with the Swiss initiative, a world war interrupted IOPN's progress. Nevertheless, with scarcely any resources, IOPN continued to collect nature-related legislation from member States. This was duly recognized in 1946 when the Union was being conceived: "The [IOPN] never had sufficient funds to publish all that was necessary. It has nevertheless brought out a few volumes in the series of the *International Review of Legislation for the Protection of Nature*."¹⁰ 9

In North America conservation leaders were supporting these developments financially and promoting international nature protection as well. In 1922, the International Committee for Bird Protection (later changed to International Council for Bird Preservation) was founded by an American ornithologist, T. Gilbert Pearson, to better coordinate and promote bird protection efforts in North America and Europe. Then in 1930, another non-governmental organization, the American Committee for International Wildlife Protection, was founded by Harold Coolidge with support from IOPN and the American Boone and Crockett Club which was especially interested in African wildlife conservation.¹¹ Harold Coolidge was then already an important figure in American conservation and was to become well-known as an international conservation leader.¹² Interested in partnerships that could further global nature conservation and build global data on nature protection, the American Committee also became a member of IOPN and began supporting the data collection work of Van Tienhoven's new Office. 10

Preparatory Conferences

After World War II, the Europeans, led by the Swiss League, resumed efforts toward global conservation organization. The United Nations had been created in 1945, UNESCO in 1946, and the momentum for international cooperation in conservation was high. The League's new Chairman, Charles Bernard (elected after Paul Sarasin's death in 1929), and Secretary, Johann Buttikofer, began informal consultations with neighboring countries to promote the Sarasins' original idea for an international nature conservation organization. Making little progress with a country-by-country approach, they invited a number of na-



Charles Bernard

11

ture conservation societies from Britain and other nearby countries for a several-day nature tour in Switzerland in July 1946. Working closely with Van Tienhoven, still IOPN President, they used the occasion for discussions on international collaboration in nature protection.¹³

- 12 Individuals participated from Britain, France, Belgium, the Netherlands, Czechoslovakia and Norway. Invited but unable to attend were individuals from Canada, Denmark, the United States, and Poland. Discussions were informal and unrecorded. In the end, agreement was reached unanimously on the need to take steps toward formation of a new international conservation organization. The conclusion was recorded this way in a report entitled “Report on the Conference for the International Protection of Nature”:

“In order to facilitate the cooperation of national societies concerned with the protection of nature and with the preservation of amenities, it is desirable that there should be an active international organization, widely international and representative in character, adequately financed, and with adequate terms of reference....The Representatives of the Swiss League stated that they hoped their Society would see its way to submit to the Swiss Government suggestions for an official initiative by that government as regards future intergovernmental collaboration in regard to Protection of Nature.”¹⁴

- 13 Once back in their capitals, participants promoted the initiative within their governments and urged the Swiss League to organize a formal International Con-



Julian Huxley at IUCN General Assembly in Nairobi (1963)

ference for the Protection of Nature. That Conference was convened one year later from 28 June to 3 July 1947 in Brunnen. Twenty-four country delegations attended as well as representatives of seven international organizations (including UNESCO, FAO, and IOPN), and several non-governmental organizations from Europe, Central America, and United States (including the American Committee for International Wildlife Protection, and the New York Zoological Society).¹⁵ After seven plenary meetings, participants endorsed resolutions including a draft constitution for a new Provisional International Union for the Protection of Nature.

A preoccupation during these deliberations was how the new organization would be supported. High hopes were placed on assistance from the newly created UNESCO. Its first Director General, Dr. Julian Huxley, had previously been Chairman of the British Wildlife Conservation Special Committee and in that capacity had encouraged the Swiss nature tour as a way to bring the British into the dialog. Now, as Director General, Huxley endorsed the new initiative. In a letter to the Conference, Huxley himself pledged UNESCO's support:

"The [International Council of Scientific Unions] has now a formal agreement with [UNESCO] signed on December 16, 1946, a copy of which I enclose herewith. There can be no doubt that U.N.E.S.C.O. will wish to enter into similar relations with the new International Organisation for the Protection of Nature, which will unify all efforts in this wide and important field."¹⁶

Equally important, he offered a vision for the Union's scope which included laws and international conventions along with science as part of nature protection:

"The situation seems to be crystallising as follows: Since the question of nature protection involves so many matters beyond the bounds of pure science (*laws and international conventions about the conservation of fauna and flora*, social aspects of national parks, amenities, etc.) it would seem fitting that a strong and [sic] International Protection of Nature Organization should not be incorporated within the framework of the International Council of Scientific Unions, but should be something *sui generis*. It would occupy a status more akin to that of such organizations as the International Meteorological Bureau, the International Hydrographic Bureau, the International Bureau of Weights and Measures, etc. (emphasis added)."

"We have discussed with ... colleagues the general principles on which the new organisation should work. The draft constitution envisaged provides: a) for governmental delegates ...; b) for delegates of special relevant international organisations (such as the International Committee for Bird Preservation); c) for delegates of national and regional protection of nature societies. I should like to point out that if such a constitution is accepted, the status of the organisation will be semi-governmental. We already know that this kind of structure can work very well, as the International Council of Scientific Unions and its constituents have had similar structures since 1919."¹⁷

At the conclusion of this Brunnen Conference, participants formally established a Provisional Union and produced a draft constitution. The Swiss League

was asked to handle administration of the Provisional Union until a permanent organization with a final constitution could be officially concluded. At the invitation of the French, it was agreed that the new organization would be launched at a formal Conference the following year at Fontainebleau, outside Paris. Three organizations were charged with organizing that Conference: the Provisional Union being managed by the Swiss League, UNESCO, and a French Committee established for that purpose.

17 Law as a tool for nature conservation was already, at this formative stage, a concept embraced by the deliberations. The draft constitution from the Brunnen Conference for the Provisional Union listed as one of its seven action areas “[t]he preparation of a world-wide convention for the protection of nature”.¹⁸ Moreover, in recognition of the valuable documentation work begun by the International Office for the Protection of Nature, the draft constitution provided: “The Union shall publish and distribute to Governments and national and international organisations concerned with and persons interested in the protection of nature, documents, *legislative texts*, scientific studies, and information of any kind regarding the protection of nature and especially the preservation of fauna, flora, natural scenery and natural monuments (emphasis added).”¹⁹

18 The initiative next moved to the formal Conference at Fontainebleau where the Union was officially created, covered in Chapter 2.

Notes

- 1 Holdgate, M., *The Green Web – A Union for World Conservation* (hereafter cited as *The Green Web*). (Earthscan: 1999), p. 9. More generally, Martin Holdgate, who was Director General of IUCN from 1988–1994, recounts this historical time in Chapter 1 of *The Green Web*. For another source with a well-documented account of international cooperation in nature protection in the late 1800s and early 1900s, see Broadman, R., *International Organizations and the Conservation of Nature* (Indiana Univ. Press, 1981), pp. 26–35.
- 2 The Swiss League was legally recognized by the Swiss Confederation and its two Chambers in 1914 in connection with the park’s establishment. See Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), p. 35.
- 3 See Holdgate, M., *The Green Web* at 11; Broadman, R., *International Organizations and the Conservation of Nature* (Indiana Univ. Press, 1981), p. 29.
- 4 Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), pp. 86–88. This document reproduces the “Act of Foundation of an Advisory Commission for the International Protection of Nature” followed by the list of delegates who signed the Act. These delegates represented Germany, United States, Argentina, Austria, Hungary, Belgium, Denmark, Spain, France, Great Britain, Italy, Norway, Netherlands, Portugal, Russia, Sweden, Switzerland.
- 5 “Act of Foundation of an Advisory Commission for the International Protection of Nature”, Article II (1913) in Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), p. 86.
- 6 “Act of Foundation of an Advisory Commission for the International Protection of Nature”, Article VI (1913) in Buttikofer, J., *Id.* at 87.
- 7 See “Summary of a letter dated August 20th 1946 from the Swiss League for the Protection of Nature to the Swiss Federal Council, requesting the restoration of the Advisory Commission for International Protection of Nature” in Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), p. 80.
- 8 See discussion in Holdgate, M., *The Green Web*, p. 12.

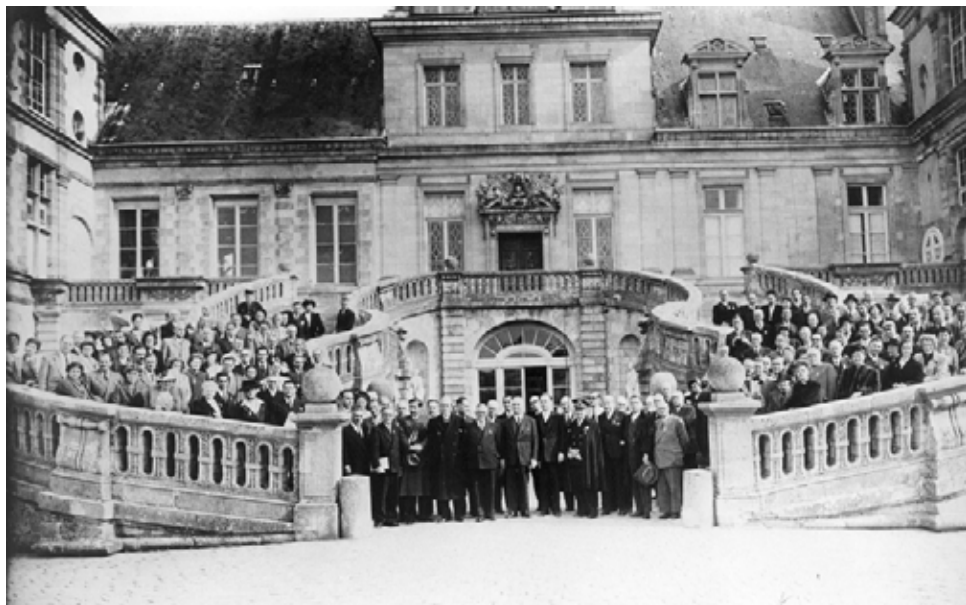
- 9 Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), p. 102 Article 2(1).
- 10 Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), p. 64. This legislative collection was transferred to IUCN's law commission offices in Bonn in 1965 for the archives.
- 11 The Boone and Crockett Club was founded in 1887, its members mostly from American wild-life and zoology organizations and many with experience working in African national parks and wildlife management. See Holdgate, M., *The Green Web*, p. 14; see also Broadman, R., *International Organizations and the Conservation of Nature* at 33.
- 12 Harold Coolidge was a founding member of IUCN in 1948, IUCN President during 1966–1972, and Chair of the Species Survival Commission and then the National Parks Commission during the 1950s and early 1960s.
- 13 For a detailed account of this interesting series of events see Holdgate, M. *The Green Web*, pp. 18–21.
- 14 Buttikofer, J., *Report on the Conference for the International Protection of Nature, June 30 – July 7, 1946* (The Swiss League, Basle, Nov. 1946), p. 14.
- 15 See Part II. “List of Delegates” in Buttikofer, J., *International Conference for the Protection of Nature, Brunnen, June 28 – July 3, 1947, Proceedings, Resolutions and Reports* (Swiss League, Basle, Dec. 1947), pp. 20–24.
- 16 *Id.* at 147.
- 17 *Id.* at 146–147.
- 18 *Id.* at 211.
- 19 *Id.*

Chapter 2: Founding IUCN

Conference at Fontainebleau

The formal Conference proposed at Brunnen to establish an International Union for the Protection of Nature took place at the Palace of Fontainebleau from September 30 – October 7, 1948. Participation was broad-based. As described in the official report of the Conference: “The constitutive act [establishing the Union] bears

1



Fontainebleau, October 1948: creation of IUCN

the signatures of delegates of eighteen Governments, seven international organizations and one hundred and seven national organizations concerned with Nature Protection. Thirty-three countries in all were represented at the Conference.”¹

The very first days of this landmark event were devoted to both administrative and substantive matters. Officials had to be elected and Charles Bernard, “who had so successfully presided at the Brunnen Conference, was unanimously elected President of the Fontainebleau Conference.”² Substantive work with a view to the needed outcomes of the Conference also was an immediate focus. Notably, the Legal and Drafting Committee “was confronted with the difficult task of drafting in two days a text of the Constitution based on the original Brunnen text and the amendments suggested by Unesco, the United States Delegation and the United Kingdom Foreign Office.”³

2

The first substantive plenary meeting was convened on October 4, 1948, and the “entire meeting was devoted to discussion of the draft Constitution.” As recorded by Conference President Charles Bernard: “One of the most important decisions of the morning was the adoption of a Preamble to the Constitution in which a very clear definition of the present-day meaning of Nature Protection was given.”

3

Indeed, the resulting definition reflected the human-nature connection: “Whereas the term ‘Protection of Nature’ may be defined as the preservation of the entire world biotic community, or man’s natural environment, which includes the earth’s renewable natural resources of which it is composed, and on which rests the foundation of human civilization...”

4 The final version of the Constitution was officially signed at 3 pm on October 5, 1948.

5 This first Constitution defined the governance structure for the Union – a General Assembly of all members, an Executive Board elected by the General Assembly, and a small Secretariat to handle administration. Its membership would be a mix of States, government agencies, international organizations, and non-governmental bodies, both national and international. Initially, members were mostly European and American.

6 With respect to legal mandates, the Constitution contained three references: Article 1 on “Objects” of the Union in paragraph 2 stated:

“The Union shall promote and recommend national and international action in respect to:

(a) The preservation in all parts of the world of wild life and the natural environment, soils, water, forests, including the protection and preservation of areas, objects and fauna and flora having scientific, historic, or aesthetic significance *by appropriate legislation* such as the establishment of national parks, nature reserves and monuments and wild life refuges, with special regard to the preservation of species threatened with extinction (emphasis added); [and] . . .

(d) The preparation of international draft agreements and a worldwide convention for the ‘Protection of Nature’;....”⁴

7 Further, paragraph 3 of the same Article declared: “The Union shall collect, analyse, interpret and disseminate information about the ‘Protection of Nature’. It shall distribute to governments and national and international organizations, documents, *legislative texts*, scientific studies and other information concerning the ‘Protection of Nature’.”⁵

8 Finally, the timing was right for a global conservation organization, as reflected in the Union’s 25th Anniversary Report: “It is said that by some grand design everything has its time and place. This was true for IUCN, which was established in the aftermath of history’s most terrible war. The idea of an international organization responsible for protecting natural sites and threatened animal species – of protecting nature from further destruction and misuses by man – fitted into the plans for world-wide reconstruction, and it was logical that the new United Nations organization, through UNESCO, should encourage and sponsor such a body.”⁶ Jean G. Baer, President of the Union from 1958–1963, agreed: “The idea of setting up an international organization responsible for protecting particularly interesting natural sites, for preventing animal species from dying out and, in a general way, for protecting nature from destruction and misuse by man, fitted exceptionally well into the world plan for reconstruction.”⁷

First General Assembly

Immediately after the official signing of the Constitution, delegates proceeded to their First General Assembly, which “unanimously called Dr. Ch.J. Bernard to the chair”.⁸ Brussels was selected as the seat of the Union (in 1960 the seat was moved to Switzerland), an Executive Board was elected, and Jean-Paul Harroy, one of the founders with experience in Africa, was elected as IUPN’s first Secretary General. Harroy (who served in this capacity until 1955, helping define the Union in its infancy through the next three General Assemblies⁹) had several factors working in favor of his candidacy. Among the initial attractions was the fact that he was Belgian and Belgium was sponsoring the Union’s first Headquarters. But there was more, as Martin Holdgate reviewed in his history of IUCN, *The Green Web*:

“Harroy’s credentials were in fact impeccable. He had worked on the ground in Africa, as Curator of the Albert National Park in Kivu and the Garamba National Park in Uele, in the far north-east of what was then the Belgian Congo. He had been Director of the institute of National Parks of the Belgian Congo back in Brussels. He had written two books, one controversially entitled *Africa – The Dying Land: the Degradation of African Soils under the Influence of Colonization* and the other concerned with protecting nature....He had just been appointed Secretary General of IRSAC, the Institut pour la Recherche Scientifique en Afrique Centrale. He knew the International Office for Protection of Nature well, because it was housed in the same building as the Institute of National Parks of the Belgian Congo.”¹⁰

The second day of the First General Assembly focused on the programme. Minutes record that the Programme Committee “enumerated some of the activities to which the Union should devote its first efforts. Chief among them were [six items, two on legislation]: ...

2. Examination of the working value of the different laws in force.
3. Selection of a type of legislation. Translation and diffusion of this model legislation in numerous languages....”¹¹

Conservation priorities highlighted Africa. As noted in Chapter 1, threats to African wildlife, especially to big game animals that had become popular for the sport of game hunting, had emerged as an area of immediate concern among conservationists. European countries which had responsibilities as colonial powers in Africa were particularly focused on that continent’s conservation problems. A European and African Technical Symposium convened during the First Assembly aimed to address these issues and identify needed actions. The Symposium agenda also recognized the importance of law, including two specific items for attention: “legislation and action by Governments to protect nature”, and “fauna conventions and international legislation”; the resulting report, presented by Symposium President, Roger Heim, identified “legislation” as one of the four areas to constitute the programme, together with education, control, and science.¹²

Operationally, the Union would stress volunteerism as a main strategy for technical leadership and outputs since members’ dues were the primary source of

funds, meaning a very limited budget for professional staff and administration. From this First Assembly, it was understood that volunteers, organized into committees and commissions, would be key for professional work and networking, the Education Commission being the first such volunteer body to be constituted during the First Assembly.¹³

First UNESCO-IUPN Conference

- 13 In accordance with the objectives outlined in the Union's new Constitution, the European and African Technical Symposium convened during the Union's First General Assembly listed items for attention at a forthcoming UNESCO Technical Conference, which would be a first joint undertaking between UNESCO and IUPN, planned for summer 1949. Among the six items for the agenda of that historic conference would be one item on international law:

“Preparation of a World Convention to serve as a basis for future international cooperation in the field of the ‘Protection of Nature’, and to assist in the development of national legislation by the countries participating in it.”¹⁴

- 14 From 22 August to 1 September 1949, this joint UNESCO-IUPN Conference did take place at Lake Success in the State of New York, the headquarters then of the United Nations. The event, entitled First International Technical Conference on the Protection of Nature, was convened within a parallel conference of member states of the United Nations which met from 17 August to 6 September. The larger conference, entitled the United Nations Scientific Conference on the Conservation and Utilization of Resources (UNSCCURE), was for the purpose of examining broadly the state of the world's natural resources, particularly after the war and in reconstruction.¹⁵ UNSCCURE brought together some 700 scientists from fifty countries, including scientists from IUPN who linked the discussions and findings of the two conferences.

- 15 The UNESCO-IUPN International Technical Conference within UNSCCURE focused specifically on concerns and measures to protect endangered species of flora and fauna and the habitats supporting them, and its resolutions called for actions toward that end. The Conference helped build scientific credibility for IUPN and served as the first global event to introduce the new organization to the international community.

- 16 The Union's 25th Anniversary Report recalls: “The Union, poor and weak at the start, soon enjoyed the privilege of having its name linked, in collaboration with UNESCO, with the organization of a very important international conference which was held in 1949 at Lake Success, following the United Nations Scientific Conference on Conservation and Utilization of Resources (UNSCCURE). This occasion presented an opportunity for advocates of IUPN to meet again after Fontainebleau. They continued to meet each year; either at the biennial General Assemblies of the organization or, in particular, at the Technical Meetings organized annually: Brussels 1950, The Hague 1951, Caracas 1952, Salzburg 1953, Copenhagen 1954. On each occasion a new book was published reporting the deliberations of the sessions, helping to publicize the activities of the Union, and strengthening its image as the international forum of conservation of nature.”¹⁶

Early Union-building

The first task for the Union was building administrative capacity to develop a membership and to link individuals working in nature conservation around the world. Jean-Paul Harroy recalls years later the strategy he pursued as the first Secretary General to identify and reach out to these individuals: “Four lines of action were chosen: ... to increase the number of international meetings during the first years; to produce as many publications as possible, particularly in relation to these meetings; to promote association, by correspondence, with national and international authori-



Charles Bernard, Marguerite Caram, Jean-Paul Harroy, Roger Heim

ties; to seek immediate financial support for the first projects with which IUPN was to be associated The task of organizing a scientific and systematic approach to conservation problems, as well as the drawing up of a world doctrine on the relation between man and his environment, were left for a later date.”¹⁷

The scientists had the lead in deciding the Union’s agenda in these years. There was a predominant interest in and commitment to pursuit of scientific solutions to the conservation problems. Pressures to build membership and prove its worth as a scientific organization meant that leadership had no time for law and policy in spite of the law-related language included in the Union’s Constitution.¹⁸ Indeed, the Assembly in Brussels in 1950¹⁹ cautioned IUPN about expanding prematurely into international law. As reported in those Assembly’s proceedings: “The Lake Success Conference took the opportunity to recommend the Union to undertake the drafting of a world convention on the protection of nature. The Commission appointed for the purpose decided that while this task was important, the time was perhaps not ripe. Resolution No. 19 was to the effect that the Union should suggest to the competent authorities the desirability of Conferences to consider the

effectiveness of the London Convention (1933) and of the Washington Convention (1940), which respectively concerned the protection of species in Africa and the Americas. The British authorities, on being approached, expressed the opinion that the present time was premature for such Conferences, but they would not fail to resume them directly the moment seemed opportune. A similar approach to the Pan-American authorities was postponed.”²⁰

19 At that 1950 Assembly even the early commitment to collect legislation and related legal documents was no longer a priority, as reflected by the Executive Board’s proposal that “the Union should not set up a library or documentation section of its own, but that this work of the IUPN could be left to the IOPN [Dutch International Office for the Protection of Nature], which has pledged its close cooperation,” and this proposal was unanimously approved by the Assembly.²¹

20 At the same time, the theme of law remained actively discussed. During the Assembly’s plenary, Secretary General Jean-Paul Harroy gave his formal report to the Assembly. In the course of discussion of the report, M. Van der Goes van Naters, a delegate from the Netherlands,²² made an address that “greatly impressed the Assembly”, including among his concluding remarks “that the real purpose of the Union is: ... To find norms and rules which are internationally valid for the defence of nature and the natural landscape, and then to draw up conventions necessary for their realization.”²³

21 By the Third General Assembly in 1952 in Caracas, Venezuela, the Union was moving beyond basic institution-building to substantive activities, including law. Pursuant to decisions of the Lake Success Conference, exploratory efforts had begun in Africa and Latin America, as reported to that Assembly:

“In accordance with the provisions of Resolution No. 19 formulated at Lake Success, the Union has endeavoured to convene a meeting of the co-signers of the London Convention of 1933 as well as of the signatories of the Washington Convention of 1940.

“The Committee for Technical Co-ordination in Africa (CCTA) has decided to call a conference at Leopoldville (Belgian Congo) in August 1953, to bring together delegates from the various States which signed the 1933 London Convention. The Union has offered its services[T]he suggestion was made to the Venezuelan Government that representatives of the co-signers of the 1940 Western Hemisphere Convention be assembled at the same time as the General Assembly of the IUPN at Caracas, but the results were negative, despite efforts to accomplish this plan.”²⁴

Failed attempt at a World Convention

22 The first formal initiative in international law came during the 1952 General Assembly. Among the mandates given to the Union by its Constitution, as noted above, was preparation of an international convention on nature protection. Proceedings of that Assembly explain the approach recommended by the Executive Board for addressing that mandate:

“As to the drafting of a World Convention for the Protection of Nature, the Union has chosen to substitute a World Charter, inspired by the Universal

Declaration on the Rights of Man. Contact has been made with the judicial service of UNESCO regarding the eventual presentation of the text of such a declaration to the United Nations General Assembly....”²⁵

Led by Roger Heim of France, a Vice-President of the Executive Board, the Assembly established a Committee to prepare a draft of such a declaration for consideration by the membership gathered at that Assembly. A first draft, entitled “A World Manifesto on the Protection of Nature” was quickly prepared and introduced to the Assembly by Heim. He explained to the Assembly that the Committee recommended the delegates approve in principle the submission of the draft either to UNESCO or the United Nations General Assembly, in order that it could be finalized in collaboration with experienced international jurists in a form “which would ensure its favourable reception by a General Conference, and later ratification by Governments.”²⁶ Other agenda items took precedence, however, and time ran out before the Assembly could have a detailed discussion on the draft. Each delegate received a copy and was instructed to provide written suggestions. 23

Comments were not forthcoming to the Secretariat and the document remained the rough draft prepared by the Committee. Time passed and IUPN decided to submit the draft to UNESCO requesting its assistance “to obtain the adherence of governments to the Caracas Manifesto for Nature Protection.”²⁷ The Executive Board of UNESCO decided, however, that the draft text was not in sufficiently advanced form to be forwarded to governments. As reported by Secretary General Harroy to the next IUPN General Assembly convened in Copenhagen in 1954, the UNESCO Executive Board considered that “the text which was forwarded to the Director General was of a purely idealistic character. No practical measure was proposed....[I]t was also the opinion of the [UNESCO] Legal Adviser, that it could not be forwarded to Member countries....[I]t would be better to let the International Union for the Protection of Nature know that the ideas expressed in that draft Manifesto have been approved by the Director General and by the Executive Board. The Union will be requested at the time of its next General Assembly in 1954 to prepare a more concrete text giving indications as to the measures which should be taken. UNESCO could then forward this new text to the Member states.”²⁸ 24

With other matters having priority, however, the Assembly did not choose to follow-up on this UNESCO recommendation and prepare a more concrete text. Instead, as reported in the Assembly proceedings, it was decided that the original draft would be forwarded to the National Commissions of UNESCO “...drawing their attention to the interesting ideas formulated in this text and to the opportunity of their implementation on a practical basis.”²⁹ Thereafter, the Belgian Ministries of Foreign Affairs and Education offered to “attempt to give the Caracas Manifesto the required legal form” for possible future submission to UNESCO.³⁰ In the end, however, nothing happened and the draft manifesto faded away without any clear advocates. 25

While unsuccessful, the draft identified several concepts that are now generally accepted in conservation policy and law. In the very first of its seven Articles, the Manifesto declared that “extinction of any living species should be considered 26

as just as serious a crime against the human race as would the destruction of artistic and other treasures left to us by our ancestors.”³¹ It went on in Article 2: “no-one may look with indifference at the existing threat against many living animal and plant species. All appropriate measures must be taken in order to save these species from extinction, preferably through the establishment of natural sanctuaries, parks and reserves, where their normal living conditions are preserved with the help of adequate regulations, and in order to spread public education which would help to attain these goals.”³²

27 Other Articles of the 1952 draft called for “reasonable care to avoid depreciation” of renewable resources, that “countries with long experience and with adequate legislation [in renewable resource use] make such available to other, less favoured areas which face similar problems,” that “regulations and limitations be set up concerning the importation of animals and plants which may compete with the native fauna and flora” and that “governments improve regulations [on pollution of air and water from industrial activity] and ... enforce such measures for the benefit of society.”³³

28 Efforts to promote a similar instrument did not surface again until the mid-1970s, when a project was developed by IUCN on the urging of President Mobutu at the IUCN General Assembly in Zaire. This attempt had the needed political support and produced a World Charter for Nature adopted by the UN General Assembly in 1982 (see Chapter 16).

Changing the Union’s Name

29 In the early 1950s a debate began within the Union’s leadership over its title, in particular, whether the word ‘protection’ fully reflected its underlying mission. The debate, driven by philosophical differences that continued for decades, broke into two camps. Some wanted to eliminate the word ‘protection’ in the title because of concerns that the term conveyed too narrow an image for the Union. They argued that the Union needed to more clearly embrace ‘use’ of natural resources, better reflected in the term ‘conservation’ than in the term ‘protection’ which implied only preservation.³⁴ Others supported the original title on grounds that it properly reflected the Union’s original and continuing primary commitment to nature protection.

30 The call to change the Union’s title was led by then IUCN President Roger Heim of France. Faced for the first time with “thorny financial problems” (as UNESCO’s initial support subsided), the Union’s title needed this change, in his view, to broaden its image and better attract support from governments, development agencies, and the public.³⁵

31 The matter was on the agenda at the Fifth General Assembly of IUPN in Edinburgh in 1956. Minutes of the IUCN Executive Board meeting prior to the Assembly explained how the issue would be presented: “The President opened the meeting and spoke of the alteration to the Union’s name that he intended to propose to the Assembly in his opening speech....Such a change would involve no alteration in the Union’s policy, being only intended to stress the importance of the social and economic aspects of nature protection; these were insufficiently expressed by the words ‘nature protection’ which might be better translated ‘Conservation of Natural

Resources' (or 'richesses')."³⁶ The Executive Board decision pursuant to that proposal read: "The members of the Board strongly supported this measure which they were confident would help them to make the Union's aims clearer when approaching governments and members of the public. A three-member committee was appointed to submit suggestions to the Board on the new title to be proposed to the Assembly after they had been in consultation with the various delegations of the Assembly."³⁷ Some days later a recommendation was ready: After discussion, it was decided that the following title should be put to the Assembly: International Union for Conservation of Nature and Natural Resources.³⁸

The Assembly, in the end, sided with the Secretariat, deciding that the title should be changed. The Executive Board's recommendation was unanimously approved by the Fifth General Assembly on June 28, 1956; the Union's legal name was changed to International Union for Conservation of Nature and Natural Resources (IUCN).³⁹

Notes

- 1 See introductory paragraph of report of the *International Union for the Protection of Nature* (Proceedings of the Conference of Fontainebleau, September 30 – October 7, 1948) (IUPN, 1948), p. 5. (IUCN archives)
- 2 "Part I. Summary Report of the Conference of Fontainebleau" in *International Union for the Protection of Nature* (IUPN, 1948), p. 6.
- 3 Id. at 7.
- 4 "Part III. Text of the Constitution of the International Union for the Protection of Nature" Article I, paras. 2(a) and (d), in *International Union for the Protection of Nature* (IUPN, 1948), p. 17.
- 5 Id.
- 6 *IUCN Yearbook 1973–Annual Report of the International Union for Conservation of Nature and Natural Resources for 1973*, (IUCN, Morges, Switzerland, 1974), p. 16. See generally the third section of that report titled "The First Quarter Century of IUCN: Looking Back and Looking Ahead", pp. 15–56.
- 7 Id. at 33.
- 8 "Part I. Summary Report of the Conference of Fontainebleau" in *International Union for the Protection of Nature* (IUPN, 1948), p. 8.
- 9 Harroy lead the Union in its critical early years through IUPN's international debut (the UNESCO Scientific Conference in Lake Success, New York, of 1949), and its next three General Assemblies (the Second in 1950 in Brussels, the Third in Caracas in 1952, and the Fourth in Copenhagen in 1954). In 1962, Harroy became the Chairman of IUCN's Parks Commission, the second Chair of that Commission following Hal Coolidge, a post he held until 1973. He inspired and influenced countries to develop protected natural areas and built up the world list of national parks. In 1982, Harroy was awarded the Fred M. Packard International Parks Merit Award by the IUCN World Commission on Protected Areas in recognition of his life as a protected areas professional.
- 10 Holdgate, M., *The Green Web*, p. 35–36 (Earthscan: 1999).
- 11 "Part I. Summary Report of the Conference of Fontainebleau" in *International Union for the Protection of Nature* (IUPN, 1948), p. 9. While the intention was well-meaning, nothing happened for many years with these components of the program. As later chapters show, capacity for legislative work only began to be developed with creation of the Law Committee/Commission in 1960–3 and even then growth was slow and it was a constant struggle to find resources as science-related activities took priority; it was only in the 1970s that such work began in earnest, mostly with the help of external funds.
- 12 See "Part II. European and African Technical Symposium" in *International Union for the Protection of Nature* (IUPN, 1948), pp. 11–13.
- 13 Id. at 10. The next formal components to be established were the Species Survival Committee formed during the Lake Success Conference in 1949, and then the Commission on Ecology

- launched at the 1954 General Assembly. Over the years, Commissions were added, dissolved, or changed to meet new demands, growing eventually to the present 6 Commissions (Environmental Law; Education and Communication; Environmental, Economic, and Social Policy; Ecosystem Management; Species Survival; and World Commission on Protected Areas).
- 14 See “Part II. European and African Technical Symposium” in *International Union for the Protection of Nature* (IUPN, 1948), p. 15.
- 15 “Plenary Meetings”, Volume 1 of *Proceedings of the United Nations Scientific Conference on the Conservation and Utilization of Resources, 17 August – 6 September 1949, Lake Success, New York* (United Nations Dept. of Economic Affairs, 1950). In all, there are 8 volumes of these Proceedings; Volume VII is on Wildlife and Fish Resources.
- 16 *IUCN Yearbook 1973* (IUCN, Morges, Switzerland, 1974), p. 31.
- 17 Id.
- 18 Author interview with Wolfgang Burhenne, June 21, 2004 (Bonn, Germany) (transcript draft, p. 8–9).
- 19 According to the provisions of the first Constitution (Article IV, D.5), the General Assembly was to meet every second year in ordinary session and at each session the location of the next session would be determined. After 1960, by decision of the General Assembly, meetings were changed to every three years. In 1996, by Assembly decision, the Assembly of members was retitled “World Conservation Congress” and continued on roughly the same 3-year intervals.
- 20 *IUPN Proceedings and Reports of the Second Session of the General Assembly, Brussels, 18–23 October 1950*, (IUPN, Brussels, Belgium, 1951), p. 66.
- 21 Id. at 23. Gradually, the IOPN did wind down, however, and its Van Tienhoven Library, named after IOPN’s founder, was disbursed, the purely legislative materials going as an archival collection to the IUCN Commission on Legislation, as reported to the IUCN Executive Board during its March 1965 session.
- 22 Van de Goes van Naters was an important political voice in the Netherlands, becoming the head of the Socialist party and also the head of the conservation movement in that country for many years. Author interview with Wolfgang Burhenne, June 21, 2004 (Bonn, Germany).
- 23 *IUPN Proceedings and Reports of the Second Session of the General Assembly, Brussels, 18–23 October 1950*, (IUPN, Brussels, Belgium, 1951), p. 19.
- 24 *Proceedings and Reports of the IUPN Third General Assembly, Caracas (Venezuela), 3–9 September 1952*, (IUPN, Brussels, Belgium, 1952), p. 43.
- 25 Id.
- 26 Resolution 95 in *Proceedings and Reports of the IUPN Third General Assembly, Caracas (Venezuela), 3–9 September 1952*, (IUPN, Brussels, Belgium, 1952), p. 23.
- 27 “Report of Activity for the years 1952–1954” in *IUPN Proceedings and Papers of the Fourth General Assembly, Copenhagen, Denmark, 25 August to 3 September 1954* (IUPN, Brussels, Belgium, 1955), p. 42.
- 28 Id.
- 29 Id. at 43.
- 30 Id.
- 31 “Draft for the World Manifesto on the Protection of Nature” (original in French) in *IUPN Proceedings and Reports of the Third General Assembly, Caracas (Venezuela), 3–9 September 1952*, (IUPN, Brussels, Belgium, 1952), p. 60.
- 32 Id.
- 33 Id. at 61.
- 34 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany).
- 35 See minutes of IUPN Executive Board discussion, “The Union’s Financial Situation” in “Executive Board Minutes, Edinburgh, 20 June 1956”, p. 2 (IUCN Archives).
- 36 “Executive Board Minutes, Edinburgh, 20 June 1956”, p. 1 (IUCN Archives).
- 37 Decision 513 in “Executive Board Minutes, Edinburgh, 20 June 1956”, p. 2 (IUCN Archives).
- 38 “Resolution 519: The Union’s Title” in “Executive Board Minutes, Edinburgh, 26 June 1956”, p. 3 (IUCN Archives).
- 39 Resolution 178, *Proceedings of the Fifth General Assembly of IUCN, Edinburgh, Scotland, 20–28 June 1956* (IUCN, Brussels, 1957).

Part 2 (1960s)

Venturing into Law

In 1958, the Union was ten years old. It was gaining membership from States, government agencies, and non-governmental organizations. The organization was building outreach and technical capability through its Secretariat in Brussels and three Commissions: Education, Species Survival, and Ecology. Relations with United Nations agencies, especially UNESCO, were strong. 1

That year, IUCN held its Sixth General Assembly of members in Athens, Greece. Among new areas receiving attention was the growing number of requests coming to the Secretariat for assistance with national conservation legislation and administration. This Part describes the Union's early deliberations and actions taken to respond to this demand both institutionally and in work programme. It begins in Chapter 3 with IUCN's creation of a Committee on Legislation in 1960 and then its upgrade to a Commission on Legislation in 1963. Chapter 4 reviews the first work programme of the Commission and its early challenges, particularly building and managing the growing collection of environmental law texts and articles from around the world, and beginning to provide ad hoc technical assistance to members and other organizations in the field of environmental law. 2

These were the years when environmental concerns reached the level of treaty-making. During the 1960s, IUCN took a leadership role in helping forge the first two modern-day conservation treaties. First, came the African Convention on Conservation of Nature and Natural Resources, covered in Chapter 5, and then the Convention on International Trade in Endangered Species of Wild Fauna and Flora (commonly known as 'CITES'), reviewed in Chapter 6. Both experiences proved valuable for building the young Commission's competence in international environmental law and for expanding its international credibility. They also generated follow-up activities with implementation. During the same period, IUCN and UNESCO joined forces to develop the World Heritage Convention, a treaty to protect natural and cultural sites whose outstanding values needed to be preserved as part of the world heritage as a whole. IUCN's contribution to that treaty-making process and its subsequent implementation are reviewed in Chapter 7. 3

Chapter 3: Creating a Law Commission

The Sixth IUCN General Assembly met in Athens, Greece, in September 1958. The Secretary General's report summarized the "Union's primary international tasks" which it hoped would elicit opinions and suggestions from that Assembly:

- approaches to governments and appropriate bodies
- promotion of conservation based on scientific research
- popular international conservation education and
- the Union's Clearing-House role as a receiver and simplified disseminator of knowledge (emphasis in original).¹

The Education Commission and Survival Service Commission (now the Species Survival Commission) played prominent roles.² Union mandates to promote conservation, advance education, save species and habitats, and disseminate and apply scientific research dominated the agenda.³

While IUCN did not have an organized capacity or constituency for law and policy work at that time, nor plans to build such, this was the first Assembly to be alerted to the fact that requests were beginning to come to the Secretariat from international, state and NGO members for legislative and administrative technical assistance. The Secretary General's report informed members: "The FAO has sought and obtained from the Union information on the form and basis for setting-up of governmental or parastatal organizations for the conservation of nature and natural resources, in this case for application in countries such as Libya. From Belgium, the Union received a request for information on types of constitution for National Parks. From Turkey, came a request for specimens of legislation and regulations for the establishment of National Parks, in this case with special reference to the Ulu Dagh, 'High Hill', once known as the Asian Olympus, near Brusa." (underline in original).⁴

No action was taken at that Assembly. However, the information spurred discussion and interest, particularly from developing countries. Over the course of the next year, requests continued to come to the Secretariat and this fueled more discussion at the level of the Executive Board. Many of the scientists had argued consistently since the Union's founding that law and policy should follow automatically from new scientific information about conservation of species and habitats. A few others maintained the position that one had to translate new scientific understandings about nature into policy and law instruments in order to achieve sustained results on the ground.⁵

In June 1960, the IUCN Executive Board finally put the topic on the agenda of its meeting immediately preceding the Seventh General Assembly in Poland (venues split between Warsaw and Krakow). At that meeting the Board decided to form a temporary Committee during the Assembly with the task of considering how to proceed. Its decision read: "The General Assembly should be informed that there would be a Committee on Administration and Legislation. A. Kuster [Government Forester and Delegate from Switzerland] would be asked to take the chair for this Committee. It should be announced on the blackboard that anyone was welcome to

attend the meetings held to discuss this subject, and a decision would then be made according to the response as to whether a follow-up was desirable.”⁶ [See Box 1]

6 **Box 1: IUCN Board in 1960**

The IUCN Executive Board members taking the decision to form a temporary Committee on Administration and Legislation were prominent in the conservation community of that time, some having been among the Union’s founders: J.G. Baer (Switzerland), President; H.J. Coolidge (USA), Vice President; F. Bourlière (France); K. Curry-Lindahl (Sweden); H. Gams (Austria); E.H. Graham (USA); R. Knobel (South Africa); P. Scott (UK); and W. Burhenne (Germany), Financial Advisor. Also attending were C.L. Boyle (UK), Chairman of the IUCN Survival Service Commission, M.C. Bloemers, Secretary General of IUCN at that time, and by invitation E.M. Nicholson (UK), Chairman of the Education Committee, and two observers, R.G. Fontaine (FAO) and A. Gille (UNESCO).⁷

First Step – A Committee on Legislation

7 Accordingly, as part of the opening business of the Seventh General Assembly, a list was issued of temporary committees for the Assembly to deal with new and ongoing business. Included on this list was a committee to deal with law: “Resolution No. 264. Committee on Legislation and Administration,” which read: “All participants interested in this Committee were invited to attend its meetings, over which A. Kuster (Switzerland) expressed his willingness to preside.”⁸

8 In his opening address to the full Assembly, IUCN Secretary General Bloemers reinforced the need to include legislation among the Union’s business: “... [T]he foremost item is collecting and classifying information. This is obviously a primary function of an organization like the Union. Some fields in which good documentation should be available are news about achievements and set-backs; names of persons and bodies active in science and practical work; new trends and achievements in science, education and information techniques and *preferably also legislation* [emphasis added].”⁹

9 Some ten days later at the third session of that Seventh General Assembly, Kuster, in his capacity as Chair of the temporary Committee on Legislation and Administration, reported results of the Committee’s deliberations in the form of a formal Resolution to establish a permanent Committee:

“Whereas there is a need for more mutual contact between the Union and the personnel of governments and parliaments who are especially concerned with the conservation of nature and natural resources, and whereas there is a need for more contact between these persons in different countries in order to promote legislation on this subject, the Union should establish a special Committee on Legislation and Administration. The Committee should consist of a permanent Chairman, Vice-Chairman and Secretary, who may co-opt other persons especially concerned with the subject.”¹⁰

10 The Resolution also defined the mission of the Committee, including documentation and networking, key elements still of today’s Law Programme:

“The primary aims of the Committee will be: 1. To collect information on laws and administrative ordinances in the field of the conservation of nature

and natural resources, and 2. To establish a list of the persons in different countries who are competent in this field. On this basis the Committee will act as a permanent centre to encourage and promote legislation and administration in the field of the conservation of nature and natural resources.”¹¹

With the Union being preoccupied with financial concerns, A. Kuster concluded: “the activities of the Committee would not need any financial support from the Union.”¹²

Resolution No. 279 recorded the Assembly’s decision. Entitled “*Committee on Legislation and Administration*”, the Resolution stated: “The Assembly accepted the resolution moved by the President that the Committee should continue its work and elected W. Burhenne (Germany) as its Chairman.”¹³

When elected to chair this new Committee, Wolfgang Burhenne was already serving in the Union’s management structure. [See Box 2] Since 1958, he had served as the financial advisor to IUCN’s Executive Board, developing good working relations with IUCN’s leadership. In addition, in a volunteer capacity he had been assisting IUCN’s Secretariat with legal work, both on in-house matters relating to IUCN’s new statutes and with incoming technical requests.¹⁴ His position in Germany as Secretary General of the Interparliamentary Working Center (IPA) provided a natural base for reaching out to parliamentarians and building legal networks.¹⁵

Box 2: Wolfgang Burhenne (Law Commission Chair: 1960–1969, 1977–1990)¹⁶

Wolfgang Burhenne began his lifetime of involvement with IUCN in 1950 during the Union’s Second General Assembly. As the youngest delegate at age 26, he was the first German, representing the German Wildlife Protection Association (Schutzgemeinschaft Deutsches Wild), the country’s first post war wildlife conservation organization which he co-founded in 1949. At the 1952 IUCN General Assembly in Caracas, Burhenne served as observer for the Federal Republic of Germany in addition to continuing to represent the wildlife organization.

At the 1954 IUCN General Assembly, Burhenne wore several hats. As before, he was delegate for the German Wildlife Protection Association. At this Assembly, he also represented the International Commission for the Protection of the Alpine Region, founded in 1952, where he then served on a volunteer basis as the Alpine Commission’s first Secretary. He also was an observer delegate on behalf of the Interparliamentary Working Center (IPA). The parliamentary focus to his early career started in the early 1950s when he was asked to serve as legislative adviser to the Bavarian Parliament and assisted preparing various bills. In 1952, he helped found IPA and was elected its first Secretary General, a post to which he has been re-elected every four years since, serving in an honorary capacity since 1985. In that capacity, he advised and drafted bills for parliamentarians at state and Federal levels.

As a young man, he joined the armed forces in Germany in 1941 and was in active service as a soldier until being wounded in Russia in 1942 and hospitalized in a military hospital near the Dachau concentration camp. During that hospitalization, he was arrested for helping camp inmates (whom he met while in the hospital) make contact with a resistance group. He was put in solitary confinement at Dachau and then sentenced to confinement in various camps until the end of the war, altogether some 37 months. In 1945, at war’s end, he was appointed by occupation forces to the Forest Police in Upper Bavaria. There he simultaneously undertook studies in forest management at the University of Munich. In 1948, he was promoted to Deputy Head for Wildlife Management in the Ministry for Food, Agriculture and Forestry of the State of Bavaria.

In that capacity, Burhenne met American and British administrators and conservationists. One such acquaintance was Harold ('Hal') Coolidge, founder of the American Committee for International Wildlife Protection, and founding member of IUCN.¹⁷ Coolidge worked with Burhenne to control hunting and fishing by occupation forces; many US soldiers in Germany during this time assumed they could freely hunt and fish. It was Hal Coolidge, Wolfgang recalls, who strongly encouraged him to get involved with IUCN. Another early acquaintance was John Jay McCloy, U.S. military governor and High Commissioner for Germany (1949–1952) (in effect, Germany's first U.S. ambassador). Through these relationships and others, Burhenne was encouraged to organize local conservation initiatives including the German Wildlife Protection Association, noted above. Many of these post-war acquaintances developed into life-long friendships supporting his efforts in environmental law and policy in later years.

Burhenne became the longest serving Chairman of an IUCN Commission, continuing after his first appointment in 1960 to be re-elected by each General Assembly, except for the period 1970–76 when he was Vice-Chair, until 1990 when new rules limited terms of office. He was appointed IUCN Legal Advisor in 1990 and continued in that post until 1994. In 1990, he also was designated UN Liaison for the Commission on Environmental Law, a new position created by the Commission which he still holds today. Burhenne continues as an honorary member of the Law Commission's Steering Committee, holding a 'member-at-large' seat. Through his leadership, he inspired and instigated team building and networking, guiding strategic and programmatic development of the Environmental Law Programme, advising national governments and international organizations, and helping forge the modern field of environmental law and policy.

Wolfgang Burhenne has received honorary Doctorate of Law degrees and numerous international awards. In 1976 he was one of the first recipients of the Elizabeth Haub Prize for Environmental Law. Among his many honors, Wolfgang and his wife, Françoise Burhenne-Guilmin, have been jointly awarded several prestigious awards. Main among them was the 1990 Better World Society Medal for the Protection of the Environment, the 1991 UNEP Sasakawa Environment Prize (the UN International Environment Prize), and the 1997 Environmental Law Institute Award. In June 2005, they jointly received the Center for International Environmental Law (CIEL) award for their distinguished, longstanding contributions to the development of international environmental law as scholars, teachers, practitioners, and visionaries in the field. A "Tribute to Wolfgang Burhenne at 70" came in the form of a book "A Law for the Environment" comprised of contributions of his friends in the environmental law profession, and presented to Wolfgang on his birthday in April 1994 by long-time friend and colleague (and senior Law Commission member) Alexandre Kiss, President of the European Council for Environmental Law. In 2004, Wolfgang was bestowed Germany's highest honor, receiving from the President of Germany the 'Knight Commander's Cross of the Order of Merit' in recognition of his lifelong work and achievements in the field of environment and nature conservation law and policy.



In 2000, the IUCN Commission on Environmental Law (CEL) created the Burhenne Award in honor of Wolfgang Burhenne. The first recipient was Cyrille de Klemm, honored posthumously at the 2000 World Conservation Congress (WCC) in Amman, Jordan, the award being presented by CEL Chair Nicholas Robinson to his widow Amalia de Klemm. (Amusingly, the local press during the WCC reported the event as an award of the 'late' environmentalist, Burhenne, who wittily responded that he was quite alive and happy to be present for this first award in his name.) Burhenne continues actively to participate in the Union and maintains a full schedule of work supporting, promoting, and helping further develop IUCN's Environmental Law Programme.

Committee work begins

Pursuant to the General Assembly Resolution that recommended creation of a permanent Committee, the new Committee had as its priority building a legislative collection. In April 1961, the Executive Board met for the first time after the Committee's acceptance by the General Assembly and, according to minutes of the meeting, Committee Chair Burhenne reported on its first initiative: "letters asking for details of legislation on natural resources had been sent to 100 Departments of Foreign Affairs, and he was now preparing cards on the answers received."¹⁸ 15

By November, when the Executive Board next met, "49 states out of the 97 approached had already replied," according to Burhenne.¹⁹ With information accumulating, the Executive Board at that November meeting began to consider how it might best be used. It "underlined the need for someone to digest and render serviceable this mass of legal and administrative information that was coming in, and to highlight the main results of its analysis...."²⁰ It resolved to refer the matter to the next General Assembly in 1963 and indicated in the meantime: "[t]he first steps that were immediately necessary were the establishment of a subject-matter and a country-distribution card-index."²¹ 16

Committee work continued and by the Executive Board's next meeting in May 1962, Burhenne presented an updated report indicating that 110 countries had now been contacted and 84 had replied. In addition, requests were continuing to arrive to the Secretariat "for assistance in the development or amendment of legislation on conservation."²² In light of this news, IUCN's Secretary General, G.G. Watterson, "questioned the advisability of deferring any decision until September 1963."²³ Administratively, there seemed to be two options for handling the immediate workload: "The convening of a small meeting of legal experts interested in conservation, or alternatively the hiring of a qualified consultant to prepare some basic material for consideration by the Committee which should be enlarged in the meantime to include a number of conservationists with some experience in legislation."²⁴ 17

Substantively, the Executive Board saw two priorities for the Committee: "a. the assessment of the documentation being collated and its organization as a serviceable tool; b. the drawing up of a checklist of basic items that should feature in protective conservation legislation."²⁵ The latter priority was the origin of guidelines and related legislative aids that began to be published by the Programme in the 1970s. 18

Following those May 1962 deliberations, the Executive Board minutes summarized its decision: "The Chairman of the Committee was requested to examine this matter and advise on the measures that should be taken. He was also requested 19

to prepare for the General Assembly in 1963 a list of the available subject-matter data (by country and by subject).²⁶ At the Executive Board's next meeting in May 1963, the Committee Chairman reported back that in response to their request "an 80-page reference list of conservation legislation in 60 countries had been drafted and would be circulated to the governments concerned."²⁷

- 20 Moreover, the Executive Board learned about other services the Committee on Legislation and Administration was now beginning to provide, even with its limited capacity. The Committee, by Board request, had begun to study specific legal aspects of trade in trophies of endangered species, an issue of growing concern to IUCN scientists. The minutes of Burhenne's report indicate that some "125 governments had already been approached regarding the Rules and Regulations pertaining to export, import and transfer of animals and plants".²⁸ The Committee also had assisted with in-house legal matters: "Proofs of the IUCN Statutes had been circulated and a rough print of the French and English texts would be available at the Assembly. If the two further amendments, which had been circulated, were approved, these would be incorporated and the preamble would also need some amendment before the definitive edition of the Statutes was finally published."²⁹

Upgrading to a permanent Commission

- 21 At the first Executive Board meeting after acceptance of the Committee by the General Assembly, IUCN leadership already was considering options for the future. Minutes of the April 1961 meeting note: "The President thanked W. Burhenne for his very hard work, and suggested that the Board bear in mind the possibility of this committee becoming a permanent Commission."³⁰ At the next Executive Board meeting in fall 1963, just prior to the Eighth Assembly in Nairobi, Kenya,³¹ IUCN President J.G. Baer proposed and the Board agreed "that the Assembly should be asked to reconstitute the Committee as a Permanent Commission of the Union, under the Chairmanship of W. Burhenne, in view of the very active interest which its work is now attracting."³² Shortly thereafter the Eighth General Assembly approved this request. Resolution No. 308 of that Assembly states: "It was resolved under the powers vested in the Assembly by Article IV. B.v) of the Statutes, to set up a permanent Commission on Legislation."³³

- 22 As noted above, by 1962 the Executive Board recognized, in view of the kinds of technical requests being received, that the Committee needed to include a number of conservationists with some experience of legislation. Early on, the Executive Board also encouraged Burhenne to establish ties with other organizations, especially a new international law organization in Geneva, the International Association of Jurists, for assistance with legislative questions, especially those "reaching beyond the compass of national boundaries".³⁴

- 23 At the May 1963 meeting of the IUCN Executive Board, preceding the upcoming Eighth General Assembly by just a few months, Burhenne reported on efforts to build Committee membership: "In order to place the Committee on a more permanent footing, member organizations had been asked to suggest any persons, expert in conservation legislation and administration who might be willing to serve... [and Board minutes reflect that the] Board approved this as a first step to establishing a



President Kennedy Natural Resources Mission to Germany, March 1966. Stewart Udall, US Secretary of the Interior (right, with W. Burhenne) and Senator Edmund Muskie (centre)

permanent Commission, which might be possible at the Assembly if sufficient support is received (emphasis in original).³⁵

During the Eighth General Assembly in Nairobi, Kenya, in September 1963, the Executive Board continued its meetings, during which Burhenne presented his first list of candidates for the Committee on Legislation and Administration. They numbered 12 in all and were approved in principle subject to further inquiries by the Chair with some of the nominees.³⁶ Accompanying the list was a recommended procedure for membership appointment:

“... Member Organizations had nominated a number of suitable members, and the Committee suggest [sic] that the final selection should be done by the Executive Board in consultation with the chairman, on the basis of the widest possible knowledge and experience of legislation and administration. It would be desirable, however, to appoint in addition a few members with scientific and practical knowledge of the conservation problems involved.”³⁷

The Executive Board’s first meeting following the Nairobi General Assembly took place in June 1964 back in Morges. At that meeting the Board approved a slightly modified list of candidates “as proposed by the Chairman ...” in Supporting Paper No. 4 and these individuals became the charter members of the new Commission: Leonard (USA) was confirmed as Vice-Chair along with 12 members: Angelo (USA), Berio (Italy), Brzezinski (Poland), Boote (UK), Chichvarin (USSR), Cooper (UK), Gillfillan (South Africa), Ikenouye (Japan), Nielsen (Denmark), Peemans (Belgium), and Wilson (USA).³⁸ One additional appointment was approved by the Executive Board at its meeting in April 1966.³⁹

Membership categories

26 IUCN Secretariat policy through the decade for all Commissions, except the Survival Service where numbers were approaching 1000, was to keep membership small, highly specialized, and elite, with no more than 40 or 50 individuals. Executive Board approval of Commission nominees provided the control. In that context, Chairman Burhenne's goal was to create a small, influential group of senior legal and administrative specialists who could advance IUCN's work at national and international levels. Individuals were sought who already were highly accomplished and recognized experts. Nominations were highly selective.⁴⁰

27 By the Ninth General Assembly in Lucerne, Switzerland, in July 1966, the Commission had grown to 16 individuals.⁴¹ Respecting the policy on small Commission size, but concerned that the network and pool of candidates needed to be broadened, particularly from countries not then represented, Chairman Burhenne created a new category called 'corresponding member' which he introduced in a report to the Assembly: "Persons with legal or administrative experience need to be found in as many parts of the world as possible as corresponding members. The list of ordinary members must be revised accordingly".⁴² The aim was to use this category to attract young professionals and specialists working in matters related to conservation law but not yet internationally recognized, and also to begin to include professionals who may be lawyers.

28 The approach brought quick results. Barely one year later, an additional 23 corresponding members had been identified and invited, as reported to the IUCN Executive Board in April 1967.⁴³ The Commission now comprised the Chairman elected at the General Assembly, a Vice Chairman invited by the Chairman and endorsed by the Executive Board, 20 ordinary members and "a world-coverage of corresponding members", all serving "in an honorary capacity and any work which they carry out for the Commission is in addition to their own professional work."⁴⁴ Membership reached some 45 individuals by the end of the decade.⁴⁵ The overall membership policy remained to keep the Commission specialized and small.

29 For most of the Commissions, formal meetings of members were reserved for the time of the General Assemblies because members were widely scattered geographically with limited travel budgets. The first formal Committee on Legislation meeting was in association with the 1963 Eighth General Assembly in Nairobi, the second meeting (members now serving as a Commission) in 1966 in connection with the Ninth General Assembly. Due to extraordinary circumstances, the Commission on Legislation was able to hold another formal meeting of members in November 1968 in Bonn on the special occasion of the first meeting of the Interparliamentary Union's Special Committee on Conservation of Nature and Natural Resources of the Educational, Scientific, and Cultural Committee, to which several Commission members belonged. Normally, however, it remained the general practice to reserve official Commission meetings for the time of the Assemblies and this continued through the 1980s.

Early resources

30 Early on, Burhenne maintained that some professional staff support would be needed to coordinate and support volunteer efforts of members. He had first raised

the issue during the 1963 Nairobi General Assembly, when he proposed hiring a “qualified lawyer to analyse the material assembled by the former Committee and provide assistance to all Governments and organizations requiring guidance on the planning and preparation of conservation legislation.”⁴⁶ His report put the request in context of emerging demand:

“(a) Since the work of the Committee is of paramount importance and has now reached a stage where it is too much for one person to handle, the Committee hopes that it will be possible in the not too distant future to arrange for some of this work to be undertaken by a person such as a young lawyer appointed on a full-time basis.

(b) Until such time as this appointment is made, the best solution is to continue on the lines laid down at the last General Assembly – appointing a chairman, vice-chairman, secretary and a small number of members, with power to co-opt others who are willing to give their time and experience.”⁴⁷

The 1963 General Assembly in Nairobi took no action on Commission staffing, however, and Commission work continued solely through volunteer contributions from the Chairman and other members. In addition, the Commission began seeking projects from outside clients where costs could be billed, including costs for short-term consultants. In 1964, the Commission successfully acquired its first major project, a contract from the Council of Europe (COE) to do a survey of conservation legislation for the 18 member countries. The project, managed by the COE’s Committee on Nature Conservation, included funds for a consultant to be engaged by the Council of Europe and assigned to the Commission to be supervised by the Chairman. The person hired was Françoise Guilmin, then completing her Doctorate in Law at the University of Brussels and recommended by Professor Jean-Paul Harroy, IUCN’s first Secretary General. In 1965, this project added an additional three months funding for supplemental analyses of pesticide and water pollution legislation in the COE States.⁴⁸ Joining Françoise Guilmin for this additional work was Elizabeth Fawcett, a law student from England. 31

In addition to providing funds for major analytical legal work, the Council of Europe project also became the Commission’s first opportunity to build working relations with academic institutions. Thereafter, the Commission began to explore additional collaborations where students might do research using the Commission’s collection that could benefit the Commission’s work programme as well. Chairman Burhenne reported to the November 1966 Executive Board meeting: “Since my last report, more connections have been made with universities and I have in my office a young lawyer who is working there at his professor’s request in order to write the thesis for his doctorate. He is making a study of legislative instruments used in the protection of the landscape in western Europe and the consequences. In addition to him, there is another lawyer who is obtaining a grant from a post graduate foundation and who will especially assist with the African legislation. He will also carry out a special study of conservation legislation in South America...”⁴⁹ 32

Preoccupied with resource concerns, Burhenne began to explore alternatives for increasing institutional capacity, in particular, making special arrangements with 33

law firms. His November 1966 report continues: “In this connection I should like to thank A. Pollard, who is a London solicitor interested in conservation work, for allowing us to have his articulated clerk in Bonn for 10 days at extremely short notice. This may not seem long, but we were in considerable difficulties over several matters which had to be in English and L. Fawcett [from the COE project] was of great assistance since she worked for the Commission on Legislation for a time last year and so was able to start the work without long explanations being required....”⁵⁰

External support

34 Identifying more long-term external sources of funding was an imperative if staff were to be added. In late 1965, the Commission was successful in obtaining a grant from World Wildlife Fund (WWF) – Germany, a new organization co-founded by Wolfgang Burhenne and Eugen Gerstenmaier, President of the Federal Parliament of Germany.⁵¹ This grant was for a full-time lawyer post for 3 years. Françoise Guilmin, from the COE project who would be graduating soon, was recruited. At the October 1965 Executive Board meeting where Guilmin accompanied the Commission Chairman Burhenne for the first time, the Board noted “with approval the appointment of Françoise Guilmin as Secretary to the Commission.”⁵²

35 Still convinced that some core staff support should be provided by IUCN, Burhenne made another plea to the General Assembly in 1966:

“It is neither in the interests of the IUCN nor of our jointly pursued aims, that tasks have to be postponed or abandoned altogether. Omissions in the legal field may lead to consequences which cannot be made good at a later date, or only through costly expenditure. Efforts are therefore being made at present to replace the purely voluntary work of the members of the Commission by an office permanently staffed with trained personnel, which will be far more effective. Special thanks are due to the German UNESCO Commission, the Governments of Sudan, Belgium and Greece, and the United States Secretary of the Interior, for their initiatives in this matter, and for the recognition they have accorded to the modest achievements of the IUCN Commission on Legislation.”⁵³

36 His report continued: “[To implement the proposed Commission programme] the Commission considers that it will require a permanent office, staffed by two qualified lawyers, one English-speaking, and one French-speaking, together with a polyglot secretary and appropriate equipment.”⁵⁴

37 While the Commission on Legislation was promoting this basic capacity building, IUCN Headquarters was warming to the idea of Commission staffing. Management reports to the 1966 General Assembly stated that the distinction in the IUCN Statutes between the IUCN Secretariat and its Commissions was “largely an artificial one. The staff of Commissions should be regarded as just as much an integral part of the Union’s ‘Secretariat’ as the Secretary General, differing only in the mode of appointment and channels of responsibility....It is now generally agreed that each Commission should be represented and served by at least one staff-member physically situated at headquarters, but there may be good reasons for external po-

sitions so long as the essential membership of and final responsibility to the Secretariat are properly recognized.”⁵⁵

In this spirit, the Ninth General Assembly approved a first three-year budget (1966–1969) for the Commission on Legislation at 90,000 Swiss Francs (for a permanent office to be set up with “two qualified assistants, with secretary and equipment”).⁵⁶ As laid out in the Commission Chairman’s proposal, the staffing would be one French-speaking lawyer, Françoise Guilmin, and one English-speaking lawyer. 38

The process for transferring funds from Switzerland to Bonn, however, took some time to set up and support from WWF-Germany continued to be critical. In November 1966, at the first Executive Board meeting after the General Assembly decision to give the Commission a budget, Burhenne reported: “I must begin my report by saying that although the work of the Commission on Legislation is continuing to make satisfactory progress, one of the main reasons for this is the assistance given the Commission by the German World Wildlife Fund. I must express my appreciation to the Fund which has generously made it possible for me to have Dr. Guilmin working full time in Bonn until the 1st July next year. The budget agreed at the General Assembly in Lucerne provided for a permanent office to be set up, but of course there has been too short a time since then for the Commission to see the colour of this money! This means that although a permanent office is in existence it is running on fresh air – apart of course from the WWF contribution.”⁵⁷ 39

Resource constraints proved an obstacle to filling a number of IUCN posts for the next few years, including the second professional position approved by the 1966 Assembly for the Law Commission. The Secretariat’s report to the next General Assembly in 1969 listed among the “posts required for the Programme which it proved impossible to fund”, the post for an “English-speaking lawyer for the Commission on Legislation.”⁵⁸ 40



Bonn, Adenauerallee 214. The seat of the IUCN Law Programme from 1964 to 1999

- 41 While that constraint was an early disappointment, the Commission was fortunate still, early on, to find physical space for a small office. With the Chairman residing and working in Bonn, it was convenient and practical to look for office space there. The Interparliamentary Working Centre (IPA), where Burhenne was the elected Secretary General, had rented its offices in a building owned by the Government of Germany and located at Adenauerallee 214, Bonn, Germany. By 1964, the Commission had rented one room from IPA to store legislative materials and by 1966 was able to expand to two rooms. During the 1970s and 1980s, as other tenants vacated the building, IPA rented the extra space and then negotiated subleases with select groups, including the Commission and, as of 1970, the Environmental Law Centre.
- 42 In this manner, the Law Programme (Commission and Centre) gradually expanded its physical space, renting additional rooms from IPA as they became available, both for offices and for the growing legislative and literature collections.⁵⁹ The Law Centre and Commission remained at Adenauerallee until 1999, by which time it occupied most of the building and still faced severe space constraints. In 1999, the Government of Germany provided new facilities at Godesberger Allee 108–112, Bonn, Germany, where the Law Programme is housed today (see Chapter 27).

Notes

- 1 “Report on the State of the Union for the Period 1956/1958”. *IUCN Proceedings of the Sixth General Assembly, Athens, September 1958* (IUCN, Brussels, 1958), p. 87.
- 2 The Education Commission was formed in 1948, in close collaboration with UNESCO. Among the resolutions from the 1949 Lake Success UNESCO-IUPN International Technical Conference on the Protection of Nature, noted in Chapter 2, was a request that IUPN establish a ‘survival service’ for the “assembling, evaluation and dissemination of information on, and the study of, all species of fauna and flora that appear appropriate to be threatened with extinction, in order to assist governments and agencies in assuring their survival.” See Resolution No. 15. “The Proceedings of the International Technical Conference on the Protection of Nature, Lake Success, 22–29 August, 1949”. That service was established in 1950 by Hal Coolidge, a founding member of IUPN, in the form of a Commission which played a major role from its founding in the work of the Union, producing eventually the IUCN Red List of Threatened Species and providing technical and scientific advice to governments and organizations. Today it is the largest of IUCN’s six commissions with a network of some 7,000 volunteers.
- 3 For a discussion of IUPN’s early programme see Holdgate, M. *The Green Web*, at 47–53.
- 4 *IUCN Proceedings of the Sixth General Assembly, Athens, September 1958* (IUCN, Brussels, 1958), p. 93.
- 5 Author interview with Wolfgang Burhenne, June 21, 2004 (Bonn, Germany).
- 6 Decision 667, “IUCN Executive Board Minutes for Meeting Tuesday, 14 June 1960, Warsaw” (IUCN archives).
- 7 “IUCN Executive Board Minutes for Meeting Tuesday, 14 June 1960, Warsaw, Poland” (IUCN archives), p. 1.
- 8 Resolution No. 264, *IUCN Proceedings of the Seventh General Assembly, June 1960, Warsaw* (IUCN, Brussels, 1960), resolutions section: p. 29.
- 9 *IUCN Proceedings of the Seventh General Assembly, June 1960, Warsaw* (IUCN, Brussels, 1960), p. 75.
- 10 *Id.* at 40–1.
- 11 *Id.* at 41.
- 12 *Id.* at 41.

- 13 Resolution No. 279, in *IUCN Proceedings of the Seventh General Assembly, June 1960, Warsaw* (IUCN, Brussels, 1960), p. 41.
- 14 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany).
- 15 The Interparliamentary Working Centre (IPA), co-founded by Burhenne in 1952, was comprised of members of the State and Federal parliaments and was non-partisan with members from all political parties in Germany as well as members from the European parliament. It aimed to encourage joint parliamentary initiatives and innovative legislation in major new policy areas needing attention after World War II. It concentrated efforts in five policy areas: parliamentary procedure and law, environmental policy, mass media, education and research, and computer privacy. Among main achievements in environmental policy were four IPA-sponsored environmental conferences organized in the 1970s around the issues of Stockholm in which Law Commission members would play an important technical role, reported in Ch. 12. The President of the German Federal Parliament, Eugen Gerstenmaier, was a member of the IUCN Executive Board during those years.
- 16 Information for this box has been gathered from a variety of sources, including the curriculum vitae of Wolfgang Burhenne; author interview with Wolfgang Burhenne on October 16, 2000 (Bonn, Germany); follow-up interview of author with Wolfgang Burhenne on June 21, 2004 (Bonn, Germany); *A Law for the Environment – Essays in Honour of Wolfgang E. Burhenne* (IUCN: Switzerland, 1994).
- 17 See Holdgate, M., *The Green Web*, p. 14, for a summary of Coolidge activities in America and abroad.
- 18 “IUCN Executive Board Minutes, Musee Alexis Forel, Morges, 27–29 April, 1961”, (IUCN archives), p. 12. That meeting also was the first meeting of the Board in IUCN’s new headquarters in Morges, Switzerland. At the tenth anniversary of IUCN in 1958, the Sixth General Assembly met in Athens, Greece, and elected a new President, Jean Baer, who was from Switzerland. With growing financial problems along with concerns over limited space in the Brussels headquarters and staff shortages, IUCN management began a search for another headquarters location that might offer cost savings. Switzerland was offered as an alternative and the Seventh General Assembly in Warsaw in 1960 authorized the move, the site eventually chosen being the small town of Morges near Lausanne. See Holdgate, M., *The Green Web*, pp. 76–78.
- 19 “IUCN Executive Board Minutes, 18 and 19 November, 1961” (Morges, Switzerland), p. 4.
- 20 Id. at 4–5.
- 21 Id. at 5.
- 22 “Third Meeting of the Executive Board of IUCN, 15–17 May 1962” (Morges, Switzerland), p. 4. (A notation attached to those minutes explains that this was the third meeting since the move of IUCN Headquarters from Brussels to Morges – the first being in April and the second in November 1961).
- 23 “Third Meeting of the Executive Board of IUCN, 15–17 May 1962” (Morges, Switzerland), p. 4.
- 24 Id. at 4.
- 25 Id. This request to produce a checklist was the first formal call for analytical work on conservation legislation, an area to blossom over the years and become a core part of the Environmental Law Programme. Today their published analytical reports, frequently in the form of guidelines on various aspects of conservation law and policy including implementation of international conservation conventions, number more than 45 and most have been issued as part of the Environmental Policy and Law Papers Series, see Annex 2.
- 26 “Third Meeting of the Executive Board of IUCN, 15–17 May 1962” (Morges, Switzerland), p. 4.
- 27 “IUCN Executive Board Minutes, Meeting of 11–13 May 1963, 28th Session” (5th Meeting held at IUCN/HQ) (Morges, Switzerland), p. 5.
- 28 “IUCN Executive Board Minutes, Meeting 11–13 May 1963, 28th Session” (Morges, Switzerland) p. 5.
- 29 Id.
- 30 “IUCN Executive Board Minutes, Musee Alexis Forel, 27–29 April, 1961” (Morges, Switzerland), p. 12.
- 31 Beginning in 1960, the timing of IUCN General Assemblies was changed to 3-year intervals rather than the original practice of meeting every two years. This meant that the next General

- Assembly after formation in 1960 of the Committee on Legislation and Administration would come in 1963. It was scheduled for September 1963. Nairobi, Kenya, was selected as the host, putting an Assembly in Africa for the first time.
- 32 “IUCN Executive Board Minutes of Meetings of 15–25 September 1963” (30th Session, 3rd Meeting held at Nairobi on 19 September 1963), p. 3.
- 33 *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 51.
- 34 See “IUCN Executive Board Minutes, Musée Alexis Forel, 27–29 April, 1961” (Morges, Switzerland), p. 12; and “IUCN Executive Board Minutes 18 and 19 November, 1961” (Morges, Switzerland), p. 4.
- 35 “IUCN Executive Board Minutes, Meeting of 11–13 May 1963, 28th Session” (Morges, Switzerland), p. 5.
- 36 The initial list consisted of the following individuals: W. Brzezinski, P.H. Cooper or R.E. Boote, N.H. Gillfillan, J. Peemans, A. Wilson, W.G. Conway, H. Angelo, V. Nielson, G. Roure, R.M. Leonard, and B. Doyle. “IUCN Executive Board Minutes of Meetings of 15–25 September 1963” (30th Session, 3rd Meeting held at Nairobi on 19 September 1963), p. 3.
- 37 “IUCN Executive Board Minutes of Meetings of 15–25 September 1963” (30th Session, 3rd Meeting held at Nairobi, Kenya on 19 September 1963), Annexure C (i), Report by W. Burhenne, dated Sept. 18, 1963.
- 38 “IUCN Executive Board Minutes of the Meetings of 26–28 June 1964” (33rd Session) (Morges, Switzerland), p. 5, and “Supporting Paper No. 4” for Agenda item 4(6): Legislation Commission.
- 39 “IUCN Executive Board Draft Minutes of the 37th Session, 1st and 2nd Meetings, 1 and 2 April 1966” (IUCN Archives), p. 8.
- 40 Author interview with Wolfgang Burhenne and Francoise Burhenne-Guilmim on October 16, 2000 (Bonn, Germany) (draft transcript, pp. 14, 23); author follow-up interview with Wolfgang Burhenne on June 21, 2004 (Bonn, Germany) (draft transcript, p. 8).
- 41 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 153.
- 42 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 153.
- 43 “IUCN Executive Board Minutes of Meetings Held 8 and 9 April 1967” (IUCN archives), p. 27.
- 44 Commission on Legislation, “Three Year Funding Report”, attached to “IUCN Executive Board Minutes of Meetings, 8 and 9 April 1967” (IUCN archives), p. 4.
- 45 “The Commission on Legislation Three Year’s Report” in *Tenth General Assembly, New Delhi, 24 November – 1 December 1969, Vol. II: Proceedings and Summary of Business* (IUCN, Morges, Switzerland, 1970), Appendix XI, p. 107.
- 46 *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 125.
- 47 “IUCN Executive Board Minutes of Meetings of 15–25 September 1963” (30th Session, 3rd Meeting held at Nairobi, Kenya on 19 September 1963), Annexure C (i), Report by W. Burhenne, dated Sept. 18, 1963.
- 48 “IUCN Executive Board Draft Minutes of the Meetings, 27–28 March 1965, 35th Session, 1st, 2nd and 3rd Meetings held at Morges” (IUCN archives), p. 12.
- 49 Commission on Legislation, “Report for the Executive Board”, p. 1, attached to “IUCN Executive Board Meetings, 5–6 November 1966, Morges, Switzerland” (IUCN archives).
- 50 Commission on Legislation, “Report for the Executive Board”, p. 1, attached to “IUCN Executive Board Meetings, 5–6 November 1966, Morges, Switzerland” (IUCN archives).
- 51 Dr. Eugen Gerstenmaier, along with Burhenne and others in the leadership of IUCN, also was a founding member of World Wildlife International – signing the Morges Manifesto adopted at its founding in 1961 at IUCN Headquarters in Morges, Switzerland. Also, by the Eighth General Assembly in 1963, when the Law Committee was accepted as a permanent Commission, Gerstenmaier was actively involved in IUCN as part of its Executive Board.
- 52 “IUCN Executive Board Draft Minutes of the Meetings of 2 and 3 October 1965” (IUCN archives), p. 10.

- 53 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 157.
- 54 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix H, p. 180.
- 55 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix H – Program of IUCN for the Three Years Till General Assembly 1969, p. 175.
- 56 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix H – Program of IUCN for the Three Years Till General Assembly 1969, p. 184.
- 57 Commission on Legislation, “Report for the Executive Board”, p. 1, attached to “IUCN Executive Board Meetings, 5–6 November 1966, Morges, Switzerland” (IUCN archives).
- 58 “Secretary General’s Report for 1966–69” in *Tenth General Assembly, New Delhi, 24 November – 1 December 1969, Vol. II: Proceedings and Summary of Business* (IUCN, Morges, Switzerland, 1970), Appendix IV, p. 46.
- 59 In 1970 by agreement with IUCN Headquarters, the newly formed Environmental Law Centre was allocated the first floor of this building. Today, the Government of Germany continues as a major supporter of the IUCN Environmental Law Programme, cost-sharing the new building where ELP has been housed since 1999.

Chapter 4: Early Priorities

The 1966 IUCN General Assembly, in approving the creation of a permanent office for the Commission on Legislation, expanded the programme's initial two-pronged mandate from 1960 (collecting legislative information and developing a list of experts) with two new priorities:

“Maintaining co-operation and co-ordination of work with that of other organizations in this field...[and]

Providing assistance to organizations, governments and individuals who request advice on matters concerning the drafting of conservation legislation and conventions, or who want any other information about such legislation.”¹

This chapter traces the Commission's early activities in the first three of these priorities: building the collection of legislative documents, providing technical advice and assistance, and pursuing international cooperation. It should be noted, as well, that as part of the Union, the Law Commission also was at the service of the Secretariat and other Commissions for internal legal matters and was regularly consulted for its legal opinion, advice and the drafting of legal documents related to the organization's administration and governance, a function that grew as the Union developed and became more complex in operations and legal relationships.² Demand was especially intense when IUCN statutes needed revision, as was the case in the 1990s, some 50 years after Fontainebleau, when a major overhaul was achieved to bring the organization into the 21st Century, and that process is reviewed separately in Part 6.

The next three chapters are devoted to the Commission's contributions in early international treaty-making, an activity which was to grow over the years into a core component of the Law Programme. Two treaty-making projects dominated the decade of the 1960s and have continued to be draw on Programme expertise: first, the African Convention on the Conservation of Nature and Natural Resources concluded in 1969 and revised in 2003 (covered in Chapter 5), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), concluded in 1973 (addressed in Chapter 6). Beginning late in the 1960s, there was a call also for a convention to protect sites of outstanding natural value as part of the world's heritage and the Law Programme provided technical support for development and subsequent implementation of the World Heritage Convention (reviewed in Chapter 7). These treaty experiences not only built technical competence and credibility for the Law Programme; the resulting instruments reflected new and modern concepts of conservation in the emerging field of international environmental law.

Documentation

By 1963, a legislative collection was taking shape as members responded to Secretariat requests for information, as noted in Chapter 3. The Committee on Legislation and Administration, at its first formal meeting during the Eighth General

Assembly in Kenya, discussed work under way. The legislative collection was a central item and Chairman Burhenne explained progress that had been made:

“All the documents received have been filed under the various Governments and receipt recorded on index cards. The first draft of a paper listing all laws, rules and regulations known to us is now being distributed to the various governments who have been requested to correct, add or amend as required.

“A first review of the task of analyzing the material has shown that a synoptic register will not be possible, as the origin and structure of the various laws have too many variations. In consultation with the Legislation Research Branch of FAO, it was decided to prepare a loose-leaf register. It should then be possible to publish at a later date an alphabetical key with a synoptic index giving references to the paragraphs in the legislation of the various countries.”³

- 5 At that first Committee meeting, members discussed the importance of the collection and how the information might be organized to be most useful. As noted in the Committee report: “The first Provisional List of Laws, Regulations and Decrees concerning World-Wide Conservation of Natural Resources was considered to be an essential ‘tool’ for the work of the Committee. A draft of a resolution was submitted to the Resolution Committee, making proposals and recommendations for the best method of abstracting such information and disseminating it to all parties concerned.”⁴ With input from that work, the General Assembly adopted a resolution highlighting the important role of law in helping translate scientific principles and sought FAO’s cooperation to prepare loose-leaf information about such laws. Resolution No. 4 entitled “Conservation Laws” read:

“*Whereas* the effect of an environment on the quality and direction of evolution of culture is parallel to the effect of fertility of land on the welfare of a nation and whereas the quality of such values in turn largely depends upon how man can judge and translate into conventional terms of laws and regulations the moral rightness and cultural worth of a scientifically based attitude to natural renewable resources, noting that the numerous and diverse laws on the conservation of nature and natural resources are now being collected by the Committee on Legislation and Administration, established by the 7th General Assembly of IUCN at Warsaw in 1960, the 8th General Assembly of IUCN meeting at Nairobi in 1963 respectfully requests the active cooperation of the Food and Agriculture Organisation of the United Nations (FAO) in compiling and publishing in leaflet form and on a continuing basis the information collected in a summarized and standard form to be agreed between FAO and IUCN.”⁵

- 6 Encouraged by this response, the Commission continued to give the collection high priority. Among the early legislative materials the Commission had to work with was the legislative collection of the International Office for the Protection of Nature (IOPN), a precursor to the Union, established in 1934, as discussed in Chapter 1. In March 1965, Chairman Burhenne reported to IUCN’s Executive Board that

the Commission had received as archival material “all purely legislative material from the Van Tienhoven Library....”⁶ Pieter van Tienhoven, a founder and first President of IOPN, had given priority to collecting nature-related legislation especially from the African colonial territories, a region of special concern to early conservationists. Through a series which he started called the *International Review of Legislation for the Protection of Nature*, he published a few volumes covering the Belgian Congo, Kenya, the Cameroons, Uganda, Ruanda-Urundi and French Equatorial Africa.⁷

With the collection continuing to grow, and the Assembly’s Resolution No. 4 pending, the Commission began to explore possibilities with FAO for production of a compendium. Implementation of the Resolution, however, proved to be more complicated than originally envisioned. The next IUCN General Assembly in July 1966 was informed that “...the previous scheme approved by Resolution No. 4 of the Eighth General Assembly for publishing the information already registered in the card index in loose-leaf form (which can be constantly supplemented or exchanged), thus making it widely available, has been postponed. On this point it should be noted that FAO does not consider it practicable to assist in the work of compiling and publishing the material, but has declared its readiness to help by supplying legal texts, in so far as copies are available in Rome, to those who ask for them as a consequence of the publication of the compendium.”⁸ The Secretary General’s report concluded that “...it proved impracticable to implement the Resolution in the way proposed....”⁹

Rethinking the legislative collection

With the loss of FAO support for a compendium, the Commission had to rethink its approach to the legislative collection. It was not only a matter of producing a publication. 8

Larger challenges related to how the collection should be managed so that useful information could be retrieved efficiently and updated in a timely fashion as new laws were enacted and existing laws changed. Legislative materials were being received in subjects such as air, land, and water pollution control, much beyond IUCN’s primary nature and species conservation focus. Different legislative texts were relating to different jurisdictions (sub-national, national, regional, and international), and arriving in many different languages as more countries joined IUCN. The task of “dealing with texts in languages other than English, French, or German” became a constant problem because of shortages of qualified personnel to do translations.¹⁰ Whenever possible, grant funds were raised for part-time assistants to help manage and translate incoming documents. By the mid-1960s, Elizabeth Haub, a business woman from Germany who later set up her own environmental law foundation (see Chapter 11), earmarked funds to WWF-Germany for environmental law which were used for this purpose. 9

The first full-time professional lawyer, Françoise Guilmin, was immediately faced with these challenges, her first assignment being to organize and strengthen the legislative collection. [See Box 1] 10

11 **Box 1: Françoise Burhenne-Guilmin (Head, Environmental Law Centre, 1970-99)¹¹**

In the mid-1960s, Françoise Guilmin was a student at the University of Brussels completing her Doctorate of Law and looking for a summer job. Françoise recalls that Jean-Paul Harroy (IUCN's first Secretary General), then a professor in another part of the University, was looking for a lawyer to assist Wolfgang Burhenne and the new IUCN Law Commission undertake a survey for the Council of Europe. He had posted the job at the law faculty. She applied and at first was refused because she was too junior, but then he could not find a lawyer so "he settled for recommending me."¹² This began her life-long career with IUCN and environmental law, to which she returned once she had completed her law studies at the University.

For this history, Françoise Burhenne-Guilmin reflected on her early experiences in Bonn:

"When I came as a law student for the first time in the summer of 1964 to Adenauerallee, where Wolfgang worked, the first floor was occupied by his IPA offices. In the back, this floor had two rooms near the little kitchen and I was given one of these rooms. Upon my arrival, Wolfgang opened the door to that room which had one desk and one chair – and all along the walls there were thin brown manilla envelopes sorted alphabetically by country name. Still, I can see... 'Afghanistan', etc., an envelope for each country, lined up alphabetically along the walls. And my first task was to prepare requests for information to all States to try to improve the collection.

"I was left alone for a few days to find addresses and write letters to ministries to improve the collection. Different letters might say, for example, 'we have nothing from your country but we would like legislation on natural resources' or 'we have the wildlife act but we would like to check on whether you have anything else.' After three days, I was called into the Chief's office and he said: 'What have you done?' And I said: 'I have written 119 letters.' He looked at me and, clearly disappointed, said: 'You have written 19 letters?' 'No', I said, 'I have typed and have ready for your signature one hundred nineteen letters.' And I saw this big man jump out of his chair and pass by me. He went to where his secretary was and he shouted: 'She has written one hundred nineteen letters! Where are the stamps?!'

"So that is to tell you about my first task – to collect information and collect names of people and try to get them working in volunteer groups. In my enthusiasm, I even wrote to the Holy See, and received an answer regretting that the Vatican had had only a few sparrows to look after!"

From those early experiences, Dr. Françoise Guilmin decided to stay with the Law Commission, becoming its first professional lawyer in 1966, then (when she married Wolfgang Burhenne in 1970) the first and sole Legal Officer (1970–1976), and in 1973, also being given the new title of Head of the Environmental Law Centre, a post she held until 1999 when she retired as ELC Head and agreed to continue as Senior Counsel. Over almost 40 years with the Law Programme,



she developed and guided its agenda and projects, sustained a financial and donor base, promoted new initiatives, wrote books and articles, drafted and promoted treaties, trained young lawyers especially from developing countries, and received many acclaims and awards.

Most notably, she received (jointly with her husband, Wolfgang Burhenne) the 1990 Better World Society 'Medal for the Protection of the Environment,' the 1991 UNEP Sasakawa Environment Prize (the UN International Environment Prize and one of the most prestigious in the field), and the 1997 Environmental Law Institute Award. In 2005, Françoise and Wolfgang were jointly honored by the Center for International Environmental Law (CIEL) as recipients of their annual 'Award for Outstanding Contributions to the Development of International Environmental Law', in recognition of "extraordinary accomplishments as a scholar, teacher, practitioner, and visionary in the area of international environmental law."¹³ Today she continues to serve IUCN and ELC as Senior Counsel, maintaining a full-schedule of work dedicated to the field of environmental law.

Guilmin quickly began designing an overall scheme, breaking texts into two broad categories, as explained to the 1966 General Assembly: "Texts (a) of existing laws, regulations and decrees of the various states (including their constitutional provisions and legal codes), and (b) of bilateral and multilateral agreements and arrangements, are collected, sorted according to their spheres of application, and then filed. Different government jurisdictions were kept apart, of particular importance in the case of federal states. In such cases, the texts of subnational legislation



Ted Turner and the Burhennes – Award of the Better World Society 1990, New York

are included to the extent that regions or provinces have direct legislative competency. Finally the laws, regulations, decrees and agreements are recorded on card indexes and classified."¹⁴

The next step was to design an expanded subject matter code to better reflect the range of topics covered by incoming texts. A new classification system with



Award of the UNEP Sasakawa Prize in Stockholm, 1991 to Françoise & Wolfgang Burhenne

twelve subject areas was devised, along with a broad miscellaneous category, and this was introduced to the IUCN Executive Board at its meeting in April 1967. The twelve-point code, which remained the basis of computer programming in subsequent years, became the following:

1. town and country planning;
2. nature and landscape in general;
3. monuments and sites;
4. protected areas and national parks;
5. soil;
6. water;
7. air;
8. flora and vegetation;
9. fauna;
10. import and export of flora and fauna;
11. pesticides;
12. effects of industry and development on nature and landscape; and
13. miscellaneous, "including legislation on noise, waste, camping and advertising ...[and] those legislative measures not dealing directly with conservation, but necessary for the legal study of certain points, such as measures concerning property and restrictions on uses, penalties, and the constitutional and administrative laws of each state."¹⁵

14 At that April 1967 meeting of the IUCN Executive Board, the Commission reported that for this new coding system, "... each text or law or regulation [has] a card which is classified by country, chronologically and by subject."¹⁶ In 1968, the

Commission wrote about growing challenges managing the ever-increasing assortment of cards:

“The mounting number of cards...has made searching more and more time-consuming. In addition, this type of card index has a limited capacity and raises problems because of the various languages and changes in, or amendments to, legal provisions....Even the answering of a relatively simple inquiry took a long time and was frequently a duplication of previous work. Even more time was required for comparative law work such as for checking how many countries had ratified a particular multilateral agreement, perhaps with a reservation clause.”¹⁷

In view of these shortcomings, the Commission began exploring possibilities for using computer technology to manage the collection. Research began in the latter half of the 1960s and continued into the early years of the 1970s, eventually generating the Environmental Law Information System (ELIS) (see Chapter 10). 15

Technical assistance

Early on, technical assistance and advice for specific requests was recognized as an important aspect of IUCN’s long-term mission. In the mid-1960s, for instance, Burhenne reminded the IUCN Executive Board “that good legislation was fundamental to all conservation....”¹⁸ Through the 1960s and 1970s, however, capacity to respond remained limited to what individual Commission members could volunteer, and it was common for the Commission Chairman to report that “more and more requests for advice were being received by the Commission and that staff and funds were totally inadequate.”¹⁹ This meant that specific requests could be handled only on an ad hoc basis, where resources, expertise, and timing coincided. 16

It was envisioned that, in time, a technical ‘service’ might be offered because, as Burhenne explained to the Executive Board in 1968, servicing ad hoc requests was difficult to plan in advance without knowing “what kind of requests are likely to be received on the one hand and on the other hand, what will be possible for the Commission to undertake at that particular time.”²⁰ Until such resources were available, however, the Chairman concluded “that with his small staff, he could deal only with ad hoc problems and not with long-term studies.”²¹ 17

Early successes with selective assistance, nevertheless, boded well for the future of the activity. As early as 1962, then Committee Chairman Burhenne reported that as a result of a recent visit to an Italian region which had requested IUCN advice, “a special bill concerned with Landscape planning had been drawn up and submitted to the Regional Government” and the Executive Board expressed “thanks to W. Burhenne for the excellent work he had achieved.”²² 18

The Commission’s first major technical assistance contract was with the Council of Europe (COE). The project called for a survey of conservation legislation in the 18 Member States of the COE. Begun in 1964 and nearing completion when the Commission’s permanent office was approved in 1966, the project was the first to use the growing legislative collection for a multi-country analysis. [See Box 2] 19

20

Box 2: Council of Europe Project

This project, negotiated during 1964 and well advanced by 1966, was the first large contract to the Commission to provide funds for services of an in-house consultant, Françoise Guilmin. Developed with the Council of Europe (COE) Committee on Nature Conservation, the project was a survey of conservation legislation for European member states of the COE using the Commission's new collection.²³

A number of elements came together for the project. In his capacity as Chair of the new Committee on Legislation created in 1960, Burhenne was asked to serve as adviser to the Council of Europe's 'Committee of Experts on Questions of the Conservation of Nature and Natural Resources'. By the end of 1962, a sizeable collection of European laws existed at the Commission as part of the documentation work. The Council of Europe's Committee of Experts became interested in possibilities for using this data for analysis of the COE conservation legislation. In 1963, the Committee of Experts in consultation with Burhenne "who visited Strasbourg several times for the purpose, sent a questionnaire to the ... member states of the Council of Europe, to explore a basis for possible co-ordination of their conservation legislation."²⁴ The response from COE members was favorable and a project was developed.

Throughout the project there were ongoing consultations between IUCN's Commission and the COE Committee of Experts on issues of nature and natural resources conservation. Commission member Cyrille de Klemm was a principal expert on the project. The work helped build a lasting relationship between the Commission on Legislation and COE member countries as noted in a 1966 Commission report: "Permanent contacts are maintained with the Council of Europe, both with members of the Consultative Assembly and its committees, as well as with the Secretary General and the Committee of Ministers."²⁵

21

The project not only provided an example of the type of demand that might be served and funded, it verified the need for a good legislative collection as an underpinning for such analytical work. During 1964 and 1965, a catalogue of conservation legislation for the COE countries was prepared, sent to COE for review and consultation, and thereafter finalized. Within IUCN, the project was viewed by the Executive Board as "a useful starting point" for preparing a catalogue of world conservation legislation.²⁶

22

The COE project also produced helpful insights for managing similar projects in the future, as laid out in a 1966 critique prepared by the Commission: "It is, above all, essential to find a lawyer whom the question interests.... A lawyer who is a specialist in the whole field and on an international scale... The lawyer in question must, in order to work effectively, ... either be multilingual... or the documentation... must be translated. This is not all. If the work is to be done properly, one lawyer for the basic study is not enough. The different legal systems being so fundamentally varied, ... it is almost essential that the texts be studied by lawyers qualified in each system. The synthesis can then be done by one lawyer."²⁷

23

By 1966, as the COE project was nearing completion, ad hoc legal requests were coming to the Commission on Legislation "in a great variety of forms. For example, there was a request from a member of parliament in Colombia for a statement of opinion on two new draft laws, an enquiry from an Irish society regarding regulations for bird protection in Europe as a basis for a new draft law, an enquiry from Paris as to existing provisions for the protection of insects, and enquiries about the experience gained with the German regulations prohibiting the use of 'hard' detergents."²⁸



W. Burhenne at the inauguration of the first National Park in Portugal in attendance of the President of the State (front, with hat), 1970

Early requests helped strengthen collaboration with other components of the Union. For example, the Commission on Legislation working with the National Parks Commission in the late 1960's assisted Portugal with preparation of a draft law to create a proposed national park. Preliminary talks took place in Paris during the UNESCO Biosphere Conference in 1968 and, at the invitation of the Law Commission, a lawyer from the concerned Ministry in Portugal came to Bonn at the beginning December 1968 to work on the draft. A review meeting was organized in Brussels with Jean-Paul Harroy, the Chairman of the National Parks Commission, the preliminary draft was finalized and sent to the responsible Ministry in mid-December.²⁹ A law on National Parks and Reserves based on this working draft was passed in 1970.³⁰ 24

Other ad hoc requests covered such topics as pesticides legislation in Europe, legislation on totally protected species worldwide and advising on hunting legislation in Niger and neighboring States.³¹ In the late 1960s, the national parliaments of Colombia, Luxembourg, and the Philippines were provided advice on draft laws for nature protection.³² A special study on legislative and regulatory measures to protect landscape areas in Western Europe started in 1966 by a University of Freiburg lawyer working out of the Commission's office resulted in a report published in German.³³ For the Latin American Conference on the Conservation of Renewable Natural Resources in Bariloche, Argentina, in 1969, the Commission organized a session on three subjects: international coordination of conservation laws, national conservation laws, and trade in animals and plants.³⁴ 25

By the end of the decade, the Commission Chairman reported to the 10th IUCN General Assembly in 1969 that answering such ad hoc requests for information and advice was taking a "large proportion of time of the Commission's permanent office."³⁵ 26

International cooperation

- 27 Through the Committee and then Commission on Legislation, the Union had a focal point for international cooperation on matters of national and international conservation law and policy. The first formal meeting of the Committee on Legislation occurred during the Nairobi General Assembly in 1963, and the issue of international cooperation was a major agenda item. As reflected in the record of that meeting, the Committee “approved the contact made by the chairman with the appropriate officers in FAO, Council of Europe and CIC (Conseil International de la Chasse), etc. The Committee expressed the view that close liaison of this kind is necessary at all times in order to avoid duplication of effort on the one hand and to increase effectiveness on the other. The Committee considered it important that a representative be appointed from each interested organization to act as its coordinator on all matters concerning legislation.”³⁶
- 28 The original Constitution of the Union in Article 1 listed as the Union’s first objective: “The Union shall encourage and facilitate co-operation between governments and national and international organizations concerned with, and persons interested in, the ‘Protection of Nature’.”³⁷
- 29 Once the Commission’s permanent office had been established in 1966, its reports regularly listed “other organizations working in the field of conservation legislation” with which it cooperated. Its first formal report to the Executive Board in 1967 had a typical entry:
- “The Commission co-operates ... [w]ith various international governmental organizations, such as:
United Nations, particularly ECOSOC, ECA, ECE,
Specialist agencies such as FAO, UNESCO, WHO,
The European Economic Community,
The Council of Europe,
The Organisation of African Unity,
The Organisation of American States.”³⁸
- 30 Relations of the Law Commission with UNESCO were strong from the beginning. Julian Huxley, UNESCO’s first Director General, had already set the stage in 1947 by pairing “laws and international conventions about the conservation of fauna and flora” with science as part of nature protection and his vision of the new organization.³⁹ In 1964, once the Committee had been reconstituted as a Commission, UNESCO promoted the Commission’s mission to Member States through a recommendation “that national legislation should be promoted for the conservation of soil, water, fauna and flora and the landscape and of all other natural resources”.⁴⁰
- 31 The first major project collaboration between UNESCO and the Law Commission began in 1965 in international treaty-making with development and promotion of an African conservation convention. UNESCO’s Biosphere Conference of 1968 and the resulting Man and Biosphere Programme (MAB) became another area for collaboration, growing over the years with legal technical assistance regarding biosphere reserves.⁴¹ In a further effort in the 1960s to strengthen ties between law and science, the Commission also offered to act as legal adviser to the

UNESCO-supported International Biological Programme/Conservation of Terrestrial Species section (IBP/CT).⁴² As reported to the 1966 General Assembly, a resolution to that effect had been adopted by UNESCO at its 13th General Conference in 1964⁴³ and IBP/CT at a subsequent meeting accepted the Commission's offer.⁴⁴ IUCN and UNESCO also collaborated in the late sixties and early seventies on development of the World Heritage Convention (see Chapter 7).

In the non-governmental, non-profit sector, the Commission and its members, many of whom were associated with non-governmental organizations, also began to build collaborations with prominent organizations. Early collaborations were initiated with CIC headquartered in France,⁴⁵ the International Wildfowl Research Bureau (IWRB) (particularly on protecting migratory waterfowl), the World Peace through Law Centre, and the International Law Association.⁴⁶ National organizations also began to support work of the Commission in the late 1960s. The Swiss League for the Protection of Nature, for example, arranged with the Commission Chairman to provide a young lawyer in 1967 to study Swiss conservation legislation using the Commission's collection and in the process share analyses and materials, and work in close cooperation with the Commission.⁴⁷ 32

The decade of the 1960s was marked by growing global awareness of threats to the natural environment. While there continued to be skepticism among many in the scientific community about the need for law, translating scientific information into law and policy was becoming more accepted as a necessary component of 33



F. Guilmin and W.E. Burhenne meet S. Udall, US Secretary of the Interior in Washington DC (1967)

conservation on the ground. The Commission defended the role of law as an important part of IUCN's conservation agenda and promoted international law instruments that could address the most serious global problems. Though almost solely dependent on volunteers, the Law Programme stayed committed to building a worldwide collection of environmental legislative texts and began to respond to a few specific technical assistance requests on an ad hoc basis. Members of the Commission were regularly called upon to cover international and other meetings, to provide technical input on environmental policy and law issues, broaden exposure for IUCN, and report back on developments and opportunities for further collaboration.

- 34 The Tenth IUCN General Assembly met in December 1969 in New Delhi. In less than a decade, the Law Programme had built credibility and relevance within the Union. The final section of the IUCN Secretary General's Report, entitled "Planning for the Future," read: "The Commissions most successful in having a real effect on world conservation were the Survival Service and Legislation Commissions with the Education Commission close behind."⁴⁸

Notes

- 1 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix H – Program of IUCN for the Three Years Till General Assembly 1969, p. 180.
- 2 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), Appendix E – Report of the Commission on Legislation, p. 157.
- 3 W. Burhenne "Annex to the Chairman's Report of the Committee on Legislation and Administration" in *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, 1963* (IUCN, Morges, Switzerland, 1964), p. 119.
- 4 W. Burhenne "Report of the Committee on Legislation and Administration (dated 18 September 1963)" in *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, 1963* (IUCN, Morges, Switzerland, 1964), p. 117.
- 5 Resolution No. 4, in *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, 1963* (IUCN, Morges, Switzerland, 1964), Annex E – Resolutions, p. 120.
- 6 "IUCN Executive Board Draft Minutes of the Meetings of 27–28 March 1965 (35th Session, 1st, 2nd and 3rd Meetings, held at Morges)", p. 12. See discussion on the International Office for the Protection of Nature in Chapter 1.
- 7 Van Tienhoven's collection of nature-related legislation from the 1930s and 1940s remains with the Environmental Law Programme today in its archives.
- 8 "Report of the Commission on Legislation" in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 153.
- 9 *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), Appendix B, p. 110.
- 10 "Report of the Commission on Legislation" in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 154.
- 11 Summarized from author interview with Françoise Burhenne-Guilmin on October 16, 2000 (Bonn, Germany).
- 12 Comments from Françoise Burhenne-Guilmin on March 2006 draft, transmitted by email dated March 18, 2006.
- 13 Excerpted from certificate of award presented June 10, 2005; author interview with Françoise Burhenne-Guilmin and Wolfgang Burhenne, April 7, 2006 (Bonn, Germany).
- 14 "Report of the Commission on Legislation" in *IUCN Proceedings of the Ninth General Assem-*

- bly, Lucerne, Switzerland, 25 June – 2 July, 1966 (IUCN, Morges, Switzerland, 1967), Appendix E, p. 153.
- 15 “Commission on Legislation Three Year Funding Report” attached to “IUCN Executive Board Minutes of Meetings held 8 and 9 April 1967” (IUCN archives), p. 4.
 - 16 Id.
 - 17 Burhenne, W. E., F. Esser, F. Guilmin, H. Schiro “An Information System for Lawyers”, p. 3. (Translated article from German, published in IBM Newsletter, 1968), p. 187.
 - 18 “IUCN Executive Board Minutes of Meetings 5–6 November 1966” (IUCN archives), p. 15.
 - 19 Id. at 15.
 - 20 “IUCN Commission on Legislation Report on Functions and Programme”, p. 1. (Attached to “IUCN Executive Board Minutes of Meetings 16 and 17 September 1968”).
 - 21 “Minutes of the 44th Session of the IUCN Executive Board, Morges, Switzerland, 16 and 17 September, 1968” (IUCN archives), p. 23.
 - 22 “Minutes of IUCN Executive Board Meeting of 24–26 November 1962” (IUCN archives), p. 8.
 - 23 The Council of Europe, an international organization of member states formed in 1949 to promote democracy and the rule of law after WWII, was especially active in the 1950’s and 1960’s. Initially it comprised mostly western European members and was concerned with western European issues.
 - 24 “Annex to the Chairman’s Report of the Committee on Legislation and Administration, August 1963”, in *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 119.
 - 25 “Report of the Commission on Legislation” in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, pp. 155–156.
 - 26 “IUCN Executive Board Draft Minutes of the Meetings 27–28 June 1964” (IUCN archives), p. 5.
 - 27 Commission on Legislation, “Work on Conservation Legislation for the Council of Europe” attached to “Minutes of the IUCN Executive Board meeting November 1966”.
 - 28 “Report of the Commission on Legislation” in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 154.
 - 29 “Report of the Commission on Legislation to the Executive Board”, Paper 45/57A attached to “Draft Minutes of the 45th Session of Executive Board, Morges, 19–20 April 1969”. (IUCN archives).
 - 30 See “Dos Parques Nacionais e outros tips de Reservas” (No. 141, June 19, 1970) in *Diario do Governo*, p. 802.
 - 31 “Report of the Commission on Legislation, 3 May 1968”, p. 3, attached to “Minutes of the 43rd Session of Executive Board, Morges, 4 and 5 May, 1968” (IUCN archives).
 - 32 “Commission on Legislation Three Year Funding Report”, p. 6, attached to “IUCN Executive Board Minutes of Meetings held 8 and 9 April 1967” (IUCN archives).
 - 33 “Commission on Legislation Three Year’s Report”, in *IUCN Tenth General Assembly Proceedings and Summary of Business, Volume II, New Delhi, December 1969* (IUCN, Morges, Switzerland, 1970), Appendix XI, p. 110.
 - 34 Id.
 - 35 Id.
 - 36 “IUCN Executive Board Minutes of the Meetings 15–24 September 1963”, Annexure C(i), para. (4); also in *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 117, para. (4).
 - 37 “International Union for the Protection of Nature, Part III – Text of the Constitution of the International Union for the Protection of Nature” at 17, Article 1(1). (1948)
 - 38 See “Commission on Legislation Three-Year Funding”, p. 4 attached to “IUCN Executive Board Minutes of 41st Session, 8 and 9 April 1967” as Paper 36B).
 - 39 See discussion in Chapter 1 and Huxley’s role in founding the Union.
 - 40 See “Report of the Commission on Legislation” in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), p. 155.

- 41 See *IUCN Tenth General Assembly Proceedings and Summary of Business, Volume II, New Delhi, December 1969* (IUCN, Morges, Switzerland, 1970), p. 111.
- 42 This UNESCO-supported programme was initiated in the early 1960's through a decision of the International Union of Biological Sciences and continued until 1974.
- 43 *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), p. 155.
- 44 "The Commission on Legislation Three Year's Report" in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, 25 June – 2 July, 1966* (IUCN, Morges, Switzerland, 1967), p. 111.
- 45 See "Annex to the Chairman's Report of the Committee on Legislation and Administration", *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 119; see also "IUCN Executive Board Draft Minutes of the Meetings of 27–28 March 1965" (IUCN archives), p. 12. CIC's members, for example, shared common interests with IUCN founders concerning the need to restore habitat and control hunting in Europe and in other parts of the world facing threats to wildlife.
- 46 See "Commission on Legislation Three-Year Funding" (also labelled Paper 36B), p. 5, attached to "IUCN Executive Board Minutes of 41st Session, 8 and 9 April 1967"; see also "Commission on Legislation – Report to the Executive Board, October 1967" (also labelled Paper 36A), p. 4, attached to "IUCN Executive Board Minutes of 42nd Session Meetings held at Morges on 1–2 November 1967" (IUCN archives).
- 47 See "Commission on Legislation Three-Year Funding", p. 5, attached to "IUCN Executive Board Minutes of 41st Session, 8 and 9 April 1967" (IUCN archives).
- 48 "Secretary General's Report for 1966–69" in *Tenth General Assembly, New Delhi, 24 November – 1 December 1969, Vol. II: Proceedings and Summary of Business* (IUCN, Morges, Switzerland, 1970), Appendix IV, p. 54.

Chapter 5: African Convention

From the late 19th century, conservationists had been concerned about growing threats to Africa's wild animals and wild game parks from hunting and habitat loss. In 1900, in an attempt to prevent uncontrolled massacre of wild animals, colonial powers in the region produced the *Convention on the Preservation of Wild Animals, Birds, and Fish in Africa*, which was signed in London in May 19, 1900 (and called the London Convention of 1900).¹ While that treaty never entered into force for lack of sufficient ratifications, it provided precedent as the first such regional initiative and substantive concepts for legislation in the individual territories.

The next try at a regional convention for Africa came in 1933, when the *Convention Relative to the Preservation of Fauna and Flora in their Natural State* was adopted in London in 1933 (London Convention) primarily to address these concerns. The treaty was signed by Belgium, France, Italy, Portugal, South Africa, Spain, Anglo-Egyptian Sudan, and Great Britain and was "applicable in full to (i) all the territories ... of any Contracting Government which are situated in the continent of Africa, including Madagascar and Zanzibar; (ii) any other territory in respect of which a Contracting Government shall have assumed all the obligations of the present Convention..."² (India came within the scope of the latter clause.) Once African nations began to achieve independence, African wildlife experts, including several associated with IUCN, worked with African leaders to create a new treaty that the new African nations could call their own.

Early initiatives

Already in 1949, at the International Technical Conference on the Protection of Nature at Lake Success, New York, co-sponsored by IUCN and UNESCO, specific proposals and a Resolution were endorsed to modernize the 1933 Convention, as noted in Chapter 2. In 1953, the Third International Conference for the Protection of Fauna and Flora in Africa was convened in Bukavu, Zaire, by the Commission for Technical Cooperation in Africa South of the Sahara (CCTA). The topic of a new treaty was a main item on the agenda. The Union's Secretary General, G.G. Watterson, served as Rapporteur General. Recommendation 9 endorsed by the Conference called for a comprehensive new conservation convention to replace what had been signed in 1933:

"Considering ... that the vital problems of protecting the human environment in Africa cannot be solved solely by the creation of nature reserves and the protection of certain species which are rare or threatened with extinction,

"*Recommends* that Governments should, in addition to detailed revision of the 1933 Convention as recommended by other resolutions, consider the preparation of another Convention which would establish the broader elements of a general policy of nature conservation in Africa, drawing inspiration from the recommendations put forward by the technical conferences concerning the protection of soil, vegetation cover, water resources, etc., with the object of ensuring the conservation of natural vegetation cover, soil, water and natural resources, primarily in the interest of the populations of Africa."³

- 4 The Seventh IUCN General Assembly meeting in Poland in 1960 took the next defining step by producing its own Resolution calling for a special project for Africa to promote conservation practices throughout the region. This Resolution read:

“The Seventh General Assembly

– resolves that consultation should be held with other international organizations concerned, in particular with F.A.O., UNESCO and C.C.T.A., in order to launch an African project in the early future. This project would be designed to inform and influence public opinion, through its leaders and responsible persons in the Governments, that the application of conservation practices, based on ecological knowledge, is in the best interests of all African countries.

The programme of operation should include a) preparatory work including a field mission to be commenced as soon as possible; b) a conference in Africa during 1961; c) an organization for following up the decisions of that Conference.”⁴

- 5 The ‘African Special Project’, as it came to be called, launched the modern conservation movement in Africa. At that time, the Federal Republic of Germany was particularly keen to support the project and during the IUCN General Assembly in Nairobi in 1963, Wolfgang Burhenne, on behalf of the Federal Republic of Germany, observed: “The Arusha Manifesto signed by President Nyerere of Tanganyika at the Conference marking Stage II of IUCN’s African Special Project, and the Resolutions adopted by the General Conference of UNESCO and the United Nations General Assembly, had been particularly important steps on a African and world basis respectively, in the process of obtaining full governmental recognition and support for the conservation movement.”⁵

- 6 Others in IUCN’s leadership offered similar historical accounts. The Project was implemented when Jean G. Baer from Switzerland was serving as IUCN’s President and years later Baer had these reflections: “One of the most successful of such projects and which has had a long lasting effect upon the principles of conservation in Africa, was the African Special Project initiated in 1960, in cooperation with CCTA (the Commission for Technical Cooperation in Africa South of the Sahara), FAO and UNESCO, and culminating in 1961 in the Arusha Conference. The latter was attended by representatives of 21 African states and 6 non-African countries and 5 international organizations. The Prime Minister, J.K. Nyerere, of the host Government of Tanganyika [now Tanzania] presented a statement later to be known as the Arusha Manifesto, which expressed the tone of the discussions and is to be considered as being the turning point for conservation and development of wildlife and wildland resources in Africa by the modern African states.”⁶

- 7 E. Barton Worthington, on the IUCN Executive Board from 1960–63 and IUCN Vice President from 1963–66, had similar recollections: “I would like to focus attention on one particular activity, the African Special Project (ASP), which was my particular charge as a Board member to coordinate. ASP originated in June 1960 at the meetings in Warsaw and Krakow. It was designed to combat what IUCN

believed to be the most urgent wildlife conservation problem of the time, namely ‘the accelerated rate of destruction of wild fauna, flora and habitat in Africa – without adequate regard to their value as a continuing economic and cultural resource’”⁷

As testimonials suggested, one of the most important outcomes of the African Special Project overall, and for the treaty work to follow was the Arusha Manifesto, a policy statement reflecting wildlife and wild places as an integral part of the region’s natural resources which the countries held in trust for future generations. This broad scope would become be a unique and pioneering feature of the final African regional conservation treaty. [see Box 1]

Box 1: Arusha Manifesto

In 1961, a Conference of nations from the African region was convened in Arusha, Tanzania, as part of the African Special Project. At that Conference, Tanzania Prime Minister Nyerere made a statement which was adopted by the nations present and came to be known as the Arusha Manifesto. The Manifesto read:

“The survival of our wildlife is a matter of grave concern to all of us in Africa. These wild creatures amid the wild places they inhabit are not only important as a source of wonder and inspiration but are an integral part of our natural resources and of our future livelihood and well being.

“In accepting the trusteeship of our wildlife we solemnly declare that we will do everything in our power to make sure that our children’s grand-children will be able to enjoy this rich and precious inheritance.

“The conservation of wildlife and wild places calls for specialist knowledge, trained manpower, and money, and we look to other nations to co-operate with us in this important task the success or failure of which not only affects the continent of Africa but the rest of the world as well.”⁸

The next Africa treaty-related deliberations came in 1964 on the occasion of a UNESCO-sponsored conference in Lagos, Nigeria. Jean-Paul Harroy, IUCN’s first Secretary General and an African expert, did much of the preparatory work.⁹ At Lagos, participating African States adopted a Resolution calling for the London Convention to be expanded into a broad-based treaty relevant for Africa and asking IUCN to prepare the preliminary draft. Recommendation (2) 11 read as follows:

“It is recommended that –

“a) the 1933 Convention on the flora and fauna of Africa be revised in order to bring it up to date and to extend the scope of its application.

b) the Organization of African Unity be invited to entrust the preparation of a preliminary draft to the International Union for Conservation of Nature and Natural Resources, assisted by UNESCO and FAO.”¹⁰

IUCN prepares draft

Pursuant to that recommendation, the Organization of African Unity (OAU), newly established in 1963 as the first intergovernmental body of African States after independence (initially numbering 32 states), became formally involved. The OAU sent correspondence to UNESCO’s Director General in June 1965 asking that UNESCO pass on its invitation to IUCN concerning preparation of a draft treaty. IUCN accepted the invitation and asked the Commission on Legislation, on its be-

half, to set up an ad hoc sub-committee comprised of African experts from both outside and within IUCN to prepare a working draft of the treaty. Prominent IUCN African experts on that subcommittee were Jean-Paul Harroy, Theodore Monod, D.P.S. Wasawo, and E.B. Worthington. IUCN added non-IUCN African experts taking into account nominations from the Economic Commission for Africa (ECA) and UNESCO's Regional Centre for Africa, as agreed with the OAU. [See Box 2]

12 **Box 2: IUCN's ad hoc Sub-Committee for the African Convention¹¹**

| | |
|-----------------------|---|
| A.P. Achieng | Permanent Secretary, Ministry of Natural Resources, Nairobi, Kenya. |
| W.E. Burhenne | Chair of IUCN Commission on Legislation. |
| T.O. Elias | Attorney-General and Minister of Justice of Nigeria (his deputy: J.D. Ogundere, Principal State Counsel; Head of Division of International and Comparative Law, Ministry of Justice, Lagos, Nigeria). |
| O. Fall | Director of Hydrology and Sec-Gen. of Comite' Inter-Africain d'Etudes Hydrauliques, Dakar, Senegal. |
| E. Fawcett | Legal Assistant to IUCN Law Commission, London. |
| F. Guilmin | Legal Assistant to IUCN Law Commission, Brussels. |
| H. Hamza | Ingenieur Principal des Forets, Sous Secretariat d'Etat a l'Agriculture, Tunis. |
| J.P. Harroy | Professor of University of Brussels; Vice-Chair of IUCN Commission on National Parks. |
| L. Kassa Wolde Mariam | President of Haile Selassie University, Addis Ababa, Ethiopia (his deputy: Aklilu Lemma, Assistant Dean of Faculty of Science, Haile Selassie University, Addis Ababa. |
| G.A. Lufti | Attorney General of Sudan (his deputy: A.R. Musa, Deputy Attorney General of Sudan). |
| T. Monod | Professor of Sorbonne, Paris; Member of IUCN Executive Board. |
| L.P. Mwanza | Permanent Secretary, Min. of Land and Natural Resources, Lusaka, Zambia. |
| A.O. Odelola | Executive Secretary, Scientific, Technical and Research Com'n of OAU. |
| D.P.S. Wasawo | Deputy Principal, University of East Africa, Nairobi, Kenya; Member of IUCN Executive Board. |
| E.B. Worthington | Vice-President of IUCN, London. |
| M.J.B. Yonke | Director-General of Agriculture, Ministry of Agriculture, Yaounde, Cameroon. |
| Observers: | |
| CIC | C. Vander Elst, Vice-President of IUCN Executive Board, Chair of Tropical Game Commission, Conseil International de la Chasse (CIC). |
| FAO | J. Carroz, Legislation Branch |
| | R. G. Fontaine, Forestry and Forest Products Division. |
| UNESCO | S. Evteev, Natural Resources Research Division, Dept. for Advancement of Science. |

13 The Commission on Legislation gave high priority to work on the African Convention. IUCN had no funds for the project, however, and resources from international sources were equally scarce. Through queries of Chairman Burhenne to the government of Germany, the new Minister for Economic Cooperation, Walter Scheel, a hunter and conservationist who was later to become President of Germany, offered to fund the drafting work up to DM 50,000. He took the long-term view that

the project would benefit the whole of Africa as well as enhance the conservation image of the young German Republic.¹²

Because the letter from the OAU contained no detail as to the precise nature of the task entrusted to IUCN, several delegates from IUCN went to Addis Ababa in September 1965 to hold discussions at the OAU and ECA headquarters. From these discussions general guidelines were given by OAU and subsequently adopted by IUCN's Executive Board. 14

On December 15–17, 1965, IUCN's Ad Hoc Sub-committee was convened by the Secretary General of IUCN, Sir Hugh Elliott, at IUCN Headquarters in Morges, Switzerland. Its purpose was to further address content issues that had not been covered in the earlier September consultations with OAU and to consider a preliminary working draft prepared by IUCN. Expectations were high that the meeting could advance the drafting process sufficiently to have a preliminary version of a new Convention to the OAU by the end of 1966.¹³ The meeting, however, was far from harmonious as two different drafts were put forth, one by IUCN and another by FAO. Burhenne would recall: "IUCN's draft was considered more modern; FAO argued that IUCN's draft was unbalanced."¹⁴ This debate and tension between the two organizations would follow the project until the end. 15

Separate FAO draft

At the December 1965 meeting, FAO presented its own draft of a new African convention, focused more narrowly on the conservation of wildlife through controlled use. Even though several sub-committee members urged IUCN and FAO to merge their drafts into one document for the meeting, FAO stood firm in its intention to move its draft forward separately. At the meeting, J. Carroz, FAO's legal representative, explained: "At its first session in 1960 the FAO African Forestry Commission established a working party on wild life management whose terms of reference included: Examination of the London Convention and the amendments proposed at Bukavu ... and the preparation of a new African Convention on conservation and management of wildlife."¹⁵ 16

On the question of merger, J. Carroz stated "that FAO was given the mandate by the African member nations, that the draft was elaborated in consultation with the member nations and that it would have to be circulated among them. In his opinion the Secretariate [sic] of FAO thus is in no position to change the draft though FAO is, of course, ready to accept advice from IUCN so far as wildlife and its management are concerned."¹⁶ 17

IUCN Commission on Legislation Chairman Burhenne served as Chair for the 3-day meeting that December. In an attempt to get back on track with one draft, he reminded members "that the Secretary General of the OAU, Diallo Telli, and the Executive Secretary of the Economic Commission for Africa, Robert Gardiner, especially emphasized the confusion to which would lead two different drafts an overlapping in work, and the adoption and ratification of the draft would be delayed."¹⁷ He agreed that "the two drafts were different in so far as the draft presented by FAO covers wildlife and wildlife management only, whereas the draft prepared by IUCN comprises conservation of natural resources in general (including soil, 18

water, etc.)....that IUCN was charged to draft a broader convention dealing with all the points mentioned above.”¹⁸

19 FAO stood firmly to its draft, indicating it did not regard its mandate “as a subject of compromise.”¹⁹ With two separate drafts and no resolution in sight, the Chair reminded members that the “final decision...only [could] be taken by the Organization of African Unity.”²⁰ The OAU representative, A.O. Odelola, closed the meeting with a final appeal: “The problems in Africa are gigantic and the field of activities is very wide. So my Organization thinks that we should avoid this duplication and should take concerted action in any important matter in the interest of an accelerated development of Africa....I appeal to FAO and UNESCO that we should come together and get a presentable convention for the protection of nature and natural resources in Africa in the interest of this continent.”²¹

20 Toward this end, IUCN continued work on its broad-based draft, circulating texts to FAO for comment, both on specific language and areas where the two conventions might be technically linked. At the November 1966, IUCN Executive Board meeting, Commission Chairman Burhenne reported on progress:

“Turning to the important question of the African convention, OAU has asked that a draft be submitted as soon as possible. We have been working hard on this project and I am obliged for the comments of members of the Board which helped us in our work. We particularly wish to thank [Theodore] Monod [a distinguished French ecologist/scientist who made his career in Francophone Africa] and the members of the sub-committee for the hard work they have put in. Immediately on his return from the Far East, Jean-Paul Harroy spent some time in Bonn working on the re-drafting and I know he could ill afford to do so. I am, of course, grateful that he did. I hope that the new draft will soon be at the stage where it can be submitted to OAU for it to obtain the comments of its member states. I look forward with interest to the day when these comments begin to arrive.”²²

21 Through 1966, however, FAO continued independently with its wildlife draft, not responding to requests from IUCN for comments or ways to merge the two. Tensions were exacerbated when FAO through its regional office in Addis Ababa separately circulated its draft to member states of the OAU and began to put pressure on African leadership through technical assistance channels to accept the narrower approach.

22 UNESCO continued to support IUCN’s broader draft and work informally but without success to bring the two organizations together. FAO’s criticisms of IUCN’s draft went not only to its broader scope, but also to its “unbalanced” treatment of subject matter if, indeed, it needed to be so broad, with more attention going to parks and wildlife than to water, air and soils.²³ Less openly discussed, but underlying the tensions, was that fact that FAO was then the lead international agency advising on wildlife management in Africa, well-seasoned, well-resourced with strong relations in Africa since the region’s pre-independence, while IUCN was considered by FAO as new and inexperienced. Yet IUCN was challenging traditional approaches to wildlife management with new ideas about placing wildlife in the wider context of conservation.

As tensions continued to grow, IUCN leadership became increasingly concerned about the long-term risks this situation posed. No one wanted to jeopardize relations with FAO, a powerful international player. IUCN was young and weak, by comparison, still struggling to build resources and professional standing, especially among developing countries. It needed FAO as a partner, not an opponent. As a result, IUCN's work, led by the Law Commission, continued to proceed cautiously, hopeful that with time the two efforts could be brought together and the difficulties resolved to their mutual benefit. 23

At the same time, the OAU was growing impatient for an IUCN draft it could circulate to members. Finally, in early 1967, IUCN's Ad Hoc Sub-Committee decided it must proceed to finalize a preliminary draft. A memo from Burhenne and Harroy to the IUCN Executive Board explained: "it was decided that a final draft should be prepared which would take, as far as possible, into account...the remarks made at Morges by the FAO delegate about the draft and the preliminary draft prepared by FAO."²⁴ 24

An IUCN preliminary draft was transmitted to the OAU soon thereafter, and in April 1967, OAU's Scientific Council for Africa issued a Resolution recommending "to all Member States the acceptance of the most comprehensive Convention on the Conservation of Nature and Natural Resources drafted by the IUCN with the co-operation of FAO, UNESCO and others at the request of the OAU Secretariat on behalf of the African States."²⁵ 25

Concluding the Algiers Convention

The Organization of African Unity managed the review process from then on. Its headquarters in Addis Ababa circulated IUCN's preliminary draft to member states for comment. This caused some confusion as FAO continued to promote its wildlife draft to member states through its regional office in Addis Ababa. UNESCO endeavored to coordinate between the two organizations and to focus African leaders on the substantive issues of each. To settle the issue, OAU's Secretary General Diallo Telli finally issued a letter in fall 1967 announcing that the Organization would continue to process the IUCN draft. 26

Secretary General Telli's letter was tabled at the next IUCN Executive Board meeting in November 1967. Minutes of that meeting record the decision taken by IUCN: "This [letter] emphasized that only one general Convention on the Conservation, Preservation and Exploitation of Nature and all Natural Resources was required for Africa. It was decided to cooperate with FAO as far as possible to provide what was requested."²⁶ Soon thereafter, IUCN and UNESCO made one final approach to FAO to join in preparing a consolidated draft. At this point, FAO agreed and the three organizations met in Rome in January 1968, finally producing a consolidated draft (the Rome draft) which was submitted almost immediately to the OAU. By now, however, the earlier IUCN draft had been circulated and was far along in the review process pursuant to an OAU Council of Ministers' decision in October 1967 in Kinshasa creating a Committee of Five States to amend IUCN's preliminary draft in light of comments received from the Member States.²⁷ 27

28 In February 1968, the OAU Committee of Five States met, pursuant to its terms of reference from the Kinshasa decision, “to examine the draft convention which had been prepared by IUCN, in consultation with FAO and UNESCO and at the request of the OAU, and to consider any proposals for modification or amendment which had been communicated to the OAU by Member States”.²⁸ Unexpectedly, the Committee found before it two drafts – the IUCN draft which had been circulated to members and the Rome draft which IUCN, UNESCO, and FAO had finalized only weeks before. OAU Secretary General Telli opened the meeting with the statement that the Rome draft, “which had been received by the OAU Secretariat only ten days before the present Committee meeting, did not correspond with the procedure laid down by the Kinshasa resolution and could not be regarded as within the Committee’s terms of reference.”²⁹ Endorsing that opening statement, the Committee excluded the Rome draft from deliberations. This position was so strictly observed, according to the IUCN advisers present, that any suggestions made by IUCN during the course of the meeting for the Committee to accept certain parts of the Rome draft were immediately rejected.³⁰

29 By the end of that OAU Committee meeting, the entire text of IUCN’s draft had been reviewed and a new version together with its annex of species was ready for transmittal to the OAU Council of Ministers for final approval. The OAU Council of Ministers subsequently approved the IUCN draft but, because of the many changes that had been made in the text, decided to circulate a clean draft once more to Member States and set the deadline for comments at 30 June 1968. The Law Commission prepared a final text in collaboration with UNESCO.

30 At the 11th Ordinary Session of the Council of Ministers of the OAU meeting in Algiers in September 1968, the final text was approved. *The African Convention on the Conservation of Nature and Natural Resources* (Algiers Convention) was subsequently signed by the Heads of State and Government of the OAU at their 5th Ordinary Session. It entered into force on 16 June 1969, and soon a majority of the Member States of the Organization of African Unity were Parties. With its advanced conservation approach, the treaty contributed significantly with framework concepts for development of national legal regimes for nature and natural resource conservation in Africa.

31 The African Convention was considered the most ‘modern’ environmental treaty of the times, a position it retained through most of the 1970s even as new treaties were being concluded.³¹ It represented a milestone in international environmental law, moving beyond the traditional sector-by-sector approach to a broader context covering both conservation and use of natural resources.

32 Technically, it had two distinguishing features of special credit. First, it approached wildlife in the context of nature and natural resources conservation and thus provided a more integrated, comprehensive approach, not purely a sector by sector approach. Article II of the text defined the Convention’s aim: “to ensure the conservation, utilization and development of soil, water, floral and faunal resources in accordance with scientific principles and with due regard to the best interests of the people”.³² Second was its annex of species. For the first time, a conservation treaty gave a special degree of protection to species listed in an annex. Those in



A session of the OAU Summit

Class A of the Annex were granted total protection and could only be taken in exceptional circumstances and in the national interest or for scientific purposes, while those in Class B could only be taken pursuant to a special authorization procedure.³³ That annex, which had been developed through extensive and detailed scientific input from IUCN scientists (especially the Survival Species Commission), became a model for the Convention on International Trade in Endangered Species (CITES) to follow shortly thereafter (see next Chapter).

IUCN's Commission on Legislation gained both experience and credibility with this first treaty-making project. The effort was a priority during the second half of the decade, as noted in the Commission's report to the 1969 General Assembly: "The main work of the Commission has been connected with the African Convention for the Conservation of Nature and Natural Resources".³⁴ It also provided experience and precedent for negotiations when the Commission began treaty development and promotion of CITES. This included the introduction and use of annexes as a technique to give species different degrees of protection, as noted above. At the same time, the unfortunate tensions that developed between FAO and IUCN on philosophy and approach to the treaty continued to strain relations, especially between the respective legal units, for a number of years.

Revising with time

From the 1970s, the field of environmental law grew rapidly. The 1972 Stockholm Conference (the first UN Conference on the Human Environment, discussed more in Chapter 12) called for actions at all levels, setting out basic environmental principles and a Plan of Action for addressing major environmental problems world-

wide. The result was increased activity at all levels, by governments, international organizations, and nongovernmental groups, to better understand the problems and address the causes through new techniques and controls, many of which needed legal and administrative arrangements to be effective. The modern field of environmental law was born.

35 As the decade progressed, a number of international agreements were concluded in areas touched on by the African Convention. In particular, there were new treaties concluded to protect wetlands of international importance for waterfowl (Ramsar, 1971, see Chapter 14), to safeguard outstanding world sites (World Heritage Convention, 1972), to control trade in endangered species (CITES, 1973), and to protect migratory species (Convention on Migratory Species, 1979). New areas also began to be receive attention, for example, a regime for managing and protecting the sea was being heavily negotiated by the end of the decade. New policy concepts also began to be introduced, for example, the World Conservation Strategy linking conservation to development, and the World Charter for Nature. These instruments introduced new principles, mechanisms, obligations, and techniques for protecting the global environment.

36 In light of these developments, the Organization of African Unity decided the African Convention needed to be updated to incorporate the latest principles and needs. In 1980, OAU's Deputy Secretary General, Ambassador Djoudi, made a request to IUCN to prepare amendments to the African Convention to this effect.³⁵ IUCN's Law Commission initiated work, and in 1981 gave a progress report to the 15th IUCN General Assembly in Christchurch, New Zealand:

"The 1968 African Convention is still recognized as being the most 'modern' and far-reaching of the regional conservation agreements. However, it lacks coverage of certain aspects of pollution and marine conservation. As a result OAU, which had requested IUCN's assistance in elaborating the Convention, approached the Chairman of CEPLA for assistance in preparing necessary amendments.

"In the first half of 1981, initial work has been undertaken to prepare the drafting process. Plans are being made to provide a draft for the February 1982 OAU Foreign Ministers meeting, so that the amendments might proceed to the next OAU summit."³⁶

37 Financial support for the revisions came again from the Federal Republic of Germany. Again Law Commission members who were expert in African law as well as those who were specialists in nature conservation generally were involved in extensive consultations as part of the process. The Law Commission relied heavily on its former secretariat staff, reconstituted in 1970 as the IUCN Environmental Law Centre (see Chapter 9) to provide technical and liaison assistance with the draft revisions. Progress was slower than had been anticipated, however, and a final draft revision of the Convention was not ready until August 1983 when an experts meeting was convened in Bonn to review the draft and make final adjustments before submission to the OAU.

38 This accomplished, the draft was submitted and a special meeting of government experts was organized by the OAU in Addis Ababa on 20–23 November 1984,

with the draft as the focus of discussions.³⁷ Law Commission Chair Burhenne and Commission member Okidi attended that meeting. As the Commission subsequently reported to the IUCN Council: "...[The meeting] decided to adopt the draft submitted to it with minor additions and amendments and to instruct the OAU Secretariat to circulate it to member governments of the OAU with a view to its discussion and adoption at the June summit of the Organization."³⁸ To aid in this review phase, the Law Programme provided two additional documents (in English and French) to the OAU for transmittal to member states, "the first reproducing the



Charles Okidi, CEL member and later Vice Chair of CEL for Africa

original text of the Convention with the amendments printed alongside, and a second one with the amendments incorporated into the text."³⁹

In 1986, at the June summit, the OAU Council of Foreign Ministers adopted the amendments, "which would now be presented to the Summit of African Ministers in July".⁴⁰ However, this process was never completed. The Director-General's Report to IUCN's 17th General Assembly in San Jose, Costa Rica, in 1988, briefly noted: "Revisions that significantly broaden and modernize the 1968 text ... [were] adopted by the OAU Council of Ministers in 1986. Heads of State and governments have still to act on these changes."⁴¹ The Commission's more detailed report explained further: "Owing to the urgent and extreme nature of a number of other political and economic matters pressing upon the OAU Summit, consideration of the amendments will only take place at the forthcoming meeting."

Meanwhile, environmental law continued to evolve and grow at an unprecedented rate. The Law of the Sea Treaty was concluded in 1982 (see Chapter 21). The World Conservation Strategy was formally launched by IUCN with UNEP and World Wildlife Fund in 1980 (see Chapter 17). And the World Commission on Environment and Development delivered *Our Common Future* in 1987 (see Chapter 19). Then, in 1992, the United Nations Conference on Environment and Development in Rio de Janeiro (UNCED, also known as the Earth Summit) brought environmental issues together into one conceptual framework under the umbrella goal of sustainable development (see Box 3 below and Chapter 19). The concept aimed to integrate environment into development and was translated by the Conference into a detailed action plan called Agenda 21. The Rio Summit also marked the adoption of two new global treaties, Climate Change and Biodiversity, instruments directly responding to the growing need for international cooperation in environment.

41 Pollution concerns triggered actions as well in international law and policy (e.g., on the ozone layer, hazardous wastes, and dangerous chemicals). Other regional agreements developed, including the ASEAN Agreement for Conservation of Nature and Natural Resources in 1985 (see Chapter 15), and several regional seas agreements such as one for the Eastern African Region concluded in 1985.

42 Still, through the remainder of the 1980s, progress to revise the African Convention remained stalled. Finally, in January 1991, the government of Mali hosted an OAU environmental meeting in Bamako where the revised documents again were widely distributed. A further resolution was adopted calling for Member States who had not yet done so to send the OAU Secretariat their comments.⁴² However, the resolution seemed to have limited impact and another period of inaction ensued. Wolfgang Burhenne (now IUCN Legal Advisor), who had long-standing relationships in Africa since the 1960s, continued to work closely with the OAU to promote the revisions.

An updated Convention

43 In 1996, at the request of the Government of Burkina Faso, the OAU decided to reactivate the revision project and an IUCN report recorded: “The OAU ... contacted both UNEP and IUCN to consider ways and means to proceed Both institutions reacted positively, and agreed to provide jointly the technical assistance requested and prepare a draft to be considered by OAU Member States in general and the Contracting parties in particular....”⁴³

44 In July 2000, an inter-agency meeting was convened by OAU with UNEP and IUCN to frame a plan for moving forward. As the basis for those discussions, the Environmental Law Programme had prepared a concept note, providing historical background, rationale for a revision that cross-referenced a detailed annex of “Global and Regional Conventions of Relevance to Africa, Adopted since 1968”, and a preliminary list of issues to be considered prior to drafting. As decided at that meeting, a draft outline was prepared for a revised African Convention taking into account issues raised.

45 A second inter-agency meeting followed in November 2000 to review the outline and at this meeting it was agreed that ELP would take the lead in preparing a first draft, seeking advice within IUCN and also from outside experts.⁴⁴ Barely six months later, in July 2001, a draft revised Convention submitted by IUCN and UNEP experts was ready for review at a third inter-agency meeting convened by the OAU in Addis Ababa.⁴⁵ The draft revised Convention was accompanied by an “Introductory Note” prepared by the ELP briefly reviewing the background, rationale, and approach taken. The rationale laid out in that Note is instructive for other efforts to update environmental law instruments at regional and national levels [see Box 3]. A final text in English and French was circulated to governments soon after that meeting.

Box 3: Challenges for the revision process.⁴⁶

46

The Introductory Note to the draft revised African Convention submitted to the OAU (now the African Union) in July 2001 laid out the rationale in four main points:

1. The need to adapt the text to the current state of international environmental law by way of global agreements, regional agreements of relevance to Africa, and non-legally binding instruments with wide global acceptance. "A first task was to consider these developments and propose amendments which would appropriately a) modify existing provisions to adapt them to these developments and b) add provisions to reflect the present breadth and depth of international environmental law in the areas covered by, and akin to, the original Convention."
2. The need to adapt the text to current scientific, technical and policy concepts and approaches. Among these developments: UNCED, where "the international community agreed that sustainable development...integrating economic development, social development and environmental policies, is the overarching framework for improving the quality of life of people around the world ... [and now is] a major objective of international environmental law." In addition, science and techniques of conservation have evolved in such fields as protected areas and wildlife management, requiring more local community involvement and thus "the need to diversify the protected area concept."
3. The need to respect, and capitalize on, the regional character of the Convention. Among the main principles considered here: The significance of the Convention "as a regional tool must be recognized Thus the Convention in its revised form should remain the principal vehicle through which common rules are established in relation to issues selected as particularly relevant to continent-wide concerted treatment." In addition, most important in relation to harmonizing multilateral environmental agreements, synergy in implementing the increasing number of global environmental conventions "should start at national and regional levels. The role of regional fora in generating synergetic effects is now being increasingly underlined as a valuable method for achieving comprehensive, coordinated and concerted responses to global commitments."
4. The need for well functioning and appropriately supported institutional mechanisms. Institutional machinery is of paramount importance and a "pre-requisite to the dynamic process needed to address implementation goals, as well as new challenges...." Such machinery includes the provision of regular "consultations of the Parties, as well as a permanent Convention Secretariat, both supported by one or more technical bodies, ... and appropriate resources for its regular functioning."

During these negotiations, in another stream of activity, Member States of the OAU were forming a new intergovernmental organization with an expanded mission and structure to replace the OAU, with emphasis, among other things, on sustainable development as an objective and attention to socio-economic concerns of development. This new organization, the African Union, became operational in 2002, after Heads of State and Government of the Member States of the OAU adopted its Constitutive Act in 2000, which entered into force in 2001.⁴⁷ That Act specifically includes environmental protection as an area of common interest to the Parties and establishes a specialized technical committee on natural resources and environment. 47

With this reinforcing framework, the new African Union continued to move forward the revision process for the African Convention, convening a meeting of government experts at UNEP Headquarters in January 2002 for the purpose of deliberating on the new draft. At that meeting, a statement from the Director General of IUCN was presented urging action so that the African Convention is "overhauled and adapted to modern concepts and legal frameworks," and pledging "IUCN's continued technical assistance as may be required".⁴⁸ Government experts reviewed the text, article by article, and made numerous changes which resulted in a revised 48

draft. In July 2002, this latest revision was presented to the African Ministerial Conference on the Environment (AMCEN) meeting in Kampala. As reported by the ELP: “The meeting recommended that the process of revision be continued, and indicated the steps which it felt were needed to do so. The African Union Council [former OAU Council of Ministers], which met at the same time in Durban, endorsed the draft revision, and recommended its adoption by the heads of State & Governments of the African Union.”⁴⁹

49 The Revised African Convention on Conservation of Nature and Natural Resources was approved by the Assembly of Heads of State and Government of the African Union in Maputo on July 11, 2003.⁵⁰ The process toward revision had taken more than 20 years. The journal *Environmental Policy and Law* in its October 2003 issue, highlighted the new convention as the “Most Comprehensive Regional Treaty on Natural Resources and Sustainable Development.”⁵¹

50 Instrumental by no small measure was the dedicated technical support and encouragement provided by the Environmental Law Programme, the cooperation of UNEP in providing this support, and the commitment of individuals in the OAU/African Union. From the early days, CEL member Cyrille de Klemm kept promoting the update. Then, in addition to the leadership of Wolfgang Burhenne from the Law Commission and Françoise Burhenne-Guilmin from the Environmental Law Centre, CEL member Charles Okidi became heavily involved in the 1980s with the first revision attempt and then with the successful follow-up in 1990s–2000s, both as CEL Vice Chair for Africa until 2000 and later as UNEP Coordinator for the PADELIA project (see Chapter 24) handling UNEP input into the final revision process. Another CEL member, Donald Kaniaru, Head of UNEP’s Division of Environmental Policy Implementation, to whom Okidi reported, was in charge of the revision process from UNEP’s side. From the OAU/African Union, Professor C. A. Johnson and Foday Bojang were particularly supportive moving forward the process for the new Convention.

Modern Commitments

51 The new Convention connects with and reinforces commitments made by Member States in the modern African Union instruments. At the same time, it retains the outline and structure of the 1969 Convention and remains a regional agreement in its attention to environmental issues of importance to Africa, covering elements already in the 1969 Convention such as soil and water conservation and pollution control.

52 Many of its most modern elements are explained in a 2004 IUCN booklet published in the Environmental Policy and Law Series under the title *An Introduction to the African Convention on the Conservation of Nature and Natural Resources*. “[D]eveloped by Africans for Africa, [the new Convention] reveals a strong commitment to sustainable development, ... [and] is in tune with current international environmental thinking, principles and policies and the latest scientific and technological developments.”⁵² It incorporates the substantive principles of sustainable development as envisioned by Agenda 21 as well as the procedural rights to infor-



Briefing of diplomats accredited to the African Union on the Maputo Convention, Addis Ababa, May 2005

mation, public participation and access to justice needed to empower people and strengthen institutions toward sustainable development.⁵³

With a primary focus still on the conservation of nature and natural resources (as reflected in its preserved title), the new Convention gives emphasis throughout to the need to integrate environmental protection and conservation with socio-economic development policies and programmes. For instance, while incorporating commitments under the Convention on Biological Diversity for in-situ conservation and recognizing IUCN's six protected areas management categories,⁵⁴ it promotes "creation of conservation areas by local communities that are primarily managed for the conservation and sustainable use of natural resources."⁵⁵ A further major innovation with treatment of conservation areas, emphasized in the 2004 IUCN booklet, "is the requirement that Parties take into account the work of competent international organizations [which could include non-governmental as well as inter-governmental] in the identification of critically important areas," thus reinforcing the requirement "to utilize scientific expertise in the implementation of the Convention."⁵⁶

The Convention enters into force once 15 States have ratified it. At IUCN's Third World Conservation Congress in November 2004, members adopted a resolution calling for all African States who had not yet done so "to sign and ratify the revised African Convention in order to bring it into force as early as possible" and requesting IUCN's Director General to "transmit IUCN's readiness to answer the call of the African Union to collaborate...to ensure the effective implementation of the Convention."⁵⁷

The IUCN booklet referenced above, *An Introduction to the African Convention on the Conservation of Nature and Natural Resources*, is particularly useful to promote ratification of the Convention. Apart from containing the text, it provides insightful discussion on the conceptual foundation for the substantive provisions of the new treaty

and a running commentary on the specific innovative and sustaining concepts incorporated in the various Convention articles. Importantly, it also contains a helpful section on the origins and history of the Convention and progression of its substantive development from the 1900 London Convention to the final adoption in Maputo in 2003.

Notes

- 1 See *An Introduction to the African Convention on the Conservation of Nature and Natural Resources* (IUCN Environmental Policy and Law Paper No. 56), p. 3. (IUCN, 2004).
- 2 Article 1, para. 3. Convention Relative to the Preservation of Fauna and Flora in Their Natural State. See ECOLEX, Treaty data base, Treaty ID Number 1834, at www.ecolex.org; text also in League of Nations Treaty Series (1936) 172, 241–272.
- 3 Resolution No. 9 of the Third International Conference for the Protection of Fauna and Flora in Africa, October 1953, in *IUPN Proceedings and Papers of the Fourth General Assembly, Copenhagen, Denmark, 1954* (IUCN, Brussels, Belgium, 1955), p. 42.
- 4 Resolution 1 of “Resolutions Adopted by the General Assembly” in *IUCN Proceedings of the Seventh General Assembly, Warsaw, June 1960* (IUCN, Brussels, Belgium, 1960), p. 151.
- 5 *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 47.
- 6 *IUCN Yearbook 1973* (IUCN, Morges, Switzerland, 1974), p. 33.
- 7 Id. at 35.
- 8 The Arusha Conservation Conference is available at <http://www.fao.org/docrep/x5401e/x5401e06.html>>).
- 9 “IUCN Executive Board Draft Minutes of the Meetings of 27–28 June 1964” (IUCN archives), p. 6.
- 10 Resolution 2(11), Decisions of the UNESCO-sponsored Conference in Lagos, Nigeria (1964) (ELP archive files on African Convention).
- 11 Source for this Box: Commission on Legislation, “Ad hoc sub-committee on draft African Convention on conservation of natural resources, Meeting in Morges on 15–17 December 1965, Summary of the General Discussions” (IUCN archives: African Convention), p. 1.
- 12 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany) (draft transcript, p. 13).
- 13 “Report of the Commission on Legislation” in *IUCN Proceedings of the Ninth General Assembly, Lucerne, Switzerland, July 1966* (IUCN, Morges, Switzerland, 1967), Appendix E, p. 156.
- 14 Author interview with Wolfgang Burhenne, June 21, 2004 (Bonn, Germany).
- 15 Commission on Legislation, “Ad hoc sub-committee on draft African Convention on conservation [of] natural resources – Meeting in Morges on 15–17 December 1965, Summary of Discussions” (IUCN-ELC Archives), p. 1.
- 16 Commission on Legislation, “Ad hoc sub-committee on draft African Convention on conservation [of] natural resources – Meeting in Morges on 15–17 December 1965, Summary of Discussions” (IUCN-ELC Archives), p. 3.
- 17 See Commission on Legislation, “Ad hoc sub-committee on draft African Convention on conservation [of] natural resources – Meeting in Morges on 15–17 December 1965, Summary of Discussions” (IUCN-ELC Archives), p. 4.
- 18 Id.
- 19 Id.
- 20 Id. at 3.
- 21 Id. at 6.
- 22 Commission on Legislation, “Report for the Executive Board”, p. 2, attached “Minutes of Executive Board Meetings held at Morges on 5 and 6 November, 1966” (IUCN archives).
- 23 Author interview with Wolfgang Burhenne, June 21, 2004 (Bonn, Germany) (draft transcript, p. 13).
- 24 “Memo to IUCN Board members from J.P. Harroy and W.E. Burhenne” (undated), p. 5, in “Working Documents: Volume – African Convention Drafts, 1967” (IUCN-ELC Archives).

