

IUCN Environmental Law Programme 2010

The Year in Review

(1) Introduction

The International Union for the Conservation of Nature (IUCN) is an environmental network made up of over 1000 members including States, government agencies and national and international NGOs and whose headquarters are in Gland, Switzerland. The mission of the IUCN Environmental Law Programme (ELP) is to advance environmental law through the development of legal concepts and instruments, and through building the capacity of societies to employ environmental law in furtherance of the IUCN mission, to influence, encourage and assist societies throughout the world to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable.

The ELP is an integrated programme of activities that assists decision makers with information, legal analysis, advisory services, legislative drafting, mentoring and capacity building at national, regional and global levels. The Programme also provides the opportunity and a forum for governments, non-governmental organizations and others to network and to share information and discuss ideas. ELP activities are carried out through the co-operation of the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC). As one of the IUCN's six Commissions, CEL consists of an extensive global volunteer network of 700 environmental law specialists in more than 204 countries. It is divided into nine Specialist Groups and two Inter-commission Task Forces. The ELC comprises an office of legal officers and information specialists in Bonn, Germany working in collaboration with CEL members, IUCN staff, lawyers and focal points in IUCN headquarters and regional and country offices worldwide. The ELC also houses an extensive library consisting of environmental law holdings and is the Management Unit for ECOLEX, "The Gateway to Environmental Law" (see ECOLEX.org), a web-based information system operated as a joint initiative of the Food and Agriculture Organization (FAO), IUCN and the United Nations Environment Programme (UNEP).

(2) Thematic Issues

(A) Biodiversity

(i) Access and Benefit Sharing (ABS)

Access and benefit-sharing (ABS) makes up the third pillar of the Convention on Biological Diversity (CBD) and as a result, it is intrinsically linked to the CBD's other two pillars, namely the conservation and the sustainable use of biodiversity. Benefit-sharing encourages States as well as their indigenous and local communities (ILCs) to conserve and sustainably use their biological diversity and at the same time rewards them for such efforts. More broadly, ABS works as an incentive for conserving biodiversity, bringing recognition to the holders of biological diversity as well as increasing awareness about the invaluable role of nature.

The ELC has been working on ABS issues and supporting the negotiations relating thereto for over 10 years and thus welcomes the adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS protocol) on 29 October, 2010 at CBD COP10 in Nagoya, Japan. Although criticisms remain, the adoption of the Protocol is a huge step forward, making Nagoya one of the most successful meetings in the CBD history to date. Indeed the Protocol creates an international framework which provides for concrete measures, rules and procedures to implement the CBD's third goal.

Throughout the year 2010, the ELC continued its legal advice and technical assistance to the German Ministry of Environment, Nature Conservation and Nuclear Safety (BMU), an IUCN member, for the negotiating of the ABS Protocol. For this, the ELC participated in EU ABS expert group meetings, different meetings of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing of the CBD and in the CBD COP 10.

Amongst other activities, the ELC developed a draft protocol before the ninth meeting of the Ad Hoc Open-ended Working Group as a possible compromise text to be presented by the German CBD Presidency. Furthermore, a paper was prepared for BMU which briefly analyzed the Norwegian ABS legislation, as well as the German and European legislation related to ABS. This paper investigated whether the Norwegian legislation provided a suitable model for potential German ABS legislation. After the adoption of the ABS Protocol at COP 10, the ELC developed a first draft for a law implementing the ABS Protocol at the German national level.

In parallel to this, the ELC continued its technical assistance to the Kingdom of Saudi Arabia through its National Commission for Wildlife Conservation and Development (NCWCD), a member of IUCN in Saudi Arabia. The 2009 draft National Strategy on ABS and draft Strategic Plan for the Collection and Documentation of Biodiversity-Related Traditional Knowledge and Practices, were revised and translated into Arabic.

