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INTERNATIONAL UNION FOR CONSERVATION
OF NATURE AND NATURAL RESOURCES

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 1978¹

¹Parts of this report are included in the presentation of the Chairman of CEPLA with regard to the last triennium to the Fourteenth General Assembly of IUCN.

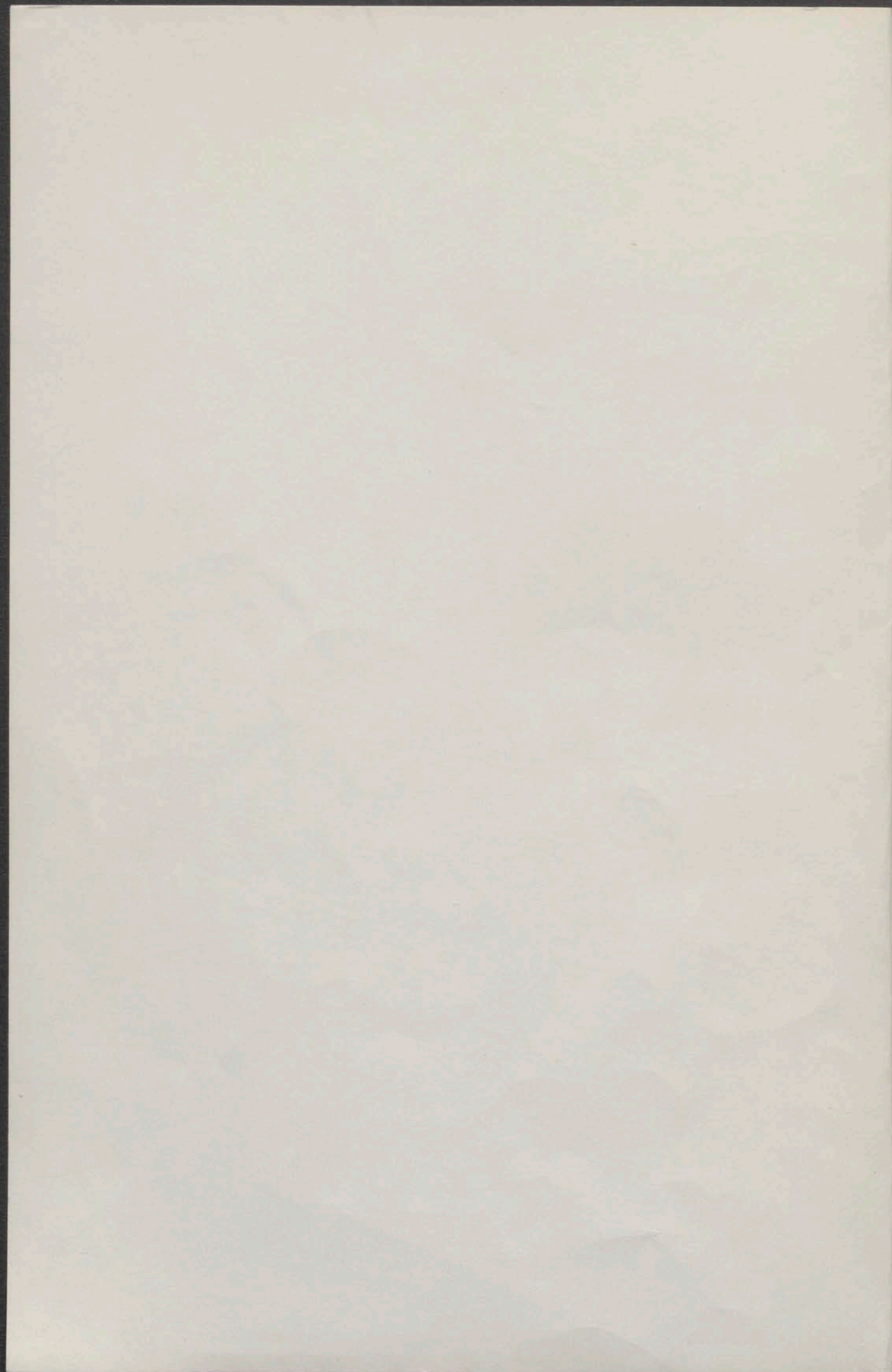


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INTRODUCTION

What is IUCN?