- 25 The Resolution is quoted in Id. at 6.
- 26 According to minutes of that meeting, the letter was tabled as Paper 36. "IUCN Executive Board Minutes for Meetings held at Morges on 1 and 2 November, 1967" (IUCN archives), p. 22.
- 27 That decision had been made at the 9th Ordinary Session of the OAU Council of Ministers meeting in Kinshasa, and the five states designated to be on the Committee were Chad, Ethiopia, Libya, Tanzania, and Uganda.
- 28 K. Curry-Lindahl and W. Burhenne, "Report of the IUCN delegation to a Committee Meeting of the OAU, Addis Ababa, 14–17 February 1968", p. 1. (Ref: P/1/1, in IUCN ELC archives of African Convention Drafts).
- 29 Id.
- 30 Id. at 2.
- 31 See, "Summary" and "Convention text" available at <<http://www.unep.ch/seas/main/legal/lafr.html>>.
- 32 *African Convention on the Conservation of Nature and Natural Resources* Art. II (September 15, 1968), 1001 U.N.T.S. 3.
- 33 See summary of that convention in ECOLEX (the FAO/IUCN/UNEP environmental law data base), treaties section, at <<http://www.ecolex.org>>.
- 34 See discussion in "The Commission on Legislation Three Year's Report," in *IUCN Proceedings and Summary of Business of the Tenth General Assembly, Volume II, New Delhi, 24 November – 1 December 1969* (IUCN, Morges, Switzerland, 1970), p. 108.
- 35 Commission on Environmental Policy, Law and Administration, "Report to the Ninth Meeting of the IUCN Council (8–10 June 1981)", p. 5, attached to "Minutes of the Ninth Meeting of the Council of IUCN, 8–10 June 1981, IUCN, Gland, Switzerland" (IUCN archives).
- 36 See Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 10, Attachment to General Assembly Paper GA/15/81/6), *IUCN Proceedings of the 15th General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982).
- 37 See Commission on Environmental Policy, Law and Administration, "Report to the 13th Meeting of the IUCN Council 8–11 November 1983", p. 4. Also referenced as Annex to Council Paper UC.13/83/17.
- 38 Commission on Environmental Policy, Law and Administration, "Report to the 18th Meeting of the IUCN Council 15–16 May, 1985", p. 2. Also referenced as Attachment to Annex 4 to Council Paper UC.18/85/1.
- 39 Id.
- 40 "Report of the Commission on Environmental Policy, Law and Administration," p. 4, attached to "Draft Minutes of 20th Session of IUCN Council, Chateau Laurier and Montebello Hotels, Ottawa, 7 and 8 June 1986" (IUCN archives).
- 41 "Director General's Overview 1985–1987" in *Proceedings of IUCN 17th General Assembly, San Jose, Costa Rica, 30 January to 11 February 1988* (IUCN, Gland, Switzerland, 1988), p. 17.
- 42 See Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds" (IUCN-ELC, Bonn), p. 10.
- 43 See Burhenne-Guilmin, F. and Okidi, C., "African Convention on the Conservation of Nature and Natural Resources – A Concept Note on the Proposed Revision" (IUCN, Bonn, 2000), p. 3.
- 44 "Regional" News in *IUCN Environmental Law Programme Newsletter September – December 2000* (IUCN-ELC, Bonn), p. 29.
- 45 "Regional" in *IUCN Environmental Law Programme Newsletter No. 1/2001* (IUCN-ELC, Bonn), p. 23.
- 46 IUCN Environmental Law Programme, "African Convention on the Conservation of Nature and Natural Resources: Introductory Note on the Proposed Draft Revision" (undated) pp. 4–6 (available from Environmental Law Centre archives).
- 47 See the official web site for the African Union for its mission, membership, and current activities, at: www.africa-union.org.
- 48 Statement by IUCN on the occasion of OAU meeting of experts for revision of the African Convention, UNEP Nairobi, 14 January 2002, Read by Eldad Tukahirwa, IUCN Regional Of-

- 49 fice for Eastern Africa's Regional Representative, on behalf of the Director General, downloaded
 50 from IUCN web site, http://www.iucn.org/info_and_news/press/oaustatement.html (printed 8/
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- 51 "IUCN Environmental Law Programme 2002: The Year in Review" (IUCN-ELC, 2003), p. 5.
 52 See IUCN Environmental Law Programme web site at: www.iucn.org/themes/law, category:
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- 53 "Most Comprehensive Regional Treaty on Natural Resources and Sustainable Development"
 54 in 33 *Environmental Policy and Law* 5 at 231 (Oct. 2003).
- 55 *An Introduction to the African Convention on the Conservation of Nature and Natural Re-*
 sources (IUCN Environmental Policy and Law Paper No. 56), p. 2–3, (IUCN, 2004).
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- 57 See *Guidelines for Protected Areas Management Categories* (IUCN, 1994).
- 58 *An Introduction to the African Convention on the Conservation of Nature and Natural Re-*
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- 59 *An Introduction to the African Convention on the Conservation of Nature and Natural Re-*
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- 60 Resolution 3.004, *Third World Conservation Congress, Bangkok, Thailand, November 2004*
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* The web site version quoted no longer being on line, the sections referred to above have been
 made available at: <http://weavingaweb/>.

Chapter 6: The Making of CITES

When European and American conservationists began to collaborate on wildlife conservation in the first half of the 20th century, as discussed in Chapter 1, they understood a main threat to wildlife survival was unsustainable hunting. Early protection measures focused on improving hunting controls and setting up parks and other protected areas to safeguard wildlife habitat from the expanding human populations. By mid-century, however, international trade in wildlife and wildlife products was being recognized as a new threat, especially to those species in high demand as trophies or for other specialty products.

Early emphasis on country action

In 1952, the Third General Assembly of the new Union, this time meeting in Caracas, Venezuela, had before it the issue of wildlife trade control. A draft resolution “prepared by the former President of the International Union of Directors of Zoological Gardens” was introduced limiting the importation of animals belonging to species protected in countries where they live in a wild state.¹ Submitted by R. Sunier, the draft was discussed and, as recorded in the Assembly proceedings, the following action was taken: “Several delegates ... considered it necessary, in the event the Assembly wished to make use of this text, to have it submitted for the critical study of a limited Committee. It was decided to establish this Committee as follows: M.C. Bloemers (Netherlands), J. Delacour (USA), C. Torres de la Llose (Uruguay), A. Villiers (French West Africa).”²

This Committee met and produced a report to the Assembly which was read by A. Villiers and approved, with the following Resolution being adopted:

“It is desirable that in all countries the importation of animals belonging to species which are protected in their natural habitat should be prohibited, unless it has been definitely established that the exportation of such animals from their country of origin has been carried out under completely legal conditions. In those countries where such legislation is already enacted, it is highly desirable that it should be rigorously enforced.”³

Urging country-level action – in both legislation and enforcement – continued to be the Union’s approach into the 1960s. At the Seventh IUCN General Assembly in Warsaw in 1960 another resolution for national action was adopted. Resolution 14 reads:

“The Seventh General Assembly

- *believing* that a major threat to the existence of some rare animals is their illegal exportation from the country of origin, followed by their legal importation into other countries;
- *warmly approves* the action of those countries which have restricted the importation of such animals;
- *now resolves* that the International Union for Conservation of Nature and Natural Resources should urge all governments who do not yet restrict the importation of rare animals in harmony with the export laws of the

countries of origin, to do so now and thereby support the efforts of those countries to preserve animals in danger of extermination.”⁴

- 5 Relatively uncontrolled trade in endangered wildlife continued, however, as customers in importing nations sought and could pay high prices for fur products, trophy skins, ivory and other wildlife products, while people in exporting countries could use the revenue. As reported by Martin Holdgate in *The Green Web*: “At the Arusha Conference in September [1961] many government officials in charge of wildlife in African countries complained that their efforts at controlling poaching were being undermined by the high prices on offer.”⁵

Building support for an international regime

- 6 Finally, during the Eighth General Assembly in Nairobi in 1963, IUCN began to shift its position toward international action. By then, the new IUCN Committee on Legislation had begun to collect national legislation, as reported to the Assembly: “At the suggestion of IUCN’s Executive Board a circular was addressed to all Governments in the Spring of 1963, requesting information concerning the regulation of import, export and transit of endangered species of Fauna and Flora.”⁶ (In a detailed briefing prior to the Assembly, IUCN’s Executive Board had learned from Committee Chairman Burhenne that in all some “125 governments had already been approached”⁷) Nevertheless, concerns persisted about the effectiveness of this country-by-country approach. The Commission reported to the Assembly: “Experience has shown that the strongest measures will prove ineffective, unless ALL Governments come to an agreement.”⁸

- 7 The time was ripe for a proposal supporting an international convention and the Committee on Legislation, meeting for the first time during the Eighth Assembly, prepared a draft resolution to that effect. That discussion was recorded this way:

“The Committee discussed at considerable length the problems concerning better protection of rare species. It was the view of most who were present that an effective convention on the protection of rare species was both possible and desirable. The draft of a resolution was submitted to the Resolution Committee, in support of such a convention.”⁹

- 8 Soon thereafter, the Resolution Committee cleared the draft and Committee Chairman Burhenne presented it to the full Assembly. Fully supported by the United States delegation headed by Stewart Udall, then Secretary of the Interior, Resolution 5, “Resolution on illegal traffic in wildlife species”, was adopted as follows:

“Whereas many rare and vanishing species of wildlife are threatened with early extinction through illegal export from their native land and whereas such illegal export would be much less frequent if import into other countries were prohibited; . . . the 8th General Assembly of IUCN meeting at Nairobi in 1963 recommends that the practical and political problems involved in illegal export be studied and that an international convention on regulation of export, transit and import of rare or threatened wildlife species or their skins and trophies be drafted and submitted for the approval of governments by the appro-

priate international organisations possibly on the occasion of a world-wide conference convened for that purpose.”¹⁰

At IUCN’s first Executive Board meeting following the Nairobi General Assembly, Commission Chairman Burhenne raised the matter of Resolution 5, noting that proceedings of a recent ‘Zoos and Conservation’ Symposium would be relevant and that UK endangered species legislation being prepared with IUCN assistance could be a useful “model for similar legislation, at least within the area of jurisdiction of the Council of Europe, or possibly to stimulate interest in the proposal for a global convention.”¹¹ He stressed, however, that a global convention “would be the preferable objective, since most endangered species come from outside Europe.”¹² The meeting deliberated on next steps, with Burhenne advising that a global convention “would probably need a special conference of conservationists and legislators at a high governmental level before progress could be made,” but that such a Conference might be difficult to organize for two or three years and “meanwhile it might be more practicable to concentrate attention on the regulation of imports into the main ‘consuming’ countries of Europe and North America.”¹³

The Commission on Legislation continued to collect national legislation on wildlife trade but made little progress toward a global convention. Its report to the Ninth IUCN General Assembly in Lucerne, Switzerland, in 1966, noted that “collection of material for a Convention on the Import, Export, and Transit of Rare and Vanishing Animals and Plants, pursuant on [sic] Resolution 5 of the 8th General Assembly of IUCN in Nairobi, has been concluded, and initial work has been done [on a draft outline] in collaboration with the [Survival Service Commission] committee, but due to pressure of work is not yet completed.”¹⁴

Delays with work on the draft convention were caused, in part, by ever-present resource constraints, but there were substantive stumbling blocks as well. Diverse views existed among major wildlife conservation groups as to a common policy framework. The IUCN Secretary General’s report to the Ninth Assembly illustrated the point: “[Drafting an international convention] was in fact the subject matter of one session of the IUCN-sponsored ‘Zoos and Conservation’ Symposium (June 1964), but regrettably nothing has yet come of its principal recommendation for ‘an alliance of major Zoos, research institutions and dealers, able to formulate a common policy on all matters pertaining to the trade in wild animals and strong enough to enforce widespread compliance with it’.”¹⁵

Without a draft convention to review, the 1966 Ninth General Assembly returned to its emphasis on the need for national action. Urging governments to control illegal wildlife traffic within their borders, members adopted Resolution 24, entitled “Commercial Exploitation of Wildlife,” which read:

“*Recalling* Resolution No. 5 of the 8th General Assembly on illegal traffic in wild life species; *having noted* the increasing traffic in certain animals and animal products as curios, such as stuffed turtles and alligators, and the skins of spotted cats, and *convinced* that several kinds of commercial exploitation of various wild plants and animals (including reptiles, birds, fishes and insects) are exercising severe pressure upon threatened species, the 9th General As-

sembly of IUCN meeting in Lucerne in June 1966 *urges* Governments to accept the principle that any commercial exploitation of such wild resources should always be subject to the overriding needs of conservation and *further requests* Governments to receive from time to time from the Executive Board of IUCN and to consider sympathetically specific representations for action in conformity with this principle, such as the control of imports or internal regulation of the traffic in specimens killed or taken in the wild.”¹⁶

14 The mandate of Resolution 5 provided a basis for continuing efforts by the Commission on Legislation, resources and time permitting, to construct a text for a draft convention. Françoise Burhenne-Guilmin, joined by Cyrille de Klemm of France and Adele ‘Nicky’ Wilson of the United States, became the small ad hoc drafting team for the convention. Other Commission members assisted with information and review. IUCN had no funds to support this work. As one of its early contributions to international treaty development, the Karl Schmitz Scholl Fund (KSSF) for Legal Protection of the Environment (the first of the Elizabeth Haub foundations, see Chapter 11) provided external support for the legal drafting and review process.¹⁷

15 A first draft entitled “Convention on the Import, Export and Transit of Certain Species” was ready for presentation by Commission Chairman Burhenne to the April 1967 IUCN Executive Board. In his accompanying remarks, Burhenne again “pointed out that what was required was uniform world-wide legislation and that if possible this Convention should be ratified at the coming [1968 UNESCO] Biosphere Conference or at a meeting closely related thereto.”¹⁸ The President of the Board “agreed that this should be the aim, and the Board approved the Convention provided it received Survival Service Commission approval.”

16 Then began the lengthy process of internal IUCN review and revision aiming for a working draft that could be more widely distributed outside the Union through diplomatic channels. The Species Survival Commission was responsible for identifying which species were or could be affected by trade and how they should be classified in the Convention, originally using two appendices: Appendix I for species in danger of extinction and prohibited from trade; Appendix II for species whose survival was threatened by trade and therefore needed trade controls. (A later addition, Appendix III, accommodated country-specific lists for other species with export restrictions.) Apart from constructing the substantive provisions, developing these appendices posed special challenges because views differed among interest groups and countries about where certain species should be placed, if at all, in the appendices to bring them under international trade control.

17 The IUCN Executive Board was responsible for clearing each draft. Finally, in September 1967 a first formal draft was ready for external review and sent through diplomatic channels to 90 countries. The process of receiving comments from countries, international agencies, and organizations, processing and assessing them, and making appropriate revisions in response took almost two years. It was not until August 1969 that a second formal draft was ready for circulation and sent through diplomatic channels to countries. Once more, a period of time was needed to receive and process the extensive comments from this second round of review, after

which the text was redrafted again. The third formal draft was circulated in March 1971. This time some 120 countries were part of the diplomatic mailing list. Drafting work on the English and French texts continued to be funded through Elizabeth Haub (KSSF) funds. Françoise Burhenne-Guilmin (now Legal Officer of IUCN's new Environmental Law Centre) continued to handle the drafting process, joined at Headquarters by Frank Nicholls, IUCN Deputy Director General.¹⁹

Toward a diplomatic conference

By fall 1971, the Swiss Government had formally agreed to act as depositary for a convention and IUCN was prepared to provide the Secretariat.²⁰ In September 1971, Frank Nicholls on behalf of IUCN reported to a United Nations Working Group reviewing the status of the draft convention: "While twelve countries were prepared to sign the convention, several others had called for a formal session to be held on the subject. Such a session, which would probably take place, ... would bring together technical and legal experts concerned with wildlife."²¹ It was becoming evident that a growing number of countries felt an international diplomatic conference would be necessary to conclude the treaty. The next step was to find a host and funding for such a conference.

Parallel to this international effort, in the United States, national legislation protecting endangered species was undergoing a major review by the U.S. Congress with a view to its updating. Beginning in 1965 and continuing over a span of four years, the U.S. Congress conducted hearings to collect information and expert advice about ways to strengthen the national wildlife law, popularly known as the Lacey Act after one of the original sponsors. In the course of those hearings in the U.S. House of Representatives and the U.S. Senate, IUCN representatives, including Commission on Legislation Chairman Burhenne and other Commission members, were invited to give testimony and continued to volunteer their time and effort to promote the convention through that process. At different points in those Hearings, draft versions of IUCN's proposed Convention text were admitted into the record. [See Box 1]

Box 1: 1960s U.S. Lacey Act Hearings and CITES

U.S. Congressman John Dingell from Michigan, Chairman of the House Subcommittee on Fisheries and Wildlife Conservation, first called hearings in 1965 to strengthen domestic endangered species legislation (the "Lacey Act", originally enacted in 1900) to "give the Secretary of Interior authority to initiate and carry out a comprehensive program for the protection, conservation, and restoration of species threatened with extinction."²² Domestic provisions were strengthened as a result,²³ but international aspects still needed attention. In October 1967, Congressman Dingell called a second series of hearings on the Lacey Act to authorize the Secretary of the Interior to cooperate internationally in efforts to protect endangered species. U.S. Depart-



John D. Dingell and Vice President Al Gore

ment of the Interior's Fish and Wildlife and Parks Services presented testimony using IUCN data on deficiencies in the current U.S. system of wildlife trade controls.²⁴

In addition, those hearings included a submission from IUCN's Commission on Legislation Chairman Burhenne who was invited by Congressman Dingell's office to participate during a visit to Washington, DC in early 1967. Burhenne's submission, dated May 31, 1967, spoke in favor of U.S. legislation as "the best that any one nation can do alone", but explained the need for international action to deal with trade, and the status of IUCN's work on a draft convention: "The fact that it has not yet been decided on what occasion the convention can be signed and, in addition, the fact that some time will be required for ratification, shows that such a convention cannot come into being as soon as we all feel it necessary."²⁵ The first draft of the convention then being circulated by IUCN to member governments was attached.

The Fish and Wildlife and Parks Services testimony endorsed IUCN's work: "The IUCN Commission on Legislation is currently preparing a draft of a proposed convention to obtain an international treaty on the import, export, and transit of endangered species. Our Department shares the international concern for preservation of threatened species, and supports the efforts of the IUCN to obtain an international treaty on the import, export, and transit of such species."²⁶

Coming late in the year, these hearings produced no Congressional action and a third set was scheduled for early 1969, again by Congressman Dingell. Russell Train, then Under Secretary, Department of the Interior and active in IUCN, led with his statement emphasizing once more the need to support the draft convention for trade and conservation reasons: "The commission on legislation of the International Union for the Protection [sic] of Nature and Natural Resources has distributed for review a draft of a proposed convention to obtain an international treaty on the import, export, and transit of endangered species. The early consummation of this treaty would eliminate an outstanding concern of the exotic fur and leather industries of this country that prohibitions on importations to this country would merely serve to divert the trade to other countries that do not impose such restrictions. Our Department shares this concern, as well as the international concern for preservation of threatened species. We are a member of the International Union and will support and participate in its programs."²⁷

Dr. Lee Talbot, then Field Representative for the Smithsonian Institution (an IUCN member) and later IUCN Director-General (1980–82), also lent his support, introducing the latest version of IUCN's draft convention into the record, with these remarks: "The next step with a convention such as this will be placing it into final form and, seeking appropriate ratification, possibly through the mechanism of an international conference."²⁸

Finally, at these hearings, U.S. commercial traders also submitted testimony in support of Interior's and IUCN's position for international action. The Tanners' Council of America, the National Association of Importers and Exporters of Hides and Skins, and the Amalgamated Meat Cutters & Butchers Workmen of the AFL-CIO (also representing the fur and leather industry), among others, presented testimony supporting U.S. sponsorship of a diplomatic conference toward a convention and proposing an amendment to the draft legislation that would instruct "the Secretary of the Interior, working through the Secretary of State, to seek an international meeting of governments in 1970 on the problems of wildlife and fish and this meeting should specifically include the signing of a convention concerning endangered species."²⁹ In the end, this unique coalition of interests (traders and conservationists) won the day and legislative supportive of a treaty was passed by the Congress soon thereafter.

U.S. provides leadership

21

In December 1969, the U.S. Congress passed amendments to the Lacey Act endorsing an international convention to control wildlife trade. This success was largely due to a new coalition of interests – the wildlife trade industries and conservationists – formed because of the mutual interest in the need for international standards, the former to keep a level playing field for international commerce and the latter to ensure wildlife protection in international trade. Both groups stressed the need for U.S. Congress support for an international convention toward that end.

Burhenne, then Chairman of the Commission on Legislation, offered these reflections on those unique developments:

“As I heard the claims of the U.S. traders at these hearings – that a unilateral U.S. ban on imports would be a restraint of trade and put U.S. merchants at a disadvantage, I said that I thought the trade people were right. Some of the U.S. conservation organizations were very angry, saying ‘you are confusing the hearings; we are looking at the Lacey Act – we need to fix the Lacey Act.’ But I supported the trade people. I said that control must be international and I mentioned Resolution 5 from the Nairobi General Assembly of IUCN in 1963, that we had already drafted something, and that the international trade aspects were very important. So, with the trade people we managed to add an international provision that in 2 or 3 years the U.S. government would present something on the international issue.”³⁰

The final legislative language passed by the U.S. Congress specified the following: “To assure the worldwide conservation of endangered species and to prevent competitive harm to affected United States industries, the Secretary [of the Interior], through the Secretary of State, shall seek the convening of an international ministerial meeting on fish and wildlife prior to June 30, 1971, and included in the business of that meeting shall be the signing of a binding international convention on the conservation of endangered species.”³¹ Importantly, the amendment included funding for the conference: “There are authorized to be appropriated such sums, not to exceed \$200,000, as may be necessary to carry out the provisions of subsection (b) of this section, such sums to remain available until expended.”³² 22

In view of this U.S. legislative action, a diplomatic conference seemed assured. As time passed, however, the U.S. did not schedule the meeting. By March 1971, when IUCN began circulating the third and newly revised convention draft, a specific date for the conference still had not been set. It was evident that the June 1971 deadline specified in the legislation for the conference was no longer feasible. 23

In spring 1971, Commission Chairman Burhenne began inquiries on the status of plans for the diplomatic conference. He recalls: “I was in Washington and I had an opportunity to see [Secretary of State] Dean Rusk in the State Department; soon afterwards, I went to [U.S. Congressman] John Dingell’s office and explained that I had seen Dean Rusk but had not received an explanation as to why an international conference had not yet been scheduled. Dingell called Rusk while I was sitting there and Rusk explained that he could not call an international conference until the United Nations General Assembly decided which China [The People’s Republic of China or the Republic of China on Taiwan] would be the official representative to the United Nations, that for the time being it was not possible to send out two invitations and neither China was then recognized.”³³ 24

In the interim, IUCN’s draft continued to advance. Several African countries began to feel the review process on the draft was becoming unresponsive to their points of view. Mainly, those states, led by Kenya, had historically used a quota system which they wanted to continue. Most other states did not want to retain the old quota system because of historic control problems, but wanted to introduce a 25

more free-market concept into CITES.³⁴ By 1971, due to continued dissatisfaction, the African states presented a separate draft that became known as the Kenya Draft. The United States began to be concerned about orchestrating a successful diplomatic conference on the official IUCN draft in light of this new draft.

Concluding a Convention

26 In October 1971, the China issue was decided by the United Nations with the People's Republic of China being recognized as the representative to the United Nations.³⁵ The US promptly scheduled the international diplomatic conference for February 1973 in Washington, D.C., and invited member nations of the United Nations.

27 The IUCN Law Centre, with continued general support from KSSF, began to assemble materials for the conference including preparation of an initial data base of species protected under national legislation (discussed more below and in Chapter 10). This was provided to the Survival Service Commission which worked with the scientific names and prepared the lists of species for the convention appendices. As technical advisers to parliamentarians attending the UN Conference on the Human Environment in Stockholm in 1972 (see Chapter 12), Law Commission members also promoted the idea of an international convention to several of the delegations and in the end this was one of the recommendations of Stockholm. Recommendation 99 of the resulting Action Plan from the Stockholm Conference provided: "It is recommended that a plenipotentiary conference be convened as soon as possible, under appropriate governmental or intergovernmental auspices, to prepare



1973 CITES Diplomatic Conference in Washington, D.C. Peter Scott (in front), Françoise Burhenne-Guilmin and Ray Dasmann (second row). In the back: Rick Parsons

and adopt a convention on export, import and transit of certain species of wild animals and plants.”³⁶

In February 1973, the United States convened its diplomatic conference in Washington, D.C. Eighty-eight nations were represented. The IUCN delegation included Frank Nicholls, IUCN Deputy Director General, Françoise Burhenne-Guilmin, Commission on Legislation, and others who had worked as part of the secretariat for the Conference. Law Commission Chair Burhenne came as part of the German delegation to reinforce the support for IUCN’s draft through as many avenues as possible. 28

In view of the intervening Kenya draft, the United States presented a discussion document in three columns showing the IUCN draft, the Kenya draft and a US compromise draft. Delegates chose the compromise draft for negotiation but the adopted text closely paralleled the IUCN draft. The addition of Appendix III, where countries could unilaterally list other species whose export they wanted to restrict and have it effective by notifying the Secretariat, helped ease concerns about the IUCN draft among those supporting the Kenya position. 29

The Conference created a marine Working Group, with Burhenne as Chair, to address issues related to introduction of species from the sea. Some proposals were offered which, Burhenne recalls, could not be accepted because they would have prejudiced Law of the Sea negotiations.³⁷ In the end, a marine species provision was added and controls were placed on introduction from the sea of specimens of species listed in Appendix I, requiring prior authorization from the State introducing the specimen and limiting its use to non-commercial purposes.³⁸ 30

After three weeks of meetings in the international diplomatic conference, the States participating in the conference concluded a convention entitled the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (‘CITES’ for short). It was signed in Washington in September 1973 (also becoming known as the ‘Washington Convention’) and came into force on July 1, 1975, once ten countries had ratified. [See Box 2] 31

Box 2: Teamwork for CITES

At the Washington, D.C. diplomatic conference, Wolfgang Burhenne, Chairman of IUCN’s Commission on Legislation, was prominent as a spokesperson promoting and helping coordinate different interest groups with development of the final text of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). He recalled for this History the extensive help and encouragement during the U.S. Lacey Act hearings from American leaders such as Stewart Udall, Russell Train, Hal Coolidge (then President of the American Association of Wildlife and later President of IUCN), and Congressman Dingell. Stewart Udall, then Secretary of the Interior, had given a keynote speech at the 1963 IUCN General Assembly in Nairobi where the first resolution for an international convention was adopted. One of his Department’s Fish and Wildlife and Park Service’s senior staff, Nicky Wilson, an active early member of the Commission on Legislation, helped organize the Department’s testimony and associated guest inputs, and served as the local host for Law Commission members. Other US members of the Commission on Legislation also helped promote IUCN’s convention work, including Homer Angelo, Law Professor from California, Commission Vice Chair in 1969, and one of the founders of the International Council of Environmental Law (see Chapter 11). 32

There were many challenges and, in some cases, unanticipated reactions to the widely-circulated IUCN drafts. Burhenne recalls: "Scientists and politicians continued to debate and revise the species lists that would be attached to the Convention indicating what level of trade controls would apply. Many organizations were excited about the appendices and not the concepts in the convention, especially those devoted to preservation of a particular type of animal. Some conservation groups were concerned about habitat destruction as the major threat, not trade, and did



1973 Diplomatic Conference in Washington, D.C. Wolfgang Burhenne behind the representatives of the German Democratic Republic (left: A Florin and H.K.O. Stubbe) and of the Federal Republic of Germany (front right: L. Heitmüller). Rear center: Ursula Dalstrup (FRG)

not see trade as an international problem. Others felt all trade in wildlife should be prohibited. Customs agencies objected to the inclusion of 'transit' because this meant goods passing through would have to be checked. Medical research organizations objected to the inclusion of primates for fear it would jeopardize access for research even though the draft allowed special permits for research. Kenya claimed the African exporting nations had not been sufficiently consulted and subsequently produced their own draft."³⁹

During the final negotiations, Burhenne recalls long hours working in the State Department building in Washington, riding the trolley through its basement hallways late at night, rotating shifts almost around the clock among the drafting team, including Frank Nicholls (IUCN Deputy Director General), Françoise Burhenne-Guilmin, and others, in order to help develop an acceptable final text. Nicholls offered these recollections on his behind-the-scenes experience: "We worked all day with the committees to get amendments settled and long hours each night to produce harmonised texts for next day's meetings. In the pre-computer days this involved much cutting and pasting of text, having it retyped and then proofreading to pick up introduced errors. Amusingly, the French editorial supervisor insisted that Department of State rules mandated that translations (e.g., the French version established from the English original) had to have the same number of words....The task of harmonising polyglot texts [was] a splendid exercise ... and the interaction in finding *le mot juste*... a great pleasure."⁴⁰

Today, the convention is virtually universally accepted with 169 countries as Parties.⁴¹ It was considered a major achievement in the field of environmental law, involving a vision within the IUCN that started more than 10 years before its conclusion. With hardly any financial support, the IUCN Environmental Law Programme provided persistent and pioneering work to promote and develop the treaty. Scientists and lawyers from throughout IUCN contributed voluntarily their time and effort to make it a reality. CITES' aim was at the heart of the Union's mission – to protect species threatened with extinction and take measures to keep non-endangered species from becoming endangered. The trade controls introduced to achieve this goal required new ways of looking at wildlife protection, pioneering concepts in substantive treaty law, and the forging of new relationships not traditionally connected to conservation. The convention put in place new reporting, management, scientific, and enforcement mechanisms that had not been seen in previous environmental-type treaties. Implementation and enforcement were a major focus during negotiations and have remained key challenges to this day. 33

Implementation

Leading up to the conclusion of the Convention, it had been assumed that IUCN would take on Secretariat functions. However, Maurice Strong, Executive Director of the new United Nations Environment Programme, volunteered UNEP as the Secretariat to begin to give the agency visibility and, to sweeten the offer, agreed to provide financing.⁴² Countries accepted UNEP's offer and the Convention text specifies: "Upon entry into force of the present Convention, a Secretariat shall be provided by the Executive Director of the United Nations Environment Programme."⁴³ Once the Convention had been concluded, Maurice Strong delegated the Secretariat functions to IUCN on behalf of UNEP, and the CITES Secretariat was housed at IUCN Headquarters in Switzerland and operated by IUCN from 1973 to mid-1984 (when then UNEP Executive Director, Mostafa K. Tolba, took it out of IUCN). 34

For its part, the Environmental Law Programme immediately began serving as legal advisor to the new CITES Secretariat and, once the Convention came into force, to the Conferences of the Parties (COPs). The Convention called for a Conference of the Parties to the Convention to convene every two years "to review the implementation of the present Convention" where Parties could revise species lists, monitor enforcement, and make recommendations for improvements.⁴⁴ The first Conference of the Parties was in Berne in 1976, and Daniel Navid, then ELC Assistant Legal Officer, recalls: "This was the first meeting I attended for IUCN, and it was entirely staffed by IUCN personnel. It was significant that IUCN managed the entire Conference for UNEP. And there were IUCN law people there as well. I served as rapporteur for that first CITES Conference of the Parties and for several thereafter."⁴⁵ 35

By the second Conference of Parties in Costa Rica in 1979, the question of how to provide sustained financing for the Secretariat had become a pressing issue. Burhenne recalled that the original Convention negotiations had agreed to identify UNEP to run the Secretariat, in lieu of IUCN, because some had expected UNEP to 36



CITES COP, New Delhi, 1981

pay and there had been no mention of member obligations.⁴⁶ By COP-2, the CITES Secretary General was Peter H. Sand. Now a long-standing IUCN Law Commission member, he recalls the innovative solution that was crafted and that has grown to be a main financing tool today: “[T]he Conference voted affirmatively to [amend the Convention] in order to legalize a new system of assessed contributions by members states through a UNEP trust fund to be established for this purpose....The CITES trust fund so established by UNEP... became the model for a long series of similar UNEP trust funds for other conventions.”⁴⁷

Technical assistance

37 Once the Convention was in force, issues regularly arose requiring legal attention, ranging from administrative matters to substantive legal questions (for example, interpreting Convention provisions concerning stricter measures taken by Contracting Parties, a question that arose in 1986). The Environmental Law Programme not only helped draft and promote CITES, it helped countries with technical assistance toward implementation. The focus was primarily on the needs of developing countries. Because of the special institutional and regulatory requirements established under the Convention (e.g., the Management Authority, government-issued permits and certificates, etc.), CITES was not a self-executing treaty. It required that countries enact specific legal and institutional measures for implementation.⁴⁸ The Environmental Law Programme (ELP) quickly gave priority to providing legal technical assistance with implementation at the country level. This included providing general guidance, national legislative analyses of existing wildlife trade regimes, and legal drafting assistance for CITES-specific enabling legislation.

38 Because CITES was complicated, the Environmental Law Programme responded to early requests from countries for legislative advice. For instance, in the

early 1980s India asked for assistance with CITES implementing legislation; a project was developed by Commission Chair Burhenne and Commission member Barbara Lausche provided the legal drafting support in-country in 1985. A few years later Jamaica asked for review of its implementing legislation for CITES which also was undertaken by Burhenne. (Technical legal assistance is discussed further in Chapter 24.)

The Environmental Law Programme also produced guidelines to help countries understand their treaty obligations. In 1981, the Environmental Law Centre issued *Guidelines for National Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, providing background on the Convention and restating its principal elements.⁴⁹ After a decade of implementation experience, a follow-up publication was prepared, *Guidelines for Legislation to Implement CITES*, with more detailed analytical information on areas needing attention in national legislation. Produced by long-standing Commission member, Cyrille de Klemm, and a joint project with the CITES Secretariat, this edition was released in 1993 on the occasion of the 20 year anniversary of CITES.⁵⁰ 39

As summarized in ELP's Annual Report for 1998, these Guidelines focused on two main areas of concern: "why legislative and regulatory measures are essential for the success of the Convention, and what elements should be included in a comprehensive legislation."⁵¹ It also updated and expanded guidance to the Parties to the Convention (especially relevant decisions from the 9th/1994 and 10th/1997 COPs) and incorporated information from a 'National Legislation Project' initiated by the Conference of the Parties in 1992 to assist countries improve existing legislation and develop new CITES implementation legislation.⁵² 40

Parallel to these activities, the Environmental Law Centre (ELC) was building up a legislative data base useful for CITES implementation. Anticipating information needs, ELC had begun already in 1971 to develop a data base of species in national legislation, as noted above. The work was initiated and maintained on a volunteer basis by Commission member Cyrille de Klemm. In 1975, a formal project was initiated under contract from the European Economic Community (a region of mostly importing countries) to prepare an analysis of legislative changes needed in member states and the Community as a whole in order to implement CITES.⁵³ That project was able to build on and expand the original compilation, providing rankings and including analysis of penal sanctions. In the mid-1980s, the Environmental Law Programme provided a second legal review of the European Community countries, this time as legal input to a larger EEC- commissioned study on implementation of CITES in EEC member states.⁵⁴ 41

These activities fed into the ongoing effort of de Klemm to build up an index of species covered by legislation worldwide.⁵⁵ With development of the computerized Environmental Law Information System in the mid and late 1970s, this information was organized as a sub-file of ELIS (see Chapter 10). Continuing to give special attention to the European Communities' legal instruments, the index contained legal data for some 70 countries by 1978.⁵⁶ It was demonstrated at the Second Meeting of the Conference of the Parties to CITES in March 1979.⁵⁷ With time and as additional funds became available, the data base was fine-tuned so that flora and 42

fauna taxa could be stored in separate files and cross-referenced to corresponding national and international instruments in a legislative database giving the species' legal status. Capacity was developed to produce abstracts for the legal instruments associated with the species index. Retrieval was by taxa, jurisdiction or a combination of elements. In 1984, a brochure was published by the Law Centre giving an overview of the species data base.⁵⁸

43 Over the years, emphasis on the need for implementing legislation turned to enforcement. It was understood at all levels that more than enactment of legislation was required for an effective global wildlife trade control programme. Monitoring and enforcement were key. In the mid-1970s, a wildlife trade monitoring programme called TRAFFIC was created largely to assist with implementation of CITES. The Law Programme was instrumental in helping develop the TRAFFIC programme between IUCN and World Wildlife Fund (WWF). Cyrille de Klemm, Daniel Navid, and other Commission members helped advise on legal aspects.⁵⁹

44 In the late 1990s, ELP and TRAFFIC began exploring joint activities to improve implementation and enforcement of CITES. One outcome was a year-long project beginning in 2001 to jointly examine CITES implementation in the European Union (EU), building on the earlier studies done by the ELC in the 1970s and 1980s, and using a case study approach for possible broader insights. Led by ELC legal officer, Tomme Young, the project culminated in an expert workshop in November 2002, in Frankfurt, supported in part by the European Commission and Frankfurt's Zoological Garden, with Law Commission member Lothar Gündling presiding.

45 The ELP/TRAFFIC expert workshop constituted the first meeting at which representatives of nearly all EU wildlife trade regulatory agencies and public prosecutors came together specifically to address enforcement issues. An ELP Newsletter in 2002 summarized some of the aims and challenges of that project: "ELP's participation in this project provided a crucial foundation for determining the basis on which current national enforcement activities operate. This amalgamation of critical data provided a footing for review and examination [sic] the relationship between specific enforcement problems and the legislative/institutional underpinnings of the enforcement activities....The Challenge now is to move beyond [laws], toward improving the effectiveness of wildlife trade regulations – to finding better ways of using national legal systems to achieve CITES world-wide conservation objectives."⁶⁰

Service to CITES Secretariat

46 The Environmental Law Programme has continued to provide technical legal support to the CITES Secretariat and Conferences of the Parties. Especially in the early years of CITES implementation, special legal issues and problems arose at the country level that required legal analyses and advice on options in accordance with CITES. Among these were the issue of how to deal with shipping controls for CITES purposes in countries with particularly long coastlines; another was how to sort out control and enforcement responsibilities in countries with concurrent federal and state jurisdiction over wildlife trade. Generally, as both Burhenne and Navid recall,

these special projects ended up being broadly useful for other countries once the analysis had been done in the specific case.⁶¹

In 1992, the Environmental Law Centre began a 'national legislation project' under contract with the CITES Secretariat. It was considered a 'pioneering' project, initiated by the CITES Parties during their 8th COP.⁶² Under the project, the CITES Secretariat contracted the Environmental Law Centre to assist with analysis of implementing legislation for a number of CITES Parties in order to determine whether they meet the basic requirements of the Convention. At COP-9 in 1994, Parties agreed to a rating system under which analyzed legislation would be placed in one of three categories: 1 (generally in compliance), 2 (partly in compliance) and 3 (not in compliance). The project has proved useful in ensuring that Parties have adequate legislation for implementing CITES. Worth special note, the project has provided a unique process of compliance control, ultimately sanctioned by collective recommendations to suspend trade with Parties found to be in persistent non-compliance.⁶³ 47

In recent years, new issues also have emerged such as species found in international waters and harmonizing CITES with other international legal instruments as part of broader international efforts with multilateral environmental agreements (for example, the Convention on Biological Diversity, UN Convention on the Law of the Sea, the International Whaling Convention, and global trade agreements).⁶⁴ 48

One of the most high profile and persistent issues through the years has been trade in ivory and the listing of the African elephant in Appendix 1 to the Convention (the list with species most endangered, threatened with extinction, where commercial international trade is prohibited). Because of historic problems of control, the prevailing approach has been to prohibit ivory trade altogether, a policy considered unnecessarily penalizing those States sustainably managing their elephant herds. At CITES' 10th COP in 1997, the Law Programme participated as part of the IUCN delegation in discussions aimed at achieving consensus among African elephant range states on the issue. As instructed by the 1994 IUCN General Assembly, it presented a paper examining, among other things, how to control trade better and recommended establishing a controlled commercial exchange mechanism for the sale of ivory.⁶⁵ The proposal received little attention, however, and the resulting compromise was a resolution of the Conference of the Parties recommending special regulatory measures, enforcement, monitoring and a quota system for trade in raw ivory to some States.⁶⁶ Ivory trade has continued as a high-profile issue for CITES. 49

In an effort to strengthen participation in the Convention process, the CITES Secretariat in the late 1990s began to encourage CITES Parties to convene regional and national meetings in advance of Conferences of the Parties to identify and prepare input on issues of most relevance to them. In the spirit of the Union's own 1990s emphasis on regionalization, the Environmental Law Programme supported this new approach, initially within the European region, where, as reported in a 2002 Environmental Law Programme (ELP) Newsletter, "IUCN-ELP ... participated in new innovations by which regional work addressing CITES issues can increase and improve the global impact of the Convention."⁶⁷ 50

Notes

- 1 Resolution 78, in *IUPN Proceedings and Reports of the Third General Assembly, Caracas, Venezuela, 3 to 9 September 1952* (IUPN, Brussels, Belgium, 1952), p. 17.
- 2 *Id.*
- 3 Resolution 96, in *Id.* at 24.
- 4 Resolution 14, in *Proceedings of IUCN Seventh General Assembly, Warsaw, Poland, 1960* (IUCN, Brussels, Belgium, 1960), p. 154.
- 5 Holdgate, M., *The Green Web*, p. 91.
- 6 “Annexe to the Chairman’s Report of the Committee on Legislation and Administration” in *IUCN Eighth General Assembly Proceedings, Nairobi, Kenya, 1963* (IUCN, Morges, Switzerland, 1964), p. 118.
- 7 “IUCN Executive Board Minutes, Meeting of 11–13 May 1963” (IUCN archives), p. 5.
- 8 “Annexe to the Chairman’s Report of the Committee on Legislation and Administration” in *IUCN Eighth General Assembly Proceedings, Nairobi, Kenya, 1963* (IUCN, Morges, Switzerland, 1964), p. 118–9; see also “IUCN Executive Board Minutes, Meeting of 11–13 May 1963”, p. 5.
- 9 W. Burhenne “Report of the Committee on Legislation and Administration (dated 18 September 1963)” in *IUCN Eighth General Assembly Proceedings, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 117.
- 10 Resolution 5, in *IUCN Eighth General Assembly Proceedings, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), p. 130.
- 11 “IUCN Executive Board Draft Minutes of the Meetings of 27–28 June 1964” (IUCN archives), p. 6.
- 12 *Id.*
- 13 *Id.*
- 14 “Report of the Committee on Legislation”, in *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), (noted as Appendix E), p. 156.
- 15 “Secretary General’s Report for 1963–1966”, *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967) (noted as Appendix B), p. 110.
- 16 *IUCN Ninth General Assembly Proceedings, Lucerne, Switzerland, 25 June – 2 July 1966* (IUCN, Morges, Switzerland, 1967), p. 207–8.
- 17 Author interview with Wolfgang Burhenne, June 22, 2004 (Bonn, Germany).
- 18 “IUCN Executive Board Minutes, 41st Session, Meetings at Morges on 8th and 9th April, 1967” (IUCN archives), p. 27–28.
- 19 See *IUCN Year Book 1970* (IUCN, 1971), p. 62.
- 20 *Id.*
- 21 See “Press Release HE/69, 14 September 1971: Intergovernmental Working Group on Conservation Begins Review of Three Draft Conventions” (United Nations, Office of Public Information, 1971), p. 3.
- 22 United States House of Representatives Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, 89th Cong., First Session, Endangered Species, H.R. 9424 and H.R. 9493, July 15, 1965, p. 119.
- 23 The Lacey Act makes it a federal crime to take wildlife across the border of any state of the United States where the wildlife was taken in violation of that state’s game and fish laws, and this remains valid law today.
- 24 United States House of Representatives Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, 90th Cong., First Session, Endangered Species, H.R. 6138, H.R. 8693, and H.R. 11618, October 4, 1967, p. 14.
- 25 Letter of May 31, 1967, from Wolfgang E. Burhenne to Honorable John D. Dingell, included in the record of United States House of Representatives Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, 90th Cong., First Session. Endangered Species, October 4, 1967, p. 68.
- 26 United States House of Representatives Hearings before the Subcommittee on Fisheries and

- Wildlife Conservation of the Committee on Merchant Marine and Fisheries, First Session. Endangered Species, October 4, 1967, p. 17.
- 27 “Statement of Russell E. Train, Under Secretary, Department of the Interior” to the United States House of Representatives Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries on H.R. 248, H.R. 992, H.R. 3790, H.R. 4812, H.R. 5252, and H.R. 6634, February 19, 1969, p. 21. This statement was also introduced into the record of Hearings in the U.S. Senate on the same legislation some 3 months later. See, United States Senate Hearings before the Subcommittee on Energy, Natural Resources, and the Environment of the Committee on Commerce, 91st Cong., May 14, 1969, p. 68.
- 28 “Statement of Dr. Lee Talbot, Field Representative, Smithsonian Institution” to the United States House of Representatives Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, February 20, 1969, p. 159.
- 29 “Statement of Arnold Mayer, Legislative Representative, Amalgamated Meat Cutters & Butchers Workmen, AFL-CIO” to the United States House of Representatives Hearings before the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries, February 20, 1969, p. 87.
- 30 Author interview with Wolfgang Burhenne, 16 October 2000 (Bonn, Germany) (draft transcript, p. 5).
- 31 U.S. Code, Title 16, section 668cc-5(b), 1970. Pub. L. 91-135, sec. 5, Dec. 5, 1969, 83 Stat. 278.
- 32 U.S. Code, Title 16, section 668cc-5(c), 1970. Pub. L. 91-135, sec. 5, Dec. 5, 1969, 83 Stat. 278.
- 33 Author interview with Wolfgang Burhenne, 16 October 2000 (Bonn, Germany) (draft transcript, pp. 5–6).
- 34 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 35 See United Nations General Assembly Decision 2758, 26th Session, 1976th Plenary Meeting, 25 October 1971.
- 36 Recommendation 99 (3), “Action Plan for the Human Environment” of the United Nations Conference on the Human Environment, June 1972.
- 37 BJL/WI Interview with WEB, 16 October 2000 (draft transcript, pp. 6–7) (Bonn, Germany).
- 38 See CITES Article III(5).
- 39 Mary Gospodarek’s notes on CITES based on her interview with Wolfgang Burhenne in mid-1980s (archives, Environmental Law Centre).
- 40 Correspondence by email communications from Frank Nicholls to Françoise Burhenne-Guilmin, dated October 4, 2005, comments on early draft and again on June 26, 2006 on May 2006 draft.
- 41 See CITES web site at: www.cites.org.
- 42 See discussion in Holdgate, M., *The Green Web*, p. 115.
- 43 Article XII.
- 44 Article XI.
- 45 Interview with D. Navid, June 23, 2004. (Bonn, Germany)
- 46 “Director General’s Report to Council for the Period November 1985 – May 1986”, p. 10.
- 47 Communication with Peter Sand on May 2006 draft, transmitted by email dated June 10, 2006. For a discussion of the trust fund concept, see Sand, P.H., “Trusts for the Earth: New International Financial Mechanisms for Sustainable Development” in W. Lang (ed.), *Sustainable Development and International Law* (London 1995), 167, at 172.
- 48 A summary of the main provisions of the Convention as well as the full text, resolutions and decisions of the Conferences of the Parties and other background information are available on the CITES Secretariat’s excellent web site: <http://www.cites.org>.
- 49 See G. Emonds. *Guidelines for National Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*. (IUCN Environmental Policy and Law Paper No. 17) (IUCN, Gland, Switzerland, 1981).
- 50 See C. de Klemm. *Guidelines for Legislation to Implement CITES*. (IUCN Environmental Policy and Law Paper No. 26) (IUCN, Gland, Switzerland, 1993).
- 51 “IUCN Environmental Law Programme Annual Report 1998”, p. 6.

- 52 Id.
- 53 See *IUCN Yearbook 1975–76 – Annual report of the International Union for Conservation of Nature and Natural Resources for 1975 and for January–May 1976*, p. 21 (IUCN, 1976).
- 54 See “Director General’s Overview Report 1985–1987 to the 17th IUCN General Assembly in Costa Rica, February 1988”, p. 17; see also “Submission from the Environmental Law Centre for Director-General’s Report 1987”, p. 1.
- 55 See reference to ‘Special Projects’ in “Environmental Law Projects” (Agenda Paper EB. 76/49) p. 2, noted in and attached to “IUCN Executive Board Minutes of the 58th Session of the Executive Board 13, 14, 15 May 1976” (IUCN Archives).
- 56 See “Report of the Work of the Union since the 13th (Extraordinary) General Assembly” (General Assembly Paper GA. 78/2) Annex 1, p. 8.
- 57 See “Report of the Commission on Environmental Policy, Law and Administration” (Council paper UC.79/27), p. 2.
- 58 See “Species Mentioned in Legislation – An Index developed by the IUCN Environmental Law Centre” (IUCN, 1984).
- 59 Author interview with Daniel Navid, June 23, 2004. (Bonn, Germany).
- 60 “Regional Work of CITES in Europe” in *IUCN Environmental Law Programme Newsletter*, Issue 1, 2002, p. 34.
- 61 Author interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 62 See CITES COP-8, Resolution Conf. 8.4 (1992).
- 63 Contributions from Peter Sand on May 2006 draft, transmitted by email dated June 10, 2006, and Marceil Yeater from the CITES Secretariat by email dated July 20, 2006. See COP-13 *decisions* 13.79–13.83, 2004. For more background on compliance issues see P.H. Sand, ‘Whither CITES? The Evolution of a Treaty Regime in the Borderland of Trade and Environment’, *European Journal of International Law* 8:1 (1997), 29, at 47; R. Reeve, *Policing International Trade in Endangered Species: the CITES Treaty and Compliance* (London 2002), at 134–147; and P.H. Sand, ‘Sanctions in Case of Non-Compliance and State Responsibility: *pacta sunt servanda* – Or Else?’, in D. Zaelke, D. Kaniaru & E. Kruzikova eds., *Making Law Work: Environmental Compliance and Sustainable Development* (London 2005), vol. I, 259, at 266.
- 64 See Young, T., “CITES COP-11” in *IUCN Environmental Law Programme Newsletter* (January–April 2000), p. 14.
- 65 See “IUCN Environmental Law Programme Annual Report 1997”, p. 5.
- 66 See Resolution 10.10, Tenth meeting of the CITES Conference of the Parties, June 1997.
- 67 “Regional Work of CITES in Europe” in *IUCN Environmental Law Programme Newsletter*, Issue 1, 2002, p. 33.

Chapter 7: World Heritage Convention

Joint UNESCO-IUCN initiative

In the late 1960s, two separate international initiatives were launched to protect outstanding sites of world heritage, one dealing with cultural sites and the other, natural sites. UNESCO began the campaign to save great cultural monuments. As later reported by former IUCN Director General Martin Holdgate in *The Green Web*, the trigger event was the potential loss of great monuments of Nubia with the building of the Aswan High Dam in Egypt.¹ The cultural section of UNESCO began work, with the help of the International Council on Monuments and Sites (ICOMOS, founded in 1965), on a concept for a draft convention to protect cultural and historical monuments and sites. During the same period, IUCN became interested in promoting a treaty on world natural heritage. In 1968, Russell Train, then President of the US Conservation Foundation and on IUCN's Executive Board, proposed the development of a world natural heritage trust and from that proposal, IUCN began work on a draft concept for a convention and fund to protect natural heritage.

Preparations on the two concepts continued in the late 1960s and early 1970s parallel to preparations for the 1972 Stockholm Conference. IUCN began circulating a paper in early 1971, and UNESCO in mid-1971. The IUCN Director General's Report to the 11th General Assembly, which convened soon after Stockholm in September 1972, included the following: "IUCN prepared the first draft of a Convention on the Conservation of the World Heritage, which was the basis for discussions at an Intergovernmental Working Group meeting convened by the United Nations in New York in September 1971. Subsequently IUCN worked with UNESCO at a meeting of experts held in April 1972, and a new draft Convention has resulted. IUCN is involved in the provision of secretariat services under this Convention in respect of natural areas. It is expected that the Convention will be concluded at a meeting in Paris in November 1972."²

According to Holdgate, the problem of the two separate but overlapping drafts came to light in the Stockholm Preparatory Committee in 1971 and there was support for reconciliation of the drafts, a position led by Russell Train of the United States.³ Through informal consultations between UNESCO and IUCN, the two organizations agreed to merge the drafts and undertake specific negotiations on the particular adaptations needed. However, it became clear these could not be completed before Stockholm. At the joint IUCN-UNESCO meeting of experts in April 1972, IUCN Deputy Director General Frank Nicholls' drafting services were useful, once more (see Chapter 9), in producing a single new draft text by incorporating IUCN's natural heritage provisions in the UNESCO draft and adding the words "and natural" wherever "cultural heritage" appeared.⁴ At the June 1972 Stockholm Conference, delegates added their support to conclusion of a single text, noting "that the draft convention ... concerning the protection of the world natural and cultural heritage marks a significant step towards the protection, on an international scale, of the environment."⁵

At UNESCO's General Conference in Paris in November 1972, a World Heritage Convention (WHC) covering both cultural and natural heritage was concluded.



The 1996 World Heritage Committee Meeting in Mexico. Bernd von Droste, Director of the World Heritage Centre, and Chair Maria-Teresa Franco (Mexico)

It came into force in 1977. The Convention set up a World Heritage Committee (the decision-making body responsible for implementing the Convention) and three Advisory Bodies: IUCN, ICOMOS, and ICCROM (the International Centre for the Study of the Preservation and Restoration of Cultural Property). These Advisory Bodies play critical roles in the implementation and monitoring of the Convention. IUCN has a designated person in the Secretariat working with WHC matters.⁶

- 5 Early on, the Environmental Law Programme began to assist the Convention with legal interpretation of its provisions for operational purposes. For example, as Executive Officer for CEPLA, Daniel Navid in the late 1970s helped draft internal WHC guidelines on how to move a site to the List of World Heritage in Danger.⁷ The Law Commission and Environmental Law Centre also were available to provide legislative drafting assistance to countries on legal protection of designated natural sites. Normally, these services follow one of three routes – support through the World Commission on Protected Areas (WCPA, formerly the Commission on National Parks and Protected Areas) in representing IUCN at the World Heritage Committee, direct assistance to the World Heritage Committee on request, or direct assistance at the country level upon request of a Party to the Convention.⁸

Implementation support

- 6 Since becoming operational in the 1970s, the World Heritage Committee steadily added new sites of outstanding significance under the Convention. As of July 3, 2003, 582 natural sites, 149 cultural sites, and 23 mixed sites had been designated.⁹ In the early years, the Committee focused mostly on identifying sites for designation. As years passed, however, and monitoring the state of conservation of existing sites became a sizeable component of the Committee's responsibilities, concerns

began to grow about endangered sites. By the late 1990s, this issue was generating significant attention as development pressures were increasingly threatening sites and it was recognized that legal and administrative protections were not adequately designed or were not being enforced. By July 5, 2003, 35 sites had been moved to the List of World Heritage in Danger because of their deteriorated status, more than half of these natural sites.

In 1998, in its role to assist countries with legal guidance, the Environmental Law Centre undertook a survey of national legislation in 25 countries with natural sites on the World Heritage List. The focus was on the adequacy of legal protection for the designated World Heritage Natural Sites (a matter which the Convention does not specify). The results showed that while a majority of States grant highest protection status under national law, the legislation tends to be sectoral, lacking explicit cross-references between applicable laws and regulations, generating lack of clarity in the protection status of the sites. The study recommended that resources be made available to ensure more efficient implementation and enforcement of existing laws.¹⁰ 7

With these results in hand, the Commission on Environmental Law (CEL) prepared a draft project proposal on “Legal Interpretation and Application of the World Heritage Convention”, with CEL members Ben Boer and David Haigh taking the lead. The project’s aim was to produce an in-depth analysis of the World Heritage Convention to guide future application of the Convention at national level, both for policy as well as operations. The draft was circulated for comments to the World Heritage Centre, the office handling day-to-day management of the Convention, ICOMOS, ICCROM and the WCPA.¹¹ CEL Chair Robinson personally delivered the revised draft proposal to the World Heritage Committee for consideration and endorsement at its meeting in Kyoto, Japan, in November 1998.¹² As reported in a 1998 ELP Newsletter: “The World Heritage Committee made a number [sic] recommendations, and the World Heritage Centre has offered to co-operate with the ELP to identify possible sources of funding to begin this project.”¹³ 8

Operational guidelines

While external funding for the legal project was not found, the Environmental Law Programme continued to promote and participate in reviews and updates of the operational guidelines for management of sites listed under the WHC – in effect, the ground rules for running the Convention. In 2000, the World Heritage Committee initiated an important multi-level negotiating process toward the 12th revision of these guidelines. The aim, as reported in an ELC background paper, was “to consolidate and simplify the guidelines so that the State Parties, the UNESCO World Heritage Centre (the Secretariat) and the Advisory Bodies can exercise their responsibilities under the Convention more clearly and effectively.”¹⁴ 9

The Environmental Law Programme was part of an IUCN team of experts providing analysis of Convention provisions and advice on proposals for revision. As reported in 2002 by John Scanlon, Head of IUCN’s Environmental Law Programme and Director of the Environmental Law Centre, “[t]his process involved the development of substantive comments and legal advice, participating in meet-

ings of the Drafting Subcommittee, and advising the IUCN representatives at the meetings of the World Heritage Committee.”¹⁵ During the process, several difficult policy questions were raised which the Environmental Law Programme, working with the IUCN Protected Areas Programme, addressed in a formal IUCN submission to the World Heritage Committee in May 2002 analyzing the legal issues.¹⁶

11 Continuing the deliberative process on the guidelines, the Environmental Law Programme participated in a workshop in Siena, Italy, in November 2002 on “The Legal Tools for World Heritage Conservation” organized by the UNESCO World Heritage Centre. Speakers and participants from the Environmental Law Centre and the Commission addressed issues of implementation, including an analysis of the tools for implementing the WHC, its relationship to other conventions, enforcement, and challenges arising from the World Summit on Sustainable Development.¹⁷

12 At that workshop, John Scanlon, ELP Head, presented a paper putting the World Heritage Convention in the context of the just-concluded World Summit on Sustainable Development (WSSD). In relation to the WSSD Plan of Implementation, he highlighted three significant opportunities and challenges for the World Heritage Convention going forward: 1) “building national capacity for the effective implementation of the convention...”, 2) promoting “the use of natural heritage sites as a major vehicle for the conservation of biodiversity...”, and 3) providing “another useful platform for addressing transboundary issues, especially in relation to natural heritage”.¹⁸

13 The final negotiating meeting for the new WHC Operational Guidelines was convened in March 2003. At “a difficult 6-day ‘extraordinary session’”, agreement was finally reached on the content of the new guidelines.¹⁹ In the end, the World Heritage Committee decided to maintain the high standards of listing and delisting sites that had been urged by IUCN and other conservation organizations. As reported on ELP’s web site, IUCN, in its capacity “as one of the three ‘advisory bodies’ to the Convention, ... played a lead role in these negotiations. The delegation, headed by Pedro Rosabal Gonzales, included Tomme Young, ELC Senior Legal Officer, and was further supported by critical research undertaken in 2002 by a team of CEL experts.”²⁰

Notes

- 1 Holdgate, M., *The Green Web*, p. 114.
- 2 See Budowski, G., and Nicholls, F. “Report on the Work of the Union Since the Tenth General Assembly” (Also labeled Agenda Paper GA.72/8) in *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 102.
- 3 Holdgate, M. *The Green Web*, p. 114.
- 4 Author interview with Wolfgang Burhenne, October 17, 2000 (Bonn, Germany) (draft transcript, p. 34). Also, correspondence by email communication from Frank Nicholls to Françoise Burhenne-Guilmin, dated October 4, 2005, commentary on early draft of history (forwarded to author by email dated November 3, 2005)
- 5 Recommendation 99(1) (a) in “Action Plan for the Human Environment,” United Nations Conference on the Human Environment (Stockholm Conference) (1972).
- 6 For general information on IUCN’s supportive role, see “Maintaining the Credibility of the World Heritage Convention” (IUCN Background Paper for “IUCN Legal Analysis on the Review of the World Heritage Convention Operational Guidelines”), available on ELP’s web site: www.iucn.org/themes/law (researched July 13, 2003).*

- 7 Author interview with Daniel Navid, June 22, 2004 (Bonn, Germany).
- 8 See, e.g., “Minutes of the 12th Meeting of the IUCN Council 23–26 November 1982, IUCN/WWF Headquarters, Gland, Switzerland”, p. 9, where Dr. von Droste of UNESCO thanked CEPLA for the Commission’s assistance to the World Heritage Committee and further requested CEPLA assistance in Guyana.
- 9 Information available on the World Heritage Convention web site at: www.whc.unesco.org.
- 10 See Rosenstiel, Anja von, “World Heritage Convention: A study of the legal status of selected sites listed under the World Heritage Convention” in *IUCN Environmental Law Programme Newsletter* (October–December 1998), p. 7.
- 11 See *IUCN Environmental Law Programme Annual Report 1998*, p. 6.
- 12 Communication from Nicholas Robinson to author by email transmission dated June 16, 2006 containing comments on May 2006 draft, email attachment p. 2.
- 13 Id.
- 14 Environmental Law Centre, “Background Paper: Maintaining the Credibility of the World Heritage Convention” (undated), available on ELP’s web site at: www.iucn.org/themes/law, under “World Heritage” (researched September 17, 2003, reconfirmed on July 23, 2005).*
- 15 Scanlon, J. “IUCN Environmental Law Programme 2002: The Year in Review”, p. 5.
- 16 See IUCN “Draft Operational Guidelines: An Analysis of the Legal Issues” (14 May 2002), available on IUCN ELP’s web site at: www.iucn.org/themes/law, category: “Activities and Projects”, subcategory: “World Heritage” (researched September 17, 2003).*
- 17 Scanlon, J. “IUCN Environmental Law Programme 2002: The Year in Review”, p. 5.
- 18 Scanlon, J., “The World Heritage Convention and Outcomes from the World Summit on Sustainable Development”, p. 4, presented at the Workshop: “The Legal Tools for World Heritage Conservation”, Siena, Italy, 11–12 November 2002, organized within the framework of the Congress of experts entitled “World Heritage 2002: Shared Legacy, Common Responsibility”, Venice, Italy, 14–16 November 2002.
- 19 “A Milestone for the World Heritage Convention (26 March 2003)” available at ELP’s web site: www.iucn.org/themes/law, category: “Activities and Projects”, subcategory: “World Heritage” (researched July 13, 2003).*
- 20 Id.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Part 3 (1970s)

Law Programme Growth

As the 1960s closed, IUCN was still one of only a handful of international environmental organizations, but environmental awareness and activism were spreading, especially in the United States and Europe.¹ New environmental health and capacity issues were being raised by such landmark publications as Rachel Carson's *Silent Spring* on chemical pollution (1962), Paul Ehrlich's *The Population Bomb* (1968), and the Club of Rome's *Limits to Growth* (1972). The United Nations was preparing for its first global Conference on the Human Environment scheduled for 1972 in Stockholm, Sweden (the Stockholm Conference, see Chapter 12). Non-governmental environmental organizations were beginning to consider international issues as part of their programming. Environmental law was becoming a recognized specialization. 1

Aiming to better position itself as a world body "contributing to the solution of world environmental problems," the Tenth IUCN General Assembly in New Delhi, India, in December 1969, endorsed a new two-pronged strategy for the Union that entailed fundamental changes in substantive emphasis and in management. First, the Union's mission (traditionally nature conservation) was restated and broadened to link science-based conservation to human welfare, embrace the human dimension of development (the theme of the upcoming Stockholm Conference), and adopt "sustainable quality of life" as a goal.² 2

The 'human dimension' was quickly and broadly absorbed in programming. The theme for the Eleventh General Assembly in Banff, Canada, in September 1972 (just months after Stockholm) was "Conservation for Development" and the 1973–1975 programme aimed to demonstrate "the value of conservation as an instrument of soundly-based development in both the richer and poorer countries of the world."³ By the end of the 1970s, IUCN had translated this theme into a *World Conservation Strategy – Living Resource Conservation for Sustainable Development* (see Chapter 17, Box 1). The phrase "sustainable development" became embedded thereafter in environment and development initiatives. 3

Second, the 1969 General Assembly endorsed a plan for an enlarged Secretariat with a more centralized administration in order to operate more like a UN body. By implication, this shift would reduce independence of decentralized units such as the commissions. In 1972, IUCN's Executive Board acknowledged that one effect of the shift to a more centralized management "...[i]nvariably ... involved an amendment of earlier relationships between the Commissions and the Secretariat, with the Secretariat taking some of the initiatives formerly undertaken by the more active members of Commissions."⁴ 4

To pay for a strengthened Secretariat which proposed using UN salary scales, IUCN had start-up funds from a number of outside sources, including a Ford Foundation grant. That grant was conditioned on IUCN appointing a professional scientist and a professional administrator to lead the organization. Accordingly, the Executive Board, chaired by IUCN President Hal Coolidge, proposed and the Tenth 5

General Assembly elected the Union's first Director General, Gerardo Budowski, and its first Deputy Director General, Frank Nicholls. Gerardo Budowski, a young agronomist and tropical forester who had been working at UNESCO, had experience in developing countries and was well known to IUCN. Frank Nicholls was a seasoned administrator and scientist from Australia.⁵

6 This new strategy proved particularly challenging to implement and by mid-decade, the Secretariat was facing serious management and financial problems, as chronicled by Holdgate in *The Green Web*.⁶ The situation came to a head with the 1975 General Assembly in Zaire as members showed growing discontent with the centralized strategy, the high costs of operating in Switzerland, the small proportion of funds reaching conservation on the ground, and the diminished role of the Commissions.⁷ As multiple tensions grew, by the end of that Assembly, Director General Budowski had decided to withdraw his candidacy for re-election (just prior to the Assembly he had been nominated by the Executive Board for another three-year term), agreeing to stay on six months until a replacement could be found. Budowski and Nicholls served as a team, and with Budowski's decision, Nicholls decided to retire as Deputy Director-General.

7 An Extraordinary General Assembly (the Thirteenth) was called in 1977 to appoint a new Director General, review the overall programme, and consider revisions to IUCN statutes to better address member concerns about becoming marginalized, relegated "largely to the role of observers".⁸ A drafting panel was created chaired by IUCN Vice-President, Don McMichael of Australia, with members Frank Nicholls and Wolfgang Burhenne; Françoise Burhenne-Guilmin (Head of ELC) and Robert Prescott-Allen from the IUCN Secretariat were to provide support.⁹ Major proposed revisions of IUCN's statutes were ready for the 1977 Assembly and most were approved by members, including replacing the Executive Board by a Council, two-thirds of which should come from the regions (eight regions were defined) and be elected by the entire membership, and shifting to the Council the selection of a Director General. David Munro was appointed the new Director General under this new regime. By 1978, IUCN's programme was refocused and work was beginning on a World Conservation Strategy, with the commissions again on track as core components of the Union.¹⁰

8 All corners of the Union were strained by these programmatic and leadership changes and some were strengthened in the end, including the Law Programme. The 1970s brought a broadened mandate to the Commission in response to revised Union objectives (with a corresponding name change to include 'policy') as well as leadership changes and structural experimentation on how the Commission functioned. At the technical support level, the Secretariat created the Environmental Law Centre from the original small Commission support unit in Bonn, an early step in IUCN's environmental law capacity building that grew into the core programme of today.

9 This Part reviews the trials of management and ultimate growth of the Law Programme in the 1970s, starting with the Commission in Chapter 8. Chapter 9 introduces the Environmental Law Centre, created in 1970 as an out-posted Secretariat unit in Bonn. Chapter 10 focuses on one of the Law Centre's first main tasks

of those years – organizing the growing legislative collection for retrieval and use, and moving it into the computer age as the Environmental Law Information System (ELIS). Finally, Chapter 11 introduces key alliances and external funding sources developed by the Commission and Law Centre in the 1970s to help build and sustain the expanding IUCN Law Programme, many of which remain principal supporters today.

Notes

- 1 For a summary account of this “new environmentalism” and IUCN’s reaction, see Holdgate, M., *The Green Web*, pp. 101–7. (IUCN) (1999).
- 2 Holdgate, M., *The Green Web*, at 108–109.
- 3 Budowski, G., F. Nicholls, R. Dasmann, “Draft Programme and Budget for 1973–1975” (Agenda Paper GA 72/3) (July 1972), at 7.
- 4 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), at 107.
- 5 For an account of how the new mandate and new leadership came about see Holdgate, M., *The Green Web*, pp. 108–110; see also, reflections of those years from the perspective of the 1975 IUCN General Assembly in *Environmental Policy and Law*, Vol. 1 (1975–76), at 195–197.
- 6 Holdgate, M., *The Green Web*, pp. 125–127.
- 7 See Holdgate, M., *The Green Web*, at 124–136, tracing the financial and management troubles of this period, which he characterizes as “upheavals”. Interestingly, he also views those crises as not widely felt outside the Union, “[f]or the centre of international action had shifted to UNEP. In the five years following the Stockholm Conference, the UNEP Governing Council established itself as the global forum in which governments debated world environmental issues and coordinated action”, Id. at 130.
- 8 “IUCN Governing Assembly”, in *Environmental Policy and Law*, Vol. 1 (1975–76), at 196. See generally the discussion in Holdgate, M., *The Green Web*, at 124–129.
- 9 See discussion in M. Holdgate, *The Green Web*, at 135–6. From the earliest days, in-house legal matters normally were referred to the Law Commission and Environmental Law Centre lawyers for action or legal opinion if outside expertise was needed. Kinds of tasks that came to them related to interpretation and revision of the Union’s statutes, legal work related to administration matters, e.g., personnel, leases, and relations with regional and national law centres and other organizations. In addition, the Environmental Law Centre and Law Commission lawyers were regularly called upon to help draft and finalize resolutions and other decisions of General Assemblies, and then the World Conservation Congresses. In the mid-1970s, with the crisis that unfolded, IUCN’s statutes underwent a major revision and the Law Commission and Environmental Law Centre lawyers were called upon to take the lead in drafting and shepherding the draft through the review and finalization process. The statutes had further major revisions in the mid-1990s, where the Law Programme lawyers again played a lead technical role. This and the evolution of in-house legal assistance are discussed further in Chapter 24.
- 10 The new statutes, new management structure, key players, and resulting programme post-1977 are further discussed in Holdgate, M., *The Green Web*, pp. 130–145.

Chapter 8: Commission in Flux

The decade of the 1970s began with management and mandate changes for the Commission. Decisions of the Tenth General Assembly of IUCN members meeting in 1969 called for new leadership and an explicit emphasis on policy, in addition to law and administration. The times were influenced, among other things, by expectations for and implementation of outcomes from the 1972 Stockholm Conference (discussed more in Chapter 12) which gave environmental law a significant boost and provided an unprecedented global forum to promote international environmental law and policy. In this setting, the 1970s brought mixed challenges to the young Commission: on the one hand, new opportunities to influence and help build the field of environmental law and, on the other, new struggles and experimentation with programme management.

Broadened mandate/new name

The Tenth General Assembly adopted five revised objectives for the Union, two of which increased focus on environmental policy as part of the new emphasis on human environment. The two policy objectives were, 1) “to formulate and promulgate statements of policy on topics of importance to the conservation of natural resources based on the best scientific evidence,” and 2) “to assist governments, on request, in developing national policies of conservation and to assist in their execution by providing advice and establishing cooperative programmes with other international agencies.”¹

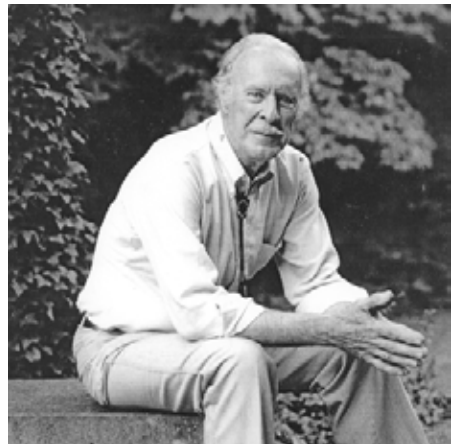


10th IUCN General Assembly, New Delhi, 1969

- 3 In line with these new objectives, the mandate of the Commission (originally constituted in 1963 as the Commission on Legislation and Administration, see Chapter 3) was enlarged to include environmental policy as an explicit component of its work programme. The commission was reconstituted as the Commission on Environmental Policy, Law and Administration (CEPLA). The change had been anticipated, as Commission Chair Burhenne explained in his report to the Tenth Assembly: “To strengthen the work of the Union, consideration is being given to enlarging this Commission to include environmental policy as well as the original responsibilities for legislation and administration.”²
- 4 The policy focus and new emphasis on the human environment had another consequence for the Law Programme; pollution issues now would need attention and the Union looked to CEPLA to take a lead role. IUCN’s new Director General Budowski explained to the 1972 General Assembly: “The issues involved in pollution control will also receive attention. Pollution will increase as human population increases but not necessarily at the same rate. The environment must be managed to reduce pollution and the most appropriate management techniques, both technical and administrative, need to be studied. These various activities are mainly the concern of the recently-created Commission on Environmental Policy, Law and Administration.”³
- 5 Pollution issues were not new to the Law Commission. In contrast to other areas of the Union’s work, in the 1960s when environmental law began to flourish, the concerns driving the new field were largely pollution-related. Growing awareness of the need for pollution control to protect human health and the natural environment triggered initiatives, mostly in the United States and western Europe, to develop and implement new legislative, administrative, and judicial tools such as legally-mandated environmental impact assessments and a citizen’s right to sue. A new cadre of lawyers with expertise in air, water, and land-based pollution law emerged during those years, some becoming members of the young Law Commission. As discussed in Chapter 4, the Commission’s first scheme for indexing legislation into 12 subjects included a strong showing in pollution-related categories, including air, water, pesticides, effects of industry, noise, and waste.

New management structure

- 6 To carry out the Commission’s new mandate, the IUCN Executive Board, chaired by President Hal Coolidge from the United States, proposed and the Tenth IUCN General Assembly elected Lynton Keith Caldwell as the Commission Chair. Caldwell, professor of political science at the Indiana University in the United States, was widely known and respected internationally for his work in environmental, social and economic policy. In the United States, he had gained recognition as one of the principal advisors to the US Congress



Lynton K. Caldwell

in drafting and adopting the US National Environmental Policy Act of 1969, legislation that among other things introduced the environmental impact assessment requirement as part of public decision-making.⁴

Caldwell was well connected within the United States university system. The Commission, especially through its U.S. Commission members, already had begun in the late 1960s to build ties to U.S. universities and by 1970–71 this was starting to bear fruit with research fellows and study tours of U.S. lawyers to Bonn.⁵ It was hoped that Caldwell could strengthen these university relationships, generate more support, and build university partnerships for the work of the Law Programme. 7

Equally important, he was known by some on the IUCN Executive Board (for example, Hal Coolidge, then President, and Lee Talbot, on the Programme and Budget Committee). Burhenne had built a reputation of relative independence with 8



Harold (Hal) Coolidge, President of IUCN, visits the ELC, May 1970

his Commission, being a strong advocate of the Commissions and their volunteer expertise as central components of Union activity. By his own account, Burhenne had openly opposed moves to shrink the role of Commissions when the proposed centralization plan worked its way through the review process.⁶

To support the new leadership and mandate, the IUCN Executive Board adopted a new model of operations for the recreated Commission, separating the three themes by Committee. In May 1970, at its first meeting after the 1969 General Assembly, the Board approved creation of three formal Committees, one each for policy, law, and administration, and these three Committees collectively would comprise the Commission.⁷ To manage these Committees, Burhenne recalls that he and Caldwell came to a good agreement: Caldwell would take charge of policy in addition to being Chair and Burhenne would handle law, which would work to each of their strengths.⁸ Accordingly, at that May 1970 Board meeting, Burhenne was appointed Vice-Chair of the Commission and Chair of the Committee on Environmental Law. With that charge, Burhenne was to carry over the mandate and members from his 9

former Commission on Legislation. For the time being, no vice-chair was appointed for administration, which was to be activated later, nor was a vice-chair for policy appointed since Caldwell would be taking the lead directly.⁹

- 10 To assist Caldwell in managing the Commission overall and especially his policy responsibilities, the Executive Board approved a new post of Executive Officer to CEPLA to be located at Headquarters. John Staub from Switzerland was appointed in 1970 to fill the post.

Policy initiatives under Caldwell

- 11 Caldwell began actively to promote the Commission and policy-related projects. Being located in the United States, he relied heavily for coordination and support on Executive Officer, John Staub, and the Commission's small unit in Bonn which by now had been reconstituted the Secretariat's outposted Environmental Law Centre, see Chapter 9.

- 12 With the 1972 Stockholm Conference on the Human Environment on the horizon, and international environmental law and policy an emerging priority, Caldwell aimed to position CEPLA to make serious contributions. One of his early initiatives was to negotiate a contract in 1971 with the UN Department of Economic and Social Affairs, Public Administration Division (PAD) to collaborate on preparatory work for Stockholm. Under the contract, IUCN would undertake a project to "deal with organizational, educational and legal aspects of environmental administration at various levels in different countries."¹⁰ The outcome would be "a series of papers written by a number of authors and coordinated by ... Caldwell."¹¹

- 13 For the project, Caldwell assembled a small task force of policy experts under the aegis of CEPLA "to examine a number of topics relating to environmental policy that emerged from the discussions at Stockholm and which appeared to be of specific interest to IUCN."¹² A key focus was to identify issues of special concern to developing countries and ways to cope with the widening gap in scientific and technological capability between developed and developing countries on matters of environmental protection.¹³ Task force members were Christian de Laet, a Law Commission member and Secretary General of the Canadian Council of Resource and Environment Ministers, who served as the task force chair, and five others: Peter Ellyard, Robert Gruszka, Scott MacLeod, Robert Munro (Coordinator), and Shadia Schneider-Sawiris. IUCN Director-General Gerardo Budowski, Deputy Director General Frank Nicholls, and IUCN's Senior Ecologist Raymond Dasmann worked with and supported the group.¹⁴

- 14 During the course of 1973, Commission Chair Caldwell and Vice-Chair Burhenne worked with the task force to identify and study several issues. Its main outputs became three papers published by the Environmental Law Centre in 1973 and 1974 in the new IUCN Environmental Policy and Law Paper (EPLP) Series (see Chapter 18). Task force member Shadia Schneider-Sawiris, an associate officer at UNEP, was lead author of a paper on "The Concept of Compensation in the Field of Trade and Environment".¹⁵ The second paper was a source book compiled by Yvonne Nicholls, an economic geographer with extensive university and international experience (and wife of Frank Nicholls), of extracts from key documents

exploring compensation and additionality for developing countries to maintain environmental quality.¹⁶ The third paper, by task force member Scott MacLeod, of-
ficer at the World Bank, explored the principle of additionality for financing envi-
ronmental measures in developing countries.¹⁷

Apart from these papers, Caldwell and the Commission identified a number of 15
other interesting projects to take advantage of the substantial data gathered for the
Stockholm papers. One proposal was to study “environmental quality as a political
concept” and work began in 1971 to make a collection and index of those docu-
ments containing official expressions of national environmental policy as a first
step to analyzing how governments shape policies in environmental quality.¹⁸ A
related proposal aimed to better understand environmental policy formulation by
studying collected documents for integration of environment and development con-
cepts in administrative practice in developing countries. The plan was to develop a
major multi-institutional effort, coordinated by Commission Chairman Caldwell
with Indiana University and undertaken jointly with the Committee on Institutional
Cooperation of the Big Ten Universities and the University of Chicago.¹⁹ The project
was envisioned as a basis for further cooperative policy-science work with the Sci-
ence Committee on Problems of the Environment (SCOPE) (established by the In-
ternational Council for Science in 1969).²⁰

A project also was started to develop a directory of governmental environ- 16
mental protection agencies. By 1970, a growing number of countries were creating
or exploring options for creating environmental machinery (agencies, commissions,
advisory bodies, etc.).²¹ The plan was to have a first issue of the directory for par-
ticipants at the 1972 Stockholm Conference. To make that target, the initial version
would be limited to agencies of central governments whose main task was protec-
tion, enhancement or restoration of the natural environment. As explained in the
1971 IUCN Yearbook, the effort “would not include government agencies that are
primarily engaged in shaping some part of the environment for reasons other than
conservation.”²²

Funding short-falls

Other than the UN-funded project on the Stockholm papers, the policy and 17
administration projects promoted in Caldwell’s initial years proved difficult to fund.
Implementing Commission projects, as Burhenne had learned in the 1960s, depended
almost entirely on finding external funds since the IUCN Secretariat had limited
resources and law commonly was not a high priority.

An early setback came when it was evident the directory of governmental 18
environmental agencies could not be prepared in time for Stockholm because of
lack of funds, and even though a sizeable collection had been gathered by 1973,
resource constraints continued to prevent its completion.²³ With no funding pros-
pects, the collection was passed to the Sierra Club in the United States as part of
IUCN’s contribution to the elaboration of Sierra Club’s World Directory of Envi-
ronmental Organizations – Preliminary Edition, 1973.²⁴ This early collaboration
reflected the close ties that already existed with a relatively small group of experts,
with Nicholas Robinson then the Chair of Sierra Club’s international committee

(later to lead IUCN's Law Commission) and the Directory's editor, Ted Tryzna, then a member of another IUCN commission.

19 Similarly, in spite of hopes that "support may be found for [the] long-term study of the conceptual bases of environmental policy in collaboration with appropriate university groups,"²⁵ by mid-decade the Commission's report to the Twelfth General Assembly indicated that "[w]ork in this field has not progressed to the extent that was originally envisaged."²⁶ By April 1973, the study of environmental quality as a political concept was in abeyance because, while a "good deal of data has been gathered ..., it remains to evaluate, condense and consolidate it."²⁷ By mid-decade, the major multi-institutional project on integrating environmental and development concepts into administrative practice was no longer active because, it was reported: "Unfortunately it has not been possible to find funding for the project."²⁸

20 Another project involving US universities and initiated in 1971 aimed to inventory state law in the United States (statutes, regulations, and major court decisions) using US university specialists as collaborators to direct interested students in compiling and analyzing the documents. While two professors (one from the University of New Mexico and the other from Colorado State University) agreed early on to cooperate and a survey was sent to US law schools about activities in environmental law, the project became too massive to manage and in 1974 the original project "was discontinued due to its proliferating nature;" the Law Programme subsequently reworked the idea into a smaller project covering 14 US states and obtained external funding from FUST (see Chapter 11).²⁹

Special challenges

21 Caldwell's tenure as Commission Chair represented the first occasion in the young life of the Commission when its Chair was not physically located in Bonn in close proximity to the Environmental Law Centre. He managed from a distance out of his base at Indiana University. Moreover, Caldwell was new to the Commission and its membership. In contrast, his predecessor, Burhenne, had had a decade to build a small and dedicated cadre of Commission members who were active volunteers for Commission projects. Caldwell had support from the new IUCN management regime as evidenced by its quick action to create the CEPLA Executive Officer post coincidental to Caldwell's appointment. Yet, even with full-time assistance of John Staub in Switzerland and ongoing technical and coordination support from the Environmental Law Centre in Bonn, communications and coordination could not be as efficient and effective from a distance as in person. The new management arrangement took extra, concerted effort and planning by all parties to keep each other fully briefed on issues, projects, changes, and needs and to build new working relations.

22 Nevertheless, the first couple of years of Caldwell's tenure were productive especially with the Stockholm papers, as discussed above. Then, in 1972, John Staub decided to retire and this was an unexpected turn. His departure left the post of CEPLA Executive Officer vacant and, because funding problems were beginning to surface in the Secretariat, the post was not refilled. Caldwell lost that dedicated Secretariat staff support.³⁰

Moreover, the Commission's new three-Committee structure could not be fully activated until the 1972 General Assembly confirmed the arrangement, leaving a two-year gap when two Committees were without Chairs to ease the burden on Caldwell and help promote new projects, including their conceptual development and fund-raising. Still, once the restructuring had been confirmed, Caldwell was optimistic about the Commission's future, as he wrote in 1972 correspondence to Françoise Burhenne-Guilmin, Head of the Environmental Law Centre: 23

"Now that the commission is confirmed ... and we have met officially, and that I do seem to be nearing the end of constraining commitments here, I hope we can give thought to how this commission may play an effective role in the future, and I of course, would welcome whatever thoughts you have on this matter."³¹

In 1973 Caldwell appointed Commission member, B. Bogdanov from the USSR, as Vice-Chair for Environmental Administration. The other two committees (policy and law) remained under the direction of Caldwell and Burhenne. 24

With the Commission restructuring confirmed, there also was need to focus on membership. IUCN Council policy to keep commissions small and elite – with no more than 50 members – was still intact. The three membership categories (ordinary members, consultants, and correspondents) introduced by Burhenne in the 1960s to give some flexibility to that policy remained in place through the 1970s under the new Chair. However, from the 45 members listed in the 1969 Commission report to the Tenth General Assembly³² (24 consultants and 21 ordinary members which included Burhenne as Chair and Homer Angelo as Vice-Chair), the reconstituted membership in 1970 fell to 27 individuals.³³ In 1972, five new policy members were added on Caldwell's nomination,³⁴ but with attrition the roster was down to only 22 by 1973 – 14 ordinary members, 7 consultants, and one correspondent from the Council of Europe.³⁵ Membership was not divided into the three committee structure. 25

Volunteerism had been a core resource for the Commission and its outputs in the 1960s. This reduction in Commission membership meant a smaller network to tap exactly when the new Chairman needed extra help to build his base of support for the new policy theme and expanded structure. As Burhenne had shown, members were the key resource for substantive work and were important as well for external fund-raising on which the bulk of the Commission activities continued to depend. 26

By 1974, Caldwell had begun to scale down his Commission activities as funds did not materialize for many of the policy initiatives and he was unable to give more time because of University commitments. Revelations about the Union's financial and management problems following the 1975 General Assembly added to frustrations all round, particularly for the Commissions. By mid-1976, the senior management team of Budowski and Nicholls, under which Caldwell had agreed to serve, had left office. In October 1976, Caldwell also officially resigned as Chairman of the Commission on Environmental Policy, Law, and Administration. Further, Commission Vice-Chair Bogdanov died unexpectedly that same year leaving only Burhenne as a Commission officer. 27

Burhenne returns as Chair

- 28 Faced with these sudden vacancies, the Executive Board turned to Wolfgang Burhenne to serve as Acting Chair. During the April 1977 Extraordinary Session of IUCN, the new IUCN Council (replacing the former Executive Board and acting pursuant to new statutory powers adopted in 1977) formally appointed Burhenne as Chair of the Commission with responsibility primarily in the law theme and requested that two Vice-Chairs be identified to take primary responsibility for the policy and administration themes.³⁶
- 29 In June 1977, Burhenne proposed and Commission members elected Commission member McCloskey (from the United States) as Vice-Chair for Policy and Commission member Syroetchkovski (USSR) as Vice-Chair for Administration; these appointments were ratified at the next IUCN Council meeting.³⁷ In May 1978, Burhenne was nominated by the Council to continue as Commission Chair and this was subsequently endorsed at the 14th IUCN General Assembly meeting in Ashkhabad that fall. The senior management structure for the Commission remained in this form, with the Chair and two Vice-Chairs, through the remainder of the 1970s.
- 30 In 1978, the Commission also was authorized a staff position once more for an Executive Officer, a new policy for all Commissions, and the post could be in Bonn to support the Chairman. Daniel Navid, serving as Assistant Legal Officer with the new Environmental Law Centre (see Chapter 9), was recruited for the post and continued full-time as CEPLA Executive Officer until 1981 when he transferred to Headquarters.
- 31 With the Commission management stabilized, focus turned to membership recruitment. Already in 1976, the year Caldwell resigned, Burhenne and Commission members had begun intensive recruitment efforts and by the end of that year membership was back up to 42 (Burhenne as Chair, 6 other ordinary members, 30 consultants, and 5 correspondents).³⁸
- 32 Emphasis was put on recruiting individuals from countries without representation to give the Commission a stronger geographic footing and to help the Law Programme stay informed about legal developments in as many countries as possible.³⁹ By mid-1978, Commission membership had grown to 58. This was broken down into 13 ordinary members including its three officers Burhenne, McCloskey, Syroetchkovski, 35 consultants (defined as experts in specific environmental law subjects), and 10 correspondents (defined as experts in environmental law in specific jurisdictions).⁴⁰
- 33 At the 1978 Assembly, Burhenne continued to make the case for a larger network of members for the Commission to carry out effectively its mandate in the three themes: “[A] broad range of totally different subject areas constitute environmental policy, law and administration....A network covering both the many disciplines involved and the various types of legal and administrative systems concerned is therefore essential for the Commission.”⁴¹ IUCN Council policy on small commission size began to relax. As membership continued to grow, the three categories began to cause confusion, sometimes overlapping, and implying a hierarchy that wasn’t there. By the end of the decade, the Commission had dropped the membership categories. The Commission reported to the IUCN Council in 1980 that mem-

bership now was at 84, and no differentiation was noted.⁴² The International Council for Environmental Law (ICEL) (see Chapter 11), with its much larger membership was a resource for candidates for the Commission.

In spite of the turbulence of the decade, the 1970s wound down with CEPLA on relatively sound footing compared to other Commissions. In 1978, the new Director General, David Munro, invited Commission Chairs to IUCN Headquarters in Switzerland to define their roles pursuant to the 1977 Extraordinary Assembly decision to ensure the Commissions were brought back into the mainstream of IUCN and part of the triennial programme.⁴³ While some commissions were the focus of concern, Holdgate recalls:

“There was little need to tamper with the three Commissions for which IUCN was most famous – SSC, CNPPA, and CEPLA....[T]he Commission on Environmental Policy, Law and Administration was for its part a unique network of the top experts on environmental law, including High Court judges as well as leading academics, while in the Environmental Law Centre there was a unique computerized law library, database and reference system....The Commission, centre and database provided the foundation for much of IUCN’s support to international conventions, for weighty publications including a multi-volume series of *Multilateral Treaties – International Environmental Law*, and for responses to many requests for information....”⁴⁴

For the 14th General Assembly in 1978, new terms of reference for all Commissions had been finalized. [See Box 1] The Commission’s management structure had stabilized. As had been the experience with the member categorization, the new three-Committee structure proved not to work. As Daniel Navid, CEPLA Executive



Daniel Navid, first ELC Assistant Legal Officer, later CEPLA Executive Officer

Officer in those years, recalls: “there never were enough resources to do three distinct themes, nor did the Vice-Chairs in policy and administration generate specific

projects or proposals. Only the ‘law’ theme continued to produce projects and raise funds for them. It just didn’t prove possible to keep the other two themes alive.”⁴⁵

36 Moreover, with time, there was appreciation that attempts to distinguish the three themes and keep them separate were somewhat artificial. In practice, environmental policy, environmental law, and environmental administration were interconnected and overlapping elements in governance. As Burhenne would reflect later, “what could be done with environmental administration standing alone? It was always part of an associated policy and law framework.”⁴⁶ Activities of the Commission, particularly requests for project assistance, commonly were a mixture of the three elements under the umbrella of environmental law.

37 But the Commission vice-chairs proved invaluable for the promotional, coordination and monitoring roles they could play representing their regions. Gradually, having learned from this experience, the regional vice-chair rather than the thematic vice-chair became the model for membership representation on the Commission, the predominant approach used until the end of 2004 (see Chapter 27).

38 By the close of the decade of the 1970s, the Commission’s management had stabilized and strengthened, with vice-chairs in place as well as a full-time CEPLA Executive Officer. The 1979 report to IUCN’s Council summarized the operating framework: “[A] new structure has been created, with the Chairman and the three Vice-Chairmen nominate [sic] comprising a Steering Committee for Commission activities, and special undertakings being accomplished through ad hoc Working Groups drawn from the membership according to expertise. General meetings of the membership will not be held but rather the membership as a whole will be consulted through correspondence on organizational matters or matters of fundamental importance. As in the past it is intended that the Commission will work very closely with the Secretariat and in particular with the Law Centre. IUCN’s activities in the law, policy and administration fields will continue to be joint endeavours, with close collaboration evident in both the planning and carrying out of projects and initiatives.”⁴⁷

39 It took another decade for the Commission’s name to reflect this thematic integration, however. It was not until 1990 that the name was changed back to a semblance of its original form – simply the “Commission on Environmental Law” (see Chapter 22).

40 The Secretariat’s decision in 1970 to create an outposted unit in Bonn called the Environmental Law Centre to support the Commission and represent the Secretariat in matters of environmental law and policy is the next part of the story.

41 **Box 1: CEPLA’s First Formal Terms of Reference, 1978⁴⁸**

Commission on Environmental Policy, Law and Administration (CEPLA):

Role. The Commission on Environmental Policy, Law and Administration is that organ of IUCN which serves as a source of technical opinion and guidance on the strategic policies and legal and institutional arrangements required to ensure that mechanisms for the conservation of the environment, together with the related measures, legislation and procedures, are compatible with the best available environmental management techniques.

Terms of Reference. The Commission on Environmental Policy, Law and Administration shall work in accordance with the programme of IUCN:

1. To gather and review information on strategic policies, legal instruments and administrative mechanisms relating to the conservation of the environment and natural resources.
2. To monitor developments both of national and international law including treaties, laws, custom, jurisprudence, court decisions and soft law.
3. To monitor the functioning and effectiveness of such policies, legal instruments and administrative systems.
4. To identify areas where the absence of effective strategic policies, legal instruments or administrative mechanisms threatens the continuing productivity of ecosystems or the survival of species.
5. To initiate, promote or support legal research consistent with the objectives of IUCN.
6. To propose and as appropriate draft strategic policies, legal instruments or administrative mechanisms for improving the environment and natural resources at the national, regional or global level. To advise on the legal and administrative implications of initiatives and strategic policy issues addressed by IUCN.
7. To participate in the development of the World Conservation Strategy, the programme of IUCN, in close cooperation with other Commissions and, as necessary, in the development and screening of projects, and to maintain a roster of experts from which individuals or groups can be selected to assist in those and other specific tasks.
8. To facilitate communication within the professional community concerned with the role of the Commission.

dated: May 5, 1978

Notes

- 1 *IUCN Yearbook 1973*, at 47. See also Holdgate, M., *The Green Web*, at 108.
- 2 "Commission on Legislation Program 1970–1972" in *Tenth General Assembly Proceedings and Summary of Business, Volume II, New Delhi, December 1969* (IUCN, Morges, Switzerland, 1970), at 145 (labeled Appendix A.4).
- 3 "Director General's Report to the General Assembly" in *Proceedings of the Eleventh General Assembly of IUCN, Banff, Alberta, Canada, 11–16 September 1972* (labeled Document No. GA.72/3) (IUCN, Morges, Switzerland, 1972), at 51.
- 4 "Report of the Work of the Union since the Eleventh General Assembly" (labeled Agenda Paper GA.75.1) in *IUCN Proceedings of the Twelfth General Assembly, 8–18 September 1975, Kinshasa, Zaire* (IUCN, Morges, Switzerland, 1976), at 40.
- 5 See *IUCN Year Book 1971*, pp. 43–45. For example, David Gregory then affiliated with Harvard Law School came to IUCN Bonn during the summer of 1971 to study various U.S. trends and policy questions and he produced two reports that became IUCN publications, one on conservation easements and the second on standing to sue, IUCN Environmental Law Papers 1 and 2 respectively.
- 6 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany) (draft transcript, pp. 12–13).
- 7 *IUCN Year Book 1970*, p. 61. This restructuring was approved by the Executive Board at its May 1970 meeting and put before the 1972 General Assembly for formal confirmation.
- 8 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 9 *IUCN Year Book 1970*, p. 61.
- 10 *IUCN Year Book 1971*, p. 40.
- 11 *Id.*
- 12 *CEPLA Newsletter No. 1* (August 1973), p. 5.
- 13 See discussion of the project in *IUCN Yearbook 1973*, pp. 59–60.
- 14 *CEPLA Newsletter No. 1* (August 1973), p. 5.
- 15 See Schneider-Sawiris, S., "The Concept of Compensation in the Field of Trade and Environment" (IUCN Environmental Policy and Law Paper No. 4) (IUCN, 1973)

- 16 See Nicholls, Y. I., "Source Book: Emergence of Proposals for Recompensing Developing Countries for Maintaining Environmental Quality" (IUCN Environmental Policy and Law Paper No. 5) (IUCN, 1973).
- 17 MacLeod, S., "Financing Environmental Measures in Developing Countries: The Principle of Additionality" (IUCN Environmental Policy and Law Paper No. 6) (IUCN, 1974).
- 18 See *IUCN Year Book 1971*, p. 39.
- 19 Id.
- 20 Nicholls, F., and F. Burhenne-Guilmin, "Report of Commission on Environmental Policy, Law and Administration for the Period 1973–1975" (labeled Agenda Paper GA. 75/8) in *IUCN Proceedings of the Twelfth General Assembly, 8–18 September 1975, Kinshasa, Zaire* (IUCN, Morges, Switzerland, 1976), p. 119.
- 21 Staub, J., "Report of the Commission on Environmental Policy, Law and Administration for the Period 1970–1972" (labeled Agenda Paper GA.72/15) in *IUCN Proceedings of the Eleventh General Assembly, Banff, Alberta, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1970), p. 151.
- 22 *IUCN Year Book 1971*, at 40.
- 23 Nicholls, F., "Report on Activities of Commission on Environmental Policy, Law and Administration," Agenda Paper EB. 73/15, at 2, attached to "IUCN Board Minutes of the 53rd Session of the Executive Board, Morges, Switzerland, 10–11 May 1973".
- 24 Nicholls, F. and Burhenne-Guilmin, F., "Report on Activities of Commission on Environmental Policy, Law and Administration," (labeled Agenda Paper EB.74/19), at 4, attached to "IUCN Minutes of the 54th Session of the Executive Board, Morges, Switzerland, 8–10 May 1974".
- 25 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), at 50.
- 26 Nicholls, F., and F. Burhenne-Guilmin, "Report of the Commission on Environmental Policy, Law, and Administration for the Period 1973–1975" (labeled Agenda Paper GA.75/8), in *Proceedings – Twelfth General Assembly, Kinshasa, Zaire, 8–18 September 1975* (IUCN: 1976), p. 119.
- 27 See Nicholls, F., "Report on Activities of Commission on Environmental Policy, Law and Administration" (labeled Agenda Paper EB. 73/15), p. 2, attached to "IUCN Board Minutes of the 53rd Session of the Executive Board, Morges, Switzerland, 10–11 May 1973".
- 28 Nicholls, F., and F. Burhenne-Guilmin, "Report of the Commission on Environmental Policy, Law, and Administration for the Period 1973–1975" (labeled Agenda Paper GA.75/8), in *Proceedings – Twelfth General Assembly, Kinshasa, Zaire, 8–18 September 1975* (IUCN, 1976), p. 119.
- 29 See *IUCN Year Book 1974*, p. 41.
- 30 John A. Staub (Switzerland), who served in this post through 1972, not only provided coordination with other Commissions, he served as the main channel of communication between the IUCN Secretariat in Switzerland and its out-posted Law Centre in Bonn.
- 31 Letter from Lynton K. Caldwell to Françoise Burhenne-Guilmin, dated November 28, 1972.
- 32 "The Commission on Legislation Three Year's Report", Appendix XI, in *Tenth General Assembly, New Delhi, 24 November – 1 December, 1969, Vol. II, Proceedings and Summary of Business* (IUCN, Morges, Switzerland, 1970), p. 107.
- 33 Nicholls, F., "Membership of Commission on Legislation" (for triennium 1969–1972) (labeled Agenda Paper E.B. 70/77) attached to "IUCN Executive Board Minutes of Meeting of 22–24 May 1970".
- 34 The new members were Christian de Laet, Secretary General of the Canadian Council of Resource and Environment Ministers, Montreal; Richard N. Gardner, Henry L. Moses Professor of Law and International Organization, Columbia University, New York; Sir Robert Jackson, United Nations Office in Geneva; Jaro Mayda, Professor of Law, University of Puerto Rico at Rio Piedras; Kauko Sipponen, Professor of Public Administration, University of Tampere, Finland. See Staub, J., "Report of the Commission on Environmental Policy, Law and Administration for the Period 1970–1972" (labeled Agenda Paper GA. 72/15), in *Proceedings of the Eleventh General Assembly of IUCN, 11–16 September 1972, Banff, Canada* (IUCN, Morges, Switzerland, 1972), p. 152.

- 35 See *IUCN Yearbook 1973*, p. 117. Full list is on page two of bound volume of ELC/CEPLA archives, volume labeled: "Reports – ELC/CEPLA 1960–1981", p. 2 (IUCN ELC).
- 36 Burhenne, W., "Report of the Commission on Environmental Policy, Law and Administration" (identified in the 1978 General Assembly Proceedings as "Annex 1 to General Assembly Paper GA. 78/21, 15 July 1978"), p. 1 (15 July 1978). That decision was taken by the newly-created IUCN Council pursuant to amendments made by the Extraordinary General Assembly meeting January 1977. At the Extraordinary General Assembly, it was decided to replace the Executive Board by a Council (which would still have an Executive Committee of members specially competent in finance, management, etc.) two-thirds of whose members should represent the regions and be elected by the whole membership, not just those in their regions. The President would be elected by the General Assembly but the Council could appoint the Director-General and Chairs of Commissions. As of April 1977, the minutes of Executive meetings refer to the Executive Board for the meetings of the 18 and 22 April 1977 (59th, 60th, and 61st sessions), and then the 1st Session of the Council. In 1978, a Bureau of IUCN is created as a subgroup of the Council composed of the President, Vice-Presidents, Treasurer and Regional Councillors which evolved over the years to deal with special and long-term issues. See Holdgate, M., *The Green Web*, p. 169.
- 37 Burhenne, W., "Report of the Commission on Environmental Policy, Law and Administration" (identified in the 1978 General Assembly Proceedings as "Annex 1 to General Assembly Paper GA. 78/21, 15 July 1978") at 1 (15 July 1978). This Report included an 'Annex 1' with a list of commission members as of July 1978, which indicated the two Vice Chairs (McCloskey from the US and Syroetchkovski from the USSR).
- 38 ELC/CEPLA archives, volume labeled: "Reports – ELC/CEPLA 1960–1981", p. 3. (IUCN ELC)
- 39 Burhenne, W., "Report of the Commission on Environmental Policy Law and Administration for the period May 1976 to April 1977," p. 2. Also cited as Agenda Paper EB. 77/21, Annex to "IUCN Executive Board Minutes of the 59th, 60th, and 61st Sessions of the Executive Board and 1st Session of the Council at World Health Organization Headquarters, Geneva, Switzerland, 18 and 22 April 1977".
- 40 See Burhenne, W. "Report of the Commission on Environmental Policy, Law and Administration", pp. 12–13 (labeled Annex 1 to General Assembly Paper GA. 78/21) in *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979).
- 41 Id. at 2.
- 42 "Report of the Commission on Environmental Policy, Law and Administration" (14 October 1980), p. 1 (labeled Council Paper UC.80.23) attached to "Minutes of the Eighth Meeting of the Council of IUCN 10–12 November 1980, IUCN, Gland, Switzerland".
- 43 "Report on Work of the Union since the 13th (Extraordinary) General Assembly" (labeled General Assembly Paper GA. 78/2) in *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979), p. 10.
- 44 Holdgate, M., *The Green Web*, pp. 144–5.
- 45 Author interview with Daniel Navid, June 23, 2004 (Bonn, Germany).
- 46 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 47 "Report of the Commission on Environmental Policy, Law and Administration" (May 1979), p. 1. (labeled Council Paper UC. 79/27) attached to "Minutes of the Fifth Meeting of IUCN Council 25–27 June 1979 at Hotel du Mont-Blanc, Morges, Switzerland."
- 48 Included with the "Minutes of 2nd Meeting of IUCN Council, 4, 5, 6 May, 1978, at Hotel du Mont-Blanc, Morges, Switzerland" (labeled '143').

Chapter 9: Environmental Law Centre

By 1966, IUCN's Commission on Legislation had been authorized to set up a small permanent office in Bonn, as reviewed in Chapter 3. The office was staffed by Dr. Françoise Guilmin, the Commission's first full-time lawyer, with visiting researchers and students providing additional support as funds became available or secondments could be arranged. Commission Chairman Burhenne supervised the operations of the office.

This arrangement was set for a change when Burhenne and Guilmin decided to marry in May 1970. The Burhennes raised the issue themselves, once they were married, explaining they felt "it was not appropriate" to continue the present working arrangement where Françoise would be supervised by her husband.¹ Consequently, she offered to resign.

Creating a Headquarters' unit in Bonn

Frank Nicholls, newly-appointed IUCN Deputy Director General, believed strongly that both individuals were very much needed inside IUCN. He consistently was a supporter of the legal role of IUCN having been involved as a scientist and legal drafter in legislative issues in his native Australia and continuing this interest inside the Union [see Box 1].

Box 1: Frank Nicholls promotes environmental law

While the Law Programme always had to be prepared to defend and promote the relevance and role of law and policy in IUCN's conservation mission, it had a steady and committed ally in Frank Nicholls, IUCN's Deputy Director General in the early 1970s, an "all-rounder" (in the words



State Secretary Günter Hartkopf (left) and Frank Nicholls sign the first agreement of the German Ministry of the Interior to support the ELC

of Martin Holdgate), an Australian physical scientist who also was a seasoned administrator and organized manager, with training in legal drafting and experience applying science to development.² Nicholls, who understood the important science-law link, played a key role in creation of the Environmental Law Centre. In addition to providing a critical, supportive link between the Centre and the IUCN Secretariat in Switzerland, he also provided additional help to the Centre as draftsman. In this capacity, he participated in preparing final drafts of CITES, Ramsar, the Bonn Convention (Migratory Species), and the World Heritage Convention.

In a separate initiative in the early 1970s arising out of the work of the IUCN Polar Bear Specialist Group of the Survival Service Commission, Nicholls played a key role as facilitator and intermediary among the five polar bear States (Canada, Denmark, Norway, the Soviet Union, the United States) in conclusion of the *Agreement on the Conservation of Polar Bears*. The process of treaty development was lengthy because of difficult jurisdictional issues and involved several drafts. Toward the end, as negotiations were reaching a critical stage, Nicholls undertook a series of visits to consult with each of the five polar bear countries, culminating in resolution of outstanding differences and conclusion of the agreement in Oslo in 1973. The Polar Bear Agreement was one of the first related to species protection that also contained provisions for ecosystem or habitat protection as well.³

Among other special initiatives, Nicholls was involved in the joint venture between IUCN and UNESCO to develop the "Convention on Conservation of Nature in the South Pacific," concluded in Apia in 1976. Reflecting on that experience: it was a "far less successful venture ... [as] a convention that does not appear to have been acted on by the Parties."⁴ On another occasion, Nicholls was invited to Bonn by Wolfgang Burhenne to be protocol officer for the 1979 diplomatic meeting on the migratory species convention. He recalled for this History that special memory, where he and Françoise "worked with Wolfgang in the top floor study night after night to get the English, French, and Germany texts in accord. It was another wonderful interaction."⁵

Frank Nicholls was invited to become a member of the Law Commission after he left Headquarters, a status he holds today as he continues to actively support and promote IUCN's environmental law activities.

- 5 To keep both Burhenne and Guilmin inside the Union, Nicholls proposed a plan whereby the small permanent office that had been created to support the Commission would be reconstituted as an Environmental Law Centre, still located in Bonn, but working for the Secretariat and reporting to him at Headquarters. This arrangement would get around the supervision problem. Burhenne in his Commission role would still report to the Executive Board but be answerable to the General Assembly. Guilmin as Legal Officer of the Centre would be staff of the Secretariat and answerable to the Director General, though working in Bonn, and on a daily basis providing support to the Secretariat and the Commission.
- 6 Nicholls' plan was well received by IUCN's Executive Board and the Burhenne/Guilmin team. Creation of an Environmental Law Centre (ELC) was approved by the Board at its May 1970 meeting and became effective immediately. The solution kept both individuals inside the organization for important institutional continuity and the professional contributions they would continue to make as a team. Moreover, a Secretariat unit linking and helping coordinate the substantive work of the now-dispersed units of the Commission (with Chairman Caldwell in Indiana and Vice-Chair Burhenne in Bonn) helped the Commission adapt to and implement decisions of 1969/1970 concerning the expanded substantive mandate, new more complex management structure, and new leadership, as described in the previous Chapter.

With the Executive Board's decision to create the Environmental Law Centre, IUCN Headquarters began to provide a core budget to support the Legal Officer. Over the years, even in times of severe resource constraints and management upheaval, as noted elsewhere in this History, some core budget always went to the Environmental Law Centre which today is a significant institution. The Secretariat's steady commitment to keep the Environmental Law Centre alive and supported by some core funds (though at times substantially reduced, as in the early 1980s) proved a mainstay for the Commission, as acknowledged in its report to IUCN's Executive Board in 1978: "[A]lthough funds were obtained from various sources the Commission could not be as effective without the support of IUCN money at the Law Centre."⁶ 7

An immediate administrative task for the new Environmental Law Centre was to bring Commission activities' reports in line with a new standardized reporting system being implemented across the Union as part of the new centralized approach. All IUCN activities were to be reshaped as 'projects', and to ensure best use of scarce funds a project screening process was introduced.⁷ Each project was to have defined objectives and operational tasks to enable "a large number of Commission members to participate closely in task forces and Working Groups, both in carrying out projects and in advising on their conception and execution."⁸ As explained by Headquarters to the Eleventh IUCN General Assembly in 1972, activities were to be oriented "towards a multidisciplinary approach to project execution...." with cross-linkages between the work of the various Commissions.⁹ 8

The ELC began this task by classifying projects according to the source of funds – those raised by the Commission for projects (including projects the Centre might carry out for the Commission), Headquarters funds going directly to the Centre, and funds that might be raised by the Centre itself. Most projects involved a pooling of resources and skills from the combined house of the Commission and Law Centre, and frequently also included funds raised externally by the Centre or Commission from other organizations. Headquarters also actively promoted Law Center activities through its external fund-raising, earmarking funds and projects for the Law Programme in Union funding proposals to Governments and other organizations. 9

Early WWF Support

In those initial years of the young Commission and Environmental Law Centre, World Wildlife Fund (WWF) was particularly important in helping fund projects and operations. WWF-International (WWF-I) was a sister conservation organization founded initially to fund-raise for IUCN (see Box 2). WWF supported early IUCN activities generally and law in particular, recalls Wolfgang Burhenne, one of the 16 founding members of WWF International in 1961 and a co-founder with Eugen Gerstenmaier (President of the Federal Parliament of Germany) of WWF-Germany in 1965.¹⁰ 10

11 **Box 2: World Wildlife Fund-International – The Early Years**

In April 1961, several of the world's leading conservationists, scientists, and businessmen (all principals in the founding or subsequent building of IUCN) came together at IUCN Headquarters in Switzerland to discuss the urgent need for professional fund-raising to support the worldwide conservation movement. The result was the decision to establish a new international fund-raising organization, to be called the World Wildlife Fund (WWF) with the giant panda as its symbol, with an international headquarters and national chapters. The Morges Manifesto, signed by 16 participants at that meeting, was the first formal statement laying out why the fund-raising organization for nature conservation was needed and the steps for its creation. In September WWF-International (WWF-I) was legally constituted under Swiss Law at Zurich and registered as a tax-exempt charitable foundation in October 1961.

Wolfgang Burhenne, to become the first Chair of the IUCN Commission on Legislation, was among the 16 signatories of the Morges Manifesto. In the late 1970s and early 1980s, especially, WWF provided important funding to the Commission to undertake projects and participate in international law developments that otherwise would not have been possible.

IUCN and WWF were to be sister conservation organizations – IUCN managing conservation operations and WWF managing the fund-raising. The two organizations planned to share office space. In the early years, WWF enabled IUCN to increase its scale of activities. In 1970, when IUCN restructured to operate more like a centralized agency pursuant to the 1969 General Assembly decision, WWF endorsed the move and agreed to assist IUCN in fund-raising, adding to IUCN's hopeful mood for financial prospects for the 1970s.¹¹ Gradually WWF became interested in undertaking some of its own project operations. By the end of 1971, some ten years after creation, WWF moved from a purely funding organization to a full partner with IUCN in project development and arrangements were agreed for joint operation of projects.¹² WWF-International continued to support IUCN activities into the late 1970s, including notably IUCN's work on the World Conservation Strategy, a joint output of IUCN, WWF, and UNEP in 1980 (see Chapter 17).

As the 1970s progressed, relations were not always smooth and tensions arose when IUCN was in periods of financial crisis, with WWF worried about the effectiveness of IUCN leadership and IUCN sensitive about project interference.¹³ While they shared office space for some 10 years, today the two organizations are independent in operations, each with separate Headquarters in Gland, Switzerland.

12 In the mid to late 1970s, World Wildlife Fund-International became an important supporter of the young Environmental Law Programme. Daniel Navid, first Assistant Legal Officer and subsequently the CEPLA Executive Director, as noted below, remembers how important was its funding support. "WWF-International was interested in law and provided project support for several specific law projects. We used the funds for work on the Charter for Nature, the Law of the Sea project, and the migratory species drafting process. Of course, we had to report back on how we spent the money. But that was a period when we got some very good projects funded with their help that otherwise would not have been funded."¹⁴

13 Françoise Burhenne-Guilmin had similar recollections that funds from WWF-International were important in those years. She remembers particularly the support from Lee Talbot, who (following service as Senior Science Advisor to WWF-International) became Director General of IUCN in 1980, and continued to encourage and build close relations between the two organizations.¹⁵ In addition, during the 1960s and much of the 1970s, Burhenne (as co-founder of the German chapter of WWF) had access to and influence with the Board of WWF-International, building further that base of support.

In addition, once the German chapter of WWF had been founded, it also began to support the new Commission. It was WWF-Germany which provided the first significant grant in 1965–66 for professional support to the Commission (as discussed in Chapter 3), the three-year grant for the legal post to which Françoise Guilmin was appointed. From 1965 until 1977, WWF-Germany was housed in the same building as the Commission and Environmental Law Centre. This arrangement was mutually beneficial because IUCN legal staff were conveniently available to assist with WWF-Germany's legal needs, including drafting of contracts for promotional activities and other operations.¹⁶ Until the mid-1970s, World Wildlife Fund-Germany continued to provide funding support, with "contributions being directed or earmarked to the Law Centre and its projects."¹⁷

The Environmental Law Centre and Commission generated projects and built expertise through these early, partly unrestricted grants. As outputs and expertise grew, alliances were built with other non-profit and grant-making institutions for funding support (see Chapter 11). The Law Centre began having success in fundraising with country donors and with the European Economic Community (EEC) (for example, with CITES species covered by legislation as discussed in Chapter 6). Normally such funds were processed through Headquarters and earmarked for specific legal projects. The Commission and Centre typically prepared a combined proposal when applying for such support. Once the United Nations Environment Programme became operational in the mid-1970s, it also began to support specific projects or joint ventures under contract, including projects through the Environmental Law Information System discussed in the next Chapter.

ELC Staffing

In 1970, the newly-created Environmental Law Centre had one professional staff position supported by IUCN, that of Legal Officer held by Françoise Burhenne-Guilmin. Burhenne-Guilmin and Staub, CEPLA Executive Officer at Headquarters, worked as a team for the Commission, each with their respective charges – Staub supporting the Commission and Chairman Caldwell overall and handling policy aspects of the Commission's work programme, and Burhenne-Guilmin continuing to support the law aspects of the Commission with Burhenne as Chair of the Committee on Environmental Law.

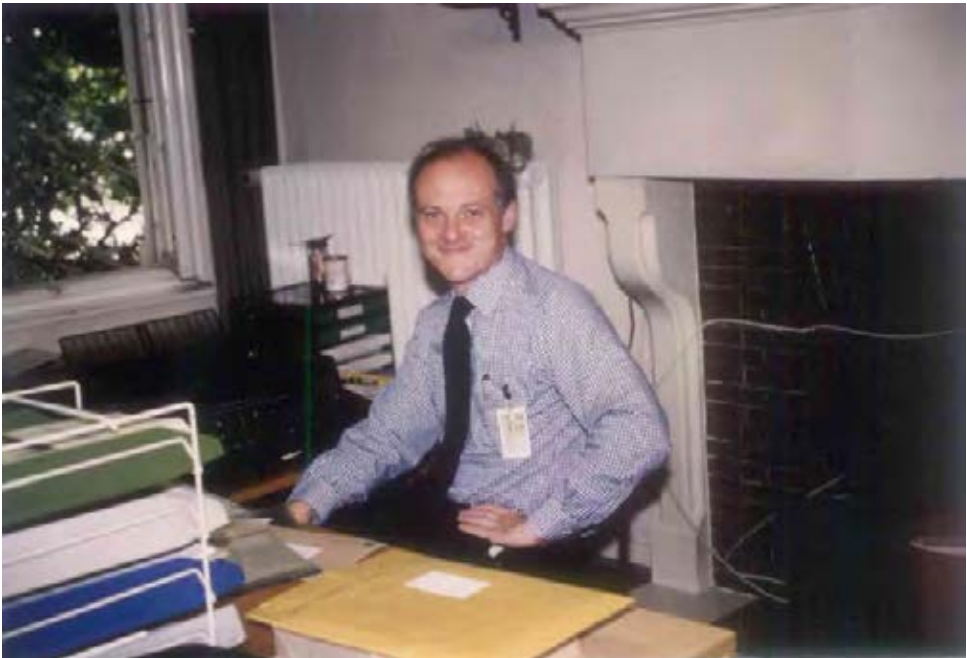
With Staub's retirement in 1972, the Law Centre became the main liaison for all Commission components. Frank Nicholls, Deputy Director General, stepped in to handle Law Programme coordination and oversight at Headquarters.¹⁸ Nicholls took a strong interest in the Law Centre, making several visits to Bonn each year during his term of office, and continued thereafter to maintain good relations with the programme. [See Box 1]

In 1973, Françoise Burhenne-Guilmin was promoted and given an expanded title: "Head of the Environmental Law Centre, and Legal Officer". For the next several years, that post remained the only post at ELC financially supported by Headquarters. In 1975, Daniel Navid (a young lawyer from the United States) was recruited by Wolfgang Burhenne to serve as Research Fellow for a 15-month period using external funds. In effect, Navid became the Centre's first assistant legal officer.

19 In 1976, Headquarters agreed to fund a second professional ELC post. Navid's contract was converted to the staff position (formalizing the 'Assistant Legal Officer' title), and the post was included in IUCN's budget. Navid continued in this capacity until 1978 when he was appointed to the new post of 'Executive Officer' for the Law Commission in line with Headquarters' policy to have executive officers for all Commissions. In this post, Navid continued to work out of Bonn, which greatly facilitated coordination with and support to the ELC. In 1981, his responsibilities were split between the Law Commission and Planning Commission and he was relocated to Headquarters, a loss for the Commission (as noted in Chapter 17) and the ELC.

20 When Navid moved to the Commission in 1978, the Law Centre lost his post. Through the 1970s and into the 1980s, Francoise managed the Law Centre's work load largely with the help of short-term researchers and others paid through external funds, sometimes directed to specific components of the programme. For example, Christian Pripp from Denmark came to the Law Centre in the mid-1980s with the support of external funds to work specifically on the Environmental Law Information System. Sometimes, consultants hired by Wolfgang Burhenne through his parliament-linked funds also helped with ELC projects of mutual interest. In 1980, for example, a young British lawyer Michael Demidecki was recruited by Wolfgang to come to Bonn and remained until 1984 helping both on parliament activities and related Law Centre projects.

21 In 1984, the Law Commission again was allocated funds from Headquarters for a post to be located in Bonn, and Malcolm Forster was recruited by Wolfgang Burhenne as General Counsel to the Law Commission and the International Council of Environmental Law (ICEL). While Forster's main responsibilities were Com-



Malcolm Forster at his desk, Adenauerallee 214, 1985

mission-related, he also provided valuable senior expertise working with ELC and Françoise Burhenne-Guilmin on joint ELC/Commission activities.

Over the years, the number of ELC's staff positions funded by IUCN gradually increased. By the end of 2004, the Law Centre had some 15 staff on its payroll, including Legal Officers, documentation and information management specialists, and support staff. (For a list of persons in senior legal posts at the Environmental Law Centre from 1970 through 2004, see Annex 1.) 22

Volunteers, visiting scholars and researchers

Continuing the practice of the 1960s, the Law Centre relied heavily on volunteer assistance from Commission members for a variety of needs, from assisting with technical requests and collection of legislative materials to advising on international law development. Servicing technical assistance requests continued to be on an ad hoc basis subject to availability of expertise and funds in cases where travel and other support costs were involved. 23

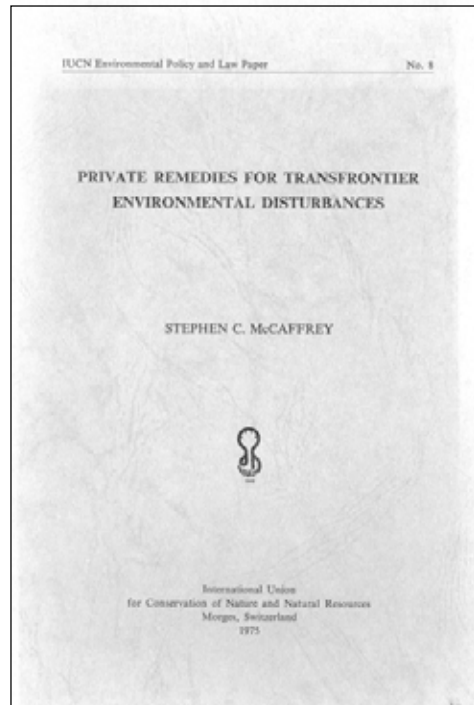
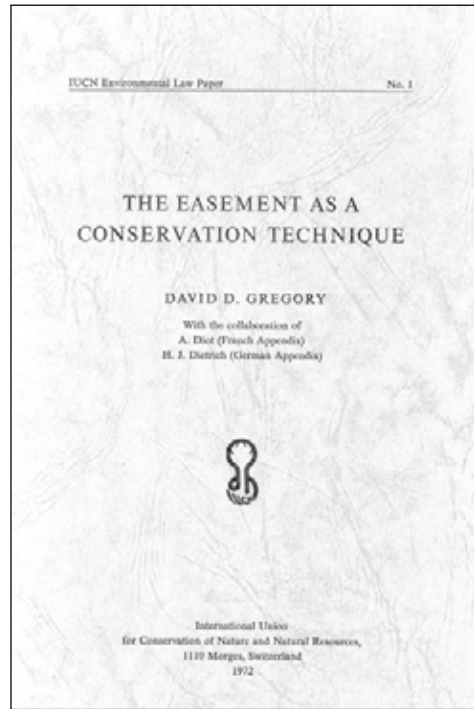
The Commission's annual report to a 1977 Executive Board meeting stressed the critical value of those volunteers to the programme: "The arrangement of providing voluntary assistance to the Law Centre has been of great significance in the success of IUCN's legal programme, as a tremendous reservoir of legal expertise has been made available to supplement IUCN's small secretariat."¹⁹ Moreover, members were called upon to help with fund-raising as illustrated by a 1981 memo to membership from the Commission Chair attaching a list of unfunded or inactive projects "in order to solicit proposals from the membership for their development... [and] thoughts as to how we might soon initiate work on them".²⁰ 24

As for the Law Centre, before Navid's arrival Françoise Burhenne-Guilmin hired short-term researchers to support the work of the office whenever external funds for projects or other special arrangements could be negotiated. The Law Commission and ELC also tried to attract research fellows and visiting scholars interested in spending time at the Centre as part of their programme of study or work. As an attraction, the growing collection of legislation and literature could be made available to them as a resource for their projects. Some of these research fellows and scholars served unofficially as assistant legal officers, but that remained an informal designation because they were not on IUCN's payroll. 25

Daniel Navid recalled that during his tenure with ELC, there were "always quite a few people in the office doing interesting research, and none on the IUCN roster because they were paid from external funds or had special fellowships."²¹ Some of the young professionals were hired by the Fund for Environmental Studies (FUST, discussed in Chapter 11) to work on a variety of projects for a number of organizations and sometimes these individuals were seconded to work on specific ELC tasks or Commission assignments. Others came through special funding arrangements directly to ELC to do specific research and, in the process, helped the Centre generally. These first researchers and scholars were mostly from developed countries and frequently combined graduate studies or other university work with fellowships, producing some of the early papers in the IUCN's Environmental Policy and Law Paper (EPLP) series. 26

27 As reported to the Twelfth General Assembly in 1975, visiting lawyers “made it possible to complete studies concerned with the adoption of new legal concepts relating to environmental issues from one jurisdiction to another.”²² For instance, David Gregory, visiting lawyer from the United States who was working on an LL.M degree at Harvard, authored the first two papers that launched the IUCN EPLP series.²³ Steve McCaffrey, American lawyer studying for his Doctorate of Law at the University of Cologne, worked at the Law Centre for more than a year, producing among other things articles for the journal *Environmental Policy and Law*, and a study on private remedies for transfrontier environmental damage, an EPLP product still relevant today.²⁴ Orlando Delogu, another American lawyer and law professor from the University of Maine, came to the Law Centre during 1973–74 as a research fellow for the International Council on Environmental Law, producing, among other things, two EPL papers, one on US experience with environmental impact assessment and the other on tax policy and environmental objectives.²⁵ Eckard Rehbinder from Germany (author of EPLP No. 3) was teaching comparative law at the University of Bielefeld in Germany during his affiliation with ELC.²⁶ Rudolf Dolzer, a visiting lawyer working on his doctoral thesis in international law at Harvard at the time, undertook research at the Law Centre for an EPLP study on the social obligation of property ownership, a paper still cited today.²⁷

28 This approach proved to be an important building block for the young programme. In addition, it generated pioneering work and publications in the emerging field of environmental law (as discussed further in Chapter 18).



Work programme

The Law Centre's first work programme consisted of the three core activities carried over from the 1960s – collecting and organizing legislative materials for staff and member use, providing technical advice and ad hoc assistance to countries on request, and developing international collaborations and treaties. In addition, the Centre assumed new administrative and project management tasks as an arm of IUCN Headquarters and supported the Commission's various initiatives in policy and administration. 29

The Centre also continued its liaison and coordination functions with Law Commission members and with ad hoc groups formed from time to time around distinct tasks, members serving in a voluntary capacity. Such Working Groups proved to be an effective and efficient tool for mobilizing technical expertise around specific issues with minimum resources. As explained to the IUCN General Assembly in 1978, ad hoc Working Groups coordinated by the Law Centre were used, for example, "for the implementation of such projects as the drafting of the Charter for Nature, the Law of the Sea statement, commenting on proposed laws or providing legislative drafting" – subjects covered elsewhere in this History.²⁸ The technique was highlighted in the Commission's report to the 1984 General Assembly: "This method of work has been devised for two reasons: on the one hand, the Commission's diversity of expertise and on the other, the need to organize consultations at frequent intervals when full meetings of the Commission would be impractical. In practice this system has proved to be most efficient taking into account the financial resources available. Ad hoc groups have mostly conducted their work by post but meetings have taken place when circumstances so required ... or when the opportunity arose."²⁹ 30

Activity in international law development significantly increased for the IUCN Environmental Law Programme in the 1970s following the Commission's and Law Centre's early successes with the African Convention and CITES (reviewed in Chapters 5 and 6, respectively). Most prominent among these for advancing the conceptual development of environmental law at the global level were two treaties that remain IUCN priorities today: the Bonn Convention (Convention on Migratory Species, 1979) (discussed in Chapter 13), and Ramsar (the Convention on Wetlands of International Importance especially for Waterfowl Habitat) (see Chapter 14). Pioneering work was done at the regional level with the ASEAN Convention (Convention on the Conservation of Nature and Natural Resources for the Association of South-East Asian Nations (ASEAN) (see Chapter 15). In 'soft' law, the Commission, supported by the Law Centre, also successfully developed and promoted the World Charter for Nature, the most modern international policy statement of the time on principles of conservation, adopted by resolution of the United Nations General Assembly in 1982 (see Chapter 16). 31

Technical assistance began to develop also as a core activity, especially with national-level legislative assistance. It continued to rely on an ad hoc approach, however, subject to available resources and expertise. In 1975, the Law Programme highlighted this area for the Twelfth IUCN General Assembly: "Advice has been given to governments on a number of occasions in the development of new or re- 32

vised conservation legislation and specific studies have been made with a view to providing guidelines for new laws in this field.”³⁰ Priority continued to be given to organizations and agencies representing developing countries. Also, Law Commission members from the requesting countries were normally involved, sometimes taking the lead, otherwise assisting the outside expert in consultations and information gathering, and supporting implementation and follow-up.

33 Hand-in-hand with work on these special and ad hoc requests, the Centre continued collecting new materials, and building and managing the growing collection of legislative texts and international instruments. By mid-1970, the collection was sufficiently robust to provide “the basis for the work of the Law Centre staff, visiting researchers, and numerous visitors.”³¹ Continuing to advance the user-friendly nature of the collection and always interested in application of the latest technology, the Law Centre by the mid-1970s had converted the hard-copy, index-card filing system to a computerized programme called the Environmental Law Information System (ELIS), supported largely with outside funds (see Chapter 10). This system improved the efficiency with which research materials could be retrieved by staff and visitors. Particularly innovative for the time, the Centre had an open-door policy for members and, to the extent feasible, the public at large to use the collection.³²

34 In 1977, an article appeared in the journal *Environmental Policy and Law* highlighting the Environmental Law Centre and its envisioned role. In brief, it explained: “IUCN’s Environmental Law Centre, established in Bonn, enables the Union to consider comprehensively the legal ramifications of environmental affairs. The Centre [is] an integral part of the IUCN Secretariat.... Activity at the Centre is geared to both providing information about and developing practical legal approaches to environmental problems. The latter take the form of being either research study projects, or action initiatives, as might be appropriate. As a consequence of IUCN’s unique international structure, we believe that the organization has been able to, and can continue to provide crucial input to policy-makers throughout the world.”³³

35 During the decade, in-house legal requests from IUCN Headquarters grew as well. There were legal opinions to prepare on contracts and other administrative matters and, most notably, revision of IUCN’s statutes, by-laws and rules of procedures for the Extraordinary Assembly in 1977, following the crisis of the 1975 General Assembly, as discussed in Chapter 8.

36 By the end of the 1970s, the Environmental Law Centre and the Commission work programmes were being represented as an integrated effort. Their report to the 1978 IUCN General Assembly explains their working partnership: “The Commission functions by working closely with the Secretariat and in particular with the Law Centre. The now increasing activities of IUCN in law, policy and administration can only be described as joint endeavors between Commission and Secretariat, with close collaboration evident in both the planning and carrying out of projects and initiatives. This report is therefore not so much a report of purely Commission activities as it is a description of the highlights of the IUCN law and policy programme in which the Commission has been involved.”³⁴

Development of a computerized Environmental Law Information System, an important foundation for the Law Centre's analytical and technical assistance work programme, is the next part of our story. 37

Notes

- 1 Author interview with Wolfgang Burhenne and Françoise Burhenne-Guilmin, June 23, 2004 (Bonn, Germany).
- 2 See Holdgate's characterization and highlights of how Nicholls became Deputy Director General of IUCN, serving with Budowski (IUCN's first Director General beginning in 1970), Holdgate, M., *The Green Web*, p. 109–110.
- 3 For a discussion of the treaty's development and role of Nicholls and IUCN, see Fikkan, A., G. Osherenko, and A. Arikainen, "Polar Bears: The Importance of Simplicity", Chapter 4 in *Polar Bears: Creating International Environmental Regimes* (O. Young and G. Osherenko, eds.), pp. 96–124. (Cornell University Press: 1993)
- 4 Correspondence by email communication from Frank Nicholls to Françoise Burhenne-Guilmin, dated October 4, 2005, commentary on draft text of this history (forwarded to B. Lausche by email dated November 3, 2005).
- 5 Communication with Frank Nicholls on May 2006 draft, transmitted by email dated June 26, 2006.
- 6 "Minutes of 2nd Meeting of IUCN Council, 4, 5, 6 May 1978, at Hotel du Mont-Blanc, Morges, Switzerland", p. 4.
- 7 *IUCN Yearbook 1973*, p. 48.
- 8 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 107.
- 9 *Id.*
- 10 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 11 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 107.
- 12 Project management was through a committee consisting of the Chief Executive Officers of the two organizations and their representatives; regular working meetings were held fortnightly to facilitate decision-making. See *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 106.
- 13 See, for example, Holdgate, M., *The Green Web*, at 133–134 (on tensions over the financial and management crisis of the mid-1970s), and 163–166 (for the financial problems of 1980).
- 14 Author interview with Daniel Navid, June 23, 2004 (Bonn, Germany).
- 15 Author interview with Françoise Burhenne-Guilmin, June 23, 2004 (Bonn, Germany).
- 16 "Environmental Law Center Annual Report 1975", p. 14.
- 17 *Id.*
- 18 Nicholls, F., "Report on Activities of Commission on Environmental Policy, Law and Administration," Agenda Paper EB. 73/15, p. 1, attached to "IUCN Board Minutes of the 53rd Session of the Executive Board, Morges, Switzerland, 10–11 May 1973".
- 19 Burhenne, W., "Report of the Commission on Environmental Policy Law and Administration for the period May 1976 to April 1977," p. 1 (also cited as Agenda Paper EB. 77/21, Annex to "IUCN Executive Board Minutes of the 59th, 60th, and 61st Sessions of the Executive Board and 1st Session of the Council at World Health Organization Headquarters", Geneva, Switzerland, 18 and 22 April 1977").
- 20 "Memorandum from Wolfgang E. Burhenne, Chairman, to Members of CEPLA, RE: Unfunded or Inactive Projects" (August 14, 1981), p. 1, with attached Annex: "Additional Projects for Commission Members Assistance".
- 21 The first officer to stay for an extended period was Daniel Navid. Author interview with Daniel Navid and Françoise Burhenne-Guilmin, June 23, 2004 (Bonn, Germany).
- 22 Budowski, G., and F. Nicholls, "Report of the Work of the Union Since the Eleventh General Assembly" (labeled Agenda Paper GA.75/1) in *Twelfth General Assembly Proceedings, Kinshasa, Zaire, 8–18 September 1975* (IUCN, Morges, Switzerland, 1976), p. 41.

- 23 See Gregory, D. *The Easement as a Conservation Technique* (IUCN Environmental Law Paper No. 1) (IUCN, Switzerland, 1972) and *Standing to Sue in Environmental Litigation in the United States of America* (IUCN Environmental Law Paper No. 2) (IUCN, Switzerland, 1972).
- 24 See McCaffrey, S., *Private Remedies for Transfrontier Environmental Damage* (IUCN Environmental Policy and Law Paper No. 8) (IUCN) (1975).
- 25 See Delogu, O., *United States Experience with the Preparation and Analysis of Environmental Impact Statements: The National Environmental Policy Act* (IUCN Environmental Policy and Law Paper No. 7) (IUCN, 1974), and Delogu, O., and H. Soell, *Fiscal Measures for Environmental Protection – Two Divergent Views* (IUCN Environmental Policy and Law Paper No. 11) (IUCN, 1976).
- 26 See Rehbinder, E., *German Law on Standing to Sue* (IUCN Environmental Law Paper No. 3) (IUCN, 1972).
- 27 See Dolzer, R., *Property and Environment: The Social Obligation Inherent in Ownership* (IUCN Environmental Policy and Law Paper No. 12) (IUCN) (1976).
- 28 Commission on Environmental Policy, Law and Administration, “Report of CEPLA to the 1978 General Assembly”, p. 2 (labeled Annex 1 to General Assembly Paper GA. 78/21) in *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979).
- 29 Commission on Environmental Policy, Law and Administration, “Report to 16th Session of the IUCN General Assembly 5–14 November 1984, Madrid, Spain,” p. 2 (also cited in General Assembly proceedings as Annex 4 to General Assembly Paper GA/16/84/1).
- 30 Budowski, G., and F. Nicholls, “Report of the Work of the Union Since the Eleventh General Assembly” (labeled Agenda Paper GA.75/1) in *Twelfth General Assembly Proceedings, Kinshasa, Zaire, 8–18 September 1975* (IUCN, Morges, Switzerland, 1976), p. 41.
- 31 *IUCN Annual Report 1974*, p. 39.
- 32 This latter feature of public access, where manageable, went farther than the other worldwide environmental law collection of the time, that of the UN Food and Agricultural Organization (FAO) where access was limited to FAO staff and FAO consultants.
- 33 Navid, D., “IUCN Activities in the Field of Law”, in *Environmental Policy and Law* (Vol. 3, 1977), p. 13.
- 34 Commission on Environmental Policy, Law and Administration, “Report of CEPLA to the 1978 General Assembly”, p. 2, (labeled Annex 1 to General Assembly Paper GA. 78/21) in *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979). Reflecting this integration, the Commission’s report for 1977 was titled: “Joint Reports of the Law Centre and Chairman of CEPLA”, and reports thereafter commonly referred to the IUCN programme of environmental policy, law and administration, and integrated work programme activities of the Commission and Law Centre.

Chapter 10: Environmental Law Information System

By the late 1960s, as noted in Chapter 4, managing the growing collection of legislative materials using the manual card-index system was proving a daunting task in maintenance and data retrieval when servicing requests. Yet, the collection was a core resource for the growing programme of international, analytical, and technical assistance activities and one upon which members and researchers were beginning to rely. Moreover, collection and analysis of “legislative texts” had been an explicit objective behind the Union’s founding and simply could not be abandoned.¹

By the mid-1960s, Commission Chairman Burhenne had begun exploring mechanized alternatives to the collection’s manual index. Having worked with IBM-Germany on law and computer privacy issues through the Interparliamentary Working Centre, he initiated consultations in 1966 with IBM’s Stuttgart office on possibilities for using their computer technology to manage the law collection. Soon, the IBM-New York office became interested, as Burhenne reported in 1967: “IBM headquarters in New York would amplify the system originated by their branch in Germany and might be able to provide assistance which was at present unobtainable because of lack of funds.”²

Starting with punch cards

The Commission decided in 1967 to begin with the punch-card system offered and adapted by IBM’s Selective Information Retrieval (SIR) programme. There were many elements to address, among them the need to start expanding the original 12-point subject-matter code to better classify and subdivide subjects.³ SIR used punch cards coded by keywords and produced mechanized printouts using data processing equipment located at IBM-Germany’s Stuttgart offices. An initial trial with 110 legal texts was created so both IBM and the Commission could analyse SIR’s suitability and explore adaptations.⁴ To cover costs of IBM’s processing and staff work for this trial, Burhenne found funds from the Max Planck Institut,⁵ the Thyssen Foundation, and the Institut fuer Dokumentationswesen (Germany).⁶

An article by Burhenne, Guilmin and others, published in 1968 in IBM’s newsletter and entitled “An Information System for Lawyers: Electronic Data Processing Systems – Aids for International Commission”, explained how the trial had been conducted with illustrations of the punch card and reporting form.⁷ With the help of Homer Angelo, Commission member from the US, and others, Burhenne wrote a similar article, entitled “An Information System for Lawyers” for the September 1968 issue of the U.S. journal, *Law and Computer Technology*, published by the World Peace through Law Centre.⁸

During this initial exploratory phase, Burhenne also made special efforts to consult with other organizations already experienced in computerized data management, especially Germany’s Ministry for Scientific Research,⁹ the US Department of the Interior in Washington, and the Canadian Council of Resource and Environment Ministers in Montreal.¹⁰ The lingering question was whether an existing soft-

ware programme could handle the needs of the collection and its maintenance or, if not, whether a new programme would need to be designed.

Testing IBM's STAIRS (Storage And Information Retrieval System)

6 Relatively quickly, the trial with the punch cards revealed major inadequacies for the law collection. Coding was done in Bonn and the resulting punch cards had to be sent to Stuttgart for processing and print out. Any mistakes or updates needed a new punch card which, once more, required staff to do the coding and Stuttgart the processing for a new print out back to Bonn.

7 Simultaneously, IBM continued working to develop computer technology for data management and came out with two new software products for libraries. The first called INDICAT related to assembly and production of a thesaurus to index documents, and the second called STAIRS was the actual software programme used for storage and information retrieval.¹¹ While the Law Centre recognized that neither programme had been designed for legislative collections, a decision was taken to try the new products in the hope that an existing computer programme might be adapted for the law collection.

8 The next step, once again, was to build a sample data base to experiment with the programme, consider adaptations, and serve as a basis for assessing the overall merits of committing to a full-scale effort with STAIRS. The sample would need to be limited but sufficiently varied and multilingual to test the full scope of capacities and potential problems, including issues of language. It also would need to be sufficiently large to provide a realistic demonstration to potential users. A deadline was set for completing the sample by June 1972 for the United Nations Conference on the Human Environment in Stockholm to which the Law Centre had been invited to demonstrate the sample data base to country delegations.

9 Burhenne began external fund-raising for work on the sample. The Karl Schmitz Scholl Fund (KSSF) (the first of the Elizabeth Haub foundations, discussed in Chapter 11) supported continued testing and development of the programme, channeling funds through World Wildlife Fund-Germany.¹² Then, the Volkswagen Foundation of Germany agreed to provide a two-year research grant for staff work to build a thesaurus, classify by keyword and input the data for the sample. The Volkswagen funding ran to 1972 when the sample was to be completed.¹³ IBM agreed to continue to cover the costs of its machine processing time and to work on programme adaptations.¹⁴

10 Using INDICAT, a 3000 'key-concept' thesaurus was produced as a key word index, initially in English, to provide a code system for legislative texts. It was decided to use keyword retrieval rather than full-text retrieval. The decision was explained in a 1972 report: "Since [1968], several approaches have been attempted, and the final format was only recently decided upon....Although much has been made of 'full text retrieval' recently, the decision was reached that a keywording system of codifying statutes would be used. In general, each keyword is a combination of a legal aspect and an environmental aspect [thus justifying the term 'key-concept']".¹⁵ That report went on to amplify the goals and benefits of this approach, including a relatively high degree of legal accuracy; a thesaurus more easily trans-

lated (than the full text) into other languages, thus simplifying work of codifiers; users more easily able to narrow their searches; a multi-lingual thesaurus useful internationally, expanding the potential user group; and as topics evolved key words that could be adapted by use of subtopics.¹⁶

Once texts were coded, the initial inputting was done at the Law Centre on an IBM 32, soon upgraded to an IBM 34, both mid-range systems. The process for receiving results, however, was still relatively cumbersome and data retrieval at the Law Centre was not possible. The technology still required that data (on diskettes instead of punch cards) be sent to an IBM processing centre where the STAIRS software was operated on a mainframe computer, this time the processing centre being in Düsseldorf. Hard copy print outs were generated in various formats (generally by subject matter or by country), depending on instructions from the Law Centre. Françoise Burhenne-Guilmin recalls those days when print outs came back that were massive and difficult to use: "The print outs were huge. There was no possibility of data retrieval, only entry at the Law Centre. If we wanted to add items to the print out we would need to send new diskettes to Düsseldorf; if we had a special search, capacity also was limited and whatever we needed would have to be done and packaged in a new print out in Düsseldorf."¹⁷

Nevertheless, the effort was seen as a worthwhile step in learning how to use technology to manage the growing collection. These were the times when documentation-oriented software programmes were still just being developed and this was the first testing legal information. Using STAIRS, by the end of 1970 Law Centre staff had inputted information on U.S. federal legislation (selected because the collection was relatively complete), as well as the laws and regulations of a few other countries with relatively full collections where visiting lawyers could do the analyses. In total, nine jurisdictions representing a variety of legal regimes were used for the experimental sample: Argentina, Canada, Czechoslovakia, France, Great Britain, New Zealand, Peru, Philippines, and the United States.¹⁸ Lawyers from several countries, including Chile, Philippines, and France, came to the Law Centre during 1971–1972 on fellowships to help with this work.¹⁹

Demonstrations

By June 1972, the STAIRS sample was ready and had its first showing during the Stockholm Conference. Two weeks later the Law Centre was in Vienna to demonstrate the sample at the Second International Parliamentary Conference on the Environment, 26–27 June. At both demonstrations an explanatory leaflet as well as the preliminary thesaurus were distributed. The objective of the demonstrations was twofold, as explained in a 1972 report: "first, to show the results of the research project to interested persons, and second, to test the system through a question-and-answer period with the audience."²⁰ The response at both demonstration events was highly favorable.

A few months after Stockholm, the demonstration received high marks from the Eleventh IUCN General Assembly in September 1972 in Banff, Canada. The Assembly was impressed that the legislative collection "appears to be the most comprehensive collection of this kind"²¹ and encouraged its further development. The



Stockholm, 1972: first demonstration of the computerized Environmental Law Information System (ELIS)

Assembly adopted a Resolution on the importance of the work, its connection to a recommendation from Stockholm, and the need for governments to help, which reads:

“CONSIDERING the growing demand for legal assistance in regard to environmental questions, and the shortage of trained personnel in this field; NOTING the development of the IUCN multilingual system for computerized indexing of environmental law documentation; CONVINCED of the importance of establishing an effective service for the exchange of information on national and international environmental law; NOTING with satisfaction Recommendation 101 of the Stockholm Conference calling for an International Referral Service for sources of environmental information;

“THE 11th GENERAL ASSEMBLY of IUCN meeting at Banff, Canada, in September 1972: REQUESTS governments and agencies concerned to take part in the further expansion of the coverage of the above system by supplying personnel and other support; AND AFFIRMS its willingness to participate in the proposed referral service by providing access to the information and data available at its Environmental Law Centre.”²²

Launching the system

- 15 The Environmental Law Information System (ELIS) was formally launched in 1974. At IUCN’s Executive Board that spring, “explanation was given of the operation of the Environmental Law Information System in Bonn, including the links that were being developed with UNEP and arrangements envisaged with the Federal Republic of Germany to support the System. Appreciation was expressed of the pioneering work that Wolfgang and Françoise Burhenne had carried out in this field.”²³

With Headquarters funding limited, the Commission and Law Centre, once more, turned to external sources for funding the small data processing unit that would be needed at the Law Centre. In 1974, the Federal Republic of Germany agreed to provide a grant to support such a unit for three years, giving the project the start-up funds to become operational.²⁴ 16

Marketing ELIS became the next priority. Motivated by Stockholm's recommendation for an information referral service and IUCN's resolution noted above, the Law Centre began discussions with the newly-created United Nations Environment Programme on possibilities for their use of ELIS services.²⁵ Negotiations went well and by the end of 1974 a contract had been concluded for ELIS to be a special sectoral source for environmental law in UNEP's new 'INFOTERRA' service.²⁶ The contract began in January 1975 and in the first year the Centre processed some 16 major requests for legislative information through this arrangement.²⁷ The collaboration frequently generated a two-way flow of information since UNEP sometimes had legislative information it could share relative to an INFOTERRA request being made to the Centre. For example, when the Centre was requested by Aspen Systems in the United States to evaluate environmental legislation in 14 American states, UNEP's INFOTERRA office provided print-outs of key sections of relevant texts.²⁸ The initial contract with INFOTERRA was extended year-by-year and with minor interruptions. 17

UNEP also promoted ELIS to member states. In 1974, UNEP asked the United Nations regional economic commissions to encourage governments to include their environmental law documents in ELIS and support its use.²⁹ Pursuant to that request, the member states of the UN Economic Commission for Europe passed a resolution in February 1975 requesting those states to assist IUCN in the computerization of their environmental legislation.³⁰ As reported in the Law Centre's annual report for 1975, "responses from several governments were received, most of them being favorable."³¹ 18

Soon thereafter, a pilot project was negotiated with the European Economic Community (EEC) to index environmental legislation of the EEC Member States. Begun in 1975, the project was to test adaptability of ELIS for EEC needs. The pilot focused on European legislation related to air pollution from the iron and steel industry and from heavy fuel oil.³² One hundred and twenty texts were indexed and processed, and a report on the evaluation of the project was submitted in March 1975. Results from the pilot were favorable and in 1976 the EEC signed a second contract with the Law Centre to input all environmental legislation of the EEC countries into a data base.³³ This second contract included binding instruments and important policy statements related to the environment. For the project, particular attention was paid to countries where the collection was especially weak, for example, Italy, for which some 500 new texts were added.³⁴ The project, called ENLEX, was carried out in partnership with the Italian Supreme Court which operated an ambitious IT-based information programme on court decisions for Italian courts. It did not succeed, however, in establishing the necessary conceptual and technical synergies and was discontinued in the early eighties.³⁵ 19

Need for special software

20 From the perspective of clientele interest, the new data management system at the Law Centre was a success for it was the only system existing at that time with capacity to generate specialized lists of legislation in a designated format. From the perspective of efficiency and effectiveness for the Centre, however, STAIRS was still severely limiting in its ability to deliver a programme responsive to the special features of the law collection and for servicing requests. Among its main deficiencies, because STAIRS was for libraries it could only treat a document (normally a book) as a stand-alone and static piece and could not accommodate updates and manipulation. The legal instruments collection, in contrast, was dynamic, requiring regular updating as new, related instruments (amendments, repeals, regulations, etc.) were received. Updates and amendments needed to be associated and cross-referenced to principal instruments, not simply entered as independent, isolated items in the data base. This interactive nature presented special maintenance challenges that a normal library collection did not face. Moreover, the collection needed a software programme able to link and inter-relate the different components of the collection (legislative texts, treaties, court decisions, and literature). This would require some equivalency across fields so that related documents could be referenced and retrieved using common codes.