Furthermore, the ELC organized and implemented a series of three-day ABS training courses in Georgia, Armenia and Azerbaijan. For this, comprehensive training materials were developed, including an ABS course book. Being a biodiversity hotspot, the South Caucasus hosts a plethora of endemic natural resources containing unique genetic resources. As a consequence, all three countries of the South Caucasus are potential candidates for so-called "bio-prospecting" activities (i.e. collecting samples of genetic resources) undertaken by companies from developed countries. All three countries should have a strong interest in ensuring that they receive equitable benefits from future products and technologies that might be developed on the basis of the genetic resources found and collected on their territory. The South Caucasus countries, however, have so far neglected to enact any ABS legislation which would be the basis for participating in and benefiting from a growing world trade in genetic resources.

(ii) Ecosystem services - Payments for Ecosystem Services (PES)

In order to stop the loss of ecosystem services and to achieve the Millennium Development Goals (MDGs), in particular MDG 7 to 'ensure environmental sustainability', governments and international initiatives are looking at the most effective ways to govern such ecosystem services. Two approaches exist: the traditional strategy of 'command and control' regulation and the use of economic or market-based instruments, such as payments for ecosystem services (PES). Analysis and engagement with partners working on ecosystem services transactions, policies and laws over the past 10 years have demonstrated a clear need to better understand the legal and institutional frameworks that have the potential to promote or hinder the development of PES schemes, as well as the complex legal

considerations that affect ecosystem services projects.

In September 2010, the ELC was invited to participate in two events relating to PES. The first was a conference on biodiversity post-2010: “Biodiversity in a changing world” which was organized by the Belgian EU Presidency, the Flemish Ministry of Environment, Nature and Energy, in cooperation with the European Commission and the other Belgian Ministries of Environment. The objective of this conference was to contribute towards the development of an EU biodiversity strategy for the post-2010 period and strengthen its position in the CBD COP 10 negotiations. The second event was organised by the United Nations Food and Agriculture Organization (FAO) at an event on “Food Security Through Income Generation - From Payment for Environmental Services to Remuneration of Positive Externalities”. The aim of the stakeholders’ consultation was to capitalize on the expertise of communities’ knowledge on food security and remuneration of positive externalities, including Payments for Environmental Services (PES) and related environmental, socio-economic and sustainability issues. The ELC was then commissioned by the FAO to write a paper on “Enabling conditions and complementary legislative tools for Payments for Environmental Services” as part of an upcoming FAO publication.

(iii) Forests

Jointly produced by IUCN's Forest Programme, the ELC, and the Ecosystems and Livelihoods Group, a report was published on forest governance structures, systems and stakeholders in six key tropical forest countries: Brazil, Democratic Republic of Congo (DRC), Ghana, Sri Lanka, Tanzania and Viet Nam. This report synthesises the findings of six participatory national assessments carried out under IUCN's *Strengthening Voices for Better Choices* (SVBC) global forest governance project. The purpose of these assessments was to provide an understanding of the policy, regulatory and institutional obstacles to using forests sustainably. Each produced many valuable findings, insights and recommendations for improving forest governance, all of which were validated through broad stakeholder consultation. A number of these recommendations have been taken up and implemented by the states concerned, leading to concrete improvements in governance systems.

(iv) Protected Areas

The ELC finalized its work on the **Guidelines for Protected Areas Legislation** a three year project of the ELC carried out in cooperation with the Commission on Environmental Law (CEL), the World Commission on Protected Areas (WCPA) and the global Protected Area Programme (PAP). The Guidelines are illustrated by 15 case studies and were developed to provide information and guidance on key elements of a modern and effective legal framework, attuned to the present roles and corresponding diversification of protected areas, as well as to the emergence of new scientific understanding about protected areas management and new governance approaches.

A side event organised by the ELC took place at CBD COP10 to present its work on 'Protected Areas and the Law' since CBD COP 9, and to launch the Guidelines.

In collaboration with the IUCN-Centre for Mediterranean Cooperation, the ELC provided legal and technical expertise to improve environmental legislation on **protected areas in North Africa**, more specifically, in Tunisia. The ELC and a national consultant analysed the legal framework in Tunisia and made recommendations for strengthening and adapting the legislation to IUCN PA management categories. The final conclusions and recommendations of the study on protected areas legislation were shared during a regional workshop in December in Tunis, organised by the Ministry of Environment of Tunisia.