The International Union for Conservation of Nature and Natural Resources is an organization composed of sovereign states, government agencies and non-governmental organizations, joined together to promote the sustainable use of natural resources throughout the world.

Founded in 1948, the Union now comprises approximately 430 members from more than 100 countries, representing all stages of economic development. IUCN is committed to ensuring that nature conservation is recognized not as competing with development but as a vital and integral part of it.

Through its education and information programme, the Union seeks to increase public awareness both of the value of natural resources and of their vulnerability. Through international cooperation and the application of scientific knowledge, IUCN helps nations take the fullest advantage of their natural resources in ways that can be sustained for the benefit of future generations.

How does IUCN operate?

The programme of IUCN, adopted by the Union's General Assembly every three years, is administered by a small secretariat of scientists and professionals and carried out in consultation with six Commissions of voluntary specialists, acknowledged internationally as authorities on particular aspects of conservation and natural resource management. The six Commissions are:

- Survival Service Commission
- Commission on National Parks and Protected Areas
- Commission on Ecology
- Commission on Environmental Planning
- Commission on Education
- Commission on Environmental Policy, Law and Administration

The headquarters of the Union is located in Morges, Switzerland.

IUCN Environmental Law Centre

The IUCN Environmental Law Centre in Bonn, Germany provides the legal input to the IUCN programme, by planning as well as carrying out projects. To these ends, the Centre works in close cooperation with the specialists who serve on the Commission on Environmental Policy, Law and Administration. The Centre's activities focus on three needs (at both national and international levels): 1) providing environmental law information, 2) drafting environmental legislative texts, 3) conducting environmental law studies.

I. ENVIRONMENTAL LAW DOCUMENTATION AND INFORMATION

A. General Project

Environmental Law Centre Documentation and Information Activities (1351)

This project concerns the maintenance of IUCN's collection of environmental law texts.

The purpose of the project is to provide a comprehensive, up-to-date collection of legal environmental texts, including legislation, administrative regulations, international conventions, court decisions, and related documents from nations throughout the world.

Currently, the legislative collection covers materials from approximately 130 countries.

1) Collection of Materials

a) Legislation Update

Documentation gathering activities continued to grow as the necessary lifeline of the information system. The legislation documentation library filled requests for update general information with states, ministries and agencies in over 105 countries. In addition, regular activities such as the scanning of official gazettes and periodicals as well as maintaining contacts with IUCN correspondents in various countries have been continued throughout the year. As a result of this updating process wherein new documents were collected and repealed documents replaced, the collection was enlarged by several hundred documents.

b) Judicial Collections

Attention has been given to further developing the Centre's collection of court decisions concerning environmental matters. Of particular interest was the progress made in the compilation of such decisions from the Federal Republic of Germany. That collection was significantly enlarged with the total in it presently standing at over 1400, 212 of which have been selected for publication in the loose-leaf volume, Umwelturteile Entscheidungen deutscher Gerichte (E. Schmidt Verlag, Berlin).

c) Literature Update

The extensive literature collection maintained in the Law Centre by the International Council of Environmental Law (ICEL) continued to grow, with over 3,600 new materials added during the period in question. Thirty issues of ICEL References have been prepared since January 1977 which provide bibliographic information about the new acquisitions to the library and these were regularly sent to all ICEL members as well as to selected libraries.

IUCN staff assisted in the identification of appropriate materials for inclusion in the library, while benefiting from the use of this valuable collection.

2) Computerization of Materials: the IUCN Environmental Law Information System (ELIS)

The first phase of the computer project, the processing of full bibliographical data for the legislation data bank, proceeded according to plan. By July 1978 over 9000 documents were codified, most of which had been typed onto MB tapes which were either processed by IBM or which awaited processing. These documents account for data from over 90 jurisdictions.