21 Equally limiting, the STAIRS programme only permitted in-house data entry, not data searches and retrieval. IBM's Düsseldorf facility had to execute any needed searches and produce the resulting print-outs, causing both time delays and a disincentive to undertake numerous or complex retrievals. Even as work on the sample progressed, new documents continued to arrive for inputting and requests for information continued to be received. Staff resources already were severely stretched, and the burdens of trying to update the data base and respond to requests was becoming difficult for the small staff. The Commission reported to the Executive Board in November 1971: "Use of the Environmental Law Documentation Centre had now reached the stage that the present staff is grossly overloaded."³⁶ Similarly, IUCN's Yearbook for 1971 reported: "The material in the Centre now totals more than 15,000 documents covering all topics in environmental law and the collection is being extended and expanded. Under these circumstances handling information requests and answering specific questions is more and more time consuming; also the value of each research cannot be recorded. A mechanized information retrieval system is clearly needed."³⁷ By 1973, the Law Centre's collection of legal instruments comprised more than 19,000 laws and regulations from 130 jurisdictions, as well as treaties.³⁸

22 In 1978, IBM introduced a new hardware technology, the IBM/38 which was their first integrated data bank system to have the capacity for both data entry and data retrieval. This meant that special software now could be developed for the hardware that could be fully operated at Bonn. With support from KSSF and FUST, an IBM/38 computer was acquired and installed on the premises in Bonn, a significant improvement from the previous situation where the processing unit had been located in Stuttgart, and later Düsseldorf. Besides substantially increasing capacity, this upgrade reduced processing costs and turn-around time for servicing requests.³⁹ As



W. Burhenne with Jan O'Neil and Ferdinand Solzbacher (right) discuss the development of ELIS

reported to the 15th General Assembly in 1981: the in-house installation of this system “greatly facilitated work under ELIS since previously it had been necessary to work with an out-of-house computer.”⁴⁰

The Law Centre hired a consultant, using additional funds from FUST, to design and install specialized software. Called ‘Romulus’, the new software began to be developed in 1979 by Ferdinand Solzbacher, and became operational in 1980. This marked the start of a long and fruitful relationship, with continued improvements and updates undertaken thereafter. By the early 1980s, stored data included some 10,000 legislative texts, 22,000 literature entries and 2,000 court decisions.⁴¹ The English and German versions of the thesaurus had been expanded, and a French version added.⁴² 23

The system’s computer hardware was updated regularly as new systems became available and resources found.⁴³ The IBM/38 computer was used until 1992 when it was replaced by a new mainframe computer, the IBM AS-400 E-20 with 32 MB main memory and 4 GB auxiliary storage capacity, with access provided through multiple local terminals. Since then the IBM AS-400 has been upgraded and replaced twice with new systems, making the current IBM AS-400 a third generation machine. 24

Maintaining the collection

Maintaining the ELIS hard-copy collection, especially of national legislation, was a constant preoccupation of the Law Centre. Law Centre and Commission leadership recognized that the value of the collection to members and other users hinged on the breadth and accuracy of its coverage. Special efforts normally were required to identify and fill gaps in a country’s legislative collection, or to verify the accu- 25

racy of texts for countries where contacts had not yet been well developed or information not easily accessible.

26 To broaden its network for source materials, the Law Centre began to establish links with libraries in universities and other institutions worldwide, starting first in Germany, and then in other countries.⁴⁴ Visiting lawyers also helped identify and fill gaps. It was Commission members, however, especially those from developing countries, on which the Centre principally relied for provision of the latest national news on legislative activity and texts. While written requests and reminders were sent regularly to all countries for updated texts, they rarely produced significant results. It took the Commission members themselves to help the Centre keep country files current. (As noted previously, efforts in the late 1970s to enlarge Commission membership focused heavily on identifying candidates from countries not already well represented, also with this goal in mind.)⁴⁵

27 Assistance with the collection was a regular item in Commission reports its on activities. For example, the report to the 1978 General Assembly states: "The Commission has continued to assist IUCN in the monitoring of developments in the fields of environmental policy, law and administration. In particular, this has taken the form of helping the Law Centre in the collection of legislative texts, administration [sic] regulations, international conventions, court decisions and related documents."⁴⁶

28 Daniel Navid recalled from his days at the Centre, "I cannot stress enough how important were the Commission members, especially from developing countries, for maintaining the collection. And their help was all volunteer. Without this voluntary resource, the effort probably could not have been sustained."⁴⁷



The legislation collection, developed by Odile Seidel, here with Jan O'Neil

In gratitude for such service, the Commission's first Newsletter in 1990 highlighted names of members who had helped. For example, Commission member Silvia Jacquenod-Martinez from Spain did extensive work in the late 1980s on Spanish legislation at both the federal and provincial levels.⁴⁸ Commission member Anna Syngellaki-Markodimitriou spent time at the Law Centre working on the collection for Greece. Ruth Rotenberg from Israel sent texts to the Centre. During those years, other Commission members sent documents from Costa Rica, Cyprus, Ethiopia, Guatemala, Italy, Uruguay and the USSR.⁴⁹ 29

In addition, visitors to the Law Centre sometimes were able to provide special help, particularly where there were major gaps such as Africa and the Middle East. One of these outstanding examples is from the 1970s, when Jane Sellar, a visiting student from New Zealand, decided to travel throughout Africa following her stay in Bonn and offered to collect documents for ELIS along the way. The Centre took her up on her offer, Burhenne contributed a small portable copy machine, and Jane carried this machine with her throughout Africa, making contacts for ELIS with local officials, collecting and copying texts, and "sending back piles of information," as Françoise Burhenne-Guilmin recalls.⁵⁰ Her travels spanned Botswana, Cameroon, Egypt, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Nigeria, South Africa, Sudan, Swaziland, Mozambique, Zimbabwe, Malawi, Tanzania, Uganda and Zambia.⁵¹ In many African countries, the good relations that IUCN had built during its work on the African Convention proved helpful in her quest to gather such materials. 30

The Arab region received special attention from M. El Azzasi, an Egyptian graduate student at the University of Bochum, who visited several North African and Middle Eastern countries including Morocco, Tunisia, Mauritania, Algeria, Libya, Syria, Jordan, Kuwait, Iraq, Yemen, Saudi Arabia, Lebanon and Egypt.⁵² El Azzasi's expedition was funded by KSSF through World Wildlife Fund-Germany on condition that material for IUCN be collected in addition to his other tasks.⁵³ 31

A lawyer from Saudi Arabia, Omar Bakhashab, came to the Law Centre in the late 1970s for a short visit to develop preliminary elements of a study of environmental principles in Islam. Burhenne recalls buying an Arabic typewriter for his work during which Bakhashab also reviewed the collection on hand for his country, provided summary translations, and subsequently continued to supply the Centre with documents.⁵⁴ A few years later, the study 'Environmental Law in Islam' was published in the IUCN Environmental Policy and Law Paper Series and Bakhashab credited for his role in the preliminary phase (see Chapter 18). 32

Building the Asian collections with its numerous jurisdictions and official languages was an exceptional challenge. The Centre was fortunate to receive help from Japan for a project initiated in 1977 and completed during 1978 for a visiting Japanese lawyer, Hiroshi Hashimoto, to analyze and index Japanese legislation for the ELIS system. With support from the Toyota Foundation and the Fund for Environmental Studies, Hashimoto completed bibliographical sheets for 300 Japanese legal texts, a significant number of which were not translated into English or German, and then turned to a second phase, completing full indexing of some 200 texts to be included in the ELIS system.⁵⁵ 33

- 34 With these many, ongoing contributions from members, the legislative collection had some 45,000 legislative texts by the 1997.⁵⁶ By the end of the 1990s, taking all components of the collection, ELIS contained more than 120,000 records of treaties, legislation, soft law, and literature.⁵⁷ Demand for ELIS services continued to grow as more countries became members of IUCN and sought assistance to strengthen their legal regimes. Requests were roughly split between those coming from outside IUCN (other international agencies, governments, organizations) and those coming from within IUCN (mostly Law Commission members, IUCN regional or country offices, or ELC itself when technical assistance projects needed data).⁵⁸
- 35 Anni Lukács, ELC Documentation Officer, has been managing and maintaining the ELIS legislative collection (national legislation and treaties) since the 1980s.

Multilateral treaties

- 36 ELIS had to be tailored as well for the special features of the treaty collection which, by the early 1970s already comprised some 175 instruments directly or indirectly related to the environment. Documents fell in two broad categories: 1) instruments which were truly ‘global’ (open to all States throughout the world), and 2) instruments which were either regional in their geographical scope or restricted in some other manner. A form was devised for inputting pertinent data on each treaty, namely, the title, status of the treaty (date and place of adoption, signature, ratification, and entry into force), official publication source, original languages, available translations, depositary, reference to amendments and related protocols, and list of Parties. Work began in the early 1970s to enter treaty information into the data base in English, French and German when available. Attention focused principally on multilateral instruments. In the late 1980s, Commission members were asked to assist the Law Centre also improve its collection of bilateral accords and any documents received also were entered into the treaty data base along with regional and international instruments.⁵⁹
- 37 As a by-product, in 1973 a cooperative project was developed between IUCN and the Fund for Environmental Studies (FUST) to produce a loose-leaf publication service for treaty information. The aim was to make treaties available in a useful form to practitioners and member countries. FUST agreed to fund the publication and Law Centre staff would undertake coding and inputting as well as assembling the sheets for publication. By the end of the year, a first volume of this new loose-leaf service was issued. Entitled *International Environmental Law: Multilateral Treaties*, the issue contained data sheets for the 175 treaty texts on file. The collection begins with treaties of the 19th century such as the Rhine River Treaty of 1816, providing an historical basis for the field of environmental law that is not always appreciated. The treaty data base grew rapidly, by 1976 to more than 300 texts, resulting in a reissue of the loose-leaf publication in three volumes.⁶⁰
- 38 By the close of 2004, this series (identified in the FUST publication series as ‘B7’, as discussed in Chapter 18) had grown to a collection of over 400 full documents with abstracts, comprising some 9 volumes, and becoming a Kluwer International Law publication.⁶¹ Today, much of this information is also available through electronic means, in particular in ECOLEX (see Chapter 28).



The 'B7'

Law and policy literature

In the course of collecting legislative texts, the Law Programme also became informed about, and frequently was sent complimentary copies of related literature and journal articles on environmental policy, law and administration. Through the 1960s the collection grew in an ad hoc fashion. Recognizing its potential value for research in-house and for members, the Law Centre and Commission began exploring external sources of support for its maintenance. 39

The International Council of Environmental Law (ICEL), created in 1969 as a sister organization to the Law Commission (see Chapter 11), offered to provide funding in 1971 to organize and manage a literature library, operating in tandem with the 'binding instruments' collection of the IUCN ELC, and fully integrated into ELIS. 40

Jackie Navid started the collection, serving as ELIS Literature Librarian from 1975 through 1980. Françoise Burhenne-Guilmin recalls "she indexed thousands of cards!"⁶² By the mid-1970s, the ICEL collection comprised more than 21,000 books, journals and articles on environmental law, policy and administration from sources worldwide.⁶³ As with the other major collections, efforts were initiated to create a computerized data base of references to the literature texts to become part of ELIS. With funds from ICEL, work began to input data. Relevant texts began to be cross-referenced to conventions and legislation, and vice versa. Materials obtained since 1990 were coded by key word and, in so far as available, documents were also abstracted with their tables of contents. 41

- 42 Still known as the ICEL Literature Library, the literature data base as of the close of 2004 contained more than 60,000 entries, some 25,000 of which were post-1990 and also included in ECOLEX (see Chapter 28).⁶⁴ It continues to be maintained by ELC staff with contributions of materials from ICEL and others. Materials are regularly reviewed and citations culled where duplicative.



The ICEL Library at Adenauerallee 214 started in 1971 – Here Torsten Wäsch, Head of the Library, in 1999

Special sub-files

- 43 Smaller data banks also were developed by the Law Centre over the years as sub-files of ELIS. Commonly, these were special projects supported by ear-marked funds. Unfortunately, maintenance of these specialized data bases ceased when the funding ran out.
- 44 One of the largest was the species data base covering fauna and flora dealt with in treaties and legislation. Begun in 1971 by Commission member Cyrille de Klemm entirely on a volunteer basis, the compilation began as input to the process of promoting development of CITES (see Chapter 6), and continued once CITES had been concluded – initially for the EEC and then broadened to include national implementing legislation of developed and developing countries. Coverage was expanded over the years to any treaty or national legislation dealing with animal or plant species. In 1986, a report on species-related legislation in 45 African countries using this species data base was published by the Environmental Law Centre. Entitled *African Wildlife Laws*, and authored by de Klemm and Commission member, Barbara Lausche, the emphasis was on regulation of taking and trade, both national and international.⁶⁵ To each country chapter were appended data pertaining to the legislation dealt with and the lists of species which they mention. With appendices,

it ran some 1700 pages. Using this data base, special reports on the treatment of CITES in national legislation were prepared for Conferences of the Parties to CITES. Similar studies were prepared later for species covered by the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention).

With funding from Germany in the mid-1990s, ELIS undertook a one-time 45 update of the index of flora species within the species data base, expanding and updating coverage of plant protection legislation from 29 European countries to 458 legal texts.⁶⁶ A project supported by the Brehm Fund (see Chapter 11) enabled preparation of an inventory and data base of birds mentioned in national legislation, whatever the status – protected, hunting allowed under controlled conditions, listed as a pest, or otherwise. By the late 1990s, this subset of ELIS contained some 5,700 records of bird taxa.⁶⁷ Again, these efforts were dependent on the volunteer contribution of de Klemm and dependent on ad hoc funding for data base maintenance and processing. As of 1997, the fauna data base contained approximately 14,000 records and the flora data base approximately 6,200 records.⁶⁸ Unfortunately, with the passing of Cyrille de Klemm in 1999 and the lack of any funding, maintenance of the data base stopped in 2000.

Over the years, other specialized data bases have covered national legislation 46 related to wetlands protection for the Secretariat of the Ramsar Convention (discussed in Chapter 14), and protected areas legislation in the Mediterranean for the Regional Seas UNEP Centre in Tunis as of the early 1990s.

International ‘soft law’ instruments (declarations, resolutions, etc., adopted 47 by major international bodies and conferences) in the field of environmental law also became a sub-file of ELIS. While the collection developed slowly, by 1990 it was of sufficient size for the Law Centre to begin, with ICEL support, a special data base of soft law as a subset of the literature data base.⁶⁹ By the late 1990s, the collection had references to more than 400 non-legally binding, soft law instruments. Beginning in 1992/3 and through the early 2000s, the collection was published in loose-leaf form by Martinus Nijhoff/Kluwer, with Wolfgang Burhenne and Nicholas Robinson as editors. It was the first publication devoted solely to soft law instruments, and Marlene Jahnke (ICEL member and editor of *Environmental Policy and Law*, see Chapter 11) recalls: “We heard that the publication, being the only such collection available, became part of the ‘required reading’ material for three Australian universities’ environmental law courses, among others.”⁷⁰ In-house, the editors began calling the series ‘Bu-Ro’, short for Burhenne-Robinson, and this name is still used casually inside ELP offices in Bonn. In the early 2000s, Oceana Publications took over publication.⁷¹

Regional documentation centres

Simultaneously, experiments were underway to test feasibility of building separate 48 electronic data bases in the regions. In the late 1970s, exploratory discussions began to identify a focal point institution in Moscow for collection and codification of legal materials for member states of the Soviet-bloc Council for Mutual Economic Assistance (CMEA). In 1979, UNEP concluded an agreement with CMEA to exchange and share information on environmental conservation and, based on

that undertaking, CEPLA took steps to develop a project in collaboration with UNEP to collect, analyze, and computerize the environmental law of the CMEA countries.⁷²

49 In 1997, the first agreement with UNEP on regional environmental law needs was concluded between IUCN (CEL Vice Chair Aguilar taking the lead), and UNEP's Regional Office of Latin America and the Caribbean (ROLAC) through a Memorandum of Understanding.⁷³ Pursuant to that agreement, a questionnaire was distributed to the Central American network of environmental law organizations and a workshop was held in October 1997, one outcome of which was a call for an electronic forum called CONLEX.⁷⁴ In Asia, with CEL member Bob Beckman taking the lead, similar efforts were undertaken with the Asia Pacific Centre for Environment Law (APCEL) to collect legislation from the ASEAN states and become an active IUCN-ELIS node in that region.⁷⁵

50 Progress has been limited in building regional data centres, both for reasons of initial and maintenance cost, and because of the growing facility of the ELIS global data base. As discussed in Chapter 28, by partnership agreement, IUCN, FAO, and UNEP agreed to merge much of their law-related data into an internet service called ECOLEX which provides versatility in search options on a regional or national basis. At the same time, the Environmental Law Programme's capacity building initiatives of the late 1990s and 2000s, with regional centres of excellence in environmental law and other Centre partners (see Chapter 29), may give momentum in some regions for further development in this area.

Notes

- 1 See Chapter 2.
- 2 "IUCN Executive Board Minutes of Meetings 8 and 9 April 1967", p. 27.
- 3 "Commission on Legislation Three Year Funding Report", p. 7 (attached to "IUCN Executive Board Minutes of Meetings held 8 and 9 April 1967").
- 4 Burhenne, W., E. Esser, F. Guilmin, and H. Schiro, "An Information System for Lawyers: Electronic Data Processing Systems-Aids for International Commission" in *IBM Nachrichten* 187 (Sindelfingen 1968), p. 5.
- 5 "Commission on Legislation Report to the Executive Board, October 1967", p. 1 (attached to "Executive Board Minutes of Meetings held on 1 and 2 November, 1967").
- 6 "Commission on Legislation Three Year's Report" in *Tenth General Assembly Proceedings and Summary of Business, Volume II, New Delhi, December 1969* (IUCN, Morges, Switzerland, 1970), p. 111.
- 7 See Burhenne, W., E. Esser, F. Guilmin, and H. Schiro, "An Information System for Lawyers: Electronic Data Processing Systems-Aids for International Commission" in *IBM Nachrichten* 187 (Sindelfingen 1968) (English translation) (reported by Burhenne in "Commission on Legislation Three Years Report" in *Tenth General Assembly Proceedings and Summary of Business, Vol. II, New Delhi, December 1969* (IUCN, Morges, Switzerland, 1970), p. 111).
- 8 See Burhenne, W., "An Information System for Lawyers" in *Law and Computer Technology*, Vol. 1, No. 8 (August 1968), pp. 17-23. This journal was published by the World Peace through Law Centre, an international organization headquartered in Washington, D.C., with close ties to the Commission in those years.
- 9 "Commission on Legislation Report to the Executive Board, October 1967", p. 1 (attached to "Executive Board Minutes of Meetings held on 1 and 2 November, 1967").
- 10 See Commission on Legislation, "Report" (dated 3 May 1968), p 1 (also cited as 'Paper 47B', tabled by the Commission for the 43rd Session of the IUCN Executive Board in Morges, 4-5 May 1968)

- 11 Burhenne, W., F. Guilmin, J. Kennedy, "An International Environmental Law Information System", p. ix–x (B3 series) (Erich Schmidt Verlag, Berlin, 1972).
- 12 *IUCN Yearbook 1971*, p. 43.
- 13 *IUCN Yearbook 1971*, p. 42. Burhenne reported expectations of the grant to the Executive Board in 1970. See "IUCN Executive Board Minutes of Meetings 22–24 May 1970", Attachment 1 to E.B. 70/43, p. 3, Attachment 2 to E.B. 70-57, p. 1.
- 14 *IUCN Yearbook 1972*, p. 33.
- 15 Burhenne, W., F. Guilmin, J. Kennedy, "An International Environmental Law Information System", p. viii (B3 series) (Erich Schmidt Verlag, Berlin, 1972).
- 16 Burhenne, W., F. Guilmin, J. Kennedy, "An International Environmental Law Information System", p. viii (B3 series) (Erich Schmidt Verlag, Berlin, 1972).
- 17 Author communication with Françoise Burhenne-Guilmin, April 7, 2006 (Bonn, Germany).
- 18 Burhenne, W., F. Guilmin, F., J. Kennedy, "An International Environmental Law Information System", p. viii (B3 series) (Erich Schmidt Verlag, Berlin, 1972).
- 19 "Commission on Environmental Policy, Law and Administration Report to Executive Board, October 1971" (Agenda Paper EB.71/45), p. 1 (attached to "IUCN Executive Board Minutes of the 50th Session, Morges, 5–6 November 1971").
- 20 Burhenne, W., F. Guilmin, J. Kennedy, "An International Environmental Law Information System", p. x (B3 series) (Erich Schmidt Verlag, Berlin, 1972).
- 21 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 103.
- 22 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 189 (labeled Document No. GA 72/23).
- 23 See IUCN, "Minutes of the 54th Session of the Executive Board, Morges, Switzerland, 8–10 May 1974", p. 10.
- 24 *IUCN Yearbook 1974*, p. 40.
- 25 Martin Holdgate, in *The Green Web*, writes that close ties developed early on between IUCN and UNEP, in part, because IUCN's Director General Gerardo Budowski and UNEP's Executive Director Maurice Strong had an "excellent personal relationship", and even more importantly because an alliance had "institutional attractions", p. 119.
- 26 See *IUCN Yearbook 1974*, p. 40.
- 27 Environmental Law Centre, "ELC Annual Report 1975", p. 9.
- 28 Id.
- 29 *IUCN Yearbook 1974*, p. 40.
- 30 "Report of the Work of the Union since the Eleventh General Assembly" (Agenda Paper GA.75.1) in *IUCN Proceedings of the Twelfth General Assembly, 8–18 September 1975, Kinshasa, Zaire* (IUCN, Morges, Switzerland, 1976), p. 40.
- 31 "ELC Annual Report 1975", p. 10.
- 32 *IUCN Yearbook (January 1975 – May 1976)*, p. 20.
- 33 "IUCN Executive Board, Minutes of the 58th Session 13, 14, 15 May 1976", p. 16. See also "Environmental Law Projects", p. 2, (labeled Agenda Paper EB.76/49) attached to "IUCN Executive Board, Minutes of the 58th Session 13, 14, 15 May 1976".
- 34 "Environmental Law Centre 1976 Annual Report", p. 8.
- 35 Author communication with Françoise Burhenne-Guilmin on May 2006 draft, transmitted by email cover dated May 10, 2006.
- 36 "IUCN Executive Board Minutes of the 50th Session, Morges, 5–6 November 1971", p. 9.
- 37 *IUCN Yearbook 1971*, p. 42.
- 38 *IUCN Yearbook (January 1975 – May 1976)*, p. 20.
- 39 "IUCN Programme in the fields of Law and Policy, Proposed Activities and Projects: 1 January 1980 – 31 December 1980", p. 2.
- 40 Burhenne, W., "Commission on Environmental Policy, Law and Administration Report to the IUCN 15th General Assembly" (dated 21 July 1981), p. 3.
- 41 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 3 (Technical Meeting minutes) (Attachment to General Assembly Paper GA/15/81/6, in *Proceedings of*

- the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981 (IUCN, Switzerland, 1981).
- 42 “ELC Annual Report 1975”, p. 9.
- 43 See Hassan, P. “Commission on Environmental Law (CEL) Triennial Report: 1994–1996” (also labeled Annex 3 to Congress Paper CGR /1/96/2), p. 24.
- 44 *IUCN Yearbook* 1973, p. 62.
- 45 Burhenne, W., “Report of the Commission on Environmental Policy Law and Administration for the period May 1976 to April 1977”, p. 2 (labeled Agenda Paper EB. 77/21, Annex to “IUCN Executive Board Minutes of the 59th, 60th, and 61st Sessions of the Executive Board and 1st Session of the Council at World Health Organization Headquarters, Geneva, Switzerland, 18 and 22 April 1977”).
- 46 “Report of CEPLA to the 1978 General Assembly”, p. 2, (cited in General Assembly proceedings as “Annex 1 to General Assembly Paper GA. 78/21”, attached to *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979).
- 47 Author interview with Daniel Navid and Françoise Burhenne-Guilmin, June 23, 2004 (Bonn, Germany).
- 48 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration*, No. 90/1, at 1 (1990).
- 49 Id.
- 50 Author interview with Wolfgang Burhenne, Daniel Navid, and Françoise Burhenne-Guilmin, June 23, 2004 (Bonn, Germany).
- 51 See *IUCN Yearbook* 1971, p. 41. Also summarized from interviews with Wolfgang Burhenne and Françoise Burhenne-Guilmin, June 2001 (Bonn, Germany).
- 52 See *IUCN Yearbook* 1971, p. 41.
- 53 Id.
- 54 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany), followed by comments from Françoise Burhenne-Guilmin on March 2006 draft, transmitted to author by email dated March 19, 2006.
- 55 “IUCN Activities in the Law and Policy Field: Joint Report of the Environmental Law Centre and the Chairman of CEPLA for the Period January 1977 – June 1978”, p. 4.
- 56 “ELIS: The Environmental Law Information System of IUCN – The World Conservation Union” (IUCN, October 1997), p. 5.
- 57 Id. at 2.
- 58 See *IUCN Environmental Law Programme Annual Report* 1994, p. 9.
- 59 “Report of the Chairman of the Commission on Environmental Policy, Law and Administration to the 18th Session of the General Assembly, 28 November – 5 December 1990, Perth, Australia” in “IUCN Triennial Report 1988–1990”, p. 84.
- 60 “IUCN Executive Board, Minutes of the 58th Session 13, 14, 15 May 1976”, p. 16; and “Environmental Law Projects”, p. 2 (labeled Agenda Paper EB.76/49) attached to “IUCN Executive Board, Minutes of the 58th Session 13, 14, 15 May 1976”. See also, “Environmental Law Centre 1976 Annual Report”, p. 11.
- 61 Author interview with Anni Lukács, June 22, 2004 (Bonn, Germany).
- 62 Author interview with Françoise Burhenne-Guilmin, June 24, 2004 (Bonn, Germany).
- 63 *IUCN Yearbook* (January 1975 – May 1976), p. 20.
- 64 Author interview with Anni Lukács, June 22, 2004 (Bonn, Germany); supplemented by data from ELC staff Andrea Lesemann in email dated May 12, 2006; also research on ECOLEX web site at: www.ecolex.org/index, as of June 23, 2005.
- 65 See Klemm, C. de, and B. Lausche, *African Wildlife Laws* (IUCN Environmental Policy and Law Occasional Paper No. 3) (IUCN, 1986).
- 66 See *IUCN Environmental Law Programme Annual Report* 1994, p. 9.
- 67 *IUCN Environmental Law Programme Annual Report* 1997, p. 11.
- 68 See “ELIS: The Environmental Law Information System of IUCN – The World Conservation Union” (IUCN, October 1997), p. 8.
- 69 Id. at 7.

- 70 Author communication with Marlene Jahnke on May 2006 draft, transmitted by email dated June 05, 2006.
- 71 See Burhenne, W., and N. Robinson (eds.), *International Protection of the Environment: Conservation in Sustainable Development* (New York: Oceana Publications).
- 72 See “Report of the Commission on Environmental Policy, Law and Administration (November 1979–80)”, p. 4 (labeled Council Paper UC.80/23, attached to “Minutes of the Eighth Meeting of the Council of IUCN, 10–12 November 1980”, IUCN, Gland, Switzerland); and Commission on Environmental Policy, Law and Administration, “Report to the Ninth Meeting of the IUCN Council”, p. 6, attached to “Minutes of the Ninth Meeting of the Council of IUCN, 8–10 June 1981” (IUCN, Gland, Switzerland).
- 73 See *IUCN Environmental Law Programme Annual Report 1997*, p. 10.
- 74 Id.
- 75 See N. Robinson, “Commission on Environmental Law Report to Council: May–November 1997”, p. 66 (attached to “Minutes of 47th Meeting of the IUCN Council 2–3 December 1997”).

Chapter 11: Building Alliances

The small core budget approved by IUCN in 1966 to support a permanent office for the Commission on Legislation (as discussed in Chapter 3) was essential but not sufficient for its growing programme of activities. Ad hoc funding was only a short-term solution, not a strategy for building a sustaining organization. New long-term alliances and relationships external to the Union needed to be built to supplement IUCN's support and secure a stronger footing for the Commission's environmental law and policy work.

By the mid-1960s, Commission Chairman Burhenne with assistance from other Commission members already was exploring outside possibilities for additional support. From the beginning, the Interparliamentary Working Centre (IPA) headquartered in Bonn, where Wolfgang Burhenne worked professionally as the elected Secretary General, supported Burhenne's voluntary work with IUCN. IPA provided limited but crucial office support when he was Committee and then Commission Chairman and, beginning in 1966, sublet space to the Commission's small permanent office. IPA also gave the programme important, early international exposure in environmental and government circles. It worked with Commission members and Environmental Law Centre staff as technical advisors for the four parliamentary environmental conferences convened in the 1970s around the Stockholm Conference (see Chapter 12).¹ IPA membership at that time numbered more than 300 legislators from both federal and state parliaments of Germany and this visibility helped build relations with parliamentarians as well as promote environmental policy, one of the core themes of the group's non-partisan work.

Being housed in Bonn, the Environmental Law Centre and Law Commission secretariat built strong relations with officials and arms of Government of the Federal Republic of Germany. In the 1970s, support for IUCN's law work initially came through project-related funding. One of the most important conceptual law projects funded externally was the development of a draft Convention on Migratory Species (see Chapter 13) for which funds were made available by the German Ministry of Food, Agriculture, and Forestry. In those years, that Ministry also supported development of the Environmental Law Information System (ELIS) (see Chapter 10). Working relations and funding support continued to strengthen over the years between the IUCN Law Programme and the Government of Germany both for projects (e.g., trust funds for environmental law services discussed in Chapter 24) and infrastructure (the new building donated in 1999, see Chapter 27).

In addition to this crucial external support, World Wildlife Fund was an important contributor to the Law Programme in the early years (as discussed in Chapter 9). Short-term alliances also were developed from time to time for special conservation interests. For example, two extended law projects were funded by the Brehm Fund, a small fund co-founded in 1976 by W.W. Brehm (an expert on birds and owner of a bird park) and Wolfgang Burhenne to support international law and policy initiatives for bird protection. One was the work of Commission member de Klemm on a proposed Western Palearctic Agreement under the Convention on Migratory Species (see Chapter 13) and the other supported development of an inven-

tory and data base of birds mentioned in national legislation as part of the Environmental Law Information System (ELIS) (discussed in Chapter 10).

5 The remainder of this Chapter focuses on five long-term alliances developed in the early years that continue to support IUCN's Law Programme and are recognized for their contributions throughout this History. First is the International Council of Environmental Law (ICEL), founded in 1969 as a non-governmental membership organization. Second, were three foundations started by the Haub family. The first, initiated in the late 1960s by Elizabeth Haub, was the Karl Schmitz Scholl Fund for Legal Protection of the Natural Environment (KSSF). This was followed in the early 1980s by creation of two collaborating organizations, the "sister" Elizabeth Haub Foundations for Environmental Law and Policy, one in the United States and the other in Canada. A fifth organization, the Fund for Environmental Studies (FUST), also created in the late 1960s, was founded with an IBM grant supporting information management projects for parliamentarians that over the years funded important projects of the Environmental Law Programme related to environmental law information management and dissemination (see Chapters 10 and 18).

6 While each of these entities has its own legal identity, over the years they have shared premises with the Law Programme which has offered several practical advantages for all concerned, including enhanced staff interaction, coordination and collaboration on mutual interests, cost-sharing of equipment and clerical staff, and reduced overall operating expenses. It has been common for Law Programme projects in law and policy to involve a pooling of resources and skills with one or more of these organizations.

International Council of Environmental Law (ICEL)

7 Prior to and during the Tenth IUCN General Assembly in New Delhi in 1969, several members of the Commission on Legislation began exploring ways to



Right: David Miller, former Ambassador of Canada in Kenya, represented ICEL at UNEP for many years

strengthen the association of environmental law practitioners, especially in developing countries. At the time, nothing existed where an interested individual, regardless of experience, could become part of an international association of environmental lawyers. The Commission on Legislation could not serve that function. Its membership strategy, as set by the IUCN Executive Board, was to stay small, inviting only highly-accomplished, internationally-recognized specialists in environmental law. With that policy, by 1969 the Commission had only 45 members worldwide. Another vehicle was needed to broaden the network.

The solution was to create a sister organization to the IUCN Commission on Legislation as a member of IUCN with more flexible entry criteria. The decision to do so was taken at the time of the 1969 IUCN General Assembly to create an International Council of Environmental Law (ICEL). ICEL was created as a non-profit, private organization with its legal seat in Geneva, but its offices and staff in Bonn. The founders were leading members of the Commission on Legislation: Homer Angelo from the United States, Wolfgang Burhenne from Germany, Cyrille de Klemm from France, Nagendra Singh from India, Baba Dioum from Senegal, and Charles Vander Elst from Belgium. 8

Its principal purposes were to coordinate and disseminate information on environmental policy and law, facilitate exchange of knowledge, and avoid duplication of effort. As stated in its statutes, ICEL was to serve as a “clearing house between individual persons and organisations dealing with the legal, administrative and policy aspects of environmental conservation and management”, including promoting collaboration and development of mechanisms for the “exchange of information on all aspects of environmental law, policy and administration.”² 9

The Council’s governing structure is a Board of Governors comprised of the founders and their designated successors, plus Board members elected from different regions of the world. ICEL presently divides the world into 10 regions; candidates for regional representation on the Board are nominated from members in their region and through a mail vote, up to two regional ‘Governors’ may be elected from members in their region for a term of three years. ICEL was structured to have both individual and corporate memberships. According to its rules, a two-step process is required for an individual to become an ICEL member. First, the candidate must be nominated by an existing member and, second, the ICEL Board of Governors decides on the nomination which, if accepted, is followed by an invitation. There is no membership fee. 10

In addition to broadening the worldwide network of environmental lawyers, ICEL became an added channel through which support could be provided to IUCN law and policy projects that might not otherwise have funds and for support to new projects with seed money. This included projects that might need funds on short notice, particularly requests for national legal technical assistance. 11

From the six founding members in 1969, ICEL rapidly expanded its membership, at its peak numbering some 600 individuals. By the 1990s, one of the objectives of ICEL (to significantly broaden the environmental law network) was no longer so critical. By then, the Commission on Environmental Law had started an aggressive member recruitment effort under Chair Hassan when the IUCN Council 12

ceased its requirement that Commissions remain small. With Law Commission membership approaching 950 members by the close of 2004, ICEL began to tighten its own admission policies.³ The Council now has some 300 individual and 20 corporate members.

- 13 In 1973, ICEL was granted general consultative status with the United Nations Economic and Social Council, a status reserved by ECOSOC for NGOs whose areas of work cover most of the issues on the agenda of ECOSOC and its subsidiary bodies.⁴ Ever since, ICEL has had permanent volunteer representatives to the UN in New York. ICEL's first such representative was Ambassador Bhagwat-Singh, recruited by Wolfgang Burhenne in the 1970s to represent ICEL as an added respon-



Members of the UN-International Law Commission at ICEL annual dinner

sibility to his duties as official representative of the Asian-African Legal Consultative Committee (now the AALC Organization) (subsequently the Ambassador also represented IUCN at the UN in New York, see Chapter 27). Nicholas Robinson (IUCN Law Commission Chair, 1996–2004) and ICEL member Charles Kassangana also have served in that capacity. Other ICEL members have volunteered to cover other cities where the UN has major institutional seats. For instance, long-time member Milena Bellini is in Geneva, Donald Kaniaru in Nairobi, Otto Dietrich in Vienna, Samar Malek in Beirut, and Banat Tasneeyanond in Bangkok.⁵ These representatives identify relevant developments of potential interest to ICEL and its members. ICEL monitors and provides technical input to deliberations of the UN General Assembly, the UN Commission on Sustainable Development, and the governing bodies of UNEP and UN specialized agencies. Through its monitoring function of UN activities, it provides a valuable service to the Law Commission by identifying information and activities important for environmental law and policy.

ICEL initiatives

ICEL received funds from the Fund for Environmental Studies (FUST), discussed below, for a number of initiatives supportive of environmental law and policy. ICEL began early on to help support information management at IUCN's Environmental Law Centre. As discussed in Chapter 10, it focused on building and supporting a law and policy literature library as a complement to the Law Programme's efforts to collect binding legal instruments, and creating an associated data base in the Environmental Law Information System (ELIS). 14

Emphasis on information exchange was central to ICEL, as explained in an article in the journal *Environmental Policy and Law* also launched by ICEL (see below): "In accordance with ICEL's purpose, members are requested to supply the ICEL library with copies of all written works to which the member has contributed and which fall within ICEL's scope of interest. Members also are expected to supply other members with information in the environmental field which is available to them and requested by their colleagues. This system for the exchange of information among members is ICEL's most important function, being particularly useful when members have need for specific information about another country's law or when, in developing policies for their own country, they can benefit from others' prior experience."⁶ Pursuant to this mission, ICEL also began in the 1970s to publish quarterly bibliography references to literature coming into the ICEL library (see Chapter 17). 15

In the early 1990s, ICEL also started a newsletter, *Environmental Notes for Parliamentarians*, with brief references to current developments in environmental law and policy. This service grew to a readership of almost 3000 parliamentarians worldwide.⁷ 16

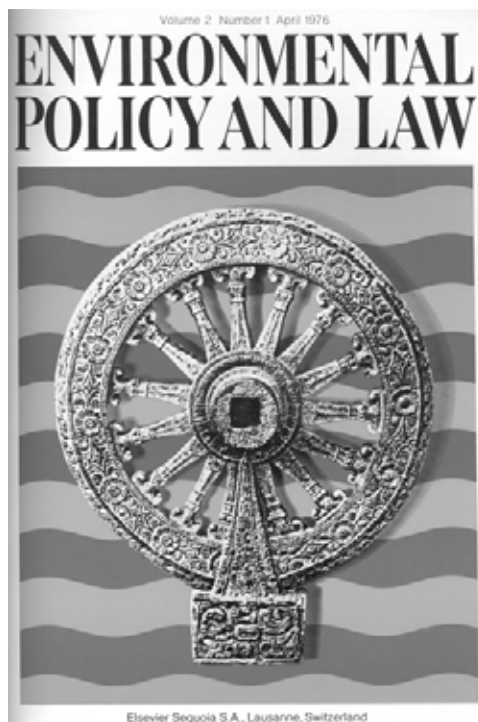
Working with the Environmental Law Centre, ICEL also sponsored with FUST monies three loose-leaf publications in international environmental law: *International Environmental Law: Multilateral Treaties* (begun in the 1970s and continuing today as discussed in the previous Chapter); the *Conservation in Sustainable Development* series, a collection of environmental policy documents taken over from Ruster and Simma in 1995; and finally in 2000 absorbing in this series an earlier Kluwer publication also developed in 1992 by ICEL: *International Environmental Soft Law*.⁸ 17

In the 1990s, ICEL supported ELP work on the draft *International Covenant on Environment and Development* (see Chapter 26). It also took on special issues in environmental law such as trade and environment, and more recently, armed conflict and the environment where it has become active in conceptual law development with the IUCN Commission on Environmental Law (see discussion of emerging issues in Chapter 31). 18

Another major ICEL initiative was the launch of a professional journal, *Environmental Policy and Law* (EPL) [see Box 1 below]. Begun in 1975 by Wolfgang Burhenne with initial funding from FUST, and continuing today, the journal aims to provide a medium for disseminating information on international environmental policy and law, and an important component of this function is to reproduce in the journal international policy decision documents, sometimes not otherwise easily 19

available. In its 29th year of production by 2004, the journal continues to be sponsored by ICEL. It is now self-sustaining from subscription fees and is professionally produced.

- 20 Wolfgang Burhenne also was the journal's first Editor-in-Chief, a responsibility he still holds. He recalls: "The intention was not to be academic, but to be the 'Time Magazine' for environmental law and policy." The journal had different short-term editors until in 1978 when ICEL member Marlene Jahnke took on the Editor's responsibilities; Burhenne and Jahnke have worked as the core production team ever since. In addition, ICEL and EPL used the volunteers noted above and others worldwide to help identify environmental law and policy developments to report in the journal. In addition, Editor Jahnke and other CEL and ICEL members are main contributors of substantive reports in the journal.



21 **Box 1: *Environmental Policy and Law* Journal**

In June 1975, a legal journal, *Environmental Policy and Law*, was launched by ICEL. Wolfgang Burhenne was the first and continuing Editor-in-Chief. Martin Mattes (a visiting researcher from the United States) served as Editor for its initial issues. Three issues were published in 1975. In 1976, another short-term researcher, David Zalob, served as Editor, and during 1977, Heather Mitchell took on that role. Beginning with Volume 4 in 1978, ICEL member Marlene Jahnke took over the Editor's desk, with Mary Gospodarek as co-editor for the next couple of years. Beginning in 1980, Jahnke continued as sole Editor and Burhenne as Editor-in-Chief, producing on average six issues annually ever since.

The Journal's first issue explained its mission and target audience: "Since its creation in 1969, the International Council of Environmental Law (ICEL) has sought in numerous ways to fulfill its function of developing the exchange of information on legal, administrative and policy aspects of environmental conservation. One means of such communication which has been considered is the publication of an environmental journal....[W]e see our audience as a special group of persons who are actively involved with problems of environmental law and policy. At the same time, we do not seek to create a scholarly journal, where experts speak to experts over their common expertise. Our central purpose is to report and analyze developments which should be of international interest – to inform those active in the environmental field in one country of the theories and practices being developed in other countries or at the international level."⁹

From the beginning, the Journal included analytical as well as descriptive articles on international developments, particularly in the United Nations, regional organizations and developing countries. In addition, it reproduced texts of selected legal and policy documents from international and regional environment-related meetings, including relevant UN General Assembly resolutions, UNEP Governing Council decisions, draft and final texts of agreements being negotiated at regional or global level.

The journal has become an important vehicle for communicating information on current international and national law developments as well as new and emerging issues, and regularly benefits from articles and commentary from Law Centre staff and Commission members, as well as from dignitaries, visiting researchers, and guest writers. As CEL and ICEL member Daniel Navid remarked for this History: “The EPL has many things, especially documents, that can’t be found readily elsewhere.”¹⁰

Finally, among its broad range of purposes, ICEL actively promoted environmental law networking. Prominent was the creation of the European Council of Environmental Law (CEDE) in 1974 by European members of ICEL. [See Box 2] The organization has remained active through the years, partnering with the IUCN Law programme on many European and global initiatives. The Law Programme has been represented at CEDE meetings. Among its many activities, CEDE sponsors periodic meetings of members to discuss problems and issues in the environment and provides a forum for European environmental lawyers to meet and collaborate specifically on regional aspects of global issues. 22

Box 2: European Council of Environmental Law (CEDE) 23

The European Council of Environmental Law (Conseil européen du Droit de l’Environnement, CEDE), a non-profit international scientific organization, created in 1974, has at present 35 members, two independent experts for each country which was member of the EU before May 1, 2003 and three founding members (Alexandre Kiss, Wolfgang Burhenne, and Heinhard Steiger) who have a lifelong mandate. One of these founders, Professor Alexandre Kiss (a CEL and ICEL member) has been President of the association since its creation. As a rule, four meetings are



Professor Alexandre Kiss

held every year. Observers of the Council of Europe and the European Union regularly attend the meetings. All the CEDE members are well known specialists of environmental law, most of them University professors, two are former high officials in ministries of environment and one is a practicing lawyer.

CEDE adopts its programmes and the participants are charged to prepare studies on legal approaches in their respective countries to subjects selected by CEDE. Such a comparative law



CEDE Meeting in Madeira

approach, paralleled by a study in international law on the same issue leads either to the adoption of resolutions addressed to governments and international bodies or to studies which are published. Six books have been published, two of them on activities related to the programmes of the EU. The CEDE also has adopted more than forty resolutions on subjects such as the environmental quality of scientific poles, information, participation and access to justice in environmental matters, waste, genetic materials of the deep seabed, the management of water resources, regional cooperation of islands, sustainable development in the law of the EU member States. Certain texts adopted by CEDE had a significant influence on the activities of international organisations (European Union, UN Economic and Social Council, Council of Europe).

The activities of CEDE were financed during the first fifteen year of its existence by FUST and since 1995 by the Government of the Portuguese Autonomous Region of Madeira. The Secretariat of CEDE, first established in Strasbourg, is now in Funchal, Madeira.¹¹

The Haub Foundations

Karl Schmitz Scholl Fund (KSSF)

- 24 *The Karl Schmitz Scholl Fund for Legal Protection of the Natural Environment* (KSSF) was created in Germany in 1968 by Elizabeth Haub in honor of her late father, Karl Schmitz-Scholl, and to commemorate his 100th birthday. KSSF's purpose is to promote and support national and international efforts in the field of environmental law. Elizabeth Haub became the first Chair of the KSSF Board and Wolfgang Burhenne, its Vice-Chair.

Elizabeth Haub, born in Germany in 1889, had become concerned about the environment long before the issue was popular or widespread. She was part of a successful business family which operated supermarkets, drugstores, and general stores mostly in Europe under such names as the Tengelmann Group and Kaiser's, and also in the United States, where it now owns a majority of A&P (Great Atlantic & Pacific Tea Company). She believed in policy and law "as a means of ensuring the conservation of the resources of the world."¹² 25

Throughout her life, Elizabeth Haub promoted and supported philanthropic activities worldwide. Wolfgang Burhenne recalls conversations with Elizabeth Haub in the 1960s where she expressed concern especially about the lack of implementation of environmental law.¹³ KSSF's statutes specify as its priority areas for support: 1) the formulation, improvement and implementation of necessary policies and legal provisions for the conservation of nature in order especially to support the implementation of decisions of the United Nations, taking into account the sustainable use of the environment and the circumstances of developing countries, and 2) the efforts of organizations recognized for these purposes.¹⁴ The need for good research and science in undertaking such work was emphasized. 26

Once IUCN had decided to support an office for the Commission of Legislation in the late 1960s, the need arose to have a German entity manage the funds allocated to or received by that office. As an outposted unit of IUCN Headquarters, legally established in Switzerland, it was not possible for the Law Centre to obtain legal personality in Germany without becoming an independent legal entity. As this was not considered appropriate by IUCN, under the law of the host country ELC needed a German entity to administer the funds it received from IUCN Headquarters and elsewhere. In view of the directly complementary purposes and the existing working ties, KSSF was the logical choice to take on that role. Through a Memorandum of Understanding (MoU) with IUCN, KSSF became the Law Centre's local employer and administrator of its funds, a function which continues to this day. The MoU vested KSSF with such administrative tasks as renting office premises and equipment for the Law Centre, handling its bookkeeping, and employing its personnel on a cost basis. 27

In addition, KSSF began to support substantive projects of the Law Programme aimed at environmental law implementation across the full spectrum of activity, from technical assistance and international law development to environmental law information management and dissemination, activities discussed throughout this history. This support was especially critical in the early years when other funding sources were virtually absent. KSSF also became an early supporter of the International Council of Environmental Law (ICEL) (discussed above) and the activities it sponsored. KSSF continues today to perform its core administrative role for the Law Programme components sitting in Bonn, as well as to provide valuable substantive seed support to projects. 28

Elizabeth Haub Foundations (USA and Canada)

Elizabeth Haub died in 1977. In 1981, Helga Haub, Elizabeth's daughter-in-law and successor in KSSF, honored Elizabeth by establishing a foundation in the 29

United States in her name, called the Elizabeth Haub Foundation for Environmental Law and Policy, and then in 1996 she created a similar foundation in Canada of the same name. With the founding of these two organizations, Helga and her husband Erivan Haub, who together have supported environmental initiatives, won international recognition for Elizabeth's interest in implementation of environmental law.

30 Helga Haub, Wolfgang Burhenne, and long-standing Commission member Will Irwin were founding members of the Board of Trustees of both foundations and continue as Trustees today.¹⁵ Carrying forward the family commitment of Helga and Erivan, Christian Haub, their son and CEO of the family's Great Atlantic and Pacific Tea Company, also is on the Board of both foundations. The Boards of both foundations always meet together at annual meetings. Over the years, eminent per-



Erivan and Helga Haub (front) at the 1981 inauguration of the Elizabeth Haub Foundation in USA. In the back W. Burhenne, Ambassador Keith Johnson and his wife, Will A. Irwin and Nicki Wilson

sons who have been members of both foundations have included Morris Udall (member of the US House of Representatives), Keith Johnson (Ambassador of Jamaica), Russell Train (Chairman of the Board, WWF-US), Nagendra Singh (President of the International Court of Justice), Taslim Elias (Judge of the International Court of Justice), and Nicholas Robinson (Professor of Pace University Law School). Among Board members of the Canadian foundation have been Charles Caccia (former Minister of Environment and Member of the Canadian Parliament) and Leonard Good (Head of Canadian CIDA and CEO of the Global Environment Facility).

31 As with the original KSSF, these foundations are supported by the family businesses and also receive donations as charitable organizations. Their goal is to continue the work of promoting adoption, implementation and enhancement of national and international laws for the preservation of the environment. Their bylaws

expressly identify one of the main purposes as to “contribute to the conservation and wise use of natural resources...through development, improvement and implementation of legal provisions concerning the use of these resources, with special attention to the requirements of developing nations.”¹⁶ Legally, the Elizabeth Haub Foundation-U.S. is a supporting organization for the work of the IUCN Environmental Law Programme and ICEL.¹⁷

The rationale for their founding, as spelled out in a brochure, was: “... the conviction that natural resources all over the world can only be preserved if they are managed using scientifically-based and sustainable measures and their conservation is ensured through effective legislative and legal instruments. It is not enough for regulations to be enacted – they must, above all, be implemented and continually optimized, based on experience.”¹⁸ 32

The KSSF and the Elizabeth Haub Foundations have been important, flexible sources of financial support for a variety of IUCN environmental law and policy projects over the years, including those related to national level legal technical assistance, building information systems, and producing publications. A key feature of their project funding strategy has been to “support good new ideas with ‘seed money’ until the projects can support themselves.”¹⁹ 33

A special issue of the Environmental Policy and Law Journal honoring the 100th birthday of the late Elizabeth Haub highlighted some of the achievements in international policy and law that have resulted from the work supported by the three Haub foundations: “In large measure, this cooperative effort has resulted in furthering nearly all new international environmental conventions and soft law [policy] agreements. For example, the World Charter for Nature of the United Nations, the Endangered Species Convention (CITES), the Algiers [African Convention] and the Kuala Lumpur [ASEAN] Conventions on the protection of Nature and Natural Resources, and the Wetlands and Migratory Species Conventions.”²⁰ Other multilateral agreements where IUCN treaty-related work has been supported by the foundations include the Protocol to the Antarctic Treaty on Environmental Protection (1991), and the Convention on Biological Diversity (1992). Several of these are discussed elsewhere in this History. 34

Haub Prizes

Two distinguished prizes have been created in honor of Elizabeth Haub. The first, created in 1973, is the Elizabeth Haub Prize for Environmental Law, awarded annually in Brussels by ICEL and the Free University of Brussels. The purpose of the Prize is to promote environmental law and recognize exceptional accomplishments, “...not only for a positive contribution to the development and promotion of environmental law in a general way, but for an initiative leading to a new concept or idea in the field of environmental law.”²¹ A number of the Laureates were IUCN Law Commission members. Second, in 1998, the Elizabeth Haub Prize for Environmental Diplomacy was created to commemorate the 25th anniversary of the United Nations Stockholm Conference on the Human Environment and the 5th anniversary of the UN Earth Summit held in Brazil in 1992. It is awarded for a “particular practical accomplishment in a specific instance or a new idea or diplomatic initia- 35

tive, leading to progress in the field of international law and policy.”²² The prize is awarded by the International Council on Environmental Law and Pace University School of Law in New York. Its first award was presented in 1999.

36 The formal award ceremonies are hosted by the co-sponsoring University and the recipient customarily makes a presentation on a subject of his or her choice, the proceedings and presentation normally reprinted in the journal *Environmental Policy and Law*. [See Box 3]



Elizabeth Haub together with ULB Rector Forier and W. Burhenne at the 1976 Prize Ceremony



20 Years Elizabeth Haub Prize 1996: Symposium in Wiesbaden

Box 3: Elizabeth Haub Laureates²³**I. Elizabeth Haub Prize for Environmental Law**

- | | |
|---|--|
| 2004 Ramon Ojeda-Mestre (Mexico) | 1981 Mateo J. Magarinos de Mello (Uruguay) |
| 2003 Peter Sand (Germany) | 1980 Russell E. Train (USA) |
| 2002 Mohamed Ali Mekouar (Morocco) | 1979 The Prize was jointly awarded to Oleg Kolbasov (USSR) and A.Ch. Kiss (France) |
| 2001 Ludwig Krämer (Belgium) | 1978 The Prize was jointly awarded to Eckard Rehbinder (Germany) and Guillermo J. Cano (Argentina) |
| 2000 Akio Morishima (Japan) | 1977 The Prize was jointly awarded to Henri Smets (Belgium) and Joseph L. Sax (USA) |
| 1999 Johan Lammers (Netherlands) | 1976 The Prize was jointly awarded to Jacques Hoeffler (Belgium) and Michel Prieur (France) |
| 1998 Parvez Hassan (Pakistan) | 1975 The Prize was jointly awarded to Waclaw Brzezinski (Poland), Michel Despax (France) and Wolfgang E. Burhenne (Germany) |
| 1997 Günther Handl (Austria) | 1974 The Prize was jointly awarded to Michel Carpentier (France), Jean Lamarque (France) and Jean-Paul Harroy (Belgium) |
| 1996 Tommy Thong-Bee Koh (Singapore) | |
| 1995 Patrick Széll (United Kingdom) | |
| 1994 Edith Brown-Weiss (USA) | |
| 1993 Winfried Lang (Austria) | |
| 1992 Nicholas A. Robinson (USA) | |
| 1991 M. Hubert Bocken (Belgium) | |
| 1990 Andronico O. Adede (USA) | |
| 1989 Zdenek Madar (Czech Republic) | |
| 1988 Cyrille de Klemm (France) | |
| 1987 Reinhard H. Ganten (Germany) | |
| 1986 Michael Bothe (Germany) | |
| 1985 Paulo A. Leme Machado (Brazil) | |
| 1984 Charles Odidi Okidi (Kenya) | |
| 1983 Heribert Rausch (Switzerland) | |
| 1982 Louis-Paul Suetens (Belgium) | |

II. Elizabeth Haub Prize for Environmental Diplomacy

- 2004 **Mohamed El-Ashry** (USA)
- 2003 **President Askar Akaev** (Kyrgyz Republic)
- 2001 **Ambassador Bagher Asadi** (Iran)
- 2000 **Ambassador Tuiloma Neroni Slade** (Samoa) and **Veit Koester** (Denmark)
- 1999 **Ambassador Razali Ismail** (Malaysia) and **Ambassador Bo John Kjellen** (Sweden)

Fund for Environmental Studies (FUST)

In 1969, IBM-Germany donated a grant of 8 million DM to support research, analytical work, and information management of benefit to parliamentarians in Germany and worldwide. [See Box 4] The Fund for Environmental Studies (FUST) was created as an independent German foundation to receive and manage this grant and continued functioning as an independent foundation thereafter. Its administrative offices were housed initially at 214 Adenauerallee, and moved to the new premises with the Law Programme in 1999. A founding member of its Board was Wolfgang Burhenne, in his capacity as elected Secretary General of the Inter-parliamentary Working Centre (IPA).

39 **Box 4: IBM and Fund for Environmental Studies (FUST)²⁴**

IBM and the IUCN Law Commission, through Chairman Burhenne, first began exploratory consultations in the mid-1960s on possibilities for using computer technology to manage environmental law information. Initial contact had been made between the IBM branch in Germany located in Stuttgart and Burhenne, who was doing IPA-related work on computer privacy issues for the German Federal parliament. Through those interactions, IBM Germany and subsequently IBM Headquarters in New York became interested in promoting the use of computer technology for management of law information for parliamentarians. In 1968, Wolfgang Burhenne and Françoise Guilmin were on a scheduled trip to Washington, D.C. to promote the Law Programme, with the itinerary organized as usual by US Law Commission member Nicki Wilson. During this trip, Burhenne (wearing his IPA hat) also testified before the U.S. Congress on computer privacy legislation in Germany, one of the first countries to address the issue. Thereafter, along with ambassadors, CEOs, and other functionaries, he was invited to IBM Headquarters in Poughkeepsie, New York. The result of this visit and detailed follow-up consultations was an offer by IBM Germany to make a major grant to IPA to support environmental policy and related projects useful for parliamentarians.

Burhenne was asked to set up a mechanism to receive and manage the funds. The grant was a substantial 8 million Deutsche Mark (DM) to be expended over three years. In 1969, the Fund for Environmental Studies (FUST) was created to receive, invest, and manage the grant. A large portfolio of projects were carried out by FUST with this grant. Some of them were entrusted and carried out by the IUCN Law Programme that would not have been possible otherwise. The money was used in such a way that generated further funds, both from investment income and revenues from publications, such that over time the fund assets grew to some 15 million DM. The fund exists today with remnants of the original investment plus new funds that have been raised.

40 This sizeable fund and its investment income were used to support a large number of projects and resulted in over 165 project reports and publications. A number of these publications were in German, but a significant number also were produced in English and came to be known as the 'A' and 'B' series of FUST publications (see discussion in Chapter 18). FUST also supported important projects of the Law Programme as well as creation of new supporting institutions. Among these were research projects in emerging environmental law developments in the 1970s (see Chapter 18), and the customized software prepared for ELIS which underpinned that data bank for the next 25 years, start-up support for the journal *Environmental Policy and Law*, described above; creation of institutions such as ICEL, the European Council of Environmental Law (CEDE), and the German Working Group on Environmental Law (all of which continue today), and sponsorship of important international conferences such as the four International Parliamentary Conferences on the Environment organized by IPA in the 1970s around the Stockholm Conference (discussed in Chapter 12). FUST also has funded a number of special publications, many in German, but a significant number also in English and French, and known as the FUST 'A' Series (see Chapter 18).

41 FUST provided the initial capital investment for the computer infrastructure for the premises at 214 Adenauerallee. All organizations housed there, including the Law Centre with ELIS, benefited from access to the new technology and shared maintenance costs. Specifically, FUST monies provided the in-house hardware for ELIS and its upgrades in 1980 (as discussed in Chapter 10). FUST also supported the creation and entire maintenance of the ICEL Literature Library and related data

base, twinning IUCN ELC efforts on national legislation and treaties for almost two decades. FUST is still contributing – albeit on a much lower level – to what has become a joint ICEL/IUCN ELC endeavor.

Notes

- 1 The preparatory committee and team of experts for the first and subsequent IPA conferences included several IUCN Law Commission members who then attended the Stockholm in the capacity as official observers for the IPA conferences: H. Angelo (USA), F. Burhenne-Guilmin (Germany), B. Dioum (Senegal), C. de Klemm (France), and E. Rehinder (Germany). See *The Parliamentary Viewpoint on the Stockholm Conference – Proceedings of the Second International Parliamentary Conference on the Environment* ('A' Series No. 9) (Erich Schmidt Verlag: Berlin, 1973), p. 10.
- 2 "Statutes of the International Council of Environmental Law" (adopted at New Delhi on November 26, 1969 as amended with effect from 1st May 1980 and further amended with effect from 15th October 1987), Article 2 ('Functions'), para. (1) (a) and (b).
- 3 Author communication with Françoise Burhenne-Guilmin, June 2003.
- 4 Information available at: www.un.org/esa/coordination/ngo/about.htm, researched August 27, 2003.
- 5 "Report of Activities: EHF-Canada, EHF-USA, KSSF-Germany" (for annual meeting July 2004), item 26.
- 6 "ICEL" in *Environmental Policy and Law* (Vol. 1, 1975/76), p. 41.
- 7 The *Environmental Notes for Parliamentarians* came out in English and French. When resources permitted the newsletter was produced monthly and also was, in more recent years, made available through ICEL's web site: www.i-c-e-l.org.
- 8 Author interview with Wolfgang Burhenne and Françoise Burhenne-Guilmin, April 8, 2006 (Bonn, Germany).
- 9 Wolfgang E. Burhenne and Martin A. Mattes (eds.), "Editorial" in *Environmental Policy and Law* (Vol. 1, 1975/76), p. 1.
- 10 Author interview with David Navid, June 23, 2004 (Bonn, Germany).
- 11 Information provided to author by CEDE President, Professor Alexandre Kiss. For a detailed presentation of the activities of CEDE, see their web site at: www.AREAM.pt/cede/fr.
- 12 "Elizabeth Haub Prize" in *Environmental Policy and Law* (Vol. 7, 1981), p. 137.
- 13 Author interview with Wolfgang Burhenne, July 12, 2001 (Bonn, Germany).
- 14 Working translation of "Satzung des Karl-Schmitz-Scholl-Fonds für Umweltrecht und Umweltpolitik e.V." (KSSF) (Bonn, 2 June 1969).
- 15 Will Irwin, Barbara Lausche, and 'Nicki' (Adele) Wilson, all members of the Commission on Environmental Law, also were incorporators of the U.S. foundation.
- 16 "Elizabeth Haub Foundation Bylaws", Article 1, Section 1(1).
- 17 Author communication on the May 2006 draft with Will Irwin, one of the incorporators of the U.S. foundation and an initial founding director.
- 18 Brochure: "The Karl Schmitz-Scholl Fund and the Elizabeth Haub Foundations: Who are we?" (undated) (available from the IUCN-Environmental Law Centre, Bonn).
- 19 Id.
- 20 "Elizabeth Haub Foundations for Environmental Law and Policy", *Environmental Policy and Law* (Vol. 27, 1997), back inside cover.
- 21 Definition of the award in ICEL's web site at: www.i-c-e-l.org/English/prizes.htm (researched 10/6/05).
- 22 ICEL web site at: www.i-c-e-l.org/English/prizes.htm.
- 23 Id.
- 24 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany) (draft transcript at 13); follow-up interview between author and Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).

Part 4 (1970s–1980s)

Drafting Global Instruments

The Law Programme's success with development and promotion of the African Convention and CITES (discussed in Part 2) brought recognition for its technical expertise in treaty-making and treaty-related work. 1

This Part focuses on four major international instruments developed and concluded during the 1970s and 1980s where IUCN and its Environmental Law Programme took a lead technical role. These instruments not only advanced the field of international law, they pioneered concepts that remain modern and relevant today. There were three treaties: the Convention to Protect Migratory Species (Chapter 13), the Convention to Protect Wetlands of International Importance for Waterfowl (Ramsar) (Chapter 14), and the ASEAN Convention for the Conservation of Nature and Natural Resources (Chapter 15). In addition, an initiative of the Law Programme to develop universal legal principles in conservation, the World Charter for Nature, became the first major environmental “soft law” instrument to be adopted by the United Nations after the Stockholm Conference (Chapter 16). 2

To set the stage, Chapter 12 first reviews the Law Programme's involvement in the 1972 U.N. Conference on the Human Environment, the ‘Stockholm’ Conference. That Conference, as noted earlier, produced the first global environmental agenda heavily weighted in environmental policy and law, and also led to the creation of the UN Environment Programme (UNEP), putting IUCN through the Law Programme squarely in the field of environmental law development as the following chapters examine, and over the years bringing the IUCN Law Programme and UNEP into a number of partnerships promoting treaty development and advances in the field as subsequent Parts of the History also show. 3

Chapter 12: Stockholm – A Framework for Environmental Law

Setting the agenda

The United Nations Conference on the Human Environment took place in Stockholm, Sweden, from June 5 to 16, 1972. As the first of its kind on the environment, the Stockholm Conference was a pioneering event. It ushered in the modern era of environmental law and, according to international law experts, “marked the emergence of international environmental law as a separate branch of international law”.¹ The outcome set forth an agenda for the Law Programme for years to come. 1

The Conference required extensive preparatory work with input from numerous international, governmental and non-governmental specialists. It brought together some 113 States, 13 United Nations specialized agencies, several intergovernmental bodies and non-governmental organizations. At the policy level, for the first time it made the environment a legitimate area for international and national policy-making. As Lynton Keith Caldwell wrote, “[it] marked a watershed in international relations. It legitimized environmental policy as a universal concern among nations, and so created a place for environmental issues on many national agendas where they had been previously unrecognized.”² 2



IUCN President Coolidge meets Ambassador Sverker C. Astrom (Sweden) at UN Headquarters in December 1968, after the UNGA Decision to convene the 1972 Stockholm Conference

The global Action Plan produced by the Conference defined a work programme for environmental policy, law, and administration at international and governmental levels that is still unfolding with impact today. Backing up this plan were 26 3

principles forming the “Declaration on the Human Environment”, principles which remain foundation stones of today’s environmental thinking and programming. Taken together, the 26 principles of the Stockholm Declaration for the first time provided a comprehensive statement of policy for the environment (becoming the first so-called international environmental “soft law”). As explained in the Declaration’s preamble, the principles responded to “the need for a common outlook ... to inspire and guide the peoples of the world in the preservation and enhancement of the human environment.”³

- 4 Its resulting Action Plan of some 109 recommendations contained more than 150 proposals for action, some general and others specific, ranging from pollution control and nature conservation to basic institution-building. It aimed to define priorities for action and for mobilizing resources of the entire spectrum of global society, from United Nations and governments to non-governmental organizations.⁴



Stockholm, 1972: A general view of the opening of the Conference at the Folkets Hus

- 5 Many of the initiatives mandated by Stockholm became important areas of the Environmental Law Programme’s future work programme, either in treaty-making (highlighted in this Part), or with technical support to the work of UN specialized agencies, or conservation monitoring and advocacy of other international initiatives (reviewed in Part V). A wide range of environmental topics was covered by Stockholm, from industrial pollution, chemical contamination, and wasteful consumption of the developed countries to poverty, underdevelopment and resource constraints facing developing countries. Debates underscored the different environmental concerns generated by lack of development in developing countries, on the one

hand, and over-development by the industrialized countries, on the other. Detailed recommendations emerged on the need for new and improved mechanisms to protect the world's genetic resources, forests, oceans, rivers and other water bodies, and species, including migratory species. Actions to control pollution of the air, waters, land, and the marine environment, as well as educational, social and cultural aspects of environmental issues were included. The United Nations Secretary General and U.N. specialized agencies (e.g., FAO, WHO, UNESCO, IMCO/IMO) were called upon to initiate, monitor and support implementation; governments were asked to take direct actions.

The United Nations General Assembly endorsed the final report of the Stockholm Conference on 15 December 1972 with no less than 11 resolutions implementing the various environmental recommendations.⁵ Included among these was Resolution 2997 (XXVII) establishing the United Nations Environment Programme (UNEP) with a Governing Council of 58 members, an Environment Fund, an Environmental Coordination Board, and a small Environment Secretariat to serve as a focal point for environmental action and coordination within the UN system. At that meeting the UN General Assembly also decided to locate the UNEP headquarters in Nairobi, Kenya.⁶ 6

The first UNEP Governing Council met in Geneva in 1973 and wove the 109 recommendations into a programme.⁷ Thereafter, UNEP's Governing Council began to meet annually. Regular meetings were later changed to biannually, in the odd years. In 1999, pursuant to a UN General Assembly resolution,⁸ a Global Ministerial Environmental Forum was created within UNEP's Governing Council to convene in special session in even years, thus continuing the practice of annual Governing Council sessions either in regular or special meetings. From the first Governing Council meeting, the IUCN Environmental Law Programme has had representation in attendance to promote environmental law. 7

The impact of Stockholm endured far beyond the event and its Plan of Action. It also generated periodic global conferences roughly at ten year intervals thereafter to review progress and update priorities, the most notable being the 1992 U.N. Conference on Environment and Development (UNCED) held in Rio de Janeiro and the most recent being the 2002 World Summit on Sustainable Development (WSSD) held in Johannesburg (both discussed in Chapter 19). 8

The Conference was of Member States of the United Nations, so IUCN attended as an observer. As discussed in Chapter 8, the Law Programme produced a set of technical papers on environmental administration, policy and law for the Conference, under contract with the United Nations Public Administration Division. During the Conference, the Environmental Law Centre, by invitation, demonstrated its sample data bank of environmental legislation being tested with the pilot IBM computer programme (see Chapter 10). Through these various channels, Law Commission members actively participated during both preparatory meetings and the Conference itself. 9

A number of lawyers came together, some for the first time, on the occasion of this Conference and built lasting ties with the IUCN Law Programme. For instance, it was at Stockholm that the Burhennes first met Nicholas Robinson (later to be- 10

come Chair of the Law Commission, see Chapter 27) who was leading the Sierra Club delegation. ICEL was also represented, and ICEL member Homer Angelo followed many of the Stockholm official sessions for ICEL. Columbia Law School Professor Richard Gardiner, a member of the US delegation, subsequently represented IUCN to ECOSOC in New York for a short time. Robinson recalls that “the Burhennes organized a dinner during the Conference to bring together all the lawyers,” a form of hospitality that continued through the years for building the IUCN team and networks.⁹

Parliamentary conferences

- 11 One of the ways the Law Programme became substantively engaged in the preparations for Stockholm was through the 1st International Parliamentary Conference on the Environment (IPCE). This parliamentary conference was the first in a series organized by the Interparliamentary Working Centre (IPA). Its purpose was



First IPCE in Bonn, 1971. From right: R.D. Munro, W.E. Burhenne, M. Hirsch, G. Budowski.

to prepare parliamentarians for and lay out a set of recommendations in environmental law to be promoted at Stockholm. Wolfgang Burhenne, as Secretary General of IPA, was in charge of this IPCE meeting (as well as three follow-up parliamentary conferences convened to assess the results of Stockholm and monitor actions taken). At that time he also was IUCN Law Commission Vice Chair in charge of the Committee on Environmental Law. The Conferences, preparation costs, and participation of the legal experts were supported from the Fund for Environmental Studies (FUST, see Chapter 11).

Several of the Law Programme's experts became technical advisers both in the preparation of and during the 1st Parliamentary Conference. Robert Munro, Law Commission member from Canada, was Secretary General of the 1st Conference. Daniel Navid, ELC Assistant Legal Advisor in the mid-1970s, recalled: "The Law Programme experts encouraged specific environmental law priorities which the parliamentarians endorsed in several resolutions on international law, including CITES and migratory species. It was an interesting example of ways the Law Commission used to help influence international decision-making even when it was not formally part of the process."¹⁰ 12

Burhenne involved IUCN in these Parliamentary Conferences in various ways. He invited then IUCN Director General Budowski to give the keynote address at the 1st Conference which was convened in Bonn, June 2–4, 1971. That Conference produced a set of recommendations for priority action by parliamentarians, including actions needed in international law, policy and administration. These recommendations were consolidated into a Resolution and sent to the UN Secretary General, the Preparatory Committee for Stockholm, heads of parliaments worldwide, and leaders of international organizations. 13

At the Stockholm Conference itself, parliamentarians actively promoted the IPCE recommendations. With the help of a team of experts, including Law Commission members appointed by the IPCE as its official observers, the parliamentarians met daily to report and reflect on progress in the Committees and Plenary. The team of experts provided technical advice, assisted in the debates, and prepared reports on results for a Second International Parliamentary Conference.¹¹ 14

As a measure of success, virtually all the recommendations promoted through IPCE were recognized in some form in the resulting Action Plan for the Human Environment adopted by the Stockholm Conference. This included those singled out for urgent attention: common environmental standards for pollution control; regulating international transport of hazardous substances; oil pollution controls on the high seas; prohibiting dumping of wastes at sea; the need for a world network of protected areas; protecting endangered migratory species; and the need for public access to information on the environment. IPCE had also called for "urgent international consultation and action" on the IUCN draft "convention on import, export, and transit of certain species of wild animals and plants",¹² which Stockholm Recommendation 99 addressed and which became CITES (discussed in Chapter 6). 15

With the assistance of FUST, IPA immediately published a book in three languages on the resolutions coming out of Stockholm along with individual reports of the technical experts.¹³ Burhenne recalls that this publication "was much in demand and only a few weeks later it also had been translated into Japanese. Members of the Japanese Parliament considered the IPA report so useful that they asked IPA permission to publish, and support from the Japanese government to translate and publish it."¹⁴ 16

Three weeks after the Stockholm Conference, IPA convened its 2nd International Parliamentary Conference on the Environment in Vienna to consider the results of Stockholm and assess "the actions taken ... on the problems and recommendations specified in the [IPCE] Resolution."¹⁵ Reports were presented by the team of experts, including Law Commission members and parliamentarians.¹⁶ 17



IPCE in Vienna, 1972

- 18 Based on reports presented, the 2nd Conference produced additional resolutions reinforcing areas addressed at Stockholm and highlighting areas needing more attention.¹⁷ Among these, parliamentarians stressed the need for a world network of protected areas and, specifically, the need to strengthen the draft conventions on world heritage and on wetlands, the need to give marine pollution control “a central place in the international efforts to protect our planet”, and growing concerns about pollution in the Mediterranean Sea and commercial whaling.¹⁸
- 19 The 3rd and 4th International Parliamentary Conferences on the Environment were held from April 8–10, 1974, in Nairobi, and in April 1976 in Jamaica, respectively, with the Law Commission and the Law Centre continuing to provide technical assistance and advice, as well as formal working papers. Each Conference generated further resolutions on areas needing increased attention. Among gaps identified by the 3rd Conference were transfrontier environmental damage, international fisheries agreements under the Law of the Sea, controlling exportation of pollution, government adoption of requirements for environmental impact statements in decision-making, conservation of the world’s forests, agreements to protect the ecology of inland lakes shared between nations, and ending waste and over-exploitation of non-renewable resources.¹⁹
- 20 Management of shared resources, particularly in frontier areas, attracted considerable debate at the 4th Conference, as did problems related to implementation. By then, a draft Convention on the Conservation of Migratory Species had been prepared by IUCN (see Chapter 13), the issues of which had been framed in a discussion paper. The importance of that initiative was underscored, with the Conference endorsing a resolution urging early adoption of the Convention. Of particular

importance to the work of the IUCN law programme, the Conference drew attention to the inadequacy of environmental protection measures at several levels and produced four resolutions on implementation: Enforcement of Environmental Legislation, Ratification of International Environmental Conventions, Environmental Quality Standards, and Technical Assistance in Environmental Law.²⁰

Three global conservation conventions called for at Stockholm were concluded after the Conference with substantial technical assistance from IUCN's Law Centre and Commission. Two of these were reviewed earlier in Part 2: CITES (the Convention to International Trade in Endangered Species of Wild Fauna and Flora), and The World Heritage Convention. The third, the Convention on Migratory Species, is discussed in the next chapter. 21

Notes

- 1 Brown Weiss, E., S., McCaffrey, D. Magraw, and R. Lutz, *International Environmental Law and Policy* (Aspen Law and Business, New York, 1998), p. 316.
- 2 Caldwell, L.K., *International Environmental Policy: Emergence and Dimensions* (Duke University Press: 1984), p. 19.
- 3 Preamble to the Declaration of the United Nations Conference on the Human Environment (1972).
- 4 International action to mobilize global efforts in conservation had been sporadic during the first half of the century, as discussed in Part One. This changed after World War II with the creation of UNESCO in 1945, IUCN in 1948, and the organization of a number of specialized technical conferences including the UNESCO-sponsored conference on the biosphere in 1968.
- 5 United Nations General Assembly Resolutions 2994–3004, 15 December 1972.
- 6 GA res. 3004 (XXVII), 15 December 1972. Communication from Donald Kaniaru, a high official in UNEP and also a Law Commission member, who attended that 1972 General Assembly, and kindly provided comments on the May 2006 of this History by email transmission dated July 4, 2006.
- 7 UNEP Decision 1 (I), Communication from Donald Kaniaru, a high official in UNEP and also a Law Commission member, who attended the 1972 UN General Assembly, and kindly provided comments on the May 2006 of this History by email transmission dated July 4, 2006.
- 8 UN General Assembly resolution 53/242 (Report of the Secretary General on environment and human settlements) of 28 July 1999.
- 9 Communication with Nicholas Robinson on May 2006 draft, transmitted by email dated June 16, 2006.
- 10 Author interview with Wolfgang Burhenne and Daniel Navid, June 22, 2004 (Bonn, Germany).
- 11 See, McEwin, S. M. (ed.), *The Parliamentary Viewpoint on the Stockholm Conference – Proceedings of the Second International Parliamentary Conference on the Environment* (A Series, No. 9) (Erich Schmidt Verlag, Berlin, 1973), p. 10. The experts were H. Angelo (USA), F. Burhenne-Guilmin (Belgium), B. Dioum (Senegal), J.-P. Harroy (Belgium), C. de Klemm (France), R.D. Munro (Canada), and E. Reh binder (Germany), H. Kruse (Germany), H.C. Miller (USA), and D. Plewe (Germany).
- 12 Munro, R.D. (ed.), *Priorities for Action – Proceedings of the 1st International Parliamentary Conference on the Environment* (Erich Schmidt Verlag, Berlin, 1971), p. 51–53.
- 13 *The Results from Stockholm* (FUST Series A 10) (Erich Schmidt Verlag, Berlin, 1973)
- 14 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 15 McEwin, S.M. (ed.), *The Parliamentary Viewpoint on the Stockholm Conference – Proceedings of the Second International Parliamentary Conference on the Environment* (A Series, No. 9) (Erich Schmidt Verlag, Berlin, 1973), p. 10.
- 16 Expert reports were prepared by Reh binder, de Klemm, Plewe, Miller, Kruse, and Angelo. See *The Results from Stockholm* (FUST Series A 10) (Erich Schmidt Verlag, Berlin, 1973).

- 17 See, generally, *International Parliamentary Conference on the Environment II, 27–29 June 1972, Vienna* (Erich Schmidt Verlag, Berlin, 1972).
- 18 *International Parliamentary Conference on the Environment II, 27–29 June 1972, Vienna* (Erich Schmidt Verlag, Berlin, 1972), p. 11–17.
- 19 See generally, *International Parliamentary Conference on the Environment III, 8–10 April 1974, Nairobi* (Erich Schmidt Verlag, Berlin) (1974).
- 20 See *International Parliamentary Conference on the Environment IV, 12–14 April 1976, Kingston, Jamaica* (1976) Daemisch-Mohr, Siegburg. A fifth and final Interparliamentary Conference on the Global Environment was organized in 1990 in Washington, D.C., under the sponsorship of the United States Senate and, in particular, Al Gore who at the time was U.S. Senator. The CEPLA Chairman assisted by the Law Centre and other Commission members provided extensive input to its preparation as well as the meeting itself, including a number of motions on environmental law which were considered by the Conference. See “Report of the Chairman of the Commission on Environmental Policy, Law and Administration,” attached to “Report of the Director-General to the 18th Session of the General Assembly 28 November – 5 December 1990, Perth, Australia”, p. 84.

Chapter 13: Convention for Migratory Species

Migratory animals move across international boundaries at different stages of their life cycles. A national conservation regime for migratory species in one country, acting alone, is unable to ensure the species' protection in other countries of its range. Migratory species conservation only can be effective with concerted action by all range States of the species concerned.

In 1971, in preparation for the UN Conference on the Human Environment scheduled for June 1972 in Stockholm, parliamentarians gathered in Bonn for the first International Parliamentary Conference on the Environment (IPCE) and adopted a conference resolution reflecting "a consensus that the following items require immediate and effective international action."¹ Among these items was the call for conclusion of an international agreement "for the conservation of endangered migratory species."² The IPCE resolution was circulated to members of the Preparatory Committee for the United Nations Conference on the Human Environment.³

At Stockholm, parliamentarians and their technical advisors, as discussed in Chapter 12, worked to promote action items in this IPCE resolution. A consensus emerged about the need to consider migratory species 'common resources' to be managed jointly by all States in the species' range; Recommendation 32 of Stockholm's resulting Action Plan called for an international treaty for migratory species. This Recommendation states:

"It is recommended that Governments give attention to the need to enact international conventions and treaties to protect species inhabiting international waters or those which migrate from one country to another:

- (a) A broadly-based convention should be considered which would provide a framework by which criteria for game regulations could be agreed upon and the over-exploitation of resources curtailed by signatory countries;
- (b) A Working Group should be set up as soon as possible by the appropriate authorities to consider these problems and to advise on the need for, and possible scope of, such conventions or treaties."⁴

IUCN's Eleventh General Assembly, meeting in September 1972, in Banff, Canada, merely three months after Stockholm, had before it the Stockholm Action Plan. The IUCN proceedings, among other things, reported that "action is now in hand to follow up the Stockholm Conference proposal for [a treaty] covering conservation of migratory species...."⁵

In spite of these good intentions, there was little immediate movement on migratory species within IUCN or from the international community. More pressing issues had first priority, in particular, setting up a UN environmental secretariat (the UN Environment Programme established in 1973),⁶ developing a global environmental information network (INFOTERRA), and concluding a World Heritage Convention (Chapter 7), and a convention to control trade in endangered wildlife (CITES, Chapter 6).

Germany sponsors treaty development

- 6 In the early 1970s after Stockholm, German environmental NGOs became increasingly critical of the government for not taking international initiatives in nature conservation. The Federal Ministry for Food, Agriculture and Forestry (responsible for nature conservation) was the focus of this criticism. The responsible Minister, Joseph Ertl, and Wolfgang Burhenne (then Vice-Chair of the IUCN Law Commission under Caldwell) knew each other well.
- 7 Burhenne recalls that in 1974, Minister Ertl approached the IUCN Law Commission and Law Centre through him for suggestions on what might be done to calm this criticism. In a meeting with the Minister, also attended by Dietrich von Hegel, Head of the Ministry's Nature Conservation Division, and Hans-Jürgen Rohr, State Secretary to the Minister, Wolfgang suggested "to take the initiative."⁷ When Minister Ertl asked what initiative he might take, Burhenne mentioned the recommendation from Stockholm for a migratory species convention and suggested Germany take the lead in promoting its development and conclusion.
- 8 The Minister liked the suggestion and asked Hegel and Rohr to follow up. As recounted in an historical review many years later, Minister Ertl "announced to UNEP's second Governing Council in 1974, that the Federal Government of Germany would develop a draft convention and organize an international conference to debate and adopt it. Beyond political considerations, all were agreed that it made obvious technical and biological sense to deal with migratory species on a multilateral basis."⁸
- 9 Burhenne recalls that the timing and circumstances surrounding that original meeting with Minister Ertl were fortuitous, opening a path for development of a convention on migratory species "which might not have happened otherwise."⁹ As with CITES, those were the years when a convention needed a country to be its champion and sponsor, not only for development and promotion of draft text but also for the associated costs of diplomatic conferences. UNEP and other specialized UN agencies commonly take on that role today, but UNEP then was just beginning. Moreover, treaties often are cited by reference to their place of adoption and so, perhaps, there also could be a 'Bonn Convention'.
- 10 After further consultations in the Ministry, it was decided that the Environmental Law Centre would be contracted to prepare the convention draft for and with the Ministry. The work was undertaken as a joint project by CEPLA and the Environmental Law Centre, based on a preliminary study undertaken by Law Commission member Cyrille de Klemm, which proposed formulating an international agreement for migratory species in the form of a framework or 'umbrella' convention.¹⁰ Work was begun in 1974. During 1975, Daniel Navid joined the Law Centre and became heavily involved in the drafting work along with Françoise Burhenne-Guilmin and de Klemm.
- 11 By September 1975, a first IUCN draft was ready for circulation and distributed to all countries with which Germany maintained diplomatic relations, with a request for comments. The draft had been prepared by IUCN and presented as the IUCN recommended draft for first round of governmental reviews. Subsequent versions, taking successive governmental comments into account, became drafts sub-

mitted by the Government of the Federal Republic of Germany, which continued to manage the process to the convention's conclusion with IUCN technical assistance.

With initial response to the draft mostly favorable, Germany decided to hold a meeting of experts in Bonn in July 1976 to more fully consider the document. The meeting was well attended; some 102 experts from 45 countries and 11 international organizations participated.¹¹ It was billed not as a drafting session, but rather a session to assist in the preparation of a Working Paper for a Plenipotentiary Conference that the Government of the Federal Republic of Germany would convene within two years toward conclusion of a convention. Discussions were informal and participants were allowed to present views and comments on a personal basis so as not to formally commit the governments or organizations they represented. As observed by Daniel Navid, rapporteur for the meeting, "These conditions greatly facilitated the work of the participants."¹²

In light of input received at that meeting of experts, a revised draft was prepared and circulated in mid-1977 as a first government draft. On the basis of further comments received, including those from a meeting of experts of European Community countries convened by Germany with IUCN as advisor, the Government decided further final revisions were necessary prior to convening a Diplomatic Conference to conclude the Convention. The IUCN Law Programme continued to provide technical advice on the elaboration of the draft and in addition convened a meeting of experts in July 1978 to develop recommendations for species that might be included in Appendices to the Convention.

Concluding a treaty

A Diplomatic Conference to negotiate the final text was hosted by the Government of the Federal Republic of Germany in Bonn from June 11 to 22, 1979, and representatives from 77 nations participated. The Conference elected as its Presi-



Diplomatic Conference in Bonn, 1979

dent, Hans-Jürgen Rohr, who had attended the original meeting some five years prior when Minister Ertl launched Germany's involvement. Peter Sand, then Secretary General of CITES (at the time hosted at IUCN Headquarters) served as Secretary General of the Conference, with Daniel Navid, then Executive Officer of CEPLA, as rapporteur.

15 The Conference created a Working Group chaired by Ambassador Rubens Barbosa, an experienced negotiator from Brazil, to undertake the detailed negotiations, and Veit Koester (Law Commission member from Denmark) was persuaded by Burhenne to be Vice-Chair. Koester recalls how important that experience was for his future international law work: "Wolfgang persuaded me to be elected as vice-chair. Until then, I had never chaired global international negotiations, but only negotiations in the framework of the Council of Europe, but I accepted, assured I would never be called to chair. Then, R. Barbosa had to leave, and suddenly I was in charge. It went reasonably well and there was not much unresolved when H.-J. Rohr took up his presidency at the end of the conference. The event was quite important to me because it started my career as chair of international governmental conferences and I have always been grateful to Wolfgang for his persuasion."¹³

16 On June 23rd, 1979, the Convention was adopted. The final text was entitled the Convention on the Conservation of Migratory Species of Wild Animals (CMS) (also to be known more commonly as the 'Bonn' Convention). CEPLA Chairman Burhenne reported success to the IUCN Council later that month, applauding the "leading role that had been played by the African, Asian and Scandinavian States in maintaining the interests of conservation"... [and concluding that] "certain compromises had been necessary in the development of the Convention but a reasonably satisfactory conclusion had been reached."¹⁴ The IUCN Council "agreed that a letter of thanks be sent to the Government of the Federal Republic of Germany for its participation in furthering the recommendations of the World Conference on the Human Environment."¹⁵

17 The Convention on Migratory Species of Wild Animals came into force in November 1983.¹⁶ In November 1984, a Secretariat was established in Bonn at the invitation of the Government of the Federal Republic of Germany. The Secretariat is provided by UNEP.

18 Consistent with the Stockholm recommendation that coverage encompass species that "migrate from one country to another", and not be limited only to endangered species, the Bonn Convention defines "migratory species" as the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries.¹⁷ The scope includes terrestrial, marine, and avian species through the whole of their migratory ranges.

19 During the negotiations, there had been debate whether the Convention's scope should include exploited species. For instance, the US, USSR, Australia and Canada had pressed for exclusion of marine mammals, molluscs, and crustaceans from the Convention.¹⁸ Among the concerns of those wanting limitations were the potential difficulties getting State support for such broad-based coverage and the possible

conflict with other agreements such as the United Nations Law of the Sea Treaty. The compromise reached was to use appendices to differentiate levels and types of action.

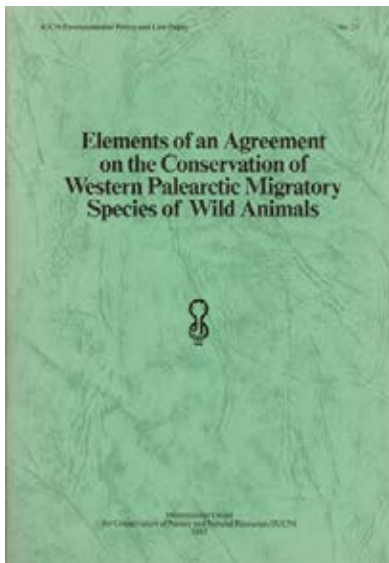
Thus, the Convention became an umbrella agreement specifying a two-tiered approach, as explained in a guide to the Convention provided by the CMS Secretariat:

1. “adopting strict protection measures for migratory species that have been categorized as being in danger of extinction throughout all or a significant proportion of their range (listed in Appendix I of the Convention); and
2. concluding Agreements for the conservation and management of migratory species that have an unfavourable conservation status or would benefit significantly from international co-operation (listed in Appendix II of the Convention).”¹⁹

The Convention also promotes joint research and monitoring to further those aims.

For the Appendix I list of “migratory species which are endangered,” the judgment on when a species is “endangered” is to be based on “reliable evidence, including the best scientific evidence available.”²⁰ Listed in Appendix I are several species of marine turtles, marine mammals including seals, dolphins, porpoises and whales, and migratory birds. For these species, the Parties endeavor to conserve and restore habitats, prohibit taking, remove obstacles and minimize activities that seriously hinder migration, and control other harmful factors including control of introduced exotic species.

Regarding Appendix II species, legally-binding agreements would be needed to trigger actions required for specific species, the object of which “shall be to restore the migratory species concerned to a favourable conservation status or to maintain it in such a status. Each agreement should deal with those aspects of the conservation and management of the migratory species concerned which serve to achieve that object.”²¹



IUCN was approached by the new Convention Secretariat to help prepare and promote such agreements. Using Western Palearctic migratory species as an illustrative case and one already raising special concern,²² IUCN organized a meeting of key NGOs (the International Waterfowl Research Bureau/IWRB, International Council for Bird Preservation/ICBP, and the Conseil International de la Chasse/CIC) in 1980 to identify a common approach to such agreements. The result from that meeting was the decision that IUCN would undertake a study, in collaboration with IWRB, ICBP, CIC, and the EEC, to develop elements of a pilot agreement, taking the Western Palearctic as an example.²³ Commission member Cyrille de

Klemm took the lead in preparing the pilot agreement, which was published in 1983 with the support of the Brehm Fund²⁴ as part of the IUCN Environmental Policy and Law Paper series, and entitled *Elements of an Agreement on the Conservation of Western Palearctic Migratory Species of Wild Animals*.²⁵

24 In 1985, at the first Conference of Parties to the Convention, CEPLA members and Law Centre staff actively participated. In particular, the Law Centre presented a study, commissioned by the Federal Republic of Germany for that COP, reviewing all international instruments dealing with migratory species.²⁶ In addition, the publication on the pilot agreement for Western Palearctic migratory species, noted above, was distributed by the Convention Secretariat to country delegations as a conference document.²⁷

25 Thereafter, the Law Programme has continued to actively support and provide technical assistance to the Convention Secretariat, participating in all COPs, providing legal opinions for questions arising under the Convention and responding to special requests from the Secretariat, e.g., in relation to the preparation of guidelines for agreements. In the late 1990s, the Law Programme also undertook a survey, at the request of the Secretariat, that looked at funding mechanisms for conservation conventions, analyzing responses that had been received from a questionnaire prepared by the Law Centre and sent to secretariats of other conservation conventions.²⁸ Also in the late 1990s, the guidelines for preparing agreements under the Convention were revised and updated by the Law Centre in cooperation with the Convention Secretariat.²⁹

Specific agreements under CMS

26 The Environmental Law Centre, with assistance of a number of Commission members, worked on several draft Agreements for the Convention in the late 1980s and 1990s. For example, the Law Centre jointly with the Commission provided substantial drafting assistance to an Agreement on Conservation of Seals in the Wadden Sea. That agreement (between Denmark, Germany, and the Netherlands), the first to be concluded under the Convention, was based on an IUCN working draft requested and commissioned by the Federal Republic of Germany. The draft was the focus of a meeting of the Parties in Copenhagen in March 1987 where the Law Centre served as advisor.³⁰ The final Agreement was concluded in October 1990, and entered into force one year later.

27 Other technical assistance, based on a Memorandum of Understanding concluded with the Convention Secretariat, included preparing in the late 1980s a draft text for a White Stork Agreement, and a draft text for a Memorandum of Understanding for the Siberian Crane (concluded in 1993 and revised in 1999). These were coordinated through the Convention Secretariat with UNEP's South-East Asian Regional Office.³¹ Technical advice was provided on draft agreements related to the Conservation of Small Cetaceans of the Baltic and North Seas (ASCOBANS) (concluded in 1991 and entered into force in 1994)³² and the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) (concluded in 1996 and entered into force in 2001).³³

In 1995, the African-Eurasian Waterbird Agreement (AEWA) (a work in progress for many years as the Western Palearctic Agreement) was concluded. The largest agreement so far under the Convention, AEWA covers a geographic area stretching from northern Canada and the Russian Federation to the southern tip of Africa. The process of developing and finally concluding this agreement spanned some ten years of technical work, including legal work by the Law Programme. The Netherlands brought life to the process once the Convention came into force, asking the Law Centre to revise the preliminary draft and its explanatory notes.³⁴ Commission member Cyrille de Klemm continued to be the key expert of the Law Programme, which remained legal advisor to the CMS Secretariat through the final negotiations of the Agreement. 28

The AEWA entered into force in 1999. Today, the agreement covers 172 species of birds ecologically dependent on wetlands for at least part of their annual cycle and 117 countries (plus the European Union) from Europe, parts of Asia and North America, the Middle East and Africa. Once the agreement had been concluded, the ELP also prepared conservation guidelines for legislation under AEWA and these were presented to the Conference of Parties in 2002.³⁵ 29

In addition to legally-binding agreements, Parties to CMS have developed a number of Memoranda of Understanding concerning specific species, a legal technique not provided for by the Convention text, but adding a layer of flexibility for governmental commitments regarding certain species.³⁶ The ELP was involved in the preparation of some of those as well. 30

IUCN continues to provide technical legal assistance on request to the CMS Secretariat. ELC Legal Officer Richard Tarasofsky was the main person working with Françoise Burhenne-Guilmin on Bonn Convention matters during 1993–97, 31



Lyle Glowka joined the CMS Secretariat in 1999 and became Agreements Officer

followed by Lyle Glowka through 1999, and then Tomme Young through 2004. The ELP has participated in negotiations for a Houbara Bustard agreement (ongoing), Memoranda of Understanding for two marine turtles agreements – Marine Turtles: Atlantic Coast of Africa (1999) and Marine Turtles: Indian Ocean/South-East Asia (2001), and the Memorandum of Understanding for the Great Bustard Agreement (effective 2001).³⁷ Other CMS agreements and memoranda of understanding which are monitored by the ELP include the EuroBats Agreement (in force in 1994), Albatrosses and Petrels Agreement (ACAP) (in force in 2004), the Bukhara Deer MOU (effective 2002), and the Aquatic Warbler MOU (effective 2003).³⁸

Notes

- 1 Munro, R.D. (ed.), “Conference Resolution” in *Priorities for Action – Proceedings of the 1st International Parliamentary Conference on the Environment (June 1971, Bonn)*, p. 51–53 (English version) (Erich Schmidt Verlag, Berlin).
- 2 Id. at 53.
- 3 Munro, R.D. (ed.), *Priorities for Action – Proceedings of the 1st International Parliamentary Conference on the Environment (June 1971, Bonn)*, p. 11 (Erich Schmidt Verlag, Berlin, 1971).
- 4 Recommendation 32, “Action Plan for the Human Environment” in “Report of the United Nations Conference on the Human Environment held at Stockholm, 5–16 June 1972”. UN Doc. A/Conf.48/14.
- 5 *Proceedings of the Eleventh General Assembly of IUCN, Banff, Canada, 11–16 September 1972* (IUCN, Morges, Switzerland, 1972), p. 51.
- 6 In 1973, the new United Nations Environment Programme (UNEP) called for by the Stockholm Conference became operative when its 58-member Governing Council met in Geneva in June. In October UNEP took up its new headquarters in Nairobi. UNEP began to establish a referral service for environmental information (INFOTERRA) and promote international environmental law.
- 7 Author interview with Wolfgang Burhenne, October 17, 2000 (Bonn, Germany) (draft transcript, p. 32); also, author interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 8 “Germany and the Genesis of CMS” in *20 Years of Migratory Species Convention*, p. 19 (in IUCN ELC archives)
- 9 Author interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 10 *IUCN Yearbook 1974*, p. 39.
- 11 See Burhenne, W. “Report of the Commission on Environmental Policy, Law and Administration”, p. 2 (labeled Annex 1 to General Assembly Paper GA. 78/21, in *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979), pp. 9–10.
- 12 Navid, D. “Draft International Convention on the Conservation of Migratory Species of Wild Fauna” in *2 Environmental Policy and Law* (Vol. 2, 1976) p. 117.
- 13 Communication from Veit Koester on May 2006 draft, transmitted by email dated June 7, 2006.
- 14 “Minutes of Fifth Meeting of IUCN Council, 25–27 June 1979, Morges, Switzerland”, p. 10.
- 15 Id.
- 16 For text of the Convention and related information, see the Secretariat’s website at: www.wcmc.org.uk/cms.
- 17 Article 1, Section 1(a). Convention on the Conservation of Migratory Species of Wild Animals.
- 18 “Minutes Fifth Meeting of IUCN Council, 25–27 June 1979, Morges, Switzerland”, p. 10.
- 19 “Guide to the Convention on the Conservation of Migratory Species or Wild Animals” (Convention Secretariat, Bonn, Germany, January 2002), p. 2.
- 20 Article III, Convention on the Conservation of Migratory Species of Wild Animals.
- 21 Article V, Convention on the Conservation of Migratory Species of Wild Animals.

- 22 In 1979, some four years before conclusion of the CMS, a meeting of the International Waterfowl Research Bureau and the European Conseil International de la Chasse adopted a resolution expressing concern about the state of protection for migratory waterfowl in the Western Palearctic region (broadly the European-African migratory flyway). See Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly", p. 8 (labeled as Attachment to General Assembly Paper GA/15/81/6, in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982).
- 23 See Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly", p. 8 (labeled as Annex 4 to General Assembly Paper GA/16/84/1, in *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain* (IUCN, Gland, Switzerland, 1985).
- 24 As discussed in Chapter 11, the Brehm Fund (Brehm-Fonds für Internationalen Vogelschutz) was a German Foundation founded in 1976 on the initiative of a German businessman, W.W. Brehm, who was running a large bird park and concerned that bird protection needed special international support. Wolfgang Burhenne was a co-founder. An early priority was support for work toward a convention to protect migratory birds in the European-African flyways. The Brehm Fund also supported work on the species sub-file of ELIS on the legal status of birds in national legislation which by 1997 included some 130 countries with 5,700 records of bird taxa; see "IUCN Environmental Law Programme Annual Report 1997", p. 11. With loss of funding for maintenance of the species data base, the bird sub-file also has not been maintained.
- 25 De Klemm, C. *Elements of an Agreement on the Conservation of Western Palearctic Migratory Species of Wild Animals* (Environmental Policy and Law Paper No. 21) (IUCN, Gland, Switzerland, 1983).
- 26 Environmental Law Centre, "Activities in the Field of Environmental Policy, Law and Administration, Report to Council" (April 16, 1985), p. 3.
- 27 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly", p. 2 (labeled as Annex 5 to General Assembly Paper GA/17/88/1, in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988).
- 28 See "IUCN Environmental Law Programme Annual Report 1997", p. 5.
- 29 See *Id.* at 6, and "IUCN Environmental Law Programme Annual Report 1998", p. 6.
- 30 "Submission from the Environmental Law Centre for Director-General's Report 1987", p. 1.
- 31 *Id.* See also email from Françoise Burhenne-Guilmin to author dated September 02, 2002, Re: IUCN and CMS, with Attachment by T. Young.
- 32 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly", p. 2 (labeled as Annex 5 to General Assembly Paper GA/17/88/1, in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988).
- 33 Legal advice to the Convention Secretariat on revisions to the draft Agreement, particularly its geographic scope, was provided by Commission members Clare Shine and Cyrille de Klemm. Clare Shine also acted as advisor to the Secretariat during the negotiations leading up to the signing. See C. Shine, "ACCOBAMS signed in Monaco" in *IUCN Environmental Law Programme Newsletter* (October–December 1996), p. 13.
- 34 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 90/1, 1990), p. 1.
- 35 Email from Françoise Burhenne-Guilmin to author dated September 02, 2002, Re: IUCN and CMS, with Attachment by T. Young.
- 36 Commentary from Françoise Burhenne-Guilmin on March 2006 draft, transmitted by email cover dated March 22, 2006.
- 37 Email from Françoise Burhenne-Guilmin to author dated September 02, 2002, Re: IUCN and CMS, with Attachment by T. Young.
- 38 See the CMS web site for a list of agreements and MOUs under the convention and background and status on those agreements at: www.cms.int/about/intro.

Chapter 14: Conserving Wetlands – The Ramsar Convention

In the 1950s, concern about the worldwide destruction of wetlands began to grow, especially among those in the scientific community. During the late 1950s, IUCN initiated a project with two other international organizations, the International Waterfowl Research Bureau (IWRB) and the International Council for Bird Preservation (ICBP), to increase global awareness of the importance of wetlands.¹ In 1962, as part of this project they convened an international conference which concluded that a convention on wetlands was urgently needed, and this was endorsed by the First European Conference on the Conservation of Wildfowl in 1963.² IUCN deferred to IWRB mostly because the subject was being driven by the waterfowl issue, considered their specialized area of expertise.³ IWRB prepared a preliminary draft, a second draft came from the Government of the Netherlands, and eventually a final draft emerged at a technical meeting of experts in Finland in 1970 as the basis for final negotiations.

Those negotiations took place at a conference convened in Ramsar, Iran, in 1971. Sponsorship came from the main international conservation organizations of that time: IUCN, IWRB, ICBP, World Wildlife Fund, the Conseil International de la Chasse (CIC), the International Biological Programme of UNESCO, UNESCO, and FAO.



Meeting for the adoption of the Convention in Ramsar, 1971
E. Firouz (centre), J. Matthews (right) and E. Carp (left)

This was an IUCN Headquarters initiative. Neither the Law Commission nor the Law Centre had been involved in the Convention's drafting or final negotiations. IUCN Deputy Director-General Frank Nicholls, participating for IUCN, recalls: "As the conference moved into its final stages it became clear that agreement could not be reached on many points in the draft. This was of particular concern to the host government and, in the hope of avoiding an unsatisfactory diplomatic out-

come, the conference secretariat and I overnight produced a compromise draft which gained acceptance. The draft fell far short of the original objectives and made no provision for enforcement or financing but at the time was seen as leaving the door open for further action in this area.”⁴

- 4 Law Chairman Burhenne remembers that he and Commission member Cyrille de Klemm had been consulted at a very early stage. However, “they gave such critical comments (on the lack of amendment provisions and other deficiencies), they were never invited back. Further offers of drafting assistance were declined and the lawyers were not invited to the final negotiations.”⁵



Iran signs the Final Act

- 5 The final text for a treaty was concluded on February 2, 1971. The title given was the Convention on Wetlands of International Importance especially as Waterfowl Habitat (commonly now known as ‘Ramsar’, for the city in which it was concluded). While the lawyers had not been involved, IUCN was still identified in the treaty as the Secretariat for the Convention once it came into force.
- 6 Daniel Navid, (ELC staff in the 1970s and a Law Commission member) became the first Secretary General for Ramsar. He wrote years later that the IUCN Law Commission had called “for more attention to be paid to legal requirements during the drafting process of this treaty, but unfortunately their advice was not heeded. This failure to do so by the Convention negotiators ... resulted in years of delay for the wider acceptance and application of the treaty.”⁶

Treaty weaknesses

- 7 The final text was “a highly flexible instrument, so designed by the conference in order to facilitate the broadest acceptance by the international community and the adherence thereto by as many nations as possible,” as reported in the journal *Environmental Policy and Law*.⁷ It turned out, however, that in opting for a treaty

with those features, the framers also had produced a convention that required little from States by way of mandatory obligations. States were slow to ratify or did not find grounds for ratification. As explained by the Government of the Federal Republic of Germany, which signed the Convention in November 1974, it was “unnecessary to submit the ratification to the Federal Parliament, because the Convention will impose no direct obligations upon citizens and because all that is required of [Germany] as a Party ... may be duly carried out simply by administrative action.”⁸

Moreover, the Convention was only in English and there was no provision specifying other authentic languages, so France and many other countries were not willing to ratify. As recognized by the drafters, the text was without financial provisions so there was no funding support for its promotion and implementation, nor for work of a Convention Secretariat to handle administration, scientific oversight, and meetings of the Contracting Parties. 8

By the end of 1974, the Convention still was not in force. Finally, one year later, on December 21, 1975, the required seven ratification instruments had been deposited and the treaty formally entered into force. Even given the implementation issues that would challenge its future, Ramsar was innovative and pioneering in its approach. As reported in an IUCN publication, the Convention “was the first globally applicable environmental convention and the only treaty to address one type of ecosystem” – wetlands important for migrating waterfowl.⁹ 9

In light of its global importance for conservation and with concerns mounting over the deteriorating state of the world’s wetlands, Contracting Parties turned to how the instrument might be improved to broaden participation and effectiveness. At this point, it was noted that the treaty also had no provision for amendment. 10

Law Programme becomes involved

In the late 1970s, with implementation seriously lagging, a few of the Contracting Parties (Canada, Denmark, India, Italy, the Netherlands and the United Kingdom) and the depositary UN agency, UNESCO, initiated discussions on how the treaty might be amended to remedy its main procedural and substantive weaknesses.¹⁰ IUCN and IWRB agreed to organize a first meeting of the Contracting Parties for this purpose, with IUCN acting pursuant to its Secretariat duties. Peter Sand, then sitting at IUCN Headquarters as CITES Secretary General, urged the Law Centre to get directly involved.¹¹ Françoise Burhenne-Guilmin, Law Centre Head, was asked to prepare and present a paper identifying treaty weaknesses, point-by-point and amendments needed to remedy each. 11

This first deliberative meeting of the Contracting Parties was held in November 1980, in Cagliari, Italy. The Parties had before them the paper prepared by Burhenne-Guilmin. The Contracting Parties agreed that two protocols were needed to repair and strengthen the treaty, the first to put in place the necessary amendment procedure, and the second containing the needed amendments themselves, including authorization of additional official languages, financial measures, and the operation of a permanent Convention Secretariat.¹² 12

The Law Centre, with the assistance of Commission members, was asked to prepare these draft protocols, again as part of IUCN’s Secretariat duties. Several 13

governments came forth voluntarily to support the work during this interim period since without financial provisions or a treaty in force, there were as yet no formal Secretariat or Party obligations.

14 The first protocol provided for an amendment procedure and recognized three additional authentic language versions (French, German, and Russian), as well as the possibility of adding other authentic language versions (e.g., Spanish, Chinese, Arabic). It was adopted by consensus at an Extraordinary Conference of the Contracting Parties organized by IUCN and hosted by UNESCO in Paris in December 1982. Françoise Burhenne-Guilmin served as Secretary General for this conference.

15 While Contracting Parties waited for this first 'Paris' Protocol to enter into force with the deposit of sufficient ratifications, IUCN went back to work drafting the proposed second protocol covering the substantive amendments to the Convention in accordance with the decision at Cagliari. A second conference of the Contracting Parties was convened in May 1984 in Groningen, the Netherlands, where an informal convention mechanism called a Task Force, with representatives from Canada, Denmark, the Netherlands, Senegal and Tunisia, was set up to refine the IUCN draft text of the second protocol. With continued technical input from IUCN and the Law Centre, the Task Force decided in a meeting at the Hague in May 1985 (while still awaiting entry into force of the Paris Protocol) to put forward only the most essential amendments in this second protocol and a joint IUCN/IWRB proposal for future secretariat support.

16 Finally, the Paris Protocol came into force in October 1986, providing the basis for calling the second Extraordinary Conference of the Parties to adopt the amendments. This Conference was held in Regina, Canada, in May–June 1987.



COP in Regina: Dennis Sherrat, Director of Wildlife for Saskatchewan, Chairperson of the 1987 CoP, and Daniel Navid, Secretary General of the Convention

Veit Koester from Denmark, also an IUCN Law Commission member, served as Chairman of the Extraordinary Conference. According to the terms of the Paris Protocol, scheduling the meeting required that IUCN, acting in its Secretariat role, receive written request for such a meeting from one-third of the Contracting Parties and timely, formal circulation of the amendment proposals. For the Conference, the Law Centre again prepared papers for the Parties reflecting the proposed amendments separately and the consolidated text of the Convention incorporating the proposed amendments.¹³ These were adopted by consensus at the Regina Conference and, in an extraordinary move, the Parties decided by resolution to apply the amendments to the Convention on a provisional basis until they came into force officially. This permitted immediate development of a financial regime and administrative mechanisms for the Convention.

The amendments established an independent Convention Bureau (based at IUCN and IWRB) and a Standing Committee to carry out the functions of the Conference of the Parties between meetings, to supervise the work of the Bureau, as well as to adopt measures and criteria for wetlands selection and conservation. IUCN continued to supply the staff of the Bureau and to work closely with the Standing Committee. 17

Implementation

The Regina amendments did not receive sufficient ratifications to enter officially into force until May 1994, some 23 years after the Convention was first concluded. Even before the Regina amendments came into force, however, Parties, as mentioned above, began applying some of the Conference decisions. Importantly, among these were provisions related to financing under which Parties began making contributions so that the Bureau and Standing Committee could function. The Law Centre, assisted by Commission members, worked closely with the Ramsar Bureau and the IUCN Wetlands Programme in promoting implementation of the Convention. It cooperated with the Groupe des Zones Humides of the French Society of Environmental Law to sponsor a symposium on legal aspects of wetlands protection in September 1987.¹⁴ In 1989, the Law Centre published a book by Law Commission member Veit Koester dealing with legal aspects of implementing Ramsar in Denmark as part of the IUCN Environmental Policy and Law Series.¹⁵ 18

In the late 1980s, Commission member Cyrille de Klemm began a project to design a scheme of analysis for legislation on wetlands which could serve as guidance to countries as they implemented Ramsar. The Law Centre's work programme for 1989 included de Klemm's work along with a project to prepare a specialized data bank for the Ramsar Bureau on the legal status of Ramsar sites in national legislation as part of a proposed Wetlands Data Bank being set up at the Ramsar Bureau.¹⁶ Unfortunately, this was one of the projects where the data bank could not be completed for lack of funds. 19

Nevertheless, in the early 1990s, with support from KSSF, de Klemm continued his work on legal tools for implementing Ramsar. The project evolved and grew to cover all requirements arising from the Convention's obligations, including legislation for conservation of listed sites and instruments for conservation and wise 20

use of wetlands generally.¹⁷ It was designed in two parts: first, dealing with non-site specific instruments and, second, covering site-specific legislation and water law related issues. Research involved extensive collection of wetlands-related legal instruments by the Law Centre from the Convention Parties and other jurisdictions, review and analysis of the collected data, and ongoing consultations with the Convention Secretariat. The project was a major activity for the Law Centre in the 1990s, with Commission member Clare Shine joining as co-author, and was published in 1999 as part of IUCN's Environmental Policy and Law Paper Series, entitled *Wetlands, Water and the Law*.¹⁸

21 In 1994, Daniel Navid, then Secretary General of the Ramsar Convention Bureau, observed that with the treaty amendments, supported by IUCN's Law Centre and IWRB, "the Ramsar Convention [has] been able at long last to play the critically important conservation role envisaged by its creators."¹⁹ And the relationship with IUCN has continued to be close because of IUCN's special responsibilities under the Convention. The Environmental Law Programme has participated, as part of the IUCN delegation, in almost all of the meetings of the Conferences of the Parties since the Convention came into force.

22 Moreover, advice and support of a legal nature have been provided on a regular basis directly by the Law Centre. For example, in 1998, an agreement was concluded between the Law Programme and the Ramsar Bureau to design a methodology for reviewing laws and institutions relevant to wetlands.²⁰ Introduced as a draft resolution to the 7th Meeting of the Ramsar Conference of Parties in San Jose, Costa Rica, in May 1999, it was envisioned that the methodology could be used as a technical guide by Parties to the Convention to support its implementation. Law Commission member Grethel Aguilar, supported by ELC Legal Officer L. Glowka, took the lead in preparing the draft methodology and supporting background documents. These were used in a technical consultation of legal experts from countries in the Ramsar regions who provided comments and case studies on lessons learned in their countries.

23 Subsequently, the draft documents were revised to incorporate comments and forwarded to the Ramsar Standing Committee in October 1998 along with a draft resolution on law and wetlands. All three documents (the methodology, supporting background, and resolution) were approved by the Ramsar Standing Committee to go forward for consideration by the 7th Conference of the Parties meeting in Costa Rica in 1999. The Conference of the Parties adopted the guidance by Resolution entitled "Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands".²¹

24 As the 1990s closed and the new century began, the Environmental Law Programme continued its active support of and assistance to Ramsar. In an article in 2000 in the ELP Newsletter, Tomme Young, its editor and Senior Legal Officer of the Law Centre, summarized important legal developments under Ramsar involving the Law Centre.²² Ramsar's relationship with IUCN remains "particularly close", wrote Young, since "IUCN is specifically charged with particular responsibilities in the text of the Convention."²³

25 Among major projects, Ramsar's Standing Committee and its Scientific and Technical Advisory Panel (STAP), continuing their work on the interpretation of various

convention articles, requested the Environmental Law Programme to give legal advice on the convention concepts of “urgent national interest” and “compensation” in relation to revisions of Ramsar site boundaries.²⁴

The Law Centre prepared a detailed evaluation of relevant legal principles of national and international law, finding “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.”²⁵ Based on that analysis, the Law Centre prepared a set of draft guidelines for determining when a proposed change of a Ramsar site boundary would be consistent with the “urgent national interest” clause, and how to evaluate compensation for wetlands lost as a result of that change.²⁶ These were circulated to the Contracting Parties and revised based on comments received, after which they were further revised by the Ramsar Standing Committee and adopted by the 8th Conference of the Parties in 2002.²⁷

More generally, the Environmental Law Programme has continued to aid the Convention with its long-term organizational development. In 2000, the Ramsar Secretariat began a systematic evaluation of its operations and institutional organization, asking the Environmental Law Centre to provide input on the role and nature of COP operations and decisions.²⁸ Among specific issues, the Law Centre was asked for legal advice from ELC on a change of name from the ‘Ramsar Bureau’ to the Ramsar Secretariat’. The advice was provided in 2004 in the form of a legal opinion on procedures for such a change along with relevant historical background. The submission went in full as a document to the 9th Conference of Parties of Ramsar, and the advice was adopted by resolution of the full Conference with the Law Centre being formally noted. John Scanlon, ELP Head responsible for the submission, saw this successful interaction as “a further strengthening and mainstreaming of the Convention.”²⁹

The Ramsar Bureau also has been part of cooperative efforts to work with other environmental conventions, beginning with the Convention on Biological Diversity with which it has developed ‘Joint CBD-Ramsar Workplans.’³⁰ This effort is expanding to other treaty secretariats as well as with observer bodies and other organizations, and work with national focal points of other conventions through their Standing Committee membership. The Bureau has created Working Groups to develop guidelines and case studies in special areas of concern, many with legal elements where the Law Centre has provided assistance, including integrated coastal zone management, wetland restoration, invasive species, climate change, and community and indigenous participation in wetlands management.

By the 2000s, IUCN as a whole was involved in significant programme activities related to wetlands through its thematic programme on ‘Water and Wetlands’. Led by that thematic programme, a multi-million dollar initiative was launched by IUCN at the 2000 World Conservation Congress called the ‘Water and Nature Initiative’ (WANI). The Law Programme, with then Senior Legal Officer Alejandro Iza as the focal point, became responsible for the ‘governance’ component of WANI. This has produced a number of regional events and publications related to promotion of wetlands conservation, including appropriate legal frameworks for wetlands protection, as discussed in Chapter 30.

30 As wetlands activities expanded, IUCN's Commission on Environmental Law (CEL) also decided in 2002 to establish a Water and Wetlands Specialist Group in recognition of the growing importance of wetlands issues under Ramsar and the prominence of water resources management as a theme at the 2002 World Summit on Sustainable Development. Some 25 CEL members joined this group representing expertise in many areas of water resources law, including issues of wetlands management.³¹ That Specialist Group was reconstituted by the new Commission leadership in 2005.

Notes

- 1 This was the Project MAR, standing for the first three letters of wetlands habitat in four different languages: marsh, marisma, maraie and maremma. See C. Shine and C. de Klemm, *Wetlands, Water and the Law*. (IUCN Environmental Policy and Law Paper No. 38) (IUCN, Gland, Switzerland, 1999), p. 27.
- 2 Shine, C. and C. de Klemm, *Wetlands, Water and the Law* (IUCN Environmental Policy and Law Paper No. 38) (IUCN, Gland, Switzerland, 1999), pp. 27–28.
- 3 Author interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 4 Correspondence by email communication from Frank Nicholls to Françoise Burhenne-Guilmin, dated October 4, 2005, commentary on early draft chapter on Ramsar in ELP History (forwarded to B. Lausche by email dated November 3, 2005).
- 5 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany) (draft transcript at 11), followup interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 6 Navid, D., "The Legal Development of the Convention on Wetlands: Getting it Right, or the Importance of Proper Legal Drafting" in A. Kiss and F. Burhenne-Guilmin (eds.), *A Law for the Environment: Essays in honour of Wolfgang E. Burhenne* (IUCN, 1994), p. 181.
- 7 "Ramsar: The Painless Convention" in *Environmental Policy and Law* (Vol. 1, 1975), p. 131.
- 8 Id.
- 9 Shine, C. and C. de Klemm, *Wetlands, Water and the Law* (IUCN Environmental Policy and Law Paper No. 38) (IUCN, 1999), p. 27.
- 10 Navid, D., "The Legal Development of the Convention on Wetlands: Getting it Right, or the Importance of Proper Legal Drafting" in A. Kiss and F. Burhenne-Guilmin (eds.), *A Law for the Environment: Essays in honour of Wolfgang E. Burhenne* (IUCN, 1994), pp. 181–187. This article traces the Convention amendment process.
- 11 Author interview with Françoise Burhenne-Guilmin on October 16, 2000 (Bonn, Germany) (draft transcript, p. 27).
- 12 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly", p. 8 (labeled "Attachment to General Assembly Paper GA/15/81/6", in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982).
- 13 "Submission from the Environmental Law Centre for Director-General's Report 1987," p. 1.
- 14 "Director General's Overview 1985–1987" in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 Febr. 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988), p. 18.
- 15 See Koester, V., *The Ramsar Convention on the Conservation of Wetlands – A Legal Analysis of the Adoption and Implementation of the Convention in Denmark* (IUCN Environmental Policy and Law Papers No. 23) (IUCN, 1989)
- 16 Burhenne-Guilmin, F., "Environmental Law Centre Work Programme 1989", p. 4.
- 17 See Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds", p. 8.
- 18 Shine, C. and C. de Klemm, *Wetlands, Water and the Law* (IUCN Environmental Policy and Law Paper No. 38) (IUCN, Gland, Switzerland, 1999). See generally this publication for background on the Convention and a comprehensive analysis of main legal issues involved with its implementation.

- 19 Navid, D., “The Legal Development of the Convention on Wetlands: Getting it Right, or the Importance of Proper Legal Drafting” in A. Kiss and F. Burhenne-Guilmin (eds.), *A Law for the Environment: Essays in honour of Wolfgang E. Burhenne* (IUCN, 1994), p. 181.
- 20 See “IUCN Environmental Law Programme Annual Report 1998”, p. 5.
- 21 Resolution VII.7, 7th Meeting of the Conference of the Contracting Parties to the Convention on Wetlands (Ramsar, Iran, 1971), San Jose, Costa Rica, 10–18 May 1999. COP7 Doc.15.7, available at: www.ramsar.org.
- 22 Young, T., “Hard at work conserving the world’s wetlands: Current Activities of the Ramsar Convention” in *IUCN Environmental Law Programme Newsletter* (September–December 2000), pp. 14–15.
- 23 Id. at 15.
- 24 Id. at 14–15.
- 25 Id. at 14.
- 26 See, Iza, A., “The ‘Urgent National Interest’ Clause in the Ramsar Convention on Wetlands” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2002), pp. 30–31.
- 27 Iza, A., “The 8th Meeting of the Conference of the Contracting parties of the Ramsar Convention on Wetlands” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), pp. 28–29.
- 28 See Young, T., “Hard at work conserving the world’s wetlands: Current Activities of the Ramsar Convention” in *IUCN Environmental Law Programme Newsletter* (Sept.–Dec. 2000), p. 14.
- 29 Communication with John Scanlon on May 2006 draft, transmitted by email June 7, 2006. The document provided was labeled Doc. 19 at Ramsar’s COP9 (2005), and adopted as Resolution IX.10, available on the Ramsar web site at: www.ramsar.org.
- 30 Id. at 15.
- 31 Dyson, M., “Water and Wetlands Specialist Group” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 19.

Chapter 15: ASEAN Agreement

In the 1970s, the Association of South East Asian Nations (ASEAN),¹ in meetings of experts, began exploring common conservation issues from a regional perspective. By then, the African countries had concluded the African Convention on the Conservation of Nature and Natural Resources (1968) (see Chapter 5), and the Latin American region had been decades with its own regional convention, the Western Hemisphere Convention (1940), which needed updating but nevertheless was a region-wide instrument of common conservation principles.²

In the late 1970s, several States represented on the ASEAN committee dealing with conservation matters recommended that a regional nature conservation agreement be developed. At an ASEAN committee meeting in September 1980, which Law Commission Chairman Burhenne attended on behalf of IUCN, an invitation was extended to the Environmental Law Programme to develop the working draft which “should take a wide conservation focus and consider draft texts tabled by governments, the results of the experts meetings, applicable national legislation and the results of further consultations.”³

The request came at a time when the Union was experiencing a deep financial crisis and severe budget cuts to the 1981 Law Programme budget had eliminated funds for the project. Hans Blix, then Minister of Development Aid for Sweden, responded quickly with support for the project, allowing it to go forward.⁴

Incorporating modern conservation principles

These were the years when conservation was being recast in the broader context of global development. In March 1980, only a few months before the ASEAN meeting, the World Conservation Strategy (WCS) had been launched by IUCN, WWF, and UNEP. The Strategy’s main conservation objectives were scientific: maintaining essential ecological processes and life-support systems, preserving biodiversity, and ensuring sustainability of species and ecosystems. But the WCS also was fundamentally strategic, offering a global framework for conservation action in the context of human development. The request from the ASEAN region for a regional nature conservation instrument was to be the first opportunity for the Law Programme to translate these concepts into international law.

By May 1981, the Environmental Law Centre supported by CEPLA had prepared a preliminary draft that was circulated to experts in the region. At the initiative and with the support of CEPLA, a workshop of ASEAN legal and technical experts was convened in November 1982, in Manila, Philippines, to consider the draft and amend the draft, as needed. As reported by the Commission, “The draft which was modern in its approach and attempted to incorporate the major elements of the World Conservation Strategy was well received by the meeting.”⁵

Chairman of the drafting committee for the treaty was Celso Roque, from the Philippines, later an IUCN Council member from the Asia Region and President of WWF-Philippines.⁶ The draft was circulated by the ASEAN coordinator to governments of the ASEAN region for official comment and consultation. A revision was made incorporating further comments and the process proceeded rapidly – the draft

was adopted by the 6th Meeting of the ASEAN Experts Group on the Environment in March 1983, then by the 8th Meeting of the ASEAN Committee on Science and Technology in September 1983, and submitted by the ASEAN Standing Committee in November 1983. Roque continued as drafting committee chair.

- 7 A final text was concluded at an ASEAN Ministers of the Environment Meeting in November 1984, and signed at the 18th ASEAN Foreign Ministers Conference on July 9, 1985 in Kuala Lumpur, Malaysia. The full title, reflecting its modern scope, was the *ASEAN Agreement on the Conservation of Nature and Natural Resources*. The Agreement was expected to be widely supported in the countries in light of its acceptance not only by the ASEAN Environment Ministers but also the ASEAN Foreign Ministers.⁷ IUCN considered the text “the most advanced regional conservation treaty in existence.”⁸ The Law Programme viewed it as “a major achievement for IUCN in the field of policy and law”.⁹

Technical support

- 8 From the beginning of the deliberations, it was expected that implementation would require a review and possible adaptation of national legislation to the new concepts being introduced. As reported in an Environmental Law Programme Newsletter, “[t]his view was clearly expressed by the Governments of the ASEAN Member States who also indicated their interest in receiving technical assistance with regard to this process....”¹⁰

- 9 CEPLA Chairman Burhenne and member Amado Tolentino took the lead in seeking funds to support such work.¹¹ Largely through their efforts, CEPLA was instrumental in finding funding support in 1990 to identify measures needed at the national level to implement the ASEAN Agreement. Specifically, the Karl Schmitz-Scholl Fund (KSSF) and the European Community agreed to fund work by the Environmental Law Centre to inventory and analyze the environmental and conservation laws of each of the six ASEAN countries in the context of the new Agreement and make proposals for any legislative or regulatory steps or amendments needed for its implementation.¹²

- 10 The project was in two phases. First, the state of existing law was analyzed with a view to assessing its compatibility with the Agreement and identifying additional elements required for its implementation. Consultants were hired, in cooperation with relevant national ministries, to prepare the initial country analyses and reports. A second phase would provide specific technical assistance upon request of individual States for any adaptations that were needed to the legislation. The national reviews were completed in April 1993.¹³

Problems with entry into force

- 11 Even as these national studies were under way, the treaty did not enter into force because of insufficient ratifications. At the time of its conclusion, there were six states in ASEAN. The Agreement required six ratifications to enter into force, in other words, consensus – the normal decision-making practice for the ASEAN countries. While the Agreement was accepted by both the Environment and Foreign Ministers at their respective formal meetings in 1984 and 1985, there was resistance

from some countries and signatures did not follow. Today there are 10 ASEAN countries, but ratifications still remain insufficient.

Thinking about lessons learned, Françoise Burhenne-Guilmin, who participated in the drafting, recalls that a reason advanced for lack of ratification was indeed that the conclusion of a binding Agreement was not the way ASEAN nations wished and used to conduct their affairs: “In 1998, in Singapore, we heard that the ASEAN Agreement was not the ASEAN way.”¹⁴

The issue of the ASEAN Agreement’s entry into force is still active within IUCN. An ELP web site reported the following news item in August 2002:

“IUCN Commission on Environmental Law (CEL) Chair, Prof. Nicholas Robinson, Regional Vice Chair for South and East Asia, Prof. Koh Kheng-Lian and Dr. Parvez Hassan, former Chair, have held a series of meetings with the Asian Development Bank (ADB), the University of the Philippines and the ASEAN Regional Centre for Biological Conservation (ARCBC) in Los Baños, south of Manila, Philippines.... Discussions with the ARCBC focused on how to advance the ASEAN Agreement on Conservation of Nature and Natural Resources.”¹⁵



Application and follow-up

While the Agreement never formally has entered into force, it remains an important international law instrument in the history of modern environmental law for its conceptual advances and its positive impact on the region. Many of the Agreement’s forward-looking principles were incorporated into the region’s conservation activities and, importantly, Member States began working individually to implement the Agreement’s concepts at national level. By 2000, a number of governments in the region, including the Philippines, the Malaysian states of Sarawak and Sabah, and Indonesia, had adopted or were in the process of incorporating conser-

vation principles in their national legislation concerning natural resources use and conservation.¹⁶

15 Daniel Navid, then Executive Officer of the Law Commission, saw the Agreement “as the first effort to make a comprehensive treaty for sustainable development, which for the 1980s was revolutionary and far-reaching.”¹⁷ Françoise Burhenne-Guilmin saw the Agreement as “a forerunner, at regional level, of the Convention on Biological Diversity, which later incorporated many of the ASEAN Agreement concepts.”¹⁸

16 The ASEAN Agreement was the first treaty instrument to incorporate an ecosystem approach and to translate objectives of the World Conservation Strategy into a framework of duties and rights in environmental law. It became part of a special class of regional agreements (along with the Bern Convention on the Conservation of European Wildlife and Natural Habitats, and the African Convention) that represented “the most progressive policies in applying Environmental Law for regional needs.”¹⁹ The Law Programme considered the treaty an example that might be emulated in other regions and proposed to the World Commission on Environment and Development in 1986 that its final report recommend similar comprehensive conservation agreements for Latin America, the Himalayan Mountain region, the Arctic region, and States with significant shared resources (e.g., the Black Sea or a shared river like the Mekong).²⁰

17 The ASEAN Agreement contained articles taken directly from two main themes of the World Conservation Strategy – conservation of species and ecosystems (vegetation, forests, water, soils, air), and conservation of ecological processes. It required Contracting Parties to take action to maintain genetic diversity in their jurisdictions and ensure sustainable use of harvested species, listing endangered species in an appendix and noting the Parties’ special responsibility to protect endemic species. It included pollution control provisions, measures for land use planning, protected areas and environmental impact assessments, as well as national-level scientific research, training, and administration.

18 In the mid-1990s, the ASEAN states requested IUCN to look at the inter-relationship between the ASEAN Agreement and other related global conventions. Law Commission Vice Chair Koh Kheng-Lian took the lead in a study to this effect.²¹ The findings were presented in a paper entitled “The Inter-Relationship between the ASEAN Agreement for the Conservation of Nature and Natural Resources and Related Global Conventions” that was considered at a 1997 ASEAN Working Group on Nature Conservation and as input to a review of the ASEAN Agreement in 1998.²²

19 While the Agreement has not entered into force, regional environmental law and policy initiatives among the ASEAN Member States have utilized and built upon the principles and obligations reflected in the 1985 ASEAN Agreement.

Notes

- 1 Mostly an economic pact, the original six countries were Brunei, Indonesia, Malaysia, Philippines, Singapore and Thailand. Today the Association has expanded to 10 countries, the initial six plus Cambodia, Laos, Myanmar, and Viet Nam. General information about ASEAN's goals and functions is available at: www.aseansec.org.
- 2 In the 1960s, the Law Commission also began discussions with the Organization of American States (OAS) and countries in the Latin American region to encourage efforts to update the Western Hemisphere Convention, the region's nature conservation agreement of 1940, but these never matured. See "Commission on Legislation Three Year Funding", pp. 4–5 (labeled Paper 36B, attached to "Minutes of IUCN Executive Board Meetings held at Morges on 8 and 9 April 1967"). Again, in 1980, the Commission participated in expert meetings convened by the OAS to discuss methods for improving effectiveness of the Western Hemisphere Convention, with Ambassador Julio Barberis, a Law Commission member from Argentina, participating on behalf of IUCN and chairing the meeting, see "Report of the Commission on Environmental Policy, Law and Administration (November 1979–80)", p. 1 (also cited as Council Paper UC.80/23, attached to "Minutes of the Eighth Meeting of the Council of IUCN, 10–12 November 1980, IUCN, Gland, Switzerland").
- 3 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 10 (labeled "Attachment to General Assembly Paper GA/15/81/6", in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981*, IUCN, Gland, Switzerland, 1982).
- 4 See "Minutes of the Ninth Meeting of the Council of IUCN, 8–10 June 1981, IUCN, Gland, Switzerland", p. 11, para. 2.6.1.
- 5 Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly", p. 5 (also labeled Annex 4 to General Assembly Paper GA/16/84/1, in *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain*, IUCN, Switzerland, 1985).
- 6 Author interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 7 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 8 "Director-General's Overview 1985-1987", p. 17, in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988).
- 9 Burhenne-Guilmin, F., "Unit Report for CEPLA", p. 1, prepared for "Report of the Director General to Council on the Activities of the Union during the period May–November 1985".
- 10 "ASEAN Project" in *IUCN Environmental Law Programme Newsletter* (No. 1, April 1991), p. 4.
- 11 "Report of the Chairman of the Commission on Environmental Policy, Law, and Administration to the 18th Session of the General Assembly 28 November – 5 December 1990, Perth, Australia" in *Proceedings of the 18th Session of the IUCN General Assembly 28 November – 5 December 1990, Perth, Australia* (IUCN, Switzerland, 1991), p. 84.
- 12 See Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme, presented to the Karl-Schmitz-Scholl Fonds", p. 3.
- 13 See "IUCN Law Programme Activities" in *IUCN Environmental Law Programme Newsletter* (January–May 1993), p. 6.
- 14 Author interview with Wolfgang Burhenne, Françoise Burhenne-Guilmin, and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 15 ELP web site at: www.iucn.org/themes/law, category "Latest News",* for the month of August 2002, heading: "IUCN CEL Delegation visits the Philippines, 18 August 2002".
- 16 See Peria, E. "The ASEAN Framework Access Agreement: Access Instrument or Impediment?" in *IUCN Environmental Law Programme Newsletter* (May–August 2000), pp. 8–9.
- 17 Author interview with Wolfgang Burhenne, Françoise Burhenne-Guilmin, and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 18 Id.

- 19 “Proposals for International Environmental Law Developments toward the Year 2000”, in 16
Environmental Policy and Law (Vol. 16, Nos. 3–4, 1986), p. 96.
- 20 Id.
- 21 See Robinson, N. “Commission on Environmental Law Report to Council: May–November
1997” in “Minutes of 47th Meeting of the IUCN Council, 2–3 December 1997”, p. 65.
- 22 “IUCN Environmental Law Programme Annual Report 1997”, p. 19.

* The web site version quoted no longer being on line, the sections referred to above have been
made available at: <http://weavingaweb/>.

Chapter 16: World Charter for Nature

Call for a global charter

Among the original objects of the Union in its first constitution of 1948 was the “preparation of a worldwide convention on the ‘Protection of Nature’”.¹ A first attempt in this direction in the early 1950s was made with a “World Manifesto on the Protection of Nature” which was deliberated by Union membership and UNESCO but never got beyond draft stage (see Chapter 2). It was not until the 1970s that this issue came again before IUCN membership, this time as a proposal for a soft-law instrument – a world charter for nature.

The call for a global charter for nature was made by President Mobutu of Zaire during his welcoming address before the Twelfth IUCN General Assembly meeting in 1975 in Kinshasa. He addressed the delegates with this advice: “The seas, the oceans, the upper atmosphere belong to the human community....One cannot freely overuse [such] international resources. People of good will ... are looking to you for positive results from this Assembly.....This is why, if I had any advice for you, I would suggest the establishment of a ‘Charter of Nature’ which once and for all will shake those who do not yet understand that the more we wait, the more the solutions will be difficult, prolonged and costly.”² Paying respect to this Presidential proposal, the Twelfth IUCN General Assembly adopted a resolution in Zaire recommending “to governments and international organizations that a Charter for Nature be drafted, with the least possible delay, through cooperation between the various international and national institutions concerned”.³

In the IUCN Council meeting subsequent to the Assembly, discussion ensued on the need for another soft-law instrument and Law Chairman Burhenne initially resisted producing a draft.⁴ The Council, in light of the formal resolution from Zaire, however, decided it was necessary to go forward and in late 1976 charged the Commission on Environmental Policy, Law, and Administration (CEPLA) with development of a world charter for nature. Some time went by without progress on a draft because it was unclear as to its final disposition. Burhenne recalls, however, that the Zaire Government kept inquiring about the status of the project and at one point confirmed that it intended to put the final draft before the United Nations.

The possibility of the draft going to the United Nations General Assembly helped catalyze the project. However, the Union was going through a major financial crisis at the time and could not provide financial support. To fund the work, the Law Centre tapped funds provided by World Wildlife Fund – International in the late 1970s (as discussed in Chapter 9). The Commission formed a small international task force to work with a consultant and staff on the project. The Task force comprised Wolfgang Burhenne as chair, and Commission members Taslim Elias (Africa), Alexandre Kiss (Europe), Michael McCloskey and Nicholas Robinson (North America), and Nagendra Singh (Asia). Consultant to the task force was Frank G. Nicholls (just retired as IUCN Deputy Director General), with Director General David Munro participating and Legal Officer Françoise Burhenne-Guilmin and Assistant Legal Officer Daniel Navid providing project support.⁵ Robinson also

recalls the active participation, in his personal capacity, of Andronico Adede (Kenya) of the UN Legal Advisors Office, also a Law Commission member.⁶

5 The task force began meeting in April 1977 to discuss parameters of the Charter. Thereafter, over the course of three years, five formal drafts were prepared and revised, each version with a review period and incorporating comments received. The Law Centre facilitated and coordinated the process, organizing and managing review meetings, in addition to drafting the original text and its subsequent revisions, with later drafts formatted in chart form showing comments beside the corresponding textual sections.⁷ An advanced draft went to the 14th IUCN General Assembly in September 1978 in Ashkhabad.⁸ A subsequent IUCN publication tracing this process explained: “Taking the UN Declaration of Human Rights as a model, the task force worked through meetings and correspondence to produce a draft charter for consideration by all IUCN members at the Union’s 1978 General Assembly in Ashkhabad.”⁹

6 In November 1979, a final revised version was presented to Zaire’s President Mobutu. The next step was the United Nations. Burhenne and others advised Zaire that they should not stand alone but ask other countries to join in the submission to the United Nations. Burhenne recalls: “There was concern that the draft, after all the work that had been done, would simply disappear if presented by a single State alone.”¹⁰

7 Nevertheless, in June 1980, through its Permanent UN Representative, Zaire presented the draft World Charter for Nature to the UN Secretary General, requesting its inclusion on the agenda of the General Assembly’s 35th session. There was no action. Then, the Organization of African Unity (OAU) informed the UN that its Member States would sponsor the draft, thus adding some 50 African countries to join in Zaire’s request. Following the OAU support, the UN General Assembly unanimously received the draft Charter in November 1980, and invited Member States of the United Nations to send their views to the Secretary General.¹¹ The General Assembly requested the Secretary General to prepare an analysis of comments received and transmit the report to its next session along with recommendations formulated in cooperation with IUCN and the United Nations Environment Programme (UNEP).

8 The African states continued to play a lead role in moving forward the process. The OAU Council of Ministers for Foreign Affairs adopted a resolution in 1981 recommending that the UN General Assembly adopt the final revised draft of the World Charter for Nature.¹² In fall 1981, UNEP called a meeting of experts, including three members of IUCN’s Law Commission, to follow up on the General Assembly request. After two periods of comment and revisions, the final report of the Secretary General, which had been prepared in cooperation with UNEP and IUCN, was presented to the 36th session of the UN General Assembly in September 1982.

United Nations adoption

9 Formal UN General Assembly debate on the Charter occurred at its 37th session on October 28, 1982. The Charter for Nature was adopted by UN General Assembly Resolution at that session.¹³

While the aim had been for consensus among states on adoption of the Charter, the final UNGA vote was 111 to 1 dissent (the United States), and 18 abstentions. The abstentions were mostly the Amazonian States and largely on grounds of needing more time to consult and comment. Zaire's representative, on behalf of the Resolution's sponsors, however, had prevailed in the position that there should be no further delays in light of the importance of the draft and that, as recounted in an IUCN legislative history of the Charter, "we have been waiting three years for a consensus and ... this text ... is an international draft which has been worked out by the experts from various countries..."¹⁴ As for the sole dissenting U.S. vote, according to Nicholas Robinson, who had meetings at the U.S. State Department afterwards, the dissent seemed to be based largely on the Charter's use of 'shall' rather than 'should', an objection that had not been raised by them previously.¹⁵ In Robinson's view, "given the profound nature of the Charter's norms, the use of 'shall' was entirely justified and fulfilled IUCN's long-standing objective [since its founding in 1948] for securing adoption of such an international instrument."¹⁶

The final General Assembly Resolution 37/7 adopting the World Charter for Nature read in part: "Recalling that, in its resolution 35/7 of 30 October 1980, it expressed its conviction that the benefits which could be obtained from nature depended on the maintenance of natural processes and on the diversity of life forms and that those benefits were jeopardized by the excessive exploitation and the destruction of natural habitats Conscious of the spirit and terms of its resolutions 35/7 and 36/6, in which it solemnly invited Member States, in the exercise of their permanent sovereignty over their natural resources, to conduct their activities in recognition of the supreme importance of protecting natural systems, maintaining



The World Charter for Nature at UNEP headquarter in Nairobi

the balance and quality of nature and conserving natural resources, in the interests of present and future generations....Adopts and solemnly proclaims the World Charter for Nature contained in the annex to the present resolution.”¹⁷

Universal principles for conservation

- 12 The World Charter for Nature [See Box 1] sets forth twenty-four principles of conservation by which all human conduct affecting nature is to be guided and judged. It declares humankind to be a part of nature and civilization to be rooted in nature, making the two fundamentally interdependent. These concepts have become even more relevant and pressing in the two decades since their adoption as scientific information has improved our understanding of the human-nature interdependence and growing threats to nature and natural processes. Many of the concepts have been incorporated in subsequent binding instruments as well as policy and soft-law instruments, most notably the draft International Covenant for Environment and Development (discussed in Chapter 26). The Charter was a clear and comprehensive statement of universal conservation principles which, even though a non-binding soft-law instrument, were cast in the form of actions that ‘shall’ be done.
- 13 Once the Charter was adopted, the Environmental Law Programme actively began promoting its conservation principles. The Karl Schmitz Scholl Fund for Legal Protection of the Natural Environment (KSSF), one of the Elizabeth Haub Foundations, provided funds to reproduce the Charter text on bronze plaques, first



Mostafa Tolba receives the German version of the Charter for Nature plaque from W. Burhenne in Nairobi. Far right: Donald Kaniaru

in English and French, and these were presented in formal ceremonies to the United Nations headquarters in New York and to UNEP headquarters in Nairobi. Plaques were presented formally also to the Governments of Canada, Belgium and the United Kingdom. WWF-Spain ordered a plaque of the text in Spanish, and King Juan Carlos of Spain was presented with the plaque during the opening ceremony of the 16th General Assembly of IUCN in Madrid in 1984. Thereafter a Spanish version also was presented to UNEP headquarters. Plaques were also made in Russian, Chinese, and Arabic. Plaques went to other governments around the world as well as to some non-governmental organizations, for example, World Wildlife Fund. Funds were located by the Law Programme for translation into German and a German plaque made with KSSF funding. By the end of the 1980s, plaques had been made in all official UN languages.

In addition, with funding from the Elizabeth Haub Foundation for Environmental Law and Policy, and the assistance of Law Commission members and the Law Centre, posters reproducing the plaques in size, language and design were printed in all available languages to promote and disseminate the text of the Charter more widely. 14

The Elizabeth Haub Foundation also supported preparation of two publications on the Charter. The first, entitled *The World Charter for Nature – a Background Paper*, by then Law Commission Chair Wolfgang Burhenne and Commission member Will Irwin, was published in English in February 1983, contains the text of the Charter in several languages and describes its legislative history from the initial proposal through the various debates to its adoption.¹⁸ The second, also by Burhenne and Irwin, entitled simply *The World Charter for Nature* (2nd Rev. Ed.), was published in 1986. This revised edition reproduced the legislative history and added a new part in English and French consisting of a commentary on the provisions of the Charter and its implications for States and individuals.¹⁹ The commentary was prepared by the International Council of Environmental Law on the initiative and under the leadership of the European Council of Environmental Law (CEDE, see Chapter 11, Box 2), with review by IUCN Law Commission members. Law Commission member Professor Alexandre Kiss, who chaired the CEDE Working Group for the commentary, prepared the French version from which Malcolm Forster derived the English text.²⁰ 15

The World Charter for Nature was the major achievement in ‘soft law’ for IUCN. For the international environmental regime, this Charter laid out a modern code of conduct for nature conservation, building on the Stockholm Principles and incorporating important aspects of the World Conservation Strategy. For the Law Programme the project produced the first IUCN-prepared document to be adopted by the United Nations General Assembly.²¹ With this accomplishment in hand, the Law Programme set its sights on the next challenge, a global covenant on environment and development, which it began to develop in the 1990s, as discussed in Chapter 26. 16

17 **Box 1: Text of the World Charter for Nature****I. GENERAL PRINCIPLES**

1. Nature shall be respected and its essential processes shall not be impaired.
2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitat shall be safeguarded.
3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitat of rare or endangered species.
4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist.
5. Nature shall be secured against degradation caused by warfare or other hostile activities.