With the support of the IUCN programme for Central and West Africa (Programme d’Afrique

Centrale et de l'Ouest – PACO), the ELC undertook studies on the institutional and legal frameworks for the establishment and management of **protected areas in West Africa**, focusing on Burkina Faso, Ghana and Ivory Coast. To that effect, the ELC worked closely with national consultants in the project countries. The studies were then brought together as a consolidated report and a comparative analysis of all three countries was developed. The report is available under the PAPACO series at www.papaco.org.

(v) Species

In consultation with the the Convention on International Trade in Endangered Species of Wild Fauna and Flora (**CITES**) Authorities of EU Member States, the ELC prepared two guidance documents on the implementation of the EU Wildlife Trade Regulations. The first document focused on derogations on the import and export of caviar to the European Community, as a personal and household effect. The second document provided guidance on the application of non-detriment findings for specimens confiscated in a third country.

In July 2010, the Executive Secretary of the Convention on the Conservation of Migratory Species of Wild Animals (**CMS**), visited the ELC. The meeting concluded that the links between CMS and the ELC should be tightened and a new Memorandum of Understanding was drafted to that effect.

The ELC participated in the ASCOBANS Meeting of the Parties/Advisory Committee in October 2010 in Bonn. Earlier in the year, the ELC produced a report on the legal implications of the proposed ACCOBAMS extension. The report helped the CMS Secretariat to define its position on the proposed extension of ACCOBAMS, and to analyse the consequences and legal implications of such an extension in terms of conservation and in terms of the revised agreement's relationship to other regional instruments. This issue was also discussed at the meeting of the parties.

(B) Climate change and energy

(i) ELC activities

The ELC started work on a new project focusing on the integration of existing laws on biodiversity and climate change into a framework law for climate change adaptation at national and international levels. At an international level, legal experts are identifying and recommending areas for the integration of multilateral environmental agreements (MEA) in climate and biodiversity adaptation work. So far, the ELC has worked with a team of environmental law experts in identifying best practices in climate adaptation law from a wide range of countries in Asia, Africa, Europe and the Americas. Part of the project aims to develop a 'comparative toolbox' of best practices in climate adaptation law that will inform work at the national level and provide a first set of legal adaptation mechanisms. At a national level, law and policy experts will work under the coordination of the IUCN Eastern and Southern African Regional Office (ESARO) and in conjunction with authorities and stakeholders in Zambia, Tanzania and Mozambique to develop case studies on climate change adaptation.

The ELC has developed a website for the project, which will function both internally to allow all people involved in the project to store and comment on the work in progress, and externally to provide a basis for the current project and future adaptation-related ELC projects to demonstrate outcomes to the public. The website address is: <http://adaptationlaw.org/>

The ELC began work on a joint project between the ELC and the IUCN's regional office in Mesoamerica (ORMA). The objective is to develop climate change governance capacity in the water sector through applied research, awareness-raising, and increased public participation. This is done to

support the development of effective ecosystem-based water management at regional and national levels. This project, carried out in four countries (Mexico, El Salvador, Costa Rica and Panama) also raised the interest of other neighbouring states in this project.

During UNFCCC COP16 in Cancun, Mexico in December, the project team organized a successful launch of this project at a side-event on the theme of “Dialogues for Climate Change and Water”. The event was attended by more than 100 participants, including partners from the four project countries and representatives of the German International Climate Initiative.

The ELC was commissioned in early October 2010 by UNDP to write a paper on benefit-sharing for REDD+. The final paper, titled “REDD+ Benefit Sharing: A comparative assessment of three national policy approaches” was presented in Cancun in November to a workshop meeting of the REDD+ Partnership countries. Revised versions of the paper will be disseminated more widely in 2011. Papers and presentations from the meeting are available on the REDD+ Partnership website, <http://reddpluspartnership.org/65563/en/>

The ELC participated in the UNFCCC and Kyoto Protocol intersessional negotiations in Bonn in April and June 2010, as well as at COP-16/CMP-6 in November in Cancun, Mexico.

(ii) Activities of the CEL Specialist Group on Energy Law and Climate Change

Following the outcomes of the Copenhagen UNFCCC COP-15 and Kyoto Protocol CMP-5 in December 2009, members of the Specialist Group attended the Bonn conference in May 2010 as part of the IUCN delegation. The CEL Specialist Group and ELC covered and reported on the sessions of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP), that failed to reach an agreement on the extension of the Kyoto Protocol or solidify and obtain new funding commitments from Annex I countries.