In addition to codifying documents and processing their codifications for the data bank, the following progress has been made in other significant areas of the programme:

- a) Original Trial Data Bank Programmes
as it presently stands were developed to mechanically revise codifications from the trial data bank to make them compatible with the system so as to allow absorption of approximately 1500 documents into the current system.
- b) Full Indexation Full indexation of Japanese legislation (second phase of codification) has been realized through the presence of a Japanese lawyer whose participation in the project was made possible by contributions from the Toyota Foundation and the Fund for Environmental Studies. Having completed bibliographical sheets for some 300 Japanese legal texts, a significant number of which are not translated into English or German, this codifier turned to the second phase of codification and by April 1978 had completed some 200 full indexations. This work is now being processed for inclusion into the system.
- c) Court Cases Codification guidelines of court decisions for Germany and for other major jurisdictions such as the U.S.A. and the U.K., were reviewed and a few aspects refined. Processing of German court cases was begun early in 1978.
- d) Programme Categories Considerable refinement of the necessary categories including the most practical design of both print-out and screen format for the benefit and easy comprehension of the user, was effected in 1977.
- e) German Documentation - Work undertaken for the Federal Republic of Germany. Special attention has been given to activities mandated by the agreement concluded with the FRG. Accordingly, German environmental legislation and court decisions have been collected and analyzed according to both the ELIS system and JURIS, a computerized

documentation system for all German legal instruments under the aegis of the German Federal Ministry of Justice. These requirements have necessitated some major adjustments in procedure for ELIS analysts. During the period of this report the body of German legislation on inland water and marine pollution as well as on soil (federal) was analyzed pursuant to both systems. Other German environmental legislation has been reviewed and reorganized in an updating effort with codification under both systems recently begun. In addition, a part of the federal legislation and that of two States was analyzed according to ELIS. The collection of German court decisions having been brought up-to-date (see above), codification under both the JURIS and ELIS systems has also been initiated.

3) Microfiching of Materials

Microfiching of documentation from the literature library has been intensified. Currently some 1700 fiches have been filled with documents from international organizations and individual country files to ensure the easy handling and longevity of the documentation.

4) Information Requests

IUCN utilized its documentation collection to continue collaboration with UNEP through the Information Referral Service (IRS).

In addition to the IRS searches, approximately 95 direct requests for information were pursued since January 1977, for governments, organizations and individuals.

Finally, the documentation of the Centre was also utilized by many independent researchers.

B. Specific Information Efforts of the Centre

The Centre engages in its own or in joint projects with others in specific documentation and information projects, several of which have resulted in publications or will do so in the near future.

In addition to the publication of a compilation of regulatory texts of the European Communities in the field of environmental conservation and the collection of recent German court cases mentioned above, two endeavors are particularly worth mentioning:

1) Multilateral Conventions (1561)

In 1973, the Centre in collaboration with the German Fund for Environmental Studies (FUST) published International Environmental Law-Multilateral Treaties (E. Schmidt Verlag, Berlin) to provide a unique source material on the subject.

This now four volume publication provides information in a comprehensive fashion as to the status of and parties to over 300 relevant conventions, in addition to providing the actual texts of these accords (usually in English, French and German versions).

In 1977 comprehensive revision of the covering information sheets and the inclusion of eight new conventions was made to insure the timeliness of the work. This was accomplished by undertaking searches of government reporting systems, contacting various treaty Depositaries and analyzing materials collected.

A further revision was initiated in March 1978.

2) Index to Species Dealt with in Legislation (841)

The status of species is a traditional interest of IUCN; to ascertain the legal status of species in national and international law is the logical follow-up of this interest and a prerequisite for recommendation as to conservation action. An index to species mentioned in the legislation of some 70 countries was therefore initially prepared in 1976 on the basis of a compilation done for the Washington Convention Conference.

During 1977 this index was prepared for computerization. The product of the computerization, a portion of which was available in January 1978, includes an alphabetical list (Latin, English and French) along with a scientific list (including synonyms in the languages mentioned above), the latter referring to the legislative texts in which each species is considered.