II. FUNCTIONS

6. In the decision-making process it shall be recognized that man's needs can be met only by ensuring the proper functioning of natural systems and by respecting the principles set forth in the present Charter.
7. In the planning and implementation of social and economic development activities, due account shall be taken of the fact that the conservation of nature is an integral part of those activities.
8. In formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology.
9. The allocation of areas of the earth to various uses shall be planned and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned.
10. Natural resources shall not be wasted, but used with a restraint appropriate to the principles set forth in the present Charter, in accordance with the following rules:
 - (a) Living resources shall not be utilized in excess of their natural capacity for regeneration;
 - (b) The productivity of soils shall be maintained or enhanced through measures which safeguard their long-term fertility and the process of organic decomposition, and prevent erosion and all other forms of degradation;
 - (c) Resources, including water, which are not consumed as they are used shall be reused or recycled;
 - (d) Non-renewable resources which are consumed as they are used shall be exploited with restraint, taking into account their abundance, their rational possibilities of converting them for consumption, and the compatibility of their exploitation with the functioning of natural systems.
11. Activities which might have an impact on nature shall be controlled, and the best available technologies that minimize significant risks to nature or other adverse effects shall be used; in particular:
 - (a) Activities which are likely to cause irreversible damage to nature shall be avoided;
 - (b) Activities which are likely to pose a significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed;
 - (c) Activities which may disturb nature shall be preceded by assessment of their consequences, and environmental impact studies of development projects shall be conducted sufficiently in advance, and if they are to be undertaken, such activities shall be planned and carried out so as to minimize potential adverse effects;

- (d) Agriculture, grazing, forestry and fisheries practices shall be adapted to the natural characteristics and constraints of given areas;
- (e) Areas degraded by human activities shall be rehabilitated for purposes in accord with their natural potential and compatible with the well-being of affected populations.
- 12. Discharge of pollutants into natural systems shall be avoided and:
 - (a) Where this is not feasible, such pollutants shall be treated at the source, using the best practicable means available;
 - (b) Special precautions shall be taken to prevent discharge of radioactive or toxic wastes.
- 13. Measures intended to prevent, control or limit natural disasters, infestations and diseases shall be specifically directed to the causes of these scourges and shall avoid adverse side-effects on nature.

III. IMPLEMENTATION

- 14. The principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level.
- 15. Knowledge of nature shall be broadly disseminated by all possible means, particularly by ecological education as an integral part of general education.
- 16. All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation.
- 17. Funds, programmes and administrative structures necessary to achieve the objective of the conservation of nature shall be provided.
- 18. Constant efforts shall be made to increase knowledge of nature by scientific research and to disseminate such knowledge unimpeded by restrictions of any kind.
- 19. The status of natural processes, ecosystems and species shall be closely monitored to enable early detection of degradation or threat, ensure timely intervention and facilitate the evaluation of conservation policies and methods.
- 20. Military activities damaging to nature shall be avoided.
- 21. States and, to the extent they are able, other public authorities, international organizations, individuals, groups and corporations shall:
 - (a) Co-operate in the task of conserving nature through common activities and other relevant actions, including information exchange and consultations;
 - (b) Establish standards for products and other manufacturing processes that may have adverse effects on nature, as well as agreed methodologies for assessing these effects;
 - (c) Implement the applicable international legal provisions for the conservation of nature and the protection of the environment;
 - (d) Ensure that activities within their jurisdictions or control do not cause damage to the natural systems located within other States or in the areas beyond the limits of national jurisdiction;
 - (e) Safeguard and conserve nature in areas beyond national jurisdiction.
- 22. Taking fully into account the sovereignty of States over their natural resources, each State shall give effect to the provisions of the present Charter through its competent organs and in co-operation with other States.
- 23. All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.
- 24. Each person has a duty to act in accordance with the provisions of the present Charter, acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met.

Notes

- 1 Article 1, para. 2 (d), “Text of the Constitution of the International Union for the Protection of Nature” in Part II of the *Report of the International Union for the Protection of Nature* (1948) (ELC archives).
- 2 Burhenne, W. and W. Irwin, *The World Charter for Nature* (Part I: Legislative History), (2nd revised edition), p. 14 (IUCN: 1986); see also, “IUCN Environmental Law Centre 1976 Annual Report”, p. 13.
- 3 Resolution 1, “Resolutions of the 12th General Assembly of IUCN, 18 September 1975” (in Special Supplement to IUCN Bulletin, Vol. 6, No. 11, November 1975).
- 4 Author interview with Wolfgang Burhenne, Françoise Burhenne-Guilmin, and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 5 Burhenne, W. and W. Irwin, *The World Charter for Nature* (2nd revised edition), Part I: Legislative History, p. 14 (Erich Schmidt Verlag, 1986).
- 6 Communication from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 7 “Report of the Commission on Environmental Policy, Law and Administration” (May 1979), p. 4 (labeled Council Paper UC.79/27); see also Commission on Environmental Policy, Law and Administration, “Report to the 15th Session of the IUCN General Assembly”, p. 9 (labeled Attachment to General Assembly Paper GA/15/81/6, in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982).
- 8 “IUCN Activities in the Law and Policy Field: Joint Report of the Environmental Law Centre and the Chairman of CEPLA for the Period January 1977 – June 1978”, p. 9.
- 9 Burhenne, W., and W. Irwin, *The World Charter for Nature* (2nd revised edition), Part I: Legislative History, p. 14 (Erich Schmidt Verlag, 1986).
- 10 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 11 UN General Assembly Resolution 35/7 (5 November 1980).
- 12 See “Summary History of the Charter” in Burhenne, W. and W. Irwin, *The World Charter for Nature – A Background Paper*, p. 15 (Erich Schmidt Verlag, 1983).
- 13 UN General Assembly document A/37/L.4.
- 14 Burhenne, W. and W. Irwin, *The World Charter for Nature* (2nd revised edition), Part I: Legislative History, p. 16 (Erich Schmidt Verlag, 1986).
- 15 Communication from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 16 Id.
- 17 G.A. Resolution 37/7, UN General Assembly document A/RES/37/7; see also Burhenne, W. and W. Irwin, *The World Charter for Nature* (2nd revised edition), Appendix 3 (Erich Schmidt Verlag, 1986), which reprints the text of the resolution.
- 18 Burhenne, W. and W. Irwin, *The World Charter for Nature – A Background Paper*, p. 15 (FUST Series A 90, Erich Schmidt Verlag, 1983).
- 19 See Burhenne, W. and W. Irwin, *The World Charter for Nature* (2nd revised edition) (FUST Series A 90, Erich Schmidt Verlag, 1986).
- 20 Id. at Preface.
- 21 There had been an earlier effort shortly after creation of the Union to set forth universal principles for conservation when the 1952 IUCN General Assembly produced a draft “Universal Manifesto for the Protection of Nature” which was intended for presentation to UNESCO or the United Nations for their endorsement. The draft did not proceed on grounds that the text lacked specific actions and recommendations for countries to take to protect nature. See Resolutions 70 and 95, in *IUCN Proceedings and Reports of the Third General Assembly, Caracas, Venezuela, 3–9 September 1952*, see also discussion in Chapter 2.

Part 5 (1980s)

Conservation Advocacy

In the 1970s and 1980s, the Environmental Law Programme made significant progress promoting and helping develop international environmental law. In contrast to its modest and uncertain beginning, by the close of the decade of the 1980s, the Programme had established itself as a global player in the field. IUCN's Director General Kenton Miller highlighted this achievement to the 17th IUCN General Assembly in 1988: "IUCN is one of the recognized world authorities in [environmental law] through the activities of the Environmental Law Centre (ELC) in Bonn and the Commission on Environmental Policy, Law and Administration (CEPLA). The Law Programme, linked to most Programme areas, continues to develop new international legal instruments, update existing ones, advise the Parties of international conventions, draft national conservation legislation and maintain monitoring and database systems on environmental law as a conservation tool for the Union and its partners."¹

This was an era, as illustrated in the prior Part, where impressive gains were being made in international law and policy related to conservation. From the first global environment meeting of governments at Stockholm in 1972, a number of major environmental treaties, many incorporating pioneering concepts for conservation, were concluded in the 1970s and 1980s. According to data from the Environmental Law Centre, there had been fewer than 20 international treaties related to an environmental theme in 1945; by 1990 there were over 300.² International development institutions did not stay immune to these developments. In the 1970s, multilateral development banks began to build in-house environmental expertise, adopt operational policies related to environmental concerns, and fund projects in this field.

In response, the Union overall began to redefine itself to stay relevant, competitive and financially viable for members amidst this growing international activity. The Union launched the World Conservation Strategy in 1980 (see Chapter 17), articulating fundamental linkages between conservation and development. To promote its scientific and technical expertise for large-scale development projects and to better compete for those development monies, it launched the Conservation for Development Centre (CDC) at Headquarters in 1981 as a professional environmental advisory service.

As a complement in policy and international relations, IUCN created an out-posted unit in Washington, D.C. in 1986. Legally set up as the IUCN-US Office, its functional title is "IUCN-USA Multilateral Office" in light of its primary objectives which included promoting global policy dialogue with US-based multilateral institutions such as the World Bank and UN system and developing partnerships, projects, and networks for IUCN constituencies and programmes in the United States setting and North American region.³ With the Union's emphasis on implementation of the World Conservation Strategy and "conservation for development", policy and programme promotion with multilateral institutions was particularly focused on those themes, especially in the early years. The office was legally incorporated as a non-profit organization in the United States to facilitate US fund-raising.

5 The IUCN-US office became an important component of the Union's policy infrastructure. Scott Hajost became its Executive Director in 1994 bringing extensive experience in environmental policy and law, having worked for the US State Department and in other senior US positions. Hajost, a Law Commission member, had first become acquainted with IUCN's Environmental Law Programme in the 1980s when he represented the United States at Antarctic negotiations and Montevideo I (discussed in upcoming chapters of this Part), meeting then IUCN Law Commission Chairman Wolfgang Burhenne and other Commission members. In the mid-1990s, Achim Steiner (later to become IUCN Director General) was Senior Advisor for Global Policy in the IUCN-US office. As environmental issues became regular agenda items of the United Nations in New York, the IUCN-US became increasingly involved coordinating IUCN's input at key UN policy and law meetings, particularly with marine issues. Today, the office's geographic mandate extends to the Caribbean and it is known as the IUCN USA & Caribbean Multilateral Office.

6 In the context of this increasingly competitive and expanding international framework, the many 'paper gains' in treaty law that had been made and were continuing to be developed required advocacy and implementation on the ground. Part 5 highlights the kinds of activities ELP began to pursue in the 1970s and 1980s (and continues today) to aid the conservation advocacy of its members and advance the international regime. At the 15th IUCN General Assembly in Christchurch, New Zealand, in 1981, Law Commission Chairman Burhenne noted what he called the 'implementation gap' – the gap between enactment of environmental law and its application.⁴ Toward this end, the Environmental Law Programme became increasingly attuned to issues of implementation, a focus that in later years would also include enforcement.

7 For this Part 5, where the focus is on groundwork laid mostly in the 1970s and 1980s, Chapter 17 begins with a review of ELP efforts to expand and strengthen Commission mechanisms so that more members could be tapped, represented, and mobilized for conservation advocacy in their countries. The next Chapter turns to Programme efforts to provide more educational tools, mainly through analytical and related publications, to better inform governments, practitioners, and organizations on new environmental law and policy issues, trends, and techniques (Chapter 18). Promoting implementation also involved monitoring and participating in other international events, especially global environmental conferences, to advocate environmental legal principles and obligations in action plans and related soft-law instruments (Chapter 19). It meant lending technical support to UN agencies with specialized mandates (Chapter 20) and, finally, promoting and strengthening environmental components in treaties with other goals (Chapter 21).

Notes

1 "Director General's Overview 1985–1987" in Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica (IUCN, Gland, Switzerland, 1988), p. 17.

2 "The Environmental Law Programme of IUCN – The World Conservation Union 1989–1990", p. 2.

3 See IUCN-USA web site at: www.iucn.org/places/usa/index.

4 Chairman Burhenne was speaking at a technical meeting of the Commission during the 15th General Assembly of IUCN, October 1981. See, EPL staff report, "IUCN's 15th General Assembly", *Environmental Policy and Law* (Vol. 7, 1981), p. 165.

Chapter 17: Member Outreach and Involvement

The context

The 1980s brought another financial crisis and the Secretariat was forced to make sweeping budget cuts to programmes across the Union. Among those most severely impacted was the Environmental Law Programme, whose core budget for 1981 was cut by 50 percent.¹ The Law Programme's many ongoing and planned activities were jeopardized.

Stretching scarce resources

The Commission informed the IUCN Council during its June 1981 meeting that while "requests to IUCN for assistance in these fields were growing",² the budget cuts were threatening Law Programme activities in several active programmes, including the ASEAN convention, Antarctica, ELIS, training, implementation guidelines, the African Convention updates, and the World Charter for Nature.³ Chairman Burhenne sent an urgent plea to members in August 1981 about unfunded projects and the Commission decision "to circulate a listing of project activities which were not funded or currently underway, in order to solicit proposals from the membership for their development...and thoughts as to how we might soon initiate work on them", with an attached annex on "Additional Projects for Commission Members Assistance."⁴

Moreover, staffing had to be cut. The budget for the post of ELC Head, held by Françoise Burhenne-Guilmin, was voluntarily reduced to a part-time salary in order for her to fill a much-needed junior position.⁵

Commission officer support

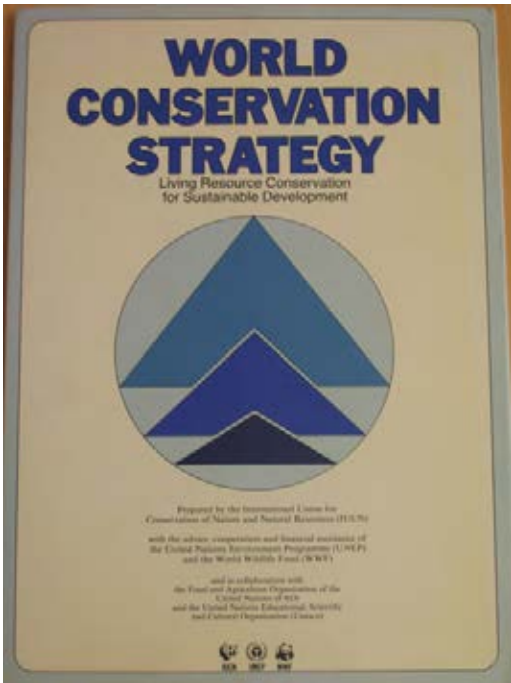
The Law Commission also faced reduced support. IUCN cut CEPLA's Executive Officer post to half-time and moved it to Headquarters. Daniel Navid, who had been CEPLA Executive Officer in Bonn since 1978, was relocated to Switzerland and the other 50% of his time was assigned to work for the Commission on Environmental Planning, an action which Law Commission members meeting in Christchurch in 1981 during the 15th General Assembly strongly opposed.⁶ That half-time arrangement continued until March 1984 when Navid resigned as CEPLA Executive Officer to become Executive Assistant to the Director General.

With the Executive Officer position vacant, efforts were pursued to regain a full-time professional post for the Commission in Bonn. The request was approved and Malcolm Forster, an accomplished UK lawyer and professor at Southampton specializing in maritime law, was recruited by Burhenne as Counsel to CEPLA. Forster had become acquainted with Burhenne and the IUCN Environmental Law Programme in the early 1980s through the European Council of Environmental Law (CEDE) where he initially participated as deputy to the British founder member, Sir James Fawcett. Sir James, President of the European Commission on Human Rights and the UK Judge on the European Court of Human Rights, frequently was unable to attend CEDE meetings, and Malcolm quickly became the UK representative.

- 6 Forster joined CEPLA and ICCEL in 1984, and his post was funded by IUCN. He recalls that for most of his time in Bonn, “there were no other staff lawyers, although Françoise had ad hoc help on a number of projects.” The Environmental Law Programme was fortunate to have Forster at the Environmental Law Centre where he worked with Françoise Burhenne-Guilmin on a number of joint ELC/Commission projects during those years in both conceptual law development and technical legal assistance (as described in other sections of this History). In addition, he continued to be active in CEDE, and undertook additional tasks in international maritime law including advising Seychelles at the International Whaling Commission and drafting for UNEP the first draft of what became the Basel Convention on Transboundary Movement of Hazardous Wastes. He stayed in Bonn as Senior Counsel to CEPLA/ICCEL until July 1987 when he returned to the UK for family reasons.
- 7 With Forster’s departure, the post of CEPLA Counsel was left unfilled because of lack of funds for a full-time post. As the Environmental Law Centre began to build up its legal staff in the late 1980s, Françoise Burhenne-Guilmin and Commission Chairs used a teamwork approach to provide legal services to the Commission through the ELC lawyers. This teamwork arrangement was in place during the terms of Parvez Hassan and Nicholas Robinson as Chair. In 2003, by agreement with Robinson, John Scanlon, the new ELP Head, designated one lawyer to work full-time on CEL matters (see Chapter 27).

Mandate of the World Conservation Strategy

- 8 The financial problems of the early 1980s coincided precisely with the launch of IUCN’s new substantive initiative – the World Conservation Strategy (WCS) – that was to become a core strategic framework for programming and fund-raising for years to come. The World Conservation Strategy was launched by IUCN, joined by UNEP and World Wildlife Fund, in March 1980. [See Box 1] Remarkably sustaining in its impact, the WCS introduced the phrase ‘sustainable development’ into modern ‘soft law’, putting conservation in the context of human development and emphasizing a systems perspective to environmental management and the need to preserve genetic diversity as well as species, principles that are in one form or another in virtually all subsequent international environmental law and policy developments in effect today.



Box 1: World Conservation Strategy

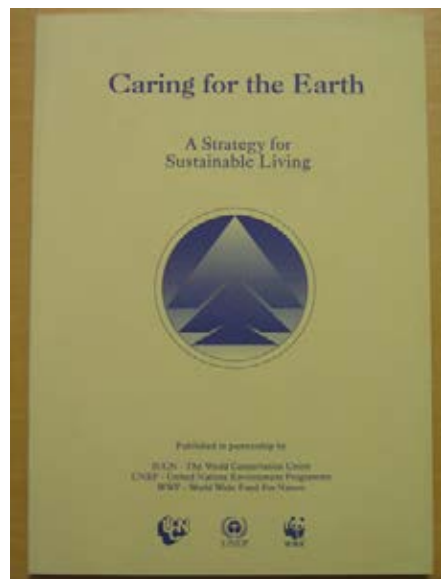
The idea for a global strategy for conservation was formally raised in 1966 during the Ninth IUCN General Assembly when the Director-General's report included the following: "The present time is favourable for preparing a strategic plan which could guide the work of all activities in the conservation field. Therefore, as a part of its program, IUCN should invite other organisations to join it in drawing up an *Overall Strategic Plan for World Conservation*, and this should be given a time scale and successive targets for achievement."⁷

Initiated after the Union's internal crises of the mid-seventies, the project aimed to offer a global framework for conservation action in the context of human development. The purpose of the new Strategy, as stated in the foreword of the eventual document, became to provide "both an intellectual framework and practical guidance for the conservation actions necessary" in this context.⁸ The final document, called the World Conservation Strategy (WCS), was produced by IUCN during the late 1970s with funding and advice from UNEP and WWF, and in collaboration with FAO and UNESCO. It reflected IUCN's emerging vision of conservation in the context of development.

During 1977 and 1978, preparation of the Strategy was IUCN's key output, as Martin Holdgate (IUCN Director-General 1988–94) later would observe: "The World Conservation Strategy (WCS) was not only IUCN's most important product in the late 1970s, but possibly its most important single contribution in the whole of its history."⁹ The final document, "World Conservation Strategy – Living Resource Conservation for Sustainable Development," was launched in March 1980 at important centres around the world (e.g., Beijing, Moscow and Washington), to emphasize "universal concern for the mutually dependent causes of conservation and development."¹⁰ The leadership of IUCN during this period, including particularly President Mohamed Kassas and Director General David Munro, played significant roles in making the Strategy a reality. WWF committed to raising funds for its implementation and FAO and UNESCO gave important endorsements. More than 450 government agencies and conservation organizations worldwide contributed comments on its basic themes.¹¹

During the Strategy's preparation, there was little input from the Environmental Law Programme, either requested or offered, because it was believed to be fundamentally a policy document phrased in scientific terms.¹² This lack of involvement was criticized by some Commission members.¹³ Once the focus shifted to implementation, ELP became heavily involved translating, promoting, and incorporating the Strategy in legal and policy instruments. The Law Commission's terms of reference for the early 1980s included the explicit mandate: "To participate in the implementation of the World Conservation Strategy...."¹⁴ The World Conservation Strategy (WCS) set forth three main conservation objectives: maintenance of essential ecological processes and life-support systems, preservation of genetic diversity, and sustainable utilization of species and ecosystems.¹⁵ It also called for national and subnational strategies "to provide a means of focusing and coordinating the efforts of government agencies, together with nongovernmental conservation organizations, to implement the World Conservation Strategy within countries."¹⁶

The WCS was updated in 1991 and reissued by IUCN as: *Caring for the Earth: A Strategy for Sustainable Living*. The input this time from the ELP was greater – following the criticism mentioned above. Building on the original strategy, this update called upon governments, among other things, to "establish a comprehensive system of environmental law and provide for its implementation and enforcement."¹⁷



10 With the launch of the WCS, a new IUCN programming approach, “A Conservation Programme for Sustainable Development”, was initiated to better link activities and funding directly to the WCS objectives “in a comprehensive fashion for the first time.”¹⁸ The move was aimed to assure major donors and partners, especially WWF and UNEP, that funds were being applied to the highest conservation priorities and were producing results on the ground. Of the nine objectives of the new programme, the Environmental Law Programme’s activities were clustered under Objective 2: “To strengthen the international and national legal, institutional and administrative base for conservation”.¹⁹

11 In this fiscally-tight and conceptually expanding framework, the challenge for the Environmental Law Programme was to manage its costs and core mandates without a significant reduction on services. The Law Commission considered its work less appealing to donors than some other Commission – as the Law Commission Chairman would frequently say, it was “less sexy.”²⁰ The mission and products associated with conservation law and policy work were less photogenic than a grand gorilla or precious panda – or any of the other high-profile symbols for nature conservation. But as Daniel Navid, former Commission Executive Officer, would recall: “Yes..., but we would respond that we were providing the tools for ensuring the gorilla or panda would truly be protected in the long-term.”²¹ In addition to finding funds to cover projects, the Commission also had obligations associated with cost-sharing with the Environmental Law Centre for technical and administrative support. In the early 1980s, these core operating costs were estimated at roughly Sfr 250,000 annually.²² In addition to donor fund-raising and increased reliance on KSSF, FUST, and the Elizabeth Haub Foundations for core support (described in Chapter 11), ways had to be found to stretch resources and to strengthen the volunteer participation of members.

New tools

12 A mainstay of IUCN’s Environmental Law Programme was its Commission membership. By 1980, the Commission had 84 members from 36 countries.²³ Through the 1980s, the Commission continued to grow steadily but slowly, concentrating on candidates who were accomplished experts in environmental policy, law, and administration, especially from developing countries. By the end of the decade, the number had grown to 118 from 50 countries.²⁴

13 As membership expanded, so did the range of technical expertise available to help promote and provide expertise with the growing number of subjects in international environmental law and policy. Global pollution concerns were receiving new emphasis, especially in such areas as atmospheric pollution, ozone depletion, hazardous substances, and climate change. A variety of legal topics related to the marine environment also were becoming more active.

14 A larger membership base also produced indirect benefits. More members occupied positions of influence internationally or nationally and could promote and reinforce IUCN’s positions and initiatives both personally as part of the Law Commission and institutionally through their professional positions.²⁵ These connections through informal networks brought many opportunities to further spread the

word about the work of the Law Programme, specific funding needs, and areas of emerging interest in the broader community.

Members' data bank

To make most effective use of this network, communication needed to be strengthened and more targeted. New means were needed to identify the specialized skills and knowledge of different members so that participation could be quickly mobilized for different kinds of tasks. In the early 1980s, the Law Programme began a new data bank organizing information about Commission members by areas of expertise.²⁶ Members were asked to identify their primary skills by subject matter (air, water, species, protected areas, etc.) along the lines of the substantive subject matter codes used by the Environmental Law Information System. Members also were invited to identify further features, such as type of law practiced (public law, private law, international law) or type of legal system (federal, socialist, Islamic, etc.) or region of the world. This information was added to the Commission's directory and disseminated to all members in hard copy periodically. 15

This skills-based members data bank proved valuable not only to better match expertise with needs, but also to facilitate consultations among specialists in a particular subject. As reported by Commission Chairman Burhenne in the late 1980s, "Membership is organized according to expertise on certain environmental and resources themes, as well as according to traditional law expertise, thus allowing consultation with groups of members according to the subject considered."²⁷ 16

During the 1990s, the data base continued to grow as membership expanded and hard-copy directories continued to be produced for each triennium. In the 2000s, once the Environmental Law Programme's web site was re-designed and expanded, the data base was put on-line.²⁸ The last hard-copy version of the Directory was published in July 2003.²⁹ 17

Members' news services

In the 1980s, the Law Programme also started two hard-copy news services to members. The first, started in 1984, was a loose-leaf bibliographic reference service, "Legislation and Regulatory Texts on Environmental Conservation", for Law Commission members, ICEL members, and affiliated libraries. It covered international instruments and national and sub-national legislation that arrived at the Environmental Law Centre.³⁰ The service became a supplement to and took the formatting of a "Literature Reference Service" begun in 1969 for literature received by the ELC/ICEL literature library.³¹ The pages of this new legislative news service were formatted to be cut into index cards for use in card catalogues. Two issues were distributed the first year.³² In 1985, the service was distributed to members with the newsletter.³³ A quarterly mailing was instituted thereafter. Funding came from ICEL and Law Centre staff prepared each issue using ELIS data. The paper services for both the Literature Reference and the Legislation and Regulatory Texts were discontinued in 1999 when ELIS was reconfigured to become part of the IUCN/UNEP/FAO joint information service, ECOLEX, and the Environmental Law Programme web site was created (see Chapter 28). 18

19 A members' newsletter was the second news service started in the 1980s, and this service has been sustaining even in the face of the internet revolution. Begun in January 1985 by CEPLA Counsel Malcolm Forster, the newsletter's purpose was to provide information on important international developments and to serve as a tool for collaboration and information exchange.³⁴ Its focus was news for Commission members in particular, and received very good feedback. Environmental Law Centre staff helped with production and members contributed articles.

20 By 1985, the Commission had become relatively large with some 88 members (double the number of a decade earlier) and the newsletter became a key tool for keeping members informed and involved worldwide. As Commission effectiveness was largely dependent on the good will and volunteer services of its members, the vision also was to have the newsletter serve as a vehicle to stimulate direct member participation, as illustrated by an invitation in the 1990 issue: "Comments on legal instruments in the drafting stage, tips and advice on new policy initiatives, reports on developments in a particular field of expertise and on participation in conferences and symposia are welcome."³⁵ With increased member involvement in environmental law, there were more resources from which to draw for articles and news that could be disseminated through the newsletter. It grew into a valuable service to the entire Environmental Law Programme – its Commission members, ELC staff, institutional partners and others – for communicating important events of ELP and international environmental law and policy developments of special concern or interest.

21 From the newsletters' launch in 1985, through the 1990s, the Environmental Law Centre worked with Commission members to produce and mail to all Commission members at least one hard-copy ELP newsletter annually, in some years during the 1990s producing as many as four issues and in 2002 launching a 'new' look with online access (see Chapter 28).

Expanded Commission structure

22 Wolfgang Burhenne remained Commission Chairman through the 1980s, giving leadership and stability to the programme. From the first two vice-chairs from 1977 dedicated to policy and administration, he shifted emphasis to a geographic focus, continuing to expand the Commission structure with more members from the regions.

23 By the 15th IUCN General Assembly in Christchurch, New Zealand, in 1981, the Law Commission had expanded its vice-chairs to three, and with turn-over, the three Vice-Chairs were now Oleg Kolbasov (USSR), Michael McCloskey (USA), and the Honorable Judge Nagendra Singh (India) of the International Court of Justice.³⁶ As discussed in Chapter 8, the thematic committees tried in the 1970s had not worked. With the 1980s, Burhenne decreased emphasis on linking specific vice-chairs to one of the main themes of the Commission, and the Commission began putting more emphasis on geographic representation for its leadership.³⁷ Already, it was becoming evident that activities in environmental policy, law, and administration were not operationally distinct but rather were integrated and interconnected within government systems, and that the distinct thematic approach of the early

1970s didn't reflect that reality. Projects needed to be designed accordingly, and it was common for projects to be driven by a law-related request with elements of policy and administration within.

In 1983, Chairman Burhenne created a new post of Deputy Chair, and appointed Judge Nagendra Singh,³⁸ who graciously agreed to serve even as his professional responsibilities were growing. [See Box 2] The addition of a Deputy Chair meant that a succession mechanism was now in place for the post of Chair as well as 'acting' Chair, should the Chairman become unavailable. 24

Chairman Burhenne retained the two remaining vice chair posts which continued to be filled by Kolbasov and McCloskey through the triennium to the next General Assembly in February 1988 in Costa Rica. At that Assembly, Chairman Burhenne singled out his Deputy Chair and two Vice Chairs for special thanks, along with Commission members, "for their assistance, advice and support throughout the triennium", and acknowledged as well gratitude to the services provided to the Commission by ELC staff and Malcolm Forster, who had served since 1984 as Commission Counsel.³⁹ 25

Later in 1988, Judge Nagendra Singh died, and Parvez Hassan of Pakistan, then a member of the Law Commission and IUCN Regional Vice Chair for Asia, was appointed Deputy-Chair. By the close of the 1980s, the number of Vice-Chairs had been increased to four, and with turn-over, the only continuing Vice-Chair was Oleg Kolbasov, who now was joined by Malcolm Forster (former Counsel returning to membership in 1988, from the UK), Charles Odidi Okidi (Kenya), and Nicholas Robinson (USA).⁴⁰ 26

Box 2: Honorable Judge Nagendra Singh 27

Nagendra Singh, who had been among the earliest Commission members, was Justice of the International Court of Justice by the time of his appointment as Vice Chair of the IUCN Commission on Environmental Law, Policy, and Administration. He had joined the International Court in 1973, served as its Vice President from 1976–1979, and then its President beginning in 1985 until his death in 1988. With a lifelong dedication to the field of environmental law and conservation, among his many distinguished posts, he also served as President of the Indian Academy of Environmental Law and Research, and Fellow of the World Academy of Art and Science.

Judge Nagendra Singh's active presence with the Law Commission and service to IUCN began with the Union's 10th General Assembly in New Delhi in 1969, where he was serving as Secretary to the President of India, overseeing the organizational aspects and government participation of the Assembly. He was among the early leaders of the Law Commission, being appointed as a member in 1969, and was one of the founders of the International Council of Environmental Law, discussed in Chapter 11. Through the years, Nagendra Singh remained a dedicated Commission member and close associate and supporter of Chairman Burhenne, even as his profes-



sional responsibilities and international visibility grew markedly with his juridical work on the International Court of Justice.

He continued actively to support the mission of IUCN's Environmental Law Programme, agreeing to serve in the new post of Commission Deputy Chair in 1983. Two years later when Nagendra Singh rose to the Presidency of the International Court, Burhenne recalls that he went to Nagendra Singh and said: "I don't think it is acceptable for you to remain my deputy now that you have such a high distinguished position" and Nagendra Singh responded: "if one is moving up and advancing, one should take along one's friends" – a moment and comment that Burhenne could never forget.⁴¹ Nagendra Singh stayed on as Burhenne's deputy until his death in 1988.

Steering committee

28 In 1989, the officers of the Law Commission became the Commission's Steering Committee.⁴² Burhenne's decision to create the committee was motivated by a number of factors. With increasing demands on the Commission from other components of the Union and with many new international, regional and national law-related developments, the Commission needed an executive mechanism to help identify and prioritize issues, and respond as a representative body of the Commission. It was envisioned that the Steering Committee could physically meet more often than the Commission as a whole, where meetings were limited to General Assemblies, normally every three years. In addition, the Steering Committee through its Regional Vice-Chairs could represent and channel member interests from their respective regions, facilitating information exchange from national level to the Commission and vice-versa so the Commission could be more responsive to members and also be more fully prepared and informed about international issues. The Environmental Law Centre provided both administrative and substantive support to the Steering Committee, including coordination of members' inputs and preparation of technical materials for its meetings.

29 By the mid-1990s, under the subsequent Commission Chair, Parvez Hassan (see Chapter 22), the Steering Committee had expanded significantly with the addition of more vice-chairs and other officers and its business grew proportionately in order to effectively service the much enlarged Commission, now numbering almost three hundred members. The Steering Committee developed business schedules and procedures, convening two formal meetings annually, one each in the spring and fall, with at least one in Bonn at the Environmental Law Centre.⁴³ The agendas of such meetings included policy issues for decision, monitoring and oversight of major Commission projects, vice-chair reports, and consideration of new and emerging issues including new international law developments.

30 The Steering Committee also became responsible for reconstituting Commission membership after the General Assemblies, nominating new officers, and recommending new members. It managed Commission input into General Assembly/Congress issues and resolutions, appointing members of the Steering Committee as lead persons to mobilize other members or groups on specific resolutions.

Working groups

31 To help mobilize Commission expertise for the growing environmental law agenda, Chairman Burhenne and the Commission Steering Committee decided to

institute an intermediate mechanism between the Steering Committee and the membership which they called the 'Working Group'. The Commission periodically in the past had formed ad hoc groups around specific technical requests, but those groups were short-term and expired after completion of the task.

With this new mechanism, it was envisioned that specific environmental law themes or issues could be identified that would benefit from longer-term collaborations and contributions of a "Working Group" of members. An officer of the Steering Committee would be designated to chair each group, and volunteers would be invited to join from the entire Commission. In effect, this would create a sub-network of specialized individuals in their areas of interest or expertise who could work through the Commission to develop and promote existing or new areas of environmental law, and broaden specialized professional associations with other members. It was also anticipated that members would have increased interaction with Commission leadership through the Working Groups and be better connected to the substantive work of the Commission, an important underlying goal. 32

The first three Working Groups were formed in the late 1980s: marine affairs (chaired by Malcolm Forster), environmental impact assessment (EIA) (chaired by Nicholas Robinson), and training (chaired by Michel Prieur).⁴⁴ Illustrative of the kinds of sustained outputs that were generated, the EIA Working Group quickly produced survey materials on EIA procedures which were used for a report on implementation of the 1985 European Community Directive on Environmental Assessment in Member States.⁴⁵ In 1991 the group issued a 75-country review on how EIA could contribute to conservation.⁴⁶ And in 1994, the group prepared a paper in Spanish and English for the 19th IUCN General Assembly and Commission meetings in Buenos Aires, Argentina, on one of the oldest EIA laws, that of the Commonwealth Puerto Rico adopted in 1970.⁴⁷ 33

Through the 1990s and into the 2000s, Working Groups became an increasingly important tool for the Commission and its conceptual work on special issues or emerging areas of law. New groups were created by the Steering Committee as interest and issues gained hold and, from time to time, old ones were dissolved when activity dissipated. Normally those decisions were taken after General Assemblies (reconstituted in 1996 as World Conservation Congresses) when the new Commission Chair and Steering Committee took over. By 2004, there were 13 active Working Groups and the name had been changed to 'specialist groups' (discussed more in Chapters 22 and 27). 34

Notes

- 1 "Minutes of the Ninth Meeting of the Council of IUCN, 8–10 June 1981, Gland, Switzerland", p. 11.
- 2 Id.
- 3 See "CEPLA Report to the Ninth Meeting of the IUCN Council (8–10 June 1981)", pp. 4–5 (also cited as Council Paper UC.9/81/2).
- 4 Burhenne, W., "Memorandum dated August 14, 1981, from Wolfgang E. Burhenne to Members of CEPLA regarding Unfunded or Inactive Projects", and attached annex (IUCN archives).
- 5 See "Minutes of Meeting of the IUCN Commission on Environmental Policy, Law and Administration, Christchurch, New Zealand, 12 and 16 October 1981", p. 3.

- 6 One of the immediate impacts of this reassignment was that Navid was unable to attend to Commission needs at the 15th General Assembly that year because his assistance was needed more by the Planning Commission, see “Report of the Meeting of the IUCN Commission on Environmental Policy, Law and Administration at Christchurch, New Zealand, 12 and 16 October 1981”, p. 1.
- 7 “Program of IUCN for the Three Years Till General Assembly 1969” (also cited as Appendix H) in *Ninth IUCN General Assembly Proceedings 25 June – 2 July 1966 Lucerne, Switzerland*, p. 171.
- 8 IUCN, *World Conservation Strategy – Living Resource Conservation for Sustainable Development*, p. 1 (IUCN, 1980).
- 9 Holdgate, M., *The Green Web*, p. 149.
- 10 de Haes, C., “Statement from the World Wildlife Fund (WWF) to the 15th General Assembly of IUCN”, p. 3 (labeled as Annex to GA/15/81/Inf.2, in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981*, IUCN, Gland, Switzerland, 1982).
- 11 See IUCN, *An Introduction to the World Conservation Strategy* (IUCN/UNEP, 1984).
- 12 Author interview with Wolfgang Burhenne on March 2006 draft, April 8, 2006 (Bonn, Germany).
- 13 Author interview with Françoise Burhenne-Guilmin on March 2006 draft, April 8, 2006 (Bonn, Germany).
- 14 “Role and Terms of Reference of the Commission on Environmental Policy, Law and Administration” (dated July 21, 1981), para. 7 (also labeled as Annex to Attachment to General Assembly Paper GA/15/81/6, in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981*, IUCN, Gland, Switzerland, 1982).
- 15 See IUCN, *World Conservation Strategy – Living Resource Conservation for Sustainable Development* (IUCN, 1980).
- 16 IUCN, *World Conservation Strategy – Living Resource Conservation for Sustainable Development* (IUCN, 1980), “Part 8. A Framework for national and sub-national conservation strategies”, para. 2.
- 17 See IUCN/UNEP/WWF, *Caring for the Earth. A Strategy for Sustainable Living*, Action 8.5, p. 68 (IUCN, 1991).
- 18 See IUCN, “A Conservation Programme for Sustainable Development 1980–82” (IUCN, 1979).
- 19 Id. at 8.
- 20 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 21 Author interview with Daniel Navid, June 23, 2004 (Bonn, Germany).
- 22 See, “Minutes of the 15th General Assembly, 1981, Christchurch, New Zealand”, p. 13.
- 23 “Report of the Commission on Environmental Policy, Law and Administration (November 1979–80)”, p. 1 (labeled Council Paper UC 80/23).
- 24 See “The Environmental Law Programme of IUCN – The World Conservation Union 1990–1991 (November 1989)”, p. 6 (prepared for the IUCN 18th General Assembly, Perth, Australia, 28 November – 5 December 1990).
- 25 “Report of the Chairman of the Commission on Environmental Policy, Law and Administration” in “Report of the Director-General” in *Proceedings of the 18th Session of the IUCN General Assembly 28 November – 5 December 1990, Perth, Australia* (IUCN, 1991), p. 81.
- 26 Commission on Environmental Policy, Law and Administration, “Report to 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain”, p. 2 (labeled as Annex 4 to General Assembly Paper GA/16/84/1, in *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain* (IUCN, 1985)).
- 27 “Report of the Chairman of the Commission on Environmental Policy, Law and Administration”, in “Report of the Director-General” in *Proceedings of the 18th Session of the IUCN General Assembly 28 November – 5 December 1990, Perth, Australia* (IUCN, 1991), p. 81.
- 28 See ELP web site at: www.iucn.org/themes/law, under category “Commission on Environmental Law”, subcategory “Members”, has been archived.
- 29 Information from Nicholas Robinson, transmitted by email dated June 13, 2006.

- 30 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly", p. 11 (labeled as Annex 5 to General Assembly Paper GA/17/88/1), in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, 1988).
- 31 See "ICEL References to Environmental Policy and Law Literature" in "The Environmental Law Information System of IUCN – The World Conservation Union" (IUCN, October 1997).
- 32 Commission on Environmental Policy, Law and Administration, "Addendum to Report to 16th Session of the IUCN General Assembly".
- 33 Burhenne-Guilmin, F., "Environmental Law Centre Report", p. 2, in "Report of the Director General to the Council on the Activities of the Union during the period May – November 1985".
- 34 Commission on Environmental Policy, Law and Administration, "Report to the 18th Meeting of the IUCN Council 15–16 May, 1985", p. 1 (labeled Annex 4 to Council Paper UC.18/85/1).
- 35 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 90/1, 1990), p. 2.
- 36 See Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 1 (identified in General Assembly Proceedings as Attachment to General Assembly Paper GA/15/81/6) (July 21, 1981).
- 37 Author interview with Wolfgang Burhenne and Daniel Navid, June 23, 2004 (Bonn, Germany).
- 38 See Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain", p. 1 (identified in General Assembly Proceedings as Annex 4 to General Assembly Paper GA/16/84/1) (September 9, 1984).
- 39 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica", p. 12 (identified in General Assembly Proceedings as Annex 5 to General Assembly Paper GA/17/88/1) (October 1, 1987).
- 40 See "Report of the Chairman of the Commission on Environmental Policy, Law and Administration to the 18th Session of the General Assembly", p. 1, attached to *Proceedings of the 18th Session of the IUCN General Assembly 28 November – 5 December 1990, Perth, Australia* (IUCN, 1991) (in "Proceedings of the 18th Session of the General Assembly" at 81).
- 41 Author interview with Wolfgang Burhenne, June 24, 2004 (Bonn, Germany).
- 42 See "Report of the Chairman of the Commission on Environmental Policy, Law and Administration" in "Report of the Director-General" *Proceedings of the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia* (IUCN, Switzerland, 1991), p. 81.
- 43 See "Commission on Environmental Law – Steering Committee" in *IUCN Environmental Law Programme Newsletter* (April–June 1995), p. 3.
- 44 See "Report of the Chairman of the Commission on Environmental Policy, Law and Administration" in "Report of the Director-General" in *Proceedings of the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia* (IUCN, Switzerland, 1991), p. 81.
- 45 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 90/1, 1990), p. 1.
- 46 See IUCN – The World Conservation Union, "Minutes of the 32nd Meeting of the IUCN Council 25–27 November 1991, IUCN Headquarters, Gland, Switzerland", p. 21.
- 47 Communication from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.

Chapter 18: Publishing Analytical Studies

Beginning in the 1970s, the Law Programme began to organize and produce analytical studies on new subjects in national and international environmental law. Already the Environmental Law Centre's young collection of legislative and regulatory texts was beginning to provide a sufficient core of baseline materials for researchers to explore special issues and themes. These analyses had potential value to others, practitioners and scholars alike, working or interested in environmental law. And there was a growing need, in this era of rapid environmental law development, to get timely and user-friendly information to member countries so trends and techniques could be taken into account in national efforts at legislative strengthening. In addition, analyses of new international treaty requirements could help members understand their obligations and local options for addressing them.

The Law Commission gave high priority to disseminating developments in new areas in environmental law, at both the national and international level.¹ At the first IUCN Executive Board meeting following the reorganization of the Commission in 1970, it was noted that analytical studies were "one of the most important works of the Commission, if not the most important, and an improvement in this respect should be considered as top priority These studies might be the subject of publications. This aspect of possible activities resulting in publications has, until now, been completely neglected, due to lack of time and funds. Publications could be undertaken in the form of special projects, by consultants, or by the staff."²

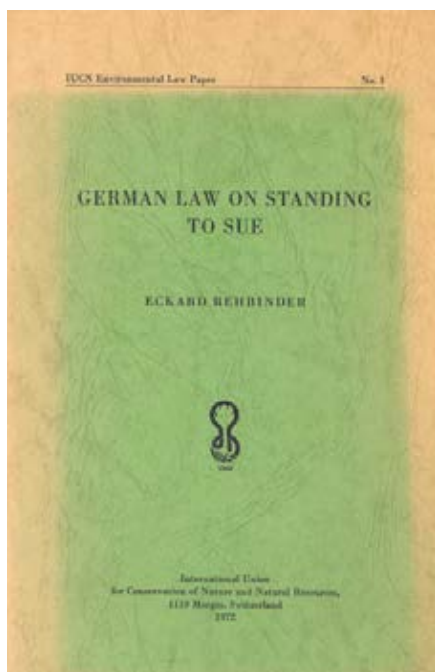
Environmental Policy and Law Paper Series

In 1972, the Environmental Law Centre and Law Commission launched a new publication series initially called the *IUCN Environmental Law Papers*. Its purpose was explained in the foreword to the first paper: "The present series of reports has been instituted as a medium for publication of the results of ... analytical work and related studies in environmental law.... It is hoped that these studies may stimulate action to adapt the new ideas for use in other legal regimes."³ In 1973, the Stockholm policy papers prepared by Law Commission Chairman Caldwell's policy task force were about to be released and the new series seemed an appropriate vehicle (as discussed in Chapter 8). So policy was added and the series was renamed *IUCN Environmental Policy and Law Paper Series* (EPLP) "to provide for a wider range of topics relating to IUCN activities within the field of interest of its Commission on Environmental Policy, Law and Administration (CEPLA), including a number of concepts relating to the development of environmental policy which could benefit from an independent analysis so as to clarify the issues involved."⁴

From the beginning, it was necessary to raise external funds for the series. The Environmental Law Centre provided overall direction, coordination and oversight, along with final vetting of papers for publication. The first three papers were funded by World Wildlife Fund Germany and published in time for distribution at the IUCN's Eleventh General Assembly convened in September 1972 in Banff, Alberta, Canada. They dealt with conservation easements and environmental standing to sue in U.S. and German

courts.⁵ The next three papers were the outputs from Caldwell's policy task force noted in Chapter 8 on compensation and additionality of financing to developing countries. This series grew into a main tool for disseminating information and analyses on new, emerging and sometimes controversial issues in environmental law to countries, practitioners, and the community at large. It continues to produce publications today; there were some 56 reports in the series as of the close of 2004.⁶

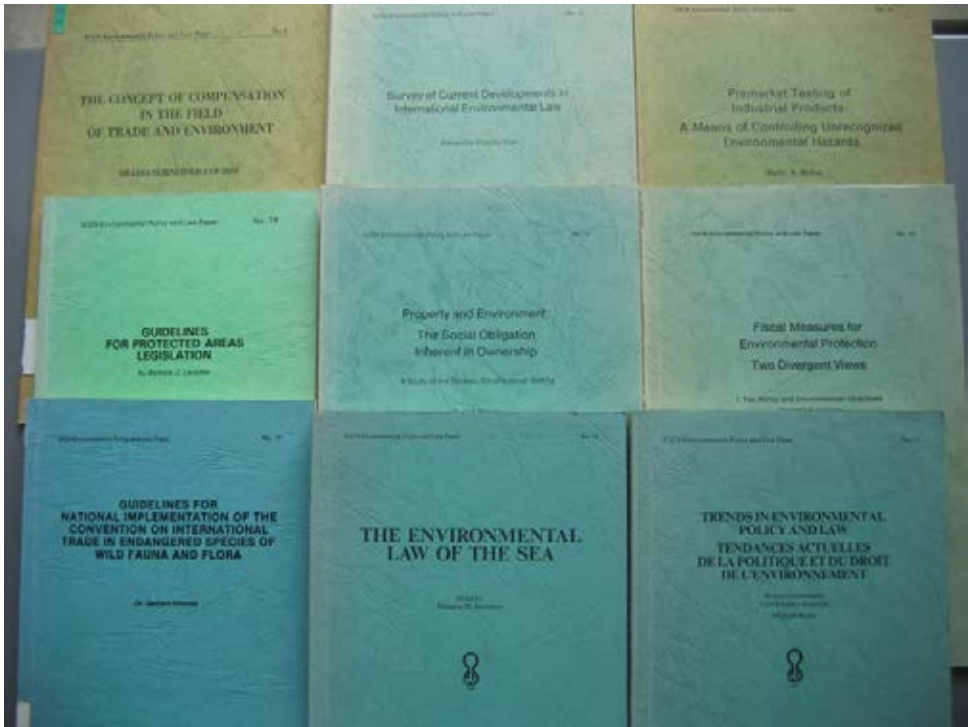
- 5 The series began with the intention of generating pioneering work in new issues emerging in the field. The first publications dealt with some of the early cutting-edge issues of the 1970s: standing to sue on environmental matters, compensation in the field of trade and the environment, additional financing to developing countries for environmental action. As noted in Chapter 9, early authors frequently



were research fellows and graduate students who came to the Environmental Law Centre to help while pursuing further studies. David Gregory, an American lawyer and LLM student at the Harvard University Law School, produced the first two papers that launched the series in 1972 – both dealing with new issues – one on the use of easements in conservation and another on standing to sue.⁷ Eckard Rehbinder, a German professor of law, authored the third paper in the series, a paper on German law concerning standing to sue.⁸ Orlando Delogu, another law professor, authored papers no. 7 and 11 on US experience with environmental impact assessment and tax policy, respectively.⁹ Rudolf Dolzer, a visiting lawyer working on his doctoral thesis in international law at Harvard at the time, prepared paper no. 12 on the social obligation of property.¹⁰

- 6 These early research projects generated lasting relationships and many individuals have remained an active part of the Commission network and international law community. For instance, Eckard Rehbinder (noted above), a long-standing member of the Law Commission, receiving the Elizabeth Haub Prize for Environmental Law in 1978 for his significant contributions to the field. Steve McCaffrey, a visiting researcher in the 1970s who produced paper no. 8 on “Private remedies for Transfrontier Environmental Disturbances” (and also an active Law Commission member), served on the International Law Commission, the distinguished United Nations body charged with promoting the progressive development of international law, important for the field of environmental law, and a body with which Wolfgang Burhenne has maintained close working relations over time.

- 7 Funding for the EPLP publications series has come mostly from the Fund for Environmental Studies (FUST), a fund created in 1969 from an IBM-Germany grant



EPLP Series: then



and now!

to promote, among other things, information analyses, management, and dissemination on issues relevant to parliamentarians (see Chapter 11). Each publication of the EPLP series normally has peer-review by specialists drawn from the Law Commission and elsewhere. Authors are often Law Commission members who are recognized specialists in the subject being addressed. By the close of 2004, many of the papers in the series were available free for downloading from IUCN ELP's new web site (see Chapter 28). For IUCN's 3rd World Conservation Congress (WCC) in 2004, ELP put all EPLP publications from 2000–2004 on a CD Rom for distribution at the Congress as part of its efforts to strengthen communications and make the publications as widely available as possible.¹¹

- 8 Different techniques were developed for information transfer through the EPLP series. Notable among those was the presentation of analytical material in the form of guidelines, either with respect to national legislation in specific areas or with implementation of international treaty obligations and environmental policy. Legislative and treaty guidelines became one of the most widely used and popular of the kinds of papers in the series. Another approach was to present inventories of specific subjects, either internationally or at national level. A third was to analyze issues for trends and emerging areas of law. A fourth was to take on a special topic by special request. For illustration, a few examples of main publications in these areas are provided below.

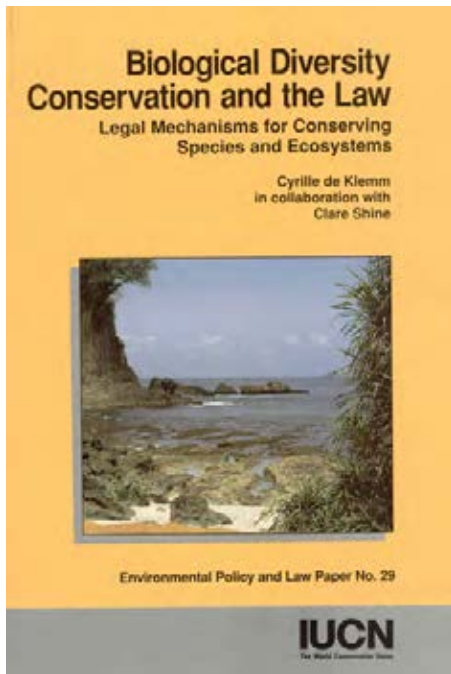
Legislative Guidelines

- 9 With the increased emphasis on implementation, a particularly effective and popular means for disseminating technical information to members, especially in developing countries, was through the production of legislative guidelines. The production of legislative guidelines began in the late 1970s. As explained in a 1978 Law Programme report: "It was considered that, although guidelines cannot replace actual drafting assistance in specific cases, they would greatly facilitate the work of the drafters on the one hand, and also facilitate the work of the Centre when commenting on specific pieces of legislation."¹² The first priorities were protected areas, species conservation, and implementation of CITES.¹³

- 10 The first guidelines to be published were *Guidelines for Protected Areas Legislation*, by CEL member Barbara Lausche, issued in 1980 as Paper No. 16. The process used in their preparation was summarized in a report to the 15th IUCN General Assembly in 1981 as follows: "These guidelines were prepared with a view to providing an outline of major issues needing to be considered when developing legal devices for protecting areas. They were elaborated by first reviewing background materials and legislation at the Law Centre, followed by consultations within CEPLA and with scientific and management experts. Important inputs were received from members of both the Commission on National Parks and Protected Areas and the Commission on Ecology."¹⁴

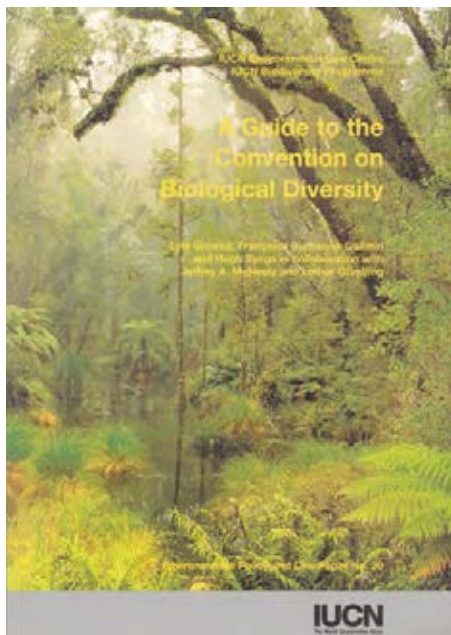
- 11 Work on guidelines for wildlife conservation legislation was initiated during the same period but could not be completed for lack of funding. Eventually, flora issues were separated out and guidelines were produced by Cyrille de Klemm and issued in 1990 under the title *Wild Plant Conservation and the Law*.¹⁵ This was soon

followed by *Biological Diversity Conservation and the Law – Legal Mechanisms for Conserving Species and Ecosystems*, released in 1993, just after the Convention



on Biological Diversity had been adopted but before it had come into force.¹⁶ Cyrille de Klemm with co-author Clare Shine (also a Law Commission member) produced this significant analytical compilation of international law obligations and legal tools for species and ecosystem conservation that is still relevant today.

Preparation of legislative guidelines to implement the major new conservation conventions at national level became another important component of the series. The first convention for such guidelines was CITES, and a two-phased approach was used. First, in 1981, Gerhard Emonds authored a publication that highlighted provisions of CITES requiring national legal and administrative measures for implementation.¹⁷ Then, in 1993 Cyrille de Klemm followed with an expanded analysis of options for executing CITES provisions at national level and incorporating what was by then more than a decade of implementation experience.¹⁸ Guidelines also were prepared for the Convention on Biological Diversity, first covering the Convention generally (*A Guide to the Convention on Biological Diversity*, 1994) and then on two particularly complex components of the Convention, access to genetic resources and alien invasive species.¹⁹



approaches and techniques that can be adapted to wetlands conservation at the national level (see Chapter 14). It is another in the substantial amount of analytical

In wetlands conservation under the Ramsar Convention, de Klemm and Shine partnered on a second project to provide legislative guidance for wetlands conservation, *Wetlands, Water and the Law – Using Law to advance wetland conservation and wise use*.²⁰ This publication, also an EPLP product, came after the Ramsar Convention had celebrated its 25th anniversary in 1996 and describes the main legal issues involved in implementing Ramsar and the growing number of legal

work generated by Cyrille de Klemm that is still a practical and completely relevant tool for today's legal drafters and resource managers.

14 One of the most popular guides to-date (if one counts 'downloads' on the ELP web site) was published in 2003 explaining the new Cartagena Protocol on Biosafety, a protocol adopted in 2000 on safe transfer, handling and use of living modified organisms that was singled out for a protocol by the Convention on Biological Diversity.²¹ According to records from the Environmental Law Centre, by mid-2004 the English version of that Guide had been downloaded some 14,000 times since it was made available online in August 2003, more than 2000 times in French since it became available in September 2003, and almost 1500 times in Spanish since that version became available in February 2004.²² Several hundred copies in English, Spanish, and French and some in Russian were ordered by the Secretariat of the Global Environment Facility for capacity building workshops and project activities aimed at implementation of the Cartagena Protocol.²³

15 In some cases, legislative guidelines have been produced through collaborative projects and partnerships with other international organizations. This was the case in the early 1980s with production of guidelines dealing with environmental health effects of pollution. In that project, the World Health Organization (WHO) and the Environmental Law Centre developed joint guidelines for setting environmental health standards. Begun in 1982, the project was coordinated by the Law Centre which organized meetings of authors and referees and provided technical advice throughout the project. In addition, the Law Centre was responsible for preparing the chapter dealing with legal aspects which was led by Law Commission members Michael Bothe and Malcolm Forster. During 1987 the final draft was approved by technical and agency reviewers and published with UNEP support under the title, *Setting Environmental Standards: Guidelines for Decision-Making*.²⁴

16 The latest legislative guide for national legislation (as of the end of 2004) was prepared by the Commission on Environmental Law Specialist Group (former Working Group) on Soils. This publication, *Drafting Legislation for Sustainable Soils: A Guide*, was produced by Specialist Group members Ian Hannam and Ben Boer, and published as EPLP Paper No. 52 in 2004. The foreword to the publication explains it is complementary to an earlier paper, *Legal and Institutional Frameworks for Sustainable Soils*,²⁵ "and goes further in analyzing all of the necessary features of a legal and institutional framework for the sustainable management and conservation of soils .. [and]...also provides guidance for the drafting of legislation."²⁶

Inventories

17 Another approach for papers in the EPLP series was to provide analytical studies that were inventory focused. This was the case, for example, with Law Commission member Simon Lyster's *International Wildlife Law*, published in 1985, as EPLP No. 22.²⁷ It is a substantial 470-page and valuable piece of work on international treaties protecting wildlife. As the first comprehensive analysis of international wildlife law, it described some 27 major treaties in detail and many others in

brief. A letter from Prince Philip, Duke of Edinburgh, provides the foreword to the book, putting emphasis on the urgent problem of wildlife exploitation in the world and the recognition in the long term that “effective conservation of the multitude of species in the plant and animal worlds depends upon acceptance and conscientious application of specific obligations under national and international law.”²⁸ An introductory part discussed basic principles of international law and their relation to wildlife treaties, with the remainder divided into three parts: treaties protecting a single species or groups of species (e.g., polar bears, vicuna), the four regional nature conservation treaties (Americas, Africa, Europe and Antarctica), and the ‘big four’ wildlife treaties concluded in the 1970s (Ramsar, World Heritage Convention, CITES, and migratory species). An annex contained texts of the main treaties.

The publication was in great demand and soon was out-of-print. Reflecting the continued timeliness of and sustained demand for this kind of analytical material, the book was reprinted by Cambridge University Press in 1994 and again in 1996, as a product of the Research Centre for International Law, University of Cambridge, in association with IUCN. It is now sold through Cambridge University Press. 18

Environmental Law Trends

The Environmental Law Centre lawyers and Law Commission also monitored international and national developments in law and policy for new trends. The most ambitious of such projects was initiated in the mid-1970s and became EPLP No. 15: *Trends in Environmental Policy and Law*. Its goal was to trace interesting developments across a wide range of environmental law subjects and then report on legal institutions, policies and administrative methods being developed and implemented of practical application for lawyers and policy makers. In 1977, the key subjects were identified: public participation in environmental planning, fiscal measures for environmental control, use of environmental impact statements, recycling legislation, and approaches to enforcement.²⁹ Research began on these several areas, but it was soon appreciated that the scope was too broad and not manageable with the resources and time available. A task force of experts in different areas of environmental law was formed to rethink the study. During 1978, Commission member Michael Bothe agreed to become coordinator. A meeting of ten legal scholars and specialists was convened in Bonn to narrow the trends to be analyzed and nominate individuals to write about each trend. 19

Work resumed and during 1980, the study was finalized and published, with the assistance of FUST and KSSF in 1980.³⁰ A 400-page book of essays by 14 authors, several of whom were Law Commission members, the study’s main purpose was explained in the journal *Environmental Policy and Law*: 20

“The question of how the environment can be conserved is posed throughout the world. In reply, a number of political, economic and legal tools and techniques of administrative and judicial procedures have been used, developed or invented....As the problems are common, it may be quite natural that the tools and techniques used to cope with them are also similar, and that states

learn from each other. It is the purpose of *Trends in Environmental Policy and Law* to present and describe some of these tools and techniques. The publication does not intend to be a comprehensive overview of environmental policy and law around the world. But some elements have been singled out and are described as a rule on a comparative basis.”³¹



21 Publications analyzing the state of play and trends in major areas of law have focused increasingly on specific thematic areas of law, including in such areas as water (as an environmental flow), energy and climate change (see Chapters 30 and 31).

Special Projects: Islamic Law and the Environment

22 Illustrative of the pioneering nature of the early Environmental Law Programme’s analytical studies was a special study undertaken in the late 1970s and early 1980s to identify Islamic principles related to legal protection of the environment. The idea evolved following technical assistance that Law Commission Chair Burhenne was providing to Saudia Arabia related to negotiation of a regional treaty on the Red Sea and shipping in the region. As those negotiations wound to a successful conclusion, IUCN’s Vice President for the region, Abdulbar Al-Gain, a close associate of Burhenne, inquired whether the Law Commission might help with a project on Islamic law and the environment. The idea was interesting not only because it would be exploring a new subject but also because Islamic law is a major force in a substantial part of the world. The Law Commission and the Department of Islamic Studies, King Abdulaziz University in Jeddah, Saudi Arabia, developed a collaborative project to undertake the study. The project’s rationale was explained by Abdulbar Al-Gain in the preface to the resulting work:

“The implementation of environmental management depends on the existence of appropriate legislation, and legislation becomes more effective and useful when it emanates from a nation’s creed and when it represents its cultural and intellectual heritage. This strong relationship between the effectiveness of legislation and the strength of its cultural roots appears to me to be all the more necessary when dealing with environmental issues, especially in Islamic societies. For Islam presents a way of life that encompasses an overall view of the universe, life, man and the inter-relationships existing between them and also combines conviction, belief, legislation and enforcement of this legislation.”³²

The project was supported by the Government of Saudi Arabia through a trust fund set up with the Meteorology and Environmental Protection Administration of Saudi Arabia, where Abdulbar Al-Gain was Vice-President. While many individuals contributed, four legal experts in Islamic law were the study's principal authors – A. Kader, A. El-Sabbagh, M. Al Glenid, and M. Samarraï. The IUCN Law Commission through Chairman Burhenne reviewed the various drafts and provided specialized advice in helping carry it out. The draft text of the study was produced in original form both in English and Arabic to facilitate as broad a technical review as possible from environmental law experts. The aim of the project was to identify the important Islamic law principles related to conservation and environmental protection. With support from the Saudi fund, the Environmental Law Centre published the study in the EPLP series in 1983 as Paper No. 20, entitled: *Basic Paper on the Islamic Principles for Conservation of the Natural Environment*.³³ The topic



Ministerial Meeting at MEPA (Saudi Arabia)

generated considerable interest and more than 85,000 copies of the first edition were distributed, as Abdulbar Al-Gain observed, “reaching and ‘influencing’ people throughout the world.”³⁴

Through the 1980s, the Islamic principles paper continued to generate wide interest and favorable reactions, especially from Islamic countries. Consequently, in the late 1980s, the IUCN Law Commission decided to prepare a second and updated edition to reflect “research ... expanded to address situations which were not present before.”³⁵ Analytical work on the second edition and its publication also were supported by the Government of Saudi Arabia, represented by Abdulbar Al-Gain, through the Meteorology and Environmental Protection Administration. The second edition, entitled *Environmental Protection in Islam* was released in 1994.

As with the first edition, many experts and specialists contributed to the final product, with Wolfgang Burhenne and the Law Commission providing technical assistance. The final publication had four main authors, two who had co-authored the first edition, A. El-Sabbagh (King Abdulaziz University) and M. Samarrai (studying at Cardiff, UK at the time) and two others, A. Bagader (King Abdulaziz University), M. Al-Ghayand (University of Cairo).³⁶

- 25 Both editions were prepared and printed in Arabic and English, and then translated into French after publication for broadest possible distribution. As global events have evolved, demand has continued to be significant both for general interest in understanding Islamic law and the environment, and for use by practitioners. By the close of 2004, some 180,000 copies had been distributed worldwide between the two editions, making the project one of the most successful of the EPLP series.³⁷ For the Islamic countries, the publications have been particularly useful as a tool for government agencies and organizations addressing growing challenges of conservation and environmental protection.

Other Series

- 26 A separate series, the “Occasional Papers”, was created and organized by the Environmental Law Centre in the mid-1980s for specialized volumes. By the close of 2004, three publications were in this series: 1) *Status of Multilateral Treaties in the Field of Environment and Conservation* (a chart, third revised edition) (1993); 2) *Migratory Species in International Instruments – An Overview* (262 pp., commissioned by the Federal Republic of Germany for the First Conference of Parties to the Bonn Convention) (1986); and 3) *African Wildlife Laws* (C. de Klemm and B. Lausche) (1700 pp., summarizing wildlife conservation legislation in 45 African countries) (1986).

- 27 As noted also in Chapter 19, another series, a six-volume set containing UNCED preparatory and working materials, edited by Nicholas Robinson, Françoise Burhenne-Guilmin, and Parvez Hassan, also was published under the auspices of IUCN during 1992–1993. Entitled *Agenda 21 and the UNCED Proceedings*, it was issued by Oceana Publications in its Series III publications on “International Protection of the Environment: Treaties and Related Documents”, which ensured it would be placed in law libraries worldwide.³⁸ This series is the only source for the working papers for UNCED.³⁹

‘A’ and ‘B’ Series of FUST

- 28 From the 1980s and continuing today, two separate publication series of the International Council of Environmental Law (ICEL), the ‘A’ and ‘B’ series, have been important supplemental means for publishing Environmental Law Programme analytical work. IUCN was always short of funds and for many years the Fund for Environmental Studies (FUST) supported these publications, including products developed by the Environmental Law Centre and Law Commission, where no other resources were available and the topic met the purposes of the fund (serving interests of parliamentarians, as noted above and in Chapter 11). The labels ‘A’ and ‘B’ helped differentiate the category of publication: ‘A’ series being distinct, one-time

studies like in the EPLP series; 'B' series being loose-leaf and multi-volume series, for example, the multilateral treaties now numbering some nine volumes, and soft law instruments, now some two volumes. The publisher of the 'A' series has been Erich Schmidt Verlag, and for the 'B' series, Kluwer Law International. For 'B' series publications, subscribers are charged a fee which helps defray costs of production.



Middle: FUST 'A' Series; below: 'Bu-Ro' (see Chap. 10)

In some cases, Elizabeth Haub Foundation monies were combined with FUST funds. As FUST monies have been drawn down, the Karl Schmitz Scholl Fund for Environmental Law and Policy (KSSF) has taken over support. Still, where small supplemental support is needed, FUST sometimes steps in to help. Today, the 'A' Series has more than 150 publications, many in English and French, and more in German. Some publications in high demand have been produced in both the 'A' Series and EPLP series, for example, *Trends in Environmental Policy and Law* (EPLP No. 15 and A 69), and *The Environmental Law of the Sea* (D. Johnston, ed., EPLP No. 18, and A 79). Other publications, including several authored by CEL members, have been published only in the A Series, for example, *UNEP Environmental Law: In-Depth Review* (B. Lausche, A 91), and *World Charter for Nature: A Background Paper* (W. Burhenne and W. Irwin, A 90, a project jointly supported by FUST and the US-based Elizabeth Haub Foundation).

One of the early 'A' series publications reflected some innovative work in which IUCN and the Law Commission were very active in the 1970s – international liability for environmental damages. Early on, Law Professor Alfred Rest (a Commission member) had been asked to draft an international convention on transfrontier

environmental damage. The result was a publication authored by Rest, and published in English in 1976 by FUST, entitled *Convention on Compensation for Transfrontier Environmental Injuries – Draft with Explanatory Notes*.⁴⁰ The publication, among other things, covered rights of individual victims for compensation in cases of transboundary harmful environmental effects, state liability aspects, access to courts, and enforcement of judgments. The draft served as a model for future liability conventions, was debated at the Fourth International Parliamentary Conference in Kingston, Jamaica in 1976, and influenced the European Union Liability Directive as well as IUCN's Draft Covenant articles on liability where Rest also contributed (see Chapter 26).⁴¹ That publication was followed by two others by Commission member Rest and published by FUST: *International Protection of the Environment and Liability – The Legal Responsibility of States and Individuals in Cases of Transfrontier Pollution* (1978) which laid the groundwork generally for international environmental responsibility and liability, and *The More Favourable Law Principle in Transfrontier Environmental Protection – A Means of Strengthening the Protection of the Individual* (1980) which laid the basis for private law norms in international cases.⁴²

- 31 Another early 'A' series publication was a unique contribution by the Environmental Law Centre to the field of environmental law, the first compilation of *Environmental Policies of Developing Countries*, issued in 1977. This compilation contained environmental policy profiles of some 63 developing countries and was produced by two sisters, Hope and Janice Marie Johnson of Jamaica, who worked at the Environmental Law Centre in the mid-1970s.⁴³ The project, which began in 1974, included review of data in the legislation collection of ELC, correspondence with countries through diplomatic channels to both foreign ministries and embassies of 102 countries for additional data and updates, and final compilation of the information using a standardized format.

- 32 The work of the Johnsons was valued for its pioneering nature. In addition, for the Burhennes and the IUCN Environmental Law Programme it had special merit because the authors were carrying on a tradition of environmental law development started by their father, Ambassador Keith Johnson, who was serving in those years as Jamaica's Ambassador to Germany. Among the Ambassador's most important distinctions for the emerging field of environmental law was his service as Rapporteur-General of the 1972 Environmental Conference in Stock-



Hope and Janice Marie Johnson, 1974

holm, Sweden. As discussed in Chapter 12, that first UN Conference on the Environment established the topic of environmental protection as a legitimate concern for the global community and laid out principles and an agenda for environmental actions that continues to be relevant today. Johnson took on that unique and important role when serving as Jamaica's Permanent Representative to the UN Headquarters in New York from 1967–1973. In retirement, he continued to dedicate his time to environmental concerns, including service on the boards of the US and Canadian Elizabeth Haub Foundations for Environmental Policy and Law (discussed in Chapter 11).

The 'B' series is best known internationally for its "B7" publication: *International Environmental Law – Multilateral Treaties*, begun in the 1970s by R. Muecke, D. Navid and O. Seidel at the Environmental Law Centre, and continuing today in hard-copy, loose-leaf form.⁴⁴ With the growth of international environmental law over the years, this publication now comprises some nine volumes and continues to be maintained with external funds and edited by its initiator, Wolfgang Burhenne. From the beginning, the hard-copy collection drew its data from the international treaty data bank of the computerized Environmental Law Information System (discussed in Chapter 10), which in the 2000s became available electronically through the new IUCN/UNEP/FAO electronic environmental law information system, ECOLEX (see Chapter 28).

Notes

- 1 IUCN Executive Board Minutes of Meetings 22–24 May 1970, Attachment 1 to E.B. 70/43.
- 2 Id.
- 3 "Foreword" to Gregory, D., *The Easement as a Conservation Technique* (IUCN Environmental Law Paper No. 1) (IUCN, 1972).
- 4 Schneider-Sawiris, S., "Foreword", *The Concept of Compensation in the Field of Trade and Environmental Law* (IUCN Environmental Policy and Law Paper No. 4) p. 4 (IUCN, 1973).
- 5 Staub, J., "Report of the Commission on Environmental Policy, Law and Administration for the Period 1970–1972" (labeled Agenda Paper GA.72/15), in *Proceedings of the Eleventh General Assembly of IUCN, Banff, Alberta, Canada, 11–16 September 1972* (IUCN, 1972), p. 150.
- 6 See ELP's web site at: www.iucn.org/themes/law, category "Information and Publications", subcategory "Environmental Policy and Law Papers".*
- 7 See Gregory, D., *The Easement as a Conservation Technique* (IUCN Environmental Law Paper No. 1) (IUCN, 1972) and *Standing to Sue in Environmental Litigation in the United States of America* (IUCN Environmental Law Paper No. 2) (IUCN, 1972).
- 8 See Reh binder, E., *German Law on Standing to Sue* (IUCN Environmental Law Paper No. 3) (IUCN, 1972).
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Chapter 19: Influencing Global Events

The 1972 Stockholm Conference set in motion a global environmental agenda that called for action, coordination and monitoring of results. It became the first of a sequence of UN-sponsored environmental events that continued to identify needed actions and monitor progress and change over the years. As discussed in Chapter 12, individuals from the IUCN Environmental Law Programme actively participated in various capacities at Stockholm. Particularly important for the emerging field of environmental law were three global events which took place at roughly ten-year intervals after Stockholm: the Montevideo Programmes in environmental law that began in the early 1980s, the work of the World Conservation and Development Commission also in the 1980s, and the United Nations Conference on Environment and Development (UNCED, also called the Earth Summit) in Rio de Janeiro in 1992.

With a broadening worldwide network of technical specialists in its Commission and a growing pool of analytical products validating its competence in the field of environmental law, the Environmental Law Programme began to participate with a strengthened voice in these UN-sponsored events in order to promote implementation of environmental law at all levels.

Montevideo Programmes in Environmental Law

The Plan of Action from the 1972 Stockholm Conference called for a myriad of environmental actions by international and regional organizations, governments, and non-governmental organizations, as discussed in Chapter 12. Among those were areas where environmental law and policy would need to play a part. With topics ranging from nature conservation, to regional seas, to pollution of all kinds, the challenge was to bring some coordination and priority-setting into the process involving key players at all levels.

IUCN Law Commission Chairman Burhenne began exploring the possibility of convening an international meeting on environmental law specifically for the purpose of coordinating such actions, ranking the highest priorities and identifying gaps from the perspective of law and policy. By then, UNEP was a young, functioning international organization but had not yet become involved with matters of environmental law. Burhenne saw UNEP as an important candidate for sponsoring such a conference, but Member States of UNEP's Governing Council were hesitant because UNEP had not been involved previously and it was not a UNEP priority.¹

During the late 1970s, UNEP's Governing Council called for preparation of a System-Wide Medium Term Environment Programme (SWMTEP) for the United Nations system and related organizations, pursuant to its mandate to promote environmental coordination. Drawing upon the Governing Council's endorsement of that all-embracing exercise, Chairman Burhenne approached UNEP's Executive Director, Mostafa Tolba, suggesting that such an international meeting on environmental law hosted by UNEP might be aimed to provide input for the system-wide plan.² Burhenne also continued to explore and promote the idea with colleagues and Law Commission members having attachments to UNEP through State delegations.

- 6 By the 8th session of UNEP's Governing Council in 1980, interest in such a special environmental law event had grown among UNEP Member States. Magarinos de Mello, then Ambassador to Sweden from Uruguay and an active CEPLA member, chaired the Governing Council. Among his initiatives as chair was to formally present a proposal for UNEP to convene an international meeting on environmental law.³ The proposal was accepted by Member States, and the Governing Council requested UNEP's Executive Director to convene "an ad hoc meeting of senior government officials expert in environmental law" in time for the results to be a section of the new System-Wide Medium-Term Environmental Programme (which was to be ready for consideration by the 10th session of the Governing Council in 1982).⁴
- 7 The purpose of the meeting, as specified by the Governing Council, was to identify "subject areas where increased global and regional co-ordination and co-operation may encourage and further enhance progress in the field of environmental law, in particular with regard to the interests of developing countries" and to set out a programme towards this end.⁵ It was to establish a programme of priorities in the field of environmental law for UNEP and others for the coming decade and begin a process of periodic review of environmental law, globally, regionally and nationally.
- 8 The next step was to find a host for the meeting and Magarinos de Mello again came forward, offering Montevideo. The International Council of Environmental Law (ICEL) offered to co-sponsor the event, an offer accepted by UNEP. The UNEP Governing Council set the meeting for November 1981.⁶ Mostafa Tolba and the UNEP Secretariat sent invitations to the 58 governments on the UNEP Governing Council and other interested or concerned governments. It also formed an Ad hoc Working Group of Experts in Environmental Law to serve as the Preparatory Committee, with UNEP's Iwona Rummel-Bolska (since becoming UNEP Chief of Environmental Law) as rapporteur. Among the many prominent experts were senior Commission member and legal scholar Alexandre Kiss (France) who headed the consultant team, IUCN Law Commission Chairman Burhenne, and ICEL member and senior governmental official, Lorne Clarke of Canada.⁷
- 9 The Preparatory Committee held two major meetings. The first was an informal consultation hosted by the Government of Canada during the first week of November 1980. The second was a formal preparatory meeting convened by the UNEP Executive Director in Geneva in September 1981, in two sessions: a Working Group of Experts on Environmental Law, and a Meeting of Experts of Some Developing Countries on Environmental Law. The second session had been a specific request of the Governing Council in order to ensure adequate attention to special concerns of developing countries. As input to the preparatory process, UNEP produced a document entitled "Environmental Law – An In-Depth Review" which identified current environmental law activities of UNEP, UN specialized agencies and some non-governmental organizations. That document led to a report to Montevideo I. ICEL further sponsored a project to reorganize the review by subject matter in order to more easily identify coverage of issues and gaps.⁸
- 10 The 15th IUCN General Assembly meeting in Christchurch, New Zealand, in October 1981, was briefed by CEPLA Chairman Burhenne on these preparations

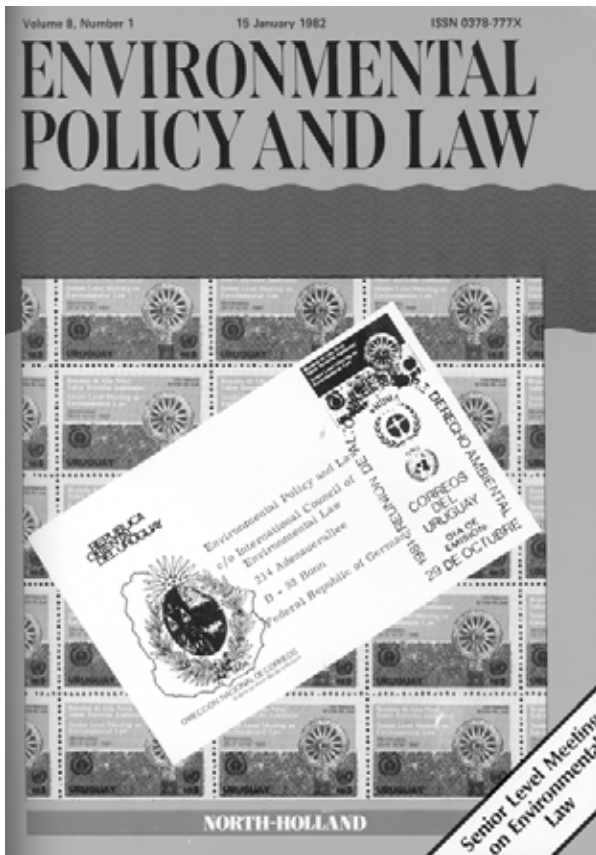
where he highlighted the “emphasis that the developing country meeting has put on the assistance needed in the field of environmental legislation, including monitoring and enforcement.”⁹ The General Assembly’s keynote speaker that year was UNEP’s Deputy Director, Peter Thacher, who also acknowledged CEPLA’s prominent role: “And with significant inputs from your Commission on Environmental Policy, Law and Administration, we will in two weeks convene a meeting in Montevideo of Senior Governmental Experts to accelerate the development of environmental law at the international level.”¹⁰

Montevideo I

The ad hoc meeting of Senior Government Officials met in Montevideo from 28 October to 6 November 1981. The meeting was opened by UNEP’s Thacher, who emphasized “the importance of this meeting as a contribution not only to the accelerated development of international law on environmental matters, but additionally as a means to bring about the coordinated, comprehensive approach on environmental law by the entire UN system and those other organizations who we welcome here as observers.”¹¹ UNEP’s Iwona Rummel-Bulska served as Vice

President for the meeting.¹² A special commemorative stamp was issued for the meeting containing the symbols of the co-sponsoring organizations – UNEP and ICEL.

Lorne Clarke, formally a governmental delegate from Canada, chaired the meeting. Clarke, who was a strong supporter of international law initiatives in conservation, played a key role in helping negotiate a consensus programme by the final day. Scott Hajost, in later years a Law Commission member and Executive Director of the IUCN USA Multilateral Office in Washington, D.C., was actively involved as part of the US delegation. Hajost recalls that the occasion was an important opportunity to get to



know more about the IUCN Environmental Law Programme and to work with Wolfgang Burhenne.¹³

- 13 Since this was a governmental meeting, Burhenne and many other IUCN Law Commission and ICEL members participated in the Montevideo meeting as government experts or as expert observers. The Law Commission submitted a formal statement jointly with ICEL and the European Council of Environmental Law (CEDE) (chaired by Alexandre Kiss) on the importance of the meeting and the programme it would adopt.¹⁴ The Law Commission also distributed to delegates several publications as background for their deliberations. Principal among these was the multi-authored study just completed analyzing the draft Law of the Sea Convention¹⁵ with a special reprint of IUCN conclusions and recommendations showing gaps and remaining conservation needs. Drawing on that study, the final conclusions of the meeting included several action items on the marine environment. In addition, delegates received an IUCN paper on the Environmental Law Requirements of Developing Countries, and two charts indicating the status of multilateral environmental treaties.¹⁶
- 14 The meeting produced a Montevideo Programme (now called Montevideo I) that identified several environmental law issues as priorities for future action. It set out action items for any actor in environmental law including specifically UNEP. The recommendations for UNEP identified three priorities for immediate attention: marine pollution from land-based sources, protection of the stratospheric ozone layer, and transport, handling and disposal of toxic and dangerous wastes. It singled out other areas for increased law and policy development, including coastal zone management, soil conservation, international trade in potentially harmful chemicals, protection of rivers and other inland waters against pollution, and environmental impact assessment. Importantly, the Programme reflected consensus about the growing need for environmental law at all levels. It also stressed the need for basic capacity-building within the profession through training, research, data strengthening, and outreach, seminars, prizes and grants.
- 15 UNEP's Executive Director, Mostafa Tolba, closed the meeting and congratulated the delegates on its successful conclusion. CEPLA Chairman Burhenne recalls Tolba expressing some concern as he came to the meeting hall on that closing day about whether there could be consensus among "so many lawyers", but was pleased to hear that all issues had been settled and an excellent Programme had been produced.¹⁷
- 16 Montevideo I was approved by UNEP's Governing Council at its 10th Session in 1982.¹⁸ For UNEP, this framework guided its emergence into environmental law. As noted in the journal *Environmental Policy and Law* in 1992: "The Montevideo Programme has formed the basis of UNEP's activities in the field of environmental law since its adoption by the Governing Council."¹⁹ It was the point of departure for many successes of UNEP in the field, in particular of its significant role in treaty-making.²⁰
- 17 For IUCN's part, CEPLA made plans that were announced during IUCN's 15th General Assembly in 1981 to reorganize its own activities along the lines of the SWMTEP in order to better relate to UNEP's environmental law programme.²¹ More generally, the Commission and ICEL continued to promote and support Montevideo I and its incorporation into the System-Wide Medium-Term Environment Programme.

Montevideo II

Montevideo I recommended that progress on the recommended actions be reviewed in 10 years time. Toward this end, UNEP's Governing Council approved a second Senior Government Environmental Law Experts meeting for 1992, to follow the UN Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil. From 30 October to 2 November 1991, this second Senior Experts meeting was convened, again by UNEP. The IUCN Law Commission and ICEL actively participated.



Review of the Montevideo Programme, Fall 1991

This second international Senior Experts meeting produced an updated programme of recommendations (called Montevideo II). Taking note of the just-concluded UNCED, delegates to this second meeting added climate change and biological diversity to the legislative agenda, not previously covered by Montevideo I. For the most part, however, implementation of existing programmes was the pervasive theme. The journal *Environmental Policy and Law* reported: "It was agreed that the priority for the next decade should be consolidation of the past gains, especially through the effective implementation of existing legal instruments" with development of new instruments only "where such action was urgently required in the future."²² In addition, Montevideo II stressed continued action in three areas of special concern: marine pollution from land-based sources, protection of the ozone layer, and transport, handling and disposal of hazardous waste, and identified additional subjects for future development.²³ The agenda of actions proposed continued to guide UNEP activities as well as environmental law priorities of other UN agencies and international organizations, including IUCN.

Montevideo III

- 20 In line with the mandate for ten-year reviews, UNEP initiated preparations at the close of the 1990s for a third senior experts' meeting. The purpose of this third meeting, as laid out in the decision of UNEP's Governing Council, was to prepare a new strategic environmental law programme for the first decade of the 21st century.²⁴ Several preparatory meetings were held, including two in Washington, D.C. and one in Geneva, attended by environmental law experts from government agencies, academic lawyers, convention secretariats, international agencies and non-governmental organizations.²⁵
- 21 During October 2000, the third Meeting of Senior Government Officials Expert in Environmental Law was convened by UNEP's Executive Director at UNEP offices in Nairobi. UNEP official Alexandre Timoshenko, also a CEPLA member, was responsible for its preparation. The delegates, a number of whom were also CEPLA and ICEL members, generated a new programme, called 'Montevideo III', which was adopted by acclamation by the UNEP Governing Council at its 21st Session in February 2001.²⁶
- 22 As with the prior two programmes, Montevideo III updated the framework for actions in environmental law for UN agencies, including UNEP, other international organizations such as IUCN, as well as regional and national actors. The meeting discussions put increased emphasis on implementing existing laws rather than just creating new ones and the need for public participation as a key in ensuring that laws are enforced.²⁷ The final Programme contained components, as reported in the journal *Environmental Policy and Law*, "designed to increase the effectiveness of environmental law", addressing such issues as "compliance and enforcement; capacity-building; prevention and mitigation of environmental damage; avoidance and settlement of international environmental disputes; strengthening and development of international environmental law; harmonization and coordination; public participation; information technology; and innovative approaches to environmental law."²⁸
- 23 The IUCN Environmental Law Programme and ICEL, who both participated in Montevideo III's elaboration, continue to use the document as input to decision-making about work programme priorities and outputs.

World Commission on Environment and Development

- 24 In 1983, roughly ten years after Stockholm, the United Nations General Assembly (UNGA) decided to create an independent World Commission on Environment and Development (WCED) to take stock of environmental progress to date and give direction for the future.²⁹ The decision was reflected in a UN General Assembly Resolution which set out the Commission's mandate to "propose long-term environmental strategies for achieving sustainable development to the year 2000 and beyond," taking into account efforts already under way in the UN system to deal with environmental issues and in furtherance of the UNEP Governing Council decision of May 1983 to prepare an "Environmental Perspective to the Year 2000 and Beyond."³⁰
- 25 Norway's Prime Minister, Gro Harlem Brundtland, was appointed Commission Chair and an additional 22 distinguished individuals, roughly half from devel-

oping countries, were appointed to make up the body of the Commission. Notable among the members, especially for IUCN, was the Honourable Judge Nagendra Singh, then President of the International Court of Justice and also Deputy Chairman of IUCN's Commission on Environmental Policy, Law and Administration.



Brundtland Commission, meeting in Brazil, October 1985

The WCED held its first meeting in Geneva in 1984. The IUCN Environmental Law Programme provided input at several stages of WCED's work. In 1985, as WCED's workplan was being formed, the Law Programme held consultations with WCED staff and provided technical information on international environmental law, including copies of the multilateral treaty chart showing status of State ratifications, for hearings to be held later by the Commission.³¹ Over the course of the WCED's operation, and at its request, the Law Centre assisted by CEPLA members reviewed drafts of chapters which were to make up the final report and provided extensive and sometimes critical comments which were usually taken into account.³² 26

Legal experts group

Besides that participation, the Law Programme also played a significant formal role in framing the subject of environmental law through an Experts Group on Environmental Law which the WCED set up to develop recommendations for its final report. This Legal Experts Group, which held its first meeting in the Hague in June 1985, was comprised of the following experts acting in their personal capacities: Robert Munro (from Canada, who served as the Group's Chair), Johan G. Lammers (Rapporteur, The Netherlands), Andronico O. Adede (Kenya), Françoise Burhenne-Guilmin (Belgium), Alexandre Kiss (France), Stephen McCaffrey (USA), Akio Morishima (Japan), Zaki Mustafa (Sudan), Henri Smets (Belgium), Robert Stein (USA), Alberto Szekely 27

(Mexico), Alexandre Timoshenko (USSR), and Amado Tolentino (Philippines).³³ All had ties to CEPLA and ICEL as members of either or both organizations.

28 During 1986, the IUCN Law Programme formed a smaller ad hoc Working Group to support the WCED Experts Group. Individuals in this ad hoc group, all previously connected to the drafting of the World Charter for Nature, were CEPLA Chairman Burhenne, Françoise Burhenne-Guilmin, Head of the Law Centre, Malcolm Forster, Counsel to the Commission, and Commission members, Alexandre Kiss, Heinhard Steiger, and Nicholas Robinson.

29 This ad hoc group prepared a paper for the WCED Experts Group on the state of international and national environmental law, setting out proposals for consideration as recommendations which might be adopted by the WCED in its final report.³⁴ The paper identified major issues and principles in environmental law and called upon the WCED “to promote and even to instigate a radical rethinking of basic assumptions central to the international law of the environment.”³⁵ Looking to the future, the paper articulated and proposed a number of emerging principles in international environmental law, including the understanding that “the object of international law is the preservation and functioning of the system within which States and other entities exist and conduct their affairs ... [i.e., a ‘systems approach’ which] regards States, not as all powerful, but as participators in the system.”³⁶

30 In emphasizing this systems approach, the paper made a number of specific recommendations.³⁷ It called for a reassessment of the concept of sovereignty and the interests of States in light of the need for the common good to protect the biosphere, suggesting the WCED refer this matter to the International Law Commission. The paper also proposed that the WCED recognize the growing roles of entities other than States in international law, including international organizations, non-governmental organizations, and individuals, because States no longer represent the sole medium through which international law is developed; that all treaty organizations establish routine procedures for NGO consultation; and that States consider criminal liability for actions of nationals that damage the global commons. Finally, introducing an initiative that the Environmental Law Programme was just beginning, the paper proposed that WCED recommend adoption by the United Nations of a covenant on the natural environment based on the principles of the World Charter for Nature.³⁸ (See Chapter 26 for more on the covenant).

Legal principles in final report

31 A number of these proposals were adopted entirely or partly by the WCED Experts Group and were included in WCED’s final report. In addition, WCED’s final report lays out the main legal principles laid out in the paper in an annex entitled: “Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law.”

32 WCED’s final report was formally released in London in 1987, and several CEPLA members were in attendance. The report made special mention of the Environmental Law Centre as a supporting institution in international environmental law: “[G]overnments should accelerate their efforts to strengthen and extend existing and more specific international conventions and co-operative arrangements

It is recommended that the UNEP secretariat, in close co-operation with the IUCN Environmental Law Centre, should help in these efforts.”³⁹

The concepts, ideas and recommendations contained in the WCED’s report were incorporated into the final “UN Environmental Perspective to the Year 2000 and Beyond” prepared by UNEP’s Intergovernmental Inter-sessional Preparatory Committee for submission to the United Nations. The General Assembly of the United Nations adopted the Environmental Perspective and final WCED report by resolution at its 42nd Session on 11 December 1987.⁴⁰ The Commission was dissolved in December 1987, after the final report was adopted. The popular version of the Commission’s report was published in 1987 under the title, *Our Common Future*.⁴¹ Subsequently, with funding from FUST and KSSF, Wolfgang Burhenne and Marlene Jahnke (ICEL member and editor of the journal *Environmental Policy and Law*) compiled and edited the “Demands for Improved Environmental Policies” which presented the recommended actions of WCED as annotations to the “UN Environmental Perspective to the Year 2000 and Beyond.”⁴² 33

United Nations Conference on Environment and Development

With a view to the twentieth anniversary of Stockholm and amidst growing environmental problems worldwide, the United Nations General Assembly in December 1989 called for the convening of another global environmental conference.⁴³ As to its purpose, the decision read: “Deeply concerned by the continuing deterioration of the state of the environment and the serious degradation of the global life-support systems.... Recognizing also that the global character of environmental problems...necessitates action at all levels, including the global, regional and national levels....”, the General Assembly affirms that the purpose of the Conference should be to “elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries....”⁴⁴ 34

Preparation

The conference was set for June 1992, and Brazil offered to host the event in Rio de Janeiro. From 1990 on, preparations were intensive. The conference was titled the United Nations Conference on Environment and Development (UNCED), or ‘Earth Summit’ as UNCED was commonly known. CEPLA and ICEL membership actively participated in preparatory meetings, helping shape the environmental law components.⁴⁵ As reported by Law Commission Chairman Parvez Hassan to the 19th IUCN General Assembly in 1994, 35

“The Commission participated actively in the preparatory process throughout; it addressed Working Group III on Legal and Institutional Matters in (August 1991) and co-sponsored two round table discussions for delegates on ‘Energy and Sustainability of Development’ and on ‘Environmental Conservation and the Law of Armed Conflict’ (April 1992).

“In addition, the Commission was well represented during the Conference itself. Members of the [Commission on Environmental Law] Steering Com-

mittee, in various capacities, were involved in the governmental meetings and maintained contact with numerous delegations. The Commission was also represented in workshop discussions at the Global Forum, the meeting of non-governmental organizations held parallel to the governmental meetings.”⁴⁶

- 36 UNCED was convened June 3–14, 1992. By the close of the Conference, delegates had signed the Framework Convention on Climate Change and the Convention on Biological Diversity; endorsed the Rio Declaration and the Forest Principles, and adopted a comprehensive programme, called ‘Agenda 21’, laying out action strategies for the coming decades. In some 40 chapters, Agenda 21 called for increased action and partnerships at all levels and by all sectors of society, including non-governmental organizations. Sustainable development was the new guiding principle endorsed by the international community for dealing not only with environmental degradation but also with new environmental protection initiatives.

Participation

- 37 As noted in CEL Chairman Hassan’s report to the 1994 General Assembly, quoted above, the Environmental Law Programme had a strong presence at the Summit. Chairman Hassan, Deputy Chair Robinson, UN Liaison Burhenne, and ELC Head Burhenne-Guilmin joined Director General Holdgate and Angela Cropper to represent IUCN. Many Law Commission members came on official delegations from their countries as well, including Oleg Kolbasov from Moscow. An exhibit featured the Law Programme’s computerized legal research (the Environmental Law Information System), and IUCN ELP representatives spoke at many events.



Demonstration of ELIS in Rio at UNCED 1992 (Maurice Strong, Secretary of the Conference, left)

The Rio Declaration on Environment and Development, produced by UNCED, reaffirmed and built upon the principles of the 1972 Stockholm Declaration, adding a further 27 principles with “the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people....”⁴⁷ In some instances where the Stockholm declaration had not been specific, the Rio Declaration mandates action, as in Principle 11 calling upon States to “enact effective environmental legislation.” The final report from UNCED, including the Rio Declaration, was adopted by the UN General Assembly in August 1992.⁴⁸ With that action, a new set of global principles in international environmental law were added to the growing body of ‘soft law’.

Agenda 21 became the principal framework for actions needed to address environmental concerns at all levels. To facilitate its use, the Environmental Law Programme published documentation from the preparatory process and the Conference itself. Robinson, with Hassan and Burhenne-Guilmin, edited and published the six-volume series *Agenda 21 and the UNCED Proceedings*, three volumes of materials from the preparatory sessions which were available at the Conference, and then three additional volumes of the Conference results which came out in late 1992 and 1993.⁴⁹ Robinson also produced a one-volume, edited version of Agenda 21, published in 1993 in the Environmental Policy and Law Paper Series, which became the first edition of Agenda 21 to be published after the Earth Summit.⁵⁰ In 1997, the Commission, on the initiative of Wolfgang Burhenne as a member of the CEL Steering Committee, and with the assistance of the Environmental Law Centre, produced a keyword index in English and German for Agenda 21.⁵¹



Boutros Boutros-Ghali and Tommy Koh at UNCED, 1992: What was the joke?

A 10-year review of Agenda 21 and progress made with its implementation was the focus of a third global United Nations environmental conference in 2002 –

the World Summit on Sustainable Development (WSSD) – held in Johannesburg, South Africa. Member States to that Conference produced the Johannesburg Declaration on Sustainable Development. The Declaration reaffirmed their commitment to implementation of Agenda 21 and identified several thematic issues for priority action – water and sanitation, energy, health, agriculture, and biodiversity protection and ecosystem-based management (given the acronym WAHAB).⁵² Several of these priorities have become the focus of ELP thematic initiatives in recent years (see Chapters 30 and 31).

- 41 The United Nations Commission on Sustainable Development (CSD) was created as a functional unit of the UN Economic and Social Council in December 1992 to follow up on implementation of UNCED action items and to monitor implementation of the international agreements signed during the Conference.⁵³ The CSD has 53 members and continues to meet annually to address work programme and implementation issues. The Commission on Environmental Law has monitored each session of the CSD since its creation, normally through the representation of Wolfgang Burhenne.

Notes

- 1 Author interview with Wolfgang Burhenne, June 23, 2004 (Bonn, Germany).
- 2 Author interview with Wolfgang Burhenne, 18 October 2000 (Bonn, Germany) (draft transcript, pp. 50–52).
- 3 M. de Mello, a friend and colleague of Law Commission Chairman Burhenne, was the winner in 1981 of the Elizabeth Haub Prize for Environmental Law, see Chapter 11.
- 4 UNEP Governing Council 8th Session, “Decision on Environmental Law”, UNEP/GC.6, Decision 8/15 (29 April 1980), para. 1.
- 5 Id.
- 6 UNEP Governing Council 9th Session, Decision on Environmental Law. UNEP/GC Decision 9/19A (26 May 1981).
- 7 Author interview with Wolfgang Burhenne, October 2000 (Bonn, Germany).
- 8 See Lausche, B., *UNEP Environmental In-Depth Review 1981 – A Presentation by Subject Areas*. (FUST ‘A’ Series, A 81) (Erich Schmidt Verlag, Berlin, 1982).
- 9 “Report of the Meeting of the IUCN Commission on Environmental Policy, Law and Administration at Christchurch, New Zealand, 12 and 16 October 1981”, p. 3.
- 10 See EPL staff report, “IUCN’s 15th General Assembly”, in 7 *Environmental Policy and Law* (1981), p. 168.
- 11 “Senior Level Meeting on Environmental Law” in 8 *Environmental Policy and Law* (1982), p. 2.
- 12 Communication from Sylvia Bankobeza on behalf of Iwona Rummel-Bulska on May 2006 draft, transmitted by email dated June 26, 2006.
- 13 Communication with Scott Hajost, Feb. 9, 2006.
- 14 “Report of the Meeting of the IUCN Commission on Environmental Policy, Law and Administration at Christchurch, New Zealand, 12 and 16 October 1981”, p. 4.
- 15 See Douglas M. Johnston (ed.) *The Environmental Law of the Sea* (IUCN Environmental Policy and Law Paper No. 18) (IUCN, 1981); (also published in FUST ‘A’ Series, A 79).
- 16 “Minutes of 15th Technical Meeting of IUCN Christchurch, New Zealand – October 1981, Session D, 16 October 1981, 14:00–17:00 h, Programme Area 2: Law, Institutions and Administration,” pp. 2–3.
- 17 Author interview with Wolfgang Burhenne, October 18, 2000 (Bonn, Germany) (draft transcript, p. 52).
- 18 UNEP/GC.10, Decision on Environmental Law (Nairobi, 20 May – 2 June 1982).
- 19 “Montevideo Follow-up” in 22 *Environmental Policy and Law* (No. 2, 1992), p. 74.

- 20 Communication from Françoise Burhenne-Guilmin on March 2006 draft, transmitted by email dated March 24, 2006.
- 21 See “Meeting of the IUCN Commission on Environmental Policy, Law and Administration, Christchurch, New Zealand – 12 and 16 of October 1981”, p. 2.
- 22 See “Montevideo Follow-up” in 22 *Environmental Policy and Law* (No. 2, 1992), p. 75.
- 23 See Jahnke, M., “Montevideo Follow-up” in 22 *Environmental Policy and Law* (1992), pp. 74–76, and “Montevideo Programme Second Meeting – Conclusions and Recommendations” in 22 *Environmental Policy and Law* (1992), p. 122–126.
- 24 UNEP Governing Council Decision 20/3 (3 Feb. 1999).
- 25 See, for example, “Montevideo III – International Expert Group Meeting” in *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 15, reporting on a meeting held in Washington, D.C., January 15–18, 2000, with thirty-eight participants from a wide range of professional backgrounds in environmental law. A background paper prepared by UNEP provided a framework for discussions which included review of achievements of Montevideo I and II, new environmental challenges and needs in the field.
- 26 UNEP Governing Council decision 21/23 (9 February 2001). Text of Montevideo III is Annex I to “Report of the Meeting of Senior Government Officials Expert in Environmental Law to Prepare a Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century”, UNEP/Env.Law/4/4 (31 October 2000). Text also is reprinted in “The Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century” in *Environmental Policy and Law* (Vol. 30, No. 6, 2000), p. 309.
- 27 See discussion of the meeting by Jahnke, M., “Montevideo III: Draft Programme Agreed” in 30 *Environmental Policy and Law* (No. 6, 2000), pp. 268–269.
- 28 *Id.* at 269.
- 29 UN Doc. A/RES/38/161 (19 December 1983).
- 30 *Id.*
- 31 Commission on Environmental Policy, Law and Administration, “Report to the 18th Meeting of the IUCN Council 15–16 May, 1985,” p. 4 (also labeled Attachment to Annex 4 to Council Paper UC.18/85/1).
- 32 “Submission from the Environmental Law Centre for Director-General’s Report 1987”, p. 2.
- 33 See, The World Commission on Environment and Development, *Our Common Future* (Oxford University Press, Oxford, 1987), p. 361.
- 34 Commission on Environmental Policy, Law and Administration, “Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica,” p. 6 (also labeled Annex 5 to General Assembly Paper GA/17/88/1); see also “Proposals for International Environmental Law Developments toward the Year 2000” in 16 *Environmental Policy and Law* (1986), p. 90.
- 35 “Proposals for International Environmental Law Developments toward the Year 2000,” in 16 *Environmental Policy and Law* (Nos. 3/4, 1986), p. 91.
- 36 *Id.* at 93.
- 37 *Id.* at 92–6.
- 38 *Id.* at 94.
- 39 World Commission on Environment and Development, *Our Common Future*, (Oxford U. Press, Oxford, 1987), p. 333.
- 40 See decision on the Environmental Perspective, UNGA Dec. No. A/42/186 (11 December 1987) and the Report of WCED (UNGA Dec. No. A/RES/187 of 11 December 1987). Communication from Marlene Jahnke on May 2006 draft, transmitted by emails dated June 5 and July 18, 2006.
- 41 World Commission on Environment and Development, *Our Common Future* (Oxford University Press, Oxford, 1987).
- 42 Jahnke, M., and W. E. Burhenne, *Demands for Improved Environmental Policies*, (FUST ‘A’ Series, A 112) (1990). Communication from Marlene Jahnke on May 2006 draft, transmitted by emails dated June 5 and July 18, 2006.
- 43 See UNGA Resolution 44/228 (22 December 1989).

- 44 UNGA Resolution 44/228, at Preamble and Part I, para. 3.
- 45 "Report of the Chairman of the Commission on Environmental Policy, Law and Administration," in "IUCN Director-General's Report to the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia," p. 83.
- 46 See Hassan, P., "Commission on Environmental Law (CEL) Triennial Report: 1991–1993," p. 79 (also labeled Annex 3 to 19th General Assembly Paper GA/19/94/4).
- 47 Preamble to the Rio Declaration on Environment and Development, Annex I of Report of the United Nations Conference on Environment and Development, UN Doc. A/Conf.151/26 (Vol. 1) (12 August 1992).
- 48 UN Doc. A/CONF.151/26 (Vol. I, II, III, and IV) (12 August 1992).
- 49 Robinson, N. (ed.), with P. Hassan and F. Burhenne-Guilmin, *Agenda 21 & the UNCED Proceedings* (Vols. I–III, 1992) (Vols. IV–VI, 1993) (produced under the auspices of the IUCN Commission on Environmental Law) (Oceana Publications, New York).
- 50 See Robinson, N.A. (ed.) *Agenda 21: Earth's Action Plan* (Annotated) (IUCN Environmental Policy and Law Series No. 27) (Oceana Publications: New York, 1993).
- 51 Lontzen, H.-P. (compiler), "Key Word Index for Agenda 21" (published in German in 1996 and in English in 1997) (Deutsche Stiftung für Umweltpolitik).
- 52 Information on the WSSD, its documents and related events, is available on its web site at: www.un.org/events/wssd.
- 53 For general information about the CSD see its web site at: www.un.org/esa/sustdev/csd.

Chapter 20: Supporting UN Partners

With implementation a growing priority, IUCN's 16th General Assembly in Madrid in 1984 called for increased collaboration with and input to United Nations organizations: "IUCN, which already enjoys consultative status within the United Nations system, should take increasingly into account the activities of other organizations where this would lead to more effective achievement of the objectives of IUCN."¹ The General Assembly urged IUCN's Council to "develop procedures to provide input into international activities in cooperation with relevant IUCN components".² Specifically, it requested the Director General to "follow closely the activities of all international organizations concerned with the environment, particularly those within the UN system, and to that effect collect and analyse relevant documents, and bring them to the attention of the relevant components of IUCN [and] arrange for the preparation of input (for example in the form of draft IUCN position documents, statements to governments and statements at meetings)....".³

In contrast to the early years of the Union, by the 1980s there were many international players active in the environmental field. In 1981, Peter Thacher, then UNEP's Deputy Executive Director, characterized it this way: "Since its establishment 33 years ago, when it was the only truly global environmental organization, IUCN has played a distinguished and central role in shaping environmental awareness and the development of environmental institutions. In recent years – in part due to IUCN's own efforts – a number of organizations have been created with international environmental responsibilities of one type or another, not least of which is UNEP itself. Many of these in both non-governmental and governmental areas are already closely associated with IUCN."⁴

Early partners – UNESCO, FAO, WHO

As noted in various other chapters throughout this History, the Environmental Law Programme through the years provided substantial and ongoing legal technical support and services to the international organizations of the United Nations system to help advance their specialized environmental mandates. ELP was specifically solicited in many cases for particular projects. Commonly, the Law Commission Chair identified a specific Commission member when specialized expertise was needed for a particular assignment and ELC legal staff regularly provided technical assistance in their areas of expertise as well as project coordination.

UNESCO, instrumental in creation of IUCN, also proved a long-standing supporter and ally in the field of environmental law and policy. Among the many collaborations in this field was assistance to implement two prominent UNESCO programmes: the World Heritage Convention (WHC) (see Chapter 7) and the Man and the Biosphere (MAB) programme. Over the years, ELP has provided technical support on legal questions related to the implementation of the World Heritage Convention, including legal opinions on operational guidelines under WHC. For the UNESCO MAB programme, the Environmental Law Programme was especially active helping develop legal principles related to establishment and management of biosphere reserves.⁵ For instance, in the mid-1990s, the Law Centre was invited by

UNESCO to participate in the preparation of proposals regarding the status of Biosphere Reserves, a subject considered at the Biosphere Reserve Conference in Seville in March 1995 and subsequently by the General Conference of UNESCO.⁶

5 Two “sister” UN specialized agencies in the environment, the World Health Organization (WHO) and the Food and Agriculture Organization (FAO), also have been partners with IUCN ELP on specific projects regarding law and policy in their respective fields, and senior lawyers in these organizations frequently have been Law Commission members. For instance, Sev Fluss, Head of Legislation in WHO and a Commission member, assisted the ELC for many years with information on health legislation related to the environment. Another joint effort with WHO was the production of guidelines for setting environmental standards.⁷ In recent years, collaboration has included ELP participation in WHO’s international advisory panel for revision of its Guidelines on the Conservation and Utilization of Medicinal Plants, yet to be published.⁸

6 FAO has been an on-going special partner through the years especially in plant protection and wildlife conservation law and policy, and several of its senior lawyers and Heads of the Development Law Service (formerly Legislation Branch) also have been members of the IUCN Law Commission over the years (e.g., Dante Caponera, Gerald Moore, Larry Christie, and Ali Mekouar).⁹ Two recent major collaborations are ECOLEX (see Chapter 28) and the preparation and publication of an *Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture* in the EPLP series.¹⁰

7 The Law Commission and the ELC staff also have enjoyed close and ongoing collaboration with regional UN organizations such as the Economic Commission for Europe (e.g., on the development and then implementation of the Aarhus Convention, see Chapter 30), Council of Europe, Economic Commission for Africa, Economic and Social Commission for Asia and the Pacific, and the African Union. Law Commission members from the respective regions normally have taken lead roles in monitoring issues, participating in meetings and providing advice on specific projects.

8 With the creation of the UN Commission on Sustainable Development (CSD) after the 1992 UN Conference on the Environment and Development, the Law Commission through Wolfgang Burhenne, among others, has actively participated in the work of the CSD, attending formal sessions and preparatory meetings, providing technical analytical papers, and advocating specific recommendations and actions in the conservation items being addressed. The Environmental Law Programme provides ongoing support as well to the work of the IUCN Permanent Mission in New York in furtherance of the Union’s new Permanent Observer status to the UN General Assembly (see Part 7, Introduction, Box 1).

9 It is not feasible or appropriate here to try to include all the contributions, collaborations, and project services beginning in the 1970s provided by the Environmental Law Programme to the many regional and international bodies of the United Nations system – some important examples would surely be missed and others repeated elsewhere in this History. For illustrative purposes, however, it is informative to use the remainder of this Chapter to highlight ELP’s conservation

advocacy work with two specific agencies of the United Nations during the 1980s – the United Nations Environment Programme (UNEP) and the International Maritime Organization (IMO). ELP’s interactions with these two agencies was directly aimed to further and facilitate development of new aspects of international law dealing with the environment.

UNEP and environmental law

The United Nations Environment Programme (UNEP), as noted in Chapter 12, was created in 1972 by the UN General Assembly, following the recommendations from the Stockholm Conference on the Human Environment. UNEP became interested in environmental law early on, especially in relation to oceans, a topic broadly included among programme priorities adopted by UNEP’s first Governing Council meeting in 1973.¹¹ By the mid-1970s, its Governing Council was endorsing the idea of promoting international agreements and conventions as well as the development of relevant principles of the Stockholm Declaration.¹² For instance, in 1978 it approved two reports prepared by a UNEP Working Group (of which CEL member Alexandre Kiss was a consultant) related to environmental cooperation on natural resources entitled “Principles of Conduct in the Field of the Environment for the Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States” and “Conclusions of the Study of Legal Aspects concerning the Environment Related to Offshore Mining and Drilling within the Limits of National Jurisdiction.”¹³

UNEP’s interest and activity in environmental law and policy was further catalyzed by its successful experience with the Montevideo I Programme in 1981, for which it had commissioned an in-depth review of environmental law activities of international organizations within and outside the UN system (see Chapter 19). UNEP began to focus more heavily on areas, as identified in the Montevideo Programme, not already covered by mandates of other specialized UN agencies.¹⁴ UNEP Governing Council meetings began to include more agenda items on environmental law and the topic remained a regular item on each subsequent Governing Council agenda. Many non-binding and binding instruments have originated under UNEP auspices, a few of which are noted below, which influenced the evolution of international environmental law.

From the early years, special relations developed between IUCN and UNEP. The period when Mostafa Tolba was Executive Director (1975–1992) has been viewed by some in ELP’s leadership as a particular high point for building the collaborative base that exists today in several areas.¹⁵ UNEP cooperated and partnered with the IUCN Environmental Law Programme on a variety of important environmental law initiatives over the years, including treaty work and information sharing, as elaborated in this and other chapters. Wolfgang Burhenne, as IUCN Law Commission Chair and in other capacities, attended all sessions of UNEP’s Governing Council, promoting UNEP’s role in environmental law. He formally and informally advised many delegates of the Governing Council, as well as the Secretariat and in this way, as observed by Nicholas Robinson (CEL Chair from 1996–2004, see Chapter 27), helped shape the IUCN-UNEP cooperative relationship.

Donald Kaniaru (senior UNEP official and long-standing Law Commission member) recalls: “As regards the UNEP process, Wolfgang Burhenne has been an institution – only a moving one...I was with him for at least 29 [Governing Council sessions]. In one session,...he vigorously defended the environmental law budget that some governments wished reduced. He had knowledge, expertise and respect by the Council.”¹⁶ Further, Kaniaru points out that, in addition to the many institu-



Nairobi: UNEP Governing Council in session

tional and funding links (through the Ecosystem Conservation Group, the World Conservation Strategy, and others), there has been an “easy flow of [senior] staff across the two organizations.”¹⁷

Pollution control

- 13
- UNEP’s early work in environmental law focused on transboundary pollution and guidance with environmental impact assessment.¹⁸ Normally, UNEP formed ad hoc Working Groups of experts to advise on and develop specific issues. The IUCN Environmental Law Programme was a regular member of such groups, represented by Commission members with the specialized expertise required and supported by Environmental Law Centre technical staff.
- 14
- Major initiatives for UNEP and its ad hoc Working Groups dealt with land-based sources of marine pollution, ozone, transboundary movement of hazardous wastes, and exchange of information on potentially harmful chemicals in interna-

tional trade. [See Box 1] In addition, IUCN's Commission on Environmental Policy, Law and Administration (CEPLA) with its own Working Group on environmental impact assessment (EIA) participated in UNEP's ad hoc Working Group of EIA experts during the late 1980s when EIA guidelines were developed.¹⁹ CEPLA also gave advice and input, at the request of UNEP's Environmental Law Unit, on drafts of conventions being developed by UNEP, e.g., in transfrontier air pollution, transport of hazardous substances, ozone, as well as on guidelines, such as those developed for information exchange on major chemical accidents.²⁰

Regional seas

Established in 1974, UNEP's regional seas programme played an early and important role in UNEP's approach to international environmental law.²¹ UNEP's involvement originated from interest at Stockholm in marine pollution and marine resources conservation.²² The regional seas approach was reinforced by Stockholm and by the UN Conference on the Law of the Sea.²³ UNEP developed and negotiated several regional seas instruments, the first being the Mediterranean Action Plan in 1975 followed by the Barcelona Convention in 1976. The approach was to start with soft law through an action plan, and progress to an agreement. Further, the agreements generally contained broad principles, most generating more specific protocols in such areas as land-based sources of marine pollution and specially protected areas and wildlife. Lee Kimball, marine policy expert and IUCN Law Commission member, observed that the approach (soft law leading to hard law) "had a major impact in shaping UNEP's environmental law programme with soft law (guidelines, action plans) leading to hard law conventions."²⁴ 15

The Environmental Law Programme promoted and supported UNEP's regional seas work. For the original Barcelona Convention (which entered into force in 1978) the Environmental Law Centre, through the assistance of Commission member Cyrille de Klemm, provided extensive support to UNEP and participated in the negotiations for its protected areas protocol. At the request of UNEP's Mediterranean Regional Seas Centre in Tunis, the Law Centre collected and analyzed legislative and regulatory materials on protected areas in the Mediterranean region. This was used as input to development of the Protocol on Specially Protected Areas (adopted in 1982 and in force in 1986).²⁵ A specialized database was created in ELIS on national legal instruments in the region of relevance to conservation of coastal and marine areas, along with an analytical report prepared by Cyrille de Klemm on the relevant law of each country. The project was completed in 1991 with English and French versions of both the database and analytical report.²⁶ 16

In the late 1980s, the Environmental Law Centre directly assisted IUCN's Coastal and Marine Programme with preparation of comments on the draft protocol covering specially protected areas and wild fauna and flora in the South Asian Seas that was being considered under UNEP auspices as part of a package of protocols to accompany the draft Regional Seas Convention for that region.²⁷ IUCN CEPLA members Malcolm Forster, Nicholas Robinson and Cyrille de Klemm also prepared comments as part of IUCN's input to negotiations on the Protocol on Specially Protected Areas and Wildlife in the Wider Caribbean Region (SPAW), and com- 17

ments on impact assessment and protected areas for the South East Pacific Regional Sea Agreement.²⁸ At the request of the Arab League Educational, Scientific and Cultural Organization (ALESCO), Commission members reviewed drafts of a Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, and of a draft Protocol Concerning Regional Cooperation in Combating Pollution by Oil and Other Harmful Substances in Cases of Emergency.²⁹

18 In 1995, Parties to the Mediterranean Regional Seas Convention concluded a revised text of the Convention along with several protocols. The revision updates the Barcelona Convention with new developments in international law, including concepts introduced by the Convention on Biological Diversity, by adopting some new instruments and amending others. One of the new texts is a Protocol concerning Specially Protected Areas and Biological Diversity, with annexes on criteria for selecting marine and coastal protected areas, endangered and threatened species, and species whose exploitation is regulated.³⁰ The Environmental Law Programme provided technical input and advice for this new protocol through the Law Centre which participated in discussions on the revision and in associated expert meetings initiated by the Tunis Centre.³¹

19 As was common for initiatives where other organizations took the lead, ELP's support with environmental law input also came from IUCN-associated individuals working on behalf of government or NGO delegations or in their personal capaci-



F. Burhenne and E. Dowdeswell, Executive Director of UNEP, signing cooperation agreement in the field of environmental law, Nairobi 17 May 1995

ties. For instance, Commission members Scott Hajost, Lee Kimball, Cliff Curtis, and Michael Wright all participated actively in support of IUCN views through their professional affiliations. Participation could involve providing commentary or negotiation input. Commission member Wright, for example, was involved with negotiations on the draft Caribbean agreement, and commentary on the draft East African Region Agreement and associated protocol on protected areas and wildlife.³² Law Commission member Tullio Scovazzi, Professor of International Law from Italy, has been heavily involved in the Mediterranean programme.

Box 1: Highlights of Cooperation with UNEP

20

Land-based marine pollution

International concerns about marine pollution from land-based sources grew out of general recommendations from Stockholm and subsequently the Law of the Sea deliberations and the 1981 Montevideo meeting where the subject was identified as the first of three major areas for UNEP action. In response, UNEP set up an ad hoc group of experts in 1984 that included Law Commission members. The purpose of the group, as laid out in the Montevideo Programme, was to develop new guidelines for legislative action to deal with land-based sources of marine pollution at national, regional and international levels. The group held its first session in Geneva in November 1984 and then a second in Montreal in April 1985.³³ For this second session the Law Programme prepared a paper setting out a number of proposed amendments to strengthen and clarify the pre-existing text; these were accepted and carried forward to the third session of the group which produced a final set of guidelines.³⁴ Commission members Shadia Schneider-Sawiris and Cliff Curtis played leading roles on behalf of IUCN at these meetings.

Hazardous waste

Another new area of international environmental concern was the handling, transport and disposal of toxic and dangerous wastes. Alarm was triggered in the 1980s as information improved about the increasing trade of such substances across borders and it was appreciated that mismanagement in one country could have harmful transboundary impacts. The topic also was a high priority of participants at Montevideo I, which assigned UNEP a lead role.³⁵ By mid-decade UNEP had formed an ad hoc Working Group of experts to address environmentally-sound management of hazardous wastes. Law Commission members participated in two meetings, one in Geneva and the other in Cairo. The latter meeting adopted guidelines based on a Law Commission draft which was submitted subsequently to UNEP's Governing Council.³⁶

These guidelines were input into the subsequent work of UNEP to prepare a convention on transboundary movement of hazardous wastes. Through the remainder of the decade Law Commission members participated in development of subsequent drafts toward a convention. Commission Chairman Burhenne participated in the diplomatic conference in Basel, Switzerland, in March 1989, which involved difficult but successful final negotiations for conclusion of a *Convention on the Transboundary Movement of Hazardous Wastes* (Basel Convention).³⁷

Exchange of Information on Potentially Harmful Chemicals in International Trade

A third new area of environmental concern in the 1980s, also led by UNEP, dealt with the need for guidelines on exchange of information about potentially hazardous chemicals, especially pesticides, that enter international trade. Again, UNEP set up an ad hoc Working Group of experts in which the Law Programme participated where meetings were convened in Rome and London. Burhenne helped draft guidelines on prior informed consent which, at a London meeting, were adopted after considerable debate on content and submitted subsequently to UNEP's Governing Council.³⁸

IMO and environmental law

- 21 The International Maritime Organization (IMO), established soon after the United Nations was created to address international shipping issues, began to deal with marine pollution as that problem intensified on the international scene in the 1960s and 1970s. In 1967, the oil tanker *Torrey Canyon* ran aground while entering the English Channel and spilled all her cargo of 120,000 tons of crude oil, resulting in the biggest oil spill recorded up to that time; the 1970s brought additional tanker accidents. These incidents raised alarm about the growing environmental threats to the marine environment, particularly from oil spills, as the size of oil tankers and amount of oil being transported by sea continued to grow. Shipments of hazardous substances, accidents at sea, and salvage operations also were raising environmental concerns. Compensation and liability issues related to environmental actions and environmental damage also needed attention. The United Nations International Maritime Organization (IMO), established by convention in 1948 and made operational in 1959, was created to provide machinery for cooperation among governments and regulation of international shipping. Originally called the Inter-Governmental Maritime Consultative Organization, or IMCO, a name which was changed to IMO in 1982, the agency became responsible for negotiation and administration of a number of important conventions related to marine safety, navigation, and, in later years, marine pollution.
- 22 In the 1970s and 1980s, IMO undertook several initiatives to address growing environmental threats from international shipping. Over the course of years, IUCN's CEPLA developed good working relations with IMO's Council, the organization's executive body, and its technical committees on matters of environmental law. CEPLA's technical contributions to the 1970s Law of the Sea (LOS) negotiations (see Chapter 21) helped build credibility for this participation. In addition, during the early 1980s, CEPLA Chairman Burhenne and Senior Counsel Malcolm Forster (who specialized in maritime law) took the lead to gain observer status for IUCN to IMO which gave IUCN and CEPLA access to IMO Council and Committee meetings.
- 23 Forster provided considerable technical input to various IMO initiatives, drawing on other Commission members as needed. In addition, some Commission members took part in IMO meetings as representatives of environmental organizations (for instance, Cliff Curtis) or as members of government delegations. When Forster left in the mid-1980s, Louise de Lafayette represented IUCN in various IMO committees and wrote a yearly report of IMO developments for the journal *Environmental Policy and Law* until her move to the UN in New York in the 2000s.³⁹
- 24 IMO's Marine Environment Protection Committee (established in 1973 and raised to full constitutional status in 1985) and its Legal Committee (established in 1967 initially to deal with legal matters arising from the *Torrey Canyon* disaster) were the main organs with which IUCN's Environmental Law Programme interacted, normally through the Law Commission with Law Centre technical support.⁴⁰ In addition, in the 1980s, CEPLA participated in IMO's Maritime Safety Committee (the highest technical body of IMO) when specific issues of concern arose, for example, when the Committee was addressing international rules on removal of

abandoned offshore installations, including oil production platforms, a subject with extensive implications for pollution prevention and fisheries management.⁴¹

By 1984, as reported to the 16th IUCN General Assembly, CEPLA member Forster was attending “regularly those meetings of the Council and committees of the International Maritime Organization (IMO) as well as those of its specially constituted groups which have been concerned with environmental law.”⁴² Similar to the approach used by UNEP, IMO commonly formed specialized ad hoc groups of experts to analyze issues and report to the organization with recommendations for further action. 25

CEPLA made significant contributions to draft conventions and guidelines produced by such groups. In particular, contributions were made with preparation of annexes to the International London Dumping Convention, the Prevention of Pollution from Ships (MARPOL), the Convention on Liability and Compensation for Damage Caused by the Carriage of Hazardous and Noxious Substances at Sea (HNS), and a Convention on Salvage and Assistance at Sea. [See Box 2] 26

Similarly, an IMO-sponsored diplomatic conference on oil pollution liability concluded in 1984 with adoption of two new Protocols that incorporated many points made by IUCN in its submissions: the Protocol to revise the International Convention on Civil Liability for Oil Pollution Damage of 1969, and a Protocol to the International Convention on the establishment of an International Fund for Compensation for Oil Pollution Damage of 1977.⁴³ CEPLA also assisted IMO with proposals to develop a draft Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and represented IUCN at an Extraordinary Session of IMO’s Legal Committee to examine preparatory work on this matter. 27

Commission Senior Counsel Malcolm Forster took the lead in representing IUCN and the Law Commission at IMO meetings in the 1980s and, when he returned to the UK in 1987 and to Southampton University, his monitoring and technical input continued as a CEPLA Vice-Chair into the 1990s. As Vice-Chair, he also oversaw the newly created Marine Working Group from 1989 into the early 1990s. Commission member and marine law specialist, Patricia Birnie, also represented IUCN during this period. Later in the 1990s, Commission member and marine law specialist, Nicholas Gaskell, provided technical advisory assistance particularly with the Hazardous and Noxious Substances Convention, along with Commission member Louise de La Fayette, both of whom also were law faculty at the University of Southampton.⁴⁴ 28

Members of the Commission continue to work intensively on these issues through the IUCN marine thematic programme at Headquarters. 29

Box 2: Contributions to the work of IMO 30

London Dumping Convention

The London Dumping Convention of 1972, which became effective in 1975, provided a global framework for the control of deliberate ocean dumping of any wastes into the sea. It was considered a primary treaty to protect the marine environment. Throughout the 1980s, the Com-

mission on Environmental Policy, Law and Administration (CEPLA) represented IUCN at Consultative Meetings of the Parties to this Convention. These meetings were dominated by the issue of dumping high-level radioactive waste in the seabed and how substances had been allocated by risk in the annexes to the Convention. CEPLA members monitored and participated in meetings convened by IMO and at the initiative of CEPLA a statement summarizing IUCN's views was prepared and submitted to the 8th Meeting of the Parties to the Convention which was considering the matter.⁴⁵

Pollution from Ships

In 1973, IMO convened an international conference to prepare an international agreement to prevent oil pollution from ships. The conference concluded the second major treaty for the marine environment: the International Convention for the Prevention of Pollution from Ships, supplemented with a Protocol in 1978 (MARPOL 73/78). CEPLA marine law specialists began monitoring its implementation during the 1980s, representing IUCN at meetings of the IMO's Marine Environment Protection Committee (MEPC) which became principally concerned about the development of annexes to MARPOL and amendments to enable some of the annexes to take effect. These annexes dealt with oil pollution; noxious liquid substances, mainly chemicals; noxious liquid substances carried in packages; and sewage and garbage from ships. Also in the context of MARPOL, the MEPC examined questions of specially sensitive areas of the sea, referred to by the Convention, and CEPLA prepared a paper on legal treatment of the concept for consideration of the Committee.⁴⁶

Carriage of Hazardous and Noxious Substances by Sea

In the mid-1980s, IUCN also provided input to IMO, following consultations within CEPLA, with respect to a forthcoming diplomatic conference on "Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea". The draft convention was not accepted as proposed, but instead was referred back to the IMO Legal Committee where CEPLA continued to participate. The reasons for failure of the conference was the subject of a report to the Legal Committee by the Secretary General of IMO. In 1988, a Working Group of Member States was established to prepare a series of alternative strategies for development of an acceptable draft and the matter was further considered at a final meeting of the Legal Committee, and IUCN support continued as part of the Commission's work plan.⁴⁷ In 1996, a Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) finally was concluded. An IUCN statement was submitted during the final negotiations, prepared under the lead of Nicholas Gaskell, Law Commission member from the UK and professor of maritime law. The paper highlighted important environmental issues, many of which still need to be addressed. While the HNS had not entered into force by the close of 2004, further technical work was anticipated in the Legal Committee on a Protocol to the Convention dealing with preparedness and response.

Salvage at Sea

Another task on the agenda of the IMO Legal Committee, where CEPLA continued to represent IUCN, was work on a draft Convention on Maritime Salvage aimed to replace the 1910 Brussels Convention on Salvage and Assistance at Sea. The principal reason for the revision was to deal with the increased threat of pollution from salvage operations and particularly the potential civil liability for damage caused by contamination. The proposed approach was to offer incentives to those assisting vessels in distress to take account of the need to reduce pollution of the marine environment. The Law Commission prepared a draft statement addressing numerous complex questions raised by the draft convention text and by debates in the IMO Legal Committee, circulating the draft statement to Commission members and other components of IUCN for comment. With this and other input, the IMO Legal Committee produced a revised text for a diplomatic conference. The Commission continued to monitor and participate actively in this issue to the conclusion in April 1989 of an International Convention on Salvage.

Notes

- 1 Resolution No. 16/18, sections 1 and 3 in *Resolutions of the 16th Session of the General Assembly of IUCN Madrid, Spain, 5–14 November 1984* (IUCN, Gland).
- 2 Id.
- 3 Id.
- 4 Quote from extracts of Thatcher statement reprinted in “IUCN’s 15th General Assembly” in 7 *Environmental Policy and Law* (1981), p. 167.
- 5 With respect to UNESCO’s biosphere reserves programme, for example, Law Commission member Cyrille de Klemm was heavily involved in helping develop the biosphere reserve legal framework (author interview with Daniel Navid, June 23, 2004 (Bonn, Germany); further legal technical assistance was provided by Law Commission member Barbara Lausche in India (1981–83) and in Guyana (1983) drafting national legislation for biosphere reserves.
- 6 See “IUCN Environmental Law Programme Annual Report 1994”, p. 3.
- 7 See Koning, H.W. de (ed.), *Setting Environmental Standards: Guidelines for Decision-making* (World Health Organization, Geneva, 1987).
- 8 See IUCN Environmental Law Centre, “IUCN Environmental Law Programme 2004: The Year in Review”, p. 8 (IUCN Environmental Law Centre, Bonn).
- 9 See “New Head of FAO’s Development Law Service Appointed” in *IUCN Environmental Law Programme Newsletter* (2004) p. 31.
- 10 See Moore, G., and W. Tymowski, *Explanatory Guide to the International Treaty on Plant Genetic Resources for Food and Agriculture* (IUCN Environmental Policy and Law Paper Series No. 57) (IUCN, 2005).
- 11 See UNGA RES 3133 (XXVIII).
- 12 See UNEP GC 66 (IV) 1976. In 1975 the UNEP Governing Council endorsed the objectives and strategy for an environmental law programme (UNEP GC Dec. 35(III) 1975 and Dec. 24(III) 1975), and the UN General Assembly requested UNEP to report annually on the status of environmental conventions and protocols (UNGA RES 3436 (XXX)). For an overview of UNEP and its early involvement in non-binding and binding instruments, see generally Tolba, M.K., et al, (eds.), *The World Environment 1972–1992* (UNEP, 1992), especially Chapter 23, “International Responses”, pp. 743–753. UNEP’s early entry into environmental law is highlighted by Lee Kimball through comments on May 2006 draft, transmitted by email dated June 8, 2006.
- 13 These reports were adopted by the Working Group on February 8, 1978 and approved by UNEP’s Governing Council on May 19, 1978 (UNEP/IG.12/2), followed by a resolution adopted by the UN General Assembly on January 19, 1979 (A/RES/33/87). The reports were published in *International Legal Materials* (1978, p. 1091). Information from Alexandre Kiss to author, transmitted by emails dated June July 18 and 22, 2006.
- 14 For information on UNEP, its current structure, activities, Conventions for which it has responsibility, Regional Seas Agreements, and much more, see its web site at <<http://www.unep.org>>.
- 15 Author interviews with Wolfgang Burhenne and Françoise Burhenne-Guilmin, June 23, 2004 (Bonn, Germany) and follow-up commentary on draft.
- 16 Communication with Donald Kaniaru on May 2006 draft, transmitted by email dated July 04, 2006.
- 17 The most recent example is the appointment by the UN General Assembly of Achim Steiner, IUCN’s outgoing Director General to be UNEP’s Executive Director. Others have included David Munroe, Genady Gulubev, Martin Holdgate, Mohammed Kassas. Communication with Donald Kaniaru on May 2006 draft, transmitted by email dated July 4, 2006.
- 18 See generally “Conclusions and Recommendations of Montevideo: Ad Hoc Meeting of Senior Government Officials Expert in Environmental Law, 28 October – 6 November 1981” in *Environmental Policy and Law* (Vol. 8, 1982), p. 31. For example, the Montevideo recommendation on EIA: “UNEP should, in consultation with relevant international organizations, develop model legislation or guidelines which could assist governments to make provisions in national legislation or regional agreements for environmental impact assessment and the dissemination and public use of information thereon.” Id. at 35.

- 19 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica", p. 4 (also labeled Annex 5 to General Assembly Paper GA/17/88/1).
- 20 Id.
- 21 Commentary from Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 22 For example, Stockholm's Action Plan Recommendation 92 dealing with such concerns as marine pollution, protecting the marine environment, and taking measures to control land-based sources of pollution includes reference to providing guidelines to Governments in these areas, para (c).
- 23 See Stockholm's Recommendation 92, Id., and Part IX, Article 123 of the LOS Convention which calls for cooperation among states bordering enclosed or semi-enclosed seas in management and conservation of the living resources, and protection and preservation of the marine environment.
- 24 Communication on May 2006 draft, transmitted by email dated June 8, 2006.
- 25 See Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds," p. 10–11.
- 26 Id.
- 27 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 90/1, 1990), p. 1.
- 28 "Report of the Chairman of the Commission on Environmental Policy, Law and Administration" in "Report of the Director-General to the 18th Session of the General Assembly 28 November – 5 December 1990, Perth, Australia", p. 83.
- 29 Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain," p. 6 (also labeled Annex 4 to General Assembly Paper GA/16/84/1).
- 30 For a summary of this new protocol, see Scovazzi, T., "A New Instrument on Specially Protected Areas in the Mediterranean" in *IUCN Environmental Law Programme Newsletter* (May–September 1998), p. 7.
- 31 See "IUCN Environmental Law Programme Annual Report 1994," p. 3.
- 32 Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain," p. 3 (also labeled Annex 4 to General Assembly Paper GA/16/84/1).
- 33 Commission on Environmental Policy, Law and Administration, "Report to the 18th Meeting of the IUCN Council 15–16 May, 1985," p. 2 (also labeled Attachment to Annex 4 to Council Paper UC.18/85/1).
- 34 Id.
- 35 Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly 5–14 November 1984, Madrid, Spain", p. 2 (also labeled Annex 4 to General Assembly Paper GA/16/84/1).
- 36 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica", p. 3 (also labeled Annex 5 to General Assembly Paper GA/17/88/1).
- 37 "Report of the Chairman of the Commission on Environmental Policy, Law and Administration," in "Report of the Director-General to the 18th Session of the General Assembly 28 November – 5 December 1990, Perth, Australia", p. 83. African nations were unhappy with the final result because of concerns about trade and the need for special, additional provisions for controlling hazardous waste coming into Africa. As follow-up to the Basel Convention, the IUCN Law Commission and Chairman Burhenne worked with the African states through the Organization of African Unity on a separate convention, which was adopted in 1991 and came into force in 1999, *Bamako Convention on the Ban of the Import Into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa*. Many of the requirements of that convention now fall within the framework of the revised African Convention (see Chapter 5).

- 38 Commission on Environmental Policy, Law and Administration, “Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica”, p. 4 (also labeled Annex 5 to General Assembly Paper GA/17/88/1).
- 39 Communication from Marlene Jahnke on May 2006 draft, transmitted by email dated June 5, 2006.
- 40 Information about IMO, its objectives, structure, conventions and numerous other details is available on its web site: www.imo.org.
- 41 Commission on Environmental Policy, Law and Administration, “Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica”, p. 5 (also labeled Annex 5 to General Assembly Paper GA/17/88/1).
- 42 “Commission on Environmental Policy, Law and Administration Report to 16th Session of the IUCN General Assembly”, p. 3 (also labeled Annex 4 to General Assembly Paper GA/16/84/1) (attached to *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain*. (IUCN, 1985)).
- 43 IUCN Commission on Environmental Policy, Law and Administration, “Addendum to Report to 16th Session of the IUCN General Assembly” (1984).
- 44 See, e.g., Gaskell, N., “Recent Developments at IMO” in *IUCN Environmental Law Programme Newsletter* (May–September 1998), p. 4.
- 45 See “Commission on Environmental Policy, Law and Administration Report to 16th Session of the IUCN General Assembly”, p. 7 (also labeled Annex 4 to General Assembly Paper GA/16/84/1) (attached to *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain*. (IUCN, 1985)).
- 46 Commission on Environmental Policy, Law and Administration, “Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica”, p. 5 (also labeled Annex 5 to General Assembly Paper GA/17/88/1).
- 47 Id.

Chapter 21: Strengthening Environmental Components in Treaties with Other Goals

1

In the 1970s and 1980s, international regimes for environmental protection and natural resource conservation were not the only areas receiving treaty attention. Initiatives accelerated across the spectrum of international environmental law related to use of resources. This chapter highlights IUCN and Environmental Law Programme efforts, which are ongoing, to promote and strengthen environmental protection and conservation measures in treaties with primarily other goals. Four such treaties are reviewed: the first two dealing with ecosystems – the Law of the Sea Treaty and the Antarctic Treaty System; and the latter two dealing primarily with specific resource use – the International Whaling Convention, and the International Tropical Timber Agreement.

United Nations Law of the Sea

Of the major international negotiations in the 1970s, the third United Nations Conference on the Law of the Sea (UNCLOS III), was the most far-reaching for modern-day ocean and marine law. UNCLOS III continued a process started in 1958 when the first United Nations Conference on Law of the Sea (UNCLOS I) was convened, followed soon thereafter by a second Conference (UNCLOS II) in 1960. UNCLOS III was convened in New York in 1973 and ended some nine years later with adoption in 1982 of a framework convention for the seas – the United Nations Convention on the Law of the Sea (UNCLOS).¹

2

Monitoring early developments

IUCN entered the picture in 1974, soon after UNCLOS III (LOS-3) was convened. The United Nations General Assembly called its second session of the Conference in Caracas, Venezuela, for 10 weeks from June 20 to August 29, 1974. Inviting some 150 Member States of the UN, the UN press release identified the goal of the meeting to be to “Adopt Comprehensive Convention and Set Up Machinery to Regulate International Sea-Bed Area”, member states “to write a new set of binding international rules governing human activities in the two thirds of the earth’s area covered by oceans.”² Then Law Commission Vice Chair Wolfgang Burhenne recalls, with amusement, that there were no funds for this meeting but he was able to attend by arranging with a local radio station in Bavaria (a land-locked state!) to prepare a report on the oceans meeting in exchange for help with travel and expenses.³

3

At the Caracas meeting, IUCN’s special interest was the work of LOS-3 Committee III, covering marine environment, research and technology transfer, and chaired by Alexander Yankov, an ICEL member from Bulgaria. For that meeting and thereafter, a small IUCN task force of lawyers and scientists with special marine expertise was established to keep under review conservation aspects of the Treaty deliberations, in particular Part XII of the draft, and to advise the Union on needed actions.⁴ The Law Centre serviced the task force.

4

- 5 As negotiations proceeded, IUCN became concerned about how issues of marine conservation were being dealt with in the draft text. The Environmental Law Programme, with assistance from the task force, prepared commentaries on the treaty drafts and statements on areas where conservation measures needed increased attention. The first statement was prepared in 1976 and circulated to all governments participating at the 5th session of the Conference.⁵ It identified crucial aspects of marine conservation “in the hope that certain of the conservation aspects of the Revised Single Negotiating Text being considered by the conference might be strengthened.”⁶ However, negotiations continued without much change.

Forming expert group

- 6 IUCN concerns were growing about continued conservation weaknesses, including weak pollution controls. In a further attempt to influence the environmental aspects, the Commission on Environmental Policy, Law and Administration (CEPLA) with assistance from the Law Centre convened a small expert group of scientists and lawyers in New York in 1977 to review the work of the Conference and make detailed recommendations. Ambassador Arvid Pardo from Malta (an early visionary on the Law of the Sea) participated at this meeting.⁷ A memorandum to the President of the Conference was prepared offering specific textual changes to the draft text that could strengthen conservation provisions.⁸ At that point, a legal subgroup was formed to coordinate further input and information exchange from Commission members worldwide with the Law Centre continuing to coordinate and serve as liaison. This subgroup met several times in 1977, both for the Law of the Sea deliberations and to provide input to the formative stages of a new IUCN marine programme.⁹
- 7 Within the Commission, in close cooperation with Chairman Burhenne, member Douglas Johnston was among the most active in representing IUCN. Johnston made several trips to Geneva to promote the IUCN position at the relevant LOS negotiating sessions¹⁰ and undertook informal discussions with national delegations.
- 8 Among the international players who supported the conservation proposals of IUCN was Elliot Richardson, U.S. President Carter’s Special Representative for the LOS Conference (1977–1980), and later chairman of the Council on Ocean Law, established in 1980. Lee Kimball, an international environmental policy specialist (later also a Law Commission member), worked with Richardson through the Council on Ocean Law to support conservation and pollution control proposals during the final negotiations, as did Commission members James Barnes and Jan Schneider. Another strong supporter, especially with regard to pollution controls, as noted above, was ICEL member Alexander Yankov, who chaired the Third Committee for UNCLOS III from 1973–1982, responsible for Part XII on environmental protection and marine conservation. An accomplished lawyer and professor of law from Bulgaria, Yankov subsequently held a number of prestigious executive positions in international law and went on in 1996 to serve as judge of the International Tribunal for the Law of the Sea.¹¹ Other Law Commission members who also have served as judges at this Tribunal include, for example, Rüdiger Wolfrum, Tullio Treves from Italy, and Budislav Vukas from Croatia.

In its report to the 1981 IUCN General Assembly, CEPLA laid out three main purposes behind IUCN's LOS-3 efforts: 1) to monitor and provide input into the UN Conference on the Law of the Sea, 2) to provide a detailed and systematic account of current developments in the legal regime of the sea in order to appraise the probable impact of UNCLOS III on the ocean environment, and 3) to make practical recommendations to governments and agencies responsible for environmental management of oceans and their resources in the aftermath of the Law of the Sea Conference.¹² In relation to the second point, CEL Chair Burhenne made an arrangement with Adolf Schneider, ICEL member, to report on each LOS-3 session in some detail. Lee Kimball recalls that she and Schneider (occasionally with other contributing authors) produced a joint report on each of the remaining nine sessions of LOS-3, published in the journal *Environmental Policy and Law*.¹³

During the summer of 1977, a second formal Statement was prepared by the Environmental Law Programme for IUCN reflecting comments from the legal subgroup and other components of IUCN, reiterating conservation weaknesses, and proposing changes to strengthen the draft text. IUCN mailed this Statement to all parties with interest or involvement in the negotiations – the foreign offices of all States participating in the Conference, UN agencies concerned with the Conference, members of the Conference Secretariat, and all members of IUCN. In addition, the Statement was distributed in March 1978 to all heads of delegations at the next session (the 7th) of UNCLOS III in Geneva.¹⁴

Environmental analyses

In spite of these efforts, provisions for environmental protection and resource conservation continued to be weak. In April 1979, the Law Commission convened



Third UN Conference on Law of the Sea: Meeting December 1973 in New York

another meeting of experts at the site of negotiations under way in Geneva to consider options in the aftermath of the Conference.¹⁵ From that meeting a number of proposals for further action were identified and a multi-authored study was proposed to lay out the environmental aspects of UNCLOS III from a global and historical perspective. Recognizing the substantial effort being made, the IUCN Council in 1978 congratulated the Environmental Law Programme for “its work on the Convention on the Law of the Sea.”¹⁶

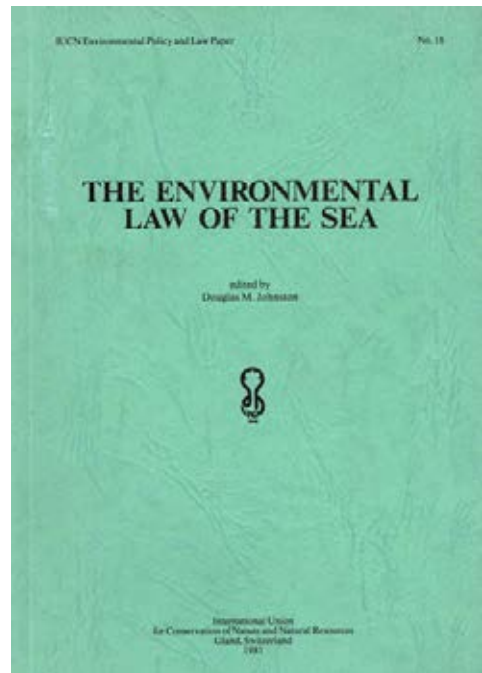
- 12 The Commission continued to monitor changes in the draft text and be represented at negotiating sessions. As negotiations neared conclusion, the study proposed at the April 1979 meeting got under way. Led by Commission members Douglas Johnston (Canada) and Cyrille de Klemm (France), the first phase involved a series of meetings and consultations with other Commission members, other components of the Union, including members of the new Marine Programme, and other organizations to frame issues, chapters and recommendations to be included for action at global, regional, and national levels once the treaty was in force. During 1980, three formal consultations were held specifically on the study’s conclusions and recommendations chapter, one at UNCLOS in Geneva, a second during the Law of the Sea Institute Conference in Kiel, and a third at the *Pacem in Maribus* Conference in Vienna, organized by Elizabeth Mann Borgese, professor and global advocate for the oceans.¹⁷ Subsequently, smaller meetings of experts continued to be convened to distill recommendations and conclusions, especially with regard to several pollution items where Commission members Martine Rémond-Gouilloud, Norman Letalik, and James Barnes took the lead.¹⁸



Third UN Conference on the Law of the Sea prepares the final text of the Convention on the Law of the Sea: September 1982

By this time, the Law of the Sea negotiations essentially were closed. IUCN and the Environmental Law Programme had not been able to respond sufficiently early in the process to influence effectively the debate and outcome on conservation. The marine area had been new to the Environmental Law Programme, and not a priority at Headquarters in the initial years of the negotiations, so it had taken time to identify experts, bring them together, and plan and mobilize action. Now, with the people and process fully engaged, ELP accelerated efforts to have a report of the study based on the latest draft text available for the 1981 Montevideo meeting of senior governmental experts (discussed in Chapter 19), where priorities for future environmental law actions were to be discussed. That target was met and for the meeting the Commission gave special emphasis to a reprint of the report's recommendations and conclusions.