Regarding energy, the CEL Specialist Group developed some publications which are listed in the Publications section, at the end of this review.

(C) Ethics

(i) Activities of the CEL Specialist Group on Ethics

The two main projects of the Ethics Specialist Group (ESG) are the Biosphere Ethics Initiative and Earth Democracy.

The Biosphere Ethics Initiative (BEI) is a soft law program of the ESG, led by the US-based Center for Humans and Nature. Through the *Relato* process, the BEI seeks to highlight existing principles of environmental ethics in action, and incorporate them into law and policy, whether at the international, national, regional or organizational level. The initiative began in 2004 with Resolution 3.020 at the IUCN World Conservation Congress in Bangkok, Thailand. *Relatos* are meetings of local and global leaders from across disciplines and professions, government and non-government, that seek to highlight principles of environmental ethics in practice.

2010 was an active year for the Biosphere Ethics Initiative, including the formal launch of a concise document stating the nature of the initiative, the *Evolving Biosphere Ethic*, at the Paris Muséum national d’Histoire naturelle, as well as the development of the first *Relato*: “The Ethic of the Indiana Dunes Region”. The BEI also collaborated with the ELC to translate its SANParks *Relato* into a case study for the RBA to Conservation Portal (www.rights-based-approach.org).

In addition, the ELC was a part of the formal side event on the BEI at the 10th COP of the Convention on Biological Diversity. The BEI was also invited to speak at the 75th IUCN Council meeting in November.

ESG's "Earth Democracy" project began in June 2009 with a symposium at the European University Institute in Florence and a subsequent conference co-organized by the Global Ecological Integrity Group (GEIG) and the University of Florence (with input from ESG members). In 2010, the "Earth Democracy" project was furthered through two book publications. In June Queen Beatrix of the Netherlands launched the following publication: Klaus Bosselmann and Ron Engel (eds.), *The Earth Charter: A framework for global governance*, KIT Publ./Amsterdam, at the Peace Palace in The Hague, to mark the 10th anniversary of the Earth Charter.

From September 2010 to January 2011 ESG members Michael Schröter and Klaus Bosselmann have been working on a theory and concept of Earth Democracy. This is ongoing work and will eventually result in a monograph-type publication. Preparations are also under way for a book "Earth Democracy" (working title), edited by Ron Engel and Klaus Bosselmann and based on papers to be given at the 2011 GEIG conference in July in Prague with additional chapters yet to be commissioned. In November 2010, Klaus Bosselmann was commissioned by Brendan Mackey (IUCN Council) to write a White Paper in preparation of IUCN's and Earth Charter International's contributions to the Rio+20 Summit in Rio, June 2012.

(D) Inland Water

(i) ELC activities

The ELC continued to work with the IUCN's Water and Nature Initiative (WANI) in 2010. WANI works with more than 80 partner organisations across the world to demonstrate water management that supports healthy rivers and communities. In order to support learning on mainstreaming ecosystem-based approaches in water resource management, WANI has been working since 2003 on a series of publications aimed at practitioners, policy-makers and students from NGOs, governments and academia. In 2010 the ELC worked on the Spanish translation of RULE, which was published in English in 2009. SPRING will be the eighth book of the series, touching upon relevant issues related to the management of underground waters and is expected to be released in 2011.

The ELC participated in a start-up meeting to develop a global initiative on ridges to reefs, aimed at building linkages between river basin management, coastal and marine areas. The so-called IUCN Ridges to Reefs Initiative focuses on water management practices to support ecosystem services and improve riparian and coastal livelihoods. It further explores the conceptual and practical justifications of a "Ridge to Reef" approach and framework as a viable concept to be embraced by IUCN, its members and partners.

The ELC was invited to speak about international water law at the Lebanese National Assembly. The forum (Parliamentarians' Water Forum in the Arab World and Neighbouring Countries) also provided an opportunity to continue advancing the development of a global helpdesk for parliamentarians, an initiative developed by the ELC and the World Water Council at the Fifth World Water Forum (March 2009, Istanbul, Turkey) to support the development of water-related legislation.