Since January 1978, efforts have been directed to refining the format of the index. Discussions have been held regarding adjustments in the numbering system used to designate the species and higher taxa in the index, and to that end, contact has been established with other institutions developing taxonomic inventory and corresponding numbering systems.

A major revision of the index is planned for the latter half of 1978 with the legislation information completely updated and the scope of the index expanded. Thereafter, annual updates will be necessary to maintain the effectiveness of the index.

II. ENVIRONMENTAL LEGISLATION: DRAFTING, ADVICE, GUIDELINES

A. International Instruments - Drafting

In the past, IUCN has contributed to the creation of several international accords, including the African Convention for the Conservation of Nature and Natural Resources, the South Pacific Convention for the Conservation of Nature and Natural Resources, and the Convention on Trade in Endangered Species of Wild Fauna and Flora.

1) Migratory Animals Convention (1454)

Primary emphasis is currently being devoted to the proposed Migratory Animals Convention, the main purpose of which is to provide the framework as an "umbrella" Convention for subsidiary agreements between Range States for the conservation and management of migratory animals. That Convention is being developed pursuant to a call made at the United Nations Conference on the Human Environment (Stockholm 1972). It is being sponsored by the Federal Republic of Germany with IUCN presently assisting in an advisory capacity.

During 1977, the IUCN Environmental Law Centre assisted the German Government in its preparation of a revision of the draft convention. This revision was circulated in August 1977 by the

Federal Republic to all governments with which it maintains diplomatic relations and to concerned international organizations for comment.

In addition, IUCN participated in an advisory capacity in a meeting of experts from European Community countries convened by the FRG to discuss the draft revision in December 1977.

On the basis of comments received on the 1977 draft, the German Government decided to prepare one final revision prior to the convening of a Diplomatic Conference in Bonn to conclude the Convention, now scheduled for June 1979. IUCN once again provided assistance in this refinement of the draft which is expected to be distributed by the Federal Republic in the autumn of 1978.

In order to develop recommendations for the species that might be included on the Appendices to this Convention, IUCN has planned a meeting of experts to be held in Bonn during July 1978. Invitations have been issued to individual experts and to concerned international organizations.

2) Charter for Nature (1560)

A drafting endeavour being currently undertaken by the Commission on Environmental Policy, Law and Administration with the assistance of the Law Centre is the creation of a Charter for Nature. A call for such a charter was made by President Mobutu of Zaire, at the occasion of IUCN's 12th General Assembly (Kinshasa, 1975). The Assembly endorsed this suggestion and recommended "to governments and international organizations that a Charter of Nature be drafted without delay". IUCN subsequently decided to take the lead in preparing such a Charter, and entrusted the Committee on Environmental Law with its development.

In 1977 considerable progress was made in the elaboration of the Charter. A Task Force created for that purpose met in April and discussed the parameters of the Charter. Members of the Task Force then submitted input to the Chairman of the Committee for the various aspects of the Charter. These contributions served as a basis for the development in the Autumn of 1977 of a preliminary draft.

In February 1978 the Task Force met to review the first draft of the Charter. Following the meeting, a revised version was prepared and submitted to the Council of IUCN for consideration (May 1977).

The comments of Council members will be considered by the Task Force at a scheduled July meeting and the draft will then be submitted to the members of IUCN. The Charter will be discussed by the membership at the September 1978 General Assembly of IUCN.

B. International Instruments - Commentary

In addition to its work toward drafting international instruments, the IUCN often provides expert advice on the conservation aspects of proposed international accords, upon request or at its own initiative.

1) Law of the Sea Draft Treaty (1247)

Several treaties of direct relevance to conservation issues are presently being considered; amongst these, the draft Law of the Sea Treaty deserves special attention as its development is of vital importance to the future of the oceans and the whole of the marine environment, should it succeed or fail.

IUCN has been therefore acting to both monitor the development of the draft Treaty and ascertain its impact on the conservation of the living resources of the sea on the one hand, and, on the other hand, to provide suggestions for improvements, if adequate and feasible.