During 1981, the study was finalized and published in IUCN's Environmental Policy and Law Series, and later reprinted in the FUST 'A' series as well (see Ch. 18) because of the high demand. Entitled *The Environmental Law of the Sea*,¹⁹ it comprised some 419 pages in five chapters with nine main contributors: Douglas Johnston, Cyrille de Klemm, Martine Rémond-Gouilloud, James Barnes, Lawrence Enomoto, Françoise Burhenne-Guilmin, Daniel Navid, Norman Letalik, and Jan Schneider. An entire chapter was devoted to detailed recommendations on measures needed after UNCLOS III to strengthen the legal framework for marine conservation. The report established ELP's credentials in the marine area. It became a major output by highly distinguished marine and international lawyers.



The Law of the Sea Treaty, complete with Part XII on environmental law of the sea, was concluded and opened for signature in December 1982, at Montego Bay, Jamaica. Observed former CEL Chair Nicholas Robinson, "there was never an environmental law of the sea until Part XII was adopted and IUCN's input to this process, along with others, was important."²⁰ Thereafter, the Environmental Law Programme made revisions to its LOS publication to reflect final treaty text, and began monitoring developments of the Preparatory Committee for the International Seabed Authority and the Law of the Sea Tribunal. The IUCN Marine Programme took the lead in monitoring overall developments of the treaty for the Union.

In 1984, the Environmental Law Programme published a chart of environmentally significant provisions of the LOS Convention entitled "Conservation and Management of the Marine Environment: Required Initiatives and Responsibilities

under the 1982 UN Convention on the Law of the Sea.”²¹ Developed by Commission members Douglas Johnston and Philip Saunders, the chart clustered the Convention’s 59 articles and three annexes into five broad categories: living resources, general pollution, transit management, management of other activities, and general marine environmental policy. As explained in an ELP Newsletter, it “analyzed actions required for implementation across a range of reference points, including purpose of the provision, required initiative/follow-up, appropriate international organization.”²²

17 IUCN’s 16th General Assembly in Madrid in November 1984 urged further efforts to address conservation measures that were so far missing in the treaty. It adopted a Resolution entitled ‘Environmental Law of the Sea’, “[f]ully aware of the importance of oceans management as a component of the worldwide efforts towards the conservation of the Biosphere...”, that requested the Director General of IUCN “to take all possible steps to assist [with treaty] implementation” and invited UNEP “as soon as possible after the entry into force of the Law of the Sea Convention, to convene a conference in collaboration with other appropriate organizations to consider necessary conservation measures”.²³

18 The Convention on the Law of the Sea entered into force on 16 November 1994 after having received the required 60 ratifications. That year the Environmental Law Centre, with the assistance of Peter Payoyo (a graduate assistant of Douglas Johnson, main contributor to the LOS study noted above), updated the “Chart on Required Initiatives and Responsibilities under the 1982 UN Convention on the Law of the Sea,” which was available for ceremonies in Jamaica in November 1994 celebrating the entry into force of UNCLOS.²⁴ The Chart was published as Part II of a joint publication with IUCN’s Marine Programme in 1995; Part I by Commission member Lee Kimball was a detailed analysis of the Convention and its relationship to specific marine conservation issues.²⁵

Ongoing participation

19 IUCN’s Marine Programme, a global thematic programme at Headquarters, has continued and grown significantly since those LOS negotiations. It has overall responsibility for monitoring UNCLOS and its implementation, using the Environmental Law Programme where there are law issues. A close associate of IUCN and the Law Programme, Elizabeth Mann Borgese, working with Ambassador Bhagwat Singh (IUCN’s representative at the UN in New York), promoted the decision in the UN General Assembly to hold annual informal consultations on law of the sea issues and IUCN sends representatives to these sessions still.²⁶ To facilitate CEL’s contributions to the work of IUCN’s Marine Programme, Nicholas Robinson during his term as CEL Chair reconstituted a CEL Specialist Group on the Marine Environment and named Professor David VanderZwaag of Dalhousie University as its Chair.

20 Illustrative of the CEL/Marine Programme collaborations in recent years, Law Commission member Louise de La Fayette prepared one of the studies on deep sea bed vents and the need to protect them from destruction by dragnet fishing, a study which Ambassador Bhagwat-Singh and CEL arranged to have released at the UN

during the General Assembly's high level informal consultations on the law of the sea.²⁷ In 2001, the Marine Programme supported an updated and expanded version of the analysis undertaken by CEL member Kimball noted above, focusing both on the further development of international ocean law and on the roles and functions of international bodies in furthering its implementation.²⁸ In addition, ELP has been involved recently in some aspects of biodiversity conservation and sustainable use of marine areas beyond national jurisdiction (the 'high seas'), as discussed in Chapter 31.

Antarctica

The Treaty System

In December 1959, 12 nations active in Antarctica during the International Geophysical Year (IGY) of 1957–58 came together in Washington, D.C., to sign the Antarctic Treaty.²⁹ This treaty, which came into force in June 1961, declared that Antarctica was to be used for peaceful purposes only, and that scientific investigation and cooperation should be allowed toward that end. The original Treaty Parties, called the Consultative Parties, became the Treaty's decision-making body, and over the years an additional sixteen States acceded to the Treaty and became part of this body. An additional 17 States have acceded to the Treaty but do not have full decision-making status.³⁰ As years passed, additional instruments were concluded which, together with the original Treaty, comprise the present-day Antarctic Treaty System regulating relations among states concerning activities in Antarctica. The Scientific Committee on Antarctic Research (SCAR), established by the International Council of Scientific Unions (ICSU) to help plan and coordinate the IGY, has played an integral scientific advisory and coordination role within the Antarctic Treaty System. 21

IUCN and the Law Programme were not involved in development of the original treaty. However, soon after the treaty's conclusion, the 7th IUCN General Assembly meeting in June 1960 in Poland adopted a Resolution supporting action by the Consultative Parties for conservation of Antarctic fauna and flora. Specifically, Resolution 6 called for appropriate treaty measures to "maintain the fauna, and [urged] the setting aside of inviolable areas for the conservation of this unique polar fauna and its natural environment" and further supported a recommendation by the ICSU "that the Special Committee for Antarctic Research be invited to prepare standard regulations which will provide for the protection of the Antarctic fauna and flora and their habitat, and that member nations be encouraged to ensure their enforcement."³¹ This formal call by members for specific conservation actions in Antarctica barely six months after the Antarctic treaty had been signed was the beginning of IUCN's long-standing involvement in that system. 22

At the first Antarctic Treaty Consultative Meeting in Canberra, Australia, in July 1961, recommendations to protect Antarctic wildlife and prevent avoidable disturbances and the introduction of exotic species were introduced. As reported to the Eighth IUCN General Assembly in 1963, "[d]ue mainly to an initiative of the International Council for Bird Preservation at a Symposium on Antarctic Resources held at Paris in September 1962, supported by the representatives of IUCN who 23



Antarctic Treaty Consultative Meeting in Utrecht, 1996

attended, there are grounds for hoping that other countries will subscribe to these recommendations and that similar measures for safeguarding of sub-antarctic islands will also be adopted.”³²

24 In June 1964, on the initiative of the SCAR, the third Antarctic Treaty Consultative Meeting endorsed “Agreed Measures for the Conservation of Antarctic Fauna and Flora,” which provided for overall protection of native animals and plants and creation of a system of managed protected areas.

25 In the late 1960s, IUCN focused again on Antarctica as the Consultative Parties began deliberations on a regime for Antarctic seal hunting. While seals were protected through the above-mentioned Agreed Measures when inside specially protected areas, there was still significant commercial interest in hunting seals outside those areas. The Law Commission prepared comments on a draft convention for regulation of sealing in Antarctic waters for consideration by the IUCN Executive Board at its May 1970 meeting. The Board decided that “the Director-General [should] discuss these with SCAR before deciding on further action.”³³ The Convention for the Conservation of Antarctic Seals was concluded in London in 1972, setting up a management system to monitor the status of seals and ensure that hunting did not threaten sustainability of the stock.

Promoting resource conservation

26 In the late 1970s, the Consultative Parties began work on a Southern Ocean Treaty in large part to address the increase in krill catches which was threatening the krill population and other marine life dependent on krill for food. Once a draft text had been acquired informally by IUCN, it was widely disseminated. As reported by Law Commission Chairman Burhenne to the June 1979 meeting of the IUCN Council,

“the negotiating text of the proposed Convention on the Conservation of Antarctic Marine Living Resources, which had not been made public, had become available from sources outside IUCN and had been published in the *Journal of Environmental Policy and Law*.”³⁴ IUCN and the Law Programme proceeded to prepare a position paper on the draft text, specifically identifying areas of weakness and making recommendations for strengthening the conservation provisions. With some urgency, IUCN and the International Institute for Environment and Development in 1980 also co-sponsored a Southern Oceans Workshop on the topic and results from that workshop were incorporated into the final draft of the paper. IUCN also continued to collaborate and coordinate with the scientists involved in SCAR, a relationship which grew with the Treaty System, which played a special role in providing independent scientific advice to Treaty Parties and helping coordinate scientific programmes in the Antarctic.

A Southern Ocean Treaty (entitled the Convention on the Conservation of Antarctic Marine Living Resources [CCAMLR]) was concluded by the Consultative Parties in 1980. It was the first convention to take an ecosystem approach to the conservation and management of natural resources. Its aim was to conserve marine life in the Southern Ocean while allowing sustainable harvesting, and it set up a Commission to oversee Convention implementation and a Scientific Committee. 27

While the new Convention was an important step for conservation in the region, Antarctica continued to generate environmental concerns because of another initiative of some of the Consultative Parties – efforts to open the region to mining. At IUCN’s 15th General Assembly in Christchurch, New Zealand, in 1981, a detailed Resolution 15/20 was passed which the Law Programme had a major role in drafting, with the assistance especially of Commission members James Barnes and Lee Kimball. Some 35 paragraphs long, the Resolution addressed the need for increased protection of the Antarctic environment in general, CCAMLR, and the mining issue, among others. Recognizing the region’s importance to the world, “particularly in maintaining the stability of the global marine environment and atmosphere”, the Assembly expressed its satisfaction that CCAMLR “provides the elements necessary to realize an ecosystem approach to the conservation and management of the natural resources of the area” and pledged “to make IUCN expertise available to the [CCAMLR] Commission and Scientific Committee....”.³⁵ The Assembly further urged the Consultative Parties to “seek the views of IUCN on any [proposed activities] which affect the conservation of the Antarctica environment” and pledged “to make IUCN expertise available to the Treaty Parties and other bodies and organizations as appropriate to conduct, or cooperate in conducting, studies necessary to ensure that activities carried out in Antarctica have minimum environmentally adverse effects.”³⁶ 28

CCAMLR came into force in 1982 as part of the Antarctic Treaty System (ATS). Although the ATS did not have a history of inviting observers from inter-governmental and non-governmental organizations to attend treaty meetings as observers, this policy began to change in the 1980s. IUCN was one of three NGOs (along with two intergovernmental organizations – FAO, International Whaling Commission and European Community) to be invited to attend the final diplomatic 29

conference in 1980 at which the Convention was adopted. IUCN was subsequently invited to attend meetings of the Commission established by the Convention, where it has been listed as an international organization since the first meeting in 1982.³⁷

30 The Environmental Law Programme took the lead in representing IUCN at CCAMLR meetings and through ELP, senior Commission member, Alexandre Kiss, and Commission Chair Burhenne, were regular participants. The focus then turned to supporting and providing legal and scientific advice with implementation of the new Convention.

31 To facilitate that task, IUCN formed a multi-commission Advisory Committee of Antarctic Experts, involving the Species Survival Commission, the Commission on Planning, and the Law Commission. Law Commission Executive Officer, Daniel Navid, now posted in Switzerland and serving only half-time for the Law Commission, was appointed staff person for the Committee. The Committee was charged with planning and coordinating IUCN activities and inputs on Antarctica and the Southern Ocean.³⁸ Commission inputs to CCAMLR meetings mostly were directed through that Committee.³⁹ Because IUCN did not have much specialized expertise in this area, it was necessary to identify and mobilize new people.⁴⁰

32 During 1983–85, Commission member Kiss, with input and guidance from the Committee, continued to actively represent IUCN at meetings of SCAR and the new CCAMLR Commission, preparing analytical material on inspection and surveillance regimes in other fisheries agreements that might have lessons and techniques useful for the Antarctic.⁴¹ In 1985, IUCN began to assist the CCAMLR Commission to develop a conservation strategy for the area under CCAMLR's jurisdiction in order to help address concerns voiced by critics, some of whom saw it merely as a fisheries commission for the Southern Ocean.⁴²

33 Further joint action by IUCN and SCAR to review conservation policy in the Antarctic had its origins at the 15th IUCN General Assembly in Christchurch, New Zealand in 1981. Discussions surrounding Resolution 15/20 noted above on the Antarctic environment and Southern Ocean generated a proposal for a meeting jointly organized by IUCN and SCAR on conservation problems in the Southern Ocean, including Antarctica, aimed to develop working relationships between the scientific community in Antarctica, represented by SCAR, and the conservation experts associated with IUCN.⁴³ Following an invitation from IUCN, SCAR agreed to co-sponsor a symposium on the Scientific Requirements for Antarctic Conservation, held in Bonn in April 1985.⁴⁴ IUCN and SCAR then set up a joint Working Group on Long-term Conservation in Antarctica which met twice in 1986 and produced a report on *Conservation in the Antarctic*.⁴⁵ Daniel Navid from the Law Commission and Danny Elder from the Marine Programme helped support this Working Group.⁴⁶

34 As international activity and attention continued to converge on the region, IUCN's General Assemblies in 1984 and 1988 recommended preparation of an Antarctic Conservation Strategy.⁴⁷ By the end of the 1980s, work was underway on the Strategy led initially by Commission member Lee Kimball (working with Danny Elder of the Marine Programme) and Law Centre Legal Officer Ekaterina Michos-Ederer.⁴⁸ An expert group revised and expanded the draft which was circulated widely to IUCN members and considered at a workshop at the 18th IUCN General Assem-

bly in Perth in 1990.⁴⁹ Martin Holdgate during his tenure as Director General (1988–1994) took a special interest in Antarctica, having been involved in the issue years earlier through the United Kingdom. He was directly involved in development of the Antarctic Strategy and was noted as one of the principal authors.⁵⁰

Monitoring mining

On the issue of mining, the 15th IUCN General Assembly in 1981 expressed grave concern. Resolution 15/20 urged that “no mineral regime be brought into operation until such time as full consideration has been given to protecting the Antarctic environment completely from minerals activities and the environmental risks have been fully ascertained and safeguards developed to avoid adverse environmental efforts”.⁵¹ The Law Commission continued monitoring developments because a proposal to allow mining in the Antarctic appeared to be gaining support among the Treaty Powers. At the 16th IUCN General Assembly in Madrid in 1984, considerable attention was given to the issue, and Law Commission members James Barnes and Lee Kimball again took a lead role in drafting two Resolutions, both of which were adopted. The first had 28 recommendations mostly directed to the Consultative Parties, and the second listed 10 specific actions for the IUCN Director General to pursue in order to “take all necessary steps to implement the [first] Resolution....”.⁵²

In the first Resolution, the 16th General Assembly recognized “the fact that the Consultative Parties are presently considering the establishment of a regime to govern both commercial exploration and exploitation of any mineral resources should this ever prove acceptable and that any exploitation of minerals would adversely affect the values of the Antarctic environment”, and reiterated again its recommendation from 1981 “that no such mineral activity should take place in Antarctica until such time as full consideration has been given to protecting the Antarctic environment completely and the environmental risks have been fully ascertained and safeguards developed to avoid adverse environmental effects....”.⁵³

The second Resolution, among other things, requested the IUCN Director General to “ensure that IUCN monitors developments pertinent to conservation of Antarctic species and habitats, and to the protection of the Antarctic environment” and “ensure that IUCN is represented by persons with relevant expertise at appropriate meetings concerning the Antarctic environment within the Antarctic Treaty system, at the United Nations and in other fora.”⁵⁴

The United Nations General Assembly during 1983–1984 had begun to focus on Antarctica after the adoption of the UN Conference on the Law of the Sea in 1982 which applied the ‘common heritage’ principle to seabed minerals. A 1983 UNGA decision requested the Secretary General to undertake a comprehensive, factual and objective study of all aspects of Antarctica, taking fully into account the Antarctic Treaty System and other relevant factors.⁵⁵ Following that decision, the United Nations took up the issues of a possible mineral regime for Antarctica. IUCN was asked to provide input. As reported in IUCN’s Triennial Report 1982–84, “Negotiation of a minerals regime for Antarctica and other questions of concern to conservation in Antarctica and the Southern Ocean, have been monitored

by IUCN's Antarctica Committee, which has provided, at the request of the UN, a detailed submission on conservation aspects of development of natural resources in the region, as a contribution to the forthcoming (November 1984) UN debate on the subject."⁵⁶ Several members of the Law Programme were actively involved.⁵⁷

- 39 The Environmental Law Programme, as part of IUCN's Antarctic Committee, continued to monitor developments with the mineral regime, preparing detailed comments on various draft texts as they became available.⁵⁸

Gaining observer status

- 40 Through the 1980s, IUCN used informal channels to monitor and provide input to the work of the Treaty Powers since participation at Consultative Meetings was strictly limited to the Consultative Parties. The restriction applied to representatives of United Nations agencies as well as other international organizations such as IUCN. Already in 1981, the 15th IUCN General Assembly had raised the issue of access as a concern, adopting a Resolution urging that "IUCN be given accredited status as an adviser to the Scientific Committee" of the CCAMLR, and more broadly urging the Consultative Parties to "invite representatives from appropriate non-governmental organizations (including IUCN and the Antarctic and Southern Ocean Coalition) to participate in meetings according to normal international practice."⁵⁹

- 41 Without observer status, IUCN had to rely on informal means to present views to Treaty nations and offer expertise. Advantage was taken of every opportunity in this regard. For instance, when the Consultative Parties met in Bonn in 1983 for the third of a special series of meetings on the proposed mineral regime, the IUCN Director General expressed interest and willingness in having IUCN contribute expertise and the Chairman of the Treaty's Legal Working Group expressed hope that informal contacts could continue.⁶⁰

- 42 In addition several countries, starting with the United States, began to include NGO as well as industry and other experts on their delegations. Through this means Law Commission members were able to participate in various stages of the negotiations with different instruments and issues arising from the ATS. In the 1980s, these included James Barnes, Lee Kimball, Cliff Curtis, Pat Scharlin, and Dick Frank.⁶¹

- 43 Within IUCN, the Law Commission took the lead in efforts to secure IUCN observer status at meetings of the Consultative Parties. Since the consultative meetings worked on the principle of consensus, opposition from any government would block NGO observer status. Among the governments opposed to NGO participation was the Soviet Union.

- 44 In 1987, Law Commission Chairman Burhenne went to Moscow, as he later reported to the 1988 General Assembly, "...for discussions on this matter with the Head of the Treaty Department of the Foreign Affairs Ministry responsible for Antarctic affairs."⁶² Burhenne recalled the meeting: "The responsible officer in the Foreign Affairs Ministry, Ambassador Rybakov, was immediately cordial, coming out of his office to greet me, explaining that this was the least he could do for a man who had been in the German concentration camp for three years during the war."⁶³ By

the end of the visit, Rybakov had agreed that IUCN could be invited as an expert to the conservation aspects of the meetings of the Consultative Parties so long as the other countries agreed and on condition that IUCN send the same representative to each meeting or get consent from the delegates in advance if the representative changed.⁶⁴ This was consistent with provisional decisions taken by the Consultative Parties in May 1987 to define an additional category of expert observers from international organizations and to invite IUCN to the October 1987 Consultative Meeting for consideration of Antarctic environmental issues. Burhenne attended the October meeting and today IUCN continues to be invited as an expert observer to the Antarctic Treaty Consultative Meetings.

Environment Protocol

By June 1988, a Convention on the Regulation of Antarctic Mineral Resources had been concluded by the Treaty Powers. However, Burhenne recalls that during 1989 it became clear that some of the Parties with territorial claims in Antarctica, led by Australia and France, were not going to ratify the Convention.⁶⁵ There followed a difficult period during which many government officials as well as individuals from the conservation community and associated with IUCN tried to restore consensus among the Treaty Parties and at the same time promote a conservation approach. As a result, the 15th Consultative Meeting in Paris in 1989, decided to convene a special Consultative Meeting to explore all proposals related to the protection of the Antarctic environment and an associated annex on environmental liability.⁶⁶ Burhenne continued to serve as representative of IUCN at the meeting. 45

Sessions of the Special Consultative Meeting began in 1990, the first of which in Chile resulted in a proposal being put forward for a protocol to the Antarctic Treaty on environmental protection. In all, there were three more sessions before a Protocol on Environmental Protection with four annexes was adopted in Madrid in October 1991, with a fifth annex adopted later that month in Bonn. In a break with past practice, IUCN was one of several NGOs and IGOs invited as observers to take part in the sessions of the Special Consultative Meeting. Within IUCN, the Advisory Committee convened several meetings during the period the protocol was evolving. IUCN decided to send a delegation to the Madrid meeting and Burhenne was designated. The Protocol prohibits mineral-related activities in Antarctica, a significant achievement for Antarctica's environment. Its adoption became a major environmental achievement for Antarctica and the world, recalls Burhenne: "It has had a lasting impact".⁶⁷ 46

During this same period, IUCN finished its Antarctic Conservation Strategy, which was published in 1991.⁶⁸ The document was disseminated and promoted at the Madrid Consultative Meeting. While the Strategy was temporarily overshadowed by the new Environment Protocol and its implementation, it still served to provide the most complete overview available about actions needed to conserve the natural environment and living resources of the Antarctic region.⁶⁹ 47

Many individuals associated with IUCN played key roles in promoting the Protocol and conservation of Antarctica, including Lorne Clarke, then Canada's Ambassador to Madrid, and long-standing supporter of IUCN and the Law Com- 48

mission since Montevideo I (see Chapter 19), Buff Bohlen, who headed the US delegation to Madrid and was later an IUCN Counselor, and Bill Mansfield from the Foreign Ministry of New Zealand and later a Law Commission member. During this period, IUCN Director General Holdgate also was actively involved, as were several individual Law Commission experts working through their delegations or directly on behalf of ELP, as noted earlier.

Liability Annex

- 49 The Consultative Parties agreed at their 17th meeting in 1992 to elaborate an annex, as mandated in the Madrid Protocol, on rules and procedures relating to liability for damage arising from activities taking place in the Antarctic Treaty area and covered by the Protocol. The Legal Group of Experts they established was chaired by Rüdiger Wolfrum, a CEL member and since elected judge on the Inter-



Rüdiger Wolfrum (right) speaks to Christian Haub (left)

national Tribunal of the Law of the Sea. The Experts Group continued to meet over the course of several years, producing numerous drafts endeavoring to produce consensus on these complex issues, and delivering a final report in 1998.

- 50 As this new legal issue arose, the Commission on Environmental Law created a Working Group on Antarctica, in the words of the new Commission Chairman, Parvez Hassan, “in order to sustain [the Commission’s] ability to contribute positively to this process.”⁷⁰ Alexandre Kiss, now Commission Vice Chair, was appointed focal point for the Working Group. Kiss, with ELC Legal Officer Richard Tarasofsky, produced a paper on behalf of the CEL Working Group entitled “Financial Preparedness and the Joint Compensation Fund in the Annex on Environmental Liability to the Madrid Protocol” which was transmitted to the Chair of the Legal

Group of Experts in 1996.⁷¹ In the late 1990s, Wolfrum attended two CEL Steering Committee meetings to report on progress with the liability draft.⁷² Among others, CEL member James Barnes was actively involved (on behalf of the Antarctic and Southern Ocean Coalition) in the liability discussions from the late 1990s. The liability annex was on the agenda again of the 28th Consultative Meeting in June 2005 in Stockholm, Sweden.⁷³

IUCN continues to monitor activities of the Antarctic Treaty System, mainly through its programme committee, the Antarctic Advisory Committee, charged with overall support and coordination of the Union's involvement on Antarctic, sub-Antarctic islands and Southern Oceans issues. Chair of this Committee is the Vice-Chair of the World Commission on Protected Areas (WCPA) Antarctic Region. The Environmental Law Programme continues to provide support and technical assistance to the Committee as legal issues arise. 51

In 2004, at the 3rd World Conservation Congress, following the tradition of all past General Assemblies and Congresses on the issue of Antarctica since 1981, members adopted another lengthy and detailed resolution on Antarctica and the Southern Ocean. This resolution expresses great concern about the growing environmental threats to the region, including from increased tourism, and from illegal, unreported, and unregulated fishing, and urging all Parties and members to take the steps necessary to protect marine habitats and biological diversity, including as a matter of priority complete rules relating to liability for environmental damage.⁷⁴ 52

Whaling

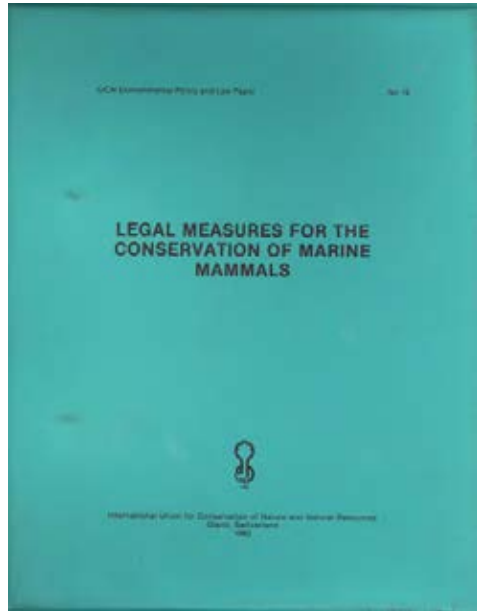
Another global treaty process that the Environmental Law Programme was particularly concerned to monitor and influence for environmental content in the 1970s and 1980s was the International Convention for the Regulation of Whaling. This Convention, signed in Washington, D.C., in 1946, set up the International Whaling Commission (IWC) to oversee its implementation and monitor adequacy of measures governing the conduct of whaling throughout the world.⁷⁵ 53

IUCN's formal involvement with the work of the International Whaling Commission began in 1977 when it became a member of IWC's Scientific Committee. Normally thereafter IUCN sent its Species Survival Commission to represent the Union. Beginning in 1978, the Environmental Law Programme participated in IWC Technical Committee Meetings in collaboration with the scientific components of the Union. Commission on Environmental Policy, Law and Administration (CEPLA) normally attended as an observer. This was another new dimension of marine law for the Commission and as with the UNCLOS and Antarctica issues, specialists in the Commission needed to be identified. In 1978, CEPLA Executive Officer, Daniel Navid, represented the Commission at IWC technical meetings. Among early scientific concerns where IUCN provided input was the issue of how to determine proper quotas for different whale populations; related to this came legal issues such as how to deal with whaling operations by States not Party to the Convention ('pirate' whalers) and how to deal with Parties not observing the IWC regulations. 54

In 1979, CEPLA joined with the International Council for Environmental Law (ICEL) to investigate existing legal and policy mechanisms at national and interna- 55

tional levels related to fishing operations and controls outside existing regimes that might provide lessons and insights for controlling whaling operations. Environmental law specialist from the UK, Pat Birnie, was particularly concerned about this issue and took the lead in evaluating available information and undertaking additional research. In 1981, her results were published as a draft study which was submitted to a special Working Group of the International Whaling Commission dealing with these problem areas.⁷⁶ The paper outlined the legal basis on which action could be taken to prevent whaling outside the framework of the Convention.

56 Once this initial work had been done, Birnie continued to monitor the subject professionally and as a CEPLA member. In 1982, with financial support from the U.S. Center for Environmental Education, her study was published as part of the IUCN Environmental Policy and Law Series, entitled *Legal Measures for the Conservation of Marine Mammals – Pirate Whaling*.⁷⁷ Efforts were explored in the mid-1980s to expand the paper, but resources were unavailable to support this additional work. The Environmental Law Programme, as reported to the 17th IUCN General Assembly in 1988, “continued to follow developments in the International Whaling Commission” and provide technical assistance as appropriate, for example, “on the proper interpretation of the special permit provisions of the 1949 Convention and on the progress of litigation in the United States surrounding the withdrawal of the Japanese reservation to the Commission decision on a moratorium on commercial whaling.”⁷⁸



57 IUCN continues to monitor and participate in treaty developments through its Species Survival Commission.

Tropical timber and an international forest regime

58 From the 1970s, IUCN members began to formally express concern and suggest actions to address the growing degradation of tropical rain forests and associated ecosystems. The 11th General Assembly meeting in Banff, Canada, in 1972 adopted a resolution urging the use of ecological principles and controls by governments to avoid tropical forest degradation, conservation of important and unique areas as protected areas, and the protection and restoration of critical areas such as watersheds.⁷⁹ Soon thereafter, the 12th IUCN General Assembly meeting in 1975 in Kinshasa, Zaire, adopted a resolution recognizing “that the tropical rain forests are of great importance both for nature conservation and the conservation of valuable genetic resources as well as for economic development”, and appealing “urgently to

the governments of topical countries concerned to give full consideration to ecological guidelines in the development of tropical forest areas....”⁸⁰

In the mid-1970s, the Environmental Law Center began research on possibilities for a tropical forest convention. In 1977, the Law Commission reported to the IUCN Executive Board on its preliminary results by presenting a Proposal for a Convention to Conserve Tropical Rain Forests. The Board asked the Commission to circulate the proposal to other Commissions and components of the Union with a note explaining work requirements and coordination links that would be important with other IUCN activities, e.g., the forthcoming Plants Campaign.⁸¹ By the end of the decade, little progress had been made, the proposal still in early stages of consultation within IUCN. 59

In the meantime, in another international forum coordinated by the United Nations Conference on Trade and Development (UNCTAD), a much narrower forestry treaty process was under way. Producer countries of tropical timber were meeting with countries consuming the product to set out rules and a treaty regime for a tropical timber production treaty. The timber initiative had begun in the late 1970s at the instigation of Japan and other major timber trading states, and was independently developing at about the time when the conservation treaty in IUCN had stalled. 60

By the nature of UNCTAD’s mandate, the focus of the timber production negotiations was on timber as a tradable commodity. The producer-consumer meetings moved forward with neither IUCN or UNEP technical input. Law Commission Chair Burhenne recalls how the negotiations in the late 1970s simply escaped IUCN’s notice. Passing through the building, Palais des Nations, housing the UN seat in Geneva, he recalls “three or four times seeing notices in the lobby for tropical timber meetings; not being a specialist in tropical timber, I informed IUCN but was told the discussions were only technical and nothing of interest for the Union.”⁸² 61

The UNCTAD-coordinated treaty negotiations continued into the new decade. In 1982 a near-final draft of the timber treaty began to be circulated by UNCTAD and CEPLA obtained a copy. At that point, IUCN concerns were raised, but the process was nearing conclusion and potential for change was minimal. Nevertheless, the Environmental Law Programme prepared a position statement analyzing the narrowness of the provisions which was adopted by the IUCN Council with some amendments, and submitted by IUCN to the Seventh Preparatory Meeting of UNCTAD on Tropical Timber on November 29, 1982, the final negotiating session.⁸³ 62

IUCN’s statement to the UNCTAD meeting emphasized that “trade in tropical timber should only be fostered if, inter alia, focus is concurrently put on research and the move towards tropical timber production in a sustainable way, i.e., move from the extraction of timber from wild forests to managed forest production for timber and other goods and services at the earliest possible moment...” and urged the meeting “to continue emphasizing the role which the projected commodity agreement can play in alleviating the depletion of national tropical forest resources and to contribute to solving the broader and more complex problems of tropical forest resources management.”⁸⁴ 63

The IUCN paper had limited impact. Because NGOs were not allowed in the meeting, Reuben Olembo, heading the UNEP delegation, requested Burhenne to 64

join the delegation. Support could not be rallied to open up the text at that late stage. The only concession resulting from the paper was the addition of conservation as a discretionary, not a mandatory, element of the draft text.

International Tropical Timber Agreement

65 In 1983, a final Conference was called under the auspices of UNCTAD and the treaty was concluded at that Conference. The final treaty, entitled *The International Tropical Timber Agreement (ITTA)*, called for creation of a new organization to oversee and manage its implementation, an International Tropical Timber Organization (ITTO).

66 Until the treaty went into force, the Environmental Law Programme continued formally and informally to urge introduction of conservation principles into the treaty text. The effort was particularly intense in view of the fact that this would be setting a precedent as the first commodity treaty for products of the wild.⁸⁵

67 Only weeks before the treaty went into force, the International Institute for Environment and Development (IIED) organized a high-level seminar in London where Malcolm Forster, then Senior Counsel to CEPLA, represented IUCN.⁸⁶ Senior government officials from both timber-producing and timber-consuming states as well as other representatives of the timber trade were present. The seminar's key message was the uniqueness of the agreement among commodity agreements and the need to take special care to ensure conservation. CEPLA "reminded those attending of the efforts made by IUCN to ensure that some recognition of the unique character of the ITTA among commodity agreements (namely, that it deals with a wild stock) appeared in the text of the Agreement, pointed out that the inclusion of conservation considerations as a permissive rather than a mandatory element made it difficult to regard the ITTA as truly a conservation instrument, and ... expressed the view that the operation in practice of the ITTA would have to be carefully monitored."⁸⁷

68 The ITTA came into force in 1985 and the ITTO began operations in 1987 when Japan offered to provide headquarters facilities in Yokohama, Japan. IUCN and the Law Programme continued to monitor activities of the ITTO thereafter, particularly in the initial years of implementation, in order to gauge the weight that would be given to conservation issues as compared to commodity issues. The resulting agreement was considered a major setback for tropical forest conservation. Burhenne recalls: "Unfortunately, the first international treaty to be concluded on tropical forests was a treaty to guarantee the selling of tropical forests."⁸⁸

Successor agreements

69 The original treaty limited its life span to 10 years. In 1993, negotiations began on a successor agreement. For this round, conservation organizations, including IUCN, were better prepared with timely technical input on recommendations for strengthening the conservation provisions of the regime. Unfortunately, results again were disappointing. An Environmental Law Programme Newsletter summarized the debate:

"The renegotiations were split along lines of tropical timber consumers and producers, each with different visions of what the new agreement should look

like.... The main disagreement is as to the appropriate scope of the revised ITTA, with Producers calling for an agreement which would cover all timbers and the Consumers favouring an agreement limited to tropical timber. While the Consumers wish to abide by the 'Year 2000' target, set by the ITTO Council in 1990, to make international trade in tropical timber dependent exclusively on sustainable use practices, the Producer position is that this should not be part of the new agreement. In addition, the Producer countries want to de-emphasize forest management and to give a renewed emphasis on other functions, such as marketing, pricing, market transparency, transfer of technology and research."⁸⁹

In the end, the final successor agreement, entitled *International Tropical Timber Agreement (ITTA 1994)* and effective for another ten years, contained no requirements for conservation. As reported in the journal *Environmental Policy and Law*, the new agreement was "attacked by almost all environmental organisations concerned with the world's forests. Most were frustrated that agreement had been reached at the lowest common denominator, behind closed doors, leaving the world's forests endangered as ever."⁹⁰ The new treaty did call for establishing a Bali Partnership Fund in response to pressure from developing countries for additional financial resources. The purpose of that fund was to assist producing member countries pursue sustainable management of their tropical timber-producing forests and in turn developing countries pledged to adopt specific policies by 2000 to help sustain their forests. 70

ITTA-1994 came into force in 1997 and in 2003–2004, as its 10th anniversary approached, treaty Parties began to address issues in preparatory meetings and formal sessions of the International Tropical Timber Council (the governing body of ITTO) for negotiations of a further successor agreement. As reported in the journal *Environmental Policy and Law*, a number of issues related to sustainable forest management are on the agendas of these new discussions, for example, ITTO Guidelines for Restoration and Rehabilitation of Degraded and Secondary Tropical Forests, and use of indicators for sustainable forest management.⁹¹ With its new UN Permanent Observer status (see Part 7, Intro.), IUCN has monitored developments but because of differing views amongst its states members, has not been at the forefront of any conservation debate. UNCTAD continues to serve as UN Secretariat for the treaty, with a further successor agreement to the ITTA-1994 to be negotiated in 2006.⁹² The organization's current membership of 59 states represents about 80% of the world's tropical forests and 90% of the global tropical timber trade, according to ITTO's web site.⁹³ 71

Promoting forest conservation generally

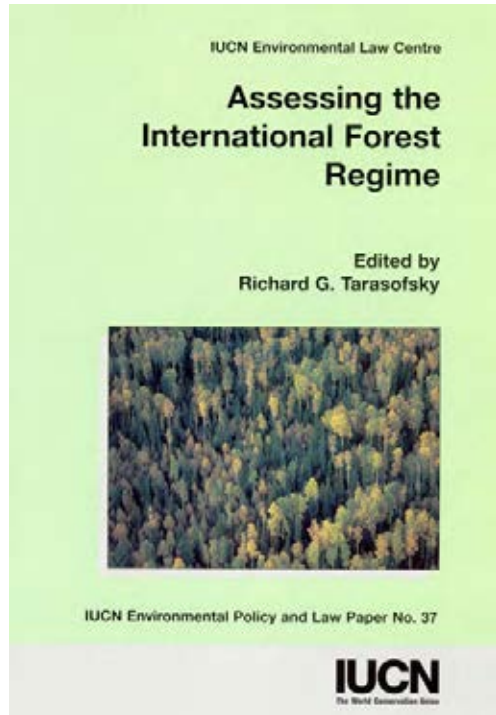
IUCN created a global thematic Forest Conservation Programme in the mid-1990s to provide improved monitoring and guidance with respect to all types of forest. As input to the debate, IUCN partnered with World Wildlife Fund International in 1996 to issue a broad, hard-hitting policy on sustainable forest management called "Forests for Life", which among other things, stated that commercial 72

timber harvesting was now “the greatest single threat to the forests richest in wild plants and animals.”⁹⁴

73 Since the early 1990s, the Environmental Law Programme has been mostly involved in promoting international conservation principles for both tropical and temperate forests through input into development and implementation of other international instruments. For example, the 1992 United Nations Conference on Environment and Development (UNCED) produced a “Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests”.⁹⁵ In addition, the Convention on Biological Diversity has become a prominent instrument for purposes of forest conservation and maintaining global biodiversity, and the ELP not only helped draft that convention but has worked diligently to support its implementation (see chapter 23).

74 While a debate persisted on whether the world needed an international convention on forests, because the IUCN Membership was divided on the issue, ELP’s approach, as recalls ELC Legal Officer Richard Tarasofsky who worked on forest issues, “...was to improve the quality of the debate by identifying gaps, overlaps and options, but not endorsing any particular side of the argument.”⁹⁶ Tarasofsky participated on behalf of ELC in several international events associated with the issue of an international forest regime and also attended meetings of the IUCN Forest Conservation Programme which brought the ELP in productive contact with other units of IUCN.⁹⁷

75 In 1998, the Environmental Law Programme undertook a legal assessment of the international forest regime in response to a request from the UN Intergovernmental Forum on Forests (IFF), the World Commission on Forests and Sustainable Development and several non-governmental organizations.⁹⁸ The multi-authored study focused on actions taken by States in the framework of legally binding instruments and institutions, building on previous analysis, assessing the effectiveness of the present regime, and identifying the need for new legal instruments. The report, edited by Richard Tarasofsky, Law Centre Legal Officer, was published in 1999 as part of IUCN’s Environmental Policy and Law Paper Series, entitled *Assessing the International Forest Regime*.⁹⁹ In 2000, ECOSOC created a successor organization to the Intergovernmental Forum on Forests called the UN Forum on Forests (UNFF).¹⁰⁰ As a



subsidiary body, its main objective is to promote management, conservation, and sustainable development of all types of forest. ICEL has actively collaborated with IUCN CEL to monitor the work of UNFF sessions and Marlene Jahnke, editor of the journal *Environmental Policy and Law* (EPL) and an ICEL member, has written several reports for EPL on UNFF sessions.

The IUCN Forest Programme now takes the lead on forest issues for IUCN, including the monitoring of ITTO. 76

Notes

- 1 For information on the history and key provisions of the Law of the Sea Convention, see UN web site: www.un.org/Depts/los.
- 2 "Third United Nations Conference on Law of Sea to Meet at Caracas, 20 June – 29 August", United Nations Press Release SEA/18 (28 May 1974), p. 1.
- 3 Author interviews with Wolfgang Burhenne, October 2000 and June 2004 (Bonn, Germany).
- 4 *IUCN Yearbook* 1974, p. 39.
- 5 "CEPLA Report to the 14th General Assembly", pp. 6/7 (labeled also Annex I of General Assembly Paper 78/21) attached to *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, 1979).
- 6 Burhenne, W., "Report of the Commission on Environmental Policy Law and Administration for the period May 1976 to April 1977", p. 1 (labeled Agenda Paper EB. 77/21, Annex to "IUCN Executive Board Minutes of the 59th, 60th, and 61st Sessions of the Executive Board and 1st Session of the Council at World Health Organization Headquarters, Geneva, Switzerland, 18 and 22 April 1977").
- 7 Author interview with Wolfgang Burhenne and Françoise Burhenne-Guilmin on March 2005 draft, April 9, 2006 (Bonn, Germany).
- 8 "CEPLA Report to the 14th General Assembly", p. 7 (labeled also Annex I of General Assembly Paper 78/21) attached to *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979).
- 9 Id. at 6.
- 10 Burhenne, W., "Report of the Commission on Environmental Policy, Law and Administration" (2 May 1978), p. 3 (also labeled Agenda Paper UC. 78/38), attached to IUCN Council, "Minutes of the 2nd Meeting 4, 5, 6 May 1978 at Hotel du Mont-Blanc, Morges, Switzerland".
- 11 For additional information on the International Tribunal of the Law of the Sea, including the judges of the Tribunal, see the Tribunal's web site: www.itlos.org.
- 12 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 6 (also labeled Attachment to General Assembly Paper GA/15/81/6), in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982).
- 13 Communication from Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 14 "CEPLA Report to the 14th General Assembly," p. 7 (labeled also Annex I of General Assembly Paper 78/21) attached to *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979).
- 15 "Report of the Commission on Environmental Policy, Law and Administration", p. 3 (also labeled Council Paper UC.79/27) (May 1979).
- 16 "IUCN Council, Minutes of the 2nd Meeting, 4, 5, 6 May 1978, at Hotel du Mont-Blanc, Morges, Switzerland", p. 4.
- 17 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 7 (also labeled Attachment to General Assembly Paper GA/15/81/6) in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982). See, e.g., Borgese, E. Mann, *The Oceanic Circle – Governing the Seas as a Global Resources* (UN University Press, 1998).

- 18 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 7 (also labeled Attachment to General Assembly Paper GA/15/81/6) in *Proceedings of the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, Switzerland, 1982).
- 19 Douglas M. Johnston (ed.), *The Environmental Law of the Sea* (IUCN Environmental Policy and Law Paper No. 18) (IUCN, 1981); also published in FUST 'A' Series, A79.
- 20 Commentary from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 21 *The Law of the Sea: Priorities and Responsibilities in Implementing the Convention*. Part II (Douglas M. Johnston, Phillip M. Saunders and Peter Payayo): Conservation and Management of the Marine Environment – Required Initiatives and Responsibilities under the 1982 UNCLOS.
- 22 "UNCLOS Chart", *IUCN Environmental Law Programme Newsletter* 1994, p. 10.
- 23 See Resolution 16/12, "Environmental Law of the Sea", *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain* (IUCN, Gland, Switzerland, 1985).
- 24 See "IUCN Environmental Law Programme Annual Report 1994", p. 3.
- 25 *The Law of the Sea: Priorities and Responsibilities in Implementing the Convention*. Part I (Lee A. Kimball): The UN Convention on the Law of the Sea – A Framework for Marine Conservation. Part II (Douglas M. Johnston, Phillip M. Saunders and Peter Payayo): Conservation and Management of the Marine Environment – Required Initiatives and Responsibilities under the 1982 UNCLOS.
- 26 Commentary from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 27 Id.
- 28 See Kimball, L. A., *International Ocean Governance: Using International Law and Organizations to Manage Marine Resources Sustainably* (IUCN, 2001, 2003 Rev.); also, communication from Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 29 Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, UK, USA, USSR – all called consultative members – were the original 12 states ratifying the treaty.
- 30 For information on the Antarctic Treaty System and participating countries see: www.scar.org/treaty.
- 31 Resolution 6, *Proceedings of IUCN Seventh General Assembly, Warsaw, Poland, June 1960* (IUCN, Brussels, Belgium, 1960).
- 32 *IUCN Proceedings of the Eighth General Assembly, Nairobi, Kenya, September 1963* (IUCN, Morges, Switzerland, 1964), pp. 65–66.
- 33 IUCN, "Minutes of the 48th Session of the Executive Board, Morges 22, 23, 24 May, 1970", p. 12 (Reference Paper E.B. 70/58, Decision E.B. 48/56).
- 34 "Minutes of the Fifth Meeting of IUCN Council, 25–27 June 1979, Morges, Switzerland", p. 9.
- 35 Resolution 15/20, "Antarctica Environment and the Southern Ocean", paras. 25 and 26, *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982).
- 36 Resolution 15/20, paras. 34 and 35, *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982).
- 37 This historical information was provided by Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006. See "Report of the US delegation to the 1980 diplomatic conference" (1980), and "Report of the 1st Meeting of the Commission established by CCAMLR."
- 38 Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly 5–14 November 1984, Madrid, Spain", p. 4 (also labeled Annex 4 to General Assembly Paper GA/16/84/1).
- 39 Commission on Environmental Policy, Law and Administration, "Report to the 18th Meeting of the IUCN Council 15–16 May, 1985", p. 5 (also labeled Attachment to Annex 4 to Council Paper UC.18/85/1).

- 40 Author interview with Daniel Navid, June 23, 2004 (Bonn, Germany).
- 41 Commission on Environmental Policy, Law and Administration, "Report to 16th Session of the IUCN General Assembly 5–14 November 1984, Madrid, Spain", p. 4 (also labeled Annex 4 to General Assembly Paper GA/16/84/1).
- 42 See "CCAMLR Makes Progress" in 15 *Environmental Policy and Law* (1985), p. 42.
- 43 Resolution 15/20 in *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982).
- 44 "Director General's Overview 1985–1987" in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988), p. 17.
- 45 See IUCN and ICSU/SCAR, *Conservation in the Antarctic – Report of the Joint IUCN/SCAR Working Group on Long-term Conservation in the Antarctic* (IUCN, 1986); communication from Lee Kimball by email transmission dated June 8, 2006.
- 46 Communication from Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 47 Resolution 16/9, para (d) adopted by the 16th General Assembly in Madrid, 1984, Recommendation 17.52, para. 7, adopted by the 17th General Assembly in San Jose (1988).
- 48 "Report of the Chairman of the Commission on Environmental Policy, Law and Administration", in "Report of the Director-General to the 18th Session of the General Assembly 28 November – 5 December 1990, Perth, Australia", p. 83.
- 49 Communication with Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 50 See *A Strategy for Antarctic Conservation* (IUCN, 1991).
- 51 Resolution 15/20, para. 13, *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982).
- 52 Resolutions 16/8 and 16/9, *Proceedings of the 16th Session of the IUCN General Assembly, 5–14 November 1984, Madrid, Spain* (IUCN, Gland, Switzerland, 1985).
- 53 Resolution No. 16/8, preamble and para. 3, *Proceedings of the 16th Session of the General Assembly of IUCN Madrid, Spain, 5–14 November 1984* (IUCN, Gland, Switzerland, 1985).
- 54 Resolution No. 16/9, paras. (a) and (b), *Proceedings of the 16th Session of the General Assembly of IUCN Madrid, Spain, 5–14 November 1984* (IUCN, Gland, Switzerland, 1985).
- 55 UNGA Resolution 38/77.
- 56 *IUCN Triennial Report 1982–84* (GA/16/84/1), p. 17. The submission was called *Conservation and Development of Antarctic Ecosystems* (IUCN, 1984).
- 57 See Commission on Environmental Policy, Law and Administration, "Addendum to Report to 16th Session of the IUCN General Assembly", p. 1.
- 58 "Commission on Environmental Policy, Law and Administration Submission for Inclusion in the Director-General's Report to Council 1987", p. 2.
- 59 Resolution 15/20, paras. 30 and 14 (c) respectively, *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982).
- 60 Commission on Environmental Policy, Law and Administration, "Report to the 13th Meeting of the IUCN Council 8–11 November 1983", p. 4 (also labeled Annex to Council Paper UC.13/83/17).
- 61 Commentary from Lee Kimball by email transmission dated June 8, 2006.
- 62 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica", p. 8 (also labeled Annex 5 to General Assembly Paper GA/17/88/1) attached to *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988).
- 63 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany) (draft transcript, p. 11).
- 64 Author interview with Wolfgang Burhenne, June 24, 2004 (Bonn, Germany).
- 65 Author interview with Wolfgang Burhenne, October 16, 2000 (Bonn, Germany) (draft transcript, p. 11).
- 66 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 90/1), p. 2.

- 67 Author interview with Wolfgang Burhenne, October 17, 2000 (Bonn, Germany) (draft transcript, p. 42).
- 68 See *A Strategy for Antarctic Conservation* (IUCN, 1991).
- 69 See "Director General's Report on the Activities of the Union since the 18th Session of the IUCN General Assembly", p. 57, Table 3 (A2), presented to the IUCN – The World Conservation Union 19th Session of the General Assembly, Buenos Aires, Argentina, 17–26 January 1994 (Also cited as General Assembly Paper GA/19/94/4).
- 70 See Hassan, P. "Letter from the Chair" in *IUCN Environmental Law Programme Newsletter January–March 1996*, p. 3.
- 71 See P. Hassan, "Commission on Environmental Law (CEL) Triennial Report: 1994–1996", Annex 3 to Congress Paper CGR/1/96/2 at 22.
- 72 Author interview with Wolfgang Burhenne on March 2006 draft, April 9, 2006 (Bonn, Germany).
- 73 Annex VI, *Liability Arising from Environmental Emergencies*, was adopted by the 28th Antarctic Treaty Consultative Meeting in Stockholm, Sweden, on June 14, 2005, and is being ratified by the Consultative Parties, for text and a report of the meeting, see the Antarctic Treaty web site at: www.ats.aq/protocol.php (researched 12/27/05).
- 74 Resolution 3.036, 3rd World Conservation Congress (Bangkok, Thailand, 17–25 November 2004), available on IUCN's web site at: <http://app.iucn.org/congress/index.cfm>. For information on IUCN's Antarctic Programme, see generally <http://www.iucn.org/themes/wcpa/region/antarctic>.
- 75 Detailed information on the International Whaling Commission, including the Convention text, is available on its web site, <http://www.iwcoffice.org>.
- 76 Commission on Environmental Policy, Law and Administration, "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 8 (labeled as Attachment to General Assembly Paper GA/15/81/6) attached to *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982).
- 77 Birnie, P., *Legal Measures for the Conservation of Marine Mammals – Pirate Whaling* (IUCN Environmental Policy and Law Paper Series No. 19, loose leaf) (IUCN, 1982).
- 78 Commission on Environmental Policy, Law and Administration, "Report of the Chairman to the 17th Session of the IUCN General Assembly 1–10 February 1988, San Jose, Costa Rica", p. 2 (Also labeled Annex 5 to General Assembly Paper GA/17/88/1) attached to *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988).
- 79 Resolution 7, "Resolutions of the 11th General Assembly of IUCN" (Banff, Alberta, Canada, 16 September 1972).
- 80 Resolution 6, "Resolutions of the 12th General Assembly of IUCN" (Kinshasa, Zaire, 18 September 1975).
- 81 See, "IUCN Executive Board Minutes of the 59th, 60th, and 61st Sessions and 1st Session of the Council at World Health Organization Headquarters, Geneva, Switzerland, 18 and 22 April 1977", p. 2.
- 82 Author interview with Wolfgang Burhenne, October 18, 2000 (Bonn, Germany) (draft transcript, p. 53).
- 83 Commission on Environmental Policy, Law and Administration, "Report to the 13th Meeting of the IUCN Council 8–11 November 1983", p. 2 (also labeled Annex to Council Paper UC.13/83/17).
- 84 "Statement of International Union for Conservation of Nature and Natural Resources (IUCN), UNCTAD Meeting on Tropical Timber, Geneva, 29 November 1982", paras. 5 and 9. (Reprinted in *Environmental Policy and Law* (Vol. 10, 1983), p. 69.)
- 85 Author interview with Wolfgang Burhenne, October 18, 2002 (Bonn, Germany) (draft transcript, p. 54).
- 86 Commission on Environmental Policy, Law and Administration, "Report to the 18th Meeting of the IUCN Council 15–16 May, 1985", p. 3 (also labeled Attachment to Annex 4 to Council Paper UC.18/85/1).

- 87 Id.
- 88 Author interview with Wolfgang Burhenne, October 18, 2002 (Bonn, Germany) (draft transcript, p. 53).
- 89 “International Law Developments” in *IUCN Environmental Law Programme Newsletter* (January–May 1993), p. 2.
- 90 “ITTA Successor Agreement” in 24 *Environmental Policy and Law* (1994), p. 69.
- 91 See “ITTA: Draft Text Agreed for Successor Agreement” in 34 *Environmental Policy and Law* 25–30 (February 2004), and “ITTC/6th: Highlighting Activities” in 34 *Environmental Policy and Law* 243–253 (November 2004).
- 92 See UNCTAD web site: www.unctad.org/Templates/Meeting.asp?m=11153&intItemID=1942&lang=1.
- 93 See ITTO web site at: www.itto.or.jp/live/index.jsp.
- 94 “Dudley, N., D. Gilmour, and J.-P. Jeanrenaud (eds.), *Forests for Life – The WWF/IUCN Forest Policy Book*, p. 10 (WWF-UK, 1996).
- 95 “Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3–14 June 1992)”, Annex III: “Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests”, UNGA A/CONF.151/26 (Vol. III).
- 96 Commentary offered by Richard Tarasofsky on May 2006 draft, transmitted by email dated June 19, 2006.
- 97 Commentary from Richard Tarasofsky on May 2006 draft, by email dated June 19, 2006.
- 98 See “IUCN Environmental Law Programme Annual Report 1998”, p. 3.
- 99 See Tarasofsky, R. (ed.), *Assessing the International Forest Regime* (IUCN Environmental Policy and Law Paper No. 37) (IUCN, 1999).
- 100 ECOSOC Resolution E/2000/35 (October 2000).

Part 6 (1990+)

Regionalization and Further Law Development

The 1990s was a decade when IUCN as an organization make major strides in decentralizing and regionalizing its programmes to strengthen services to members. At the same time, it was a decade for significant conceptual advances in environmental law to fill gaps and consolidate in response to improved science and technology, and global understandings about the natural environment and sustainable development. 1

By 1990, as new international players were entering the environmental field, IUCN's competitiveness for the increasingly tight donor dollars hinged more and more on how well it could respond and provide services to members, especially in developing countries. The Union had grown, as Martin Holdgate, IUCN Director General (1988–1994), reported to the 18th General Assembly in 1990: "IUCN is, at least on paper, now a fairly large organization, and if the potential outreach of the Union were to be evaluated in terms of the numbers of individuals in the membership of all the organizations it links, it would be an immense global force."¹ Membership by then comprised 62 governments, 108 government agencies and over 400 NGOs.² 2

There were now twelve IUCN Regional and Country Offices (RCOs) outside Europe (up from two in 1985). Staff had doubled during the five year period from 1985 (from 92 to 190 in 1990), about half of which were now in field offices.³ And members at the 1990 General Assembly mandated more "extension and strengthening of the network of IUCN Regional and Country Offices..."⁴ (This stunning rate of staff growth thus continued, by the end of the decade approaching 1000 staff, with only 100 at Headquarters.⁵ From twelve RCOs in 1990, there were 42 by the end of the 1990s.⁶) 3

This considerable staff expansion outside Headquarters was in direct response to the new policy of decentralization and regionalization. By 1994, regionalization was well under way and IUCN Director General Holdgate assured the 19th General Assembly that the process would continue: "With the decentralization of the Secretariat and stronger links with members at national and regional level, as proposed in the Strategic Plan, [the service sector] can be expected to grow further, and indeed the Commissions and Secretariat as a whole are likely to become more and more a supporting service network."⁷ According to Holdgate, service to the RCOs was one of IUCN's fastest growing "spheres of action".⁸ 4

To freshen its image in line with these changing times, IUCN members at the 1990 General Assembly also voted to add 'The World Conservation Union' to the legal name 'International Union for Conservation of Nature and Natural Resources (IUCN)', the official name of the Union since 1956. Members considered the legal title too 'unwieldy', not modern, and not adequately conveying the "the worldwide nature of [the Union's] membership and activities".⁹ While the official name remains still the legal name, documents from then on were to identify the Union as "IUCN – The World Conservation Union", a practice that continues today.¹⁰ To 5

reinforce this new image, the General Assembly of members was renamed the ‘World Conservation Congress’ to be effective with the 1996 Assembly.¹¹

6 Implementing the new policy of regionalization was painful and difficult, as the next IUCN Director General David McDowell would report in 1996: “What the General Assembly sought was not simply fundamental changes in procedures, ways of operating and global distribution of human and financial resources but a whole change of mindset across the Union, ... [where] members are to be in the driving seat, not the secretariat nor any other element inside or outside the Union...., [where] the secretariat, Commissions and overall activities of the Union must be further regionalized and hence decentralized to achieve greater effectiveness and presence around the globe....All this adds up to a revolution.”¹²

7 For the Environmental Law Programme, regionalization was a two-sided charm: on the one hand, reinforcing efforts within the Commission to broaden membership especially from developing countries and their involvement in environmental law and, on the other, presenting new challenges for the Environmental Law Centre in its ongoing efforts to sustain core global and centralized services. At the substantive level, already in the 1980s, two major gaps began to receive significant attention by the Environmental Law Programme in its progressive development of international environmental law, and these developed in the 1990s. The first was the recognition that a broader, more systems-oriented treatment was needed, particularly to address growing concerns about species and ecosystem conservation. The second was the enduring interest for an umbrella environmental treaty encompassing environmental questions generally.

8 This Part takes the Environmental Law Programme (ELP) through these major programmatic and conceptual law challenges and contributions of the 1990s. Chapter 22 tracks Law Commission expansion as it adapts its governance system to involve more members, especially from developing countries. Chapter 23 deals with the Programme’s efforts during those years to promote and develop a new global, more ‘systems-oriented’ treaty, the Convention on Biological Diversity. During the decade, the Environmental Law Programme also made strides expanding legal technical assistance and developing an Environmental Law Service to more effectively provide legal services to regional and country levels, and this is addressed in Chapter 24. Chapter 25 reviews ELP’s initiatives to strengthen environmental law training and education in developing countries, through several means, including its flagship programme to ‘training the trainers’. Finally, the Part closes with the major attention and effort given by the Environmental Law Programme to articulate and consolidate legal principles on environmental protection and sustainable development into an international covenant.

Notes

1 Holdgate, M., “Overview 1988–1990”, p. 10 (IUCN, 31 May 1990).

2 Id. at 8.

3 See Id. at 10, Table 1. In 1985, IUCN had 92 employees, 48 of which were at Headquarters, 6 in Bonn at the Environmental Law Centre, and 23 in Cambridge, UK, at the World Conservation Monitoring Centre. By 1990, the Union’s 190 full-time staff equivalents were distributed: 66 at Headquarters, 7 in Bonn, 32 in Cambridge, and the remainder in the 12 regional and

- national offices outside Europe, the largest being Kenya with 22, Pakistan with 18, and Costa Rica with 11 staff.
- 4 Resolution 18.2, *Resolutions and Recommendations, 18th Session of the General Assembly of IUCN – The World Conservation Union, Perth, Australia, 28 November – 5 December 1990*, p. 4 (IUCN, 1991).
 - 5 See “Report of the Director General on the Work of the Union since the 1st World Conservation Congress, Montreal, 1996” (Congress Paper CGR/2/2000/2), p. 2, in *Proceedings of the 2nd World Conservation Congress, 4–11 October 2000, Amman, Jordan* (IUCN, 2001).
 - 6 Id.
 - 7 “Director General’s Report on the Activities of the Union since the 18th Session of the IUCN General Assembly”, p. 63 (also labeled GA/19/94/4) in *Proceedings of IUCN – The World Conservation Union, 19th Session of the General Assembly, Buenos Aires, Argentina, 17–26 January 1994*, (IUCN, 1994).
 - 8 By 1994, IUCN’s Regional and Country Offices had grown to 30 and some 300 of the organization’s 464 staff were now located in those offices. See Holdgate, M., “Director General’s Report on the Activities of the Union since the 18th Session of the IUCN General Assembly”, p. 55, Table 1 (General Assembly Paper GA/19/94/4) in *Proceedings of the IUCN – The World Conservation Union, 19th Session of the General Assembly, Buenos Aires, Argentina, 17–26 January 1994*, (IUCN, 1994).
 - 9 Resolution 18.1 (3), *Resolutions and Recommendations, 18th Session of the General Assembly of IUCN – World Conservation Union, Perth, Australia, 28 November – 5 December 1990*, p. 3 (IUCN, 1991).
 - 10 Id.
 - 11 Resolution 18.2 (3), *Resolutions and Recommendations, 18th Session of the General Assembly of IUCN – World Conservation Union, Perth, Australia, 28 November – 5 December 1990*, p. 5 (IUCN, 1991).
 - 12 McDowell, D., “The Report of the Director General on the Work of the Union Since the 19th Session of the IUCN General Assembly” (Congress Paper CGR/1/96/2), p. 7, in *Proceedings of the IUCN – The World Conservation Union, World Conservation Congress, 13–23 October 1996, Montreal, Canada*, (IUCN, 1997).

Chapter 22: Governance in the 1990s

The 18th IUCN General Assembly meeting in Perth, Australia, in 1990, reconstituted the Commission on Environmental Policy, Law and Administration (CEPLA) as the Commission on Environmental Law (CEL). The name change followed years of discussion and was supported by outgoing Commission Chair Burhenne, who explained in a memo to members: “CEPLA’s mandate should be modified for it to become the IUCN Commission on Environmental Law; this was recommended not only because law is the area in which CEPLA has concentrated, but also because it was felt that the subject of policy is so broad that they [sic] cannot be handled by a single commission. Indeed all IUCN Commissions are dealing with policy issues in their own sphere of competence....”¹

The name change was a relatively straightforward administrative matter. Another change was more substantive. For the first time, the 18th General Assembly programme documents were integrated. Proposed activities of the Commissions were presented side-by-side related implementation activities of the Secretariat.² This was considered important substantive and symbolic progress for the Law Programme. Chairman Burhenne recalls that legal activities were indeed integrated or ‘interlaced’ as far as possible with other parts of the programme, for example, legal activities on protected areas were in the protected areas programme, legal activities on species in the species survival programme.³ At the 1990 Assembly meeting, Chairman Burhenne stressed the importance of this development in his recorded statement: “When I look through the programme, I see something I have long argued for in IUCN. The Law Programme is not simply treated as a separate programme, but as an integral part of all other programmes. It is essential that IUCN work this way, because every IUCN science, technical and theme programme has a legal component that cannot be ignored. Today, I am happy to see legal components clearly included in most areas. The section that you see called the ‘Environmental Law Programme’ is, therefore, a general section and must be read in conjunction with the other programme areas.”⁴

Carrying through this new emphasis on integration, ELP’s workplan for 1990–91 for the first time integrated Commission and Environmental Law Centre activities, explaining: “These two parts of the Programme cooperate extensively, often on the same activities. While in some instances the ELC has the lead and in others the Commission, the strengths of both are always pooled towards the common goals of the triennial programme approved by the IUCN General Assembly....”⁵ A 1995 ELP Newsletter laid out the Programme’s vision for integration in the context of the new Union-wide move toward regionalization:

“The ELP vision for the 21st century is of an integrated law programme and law information system coordinated through the Law Centre and implemented through regional centres established by IUCN members and RCOs with support provided as needed from the Law Centre and CEL.”⁶

Regionalization of law-related activities presented special challenges for ELP.⁷ Decisions were driven by IUCN Headquarters with consequences for the compo-

ment programmes, particularly concerning which functions could best be moved to the regions and which by their nature needed to stay centralized. For ELP, important centralized services such as providing environmental law information, conceptual law development, treaty support, and monitoring of global trends could not be delegated to relatively independent regional and country offices. Other functions had this possibility, for example, technical services, but not without seriously reducing funding for the Environmental Law Centre. For law-related activities that lent themselves to more local implementation, there also were important questions of oversight and standards of performance, how funds should be allocated and who should be in charge overall – issues which were never considered at the outset.

- 5 Nevertheless, during this period, Headquarters' support shifted heavily to building regional capacity and important global services lost significant funding as ELP had to compete with regional and local projects. In parallel, donor funding during the decade slowly but steadily moved toward the conclusion of framework agreements with IUCN, increasingly precluding earmarking to specific programmes, such as the ELP.

New leadership

- 6 A new Chair for the Commission on Environmental Law came on board in 1990 to guide its development and help the Law Programme respond to the regionalization changes ahead. This came about pursuant to a new rule, recommended by the IUCN Council and adopted by the 18th General Assembly, limiting Commission chairs to two terms.⁸ The new rule meant that Wolfgang Burhenne, who had founded the law component and been the Law Commission's Chair for more than 20 years, was no longer eligible for election.
- 7 As a member of the IUCN Council, Burhenne worked with Commission leadership to promote and support the nomination of his Deputy Chair, Parvez Hassan, to be the new Chair.⁹ Members of the 18th Assembly were unanimous in their election of Parvez Hassan to take over leadership of the Commission on Environmental Law. Hassan, from Pakistan, already had been working closely with IUCN for many years. Internationally, he was well known and highly regarded in environmental law circles, having served as legal expert for the Asia and Pacific region for the United Nations. In Pakistan, he was a senior partner in the law firm of Hassan & Hassan (Advocates) in Lahore, Pakistan. Importantly for the new regionalization strategy, he was well-known by the development community and a respected and experienced spokesman for developing countries. [See Box 1]

8 **Box 1: Dr. Parvez Hassan (CEL Chair 1990–1996)**

Dr. Parvez Hassan had provided years of volunteer service to IUCN by the time of his 1990 election as Commission Chair, including as Regional Councilor for West Asia from 1984–1987, and Deputy Chair of CEL from 1988–1990.

He gained early exposure to environmental protection legislation working in the Asia and Pacific region. After completing post-graduate legal studies at Harvard Law School and building professional associations with three law firms in New York and Washington, D.C., he returned to Pakistan in 1969 to practice law. In 1977, a colleague from his Harvard days, Dr. Kazi Jalal, now with United Nations ESCAP in Bangkok, asked Hassan to help with an environmental protection

legislation project. It was during one of his early visits to Bangkok when he met Wolfgang Burhenne, then Chair of the IUCN Law Commission. Years later Burhenne and others joined to have Hassan elected as Regional Councilor for West Asia. This also led to Hassan joining CEL. In 1988, on the death of Nagendra Singh, President of the International Court of Justice and then CEL Deputy Chair, Burhenne requested Hassan to become Deputy Chair.

In Pakistan, Hassan was involved early on in social causes related to education, child labour, handicapped children and health. As he reflected years later, however, "[i]t was the law profession that has given me the identity, respect and resources."¹⁰ He helped draft national environmental legislation and began promoting organizations dealing with environment. In 1979, Hassan was invited to join the Board of the World Wide Fund for Nature Pakistan, his introduction to national park and wildlife law, policy, and management. He served on the Boards of Trustees of several Universities and Colleges. The Pakistan Environmental Law Association (PELA), with the important support of Parvez Hassan, was founded in 1999. From 1995 to 2001, he served as head of the Rockefeller Brothers Foundation LEAD programme in Pakistan.

A main legacy as CEL Chair was Hassan's pioneering work to promote and implement a "training the trainers" programme in environmental law at university level, especially for developing countries, which he saw as a way to "leap-frog" capacity building (see Ch. 26).¹¹ During his tenure as CEL Chair, he also managed the process of proposing fundamental reforms and amendments of the IUCN Statutes, Rules of Procedures and Regulations which were adopted by the 1996 World Conservation Congress (see Box 3).

Dr. Hassan has received numerous awards and recognitions. Among these, in 1991, he was awarded the Global 500 Roll of Honor by the United Nations Environment Programme, an award presented in Stockholm by the King and Queen of Sweden. In 2000, in Brussels, Belgium, he was awarded the 1998 Elizabeth Haub Prize for exceptional service to international environmental law.¹²

A credit to his lifelong and continuing commitment to environmental law, an IUCN designated "centre of excellence", the Dr. Parvez Hassan Environmental Law Centre, was inaugurated in 2003 at Punjab University Law College, Lahore, Pakistan (see Ch. 29). Among others at that event, past CEL Chair and long-standing friend, Wolfgang Burhenne, offered some congratulatory remarks, highlighting two specific achievements during Hassan's tenure as CEL Chair: "You ... quite naturally became my successor as the Chairman of the Law Commission, and led it to a number of achievements, especially in relation to the finalization of the International Covenant on Environment and Development, and to the launch of a new set of activities related to capacity building for environmental law, particularly in the Asia Pacific region."¹³ Also, in 2003 Brazilian lawyers at their 7th International Conference on Environmental Law, sponsored by the Law for a Green Planet Institute (an IUCN member), recognized Dr. Hassan for his 'vision, leadership and commitment to a sustainable world'.¹⁴

In 2000, the Second World Conservation Congress in Amman, Jordan, awarded Hassan honorary membership in the Union in recognition of his service to IUCN, particularly as Chair of the Commission on Environmental Law and as IUCN's Legal Adviser, a post he served from 1994–1996. It was an appropriate recognition of the dynamic leadership he provided to CEL and his dedication to IUCN that the IUCN Council twice nominated Hassan as a candidate for the Presidency of the Union (at the 1996 and the 2004 World Conservation Congresses). These were two firsts in the Union's history: 1) the first time a Commission Chair was proposed as a Presidential candidate, and 2) the first time a non-incumbent was nominated twice during a period of eight years to lead IUCN. Hassan continues to serve on the IUCN CEL Steering Committee as an Honorary Member of CEL.



- 9 Hassan launched his new term as CEL Chair by appointing Nicholas Robinson (USA) as Deputy Chair from a panel identified by Wolfgang Burhenne. He would recall years later in a personal tribute to Robinson in the 2004 ELP Newsletter that decision was “the most important decision I would make as the Chair....With Nicholas’s dedicated support, guidance and wisdom, we were able to turn the foundational vision of Wolfgang into making CEL an important and relevant player in the development of environmental law in the six years of our joint leadership from 1990 to 1996.”¹⁵
- 10 He also initiated and supported two new formal designations for the former CEL Chair Burhenne to ensure institutional continuity and take full advantage of Burhenne’s considerable experience, knowledge, and international relationships for the Law Programme going forward. First, Burhenne was appointed CEL UN Liaison, a new position for the Commission, facilitating Burhenne’s continued, long-standing role representing IUCN and the ELP in the United Nations. Second, Hassan promoted Burhenne’s appointment by the 18th General Assembly as IUCN’s first Legal Adviser, a new post created with 1990 amendments to IUCN statutes.¹⁶ He also involved Burhenne and Robinson on special initiatives, such as the draft Covenant for Environment and Development which Burhenne had begun in the 1980s (see Chapter 26).
- 11 Hassan helped institutionalize the relationship of CEL with the Environmental Law Centre and former CEL chairs by proposing in CEL’s first bylaws (discussed more below) the creation of ‘ex-officio’ members on the CEL Steering Committee.¹⁷ This designation applied to three positions: 1) the ELC Director, 2) former CEL Chairs (Burhenne becoming the first in CEL to assume that post), and 3) the Legal Advisor (Burhenne also being the first in that formal position).
- 12 Françoise Burhenne-Guilmin, Head of the Environmental Law Centre in those years, recalls close and collaborative working relations between the new Chair and Burhenne.¹⁸ This working relationship was to include herself and Nicholas Robinson as well. In Hassan’s words: “I turned to Wolfgang Burhenne, Nicholas Robinson and Françoise Burhenne as my closest advisors in CEL.”¹⁹
- 13 In this spirit of collaboration and friendship, Chairman Hassan served two terms as CEL Chair, being re-elected in 1994 by the 19th General Assembly. During that period, he initiated and promoted a number of important and sustaining initiatives toward regionalization and decentralization of law-related activities. And, impressively, he was able to make many pioneering and enduring advances without the aid of a full-time dedicated Commission senior staff officer. As noted in Chapter 17, Malcolm Forster, the Law Commission’s full-time Counsel stationed in Bonn, resigned in 1987 to return to the UK. During the period of Hassan’s tenure as Commission Chair, all technical and administrative support came from the Environmental Law Centre – its Head, Françoise Burhenne-Guilmin, and assignments she delegated to ELC staff.
- 14 Hassan’s main goal in Commission operations was to increase involvement of and outreach to developing countries. Substantively, his aim was to pursue and promote environmental law capacity building in developing countries. Indeed, in later years he acknowledged the sense “that there were expectations of my special responsibilities to the developing countries.”²⁰

In other chapters, substantive programmes advanced during his tenure are described. This chapter reviews a number of key measures Hassan took to expand the Commission's membership network in developing countries, broaden its management structure, and strengthen the Union generally. In 1996, with Hassan's support, CEL's Deputy Chair, Nicholas Robinson, a professor of environmental law from the United States, was elected the new Commission Chair. Again, working in partnership, Robinson maintained the Commission's strengthened management structure that Hassan had built and continued many substantive initiatives launched or pursued during Hassan's tenure. Pursuant to requirements of CEL's Bylaws, Burhenne and Hassan, as former chairs, continued on the Steering Committee during the 8-year tenure (1996–2004) of Robinson, thus ensuring continuity and facilitating the close relationship between Burhenne, Hassan, and Robinson. 15

Key initiatives under Robinson's administration are further reviewed in Part 7 which takes this History through the end of Robinson's second term in 2004 (for highlights of Robinson's background, see Chapter 27, Box 1). 16

Expanding membership

Hassan set as one of his earliest goals as CEL Chair the expansion of Commission membership, especially from developing countries, and achieving geographical and gender balance.²¹ The IUCN Council and General Assemblies had put emphasis since the 1980s on greater developing country representation and better gender balance, and this emphasis intensified in the 1990s.²² When Hassan began his term as CEL Chair, total Commission numbers were still small and membership was highly specialized, with emphasis on experts in environmental law who could commit time and energy to advancing the programme.²³ 17

Hassan recalled: "The applicable requirements for CEL membership, when I became Chair, required leadership, scholarship or demonstrated dedication of the applicant in the field of environmental law. This handicapped membership from developing countries. Environmental law by that time was generally not included in the syllabus of most law schools in developing countries and the nascent stages of environmental consciousness in those countries had not facilitated the development of a professional or academic cadre of environmental law specialists. Lawyers from developing countries were mostly excluded under this eligibility criteria."²⁴ 18

Hassan, citing his own example of not having formal environmental legal education, successfully persuaded the CEL Steering Committee to admit developing country law graduates who showed interest in pursuing environmental issues, in his words, "to jump-start the evolution of a cadre of environmental lawyers in developing countries."²⁵ By using the network of existing CEL and ICEL members to promote the Commission and identify new candidates, the result was significant expansion of Commission membership from developing countries. Timing also was favorable for this move; by the 1990s and through that decade, developing country interest and expertise in environmental law was beginning to grow rapidly, spurred in part by the conclusion of several major international environmental conventions as discussed elsewhere (for example, CITES, the Bonn Convention on Migratory 19

Species, the Convention on Biodiversity), as well as a general worldwide shift giving attention to environmental issues in development.

20 During Hassan's tenure, membership more than doubled from 118 in 1990 to 297 in 1996 (when he concluded his second term); importantly, members were now roughly equally distributed between developing and developed countries.²⁶ Hassan's successor, Nicholas Robinson, continued this aggressive recruitment policy and by the end of the decade of the 1990s, the Commission had some 580 members from more than 111 countries, still roughly distributed equally between developed and developing countries.²⁷ Sector specializations would subsequently follow (as discussed below with the Working Groups and in Chapter 27 with Specialist Groups).

21 To balance CEL's new policy of growth, ICEL began to shift away from its liberal recruitment policy to be a more selective and specialized approach. This contrasted with its initial years when the policies were reversed and ICEL developed a large pool of members from which the much smaller Law Commission could draw its candidates.²⁸

22 The successful recruitment of developing country members brought Hassan's early vision to a reality. With years of hindsight, Hassan offered these reflections: "This recruitment from developing countries, over the years, created the first generation of environmental lawyers from developing countries and provided CEL with added strength in the universality of its membership which was important for its success and for the growth of environmental consciousness in the legal communities of developing countries."²⁹

23 As membership grew, so did the pool of information from members about environmental law developments and news. The main tool in the 1990s for information exchange and outreach was the hard-copy Environmental Law Programme Newsletter that had been launched in 1985 (see Chapter 17). By the mid-1990s, with the growing volume of environmental law news to exchange, and the importance of regular contact with all membership, Chair Hassan and the Environmental Law Centre worked together to expand production of the Environmental Law Programme Newsletter from the one annual issue that had been the tradition since 1985 to three issues annually, and this continued through the 1990s (with four issues in 1997).

Expanding Steering Committee

24 Hand-in-hand with the new recruitment policy, Chairman Hassan proposed expansion of the Commission's governance structure from four to six regional Vice-Chairs and the proposal was approved by the 18th General Assembly. At the IUCN Council April 1991 meeting, Chairman Hassan reported that "six Vice-Chairs had now been appointed and represented a wide geographical spread".³⁰ They were the newly appointed Deputy Chairman, Nicholas Robinson (Vice-Chair for North America), and five other Vice-Chairs: three with continuing terms, Malcolm Forster (West Europe), Charles Odidi Okidi (Africa), and Oleg Kolbasov (East Europe), and two new appointments: Antonio Andaluz Westreicher of Peru (South America), and Amado Tolentino of the Philippines (Asia).

25 Ever mindful of the Union-wide regionalization strategy and his own commitment to developing countries, Chairman Hassan reported to the 1994 General As-



CEL Steering Committee 1993–1996 with ELC Staff

sembly that the Commission had started “the process of regionalization, through the encouragement of regional networks and through intensive activity by the Vice-Chairs, who represent the various geographical regions globally.”³¹ An ELP Newsletter further confirmed that “[t]he most important outcome of the [September 1994 CEL Steering Committee] meeting was the commitment to regionalizing the Commission.”³²

More importantly for purposes of implementation, the Steering Committee agreed “that the new funds allocated to CEL under IUCN’s general move to strengthen the commissions would be earmarked for the regional Vice-Chairs in order to allow them to better mobilize their regional networks and to better interact with IUCN offices in their regions.”³³ This was another first for the Commission, instigated by Hassan, where resourcing the Vice Chairs began to be accomplished out of a special ‘Chairman’s Fund’, a fund created in response to a 1994 external review of the Law Programme which, among other things, recommended “involving more CEL members in the implementation of the programme and increasing the role of the Vice Chairs....”³⁴ [See Box 2]

Box 2: External Reviews of IUCN Programmes

To better monitor performance, IUCN began in the 1990s to undertake periodic reviews of its programmes. Initially these reviews were internal, the first during 1988–1990, and the second during 1991–1992. The 1992 review spanned the entire organization. For the Commission on Environmental Law it highlighted the need to expand membership from developing countries, reinforcing a priority of CEL Chair Parvez Hassan. It also recommended an “independent, in-depth review of the activities, procedures and relationships of CEL, ICEL and the Law Centre to provide guidance in the changing circumstances of the future.”³⁵ In response, IUCN contracted an inde-

pendent review by a three-person team (CEL members: Bob Munro (Team Leader), Andronico Adede, and Peter Sand) who delivered their report in October 1994. This report, which was released as Hassan started his second term as CEL Chair, was particularly important for it reinforced the directions he had taken the Commission in his first term. Among major findings, the 1994 review team found the Commission and ELP should put more emphasis on implementation of environmental law.³⁶ It also found that more CEL members should be involved, especially members from developing countries, and that regional roles and resources for CEL Vice Chairs should be increased.³⁷ These were findings that CEL Chair Hassan and his successor, Nicholas Robinson, worked hard to implement directly in their support of Vice-Chairs, increased use of Specialist Groups, and capacity building.

A decision of the 19th General Assembly motivated the Union to begin regular organization-wide external reviews. Members instructed the IUCN Council in 1994 to “undertake a critical analysis of the decentralisation process in the Secretariat and Commissions so as to ensure that the pattern serves the members and partners in an optimal way”³⁸ Thereafter, the Union conducted regular external reviews roughly to coincide with each upcoming Congress – the next review for the 1996 Congress, and thereafter the 2000 and 2004 Congresses. Findings of these reviews generated the new results-oriented programme framework of the 2000s and use of “key result areas” as a measure of outputs (as discussed in Part 7, Intro.).

Reflecting the Union’s and ELP’s responsiveness to concerns identified in these progressive reviews, the 2003 Review (prepared for the 2004 WCC) found that the programme of CEL and ELC had “moved closer to being an integrated whole – the Environmental Law Programme (ELP).”³⁹ More generally, the 2003 External Review found that “IUCN had made strong progress since the 1999 External Review” in programme, knowledge management, and governance and, suggesting regionalization was here to stay, the review concluded: “Now is the time for [the Union] to address two further, fundamental strategic issues: its character as a regionally structured, global membership organization; and ways to drive and resource its work through the Programme.”⁴⁰

Parvez Hassan (CEL Chair in the 1990s) recalled that most of the Union-wide External Reviews had positive findings for the Law Commission, commonly joined by the Species Survival Commission and World Commission on Protected Areas as the three most well-run and well-led of the six Commissions, and that this “peer review added to the image and effectiveness of the Law Programme among members and donors of IUCN.”⁴¹

28 As the Union expanded in its membership of States and adjusted country groupings into regional clusters, Hassan matched IUCN’s regional structure with corresponding Vice-Chairs. By 1995, CEL’s Vice-Chairs had been expanded to eight, one for each of IUCN’s eight statutory regions, Oceania and West Asia having been added, represented by CEL members Donna Craig and Badria Al-Awadhi, respectively. Since the duties of the Deputy Chair Nicholas Robinson did not afford time for regional work, North America was separately represented by CEL member William Futrell, President of the Environmental Law Institute.

29 As a standing item at the Steering Committee meetings, the agendas now included reports from the vice-chairs, deputy chair, and chair. In addition, to begin to facilitate some uniformity of reporting, guidance was introduced by Chairman Hassan that report content include membership news and events, and legislative and case law developments in the respective regions.⁴²

30 When Deputy Chair Nicholas Robinson succeeded Hassan as CEL Chair in 1996, that Deputy Chair post was vacant until the end of 1997 when Commission member Angela Cropper from Trinidad and Tobago was appointed. In March 1999, Ben Boer from Australia became Deputy Chair and served until 2002 when he was succeeded by Michael Jeffery, also from Australia, who served through 2004.

A mandate from the 1st WCC in 1996 indicated that this regional movement should continue and be further developed. Specifically, members called upon the CEL Chair to “encourage Vice Chairs of CEL to work closely within the ELP in collaborating with IUCN Regional and Country Offices to consolidate the CEL network and integrate its expertise into the IUCN Programme in their respective regions....”⁴³ In response, the Commission, at its first Steering Committee meeting following the WCC, split its South American region into Meso America and South America, with a Vice-Chair for each, bringing the number of Vice-Chairs to nine. The roster of Vice-Chairs appointed by the IUCN Council following the 1996 World Conservation Congress was as follows: Charles Okidi (Africa), Koh Kheng-Lian (South & East Asia), Donna Craig (Oceania), Oleg Kolbasov (East Europe/North & Central Asia), Badria Al-Awadhi (West Asia), Michael Bothe (Western Europe), Jorge Caillaux (South America), Grethel Aguilar Rojas (Meso America), and William Futrell (North America and the Caribbean).⁴⁴ 31

The 1997 ELP Annual Report directed that Vice-Chairs were to be “responsible for co-ordinating CEL input into IUCN activities in their region, and be the regional spokesperson at each CEL Steering Committee meeting.”⁴⁵ Vice-Chairs were encouraged to initiate regional meetings of members as well as participate in central Steering Committee meetings. In the words of Chairman Hassan, after attending the first meeting of North American CEL members in May 1996: “This is what regionalization is all about another region has come to life.”⁴⁶ 32

Expanding working groups

Chairs Hassan and thereafter Robinson also kept and built upon the initiative started by former Chair Burhenne in the 1980s to have an intermediate layer in Commission administration between officers and members called the Working Group (as discussed in Chapter 17). In response to a special decision of the 1990 General Assembly, the Steering Committee created a new Working Group in 1991 on “Cultural Sustainability: The Rights of Indigenous Peoples and Environmental Law” chaired by Vice-Chair Donna Craig of Australia.⁴⁷ A Working Group specifically for preparation of a draft Covenant on Environment and Development was formed in the early 1990s and remained active until the draft Covenant’s launch in 1995 (see Chapter 26). The Steering Committee at its March 1996 meeting (while Hassan was still sitting as CEL’s Chair) established two new Working Groups, one on Trade and Environment (chaired by Hassan) and the other on Antarctica (chaired by Vice-Chair Alexandre Kiss). 33

In 1998, now under Robinson’s watch, the Steering Committee retired those two Working Groups, reconstituted an existing group on Indigenous Peoples (co-chaired by Donna Craig and M.K. Ramesh), and added five new groups: Information Technology (chaired by Robert Goldstein), Judiciary (chaired by Charles Okidi), Ethics and Jurisprudence (chaired by Parvez Hassan), Environmental Legal Education (chaired by Lye Lin Heng), and Energy Law and Climate (chaired by Adrian Bradbrook).⁴⁸ This brought the number of active Working Groups to six. By the end of the decade, a seventh Working Group on Sustainable Soils (chaired by Ben Boer) had been added.⁴⁹ 34

First by-laws

35 As the Commission's management framework expanded and became more sophisticated, it became important to formalize some business procedures for its decision-making. Chairman Hassan launched another new initiative during his term as CEL Chair which was a first for any of the Commissions – developing bylaws on objectives, membership rules, meeting procedures and different levels of governance responsibility. The bylaws were prepared and adopted by the CEL Steering Committee in 1995.⁵⁰ They became a precedent and aided as a model for the other IUCN commissions which subsequently developed bylaws.

36 Among other things, CEL's bylaws set out how Commission meetings were to be conducted and how business transacted. They direct how CEL members were to be appointed and their responsibilities. In addition, the longest section, 'Governance of the Commission', defined the Commission's Officers and laid out in detail the Steering Committee membership, functions, and meetings. The bylaws also provided for an Executive Committee, Regional Committees, and other Committees as appropriate. The Executive Committee, as the permanent committee, was comprised of the Chair, Deputy Chair, Director of the Environmental Law Programme (effectively, the Director of ELC which, beginning with Di Leva's tenure as ELC Director in 1999, was given the dual designation of ELC Director and Head of ELP), and the Legal Adviser. The Committee is charged "to implement the policies laid down by the Steering Committee and to act on behalf of and under the authority of the Steering Committee between meetings...."⁵¹ Regional Committees were to be overseen by the respective regional Vice-Chairs and established to promote membership, capacity building and communication at the regional level.

Designating United Nations Liaison

37 The Environmental Law Programme, particularly through the Commission network of members, monitored developments of the United Nations system relevant to environmental law and activities of the Union. The IUCN General Assembly in the 1980s formally requested the Secretariat to give increased attention to activities of international organizations, especially those within the United Nations system, and collect relevant documents on important issues and identify agenda items for follow-up as needed.⁵² Having received consultative status during the 1950s as a nongovernmental organization to ECOSOC and the UN system, IUCN had been in a special position for decades to collaborate with and provide input to a wide range of UN activities. Throughout his tenure as officer of the the Law Commission, Wolfgang Burhenne had made activities within the UN system a high priority for monitoring and was regularly coordinating with Commission colleagues to ensure that either he or another member was tracking any major UN event dealing with environmental law, either as a formal IUCN representative or participating in another capacity (for example as an ICEL member) but monitoring for CEL as well. This practice continues today.

38 In 1994, in order to put this important work on a stronger institutional footing and ensure continuity, the CEL Steering Committee created a special designation, "Liaison to the UN System", and formally appointed Wolfgang Burhenne to the

post. The designation aimed to give recognition and structure to the Law Programme's efforts to monitor activities and meetings of the United Nations system. While meetings of the UNEP Governing Council and the United Nations Economic Commission for Europe had consistently been covered by Burhenne and European Commission members respectively, the 1990s brought a wave of new activities mainly flowing from the 1992 United Nations Conference on Environment and Development (UNCED). The UN Commission on Sustainable Development (CSD) created by UNCED to monitor progress with implementation of Agenda 21 began to convene formal annual meetings in New York and initiated various ad hoc intersessional groups. From the very beginning of the CSD, Burhenne began attending their annual meetings to monitor developments for IUCN/CEL and continued in that role through 2004.

Today, IUCN's new status as Permanent Observer to the UN General Assembly (see Part 7, Box 1) and its Permanent Observer Mission in New York provide an added base of support for CEL's UN Liaison post (still actively held by Burhenne) and makes the Commission's work in this regard even more central for helping IUCN fulfill its new Permanent Observer role and responsibilities within the United Nations system. Ambassador Bhagwat-Singh, as IUCN's representative in New York, provides active support to Burhenne and to other members of CEL who come to the United Nations to attend meetings in their capacity as experts in environmental law, both through IUCN and ICEL. 39

Serving the Union

Inter-Commission coordination

Through virtually the entire history of the Union, General Assemblies and then Congresses pressed for increased coordination and collaboration among the Commissions of IUCN. This was a message also commonly in the IUCN External Reviews once they became a regular event in the 1990s. During Hassan's tenure as CEL Chair, the Commission led an initiative for improving coordination of the six Commissions. This was development of an agreement among the Chairs of the Commissions to meet as a group (a 'forum') prior to each regular IUCN Council meeting (where they would be assembled in any case). Hassan played an important role in establishing and leading this forum, which appointed him its Chair, and he became known as the "Chair of the Chairs" for this role. With the IUCN Council normally meeting twice a year, these inter-Commission meetings, as Hassan recalls, "provided an opportunity for the Commission Chairs to work together as facilitative of inter-Commission mandates and work. This 'union' of the Chairs ... enhanced the voice of the Commissions in the work of IUCN....It was important for the [Commissions] to establish a forum to develop one voice on their behalf."⁵³ 40

Hassan served as "Chair of the Chairs" from 1993 to 1996, when his second term as Head of the Law Commission came to an end. The commission forum continued under the leadership of Hassan's successor, Nicholas Robinson. This initiative set a precedent and became a forerunner for other commission summits, in particular one called by the new Director General David McDowell in 1995 in 41

Sonloup, Switzerland. The purpose of that ‘Sonloup Summit’ was to review the roles and mandates of the Commissions in light of the new regionalization agenda reaffirmed by the 1994 General Assembly in Argentina, and the separate call for updates to IUCN’s statutes which necessarily would include the roles and mandates of the Commissions. The result was the Sonloup Accord, brokered by then IUCN President Jay Hair, which endorsed efforts to build new and closer partnerships within the Union, especially between the Commissions and Headquarters, pursue joint and coordinated tasks including fundraising, and give greater recognition to the voluntary nature of the Union.⁵⁴

Updating IUCN’s statutes

42 In 1994, the 19th General Assembly meeting in Buenos Aires, Argentina, requested that IUCN’s statutes be updated to incorporate the new decentralization and regionalization strategy, the reconstitution of IUCN’s General Assemblies into World Conservation Congresses, and other modern environmental concepts and priorities.⁵⁵ The last major revision of the statutes had been in 1978, so updating the document was due and required the broad-based participation from all corners of the Union. CEL Chair Hassan was asked to serve as Chair of the Statutes Review Committee to prepare the revision. This turned into a major endeavor involving Hassan and his Deputy, Robinson, as well as other CEL members. [See Box 3 below] Hassan relayed the importance of this collaborative work in a report to CEL members in 1996:

“[T]he Deputy Chair, Nicholas Robinson, and I have been very active in shepherding one of the major challenges of this past triennium: revision of the IUCN statutes. I believe we have made significant improvements to the old statutes, but it will be for the membership of IUCN at the [upcoming World Conservation Congress in Montreal] to decide how well we have done.... Because of the important role lawyers can play in assisting the membership through this process, I am appealing to all CEL members who will join us in Montreal to also plan on helping out with the statutes process.”⁵⁶

43 **Box 3: 1996 Revision of IUCN Statutes**

The Statutes Review assignment that the Union handed CEL in 1994 was one of its most challenging tasks inside the Union. The IUCN Council turned to CEL Chairman Hassan to head the initiative, not only to review but also to restructure through amendments the basic constituent documents of the Union in place since their last revision in 1978. These documents included the Statutes, the Rules of Procedure for the World Conservation Congresses, and the Regulations. Hassan reflected, for this History, on the challenge presented – “to update those documents in light of the experiences and difficulties arising in the prior 16 year period since the last revision and also to incorporate the dynamism and vision for the organization in the 21st century.”⁵⁷

The process proposed by Hassan and accepted by the Council required the Statutes Review Committee (SRC) to comprise all the important constituents of IUCN: eight Councillors (one from each of the eight statutory regions), a Commission Chair to represent each of the six Commissions, the Director General to represent the Secretariat and former Director General Martin Holdgate to represent the institutional memory of the Secretariat. To this membership, he added Wolfgang Burhenne and Nicholas Robinson. Hassan asked Robinson to convene a drafting group to prepare

the formal legal texts of new provisions; among its members were José Martínez Aragón, a CEL member from Spain, and Swiss IUCN Councillor Jacques Morier Genoud, who worked with Robinson as a 3-person team producing simultaneous drafts in English, Spanish, and French, with Fiona Hanson at IUCN Headquarters providing full administrative support. Hassan participating throughout as SRC chair.

Hassan reached the IUCN membership through periodic reports about the important issues before the Committee. As testimony to his commitment to the task, he also gave personal briefings in all IUCN regions to many of the IUCN State and NGO members.⁵⁸ At the 1996 World Conservation Congress where the draft statutes were to be presented, Hassan organized a 2-day special plenary session to review, debate, and amend as necessary the proposed new legal package. In the end, the recommendations of the Committee were unanimously adopted in the time allotted, with a standing ovation, by the World Conservation Congress in 1996.

As to the value of this contribution to CEL's substantive environmental law work, Hassan recalls: "By the opportunity afforded by the Statutes Review process, CEL got an opportunity to work closely with all the constituents of the IUCN family and made good use of this opportunity to demonstrate, first hand, the value of the legal expertise of CEL and the leadership role it provided in negotiating to success the amendments to the IUCN Statutes, Rules of Procedure of the World Conservation Congress and the Regulations. This opportunity enhanced CEL in the IUCN."⁵⁹

Providing in-house legal services

With creation of the new IUCN Legal Adviser designation in IUCN's statutes in 1990, all three Law Commission Chairs (Burhenne, Hassan and Robinson) served at different times during the decade in this post, providing in-house legal advice to the IUCN Council and Director General. As this workload grew, various accommodations were made to address demand through the Legal Adviser and ELP legal staff. [See Box 4 below] Gradually, however, concerns were raised that primary responsibilities associated with managing the Environmental Law Programme could be jeopardized and the IUCN Council decided to create a new full-time post for IUCN General Counsel. In 2003, IUCN hired Giuseppe Zaccagnini, formerly with the Office of Legal Counsel of the World Intellectual Property Organization, who became IUCN's first Legal Counsel to serve the Director General and the Secretariat on all legal business arising within the organization.



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45 **Box 4: Evolving In-House Legal Services**

The 18th General Assembly approved amendments to IUCN's statutes in 1990 creating a new post of IUCN Legal Adviser. The responsibilities would be to provide "legal advice to the [General Assembly], the Council and the Secretariat, and to such other components of IUCN as may be prescribed in the Regulations."⁶⁰ The 18th General Assembly appointed Wolfgang Burhenne to serve as its first Legal Adviser, and Burhenne held this position until 1994 when Parvez Hassan was re-elected for a second term as CEL Chair and also took over as Legal Adviser.

In 1996, when Nicholas Robinson was elected the new CEL Chair, the IUCN Council appointed him as Legal Adviser. Gradually, the Legal Adviser's workload grew and those tasks began to compete for the time Robinson needed to manage the Commission, as he explained to the IUCN Council in November 1998: "During the past eight months, I have devoted substantial amounts of time to IUCN, as both the Chair of the Commission on Environmental Law, and as Legal Adviser.... The work as Legal Adviser has cut deeply into the time that could have been devoted to the Commission. From April through October, this has included participation in all sessions of the Search Committee for the new DG, and ... the preparation of the employment agreement for the new Director General. From November into December this service consisted of numerous meetings with the Legal Adviser and Diplomats of the Member States of the United Nations with respect to the proposal that IUCN be accorded Observer Status in the United Nations General Assembly."⁶¹

In 1999, when Charles Di Leva joined IUCN as Head of the Environmental Law Programme and Director of the Environmental Law Centre, the new Director General, Maritta Koch-Weser (like Di Leva, also formerly with the World Bank), asked the CEL Steering Committee to allow him to assist her with legal matters internal to IUCN. The Committee agreed and the designation of "General Counsel to the Director General" was created administratively for Di Leva who continued in that dual role during his tenure with IUCN until 2001. As with Robinson's dual role, the "General Counsel" workload turned out to be considerable, taking Di Leva's time away from ELP priorities. Moreover, there was the question of how a "General Counsel" role fit with that of the Legal Adviser and other lawyers hired for internal legal needs.

At the IUCN World Conservation Congress in Amman, Jordan, in 2000, Robinson submitted to the IUCN Council the first comprehensive report on the work of the Legal Adviser.⁶² The Council reappointed him to the post for another four years during that Congress. In light of the growing workload, the Council also requested Robinson "to begin a process to consider how best to provide legal services to Council and to present the alternatives for discussion"⁶³

Working closely with the Director General, Robinson prepared a report for the May 2002 Council meeting which included a recommendation on request of the Director General for a new in-house position of Legal Counsel as a step toward establishing a full-time Legal Adviser. Included in that report also was a set of proposed revisions to the IUCN Regulations defining the scope of work and mandate of the Legal Adviser. The Council approved the recommendation and amended the regulations to establish terms of reference for an Office of Legal Adviser.⁶⁴ In his capacity as Legal Adviser, Robinson worked with the Director General and ELP Head Scanlon to define specific terms for the post. In August, 2003, Giuseppe Zaccagnini, formerly with the Office of Legal Counsel of the World Intellectual Property Organization, was appointed as IUCN's first Legal Counsel to provide dedicated service to the Director General and the Secretariat on all legal 'business' arising within the organization. As announced on ELP's web site, his responsibilities were to include "advising on dispute settlement and litigation; providing technical advice on issues related to Memoranda of Understanding with host countries and other intergovernmental organizations; and assisting in the negotiation and drafting of contracts."⁶⁵

Notes

- 1 "Memorandum from Wolfgang E. Burhenne, Chairman to all CEPLA Members", Re: IUCN Commissions during the next triennium, dated 10 April 1990.
- 2 "Director General's Report on the Activities of the Union since the 18th Session of the IUCN General Assembly", p. 57 (also labeled General Assembly Paper GA/19/94/4) in *Proceedings*

- of the IUCN – The World Conservation Union 19th Session of the General Assembly, Buenos Aires, Argentina, 17–26 January 1994 (IUCN, 1995).
- 3 Comments from Wolfgang Burhenne, transmitted by email from Françoise Burhenne-Guilmin to author on March 16, 2006.
- 4 Burhenne, W., “Statement on the IUCN Triennial Programme and Budget” in *Proceedings of the 18th Session of the IUCN General Assembly 28 November – 5 December 1990, Perth, Australia* (IUCN, 1991). (One page, un-numbered, in ELC archives)
- 5 Environmental Law Centre, “Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds”, (undated), p. 1.
- 6 *IUCN Environmental Law Programme Newsletter* (July – September 1995), p. 5.
- 7 Author interview with Wolfgang Burhenne and Françoise Burhenne-Guilmin, June 24, 2004 (Bonn, Germany).
- 8 Articles 41 and 42, *IUCN Statutes and Regulations*, p. 14 (IUCN, 2000).
- 9 See Wolfgang Burhenne letter to Dr. Gerhard Emonds dated 24 July 1990 (CEL archives files).
- 10 Speech of Dr. Parvez Hassan on the occasion of the opening of the Dr. Parvez Hassan Environmental Law Centre, February 15, 2003, available on the ELP web site: www.iucn.org/themes/law/news/link/February2002.*
- 11 Hassan, P., “The Dr. Parvez Hassan Environmental Law Centre: A Story of Gratitude”, p. 4. These remarks are available on ELP’s web site at: www.iucn.org/themes/law, under ‘Latest News’ – news for February 2003, headline: “Dr. Parvez Hassan Environmental Law Centre Inaugurated, 15 February 2003”.*
- 12 Hassan’s acceptance speech is reprinted *Environmental Policy and Law Journal*, Vol. 31 (February 2001), pp. 36–42.
- 13 Speech of Wolfgang Burhenne at inaugural ceremony of the Dr. Parvez Hassan Environmental Law Centre, Lahore, Pakistan, 15 February 2003, p. 6 of draft (unpublished, available at IUCN ELC).
- 14 See “Brazilian Lawyers Pay Tribute to Dr. Parvez Hassan (4 June 2003)”, in ELP web site at: www.iucn.org/themes/law, under category “Latest News”, news for June 2003.*
- 15 Hassan, P., “Nicholas A. Robinson: A Personal Tribute” in *IUCN Environmental Law Programme Newsletter* (2004), p. 31–32.
- 16 Part X – The Legal Adviser, *IUCN Statutes and Regulations* (IUCN, 2000), pp. 22–23.
- 17 As discussed in Chapter 17, when the Law Commission Steering Committee was first established in the late 1980s, only Commission officers were members.
- 18 Author interview and personal communications, June 24, 2004 (Bonn, Germany).
- 19 Correspondence with Parvez Hassan, comments provided on Dec. 2005 draft, p. 4, transmitted by email dated January 24, 2006.
- 20 Hassan, P., “Preface” in Craig, D., N. Robinson, and K. Kheng-Lian (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region, Vol. 1* (Asian Development Bank, Manila, Philippines, 2002), p. xvii.
- 21 Communication with Parvez Hassan, comments on December 2005 draft, p. 5, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006.
- 22 The 1994 General Assembly mandated that the Commissions should increase regional diversity and gender balance to “reflect the reality of the regions” in the Commissions. See McDowell, D., “The Report of the Director General on the Work of the Union Since the 19th Session of the IUCN General Assembly for the World Conservation Congress, 13–23 October 1996, Montreal, Canada”, p. 11 (also cited as Congress Paper CGR/1/96/2).
- 23 Author interviews with Wolfgang Burhenne, June 2002, June 2004 (Bonn, Germany).
- 24 Communication with Parvez Hassan, comments on Dec. 2005 draft, p. 5, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006.
- 25 Id.
- 26 Table on “CEL membership growth over the last 10 years (1990–2000)” (distributed by region). Prepared by Jil Self, ELC, and received by author during June 2004 visit to Bonn.
- 27 See *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 20.
- 28 Author interview with Wolfgang Burhenne, ICEL Governor, June 23, 2004 (Bonn, Germany).

- 29 Communication with Parvez Hassan, comments on Dec. 2005 draft p. 5, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006.
- 30 “Minutes of the 31st Meeting of the IUCN Council, 8–10 April 1991, IUCN Headquarters, Gland, Switzerland”, p. 27.
- 31 See Hassan, P., “Commission on Environmental Law (CEL) Triennial Report: 1991–1993”, p. 81 (also cited as Annex 3 to General Assembly Paper GA/19/94/4).
- 32 “Commission on Environmental Law – CEL” in *IUCN Environmental Law Programme Newsletter* (1994), p. 4.
- 33 Id.
- 34 Communication with Parvez Hassan, comments on Dec. 2005 draft p. 5, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006. See also Hassan, P. “Commission on Environmental Law (CEL) Triennial Report: 1994–1996”, p. 24 (Annex 3 to Congress Paper CGR /1/96/2).
- 35 “Mid-Term Review of Commissions – Commission on Environmental Law (CEL)”, at 19 (para. 78). (IUCN: 1992)
- 36 The report found that the Commission should shift its mandate more to implementation of environmental treaties and national laws rather than the current emphasis on “laying the strongest possible legal foundation.” It also spelled out what should be ELP’s overall goal and mission: “To influence, encourage and assist societies throughout the world in strengthening the framework and implementation of environmental law for conserving the integrity and diversity of nature and ensuring any use of natural resources is equitable and ecologically sustainable.” “Securing our Common Future – The Rule and Role of Law” (Environmental Law Programme, Final Report of the External Review Team), p. 9 and p. 1 respectively. (IUCN, October 1994).
- 37 “Securing our Common Future – The Rule and Role of Law”, p. 17 (Environmental Law Programme, Final Report of the External Review Team) (IUCN, October 1994).
- 38 Resolution 19.1, *Resolutions and Recommendations, IUCN – The World Conservation Union 19th Session of the General Assembly* (IUCN, 1994).
- 39 Whyte, A., and Zenda Ofir, “External Review of IUCN Commissions – Final Report”, p. 13 (IUCN: May 2004).
- 40 Bruszt, G., T. Ammour, J. Claussen, Z. Ofir, N.C. Saxena, and S. Turner, “Summary of the 2003 External Review of IUCN”, p. 71 (Attachment 1 of “IUCN’s Response to the 2003 External Review of IUCN, April 2004”, also labeled as Congress Paper CGR/3/2004/10), at 71.
- 41 Communication with Parvez Hassan, comments on Dec. 2005 draft p. 7, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006.
- 42 Email comments from Parvez Hassan to Françoise Burhenne-Guilmin, dated June 14, 2004 (forwarded to author on June 14, 2004).
- 43 Resolution 1.41(4), *Resolutions and Recommendations, World Conservation Congress, 13–23 October 1996, Montreal, Canada*, p. 41 (IUCN, 1997).
- 44 See “CEL Governance and Reconstitution of CEL Membership” in *Environmental Law Programme Annual Report 1997*, pp. 12 and 20.
- 45 See “IUCN Environmental Law Programme Annual Report 1997”, p. 12.
- 46 The first meeting of the North American CEL members was organized by CEL Vice-Chair William Futrell in Washington, D.C. See Hassan, P., “Letter from the Chair” in *IUCN Environmental Law Programme Newsletter* (April–June 1996), p. 3.
- 47 See *IUCN Environmental Law Programme Newsletter* (No. 1, 1991), p. 3.
- 48 See “IUCN Environmental Law Programme Annual Report 1998”, p. 13, and Robinson, N., “Triennial CEL Report to the Council, 1997 – February 2000”, p. 6 (7 February 2000).
- 49 See Hannam, I. “Specialist Group for Sustainable Soils” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p.16.
- 50 See “Commission on Environmental Law” in “Minutes of 41st Meeting of the IUCN Council and Associated Events 22 to 24 May 1995, IUCN Headquarters, Gland, Switzerland”, p. 6. Current bylaws of CEL are available on the Environmental Law Programme web site.
- 51 Article VII.3, “Bylaws of the IUCN Commission on Environmental Law” (Version revised 3/1998), once available on the Environmental Law Programme web site: www.iucn.org/themes/law (researched 11/6/02), has been archived.

- 52 Resolution No. 16/18, in *Resolutions of the 16th Session of the General Assembly of IUCN, Madrid, Spain, 5–14 November 1984* (IUCN, Gland).
- 53 Email communication from Hassan to Burhenne-Guilmin, dated Jan. 24, 2006, subject: ELP History of IUCN (forwarded to author, Jan. 24, 2006).
- 54 McDowell, D., “The Report of the Director General on the Work of the Union Since the 19th Session of the IUCN General Assembly”, p. 11 (Congress Paper CGR/1/96/2) in *Proceedings of the IUCN – The World Conservation Union, The World Conservation Congress, 13–23 October 1996, Montreal, Canada*.
- 55 Resolution 19.5, “Resolutions and Recommendations” in *Proceedings of the 19th Session of the General Assembly of IUCN – World Conservation Union, Buenos Aires, Argentina, 17–26 January 1994* (IUCN, 1994).
- 56 See Hassan, P., “Letter from the Chair” in *IUCN Environmental Law Programme Newsletter* (January–March 1996), p. 3.
- 57 Communication with Parvez Hassan, comments on Dec. 2005 draft p. 10, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006.
- 58 Commentary from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 59 Communication with Parvez Hassan, comments on Dec. 2005 draft p.10, attached to email correspondence from Hassan to Burhenne-Guilmin dated January 24, 2006.
- 60 Part X – The Legal adviser, *IUCN Statutes and Regulations* (IUCN, revised 2000), pp. 22–23.
- 61 Robinson, N., “World Conservation Union – IUCN Commission on Environmental Law Report of the Chairman: 2nd Half 1998” (31 December 1998) (Report to IUCN Council).
- 62 Communication from Nicholas Robinson on December 2005 draft, transmitted by cover letter dated March 7, 2006.
- 63 Decision C/53/5, “Draft Minutes”, 53rd Meeting of the IUCN Council, Amman, Jordan, 11 October 2000, p. 7.
- 64 Decision C/56/4, “Draft Minutes”, 56th Meeting of the IUCN Council, Gland, Switzerland, 27–29 May 2002, p. 3.
- 65 See ELP Web Site at www.iucn.org/themes/law under the category “Latest News”, subcategory “News August 2003”.*

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 23: A ‘Systems’ Approach – The Biodiversity Convention

Background

Since the founding of IUCN, there had been recurrent efforts to explore possibilities for a framework treaty for nature conservation and the environment. As discussed in earlier chapters, the original IUCN constitution of 1948 had identified among its founding objectives the preparation of “a worldwide convention for the ‘Protection of Nature’”.¹ The 1952 IUCN General Assembly made a first, failed attempt at a World Convention for the Protection of Nature. In the late 1970s and early 1980s, IUCN successfully promoted a relatively equivalent “soft law” instrument adopted by the UN General Assembly in 1982, the World Charter for Nature – a statement of 24 principles of conservation “by which all human conduct affecting nature is to be guided and judged.”²

As scientific understanding improved about natural systems, international environmental treaty law developed, and implementation experience grew, gaps became evident. The impressive gains in international environmental law made through the 1970s and 1980s introduced new protections and management regimes for several global concerns, as described in earlier chapters, including CITES, the World Heritage Convention, Ramsar, and the Migratory Species Convention. However, the predominant approach was area- or species-specific, frequently limiting coverage to lists of specific species or sites or habitats. The need for a broader approach began to emerge to cover species and ecosystems conservation globally. This thinking followed trends in other broad sectors, as exemplified by the UN Law of the Sea Treaty (see Chapter 21).

Launch of the World Conservation Strategy (WCS) in 1980 only accentuated this systems gap. The WCS, among other things, called for preservation of genetic diversity as well as species and ecosystem diversity in order to further sustainable development. As Françoise Burhenne-Guilmin wrote, “[t]he recognition of the conservation of biological diversity as a common concern of humanity ... triggered the recognition of the need for a global instrument. Indeed, neither isolated national action, nor sectoral international action can achieve the goal implied in this recognition.”³

Thus was born an initiative in IUCN’s Environmental Law Programme to draft and promote a global treaty, which evolved over time into a draft convention on biological diversity. The initiative was born before the word ‘biodiversity’ was used; it started with IUCN General Assembly resolutions on genetic resources and also on habitats.

Early promotion

Soon after the launch of the World Conservation Strategy in 1980, IUCN actively began promoting development of a new kind of treaty to consolidate existing law, fill gaps, and address species and ecosystem conservation as a whole. Couched initially in the mandate to conserve genetic diversity, the project was an initiative of

the Environmental Law Programme from the idea's infancy. Wolfgang Burhenne, Law Commission Chairman during those years, would reflect later on the role of the lawyers in those events:

"To the surprise of many, the original promoters ... were not within the scientific community but were instead within the legal community. Since the early 1970s, several members of the International Union for the Conservation of Nature and Natural Resources (IUCN) Commission on Environmental Law (CEL) had argued that the natural environment as a whole was not being adequately conserved through the existing legal instruments of the time. They criticized the fact that conservation legislation was simply old-fashioned: advanced environmental law existed for the technical aspects of achieving improved environmental quality, for instance for pollution control, but there was no comprehensive legislation concerning [the natural environment] in general. Legislation – with few exceptions – existed for protected areas or was only species-oriented. Expressing such, Cyrille de Klemm called for a 'world-wide convention of a general nature'"⁴

Initial focus on genetic resources

6 The effort started with a focus on genetic resources. At the 15th IUCN General Assembly (Christchurch, New Zealand, 1981) the International Council of Environmental Law (ICEL) presented a resolution which was adopted. Among other things, the resolution instructed the IUCN Secretariat to carry out a preliminary study "on the conservation, accessibility and use of genetic resources with a view to providing a basis for an international management regime and for rules to implement it."⁵ Soon thereafter, in 1982, the Third World National Parks Congress meeting in Bali, Indonesia, invited IUCN to investigate the "possible development of international instruments to regulate commercial exploitation of genetic resources."⁶ At that Congress, Burhenne wrote that he along with Law Commission lawyers de Klemm, Lausche, and Navid "challenged the protected area managers to redefine and extend their principles to land outside protected areas, and they also proposed a world treaty to protect wild genetic resources for the future."⁷

7 As a result of Law Commission and ICEL efforts, the mandate was in place to develop a new treaty. Unfortunately, resource limitations and other priorities caused some delay in undertaking work toward a treaty.

8 At the 16th IUCN General Assembly in Madrid in 1984, ICEL members again took the initiative, as follow-up to the 1981 resolution, and proposed a new, expanded resolution which the General Assembly adopted. The Resolution, entitled 'Wild Genetic Resources and Endangered Species Habitat Protection', detailed five basic principles "which should also serve as a basis of a preliminary draft for a global agreement on the conservation of the world's wild genetic resources with a view to developing a joint draft [with the Parks Commission] by late 1985...."⁸ These were:

- "(a) Wild genetic processes are both renewable and non-renewable, they must be maintained because they are the basis of ecological diversity....
- (b) The world community has the responsibility to preserve these resources

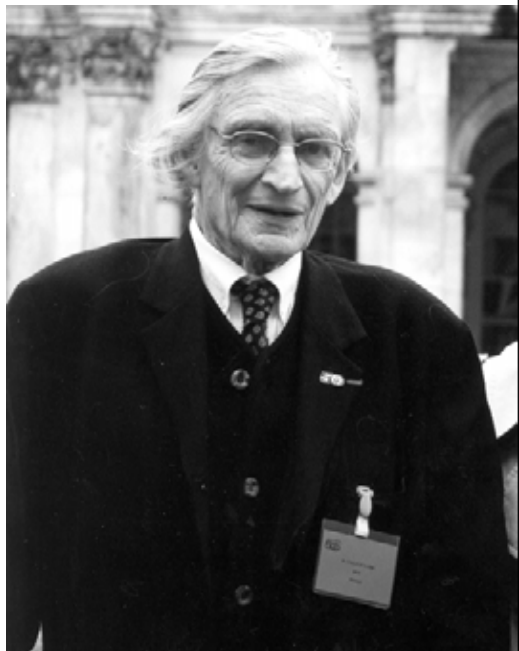
for future generations. States, as the Custodians of these resources, have a duty of stewardship

- (c) Conservation measures taken in pursuance of this duty should aim primarily at preserving wild genetic resources in situ and should include the adoption and implementation by Governments of legislation for the conservation of natural habitats, and particularly the habitats of endangered species....
- (d) Financial resources necessary to implement these conservation measures shall be made available....
- (e) In particular, commercial users of processes derived from wild genetic resources have to participate ... through financial contributions....”⁹

Taking these principles as the conceptual framework, IUCN’s Commission on Environmental Policy, Law and Administration (CEPLA) began contacting practicing lawyers competent in this field to assist with the project.¹⁰ The suggested timeline in the 1984 Resolution for a draft passed without results, mostly due to lack of resources, but during 1986 a small group of experts was convened by the Law Commission Chair at the Law Centre to discuss proposed articles for a first draft.¹¹ Drawing on this consultation, a preliminary draft was prepared by the Law Centre, with CEPLA member Cyrille de Klemm and ELC Head Françoise Burhenne-Guilmin taking the lead. De Klemm had been a tireless advocate for nature and species, and biodiversity conservation was an area where he was increasingly influential and productive. [See Box 1]

Box 1: Cyrille de Klemm – Nature’s Advocate (1927–1999)

Cyrille de Klemm, a charter member of the IUCN Law Commission and the International Council of Environmental Law (ICEL), among others, and a leading expert in environmental law, played a major and unique role in shaping and promoting IUCN’s contributions to the field. He died in Paris on 1 April 1999, just before publication of one of his many definitive books on conservation and law: *Wetlands, Water and the Law*, co-authored with Clare Shine.¹² Born in Switzerland, he took his law degree from Aix-en-Provence, France, and made further legal studies at the Sorbonne in Paris. His lengthy career was mostly tied to IUCN where he worked creatively, both as a tireless volunteer and a consultant, to promote conservation, but his profession was as a conference interpreter. Living most of his adult life in Paris, and always available to the IUCN Environmental Law Programme, he was deeply committed to IUCN’s mission, supporting the



work of the Environmental Law Centre as well as of the Commission, and having a substantive hand in most of the conservation conventions concluded since the 1960s.

Cyrille de Klemm was an early promoter of principles of biodiversity conservation and sustainable use, many of which ultimately found their way into legal texts. Among his main achievements was to be the first to promote the concept of a convention on biological diversity and to articulate concepts and principles that went into the early drafts of the convention, prepared under the auspices of IUCN ELP. Among the many conventions with which he was especially linked, is the Convention on Migratory Species (CMS), where he helped draft the original Convention text and promote its later development, producing, among other things, *Guidelines for the Harmonization of Future Agreement*, which became an essential document in the legal framework of CMS.¹³ He also served for many years as legal advisor to the Ramsar Convention on wetlands. In tribute to his memory, an International Colloquium on Biological Diversity and Environmental Law was convened in Paris in March 2000, organized by the Council of Europe, IUCN, and others, with sponsorship from many of the organizations with which he was affiliated through his life, including CEL, ICCEL, and the French Society of Environmental Law.¹⁴

Cyrille produced numerous papers and books, many concerned with international treaties noted in this History and in Annex 2, particularly associated with conservation and sustainable use of biological resources. Cyrille de Klemm “is the real father of the Biodiversity Convention,” reported the *Plant Talk* magazine in 1999 in his memory – the magazine supported by six leading botanical and conservation institutes (the Swedish Species Information Centre, the Critical Ecosystem Partnership Fund, the Eden Project, Plantlife International, the Royal Botanical Gardens at Kew, UK, and the Department of Botany of the Natural History Museum of the Smithsonian Institution and the US Botanical Gardens.)¹⁵

For the 50th anniversary of IUCN, CEL’s contribution included an address by Cyrille de Klemm to the formal conference at Fontainebleau. As then CEL Chair Robinson recalls, “not everyone agreed to giving him this prominent role in view of his strong views on the protection of flora and fauna, but he rose to the occasion and delivered a brilliant paper. As fate would have it this was his last public presentation. He was one of the greatest imaginative minds in all the history of environmental law.”¹⁶

Cyrille received many acknowledgements and awards for his conservation work. Among these, the Burhenne Award (named after Wolfgang Burhenne for his continuing lifetime of service in environmental law) was awarded for the first time at the IUCN WCC in Amman, Jordan, in October 2000 to Cyrille de Klemm. Françoise Burhenne-Guilmin gave the posthumous honors to Cyrille de Klemm, whose widow Amalia de Klemm received the medal on behalf of her husband. Françoise drew her remarks from a paragraph prepared on Cyrille by a leading French conservationist, Lionel Brard, because she was so moved by that text. It is reproduced here in the original French and English translation:¹⁷

“... Délicieusement cultivé, humaniste, esthète et militant à la fois, Cyrille était un homme d’exception, un transfrontalier des deuxième et troisième millénaires, un visionnaire féru du passé et des racines qui y plongent. Cyrille était un pionnier qui aimait s’aventurer à la frontière des disciplines, en ce lieu de flux et reflux où les matières échangent et communiquent: Droit, Sciences, Politiques, Écologie ... Homme de lisière, Cyrille était artisan orfèvre, habile à la perfection dans l’art de métisser les savoirs. Avec lui le Droit forteresse devenait lumière et perspective. D’un rare intelligence fortifiée d’erudition, tempérée de juste intuition, il était unique. Unique de par son sens inné de la liberté et de l’engagement au service du monde.” (Lionel Brard, Président d’Honneur de France Nature Environnement)

“... Wonderfully cultured, a humanist, sensitive to beauty and a militant rolled into one, Cyrille was an exceptional man, a voyager between the second and third millennia, a visionary who loved the past and the roots which run deep into it. Cyrille was a pioneer who enjoyed venturing on the boundary between disciplines, where disciplines ebb and flow, exchange and communicate: Law, Science, Politics, Science, Ecology. A man of the fringes, Cyrille was a master craftsman who perfected the art of blending different bodies of knowledge. He turned the fortress of Law into light and perspective. His was rare intelligence, buttressed by erudition and tempered by accurate intuition – he was unique. Unique in his innate sense of freedom and his commitment to serving the world.” (unofficial English translation)

These initial efforts by the Environmental Law Programme attracted the critical interest of the plant specialists, and led to a fruitful and long-lasting cooperation between them and the ELP.¹⁸ The preliminary draft was reviewed with the IUCN/WWF Plant Advisory Group in Kew Gardens, UK, in May 1988, which was followed by an IUCN Council meeting where Commissions and other programmes examined the draft in light of comments received.¹⁹ During this internal consultative and review process, the Chairman of IUCN's Species Survival Commission, Grenville Lucas, suggested that the term "genetic" diversity be replaced by the term "biological" diversity in order to be more reflective of the broad conservation purposes of the treaty.²⁰ This was generally agreed and the name of IUCN's working draft was changed to 'Convention on Biological Diversity'.

Producing a working draft

The Environmental Law Programme continued to take the lead for IUCN on successive drafts, each being processed by a small IUCN ad hoc legal drafting team composed of Françoise Burhenne-Guilmin, Cyrille de Klemm, Malcolm Forster, and Tom Stoel. In early 1988, at a workshop at the 17th IUCN General Assembly in San Jose, Costa Rica, additional inputs to this drafting process were solicited.²¹



Mrs Arias, wife of Costa Rica President Oscar Arias, visits the ELC before the 17th GA of IUCN in Costa Rica (1988)

During 1989, a draft was finalized for circulation by IUCN to a select external audience including partner organizations within the Ecosystem Conservation Group

(set up by UNEP in the 1970s to coordinate programming, initially with UNESCO, FAO and IUCN, and then WWF and later the World Bank). An important goal of the IUCN draft was to create a multilateral fund for conservation and a funding mechanism for collecting proceeds that could go into the fund. That provision did not survive subsequent drafting and negotiation processes.

- 13 During this period, IUCN Law Commission Chairman Burhenne used the occasion of his observer attendance at UNEP's Governing Council meetings to promote informally and build UNEP support for the IUCN initiative. At the 14th UNEP Governing Council meeting in 1987, some Members moved that UNEP should prepare an umbrella convention simply to consolidate instruments already in force in this field.²² Concerned that this motion might, in effect, put a stop to the considerable work already done by IUCN toward a more comprehensive framework, Burhenne undertook intensive informal consultations with delegates to promote amendments to this motion that would support IUCN efforts and link them to any future UNEP work. He later wrote about those critical moments:

"With the help of the United Kingdom representative, Dr. Martin Holdgate, a compromise wording was worked out and adopted. It called for support of IUCN's efforts in developing 'a convention for the *in situ* preservation and conservation of biological diversity' and requested the UNEP Executive Director to 'establish an ad hoc working group . . . to investigate the desirability and possible form of an umbrella convention to rationalise current activities in this field.' The working group would work 'in close collaboration' with the Ecosystems Conservation Group of which IUCN is a member."²³

- 14 In 1987, pursuant to that Governing Council decision, UNEP established a technical working group, chaired by Veit Koester of Denmark (a CEL member). The first meeting of this UNEP working group was convened in November 1988 and three subsequent meetings were convened – February 1990, July 1990, and November 1990. IUCN was a member of this ad hoc group, represented by Françoise Burhenne-Guilmin. FAO and UNESCO also actively participated.²⁴

- 15 The initial meeting of the Working Group in 1988 focused on analyzing the existing conventions to address how to fill gaps in current laws for biodiversity conservation. As later explained by Iwona Rummel-Bulska, Executive Secretary to the final Intergovernmental Negotiating Committee:

"At that meeting the Working Group concluded that existing conservation conventions and other relevant programs were sectoral and did not cover the full range of biological diversity, and that the amendment of existing conventions for the purpose of achieving rationalization or consolidation of resources and for adequately meeting the full range of biodiversity at a global level would be extremely difficult and time-consuming, because the political contexts of the currently existing legal instruments differed, with different adhering parties, clients, and administrative provisions. Amendment of the existing instruments being neither possible nor desirable, there was an urgent need for a new international legal instrument and other measures for the conservation of biological diversity."²⁵

The Working Group continued to meet and by the third meeting had identified elements to be included in a global convention. By then, IUCN had already drafted a number of articles for a global convention (IUCN focused on in-situ conservation) and FAO (covering cultivated plants, domesticated animals, ex-situ biodiversity) and a small group of experts mostly from UNEP, IUCN, and FAO put all the elements into a document circulated to governments as the basis for discussions at the fourth meeting to be held in November 1990. The draft also was to take into account socio-economic aspects of biodiversity conservation and use. 16

In February 1991, actual negotiations began, with a second session in May 1991, and a third June–July 1991, by which time the Working Group had been renamed the Intergovernmental Negotiating Committee (INC) for the Convention on Biological Diversity.²⁶ Veit Koester was elected one of the two vice-chairs of the INC, chairing the working group responsible for some of the most complex issues of the convention such as access to genetic resources, biotechnology, the financial mechanism, and relations with other conventions.²⁷ Reflecting the prevailing situation with many Law Commission members involved in international negotiations, Veit recalls: “Whenever I chaired at global, international governmental negotiations, I had three functions – being an objective and neutral Chair, the Head of the [country] delegation, and a member of CEL ... where I relied on Françoise [or other ELP people] who were always ready to provide advice.”²⁸ 17



IUCN, FAO and UNESCO in Nairobi for CBD negotiations (left: F. Burhenne, right: M. Jardin)

IUCN played a dual role in the negotiations: 1) as observer to the INC and 2) through Françoise Burhenne-Guilmin, as part of the Secretariat for the INC. FAO and UNESCO had also similar dual roles. Burhenne-Guilmin also was part of the IUCN delegation attending the negotiating sessions as observer. Among principals in the negotiation sessions were experts associated with IUCN such as CEL mem- 18

ber Veit Koester, and the UNEP Secretariat lawyer assigned to the INC, Alexandre Timoshenko, also a CEL member.

- 19 Apart from the Environmental Law Center's participation in the official process, it also had contact with non-governmental organizations (NGOs) interested in monitoring the process and attended their meetings to help coordinate the position of NGOs. In particular, ELC participated in two NGO consultations: one in the Hague organized by the Netherlands Committee for IUCN in which over 100 participants took part. The other organized by WWF International aimed to firm up the position of a number of NGOs on the convention. Regular contacts and cooperation continued with the network of NGOs that resulted from these efforts.

Concluding a treaty

- 20 The formal negotiating process to conclude a draft convention continued through seven difficult sessions during 1991 and into 1992, with many issues under debate related to clarification of terms, concepts, rights, and obligations (e.g., for access and benefit sharing, technology transfer, funding issues). Finally, on May 22, 1992, in Nairobi, Kenya, now celebrated each year as 'Biodiversity Day', a *Convention on Biological Diversity* (CBD) was concluded by the nations of the world, barely a week before the Rio Conference, the target for adoption. In June, at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil, the Convention was opened for signature, and a record number of 153 countries signed. Approximately 18 months afterwards, on 29 December 1993, the Convention came into force, the result of more than a decade's work. It was a milestone for international environmental law, providing a comprehensive regime for biodiversity conservation, the sustainable use of its components, and the sharing of benefits deriving from the use of genetic resources, thus encompassing all facets of biodiversity.

Implementation

Producing guidance

- 21 Once the Convention had been concluded, the Environmental Law Programme (ELP) quickly shifted its support to implementation, especially at national level where most of the responsibility would fall. A grant from the Swiss (Direction de la Coopération au Développement et de l'Aide Humanitaire) made it possible. Beginning in early 1993, ELP worked with other components of the Union to produce an explanatory guide to the Convention, entitled *A Guide to the Convention on Biological Diversity*.²⁹ The draft was reviewed extensively through regional workshops and by individual experts. Authored by Lyle Glowka (lead author), with Françoise Burhenne-Guilmin and Hugh Synge, in collaboration with Jeff McNeely and Lothar Gündling, it was co-published in 1994 by the Environmental Law Programme and IUCN's Biodiversity Programme. As explained in its Editorial Note, "[t]he primary goal of [the *Guide*] is to explain the Convention's text. Where appropriate, options for implementing a Convention article are provided The *Guide* has been designed as a reference document for anyone desiring more information on the Convention on Biological Diversity and possible steps for its implementation."³⁰ In 161 pages,



Signature of the Final Act of the CBD by China, Nairobi, May 1992
(left: Iwona Rummel-Bulska, right: Veit Koester, Mostafa Tolba)

this collaborative publication not only provided historical context but, more importantly, detailed analysis of the Convention text, article by article. It was a major success and is still widely used today. Versions in French and Spanish were prepared by IUCN and the Guide has been published in various other languages, including Chinese, at the initiative of individuals and members of IUCN.³¹

Thereafter, other publications were prepared to supplement this reference document. In 1993, for example, another study was initiated to identify and assess the full range of laws and legal mechanisms available to support biodiversity conservation. The publication resulting from this study, entitled *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems*, was issued in 1993 as part of IUCN's Environmental Policy and Law Series.³² Undertaken by Law Commission members Cyrille de Klemm and Clare Shine, the book analyzed all major existing treaties and binding instruments, including the Convention on Biological Diversity, for provisions important for conservation of species and habitats in both marine and terrestrial environments as well as biological diversity. 22

In the mid-1990s, the Environmental Law Programme began work on another supplemental guide to help countries review their laws and institutions relevant to biodiversity and the national biodiversity planning process required under the Convention. The project, undertaken by ELC Legal Officer Lyle Glowka with funding from Germany and The Netherlands, resulted in *A Guide to Undertaking Biodiversity Legal and Institutional Profiles*, published in 1998 as part of the IUCN Environmental Policy and Law Series.³³ 23

During this same period, the Environmental Law Programme also participated in a broader IUCN initiative to develop a specialized data base for biodiversity 24



Lyle Glowka, Maria S. Manguiat and Françoise Burhenne at the ELC in 1998

conservation which was to include ELIS data on legal status of species and sites.³⁴ The initiative could not be sustained, however, for lack of resources.

Technical assistance: access and benefit-sharing

25 A special challenge for the new Convention as implementation got under way related to article 15 (Access to Genetic Resources). In 1994, the Environmental Law Centre began a four-year project, funded by Germany and the Netherlands, to provide technical legal assistance to implement the CBD, one component of which dealt with access to genetic resources and benefit sharing related thereto. While most countries had developed laws to control the taking of animals and plants, virtually none had controls over access to the genetic material, as such. A principal issue under the new Convention was how to define the rights and obligations of Contracting Parties with respect to access to genetic resources and the fair and equitable sharing of benefits derived from their use.

26 The Environmental Law Programme's first technical assistance under this project came at the request of the Andean Pact countries (Bolivia, Colombia, Ecuador, Peru, and Venezuela), through their Council of the Cartagena Accord, which asked the Law Centre for technical assistance to prepare a report on elements for a common regime on access to genetic resources. With support from the Peruvian Environmental Law Society (Sociedad Peruana de Derecho Ambiental [SPDA]), an IUCN ELP 'partner institution', a legal team was created with Patricia Moore and Lyle Glowka from the Environmental Law Centre and Brendan Tobin and Manuel Ruiz from SPDA. Special advisors were Jorge Caillaux (SPDA) and Françoise Burhenne-Guilmin (ELC).³⁵

27 The project involved extensive regional consultations, review of draft documents by regional experts, and two regional workshops jointly organized by IUCN

and SPDA. The final report was submitted to the Council in 1994. Entitled *Legal Framework to Regulate Access to Genetic Resources in the Andean Pact*, and authored by Françoise Burhenne-Guilmin and Manuel Ruiz, the report was used by Andean Pact experts for an intergovernmental process which eventually led in 1996 to the Decision on a Common Regime on Access to Genetic Resources.³⁶ During this two year period, the Environmental Law Programme provided comments and advice on the draft reports before the Council as part of its process of developing regional legislation on access to genetic resources.³⁷

The Andean project helped advance understanding about the legal and policy issues surrounding access to genetic resources. Drawing upon this experience, the Environmental Law Programme began to expand its technical assistance. In 1997, for instance, ELP participated in a panel discussion at a meeting of the CBD Subsidiary Body of Scientific, Technical and Technological Advice, presenting a paper by Lyle Glowka, entitled “The Next Rosy Periwinkle Won’t Be Free: Emerging Legal Frameworks to Implement Article 15 of the Convention on Biological Diversity”, which contained comparative analysis of existing legislative frameworks on access to genetic resources.³⁸ In early 1998, the ELP worked closely with IUCN’s



P. Roque (Switzerland) speaking at the CBD COP in Jakarta, 1995

Sri Lanka office to develop the South/South East Asia Workshop on Access to Genetic Resources. Hosted and co-sponsored by the M.S. Swaminathan Institute, with funding from the Swiss Development Corporation, the three-day workshop took place in late February in Madras, India, and informed government officials from thirteen countries on main considerations related to access to genetic resources and benefit sharing.³⁹

29 Drawing upon the experience with the Andean countries and these subsequent events, the Environmental Law Programme prepared a general guide for designing legal frameworks dealing with access to genetic resources. Authored by Lyle Glowka and supported by funds from the Netherlands' Ministry of Development Cooperation, the publication, entitled *A Guide to Designing Legal Frameworks to Determine Access to Genetic Resources*, was issued as part of the IUCN Environmental Policy and Law Series. This *Guide*, which aimed to supplement the original *Guide to the Convention on Biological Diversity*, noted above, was launched at an IUCN members reception held during the Fourth Meeting of the Conference of the Parties (COPs) to the Convention in May 1998 in Bratislava.⁴⁰ At the Global Biodiversity Forum⁴¹ preceding that COP, the Environmental Law Programme and the World Resources Institute organized a workshop on access to genetic resources and benefit sharing, including case studies and lessons learned from countries worldwide, to inform the COP's work in that area.

30 In spite of these efforts, the issue of access and benefit sharing made little progress in the Convention of Biological Diversity through the 1990s and into the 2000s. In 2003, following several years of planning, ELP began a new, substantial project with funding from the German Federal Ministry for Economic Cooperation and Development (BMZ) to assist the CBD "move beyond the stalemates that have plagued it for 12 years", and begin to create and implement an effective system for "access to genetic resources, and equitable sharing of the benefits arising from their use."⁴²

31 The Project, entitled "Trade Issues Relevant to Access to Genetic Resources within the Framework of the Convention on Biological Diversity" (ABS Project), spans several years, and includes a number of activities, including providing expert advice, coordination of international work, and production of publications, led by Tomme Young, ELC Senior Legal Officer. The focus for 2003 was on preparations for two key international meetings: the second meeting of CBD's Ad hoc Open-ended Working Group on Access and Benefit-sharing (December 2003) and the 7th Conference of the Parties to the CBD (February 2004). This work, as reported in ELP's annual report for 2003, "included workshops and research in three regions, canvassing over 50 countries' laws and experiences, and addressing important current issues regarding legal action at regional level."⁴³



Tomme Young, ELC Senior Legal Officer

Publications issued in 2003, all aimed to inform the process and move forward the debate, included a major volume on national legislation by Jorge Cabrera Medaglia: *A Comparative Analysis on the Legislation and Practices on Access to Genetic Resources and Benefit-sharing (ABS): Critical Aspects for Implementation and Interpretation*, and four smaller booklets – international and sub-regional issues, ABS in arid countries and those with low diversity and high endemism, options for developing an international regime, and a report from a Latin American expert workshop on certificates of origin.⁴⁴ 32

The work was well received and in 2004 activities continued under the project to complete and translate initial studies and other materials circulated at the COP-7, broaden their distribution, and provide continued expert assistance and support with ABS negotiations going forward. In partnership with the University of California (Davis campus) Genetic Resources Conservation Project, the ABS Project produced a particularly informative volume of submissions from 19 Pacific Rim countries which provided detailed legal analysis of their ABS laws and processes for an October 2003 expert workshop co-sponsored by University of California, Davis campus, and IUCN. IUCN sponsored several developing country participants to this workshop. The ongoing collaboration provided resources to organize the submissions into a publication in the IUCN Environmental Policy and Law Paper Series: *Accessing Biodiversity and Sharing the Benefits: Lessons from Implementing the Convention on Biological Diversity*, (edited by Santiago Carrizosa, Stephen Brush, Brian Wright, and Patrick McGuire).⁴⁵ The publication was launched at and very well received by the IUCN World Conservation Congress (WCC) in Bangkok, Thailand, in November 2004. This ABS project continues through 2005 and can be monitored on ELP's web site at: www.iucn.org/themes/law/abs01.html. 33

Global Invasive Species Programme (GISP)

Another technical issue gaining increased attention as CBD implementation progressed was how to deal with introduced alien invasive species. As global trade and transport grew, so did greater access to and introduction of different plant and animal species, including those that were non-indigenous (or alien) species, many of them invasive. Invasive alien species came to be recognized as one of the most serious threats to indigenous species and habitats, as well as to human health, and to the economic and ecological well-being of countries. In 1997, IUCN partnered with UNEP and others to coordinate a Global Invasive Species Programme (GISP) to assist governments and organizations share information and bring new approaches and commitment to prevention and management of invasive alien species. The IUCN Environmental Law Programme became one of the charter members of the GISP Executive Committee, with the Environmental Law Centre managing the components on legal and institutional frameworks with support from Law Commission members. In 1998 a Memorandum of Agreement was signed between IUCN and the Scientific Committee on Problems of the Environment (SCOPE) to seek Global Environment Facility funding for the legal component.⁴⁶ 34

The GISP was organized in two phases. The first phase (1998–2000) aimed to improve information and guidance, including specifically the legal and policy is- 35

sues surrounding introduction of alien species. Among the Environmental Law Programme activities during this phase was participation in an international workshop with thematic and country-specific reports, and contribution of a legal and institutional chapter to a synthesis report, *Invasive Alien Species: Searching for Solutions*.

36 The ELP also began a project in 1998 to produce a legal guide on the issue. Involving more than two years of work, the publication was issued in 2000 as part of the IUCN Environmental Policy and Law Series, entitled *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*, and authored by Commission members Clare Shine and Lothar Gündling, joined by Law Centre staff member Nattley Williams.⁴⁷ Its aim, as stated in the Editorial Note, was “to provide national policy and lawmakers with practical information and indicators for developing or strengthening legal and institutional frameworks on alien invasive species....”⁴⁸ The publication was a collaborative effort of the Environmental Law Programme with GISP and the IUCN Invasive Species Specialist Group.

37 The project overall was organized and managed by the ELC Legal Officer Nattley Williams. GISP phase two (2001–2003) focused on additional areas of need identified by the Executive Committee, including elements of law and policy which the Law Programme continued to coordinate. As reported in the 2001 ELP Newsletter, the goal continued to be “supporting the development and strengthening of instruments and institutional capacity and providing legal input to other Elements” of the GISP.⁴⁹ Components of law and policy for this phase included “(a) support for development and/or strengthening of regional, national and sub-national legal and institutional frameworks; (b) provision of technical advice and assistance to international organizations and conventions to support guidelines, standards, or legal protocols; (c) further review of existing international instruments, including especially the identification of operationally important gaps...[and] (d) provision of legal/policy assistance in the ongoing processes directed at new standards or codes of conduct....”⁵⁰

Biosafety Guide

38 Biosafety also became a high priority area for special attention under the Convention as implementation progressed. Recognizing the urgent global need for a legal mechanism to ensure the safe transfer, handling and use of living modified organisms, this area (known as ‘biosafety’) became the focus of a Protocol mandated by the CBD. Work formally began towards development of the Protocol in July 1995, when an Open-ended Ad Hoc Group of Experts on Biosafety met in Madrid, Spain, pursuant to the Convention’s Article 19(3). That Article required the Conference of the Parties to “consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advanced informed agreement, in the field of safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.”⁵¹

39 That first meeting began a process of treaty development through the Ad Hoc Working Group on Biosafety (BSWG) set up for that purpose. From 1996–1999,

Veit Koester of Denmark chaired the BSWG through six meetings, shaping the text for the final negotiations of the Protocol by a CBD Extraordinary Session of the Parties in Montreal, which was chaired by Colombian Environment Minister Juan Mayr, a former IUCN Councillor. Mayr asked CEL Chair Robinson for legal help and Françoise Burhenne-Guilmin went to Montreal so that IUCN would have legal expertise available to the Chair throughout the negotiations.⁵²

On January 29, 2000, negotiations were successfully concluded, and a Biosafety Protocol to the Convention on Biological Diversity was adopted. One of its main achievements is to set out an advance informed agreement (AIA) procedure for the transboundary movement, transit, handling and use of all living modified organisms (LMOs) that may have adverse effects on the conservation and sustainable use

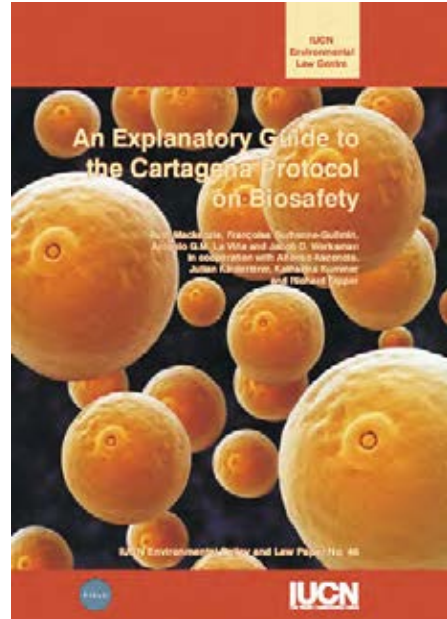


Juan Mayr signs the Protocol on Biosafety, flanked by Dan Ogolla (left) and Palitha Kohona (right)

of biodiversity, taking also into account risks to human health.⁵³ It also places a strong emphasis on the use of the precautionary principle in its implementation. A number of international NGOs played an important role in the negotiation process, including the Foundation for International Law and Development (FIELD), Greenpeace, and the World Wide Fund for Nature (WWF).

Almost immediately, the focus of Parties and other stakeholders shifted to implementation. The idea of an explanatory guide to the Biosafety Protocol emerged, and based on its prior experience with the Convention guide, the Environmental Law Programme successfully sought the partnership of FIELD to undertake the project. Françoise Burhenne-Guilmin became coordinator of the project and Ruth MacKenzie from FIELD the lead author. Funds were provided by Denmark, supplemented by a grant from the European Community, later joined by Canada, Norway, and Switzerland.

42 After two years of intensive analytical and collaborative work by the IUCN Environmental Law Centre and FIELD, later joined by the World Resources Institute, *An Explanatory Guide to the Cartagena Protocol on Biosafety* was published in 2003 as part of the IUCN Environmental Policy and Law Series,⁵⁴ with Ruth MacKenzie as lead author, building on the contributions of a number of international experts, including Françoise Burhenne-Guilmin (ELC Senior Counsel), Antonio G.M. La Viña (Senior Fellow at the World Resources Institute) and Jacob D. Werksman (former lawyer at FIELD and then Environmental Institutions and Governance Adviser to UNDP in New York).



43 The product was the result of a weighty consultation process including three workshops and wide circulation of the various drafts, involving individuals in government, non-governmental organizations, and the private sector. As to its main purpose, the foreword explains: “One prerequisite for the successful implementation of a treaty is an understanding of the text itself, and of its implications. In this regard, the Cartagena Protocol is a text that may well not be readily accessible to all those who will need to become involved, in one way or the other, with its implementation. We hope that this Explanatory Guide will both make the Protocol more readily accessible and prove useful as a reference work for those who are involved in its implementation.”⁵⁵

44 The Guide has been a major success, the most popular publication to be downloaded from ELP’s web site to date, with some 18,000 downloads in various languages since it became available in 2003, first in English, then in French and Spanish. It remains in high demand.

Notes

- 1 Article 1, para. 2 (d). “The Text of the Constitution of the International Union for the Protection of Nature” (Part III of the International Union for the Protection of Nature Report of the Conference of Fontainebleau, September 30 – October 7, 1948). (IUCN ELC Archives).
- 2 Burhenne, W., and W. Irwin, “Preface”, in *World Charter for Nature: A Background Paper*, p. 5 (1983) (available from the IUCN Environmental Law Centre, Bonn).
- 3 Burhenne-Guilmin, F., “The Convention on Biological Diversity” in *Biodiversity Conservation in the Asia and Pacific Region – Constraints and Opportunities* (Proceedings of a Regional Conference, 6–8 June 1994, sponsored by the Asian Development Bank and The World Conservation Union), (Asian Development Bank, 1995), 107–118, p. 111.
- 4 Burhenne, W., “Foreword” to Sanchez, V. and Juma, C. (eds.), *Biodiplomacy: Genetic Resources and International Relations*, pp. ix (African Centre for Technology Studies: Nairobi, Kenya, 1994).