The ELC also participated in World Water Week in Stockholm in September 2010. Among other activities, the ELC was present at an event "Cleaning up Corrupted Water - Enabling Mechanisms for Improved Water Integrity" jointly organized by the Water Integrity Network (WIN), UNDP Water Governance Facility at SIWI (WGF) and IUCN.

The ELC presented a paper at the ISARM (Internationally Shared Aquifer Resources Management) International Conference on “Transboundary Aquifers: Challenges and New Directions”, held in December 2010 at UNESCO, Paris on “Strengthening Water Governance Capacity for Transboundary Aquifers”. This focused *inter alia* on the need for an international binding regime for governing shared groundwater and the need to take stock of the lessons learned from surface water.

In addition to its participation in international fora, the ELC conducted a series of trainings and workshops in Mesoamerica and in the Arab Region on the theme of shared water governance.

In collaboration with the Water Unit from the IUCN's Regional Office for Mesoamerica (ORMA), the ELC conducted a training event for senior officials of the Government of Guatemala in order to build capacities for negotiation and cooperation on transboundary water resources. With most of the Guatemalan territory containing rivers which are shared, transboundary issues and working across boundaries with neighbouring States is critically important for regional stability and economic development. Experiences from the Water and Nature Initiative working at the watershed level in both Guatemala and Mexico highlighted the similarities between countries in terms of water concerns and the need to work together on water issues as part of good transboundary water governance practice. The training included participants from the Ministry of Environment and Foreign Affairs, and members of the diplomatic corps.

IUCN also organized a training workshop in Tapachula, Mexico, as part of the Water and Nature Initiative. The event brought together members of watershed committees, academia and scientific experts on the theme of shared water governance. In addition to this, and in response to a request from the Ministry of the Environment and the Ministry of Foreign Affairs of El Salvador, the ELC in cooperation with ORMA, conducted training session on water governance for high level officials from different government agencies of El Salvador. The workshop, attended by officials of various ministries, as well as diplomats and technical advisers in the management of water resources, aimed at strengthening local governance capacities of staff from the ministry on shared waters (rivers, lakes, wetlands, aquifers).

Finally, together with the ELC and Cornell University, the UNDP-Regional Bureau for Arab States organized a round-table expert group meeting on Capacity Development for the Enforcement of Water Legislation in the Arab Region. The objective of the experts' round table was to solicit experts' advice and opinions on the level of compliance to water and environmental legislations in Arab States, but also to discuss adequacy of monitoring and reporting capacities to enforce water legislation, converse on best practices, challenges, and opportunities and provide guidelines for a plan of action. The outcome of the meeting will serve in the formulation of an UNDP-Cornell-IUCN joint project/capacity building program aimed at reinforcing compliance and enforcement of water legislation in the Arab Region.

(E) Marine Resources

(i) Activities of the CEL Specialist Group on Oceans, Coastal and Coral reefs

The Mediterranean Sea, with a population of over 400 million and bordered by twenty-two states, is one of the most densely populated and economically exploited seas in the world. The limited marine space and the resulting problem of overlapping maritime boundaries, creates a governance challenge for the protection of the marine environment in areas beyond national jurisdiction.

The CEL Specialist Group on Oceans, Coasts and Coral Reefs has been actively involved in developing national and international policy on addressing the issue of environmental governance in

areas beyond national jurisdiction in the Mediterranean Sea. The Specialist Group, together with other IUCN partners, such as the IUCN Centre for Mediterranean Cooperation in Malaga and the Global Marine Programme in Gland, established a Group of Mediterranean Experts which has been working on finding common ground to address challenge linked to this issue.

Since 2007 there have been a series of workshops under the common title of “Towards an improved governance of the Mediterranean Sea.” One of the important outcomes of a workshop held in Istanbul in January 2010, was the adoption of the first set of “Findings and Recommendations on Seamounts and Canyons in the Mediterranean Sea” and the conclusions and recommendations of the Group on Illegal, Unreported and Unregulated (IUU) Fishing. Two recommendations were adopted by a second workshop held in Italy in September/October 2010: one to continue work on seamounts and canyons in the Mediterranean Sea, including projects for marine protected areas, the other a recommendation to the governments of Mediterranean States urging ratification of the Continental Shelf and Seabed Protocol (not yet in force).