In the spring of 1977, IUCN called for a small expert group of scientists and lawyers to meet in New York, the site of the sixth session of the United Nations Conference on the Law of the Sea to consider the work of that Conference and make recommendations to IUCN as to its course of action regarding the subject. A memorandum for the President of the Conference was prepared pursuant to the meeting offering specific textual changes to the Revised Single Negotiating Text under consideration at the Conference, in order to attempt strengthening the conservation

aspects of that document, where minor textual changes might do so. This comprised Phase I of the recommended action.

During the summer, commentary was sought from the members of the group and others as to the treatment of conservation issues in the "composite" text which was prepared at the close of the spring New York session of the Conference. It was decided that commentary received be compiled. This draft was examined at a meeting of an ad hoc Task Force and an IUCN Statement prepared on the treatment of those conservation issues in the composite text (Phase II of the action).

This Statement was sent by IUCN to the Foreign Offices of all States participating in the Law of the Sea Conference, United Nations agencies concerned with the Conference, members of the Secretariat of the Law of the Sea Conference and all members of IUCN. It was later distributed to all heads of delegations to the seventh session of the Conference which began in March 1978 in Geneva.

IUCN was represented at the Geneva session of the Conference and informal discussions on the Statement were thus possible with various interested national delegations.

It is planned that the seventh session of the Conference will reconvene in New York in August 1978 and at that time IUCN will continue to monitor developments.

2) Draft European Convention on the Conservation of Wildlife and Natural Habitats

IUCN has followed the development of this Convention by the Council of Europe with great interest. Detailed comments have been prepared on the most recent version of the draft and have been submitted both to the Council of Europe and to those members of IUCN participating in the negotiations. IUCN was invited to, and has been represented at, the June 1978 meeting of the ad hoc group convened by the Council of Europe to examine the draft Convention.

3) Other Conventions

Plans have been made to revise several existing Conventions (e.g. Whaling Convention) and to prepare

new ones (Southern Ocean) which have emerged during 1977-1978. IUCN has been monitoring these plans with interest and developed every effort to participate constructively by offering its views.

C. International Instruments - Assistance in Administration

Endangered Species Convention

The Law Centre has assisted the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora with both the provision of legal expertise on an ad hoc basis, and on-the-scene assistance at the October 1977 Technical meeting of the Parties to the Convention, held in Geneva, wherein various problems in implementation and administration of the Convention were discussed.

D. National Legislation

Assistance and Advice with regard to Conservation Legislation (1129)

IUCN regularly receives requests from governments for assistance in drafting conservation legislation, or for comment and advice on specific draft legislative or regulatory texts.

Although convinced of the importance of this part of its activities, IUCN has had to limit such assistance in the past to limited number of cases, as resources allowed.

a) Participation in drafting

(i) Malawi

IUCN received a request from the Government of Malawi to participate in the preparation of legislation for the establishment and administration of a multipurpose conservation area near the capital. The area would be divided into sections that would be given varying degrees of protection and subject to various uses ranging from forestry to educational nature park. To survey the situation a consultant visited Malawi in March 1978 and on the basis of his report, following extensive discussions with government officials and other interested parties, preparations were made to proceed to the drafting work. It is

anticipated that a first draft will be completed in early summer. The consultant could then return to Malawi in the autumn to pursue the draft with local officials and assist in necessary revisions so that it might be put forward for enactment.

(ii) Panama

The Government of Panama requested the participation of IUCN in developing new legislation for the conservation of wild-life resources. IUCN therefore sent a consultant to Panama in February 1978 to work with Panamanian officials on this project. A first draft of a comprehensive wildlife conservation act, including sections on habitat protection, hunting regulations and trade has now been completed and it is hoped that steps may soon be taken toward its enactment.