- 5 See Resolution 15/10 adopted by the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981.
- 6 See Recommendation 10, World Parks Congress on National Parks, 11–22 October 1982, Bali, Indonesia.
- 7 Burhenne, W., “Foreword” to Sanchez, V. and Juma, C. (eds.), *Biodiplomacy: Genetic Resources and International Relations*, pp. ix (African Centre for Technology Studies: Nairobi, Kenya, 1994).
- 8 Resolution 16/24, “Wild Genetic Resources and Endangered Species Habit Protection”, in “Resolutions, 16th Session of the General Assembly of IUCN, Madrid, Spain, 5–14 November 1984”.
- 9 Resolution 16/24: “Wild Genetic Resources and Endangered Species Habit Protection”, in “Resolutions, 16th Session of the General Assembly of IUCN, Madrid, Spain, 5–14 November 1984”.
- 10 See Commission on Environmental Policy, Law and Administration, “Report to the 18th Meeting of the IUCN Council 15–16 May, 1985”, p. 4 (also referenced as Attachment to Annex 4 to Council Paper UC.18/85/1).
- 11 “Director General’s Report to Council for the Period November 1985 – May 1986”, p. 9.
- 12 Shine, C., and C. de Klemm, *Wetlands, Water and the Law* (IUCN Environmental Policy and Law Paper No. 38) (IUCN, 1999).
- 13 “A Tribute to Cyrille de Klemm” in *CMS Bulletin* (No. 9, June 1999), p. 20, available through the CMS Secretariat web site at: www.cms.int/pdf/bul9_en.pdf.
- 14 See Ramsar’s web site at: http://www.ramsar.org/wn/w.n.deklemm-_colloq.htm.
- 15 See “Profile and Tributes: Cyrille de Klemm, 1927–1999” in *Plant Talk* (No. 18, July 1999), (*Plant Talk*, “a quarterly magazine that supports plant conservation worldwide” is available on the web at: www.plant-talk.org).
- 16 Contribution from Nicholas Robinson, transmitted by email dated June 13, 2006.
- 17 Provided by Françoise Burhenne-Guilmin.
- 18 Communication from Françoise Burhenne-Guilmin on March 2006 draft, transmitted by email cover dated March 29, 2006.
- 19 “Report of the Chairman of the Commission on Environmental Policy, Law and Administration”, in “IUCN Report to the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia”, p. 84.
- 20 Author interview with Wolfgang Burhenne and Françoise Burhenne-Guilmin, June 24, 2004 (Bonn, Germany).
- 21 “Report of the Chairman of the Commission on Environmental Policy, Law and Administration”, in “IUCN Report to the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia”, p. 84.
- 22 Author interview with Wolfgang Burhenne, 18 October 2000 (Bonn, Germany) (draft transcript, p. 57).
- 23 Burhenne, W., “Foreword”, to Sanchez, V. and Juma, C. (eds.), *Biodiplomacy: Genetic Resources and International Relations*, p. x (African Centre for Technology Studies: Nairobi, Kenya, 1994).
- 24 Author interview with Françoise Burhenne-Guilmin and Wolfgang Burhenne, October 2000 (Bonn, Germany) and June 24, 2004 (Bonn, Germany). Interview with Françoise Burhenne-Guilmin, April 9–10, 2006 (Bonn, Germany).
- 25 Rummel-Bulska, I., “Negotiating Process leading to the Convention on Biodiversity Conservation,” a speech presented at the Third University of Joensuu-UNEP Course on International Environmental Law Making and Diplomacy, Pietermaritzburg campus, South Africa, 26 June – 7 July 2006, p. 8.
- 26 Rummel-Bulska, I., “Negotiating Process leading to the Convention on Biodiversity Conservation”, a speech presented at the Third University of Joensuu-UNEP Course on International Environmental Law Making and Diplomacy, Pietermaritzburg campus, South Africa, 26 June – 7 July 2006.
- 27 Communication and comments on May 2006 draft from Veit Koester, transmitted by email dated June 7, 2006.
- 28 Id.

- 29 Glowka, L., F. Burhenne-Guilmin, H. Synge (in collaboration with J. McNeely and L. Gündling) *A Guide to the Convention on Biological Diversity* (IUCN Environmental Policy and Law Paper No. 30) (IUCN, 1994).
- 30 “Editorial Note” in Glowka, L., F. Burhenne-Guilmin, H. Synge, (in collaboration with J. McNeely, and L. Gündling) *A Guide to the Convention on Biological Diversity* (IUCN Environmental Policy and Law Paper No. 30) (IUCN: 1994), p. viii.
- 31 Contribution by Françoise Burhenne-Guilmin on March 2006 draft, transmitted by email cover dated March 29, 2006.
- 32 Klemm, C. de, *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems* (IUCN Environmental Policy and Law Paper No. 29) (IUCN, 1993).
- 33 See Glowka, L., *A Guide to Undertaking Biodiversity Legal & Institutional Profiles* (IUCN, 1998).
- 34 In the mid-1990s, IUCN, through the World Conservation Monitoring Centre (WCMC), created the Biodiversity Conservation Information System (BCIS), a consortium of international conservation organizations and programmes of IUCN. The Environmental Law Programme collaborated as a steering committee member on legal information about species and sites while that data base was active. For the start-up years, see “Biodiversity Conservation Information System” in *IUCN Environmental Law Programme Newsletter* (October–December 1997), p. 8. By 2001, the consortium had ten members: Birdlife International, Conservation International, International Species Information System, IUCN Environmental Law Programme, IUCN World Commission on Protected Areas, IUCN Commission for Ecosystem Management, IUCN Species Survival Commission, Traffic, UNEP-WCMC, and Wetlands International. See <http://www.biodiversity.org>.
- 35 For an overview of this project, see “Editorial Note”, Glowka, L., *A Guide to Designing Legal Frameworks to Determine Access to Genetic Resources* (IUCN Environmental Policy and Law Paper No. 34) (IUCN, 1998), p. vii.
- 36 See Caillaux, J., “South America Moves Forward: Access to Genetic Resources and Related Issues” in *IUCN Environmental Law Programme Newsletter* (April–June 1996), p. 10.
- 37 See Hassan, P., “Commission on Environmental Law (CEL) Triennial Report: 1994–1996”, p. 23 (also cited as Annex 3 to Congress Paper CGR/1/96/2).
- 38 See “IUCN Environmental Law Programme Annual Report 1997”, p. 3.
- 39 Id. at 11.
- 40 See Glowka, L., *A Guide to Designing Legal Frameworks to Determine Access to Genetic Resources* (IUCN, 1998). Specifically for a discussion of COP IV, see “IUCN Environmental Law Programme Annual Report 1998”, p. 4.
- 41 The Global Diversity Forum was founded in 1993 by IUCN, World Resources Institute (WRI), UNEP, and African Centre for Technology Studies (ACTS) to promote participation of all stakeholders in issues related to biodiversity, particularly in furtherance of the objectives of the CBD. See their web site at: www.gbf.ch.
- 42 Reported in: Scanlon, J., “IUCN Environmental Law Programme 2003: The Year in Review”, p. 5 (IUCN Environmental Law Centre, Bonn).
- 43 Id.
- 44 See Medaglia, J., *A Comparative Analysis on the Legislation and Practices on Access to Genetic Resources and Benefit-sharing (ABS): Critical Aspects for Implementation and Interpretation*. (2003); Chishakwe, N., and T. Young, “Access to Genetic Resources, and Sharing the Benefits of their Use: International and Sub-regional Issues” (2003); Wynbert, R., with L. Haidar, W. Nasser, and A. Garane, “Biodiversity Access and Benefit-sharing in Arid Countries and Those with Low Diversity and High Endemism” (2003); “Summary Handbook for CBD Delegations: Options and Process for the Development of an International Regime on Access and Benefit-sharing” (2003); “Report of the Latin American Expert Workshop on Certificates of Origin (Lima)” (2003). These reports are available from the IUCN Environmental Law Centre, ABS Project: Bonn, Germany. See also the ELP web site for an overview of the project, current status, and publications, at: www.iucn.org/themes/law/abs01 (researched 12/29/05).*
- 45 See Carrizosa, S., S. Brush, B. Wright, and P. McGuire, *Accessing Biodiversity and Sharing the Benefits: Lessons from Implementing the Convention on Biological Diversity* (IUCN Envi-

ronmental Policy and Law Paper No. 54) (2004) (IUCN: Bonn). Also available through the ELP web site on the project at: www.iucn.org/themes/law/abs01.*

46 See "IUCN Environmental Law Programme Annual Report 1998", p. 2.

47 Shine, C., N. Williams, L. Gündling, *Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species* (IUCN Environmental Policy and Law Paper No. 40) (IUCN, 2000).

48 Id. at xiii.

49 Shine, C., "Update: The Global Invasive Species Programme" in *IUCN Environmental Law Programme Newsletter* (No.1/2001), p. 17.

50 Shine, C. "Update: The Global Invasive Species Programme" in *IUCN Environmental Law Programme Newsletter* (No.1/2001), p. 17.

51 See "Biosafety and the Convention on Biological Diversity" in *IUCN Environmental Law Programme Newsletter* (July–September 1995), p. 7.

52 See Burhenne-Guilmin, F., "Success at the Start of the New Millennium" in *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 7; amplified by communication from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.

53 For a discussion of the Protocol, see Mackenzie, R., "Cartagena Protocol on Biosafety: Overview" in *IUCN Environmental Law Programme Newsletter* (January–April 2000), pp. 1, 4 and 5.

54 See Mackenzie, R., F. Burhenne-Guilmin, A. La Vina, and J. Werksman, (in cooperation with A. Ascencio, J. Kinderlerer, K. Kummer, and R. Tapper), *An Explanatory Guide to the Cartagena Protocol on Biosafety* (IUCN Environmental Policy and Law Paper No. 46) (IUCN, 2003).

55 Scanlon, J., T. Gross, J. Lash, "Foreword" to Id. at p. ix.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 24: Service to the Regions

The IUCN Environmental Law Programme's provision of technical assistance in environmental law was one of the most direct means to support progress in developing countries. This service became a leading component of ELP's efforts, first, to assist locally and, second, to regionalize. Already, by the late 1970s, legal technical assistance to developing countries and in particular "the drafting of environmental legislation ... [had become] ... among the Commission's top priorities...."¹ Demand from developing countries for such assistance had increased steadily during the 1980s, as reported by the IUCN Director General to the 17th IUCN General Assembly in 1988: "Recognition of the vital importance of national legislation in support of conservation goals has led to an increase in the activities of the Law Programme in this respect."²

Providing ad hoc assistance

Through the 1970s and 1980s, the Environmental Law Programme provided legal technical assistance to developing countries on an ad hoc basis, for the most part, identifying expertise and outside funds for each request. With the 1970s' focus on international conventions, and studies on trends and techniques, the Commission and Environmental Law Centre had limited resources remaining for country-level assistance and could only serve special cases. In the 1980s, however, with the shift to implementation of new international treaty obligations, the demand and pressure for country-level service increased markedly and this area of the programme saw sizeable growth, though still delivered on an ad hoc basis. Typically, experts were drawn from the Law Commission membership and provided assistance mostly on a volunteer basis unless travel costs were involved.

The need to keep fundraising to meet accelerating demand was evident in a 1988 memo to Law Commission members from Chairman Burhenne:

"As Members will be aware, funding from central IUCN sources for the work of the legal elements of the IUCN programme has been progressively and substantially reduced during recent months, and it is a matter for the General Assembly, acting on the recommendations of the September meeting of the IUCN Council, to decide how this situation is to be remedied. In any case, if the Law Programme of IUCN (including CEPLA activities) are to be developed (especially in relation to the provision of assistance to developing countries and to the monitoring of current developments), new sources of funding must be identified and approached with projects which are likely to attract a favourable response from those sources. Members are now asked for their assistance or advice in this connection."³

While legal technical assistance requests varied widely by country and subject matter, they generally fell into two broad types of service: 1) providing environmental law information and 2) assisting with national legislation, either through review of locally prepared drafts or preparation of the draft legislation.

- 5 An Environmental Law Programme brochure entitled “Developing Countries and Environmental Law – IUCN Response to Some Requirements” was prepared to help national institutions understand the importance of environmental law in development. The brochure explains:

“Considerable attention has been devoted by several international organizations, including UNEP and IUCN, in the past few years to the relationships between environmental conservation and development. The World Conservation Strategy has resulted from these efforts. The Strategy clearly indicates that sustainable development and conservation are mutually dependent and that hence the latter is a prerequisite to the former.”

“In turn, the aims of conservation can only be achieved in a lasting way if they are supported by the necessary legal and administrative measures. It follows that environmental and conservation law must be viewed as a necessary integral part of development, and that it is essential for developing countries to take the steps necessary to build up their legislation in this field and to receive adequate assistance to that end.”⁴
- 6 Reflecting the growing experience of the Environmental Law Programme in responding to requests, the brochure further casts information as necessary but not sufficient for upgrading national legislation:

“Information, however useful in deciding on the orientation to be given to legislation, is not a panacea. When actually drafting specific legislation for a given country, the laws of other nations are of very limited help. Indeed, each legislative drafting exercise has to take into account the legal system and constitution of the country in question, including those existing provisions directly or indirectly relevant.”⁵
- 7 Requests came from governments directly and on referral from international agencies working with the governments. When a request was on referral from UNEP or another UN specialized agency, some funding support normally was attached and joint projects frequently were the result. For instance, IUCN assistance to Thailand with a national conservation plan came in the form of a joint IUCN/UNEP project with UNEP funding. In some cases, UNEP made referrals to IUCN for specialized environmental law assistance to governments with whom UNEP already was working on related issues. One cluster of such requests, for example, focused on providing specialized assistance to the Governments of Jordan, Kuwait, Oman, Saudi Arabia and the United Arab Emirates.⁶ This request generated IUCN/CEL work to analyze the basis of environmental law in Islam, a project that resulted in a publication on Islamic Law and the Environment (see Chapter 18).
- 8 The ad hoc projects spanned the full range of subject areas, from providing comments on protected areas bills (Swaziland) to species conservation (Jordan) to environmental contaminants (Papua New Guinea) and drafting legislation for multi purpose conservation areas (Malawi) near its capital city, to elaborating on a National Conservation Strategy for Thailand.⁷ There were a variety of products produced, for example, draft biosphere reserve legislation for India, national heritage

trust legislation for Swaziland, and a draft environmental management act for The Gambia. Generally these services were well received and sometimes led to further requests.⁸

Table 1 lists these and other examples of the ad hoc legal technical assistance provided by the Environmental Law Programme starting in the 1970s and increasing in the 1980s. 9

Seeking ear-marked funds

As requests for assistance grew, the ad hoc approach proved highly inefficient and unresponsive, especially to requests with a limited window for action. Through the 1980s, the Environmental Law Programme tried unsuccessfully to raise earmarked funds for a dedicated Environmental Law Service. As early as 1984, anticipating growing demand, the Law Commission made a proposal to the IUCN Council preparatory to the 16th IUCN General Assembly meeting in Madrid proposing that "...responding to requests from governments and others for assistance with preparation or implementing conservation law, ... by nature difficult to preplan, should be the subject of an 'earmarked' sum allocated to the budget for that purpose, and ... the balance between its activities should be kept under reserve."⁹ 10

Possibilities were explored with the new Conservation for Development Centre (CDC), set up in 1981 as an environmental advisory service to more effectively compete for development monies available to implement the World Conservation Strategy. Headed by Mike Cockerell, the CDC promoted IUCN expertise for large-scale projects of the World Bank, other multilateral banks, and bilateral aid agencies.¹⁰ Since virtually all ELP activities aimed to advance implementation of the World Conservation Strategy in some manner, CDC seemed an ideal vehicle to provide earmarked support. However, CDC declared itself unable to help because ELP's technical assistance projects were simply too small to be cost-effectively managed. 11

Françoise Burhenne-Guilmin, then Head of the Environmental Law Centre, recalls: "My proposal to Mike was for something on the order of 50,000 Swiss francs which I proposed to draw down as needed for projects typically costing 5000 Swiss francs or so. I was surprised to hear my funding needs were too *small*. We were used to working on a shoe-string budget, greatly relying on volunteer contributions, and so the argument at the time took me aback completely. While CDC was not at all negative on the project, I was told it was impossible for CDC to be cost-effective if they accepted such small proposals and that their lowest range was something on the order of 250,000 Swiss francs! This apparently was a problem being faced by other IUCN commissions as well."¹¹ 12

In another vein, one of IUCN's partners, World Wildlife Fund-US/Conservation Foundation signed a cooperative agreement with IUCN in 1986 to support the Law Centre's work with conservation legislation in developing countries. This was thought to have potential for a future mutually beneficial legal technical assistance programme. The initiative was never fully developed, however, and Fiji became the first and only country to receive assistance under the agreement.¹² 13

In 1988, as part of IUCN's preparation for the upcoming 17th General Assembly, the Environmental Law Programme drew up a list of projects for which fund- 14

ing was being sought from central IUCN sources. Included in that list was a project proposal entitled “Technical Assistance Service for the Drafting of Environmental Conservation Legislation.” The proposal repeated the same, long-standing need: “to provide a rapid response to requests from developing countries for help in drawing up conservation legislation which is workable and accords with modern conservation thinking” and estimated that the service could be “established on a trial basis for a three-year initial period at an annual cost of Sfr 180,000.”¹³ The project did not survive the IUCN Council screening process, however, and was not part of the General Assembly presentation. For the times, legal technical assistance was not a high priority.

Environmental Law Service

Bilateral support

15 As demand continued to grow, the Environmental Law Centre shifted its fund-raising requests to the bilateral donor community. In 1990, these efforts finally produced results when the Swedish Government stepped forward with a 4-year earmarked grant. Soon, the Commission reported the news in its 1990 Newsletter: “a Trust Fund was established by Swedish International Development Authority (SIDA) which will allow the Programme to respond quickly to calls of developing countries for assistance in the legal field.”¹⁴

16 The Swedish grant allowed the Environmental Law Service (ELS) to be launched. Lothar Gündling was recruited as ELC Legal Officer to become its first Project Coordinator. By 1992–1993, under his dedicated management, some 40 countries had active, pending requests with the Environmental Law Centre for “assistance in the preparation of conservation and environmental law.”¹⁵ As explained in an internal report, “responses to these requests are handled in the first instance by the Environmental Law Centre, members of the Commission have sometimes helped to articulate the demand for assistance and are frequently involved in the ensuing substantive work.”¹⁶

17 By 1994, the Swedish monies were nearing an end. ELC had demonstrated the Service’s value and demand. However, IUCN Headquarters’ shift to regionalization meant that IUCN general programme funds were concentrated on building regional capacity, rather than supporting a centrally-led effort. These were, however, early years for IUCN RCO development and regional and country offices had little capacity to initiate or manage environmental law projects, nor in most instances was law a priority. So demand for this centralized service continued and ELC, once more, pursued external support.

18 In 1994, the German Federal Ministry for Economic Cooperation and Development (BMZ) approved a new grant and a BMZ Trust Fund was set up to cover four more years. The initial priority was assistance with national legislation to implement the Convention on Biological Diversity.¹⁷ Following the 1992 Rio Conference and conclusion of the Convention on Biological Diversity, countries began exercises to update national legislation to be in compliance with new international obligations. Gradually, the scope broadened to helping developing countries

strengthen their national legal frameworks for environmental protection and conservation.¹⁸

Patricia Moore, ELC Legal Programme Officer, succeeded Lothar Gündling as the Environmental Law Service Coordinator. She led activities under the BMZ project, coordinating with Lyle Glowka, ELC Legal Officer for Biodiversity. 19

During these years, targeted funding for Africa legal technical assistance became a special initiative. In 1995, IUCN, through the Environmental Law Programme and its Environmental Law Service, became a partner (along with FAO and the World Bank) in a UNEP-UNDP four-year Joint Project on Environmental Law and Institutions that was funded by the government of the Netherlands.¹⁹ The project had two phases. Phase I, the UNEP/UNDP/Netherlands Joint Project, continued into 2000 and focused on five countries (Burkina Faso, Malawi, Mozambique, Sao Tome & Principe, South Africa) and one region (East Africa: Kenya, Tanzania, Uganda).²⁰ Phase II, the successor project from 2001–2004 coordinated by UNEP, had multiple funding sources and added an additional six countries (Lesotho, Swaziland, Botswana, Mali, Niger, Senegal).²¹ Planning for Phase II was spearheaded by a donors meeting at UNEP in January 2000.²² 20

Phase II, which came to be known as PADELIA (**P**artnership for the **D**evelopment of **L**aw and **I**nstitutions in **A**frica), “set a new mode of interagency cooperation,” as Françoise Burhenne-Guilmin recalls, “for it had a Steering Committee composed of the international agencies active in the field of environmental law to ensure coordination across the agencies concerned and back-stopping by them as needed.”²³ It was managed by UNEP’s Division of Environmental Policy Implementation which was led by CEL member Donald Kaniaru. The first project coordinator was another CEL member and former Vice-Chair for Africa, Charles Okidi, who was succeeded by UNEP’s Elizabeth Mrema, also a CEL member. As assessed by Burhenne-Guilmin, ELC Head during much of the project’s term and continuously involved in its monitoring, PADELIA achieved considerable results. During the first phase, IUCN ELP was lead implementing agency with much success in Burkina Faso where framework environmental legislation and subsidiary instruments for wildlife and other related issues were the focus.²⁴ The project continues, now under the leadership of UNEP’s Division of Policy Development and Law, but with less direct involvement from partner agencies. 21

Even with this growing support in the 1990s, however, “demand continued to outstrip what could be provided with available resources”, as IUCN Director General Holdgate reported to the 19th General Assembly in 1994.²⁵ A system was set up to screen and prioritize requests. ELS assistance was classified into three main categories: 1) drafting legislation and regulations, 2) providing reviews and analysis of existing legislation and priorities for future lawmaking, and 3) building individual and institutional capacity in environmental law.²⁶ 22

Strengthening regional ties

Under the 1994 BMZ grant, more than two-thirds of all technical assistance requests to the Environmental Law Centre originated from or were processed through IUCN’s Regional and Country Offices (RCOs).²⁷ The Environmental Law Programme’s 23

1994 Annual Report explained: “As IUCN’s regionalization effort progressed, it was becoming increasingly important for regional and country offices to investigate their country’s and regions’ interests in receiving assistance in the legislative field, and to consider legal implications of their projects at the planning stage so that the ELS can coordinate long-term programming and budgeting more closely with them.”²⁸

- 24 Relationships and roles between the RCOs and the central Law Programme began to clarify and strengthen. In September 1995, IUCN called a two-week meeting at Headquarters for all RCOs and IUCN programmes, including the Law Programme, to outline a vision for the 21st century and highlight opportunities for increased coordination and cooperation. The Law Programme summarized in its Newsletter the plan for working with the regions:

“... As project administration moves into RCOs, Law Centre staff time will be freed to concentrate on compiling, synthesizing, and disseminating experiences from the field. ELC will be working with several regional programmes and offices to develop proposals to secure the funding to assure that they have the local legal expertise they require to support their initiatives. RCOs made it clear that they want to work with CEL members locally and that they need for CEL members’ interests and expertise to complement their programme requirements. CEL Vice Chairs will coordinate closely with IUCN Regional Directors and Country Representatives in their regions to ensure that environmental law is appropriately included in IUCN’s national and regional programmes. RCOs will assist in identifying CEL members who are interested in and committed to working with IUCN programmes at the national and regional levels, and ELC will be able to work more closely with them to coordinate their input into the international work of the ELP.”²⁹

- 25 As these initiatives took hold, the role and value of a central and globally active law unit became clearer and more apparent. The Union at its 1st World Conservation Congress in 1996 adopted a resolution requesting the Director General, within available resources, to “ensure that IUCN’s fund-raising activities seek to secure the resources necessary to permit the ELP to respond effectively to the demands placed on it by IUCN members, partners and Regional and Country Officers.”³⁰

- 26 By 1998, with support from the BMZ project begun in 1994, the Environmental Law Service had “initiated or completed projects in more than 35 jurisdictions, and in all regions of the developing world.”³¹ As explained in ELC’s final project report, “[c]apacity-building is a component of every ELS project. In each case, one or more national lawyers gain practical experience in environmental legal research and analysis, and environmental lawmaking. Projects involving drafting of new legislation include at least one consultative workshop during the process ... to build awareness among non-lawyers as well as lawyers of the key role law plays in protecting the environment and conserving biodiversity. In some cases, the entire project is a national or regional workshop, conference or seminar to build awareness and capacity in environmental law. The outputs ... are usually draft laws and regulations.”³²

The Netherlands grant

In 1997, the Government of The Netherlands approved a four-year grant to further support activities of the Environmental Law Service. Entitled “Environmental Law Services: Technical Assistance and Capacity Building,” the project received its funding through the Netherlands’ Directorate-General for International Cooperation (DGIS), the agency responsible for development cooperation policy, implementation, coordination, and funding, as well as coordination between national and EU policy on developing countries.³³ Legislative assistance was an initial focus which later branched out into training and capacity building (see Chapter 25). A number of projects funded under that grant leveraged EU funding as well. Françoise Burhenne-Guilmin recalls that these were years when “the surge in progress of the Environmental Law Service and its diversification were sustained by DGIS and BMZ funding support, and the tireless efforts, networking, and management skills of those ELC staff responsible for it.”³⁴

The DGIS project was managed by Patricia Moore, Legal Officer at ELC through 1998. Under the terms of the agreement with The Netherlands, the target groups were developing country governments for legal technical assistance and NGOs for capacity building.³⁵ During the duration of the DGIS funding, the general objectives of the ELS were:

- to provide rapid and flexible response to requests for technical assistance and support for capacity building activities,
- to build local capacity in the environmental law field, both within institutions and among individuals,
- to develop guidelines to assist developing countries in creating and reforming their environmental legal regimes.³⁶



IUCN – Regional IUCN members meeting, Jordan 1994. From the right: R. Tarasofsky, L. Gündling and P. Moore

The DGIS grant funded both country-specific and regional activities. Some projects ventured into new areas (e.g., Nepal judiciary workshops), others provided important leverage for additional funds (e.g., Bangladesh framework law with the

World Bank; Guinea-Bissau with the EU), and still others built upon work and relationships of earlier projects (e.g., South Africa Development Community (SADC)



SADC Forest legislation project, meeting in Lesotho, 2000. Centre back: Nattley Williams

forestry sector, Nicaragua biodiversity support). In most cases of regional scope, the IUCN regional offices were involved. Table 2 provides an illustrative list of major country-level legal technical assistance projects of the Environmental Law Service supported in the 1990s through the Swedish grant, the 1994 BMZ trust fund, and the 1997 DGIS grant.³⁷

Regionalization Project

- 30 In 1998, with the BMZ project initiated in 1994 coming to a close, the Environmental Law Programme began negotiations to explore further support from the German Government for ELP's Environmental Law Service. A follow-up project was approved and a new BMZ trust fund project was put in place to support the ELS for another four years beginning in 1999. The new project's official title, "A Programmatic Framework for delivering Regionally and Nationally Tailored Environmental Law Programme Services through IUCN Regional and Country Offices," was given the working title: 'Regionalization Project'. As laid out in the project document, the overall goal was –

“to support sustainable development by promoting and enabling adoption of a strong legal foundation for sustainability at the international, regional, and national levels”, with the immediate goal being “to assist developing countries in creating and incorporating into national legal systems, measures and instruments which promote sustainable use and conservation of biodiversity and other natural resources.”³⁸

- 31 Coordinated by ELC Legal Officer (later Senior Legal Officer) Alejandro Iza, who became IUCN ELC Director in 2005, the project's main objectives extended

beyond technical assistance. They also aimed to provide training, develop expert forums for exchange of ideas and conceptual law development, build networks among national and regional environmental law centres, and disseminate environmental law information.³⁹

Strategically, the project embodied a further shift toward developing legal capacity in IUCN Regional and Country Offices – “enabling them to focus on environmental law priorities at the regional and national levels”, emphasizing complementary roles and partnerships between the central unit, the Environmental Law Centre in Bonn, Germany, and IUCN Regional and Country Offices.⁴⁰ As explained in project documents, “ELC-based staff will be responsible for coordinating project design, networking with other IUCN Headquarters-based technical programmes, implementing global activities, financial management, and reporting. RCOs will collaborate in project design, coordinate field activities, and contribute to monitoring and evaluation of project results.”⁴¹ All parties would be involved in planning and implementation. Each IUCN Region would appoint an environmental law focal point and electronic communication links would be established between Environmental Law Centre staff and designated RCO staff.⁴² As experience was gained, intra-regional coordination mechanisms were emphasized more than regional ones to provide more limited and relevant geographic area for tailoring services to specific needs.⁴³



Guinea Bissau: Centre for environmental legislation. Left: Mauricio Cysne and his wife, centre back: Alejandro Iza

Once the Netherlands project came to a close in 2001, the BMZ ‘Regionalization’ project continued as the principal funding source for this follow-up of the Environmental Law Service. By 2002, Phase I was near completion and lessons learned were incorporated into the proposed Phase II design to cover 2003–2005. One of the challenges during Phase I was finding a common definition for “Regionalization.” After assessing experience with operations in 1999, the Environmental Law Programme adopted the following working definition: Regionalization means “the preparation of environmental law programmes with the goal of:

- increasing the general capacity within the IUCN regions in the area of environmental law, and

- increasing the capacity of these regions to propose, plan and implement (with [cooperation] of the global ELP) national and environmental law projects within their region.”⁴⁴

34 Phase I activities, as laid out in the design of the project, required concurrence by the corresponding IUCN Regional Office. Experience found that this approach was not always sufficiently flexible or efficient to ensure effective, timely project development or delivery.⁴⁵ Various IUCN Regional Offices had different capacities to participate and, in some cases, other priorities. Phase II was negotiated so that project development and implementation could envisage additional options for local partners including, in particular, the IUCN/ELP designated ‘centres of excellence’ and other ‘institutional partners’ (discussed in Chapter 29). Each initiative under Phase II endeavored to include an IUCN ‘partner’ environmental law institution as well as the corresponding IUCN Regional Office. This approach has been a boost to local capacity building because the ELS projects increasingly worked with and brought together the RCOs and the regional and country centres of excellence in environmental law (for example, the Brazil and China projects noted in Table 3).

35 Every year, two regions or sub-regions were selected to develop a strategy and workplan for integrating environmental law into IUCN’s regional programmes. The process for designing a regional or sub-regional environmental law programme involved CEL and IUCN members in the region or sub-region who specialised in environmental law. The modus operandi of each regional or sub-regional programme was different and involved a different mix of input from staff, volunteers, IUCN members and consultants depending upon the existing capacity of the particular region. As of 2002, seven regions or sub-regions had developed programmes and pilot projects: Brazil, China, Central Asia, North Africa/



China: Wang Xi, Patti Moore, Alejandro Iza

West Asia, Eastern Africa, West Africa, and Meso-America.⁴⁶ Activities supported by the Regionalization Project have continued to expand.

Reflecting the broad potential scope of the Regionalization Project, priority areas could be selected for special attention at regional, subregional, or national level. Water was one of the early priorities for a number of regions and in response the Regionalization Project partnered and supported several regional activities of IUCN's Water for Nature Initiative (see Chapter 30). For example, in Meso-America attention was on implementing an IUCN Central American Wetlands Policy with respect to the Ramsar Convention and the creation of guidelines.⁴⁷ In East Africa, an activity for review of national wetlands legislation and the participatory management of wetlands was developed, the first country being Uganda.⁴⁸ 36

Table 3 highlights a number of such activities supported by the Environmental Law Service "Regionalization" Project during the period 1999–2004/5. 37

Table 1: Ad hoc Projects: A Sampling of Legal Technical Assistance of the 1960s-1980s⁴⁹

| Country | Subject | Year(s) | Notes (misc.) |
|-----------------|---|---------|---|
| Argentina | Protecting whales from tourism | 1983 | At request of Province of Chabut |
| Brazil | Conservation provisions for Constitution | 1985 | Information for proposed revision of constitution |
| Chile | Protected wildlands | 1983 | Comments on draft legislation |
| Ethiopia | Environmental legislation | 1989 | Assessment of country needs |
| Fiji | Legislative assistance | 1986 | First request serviced under new cooperative agreement with WWF-US |
| Gambia | Environmental Management Act | 1985-7 | UNEP request; working draft prepared by Law Commission Chair Burhenne, and Com'n Counsel Forster; passed Parliament Jan. 1987; resulted in Gambia's ratification of the African Conv. |
| India | Biosphere Reserve Legislation | 1980-2 | Dept. of Forestry and Wildlife; working draft prepared by Law Com'n member Lausche. |
| India | Legislation to Implement CITES | 1985 | Dept. of Forestry and Wildlife; funding from KSSF, EC, WWF-I; working draft prepared by Law Com'n member Lausche |
| India/WWF-India | Draft Forest Bill | 1982-4 | Law Commission provision of comments on a „tentative draft“ of a proposed India Forest Bill; request from and comments forwarded to WWF-India |
| Indonesia | National environmental legislation | 1977-78 | Prepared detailed commentary on draft law for the protection and conservation of natural resources; led by Law Com'n member and ELC Head F. Burhenne-Guilmin |
| Indonesia | Wildlife protection legislation (including hunting) | 1986 | Technical assistance to Indonesian lawyers drafting the project |
| Jamaica | Implementation of CITES | 1988 | Comments provided on relevant clauses of National Resources Conservation Act; carried out by Law Com'n chair Burhenne |
| Jordan | Legislative Assistance on draft hunting law | 1977-78 | Report prepared for and with assistance of WWF |

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| Kenya | Indepth review of environmental law | 1986-7 | Request from Nat'l Envir. Com'n; project included symposium for local senior officials |
| Malawi | Legislative Assistance | 1977-80 | On-site consultations and preparation of first working draft of legislation for establishing and administering multipurpose conservation area near capital; work by Law Com'n member Rehbinder |
| New Zealand | Comments on Protected Areas Legislation Review | 1989 | Work carried out by Law Com'n member de Klemm with ELC. |
| Oman | Protected Areas and Wildlife Legislation | 1984-6 | Request from Government of Oman; working draft prepared by Law Com'n member Lausche |
| Pakistan | Comments on proposed Forest Lands Bill | 1984-5 | |
| Panama | Legislative Assistance | 1977-8 | On-site consultation and first working draft of legislation for wildlife conservation and habitat protection, regulation of hunting and trade |
| Papua New Guinea | Comments on local draft | 1978 | Environmental contaminants, conservation areas, and environmental planning |
| Philippines | Conservation provisions for Constitution | | |
| Portugal | National Parks | 1966-68 | Earliest example of legislative assistance; resulted in legislation for creation of the first national park in Portugal |
| Saudi Arabia | Advice in multiple areas of Environmental Law | 1982-7 | Included policy on conservation of birds of prey, draft legislation for protected areas, draft framework law and national environmental policy which also served as input to statement of principles for Gulf Cooperation Council (GCC) States; work undertaken by Com'n Chair Burhenne |
| Sri Lanka | National Heritage Wilderness Legislation | 1986-7 | |
| Sudan | Wildlife and National Parks | 1973 | Joint project with FAO; prepared first working draft of legislation |
| | Marine Conservation | 1978 | Comments on draft measures; funded by WWF |
| | CITES | 1983 | Assistance with legal and administrative instruments to implement CITES; team included Burhenne, Demidecki, Hassan Al Tourabi |

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|----------------|---|--------|---|
| Sudan (cont'd) | National Environmental Policy Law | 1984 | UNEP request; assisted with preparation of law and setting up of environmental administration based on Islamic booklet; led by Burhenne |
| Swaziland | National Heritage Trust Commission | 1981–2 | |
| Thailand | Conservation Plan | 1976 | Joint project with UNEP; covered entire country, including constitutional and legislative framework; led by Law Com'n member Navid |
| Uganda | Comprehensive Environmental Act | 1986–7 | UNEP request to provide advice to Government of Uganda; preparation of first working draft; presented to newly-formed Ministry of Environment; Com'n team of Burhenne and Forster |
| Vanuatu | Strengthen environmental legislative framework | 1989 | Included comprehensive review and country visits; request from Government of Vanuatu under contract from Asian Development Bank; work carried out by Law Com'n members de Klemm and Forster with ELC Head F. Burhenne-Guilmin |
| Vietnam | Work on natural resources and environmental law | 1989 | Vietnam lawyers visit ELC to work on legislation |
| | | ***** | |

Table 2: Environmental Law Service Projects⁵⁰

| Country/Region | Subject | Year(s) | Notes |
|----------------|------------------------------------|-----------|---|
| Africa | Environmental Law and Institutions | 1995–2004 | IUCN and the Environmental Law Programme through the Environmental Law Service partnered with UNEP and UNDP for a Joint Project, funded by the government of the Netherlands; FAO and the World Bank were also partners. ⁵¹ The project's start-up phase continued into 2000; funding for Phase II was pledged from multiple sources at a donors meeting at UNEP in January 2000. ⁵² It continues today under the leadership of UNEP (see discussion in text) |

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| Argentina | Analysis of two environmental bills in the Federal Congress | 1992-3 | Project carried out by Fundacion Ambiente y Recursos Naturales (FARN) directed by CEL member Pedro Tarak |
| | Comparative review of constitutional provisions on environment for local public ed. campaign. | 1996-8 | Request from Envir. Com'n of Chamber of Deputies, Salta Province. Work through FARN and local partner. |
| Bangladesh | Baseline review of legislation; preparation of national environmental framework law | 1999-2000 | Request from Ministry of Environment and Forests; collaborative project of the Environmental Law Service and Bangladesh Environmental Law Assoc., ELS did baseline review with DGIS support and World Bank funded development of law. Project included workshops, analyses, and recommendations on judicial and administrative mechanisms |
| Brazil | State Environmental Protection Law Consultations on developing national environmental law programmes | 1990-1999 | Request from State of Rio Grande do Sol. Part of effort to regionalize environmental law |
| Botswana | EIA Legislation, begun with national workshop. | 1993-6 | Request of Nat. Conservation Strategy (Coordinating) Agency, with local lawyers |
| Burkina Faso | Assessment of legal implications of GRENASUB Project | Early 1990s | Request from Min. of Envir., project completed in 1992 |
| | Comprehensive report on national environmental legislation; prepared several draft laws; conducted two training seminars for local lawyers | 1997-1999 | First phase of sub-project under UNEP/UNDP Joint Project on Environmental Law in Africa. May 1998 training session on CBD |
| Cambodia | Intro. course in environmental law Development of new forestry law | 1996-7 2000-1 | Co-funded with German Foundation for International Development. With drafting team from Min. of Forestry, Fish., and Agric. |
| Cape Verde/ Lusophone African countries | Three training courses on main provisions for new draft environment protection bill and regulations | 1998-1999 | Workshops for drafting environmental legislation offered to Portuguese-speaking African lawyers, UNEP provided support for participants, DGIS provided main funding for ELS; training courses were supervised by lawyers from Cape Verde and Portugal, participants from all sectors including judiciary |

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|---------------------------------|--|-------------|--|
| Chile/for South American Region | Three-day workshop for Latin American environmental lawyers | 1998 | This event was organized in conjunction with the 1 st South American Conservation Congress held in Puyehue, Chile; DGIS funds to ELS; 12 lawyers from 7 countries |
| China | Consultations on developing national environmental law prog. as part of Regionalization | 1999–2000 | Consultations with Chinese law experts; meeting at Wuhan U. in Oct. 1999 w/Prof. Wang Xi, and attended by Vice Chair Koh Kheng-Lian and Chinese law experts |
| Colombia | Environmental provisions for new Constitution | Early 1990s | Completed 1991, request from Colombian environmental org. |
| Costa Rica | Framework law on biodiversity conservation | 1995–7 | Request from president of Special Envir. Com'n of Legislative Assembly, carried out by IUCN Regional Office of Central America. |
| Ecuador | Revision of Protected Areas Legislation | Early 1990s | IUCN Regional Office, Costa Rica with ELS sponsorship and Ecuador environmental law expert |
| El Salvador | Preparation of regulations for national wildlife law | 1999 | Request from Director General of Renewable Natural Resources, Min. of Agriculture; project funded by DGIS; series of workshops and consultations on draft regulations |
| Eritrea | Framework environmental law | 1992–5 | Government request, work undertaken through national consultant with ELS support |
| | | 1993 | Draft framework law for biodiversity conservation (under projects implementing the Convention on Biological Diversity) |
| Ethiopia | Environmental law, inventory and analyses, drafting framework law, continued support with revision, peer review, workshops to finalize | 1995–2000 | Request of Environmental Protection Authority; national consultant did comparative study; national three-day workshop; two gov't lawyers visit ELC for further research |
| Fiji | Assistance on proposed legal measures for implementing international conservation conventions, especially CBD | 1993–4 | Government request; ELS funded Fiji lawyer for two weeks at Law Centre to do research and consult with ELC staff |
| Gabon | Review of legal regime for wildlife mgt. | 1996–97 | WWF-Gabon request; part of GEF-funded biodiversity conservation project |
| Gambia | Prepare and revise draft National Environmental Mgt. Act | 1993–96 | Government request |

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| Guinea-Bissau | New wildlife and envir. protection law | 1991 | Government request, with Canadian expert |
| | Draft laws on protected areas and protection of mangroves | 1994 | Government request |
| | Continued legal technical assistance on environmental legislation | 1995–8 | Part of larger project co-funded with EU, with IUCN country office. Project suspended in 1998 |
| | | | Initiatives restarted in 2001 |
| Jordan | Commentary on draft framework envir. Law, assistance with regs and bylaws | 1993+ | Request from Government |
| Lebanon | Compile and review existing env. laws, with recommend. for action | 1992–4 | ELS supported local attorney and professor who prepared the review |
| Mauritania | Revision of Wildlife Law and Forestry Code | 1993–96 | Gov. request, two national consultants prepared drafts; assistance in collaboration with FAO Legal Dept. and IUCN Sahel Programme |
| Nepal | Support for development of framework environmental law and regulations | 1993–6 | Gov. request, Environmental Protection Bill drafted by IUCN-Nepal's staff lawyer |
| | Training seminars for Judiciary on environmental law, regs., & biodiversity | 1997–9 | Organized by ELC and IUCN-Nepal with ELS support from DGIS |
| Nicaragua | Wildlife Legislation | 1994–6 | ELS project, funded by BMZ trust fund |
| | Provide technical assistance for preparation of legal component of national biodiversity strategy, including review and revision of draft law on biodiversity | 2000 | Involved international and national consultants, the Min. of Environment, CEL Vice-Chair for Meso-America and ELC staff. Funded by ELS through DGIS. |
| Niger | New wildlife protection and management legislation | Early 1990s | With local IUCN office, consultations, workshop, drafting |
| Pakistan | Guidelines for EIAs; Assistance with fed. and provincial framework environmental laws | Early-mid 1990s | Requests from fed. and provincial governments processed through IUCN Pakistan office |
| | Review proposed amend. to 1983 Envir. Ordinance | Early 1990s | Request from Punjab Province EPA |

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|---|--|-------------|---|
| Pakistan (cont'd) | Framework of elements for new National Wildlife Policy and Legislation | 1997–9 | Request through IUCN-Pakistan; cross-regional exchange of expertise from Southern Africa |
| Panama | Drafting new wildlife law | 1994 | Requested by Envir. & Dev. Com'n of Nat'l Leg. Assem. |
| | Assessment of nat'l legal framework for biodiversity strategy | 1998–99 | Request from from Nat'l Env. Auth. to IUCN Reg. Office (ORMA) who asked for ELS support. Funding from DGIS |
| Seychelles | Prepare legal component of National Biodiversity Strategy and Action Plan | 1997 | Action plan prepared by a CEL member |
| Solomon Islands | Prepare draft environmental protection act, following SPREP review (see below) | 1993 | Gov. request; assistance of CEL member |
| Southern African Development Community (SADC) | Forestry Sector Protocol; Wildlife Sector Protocol. Included review and analysis of forestry-related leg. in 14 SADC countries | 1997–2000 | Request from SADC; co-funding from the EU; two part project included 13 national reviews and three sector reports; close collaboration with IUCN Regional Office for Southern Africa (ROSA). Funded through ELS with DGIS funds |
| SPREP Countries (South Pacific) | Review envir. laws in 5 States and recommend future action | 1990–1993 | SPREP request with consultations and workshops |
| Syria | Advise on draft environmental protection law | 1993–1994 | Min. for the Envir. |
| Uganda | Overview analysis and draft Envir. Protection Bill | 1992–3 | With assistance of two Ugandan lawyers |
| Yemen | Legal component of National Biodiversity Strategy/Action plan, draft laws on protected areas, access to genetic resources | 1997–9 | Request from Government of Yemen; ELS used national consultants |
| Zambia | Study on implementation of 1990 Envir. Protection and Pollution Control Act | Early 1990s | Government request, Zambian lawyer under ELC guidance, with report and workshop |

Table 3: Regionalization Project Activities (1999-2004/5)⁵³

| Country/Region | Activity | Year(s) | Notes |
|---|---|----------------|---|
| China/S&SEA | Strategy for Environmental Law Capacity Building | 1999–2002 | Regionalization Project in South and Southeast Asia Region (S&SEA), promoting and implementing environmental law in China. MOU with Wuhan University Research Institute for Environmental Law, a partner institution with support from ADB. In 2001, ELP organized a mission to China with one ELC legal officer and Patricia Moore, Head of the IUCN ELP Regional Programme for Asia out of the IUCN Regional Asia Office, to work with CEL member and director of the Wuhan Institute, Professor Wang Xi (a former ELC research fellow). Three concept papers were produced, one each on Alien Invasive Species, EIA, and ecological function zones. The concepts were later converted into proposals for further legal work under the Asia Regional Programmes on Biodiversity, Environmental Assessment, and Protected Areas. ⁵⁴ |
| Brazil/SUR | Strategy for Environmental Law Capacity Building | 1999 | Development of an environmental law programme for the South American Region. MOU concluded between CEL and Lawyers for a Green Planet, a partner institution, to carry out the project. This project also involved close collaboration with and participation of the IUCN Regional Office for South America (IUCN-SUR). |
| Indonesia | Capacity Building for Implementation of Environmental and Natural Resources Law | 1999 | International Workshop held in Jakarta; involvement of IUCN, CEL and Indonesian Centre for Environmental Law, a partner institution. |
| West/Central Asia and North Africa (WESCNA) | Regional Workshops | 2000–2 | The Third IUCN Regional Conservation Forum met in Tunis, Tunisia in April 2000 to begin the process of elaborating a regional environmental strategic plan. Two workshops also were held in IUCN's Regional Office in Almaty, Kazakhstan, with technical services from ELC, FAO and UNEP on legal aspects of transboundary protected areas and water resources mgt. |

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|------------------|--|--------|--|
| Andean region | Study on legal situation of water resources | 2000–4 | <p>ELC cooperation with CEDA (Centro Ecuatoriano de Derecho Ambiental) and CEL members in the region with the IUCN Regional Office for South America (IUCN-SUR). In the project CEL members carried out a study on water resources in the Andean countries of Bolivia, Peru, Ecuador, Colombia, and Venezuela, aimed at analyzing the current legal framework, and culminating in a workshop in Quito, Ecuador including decision-makers of Ecuador involved in the process of drafting new water legislation. With the help of IUCN-SUR, this process has expanded to other countries in the region.</p> <p>Technical feasibility studies have been produced and establishment is under way with launch planned for late 2005 along with a publication summarizing the activity and, based on lessons learned, recommendations for improving transboundary natural resources governments.</p> |
| Bolivia/Paraguay | Technical support for establishment of a transboundary protected area in the Gran Chaco Region | 2004–5 | <p>Both CEL and ELC were involved with the IUCN East Africa Regional Office (EARO) in these activities. IUCN's Regional Office for Southern Africa also assisted EARO in developing and operating the programme.</p> |
| East Africa/EARO | Regional meetings to discuss the most relevant environmental legal issues, and conclusion of an internal agreement between ELP and EARO for development of a regional environmental law programme. | 2000–2 | |
| South America | Improving natural resources governance systems | 2003–5 | <p>Through a regional forum of experts on biological diversity and water, a Symposium was conducted in June 2004 to discuss findings of country studies produced by CEL experts from Venezuela, Colombia, Ecuador, Peru, Bolivia, Chile, Brazil, Paraguay, Uruguay and Argentina and prepare recommendations for improving governance related to biodiversity and water. Results to be published in 2005/6.</p> <p>Course was conducted in Guatemala in 2004. Attendees included government officials, NGOs, academics, and officers in charge of transboundary projects. The strong interest shown in the project, in a region where more than 40% of the natural resources are shared between two or more states, generated the decision that the project manager would prepare a handbook on the course, which will be finalized in 2005 as a further capacity building tool in the region.</p> |
| Central America | Dialogue on Transboundary Resources Management in selected countries – Guatemala, Honduras, El Salvador, Mexico | 2003–5 | |

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|-----------------------------|--|--------|---|
| Central America (cont'd) | Production of Handbook on environmental law for Central America (Manual de Derecho Ambiental en Centroamerica) | 2003-5 | <p>This handbook was completed, published and distributed across and outside Central America during 2004. The first edition is out of stock and, subject to available funds at the end of the project, a second edition with an extra volume of relevant documents will be produced.</p> |
| | Comparative analysis of biodiversity and water governance regimes in the region | 2004-5 | <p>This project started as a joint project on transboundary EIA of the San Juan River Basin between Nicaragua and Costa Rica. For political reasons it was redesigned as a series of country studies on biodiversity and water resources for Belize, Guatemala, Honduras, El Salvador, Costa Rica, and Panama, which will be used to produce a comparative analysis. Results published in 2005.</p> |
| Nicaragua | Developing wetlands policy | 2004-5 | <p>Project involves extensive analysis of customary rules governing natural resources in the indigenous communities, with a view to documenting them, holding a workshop with the communities for input, and producing a publication from the process to be disseminated to the communities.</p> |
| Philippines | Train the Trainers Course | 2004 | <p>Drawing on the successful experience in Singapore with the first „Train the Trainers“ courses conducted by the Asian-Pacific Centre for Environmental Law in 1997-8, this course was developed. Members of CEL and an ELC Legal Officer were part of the training team.</p> |
| Argentina | Practical Training | 2003-5 | <p>Training sessions on baseline environmental legislation were initiated in 2003 and completed in 2004, with two publications the latter of which will be released in 2005.</p> |
| Peru | Training course on environmental law and policy | 2003-4 | <p>A training course was conducted at IUCN's partner centre in environmental law, the Catholic University of Peru, jointly with ELP's institutional NGO partner, Sociedad Peruana de Derecho Ambiental (SPDA), with an ELC Legal Officer as part of the training team.</p> |
| Lebanon | Training programme on environmental law for governmental officials | 2004-5 | <p>This project is a collaboration between the ELC and Ministry of Environment, to assist the Ministry prepare a training programme with three components: compliance and enforcement of environmental laws, Strategic Environmental Assessment (SEA), and implementation of Multilateral Environmental Agreements (MEAs); the training course for 2005.</p> |

Notes

- 1 *Proceedings of the 14th General Assembly of IUCN, September 26 – October 5, 1978, Ashkhabad, USSR* (IUCN, Switzerland, 1979), p. 15.
- 2 “Director General’s Overview 1985–1987”, in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988), p. 17.
- 3 Chairman Wolfgang Burhenne, “Memorandum to CEPLA Members Re: 17th Session of the IUCN General Assembly, San Jose, Costa Rica; 30 January to 11 February 1988”, dated 2 June 1987, p. 1–2.
- 4 Commission on Environmental Policy, Law and Administration and Environmental Law Centre, *Developing Countries and Environmental Law – IUCN Response to Some Requirements* (IUCN, undated, early 1980s), p. 3.
- 5 *Id.* at 5.
- 6 “Report of the Commission on Environmental Policy, Law and Administration (November 1979–1980)”, submitted to the IUCN Council and labeled Council Paper UC.80/13 (14 October 1980), p. 3.
- 7 Commission on Environmental Policy, Law and Administration, “Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981”, p. 12 (also labeled Attachment to General Assembly paper GA/15/81/6), attached to *Proceedings of the 15th IUCN General Assembly in Christchurch, New Zealand, 11–23 October 1981* (IUCN, Gland, 1982); see also “Director General’s Overview 1985–1987” in *Proceedings of the 17th Session of the IUCN General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, Gland, Switzerland, 1988), p. 17.
- 8 At the CEPLA technical meeting during the 15th General Assembly in Christchurch, New Zealand, October 1981, a delegate from India cited the “favorable experience of his Government in regard to CEPLA’s ongoing assistance from the development of Biosphere Reserve legislation”, and raised the possibility of CEPLA assistance in a major endeavour to review and consolidate the entire body of Indian environmental legislation, at both State and Federal level, see “Minutes of 15th Technical Meeting of IUCN Christchurch, New Zealand – October 1981, Session D, 16 October 1981, 14:00–17:00 h, Programme Area 2: Law, Institutions and Administration”, p. 3.
- 9 See Forster, M., “General Assembly – A Lawyer’s Perspective” in 13 *Environmental Policy and Law* (No. 3–4, 1984), p. 98.
- 10 For perspective on the history, role, and impact of the CDC, see Holdgate, M., *The Green Web*, pp. 157, 167, 175–179.
- 11 Author interview with Françoise Burhenne-Guilmin, 16 October 2000 (Bonn, Germany) (draft transcript, pp. 25–26).
- 12 “Director General’s Report to Council for the Period November 1985 – May 1986”, p. 26.
- 13 “Memorandum from Chairman Burhenne to CELPA Members regarding the 17th Session of the IUCN General Assembly, San Jose, Costa Rica; 30 January to 11 February 1988” (2 June 1987), p. 4.
- 14 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 1, 1990), p. 1.
- 15 “Annex 3 – Commission on Environmental Law”, p. 9 (Commission Report to the 34th Meeting of the IUCN Council 2, 5, and 6 November 1992, IUCN Headquarters, attached to Minutes of the Meeting).
- 16 *Id.* at 5.
- 17 See “IUCN Environmental Law Programme Annual Report 1994”, p. 5.
- 18 See “IUCN Law Programme Activities” in *IUCN Environmental Law Programme Newsletter* (January–May 1993), p. 4.
- 19 See “IUCN Environmental Law Programme Annual Report 1994”, p. 6.
- 20 *Id.*
- 21 Email from Françoise Burhenne-Guilmin to author dated April 29, 2004.
- 22 See *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 19.

- 23 Communication from Françoise Burhenne-Guilmin on March 2006 draft, transmitted by email dated March, 16, 2006.
- 24 Id.
- 25 See “Director General’s Report on the Activities of the Union since the 18th Session of the IUCN General Assembly”, p. 63, Table 5 (A40) (report labeled General Assembly Paper GA/19/94/4), in *Proceedings of IUCN – The World Conservation Union 19th Session of the General Assembly, Buenos Aires, Argentina, 17–26 January 1994*.
- 26 See IUCN Environmental Law Centre, “Environmental Law Services of the IUCN Environmental Law Centre – Final Report on Projects Supported by BMZ Trust Fund 1994”, p. 1 (June 2001).
- 27 See “IUCN Environmental Law Programme Annual Report 1994”, p. 6.
- 28 Id.
- 29 “IUCN in the Future” in *IUCN Environmental Law Programme Newsletter* (July–September 1995), p. 5.
- 30 Resolution 1.41(5.c), *Resolutions and Recommendations, World Conservation Congress, 13–23 October 1996, Montreal, Canada*, p. 42 (IUCN, 1997).
- 31 IUCN Environmental Law Centre, “Environmental Law Services of the IUCN Environmental Law Centre – Final Report on Projects Supported by BMZ Trust Fund 1994”, p. 1 (June 2001).
- 32 See IUCN Environmental Law Centre, “Environmental Law Services of the IUCN Environmental Law Centre – Final Report on Projects Supported by BMZ Trust Fund 1994”, p. 1 (June 2001).
- 33 Email communication from Françoise Burhenne-Guilmin, March 01, 2006, subject: DGIS; see also “IUCN Environmental Law Programme Annual Report 1997”, p. 7.
- 34 Email correspondence from Françoise Burhenne-Guilmin to author dated Jan. 16, 2006, subject “ELS”; and written communication from Burhenne-Guilmin on the March 2006 draft by email transmission dated March 16, 2006.
- 35 See Environmental Law Centre, “Environmental Law Services – Technical Assistance and Capacity Building Annual Report 1997”, dated 27 February 1998 (ELC, Bonn).
- 36 Id.
- 37 Projects listed in this table are drawn from multiple sources, including: IUCN Environmental Law Centre, “Environmental Law Services of the IUCN Environmental Law Centre – Final Report on Projects Supported by BMZ Trust Fund 1994” (June 2001); “Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds”, pp. 4–6; “IUCN Environmental Law Programme Annual Report 1994”, pp. 4–5.
- 38 IUCN Environmental Law Centre, “BMZ 1998 Trust Fund – Proposal of the IUCN Environmental Law Programme”, p. 5 (August 1998).
- 39 Id.; and working draft dated May 2002 for Phase II of the Project, p. 2.
- 40 See *IUCN Environmental Law Programme Newsletter* (January–April 2000), p. 2.
- 41 IUCN Environmental Law Centre, “BMZ 1998 Trust Fund – Proposal of the IUCN Environmental Law Programme”, p. 9 (August 1998).
- 42 Author interview with BMZ Project Manager, ELC Senior Legal Officer Alejandro Iza, June 23, 2004 (Bonn, Germany).
- 43 IUCN, “Annual Report as of 31 December 1999”, for the BMZ/IUCN project: *A Programmatic Framework for Delivering Regionally and Nationally Tailored Environmental Law Programme Services Through Regional and Country Offices* (Regionalization Project, Phase 1), p. 3.
- 44 IUCN Environmental Law Centre, “IUCN Environmental Law Programme Regionalization, Phase II”, p. 1 (May 2002).
- 45 Interview with Project Coordinator, ELC Senior Legal Officer Alejandro Iza, June 23, 2004 (Bonn, Germany).
- 46 See “Regionalization” on IUCN ELP’s web site at: www.iucn.org/themes/law/elp05.html (researched 10/27/03 and 12/01/05). The Regionalization Project was regularly updated on ELP’s web site by Project Manager, Alejandro Iza, through January 2002.*

- 47 IUCN Environmental Law Centre, "Annual Report for Activities Supported by BMZ Trust Fund 1998", p. 6 (20 June 2002).
- 48 Id. at 7.
- 49 Information derived from several sources including ELC and Law Commission annual reports and, especially, computerized notes of legislative assistance projects compiled in the 1980s by ELC staff person Mary Gospodarek.
- 50 Projects listed in this table are drawn from multiple sources, including: IUCN Environmental Law Centre, "Environmental Law Services of the IUCN Environmental Law Centre – Final Report on Projects Supported by BMZ Trust Fund 1994" (June 2001); "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds", pp. 4–6; "IUCN Environmental Law Programme Annual Report 1994" pp. 4–5; IUCN ELC Environmental Law Service Annual Reports to the Netherlands for 1997 (dated 27 Feb. 1998), 1998 (dated 26 Feb. 1999), 1999 (dated 26 Feb. 2000), and 2000 (dated 10 March 2001) (reports on file at ELC, Bonn).
- 51 See "IUCN Environmental Law Programme Annual Report 1994", p. 6.
- 52 See *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 19.
- 53 These projects are drawn from several project reports of the BMZ Trust Fund at ELC, including: IUCN Environmental Law Programme, "BMZ 1998 Trust Fund – Proposal: A Programmatic Framework for Delivering Regionally – and Nationally-Tailored ELP Services through IUCN Regional and Country Offices (RCOs)" (herein referred to as the 'BMZ 1998 Project') (August 1998); "Agreement between the Government of the Federal Republic of Germany and IUCN – The World Conservation Union granting 1998 trust funds for the BMZ Trust Fund 1998" (Annual Report as of 31 December 1999); "Annual Report [2000] on activities supported by the BMZ Trust Fund 1998" (23 April 2001); "Annual Report [2001] on activities supported by BMZ Trust Fund 1998" (20 June 2002); "Annual Report [2004] on the activities supported by the BMZ Trust Fund 2003" (2005).
- 54 IUCN Environmental Law Centre, "Annual Report for Activities Supported by BMZ Trust Fund 1998", p. 3 (20 June 2002).

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 25: Environmental Law Training

The Environmental Law Programme's legal technical assistance efforts to developing countries highlighted the need for basic environmental law training and education on the ground, especially for officials and organizations involved with implementation of treaty obligations and national legislation. Legislative assistance normally responded to a specific request and was short-term and limited. As more developing countries became IUCN members and interest in environmental law grew, training local professionals could help ease the gap between demand for specialized assistance and ELP's ability to deliver it.

Training was identified early on as an area for development. Already in the late 1970s, a Law Commission report to IUCN's Council announced that it had begun a survey, jointly with the International Council of Environmental Law, concerning the "preparation of a listing of suitable materials for teaching environmental law in universities in developing countries."¹ With the 1990s, both CEL Chair Hassan and his Deputy Robinson were committed to environmental law education and training, especially at university level, as a way to build capacity in environmental law in developing countries. The new Union-wide regionalization strategy gave further standing to projects that emphasized training in environmental law at regional and local levels. The multi-year Regionalization Project of the Environmental Law Service (discussed in Chapter 24) evolved to include as one of its five main objectives the development of general and specialized training programs in the regions and developing countries.²

Among ELP's many activities, three areas most directly aimed at training were aggressively developed in the 1990s and these continue strong today: 1) formalizing a fellows and interns programme at the Environmental Law Centre for developing country professionals, 2) organizing, sponsoring and co-sponsoring global, regional and in-country seminars and workshops, and 3) developing a 'training the trainers' programme in environmental law for law faculty in developing countries.

Fellows, secondments, interns

From the 1970s, lawyers from developed countries, especially from the US and Germany, began to visit the Environmental Law Centre in Bonn to do special research projects in environmental law. As discussed in Chapter 9, these first researchers commonly combined graduate studies or other university-related research with their time in Bonn and several became authors of early papers in the IUCN Environmental Policy and Law Paper Series. From the United States, for example, visiting lawyers David Gregory, Steve McCaffrey and Orlando Delogu all generated important early EPLP publications, and from Germany, Professors Eckard Reh binder and Rudolf Dolzer did the same.

By the early 1980s, interest in fellowships, secondments, and later internships to the Law Centre had expanded to lawyers in developing countries. As reported by the Law Commission to the 15th General Assembly in Christchurch in 1981, efforts had begun "to develop a program wherein a limited number of young lawyers from

developing countries might receive training assistance over a few months at the Environmental Law Centre.”³

6 With these first arrangements, a curriculum was prepared and widely circulated throughout the Commission network for comment, and Commission members Malcolm Forster, Alexandre Kiss, and Eckard Rehbinder volunteered to supervise the first participants.⁴ Candidates were selected on an ad hoc basis subject to resources and interested candidates. Among the first fellows in 1981 was a young lawyer from Argentina, Pedro Tarak, who later would become a Commission member and Director of an IUCN ELP ‘institutional partner’ and IUCN Member, the Argentina Foundation for Environmental and Natural Resources (FARN), in Buenos Aires.

7 As the field of environmental law grew, young professionals from developing countries increasingly sought arrangements as fellows, secondments, or interns at the Law Centre to learn about or polish skills in environmental law. The length of these visits depended both on the project involved and resources available. Usually, external funds were required. Among the early supporters was the Karl Schmitz Scholl Fund for the Legal Protection of the Environment (KSSF), and the Elizabeth Haub Foundations for Environmental Law and Policy (discussed in Chapter 11). For example, a 1991 ELP progress report to the KSSF identified three research fellows supported by KSSF as part of its programme on international law and biodiversity: a parliamentary draftsman from the Zambia Ministry of Legal Affairs, a private attorney from Pakistan who had founded an environmental NGO, and the Legal Officer to the Ghana Environmental Protection Council.⁵

Through the 1990s, arrangements for ELC fellows, interns, or secondments continued to be on an ad hoc basis. However, as with technical assistance (discussed in Chapter 24), such an approach was difficult for in-house planning and missed opportunities to take advantage of good candidates for lack of funds.

The Carl Duisberg Gesellschaft/InWEnt Programme

8 In 2000, after some negotiation, Law Centre Director Di Leva reached a five-year agreement with the Carl Duisberg Gesellschaft (CDG) to become a designated partner of the CDG’s fellowship programme. This agreement was a welcome means to expand the capacity-building potential of the Environmental Law Centre. CDG, a non-profit organization founded in 1949 and headquartered in Cologne, Germany, was dedicated to international advanced training and human resources development. The purpose of its fellowship programme was to provide practical and professional experience for young professionals and executives from around the world.

9 Individuals were selected from a pool of applicants each year and invited to Germany where they worked independently on the research topic selected and agreed upon prior to their arrival with the Environmental Law Centre. They spent four months in Germany, one of orientation in a CDG Centre in Saarbrücken, and three at the Environmental Law Centre in Bonn. At the end of their stay, they were expected to give an oral presentation of their research results to IUCN ELP and CDG officers. The first group of four CDG Fellows came to the Law Centre at the end of 2000 from Bangladesh, Venezuela, Nigeria, and China.⁶ A second group of two

CDG fellows came to Bonn from May through July 2001, one from Kenya and the other from Ghana.⁷



InWent Fellows 2004 (R. Gutierrez (Philippines), E. Fernandes (Costa Rica), A. Ruiz (Peru) and S. Jemaïel (Tunisia)) with Demetrio Polo-Cheva (InWent, centre back), A. Kiss and F. Burhenne

In 2002, the CDG merged with the Deutsche Stiftung für Entwicklung (DSE), another German international organization, to form 'InWent Capacity Building International' with the same dedicated purpose to build expertise, especially in developing countries.⁸ As reported in an ELP Newsletter, "The ELC hopes to continue to build its relationship with CDG, and to utilize the fellowship programme to promote the ELC's objectives of outreach and capacity-building in environmental law around the world."⁹ The fellows who came dealt with a variety of themes, many subjects in which they already were involved.

The CDG programme has been particularly beneficial in providing the opportunity for professionals from other countries to interact with Environmental Law Centre staff lawyers, undertake research, and participate in ELC activities and events. All fellows had law degrees and most were already engaged in professional activities – in NGOs, universities or government service. As Françoise Burhenne-Guilmin, coordinator for the fellows programme, would remark in 2004, the programme combined the best of two worlds: the culture of InWent (in training) and the knowledge pool and network of IUCN ELC.¹⁰

In 2002, 12 individuals joined this ELP training programme, among them two secondments (from the Government of Australia, initiated by ELC Director John Scanlon), and five fellows from the InWent Fellowships Programme, as well as a professor from the Faculty of Law at the University of Buenos Aires under a Humboldt post-doctorate Fellowship.¹¹ In 2003, the Centre hosted 12 professionals from South America (Costa Rica and Chile), Africa (Morocco), Asia (Japan) and

the United States and Australia: five InWent fellows, plus two other fellows, a secondee from a New York City law firm (serving a year as Junior Legal Officer), and 4 interns.¹² In 2004, the Law Centre hosted seven interns and fellows from Germany, Italy and Sweden.¹³ By the close of 2004, the CDG fellowship programme had generated two publications in the Environmental Policy and Law Paper series: *Environmental Law in Developing Countries – Selected Issues Vols. I and II*.¹⁴



InWent Fellows 2002 with ELC Staff and W.E. Burhenne (centre)

- 13 The programme of visiting researchers continues. For funding support, the ELC continues to collaborate and seek assistance from the InWent programme, the Humboldt Foundation, the Fulbright Programme, and other foundations that from time to time offer fellowships.¹⁵ Once the Environmental Law Programme web site became operational in 2002, information about fellowships and internships also was placed on the site. ELP Head Scanlon and ELC Senior Counsel Burhenne-Guilmin worked with staff to produce and place on the site a standardized application form for people wishing to apply for ELC internships. The website also began to be used as a means of acknowledging ELC fellows and interns and providing their profiles, as well as making their papers available online as appropriate.¹⁶

Seminars and workshops

- 14 Another means of environmental law training was to organize and disseminate general or specific environmental law information through special seminars and workshops. By 1990, a ‘major communication component’ of the Environmental Law Programme, as reported to the 18th IUCN General Assembly, was a project aimed at making the results of its activities, “especially those related to international conventions and their implementation ... readily available to a network of experts in developing countries through, inter alia, regional workshops and training sessions at the ELC.”¹⁷

Regional seminars

One of the first regional environmental law events organized by ELP for developing countries was a pair of seminars for African lawyers in 1990–1991, one for French-speaking African lawyers and the second for English-speaking African lawyers. The focus was on “expertise building in the field of international law for developing nations, particularly with respect to treaties concerning biological diversity.”¹⁸ The theme was in anticipation of the soon-to-be-concluded convention on biological diversity. Other subjects included proposed updates to the African (Algiers) convention, other international conventions related to biodiversity conservation, and national conservation laws of the countries represented. These training seminars were conducted under the IUCN-ELC project on “The International Law Dimension of Biological Conservation and Developing Countries”, supported by the Royal Norwegian Ministry of Development Cooperation. With the assistance of the ELC, both were organized by the Law Commission’s Working Group on Training, one of the first working groups of the Commission established in the late 1980s and chaired by Commission member Michel Prieur. Each involved a week-long series of detailed presentations and discussion periods.

The first African seminar was convened in November 1990 in Limoges, France, for French-speaking African lawyers and administrators interested in legal aspects of the protection of species, habitat and biological diversity. It was held at the University of Limoges where Michel Prieur was Director of the International Centre for Comparative Environmental Law.¹⁹ The second, in November 1991, in Harare, Zimbabwe, was for government administrators and university law faculty of English-speaking African states. The Harare seminar ended up twice the size originally



First training seminar on biological diversity – related law, Limoges 1990. C. de Klemm (left), F. Burhenne-Guilmin, M. Prieur

planned, drawing some 40 participants from 18 African nations.²⁰ It was organized with the assistance of the IUCN Regional Office for Southern Africa and co-sponsored by the Ministry of Environment and Tourism and the Ministry of Justice, Legal and Parliamentary Affairs of Zimbabwe.

17 During the same period, the Environmental Law Centre, working with IUCN's Regional Office for Central America (ORCA), used resources from the Environmental Law Service to sponsor a series of roundtable discussions with environmental lawyers of Central America. These discussions culminated in a 'Congress on Environmental Law' in August 1992. Organized by Patricia Madrigal Cordero of ORCA, the project aimed to strengthen existing frameworks of environmental law and develop a common environmental law strategy for Central America and the region internationally.²¹ A second Congress was held in August 1993, looking at administrative and judicial systems.

18 Following from these discussions, various collaborative activities ensued between the Environmental Law Programme and the region. Among the outcomes, an agreement was concluded in December 1998 between IUCN, the Government of Puerto Rico, the Central American Commission for Environment and Development, and the Center for Environmental Legal Studies of Pace University in New York (an IUCN NGO member), for continued development of environmental law in the Wider Caribbean and Meso America Region.²² A training manual on environmental law for Central America also was supported under the Regionalization Project (discussed in Chapter 24), with most of the preparation of the report in 2003 and publication in 2005.²³

19 In South America, the Environmental Law Centre provided technical assistance to the Inter-American Development Bank to organize a Seminar on Environmental Law and Policy in Latin America, convened in May 1993 in Santiago, Chile.²⁴ The seminar focused on implementation of Agenda 21 (obligations set out at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro). There were several panels, each focused on specific environmental issues (biodiversity conservation, transport of waste, climate change, etc.), and the needs and problems of developing countries, especially in the Latin American region.

20 In the same region, IUCN's Commission on Environmental Law, Bolivia's National Environmental Secretariat, and the Executive Secretariat of the Andres Bello Accord sponsored the first Latin American Environmental Congress. Convened in Santa Cruz, Bolivia, in September 1993, the Congress drew some 76 delegates from 11 countries and three international organizations, producing recommendations on national, regional, and international issues in the field.²⁵

Country seminars

21 As the 1990s progressed and environmental law gained more visibility in developing countries, the Environmental Law Centre also was called upon to organize environmental law seminars at the country level. Funding commonly came from the Environmental Law Service. For example, in 1997, a one-week training seminar on introductory principles of environmental law was conducted by the Environmental Law Programme for officials of the Ministry of Environment of Cambodia; co-

sponsorship came from the German Foundation for International Development.²⁶ In 1998, a one-week forum on drafting environmental legislation was conducted in Cape Verde as the first activity under a new Memorandum of Understanding between the Law Centre and the Executive Secretariat for the Environment of Cape Verde (SEPA), with funding from the Netherlands and UNDP contributing resource persons from Portuguese speaking countries (see Chapter 24, Table 2). Participants included lawyers, central and local government authorities and non-governmental organizations, with papers from the forum to be published in 1999.²⁷

Under the Regionalization Project, practical country-level training was an area of emphasis. Among activities under that project, an IUCN member and ELP ‘institutional partner’, the Argentina Foundation for Environmental and Natural Resources (Fundacion Ambiente & Recursos Naturales – FARN), was supported to conduct a training session on baseline environmental legislation in Argentina and to produce an associated publication.²⁸ Following that project, which was implemented in 2003, FARN proposed a further series of workshops on environmental and natural resources law areas not already covered which would be implemented in 2004.

In addition to specially targeted sessions or publications, the Environmental Law Programme also began to take advantage of special international events to organize environmental law seminars around the formal meetings. For instance, the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992 provided an opportunity for such a special event. CEL Chair Hassan asked Nicholas Robinson and CEL member Professor Jose Tavares from Bahia, Brazil, to organize a pre-UNCED law conference in Bahia. Entitled “The Environment, Law and the Quality of Life”, the symposium was co-sponsored by the IUCN Commission on Environmental Law and the Faculty of Law of the Universidad Catolica do Salvador in Bahia. It attracted more than 300 participants, featured an opening address by CEL Commission Chair Parvez Hassan, and adopted the “Letter from Bahia” urging advances in environmental protection legislation and legal education.²⁹

As discussed in Chapter 19, the Environmental Law Programme also had a strong presence at UNCED itself, represented by CEL Chair Hassan, Deputy Chair Robinson, UN Liaison Burhenne, and ELC Head Burhenne-Guilmin. Law Commission members spoke at many of the events, and several publications were produced by ELP on the proceedings itself, as well as the first edition of Agenda 21 to be published after the Summit.³⁰

Biodiversity law and policy

Once the Convention on Biological Diversity had been concluded, the Environmental Law Programme also promoted and convened regional biodiversity conferences and workshops focused on implementation of the Convention. On the initiative of CEL Chair Hassan, one outstanding event was a conference on biodiversity for the Asia and Pacific region convened 6-8 June 1994 by IUCN and the Asian Development Bank (ADB) at ADB Headquarters in Manila, Philippines. At this CEL-led conference, several Law Commission members presented papers.³¹ Not only was it the first such conference on biodiversity where CEL partnered with the

ADB, Hassan recalls that this was likely the first such seminar or conference jointly sponsored by IUCN and ADB on any subject, and its success was another example where networks and “personal friendships can facilitate important decision-making.”³² In this case, the ADB involvement was supported by individuals in the ADB who had been long standing colleagues of Hassan in the Asia-Pacific professional community: K.F. Jalal, Bindu Lohani, and M.E. Tusneem (later to become Director General of the East and Central Asia Regional Department of ADB).

26 The event not only had substantive value in advancing regional understanding about biodiversity conservation. It also gave status to IUCN in the region and in the eyes of ADB operations because the President of the ADB, Mitsui Sato, presented opening remarks and attended one of the evening receptions which, according to Hassan, was something special.³³ The goodwill created was important for the emerging IUCN/ADB partnership in creation of a regional environmental law training facility (the Asian Pacific Centre for Environmental Law) that was to come about a few years later in Singapore with ADB support (see below).

27 The proceedings of this Conference were reproduced in a joint ADB-IUCN book, the title of which was the title of the conference: *Biodiversity Conservation in the Asia and Pacific Region: Constraints and Opportunities*.³⁴ The conference and resulting book were comprehensive, covering the full range of biodiversity conservation aspects in the region, from technical and economic, to social and legal/institutional. Hassan delivered the opening remarks on behalf of Jay Hair, then President of IUCN and also presented a substantive paper on political and legal dynamics of implementing the Convention in the region.³⁵ A separate and sizeable contribution on the legal and institutional issues of biodiversity conservation was made by the Environmental Law Programme in a 50-page paper authored by Law Commission members, all specialists in this area: Cyrille de Klemm, Amado Tolentino, Françoise Burhenne-Guilmin, Richard Tarasofsky, Lyle Glowka, and Donna Craig.³⁶

28 In other regions, workshops were held in Central Asia (for Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan) and West Asia (for the Gulf Cooperation Council countries).³⁷ In addition, Commission members participated in training workshops in Pakistan and Ecuador designed around publications prepared by ELP, particularly the *Guide to the Convention on Biological Diversity* (discussed in Chapter 23).³⁸ During 1997, the Law Programme collaborated with the UNEP/UNDP Joint Project on Environmental Law and Institutions in Africa to organize a workshop focused on national legislation to implement biodiversity-related conventions in that region.³⁹

50th Anniversary law events

29 The Environmental Law Programme organized two high-profile events in 1998, on the occasion of IUCN’s 50th Anniversary, celebrated on 3 November at Fontainebleau, France, the site of the Union’s founding conference in 1948. Both events involved significant contributions from Commission member Cyrille de Klemm (the last before his death in 1999) [see Box on de Klemm in Chapter 23].

30 The first event, a colloquium to commemorate the 50th Anniversary, was held in Paris at the Palais du Luxembourg on 30 October 1998, a few days before the

formal ceremonies. Entitled 'Landscape Conservation Law: Present Trends in International and Comparative Law,' the colloquium was organized by two IUCN Commissions, the Commission on Environmental Law and the World Commission on Protected Areas (WCPA), joined by the French Society for Environmental Law (SFDE, an IUCN member), and supported also by the Foundation Gaz de France.

Panel presentations addressed initiatives to promote landscape conservation in Europe (including the draft European Landscape Convention), Africa, North America and East Asia and the importance of better protecting and managing landscapes was discussed in detail.⁴⁰ Commission participation was impressive with the number and scope of its leadership assembled with key roles for the event, in particular, CEL Chair Nicholas Robinson, former Chair Parvez Hassan, ELC Head Burhenne-Guilmin, UN Liaison Wolfgang Burhenne, members Donna Craig, Cyrille de Klemm, Oleg Kolbasov, Koh Kheng-Lian, Charles Okidi, Grethel Aguilar, and Lyle Glowka. Adrian Phillips, Chair of the WCPA, joined by Jerome Fromageau, President of SFDE, served as co-conveners with Robinson and Burhenne-Guilmin. The proceedings were published in the Environmental Policy and Law Paper series as *Landscape Conservation Law: Present Trends and Perspectives in International and Comparative Law*.⁴¹ 31

The second event was at the 50th Anniversary itself. The Environmental Law Programme was given the lead in preparing a symposium session on "Institutional Aspects of Conservation in the Context of Sustainable Development".⁴² The keynote speaker was Ms. Joke Waller-Hunter, at that time representing OECD.⁴³ The presentation was followed by responses from a panel of leading environmental law experts, including Cyrille de Klemm, who expanded on themes such as biodiversity, wetlands, and world heritage. Three successive Chairs were among the CEL members participating at Fontainebleau: Wolfgang Burhenne, Parvez Hassan, and then current CEL Chair Nicholas Robinson. 32

'Law Week' pre-WSSD

Finally, as further illustration of the growing opportunity of such special environmental events linked to international meetings, ELP took the opportunity provided by the World Summit on Sustainable Development in September 2002 in Johannesburg, South Africa, to promote and help organize environmental law workshops, seminars, and conferences for delegates on the environmental law themes to arise at the Summit. In preparation, earlier in the year, IUCN ELP and UNEP had undertaken a series of meetings and consultations on how best to take advantage of the Summit for new collaborative activities on environmental law. In the end, three main environmental law events were agreed upon, all scheduled the week prior to WSSD which came to be called 'Law Week'. IUCN was either a convenor or co-sponsor of each event and the outcomes were addressed at the end of August at a 'Futures Dialogue' session, chaired by ELP Head Scanlon, in Johannesburg and titled "Sustainable Development: What's Law Got to do with it?" Former Chair Hassan and other CEL members gave presentations at that wrap-up session and the consensus was a commitment to capacity building.⁴⁴ 33



IUCN CEL, University of Natal pre WSSD Conference, Pietermaritzburg, South Africa, 2002

- 34 The first event, as discussed in Chapter 29, was UNEP's Global Judicial Symposium in Johannesburg, 18–20 August 2002, which IUCN ELP co-sponsored. At this Symposium, CEL Chair Robinson and former Chair Hassan, together with UN Legal Advisor Hans Correll, were the only non-judges invited to attend and speak. Each delivered papers that UNEP later published with the proceedings of the Symposium, a major UNEP contribution to the WSSD. South Africa's Chief Justice Arthur Chaskalson presented the recommendations of the Symposium to the Summit which, as Robinson recalls, "provided an important foundation for the ongoing cooperation between UNEP and IUCN on the roles of the judiciary in environmental law."⁴⁵
- 35 In addition, two general environmental law events were organized. The first was with the University of Natal's Institute of Environmental Law, joined by ELP and UNEP, which hosted a conference for environmental lawyers entitled: "Environmental Law Foundations for Sustainable Development", 20–22 August. Its main purpose was to discuss the general themes of the Summit and identify challenges going forward. Preliminary discussions between CEL Chair Robinson and Michael Kidd of the Institute in November 2001 had laid the groundwork for this co-convened event. UNEP subsequently joined, giving the conference further international stature.
- 36 The event provided a special opportunity for several IUCN affiliated environmental law organizations to cooperate with the sponsorship: the Arab Regional Centre for Environmental Law (Kuwait), Asia-Pacific Centre for Environmental Law (Singapore), Environmental Law Institute (USA), European Environmental Law Association, and the International Council of Environmental Law. Convened in Pietermaritzburg, the conference attracted participants from some 20 countries, several providing expert input in such themes as ethics, public participation, implementation and enforcement – with the 'implementation gap' being identified as

among the most pressing needs to confront. The final address was by CEL Chair Robinson who related conference deliberations to the upcoming Summit.⁴⁶

The second general environmental law event where ELP was either a convenor or co-sponsor during the WSSD 'Law Week' was a conference led by a South African organization, ENF EnviroLaw Solutions, and entitled: "Law and Governance for a Sustainable World" or "EnviroLaw 2002" for short. Several governments and international organizations provided support for the conference and the South Africa Ministry of Justice and Constitutional Development played a leading role during the session itself. A main focus was implementation and enforcement of environmental and sustainable development law, including multilateral environmental agreements at national level.

37



WSSD, Johannesburg 2002. From the left: Antonio Benjamin, Parvez Hassan, John Scanlon, Jorge Caillaux

The conference produced a statement of recommendations, called "Durban Statement: The ENVIROLAW 2002 Recommendations," which identified a number of activities for future action in capacity building including developing an Environmental Law Enforcement Index (such as one recommended by the Government of the Netherlands), providing training in enforcement and compliance, including of international agreements, and taking initiatives to build public awareness and regional cooperation.⁴⁷ Discussions subsequent to the conference agreed that the findings of the gathering could be used as a case study for future capacity building in the region. In February 2003, IUCN and EnviroLaw signed a memorandum of understanding for EnviroLaw to become one of the growing network of IUCN ELP institutional partners in environmental law.⁴⁸

38

‘Training the Trainers’ initiative***Asia-Pacific pilot***

39 CEL Chair Hassan, as noted previously, considered his “highest priority to develop capacity in the developing world.”⁴⁹ He saw capacity building at the university level as a key component of this larger agenda, maintaining that “lack of trained faculty had prevented most universities in Asia, Africa, and South America from including even the teaching of environmental law in their law schools” at a time when environmental law was flourishing and developing countries were expected to translate their international obligations into national law.⁵⁰

40 Early in his tenure, Agenda 21 of the 1992 United Nations Conference on Environment and Development (UNCED) gave impetus for this emphasis when it called upon “[c]ompetent international and academic institutions...[to] cooperate to provide, especially for trainees from developing countries, postgraduate programmes and in-service training facilities in environment and development law.”⁵¹

41 Building a network of institutional partners at regional and national levels was not only inherently fundamental for strengthening local capacity in environmental law. It also furthered IUCN’s regionalization policy and responded to the further call in Agenda 21 for “countries, assisted by international organizations, non-governmental organizations and other sectors, [to]...strengthen or establish national or regional centres of excellence in interdisciplinary research and education in environmental and developmental ... law....”⁵²

42 As CEL Chair, Hassan began building ties between the Commission and other international organizations toward cooperation and collaboration in environmental law capacity building. He made a standing invitation to UNEP to attend all CEL Steering Committee meetings as a way to institutionalize UNEP-CEL cooperation. He saw the purpose of this initiative “to coordinate [CEL] environmental law initiatives with UNEP to avoid duplication and to strengthen where CEL could work together with UNEP.”⁵³ He followed this with visits to Nairobi to further build working relations with UNEP. Working closely with Sun Lin, Director of UNEP’s Programme Activity Centre, these overtures brought success on a number of ELP fronts, including UNEP’s support for ELP’s Asia-Pacific training initiative (see below), CEL’s work on the draft Covenant (see Chapter 26), and outreach to the judiciary (see Chapter 29).

43 Hassan began assessing different options for university capacity building and decided the approach with the broadest long-term impact would be to develop ‘training the trainers’ courses. A pilot project would need to be created. In 1990, the 18th IUCN General Assembly had adopted a resolution calling for IUCN to give special support to the Asia and Pacific regions, adding stimulus for this regional choice.⁵⁴ In addition, Hassan was acquainted with regional funding sources and the Commission counted on attracting donors for the external funds needed for the venture.

44 Being familiar with and well-regarded by universities in this region, Hassan began to explore options for an institutional base in Asia or the Pacific. From several possibilities, Singapore was selected. In later years, Hassan would explain why. “First, [Singapore] is easy to reach (including the granting of visas). Second, the language of instruction in Singapore is English. Third, the National University of

Singapore has an excellent law faculty. But the overwhelming factor in favor of Singapore was the dynamism and commitment of Ambassador Tommy Koh who welcomed, exuberantly, my initiative and offered local resources.”⁵⁵ Ambassador Koh, a Professor of Law at the University and CEL member, also was highly regarded internationally, in particular at the time for the very effective role he had played as chairman of the UNCED Preparatory Committee leading up to the 1992 Conference in Rio de Janeiro.

In 1995, based on discussions initiated by CEL Chairman Hassan with the National University of Singapore, a proposal was developed to create the first Regional Centre of Excellence for Environmental Law at the University.⁵⁶ A main function of this first ‘Centre’ would be to teach environmental law at the university level. IUCN, at that juncture, was not able to help with financial support. Turning to external sources, Hassan, joined by CEL Deputy Chair, Robinson, and ELC Head, Burhenne-Guilmin, undertook extensive negotiations with the Asian Development Bank (ADB) for funding and with the University leadership for development of a training programme. 45

These negotiations were successful and resulted in the signing of two agreements fundamental to implementing the project. First, in April 1996, Hassan on behalf of IUCN signed an agreement with the Asian Development Bank (ADB) to provide a technical assistance grant of US\$600,000. The support was for IUCN to work with the National University of Singapore (NUS), UNEP, ESCAP, and others, including the UN University and United Nations Institute for Training and Research (UNITAR) to teach intensive environmental law courses at NUS during the summers of 1997 and 1998.⁵⁷ The National University of Singapore gave ‘in-kind’ sup- 46



Inauguration of APCEL, Singapore 1996. From the left: Tommy Koh, Koh Kheng-Lian, Parvez Hassan

port of US\$250,000. Hassan played a considerable role in making that agreement happen. As discussed above, he had already built goodwill for IUCN with the ADB on the occasion of the Asia-Pacific regional conference on biodiversity conservation in 1994. In addition, he had longstanding friendships in the region, some of whom now were with ADB. In particular, friend and colleague Dr. Kazi F. Jalal, who was then ADB Chief of the Office of Environment and Social Development, gave his personal support to helping move forward the grant received by IUCN.⁵⁸

47 The second signing, undertaken at a special ceremony in July 1996, in Singapore, was an agreement between IUCN and NUS to develop jointly the project. The ceremony was attended by CEL Chairman Hassan and Steering Committee members Wolfgang Burhenne, Koh Kheng-Lian, Donna Craig, Nicholas Robinson, and Amado Tolentino, along with Environmental Law Centre Head Françoise Burhenne-Guilmin.

48 This had been made possible by the creation of the Asia-Pacific Centre for Environmental Law (APCEL) in February 1996 at the Faculty of Law of the NUS, to provide the institutional framework within which the training would be offered. As envisioned by Hassan, APCEL became the first collaborating partner of the IUCN Environmental Law Programme to be given the designation “Regional Centre of Excellence in Environmental Law” (see discussion of partner centres in Chapter 29).

49 With these agreements in place, APCEL and IUCN began working with UNEP and ESCAP to develop the two ‘training the trainers’ courses. The training programme was titled: “Capacity Building for Environmental Law Training in the Asia-Pacific Region” and was to focus initially on law faculties in that region. A course planning committee was formed to develop the course syllabus and schedule. Nicholas Robinson representing CEL co-chaired this committee with Koh Kheng-Lian, CEL Vice-Chair for South and East Asia, and founding director of APCEL. Lal Kurukulasuriya represented UNEP on the committee. Other committee members were: from IUCN, Françoise Burhenne-Guilmin, and two CEL members from Australia, Donna Craig and Ben Boer; and from APCEL, Robert C. Beckman, Lye Lin-Heng, L.R. Penna, Simon S.C. Tay, Lim Lei Theng and Alan Tan Khee Jin.⁵⁹ ELC Legal Officer Richard Tarasofsky served as resource person for the two training courses.⁶⁰

50 Numerous other resource persons and institutions contributed to provide the wide range of course materials needed. For example, Charles Okidi, long-standing



Parvez Hassan speaks at the inauguration of APCEL (1996)

CEL member and CEL Vice Chair for Africa, provided important case law precedents from around the world.⁶¹ In addition to the Faculty of Law of the National University of Singapore, two other law schools provided substantial support with teachers on a *pro bono* basis and other resources: the Centre for Environmental Law at Pace University in New York, USA, and the Centre for Environment Law, Macquarie University in Australia.

The two 'training the trainers' courses were conducted at the National University of Singapore during 1997 and 1998, beginning in June of each year. Each course ran for four weeks and emphasized teaching methodologies in international, regional, and national environmental law.⁶² More than 30 resource persons taught in each of the two courses on a *pro bono* basis.⁶³ All trainees already were teaching law, some also environmental law. Sixty-three law professors, including a significant number of women, participated from 15 countries. As much as possible course materials were drawn from the region.

51



Train the trainers course, Singapore 1998. Front left: Nicholas Robinson

APCEL and its training programme were considered a major success. As reported in an ELP Newsletter in 2000, APCEL "... played a critical role in developing courses on environmental law within NUS as well as conducting training courses, seminars, workshops and other training programs on environmental law, management and governance for government officials and administrators both in Singapore and in the Asia-Pacific region."⁶⁴

52

After the courses had been completed, materials were collected and organized for a publication. Donna Craig, Nicholas Robinson, and Koh Kheng-Lian (all environmental law professors in their own right) took on the task of compiling, editing, and condensing the numerous materials to make publication feasible. In addition, CEL member Robert Beckman (NUS Faculty of Law), Françoise Burhenne-Guilmin,

53

and Ben Boer made substantial contributions to specific chapters of the final volumes.

54 In April 2002 in Washington, D.C., the IUCN Commission on Environmental Law in collaboration with the Asian Development Bank (ADB), UNEP and the Asia-Pacific Centre for Environmental Law (APCEL) finally launched the two-volume environmental law book. Published by ADB and entitled *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* (Vols. I and II), the long-awaited volumes were received enthusiastically and this event was followed by other launches around the world. For instance, in Tokyo that same year, a launch was combined with a day-long symposium at the Asian Development Bank Institute entitled “The Second Generation of Environmental Laws”. Among the main presenters were CEL Chair Robinson and his two co-authors for the “Capacity Building” volumes, Donna Craig and Koh Kheng-Lian, along with ELC Legal Officer Maria Socorro Z. Manguiat. Subsequently, a CEL member published a counterpart to the two-volume ADB book specifically for Japan.⁶⁵ In addition, the proceedings of the symposium were published in the Environmental Policy and Law Paper Series under the title *Towards a “Second Generation” in Environmental Laws in the Asian and Pacific Region – Selected Trends*,⁶⁶ discussed further in Chapter 30.

55 The Asia-Pacific environmental law training project was a pioneering work which, as described in ELP’s annual report for 2002, was “aimed at providing universities, governments, the private sector and NGOs with the necessary tools and expertise to address environmental problems and develop laws to support sustainable development in this region.” The initiative was a major success largely due to Hassan’s dedication and ability to rally regional support, especially from the Asian Development Bank, combined with the strong leadership of Robinson and Koh Kheng-Lian over four years and the CEL team’s effective recruitment of faculty from the talented pool of CEL specialists.

56 The final publication provided a comprehensive set of training materials for university-level environmental law courses for use by Law Commission members and others building environmental law training programmes in developing countries.⁶⁷ The two-volume set ran some 994 pages, divided into 24 chapters. The multi-year endeavor involved a substantial commitment of time, money, and effort by CEL members and numerous others as resource persons and institutions. The project broke new ground for the IUCN Environmental Law Programme in its comprehensive scope and the numerous institutions and individuals who contributed resources or served as faculty, guest speakers, and panelists. In addition to generating teaching materials and lessons for future courses in that region and elsewhere, the two-year course built many new institutional partnerships and a professional network of law professors in the region. As a direct result of this capacity-building project, Nicholas Robinson has observed that environmental law teaching was inaugurated for the first time in universities in many Asian nations.⁶⁸

57 APCEL alumni were encouraged and became committed to strengthening environmental law and environmental legal education on return to their countries. One alumni, Maria Socorro Z. Manguiat, from the Philippines, came to know the



Koh Kheng-Lian, Parvez Hassan and Donna Craig launch the ADB-sponsored publication „*Capacity Building for Environmental Law in the Asian and Pacific Region*“ in 2002

IUCN Environmental Law Programme through participation in the 1997 APCEL ‘training the trainers’ course and subsequently was recruited in 2000 by ELP Head Charles Di Leva to join the Law Centre as Legal Officer.⁶⁹ She was designated focal point for climate change and energy, thematic areas where ELC became more active thereafter.

Following the successful experience in Singapore, CEL Chair Robinson and former Chair Hassan went on to promote ‘training the trainers’ projects in the Arab, African, and South American regions. In 2002, for example, through the efforts of Robinson and CEL Vice Chair Badria Al-Awadhi, ELP joined with the Arab Regional Centre for Environmental Law in Kuwait and UNEP’s regional office (which provided support) convening workshops to develop curriculum for a ‘training the trainers’ course for Arab region in 2003.⁷⁰ The Arab Regional Centre for Environmental Law (ARCEL) had been founded in 2001 with the collaboration of CEL and the Faculty of Law at the University of Kuwait, thereafter becoming an IUCN ELP partner centre (see discussion of partner centres in Chapter 29). 58

Again, using the Singapore model, an environmental law training course was held in the Philippines in November 2004 prior to the Bangkok World Conservation Congress. Led by CEL Chair Robinson, Philippines CEL member Tony Oposa, ELC Legal Officer Maria Manguiat, and APCEL Director Koh Kheng-Lian, the course was attended by some 30 university professors from the Philippines and three from Thailand.⁷¹ The Philippine course was jointly organized by the IUCN Environmental Law Programme and the University of the Philippines Law Centre, and covered national, regional and international environmental law issues and special local teaching challenges. 59

UNITAR Project

60 In addition to the Asia-Pacific ‘training the trainers’ initiative, ELP through the Commission on Environmental Law joined with UNITAR (United Nations Institute for Training and Research) in the mid-1990s to produce self-training manuals in environmental law that could serve as “courses of correspondence instruction.” Called the “Programme of Training for the Application of Environmental Law”, this collaboration received funding from Switzerland and the Netherlands, included UNEP, and focused on the needs of developing countries and countries with economies in transition. It was agreed that so far as possible the expert authors for these course materials would be members of the IUCN Commission on Environmental Law. The initiative was facilitated by Dan Navid, CEL member and former Legal Officer at the ELC, then Senior Special Fellow at UNITAR.

61 The programme generated a 10-volume set of manuals in international environmental law which were published between 1997 and 1999. Each was designed as a separate course for use in distance learning as correspondence courses for lawyers, judges, planners, academics, government officials, and NGO representatives working in the field of environmental law, policy and administration. UNITAR contributed to both the 1997 and 1998 ‘training the trainers’ course noted above with staff involvement and provision of the course manuals as background training materials. Table 1 (below) lists the manuals by course number, subject, and author.



Table 1: UNITAR / IUCN Programme of University Training in Environmental Law

| Course No. | Subject | Author (* CEL member) |
|------------|---|--|
| 1 | Introduction to International Environmental Law | Alexandre Kiss* |
| 2 | The Role of International Organizations in the Evolution of Environmental Law | Peter H. Sand* |
| 3 | Techniques and Procedures in International Environmental Law | Dinah Shelton* |
| 4 | International Environmental Negotiations | Winfried Lang* |
| 5 | International Environmental Law: Hazardous Materials and Waste | Jan W. Huismans & Achim A. Halpaap |
| 6 | International Environmental Law: Biological Diversity | Cyrille de Klemm* & Clare Shine* |
| 7 | International Environmental Law: Atmosphere, Freshwater and Soil | Lothar Gündling* |
| 8 | International Environmental Law: Marine environment, Polar regions, Outer Space | Lothar Gündling* & Richard Tarasofsky* |

| | | |
|----|--|---|
| 9 | Environment and Commerce | Agnes Michelot; second revised edition by Robert Goldstein ^{*72} |
| 10 | Developments and Trends in International Environmental Law | Alexandre Kiss* & Dinah Shelton* |

In April 1998, CEL members Daniel Navid and Peter Sand directed a UNITAR/UNDP ‘inauguration workshop’ in Teheran on implementation of multilateral environmental agreements in the Islamic Republic of Iran, attended by legal staff of several ministries, governmental environmental agencies and non-governmental organizations.⁷³ 62

In 1999, the Director General of IUCN, Maritta Koch-Weser, and the Executive Director of UNITAR, Marcel A. Boisard, formalized through a Memorandum of Understanding the collaboration already under way between UNITAR and IUCN CEL in environmental law. The Memorandum, to have effect for a period of 5 years, recognized the ‘courses of correspondence instruction’ that already had been produced and identified further agreement to cooperate on a series of follow-up workshops providing more in-depth training in selected subjects. The Memorandum also recorded agreement to jointly develop other ‘inauguration’ workshops in-country for students beginning the course sessions.⁷⁴ Several workshops were held worldwide with Commission members being a main source of expertise. In 1999, pursuant to this agreement, the first of three annual workshops was held in Japan for the Asia and Pacific region focused on biodiversity law; CEL members Alexandre Kiss and Dinah Shelton represented IUCN and Dan Navid represented UNITAR.⁷⁵ Finally, the agreement recognized the need for more comprehensive national capacity building efforts in special cases and The Gambia was among the countries to receive this assistance, with Lothar Gündling providing the expertise on behalf of ELP and the Commission. 63

A further course chapter on trade and the environment was provided subsequently when UNITAR’s Mary Sancy (a CEL member) invited CEL to provide an update on Trade and Environment, and CEL member Robert Goldstein did so. The UNITAR correspondence course in international environmental law is still in use today.⁷⁶ 64

Notes

- 1 Burhenne, W., “Report of the Commission on Environmental Policy Law and Administration for the period May 1976 to April 1977”, p. 2 (also labeled Agenda Paper EB. 77/21, Annex to IUCN Executive Board Minutes of the 59th, 60th, and 61st Sessions of the Executive Board and 1st Session of the Council at World Health Organization Headquarters, Geneva, Switzerland. 18 and 22 April 1977).
- 2 See IUCN Environmental Law Programme, “BMZ 1998 Trust Fund Proposal: A Programmatic Framework for Delivering Regionally- and Nationally-Tailored ELP Services Through IUCN Regional and Country Offices (RCOs)” (August 1998) p. 6.
- 3 See Commission on Environmental Policy, Law and Administration, “Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981”, p. 14 (also labeled Attachment to General Assembly Paper GA/15/81/6).
- 4 Id.
- 5 See Environmental Law Centre, “Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds”, p. 11.
- 6 The four fellows were: Dr. Nazrul Islam from Bangladesh, an Assistant Professor at the Department of Law of the University of Dhaka, having recently finished his Ph.D. at the School of Oriental and African Studies in London; Isabel Martinez from Venezuela, formerly legal officer at

- the UNEP Regional Office for Latin America and the Caribbean; Ikechi Mgbeoji from Nigeria, a lawyer affiliated with a law firm in Lagos who was doing his Ph.D. at Dalhousie University in Canada; and Wang Xi from China, a Professor at the University of Wuhan and the Vice Director of the Institute on Environmental Law at the university, one of the environmental law “centres of excellence” (see Ch. 30). See Osafo, Y., “CDG Fellowship Programme” in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 31.
- 7 The two fellows were Gladys Gitahi from Kenya and Larsey Mensah from Ghana. See Martinez, I., “New CDG Fellows at the ELC” in *IUCN Environmental Law Programme Newsletter* (No.1/2001), p. 18.
 - 8 See Burhenne-Guilmin, F., “Environmental Law Fellowships, InWent Fellowships at the IUCN Environmental Law Centre”, (in-house report on the programme for the period 2000–2004).
 - 9 Martinez, I., “New CDG Fellows at the ELC” in *IUCN Environmental Law Programme Newsletter* (No.1/2001), p. 18.
 - 10 Communication with Françoise Burhenne-Guilmin on March 2006 draft, with notes on her presentation to 2004 Fellows ceremony, summer 2004.
 - 11 See *IUCN Environmental Law Programme Newsletter*, (Issue 1, 2003), pp. 39–40; see also Scanlon, J., “World Conservation Union (IUCN) (ELP 2002 Year in Review)”, in 13 *Yearbook of International Environmental Law* 823–4 (Oxford: 2002).
 - 12 See *IUCN Environmental Law Programme Newsletter* (2004), pp. 48–49; see also Scanlon, J., “IUCN Environmental Law Programme 2003 – The Year in Review”, p. 11 (IUCN ELC, Bonn).
 - 13 See IUCN Environmental Law Centre, “IUCN Environmental Law Programme 2004 – The Year in Review”, p. 10.
 - 14 See Islam, N., I. Martinez, I. Mgbeoji, W. Xi, *Environmental Law in Developing Countries – Selected Issues* (IUCN Environmental Policy and Law Paper No. 43, coordinated by Françoise Burhenne-Guilmin), (IUCN, 2001); and Cedeño Bonilla, M., E.F. Fernandez, S. Jemaiel, R. Mwebaza, and D. Zhandayeva, *Environmental Law in Developing Countries – Selected Issues*, Vol. II (IUCN Environmental Policy and Law Paper No. 43 Vol. II, coordinated by Françoise Burhenne-Guilmin) (IUCN, 2004).
 - 15 See IUCN Environmental Law Programme web site at www.iucn.org/themes/law/fell01, “Fellows and Interns” (researched July 5, 2004).*
 - 16 Communication from J. Scanlon on March 2006 draft transmitted by email cover dated April 26, 2006.
 - 17 See IUCN Environmental Law Centre, “IUCN Law Programme”, Annex 6, *IUCN Programme 1991–1993*, p. 47, *Proceedings of the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia* (1991).
 - 18 *IUCN Environmental Law Programme Newsletter* (No. 1, April 1991), p. 5.
 - 19 See *IUCN Environmental Law Programme Newsletter* (No. 1, April 1991), pp. 3 and 5.
 - 20 See Environmental Law Centre, “Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds”, pp. 9–10. Commission Chair Burhenne reported the anticipated seminars to the General Assembly in 1990, see Burhenne, W., “Report of the Chairman of the Commission on Environmental Policy, Law and Administration to the 18th Session of the General Assembly (March 1989 to March 1990)” in “IUCN’s Report to the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia”, p. 84.
 - 21 See *IUCN Environmental Law Programme Newsletter* (April–August 1992), p. 7.
 - 22 See *IUCN Environmental Law Programme Annual Report 1998*, p. 10.
 - 23 See ELC working draft of “Annual Report on activities supported by BMZ Trust Fund 2003” (29 March 2004), p. 3.
 - 24 See *IUCN Environmental Law Programme Newsletter* (January–May 1993), at 4.
 - 25 See *IUCN Environmental Law Programme Newsletter* (June–December 1993), p. 11.
 - 26 See *IUCN Environmental Law Programme Annual Report 1997*, p. 9.
 - 27 See *IUCN Environmental Law Programme Annual Report 1998*, p. 11.
 - 28 See ELC working draft of “Annual Report on activities supported by BMZ Trust Fund 2003” (29 March 2004), p. 3.
 - 29 As reported by CEL Chairman Hassan, “Commission on Environmental Law (CEL) Triennial Report: 1991–1993,” p. 80 (also cited as Annex 3 to General Assembly Paper GA/19/94/4).

- 30 See Robinson, N. (ed.), with P. Hassan and F. Burhenne-Guilmin, *Agenda 21 & the UNCED Proceedings* (Vols. I–III, 1992) (Vols. IV–VI, 1993) (produced under the auspices of the IUCN Commission on Environmental Law) (Oceana Publications: New York); and Robinson, N.A. (ed.) *Agenda 21: Earth's Action Plan* (Annotated) (IUCN Environmental Policy and Law Series No. 27) (Oceana Publications: New York, 1993).
- 31 See Hassan, P., “Commission on Environmental Law (CEL) Triennial Report: 1994–1996” (also labeled Annex 3 to Congress Paper CGR/1/96/2), p. 23.
- 32 Email communication from Parvez Hassan to Françoise Burhenne-Guilmin dated Jan. 25, 2006, subject: “ELP History of IUCN: ADB Conference, 1994”, p. 1.
- 33 Id.
- 34 McNeely, J. (ed.), *Biodiversity Conservation in the Asia and Pacific Region: Constraints and Opportunities* (Asian Development Bank) (1995).
- 35 Hassan, P., “Opening Remarks: The Political and Legal Dynamics of the Implementation of the Convention on Biological Diversity in the Asian and Pacific Region”, in McNeely, J. (ed.), *Biodiversity Conservation in the Asia and Pacific Region: Constraints and Opportunities* (Asian Development Bank) (1995), pp. 391–401.
- 36 Klemm, C. de, A. Tolentino, Jr., F. Burhenne-Guilmin, R.G. Tarasofsky, L. Glowka, and D. Craig, “Conservation Biodiversity: The Legal and Institutional Issues”, in McNeely, J. (ed.), *Biodiversity Conservation in the Asia and Pacific Region: Constraints and Opportunities* (Asian Development Bank) (1995), pp. 402–452.
- 37 See *IUCN Environmental Law Programme Annual Report 1994*, p. 7.
- 38 See Hassan, P., “Commission on Environmental Law (CEL) Triennial Report: 1994–1996” (also labeled Annex 3 to Congress Paper CGR/1/96/2), p. 23.
- 39 See *IUCN Environmental Law Programme Annual Report 1997*, p. 9.
- 40 See “Increase Promotion of the Law Programme” in *Environmental Law Programme Annual Report 1998*, p. 15.
- 41 *Landscape Conservation Law: Present Trends and Perspectives in International and Comparative Law* (Proceedings of a Colloquium Commemorating the 50th Anniversary of IUCN, 30 October 1998, Palais du Luxembourg, Paris) (IUCN Environmental Policy and Law Paper No. 39) (IUCN, 2000).
- 42 Reported in “IUCN Environmental Law Programme Annual Report 1998” at 15.
- 43 Id.
- 44 Contribution from John Scanlon on May 2006 draft transmitted by email dated June 7, 2006.
- 45 Commentary on this topic by Nicholas Robinson with respect to the May 2006 draft, transmitted by email dated June 13, 2006.
- 46 See article on the Conference in ELP’s Newsletter: Kidd, M., “World Summit 2002: Environmental Law Foundations for Sustainable Development Conference” in *IUCN Environmental Law Programme Newsletter* (2003), p. 13.
- 47 See IUCN web site at: www.iucn.org/themes/law/pdfdocuments/EnviroLaw.*
- 48 See article on the EnviroLaw Conference at Joubert, F., “EnviroLaw 2002 Conference: Law and Governance for a Sustainable World” in *IUCN Environmental Law Programme Newsletter* (2003) at 14.
- 49 Speech of Parvez Hassan at the inauguration of the Dr. Parvez Hassan Environmental Law Centre in the Punjab University Law College in Lahore, Pakistan, 15 February 2003, available on ELP web site at www.iucn.org/themes/law (under news for February 2002).*
- 50 Hassan, P., “Preface” in Craig, D., N. Robinson, and Koh, Kheng-Lian (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region, Vol. 1* (Asian Development Bank, Manila, Philippines, 2002), p. xvii.
- 51 UNCED, *Agenda 21*, para. 8.20 (UN doc: A/CONF.151/26, Vol. I) (June 1992).
- 52 Id. at para. 36.5(j).
- 53 Email communication from Parvez Hassan to Françoise Burhenne-Guilmin dated Jan. 24, 2006, subject: “ELP History of IUCN” (forwarded to author January 24, 2006).
- 54 See Resolutions 18.6 and 18.7 in *IUCN 18th General Assembly Resolutions and Recommendations* at 8–9 (IUCN, 1991).

- 55 Hassan, P., "Preface," Craig, D., Robinson, N., Koh, Kheng-Lian (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region*, Vol. I, p. xvii (Asian Development Bank, Manila, Philippines, 2002).
- 56 See "Commission on Environmental Law" in "Minutes of 41st Meeting of the IUCN Council and Associated Events 22 to 24 May 1995, IUCN Headquarters, Gland, Switzerland", p. 6.
- 57 See Hassan, P., "Letter from the Chair" in *IUCN Environmental Law Programme Newsletter* (April–June 1996), p. 3. For detailed steps involved in developing the programme, see Sumida, G., and R. Zeliuss, "Foreword" in Craig, D., Robinson, N., Koh, Kheng-Lian (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region*, Vol. I, p. xiii–xv. (Asian Development Bank, Manila, Philippines, 2002).
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- 60 Communication from Richard Tarasofsky by email dated June 19, 2006.
- 61 Id.
- 62 See "IUCN Environmental Law Programme Annual Report 1997", p. 9, and "IUCN Environmental Law Programme Annual Report 1998", p. 10.
- 63 See Sumida, G., and R. Zeliuss, "Foreword" in Craig, D., Robinson, N., Koh, Kheng-Lian (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region*, Vol. I, p. xiii. (Asian Development Bank, Manila, Philippines, 2002).
- 64 Irene Lye Lin-Heng "The Asian-Pacific Center for Environmental Law (APCEL)" in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 24.
- 65 See Scanlon, J. "IUCN Environmental Law Programme 2002 – the Year in Review" (IUCN Environmental Law Centre, Bonn), p. 10.
- 66 See Lin-Heng, L., with M. S. Manguiat (eds.), *Towards a "Second Generation" in Environmental Laws in the Asian and Pacific Region – Selected Trends* (Proceedings of an IUCN/IGES/ADB Symposium at the ADB Institute, Tokyo, Japan, 11 November 2002) (IUCN Environmental Policy and Law Paper No. 48) (IUCN, 2003).
- 67 See Craig, D., Robinson, N., Koh, Kheng-Lian (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region* (Asian Development Bank, Manila, Philippines, 2002).
- 68 Communication from Nicholas Robinson on December 2005 draft, transmitted by cover letter dated March 7, 2006.
- 69 Author interview with M. Manguiat, June 23, 2004 (Bonn, Germany).
- 70 See ELP web site at: www.iucn.org/themes/law, under "Latest News", news for the second quarter 2002, heading "UNEP ROWA, IUCN ELP and ARCEL Collaborate to 'Training the Trainers' from Arab States."*
- 71 See IUCN Environmental Law Centre, "IUCN Environmental Law Programme 2004 – The Year in Review", p. 10 (IUCN ELC archives, Bonn).
- 72 The first draft course on Trade and Environment had been written by Richard Tarasofsky, ELC Legal Officer (communication from Richard Tarasofsky on May 2006 draft by email dated June 19, 2006).
- 73 Contribution provided by Peter Sand on May 2006 draft, transmitted by email dated June 8, 2006.
- 74 See "Memorandum of Understanding Between The United Nations Institute for Training and Research (UNITAR) and The World Conservation Union (IUCN)", dated March 1999 (IUCN ELC files: Bonn), p. 3.
- 75 Author interview with W.E. Burhenne and F. Burhenne-Guilmin, June 2004 (Bonn, Germany).
- 76 This further updated Information provided by Nicholas Robinson in response to May 2006 draft, transmitted by email dated June 13, 2006.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 26: Consolidation of Principles – An International Covenant

Background

As the number and variety of international and regional treaties dealing with environmental law continued to expand in the 1970s and 1980s, there was reason to seek some overarching structure within which the many rules and principles could be framed. Beginning in the 1980s and developing in the 1990s, an effort was launched to produce a framework of legal principles for environmental protection and sustainable development. The product came to be called a ‘covenant’ in parallel to other United Nations ‘covenants’, particularly for human rights and social and economic rights. 1

In 1987, the World Commission on Environment and Development (WCED), an international, independent body of distinguished persons and experts set up by the United Nations General Assembly in 1983 to take stock of environmental progress since Stockholm and highlight future directions, delivered its report to the UN entitled *Our Common Future*.¹ (WCED is discussed more in Chapter 19.) Among the inputs to WCED’s work was a paper by a small working group of IUCN Law Commission lawyers organized by Law Commission Chairman, Wolfgang Burhenne, that identified key legal issues for WCED’s consideration. This paper suggested, among other things, that WCED “recommend that the United Nations transform the principles of the World Charter for Nature, [see Chapter 16] ... into a covenant on the natural environment, analogous to the work done to structure the Universal Declaration of Human Rights....”.² 2

The Law Commission working group paper was submitted to the WCED and reviewed by a small group of international experts in environmental law organized by the Commission to give advice on legal rights and principles. This legal advisory group was chaired by Robert Munro of Canada (a Law Commission member) and included Françoise Burhenne-Guilmin and several other Law Commission and ICEL members (see Chapter 19). 3

Among activities of the WCED legal advisory group was input to and review of portions of the final report dealing with legal and institutional matters. Several recommendations of this IUCN legal Working Group were adopted by the WCED legal group, including a recommendation for “A Universal Declaration and a Convention on Environmental Protection and Sustainable Development.”³ The text of that portion of the final WCED report read in part: 4

“Building on the 1972 Stockholm Declaration, the 1982 Nairobi Declaration, and many existing international conventions and General Assembly resolutions, there is now a need to consolidate and extend relevant legal principles in a new charter to guide state behaviour in the transition to sustainable development. It would provide the basis for, and be subsequently expanded into, a Convention, setting out the sovereign rights and reciprocal responsibilities of all states on environmental protection and sustainable development.”⁴

5 In addition, the WCED legal group had prepared a final set of legal principles embodied in 22 Articles which the WCED attached as Annex 1 to the Final Report “to assist the General Assembly in its deliberations” on a draft Declaration and Convention.⁵

6 In 1988, the 17th IUCN General Assembly in Costa Rica adopted a Resolution presented by ICEL encouraging work toward this framework instrument. Specifically, the Resolution recommended that IUCN’s law and policy programme include “work towards the convention on environmental protection and sustainable development called for by the WCED Report ... [and suggested] that such a treaty embody the principles of the World Charter for Nature”⁶

7 Subsequent documents laid out the Law Commission’s view that this was a clear mandate, that the 1988 Assembly, “taking into account the many ‘soft law’ instruments already existing,...[had] expressed its formal support for the [Law Commission] to continue what it had by then already begun, in preparing elements for an international convention on environmental protection and sustainable development.”⁷

Process of preparation

8 With this mandate, the Environmental Law Programme formed a new Working Group chaired by Law Commission Chair, Wolfgang Burhenne, and comprised of 16 leading environmental law experts representing government lawyers, academics and private practitioners worldwide.⁸ Parvez Hassan, then the Commission’s Deputy Chair, was part of the Working Group. Hassan, who actively continued support to the project as CEL Commission Chair, recalls:

“The Working Group was distinguished in its background. Several of its members had been in the forefront of international developments in the field of environmental protection and several were active participants at and veterans of both Stockholm 1972 and World Charter of Nature 1982. Another objective in the mix of the Working Group was to reflect an appropriate North-South balance as the general debate by now expected was characterised by a First World-Third World divide. I was privileged to be associated with the Working Group from its very inception.”⁹

9 The Working Group had its first formal meeting in Bonn, November 28–30, 1989, to discuss the initiative of a draft Covenant on Global Environmental Conservation and Sustainable Use of Natural Resources, and its possible elements. Immediately afterwards, a rough outline was prepared by then Commission Vice Chair, Nicholas Robinson. At a follow-up working session at the Environmental Law Centre in January 1990, the outline was developed into a preliminary draft with Commission members Alexandre Kiss and Malcolm Forster taking the technical lead.

10 A second formal meeting of the Working Group was held in March 1991, chaired by Parvez Hassan, now Commission Chair. At Hassan’s request, Wolfgang Burhenne also stayed involved to provide continuity to the work. This 1991 meeting dealt especially with issues important to developing countries, such as articles against export of toxic wastes to developing countries and against environmental degradation by multinational corporations, both of which were offered by Hassan

and supported by other members. The Working Group agreed that the latest version of the draft should be made available to the preparatory committee for the 1992 United Nations Conference on Environment and Development (UNCED); accordingly it was circulated for comment at the UNCED Prepcom Meeting in August 1991. Later, the draft became available as an UNCED document in all UN official languages.



Discussing the draft Covenant in Bonn. From the left: P. Széll, M. Forster, F. Burhenne, S. McCaffrey, P. Hassan, W.E. Burhenne, J. Lammers

The Working Group was encouraged by the favorable response from participants at UNCED and by the resulting UNCED action plan, Agenda 21, which gave international environmental law a role in integrating environment and development. 11

A third formal meeting of the Working Group held after UNCED sought to incorporate ideas from UNCED and Agenda 21; in addition, membership was expanded to include participants from the UNCED process. Shortly thereafter a small drafting committee was appointed to further refine the draft in light of UNCED themes and to better reflect issues important to developing countries.¹⁰ 12

Finalizing a draft covenant

In September 1993 a fourth meeting of the expanded Working Group took place in Bonn with more than 40 participants including officials from foreign offices, ambassadors, ethicists, and observers. Two other components of IUCN also participated – IUCN’s Ethics Working Group, because of the strong moral element of the covenant, and the IUCN Species Survival Commission, because of the importance of biological diversity. At this meeting the title was formally changed to draft “International Covenant on Environment and Development”, and the text was reorganized with a new part containing extensive ‘Fundamental Principles’ and in- 13

cluding provision for international financing mechanisms. Chair Hassan proposed and led the adoption of those changes.

14 The drafting committee continued its work, incorporating comments from the fourth meeting. During 1993 and 1994, representatives of the Working Group began to promote the draft outside IUCN circles, at law meetings of other organizations in Washington DC; Bangkok, Thailand; Hyderabad, India; and Nairobi, Kenya with UNEP. For instance, Chair Hassan made a presentation on the covenant in Washington, DC at the American Society of International Law in 1993, and his paper was subsequently published in their proceedings (and also referenced in the draft Covenant).¹¹ The draft Covenant also was featured in a workshop at the IUCN General Assembly in Buenos Aires in January 1994. The Working Group's final meeting took place in September 1994 in New York with specialists in international liability also invited to refine provisions dealing with this issue. The draft was refined one last time. Richard Tarasofsky, ELC Legal Officer, worked with Alexandre Kiss and Dinah Shelton to prepare an extensive commentary explaining the background and rationale for each of the draft articles.

15 The draft Covenant was published in 1995 as part of the IUCN Environmental Policy and Law Paper Series under the title: *Draft International Covenant on Environment and Development*.¹² It was launched at the United Nations Congress on Public International Law held in New York in March 1995, as part of the UN's 50th Year anniversary celebrations. Lead participants included CEL Chair Hassan and Wolfgang Burhenne (in this event representing ICEL). On the occasion, Professor Edith Brown-Weiss (a CEL member and then president of the American Society of International Law) discussed the need for such a framework treaty bridging the sectors of environment and development.¹³ Hassan recalls that "the launch was a



Edith Brown-Weiss launches the *Draft International Covenant on Environment and Development* at the UN Congress on Public International Law, New York, March 1995

post ‘soft’ law appeal to create a legal and binding regime for States, with the Covenant being driven by the essential premise that the world community had several soft law declarations, such as the World Charter for Nature (1982), which now needed to be developed into treaty law.”¹⁴

The draft Covenant represented a work in progress document. Soon after the launch, Richard Tarasofsky, ELC Legal Officer, wrote in an ELP Newsletter: “The Draft Covenant will not end the need to conclude international treaties on environment and development. Rather, if universally adhered to, it should usher in a new era of national and international law-making, with everyone proceeding from the same legal basis.”¹⁵

The Covenant was framed in 72 articles, the first stating its objective to “achieve environmental conservation and sustainable development by establishing integrated rights and obligations”.¹⁶ To do this, it endeavored to bring together the many important sectoral, regional, and global environmental elements that had accumulated in treaties and soft law the past several decades, reinforcing and consolidating existing norms, filling gaps, and providing “a common basis upon which future lawmaking efforts might be developed”.¹⁷ It sought to move forward concepts in “an agreed single set of fundamental principles like a ‘code of conduct’”.¹⁸

First revision

In light of new international and regional developments in law and policy, the Covenant had two revisions since its initial release, in each case sufficiently major revisions to warrant a revised edition being published – a second edition in 2000, and a third in 2004.

The first revision was raised as a possibility by Wolfgang Burhenne as a member of the Law Commission Steering Committee in December 1997.¹⁹ The basis for this request to review and update the 1995 document was the need to reflect the many new developments in public international law that had occurred since it had been finalized in 1994. In addition, an ‘Earth Charter’ had emerged following the 1992 Rio Conference and it was important to ensure consistency among the principles of both texts (see below). It was finally agreed to review the text to ensure the draft Covenant reflected the latest thinking and because IUCN and ICEL were “convinced that the need for an umbrella agreement was increasing more than ever in order to knit together the principles reflected in the sectoral treaties impacting upon environment and development.”²⁰

With this in mind, IUCN and ICEL convened a small group of public international law experts in New York in May 1999 under the Chairmanship of Ambassador Ramon Piriz-Ballon, one of the principals involved with preparation of the initial draft, to initiate a review process.²¹ Consultations were undertaken with drafters of the Earth Charter to ensure consistency. Law Commission member Dinah Shelton served as the group’s Rapporteur, collecting proposals and decisions and preparing the detailed commentary for the new version, which again was presented in the form of 72 articles. On the occasion of the closing of the UN Decade of International Law, CEL and ICEL presented a revised and updated text to Member States of the UN General Assembly at their 54th Session in November 1999.

21 In 2000, this revised text was published by IUCN under the title: *Draft International Covenant on Environment and Development — Second Edition: Updated Text*.²² It was again distributed and promoted to governments and ministries of justice and environmental affairs worldwide. Also, in 2000 the CEL Steering Committee decided that it should make promotion of the draft revised Covenant among its highest priorities at the 2002 World Summit on Sustainable Development.²³ Using the precedent of human rights, where the first non-binding declaration in 1948 led finally in 1966 to binding human rights covenants, Parvez Hassan wrote in the ELP Newsletter in 2002 the hopes of CEL and ICEL for the future of the draft Covenant:

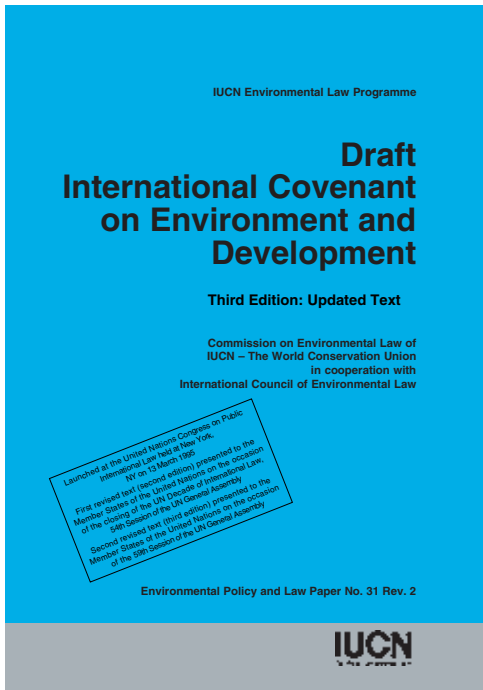
“We sincerely hope that the IUCN Draft International Covenant on Environment and Development may be used as the negotiating text in the inter-governmental process of developing a binding instrument on sustainable development. If this text reduces length of the negotiating process to less than eighteen (18) years, the efforts and vision of CEL and ICEL will have served the international community well.”²⁴

Second revision

22 The fast pace of change and growth of environmental law and development policy at the start of the new millennium justified yet another look at the draft Covenant in 2003. Again, the IUCN Commission on Environmental Law and International Council of Environmental Law convened a small meeting of experts in March 2003, this time in Bonn, at the Environmental Law Centre. The main purpose, as explained in the foreword to the eventual third edition, was

“to assess the impact on the Covenant of the results of the Johannesburg World Summit on Sustainable Development (WSSD), especially on the matter of implementation of international agreements. At the same time, it was considered desirable and convenient to revise the Covenant text as a whole to take account of other international law developments relevant to the Covenant which had occurred since the last revision.”²⁵

23 This review ended up – to the surprise of some participants – being wide-ranging, with many changes that justified a third edition. Coordinated again by Wolfgang Burhenne as a member of CEL’s Steering Committee, other reviewers included CEL Chair, Nicholas Robinson, previous CEL Chair, Parvez Hassan, and CEL member, Dinah Shelton, who agreed again to serve as Rapporteur, preparing the revised text to reflect decisions taken and revising the Commentary accordingly. Members of the UN Office of Legal Affairs in the UN Secretariat also actively participated in the review. The resulting text reflected the reviewers’ concern that the social and economic pillars of sustainable development be incorporated, rather than concentrating solely on the environmental pillar. Important new treaties and soft law instruments, including the Johannesburg Declaration and Plan of Implementation, were scrutinized for new rules and principles that needed incorporation. When the review was finished and the revised text prepared, the new draft had 75 articles, an expansion from the original 72. The final text was published in 2004



as: *Draft International Covenant on Environment and Development – Third Edition: Updated Text*.²⁶

While the Covenant continues to 24
circulate as a draft, its principles are beginning to filter into legal frameworks and legal thinking – one of the important near-term functions of the document. As reported in an ELP Newsletter in 2000: "... [I]t has been increasingly used by legislators as well as by the environment ministries in many States as a checklist to ensure that national environmental legislation covers all widely accepted principles."²⁷ Equally important, at the global level, "the call for an integrated international framework on environment and development has been growing".²⁸ It was noted at international events. As reported by Law Commission Chair Hassan in 1996, shortly after issuance of the 1995 Draft: "I attended the Second Workshop on Sustainable Development, organized by UNEP in Washington, D.C. 22–24 May [1996]. The Draft Covenant was identified as a major document for the future environment agenda; several international environmental law principles that are being recommended are influenced by the Fundamental Principles of the Draft Covenant."²⁹

Among these fundamental principles are such core concepts as the principle 25
that "every form of life is unique and to be safeguarded independent of its value to humanity"; that "nature as a whole warrants respect",³⁰ that the "global environment is a common concern of humanity,"³¹ that intergenerational equity qualifies present action;³² and that environmental protection is better achieved by preventing harm than by remedying its consequences.³³ Other provisions articulate distinct obligations of Parties in respect of the environment, individually and collectively, in general terms and as related to specific natural systems and resources, including biological diversity and cultural and natural heritage.³⁴ New, emerging, and re-emerging issues are addressed in provisions on obligations and duties, including introduction of alien or modified organisms, consumption, production, and trade concerns, and environmental harm from military activities.³⁵ The Covenant includes principles on implementation, including the need for cooperation, technology transfer, biotechnology benefit-sharing, information access and exchange.³⁶ Finally, building on 1970's work of IUCN and drawing especially on the Working Group expertise of CEL member Alfred Rest who had actively published on liability issues (see Chapter 18), an entire Part of the Covenant is devoted to 'responsibility and liability' which covers such issues as State liability for damage to another state or beyond national jurisdiction, civil remedies and recourse under domestic law.³⁷

26 The new third edition of the Covenant, by making sure the latest developments are included in the text, is a reflection of the most up-to-date picture of modern environmental law and policy. In the very first sentence of the foreword to the third edition, Burhenne on behalf of both CEL and ICEL expressed what continues to be the Environmental Law Programme's ultimate vision for the Covenant:

"The Draft Covenant is a blueprint for an international framework (or umbrella) agreement consolidating and developing existing legal principles related to environment and development. The intention is that it will remain a "living document" until – as is the hope and expectation of those who have been involved in the project – it is adopted as a basis for multilateral negotiations."

27 IUCN members at the 3rd World Conservation Congress in Bangkok, Thailand, in November 2004, took special note of the ongoing work of IUCN and especially of the Commission on Environmental Law (CEL) and the International Council of Environmental Law (ICEL) in developing, promoting, and keeping current the Draft Covenant. The Congress adopted a Resolution recognizing the many organizations and individuals involved in helping revise the text and the important support of the Elizabeth Haub Foundation for Environmental Policy and Law of Canada for providing the necessary funds to organize the meetings, and produce and publish the third edition, and requesting IUCN's Director General to continue to promote the draft, use its principles as guidance within IUCN, ensure that CEL continues to "serve as a custodian of the Draft Covenant" and continue revisions as needed.³⁸ Importantly for the future of the Covenant, the Congress 'strongly' recommended "that the Draft covenant be used as guidance for negotiations on multilateral treaties, as well as for the drafting of national legislation and policy directives."³⁹

Earth Charter – a complementary initiative

28 Motivated by the 1992 Rio Earth Summit (UNCED), two international non-governmental organizations, the Earth Council (founded in 1992 by Maurice Strong, first UNEP Executive Director, and Secretary General of the Rio Earth Summit), and Green Cross International (launched by Mikhail Gorbachev in 1993) collaborated to develop an Earth Charter as a set of principles and values to guide actions toward sustainable development. With support from the Government of The Netherlands, the Earth Council and Green Cross International organized an international experts' workshop in May 1995 at the Peace Palace in The Hague to discuss environmental and sustainable development concerns, including global security, good governance and equity, economics and trade, and inter-state relations, as guidance for preparation of the Charter.

29 By this time, CEL had already launched the draft Covenant at the United Nations Conference on Public International Law in March 1995, as noted above. As Hassan recalls, "the announcement of plans for the Earth Charter had a mixed reception in CEL. Many members of the Steering Committee were of the opinion that the work of the Earth Charter would detract from the more definitive approach of the draft Covenant."⁴⁰ However, when Chair Hassan found that CEL could not persuade the Earth Council and Green Cross International to revisit their thinking about the Earth Charter, he recom-

mended to his Steering Committee that CEL accept the invitation to assist the Earth Charter effort. In his words, “this way it would be possible to influence the development of the Earth Charter as a document harmonious with the draft Covenant.”⁴¹ This proposal was accepted by the Steering Committee. Hassan now had to communicate this decision and confirm the arrangement with Earth Charter leadership. He undertook three separate meetings, one with Ambassador Sahnoun (a principal supporter of the Earth Council) in Geneva where he was accompanied by Wolfgang Burhenne, a second with Maurice Strong in Islamabad, Pakistan, and a third with Mikhail Gorbachev at The Hague. It was agreed that the Earth Charter and the draft Covenant would be mutually supportive efforts. The understanding included an active commitment by CEL to support the drafting of the Earth Charter.

At the Hague workshop on the Earth Charter, attended by CEL Chair Hassan and Wolfgang Burhenne, Hassan opened the second day with a presentation of the Draft Covenant, as per the understanding with the sponsors of the Earth Charter. The distinction between the two instruments and the process for development of the Earth Charter were explained in the resulting Hague Workshop report:

“The Draft Covenant and the proposed Earth Charter share similar concerns but they differ considerably in their origin and character. The Draft Covenant is intended to be the basis for a legally-binding document; the Workshop decided that, by contrast, the Earth Charter is to become an instrument without a legal character, but declaratory of commitments subscribed by the citizens of the world.

“The final revised version of the Basic Elements of the Earth Charter will be prepared by a drafting group selected from the Workshop participants and the Steering Committee members and should be ready by early fall. The Earth Council and Green Cross hope to make it available for distribution before the next General Assembly of the United Nations and the beginning of the second phase of the Earth Charter initiative.”⁴²

Collaboration

Through the rest of the decade the work of the IUCN Commission on Environmental Law (CEL) and the Earth Council on their respective projects remained complementary, former CEL Chair, Parvez Hassan, taking the lead and working diligently with both organizations toward this end.

The understandings that Hassan had reached with the Earth Council and Green Cross International were fully supported by the new CEL Chair Robinson. Hassan attended meetings of the principal drafters of the Earth Charter organized by the Earth Council at the Hastings Institute, an ethics institution in New York, and in 1999 organized a meeting at the Hastings Institute of the CEL Ethics and Jurisprudence Working Group, which he chaired, and the Earth Charter drafting group. Key leadership in CEL, including Wolfgang Burhenne, Parvez Hassan, Nicholas Robinson, and others, met at length with the draftsperson of the Earth Charter, Professor Steven Rockefeller. Through these meetings several CEL members, including Alexandre Kiss, Dinah Shelton, Donna Craig, Mohamed Ali Abrougui, Donna Ponce-Nava, and Song Li participated in the drafting process, resulting in finalization of the text of the Charter.

33 The harmony between the Earth Charter and the draft Covenant, Hassan recalls, had much to do with CEL and particularly his providing dedicated support in the final stages of the drafting of the Charter.⁴³ The reference in the Earth Charter to the need for the Charter to be supplemented by a global treaty on environment and development was understood to mean a reference to the IUCN draft Covenant. As Hassan explained: “The drafting history of the Earth Charter will show the reference to the IUCN draft Covenant was dropped in the final stages of drafting, with CEL participants agreeing, only because it was felt that such a specific reference would not be in line with the generality of the Earth Charter.”⁴⁴

34 In 1998, CEL Chair Robinson created a new Law Commission Working Group on Ethics and Jurisprudence, and Parvez Hassan was appointed its Chair. Principal among the tasks of that working group was to provide ongoing support and coordination for the Earth Charter and draft Covenant on Environment and Development.⁴⁵ This group was reconstituted as the Ethics Specialist Group when Working Groups were renamed specialist groups in 2003 (see Chapter 27).

35 In 2000, the Earth Charter was officially launched at the Hague. The Commission on Environmental Law was in attendance. As reported in the ELP newsletter: “On 29 June 2000, delegates from around the world gathered in the Peace Palace at The Hague on the invitation of the Co-Chairs of the Earth Charter Commission, Mikhail Gorbachev and Maurice Strong, and in the distinguished presence of Her Majesty Queen Beatrix of the Netherlands, to officially launch the Earth Charter, declaring a compelling and universally valid ethical framework for nature conservation, environmental protection and sustainable development for the new millennium.”⁴⁶

36 At this distinguished ceremony, former CEL Chair, Pavez Hassan, was invited to speak. He noted, in part, the launch of the Earth Charter “as a ‘common standard’ by which the conduct of all individuals, organizations, businesses, governments, and transnational institutions is to be guided and assessed”; which the IUCN World Conservation Congress meeting in October 2000 “is expected to endorse ... and call upon its membership to support its wide dissemination.”⁴⁷ He expressed the hope that the international community would move more quickly than it had in the human rights sphere – where it took some 18 years to move from a declaration to legally-binding covenants, and concluded:



“We at the IUCN have tried to accelerate and jump-start the process beyond the Earth Charter by proposing a comprehensive draft Covenant on Environment and Development to follow and supplement the Earth Charter....[O]nly when the lofty principles of the Earth Charter become binding legal obligations and are implementable by people all over the world will the Earth Charter have achieved its full potential.”⁴⁸

37 After that formal launch, Hassan continued to be a key supporter and promoter of the Earth Charter, including at the final preparatory meeting in Bali, Indo-

nesia, for the 2002 World Summit on Sustainable Development (WSSD). In turn, the WSSD's Plan of Implementation acknowledged the "importance of ethics for sustainable development and ... the need to consider ethics in the implementation of Agenda 21."⁴⁹

IUCN endorsement

At the 3rd World Conservation Congress in Bangkok, Thailand, in November 2004, IUCN members endorsed the Earth Charter "as an inspirational expression of civil society's vision for building a just, sustainable and peaceful world".⁵⁰ In a Resolution reflecting this decision, the Congress recognized the Charter "as an ethical guide for IUCN policy and ... programmes", recommended that IUCN use the Charter "to advance education and dialogue on global interdependence, shared values, and ethical principles for sustainable ways of living"; and encouraged members "to determine the role the Earth Charter can play as a policy guide within their own spheres of responsibility."⁵¹

Notes

- 1 See The World Commission on Environment and Development, *Our Common Future*. (1987) (Oxford University Press: New York).
- 2 "Proposals for International Environmental Law Developments toward the Year 2000", in 16 *Environmental Policy and Law* (Nos. 3/4, 1986), p. 94.
- 3 The World Commission on Environment and Development, *Our Common Future*, pp. 332–333. (1987) (Oxford University Press: New York).
- 4 Id. at 332.
- 5 The World Commission on Environment and Development, *Our Common Future*, pp. 333. (1987) (Oxford University Press: New York).
- 6 Resolution 17.22, paras. 3 and 4, in *Proceedings of IUCN 17th General Assembly, 1–10 February 1988, San Jose, Costa Rica* (IUCN, 1988), p. 11.
- 7 IUCN Commission on Environmental Law in cooperation with International Council of Environmental Law, *Draft International Covenant on Environment and Development* (IUCN Environmental Policy and Law Paper 31) (IUCN, 1995), p. xii.
- 8 The initial expert group for this initiative comprised most active leaders and members of the Commission: W.E. Burhenne (Chairman), A. Adede, M. Forster, L. Gündling, P. Hassan, A. Kiss, C. de Klemm, S. McCaffrey, D. Munro, A. Postiglione, A. Rest, N. Robinson, P. Széll, A. Timoshenko, B. Vukas, F. Burhenne-Guilmin and E. Michos-Ederer. See "Report of the Chairman of the Commission on Environmental Policy, Law and Administration", in "IUCN Report to the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia", p. 84.
- 9 Hassan, P., "The IUCN draft International Covenant on Environment and Development: Background and Prospects" in A. Kiss and F. Burhenne-Guilmin (eds.), *A Law for the Environment: Essays in Honour of Wolfgang E. Burhenne*, (IUCN, 1994), p. 40.
- 10 The drafting committee was composed of Parvez Hassan, Wolfgang Burhenne, Nicholas Robinson, Stephen McCaffrey, Andronico O. Adede, and Alexandre Kiss. These individuals were also the core of the Working Group. See Hassan, P. "The IUCN Draft International Covenant on Environment and Development: Background and Prospects" in A. Kiss and F. Burhenne-Guilmin (eds.), *A Law for the Environment: Essays in Honour of Wolfgang E. Burhenne* (IUCN: Gland, 1994), p. 41.
- 11 See Hassan, P., "Toward an International Covenant on Environment and Development" in *American Society of International Law (ASIL) Proceedings 1993*, pp. 513–522.
- 12 See IUCN Environmental Law Centre, *Draft International Covenant on Environment and Development* (IUCN Environmental Policy and Law Paper No. 31) (A project of the IUCN Com-

- mission on Environmental Law in cooperation with International Council of Environmental Law) (IUCN: 1995)
- 13 See Burhenne, W., and N. Robinson, "Foreword to the Second Edition", p. xi, *Draft International Covenant on Environment and Development. Second Edition: Updated Text* (IUCN Environmental Policy and Law Paper No. 31 Rev.) (IUCN, 2000).
- 14 Communication from Parvez Hassan on draft History, April 6, 2006 (Bonn, Germany).
- 15 Tarasofsky, R.G., "Why the Draft International Covenant on Environment and Development?" in Jan–Mar. *IUCN Environmental Law Programme Newsletter* (1995), pp. 3–4.
- 16 IUCN Commission on Environmental Law in cooperation with International Council of Environmental Law, *Draft International Covenant on Environment and Development*. (IUCN Environmental Policy and Law Paper No. 31) (1995), p. 2.
- 17 Id. at x.
- 18 Id.
- 19 See Robinson, N., "Commission on Environmental Law Report to Council: May–November 1997", p. 65 (attached to "Minutes of 47th Meeting of the IUCN Council 2–3 December 1997").
- 20 Id.
- 21 Buenker, M., "Updated Draft International Covenant on Environment and Development released" in *IUCN Environmental Law Programme Newsletter* (January–April 2000), p. 16.
- 22 See IUCN Commission on Environmental Law in cooperation with International Council of Environmental Law, *Draft International Covenant on Environment and Development. Second Edition: Updated Text* (IUCN Environmental Policy and Law Paper No. 31 Rev.) (IUCN, 2000).
- 23 The other issue was Principle 10 of the Rio Declaration.
- 24 Hassan, P., "IUCN Draft International Covenant on Environment and Development" in *IUCN Environmental Law Programme Newsletter* (No. 1, 2002), p. 29.
- 25 Burhenne, W., "Foreword to the Third Edition", p. xi, *Draft International Covenant on Environment and Development – Third Edition: Updated Text* (IUCN Environmental Policy and Law Paper No. 31 Rev. 2) (IUCN:2004).
- 26 See IUCN Commission on Environmental Law in cooperation with International Council of Environmental Law, *Draft International Covenant on Environment and Development – Third Edition: Updated Text* (IUCN Environmental Policy and Law Paper No. 31 Rev. 2) (IUCN: 2004)
- 27 Buenker, M., "Updated Draft International Covenant on Environment and Development Released" in *IUCN Environmental Law Programme Newsletter* (January–April 2000), p. 16.
- 28 Id.
- 29 Hassan, P. "Letter from the Chair" in *IUCN Environmental Law Programme Newsletter* (April–June 1996), p. 3.
- 30 *Draft International Covenant on Environment and Development – Third Edition: Updated Text* (IUCN Environmental Policy and Law Paper No. 31 Rev. 2) (IUCN, 2004), Article 2.
- 31 Id. at Article 3.
- 32 Id. at Article 4.
- 33 Id. at Article 5.
- 34 Id. at Part IV, Articles 16–22.
- 35 Id. at Part V, Articles 23–32.
- 36 Id. at Part VIII, Articles 36–48.
- 37 Id. at Part IX, Articles 49–58.
- 38 Resolution 3.021, in "Adopted Resolutions and Recommendations", 3rd *World Conservation Congress*, Bangkok, Thailand, 17–25 November 2004. See IUCN's web site at: www.iucn.org/congress/index.cfm (researched 12/30/05).
- 39 Id. at para. 2.
- 40 Communication from Parvez Hassan on draft, April 6, 2006 (Bonn, Germany).
- 41 Id.
- 42 "Earth Charter Initiative" in *IUCN Environmental Law Programme Newsletter* (April–June 1995), p. 8. (excerpted from Earth Charter Workshop preliminary report, 31 May 1995.)
- 43 Communication from Parvez Hassan on draft, April 6, 2006 (Bonn, Germany).

- 44 Id.
- 45 Email attachment from Ron Engel, Co-Chair, CEL Ethics Specialist Group, “The Contributions of IUCN to the Ethics of World Conservation, Chronology 1948–2004” (draft November 2004), p. 11. Email correspondence from Ron Engel to Françoise Burhenne-Guilmin, dated January 19, 2006, subject: CEL Specialist Group on Ethics (forwarded to author January 19, 2006).
- 46 See Note preface to “The Earth Charter: The Journey from the Hague 2000” in *IUCN Environmental Law Programme Newsletter* (May–August 2000), p. 22.
- 47 Hassan, P. “The Earth Charter: The Journey from the Hague 2000” in *IUCN Environmental Law Programme Newsletter* (May–August 2000), p. 22.
- 48 Id.
- 49 “Plan of Implementation”, *World Summit on Sustainable Development*, para. 6 (2002).
- 50 Resolution 3.022, para. 1, in “Adopted Resolutions and Recommendations”, 3rd *World Conservation Congress*, Bangkok, Thailand, 17–25 Nov. 2004 (see IUCN’s web site: www.iucn.org/congress/index.cfm (researched 12/30/05)).
- 51 Resolution 3.022, paras. 2–4, in “Adopted Resolutions and Recommendations”, 3rd *World Conservation Congress*, Bangkok, Thailand, 17–25 November 2004. Available on IUCN’s web site at: www.iucn.org/congress/index.cfm (Researched 12/30/05).