Directly related to the activities of the IUCN and Oceans Specialist Group on governance of the Mediterranean Sea, members of the Oceans Specialist Group were invited to the Mediterranean Action Plan RAC-SPA (Regional Activity Centre for Specially Protected Areas) extraordinary meeting of National Focal Points for SPAs held in Istanbul on 1 June 2010. The subject of the meeting was the project for “Identification of possible SPAMIs (Specially Protected Areas of Mediterranean Importance) in the Mediterranean areas beyond national jurisdiction.” The outcome of the extraordinary meeting was the identification of several potential “high seas” areas in the Mediterranean Sea where SPAMIs under the SPAMI Protocol to the Barcelona Convention could be established.

Members of the Oceans Specialist Group of the CEL prepared and submitted written and oral statements on behalf of IUCN to the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea (ITLOS) on 19 August 2010 for its consideration in its advisory opinion on “Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area.” Members of the Specialist Group provided oral statements to the Chamber at proceedings held at the Tribunal in Hamburg, Germany on 14 to 16 September 2010. These statements were of special significance because they mark the IUCN’s first appearance before either the ITLOS or International Court of Justice.

The Chamber was asked to address three questions regarding the responsibility and liability of states sponsoring mining by commercial entities in the seabed area beyond national jurisdiction (“The Area”) under the 1982 UN Convention on the Law of the Sea. This zone is declared the “common heritage of mankind” by the convention. Three IGOs submitted written statements, one of which was from IUCN. As the only IGO representing the interests of nature this was an important achievement for IUCN and its Commission on Environmental Law. You may download the public sitting held on Thursday, 16 September 2010, at 3 p.m. at the International Tribunal for the Law of the Sea, Hamburg here: http://www.itlos.org/start2_en.html.

(F) Soils

(i) Activities of the CEL Specialist Group for the Sustainable Use of Soils and Desertification

As global interest continues to grow in the investigation of an international instrument for soil, a number of new initiatives in national soil legislation and policy reform developed in 2010 under the CEL Soil Specialist Group. The draft Soil Protocol for the Protection and Sustainable Use of Soil, prepared by the Specialist Group, was discussed at various international soil conservation forums and at two MEA

Secretariats. In addition, a variation of the draft Soil Protocol, the Draft Protocol for Security and Sustainable Use of Soil, was prepared specifically in response to the UNCCD's 10 Year Strategy and Framework (2008-2018).

In May 2010 a proposal for the development of legislative guidelines for sustainable soils in the Balkan Region was presented to the International Land Conservation Conference in Belgrade, Serbia. Soil Specialist Group members presented key papers on: developments in the EU legal framework for soil protection, history and ethics of European soil protection law, the use of environmental agreements in remediation of contaminated land, and progress in national and international soil legislation. Papers presented at the conference have since been published in: *Global Change-Challenges for Soil Management, Advances in GeoEcology*, 41, 2010.

In addition to this, various Soil Specialist Group members provided assistance to the People's Republic of China (PRC) in recent years, on the revision of the 1991 PRC Water and Soil Conservation Law. The Revised Water and Soil Conservation Law was adopted by the Congress of the PRC in December 2010 and introduces new procedures for coordination and monitoring, measures to prevent and control water and soil loss, and there is a complete new chapter on water and soil conservation planning.

Assistance was provided to the Government of Mongolia in drafting the new Soil Protection and Desertification Prevention Law. Preparation of this law was a priority recommendation of the 2008-2009 comprehensive review of Mongolian natural resources law, under the joint Governance Project of the Government of Mongolia, United Nations Development Program and the Netherlands. The purpose of this law is to regulate to protect soil from erosion, degradation and pollution and to provide for soil rehabilitation and desertification prevention measures. Land degradation has reached severe proportions in Mongolia from the effects of overgrazing and changes in climate characteristics and this new innovative law is an essential component of Mongolia's multidisciplinary approach to land management.