(iii) Thailand

An IUCN/UNEP mission visited Thailand with a view to prepare a comprehensive Nature Conservation Plan for the entire country. This is the first time that IUCN has been engaged in such a comprehensive project. Since January 1978 members of the mission, including the IUCN Assistant Legal Officer have spent periods in Thailand participating in and guiding preliminary work. The Plan will cover all aspects of nature conservation including consideration of ecosystems both within and outside of protected areas and an analysis of present legislation to provide the basis for this protection.

In late June 1978 it is anticipated that a first draft of the Plan will be completed and circulated for comments to relevant bodies in Thailand and elsewhere. Following necessary revisions, the final version of the Plan will then be presented to the Government of Thailand in mid-November 1978 and at that time a symposium on the Plan will take place in Bangkok.

b) Comments on draft legislation

(i) Indonesia

In September 1978, the Law Centre provided detailed commentary on a draft Indonesian law for the Protection and Conservation of Natural Resources. The points raised in this analysis submitted at the request of the Government of Indonesia, were subsequently taken into consideration in the revision of the bill made by the Government in April of 1978.

(ii) Jordan

In April 1978, the Law Centre was requested by WWF to comment on a draft hunting law elaborated in the context of a WWF project in Jordan. This task was recently completed with a detailed report submitted to WWF.

Several similar requests (e.g. from Swaziland) are pending.

2) Guidelines for the Drafting of National Parks Legislation (1130)

Guidelines for the Drafting of Wildlife Conservation Legislation (1131)

In addition to this direct assistance, geared at specific situations and legislative texts, the Law Centre has undertaken to promote the development of guidelines for subject areas of particular interest to IUCN.

It is 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.

Two of the areas where IUCN believes that assistance for drafting legislation is most needed are the fields of protected areas and wildlife conservation. These, more than other areas of environmental law, lack proper background material and adequate literature. Thus, it is considered that guidelines for drafting legislation on the establishment and management of protected areas and conservation of wildlife would be a valuable tool for policy makers, legislators and administrators, especially in developing countries.

The Law Centre therefore included in its 1977 programme a project toward the preparation of such guidelines.

As a first step since funds were limited, the legislation of some 40 countries throughout the world was analyzed and the major techniques and aspects of these enactments identified. This analysis was intended to serve as a basis and as background materials for the preparation of the guidelines in the near future.

Regrettably, the project could not continue in 1978 due to lack of sufficient funding. Efforts are being made to work on this endeavor again in 1979.

III. ENVIRONMENTAL LAW STUDIES

Several legal studies have been undertaken at and under the auspices of the Law Centre during the past few years. Their results have been published in the IUCN Policy and Law Series. Such studies are geared towards practical application; two subjects are currently under consideration for study and publication; timing and extent of other planned studies will depend on the interest they will receive and the resources that will be available.

A. Alternatives for the Control of Environmentally Harmful Industrial Products and Processes (1349)

This study was published in February 1978 as Number 13 in the IUCN Environmental Policy and Law Series. For a description of the study see the IUCN Environmental Law Centre annual report of 1976.

B. Review of Emerging Trends in Environmental Law (1244)

This project aims at producing concise reports on legal institutions, policies, and administrative methods

developed and implemented in various countries which might be of interest to and have practical application for lawyers and policymakers in other countries.

In 1977, work was begun on analyzing the subjects of public participation in environmental planning, fiscal measures utilized for environmental control, the use of environmental impact statements, recycling legislation, and approaches to the enforcement of environmental law, in several jurisdictions.

At the beginning of 1978 a consultant was retained to coordinate development of the project. A meeting was convened in Bonn in February of approximately ten legal scholars and specialists for the purpose of discussing the parameters of the project, selecting trends to be analyzed and defining their scope, as well as nominating appropriate individuals to write about each trend. It is anticipated that significant progress in developing this project will be achieved in 1978.

IV. DEVELOPMENT OF IUCN PROGRAMME - LEGAL INPUT

A. World Conservation Strategy

During the period of this report, IUCN's single most important task has been the preparation of a World Conservation Strategy. The Strategy will cover the conservation of all wild living resources and as such requires the collaboration of scientists and professionals from all over the world for its development. The purpose of the Strategy is to:

- a) identify the main ways in which species and ecosystems are depleted, degraded or destroyed;
- b) define effective preventive or remedial action;
- c) propose priorities for action.