Part 7

Entering the 21st Century

By the 2000s, IUCN was into its sixth decade of operations and the world's largest environmental network. Between 2000 and 2004 (when this History closes), the Union convened two Congresses of members, the Second World Conservation Congress in Amman, Jordan, 4–11 October 2000, and the Third World Conservation Congress in Bangkok, Thailand, 17–25 November 2004. From its modest beginning in 1948, where 18 Governments signed the founding Constitution, by the close of 2004 IUCN had grown to 82 state members, 112 government agencies, 768 national NGOs, 82 international NGOs and 34 affiliate members.¹ By the close of 2004, IUCN has some 1000 staff located in 62 countries, with Headquarters continuing in Gland, Switzerland. The 2004 Congress had drawn some 4800 people from across the globe, including more than 40 Ministers, almost 1000 scientists, more than 200 business representatives, and hundreds of non-governmental organizations.² The Law Commission was approaching 1000 members.³

IUCN's mission into the 21st century remained true to its founders' concern for nature and the natural environment (as reflected in the revised statutes of 1996): "to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and ensure that any use of natural resources is equitable and ecologically sustainable."⁴ Its policy of 'regionalization' as a central means for fulfilling this mission remained strong. The 2000 World Conservation Congress requested IUCN Director General Maritta Koch-Weser to "further encourage regionalization of the Secretariat's Component Programmes in all regions, ...support Regional Offices, ... enabling them to work with members and Commissions to ensure a systematic approach to regionalization; [and] ensure coherence between IUCN's global and regional programmes...."⁵

Of special note, the Union began 2000 with a new status in the international community. After extensive work on documentation and with the support of IUCN Member States and organizations worldwide, IUCN received approval from the United Nations General Assembly on December 17, 1999, to be a Permanent Observer to the UNGA [see Box 1 below]. This made IUCN the first and only organization with a primarily environmental mission to receive this distinction. IUCN joined the International Committee of the Red Cross (ICRC) in this unique observer status, since neither was purely intergovernmental.

The UNGA decision also had significant implications for the legal standing of IUCN in the international community and how it represented members' interests, because the Union now would be recognized in UN meetings as an international organization with the same status as other international organizations with member states (e.g., the development banks, European Community, League of Arab States, Organization of American States, International Tribunal for the Law of the Sea, and many more).⁶ Its previous status with the UN had been as an international non-governmental organization with special consultative status to the United Nations ECOSOC, the normal avenue for NGOs to participate in the United Nations. The

new status would require even more sensitive balancing between the interests of its State members and non-governmental members when making interventions as a Permanent Observer to the United Nations.

5 The Union's 2001–2004 activities were cast within a new 10-year strategic framework and laid out in the document: "Stepping into the New Millennium, IUCN's Intersessional Programme." The goal was to "shift from a process-oriented, fragmented programme to a result-oriented, integrated programme."⁷ This was in response, largely, to findings from a 1999 External Review that current programmes were fragmented especially across global and regional programmes, and between thematic programmes and regional operations, and that a more "balanced overall structure" was needed.⁸ In addition, programming was found to be too process-oriented and not sufficiently results-oriented.

6 In response, the new framework introduced 'key result areas (KRAs)' of work as the "basis for integration of the Programme; and for building teams comprising both Commissions and programme units within the Secretariat, at national, regional and global levels."⁹ CEL Deputy Chair Ben Boer participated on the Programme Committee, promoting the idea of KRAs as a way to reshape IUCN's Programme; the IUCN Council agreed to this new approach as a way to focus priorities and marshal effectiveness.¹⁰ This framework began to be applied to the 2001 programme and was continued into the next planning period (2005–2008) in a document adopted by the 2004 Congress entitled "Many Voices, One Earth: The IUCN Programme 2005–2008". The framework had six areas of emphasis where results were to be measured: 1) understanding biodiversity, 2) social equity, 3) conservation incentives and finance, 4) international agreements, processes and institutions for conservation, 5) ecosystems and sustainable livelihoods, 6) programme delivery.¹¹ According to a 2003 External Review, the new approach proved to be effective for the programme had been "transformed from a weakness to a strength."¹²

7 In addition to addressing External Reviews, IUCN aimed to respond to and incorporate, through its programming, recent international events and commitments made by States, especially since the last World Conservation Congress in 2000. The programme submitted to the 2004 World Conservation Congress for the coming period 2005–2008, in particular, recognized declarations of the World Summit for Sustainable Development (WSSD) and its Plan of Implementation (2002), the UN Millennium Declaration (2000), and the Monterrey Consensus (from the International Conference on Financing for Development held in Monterrey, Mexico, 2002).¹³ It aimed as well to move forward the debate about the role of environment in sustainable development – a concept laid out in Agenda 21 and reinforced by the WSSD. Recognizing the "three pillars" of sustainable development (economic, social, environmental), the 2004 programme document indicated its aim to "explicitly [seek] to improve the attention of decision makers on the role of a healthy environment in sustainability by expanding the role of the environment in sustainable development."¹⁴

8 These organizational goals and approaches guided all components of the Union, including the Environmental Law Programme, through the early and mid-years of the first decade of the 21st century (the 2000s). In that context, the ELP continued to evolve and grow in management and member involvement (see Chapter 27). Its

technology-based services launched a new era of electronic communications on a range of fronts, from improved access to legislation and news to making available full texts of publications (Chapter 28). New partnerships were formed and strengthened at regional and national levels, especially in developing countries, to increase the collective capacity to advance environmental law at all levels (Chapter 29). Finally, ELP and especially the Commission on Environmental Law increasingly began making contributions in areas considered by some to be ‘second generation environmental law’ (Chapter 30) and other areas that were re-emerging or new to the field (Chapter 31).

Box 1: IUCN Gains UN Observer Status

9

Historically, the United Nations, its specialized agencies and programmes were important to IUCN’s mission. As discussed in previous chapters, UNESCO was key to IUCN’s founding, FAO was an early participant, and over the years, UNEP, WHO, IMO, and the development banks, among others, were collaborators on international and national conservation initiatives. Convention secretariats gave IUCN special responsibilities with a number of international conservation agreements. By the mid 1990s, IUCN’s office in Washington, DC, (set up in 1986, see the introduction to Part 5) had a growing policy role, in addition to its other functions, coordinating IUCN’s multilateral representations with international organizations in Washington and New York, especially the World Bank and the United Nations.

Recognizing the importance of the United Nations to IUCN’s mission, IUCN members and CEL leadership requested IUCN’s Council at the 1996 World Conservation Congress to examine how the Union could collaborate more closely with the many organs of the UN.¹⁵ One outcome of this examination was a proposal from Council that IUCN seek Permanent Observer status with the UN General Assembly. IUCN Director General McDowell asked CEL Chair Nicholas Robinson (in his capacity as Legal Adviser) to take a lead role in undertaking the necessary steps for consideration by the General Assembly. Working closely with IUCN’s Representative at the United Nations Headquarters, Ambassador Bhagwat-Singh (an ICCEL member), and with IUCN’s President, Yolanda Kakabadse, who at the time was Ecuador’s Environment Minister, Robinson prepared the documentation for an application and continued as the lead to fine-tune the application through the process. Ecuador’s Mission to the UN sponsored the proposal to invite IUCN to be an official Observer. Bhagwat-Singh and Robinson undertook extensive consultations with delegations between capitals of UN Member States and their missions to ensure that instructions were provided to support IUCN’s application, and Robinson traveled to confer with foreign ministries in Moscow, Beijing, and Washington, while Bhagwat-Singh held high-level talks with contact groups on the text of the actual resolution to rally support. Yolanda Kakabadse, members of the IUCN Council, past and present Director Generals, IUCN staff, and IUCN members all contributed countless hours to pursue formal and informal consultations and meetings, and to assist those delegates who would speak in favor of the proposal.

The result of this intensive effort was the UN General Assembly decision on December 17, 1999 to invite IUCN to be a UN General Assembly Observer. The Resolution laid out the decision as follows:

“Considering the importance of the International Union for the Conservation of Nature and Natural Resources,

Considering also the need, frequently noted by the United Nations, to promote and support every effort towards the conservation of nature,

Taking into account that the main objective of the International Union for the Conservation of Nature and Natural Resources is to encourage and assist the international community in conserving the integrity and diversity of nature,

Wishing to promote cooperation between the United Nations and the International Union for the Conservation of Nature and Natural Resources,

*Decides to invite the International Union for the Conservation of Nature and Natural Resources to participate in the sessions and work of the General Assembly in the capacity of observer.”*¹⁶

This new status represented a significant advance from the special consultative status IUCN had enjoyed since the early 1950s as a non-governmental organization with the United Nations Economic and Social Council (ECOSOC) (a distinction it relinquished before seeking to hold status as an intergovernmental organization).¹⁷ ECOSOC normally was the avenue by which *non-governmental organizations* took a role in formal UN deliberations; the UNGA “observer” status now put IUCN in the league of *intergovernmental organizations* representing State members of IUCN.

The Second World Conservation Congress in 2000 took special note of IUCN’s new responsibilities: “Mindful that environmental issues continue to assume a greater role on the agendas of many multilateral organizations, ...IUCN is the only international observer organization in the UN General Assembly with expertise in issues concerned with the environment, biodiversity, nature conservation and sustainable natural resource use, and ... [it] will therefore be called upon increasingly to contribute its expertise to the United Nations and other multilateral organizations...”¹⁸

IUCN’s new UNGA observer status presented potentially significant new opportunities for the Environmental Law Programme. As Robinson explained in an ELP Newsletter soon after the UNGA decision: “Of the over 150 items included each year on the General Assembly’s agenda, over 30 are directly relevant to environmental law, and this trend is growing.”¹⁹ The issue of an IUCN office or dedicated staff position in New York was considered, but declined for financial reasons, by both the 2000 and 2004 World Conservation Congresses which welcomed continued volunteer assistance. Recognizing the assistance already provided by CEL and ELP, the 2004 Congress also requested CEL to continue “its assistance to the IUCN Director General, through volunteer qualified legal experts”, and invited “other Commissions to assist with the submission of appropriate expert scientific and technical advice.”²⁰

IUCN Director General Maritta Koch-Weser established IUCN’s Permanent Observer Mission in New York and appointed Bhagwat-Singh as Ambassador, Permanent Observer; Nicholas Robinson as the Mission’s Legal Adviser (through 2004); Anna Holzner as Attaché. In 2004, Diane Jumet succeeded Anna Holzner.²¹

Notes

- 1 See “Part III. Text of the Constitution of the International Union for the Protection of Nature” in *International Union for the Protection of Nature* (IUPN, 1948), p. 23 contains the list of Governments that signed the document. For current membership of IUCN, see IUCN’s web page at: www.iucn.org/members. The figures shown reflect numbers as of March 2005, tabulated following the results of the 2004 World Conservation Congress (researched April 13, 2005). These numbers normally fluctuate as the status of members changes. For example, in October 2005, the numbers changed slightly for national NGOs (from 768 to 784), international NGOs (from 82 to 84) and affiliates (from 33–34) (researched October 16, 2005). By the close of 2005, there had been further changes – national NGOs (down to 775) and government agencies at 113 (researched December 11, 2005).
- 2 See the IUCN web site on the Third World Conservation Congress at www.iucn.org/congress (researched on 4/14/2005).
- 3 Scanlon, J., “Environmental Law Programme – Overview”, ELP’s web site: www.iucn.org/themes/law (as of 14 December 2004).*
- 4 This statement is on IUCN’s web page at: www.iucn.org, category “Overview”, heading: “What is the World Conservation Union”, para. 2 (researched 2/28/05 and again 12/11/05). The statement also can be found in Part II – Objectives, para. 2, of “IUCN Statutes of 5 October 1948, revised on 22 October 1996” (IUCN, 2002).

- 5 Resolution 2.5, *Resolutions and Recommendations, World Conservation Congress, 4–11 October 2000* (IUCN, Switzerland, 2001), p. 5.
- 6 A list of entities and organizations having a standing invitation to participate as Permanent Observers in the work of the General Assembly can be found on the United Nations web site at: www.un.org, category: “Main Bodies”, subcategory: “General Assembly”, subcategory: “Observers”.
- 7 See IUCN – The World Conservation Union, “The External Review of the IUCN Programme”, Addendum 1 to Congress paper CGR/2/2000/2: “Information Document for the 18th Sitting of the World Conservation Congress Friday 6 October 2000”, pp. 23–25 (IUCN, June 1999).
- 8 IUCN – World Conservation Union, “Stepping into the New Millennium: Intersessional Programme” (adopted at the World Conservation Congress, Amman, Jordan, 4–11 October 2000) p. 16 (IUCN, 2001).
- 9 Id. at 15.
- 10 Communication from Nicholas Robinson on December 2005 draft, transmitted to author by cover letter dated March 7, 2006.
- 11 See IUCN – World Conservation Union, “Many Voices, One Earth: The IUCN Programme 2005–2008” (adopted at the World Conservation Congress, Bangkok, Thailand, 17–25 November 2004).
- 12 Bruszt, G., T. Ammour, J. Claussen, Z. Ofir, N.C. Saxena, and S. Turner, “Summary of the 2003 External Review of IUCN” (Attachment 1 of “IUCN’s Response to the 2003 External Review of IUCN, April 2004”, also labeled as Congress Paper CGR/3/2004/10), p. 71.
- 13 See “World Summit on Sustainable Development Plan of Implementation” adopted at the 17th plenary meeting on 4 September 2002, see UN Doc. A/Conf.199/20; “UN Millennium Declaration”, adopted by the UN General Assembly 18 September 2000 (see UN Doc. A/RES/55/2); “Monterrey Consensus of the International Conference on Financing for Development”, adopted on 22 March 2002 (see UN Doc. A/Conf. 198/11).
- 14 IUCN – The World Conservation Union, “The IUCN Programme 2005–2008: Many Voices, One Earth” (adopted at the World Conservation Congress, Bangkok, Thailand, 17–25 November 2004), p. 5 (IUCN, Nov. 2004).
- 15 Resolution 1.80, “Resolutions and Recommendations of the World Conservation Congress 13–23 October 1996, Montreal, Canada” (IUCN, 1997).
- 16 UN Resolution A/RES/54/195 (17 December 1999).
- 17 Communication with Nicholas Robinson on December 2005 draft, transmitted to author by cover letter dated March 7, 2006.
- 18 Resolution 2.10, in *Resolutions and Recommendations of the World Conservation Congress 4–11 October 2000, Amman, Jordan* (IUCN, 2001).
- 19 Nicholas Robinson “Chairman’s Letter – January 2000” in *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 3.
- 20 Resolution 3.023 of the World Conservation Congress, Bangkok, Thailand, 17–25 November 2004, available on IUCN’s web site: www.iucn.org, heading: “World Conservation Congress” (researched 04/14/2005).
- 21 In 2005, Nicholas Robinson resigned as the Mission’s Legal Adviser; communication on December 2005 draft, transmitted to author by cover letter dated March 7, 2006.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 27: Evolving Programme

By 2000, the Environmental Law Programme had grown to a sizeable network of individuals and organizations, with a complement of programmes spanning all levels, from global to local. From some five members in the early 1960s, the Commission on Environmental Law had nearly a 1000 members at the close of 2004. From one staff, Françoise Burhenne-Guilmin in 1970, the Environmental Law Centre now had some 15 professional posts in Bonn and had built partnerships with many environmental law organizations in developing countries, including 13 with which it had signed memoranda of agreement (discussed in Chapter 29).¹

The new century began with CEL Chair Nicholas Robinson's re-election by the 2000 World Conservation Congress for a second term to run through the end of 2004 [see Box 1 below]. This second term provided continuity for ELP in the midst of other management changes and gave Robinson the opportunity to continue a number of his and Hassan's initiatives of the 1990s, seeing concrete results in several priority areas, including particularly the IUCN Academy of Environmental Law and the judiciary.

Regionalization remained a central focus of ELP's programming. This Chapter reviews administrative and management changes during the period roughly from 2000 through 2004, measures taken by the Commission to continue to strengthen and expand membership involvement, and ELP's first formal strategic planning exercise.

Box 1: Professor Nicholas Robinson (CEL Chair: 1996–2004)

By the time of Professor Robinson's election as CEL Chair in 1996, he already had contributed more than two decades of volunteer service to the Law Commission and IUCN, and had built a distinguished career in environmental law. During the 1972 Stockholm Conference the Burhennes first met Robinson, then leading the Sierra Club delegation, and invited him to join the Law Commission. Thereafter, he pursued many collaborative projects with the Commission and Law Centre. In the 1980s, he had helped draft the World Charter for Nature and contributed to early work on the Convention on Biological Diversity. He was Chair of one of the Law Commission's first three working groups under Burhenne's chairmanship, the Working Group on Environmental Impact Assessment. As Deputy Chair for CEL Chair Hassan during 1990–1996, Robinson actively supported Hassan's emphasis on developing countries. He participated in such international events as the 1992 United Nations Earth Summit in Rio de Janeiro, and edited resulting proceedings for IUCN. In 1994, Robinson became chair of the Legal Drafting Group of the IUCN Statutes Review Committee which Hassan chaired, working closely with IUCN Headquarters and members. He led the team of the CEL faculty who developed and taught the first IUCN ELP 'Training the Trainers' course in Singapore in 1997–98, editing the resulting published course materials with CEL Vice-Chairs Donna Craig of Australia and Koh Kheng-Lian of Singapore, and promoted similar initiatives in other regions.²

Among his achievements at IUCN, Professor Robinson expanded the scope of CEL's reach to include building the capacity of the courts with respect to applying and enforcing environmental laws. He organized and launched a Judiciary Specialist Group, chaired by Justice Paul Stein of Australia, lectured at UNEP's Judicial Symposia in Colombo, Manila and Johannesburg, and led organization of the first such judicial symposia for West Europe (London, 2001), the Arab World (Kuwait, 2002), Eurasia (L'viv, 2003), and North America (New York, 2004) (see Chapter 29 on the new emphasis on the judiciary).

Based on his CEL leadership in building capacity to teach environmental law in Asian university law faculties from 1996–1998, Professor Robinson conducted a set of negotiations with law schools throughout the world to establish the first consortium of law schools on any subject: an Academy of Environmental Law. As discussed in Chapter 29, the initiative was endorsed by the IUCN World Conservation Congress, and launched in 2003 at the Academy's First Colloquium on Energy Law and Sustainable Development at Shanghai Jiao Tong University in China. The colloquium was instituted as an annual event to cover a different topic in a different host university and country each year (Kenya in 2004, Australia in 2005, New York in 2006). Through his efforts, Cambridge University Press agreed to publish the Academy's research studies resulting from each colloquium.

Before coming to IUCN, Robinson already had developed a strong environmental law record, having been named in 1969 to the Legal Advisory Committee of the President's Council on Environmental Quality. After getting a law degree from Columbia University, he helped municipalities with environmental issues and, among other positions, was General Counsel of the New York State Department of Environmental Conservation, drafting New York state's early wetlands and wild bird laws. He served under five U.S. presidents undertaking environmental law negotiations with the Soviet Union, and was an International Fellow at the Council on Foreign Relations. He led establishment of the Sierra Club's international program and served on its Board as International Vice President. In 1978, he helped establish the Pace University School of Law in White Plains, New York, and founded its environmental law program. As Co-Director of its Center for Environmental Legal Studies, he helped the school build a national and international reputation. In 1999, Professor Robinson became the first Gilbert and Sarah Kerlin Distinguished Professor in Environmental Law, a chair endowed to expand the school's programs of research, education, professional and scholarly activity and publications in environmental law.

Professor Robinson has authored many publications, including two treatises on environmental law which have been translated into Russian and Chinese. He has received distinctions and awards, including the Elizabeth Haub Prize for Environmental Law in 1992, and the Natural Resources Council of America 'National Environmental Quality Award' in 2002. In June 2004, the IUCN member and ELP 'partner centre' Brazilian Law for a Green Planet Institute at its 8th International Conference on Environmental Law paid tribute to Professor Robinson for his "leadership in advancing environmental law for sustainable development."³ In September 2004 he was honored with the Natural Resources Law Institute Distinguished Visitor award at the Lewis & Clark Law



School and his guest lecture became the published essay “IUCN as Catalyst for a Law of the Biosphere: Acting Globally and Locally”.⁴ That year the Sierra Club elected him an “Honorary Vice President.”

Among the many initiatives he supported as CEL Chair, two lasting contributions will be the establishment of the IUCN Academy of Environmental Law, and the increasingly self-energizing Commission specialist groups working on conceptual development of environmental law. For IUCN overall, it will surely be his leadership as Legal Advisor (from 1996–2004) in helping IUCN gain Permanent Observer status to the UN General Assembly.

Administrative changes

New premises

The original location of IUCN’s environmental law activities since the 1960s, the historic villa at Adenauerallee 214 in Bonn, Germany, had begun by the late 1980s to present severe limitations to the growth of the programme, and this was the subject of consultations in 1990–91 between IUCN’s Director General Holdgate and the German Ministry of the Environment.⁵ A key issue was whether Germany might consider supporting new premises in Bonn. As the response was uncertain, IUCN’s Council, in a meeting in November 1992, began to face the prospect that it might need to transfer the ELC (with ELIS, the hard copy library, archives, and other resources) to another location, possibly the Maison pour l’environnement being established by the Swiss Government for environmental institutions in Geneva.⁶

Some six years later, in December 1998, negotiations were successfully concluded and IUCN was offered rent-free and on a long-term basis the use of a five-story building in Bonn, near the Federal Ministry of the Environment and other government buildings some of which were now converted to other uses because of



December 1998: F. Burhenne and the representative of the Federal Ministry of the Environment exchange copies of the agreement concerning the IUCN-ELC premises at Godesberger Allee 108–112 in Bonn

the move of the capital to Berlin.⁷ The new address was Godesberger Allee 108–112 and the premises came with newly-renovated space, new furniture, state-of-the-art communications equipment, ample meeting space, and storage facilities for the archives.



IUCN-ELP home in Bonn since January 1999

7 ELC’s Head, Françoise Burhenne-Guilmin, led the negotiations and directed preparation of the building and readiness of the staff for moving, which occurred during the first half of 1999. The German Federal Ministry of Environment (BMU) and IUCN formally inaugurated the new premises on March 24, 1999. The ceremony was held at the German Museum on Godesberger Allee, half-way between ELC’s ‘old’ home and its ‘new’. Displays included IUCN’s 50th Anniversary posters and the text of the Charter for Nature in all available languages.⁸ Maritta R. von Bieberstein Koch-Weser, Director General of IUCN, addressed the audience along with BMU State Secretary Gila Altmann and the Lord Mayor of Bonn, Bärbel Dieckmann. A message from Klaus Töpfer, Executive Director of UNEP, was conveyed on his behalf by Wolfgang Burhenne. Also attending was Erivan Haub representing the Haub Foundations which supported many IUCN and ICEL environmental law initiatives over the years (see Chapter 11). As CEL Chair, Robinson attended the event, along with the entire Steering Committee, which then held its first meeting in 1999 at the new ELC offices to coincide with the inaugural celebrations.⁹

8 Françoise Burhenne-Guilmin reflected in the next ELP Newsletter: “The old and charming building, which was the host of the programme for so long, will be remembered fondly by those who identified it over the years with environmental law and IUCN.”¹⁰ The building, known by some long-time locals as the Villa Salviati,

had a distinguished history. It was home in the early 20th century to Prince Salvati and his bride, the daughter of the last Kaiser of Germany, Wilhelm II (1859–1941). Françoise recalls when she came to Bonn in the 1960s, “someone who had been employed by the Salvatis still lived in the upper tower of the house, and described the Salvatis’ presentation of their first baby to the ‘people of Bonn’ from the stairs which went into the garden.”¹¹

However, it is the building across the street, the Palais Schaumburg, that remained most memorable for some ELP staff because of the dignitaries coming and going when it was a second headquarters for the federal chancellor. Lyle Glowka, ELC Legal Officer for Biodiversity from 1993–1999, visited the Palais as a tourist in 2004 (for now the building is a recommended sightseeing stop) and reflected to Françoise that the “Adenauerallee filled with flags when heads of state visited, and seeing the photos of dignitaries that passed through, I really felt that Wolfgang and you (and we all) had a bird’s eye view on a significant portion of German history.”¹² 9

New management

With the new premises in hand and preparations for the 2000 World Conservation Congress well under way, Françoise Burhenne-Guilmin formalized her plans for retirement as Head of the Environmental Law Centre after some 30 years at the helm. In early 1999, she announced her decision to resign before the 2000 WCC and began the process of recruiting a replacement. She confirmed her commitment to continue with ELC as Senior Counsel to support the transition and, later on, to work on specific projects. 10

This would be a turning point for the ELC since Françoise had been in charge of the Environmental Law Centre since its inception in 1970, and had built its programme hand-in-hand with that of the Commission. However, John Scanlon (a subsequent Director) offered the view that “her decision to remain with the ELC as Senior Counsel ensured her extraordinary expertise was not lost to the Programme.”¹³ 11

In tribute to Françoise, Nicholas Robinson, CEL Chair, wrote to Law Commission members in 1999: 12

“On 1 July 1999, our colleague and friend, Dr. Françoise Burhenne-Guilmin, concluded her tenure as Head of the IUCN Environmental Law Centre. As the architect and author of the move to new offices in Bonn, the new IUCN ELC physically attests daily to her dedication and accomplishment. Without her, it would not be!

“But the more telling testimony is found in the ideas now embedded in the Convention on Biological Diversity, or in the World Charter for Nature, or in the ASEAN Convention on Conservation of Nature and Natural Resources, or in myriad other treaties and national laws where her drafting precision, her brilliance for conceptualizing a new legal idea, and her prodigious capacity for hard work are evident. Françoise’ legacy is alive in the law she helped to create. She is truly the “Mother” of biodiversity law, a field that most felt was but a wild dream as recently as 1986.

“...Her work has gained her many international awards, which she modestly and graciously accepts and puts aside as she launches into her next work.”¹⁴

13 Françoise Burhenne-Guilmin's resignation brought turnover to the post for the first time. There have been two successive ELC Heads as of the end of 2004, each bringing new ideas and fresh energy along with new management styles and programme priorities.

14 In 1999, Charles Di Leva, an American lawyer specializing in environmental law, with considerable international experience, followed Françoise to head the Environmental Law Centre and Environmental Law Programme. Di Leva was recruited from the World Bank, where he had served as Senior Counsel in Environmental and International Law. Di Leva's assignment with IUCN was under the auspices of the World Bank Staff Exchange Programme. He returned to the Bank when his two-year commitment was completed. Di Leva served through the end of July 2001. [See Box 2 below]

15 **Box 2: Charles Di Leva (Head of ELP: July 1999 – July 2001)**



Charles Di Leva, appointed in 1999 to replace Françoise Burhenne-Guilmin as Head of ELC, had the new dual title: Head of the Environmental Law Programme and General Counsel to the Director General of IUCN. Charles brought over 20 years of environmental law experience in the public and private sectors, much of this at the international level. Prior to joining ELC, he had served as Senior Counsel in the Environment and International Law Unit of the World Bank's Legal Department (to which he returned in 2001). He also had been a trial attorney in the Enforcement Division of the US Department of Justice. At the United Nations Environment Programme in Nairobi, during the late 1980s, he had been Senior Programme Officer with the Environmental Law Unit. At the time of his appointment, he also was Adjunct Professor teaching environmental law at both the American and George Washington Universities.

At ELP, his priorities included supporting regionalization of the law programme, a unified environmental law programme and plan (ELC and CEL), and improved communications. He built up the ELC legal staff, recruiting a number of talented lawyers including Alejandro Iza (some years later to become ELC Director). He promoted the use of regional and thematic focal points and support to the CEL regional Vice Chairs. He placed emphasis on the role of the Environmental Law Centre in regionalizing the ELP, particularly through the BMZ Regionalization Project (see Ch. 24). Di Leva also strengthened ELP participation in such international law areas as climate change; with expertise in that thematic area, he participated directly in various meetings associated with the Climate Change Convention. He developed the CEL forum as the first electronic network for Commission members, expanded the Newsletter, and supported expansion of ECOLEX to include FAO.

In 2001, John Scanlon, an Australian environmental lawyer with significant experience in senior management, was recruited as the next ELP Head and Director of the Environmental Law Centre, serving through the end of January 2005. With a Master of Laws (Environment) from the Australian Centre for Environmental Law in Adelaide, he had worked in the public and private sectors, with academic institutions and non-governmental organizations, in developing countries, and internationally. Scanlon led a number of initiatives discussed in subsequent chapters of this Part. [See Box 3 below]

Box 3: John Scanlon (ELP Head/ELC Director: Oct. 2001 – Jan. 2005)

John Scanlon, from Australia, joined IUCN in October 2001 to succeed Charles Di Leva, with the new title: Head of the Environmental Law Programme and Director of the Environmental Law Centre. John brought some 18 years of legal, policy, and senior management experience to the post. Admitted to legal practice in Australia in 1984, he also was an accredited mediator. He was first appointed as a member of the IUCN Commission on Environmental Law in 1995.

Scanlon had broad international experience including serving as advisor to the Secretary General of the World Commission on Dams (Cape Town) and providing technical advice to the World Bank's Russian Federation Environment Management Project and Guyana Environmental Management Project, and the National Environmental Agency of Vietnam, as well as USAID's Okavango Integrated River Basin Management Project in Botswana. He provided technical advice on projects in more than 25 countries. In Australia, among other posts, he served as Chief Executive, Department of Environment, Heritage and Aboriginal Affairs (Adelaide), where he led the state's negotiations on the review of roles and responsibilities of the Commonwealth, States and Territories in relation to the environment and Commonwealth environmental law reform. Scanlon also served as Acting Policy Adviser, Federal Minister for Environment and Heritage (Canberra); and Chief of Staff, South Australian Ministry for Environment and Natural Resources. He had been Partner in the Australian law firm, Ward and Partners, in the specialized Environment, Local Government and Planning Law Practice Group, and was President of the National Environmental Law Association of Australia (South Australia Division) representing the Association at the 1992 Rio Earth Summit, and founding Chair of the South Australian Environmental Law Community Advisory Service (now named the Environmental Defender's Office (SA)).



As Head of ELP, John focused on strengthening working relationships between ELC staff and Commission members and on forming partnerships with international and national organizations. Among accomplishments were his efforts to transform and upgrade the Programme's communication system, developing a state-of-the-art environmental law web site, improving the newsletter, and making documents and news available online. During his tenure, the Programme also was strengthened in its participation in current and emerging areas of international environmental law and policy, including particularly the judiciary, water law, energy law, and governance. He launched a major capacity-building initiative focused especially on developing countries and managed the release of over 20 substantive publications, several of which he co-authored or co-edited (many cited in other chapters of this Part). Scanlon resigned at the end of January 2005, moving back to Australia with his wife Xenya (whom he met at IUCN) for personal reasons. In February 2005 he was selected by the IUCN Council to serve on the Law Commission's Steering Committee.

Commission expansion

- 18 The early years of the 2000s, with which this History concludes, were particularly active years for CEL Chair Robinson and the Commission. Building on Robinson's first term (1996–2000), CEL grew and made contributions in new directions mainly through specialized groups which generated a number of active sub-networks and production of new analytical materials with the support of ELC. As Professor of Environmental Law and Co-Director of the Center for Environmental Legal Studies at Pace University Law School, New York, Robinson maintained his academic allegiance throughout his tenure, working closely with developing country universities.
- 19 He continued the policy of membership expansion started by the former CEL Chair Hassan. From roughly 290 members in 1996, membership had grown to 635 in 2000.¹⁵ By the close of 2004, as noted earlier, the network had further expanded by some 50% to 975 members from more than 130 countries.¹⁶
- 20 One of Robinson's early strategic initiatives as CEL Chair was to create a special committee called the CEL Scientific Panel on Environmental Law and Conceptual Development to provide a vision on emerging issues. Set up in 1997, the panel was chaired by Alexandre Kiss, senior member of the Commission and Vice-Chair for Western Europe. Members were long-standing CEL members Cyrille de Klemm, Eckard Rehbinder, and Françoise Burhenne-Guilmin (as Head of the Environmental Law Centre). The mandate of this special committee was to confer and report to the Steering Committee on new conceptual developments in environmental law.¹⁷ The panel held its first meeting in February 1998, reporting to the CEL Steering Committee in April¹⁸ and a second and final meeting within the framework of the Second World Conservation Congress in Amman, Jordan in 2000.
- 21 The CEL Scientific Panel on Environmental Law and Conceptual Development made its final report to the CEL Steering Committee in June 2001 and then was dissolved.¹⁹ Among the issues proposed for further development were several that remain compelling, including the role of non-State actors in the development of and promoting compliance with new environmental rules; the relationship between international protection of human rights and the environment; international mechanisms for assessing compliance with international environmental agreements; the legal nature of institutions established by multilateral environmental agreements,

and relations among these institutions and UN specialized agencies and regional organizations; and the teaching of environmental law and institutions at the international level.²⁰

Steering Committee

Robinson maintained a full and active Steering Committee. As the Commission's structure and substantive programme grew, so did the volume of business that needed attention during the semiannual Steering Committee meetings. There were more policy-related issues, global, regional and subject-specific reports from Regional Vice-chairs, Specialist Groups, and others, and new issues to be addressed. The Steering Committee also became a focal point for vetting in-house legal questions where members with special expertise might advise. The growing agenda meant that the meetings sometimes expanded from two to as many as four days. Beginning in January 2002, minutes of the semiannual meetings, once approved, were available on the ELP website.²¹



CEL Steering Committee meeting in Bonn, 2002. From left: Achim Steiner, IUCN Director General, John Scanlon, Nick Robinson (CEL Chair), Wolfgang Burhenne, Ben Boer

Following the 2000 World Conservation Congress, the Steering Committee was newly appointed by the IUCN Council with some rotation of members as Vice-Chairs completed their second terms and new members were assigned.²² Three Vice-Chairs completed their second terms in 2000, and new members were appointed from their respective regions: Africa – Etienne Sinatambou from Mauritius replaced Charles Okidi from Kenya; Oceania – Mark Christenson from New Zealand replaced Donna Craig from Australia; West Europe – Andrew Waite of England replaced Michael Bothe of Germany who had taken over the post from Alex Kiss in 1997. In addition, a new Vice-Chair, Svitlana Kravchenko of the Ukraine was appointed for East Europe/North & Central Asia, taking the seat of the late Oleg Kolbasov of Russia.²³ Other members continued into a second term: Koh Kheng-Lian (South & East Asia), William Futrell (North America and the Caribbean),

Jorge Caillaux (South America), Grethel Aguilar (Meso America), Badria Al-Awadhi (West Asia).

- 24 During the period 2000–2004, a few additional changes occurred to the Steering Committee. In 2002, Ben Boer stepped down as Deputy Chair and the IUCN Council appointed Michael Jeffery (Professor of Law at Macquarie University in Australia) as the new Deputy Chair for the remainder of the term, 2003–2004.²⁴ In 2003, the Regional Vice-Chair for West Asia, Badria Al-Awadhi, a Kuwaiti lawyer and first Director of the Arab Regional Centre for Environmental Law (ARCEL) (an IUCN ELP partner centre), stepped down and the IUCN Council appointed Samar Malek Azar, a Lebanese lawyer and legal adviser to the Lebanese Ministry of the Environment.²⁵ Also in 2003, CEL created a new post of Vice-Chair for indigenous peoples law, and the IUCN Council appointed CEL member and co-chair of CEL’s Specialist Group on Indigenous Peoples, Paul Kuruk, originally from Ghana, and a professor of international law in Alabama and Executive Director of the Center for Indigenous Knowledge Systems of the Institute for African Development.²⁶

Specialist Groups

- 25 The Commission ‘Working Group’ was changed in name to ‘Specialist Group’ in May 2003, by decision of the CEL Steering Committee, to keep in line with IUCN terminology. Under Robinson’s watch as CEL Chair, this mechanism remained a sustaining tool for member involvement and was significantly expanded.²⁷ The concept was involving more members and directing experts toward conceptual projects that were beginning to produce publications (as discussed in Chapters 30 and 31). Aiding this expansion, the rules were made more flexible to allow a Specialist Group member to serve as Chair or Co-Chair of the Group without already being on the Steering Committee, thus more broadly tapping interested members and not unduly burdening CEL officers.
- 26 At its spring meeting in 2004, the CEL Steering Committee further institutionalized the ‘Specialist Group’ into the structure of CEL. It adopted a Specialist Groups ‘Operational Protocol’ that was drafted jointly by CEL Steering Committee members and ELC staff and presented to the Steering Committee by CEL Vice Chair Futrell.²⁸ This Protocol laid out procedures on such issues as creation of Specialist Groups, appointing chairs and co-chairs, outputs, links with ELC, and overlap with other groups.²⁹ Between 2000 and 2004, CEL Chair Robinson and the Steering Committee continued to build up use and member involvement in Specialist Groups. Two groups from the late 1990s had been retired: Information Technology, and Legal Education; four groups renewed: Indigenous Peoples, Judiciary, Energy/Climate, and Soils; and seven new groups established. The list of Specialist Groups in ELP planning documents for the November 2004 WCC identified 13 groups as follows:³⁰

- Armed Conflict and the Environment
- Biodiversity
- Capacity Building in the Asia Pacific
- Energy Law and Climate Change

Enforcement and Compliance
 Ethics
 Human Rights and the Environment
 Indigenous Peoples
 Judiciary
 Oceans
 Sustainable Use of Soils
 Trade and Environment
 Water and Wetlands.

At the May 2004 meeting of CEL's Steering Committee, an additional four Specialist Groups were created (Protected Areas, Species, Forests, and Arctic), but there was insufficient time to make them fully operational by the end of 2004, when the term of that Steering Committee would expire.³¹ 27

The Commission's growing network of members, expanding work programme, and enlarged structure of specialist groups and regional chairs meant that coordination and support needs were fast outpacing what ELC staff could fit into their otherwise full schedules. As discussed in earlier chapters, since the departure of Malcolm Forster as Commission Counsel in 1988, there had been no dedicated staff position to service the Commission full-time either out of Bonn or Headquarters. 28

CEL Liaison

In the early 2000s, Scanlon assigned ELC Legal Officer Manguiat (already working on climate change and energy law) to serve as "Legal Officer focal point for CEL, in particular the Steering Committee."³² The idea, Scanlon would later explain, was to build and strengthen relations between the ELC and Commission, and "Manguiat did an outstanding job in that role", but it had been agreed with her that the arrangement would not extend beyond 2002 after which she would resume her duties as a full-time Legal Officer.³³ 29

In 2003, a dedicated full-time 'CEL Liaison Officer' position was created by Scanlon following discussions with Robinson (a change from the prior approach where different ELC staff were assigned specific CEL tasks from time to time, subject to their other ELC workload, as discussed in Chapter 17). With CEL's legal workload growing substantially as membership and specialist groups expanded, this seemed to be needed. Katerina Sarafidou, a young lawyer from Greece who had served with ELC as an intern in 2002, was recruited by Scanlon to work full-time for CEL. The position was hosted and administratively supported by ELC. As reported in the ELP Newsletter, Katerina's duties would be to "support, coordinate and develop activities and products of the Commission on Environmental Law (CEL), including the activities of the Chair, the CEL Steering Committee and, as appropriate, the CEL Specialist Groups...[as well as] liaise with members of CEL and ... be a focal point for information on the Commission."³⁴ 30

Sarafidou worked closely with Chairman Robinson and ELC staff and Commission volunteers, reporting on a day-to-day basis to Scanlon. She provided assistance with various important Commission activities and events and continued as 31

CEL Liaison located in Bonn through the end of 2004. Some of her main projects related to work on the Judiciary symposia and initial Academy of Environmental Law colloquia (discussed further in Chapter 29), as well as the Commission's 'Judiciary Day' Conference held in conjunction with the 2004 World Conservation Congress (WCC) in Bangkok, Thailand.

Looking ahead

32 The 2004 WCC endorsed a revised mandate for the Commission on Environmental Law for the coming period 2005–2008. Consistent with IUCN's new Programme emphasis on environment as one of three pillars of sustainable development (along with economic and social factors), CEL's mandate for 2005–2008 shifted emphasis from advancing law to advancing sustainability through law. Its new mission statement read: "To advance sustainability through the development of legal and policy concepts and instruments and through building the capacity of societies to develop and implement environmental law and policy, in furtherance of the IUCN Mission."³⁵ CEL's programme going forward was folded into ELP's Component Programme Plan (2005–2008), discussed later in this chapter.

33 Also, with the close of the 2004 WCC, CEL Chair Robinson concluded his tenure as Commission Chair, having completed the maximum of two terms allowed by the IUCN statutes. The Congress elected a new Chair, Sheila Abed de Zavala of Paraguay, to serve during the period 2005–2008. It is for each CEL Chair to constitute a Commission Steering Committee and together with that Committee decide which Specialist Groups will continue to exist, what will be the new or continuing priorities, and how the CEL budget will be allocated. The 2005–2008 ELP Component Programme Plan states that "CEL Specialist Groups in this Intersessional Period will be reviewed and recreated as appropriate to ensure they relate to key thematic and cross cutting themes identified in this Plan, and contribute to delivering on the IUCN Programme."³⁶ (The new CEL Chair completed that task in early 2005, see Postscript.)

Strategic Planning

The 2000 ELP Plan

34 In 2000, the Environmental Law Programme delivered its first Congress-requested plan to the World Conservation Congress meeting in Amman, Jordan. An initial planning exercise in the early 1990s under CEL Chair Hassan had faltered both in development and implementation because of lack of resources. The work begun then was not to die, however, for the 1996 World Conservation Congress requested the new Chair, Nicholas Robinson, to "coordinate efforts of the Steering Committee and CEL membership to provide substantive input into the process of developing and completing the strategic plan for the ELP ... [and] report to the [next] World Conservation on [its] development and implementation."³⁷ Recognizing the resource constraints, the Congress also requested IUCN's Director General, within available resources, to "provide increased support, proportionate to the increased demand from IUCN members for ELP services, to continuing to develop

the potential of the CEL, particularly to allow CEL members to collaborate fully with IUCN members and Regional and Country Offices....”³⁸

Hassan’s earlier effort had laid the ground work for implementing the formal request. As CEL Chair Hassan reported to the 19th General Assembly in 1994: “The efforts of the Environmental Law Centre and the Commission on Environmental Law to build an integrated programme with a clear structure and an emphasis on regionalization was greatly assisted by the intensive strategic planning process that went on through the triennium, resulting in a strategic plan. Unfortunately, lack of sufficient funds and personnel handicapped the effectiveness of the Commission, especially for setting up new projects. Although, through special personal efforts of the Steering Committee and various Commission members, funds were found for certain projects, this *ad hoc* funding is not conducive to long-term planning.”³⁹

As reported in a 1995 ELP newsletter, the CEL Steering Committee, with representatives from each of the eight IUCN regions and ELC staff, already had identified six areas for attention in an ELP strategic plan: (1) law development; (2) law services; (3) law information system; (4) networking; (5) communications; and (6) fundraising.⁴⁰ These areas had been selected taking into account findings of external reviews and in accordance with Union-wide planning at the time.

Based on this background work, CEL Deputy Chairs Angela Cropper followed by Ben Boer led production of the newly-mandated draft plan. The goal was to “incorporate IUCN’s regionalization process and shifting programme funding base, and more effectively engage the expertise of CEL members,” to provide a framework for activities through the first decade of the 21st Century.⁴¹ The CEL Steering Committee agreed with the ELC on much of the draft Plan at its meeting in Paris before the IUCN 50th Anniversary observances in 1998. It was then refined and ready for the 2nd World Conservation Congress in 2000.

The new ELC Director, Charles Di Leva, explained in an ELP Newsletter later that year some of the motivation behind the plan:

“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 it does not fully integrate with the work of other IUCN programmes. For these reasons, there is a need to begin a planning process ... 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....[T]he Law Programme has ... taken the first step in a long and hopefully fruitful planning process.”⁴²

2002–2003 ELP Update

John Scanlon, ELP Head, together with CEL Chair, Nicholas Robinson, initiated a second consultation process with the IUCN Headquarters, the Environmental Law Centre, Regional and Country Office staff, and members of the Commission on Environmental Law to update the plan for 2002–2003. The revision aimed to strengthen regionalization of ELP activities, improve coordination with other parts

of the Union (a weakness identified in the 1999 External Review), and take into account the new Union-wide programming framework adopted by the 2000 WCC (as discussed in the introduction to this Part). That framework, around which all components of the Union were to plan and programme activities, defined seven “key result areas” (KRAs) as the basis for integration of ongoing and new areas of work, and “for building teams comprising both Commissions and programme units within the Secretariat, at national, regional and global levels.”⁴³

40 An updated ELP Strategic Plan for the period 2002–2003 was finalized in 2002 and adopted by the CEL Steering Committee at a meeting in South Africa in August, just before the 2002 World Summit for Sustainable Development in Johannesburg.⁴⁴ The Plan began by stating ELP’s mission: “To lay the strongest possible legal foundation at the international, regional and national levels for environmental conservation in the context of sustainable development.”⁴⁵

41 Of special note for regionalization of law activities, the new Plan for the first time included as part of its ‘integrated programme’ lawyers based in the Regional and Country Offices of IUCN (RCOs).⁴⁶ This meant an explicit move to reach out beyond the two core components that had historically been the Environmental Law Programme (the Commission and the Environmental Law Centre) to the regions.

In substantive respects, the 2002–2003 Plan generally kept intact ELP’s historic emphasis on the four broad categories of work into which it categorized activities advancing the environmental law mission:

- Generation of knowledge and dissemination of information;
- Capacity building
- Conceptual development of law, and
- Technical ‘on-ground’ legal assistance.

42 Similarly, the Plan continued to give priority to the five global treaties which ELP historically promoted and helped develop (called ‘Priority Treaties’ through the 2000s).⁴⁷

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention)
- World Heritage Convention (WHC)
- Convention on Migratory Species (CMS), and
- Convention on Biological Diversity (CBD).

43 In addition, it now identified three other treaties of “key significance to IUCN” to be monitored and supported by the programme and its network of CEL members (with other significant treaties to be monitored as resources permitted)⁴⁸:

- Convention to Combat Desertification (CCD)
- Framework Convention on Climate Change (FCCC), and
- United Nations Convention on the Law of the Sea (Part 12 and related instruments) (UNCLOS).

Capacity building continued to be reflected as a core area of work with, among other things, regionalization, expansion of the centers of excellence and other institutional partners, promotion of the International Academy of Environmental Law, continued development of ECOLEX, and maximizing opportunities presented by IUCN's new UN Observer Status.⁴⁹ 44

ELC Strategic Workplans

During Scanlon's tenure as Director of the Environmental Law Centre, he initiated a number of planning exercises and management tools specifically for Environmental Law Centre staff to strengthen and help guide performance, and to ensure resources were being directed to agreed priorities of the Environmental Law Programme Strategic Plan and the Union-wide Programme adopted by the World Conservation Congress (WCC) in 2000. The main planning tool was the ELC Strategic Work Plan, the preparation of which he led for the years 2002, 2003, and 2004.⁵⁰ The purpose of such plans was to describe "the work of ELC staff in broad thematic and substantive terms ... to provide guidance to ELC staff and others on the areas of work of the ELC."⁵¹ They were further complemented by an ELC Strategic Improvement Plan 2001–2003, also developed by Scanlon, outlining main areas of improvement under which priority projects, responsible staff and deadlines were set out. These planning and management tools were prepared through a broad consultative process with ELC staff, Headquarters staff, and in some cases CEL management. 45



ELC Staff at Christmas Party 2001. Front from left: Ann Devoy, Maria Manguiat, Alejandro Iza, Françoise Burhenne. Back from left: Alexandra Fante, Tomme Young, Anni Lukács, Maaïke Bourgeois, Daniella Montag, Jil Self

ELP Component Plan 2005–2008

- 46 In preparation for the World Conservation Congress in 2004, the IUCN Secretariat laid out a new Programme for the next planning period, 2005–2008. Called “Many Voices, One Earth: The IUCN Programme 2005–2008”, the new Programme is described in terms of the three interlinked pillars of sustainable development (economic, social, and environmental), explaining in its introductory paragraphs the aim to help improve understanding about the need for an expanded role for the natural environment if sustainability is to be achieved.⁵² It links human well-being and a healthy environment, recognizing that “the causes of environmental problems are largely political, economic, and social,” and thus the need for IUCN to “simultaneously focus on the direct and underlying causes of biodiversity loss.”⁵³
- 47 To ensure that each unit of the Union had input and a programme that harmonized with the overall Programme, each was required to prepare during 2003 and 2004 what were called “Component Programme Plans.” This exercise applied to the commissions, regional programmes, global thematic programmes and support units at Headquarters and elsewhere.



CEL Steering Committee, Ukraine, 2003

- 48 Following a meeting of the CEL Steering Committee in 2003, the Environmental Law Programme began work on its Component Programme Plan. It was agreed that a coordinated joint CEL/ELC planning process would be undertaken to cover both the Commission and ELC. Co-chairs for the process were Koh Kheng-Lian (CEL Regional Vice Chair) and John Scanlon (ELC Director), with major contributions from CEL Vice Chair William Futrell.⁵⁴ Long-standing CEL member Alexandre Kiss had prepared as input to this work an analysis on the state of environmental law and directions for the future. In that report, he traced the progression of environmental law from its initial, early focus on key sectors (e.g., forests, wild-



Developing the ELP Component Plan 2005–2008 in Bonn. From left: A. Kiss, A. Iza, A. Rest, W. Futrell, K. Sarafidou, M. Manguiat; front: Koh Kheng-Lian, John Scanlon

life) to its gradual movement to issues of degradation control (pollution, overuse), and finally to where we are today – making efforts to better integrate into society as part of development. Picking up on the schematic of the Union-wide Programme, Professor Kiss raised the leading question: “in light of the outcome of the 2002 WSSD...whether instead of integrating different aspects of human activities in environmental protection, environmental law itself is not being integrated into the larger context of development, as one of the three pillars of life in future society.”⁵⁵

Key sections of the ELP Component Plan are highlighted here to show the framework for an intended work programme for the coming period. While not detailed in an operational sense for purposes of implementation, the Plan reflects the sustaining nature of ELP’s core areas of work and historical treaty priorities, and the conceptual framework within which its many activities respond to the ongoing challenges of regionalization, strategic directions from Headquarters, and evolving field of environmental law.⁵⁶ 49

Structurally, the ELP Plan for the first time embraced a new fourth element: “ELP collaborating members, centres and partners”, as part of the network of people and institutions comprising IUCN ELP.⁵⁷ IUCN lawyers in Regional and Country Offices (RCOs) already had been included in ELP’s 2002–2003 Strategic Plan, along with the Commission and Law Centre, as discussed above. The new ELP Component Plan reflected a programme of work to be “delivered through the collective efforts” of the CEL, ELC, IUCN staff in the RCOs, and IUCN ELP collaborating members, centres, and partners.⁵⁸ A further distinction appeared. In the Component Plan, IUCN’s Environmental Law Centre in Bonn is characterized explicitly as the ‘global’ centre and the “hub of the global network of centres” in regions and countries.⁵⁹ 50

51 The Plan anchors its rationale in several global events and developments since the last Congress, echoing the Union programme references, in particular, to the World Summit on Sustainable Development (WSSD), the United Nations Millennium Declaration, and the Monterrey Consensus (from the International Conference on Financing for Development held in Monterrey, Mexico, 2002). Highlighting WSSD's emphasis on poverty eradication as the greatest challenge, it links this issue to law by stating that "[g]ood governance' and the rule of law are indispensable requirements to eradicating poverty."⁶⁰ An additional contextual reference is the "Montevideo III" environmental law programme prepared by senior government officials in environmental law worldwide and adopted in October 2000 by UNEP's Governing Council as the 'Programme for the Development and Periodic Review of Environmental Law for the First Decade of the 21st Century' (see Chapter 19), with ELP committing to continued monitoring and implementation support for its many provisions.⁶¹ It recognized the significant opportunities available to IUCN, and particularly the ELP, in advancing its mission and the field of environmental law through IUCN's new Permanent Observer Status with the United Nations.⁶²

52 A number of sections of the ELP 2002–2003 Strategic Plan were incorporated in the Component Plan – the ELP Plan being the in-house guide, while the Component Plan went to the WCC and needed to be laid out in accordance with prescribed Headquarters' guidelines. Such common items included the four core areas of work (conceptual development of law, generation of knowledge and the dissemination of information, capacity building, and technical legal assistance), the five 'Priority' global treaties and three other treaties of key significance in the 2002–2003 plan, and the continued capacity building of partner centres, the IUCN Academy of Environmental Law, and the judiciary (discussed in Chapter 29). Several thematic areas are linked to the World Summit for Sustainable Development high priority sectors (water, energy, health, agriculture and biodiversity, given the acronym WEHAB), a number of which have ongoing project activities (see Chapter 30). A few new cross-cutting priority themes were added, including alternative dispute resolution, armed conflict and the environment, compliance and enforcement, intellectual property rights, and environmental impact assessment – most of which have had some attention in the past.

Capacity building initiative

53 Overall, the thrust of the Plan was to continue capacity building and implementation in the field of environmental law and policy, themes characterized as "core areas of work."⁶³ In the early 2000s, the Environmental Law Programme began an exercise to cluster and inter-relate its main activities within a 'capacity building and implementation' framework. The exercise developed into the 'Capacity Building Initiative' which laid out activities and outputs in the form of a matrix.⁶⁴ A draft was prepared by the ELC for discussion at the January 2002 CEL Steering Committee meeting in Bonn, where it was presented by Scanlon and received strong support. The meeting endorsed its circulation for discussion at the Bali preparatory meeting in May 2002 in advance of the World Summit on Sustainable Development (WSSD).⁶⁵ With an emphasis on partnerships, the initiative qualified as a Type 2

Partnership Initiative under the WSSD. Some of the partnerships were already well established (for example, UNEP and FAO with the electronic environmental law information initiative called ECOLEX, discussed in the next chapter). Other envisioned partners and supporters included multilateral development banks and regional and national environmental law organizations.

The initiative was built around seven distinct but interrelated pillars. Table 1 shows the capacity building framework which, as can be seen, embraces virtually all major components of the ELP, from activities ongoing for years (discussed in earlier chapters) to relatively new endeavors such as E-Communication, partner centres and the IUCN Academy (discussed in subsequent chapters). 54

Table 1 IUCN ELP Environmental Law Capacity Building Initiative
Environmental Law Capacity Building Programme for Sustainable Development 2002–2005⁶⁶

| Academic Education | Practical Training | Expert Forums | International Experience | Publications | Technical Assistance | Information |
|---|---|--|--|--|---|--|
| <p>Objective: To provide the opportunity to strive for academic excellence through an international higher level degree, with support being provided to partner institutions in developing countries. To convene an annual conference on academic advancements in environmental law.</p> | <p>Objective: To provide practical training, workshops and conferences in priority areas, including synergies between conventions, achieving coordinated and effective compliance with environmental laws and good governance.</p> | <p>Objective: To facilitate the establishment of expert forums for the exchange of information and ideas with colleagues from developed and developing countries, such as the IUCN CEL Specialist Groups on Energy, Water, Soils, Judiciary, etc.</p> | <p>Objective: To provide the opportunity for fellowships, internships and placements that allow people from developing countries to gain experience and develop networks in environmental law at the global and regional level.</p> | <p>Objective: To produce timely publications, including guidelines, on priority global and regional issues, to translate them into as many local languages as possible and to distribute them widely.</p> | <p>Objective: To work with local counterparts to provide technical assistance in the review, drafting and public consultation on new and revised environmental laws.</p> | <p>Objective: To provide global web access to information on environmental law and policy, including international treaties, literature, judicial decisions and national legislation.</p> |
| <p>Delivery: IUCN International Academy of Environmental Law with IUCN ELP.</p> | <p>Delivery: Global coordination through ELC, Bonn with regional/national delivery through regional centres of excellence in cooperation with IUCN RCOs.*</p> | <p>Delivery: Global coordination through ELC, Bonn with regional/national delivery through IUCN/RCOs in cooperation with partner centres.</p> | <p>Delivery: ELC, Bonn with regional experience gained through partner centres and IUCN RCOs.</p> | <p>Delivery: IUCN Environmental Law and Policy Series for substantive publications, supplemented by ELP Newsletter and features on the ELP web site.</p> | <p>Delivery: Global coordination through ELC, Bonn with regional/national IUCN RCOs in cooperation with partner centres.</p> | <p>Delivery: ECOLEX, a joint initiative of IUCN, UNEP and FAO for substantive information, supplemented by ELP Website.</p> |

* By the end of 2004, IUCN had 42 regional and country offices (RCOs) around the world.

Notes

- 1 See ELP's web site for ELC staffing and commission membership at: www.iucn.org/themes/law, category: "Overview" (data as of 14 December 2004).*
- 2 See, Craig, D., Robinson, N., Kheng-Lian, K., (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources* (Vol. I and II) (Asian Development Bank, 2002).
- 3 See news item in ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for June 2004, heading "A Tribute to Professor Nicholas A. Robinson" (researched July 2004).*
- 4 See Robinson, N., "IUCN as Catalyst for a Law of the Biosphere: Acting Globally and Locally" in 35 *Environmental Law* 249–310 (2005) (Lewis & Clark Law School: Portland, Oregon).
- 5 See Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme presented to the Karl-Schmitz-Scholl Fonds", pp. 12–13.
- 6 See IUCN – The World Conservation Union, "Minutes of 34th Meeting of the IUCN Council, 2, 5 and 6 November 1992, IUCN Headquarters, rue Mauverney, Gland, Switzerland", p. 25.
- 7 See "IUCN Environmental Law Programme Annual Report 1998", p. 14.
- 8 See Burhenne-Guilmin, F., "The Environmental Law Centre in Transition" in *IUCN Environmental Law Programme Newsletter* (January–April 1999), p. 1.
- 9 See "Highlights from the CEL Steering Committee" in *IUCN Environmental Law Programme Newsletter* (January–April 1999), p. 2.
- 10 Burhenne-Guilmin, F., "The Environmental Law Centre in Transition" in *IUCN Environmental Law Programme Newsletter* (January–April 1999), p. 1.
- 11 Email exchange between Françoise Burhenne-Guilmin and Lyle Glowka on this history, dated June 30, 2004 (forwarded to author).
- 12 Id. Also, according to information from the Tourist Office of Bonn, the Palais, built between 1858 and 1860, was the home in the late 1800s of Prince Adolf Wilhelm Victor zu Schaumburg-Lippe and his wife Wilhelmine Victoria von Preussen. It was acquired by the Federal Republic of Germany in 1949.
- 13 Communication from John Scanlon on March draft, transmitted by email dated April 26, 2006.
- 14 Robinson, N., "Chairman's Letter" in *IUCN Environmental Law Programme Newsletter* (May–August 1999), p. 3.
- 15 Data from the Environmental Law Centre on CEL statistics from 1990 through 2000, received June 2004 from Jil Self.
- 16 Scanlon, J., "Environmental Law Programme – Overview", ELP's web site: www.iucn.org/themes/law (as of 14 December 2004).*
- 17 See "IUCN Environmental Law Programme Annual Report 1997", p. 12.
- 18 See "IUCN Environmental Law Programme Annual Report 1998", p. 13.
- 19 Kiss, A., "IUCN Commission on Environmental Law Scientific Council Report to the Steering Committee" (June 17, 2001).
- 20 Id.
- 21 Between mid-2000 and the end of 2004, the ELP web site, www.iucn.org/themes/law, had a link to these minutes through the CEL sublink on "Specialist Groups".
- 22 See Di Leva, C., "The Law Programme at the Second World Conservation Congress in Amman and Plans for Post-Amman" in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 6. The Steering Committee appointed following the 2000 WCC was available on the ELP web site, and undated as needed, until the end of December 2004, at www.iucn.org/themes/law/cel1103.html. It was replaced with the updated roster following the Third World Conservation Congress.
- 23 Di Leva, C., "New Appointments to the Steering Committee" in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 6.
- 24 See "New Deputy Chair for CEL Appointed" (18 December 2002) on ELP web site at: www.iucn.org/themes/law, under Latest News, news for October–December 2002. See also "CEL Steering Committee Members", in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 46.*
- 25 See announcement on ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for June 2003.*

- 26 Id.
- 27 The “Working Group” was a Commission mechanism started in the late 1980s under CEL Chairman Burhenne to increase member participation in specific areas, as discussed in Chapter 17, and continued by his successors, Hassan (see Chapter 22) and Robinson.
- 28 The Protocol was drafted at a meeting held at the ELC in early 2004 between selected CEL Steering Committee members and ELC staff. The drafting of the Protocol was co-Chaired by William Futrell (CEL) and John Scanlon (ELC). Professor Alfred Rest (CEL) was an invited guest at the drafting meeting. (Communication from John Scanlon on March draft, transmitted by email dated April 26, 2006.)
- 29 The operational protocol once available on ELP’s web site at www.iucn.org/themes/law under the link “Specialist Groups”, has been archived.
- 30 See “IUCN Environmental Law Programme Component Programme Plan 2005–2008”, p. 16 (IUCN ELP, 2004).
- 31 See Robinson, N., “IUCN Commission on Environmental Law Supplemental Report (2004)”, p. 3.
- 32 Scanlon, J., “Final ELC Strategic Workplan 2002” (28 December 2001), pp. 5 and 2 respectively.
- 33 Communication from John Scanlon on March draft, transmitted by email dated April 26, 2006.
- 34 Manguiat, M. S., “New CEL Liaison Officer Appointed” in *IUCN Environmental Law Programme* (Issue 1, 2003), p. 41.
- 35 ELP web site at: www.iucn.org/themes/law, category “Commission on Environmental Law”, subcategory: “Mandate and Bylaws” (researched 11/4/05).*
- 36 IUCN Environmental Law Programme, “Component Programme Plan 2005–2008”, p. 16 (Box 8) (IUCN ELP, 2004).
- 37 Resolution 1.41(4 a) and b)), *Resolutions and Recommendations, World Conservation Congress, 13–23 October 1996, Montreal, Canada*, p. 42 (IUCN, 1997).
- 38 Resolution 1.41(5.c), *Resolutions and Recommendations, World Conservation Congress, 13–23 October 1996, Montreal, Canada*, p. 42 (IUCN, 1997).
- 39 Hassan, P. “Commission on Environmental Law (CEL) Triennial Report: 1991–1993”, p. 81 (also cited as Annex 3 to General Assembly Paper GA/19/94/4).
- 40 See “Commission on Environmental Law – Steering Committee” in *IUCN Environmental Law Programme Newsletter* (April–June 1995), p. 3.
- 41 “IUCN Environmental Law Programme Annual Report 1997”, p. 13.
- 42 See Di Leva, C., “The Law Programme at the Second World Conservation Congress in Amman and Plans for Post-Amman” in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 6.
- 43 The framework was laid out in IUCN’s programming document to the 2000 WCC. Entitled “Stepping into the New Millennium: IUCN’s Intersessional Programme”, it was adopted by the WCC as the framework for how work would be prioritized and results evaluated for all components of the Union. The seven key result areas were: 1) Effective management and restoration of ecosystems; 2) Institutions, agreements, processes and policies; 3) Incentives and finance; 4) Equitable sharing of the costs and benefits; 5) Assessment of biodiversity and of related social and economic factors; 6) Information management and communications systems; 7) Effective, efficient, and accountable governance and management of the Union. See IUCN – World Conservation Union, *Stepping into the New Millennium: Intersessional Programme* (adopted at the World Conservation Congress, Amman, Jordan, 4–11 October 2000), at 14–15. (IUCN, 2001).
- 44 See IUCN ELP web site at: www.iucn.org/themes/law, under “Strategic Plan”, researched July 27, 2004; see, also, Scanlon, J. and N. Robinson, “IUCN Environmental Law Programme Strategic Plan 2002–2003” (October 2002 draft at 2) (available from IUCN ELC).*
- 45 Scanlon, J. and N. Robinson, “IUCN Environmental Law Programme Strategic Plan 2002–2003” (October 2002 draft at 4) (available from IUCN ELC).
- 46 Id.
- 47 Id. at 8.
- 48 Id. at 6.
- 49 Scanlon, J. and N. Robinson, “IUCN Environmental Law Programme Strategic Plan 2002–3” (October 2002 draft at 7–8); see Part 7 (Intro.), Box 1: IUCN Gains UN Observer Status.

- 50 See Scanlon, J., “ELC Strategic Workplan 2002” (28 December 2001); Scanlon, J., “ELC Strategic Workplan 2003” (16 January 2003); and Scanlon, J., “ELC Strategic Workplan 2004” (February 2004).
- 51 Scanlon, J., “ELC Strategic Workplan 2002” (28 December 2001), p. 1.
- 52 IUCN – World Conservation Union, “Many Voices, One Earth: The IUCN Programme 2005–2008” (adopted at the World Conservation Congress, Bangkok, Thailand, 17–25 November 2004), at 5.
- 53 Id.
- 54 The core ELP Programme Planning Team for this 2003 exercise was comprised of the following individuals: representing CEL, members Koh Kheng-Lian (co-chair), Bill Futrell, Jorge Caillaux, Svitlana Kravchenko, Mark Christensen; representing ELC, staff John Scanlon (co-chair), Tomme Young, Alejandro Iza, Maria Socorro Manguiat, and Katerina Sarafidou (CEL/ELC) as Rapporteur. See, Annex, “IUCN Environmental Law Programme Component Programme Plan 2005–2008” at 30. (IUCN ELP: 2004)
- 55 Kiss, A., “IUCN Situation Report on Environmental Law” (3 April 2003 draft at 6) (available from IUCN ELC).
- 56 The IUCN ELP Component Programme Plan for 2005–2008 indicates that the “Plan will be supplemented by a IUCN ELP Strategic Plan for 2005–2008, being developed jointly by CEL and the ELC. This will provide more specific detail of activities and targets for the 2005–2008 Intersessional Period.” IUCN Environmental Law Programme, “Component Programme Plan 2005–2008”, at 4. (IUCN ELP, 2004).
- 57 IUCN Environmental Law Programme, “Component Programme Plan 2005–2008”, p. 15 (IUCN ELP, 2004).
- 58 Id.
- 59 Id. at 21.
- 60 Id. at 4.
- 61 Id. at 3–9.
- 62 Id. at 12.
- 63 Id., see e.g., pp. 12, 14.
- 64 John Scanlon, ELP Head during its development, wrote in an ELP Newsletter that the initiative aimed “to bring together, through genuine partnerships, the network of existing environmental law institutions and individuals in order to maximize leverage and get resources on the ground as quickly and efficiently as possible”. Scanlon, J., “Capacity Building in Environmental Law: The Challenge” in *IUCN Environmental Law Programme Newsletter* (No. 1/2003) at 10.
- 65 See Scanlon, J., “Capacity Building in Environmental Law: The Challenge” in *IUCN Environmental Law Programme Newsletter* (No. 1/2003), p. 10.
- 66 Issued January 2002, revised November 2003. Available on ELP’s web site: www.iucn.org/themes/law, Subject heading: Environmental Law Programme – Capacity Building – Matrix; researched July 5, 2004, and July 20, 2005. The matrix also was enclosed in the 2002 ELP Newsletter and attached as Appendix 3 to the IUCN Environmental Law Programme Component Programme Plan 2005–2008.*

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 28: E-Communication – Improving Information Flows

In the 2000s, the Environmental Law Programme transformed itself into a web-based organization. Virtually all activities of the ELP are now possible to access and monitor through the Internet. Its networks of specialists are connected and kept informed through special Internet links facilitating, among other things, broader participation in conceptual law development. Its current publications, papers, and speeches may be downloaded in full without special access requirements, and old, out-of-print publications are gradually being inputted as well. This transformation to an E-Communication Programme took time, commitment, and resources. But once in place, the electronic information systems have become an integral form of operations and have broadened involvement of members and organizations. The shift appears to have virtually unlimited potential to reach and tap existing and new constituencies in the development and implementation of environmental law. This chapter highlights ELP's main services available and continuing to be developed and made available through the Internet.

ECOLEX

In the 1990s, Françoise Burhenne-Guilmin, ELC's Head, began exploring how the Environmental Law Information System (ELIS) (see Chapter 10) data bases might be made available through the Internet. The IUCN Environmental Law Centre had continued to maintain its multilingual, structured data bases of environmental law using ELIS as the organizational framework for international treaties, legislative texts, soft law, and the ICEL literature library. One of the unique aspects was the inclusion of a large number of legal references from developing country legislation. With the environmental law network growing substantially and interest in environmental law information matching that growth, a system limited to hard-copy texts was cumbersome and unresponsive to modern information needs, especially in developing countries.

One of ELC's first ventures to move some of its environmental law data online came in 1994 when a Memorandum of Understanding was signed with the U.S.-based Consortium for International Earth Science Information Network (CIESIN), an organization which managed its own web site through which it moved information to its members.¹ The agreement was that CIESIN would purchase ELC's treaty data (along with regular updates) which CIESIN would then use for its own applications. By that time, ELC had made improvements to the data base so that searches could be either by treaty (showing all States that had ratified) or country (all treaties ratified by one State). The agreement continued for several years.²

UNEP / IUCN Joint Service

The Law Centre continued to look for new partners to help build a full online system. At the same time, UNEP was beginning to explore establishing its own online legal data base. Through the CEL network, and Veit Koester then working at

the Danish Ministry of Foreign Affairs, UNEP and the Law Centre became aware of their immediate mutual interest and this led to discussions between the two organizations and eventually a partnership.³ In May 1995, in Nairobi, UNEP's Executive Director, Elizabeth Dowdeswell, and Françoise Burhenne-Guilmin on behalf of IUCN, "formalized [UNEP's and IUCN's] long-standing collaboration in the field of Environmental Law."⁴ They signed an agreement of cooperation that covered, among other things, environmental law information. CEL Chair Parvez Hassan had much to do with making this agreement happen. An ELP Newsletter of that year reported: "CEL Chair Parvez Hassan had visited UNEP in January 1995 for preliminary discussions on the agreement, was instrumental in its development, and attended the signing ceremony."⁵ The environmental law agreement, an annex to a larger Framework Agreement of Cooperation signed by the Heads of each organization in March 1995, responded to a 1995 UNEP Governing Council Resolution singling out IUCN's Environmental Law Information System (ELIS) as a tool to be used by UNEP to fulfill its own information needs in environmental law "with a view to avoiding duplication of efforts and provide IUCN the necessary support to enable it to service the information needs of UNEP."⁶

5 The UNEP/IUCN agreement spanned all fields of environmental law, from information sharing to capacity building. It pledged collaboration with development and codification of international environmental law, support to international environmental conventions, services to developing countries in the development of national environmental legislation, management of environmental law information, and legal training.⁷

6 UNEP's Iwona Rummel-Bulska recalls those years and how "we collaborated with [ELC] in the development of national and international environmental law, including in ECOLEX."⁸ A provision called for UNEP and IUCN to join "efforts in the Environmental Law Information Service (ELIS), thereby merging their information systems, with a view to enhancing the capacity of both organizations to access and disseminate environmental law information and providing an expeditious and inexpensive legal information service to Governments, especially of developing countries and countries with economies in transition."⁹ The two systems were considered complementary: the ELIS collection which had been growing since the 1960s only available in hard copy (see Chapter 10), and UNEP's developing Computerized Environmental Law Information Base (CELIB), a smaller collection of treaties and national legislation which, because of various mandates from its Governing Council, had begun in the late seventies. With the new partnership, IUCN agreed to merge ELIS and CELIB, and UNEP agreed to partner with IUCN to provide UNEP's environmental law information needs.¹⁰

7 In September 1995, the Environmental Law Centre and UNEP convened the first formal meeting under the agreement where a Technical Working Group was formed to address issues associated with a possible merger of the two organizations' information systems. These issues included data structure, dissemination technology, and funding.¹¹ From these deliberations, a full project proposal was prepared detailing how the joint environmental law project could be undertaken and the funding that would be needed.

In 1997, the Government of The Netherlands offered to fund a project to test the feasibility of a joint IUCN/UNEP web-based service and to set the stage for its implementation.¹² The project's aim was laid out in ELP's Annual Report for 1997:

"The project will give UNEP access to the wealth of environmental law information held by IUCN and will ultimately result in a joint network comprising a pool of core data on environmental law and policy. This partnership allows both organizations to work toward developing a jointly-supported 'common core' data archival system, linking this 'core' data archival system to specialized information holdings of both and other partner organizations, and developing joint information products."¹³

With this funding support, IUCN and UNEP began work in 1997 on the joint initiative, giving it the name Joint Environmental Law Information System (JELIS). In 1998, a Steering Committee with representatives from IUCN, UNEP and the Government of The Netherlands was created to oversee the project.¹⁴ In the first phase (roughly 18 months), work would focus on developing and demonstrating an appropriate software for the system. The Committee decided to use IUCN's ELIS as its core archival system and link those data to the full text information available from UNEP and eventually other sources. The system envisioned searches using subject areas, keyword, country, date, or free-text. A common classification of subject matter was agreed upon, roughly along the lines of the IUCN classification system, main subjects being climate/atmosphere, freshwater, marine environment, soils, forests, biodiversity, energy, protected areas, and hazardous substances.¹⁵



At the 20th session of UNEP GC, Anni Lukács, Documentation Officer of IUCN-ELC, demonstrates the Joint Environmental Law Information System of UNEP & IUCN to Mark Collins, Director of WCMC. Behind them: F. Burhenne, Head ELC; Dirk van Gulik and David Larkin, consultants to the joint project

- 10 As the project and its feasibility continued to be positive, the joint service was given the name ECOLEX. A prototype was developed to test and peer review both the treaty and national legislation data bases. References on the status of more than 480 treaties from IUCN's ELIS were included with links to the full texts of some 150 treaties from UNEP's CELIB. For national legislation, ELIS data for three countries, updated through a pilot project, was inputted: Burkina Faso, Costa Rica, and the Philippines. Country profiles were made possible through data links that featured all the multilateral and bilateral agreements to which each trial country was a party, its national environmental legislation, and secondary literature materials on the country's environmental law. Work on the prototype was undertaken in partnership with regional institutions such as UNEP's Regional Office for Latin America and the Caribbean (ROLAC) in the case of the Costa Rica.
- 11 By February 1999 an early version of the prototype showcasing multilateral treaty data was available and demonstrated during the UNEP Governing Council meeting in Nairobi and also during the inauguration of the new Environmental Law Centre offices in March 1999.¹⁶ By June 1999, the pilot had been completed. In addition to the Internet linkages and electronic access, other electronic-based products such as CD-ROMs and disk-based information were explored as part of the pilot.

FAO brings FAOLEX

- 12 As the prototype was being developed and started, the Food and Agricultural Organization (FAO) became interested in being part of the new web-based environmental law information system. Over decades, FAO had built and was managing another large legal data base called FAOLEX, mostly of developing country legislation, also with electronic versions of texts. In 1999, FAO agreed to join IUCN and UNEP as a partner.¹⁷ It was considered that a merger of FAOLEX and ECOLEX would create the largest electronic library of environmental law worldwide.
- 13 IUCN began searching for funding support of ECOLEX and initiated steps toward bringing FAO into the partnership. When Charles Di Leva joined as Head of ELP in July 2001, he continued to pursue possibilities to expand ECOLEX with FAO's data base. Nattley Williams, ELC Legal Officer during this period, took the staff lead in pursuing this possibility with FAO at the technical level on behalf of ELC. Technical issues of database compatibility and links among the data sets were among the first to be investigated. The governance structure and the possibility to include FAO in the ECOLEX Steering Committee were also considered, together with the proposal for ELC to continue as the ECOLEX Management Unit (working under the guidance of the ECOLEX Steering Committee). Data Implementation Units were identified in each organization.
- 14 In 2001, a partnership agreement along the lines described above was signed by FAO, IUCN and UNEP for the integration of FAO's data into ECOLEX. The three organizations continued work through 2001 and 2002 to integrate the systems.

Launch in 2003

- 15 On December 2, 2003, the new tripartite ECOLEX was launched in Rome during the FAO General Conference.¹⁸ In 2004, the ECOLEX server moved to the

Environmental Law Centre as the ECOLEX Management Unit. The new ECOLEX, as explained on ELP's web site:

"... represents the first step towards allowing users to undertake a common search of all of the data bases of IUCN (ELIS), FAO (FAOLEX), and UNEP. Through a single search users will now be able to access bibliographic and analytical information on multilateral legal instruments, national legislation, soft law, judicial decisions, law and policy literature and more for selected subject areas and key words."¹⁹

Data is accessed directly through the ECOLEX web site: www.ecolex.org, or a link through any of the three partners' web sites. The home page provides links to four data bases: treaties, national legislation, literature, and court decisions. By the close of 2004, the treaty data base contained some 500 entries, most with links to full texts. The largest data bank, national legislation, contained some 10,000 law entries, 22,000 regulations, and almost 10,000 other entries involving amendments or other instruments.²⁰ Most of these entries have links to full texts. The second largest data bank in number of entries covers law and policy literature, with some 25,000 records, with publication dates post-1990. Because of copyright law, this data bank provides only bibliographic information on each document. 16

Finally, the data bank on court decisions, still in early development, is the newest component with bibliographic information on only 50 decisions. These entries are duplicated in the IUCN ELP/UNEP Judicial Portal (discussed in Chapter 29) where full texts are available. Steps were being taken during 2004 at an ECOLEX Steering Committee meeting (composed of representatives from FAO, UNEP, and IUCN) to link the Judicial Portal to ECOLEX so that information entered on the Portal can be validated and made available through ECOLEX.²¹ 17

In a background page, the ECOLEX site also provides an overview of its objectives. That text, reflecting jointly the three partners' vision, explains that the "resulting combined information resource is the largest available on environmental law globally, with over hundred thousand references to relevant documents already being available on the web."²² The importance of this new service was emphasized in an ELP Newsletter: 18

"ECOLEX provides ... an essential resource for developing the necessary tools to promote environmental management in the context of sustainable development....The development of ECOLEX has brought together two UN organizations, FAO and UNEP, in a unique partnership with IUCN – all sharing a common vision to provide better electronic access to information on environmental law to build capacity worldwide."²³

The ECOLEX partnership is a registered partnership within the framework of the World Summit for Sustainable Development (WSSD). This designation, adopted by the 2002 WSSD, recognizes voluntary multi-stakeholder initiatives which contribute to the implementation of inter-governmental commitments to promote sustainable development and further Agenda 21 and related subsequent United Nations declarations.²⁴ Registration of organizations to qualify for a designation of this type 19

of WSSD partnership is managed by the UN Department of Economic and Social Affairs, Division on Sustainable Development.

20 Technical staff of the three organizations continue to coordinate and work on improvements of the system’s content and to make searches more user-friendly. Over the long-term, ECOLEX objectives include three significant areas for growth and development: 1) to build a network of associates at regional and national level,

The graphic features the ECOLEX logo at the top, with the website address www.ecolex.org and the text "Online access to over 100 000 legal references". Below this, a green plant with five leaves is shown growing out of a white scale of justice. A blue fish is positioned in the lower right pan of the scale. The background is split into a grey top half and a yellow bottom half. On the left side, vertical text reads "Information service on environmental law:" followed by a list: "• treaties • national legislation • soft-law and other non-binding policy and technical guidance documents • judicial decisions • law and policy literature". At the bottom right, text states "Essential for developing the necessary legal tools to promote environmental management". The footer contains three logos: IUCN (The World Conservation Union), UNEP, and FAO (Food and Agriculture Organization).

ecolex

www.ecolex.org Online access to over 100 000 legal references

Information service on environmental law:

- treaties • national legislation • soft-law and other non-binding policy and technical guidance documents • judicial decisions • law and policy literature

Essential for developing the necessary legal tools to promote environmental management

IUCN The World Conservation Union

UNEP

FAO

2) to expand the consortium of ECOLEX partners to include, among others, the possibility of private sector partners, and 3) to customize specific projects for use in developing countries and become linked to other data sets, such as UNEP Country Profiles.²⁵

ELC Documentation Officer, Anni Lukács, an accomplished and long-standing member of the information management team who has managed ELIS for years, is in charge of management and maintenance of ECOLEX for IUCN and for coordinating systems issues and content with the other two partners. 21

ELP's web site

IUCN Headquarters developed a web site for the Union in the mid-1990s. In 1997, the Environmental Law Programme joined the site with a web page of its own. Development and maintenance of this web page were slow and cumbersome, however. There was limited web expertise at the Environmental Law Centre, and the 'law' page could only be updated and formatted through IUCN Headquarters by staff in Switzerland. As a result, web page information was not always timely or current. Through the 1990s, the hard-copy Environmental Law Programme Newsletter mailed to CEL members remained the most up-to-date, complete source of information and news for the law network. 22

CEL Forum

When Charles Di Leva became Director of the Environmental Law Programme and Head of the Environmental Law Centre in 1999, he began work to launch an improved ELP web site as well as an expanded ELP hard-copy Newsletter. While progress with the full web site took time because of the scale of the project and expertise needed, development of a special Internet link for CEL members, 'The CEL Forum', was more immediately feasible. Launched in August 1999, the Forum link provided a means whereby members could post messages to the entire Commission. Managed by Jil Self, Programme Assistant at the Environmental Law Centre, it became the official, electronic mailing list for members of the Commission. 23

With membership of CEL approaching 1000 by the end of 2004, the CEL Forum became a mainstay for communication among Commission members. Its purpose, as explained in an ELP Newsletter, is "to provide a platform for e-mail communications and discussions on the activities, policies, programmes and events of the IUCN Environmental Law Programme (ELP)."²⁶ It is a closed mail list in the sense that CEL members must expressly consent to be listed and are not automatically added; it is open only to the members of CEL and ELC staff who assist CEL. The CEL Forum has become an important tool for members to stay in touch on technical matters and share news of mutual interest. Messages and replies may be posted in English, French, or Spanish. Postings include news about past events or announcements of upcoming events, meetings, training courses, employment opportunities, funding opportunities, calls for papers or awards, requests for information and replies, and opinions of issues relevant to the ELP. According to records kept by the "Forum" manager at ELC, some 122 messages were posted on the Forum in 2000/2001, 157 in 2002, 250 in 2003 (heavy traffic on Iraq), and 120 in 2004.²⁷ 24

New design

25 John Scanlon, Di Leva’s successor as ELP Head beginning in October 2001, made communications (and the ELP web site in particular) among his top priorities from the beginning of his term. He led the drive to develop the new website and website portals, allocating resources for staff training as well as for improving communication technology.

26 One of Scanlon’s first steps was to build a web site team in Bonn so that the site could be managed directly by the Environmental Law Centre. Two ELC staff,



Anni Lukács

Anni Lukács and Alexandra Fante, were sent to IUCN Headquarters in November 2001 for training and given responsibilities for the Law Programme site. Anni Lukács is web master for the site. Other ELC staff and several Commission members were given assignments to develop site content. Strict deadlines were set and the new IUCN Environmental Law Programme web site was launched on January 24, 2002, some four months after Scanlon’s arrival. The launch was brought forward several months to coincide with the first visit of IUCN’s Director General Achim Steiner to the ELC, and the first meeting of the CEL Steering Committee in 2002.²⁸ With this launch, supported by CEL Chair Robinson and several CEL members, the ELC became the first IUCN unit to utilize the new IUCN template to update the design of its web page.²⁹

27 During 2002, the ELC entirely redesigned the ELP web page. As reported in an ELP Newsletter, by the close of the year the web site had “summaries and outlines of all aspects of the ELP”, including a wide range of current information, news, important events, pictures and links to more information.³⁰ Since then, the site has continued to be developed and improved, with CEL members especially



Launch of the web site in Bonn, January 2002, with IUCN Director General Achim Steiner and ELC information staff Maaïke Bourgeois and Alexandra Fante

through the Specialist Groups becoming important sources of updates on international law events and important publications. Through the efforts of the web site team, major documents also are now accessible through the site, including full texts of many publications in the IUCN Environmental Policy and Law Paper Series. ELP news, CEL Steering Committee minutes, Commission bylaws, and ELP working papers or legal position papers for international meetings of convention secretariats and other international organizations now are regularly posted on the site. Information is updated on a monthly or bi-monthly basis as needed, with more comprehensive review and revisions three or four times a year. Importantly, for researchers and analysts, news items are archived on the site for retrieval of past years' news.

The present ELP web site significantly improves the speed and substance of information flows to ELP networks (and the public at large since special passwords are not needed). It has become a primary means by which members access current information, monitor events and download documents. Enhancement of communication tools in general (including ELP's hard-copy newsletter, see below) and the ELP web site in particular remained a major focus for John Scanlon through 2003 and 2004, and layout and content of the website and website portals was subject to his approval in order to ensure ongoing quality and consistency. During 2004, the site was attracting more than 45,000 hits per month and was the number one result for a Google search of 'Environmental Law Programme'.³¹

ELP's home page is tailored to the key features of the Environmental Law Programme in several main categories, further divided into subcategories, with additional links to specific subjects or reports inside each subcategory. Illustrative of

coverage, main categories and subcategories as of the close of 2004 are outlined in Table 1 below.

| Table 1: The ELP web site | |
|---------------------------------|--|
| Main Categories | Subcategories |
| Latest News | [with archived news from 2002 to the present] |
| Environmental Law Programme | Overview, Strategic Plan, Achievements, Priority Areas, Regionalisation, Capacity Building, Legal Services, ELP Newsletter |
| Commission on Environmental Law | Overview, History, Steering Committee, Specialist Groups, Members, Current Activities, Partner Centres, Draft Covenant on Environment and Development, IUCN Academy, Mandate and By-laws, Steering Committee Minutes |
| Environmental Law Centre | Overview, History, Strategic Workplan, Current Activities, Staff, Contact Details, Vacancies |
| Regional and Country Offices | [with most RCOs, with links to their home pages] |
| Activities and Projects | Overview, Biodiversity, Water and Wetlands, Climate Change and Energy, Species, Desertification, World Heritage, Protected Areas, Judiciary, Governance, WSSD, World Parks Congress, World Conservation Congress, Access and Benefit-sharing |
| Information and Publications | Overview, Libraries Collection, ECOLEX, Publications, Thematic Information, Suggested Reading, Relevant Links |
| Fellows and Interns | Information on fellowships and intern programmes, how to apply and profiles of ELC fellows and interns |
| Calendar of Events | Events of interest to IUCN CEL members |
| Links | Useful links for IUCN CEL members |
| Your Feedback | To the ELC Web Master |
| Site Map | Easy way to navigate the web site |
| Contact Details | ELC Bonn |
| International Directory | Institutions worldwide active in environmental law |
| Portals | Links to CEL Portal, Judicial Portal, Genetically Modified Organisms (GMO) Portal |

Publications accessed electronically

Once the web site had been redesigned and expanded, publications could be put online for users to download free, normally as PDF files, with further links provided as appropriate to additional documents. Among its attributes, the web site

began to make available full texts of many ELP staff papers, the Commission's bylaws, and IUCN legal statements on specific environmental issues. ELP Newsletters also were made available in English and Spanish on the ELP web site as PDF files for all years since 1998.³²

Gradually, full texts of publications in the Environmental Policy and Law Paper (EPLP) series have become available online. Impressively, and the key point for Chair Robinson, "IUCN's ELP had entered the world of global distribution and on-demand publishing of its legal studies."³³ This feature quickly generated interest from members and some documents became especially popular. For instance, one of the most popular publications, the Biosafety Guide³⁴ was downloaded in English 13,963 times between its release in August 2003 and June 29, 2004; the French version, 2,042 times between its release in September 2003 and June 29, 2004, and the Spanish version, 1,408 times between its release in February 2004 and June 29, 2004.³⁵ The EPLP publication 'Water as a Human Right?' (noted in Chapter 30) was downloaded close to 10,000 times in the first three months after release.³⁶

Internet Portals

In 2002–2003, the Environmental Law Programme added a new feature to its web site: 'IUCN ELP Portals'. These were Internet-based means for specialized networks and user groups to communicate on specific issues so long as they met entry requirements. Three had been activated as of the end of the 2004: one for Law Commission members, another for the Judiciary, and a third on a time-limited basis for comments on genetically modified organisms.

Law Commission

In 2003, a portal was launched for members of the Commission on Environmental Law, called the 'CEL Members Portal'. The portal is a database of all CEL members' with the contact and other information they wish to share. It serves as a web-based tool and is available only to members, each of whom is assigned a personalized user name and password for access. The portal has been designed so that members can keep current their contact and other personal information and decide which information they wish to share. It also is "used as the IUCN's 'master' copy of CEL members' data and will eventually replace the hard copy of the CEL directory."³⁷ The Environmental Law Centre reported in 2004: "The CEL Members' Portal was received with enthusiasm from the CEL members, a big number of whom have already visited the Portal and have made use of this new tool by entering and updating their personal data."³⁸ The Portal, originally conceived by the Environmental Law Programme and ELC staff, has since been adopted and expanded by IUCN Headquarters to cover all six Commissions.³⁹ (The hard-copy version of the Directory of CEL Members was updated and published last in July 2003.⁴⁰)

Judiciary

As part of the plan to use the ELP website to better connect different specialized environmental law networks, a second portal specifically for the judiciary was developed by the ELC as a joint initiative with UNEP and launched in 2002 at an

IUCN/UNEP judicial symposium (see Chapter 29). This Judicial Portal was established as a separately accessible part of the IUCN Environmental Law Programme's website.⁴¹ The draft version of the Portal was reviewed by Honorable Justice Paul Stein of Australia (Chair of the CEL Judiciary Specialist Group) in June 2002. The Portal not only strengthened ELP's growing 'E-Communication' services, it also helped support ELP's broader capacity building initiative by helping "create a global network of judges interested in environmental law and sustainable development".⁴²

- 35 The Judicial Portal became operational in October 2002.⁴³ Initially, it was a closed forum for judges only who were given a special password to access the data base for exchange of information, experiences and decisions on environmental law. During 2003, ELC and CEL, working with UNEP, continued to improve the facility, addressing operational issues and making it more user-friendly. In May 2004, access was extended to all IUCN Commission on Environmental Law members through a password system.⁴⁴ There is no editing or screening of information posted on the site. The Portal also will contribute to ECOLEX through the judicial decisions it identifies and downloads on the site.

Time-Limited applications

- 36 A third portal, the GMO Portal, was activated in 2002 for a specific task and is an example of time-limited web applications for which the ELP web site can be used. This Portal was set up to facilitate comments and feedback to the IUCN Council on IUCN's draft background/scoping paper entitled: "Biosafety and Genetically Modified Organisms: Background for the Enunciation of an IUCN Position and Action Plan".⁴⁵ The Portal gives access to the draft paper in PDF format, comments received to date, a standard form for feedback and a discussion forum. Only open to IUCN members and members of IUCN's six commissions, instructions for use of the portal identified April 2003 as the date by which comments should be received in order for them to be taken into account.⁴⁶ Depending on the success of this pilot task-specific portal, other time-limited portals may be created for specific subjects calling for communication among specialists.

"New Look" Newsletter

- 37 In line with the new emphasis on communications, the Environmental Law Programme (ELP) also launched an initiative in 2001 to redesign the hard-copy ELP Newsletter that had been a main outreach tool for Commission members since the mid-1980s (see Chapter 17). This effort paralleled the work already underway to design and expand a versatile and news-oriented ELP web site. In May 2002, the ELP web site announced release of a 'new look' ELP newsletter as part of a "major drive to further develop and improve its communication tools"⁴⁷ The 'new look' was a physical upgrade with a cover like a professional magazine (color photos and glossy paper). It also introduced a new approach to content, featuring a special theme with in-depth coverage by experts in that theme, in addition to news items. With this more resource-intensive approach and in light of the new ELP web site (a resource for information not previously available), production of the Newsletter

IUCN

The World Conservation Union

NEWSLETTER

Issue 1, 2002

Environmental LAW Programme

A Proud History and a Bright Future

Welcome to the new look IUCN Environmental Law Programme Newsletter!

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

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

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

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

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

If we are able to maintain this momentum we are set for a very bright future indeed. The first CEL Steering Committee meeting for 2002 was held at the ELC. This invigorating and direction-setting meeting saw the Committee engage



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

directly with the Director General and address a series of critical issues to both the IUCN and the international community including the World Summit on Sustainable Development, IUCN United Nations Observer Status, the 2003 World Parks Congress, current World Heritage, wetlands and water issues and the further development of a major ELP capacity building initiative.

continued page 3

Inside this issue: Focus on WATER

was reduced to one issue annually. The Newsletter continued to be mailed to all members and PDF versions were now available online.

The theme featured in the 2002 Newsletter was water, with lead articles by Alejandro Iza, Project Manager for ELP's work in IUCN's Water and Nature Initiative (see Chapter 30); Professor Irina Krasnova, Environmental Law, Russian Academy of State Administration; Professor Griselda Capaldo, National Council of Sci-

entific and Technological Research, University of Buenos Aires; and Megan Dyson (CEL Water and Wetlands Specialist Group Chair) with John Scanlon, ELP Head.

39 Feedback on the 2002 Newsletter was positive so the new approach to content was continued with the 2003 and 2004 issues. The 2003 issue released in July 2003 focused on issues of implementation, with articles by CEL Steering Committee members and other CEL specialists on major themes from the WSSD Plan of Implementation, including ethics (by Juan Mayr), energy (by Adrian Bradbrook), water (by Alejandro Iza), globalization (by Michael Ewing-Chow), governance (by Lee Kimball), and capacity-building (by John Scanlon). The issue also reported on ELP sponsored or co-sponsored conferences during "Law Week" preceding the WSSD (see Chapter 29), and activities of a number of CEL Specialist groups.

40 The 2004 issue featured energy, with lead articles by Director General Achim Steiner and CEL Climate and Energy Specialist Group Chair, Richard Ottinger, among other distinguished experts (for example, Thomas Johansson, Director of an International Institute for Industrial Environmental Economics in Sweden; Zho Dadi, Director of an Energy Research Institute in China; and Ibibia Worika, Senior Lecturer, Rivers State University of Science and Technology, Nigeria, and Senior Legal Counsel of OPEC). The ELP Newsletter also is available online through ELP's web site.

International Directory

41 The number of environmental law centres and related institutions in environmental law grew substantially through the 1980s and 1990s. While not all similarly organized or equipped, such institutions provided potential for expanded local and regional capacity building and collaboration across regions and globally in a wide variety of environmental law activities, from data sharing to training and technical assistance. At the 18th IUCN General Assembly in 1990, the Commission on Environmental Law held a workshop where, among other things, members discussed building an 'Environmental Law Centre Network'. The initial thinking was to build an information network, keeping the project "relatively simple, consisting of a list of network participant names and communication arrangements, a short compendium of resources, ways in which the network could communicate on information and materials, and ways in which the members could help each other in litigation, law reform, research, and other matters."⁴⁸

42 A proposal for creating this information network was prepared by the Law Centre and approved by CEL's Steering Committee in March 1991. According to the proposal, criteria for Centres to be listed in this network would include being a non-profit organization with a research or project component and having a specific focus on law with a distinctive organizational structure. A questionnaire was prepared by Deputy Chair, Nicholas Robinson, with advice from Commission members Donna Craig and Ben Boer, and sent out to an initial list of 30 environmental law centres worldwide, inviting suggestions for additional Law Centres who might also be included.⁴⁹ By 1993, the list of potential centres had grown to 50.⁵⁰

43 ELC began inviting identified centres to provide information for a World-Wide Directory of Environmental Law Organizations.⁵¹ The purpose of the Direc-

tory, as explained in an ELP Newsletter, was “to facilitate communication between environmental law organizations throughout the world.”⁵² Following a standardized format, organizations began to submit information on contact data, programme areas, and activities. With support from the International Council on Environmental Law (ICEL), ELC staff began to build a database and in 1997 a draft *International Directory of Institutions Active in Environmental Law* was produced and circulated to CEL Steering Committee members for review and comment.⁵³ In 1997 and again in 1999, a Directory was published in hard-copy as a joint initiative of ICEL and ELC. Many IUCN member organizations were included in the Directory as well as intergovernmental centres for environmental law, for example, the FAO legal office and UNEP environmental law unit.

As ELP’s web site gradually gained capacity, the Directory became another important item that John Scanlon and others at ELC aimed to move to electronic form. In 2004, they achieved this additional step in their ‘E-Communication’ efforts. The International Directory of Institutions Active in Environmental Law became available in September of that year. The announcement was an ELP news item on its web site:

“Knowing who to contact and where to find information on environmental law is critical for establishing and maintaining knowledge networks and for building capacity. In order to help meet this need, IUCN’s Environmental Law Centre (ELC) has cooperated with the International Council of Environmental Law (ICEL), an IUCN Member, to compile an international directory of institutions active in environmental law. This Directory is now available on the IUCN Environmental Law Programme website, and will be updated and maintained by the IUCN ELC. All institutions that are active in the area are invited to be included in the Directory and to keep their details up to date.”⁵⁴

Comprising some 200 organizations by the close of 2004, the Directory is an excellent resource for identifying organizations active in environmental law internationally and by country. The organizations have the responsibility to provide updated information to ELC. In many cases, they have provided links to their web site homepages. Anni Lukács, Senior Documentation and Information Officer, and ELC webmaster, maintains the Directory.

Listing UN documents on the web

In the 1990s, when Wolfgang Burhenne retired as CEL Chair and was appointed CEL liaison to the United Nations, he began monitoring (with the help of other Commission and ICEL members) UN General Assembly meetings and special meetings of the UN system for documents relevant to the environment and sustainable development. When IUCN was granted the Permanent Observer status at the UN General Assembly (see Part 7, Introduction/Box 1), such monitoring received special attention by the 2000 World Conservation Congress in a resolution recognizing the Director General’s request for “the Environmental Law Programme to continue monitoring documents of the United Nations and to undertake an ongoing review of the agenda of the United Nations, in order to inform IUCN and its

constituents of any agenda items and other ongoing relevant issues with which IUCN and its assembled expertise might be able to assist.”⁵⁵

- 47 In 2001, Burhenne launched a trial project under the auspices of the Environmental Law Programme through the International Council of Environmental (ICEL) to make a list of such documents available through the Internet.⁵⁶ After extensive experimentation, this project became operational in 2004. The ICEL web site, www.i-c-e-l.org/english/un-docs, was selected to house the list. ICEL’s homepage⁵⁷ prompts the viewer to ‘UN Documents relevant to the Environment and Sustainable Development’. Each listed document is identified by official number, title, and languages in which it is available, with a link to the actual document text. Burhenne has continued screening documents for posting and the list is regularly updated and old items deleted.

Notes

- 1 See “IUCN Environmental Law Programme Annual Report 1994”, p. 9.
- 2 Id. at 11, and “IUCN Environmental Law Programme Annual Report 1998”, p. 13.
- 3 Reflections from Veit Koester on this historical point, transmitted by email dated June 7, 2006.
- 4 See “IUCN – UNEP Cooperative Agreement Signed” in *IUCN Environmental Law Programme Newsletter* (April–June 1995), p. 1.
- 5 Id.
- 6 See “IUCN-UNEP Meeting” in *IUCN Environmental Law Programme Newsletter* (July–September 1995), p. 5.
- 7 See “IUCN-UNEP Cooperation Agreement Signed” in *IUCN Environmental Law Programme Newsletter* (April–June 1995), pp. 1 and 4.
- 8 Comments from Iwona Rummel-Bulska, Chief of UNEP’s Environmental Law Branch, on May 2006 draft, transmitted by UNEP’s ‘Sylvia Bankobeza to ELC by email dated June 26, 2006.
- 9 See “IUCN-UNEP Meeting” in *IUCN Environmental Law Programme Newsletter* (July–September 1995), p. 5.
- 10 See Robinson, N., “Commission on Environmental Law – Triennial CEL Report to the Council 1997 – February 2000”, p. 4 (7 February 2000).
- 11 See “IUCN-UNEP Meeting” in *IUCN Environmental Law Programme Newsletter* (July–September 1995), p. 6.
- 12 See “IUCN Environmental Law Programme Annual Report 1997”, p. 10. In 1997, the ELC also undertook negotiations with Cambridge Scientific Abstracts (CSA), a company in Maryland USA, to make all ELIS data bases available online by subscription beginning in 1999. The CSA partnership was not implemented, however, when in 1997 the Government of The Netherlands came forward to support the UNEP/IUCN joint project.
- 13 See “IUCN Environmental Law Programme Annual Report 1997”, p. 10.
- 14 See “IUCN Environmental Law Programme Annual Report 1998”, p. 12.
- 15 See Williams, N., “Global Access to Environmental Law Information – The UNEP/IUCN Joint Environmental Law Information Service” in *IUCN Environmental Law Programme Newsletter* (January–April 1999), p. 12.
- 16 Id.
- 17 See Robinson, N., “Triennial CEL Report to the Council, 1997 – February 2000”, p. 4.
- 18 See “ECOLEX – A Gateway to Environmental Law” at IUCN ELP’s web site: www.iucn.org/themes/law, under “ECOLEX” (researched 12/22/03 and 6/15/2005).^{*} To access ECOLEX directly go to: www.ECOLEX.org.
- 19 Id., and “ECOLEX Re-Launch in Rome” on IUCN ELP’s web site: www.iucn.org/themes/law/info03 (researched 6/15/2005).^{*}
- 20 Email from Anni Lukács to author, dated June 30, 2005, re: ELP History.
- 21 See Robinson, N., “IUCN Commission on Environmental Law: Supplemental Report (2004)”, p. 3 (Supplement prepared for the 2004 World Conservation Congress as part of CEL’s Report

- from the Chair of the Commission in Annex 4 to Congress Paper CGR/3/2004/12) (available from IUCN ELC).
- 22 “ECOLEX – Why FAO, IUCN and UNEP? – A bit of history” at www.ecolex.org/ecolex/en/info (researched 6/19/05).
- 23 Burhenne-Guilmin, F., “ECOLEX – World’s Largest Environmental Law Database Launched on the Web” in *IUCN Environmental Law Programme Newsletter* (2004), p. 50.
- 24 For more information on such partnerships for sustainable development see the web site of the United Nations Department of Economic and Social Affairs, Division of Sustainable Development, at <http://www.un.org/esa/sustdev/partnerships/partnerships.htm>.
- 25 See “Overall Objectives” on ECOLEX web site under “about” ECOLEX at www.ecolex.org/ecolex/en/info.php?language=en (researched July 5, 2004 and June 19, 2005), supplemented by communication from Françoise Burhenne-Guilmin on March 2006 draft, transmitted by cover email dated April 1, 2006.
- 26 Self, J., “The CEL Forum” in *IUCN Environmental Law Programme Newsletter* (2004), p. 52.
- 27 Email from Jil Self to Barbara Lausche, dated June 22, 2005, re: ELP History and CEL Forum.
- 28 Announcement by John Scanlon, ELP Head, via email from Jil Self (IUCN ELC) to CEL Members Forum, re: “New ELP Website”, January 25, 2002.
- 29 As reported in IUCN Environmental Law Programme “Programme and Assessment Report 2002”, p. 5.
- 30 “Web site News” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2002), p. 27.
- 31 Communication with ELC website team, June 2004 (Bonn, Germany); the Google information provided by John Scanlon on March 2006 draft, transmitted by email cover dated April 26, 2006.
- 32 See ELP’s web site at: www.iucn.org/themes/law, category: “Environmental Law Programme,” subcategory: “ELP Newsletter” (researched 12/10/05).*
- 33 Communication with N. Robinson on December 2005 draft, transmitted to B. Lausche by cover letter dated March 7, 2006.
- 34 Published by IUCN in 2003 as IUCN EPLP Series No. 46: *An Explanatory Guide to the Cartagena Protocol on Biosafety*.
- 35 Email from Françoise Burhenne-Guilmin to author, June 29, 2004, re: “Biosafety Guide – downloads”; data provided by Anni Lukács, ELC staff.
- 36 Communication from John Scanlon on the March 2006 draft, transmitted by email cover dated April 26, 2006. The publication is Scanlon, J., A. Cassar, and N. Nemes, *Water as a Human Right?* (IUCN Environmental Policy and Law Paper No. 51) (IUCN, 2004).
- 37 Self, J., “CEL Members’ Portal” in *IUCN Environmental Law Programme Newsletter* (2004), p. 52.
- 38 Id.
- 39 Communication from John Scanlon on the March 2006 draft, transmitted by email cover dated April 26, 2006.
- 40 Information from Nicholas Robinson by email dated June 13, 2006.
- 41 See “Judicial Portal Fact Sheet” on ELP’s web site at: www.iucn.org/themes/law, under Activities and Projects, subcategory “Judiciary” (accessed August 2002 and November 2005).*
- 42 Stein, P., “The Judicial Portal” in *IUCN Environmental Law Programme Newsletter* (2003), p. 16.
- 43 See IUCN – The World Conservation Union, “Judicial Portal Fact Sheet” in Developments/Judiciary <<http://www.iucn.org/themes/law/dev09.html>> (August 2002).*
- 44 See “Judicial Portal” on IUCN ELP’s web site at www.iucn.org/portal/elc/index.php. (Accessed October 31, 2003 and again June 24, 2005); see also, “Judicial Portal Fact Sheet”, available on ELP’s web site at: www.iucn.org/themes/law, category: “Activities and Projects”, subcategory “Judiciary” (accessed August 2002 and again November 2005).*
- 45 See “GMO Portal” on the IUCN ELP web site at www.iucn.org/portal/elc/index.php (researched on October 31, 2003 and June 24, 2005).
- 46 See “IUCN Environmental Law Programme Portals” at www.iucn.org/portal/elc/index.php (researched on October 31, 2003 and June 24, 2005).

- 47 Announcement in ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for May 2002, heading: "'New Look' IUCN ELP Newsletter Released" (3 May 2002).*
- 48 See Commission on Environmental Law, "Workshop Report" (for workshop held on 3 December 1990 during the 18th IUCN General Assembly in Perth, Australia), p. 3; see also "Environmental Law Centre Network" in *IUCN Environmental Law Programme Newsletter* (April 1991 No. 1), p. 4.
- 49 See *IUCN Environmental Law Programme Newsletter* (April 1991 No. 1), p. 4.
- 50 See Hassan P. "Commission on Environmental Law (CEL) Triennial Report: 1991–1993" (also labeled Annex 3 to General Assembly Paper GA/19/94/4) in *Proceedings of the 19th Session of the General Assembly of IUCN – World Conservation Union, Buenos Aires, Argentina, 17–26 January 1994*. (IUCN, 1994). p. 80.
- 51 See *IUCN Environmental Law Programme Newsletter* (July–December 1993), p. 14.
- 52 See *IUCN Environmental Law Programme Newsletter* (July–December 1993), p. 14.
- 53 See "IUCN Environmental Law Programme Annual Report 1998", p. 14.
- 54 See IUCN ELP web site at: www.iucn.org/themes/law. News archives for September 15, 2004 (researched June 22, 2005). The Directory is accessible on the web site home page through either "Links" or "International Directory".*
- 55 Resolution 2.10 (preamble), *Resolutions and Recommendations of the World Conservation Congress 4–11 October 2000, Amman, Jordan*, p. 9 (IUCN, 2001).
- 56 See Scanlon, J., "World Conservation Union (IUCN)" in *12 Yearbook of International Environmental Law 2001*, 778–788 (Oxford Univ. Press).
- 57 ICEL's web site is linked to ELP's web site through ELP's subcategory, 'International Directory', and then under 'G' for Germany.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 29: New Partners

The Union-wide emphasis on regionalization meant a shift to regional and country-level activities and projects. For the Environmental Law Programme, and in particular, the Commission's mandate and mission, it was unclear how much interest or capacity there would be for law-related projects in regions or countries. This meant rethinking strategy and giving highest priority to capacity building in environmental law in developing countries, as discussed in Chapters 22 and 27.

This chapter reviews four areas of capacity building in environmental law that flourished in the 2000s. They were all integrated into and put in the context of the ELP's 'Capacity Building Initiative' which laid out activities and outputs in the form of a matrix (see Chapter 27). First, IUCN Regional and Country Offices (RCOs) began to build their own environmental law capacity, supported by the 'global' ELP in Bonn. Second, ELP and especially the Commission began in the 1990s during Parvez Hassan's term as CEL Chair to explore possibilities for supporting new centres or strengthening existing ones in developing countries outside the IUCN family, mostly attached to university faculties of law. Hassan's successor, CEL Chair Nicholas Robinson, continued and built on these efforts and the 2000s saw significant growth in such IUCN ELP "centres of excellence", subsequently renamed 'partner centres'. A third initiative was creation of an independent IUCN Academy of Environmental Law at university level. The fourth initiative that generated new collaborations and new partnerships aimed at environmental law capacity building of the judiciary.

Supporting Regional and Country Offices (RCOs)

In the 1990s, most IUCN Regional Offices did not have legal staff and capacity was limited for law-related projects to be implemented out of those offices. Capacity gradually grew, however, and by the close of 2004, there were either environmental lawyers or designated focal points for 'law' in all IUCN regional offices around the world, with the Asia Region having dedicated environmental lawyers based in Pakistan, Bangladesh, Nepal and Sri Lanka.¹ During the 2000s, as discussed in Chapter 27, the Environmental Law Programme broadened beyond its two traditional components (the Law Commission and Environmental Law Centre), to reach out and partner with environmental lawyers or legal officer focal points in IUCN's Regional and Country Offices (RCOs).² While the RCOs were still independent, this facilitated improved flows of information and collaboration between the global and regional level.

This regional growth caused some evolution in the structure for environmental law activities in the 2000s and three layers began to emerge. First, there was the original 'global' layer represented by the Environmental Law Programme in Bonn comprising a global centre of excellence in environmental law and information dealing with conceptual law development and global guidance on international treaty obligations and law and policy developments. The second layer comprised environmental law activity in the IUCN regional offices where environmental lawyers were beginning to be hired, taking the lead in identifying and organizing needed regional

and national legal technical assistance, as the case may be, with support from the global ELP. The third layer consists of IUCN country legal staff who were not necessarily lawyers or environmental lawyers by profession but were increasingly being trained and learning about IUCN's work in environmental law.³

5 Depending on the region, this distinction was already making some impact on the ground with implementation. For instance, in IUCN's Asia Region, one of nine IUCN regions, established in 1999 and covering 23 countries, the Regional Office in Bangkok has environmental law as one of its eight thematic programmes and a distinct Regional Environmental Law Programme – a Regional 'ELP' – headed by Patricia Moore, former Law Programme Officer at the Environmental Law Centre in Bonn.⁴ Her professional start with the "global" ELP made her well-suited to be part of the emerging regional technical structure of the Environmental Law Programme.

6 An example of how collaboration could work with these layers was an environmental law orientation course for IUCN staff lawyers in Asia in November 2003.⁵ That three-day course, organized by lawyers of IUCN's Regional ELP in Bangkok, was supported by IUCN's "Global" Environmental Law Centre. Intended thereafter to be an annual event, the course aimed to help staff lawyers in IUCN country offices of Bangladesh, Pakistan and Sri Lanka learn about IUCN's environmental law work at the regional and global level, including the many resolutions, policy statements, policy briefs, internet resources, publications, and other guides that have been generated by ELP the past decades since its beginning in 1960. The funds came from the "Regionalization" Project and A. Iza, a Legal Officer from the Environmental Law Centre in Bonn, was one of the resource persons. The event also provided opportunity for participating lawyers to compare national laws, and to learn about draft regional and global programmes in anticipation of the 2004 World Conservation Congress being held in that region.

Centres of Excellence / 'Partner Centres' in environmental law

7 To supplement and support IUCN's Regional and Country Offices, the Commission on Environmental Law began to explore, promote and develop partnerships with law institutions in developing countries. Initially, these partner institutions were given the designation 'regional centres of environmental law', a title replaced in 2002 by 'centres of excellence'. In 2003, questions were raised by several existing centres of excellence and by Steering Committee members regarding the meaning of the designation 'center of excellence' and at a CEL Steering Committee meeting in May 2004, the designation was changed to "partner centres", a term suggested by the ELC.⁶ By the 2000s, emerging partnerships were developing in most regions and the ELP began to undertake some law-related projects in training, technical assistance, or conceptual law development at regional or country level jointly with a partner centre in a region or country, and in at least one instance together with an RCO.

Building on APCEL

8 From the beginning pilot, engineered by CEL Chair Hassan in the Asia-Pacific region in the 1990s, and the resulting Asia-Pacific Centre for Environmental

Law (APCEL) at the University of Singapore with its flagship ‘training the trainers’ courses (see Chapter 25), there are now independent collaborating ‘centres’ in most regions. More telling of the steady progress made, this emerging network of centres was identified in the ELP’s Component Programme Plan 2005–2008 as part of the ‘network of people and institutions’ through which ELP seeks to implement its Programme. The Component Programme also acknowledged the evolving state of the relationship between partner centres and the ELP: “The nature of the relationship between ‘centres of excellence’ and the IUCN ELP will be further defined during 2005–2008, including through drawing upon experience gained from working together during the previous Intersessional period, which, for example, included working in partnership with Ecopravo Lviv....”⁷

Following the success in Singapore, Hassan and Robinson continued full-scale efforts with CEL members and organizations to build this institutional network of environmental law centres, with considerable success. CEL Chair, Nicholas Robinson, reported to Commission members in a 1999 ELP Newsletter: “Finally, for the first time, our Triennial Programme [2001–2004] will add a new dimension to complement the ELC and CEL. New strength comes from regional or national centers of environmental law around the world....The next Triennial Programme will complete the network of regional environmental law centres of excellence, defining projects to link them into [a] world-wide framework of cooperative endeavors, bringing new strength to the partnership.”⁸

Between 2000 and 2004, as laid out in Table 2 at the end of this Chapter, the growing institutional network in developing countries expanded to eleven institutions: seven centres of excellence attached to university faculties of law (in China, Costa Rica, Kuwait, Pakistan, Peru, Singapore, South Africa) and four other environmental law NGOs (in Peru, Russia, Brazil, and the Ukraine). A separate Memorandum of Understanding was signed with the Argentina NGO, Foundation for Environment and Natural Resources (FARN).⁹ Of special note, in 2002 ELC Head Charles Di Leva and CEL Chair Nicholas Robinson signed the first agreement for a centre in China, in Wuhan at the Research Institute for Environmental Law (RIEL) at Wuhan University.

Operating framework

By design, these institutions would be independent entities, with no formal relationship to IUCN as to funding or mandate. Until late 2003, partnerships normally were formalized through negotiations and a joint agreement or memorandum of understanding. While this was an appropriate approach to take in the first instance, as the initiative was significantly expanded over 2000–2003, ELC became aware that CEL Steering Committee members, RCOs, and the ‘centres’ themselves were expressing some uncertainty regarding the process for designation of centres, their relationship with the ELP and RCOs, and the nomenclature being used to describe them. It became apparent to the ELC that there was need to facilitate the initiative of CEL by developing a consistent framework within which to operate.¹⁰

At the request of ELP Head Scanlon, a uniform Charter was developed for partner centres by representatives of CEL led by Professor Alexandre Kiss, and the

ELC led by Alejandro Iza, and a standard memorandum of understanding was developed by ELC for consideration by CEL. It was adopted and utilized by the Steering Committee at its November 2003 meeting at which Robinson and Scanlon signed MOUs with the University of Costa Rica; Shanghai Jiao Tong University, China; the University of Natal, South Africa; and Ecopravo Lviv, Ukraine. A draft Charter for 'partner centres' was agreed to by the Steering Committee at its November 2003 meeting, with a final version being adopted at its meeting in May 2004.¹¹

Adding new 'partners'

- 13 Among the highlights of this initiative was the launch of the Arab Regional Centre for Environmental Law (ARCEL) in cooperation with the Faculty of Law, Kuwait University in November 2001. This was the first such centre for the Arabic-speaking region. The launch ceremony was attended by Chairman Robinson and the deans of 26 law schools from the region. Dr. Badria Al-Awadhi, then CEL Regional Vice-Chair for West Asia, and the first director of the new centre, presented ARCEL's first lecture on its scope and origins, inviting participation of legal experts throughout the region in building regional capacity in environmental law, and stressing the establishment at ARCEL of the first environmental law library in Arabic. ARCEL went on to convene the first judicial symposium of courts from the Arab world and, with UNEP, a workshop on teaching environmental law for Arab law schools.¹²
- 14 Notable for the Commission and environmental law community, in February 2003, the Dr. Parvez Hassan Environmental Law Centre was inaugurated in Punjab University Law College, Lahore, Pakistan (Hassan's alma mater). He helped negotiate its creation and donated the building as a gesture of his lifelong commitment to environmental law. The Centre houses environmental law activities and courses, some taught by alumni of the first 'training the trainers' courses he helped found at the University of Singapore, Asia Pacific Centre for Environmental Law. A message of congratulations from John Scanlon, Head of IUCN ELP (delivered at the ceremony launching the Centre in Lahore by Wolfgang Burhenne) called Hassan "a man of vision who sees the gem behind the uncut stone, the opportunity behind every challenge... well-known for his contribution to the development of environmental law."¹³
- 15 Another highlight of this evolving partner network is that in 2003 at the IUCN World Parks Congress in Durban, South Africa, CEL welcomed for the first time a thematic 'centre of excellence': the Mandela Institute, School of Law, at the University of Witwatersrand, which specializes in water law. Beginning in 2004, the Institute planned to offer Masters level courses in water law for African lawyers.¹⁴
- 16 The latest addition to this ELP institutional network came at the CEL Steering Committee meeting in Shanghai in November 2003 (on the occasion of the launch of the new Academy of Environmental Law, see discussion elsewhere in this Chapter). At that special meeting, IUCN's Commission on Environmental Law recognized three new 'centres of excellence' (University of Costa Rica, Shanghai Jiao Tong University, and University of Natal) and a fourth under development at the University of Botswana. While the first three were created, the Botswana initiative

by the close of 2004 still required negotiation with the University Law Department which for the time being was only involved with the IUCN Academy of Environmental Law.¹⁵

While some negotiations have been slower than others, overall this capacity building initiative was envisioned as an important avenue, not only for local environmental law training, but also for strengthening relations and project collaboration between the Environmental Law Programme and the regions and countries involved, an area stressed for improvement in a number of external reviews. Commission members continue to be key promoters in helping identify and develop such cooperative arrangements with individual institutions in their regions and countries. 17

The Commission on Environmental Law, in its triennial report to the 2004 World Conservation Congress, assessed the programme this way: 18

“The establishment of ‘centres of excellence’ has helped promote not only Agenda 21 but also IUCN’s statutory objective to build alliances and expert networks for conservation. The collaboration between the ELP and the regional ‘centres of excellence’ has built a network of institutions and experts on environmental law for the promotion of environmental law and sustainable development, in particular in the region of each centre.”¹⁶

The ‘Partner Centres’ attached to university faculties of law as of the close of 2004 are identified in Table 2.¹⁷ The university centres also work closely with the IUCN Academy of Environmental Law (see below), linking the Academy and the ELP in practical cooperation. 19

Other institutional partners

The Environmental Law Programme built strong collaborative ties with a number of already-existing institutions, internationally and nationally. In some cases, these relationships also have been formalized with memoranda of understanding for specific activities. 20

At the national level in developing countries, for instance, memoranda of understanding or other arrangements have been concluded with three ELP institutional partners: 21

- The Argentina Foundation for Environmental and Natural Resources (FARN), in relation to work in Argentina,
- The Peruvian Society for Environmental Law (SPDA), working in association with Catholic University of Peru ‘partner centre’ (see Table 2),
- EnviroLaw Solutions, for capacity building activities in Africa.¹⁸

At the international level, as noted in other chapters, international institutions where memoranda of understanding have been signed on environmental law collaboration include FAO and UNEP, especially for ECOLEX (see Ch. 28), UNITAR for training (see Ch. 25), and UNDP in relation to water governance (see Ch. 30). 22

IUCN also has developed special relationships at the regional level. For example, in July 2002, IUCN signed a Memorandum of Understanding with the South 23

Pacific Regional Environmental Programme which included an annex on environmental law. That agreement, signed by ELP Head John Scanlon on behalf of the IUCN Director General, was concluded on the occasion of the 7th Pacific Islands Conference on Nature Conservation and Protected Areas held in the Cook Islands, 2003, where ELP was represented by CEL Regional Vice Chair for Oceania Mark Christensen and ELC Legal Officer Alejandro Iza, in addition to Scanlon.¹⁹



Cook Islands, 2003, J. Scanlon signs an agreement with SPREP on behalf of IUCN Director General

Developed country collaborations

24 The Environmental Law Programme by the late 1990s also was forging partnerships and collaborations with non-governmental IUCN members active in environmental law in developed countries.²⁰ With its administrative base in Bonn, Germany, the Commission on Environmental Law had close relations from the beginning with non-governmental European environmental organizations. Over time, many active members of the Commission were European-based, some also over the years becoming recipients of Elizabeth Haub Prizes for distinguished service in environmental law or diplomacy (see Chapter 11).

25 European CEL members commonly also were active members of European environmental law organizations, e.g., the European Environmental Law Association (EELA) and the European Council of Environmental Law (CEDE), forging ties and co-sponsorship opportunities on issues and events. For example, EELA and CEL co-sponsored a workshop during the inauguration ceremonies for the new ELP offices in March 1999 entitled “The Tasks of Organizations promoting Environ-

mental Law: Where do we want to go together?”.²¹ The workshop examined regional environmental law developments and how regional environmental law specialists could be better linked to the progressive development of international environmental law.

Outside Europe, numerous collaborations were and continue to be developed with developed country institutions specializing in environmental law. Most commonly, institutional partnerships emerged on project or programme activities where CEL members already were affiliated with the institution on an individual basis. Among these were the Environmental Law Institute (Washington, D.C., headed until his retirement in 2003 by CEL Vice-Chair William Futrell), the Centre for International Environmental Law (Washington, D.C.), the Pace University Law School’s Center for Environmental Studies (New York, the base for Nicholas Robinson, CEL Chair from 1996–2004), the Macquarie University Law Faculty Centre in Sydney, Australia, the Japan Centre for International and Comparative Environmental Law, and the Marine and Environmental Law Institute in Dalhousie, Canada – to name a few.

The ELP Component Plan 2005–2008, which reflected the status as of the end of 2004, contains appendices with information about “current non-governmental IUCN Members active in environmental law”. Table 1 below is a condensed list of members from developed countries. For contact information and areas of work of these members as well as an expanded list of organizations worldwide with environmental law expertise, whether or not they are IUCN members, see the International Directory of Institutions Active in Environmental Law on ELP’s web site, discussed in Chapter 28.²²

Table 1: IUCN Members Active in Environmental Law from Developed Countries²³

| Name of Organization and Headquarters | Geographic Scope |
|---|---------------------------------|
| Canadian Institute for Environmental Law and Policy (CIELAP), Toronto, Canada. | Canada |
| Canadian Institute of Resources Law (CIRL), Calgary, Canada. | Canada |
| Center for International Environmental Law (CIEL), Washington, DC. | International |
| Center for Environmental Legal Studies, Pace University, White Plains, NY. | USA/International |
| Defenders of Wildlife, Washington, DC. | North America/ International |
| Environmental Defense, Washington, DC. | USA |
| Environmental Law Institute, Washington, DC. | USA/International |
| Foundation for International Environmental Law and Development (FIELD), London, UK. | International |
| International Council of Environmental Law, Bonn, Germany. | International |
| International Institute for Sustainable Development (IISD), Winnipeg, Canada. | International |

| | |
|---|-----------------------------|
| Macquarie University Centre for Environmental Law, Sydney, Australia. | Australia/ International |
| National Environmental Law Association (NELA), Canberra, Australia. | Australia |
| National Wildlife Federation (NWF), Washington, DC. | USA |
| Natural Resources Defense Council (NRDC), Washington, DC. | USA |
| World Wildlife Fund-US (WWF), Washington, DC. | USA/International |

IUCN Academy of Environmental Law

Groundwork

- 28 Hand-in-hand with these ELP initiatives to build regional and country level law capacity for environmental law promotion and implementation, the Environmental Law Programme through the Commission on Environmental Law began to explore building a network of independent scholarly and professional research institutions in environmental law.
- 29 CEL Chair Nicholas Robinson, himself a university professor in environmental law, led the effort in the CEL Steering Committee to build a new kind of network focused on academic institutions around the world and faculties and professors in environmental law. Based on extensive consultations with Commission members, several existing centres of excellence (the ‘partner centres’) and others in academia, Robinson proposed the creation of an international academy of environmental law. In fact, the very first person to propose this as a ‘flagship’ for CEL was Angela Cropper at a Steering Committee meeting (when she was Deputy Chair) – the idea took several years of gestation.²⁴ The initiative advanced recommendations in Agenda 21 which called upon competent international and academic institutions to cooperate in providing legal education on environment and development law²⁵. It supported ELP’s overall mission to advance environmental law especially in developing countries. An ELP Newsletter explained some of the rationale behind the initiative:
- “The field of environmental law is now so complex that it has become hard for IUCN’s several hundred volunteer lawyers and modest full-time staff of legal specialists to sustain both the demands for their expert services and the academic study and elaboration of new concepts for refining and advancing environmental law. It has been increasingly difficult for the Commission on Environmental Law (CEL) to both provide expertise to the Union, and to respond to requests to build the environmental law capacity in developing countries and economies in transition.
- “Recognising these difficulties, the Commission [after consultations around the world] ... determined that the most efficacious way to sustain the Union’s contribution to building environmental law is to become more closely allied with the University community’s expertise in environmental law.”²⁶
- 30 The stages required for creating this new, world-wide institution would involve both procedural and substantive steps. First, the CEL Steering Committee needed to approve Robinson’s proposal for development of an academy which, when so approved in 1998, was submitted to IUCN’s Council for further endorse-

ment and for permission to link IUCN's name to the concept.²⁷ With this step successfully accomplished, CEL announced the initiative to create an IUCN Academy of Environmental Law at IUCN's 50th Anniversary celebration in Fontainebleau, France, in November 1998.

IUCN members formally 'welcomed' the initiative to pursue the establishment of an Academy at the World Conservation Congress (WCC) in October 2000, and by Resolution requested "the Council to give urgent consideration to this endeavour within IUCN's Overall Programme before the next World Conservation Congress."²⁸ Inviting all interested IUCN members to promote and assist, the Resolution requested the CEL Chair and IUCN's Director General to "collaborate with existing international and regional training and research institutions and programmes, and to develop a detailed statement of goals, functions, structure, and legal form of the Academy for consideration by the Council."²⁹ 31

With this mandate, Robinson and CEL continued aggressively to develop the Academy's governance structure, legal form and criteria for membership. As re- 32



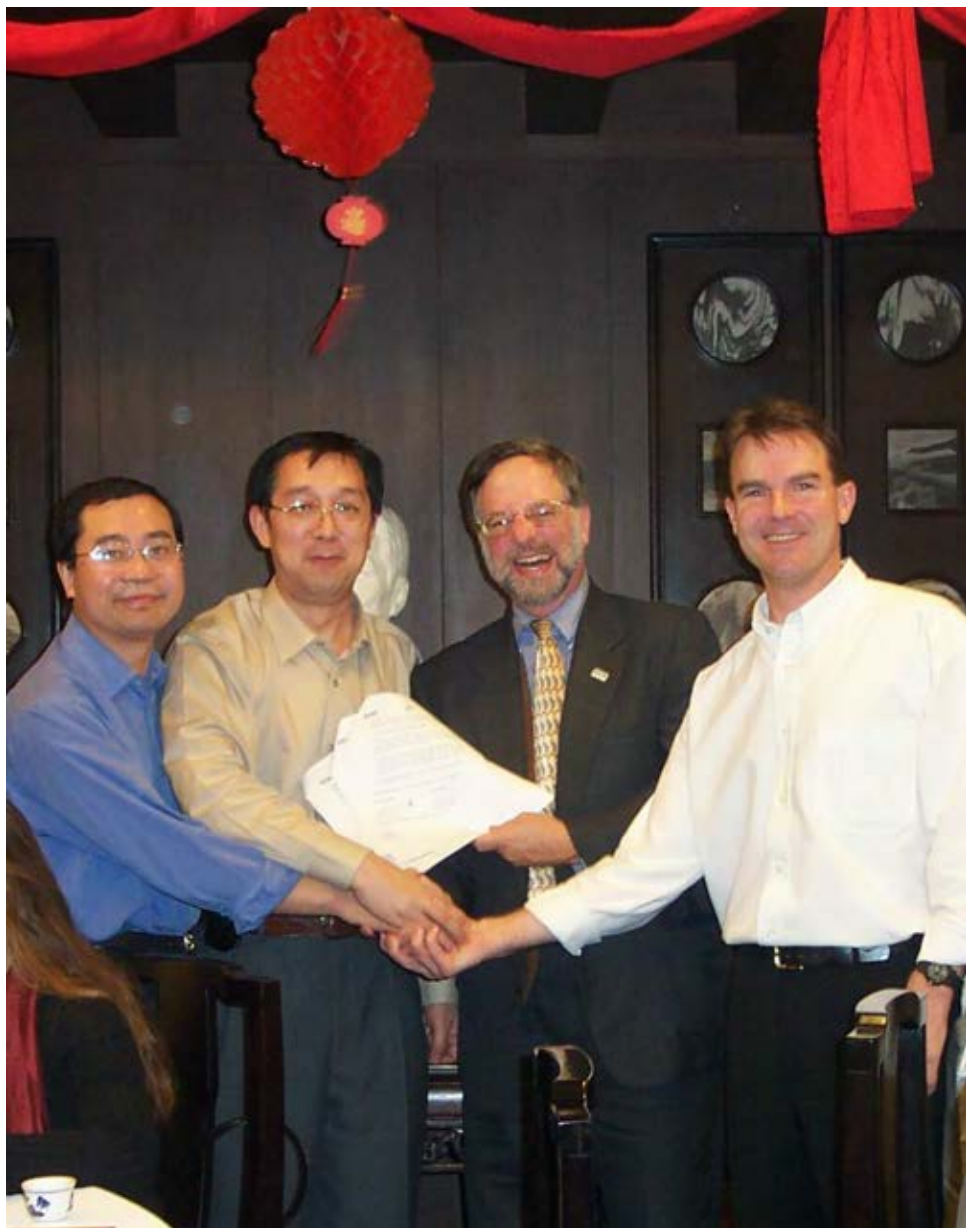
Discussing the IUCN Academy in Bonn, August 2002. From left: J. Scanlon, M. Manguiat, A. Iza, K. Sarafidou, L. Paddock. Front: C. Okidi, I. Mbechi, N. Robinson

ported in an ELP Newsletter: "Besides the extensive discussions that were held with legal scholars from more than 240 universities, CEL convened conferences, workshops and meetings in every region of the world between 1997 and 2002."³⁰ At its August 2002 meeting, the CEL Steering Committee authorized Robinson to bring the full Academy proposal forward to the IUCN Council with the recommendation that it be established as an autonomous body associated with ELP.³¹ Based on the Commission's recommendation, the 57th Meeting of the IUCN Council (9–11 December 2002) unanimously approved the launch of the Academy and authorised the Steering Committee to implement the Commission's proposal for its establishment.³²

Preparatory meetings were scheduled throughout 2003 and formal launch was set for the end of 2003.

Launch

- 33 On November 4, 2003, the Commission on Environmental Law on behalf of IUCN launched the new IUCN Academy of Environmental Law. The launch was planned to occur on the occasion of the Academy's first colloquium on 'Energy for Sustainable Development' which CEL's Specialist Group on Energy and Climate,



Launch of the IUCN Academy of Environmental Law, Shanghai, November 2003. Chair N. Robinson with Wang Xi (left) and J. Scanlon (right)

and its Chair Professor Richard Ottinger, had taken a lead role in organizing. The event was hosted by Shanghai Jiao Tong University, Shanghai, China, which drew more than 150 professors representing 90 university law faculties from 60 countries.³³ Wang Xi, CEL member and Director of the Environment and Resources Law Institute at the University, coordinated the local preparations.

UN Secretary General Kofi A. Annan delivered an opening statement, welcoming the establishment of “a new global network of university law departments” dedicated to environmental law, and stating that the “United Nations looks forward to the teaching and research that the Academy will now undertake ... towards our common goal of sustainable development on our one and only planet.”³⁴ Among other distinguished persons to welcome the gathering were Professor Xie Shengwu, President of the host university, and IUCN’s Director General Achim Steiner via a video organized by the ELC with IUCN Headquarters. 34

CEL Chair Robinson gave an opening address at the inauguration and Wolfgang Burhenne spoke on behalf of CEL. ELP Head Scanlon delivered welcoming remarks and a closing message on behalf of the Environmental Law Programme. ELC legal staff Alejandro Iza and Maria Socorro Manguiat actively participated in and supported the launch, as did CEL Liaison Officer Saradifou. In his closing remarks, Scanlon said the success of the launch was the result of a great team effort between CEL, in particular the leadership of Chair Robinson and the Energy Law and Climate Change Specialist Group, with the ELC, Shanghai Jiao Tong University, and Pace University, which served to show what could be achieved through collaborative endeavor.³⁵ Professor Wang Xi and his team at Shanghai Jiao Tong University and Professor Koh Kheng-Lian, then CEL Vice-Chair for Asia, also worked diligently to support the colloquium itself.³⁶ 35

On November 30th, 2003, following the successful launch and inaugural colloquium in China, a ‘ribbon launch’ of the Academy was held at the National University of Singapore hosted by the Asia-Pacific Centre for Environmental Law, IUCN ELP’s first recognized regional environmental law ‘centre of excellence’. 36

These events were reported most extensively on ELP’s web site: www.iucn.org/themes/law, where the ELC has included several pages of information on the Academy that is updated regularly by ELC staff. Summary material on the first colloquium explains that this new Academy is “the first worldwide learned society in the field of environmental law. Its establishment also marks the first time that law schools, departments and faculties have formed an international academic consortium on any subject.”³⁷ Cambridge University Press published two volumes of papers from this first colloquium.³⁸ 37

Under the terms of the 2000 World Conservation Congress Resolution and Council decision establishing the Academy, it is autonomous in its operations and raises its own funds. The annual colloquia are funded by the host university with special fund-raising for each event. UNEP has co-sponsored the Academy by providing scholarships for developing country law professions to attend each of the past three events.³⁹ 38

The Academy’s relation to the Environmental Law Programme is one of close cooperation, but with no financial ties. The Academy is an NGO under Canadian 39

law that is autonomous in its decision-making and studies, but subject to the terms and conditions of a license granted by IUCN to use its name and logo. The license includes provisions regarding its relationship with the IUCN Environmental Law Programme. The Academy was created to serve and support the IUCN Environmental Law Programme in the area of academic endeavour. Its research programme is to be coordinated with and provide support to the activities of the IUCN ELP.

40 This special relationship is reflected in the governance structure of the Academy. It is governed by an Executive Committee (initially called a 'Bureau') of from five to nine persons elected by the Academy's Academic Collegium, the representative body comprised of a member from each university in the Academy. The Chair of CEL and Head of ELP serve as ex officio members of both the Collegium and Executive Committee. The Collegium directs research and other Academy programmes. The Executive Committee, responsible for defining and undertaking projects and operations of the Academy, elects its own Chair and selects a Director for the Academy. Membership is open to any university that meets the admission criteria and there is no limit on numbers of members. The first universities to be part of that network were those hosting centres designated as IUCN centres of excellence.

41 From 2002 to the end of 2004, the ELC Director Scanlon agreed to provide the interim Secretariat for the Academy at the Environmental Law Centre in Bonn, and established and maintained a dedicated section on the ELP website about the Academy. This support was critical to the successful launch of the Academy in 2003 and to its early development.

42 At the Second Colloquium in October 2004, the CEL Steering Committee appointed an interim governing board for the Academy, with Professor Nicholas Robinson as the initial chair and Professor Jamie Benidickson of the University of Ottawa as the first Director. Members accepted an invitation from the University of Ottawa, Canada, to host the Secretariat and confirmed that the Academy would be situated at the University of Ottawa Faculty of Laws.⁴⁰ Services to the Academy also are provided by other cooperating secretariats: the Pace University Center for Environmental Legal Studies in New York, USA, and the Asia-Pacific Centre for Environmental Law at the National University of Singapore. In 2004, the Academy negotiated with Cambridge University Press for publication of the papers and other background materials from each future annual colloquium.

Activities

43 The Academy's main programme components are an "annual conference to critically review environmental law and reflect on new concepts, ... an annual scholarly publication of the conference proceedings, ... research projects, ... and teaching and university-level capacity building in environmental law world-wide, with special attention to developing countries and countries with economies in transition."⁴¹ At its first colloquium, the lecture series was established and three lectures on environmental law were delivered by long-standing CEL member and distinguished senior scholar in environmental law, Professor Alexandre Kiss of the University of Strasbourg.

The Academy's Second Annual Colloquium was convened in Kenya during 4–9 October 2004, hosted by and in partnership with the University of Nairobi, with Charles Okidi, CEL member and professor at that university, leading the prepara-



Nairobi: 2nd IUCN Academy Colloquium, 2004. From left: N. Robinson, W. Maathai and C. Okidi

tions. As with the first colloquium, the event involved a number of distinguished persons. The session was opened by Kenya's Assistant Minister of the Environment and founder of the Green Belt Movement, Professor Wangari Maathai, who learned during the Colloquium that she had been awarded the Nobel Peace Prize. The colloquium opened on UN World Habitat Day and the Executive Director of the UN Human Settlements Programme, Professor Anna Kajumulo Tabajuka, addressed the group, with UN Secretary General Kofi Annan sending a written message and IUCN Director General Steiner again sending a video message. The theme was land use for sustainable development and the lecture series was delivered by Professor Akio Morishima. As with the first colloquium, the event was well attended, with some 150 participants, including 112 law professors representing 57 law faculties from 40 countries worldwide.

The Academy's Third Colloquium (July 2005) was hosted by Macquarie University in Sydney, Australia, with the theme 'Biodiversity Conservation, Law and Livelihoods.' Françoise Burhenne-Guilmin, now Senior Counsel at the ELC, gave the keynote address and Commission member Professor Joe Sax gave the Distinguished Lecture. The Fourth Colloquium in 2006 will be hosted by Pace University with the theme, 'Environmental Law Compliance and Enforcement', with Professor Eckard Reh binder (and CEL member) the Distinguished Lecturer. The Fifth Colloquium (2007) will be hosted by the Brazilian 'Instituto O Direito por Um Planeta Verde' (Law for a Green Planet Institute), another IUCN member and ELP partner centre, with the theme 'Environmental Law 15 Years after Rio'; the Sixth to

be at the Autonomous University in Mexico City, and the Seventh at Wuhan University in Wuhan, China. CEL Chair Robinson has continued to be a leading figure in promoting and developing the Academy as a new and important mechanism for advancing the role of environmental law in sustainable development.⁴²

The Judiciary

- 46 Historically, the judiciary had been a branch of government that was not a major focus for IUCN's environmental law initiatives and networks, even though Dr. Nagendra Singh, President of the International Court of Justice, was a Commission member in the 1980s and its Deputy Chair. Some initial work had been done in the 1970s to collect court decisions, first starting with German cases, but the project was discontinued for lack of funds. In 1998, recognizing this gap and inspired by some CEL members from the judiciary, CEL Chair Robinson and the CEL Steering Committee created a Working Group on the Judiciary. This move led to a number of activities directed to the interests and needs of the judiciary in training, networking and data collection to enhance judicial expertise and capacity in environmental law.

Conferences

- 47 In the early 2000s, UNEP and the Environmental Law Programme, represented by CEL Chair Robinson and ELP Head Scanlon, began a series of meetings to explore possibilities for cooperation in events surrounding the 2002 World Summit for Sustainable Development (WSSD).⁴³ As a first collaborative event with the judiciary, UNEP invited IUCN to cosponsor a UNEP-led "Global Judicial Symposium" in Johannesburg, South Africa, in August 2002 prior to the WSSD, which came to be called WSSD's 'Law Week'.⁴⁴ The theme was the role of law and sustainable development. UNEP organized the symposium and CEL Chair Robinson and former CEL Chair Hassan served as resource persons. That Global Symposium was the culmination of three earlier UNEP-organized symposia (between 1996 and 2001), beginning in Mombasa, Kenya in 1996, followed by a second in Colombo, Sri Lanka, and a third, in Manila, Philippines, where UNEP's Law Programme Chief Donald Kaniaru, a CEL member, had been in charge and UNEP's Lal Kurukulasuriya, also a CEL member, had worked as part of his team. For the Global Symposium in Johannesburg, Kurukulasuriya was now in charge of the event for UNEP, working under Director Bakary Kante whom Kaniaru represented in his new post as UNEP Director of Environmental Policy Implementation.⁴⁵ Robinson and Hassan, along with UN Legal Advisor Hans Correll, were the only non-judges invited to speak at the Symposium.
- 48 Following up on the outcome of that and related events immediately after the WSSD, UNEP held a meeting of some 26 Chief Justices and senior judges from around the world in Nairobi from 30–31 January 2003, at which CEL Chair Robinson and ELP Head Scanlon again participated.
- 49 IUCN ELP organized a number of other environmental law events specifically for judges. On October 10–11, 2002, ELP (with leadership from CEL Vice Chair Andrew Waite) and the UNEP Regional Office for Europe co-sponsored a two-day Symposium in London for judges from Western European countries. Con-



London, October 2002: Symposium for judges from Western European countries

vened by the IUCN Commission on Environmental Law and opened and supported by Lord Woolf, Lord Chief Justice of England and Wales, the event brought together judges from across Europe to meet with judges and scholars worldwide. The Symposium aimed to identify preliminary steps that the judiciary could take to implement relevant parts of the WSSD Plan of Implementation related to the judiciary's role in achieving sustainable development.⁴⁶ CEL Chair Robinson and Andrew Waite, CEL Vice Chair for West Europe, represented CEL in organizing the event and Scanlon and Manguiat represented ELP. A number of distinguished persons were speakers.

A brief record of the decisions taken at the Symposium was drafted by Scanlon and called the "London Bridge Statement" (recognizing the location of the event). It was adopted by acclamation (with a similar process becoming a feature of all subsequent events) recording agreement, among other things, to: 50

"Establish, as of today, a European Judicial Forum to progress the outcomes of the Symposium, with its initial membership to comprise the European members of the judiciary who attended the Symposium."

[and]

"Invite the IUCN Commission on Environmental Law Judiciary Specialist Group, Chaired by the Hon. Justice Paul Stein AM QC (Australia), to facilitate co-ordination of the work of the European Judicial Forum with broader global initiatives."⁴⁷

To make progress on those recommendations and advance implementation of the WSSD Plan of Implementation related to the judiciary, the European judges met next in Rome in May 2003, the event being the first meeting of the European Judi- 51

cial Forum with the IUCN CEL Judicial Specialist Group. At that meeting, among other things, further support was pledged for the IUCN/UNEP Judicial Portal.⁴⁸

52 Continuing with the IUCN/UNEP initiative to work with judges worldwide on capacity building in environmental law, a judicial symposium was convened for the Arab region on October 26–28, 2002. Hosted by the State of Kuwait, in cooperation with the Arab Regional Center for Environmental Law (ARCEL) (an IUCN member and ‘partner centre’ led by former CEL Vice Chair Badria Al-Awadhi), the IUCN Environmental Law Programme, the State of Kuwait’s Judicial Institute, and UNEP, some 50 judges from the region and one judge from Australia attended. CEL Chair Robinson addressed the group, among others. With a view to advancing implementation of the WSSD for the judiciary, main topics included the issue of specialized environmental courts and the importance of environmental expertise-building also for the judiciary.⁴⁹

53 In May 2003, a similar event was held in Lviv, Ukraine, for Central/Eastern Europe, the Caucasus and Central Asia. Sponsored by IUCN, UNEP, and EcoProvo-Lviv (an IUCN member and IUCN ELP ‘partner centre’ led by CEL Regional Vice



Lviv, Ukraine, May 2003: Symposium for judges from the region

Chair Svitlana Kravchenko), the symposium was attended by 15 Chief Justices and other senior judges from Supreme and Constitutional Courts from 11 countries of the region and judges and experts from other parts of the world.⁵⁰ Again, CEL Chair Robinson addressed the meeting, as did former Chair Hassan, Chair of the CEL Judiciary Specialist Group Justice Stein AM QC, and ELP Head Scanlon. The symposium considered regional and comparative case studies, and such issues as human rights and the environment, constitutional environmental rights, environmen-

tal courts, and exchanging judgments through the Judicial Portal. It was supported by the State Judicial Administration of Ukraine and the Judicial Academy of Ukraine. The 'Lviv' statement adopted by acclamation by the Symposium was available in English and Russian and posted on ELP's website.⁵¹

Later in 2003, the Latin America region had its judicial symposium organized by the Argentinian Fundacion Ambiente and Recursos Naturales (FARN) (an IUCN member and ELP "partner"), together with UNEP, the World Bank Institute, and Law for a Green Planet Institute (another IUCN 'partner centre'). Convened in October in Buenos Aires, the three-day event drew judges, prosecutors, and environmental law experts mainly from Latin America and the United States to discuss implementation and compliance issues of environmental law in the region. IUCN ELP was a member of the event's advisory group and Alejandro Iza, ELC Legal Officer, made a presentation on the IUCN/UNEP Judicial Portal.⁵² 54

Also in October 2003, as part of the ongoing collaboration between UNEP and IUCN, chief justices and senior judges gathered in Nairobi for a "UNEP Chief Justices Meeting of East and West African Countries" to work on regional implementation of the 2002 Global Judges Symposium. Reflecting its regional importance, the two-day meeting was chaired by the Honourable Chief Justice of the Republic of Kenya, Hon. Justice Johnson Evan Gicheru; IUCN Regional Director for Eastern Africa, Eldad Tukahirwa, attended on behalf of IUCN.⁵³ 55

IUCN ELP's capacity building for the judiciary has continued worldwide, many activities organized or promoted by members of the CEL Judiciary Specialist Group.⁵⁴ On 28 February 2004, an EU Forum for Judges for the Environment was created as a new international non-profit association under Belgian law. In late June 2004, CEL Chair of the Specialist Group on the Judiciary, Justice Paul Stein AM QC, gave the keynote address at a Regional Workshop on the Role of the Judiciary in Promoting Sustainable Development in Bangkok, Thailand. He then went on to Kathmandu, Nepal, for the South Asian interaction on Environmental Justice and Equity organized by the Nepal Forum for Justice in cooperation with the Nepal Supreme Court. 56

Finally, during November and December 2004,⁵⁵ two major judicial events were cosponsored and organized by the IUCN Environmental Law Programme, mainly through the CEL Specialist Group on the Judiciary and the Environmental Law Centre. First, November 17, 2004, the first day of the Third World Conservation Congress in Bangkok, Thailand, was 'Judiciary Day' organized by IUCN CEL with UNEP, UNDP, FAO, the World Bank Institute, The World Bank, and leading NGOs working in the area. CEL Vice Chair Futrell and Head of ELP Scanlon were instrumental in attracting co-sponsors and sponsorship funds from the private sector to support the event and the subsequent publication of the proceedings. Chaired by the retiring CEL Chair Nicholas Robinson, the event drew participation of judges and practitioners from around the world to showcase the role of the judiciary in upholding the rule of law, and focused on links between environment, human rights and poverty. IUCN Director General Achim Steiner also addressed the meeting. Proceedings of the event will be published in the IUCN Environmental Policy and Law Paper series. 57

58 Soon after the 3rd WCC, on December 6–8, 2004, Pace University Law School, the New York State Judicial Institute, and the Commission for Environmental Cooperation (CEC – the NAFTA environment arm), and UNEP hosted the first Judicial Symposium on the Judiciary and Environmental Law in North America. That



December 2004: First Judicial Symposium on the Judiciary and Environmental Law in North America. From left: Nicholas Robinson, Lord Justice Robert Carnwath, Justice Paul Stein

event drew more than 40 judges and experts from Canada, Mexico, and the United States to compare how select environmental law issues were handled in Australia, Belgium, Canada, Egypt, England, Mexico, and several states within the US. Cosponsored by IUCN and UNEP, among others, key participants included Justice Paul Stein AM QC from Australia (CEL Specialist Group Chair) and Professor Nicholas Robinson, Pace University (just retired CEL Chair). It was to be followed in November 2005 by a second Symposium held in Mexico City at the Pan American University Law Faculty, at which Professor Nicholas Robinson would be providing a lecture.⁵⁶

Judicial Portal

59 At the UNEP Global Judges Symposium in Johannesburg, South Africa, in August 2002, Justice Paul Stein AM QC, Chair of CEL’s Judicial Specialist Group and Honorable Judge of the Court of Appeal of New South Wales, Australia, launched the IUCN/UNEP Judicial Portal as the “world’s first Internet based means for judges from around the world to communicate with one another, and to share environmental law judgments and information.”⁵⁷ Developed and designed by the Environmental Law Centre with Stein’s assistance (as discussed in Chapter 28), the new Portal was well received at the Symposium by some 130 assembled judges from more than 60 countries as well as international courts and tribunals.⁵⁸

John Scanlon, Head of the Environmental Law Programme, launched the operational phase of the Judicial Portal at the October 2002 meeting of European Judges noted above. The Symposium's concluding "London Bridge Statement" also focused on the portal, with participants agreeing to: "Commend the development of the IUCN/UNEP Judicial Portal by the IUCN Environmental Law Centre as an innovative and effective means to facilitate communication on environmental law amongst judges, and in particular the sharing of judgments, and to encourage judges from across Europe to participate actively in the Portal."⁵⁹ The Judicial Portal continues to be managed by the IUCN Environmental Law Centre. 60

Judicial decisions data base

The Environmental Law Programme initiated work in the mid-1970s to build a collection of court decisions related to environmental matters in major jurisdictions. Guidelines were prepared and tested with court decisions from Germany and selected cases from other major jurisdictions such as the USA and UK. With funds very limited, however, it was possible only to begin to build a judicial data base for German decisions, the initial analyses prepared by two German researchers. By 1975, cases from 1973–75 had been analyzed and approximately 400 German court decisions added to the Law Centre's documentation collection.⁶⁰ The work was both time-consuming and highly technical, and it was difficult to find researchers and funding to broaden coverage to other countries. Into the 1980s, German funding, mostly through FUST, supported the continued abstraction and entering into an ELIS subfile of all major environment-related decisions of the German courts.⁶¹ Lack of resources kept the project from branching out to other jurisdictions. 61

With the start of ECOLEX in the 1990s and its launch in 2003, combined environmental law information of IUCN, UNEP, and FAO became accessible to the public (as discussed in Chapter 28). One of the data bases of that global data bank features judicial decisions. While the court decisions available through ECOLEX only numbered some 50 by the close of 2004, this feature together with the judicial portal's capacity for judges and CEL members to enter court cases on that site should enhance the collection with time. 62

Table 2: IUCN ELP ‘Partner Centres’

| Country/Institution | Year of Estab, MOU/Agmt | Historical Notes |
|---|----------------------------|--|
| Brazil/Law for the Green Planet Institute | 2001 | Negotiations were undertaken in the late 1990s with organizations in Brazil and during the 3 rd International Conference on Environmental Law in Sao Paulo, Brazil. In June 1999, CEL Chairman Nicholas Robinson, on behalf of CEL, signed a cooperation agreement with Law for a Green Planet Institute (Instituto „O Direito por um Planeta Verde“) to include that Institute in the network of centres for Latin America. ⁶² The agreement highlighted cooperation in the development of a country-wide network of institutions and experts in Brazilian and international environmental law. On the occasion of the 2002 WSSD in Johannesburg, the MOU was reviewed and „reinvigorated“; ELP and the Institute further agreeing, among other things, to collaborate in implementing WSSD outcomes in South America, work closely together on the Institute’s 7 th International Environmental Law Conference (‘Water and the Web of Life’), and recognize the Institute as an IUCN ELP ‘centre of excellence’. CEL Regional Vice Chair for South America, Jorge Caillaux, and ELP Head, John Scanlon, both signed the renewed MOU on behalf of IUCN, and Professor Antonio Benjamin (Brazil) signed on behalf of the Institute. ⁶³ |
| China/Environmental and Resources Law Institute of Shanghai Jiao Tong University Law School, and Research Institute for Environmental Law of Wuhan University | 2003 | A regional programme called Promoting Environmental Law In China (PELC) was launched in November 1999, jointly by IUCN’s Environmental Law Programme, IUCN, and the Wuhan University in Wuhan, China. The programme was based on a Memorandum of Understanding signed by representatives of the ELP, IUCN, and Research Institute of Environmental Law (RIEL) at Wuhan University, with Professor Wang Xi, former Vice Director of the University’s Research Institute of Environmental Law as the Coordinator. Its purpose is to develop a network of institutions and experts in Chinese environmental law. ⁶⁴ Discussions with CEL member Du Qun and RIEL are continuing. ⁶⁵ At the first annual meeting of the IUCN Academy of Environmental Law in Shanghai in November 2003, CEL Chair Robinson and ELP Head Scanlon signed a memorandum of understanding with Shanghai Jiao Tong University Law School. |

Costa Rica/University of Costa Rica 2003

At the first annual meeting of the IUCN Academy of Environmental Law in Shanghai in November 2003, CEL Chair Robinson and University of Costa Rica Law School (UCR) Dean and Professor of Environmental Law Rafael Gonzalez Ballar signed a memorandum of understanding recognizing the UCR as one of the newest CEL 'centres of excellence'. CEL Regional Vice-Chair for Meso-America, Grethel Aguilar, facilitated the establishment of the Centre and participated in the signing ceremony. In 2004, UCR began offering a new Master's in Environmental Law Program, strengthening its post graduate courses in environmental and agrarian law. UCR also began the region's first in-house environmental law clinic, *Consultorio Juridico Ambiental*, which plans to work with the IUCN Regional Office for Meso-America on law related projects and internships.⁶⁶

Kuwait/Arab Regional Centre for 2001
Environmental Law (ARCEL) at
the Faculty of Law, University of
Kuwait

In 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 CEL Vice Chair for West Asia, Dr. Badria Al-Awadhi, and the Dean of the Law Faculty, Dr. Fadhel Nasserallah, a Memorandum of Understanding was concluded with IUCN's Commission on Environmental Law to designate ARCEL as a Centre of Excellence in environmental law.⁶⁷ ARCEL was formally launched in November 2001, by the Faculty of Law of Kuwait University in cooperation with the CEL. The launch ceremony was honored with the presence of Dr. Fazia M. Al-Koavafi, Rector of Kuwait University, and Professor Nicholas Robinson, Chair of CEL, plus the Deans of 26 law schools drawn from Egypt, Jordan, Kuwait, Lebanon, Oman, and Syria, and the Director-General of the Environment Public Authority of the State of Kuwait, Dr. Mohammad A. Al-Sarawi.

At that ceremony, Dr. Badria Al-Awadhi, CEL Vice Chair for West Asia, who had had a major role in promoting and negotiating creation of the Centre, made a key presentation. As reported in an ELP Newsletter, she „invited the participation of legal experts throughout the Arab world in building the region's capacity in environmental law. ... [and] highlighted the establishment of the first environmental law library in Arabic at ARCEL.“⁶⁸ For the Environmental Law Programme, inaugurating an Arabic environmental law centre had special meaning in light of the project it had supported and promoted in the 1980s and 1990s on Islamic Principles of Environmental Law.⁶⁹

| | | |
|---|------|--|
| Pakistan/Dr. Parvez Hassan Environmental Law Centre (PHELC) | 2003 | <p>In February 2003, a Centre of Excellence was inaugurated in Pakistan. Named the Dr. Parvez Hassan Environmental Law Centre, in honor of Hassan's lifelong commitment to environmental law, the new Centre was located at the Punjab University Law College, the oldest and largest institution of legal education in Pakistan. Parvez Hassan, an alumnus of the University and Chair of CEL from 1990-1996, helped negotiate the Centre with the support and collaboration of the Law College and IUCN's Environmental Law Programme, and donated the building. In 2001, the Law College was the first institution in Pakistan to start a diploma programme in environmental law. The new Centre „will house the Environmental Law courses and other academic activities of the College and the University,“ which already offers environmental law as part of the regular Bachelor of Laws programme and will offer environmental law as one of the subjects in the Master of Laws and the doctoral programme.⁷⁰</p> |
| Peru: 1) Partner Centre – Catholic University Faculty of Law, and 2) associated NGO institutional partner – Peruvian Society for Environmental Law (SPDA) | 2003 | <p>In 1998, CEL members and other interested lawyers held a three-day workshop in Chile during the 1st South American Conservation Congress, in part to identify possibilities for a regional centre.⁷¹ In October 2002, Pontifical Catholic University of Peru (PUCP) and the Peruvian Society for Environmental Law (SPDA) signed a cooperation agreement to pave the way for establishing a Commission on Environmental Law Centre of Excellence, in Lima, Peru.⁷² Following the precedents of other regional centres, especially APEL in Singapore, and ARCEL in Kuwait, it was envisioned that the proposed Centre would develop a programme for teaching environmental law and policy. The designation of the Catholic University of Peru as a regional centre of excellence was formalized in 2003.⁷³ That same year, the University Faculty of Law launched its first diploma programme on environmental law. Directed by the Law School with academic support from IUCN ELP's institutional partner, SPDA, and ELP, the programme made alliances with other environmental centres, mainly in the Andean region, and involved visiting professors from Chile, Argentina, Brazil, and the USA to share the academic teaching with Peruvian teachers.⁷⁴</p> |
| Singapore/Asia Pacific Centre for Environmental Law (APEL) | 1996 | <p>For background on the creation of APEL, see Chapter 25 on Training, where it is featured as the founding centre of the „Training the Trainers“ programme and IUCN ELP's first designated „regional centre of excellence.“ As APEL has grown, it has built a web site containing framework environmental laws for some ASEAN countries, a list of international conventions and their status, explanatory notes on words and phrases in international law and links to other important web sites, see http://law.nus.edu.sg/apcel/.</p> |

- South Africa/ The Mandela Institute, School of Law, University of Witwatersrand, Johannesburg, and the University of Natal 2003
- CEL used the occasion of the 5th IUCN World Parks Congress in Durban, South Africa, to announce this first CEL regional 'centre of excellence' in Africa and the first centre to be recognized for its thematic expertise, water law. Considered a major capacity building initiative for Southern Africa, the Centre will host certificate and Masters level courses in water law, designed for African lawyers and non-lawyers.⁷⁵
- The Russian Fed./ EURASIA 2001
- In the mid-1990s, consultations were initiated in Moscow for a regional centre covering Russia and the Commonwealth of Independent States (CIS). In 1996, agreement was reached to locate the Moscow Environmental Law Centre at the State Academy of Public Service under the Russian Federal President. The proposal was formally approved by the IUCN Law Commission Steering Committee at its March 1996 meeting.⁷⁶ During 1997, the Commission continued preparations for the establishment of the Centre, to be formally called the Moscow Institute for Environmental Studies (Eurasia). Its purpose would be to promote regional capacity building in the Russian Federation and CIS by providing independent expertise in environmental law, a reference library, and eventually a web site making Russian environmental law available on the internet.⁷⁷ The Eurasia Centre for Environmental Legal Studies was officially opened in late 1998.⁷⁸ The Eurasia Centre has had difficulty becoming and remaining operational for lack of resources and other local institutional factors, including recent issues about its legal status since the government has changed the law on NGO incorporation.⁷⁹
- Ukraine/Ecopravo-Lviv 2003
- Ecopravo-Lviv (EPL) was founded in 1994 in Lviv, Ukraine, as one of the first public interest environmental law organizations in the Ukraine and the former Soviet Union. Representing citizens is a central part of EPL's mission as is operating a clinical program for students of the Law Faculty of Ivan Franko Iviv National University. Ecopravo works at the national and international level, its President, Professor Svitlana Kravchenko, being a member of the IUCN Law Commission and Vice Chair for her region in the late 1990s and early 2000s. As Ecopravo-Lviv gained experience with environmental law training and education, negotiations began with CEL for it to become a new regional 'centre of excellence' in environmental law. In 1999, EPL and the IUCN Law Commission agreed to develop regional environmental law training, with workshops planned for June 2000 in Almaty, Kazakhstan, coordinated with the IUCN RCO in Almaty.⁸⁰ In 2003, the organization was recognized as part of IUCN ELP's growing global network of regional 'centres of excellence'.⁸¹

Notes

- 1 See “Environmental Law Programme – Overview” in ELP’s web site at: www.iucn.org/themes/law/elp01.html, as of December 14, 2004, the principal author was John Scanlon (site accessed 4/6/05 and 11/14/05).*
- 2 ELP’s web site so identified the “Programme” in the “Overview” of ELP, at: www.iucn.org/themes/law, category “Environmental Law Programme”, subcategory “Overview” (accessed during 2004 and 2005, the last time December 11, 2005, when this formula was still intact). See, also IUCN Environmental Law Programme, “Component Programme Plan 2005–2008”, p. 15 (IUCNELP: 2004).*
- 3 See news item in ELP’s web site at: www.iucn.org/themes/law, under “Latest News”, news for November 2003, heading: “Connecting IUCN’s Global, Regional and Country Staff Lawyers” (21 November 2003).*
- 4 See IUCN web site for a description of the Regional Thematic Environmental Law Programme of the IUCN Asia Regional Office at: www.iucn.org/places/asia/rtp.htm#law. (Researched 12/05/05)
- 5 See news item in ELP’s web site at: www.iucn.org/themes/law, under “Latest News”, news for November 2003, heading: “Connecting IUCN’s Global, Regional and Country Staff Lawyers” (21 November 2003).*
- 6 Robinson, N., “IUCN Commission on Environmental Law Supplemental Report (2004)”, p. 2, and comments from John Scanlon on March 2006 draft, transmitted by email cover dated April 26, 2006.
- 7 IUCN Environmental Law Programme, “Component Programme Plan 2005–2008”, pp. 15 and 18. (IUCN ELP: 2004)
- 8 Nicholas Robinson “Letter from the Chairman” in “IUCN Environmental Law Programme Newsletter January–April 1999” at 3.
- 9 Information reported on ELP web site at: www.iucn.org/themes/law, under the Category ‘Commission on Environmental Law,’ subcategory: ‘Centres of Excellence’ (web site updated as of February 4, 2004) (researched July 5, 2004). No longer available.
- 10 Explanation and commentary provided by J. Scanlon on March 2006 draft, transmitted by email cover dated April 26, 2006.
- 11 Communication with John Scanlon on March 2006 draft, transmitted by email cover dated April 26, 2006. See also news of the Nov. 2003 CEL Steering Committee meeting on ELP’s web site at: www.iucn.org/themes/law, under ‘Latest News’, see news for November 2003, heading: “IUCN CEL ‘Centres of Excellence’ Expanded” (draft charter for Centres available from IUCN ELC, Bonn).*
- 12 Communication with Nicholas Robinson on December 2005 draft, transmitted to author by cover letter dated March 7, 2006.
- 13 Scanlon, J., “A Testament to a Visionary” (A message from John Scanlon, Head, IUCN Environmental Law Programme and Director, IUCN Environmental Law Centre in Bonn, Germany, on the Occasion of the Inauguration of the Dr. Parvez Hassan Environmental Law Centre in Lahore, Pakistan), available on the ELP web site at: www.iucn.org/themes/law, under ‘Latest News,’ news for February 2003.*
- 14 See IUCN Environmental Law Centre, “IUCN Environmental Law Programme 2003, The Year in Review”, p. 10. Also this was a news item on ELP’s web site at: www.iucn.org/themes/law, under “Latest News”, see news for September 2003, heading: “A Water Law Centre of Excellence for Southern Africa” (15 September 2003).*
- 15 Commentary from Nicholas Robinson on December 2005 draft, transmitted to author by cover letter dated March 7, 2006; further commentary provided by Robinson on May 2006 draft by email dated June 13, 2006.
- 16 Robinson, N., “Commission on Environmental Law, Report 2001–2004” in “Congress Paper CGR/3/2004/12, Annex 4”, p. 91, *IUCN – The World Conservation Union, The Third World Conservation Congress, 17-25 November 2004, Bangkok, Thailand*.
- 17 To stay informed on progress with these Centres, information is available and regularly updated on IUCN ELP’s web site: www.iucn.org/themes/law, subject heading: “Environmental

- Law Programme – Overview” (researched on 7/21/05, with data updated as of 14 December 2004).*
- 18 These were specifically identified in IUCN ELP’s Component Programme Plan for 2005–2008, p. 19.
- 19 See story on ELP’s web site at: www.iucn.org/theme/law, under category “Latest News”, news for July 12, 2002.*
- 20 See details in Robinson, N., “Commission on Environmental Law Triennial CEL Report to the Council 1997 – February 2000” at 4. (7 February 2000)
- 21 See “Highlights from the CEL Steering Committee” in *IUCN Environmental Law Programme Newsletter* (January–April 1999), pp. 2, 13.
- 22 ELP web site: www.iucn.org/themes/law, category “International Directory”.*
- 23 Data as of 2004, condensed from “Appendix 1: Members of IUCN Active in Environmental Law” in *IUCN Environmental Law Programme – Component Programme Plan 2005–2008* (final version for *IUCN Intersessional Plan 2005–2008*) (ELP, 2004).
- 24 Communication and commentary from F. Burhenne-Guilmin on March 2006 draft, transmitted by cover email dated May 13, 2006.
- 25 Agenda 21, para. 8.20.
- 26 “IUCN Academy of Environmental Law Overview” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 43.
- 27 See N. Robinson “IUCN Commission on Environmental Law Chair’s Report of Highlights to Council, 6 November 1998” at 2.
- 28 Resolution 2.4, *Resolutions and Recommendations of the World Conservation Congress 4-11 October 2000, Amman, Jordan* (IUCN, 2001), p. 20.
- 29 Id.
- 30 “IUCN Academy of Environmental Law Overview” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 43.
- 31 See “Minutes of the CEL Steering Committee Meeting” 23 August 2002 (draft of 13 December 2002, p. 3 of 7). See, also, Scanlon, J., “World Conservation Union (IUCN)” in *Yearbook of International Environmental Law* (Vol. 13, pp. 809–825), at 823. (Oxford University Press: 2002) (The latter report also on file at IUCN ELC as Scanlon, J., “IUCN Environmental Law Programme 2002: The Year in Review”).
- 32 See “IUCN Council Endorses IUCN Academy of Environmental Law” (16 December 2002) in ELP web site at: www.iucn.org/themes/law, under “Latest News”, news for October – December 2002.*
- 33 For a description of the Academy, summaries and full presentations of the various speakers at the first colloquium in 2003 and the second colloquium in 2004 see ELP’s web site at: www.iucn.org/themes/law, under “Commission on Environmental Law”, subcategory “International Academy” (researched July 2004 and November 2005); web site information supplemented by communication from Nicholas Robinson on December 2005 draft, transmitted by cover letter dated March 7, 2006.*
- 34 See “Statement of the UN Secretary General” on ELP’s web site at: www.iucn.org/themes/law, under the category: Commission on Environmental Law, subcategory: IUCN Academy.*
- 35 Commentary from John Scanlon on the March 2006 draft, transmitted by email cover dated April 26, 2006.
- 36 Commentary from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 37 “Summary of the First Colloquium” on ELP’s web site at: www.iucn.org/themes/law, under the category: Commission on Environmental Law, subcategory: IUCN Academy.*
- 38 Bradbrook, et al., *Energy Law for Sustainable Development*, and Ottinger, et al., *Compendium of Sustainable Energy* (Cambridge University Press, 2005).
- 39 Communication from Iwona Rummel-Bulska on May 2006 draft, through email transmitted by UNEP’s Sylvia Bankobeza dated June 26, 2006.
- 40 Id.
- 41 “IUCN Academy of Environmental Law Overview” in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 43.

- 42 See, for example, Robinson, N., "The IUCN Academy of Environmental Law: Seeking Legal Underpinnings for Sustainable Development" in 21 *Pace Environmental Law Review* 325–353 (Summer 2004).
- 43 See "UNEP and IUCN-ELP Moving towards a New Era of Cooperation, 13 May 2002" on the ELP web site at: www.iucn.org/themes/law, under Latest News, news of second quarter 2002.*
- 44 Three separate but linked law events were organized during the week prior to the WSSD, August 18–25 – the UNEP-led and IUCN-cosponsored Global Judges Symposium, an IUCN/UNEP co-convened conference "Environmental Law Foundations for Sustainable Development", and an EnviroLaw Solutions conference entitled "Law and Governance in a Sustainable World". See: *IUCN Environmental Law Newsletter* (2003), pp. 12–14.
- 45 Contribution from Donald Kaniaru on May 2006 draft, transmitted by email dated July 4, 2006.
- 46 See Waite, A., "Symposium on Environmental Law for European Judges" in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 15; see also IUCN Environmental Law Centre, "IUCN Environmental Law Programme 2002 – The Year in Review" printed in 13 *Yearbook of International Environmental Law* 809–825 (under the heading "World Conservation Union (IUCN)", p. 822–823). A brief news item also is available on this event through ELP's web site at: www.iucn.org/themes/law, under Latest News, news for third quarter 2002, heading: "European Judges meet to Advance WSSD Outcomes" (14 October 2002).*
- 47 "London Bridge Statement" paras. 1 and 2 (Symposium on Environmental Law for European Judges, Adelaide House, 10–11 October 2002), Adelaide House, 11 October 2002, available on ELP's web site at: www.iucn.org/themes/law, under Latest News, news for third quarter 2002, full text of London Bridge Statement attached as PDF file.*
- 48 See ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for May 2003.*
- 49 See summary of the event and Robinson's speech on ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for fourth quarter 2002, heading: "Judges from the Arab Region Meet in Kuwait" (5 November 2002), or under "Activities and Projects", subcategory "Judiciary".*
- 50 For a summary and programme statements, see ELP's web site at: www.iucn.org/themes/law, under "Latest News", news of May 2003.*
- 51 See: www.iucn.org/themes/law, Category: 'Activities and Projects,' Subcategory: 'Judiciary,' news item for May 2003, link to "Lviv" Statement.*
- 52 For a summary and related links to FARN and programme documents (in Spanish), see ELP's web site at: www.iucn.org/themes/law, under "Latest News", news of October 2003, heading: "Jueces Y Fiscales de America Latina se Reunen en Buenos Aires" (8 October 2003).*
- 53 For a summary and also a PDF file on the "Nairobi Statement" from that meeting, see ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for October 2003.*
- 54 For additional information on each of these events, including statements made, see ELP's web site at: www.iucn.org/themes/law, under either "Latest News", and then the news for that month or the subsequent month where the event is late in the month, or "Activities and Projects", subcategory "Judiciary".*
- 55 Id.
- 56 Communication from N. Robinson on December 2005 draft, transmitted by B. Lausche by cover letter dated March 7, 2006.
- 57 Manguiat, M., "Global Judges Symposium on the Role of Law and Sustainable Development" in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 12.
- 58 See Stein, P., "The Judicial Portal" in *IUCN Environmental Law Programme Newsletter* (2003), p. 16.
- 59 "London Bridge Statement" para. 3.
- 60 *ELC Annual Report 1975*, pp. 8–9.
- 61 Commission on Environmental Policy, Law and Administration. "Report to the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981", p. 5, in *General Assembly Proceedings* cited as "Attachment to General Assembly Paper GA/15/81/6".
- 62 See Benjamin, A., "The Center of Environmental Law Excellence in Brazil" in "IUCN Environmental Law Programme Newsletter September–December 2000" at 27.

- 63 See ELP's web site at: www.iucn.org/themes/law, under "Latest News", news for the third quarter 2002, heading: "IUCN ELP Reinvigorates MOU with Law for a Green Planet" (31 August 2002).*
- 64 See *IUCN Environmental Law Programme Newsletter* (January–April 2000), p. 2.
- 65 Communication from N. Robinson on December 2005 draft, transmitted to B. Lausche by cover letter dated March 7, 2006.
- 66 See Ankersen, T., "University of Costa Rica Law School Recognized as a CEL Regional 'Centre of Excellence'," in *IUCN Environmental Law Programme Newsletter* (2004), pp. 27, 30.
- 67 Al-Awadhi, B., "Arab Regional Centre for Environmental Law" in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 25.
- 68 "IUCN Launches Arab Regional Centre for Environmental Law" in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2002), pp. 38–39.
- 69 See *Environmental Protection in Islam* (IUCN Environmental Policy and Law Paper No. 20 Rev.) (IUCN, 1994).
- 70 "Latest News [Dr. Parvez Hassan Environmental Law Centre Inaugurated]", in ELP website at: www.iucn.org/themes/law, under news items for February 2002 (researched 2/27/03).*
- 71 See *IUCN Environmental Law Programme Annual Report 1998*, p. 11.
- 72 See Scanlon, J., "IUCN Environmental Law Programme 2002: The Year in Review", p. 9.
- 73 See Scanlon, J., "IUCN Environmental Law Programme 2003: The Year in Review", p. 10.
- 74 See Mendez Chang, E., "Lima, Peru: Diploma Program on Environmental Law at PUCP" in *IUCN Environmental Law Programme Newsletter* (2004), p. 26–27.
- 75 The Centre was announced in ELP's web site, www.iucn.org/themes/law, subject heading: Environmental Law Programme – Latest News: News Archives for September 2003.*
- 76 See Hassan, P., "Letter from the Chair" in *IUCN Environmental Law Programme Newsletter* (January–March 1996), p. 3.
- 77 See "IUCN Environmental Law Programme Annual Report 1997", p. 9; and see also "IUCN Environmental Law Programme Annual Report 1998", p. 10.
- 78 See "IUCN Environmental Law Programme Annual Report 1998", p. 10.
- 79 Commentary from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 80 See *IUCN Environmental Law Programme Newsletter* (September–December 1999), p. 19.
- 81 See IUCN Environmental Law Centre, "IUCN Environmental Law Programme 2003: The Year in Review", p. 10 (IUCN ELC archives).

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 30: Evolving Scope of Environmental Law

The evolving scope of environmental law was the theme of an IUCN environmental law symposium in Japan in 2002 and resulting publication entitled *Towards a 'Second Generation' of Environmental Laws in the Asian and Pacific Region – Selected Trends*.¹ The symposium, co-sponsored by the Asian Development Bank (ADB) and the Japan Institute for Global Environmental Strategies (IGES), was organized by CEL Chair Robinson with other Commission members and ELC. The occasion was used to acknowledge the leadership role of the Asian Development Bank in supporting environmental law capacity building in the region and to launch the two-volume set, *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources*, published by the ADB from the National University of Singapore “training the trainers” courses at the Asia-Pacific Centre for Environmental Law (APCEL) in 1997–1998 (see Chapter 25).² The three editors of the ADB books, Donna Craig, Nicholas Robinson, and Koh Kheng-Lian, presented copies to the IGES library during the symposium.³

The symposium presenters, mostly CEL members and ELC staff, focused on the progression of environmental law generally, and in three specific areas, climate change, soil restoration, and biodiversity, observations that reflect directions being taken by the Environmental Law Programme as it continues to develop. The publication contained articles (‘thought pieces’⁴) by those who made presentations. Three of the authors wrote specifically on the general theme of the evolving scope of environmental law: Koh Kheng-Lian (Director of the Asia-Pacific Centre for Environmental Law), Nicholas Robinson (Professor of Environmental Law at Pace University New York and then CEL Chair), and John Boyd (Senior Counsel at the ADB).⁵ Other authors were Akio Morishima, Yumihiko Matsumura, Hiroko Muraki Gottlieb, Donna Craig, Kiroji Isozaki and Michael Jeffery. ELC Legal Officer Maria Manguiat and Lye Lin-Heng, Deputy Director of the Asia-Pacific Centre for Environmental Law, were co-editors of the resulting publication, which was issued in 2003, plus contributing authors.

As scholars have written, environmental law has progressed in phases, from an initial focus on specific sectors (forests, parks, wildlife), on to sources of environmental degradation (e.g., pollution, over-use), and prior chapters in this History track that progress.⁶ Today, as discussed in Chapter 27, the move is toward more integration of environmental laws and policies into the broader ‘sustainable development’ framework of society. And even as the sector-specific and pollution control regimes continue their development, the integrated approach is receiving increased attention and recognition as a direction for the future.⁷

Moreover, through the 1980s and increasingly in the 1990s, scientific understanding and public awareness improved about the interconnected nature of environmental issues, not only scientifically but also in relation to society. Slowly a more systems approach began to take hold and a predominant feature of the emerging ‘second generation’ of environmental law is an ecosystem approach to resource issues. The Convention on Biological Diversity (1992) launched this approach in treaty law, building on earlier policy principles such as those reflected in the World

Conservation Strategy (1980). Today, the ecosystem approach is being applied to new legal initiatives, for example, with water, soils, and energy (themes discussed below). Another set of principles also has come into play with much prominence as the 21st century begins and those relate to good governance, including two issues rounding out this chapter: environmental justice/public participation, and the use of the precautionary principle in environmental decision-making.

Water and Nature Initiative

- 5 From the 1970s, the Environmental Law Programme had been involved in promoting and developing implementation tools for wetlands conservation under the Ramsar Convention, as reviewed in Chapter 14. By the 2000's, IUCN's thematic programme on Water and Wetlands was thriving and at the World Conservation Congress in Amman, Jordan in 2000, IUCN announced the launch of a new \$30 million initiative, the Water and Nature Initiative (WANI), to help communities develop and maintain sustainable water resources.⁸ The initiative was a five-year action plan aimed to mainstream "an ecosystem approach into catchment policies, planning and management."⁹
- 6 Implementation of WANI began in 2001. At its core were demonstration sites with projects applying ecosystem management to river basins in combination with appropriate institutional, legal and economic frameworks. This main component was joined by five other components, the third of which was 'wise governance', the responsibility of the Environmental Law Programme (other components being participation and empowerment of stakeholders; economics and incentives; knowledge and information; and coordination, communication and learning). The governance component envisioned putting in place appropriate legal and institutional frameworks for water resources management needs in the project areas. In January 2002, CEL formed a Water and Wetlands Specialist Group, under the chairmanship of Megan Dyson of Australia, to mobilize members for WANI and facilitate collaboration with IUCN's thematic programme on Water and Wetlands.¹⁰ The formation of this network of lawyers also was timely for the upcoming 2002 World Summit on Sustainable Development which identified water as one of its main five main agenda issues.
- 7 Alejandro Iza, ELC Senior Legal Officer, was the Environmental Law Centre focal point through 2004 for coordinating and promoting field projects for the "governance" component of the Water and Nature Initiative and for linking regional activities to the Environmental Law Programme and CEL, especially its Specialist Group on Water and Wetlands. A unique feature of the initiative, in his view, was that it brought together IUCN programmes and regional operations at the working level of projects.¹¹
- 8 In WANI's governance component, the premise was that "wise governance is essential to improve water resources management ... projects in this component work in the demonstration sites to change governance systems."¹² Two major project areas were developed, the first focused on producing regional climate change adaptation strategies for water resources management through regional roundtables and expert input; the second more broadly related to guidelines and tools for legal frame-

works and institutional arrangements generally for water management at the demonstration sites, the latter aiming to produce, among other things, a legal data base of approaches being used and a toolbox for improving legal frameworks.

Out of this initiative and in response to related international developments,¹³ 9 the Environmental Law Programme produced or contributed to a number of collaborative events and publications in the 2000s.¹⁴ The focus of the 2002 issue of ELP's newsletter was water, as was the first issue of the IUCN Bulletin in 2003 where Scanlon, as Head of ELP, outlined main reasons "Why we need robust legal frameworks".¹⁵ In 2003, IUCN published its first principal contribution to the initiative, an IUCN guide entitled: *Flow – The Essentials of Environmental Flows*, which reflected the thinking and contributions of several water experts from diverse disciplines. The guide, a joint effort of the IUCN Water and Nature Initiative and the



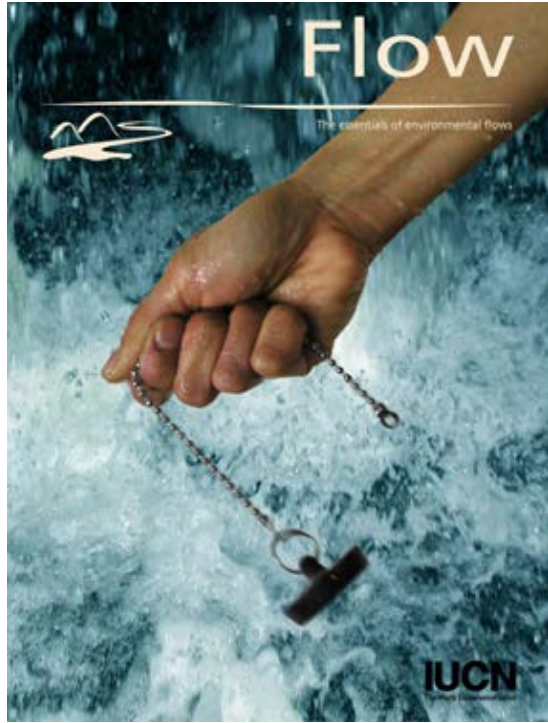
2002: WANI Environmental Flows Panel at WSSD

IUCN Environmental Law Programme, was edited by Megan Dyson (CEL), Ger Bergkamp (IUCN WANI) and John Scanlon (ELP). ELP's contribution was principally from the Environmental Law Centre and CEL Water and Wetlands Specialists Group, with input from the IUCN Commission on Ecosystem Management. The publication turned out to be one of IUCN's most successful recent releases and has been translated into several languages (with plans ultimately for translation into twelve languages).¹⁶

Promoting the guide, John Scanlon, on behalf of the Environmental Law Programme and with input from CEL Chair Robinson, participated as part of the IUCN delegation to the 12th session of UN Commission on Sustainable Development (April 2004, water being a main theme). 10

The ELP made another strong presence at the 3rd World Water Forum in Japan in 2003.¹⁷ John Scanlon and Alejandro Iza, among others, represented the programme, 11

and CEL members Megan Dyson (Australia) and Robyn Stein (South Africa) were heavily involved in preparations of the Forum. During the forum, ELP participated specifically in the panel for the wrap-up session on the theme of “Water and Governance” and released a new ‘Water Law Series’ of short briefing papers, now numbering twelve, aimed at helping non-lawyers understand the importance of the role of law in water resources management.¹⁸



12 For ELP, technical assistance was an important part of its WANI participation. Following the 3rd World Water Forum, in March and again in August 2003, IUCN held workshops as part of the WANI Huong Basin Integrated Management Project to discuss options for establishing a River Basin Authority. Following meetings with local officials and experts, the Head of ELP, John Scanlon, made a detailed presentation on river basin organizations which included an overview of what had been established at sub-national and trans-national levels in more than 10 countries.¹⁹ A key message from these kinds of technical workshops was that there is no ‘model’ river basin organization; rather each institutional and legal framework needs to be created in the context of local laws and conditions.

13 ‘Water as a Human Right?’ is the subject of another ELP paper published in 2004 in the IUCN Environmental Policy and Law Series.²⁰ With John Scanlon as the lead author, the paper was produced originally for the 7th International Conference on Environmental Law, in Sao Paulo, Brazil, in 2003. The conference, entitled “Water, Law and the Web of Life,” was co-sponsored by the Brazilian NGO and partner centre, Law for a Green Planet Institute,²¹ and ELP.

14 One additional IUCN ELP publication released in 2004 needs special mention here. Entitled *International Water Governance: Conservation of Freshwater Ecosystems*, its Volume 1 is a compilation and analysis of international agreements related to this theme.²² Edited by ELC Senior Officer Alejandro Iza, with the assistance of many other ELC staff, interns, and fellows, the publication is a major piece of work in some 324 pages. As explained by ELP Head Scanlon in the preface, it is focused on an area of law that is not always easy to navigate: “selected water course agreements for shared water resources from around the world, along with an analysis of other multilateral environmental agreements that may impact the conservation of freshwater ecosystems.”²³

The 2004 World Conservation Congress reaffirmed the Union's continued commitment to promoting actions to protect the Earth's waters for public and ecological benefit using an ecosystem approach and including appropriate governance structures. The Congress, among other principles, called on the IUCN Director General and all governmental and non-governmental members of IUCN to promote actions consistent with the principle that "an ecosystem approach must be central to national and transboundary governance structures related to water resources management."²⁴ 15

Sustainable soils

In 1999, the Commission on Environmental Law created a "Working Group" (now "specialist group") on Sustainable Soils. The first chair of the group was CEL Steering Committee member Ben Boer of Australia. As explained in an ELP Newsletter, the "impetus for the Specialist Group arose out of contacts of CEL members with the main international soil science organisations that were and continue to be concerned about the need for improved legal protection of soils on a global basis."²⁵ 16

It became one of the most active early groups. At the 2000 World Conservation Congress, members passed a resolution giving substantial impetus to its work. The Congress welcomed ELP's initiative to form the group and invited other members to support its work in developing guidelines on environmental law and policy concerning sustainable use of soils and in researching a global instrument in this area. Importantly, the resolution directed the ELP and this group: 17

"... to prepare guidelines and explanatory material related to principles and elements of national legislation and policy to assist States to manage their specific soil degradation and land degradation problems, and to investigate the need for and feasibility of further developing international environmental law in this field, in particular through an international instrument for the sustainable use of soils"... and in this work "to pay particular attention to the ecological needs of soil and their ecological functions for the conservation of biodiversity and the maintenance of human life".²⁶

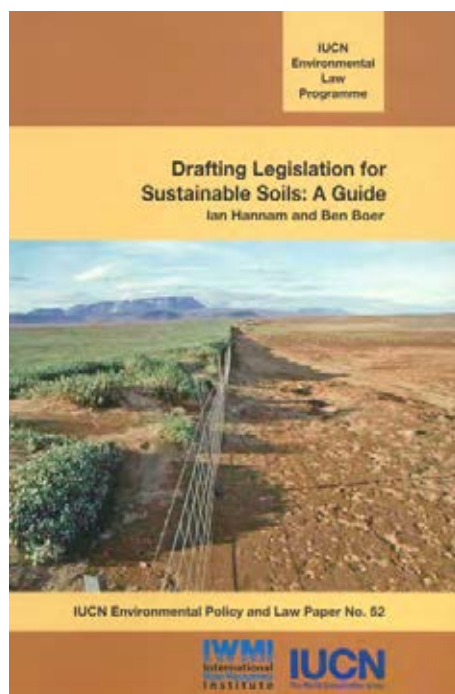
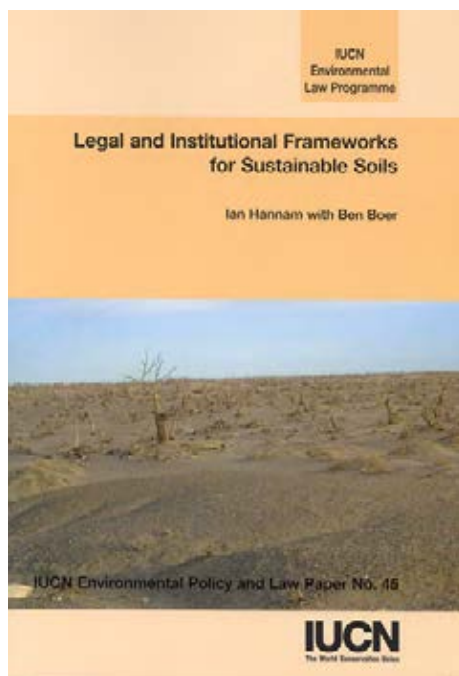
The first principal activity of the CEL Sustainable Soils Group was to prepare a report in response to this resolution, with support from the European Soils Bureau. The effort became the first published study from a CEL Specialist Group. The report, issued in 2002, was entitled *Legal and Institutional Frameworks for Sustainable Soils*, and authored by Ian Hannam (now chair of the group) and Ben Boer on behalf of the Specialist Group.²⁷ It reflected a close working partnership between the law and science communities, namely the Environmental Law Programme and representatives from a number of global soil science institutions. This was facilitated through the formation in early 2001 by the CEL Soils Specialist Group of an external scientific reference group of eight eminent soil scientists from international soil science organizations and academic institutions so that the lawyers could remain current on the global concerns of soil protection. The resulting report considered and analyzed soil-related legal and institutional issues at both national and international levels, made conclusions on the needs at both levels, and closed with 18

seven recommendations on principal actions that IUCN, ELP and the Specialist Group should take to further support the conclusions of the report.

- 19 The activities of this group were directly relevant to IUCN's efforts to promote and assist with implementation of the UN Convention to Combat Desertification (UNCCD), one of the treaties of key significance to the work of IUCN in ELP's Strategic Plan 2002–3 and subsequent Component Programme Plan (as discussed in Chapter 27). For example, in September 2003 Alejandro Iza representing ELC was part of the IUCN delegation to the Sixth Conference of the Parties to UNCCD where he had the opportunity to highlight the need for new or strengthened legal frameworks in areas such as soil degradation, as well as water and land use.²⁸

- 20 Continuing its development of “self-help products” for states, the CEL Soils Specialist Group next began work on a key recommendation in its first report – development of the elements for a “generic” national soil statute.²⁹ In 2004, that publication was issued by ELP. Entitled *Drafting Legislation for Sustainable Soils: A Guide*, it again was authored by the Group's leadership: Ian Hannam and Ben Boer.³⁰ The report was jointly sponsored by IUCN and the International Water Management Institute. As noted in its preliminary sections, the report aimed to respond not only to the 2000 WCC Congress resolution noted above. It also was in recognition of the WSSD concerns about effective and efficient use of soils and in furtherance of the 2000 UNEP Montevideo III Programme objective related to sustainable use of soils.³¹

- 21 This Specialist Group has maintained momentum to continue to promote support and action. In 2004, the Third World Conservation Congress once again turned to the legal aspects associated with sustainable use of soils and adopted a fur-



ther resolution. Recognizing the “significant and substantial work done” by the ELP through this CEL Specialist Group on Sustainable Use of Soil, in implementing the prior resolution from the 2000 Congress through the two publications, further communication and research, the 2004 Congress acknowledged that a “specific global environmental law instrument for the sustainable use of soils” was justified.³² In that context, the Congress requested the Director General to work with members to outline options for a global legal instrument, to continue communications on the outcomes of the soils programme and prepare further guidelines as needed to support a global instrument, and to continue efforts to help countries develop national soils legislation, policy, institutions, and strategies.³³

Energy, climate change and sustainable development

The Environmental Law Programme was not active in either energy or climate change issues through much of the 1990s. During that decade, UNEP took the lead with the World Meteorological Organization in developing and negotiating the 1992 United Nations Framework Convention on Climate Change (UNFCCC) and the 1998 Kyoto Protocol. When the Secretariat for the Climate Change Convention moved to Bonn in 1996, staff interaction increased but there was little sustained substantive activity. 22

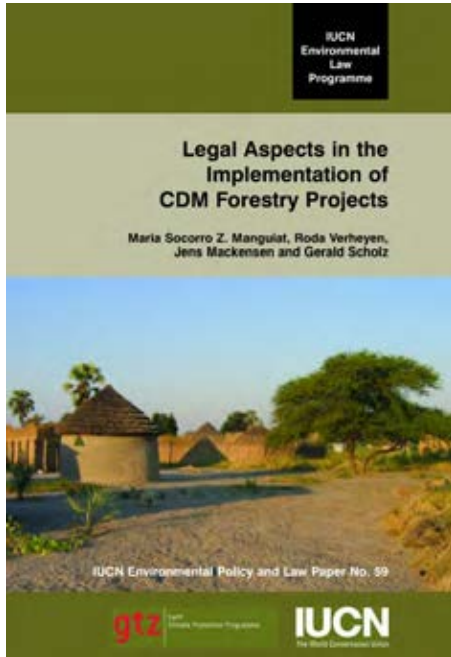
In 1998, CEL had formed an Energy Law and Climate Working Group, chaired by Adrian Bradbrook, Professor of Energy Law at the University of Adelaide in Australia, with Dean Emeritus Richard Ottinger of Pace University Law School, New York, as Vice Chair.³⁴ It was interested in getting the Commission more involved in climate change and energy issues as related to sustainable development. Then in 1999, Charles Di Leva joined ELC as Head of the Environmental Law Programme. Charles had been working on issues of climate change for many years and began to get the Law Programme more involved. By this time, IUCN Headquarters had initiated the IUCN Climate Change Programme in recognition that climate change was one of the major threats to biodiversity. 23

Under Di Leva, and with the collaboration of CEL, ELP began working with advisors of the IUCN Headquarters Climate Change Programme to monitor legal developments and compliance issues under the Convention, and provide technical support. Illustrative of these early activities was a briefing seminar by the ELP funded by the Asian Development Bank for the Asian delegates to the UNFCCC in 1999 in Bangkok.³⁵ Di Leva also attended climate change meetings and ongoing negotiations of the Kyoto Protocol, and provided in-depth analysis of the issues in articles in ELP newsletters.³⁶ 24

IUCN became a cosponsor, through the CEL Working Group, of the ‘Clean Energy 2000’ Conference (also known as the ‘Millennium Conference on Energy, Environment & Clean Mobility’) in Geneva where IUCN Director General Maritta Koch-Weser gave a keynote address. CEL Chair Robinson, Working Group Chair Bradbrook and Vice-Chair Ottinger all presented papers at that Conference and Bradbrook and Ottinger developed the basis for an action plan on the legal aspects of biodiversity and climate change for IUCN’s strategic planning in biodiversity.³⁷ Also in 2000, Ottinger represented the Working Group on behalf of the Commis- 25

sion on Environmental Law at a meeting of the Ad Hoc Intergovernmental Group of Experts on Energy and Sustainable Development convened to prepare for the 9th session of the UN Commission on Sustainable Development (CSD) session in 2001.

- 26 Di Leva recruited Maria Manguiat from the Philippines as ELC Legal Officer and she joined the Centre in 2001 as focal point, among other things, for climate change. Manguiat became the designated liaison for the CEL Energy Law and Climate Change Working Group as well. Under Di Leva, ELP began collaborating with the IUCN Headquarters Programme, and became involved with use of new



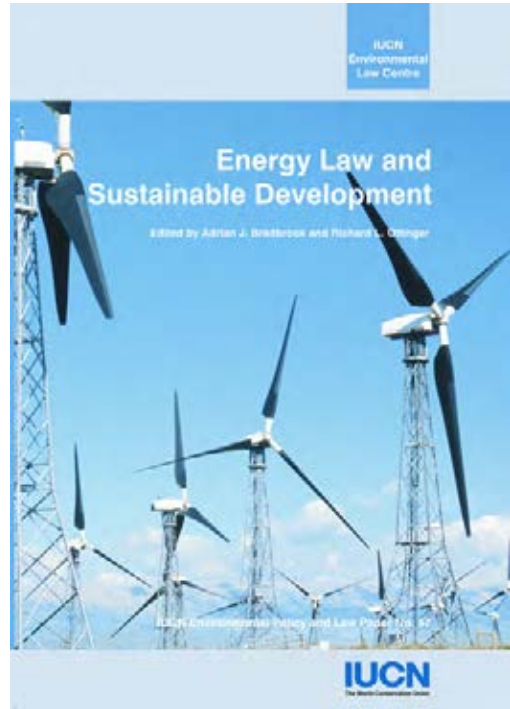
mechanisms, such as the Clean Development Mechanism (CDM), being introduced by the Kyoto Protocol, to promote and manage forest ecosystems. After Di Leva's departure in 2001, ELP mainly through Manguiat continued to work with the Convention bodies and IUCN Headquarters on IUCN climate change activities. In particular, she worked with developing countries (in cooperation with UNEP and FAO) to provide legal advice for setting up small scale forestry projects under the CDM.³⁸ She also provided support to and coordinated activities with the Commission through its Specialist Group. As noted at the beginning of this chapter, she was actively involved in organizing and served as co-editor for the Proceedings of the IUCN/IGES/ADB Symposium in Japan in 2002 and resulting publication on 'second generation' environmental laws

in the Asian and Pacific Region. In addition, she contributed an article on climate change, highlighting synergies and linkages that needed strengthening between a number of associated international instruments.³⁹

- 27 A 2003 article by Ottinger, now Chair of the Specialist Group, defined the Specialist Group's continued mission: "to represent and assist IUCN and CEL in preserving biodiversity through promotion of legal measures to advance sustainable energy as the principal solution to climate change."⁴⁰ This mission was given new life by the 9th session of the UN Commission on Sustainable Development (CSD) in 2001 which laid the groundwork for further development of the energy agenda at the 2002 World Summit on Sustainable Development (WSSD). As explained by the Working Group's Vice Chair Adrian Bradbrook, until then energy issues had been largely ignored by environmental law. As part of the CSD process, a 'World Energy Assessment' had been commissioned for the 9th session. The Assessment emphasized "the link between energy and most of the ills of modern society" including environment.⁴¹ Subsequently, the 2002 WSSD selected energy as one of its five major agenda issues, adopting further guidance in its Plan of Imple-

mentation for implementing clean energy policies. IUCN and CEL through the Specialist Group participated in both the CSD and WSSD and continue to participate in preparations for 14th session of the CSD in 2006 which was devoted to energy policy.

The principal publication from these initiatives was a book in the Environmental Policy and Law Series, *Energy Law and Sustainable Development*.⁴² The publication is a collection of contributions by 14 experts from around the world in the field of energy and climate change (including contributions by Bradbrook, Ottinger, and IUCN Director General Achim Steiner, an expert on dams). It covers a wide range of viewpoints and perspectives on how energy law, if updated and overhauled, could contribute to sustainable development. ELC Head, John Scanlon, in the book's Preface, highlights the fact that energy law is becoming an integral component of environmental law as energy concerns have moved to the forefront of sustainable development and that Parties to the Climate Change Convention are individually and collectively beginning to draft and amend energy laws to meet new obligations, thus making the publication especially important and relevant.⁴³ CEL Chair Robinson, in the book's Foreword, identifies several emerging issues in energy law as background for the specific articles.



The late Joke Waller-Hunter, Executive Secretary of the UNFCCC, included a special Message commending the Environmental Law Programme for the timely and insightful publication.⁴⁴ The book was launched at a ceremony with Waller-Hunter and Robinson, organized by ELC Legal Officer Manguiat, at the UNFCCC in Bonn, and was distributed also at the launching of the International Academy of Environmental Law in 2003 (see discussion of the Academy in Chapter 29).

Subsequently, Ottinger and the Specialist Group through CEL and UNEP began collaborating on a follow-up publication, an energy law handbook for legal drafting of legislation for environmentally sound management of energy resources.

The Specialist Group, numbering some 30 members by the close of 2004, has continued a high level of activity. It has maintained close collaboration with the UN system on energy matters, mostly notably with UNDP and the UN Department of Economic and Social Affairs (UNDESA) on initiatives to assist with promoting the World Energy Assessment and implementation plans through regional briefings, seminars, and forums, and the provision of training and other materials for IUCN members and others working with country-level energy decision-makers.

31 Specialist Group members participated in the International Conference on Renewable Energy hosted by the German Government in Bonn in June 2004, attended by some 2,500 participants from 154 countries.⁴⁵ One of the Group's members, Thomas Waelde of Dundee, Scotland, co-wrote with IUCN Director General Achim Steiner a conference thematic background paper on international institutional arrangements for promoting renewable energy. A side event to the Bonn Conference focused on the role of international law in promoting renewable energy where Ottinger presented a paper on the legal framework for renewable energy for sustainable development.⁴⁶

32 A 2004 issue of the *Journal of Energy and Natural Resources* featured renewable energy. Members of the CEL Working Group contributed articles edited by Ottinger and Bradbrook under the auspices of its publisher Thomas Waelde, also a Working Group member – a classic example of how the Commission and broader community continue to benefit from the multiple-faceted roles of members. The 2004 issue of ELP's newsletter focused on energy, with several members of the Specialist Group writing articles addressing law and policy dimensions of energy use, efficiency, and renewables, including one by IUCN Director General Steiner about the relationship between biodiversity and the use of renewable energy.⁴⁷

33 At the 2004 World Conservation Congress in Bangkok, the Specialist Group successfully promoted an energy-related resolution adopted by members requesting, among other things, that "IUCN provide leadership in advancing ecologically-sound energy systems for sustainable development, as a necessary and core part of the biodiversity conservation objectives of the Union."⁴⁸ IUCN members through that resolution also explicitly recognized and welcomed the work the Environmental Law Programme, through the Environmental Law Centre and the Climate and Energy Specialist Group of CEL, "has done to promote the concept of energy law for sustainable development".⁴⁹



Environmental justice

34 The issue of environmental justice gained prominence in the late 1990s and early 2000s in association with good governance and environmental decision-making. It embraced such process-oriented principles as public participation, fairness, ready access to information and decision-making processes, and the right to know. The issue was broadly recognized internationally when the 1992 Rio Declaration on Environment and Development included Principle 10 which declared the impor-

tance of citizen participation at all relevant levels, access to information concerning the environment, opportunity to participate in decision-making processes, and the need for effective access of concerned citizens to judicial and administrative proceedings.⁵⁰

Subsequently, Principle 10 has been referenced as an element of good governance in numerous international events, most notably the adoption in 1998 of the United Nations Economic Commission for Europe *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (the ‘Aarhus’ Convention, for the city in Denmark where it was adopted). CEL member and UN Liaison, Wolfgang Burhenne, who represented IUCN throughout the Convention negotiations, was impressed with how the Eastern and Western European Countries came together to call for such a Convention. He explained: “The United Nations Economic Commission for Europe (ECE) is the meeting point for the East and the West. When Member States of the ECE asked for the drafting of the Convention, all the newly independent Eastern European countries joined in unity to support the Convention while the United States and Canada (also members) chose not to join, so the negotiations were very sensitive.”⁵¹



UN-ECE meeting, Geneva

Burhenne represented IUCN in the ECE Working Group formed to produce the first draft. CEL member Veit Koester was Vice Chair of the Group. Other CEL members participated as well as representatives in country delegations.

The final Convention text regulates relations between the public and governments, calling for more transparency in environmental decision-making processes. In a statement made at the final negotiation session, CEL commended the UN/ECE

Member States for supporting the Convention and urged States in other regions of the world to follow the path shown by ECE Member States. Wolfgang Burhenne, in a statement at the last negotiating session, highlighted the unique achievement: "The text is a first: while national legislation and EC instruments already exist, it is the first time that a multilateral agreement would be concluded on this subject."⁵²

- 38 Svitlana Kravchenko, CEL Vice Chair for East Europe/North & Central Asia and Director of Ecopravo-Lviv, an IUCN CEL designated regional 'centre of excellence' in the Ukraine, was a central figure in moving forward the Aarhus process in the region. She explained in an ELP Newsletter: "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."⁵³ Moreover, it immediately generated momentum for broad consideration beyond Europe. Kravchenko



Signature of the Aarhus Convention, adopted in 1998

continued in her article: “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.”⁵⁴

The Aarhus Convention came into force in 2001, providing a distinct legal framework for implementation of Principle 10. Members of the Commission on Environmental Law have continued to participate in country delegations and in an individual capacity promoting implementation of the Convention through its Compliance Committee and its Task Force on Access to Justice, contributing not only to the general work but also helping formulate guidance on the judiciary.⁵⁵ IUCN members at the 2004 World Conservation Congress gave special attention to improving implementation of Principle 10 by adopting a recommendation on the subject. Entitled “Implementation of Principle 10 by building comprehensive good governance systems”, the recommendation among other things recognizes progress already made with Aarhus and other initiatives, and calls for further concrete commitments, including from national governments, “with particular attention to improving the legal, institutional and policy arenas related to access rights ... so that they meet the needs of the poor and build access to justice.”⁵⁶ 39

Precautionary principle

The precautionary principle was introduced in international law by the Rio Declaration on Environment and Development adopted by the 1992 UN Conference on Environment and Development. Principle 15 of the Rio Declaration states: “In order to protect the environment, the *precautionary* approach shall be widely applied by States according to their capabilities.” It then goes on to explain: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁵⁷ 40

Implementation of the precautionary principle has presented special challenges for environmental governance, not least of which is understanding how to apply it reasonably to promote conservation and sustainable development in the increasingly complex world of science and policy. Recognizing this, IUCN members at the First World Conservation Congress in 1996 approved a resolution requesting the Director General “in conjunction with the Chair of the Commission on Environmental Law and in consultation with IUCN Members and Commissions...to examine the Precautionary Principle and advise on its use in an environmental context and with especial reference to IUCN programmes.”⁵⁸ 41

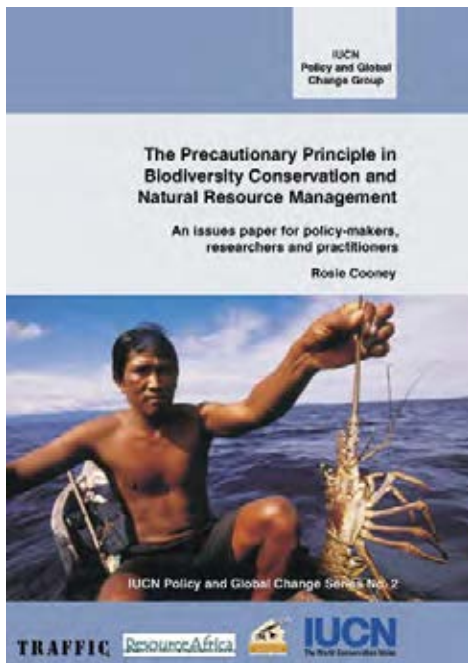
At the Second World Conservation Congress in 2000, ELC and the Species Survival Commission, among others, indicated their commitment to continue working in response to the 1996 resolution, including cooperating with TRAFFIC and the African Resources Trust in efforts to “jointly organize a workshop in July 2000 to examine the Principle and scope-out the issues that would have to be clarified....”⁵⁹ In 2001, the IUCN Environmental Law Programme Newsletter devoted several of its pages to the precautionary principle with contributing articles from Australia, 42

Zimbabwe, and the United Kingdom on the difficulties of application, for example, with genetically modified organisms in New Zealand, CITES in Southern Africa, and conservation and wildlife use generally.⁶⁰

- 43 The need for guidelines became increasingly pressing with the recognition that a number of international instruments incorporated the concept. For example, as reported by CEL member Alexandre Kiss in an analytical report he prepared for the Law Commission in 2003,⁶¹ the principle was included in the Framework Convention on Climate Change and the Convention on Biological Diversity – both adopted at the Rio Conference. Subsequent legal instruments followed their lead, for example, the 2000 Convention on Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, the 2001 Agreement on Albatrosses and Petrels under the Migratory Species Convention, the 2001 Stockholm Convention on Persistent Organic Pollutants and the 2002 ASEAN Agreement on Transboundary Haze Pollution. It is included as well in the new biosafety protocol to the Convention on Biological Diversity, a particularly complex science and technology issue relating to living modified organisms (LMOs). An ELP Newsletter explained the principle but left little guidance to its application:

“Article 10 of the Cartagena Biosafety Protocol to the Convention on Biological Diversity specifically calls for countries to apply the Precautionary Principle to their permitting decisions regarding the import of any LMO intended for introduction into the environment and the conditions that shall apply to such import. Article 11 applies the Precautionary Principle to the introduction of LMOs for direct use as food or feed, or for processing. In both, the Protocol states that lack of scientific certainty or insufficient scientific evidence regarding potential adverse effects shall not be used as a reason to delay action to control or protect against such effects.”⁶²

- 44 Following from the earlier arrangement with TRAFFIC and ResourceAfrica, in 2003 the IUCN Environmental Law Centre agreed to cooperate with IUCN’s Species Programme, the Regional Office for Southern Africa, TRAFFIC, ResourceAfrica, and Fauna and Flora International on a new initiative to examine experiences and provide examples of the principle in use. The project, called ‘The Precautionary Principle Project’, aimed to develop ‘best practice’ guidance on the meaning and application of precaution in natural resource management and biodiversity conservation.⁶³ Results would be delivered beginning in 2005 through a new website: www.pprinciple.net.



Taking this work into account, IUCN members at the 2004 World Conservation Congress adopted a resolution on the application of the precautionary principle in environmental decision-making and management. Recognizing the importance of the principle and the need that it not be applied in isolation, the Congress called, among other things, for IUCN members, their representative bodies, the Commissions and the Director General "...to promote and develop tools for the appropriate and effective application of the Precautionary Principle...; investigate the relationship of the Precautionary Principle with other principles...; and promote a greater understanding of the legal application and operational implementation of the Precautionary Principle."⁶⁴ In addition, the Congress called on IUCN "to establish an Inter-Commission Working Group on the Precautionary Principle,...and ... encourage all decision-makers to apply the Precautionary Principle in ways that enhance conservation and sustainable development..."⁶⁵

Notes

- 1 See Lin-Heng, L. and M. Socorro Z. Manguiat (eds.), *Towards a "Second Generation" in Environmental Laws in the Asian and Pacific Region – Selected Trends* (IUCN Environmental Policy and Law Paper No. 48) (IUCN, 2003).
- 2 See Craig, D., Robinson, N., Kheng-Lian, K. (eds.), *Capacity Building for Environmental Law in the Asian and Pacific Region* (Asian Development Bank, Manila, Philippines, 2002).
- 3 Commentary from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006.
- 4 Characterization by John Scanlon in the preface, writing in his capacity as Head of the IUCN Environmental Law Programme and Director of the IUCN Environmental Law Centre, in Lin-Heng, L. and M. Socorro Z. Manguiat (eds.), *Towards a "Second Generation" in Environmental Laws in the Asian and Pacific Region – Selected Trends* (IUCN Environmental Policy and Law Paper No. 48) (IUCN, 2003), at xi.
- 5 Kheng-Lian, K., "The first generation of environmental laws in Asia", pp. 15–26; Robinson, N., "Challenges confronting the progressive development of a second generation of environmental laws", pp. 27–32; Boyd, J., "From Rio to Johannesburg: A review of Asian Development Bank environmental practice and policy", pp. 33–48, in Lin-Heng, L. and M. Socorro Z. Manguiat (eds.), *Towards a "Second Generation" in Environmental Laws in the Asian and Pacific Region – Selected Trends* (IUCN Environmental Policy and Law Paper No. 48), (IUCN, 2003).
- 6 For example, a paper prepared by long-standing CEL member, Professor Alexandre Kiss, reflects this progression as it gives a situational analysis of where environmental law is today for input to ELP's preparation of its Component Programme Plan 2005–2008. See, Kiss, A., "IUCN Situation Report on Environmental Law" (3 April 2003) (available from IUCN ELC). Among many awards Kiss has received, at the Third World Conservation Congress in 2004, the President of IUCN announced the presentation of the Wolfgang Burhenne Award to Professor Alexander Kiss "for outstanding service to the Commission on Environmental Law", see IUCN web site for the Congress at: www.iucn.org/congress, under "Proceedings of the Members Business Assembly" at 55. (IUCN: 2005)
- 7 Kiss, A., "IUCN Situation Report on Environmental Law" (3 April 2003 draft) (available from IUCN ELC.)
- 8 See News Release: "IUCN launches \$30 million initiative for fresh water and healthy ecosystems", Amman, Jordan, October 5, 2000, available at www.iucn.org/info_and_news/press/wet30mil.html (researched 10/11/05).
- 9 See the project's web site at www.waterandnature.org. or at www.iucn.org/themes/wani (researched 10/11/05).
- 10 For an overview of the Group, its early interests and activities, see Dyson, M., "Water and Wetlands Specialist Group" in *IUCN Environmental Law Programme Newsletter* (Issue 1,

- 2003) at 19. Dyson provided an update on the group's activities, now numbering some 27 members, in 2004, see M. Dyson, "Water and Wetlands Specialist Group" in *IUCN Environmental Law Programme Newsletter* (2004) at 19–20.
- 11 Author interview with Alejandro Iza in Bonn, June 23, 2004 (Bonn, Germany).
- 12 IUCN 'Water and Nature Initiative' web site at www.iucn.org/themes/wani/comp3.html.
- 13 For example, one of the UN's Millennium Development Goals was "to halve, by the year 2015, the proportion of people who are unable to reach, or to afford, safe drinking water" and "to stop the unsustainable exploitation of water resources", both endorsed by the World Summit for Sustainable Development (WSSD) in 2002. See, UNGA Resolution 55/2, "United Nations Millennium Declaration", paras. 19 and 23. Also, 2003 was proclaimed by the UN as the International Year of Freshwater.
- 14 For a comprehensive accounting of the work of the IUCN Environmental Law Programme in water and wetlands, see the ELP web site under "Activities and Projects", subcategory "Water and Wetlands" at www.iucn.org/themes/law.*
- 15 See *IUCN Environmental Law Programme Newsletter* (2002) (IUCN ELC: Bonn), also available at ELP's web site: www.iucn.org/themes/law, search under the category "Environmental Law Programme", subcategory "ELP Newsletter"; and Scanlon, J. "Water and Law – Why we need robust legal frameworks", in IUCN, *World Conservation* (The IUCN Bulletin) – *Moving Water* (No. 1, 2003), at 14 (IUCN: Gland).*
- 16 Information provided by John Scanlon on May 2006 draft, transmitted by email dated June 7, 2006.
- 17 See article by Alejandro Iza on the World Water Forum in *IUCN Environmental Law Programme Newsletter*(2004) at 42–3.
- 18 A list and copies of these papers can be found through ELP's web site at www.iucn.org/themes/law, under the category "water and wetlands".*
- 19 IUCN Environmental Law Centre, *IUCN Environmental Law Programme 2003: The Year in Review*, p. 7 (available at IUCN ELC).
- 20 See Scanlon, J., A. Cassar, and N. Nemes, *Water as a Human Right?* (IUCN Environmental Policy and Law Paper No. 51). (IUCN, 2004)
- 21 In 2001, this NGO became one of the 'partner centres' in ELP's growing collaborative network of regional and national centres for environmental law, as discussed in Chapter 29.
- 22 Iza, A., (ed.), *International Water Governance: Conservation of Freshwater Ecosystems, Vol. 1: International Agreements Compilation and Analysis* (IUCN Environmental Policy and Law Paper No. 55) (IUCN, 2004).
- 23 Id. at ix.
- 24 Resolution 3.006, Third World Conservation Congress, Bangkok, Thailand, November 2004 (IUCN). Available on the IUCN web site at www.iucn.org/congress.
- 25 Hannam, I., "Specialist Group for Sustainable Soils" in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), at 16.
- 26 Resolution 2.59, paras. 1 and 3, in *Resolutions and Recommendations, World Conservation Congress 4–11 October 2000, Amman, Jordan* at 44. (IUCN:2001)
- 27 See Hannam, I. with B. Boer, *Legal and Institutional Frameworks for Sustainable Soils* (IUCN Environmental Policy and Law Paper Series No. 45) (IUCN: 2002).
- 28 See ELP web site at: www.iucn.org/themes/law, category "Latest News", for the month of September 2003. Story headline: "The Ecosystem Approach to Dryland Management: Integrating Biodiversity and Livelihood Security" (10 September 2003), (researched October 23, 2005).*
- 29 See Hannam, I. with B. Boer, *Legal and Institutional Frameworks for Sustainable Soils* (IUCN Environmental Policy and Law Paper Series No. 45) at 87, point 4. (IUCN: 2002).
- 30 See Hannam, I., and B. Boer, *Drafting Legislation for Sustainable Soils: A Guide* (IUCN Environmental Policy and Law Paper No. 52). (IUCN: 2004)
- 31 Id. at vii and viii.
- 32 Resolution 3.072, *Third World Conservation Congress, Bangkok, 17–25 November 2004*, available on IUCN web site at: www.iucn.org/congress/index.cfm, see "Outputs" and "Adopted Resolutions and Recommendations" (researched 11/09/05).

- 33 Id. It also should be noted that by the late nineties, the ELP Newsletter was beginning to give attention to a proposal for a Convention on Sustainable Use of Soils as concerns focused on the global threat that soil degradation could become should the problem grow in magnitude comparable to greenhouse effects or the loss of biodiversity. See Freeman, P., "Proposed Soil Convention: The Tutzing Project Time Ecology" in *IUCN Environmental Law Programme Newsletter* (May-August 1999), p. 16.
- 34 In 2001, Ottinger became Chair with Bradbrook Vice-Chair. The group's title was used flexibly (from time to time some documents putting "energy" first and others "climate" first), but the core focus has remained "Energy and Climate." Their aim was to give increased attention to energy law as part of environmental law, a relatively new perspective, for addressing climate change issues in the context of sustainable development.
- 35 See Robinson, N., "IUCN Commission on Environmental Law Triennial CEL Report to the Council, 1997-2000" (7 Feb. 2000), p. 5.
- 36 See, e.g., Di Leva, C., "The Many Challenges of Climate COP-6" in *IUCN Environmental Law Programme Newsletter* (May-August 2000), pp. 18-19; and Di Leva, C., "Disappointment in Den Haag" in *IUCN Environmental Law Programme Newsletter* (September-December 2000), pp. 2-4.
- 37 Robinson, N., "Triennial CEL Report to the Council [covering the period] 1997 - Feb. 2000", p. 6. (7 Feb. 2000).
- 38 Author interview with Maria Socorro Manguiat, June 23, 2004 (Bonn, Germany).
- 39 See Manguiat, M. S., "The UNFCCC after the decisions of Johannesburg's WSSD", in Lin-Heng, L. and M. Socorro Z. Manguiat (eds.), *Towards a "Second Generation" in Environmental Laws in the Asian and Pacific Region - Selected Trends* (IUCN Environmental Policy and Law Paper No. 48), (IUCN, 2003).
- 40 Ottinger, R., "Climate and Energy Specialist Group" in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 18. Ottinger and Bradbrook (reporting as chair and vice-chair respectively) provided an update on the Group's activities in an ELP newsletter in 2004, see Ottinger, R., and A. Bradbrook, "Climate and Energy Specialist Group: Update on 2003-2004 Activities and Plans" in *IUCN Environmental Law Programme Newsletter* (2004), p. 21.
- 41 Bradbrook, A., "WSSD: Energy Emerges from the Shadows" in *IUCN Environmental Law Programme Newsletter* (Issue 1, 2003), p. 4-5.
- 42 Bradbrook, A., R. Ottinger (eds.), *Energy Law and Sustainable Development* (IUCN Environmental Policy and Law Paper No. 47) (IUCN, 2003).
- 43 See Scanlon, J., "Preface" in A. Bradbrook and R. Ottinger (eds.), *Energy Law and Sustainable Development*" (IUCN Environmental Policy and Law Paper No. 47), p. xv (IUCN, 2003).
- 44 See Robinson, N., "Foreword", pp. vii-xiii, and J. Waller-Hunter, "Message", p. xvii, in Bradbrook, A., and R. Ottinger (eds.), *Energy Law and Sustainable Development*" (IUCN Environmental Policy and Law Paper No. 47) (IUCN, 2003).
- 45 See ELP web site at: www.iucn.org/themes/law, category "Latest News", news archives for the month of June 2004, under the heading "An International Commitment to Renewable Energy", 7 June 2004.*
- 46 See Ottinger, R., "Climate and Energy Specialist Group: Update on 2003-2004 Activities and Plans" (Specialist Group progress report available through IUCN ELC).
- 47 See Steiner, A., "Bringing Biodiversity Concerns into the Renewables Debate" in *IUCN Environmental Law Programme Newsletter* (2004), pp. 4-6.
- 48 Resolution 3.059, *Third World Conservation Congress, Bangkok, 17-25 November 2004*, available on IUCN web site at: www.iucn.org/congress/index.cfm, see "Adopted Resolutions and Recommendations". Researched 11/12/05.
- 49 Id.
- 50 Principle 10, "Rio Declaration on Environment and Development" (UNCED, 1992).
- 51 Author interview with Wolfgang Burhenne on March 2006 draft, April 9, 2006 (Bonn, Germany).
- 52 Extracts in "Statement by the Representative of IUCN" in *IUCN Environmental Law Programme Newsletter* (January-April 1998), p. 2.

- 53 Kravchenko, S., "The Aarhus Convention Advances Participatory Democracy in Europe" in *IUCN Environmental Law Programme Newsletter* (September–December 2000), p. 12.
- 54 Id. at 14.
- 55 See Robinson, N., "IUCN Commission on Environmental Law: Supplemental Report (2004)", p. 3. (Supplement prepared for the 2004 World Conservation Congress as part of CEL's Report from the Chair of the Commission in Annex 4 to Congress Paper CGR/3/2004/12) (IUCN ELC archives).
- 56 Recommendation 3.081, *Third World Conservation Congress, Bangkok, 17–25 November 2004*, Available on IUCN's web site at: www.iucn.org/congress/index.cfm, under "Adopted Resolutions and Recommendations".
- 57 Principle 15, Rio Declaration on Environment and Development. (UNCED, 1992).
- 58 Resolution 1.45, *First World Conservation Congress, 13–23 October 1996, Montreal, Canada*, discussed in Hutton, J., "The Precautionary Principle and the IUCN in Motion!" in *IUCN Environmental Law Programme Newsletter* No. 1/2001", p. 1.
- 59 Hutton, J., "The Precautionary Principle and the IUCN in Motion!" in "IUCN Environmental Law Programme Newsletter No. 1/2001", pp. 1 and 4.
- 60 *IUCN Environmental Law Programme Newsletter* (No. 1/2001).
- 61 See, Kiss, A., "IUCN Situation Report on Environmental Law" (3 April 2003), p. 1 (available from IUCN ELC).
- 62 Tapper, R., "Application of the Precautionary Principle to Biosafety" in *IUCN Environmental Law Programme Newsletter* (January–April 2000), p. 7.
- 63 The first output from the project came in October 2005 with issuance of "Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management." See news item on ELP's web site at: www.iucn.org/themes/law, category "Latest News", heading: "Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resources Management" (28 October 2005). See also the project's web site at: www.pprinciple.net, where the home page explains the project and has highlights of the new guidelines, which address living resources management, and can be downloaded in English, Spanish, or French (researched 12/10/05).*
- 64 Resolution 3.075, "Applying the Precautionary Principle in environmental decision-making and management", para. 1, *Third World Conservation Congress, Bangkok, 17–25 November 2004* (available on IUCN's web site at: www.iucn.org/, then "About IUCN", then "Congress", and then "Adopted Resolutions and Recommendations").
- 65 Id. at paras. 2 and 3.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Chapter 31: Emerging and Re-emerging Issues

The Environmental Law Programme (ELP), since its beginning, has pioneered new ideas and helped define emerging subjects, steadily promoting and supporting innovation in international environmental law, as part of the core mission of the Union. As Commission on Environmental Law (CEL) Chair Parvez Hassan observed in his report to the IUCN General Assembly in 1994: “The Commission prides itself on being at the forefront of the international legal community, able to react quickly and effectively to new issues and to provide leadership.”¹

This innovation can be seen throughout ELP’s many years – from its early creation of the IUCN Environmental Law and Policy Papers as a vehicle to broadcast cutting-edge research, the conservation principles it instilled in major conservation conventions (especially the continuing five ‘priority’ treaties as discussed in prior chapters), promotion of the three Montevideo programmes of environmental law, and recent ground-breaking work in biosafety, water conservation, renewable energy, and global environmental law institution-building with the IUCN Academy of Environmental Law and partner environmental law centres.

CEL’s mandate for 2001–2004, endorsed by IUCN members at the 2000 World Conservation Congress and reaffirmed at the 2004 WCC, included to:

“Innovate and promote new or reformed *ethical and* legal concepts and instruments that conserve nature and natural resources and reform patterns of unsustainable development.” (italicized words added in 2004).²

ELP, especially through the Commission, participated in meetings and prepared notes and reports on issues over the years that may not have sufficiently matured with products or actions to have been included in earlier chapters. Some issues received less attention than others for reasons of timeliness, available expertise, resources, or other higher priorities under IUCN’s mandate and ELP’s mission. Some issues have emerged only in the 1990s and 2000s. In recent years, where other organizations (especially convention secretariats) are taking a lead role in overseeing and funding new environmental law initiatives, ELP has shifted to providing support or serving as catalyst for implementation. This is the case, for instance, with ELP’s support to the Climate Change Convention and the Clean Development Mechanism (CDM) of the Kyoto Protocol with legal technical assistance for small scale forest projects in Asia,³ and the 2000 Stockholm Convention on Persistent Organic Pollutants (POPs Treaty).⁴

The same might be said for the new attention to ‘governance’ within the context of environment and sustainable development. ‘Good governance’ is an ageless principle associated with the manner in which power is exercised in management of a country and its development.⁵ However, the concept became firmly linked to sustainable development as part of the international agenda associated with the 2002 World Summit for Sustainable Development where the resulting Plan of Implementation stated, among other things, that “[g]ood governance within each country and at the international level is essential for sustainable development.”⁶ In preparations for the WSSD, IUCN set up various working groups, including one on policy,

and ELP Head John Scanlon took the lead in developing IUCN's position on governance for sustainable development. CEL member Lee Kimball was engaged by ELP to prepare a first draft of a background paper for IUCN on governance for sustainable development and she was the lead author joined by John Scanlon for the final version circulated at the May 2002 preparatory conference for WSSD in Bali.⁷ Staff at IUCN Headquarters and at the IUCN-US office were consulted in finalizing the paper which, Kimball recalls, "served to inform IUCN interventions in the preparations for and outcomes of WSSD."⁸

- 5 Some emerging issues already have well-grounded precedent. This is the case, for example, with the emerging interest in international guidelines and regional agreements for mountain ecosystems where the 1991 Alpine Convention provides important precedent but further conceptual law development is likely.⁹ [See Box 1 below] Factors stimulating new attention include Agenda 21 (the action plan from the 1992 UN Conference on Environment and Development) which devoted an entire chapter to mountains: "Managing Fragile Ecosystems: Sustainable Mountain Development."¹⁰ The United Nations designated 2002 as the 'International Year of Mountains' during which a number of mountain-related events were convened. In 2003, the CEL Steering Committee held a workshop on the proposed Carpathian Convention in the Ukraine, and scoped out steps to assist in implementation of the Convention.



Signature of the Convention on the Protection of the Alps, concluded in 1991

- 6 The signing in May 2003 of the Framework Convention on the Protection and Sustainable Development of the Carpathians (Carpathian Convention), the second mountain ecosystem regional agreement, added momentum for action in this emerging area. Finally, IUCN members at the 2004 World Conservation Congress adopted a resolution on transboundary cooperation in mountain areas, acknowledging among other things the Alpine and Carpathian Conventions, and requesting IUCN to "initiate a study identifying where the development of legal frameworks for transboundary cooperation on sustainable development in mountain areas would be a practicable and realistic option."¹¹

Box 1: Protecting Mountain Ecosystems – The Alpine Convention

7

The Convention on the Protection of the Alps (Alpine Convention) was concluded in 1991 and came into force in 1999. As one of the first ecosystem-oriented conventions, it also was the first international agreement specific to mountain concerns and aimed to provide a comprehensive policy not only on nature and landscape protection but, importantly, also on sustainable development to meet the economic and social needs of the growing Alpine populations. The Convention has eight Parties (Switzerland, Germany, France, Italy, Liechtenstein, Monaco, Austria, Slovenia) and the European Union.

With the goal of developing such a convention, Alpine governments began meeting in the late 1980s, and Wolfgang Burhenne, then Chair of IUCN's Law Commission, took part as IUCN's representative. In parallel, Burhenne took a leading role in establishing an International Centre for Alpine Environment in Chambéry, to which he was elected Vice-Chair of its first Board (the Centre proved important for development of the convention and subsequently, its implementation). In September 1988 in Vaduz, Liechtenstein, IUCN cosponsored a workshop with the International Commission for the Protection of the Alps (CIPRA) to consider specific elements for a convention.¹² This was followed by a ministerial meeting in December 1989 where it was agreed that the convention should take the form of a framework agreement with detailed protocols on specific technical subjects and that IUCN and CIPRA should continue to be involved in the process. Austria took the lead on drafting the framework convention itself and Germany chaired the Working Group on Nature Conservation, asking IUCN through the Environmental Law Centre to provide technical assistance for drafting a nature conservation protocol. Lothar Gündling, ELC's Legal Officer, served as coordinator, preparing the protocol draft and participating in the negotiations of that Working Group.

During the 1990s, Burhenne continued to represent the Union at governmental meetings on the treaty as part of the Union's broader programme on Conservation of Mountain Environments.¹³ He assisted with development of the Convention's eight Implementation Protocols: agriculture, energy, forests, land use planning, protection of nature and landscapes, soil conservation, transport, and tourism.

For the remainder of this Chapter, a few emerging and re-emerging issues in environmental law have been selected for a more expanded discussion because of the amount of activity under way or anticipated by the Environmental Law Programme, through increasingly active Commission Specialist Groups, or generally because of requests from IUCN members at the 2004 World Conservation Congress. Four such issues are reviewed: high seas biodiversity, trade and the environment, environmental protection in the Arctic, and armed conflict and the environment. 8

High seas biodiversity

Among new issues, high seas biodiversity and marine protected areas began to receive heightened attention in UN and other international fora from 2000, as reports mounted about serious loss of marine species, biodiversity, and habitats in the deep-sea and high seas areas. The effects of destructive fishing practices and illegal and unregulated fishing were among the most pressing concerns. There was growing international interest in the sustainable use of marine genetic resources collected from areas beyond national jurisdiction including issues of access and benefit-sharing, with seabed areas like hydrothermal vents considered especially interesting. 9

While oceans issues in general come under the framework of the UN Law of the Sea Convention negotiated in the 1970s and adopted in 1982, new develop- 10

ments in science, new international treaties (including the Convention on Biological Diversity, CBD), and principles such as sustainable use, the precautionary approach and the ecosystem approach motivated new international discussions. These focused both on actions urgently needed for conservation and management of 'high seas' biodiversity and on efforts needed over the medium term to ensure application of the latest scientific findings and new management and legal approaches to marine conservation, drawing also on obligations under the CBD.

11 IUCN's involvement in this growing international debate and dialogue has been led by its thematic Global Marine Programme, joined by other components, especially the World Commission on Protected Areas, and the Environmental Law Programme.

12 At the 2nd World Conservation Congress (WCC) in 2000 in Amman, Jordan, members adopted a resolution calling on the Director General to work with IUCN members and multilateral agencies "to explore an appropriate range of tools, including high seas Marine Protected Areas, with the objective of implementing effective protection, restoration, and sustainable use of biological diversity and ecosystem processes on the high seas."¹⁴ This was followed by more specific policy guidance from the next WCC in Bangkok in 2004 (see below).

13 IUCN first tackled these issues in a publication authored by CEL member A. Charlotte de Fontaubert and entitled *Status of Natural Resources of the High-Seas*, which contained a section on legal and political considerations.¹⁵ ELC Legal Officer Tomme Young also prepared early background analysis and information for IUCN on some of these issues.

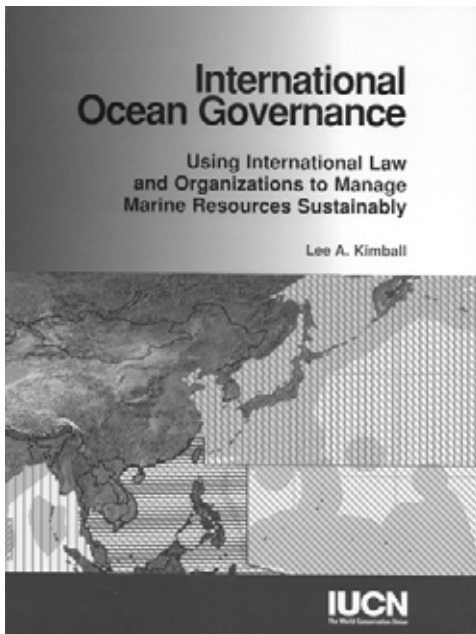
14 During 2002, IUCN initiated an exercise to develop an action plan for creating high seas protected areas. A workshop jointly sponsored by IUCN, WWF, and IUCN's World Commission on Protected Areas (WCPA) was convened in January 2003 in Malaga, Spain. Its purpose was to develop an action plan for creating high seas protected areas as input to the upcoming 5th IUCN World Parks Congress (WPC) in September 2003. Hosted by IUCN's Centre for Mediterranean Cooperation and drawing some forty world experts, the workshop agreed upon a set of actions to be undertaken to enable establishment of a marine protected areas network in the high seas.¹⁶ As part of this effort, ELP's Tomme Young prepared an initial report identifying the "complex web of laws" that touch on elements of high-seas conservation.¹⁷

15 The topic received extended attention at the World Parks Congress mainly at a governance workshop, which included input from Tomme Young on legal tools. One of the recommendations resulting from the WPC was that the international community as a whole should establish and effectively manage by 2008 at least five ecologically significant high-seas marine protected areas.¹⁸

16 Since late 2002, two CEL members, Lee Kimball (working out of the IUCN Washington DC office, long-standing UN Law of the Sea expert and IUCN's Adviser on UN International Institutions), and Kristina Gjerde (working out of IUCN Headquarters and IUCN's High Seas Policy Adviser and recipient of the 2003 Pew Marine Conservation Fellowship) have served as key advisers and as spokespersons for IUCN in relevant international meetings at the United Nations, UN Food and Agriculture Organization (FAO), and CBD.

Using its Permanent Observer status with the UN General Assembly (see Part 7, Intro.), IUCN has addressed issues of biodiversity conservation in marine areas beyond national jurisdiction in its annual statements to the UN General Assembly, at annual meetings of the UN Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), and at annual Informal Consultations of States Parties to the UN Fish Stocks Agreement.¹⁹ IUCN has also intervened and presented documents on some of these issues at the biennial meetings of the FAO Committee on Fisheries, at annual meetings of the Antarctic Treaty and CCAMLR, at biennial meetings of the CBD Conferences of Parties, and at numerous inter-sessional technical and informal working groups.²⁰

Coordinated with the IUCN Global Marine Programme by CEL member Lee Kimball, these various inputs have been developed through a process of consultation and feedback from concerned IUCN components, including ELP and CEL members and members of WCPA and SSC. From background scientific and legal-policy information to recommendations for short- and medium-term options, the focus has been conserving deep sea biodiversity and using it sustainably, including control of bottom trawl fisheries to protect seamounts, deep water corals and other biodiversity hotspots.²¹



In 2003, the IUCN Commission on Environmental Law approved creation of a Specialist Group on Oceans Law and Governance, subsequently reconstituted Oceans, Coasts and Coral Reefs. Chaired by David VanderZwaag, Professor of Marine Law at Dalhousie University, Canada, the group has identified among its issues for attention the “governance challenges of areas beyond national jurisdiction, including deep seabed mining and high seas biodiversity.”²²

At the IUCN World Conservation Congress in 2004, members reaffirmed interest and concern relative to conservation and sustainable management of high seas biodiversity, adopting a resolution for the IUCN Director General and members to facilitate a number of actions by states and relevant international

organizations, individually and collectively, including several involving governance issues, law and policy, such as to “further develop expert processes within IUCN in order to contribute to the Ad Hoc Open-Ended Working Group established by the UNGA and to the Ad Hoc Open-ended Working Group on Protected areas established by the CBD ... and to recommend options for improved governance arrangements....[as well as to] consider development and adoption within the UNCLOS framework of new international instruments and/or additional mecha-

nisms, tools, and approaches for the effective governance, protection, restoration and sustainable management of marine biological diversity and productivity in the high seas....”²³

21 Also in 2004, the CBD Secretariat invited IUCN to prepare a background study on “The International Legal Regime of the High Seas and the Seabed Beyond the Limits of National Jurisdiction and Options for Cooperation for the Establishment of MPAs in Marine Areas Beyond the Limits of National Jurisdiction.” Kimball coordinated the study as lead author, for presentation to the CBD Working Group on Protected Areas in June 2005 in Montecatini, Italy.²⁴

22 Through this and other important contributions to come, IUCN mainly through its Global Marine Programme will continue to help promote and implement international action for high seas biodiversity conservation. As Kimball has reflected for this History, “marine biodiversity conservation in areas beyond national jurisdiction has increasingly become an issue of keen interest in the international community. It comprises growing dismay over the state of international fisheries and the adverse impacts of destructive fishing practices as well as calls for sustainable and equitable biodiversity use, including of genetic resources. IUCN played a vital role in launching these international discussions and, through numerous reports and policy papers prepared for intergovernmental meetings and the organization of ‘side event’ presentations, continues to inform them by bringing to bear recent scientific findings and viable recommendations for response – from new international legal mechanisms to further utilization of appropriate tools like marine protected areas and environmental impact assessment.”²⁵

Trade and environment

23 In the mid-1990s, the trade and environment issue began to receive active attention within IUCN. This was stimulated by the growing recognition within the international community of the need to address connections between international trade and environmental protection, particularly as the General Agreement on Tariffs and Trade (GATT) was being reformed and the World Trade Organization (WTO) was created in 1995.²⁶ The 1994 IUCN General Assembly endorsed a resolution, in which the Environmental Law Programme was heavily involved, which for the first time called for IUCN engagement in GATT/WTO issues. Entitled “The Relationship Between Conservation and Trade,” the resolution urged, among other things, all governments to ensure that future negotiations, within the framework of GATT and elsewhere, support and are not at odds with environmental protection, and requested the Director General working with CEL and other commissions to appoint a Working Group on Trade, Conservation, and Sustainable Development to analyze existing international trade agreements and initiatives and report with recommendations to the IUCN Council.²⁷

24 An ELP newsletter in 1995 reported on a public meeting on “Trade and Environment” in April 1995, co-sponsored by IUCN and the Global Environment and Trade Study (GETS), in Geneva where some 100 diplomats and environmentalists participated.²⁸ The event included a panel discussion on the relationship between multilateral environmental agreements and the international trade regime. Organ-

ized by the Environmental Law Centre, the panelists included ELC's Legal Officer, Richard Tarasofsky (who spoke on the Biodiversity Convention and CITES) and CEL members Winfried Lang (on the Basel Convention and Montreal Protocol) and James Cameron (on Climate Change), along with E.U. Petersmann of the WTO Secretariat as commentator of the presentations. Scott Hajost, Executive Director of the IUCN-US office and CEL member, served as moderator.

In 1996, CEL's Steering Committee established a Working Group on 'Trade and Environment'. The issue, according to CEL Chair Hassan in a letter to CEL members, "has become our highest substantive priority for the triennium now that the Covenant has been completed" with the aim of the Group "to develop our own activities on trade and environment and to provide top-quality input into IUCN's other activities on this topic."²⁹ To underscore the importance of the issue, Hassan agreed to be the Working Group's chair.³⁰ As it turned out, however, with ongoing responsibilities in a number of areas, the Working Group did not become actively engaged.³¹ 25

Nevertheless, the Environmental Law Centre stayed involved in monitoring developments in the WTO, including production of a survey of issues and proposals on trade and environment in 1996 by Richard Tarasofsky (ELC Legal Officer) with Kenneth Ewing. The survey tracked governmental and non-governmental proposals made and provided a bibliography for further study. A first draft was distributed at the 1996 World Conservation Congress and an updated draft was circulated to Trade Ministers at the First World Trade Organization's Ministerial meeting in Singapore in December 1996.³² Further, ELC was involved in a workshop on the issue at IUCN's 1st World Conservation Congress (WCC) in Montreal in 1996.³³ That WCC generated a second resolution on the trade issue, with the involvement of ELC, this time focused on concerns over trade liberalization and the environment, acknowledging IUCN's support for the new International Centre for Trade and Sustainable Development (ICTSD), urging IUCN to investigate environmental consequences of trade liberalization, providing recommended actions, as appropriate, and urging it to help developing countries build capacity to include environmental considerations in trade policies.³⁴ 26

Focusing on trade and the Convention on Biological Diversity (CBD), the Environmental Law Centre participated in a WTO public symposium on trade and sustainable development in 1996, where Tarasofsky gave a presentation on the relationship between the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the CBD.³⁵ Continuing with this theme, the Environmental Law Programme in 1997 became part of an IUCN-led four year German-funded project on the CBD and international trade regime. Based on the assumption that both regimes needed successful implementation in order to achieve sustainable development, the project focused on how CBD and the World Trade Organization (WTO) could best work together. As explained by the Project Officer Tarasofsky, the recommendations from the project "aimed either at reforming the respective regimes or in support of their implementation, so that they reinforce, rather than contradict, each other."³⁶ The project selected three themes important to the core of the CBD: forests, fisheries, and intellectual property rights (IPRs), and held expert workshops 27

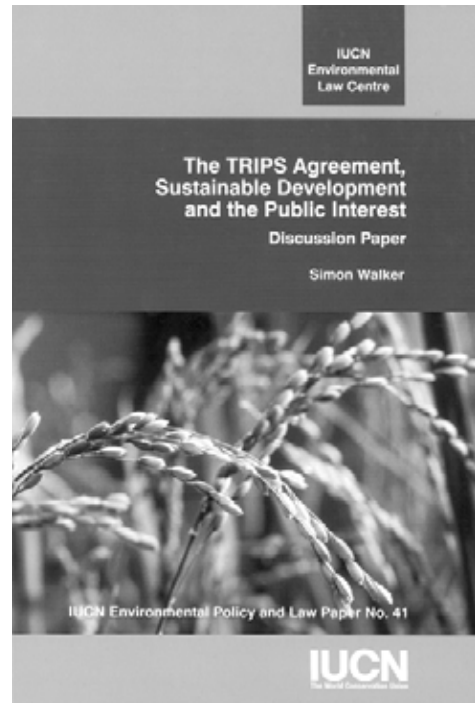
for each – the forest workshop in Chile in 1998, IPRs in India in 1999, and fisheries in West Africa in 1999. In addition, IUCN co-organized workshops at the Global Biodiversity Forum and World Trade Organization Ministerial meeting in 1998.³⁷

28 The 1997 IUCN project was winding down as UNEP began efforts to promote broader international consultations on synergies between the major multilateral environment agreements and the World Trade Organization in order to mitigate potential trade-environment conflicts, and trade and environment linkages were being examined under the North American Free Trade Agreement (NAFTA).³⁸ To further contribute to UNEP's effort, a number of papers were generated for the workshops under the IUCN project and an Action Guide containing background and recommendations from the project was published by the Environmental Law Programme in 2002 at the conclusion of the project.³⁹ In addition, among other publications from the project, one on the environmental and development impacts of patent protection focused on the global agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and was produced jointly by IUCN and the Center for International Environmental Law (CIEL, an IUCN member) as part of the IUCN Environmental Policy and Law Paper Series: *The TRIPS Agreement, Sustainable Development and the Public Interest: A Discussion Paper*, by Simon Walker.⁴⁰

29 In 2003, ELP, again with the support of the German government (BMZ), began a new, long-planned 3-year project on "Trade Issues Relevant to Access to Genetic Resources within the Framework of the Convention on Biological Diversity" (ABS project).⁴¹ Progress on development of systems for access and benefit sharing issues under the Convention had been attempted and stalled a number of times because of complex economic and political factors since conclusion of the treaty in 1992. The aim of this new project, led by Tomme Young, ELC Senior Legal Officer, was to assist CBD to move forward on this "equity" objective. Through this new ABS project, ELP experts participated during 2003 and 2004 in preparations for and participation in ad hoc meetings of the CBD on the issue and the 7th COP of the Convention. Their focus was on the legal issues that must

be addressed for creation and implementation of a functioning international regime on ABS and to coordinate the work of five other international projects on legal issues. (See Chapter 23 for more on this project and its publications.)

30 In 2004, the Environmental Law Centre also sent a Legal Officer to represent IUCN at the "Roundtable on Emerging Issues in the Relationships between the





Climate and Trade Regimes (Climate Change, Mitigation Adaptation and the WTO)" held in Geneva in October 2004 to share ideas on possible links between trade and adaptation.⁴²

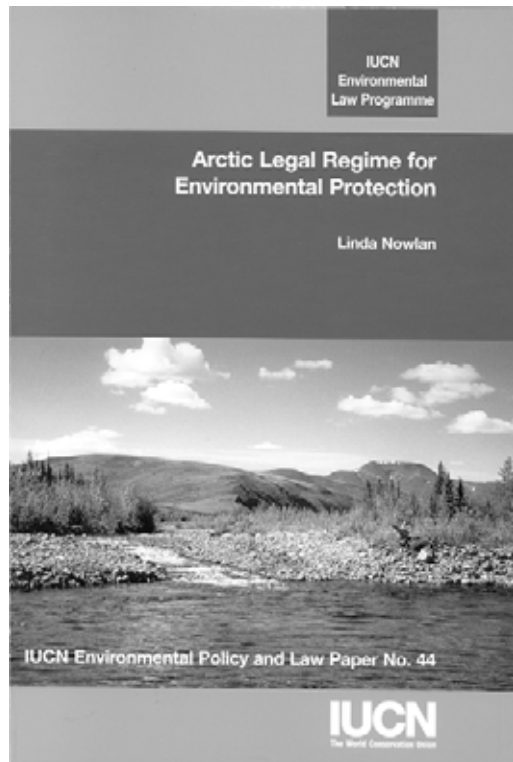
In light of the growing environment and trade activity in international fora, the CEL Steering Committee in 2004 reactivated a Specialist Group on Trade and the Environment, particularly for the upcoming discussions on biodiversity and trade at the 2004 World Conservation Congress.⁴³ Again, however, there was little opportu-

nity for the group to become actively engaged before the end of CEL Chair Robinson's term (the end of 2004), at which point the rules would require the successor Chair to newly constitute or reconstitute the Specialist Groups desired for the coming term.⁴⁴

The Arctic

32 For many years, IUCN had been concerned about the environmental situation in the Arctic, which has been coming under increased environmental stress from accelerated resources extraction, distant pollution activities, and climate change. In 2000, IUCN members adopted a resolution at their 2nd World Conservation Congress (WCC) recognizing the circumpolar Arctic as a priority ecosystem for IUCN, calling for the preparation of an Arctic Strategy and Action Plan, and the establishment of Arctic activities as part of IUCN's overall programme.⁴⁵ The Arctic, with no comprehensive environmental law regime, posed special jurisdictional issues, being home to several indigenous groups claiming territorial rights, in addition to having land-based industrial and resources users, and existing economic activity.

33 ELP took action soon after the 2000 WCC to support the resolution. A joint IUCN/ICEL project was initiated by Charles Di Leva, ELP Head, and Wolfgang Burhenne, in his capacity as Executive Governor of ICEL, to examine environmental law issues of the Arctic with a view to exploring whether current approaches were sufficient or there may be grounds to go further in the direction of a more comprehensive environmental intergovernmental instrument for the Arctic. Linda Nowlan, CEL member and Executive Director of the NGO, West Coast Environmental Law, took on the task of preparing a comprehensive report of the Arctic's legal issues, including comparisons between the two polar regions, with recommendations and rationale for the development of a new Arctic framework environmental



agreement. The report, *Arctic Legal Regime for Environmental Protection*, was published in 2001 in the IUCN Environmental Policy and Law Paper Series.⁴⁶

34 Subsequently, CEL Chair Robinson designated Wolfgang Burhenne to take the lead within CEL's Steering Committee on 'Arctic and the environment' issues. In March 2004, Wolfgang Burhenne and Nicholas Robinson on behalf of ELP and ICEL, joined by Françoise Burhenne-Guilmin as ELC Senior Council, convened an

informal meeting of experts in Ottawa to consider the 2001 publication and possible future actions. Supported by the Government of Canada and the Elizabeth Haub Foundation for Environmental Policy and Law of Canada, that meeting was attended by experts from international institutions, governments, non-governmental organizations and academia participating in their personal capacity. The author, Linda Nowlan, was present to highlight main points of her study, including her assessment, as reflected in the meeting's report, that there was "potential to strengthen the legal regime in numerous ways to better protect this unique [Arctic] environment."⁴⁷

The meeting concluded by supporting further analyses. Participants recognized that the present environmental legal regime needed strengthening, but that such strengthening depended not only on legal techniques but also on the feasibility of building upon existing instruments and institutions, in particular the Arctic Council (a high level intergovernmental forum created in 1996), as well as mobilizing political will. Thus, there was no 'a priori solution' and additional action-oriented and issue-oriented analysis was needed in cooperation with existing activities, programmes, and institutions.⁴⁸

In response, the CEL Steering Committee meeting in May 2004 upgraded the issue by creating a Specialist Group on the Arctic to help focus further Commission expertise to any analytical work that might follow from the March meeting conclusions.⁴⁹

Results of the March 2004 experts meeting also were reported to IUCN members at the 2004 World Conservation Congress. The Congress adopted a resolution that not only recognized the work done to date, but in addition requested continued action, namely that IUCN continue to cooperate with various groups and programmes of the Arctic Council and that CEL "participate in the work of the Arctic Council, if needed, by making its services and expertise available ... in relation to appropriate legal frameworks" and that the Arctic Council and Arctic indigenous peoples be involved in any relevant future work of CEL.⁵⁰

Work on an Arctic environmental law regime will continue within the Commission. (While the new CEL Chair Abed and new CEL Steering Committee decided at its 2005 meeting not to reinstate the Arctic Specialist Group created in 2004 pending further consultations, including with the Arctic Council, they decided to create a special task force on the 'Arctic Regime' with Wolfgang Burhenne as chair.⁵¹)

Armed conflict and the environment

Within the Law Commission, interest in the effects of war on the environment began in the early 1980s when the IUCN Council accepted the Commission's offer to study the question of international legal instruments to restrain environmental damage caused directly or indirectly by warfare, and to propose options for conceptual law development. Commission member Michael Bothe agreed to take the lead in preparing an initial paper based on internal Commission consultations.⁵² This assignment was coincidental to his appointment by the European Economic Community to a special working group on armed conflict and the environment.

The 16th General Assembly of IUCN meeting in 1984 generated a major resolution on conservation and military activities. Sponsored by the International Coun-

cil of Environmental Law and motivated in part by the United Nations action to declare 1986 the International Year of Peace, the resolution (among other things) called on States to adhere on the Convention on the Prohibition of Military or Any other Hostile Use of Environmental Techniques, and called for other measures to protect the environment including conclusion of a treaty prohibiting manufacture and stockpiling of chemical weapons, and for peace-time military activities to be conducted in a manner that avoided undue environmental damage.⁵³ In addition, it introduced ‘an intriguing proposal’, according to Malcolm Forster, CEL Counsel, that the world’s natural heritage (including ecosystems beyond national jurisdiction) should be accorded the same special status in the international law as that enjoyed by the artistic and cultural heritage, perhaps by means of a protocol to the 1954 Convention for the protection of cultural property in the event of armed conflict.⁵⁴

41 Through the 1980s and into the 1990s, the Law Commission continued to follow the issue through its members and participated as feasible in initiatives of other organizations especially in Europe. In the late 1980s, for instance, the Council of Europe’s Legal Experts Group prepared a draft of rules on compensation for damage to the environment from war. IUCN submitted comments with the support of the Environmental Law Centre and Commission members R. Ganten, L. Gündling, A. Rest and H. Smets.⁵⁵ At the same time, the International Committee of the Red Cross convened consultations on armed conflict and the environment and then CEL Deputy Chair Nicholas Robinson, with CEL members Badria Al-Awadhi and Michael Bothe, participated in several of those.

42 CEL Chair Hassan supported Commission work on this issue from early in his tenure. The challenge was to decide how the Commission might serve as a catalyst in this area in view of the many opinions on the subject especially from experts. The environmental impacts of war gained attention in the aftermath of the 1991 Gulf war, particularly in the context of UN Security Council discussions on Iraq’s liability for damage resulting from the war. Specifically, in a resolution passed on April 3, 1991, the Security Council reaffirmed “that Iraq ... is liable under international law for any direct loss, damage – including environmental damage and the depletion of natural resources – or injury to foreign Governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait.”⁵⁶

43 A report entitled “War and Environment” was prepared by the CEL Steering Committee for an IUCN Council meeting in November 1991 describing activities undertaken to study the legal issues posed by the conflict in the Gulf Region. Hassan emphasized the need to establish a set of principles based on the expertise gained in preparing that report and to bring them together into a covenant. Noting that “[m]any people were looking to the Commission to put together a group dealing with issues of armed conflict and the environment”, he requested the Council’s authorization to proceed.⁵⁷ The Director General indicated his support for this proposal, subject to discussions on cost and members of the Council strongly endorsed the need to provide for such initiatives as a contingency in the IUCN budget.⁵⁸

44 Backed by this endorsement, the Commission co-sponsored with ICEL a consultation of experts in December 1991 in Munich which, according to an ELC re-

port, “allowed a group of 18 environmental and humanitarian law experts to freely discuss how the international community might and should proceed in this area.”⁵⁹ That meeting resulted in a series of recommendations to increase effectiveness of existing international legal instruments and further develop international law in this area. Next, CEL organized and convened a ‘Workshop on National Security’ during the IUCN World Parks Congress in Caracas in February 1992. The CEL Steering Committee used the occasion of the 1992 World Parks Congress to hold a regular meeting where minutes record: “it was clear that the Commission would soon have to decide whether and how to proceed in this field.”⁶⁰

In view of the interest generated by the World Parks Congress workshop, the Commission decided to focus, as a next step, more narrowly on the issue of how to protect designated natural and cultural sites in times of armed conflict. CEL began by co-sponsoring a consultation of senior legal experts meeting on this issue in December 1992 in Amsterdam in collaboration with the International Council of Environmental Law and the World Travel and Tourism Council. The consultation produced over 40 recommendations from such international organizations as the International Committee of the Red Cross (ICRC) and UNESCO.⁶¹ Applicable international agreements were reviewed and it was “recognized that these instruments need to be re-examined in light of recent fundamental changes in international relations.”⁶² 45

Reporting on these activities, Hassan’s Law Commission report to the 19th IUCN General Assembly in 1994 in Buenos Aires included the issue of war and the environment under ‘new directions’ because “it became apparent that the international community needed to discuss how to handle the lack of effectiveness of the international law on the protection of the environment in times of armed conflict.”⁶³ The 1994 General Assembly passed a resolution on ‘Armed Conflict and the Environment’, as did the subsequent General Assembly in 1996, both calling for further attention to the issue.⁶⁴ 46

During this period, within the UN system the issue of war and the environment also was at least recognized by the 1992 Rio Declaration,⁶⁵ making its way to the UN General Assembly but without further advance. These efforts led to the “Guidelines for military manuals and instructions on the protection of the environment in times of armed conflict”, prepared by the International Committee of the Red Cross and recommended for dissemination by General Assembly Resolution in 1994, which Michael Bothe observes, “would not have been possible without the previous IUCN efforts noted above.”⁶⁶ 47

In 1994–95, CEL concentrated on protected areas in relation to the issue and CEL member Andronico Adede from Kenya prepared a draft “Convention on the Prohibition of Hostile Military Activities in Protected Areas”, with ELC Legal Officer Richard Tarasofsky preparing the commentary.⁶⁷ The draft aimed principally toward actions that could be taken by the UN Security Council. In March 1996, the Environmental Law Centre circulated the draft and commentary to key CEL members, several of whom responded including Professor Michael Bothe of Germany (who had been involved extensively with the European debates), Professor Steve McCaffrey of the US (a long-standing CEL member and former member of the UN 48

International Law Commission), and Professor Dinah Shelton (who was heavily involved in producing the draft International Covenant on Environment and Development).⁶⁸ Tarasofsky presented the Draft Convention at a conference organized by the Environmental Law Institute (an IUCN member) in Washington in 1998, where he recalls “it proved to be quite controversial.”⁶⁹

49 No further action was taken on the draft as some felt it was too ambitious and others felt that existing legal instruments could achieve the same results.⁷⁰ Instead, the Draft International Covenant on Environment and Development (see Chapter 26) introduced a lengthy article on ‘Military and Hostile Activities’ (with an extensive commentary and references to other legal instruments) in response to the “widespread sentiment that international law should provide better protection for the environment during armed conflict, both by enforcing existing norms and developing new ones.”⁷¹

50 On a more modest scale, CEL and the IUCN World Commission on Protected Areas (WCPA) produced in 1998 a draft “Code of Conduct on Transboundary Protected Areas in Times of Peace and Armed Conflict” in response to recommendations of two conferences on Parks for Peace, one in Cape Town, South Africa, in 1997 and the second in Bornio, Italy, in 1998.⁷² The code proposed an enabling framework for promoting cooperation relating to the establishment and management of transboundary protected areas. CEL and WCPA continued the project through a working group.

51 In 2002, IUCN ELP participated in discussions in the Arab Region organized by a partner centre, the Arab Regional Centre of Environmental Law (ARCEL), where one of the topics for discussion was how to advance legal research on armed conflict and the environment. CEL Vice-Chair and ARCEL Director, Dr. Badria Al-Awadhi, and University of Kuwait Dean of the Law Faculty, Professor Nasserallah, were joined by CEL Chair Nicholas Robinson and ELP Head John Scanlon for a series of meetings with other Kuwait-based institutions to plan joint activities for the coming 12 to 24 years.⁷³

52 With the escalating tensions surrounding Iraq in 2003, the IUCN Council requested IUCN to develop a statement on armed conflict and the environment which was released in March 2003. The statement focused on IUCN’s concern for the people and the environment in an armed conflict and sought to focus the international community on existing international instruments which offer protection in such times. It was accompanied by several reference materials on such existing instruments. Subsequently, the CEL Steering Committee decided to create a new Specialist Group on Armed Conflict and the Environment with CEL Vice-Chair Michael Bothe as Chair.

53 In 2004, IUCN members at the 3rd World Conservation Congress (WCC) requested the IUCN Director General to ensure that higher priority is given within the upcoming programme and within the components of IUCN to concerns about the detrimental effects of military activities to the environment.⁷⁴ The issue is expected to remain active within the Environmental Law Programme within the Commission through its Specialist Group on Armed Conflict and the Environment.⁷⁵

Notes

- 1 Hassan, P., "Commission on Environmental Law (CEL) Triennial report: 1991–1993" (also labeled Annex 3 to General Assembly Paper GA/19/94/4), p. 78.
- 2 Commission on Environmental Law (CEL) Mandate: 2001–2004, para. 2 (b), and Commission on Environmental Law (CEL) Mandate: 2005–2008, para. 3(c). See IUCN ELP web site at <http://www.iucn.org/themes/law>, under category "Commission on Environmental Law", subcategory "Mandate".*
- 3 For example, ELC Legal Officer, Maria Socorro Z. Manguiat, had responsibility for the climate change theme and within that cluster of activities worked (through a framework project funded by Germany and UNEP) with Convention subsidiary bodies, UNEP and FAO, on case studies to improve understanding about legal aspects and rules to qualify small scale afforestation and reforestation projects under the Clean Development Mechanism as guidance to policy makers and communities, author interview with Maria Socorro Manguiat in June 2004 (Bonn, Germany).
- 4 The IUCN Environmental Law Programme was part of an international network of more than 300 organizations that supported and promoted the treaty's development under the leadership of World Wildlife Fund's Global Toxic Chemicals Institute headed by Clifton Curtis (a CEL member). CEL Chair Robinson represented ELP at negotiations in Russia and CEL member Professor Marco Antonio Olson represented ELP at the final negotiations in Stockholm, Olson thereafter publishing the definitive book on the negotiations and content of the convention (see Olson, M.A., *Analysis of the Stockholm Convention on Persistent Organic Pollutants* (Oceana, 2003)); contribution from Nicholas Robinson on May 2006 draft, transmitted by email dated June 13, 2006). Once concluded in 2000, CEL Vice Chair for Africa, Etienne Sinatambou, pledged the support of ELP in legislative drafting for implementing the treaty. See article by Clifton Curtis, "Key Elements in the Global POPs Treaty", and article by Etienne Sinatambou, "Final Negotiations of the POPs Convention" in the *IUCN Environmental Law Programme Newsletter* (September–December 2000). The treaty came into force in February 2004.
- 5 See, e.g., The World Bank, *Governance and Development* (Washington, D.C., 1992).
- 6 Para. 4, "World Summit on Sustainable Development Plan of Implementation" (UNGA A/ Conf.199/20).
- 7 See "IUCN and Governance for Sustainable Development" (IUCN, 2002). Communication from John Scanlon by email dated July 24, 2006.
- 8 Commentary by Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 9 While the CEL does not have a specialist group on mountains, IUCN's World Commission on Protected Areas (WCPA) has an active mountain theme with a Mountain Protected Areas Newsletter and a Mountain Protected Areas Network. In 2004, IUCN/WCPA published *Guidelines for Planning and Managing Mountain Protected Areas* (L. Hamilton and L. McMillan, eds.)
- 10 Agenda 21, Chapter 13, para. 13.1–13.24 (UNCED, 1992)
- 11 Resolution 3.040, in "Resolutions and Recommendations of the Third World Conservation Congress, Bangkok, Thailand, 11–25 November, 2004" (available on IUCN's web site at: www.iucn.org/congress/index.cfm, "Adopted Resolutions and Recommendations") (researched 12/10/05).
- 12 See Burhenne, W., "Report of the Chairman of the Commission on Environmental Policy, Law and Administration to the 18th Session of the General Assembly (March 1989 to March 1990)" in "IUCN's Report to the 18th Session of the IUCN General Assembly, 28 November – 5 December 1990, Perth, Australia", p. 83.
- 13 See Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme, presented to the Karl-Schmitz-Scholl Fonds", p. 4.
- 14 Resolution 2.20, adopted by the 2nd World Conservation Congress meeting in Amman, Jordan, 4–11 October 2000.
- 15 See *The Status of Natural Resources of the High Sea* (an independent study conducted by the Southampton Oceanography Centre and Dr. A. Charlotte de Fontaubert) (Part II: Legal and Political Considerations) (WWF, WCPA, IUCN, 2001).

- 16 See Gjerde, K.M., and C. Breide (eds.), *Towards a Strategy for High Seas MPAs*, Proceedings of the IUCN, WCPA, and WWF Experts Workshop on High Seas MPAs, 15–17 January 2003 (IUCN, 2003).
- 17 See “IUCN Charts a Course for Conserving High Seas Biodiversity (16 January 2003)”, available at: www.iucn.org/themes/law/dev11.html (researched 7/24/2003).*
- 18 See World Parks Congress Recommendation V.23, item 2 (available as PDF file on IUCN web site at: www.iucn.org/themes/wcpa, under “World Parks Congress”, “Vth World Parks Congress Recommendations,” researched 11/25/05).
- 19 Commentary and information provided by Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 20 News of this participation and accompanying statements can be found on the web site of the IUCN Marine Programme at: www.iucn.org/themes/marine, under ‘news’ for the corresponding date.
- 21 See, e.g., IUCN, “Statement to the Second Committee concerning Sustainable Ocean Development” (for the UN General Assembly 58th Session, New York) (November 24, 2003), available on the IUCN Marine Programme web site at: www.iucn.org/themes/marine, as PDF file under the archived news item for December 4, 2003; see also “Conserving Deepsea Biodiversity ... Using it Sustainably: Short-Term and Long-Term Options for Action” (United Nations Informal Consultative Process on Oceans and the Law of the Sea 7–11 June 2004) (May 2004); “Statement by Lee Kimball for General Assembly, Fifty-ninth Session, Oceans and the Law of the Sea, Agenda item 49(a) and (b)” (17 November 2004), available on the IUCN Marine Programme web site at: www.iucn.org/themes/marine, as PDF file under the archived news item for November 16, 2004.
- 22 Terms of Reference for the Oceans Group, attached as PDF file to email from CEL Liaison Officer, Katerina Sarafidou, to Françoise Burhenne-Guilmin, Subject: Re: CEL Working Groups, dated May 06, 2004. In 2005, the new CEL Chair Abed reconstituted the group with its current name, Oceans, Coasts, and Coral Reefs (see postscript).
- 23 Resolution 3.064, items (b) and (c) (available on IUCN’s web site at: www.iucn.org/congress/index.cfm, “Adopted Resolutions and Recommendations,” researched 11/25/05).
- 24 See CBD Technical Series No. 19 (November 2005), information provided by Lee Kimball on May 2006 draft, transmitted by email dated June 8, 2006.
- 25 Commentary by Lee Kimball as further input to the May 2006 draft, transmitted by email dated July 25, 2006.
- 26 See WTO web site at: www.wto.org.
- 27 Resolution 19.25 adopted by the 19th Session of the IUCN General Assembly in Buenos Aires, Argentina in 1994.
- 28 See “IUCN/GETS Meeting on Trade and Environment” in *IUCN Environmental Law Programme Newsletter* (April–June 1995), at 9.
- 29 Hassan, P., “Commission on Environmental Law – Letter from the Chair” in *IUCN Environmental Law Programme Newsletter* (January–March 1996), p. 3.
- 30 Id.
- 31 Communication from Richard Tarasofsky on May 2006 draft transmitted by email dated June 19, 2006, further confirmed by John Scanlon in comments provided by email dated June 7, 2006, and Scanlon’s further observation that the new CEL Chair Abed in 2005 reconstituted and activated the group.
- 32 See Tarasofsky, R., “Trade Ministers meet in Singapore” [box: The ‘Trade and Environment’ Agenda: Survey of Major Issues and Proposals – From Marrakesh to Singapore] in *IUCN Environmental Law Programme Newsletter* (October–December 1996) at 5.
- 33 Communication from Richard Tarasofsky on May 2006 draft, transmitted by email dated June 19, 2006.
- 34 See Resolution 2.33, adopted by the 1st World Conservation Congress, 4–11 October 2000, in Amman, Jordan.
- 35 Communication from Richard Tarasofsky on May 2006 draft, transmitted by email dated June 19, 2006.

- 36 Tarasofsky, R., *Towards a mutually supportive relationship between the Convention on Biological Diversity and the World Trade Organization: An Action Guide*, at 1. (IUCN ELP: 2002)
- 37 See *IUCN Environmental Law Programme Annual Report 1998* at 3.
- 38 See for example, "MEAs: Working Group on Compliance and Enforcement" in 30 *Environmental Policy and Law* 60–62 (March 2000); Jahnke, M., "WTO: Trade and Environment Decisions" in 30 *Environmental Policy and Law* 276–278 (December 2000); and Jahnke, M., "North America: Linkages between Trade and Environment" in 30 *Environmental Policy and Law* 287–291 (December 2000).
- 39 See Tarasofsky, R., *Towards a mutually supportive relationship between the Convention on Biological Diversity and the World Trade Organization: An Action Guide*. (IUCN ELP: 2002).
- 40 See Walker, S., *The Trips Agreement, Sustainable Development and the Public Interest: Discussion Paper* (IUCN Environmental Policy and Law Paper No. 41) (IUCN: 2001).
- 41 See, Scanlon, J., "IUCN Environmental Law Programme 2003: The Year in Review", p. 5; and IUCN Environmental Law Centre, "IUCN Environmental Law Programme 2004: The Year in Review," p. 7 (IUCN Environmental Law Centre: Bonn).
- 42 See IUCN Environmental Law Centre, "IUCN Environmental Law Programme 2004 – The Year in Review" at 5, (IUCN, Bonn).
- 43 Id.
- 44 In 2005, the new CEL Chair Abed did reconstitute and activate this Specialist Group (see postscript), with Nicolás Lucas as chair and Marie Clare Segger as co-chair (see ELP web site at: www.iucn.org/theme/law, category "Commission on Environmental Law", subcategory "Specialist Groups").*
- 45 Resolution 2.22, paras 1 and 4. "Resolutions and Recommendations of the World Conservation Congress 4–11 October 2000, Amman, Jordan", at 19 (IUCN, 2001).
- 46 See Nowlan, L., *Arctic Legal Regime for Environmental Protection* (IUCN Environmental Policy and Law Paper No. 44) (IUCN, 2001).
- 47 "Report: IUCN-CEL Meeting of Experts on Arctic Issues" (Ottawa, 24 and 25 March 2004), p. 2.
- 48 Id. at 4.
- 49 See Robinson, N., "IUCN Commission on Environmental Law: Supplemental Report (2004)" (Supplement prepared for the 2004 World Conservation Congress as part of CEL's Report from the Chair of the Commission in Annex 4 to Congress Paper CGR/3/2004/12) (Available from IUCN ELC).
- 50 Resolution 3.037, "Arctic Legal Regime for Environmental Protection" (available on IUCN's web site at: www.iucn.org/congress/index.cfm, "Adopted Resolutions and Recommendations").
- 51 See ELP web site at: www.iucn.org/themes/law, category: "Commission on Environmental Law", subcategory: "Specialist Groups" (researched 12/05/05).*
- 52 Commission on Environmental Policy, Law and Administration, "Report to the 13th Meeting of the IUCN Council 8–11 November 1983", p. 5 (also referenced as Annex to Council Paper UC.13/83/17).
- 53 See Resolution 16/2 in "Resolutions – 16th Session of the General Assembly of IUCN, Madrid, Spain, 5–14 November 1984".
- 54 See Forster, M., "General Assembly-A Lawyer's Perspective" in 13 *Environmental Policy and Law* 3–4 at 98 (1984).
- 55 See *Newsletter of the IUCN Commission on Environmental Policy, Law and Administration* (No. 90/1), p. 1 (1990).
- 56 Para. 16, Resolution 687 (1991) (3 April 1991), United Nations Security Council.
- 57 See IUCN – The World Conservation Union, "Minutes of the 32nd Meeting of the IUCN Council 25–27 November 1991, IUCN Headquarters, Gland, Switzerland", p. 21.
- 58 See IUCN – The World Conservation Union, "Minutes of the 32nd Meeting of the IUCN Council 25–27 November 1991, IUCN Headquarters, Gland, Switzerland", p. 21.
- 59 Environmental Law Centre, "Progress and Assessment Report for 1991 for the IUCN Environmental Law Programme, presented to the Karl-Schmitz-Scholl Fonds", p. 3.
- 60 "CEL Steering Committee Meeting" in *IUCN Environmental Law Programme Newsletter* (January–March 1992), p. 7.

- 61 Reported by Hassan, P., in “Commission on Environmental Law (CEL) Triennial Report: 1991–1993” (Annex 3 to General Assembly Paper GA/19/94/4), p. 79. The ICRC continued with three more expert meetings in 1992 and 1993, Nicholas Robinson as CEL Deputy Chair participating in the latter which produced a report entitled “Protection of the Environment in Time of Armed Conflict” that was submitted to the 48th session of the UN General Assembly. See “Armed Conflict and the Environment” in *IUCN Environmental Law Programme Newsletter* (June–December 1993), p. 7.
- 62 “IUCN Law Programme Activities” in *IUCN Environmental Law Programme Newsletter* (September–December 1992), p. 3.
- 63 See P. Hassan, “Commission on Environmental Law (CEL) Triennial Report: 1991–1993” (Annex 3 to General Assembly Paper GA/19/94/4), p. 78.
- 64 Resolution 19.41 of the 19th IUCN General Assembly (1994), and Resolution 1.75 of the 1st World Conservation Congress (1996).
- 65 See Principle 24: “Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperation in its further development, as necessary” in *Rio Declaration on Environment and Development* (Annex I of UNGA A/Conf. 151/26 (Vol. I), 12 August 1992).
- 66 See UNGA Res. 49/50 (9 December 1994). Commentary provided by Michael Bothe on May 2006 draft transmitted by email dated June 5, 2006.
- 67 Reported by Wolfgang Burhenne, CEL Liaison to the UN System, in *IUCN Environmental Law Programme Newsletter* (January–March 1996), p. 11.
- 68 Draft and comments are available in ELC archives.
- 69 Commentary from Richard Tarasofsky on May 2006 draft transmitted by email dated June 19, 2006.
- 70 In August 1998, Tarasofsky sent a memo to Wolfgang Burhenne and CEL Chair Robinson with a modified commentary based on comments received and recommending additional CEL review before wider circulation. Memo from Richard G. Tarasofsky to Wolfgang E. Burhenne and Nick Robinson, dated 23 August 1998. (ELC Archives).
- 71 See Article 32, *Draft International Covenant on Environment and Development*, 3rd Edition (IUCN Environmental Policy and Law Paper No. 31 Rev. 2), p. 12, commentary at p. 101. (IUCN: 2004)
- 72 See *IUCN Environmental Law Programme Annual Report 1998*, p. 3.
- 73 See ELP web site at: www.iucn.org/themes/law, under “Latest News”, news for the second quarter 2002, heading “ARCEL and IUCN ELP for an Exciting Future”.*
- 74 Resolution WCC3.058, Third World Conservation Congress, Bangkok, 17–25 November 2004 (available on IUCN’s web site at: www.iucn.org/congress, under “Adopted Resolutions and Recommendations”).
- 75 The group was reconstituted by the new CEL Chair Abed in 2005, on the recommendation of the new Steering Committee, and long-standing expert on the subject, Michael Bothe, will again serve as its Chair.

* The web site version quoted no longer being on line, the sections referred to above have been made available at: <http://weavingaweb/>.

Postscript

This History runs through 2004. The Environmental Law Programme keeps moving forward, however, growing and evolving with the changing times, both in programmatic terms and in leadership. Announcements and news on projects, new activities, initiatives and management and staff changes continue to be provided on ELP's web site at: www.iucn.org/law.

A few highlights about 2005 are worth noting as this History closes. First, with the expiration of Nicholas Robinson's term as CEL Chair, the 3rd World Conservation Congress (WCC) in November 2004 elected a new Chair, Sheila R. Abed from Paraguay, the first woman to serve as CEL Chair; her term will run into 2008 through the next WCC. Sheila brings years of experience as an environmental lawyer in Paraguay and founded the Paraguayan Environmental Law and Economics Institute (IDEA) of which she is Executive Director. She moved the position for CEL's Liaison Officer from Bonn to her base in Asuncion. A second important leadership change came in January 2005 when John Scanlon resigned and returned to Australia, and Alejandro Iza, ELC Senior Legal Officer, was appointed as the new ELP Head and Director of the Environmental Law Centre. Alejandro, from Argentina, joined ELC legal staff in 1999, with a Doctorate in Law from the University of Buenos Aires and extensive international experience, and was ELC project officer for important initiatives, as noted in this History.



Sheila Abed, Chair of ICCEL and Alejandro Iza, Head of the Environmental Law Programme (ELP) in Guatemala, 2006

- 3 By the rules of the Commission, each new Chair selects its Steering Committee of senior Commission members to help lead and guide the work for the upcoming term. The following Steering Committee was appointed: Michel Prieur (France) as Deputy Chair, along with the following members (in alphabetical order): Nawzat Ali (Jordan), Antonio Benjamin (Brazil), Edith Brown-Weiss (USA), Wolfgang Burhenne (Germany, Member-at-Large), Melinda Janki (Guyana), Alejandro Iza (Head, IUCN ELP and ex officio member), Veit Koester (Denmark), Samuel Nguiffo (Cameroon), Daniel Sabsay (Argentina), John Scanlon (Australia), Robyn Stein (South Africa), Giuseppe Zaccagnini (IUCN Legal Adviser and ex officio member), Tatiana R. Zaharchenko (Ukraine), Tony La Viña (Philippines).
- 4 CEL's new Steering Committee met for the first time in Cape Town, South Africa in June 2005, and set directions going forward. Giving emphasis to the Specialist Groups, it reconstituted some groups and added new ones as follows: armed conflict and the environment, implementation of the Convention on Biological Diversity, energy law and climate change, enforcement and compliance, ethics, human rights and the environment, indigenous peoples, judiciary, oceans/coasts/coral reefs, sustainable use of soils, trade and the environment, water and wetlands, and environmental governance. A task force also was created for protected areas (jointly with the IUCN World Commission on Protected Areas) as well as for the Arctic. Specialist Group Chairs, Co-Chairs, and CEL Steering Committee as well as ELC focal points can be found on the ELP web site.
- 5 As the wheel of law continues to turn and help guide the future, it is hoped successor volunteers will come forth to update ELP's history at regular intervals.



Annex I: Environmental Law Programme Officials and Senior Legal Staff (1960–2004)

1. Commission on Environmental Law:

a. Chairs: **1960–1969:** Wolfgang E. Burhenne (Germany)
 1970–1976: Lynton K. Caldwell (USA)
 1977–1990: Wolfgang E. Burhenne (Germany)
 1990–1996: Parvez Hassan (Pakistan)
 1996–2004: Nicholas A. Robinson (USA)

b. Commission Officers:

1978–1984: Daniel Navid (Exec. Off.) (USA)
1984–1988: Malcolm Forster (Senior Counsel) (UK)

2. Environmental Law Centre (ELC) (established in 1970):

a. Executive Officers:

1970–1999: Françoise Burhenne-Guilmin (Belgium) (title began as IUCN Legal Officer; appointed as Head of ELC in 1973)
1999–2001: Charles Di Leva (USA), ELP Head and ELC Director; General Counsel to the IUCN Director General.
2001–2004: John Scanlon (Australia), ELP Head and ELC Director.

b. Senior Legal Staff:

1976–1978: Daniel Navid, Assistant Legal Officer (USA)
1980–1984: Michael Demidecki, Legal Officer (UK)
1988–1990: Ekaterina Michos-Ederer, Legal Officer (Greece)
1990–1993: Susan Casey-Lefkowitz, Legal Officer (USA)
1990–1994: Lothar Gündling, Projects Coordinator-ELS (Germany)
1993–1998: Patricia Moore, ELC Law Programme Officer (USA)
 (2000–2004+, Head, IUCN Asia Reg'l ELP/Bangkok).
1993–1997: Richard Tarasofsky, Legal Officer (Canada)
1993–1999: Lyle Glowka, Legal Officer (USA)
1996–2000: Nattley Williams, Legal Officer (Jamaica)
1998–1999: Mauricio Cysne, Legal Officer (Portugal/Brazil)
1999–2004: Tomme Young, Legal Officer/Senior Legal Officer (USA)
2001–2004: Maria Socorro Z. Manguiat, Legal Officer (Philippines)
2003–2004: Katerina Sarafidou, CEL Liaison Officer (Greece)
1999–2004: Alejandro Iza, Legal Officer/Senior Legal Officer (Argentina)

Annex II: ELP and related IUCN Law Publications (1972–2004)¹

I. Environmental Policy and Law Paper (EPLP) Series

- No. 56** *An Introduction to the African Convention on the Conservation of Nature and Natural Resources*, IUCN ELP, 2004
- No. 55** *International Water Governance: Conservation of Freshwater Ecosystems. Vol. 1 International Agreements – Compilation and Analysis*, Alejandro Iza (Ed.), 2004
- No. 54** *Assessing Biodiversity and Sharing the Benefits: Lessons from Implementing the Convention on Biological Diversity*, edited by Santiago Carrizosa, Stephen B. Brush, Brian D. Wright, Patrick E. McGuire, 2004
- No. 52** *Drafting Legislation for Sustainable Soils: A Guide*, Ian Hannam and Ben Boer, 2004
- No. 51** *Water as a Human Right?*, John Scanlon, Angela Cassar, Noémi Nemes, 2004
- No. 50** *Water Governance in West Africa/La gouvernance de l'eau en Afrique de l'Ouest*, Madiodio Niasse, Alejandro Iza, Amidou Garane, Olli Varis, 2004
- No. 43** *Environmental Law in Developing Countries – Selected Issues Vol. II* Marianela Cedeño Bonilla, Edgar Fernández Fernández, Sondes Jemaiel, Rose Mwebaza and Dana Zhandayeva (co-ordinated by Françoise Burhenne-Guilmin), 2004
- No. 31** *Draft International Covenant on Environment and Development* Third Edition: Second Revised Text, 2004
- No. 49** *International Environmental Governance – An International Regime for Protected Areas*, edited by John Scanlon and Françoise Burhenne-Guilmin, 2004
- No. 48** *Towards a “Second Generation” in Environmental Laws in the Asian and Pacific Region – Selected Trends* edited by Lye Lin-Heng with Maria Socorro Z. Manguiat (Proceedings of an IUCN/IGES/ADB Symposium, ADB Institute, Tokyo, Japan), 2003
- No. 47** *Energy Law and Sustainable Development*, Adrian J. Bradbrook, Richard L. Ottinger, 2003
- No. 46** *An Explanatory Guide to the Cartagena Protocol on Biosafety*, Ruth Mackenzie, Françoise Burhenne-Guilmin, Antonio G.M. La Viña and Jacob D. Werksman in cooperation with Alfonso Ascencio, Julian Kinderlerer, Katharina Kummer and Richard Tapper, 2003; English, French, Spanish, Russian
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- No. 43** *Environmental Law in Developing Countries – Selected Issues* Nazrul Islam, Isabel Martinez, Ikechi Mgbeoji, Wang Xi (co-ordinated by Françoise Burhenne-Guilmin), 2001

- No. 42** *Direito do Ambiente e Redacção Normativa: teorie e prática nos países lusófonos*, Mauricio Cysne e Teresa Amador (eds.), 2000
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- No. 40** *A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species*, Clare Shine, Nattley Williams and Lothar Gündling, 2000 English, French, Spanish
- No. 39** *Landscape Conservation Law – Present Trends and Perspectives in International and Comparative Law*, IUCN ELP/ PA, Societe Française pour le Droit de l'Environnement, 2000 English/French
- No. 38** *Wetlands, Water and the Law*, Clare Shine and Cyrille de Klemm, 1999
- No. 37** *Assessing the International Forest Regime*, edited by Richard Tarasofsky, 1999
- No. 36** *A Guide to National Legislation for implementing the Convention on Biological Diversity*, Patricia Moore in collaboration with Lothar Gündling et al. – *Publishing plans for this title have been withdrawn.*
- No. 35** *A Guide to Undertaking Biodiversity Legal and Institutional Profiles* Glowka, L. in collaboration with Clare Shine, Orlando Rey Santos, Mohiuddin Farooque and Lothar Gündling, 1998; English, Russian
- No. 34** *A Guide to Designing Legal Frameworks to Determine Access to Genetic Resources*, Glowka, L., 1998
- No. 33** *The "Trade & Environment" Agenda: Survey of Major Issues and Proposals – From Marrakesh to Singapore*, Ewing, K.P., Tarasofsky, R.G., 1997
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- No. 30** *A Guide to the Convention on Biological Diversity*, Glowka, L. et al. 1994
- No. 29** *Biological Diversity Conservation and the Law: Legal Mechanisms for Conserving Species and Ecosystems*, Klemm, C. de; Shine, C., 1993
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- No. 27** *Agenda 21: Earth's Action Plan*, Robinson, N.A. (ed), 1993
- No. 26** *Guidelines for Legislation to Implement CITES*, Klemm, C. de, 1993
- No. 25** *Proceedings of an International Conference on: Legal Aspects of the Conservation of Wetlands*, Untermaier, J., 1991
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- sis of the Adoption and Implementation of the Convention in Denmark*, Koester, V., 1989
- No. 22** *International Wildlife Law*, Lyster, S., 1985
- No. 21** *Elements of an Agreement on the Conservation of Western Palearctic Migratory Species of Wild Animals*, Klemm, C. de et al., 1983
- No. 20** *Rev. Environmental Protection in Islam*, Bagader, A.; El-Sabbagh, A.; Al Glayand, M.; Sammarrai, M., in collaboration with Llewellyn, O., 1994
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- No. 20** *Basic Paper on the Islamic Principles for the Conservation of the Natural Environment*, Kader, A.; El-Sabbagh, A.; Al Glenid, M.; Izzidien, M., 1983
- No. 19** *Legal Measures for the Conservation of Marine Mammals* (Loose Leaf) Birnie, P., 1982
- No. 18** *The Environmental Law of the Sea*, Johnston, D. (ed), 1981
- No. 17** *Guidelines for National Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora*, Emonds, G., 1981
- No. 16** *Guidelines for Protected Areas Legislation*, Lausche, B.J., 1980
- No. 15** *Trends in Environmental Policy and Law*, Bothe, M., 1980
- No. 14** *Nordic Countries' Legislation on the Environment with Special Emphasis on Conservation*, A Survey, Koester, V., 1980
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- No. 10** *Survey of Current Developments in International Environmental Law* Kiss, A.C., 1976
- No. 9** *The Legal Aspects of Ecological Reserve Creation and Management in Canada*, Franson, R.T., 1975
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- No. 6** *Financing Environmental Measures in Developing Countries: The Principle of Additionality*, MacLeod, S., 1974
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- No. 4** *The Concept of Compensation in the Field of Trade and Environment* Schneider-Sawiris, S., 1973
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II. IUCN EPLP Occasional Papers (no longer available, archival copies at ELC)

1. *Status of Multilateral Treaties in the Field of Environment and Conservation*, This is the third expanded and revised edition of the original chart, published in 1985, which lists all the global and regional conventions of relevance to environmental conservation, together with their status. 1993.
2. *Migratory Species in International Instruments: An Overview*, Commissioned by the Federal Republic of Germany for the First Conference of the Parties to the Migratory Species Convention, this document contained an overview of all international conventions dealing with migratory species to date. 262 pp. 1986.
3. *African Wildlife Laws*, This publication had four parts. The first part contained reports on the wildlife legislation of 45 African states. The second part contained bibliographic information on each relevant legal instrument, together with an abstract and the species covered. The third part was structured according to the taxa dealt with in the African national legislation, referring back to national texts. The fourth part contained an alphabetical list of taxa dealt with in part III. 1712 pp. 1986.

III. Other IUCN ELP Publications:

An International Environmental Law Information System: Report on a research project, by W.E. Burhenne, F. Guilmin and J.W. Kennedy, BzU (B 3), Erich Schmidt Verlag, 1972

Towards a mutually supportive relationship between the Convention on Biological Diversity and the World Trade Organization – An Action Guide, by Richard Tarasofsky, IUCN, 2002

IV. Other Publications with IUCN ELP Input:

Genetically Modified Organisms and Biosafety: A background paper for decision-makers and others to assist in consideration of GMO issues, by Tomme Young, IUCN, 2004; English, French, Spanish

Flow: the essentials of environmental flows, edited by M. Dyson, G. Bergkamp and J. Scanlon, IUCN, 2003

International Environmental Law: Multilateral Treaties, by W.E. Burhenne (ed), Kluwer Law International, 1997 (Looseleaf)

International Protection of the Environment: Conservation in Sustainable Development, by W.E. Burhenne and N.E. Robinson (eds), Oxford University Press, 1995 (Looseleaf)

Report of the International Expert Workshop on the Enforcement of Wildlife Trade Controls, by M. Anton, N. Dragffy, S. Pendry and T. Young, 2001

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The Basis of the U.N. Environmental Policy: The Resolutions of the General Assembly, BzU (A 16), Erich Schmidt Verlag, 1973

The Results from Stockholm, BzU (A 10), Erich Schmidt Verlag, 1973

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A Law for the Environment, by A. Kiss and F. Burhenne-Guilmin (eds), IUCN, 1994

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The World Charter for Nature: Legislative History and Commentary, 2nd revised edition, by W.E. Burhenne and W.A. Irwin, BzU (A 90), Erich Schmidt Verlag, 1986

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UNEP Environmental Law In-Depth Review 1981: A presentation by subject areas, by B.J. Lausche, BzU (A 81), Erich Schmidt Verlag, 1982

The Environmental Law of the Sea, by D.M. Johnston, BzU (A 79), Erich Schmidt Verlag, 1981

Environmental Policies in Developing Countries, compiled by H. Johnson and J.M. Johnson, reviewed and edited by R. Gour-Tanguay, BzU (A 27), Erich Schmidt Verlag, 1977

An individual right or an obligation of the State? BzU (A 41), Erich Schmidt Verlag, 1976

Note

- 1 Prepared with the helpful assistance of Andrea Lesemann, Documentation Officer for the IUCN Environmental Law Centre in Bonn. For entire list, including publications since 2004, along with download possibilities, see ELP web site at: www.iucn.org/law.

ABBREVIATIONS

| | |
|--------|--|
| ADB | – Asian Development Bank |
| AEWA | – African-Eurasian Waterbird Agreement |
| ALESCO | – Arab League Educational, Scientific and Cultural Organization |
| APCEL | – Asia-Pacific Centre for Environmental Law |
| ARCEL | – Arab Regional Centre for Environmental Law |
| ASEAN | – Association of Southeast Asian Nations |
| ASP | – African Special Project |
| BMZ | – German Federal Ministry for Economic Cooperation and Development |
| CBD | – Convention on Biological Diversity |
| CCAMLR | – Commission for the Conservation of Antarctic Marine Living Resources |
| CCTA | – Committee for Technical Cooperation in Africa South of the Sahara |
| CDC | – Conservation for Development Centre |
| CDG | – Carl Duisburg Gesellschaft |
| CEDE | – European Council of Environmental Law |
| CEL | – Commission on Environmental Law (IUCN Law Commission name since 1990) |
| CELIB | – Computerized Environmental Law Information Base |
| CEPLA | – Commission on Environmental Policy, Law and Administration (IUCN Law Commission name from 1970–1990) |
| CIC | – Conseil International de la Chasse (International Council for Game and Wildlife Conservation) |
| CIEL | – Center for International Environmental Law |
| CIESIN | – Consortium for International Earth Science Information Network |
| CIPRA | – International Commission for Protection of the Alps |
| CITES | – Convention on International Trade in Endangered Species of Fauna and Flora |
| CMEA | – Council for Mutual Economic Assistance |
| CMS | – Convention on the Conservation of Migratory Species (Bonn Convention) |
| CNPPA | – Commission on National Parks and Protected Areas (now World Commission on Protected Areas) |
| COE | – Council of Europe |
| COP | – Conference of Parties |
| CSD | – United Nations Commission on Sustainable Development |
| DGIS | – Directorate-General for International Cooperation (Netherlands) |
| ECA | – United Nations Economic Commission for Africa |
| ECE | – United Nations Economic Commission for Europe |
| ECOLEX | – IUNC/UNEP/FAO joint environmental law information service |

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| ECOSOC | – United Nations Economic and Social Council |
| EEC | – European Economic Community |
| EELA | – European Environmental Law Association |
| EIA | – environmental impact assessment |
| ELC | – Environmental Law Centre |
| ELIS | – Environmental Law Information System |
| ELP | – Environmental Law Programme |
| ELS | – Environmental Law Service |
| EPLP | – Environmental Policy and Law Paper |
| ESCAP | – United Nations Economic and Social Commission for Asia and the Pacific |
| EU | – European Union |
| FAO | – United Nations Food and Agriculture Organization |
| FAOLEX | – United Nations FAO legislative data base of national laws on food, agriculture, and renewable natural resources |
| FARN | – Fundacion Ambiente y Recursos Naturales (Environment and Natural Resources Foundation, Argentina) |
| FCCC | – Framework Convention on Climate Change |
| FIELD | – Foundation for International Law and Development |
| FUST | – Fund for Environmental Studies |
| GISP | – Global Invasive Species Programme |
| HNS | – Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea |
| IBP/CT | – International Biological Programme/Conservation of Territorial Species |
| ICBP | – International Council for Bird Protection |
| ICCROM | – International Centre for the Study of the Preservation and Restoration of Cultural Property |
| ICEL | – International Council for Environmental Law |
| ICOMOS | – International Council on Monuments and Sites |
| ICRC | – International Committee of the Red Cross |
| IFF | – Intergovernmental Forum on Forests |
| IIED | – International Institute for Environment and Development |
| IMO | – International Maritime Organization |
| INFOTERRA | – UNEP global environmental information exchange network |
| IOPN | – International Organization for the Protection of Nature |
| IPA | – Interparlamentarische Arbeitsgemeinschaft (Interparliamentary Working Centre) |
| IPCE | – International Parliamentary Conference on the Environment |
| ITTA | – International Tropical Timber Association |
| ITTO | – International Tropical Timber Organization |
| IUCN | – International Union for Conservation of Nature and Natural Resources |

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| IUCN-US | – IUCN-USA Multilateral Office |
| IUPN | – International Union for the Protection of Nature |
| IWC | – International Whaling Commission |
| IWRB | – International Wildfowl Research Bureau |
| JELIS | – Joint Environmental Law Information System |
| KSSF | – Karl Schmitz Scholl Fund |
| LOS | – Law of the Sea |
| MAB | – Man and Biosphere Programme |
| MARPOL | – International Convention for the Prevention of Pollution from Ships |
| MEPC | – Marine Environment Protection Committee |
| MOU | – memorandum of understanding |
| NAFTA | – North American Free Trade Agreement |
| NGO | – non-governmental organization |
| OAU | – Organization of African Unity |
| OECD | – Organisation for Economic Cooperation and Development |
| ORCA | – Regional Office for Central America |
| PADELIA | – Partnership for the Development of Law and Institutions in Africa |
| POPs | – Convention on Persistent Organic Pollutants |
| RCO | – regional and country office |
| ROLAC | – Regional Office of Latin America and the Caribbean |
| SCAR | – Scientific Committee on Antarctic Research |
| SCOPE | – Science Committee on Problems of the Environment |
| SPDA | – Sociedad Peruana de Derecho Ambiental |
| SSC | – Survival Species Commission |
| STAIRS | – Storage and Information Retrieval System |
| STAP | – Scientific and Technical Advisory Panel |
| SWMTEP | – System-Wide Medium Term Environmental Programme |
| TRIPS | – Trade-Related Aspects of Intellectual Property Rights |
| UNCED | – United Nations Conference on Environment and Development |
| UNCLOS | – United Nations Conference on Law of the Sea |
| UNCTAD | – United Nations Conference on Trade and Development |
| UNDP | – United Nations Development Programme |
| UNEP | – United Nations Environment Programme |
| UNESCO | – United Nations Educational, Scientific and Cultural Organization |
| UNGA | – United Nations General Assembly |
| UNITAR | – United Nations Institute for Training and Research |
| UNSCCUR | – United Nations Scientific Conference on the Conservation and Utilization of Species |
| WANI | – Water and Nature Initiative |
| WCC | – World Conservation Congress |
| WCED | – World Commission on Environment and Development |
| WCMC | – World Conservation Monitoring Centre |

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| WCPA | – World Commission on Protected Areas |
| WCS | – World Conservation Strategy |
| WHC | – World Heritage Convention |
| WHO | – World Health Organization |
| WSSD | – World Summit on Sustainable Development |
| WTO | – World Trade Organization |
| WWF | – World Wildlife Fund |

CHRONOLOGICAL INDEX

Note: References are to Chapter and paragraph. Those in italics are to illustrations.

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