This approach of the Strategy will enable those interested in global conservation to formulate programmes which will consist of high priority projects, avoid duplication and dovetail with activities of others.

It is hoped that by providing a global perspective the Strategy will enhance the work of IUCN and others to initiate action in addition to reacting to ad hoc requests for assistance.

Members of CEPLA have been consulted, as the members of other Commissions, during the elaboration of the Strategy. It is expected that CEPLA will provide continuous input in its particular field of interest for subsequent revisions.

B. Marine Programme

The IUCN/WWF Marine Programme has been designated to develop a strategy and select projects to carry out that strategy for a comprehensive approach to the conservation of marine resources. To coordinate the programme, IUCN established the Marine Steering Committee, which is composed of a representative of each of the Commissions of IUCN as well as a few scientists with special expertise in marine conservation.

CEPLA participated in the work of the Marine Steering Committee through its representative, and provided support to that representative by calling a legal subgroup through the offices of the Law Centre to liaison with her. This group had the opportunity to meet several times in 1977 during the important formative period of the programme.

V. IUCN COMMISSION ON ENVIRONMENTAL POLICY, LAW AND ADMINISTRATION

As noted in the introduction to this report, the Law Centre and the Commission work closely together in developing and carrying out the activities of IUCN in the legal and policy field; many of the above-mentioned projects can therefore only be described as joint endeavors. The membership of the Commission was reconstituted in 1977 and presently includes:

- | | | |
|---------------------|---|----------------------------------------------|
| W. E. Burhenne | - | Chairman (Law)
(Germany, Fed. Rep.) |
| J. M. McCloskey | - | Vice-Chairman (Policy)
(U.S.A.) |
| E. E. Syroechkovski | - | Vice-Chairman (Administration)
(U.S.S.R.) |

1) Members

- | | | |
|-------------|---|-----------|
| G. Cano | - | Argentina |
| A. Ch. Kiss | - | France |

1) Members (contd.)

R. Muecke	-	Australia
J. K. Mulwa	-	Kenya
Y. Nomura	-	Japan
N. Robinson	-	U.S.A.

2) Consultants (experts in specific environmental law subject areas e.g., wildlife, law of the sea, penal law)

M. J. Bean
W. Brzezinski
D. Caponera
S. D. Cook
M. Delmas-Marty
O. Delogu
P. Dupuy
T. O. Elias
J. V. Gomez-Feu
H. Hashimoto
W. Irwin
D. Johnston
C. de Klemm
J. Lamarque
K. Langelaar
R. E. Laster
Z. Madar
J. Matthijs

2) Consultants (contd.)

S. C. McCaffrey
J. Ogundere
D. R. Pedley
M. Prieur
H. Rausch
E. Rehbinder
M. Rémond-Gouilloud
M. Savini
N. Singh
H. Soell
H. Steiger
R. Stich
L. P. Suetens
A. E. G. Trollip
A. Utton
C. Vander Elst
N. Wimmer

3) Correspondents (experts in environmental law
in specific jurisdictions)

R. Abasolo	-	Peru
K. N. Bahl	-	India
E. Bernaerts	-	Belgium
M. Denys	-	Belgium
J. Fulthorpe	-	U.K.
A. Herrero de la Fuente	-	Spain
D. Soetemans	-	Belgium
J. Tallineau	-	Ivory Coast
G. Wilches-Chaux	-	Colombia
A. N. Wilson	-	U.S.A.

VI. SUPPORT OF THE LAW CENTRE

In addition to the support of the organization, which includes particular financing by the World Wildlife Fund and the United Nations Environment Programme, specific projects of IUCN in the legal and policy field have been supported in the period considered by this report, financially or otherwise, by the German Government, the Fund for Environmental Studies, the Karl Schmitz Scholl Fonds, and the International Council for Environmental Law. IUCN is indeed grateful for the generous support that has been provided by these bodies.