Specialist Group members have been influential in Istanbul Bilgi University agreeing to investigate a proposal to establish a Central Asian-Turkish Environmental Law and Policy Development and Studies Program within the Law School of the University. The aim is to provide quality environmental law education, knowledge and capability to the Central Asian region and other countries by offering a comprehensive environmental law and policy development and studies program through the Law School. A key aspect of the program will be the role of environmental law in prevention and management of soil degradation which is severe in the region. Specifically, assistance has been provided to the Republic of Tajikistan in drafting a national soil protection law to protect the soil resources of the Pamir high mountain region. The drafting of this law was a recommendation from the 2009-2010 review of Tajik environmental law for sustainable land management under a GEF-UNEP project implemented by the United Nations University.

(G) Cross-cutting issues in environmental law

(i) Rights-Based Approaches to Conservation (RBAs)

In order to implement IUCN rights-related resolutions (e.g. Resolution "4.056 - Rights-based approaches to conservation") the ELC continued to work on rights-based approaches to conservation in 2010.

To further encourage the implementation of RBAs to conservation, the ELC developed a portal, the "Rights-Based Approach to Conservation Portal" (RBA to Conservation), to serve as a platform for collecting and sharing RBA-related information. Administered by the ELC, the portal is to be supported by IUCN staff and commission members, as well as other international experts currently working on rights-related issues in various contexts. The portal can be accessed at www.rights-based-approach.org.

Throughout 2010, the RBA to Conservation portal was continuously updated in order to develop a more user-friendly interface, to encourage dialogues and the exchange of information. Case studies on the implementation of RBA in different ecosystems and contexts were developed by NGOs such as Natural Justice, and UNDP and uploaded onto the portal. The portal was then presented at a side event of the CBD COP10 in October 2010 (“The Biosphere Ethics Initiative: Incorporating environmental ethics into law, governance and policy”), as well as at a core group meeting of the Conservation Initiative on Human Rights (CIHR) in November 2010. The CIHR is a consortium of international conservation NGOs that seek to improve the practice of conservation by promoting the integration of human rights in conservation policy and practice. IUCN is one of the CIHR partners, which include Birdlife International, Conservation International, Fauna & Flora International, The Nature Conservancy, Wetlands International, Wildlife Conservation Society, and WWF.

Further on the theme of RBA, the ELC and the IUCN Academy of Environmental Law held a joint-workshop in September at the University of Ghent in Belgium on “Integrating human rights and environmental protection: status quo and ways forward”. Scholars from different countries introduced human rights and environmental justice concerns unique to their own jurisdiction. The workshop focused on identifying how people in a particular country face disproportionate effects from environmental harm and how substantive laws can cause or contribute to such inequity, or provide solutions to the problem.

Finally, the ELC drafted a concept note for a policy paper on conservation and rights. This policy builds on IUCN’s mandate to develop a comprehensive policy on the topic, set out in Resolution 4.056 and outlines the main points for developing a policy for mainstreaming rights-based approaches to conservation within IUCN’s activities.

(ii) Activities of the CEL Specialist Group on Armed Conflict and the Environment

In 2010, the IUCN CEL Specialist Group on Armed Conflict and the Environment continued its work on two primary themes: (1) legal protection of the environment in times of armed conflict (led by Co-chair Michael Bothe), and (2) the role of natural resources in post-conflict peace-building (led by Co-chair Carl Bruch). A broad spectrum of interested persons from academia and practice are involved in each of the themes.

On the first theme, the Specialist Group participated in an expert meeting to inventory and assess international law protecting the environment during armed conflict, organised in Nairobi in March 2009 by UNEP and the ICRC. Building on the Nairobi meeting as a stock-taking exercise, the CEL Specialist Group Co-chair developed and circulated a questionnaire to shed some light on controversial questions of the *lex lata* and to collect ideas on possible suggestions for the development of the law. The responses pinpoint matters of controversy, such as the interpretation of the relevant provisions of Protocol I Additional to the Geneva Conventions and the customary law status of these provisions. Additionally, some respondents raised the question whether some *action de lege ferenda*, including action by IUCN, might be appropriate (e.g. rules for the safeguard of particularly important protected areas in armed conflict).

On the second theme, the Specialist Group is working with the Environmental Law Institute, the United Nations Environment Program, and the University of Tokyo to examine experiences in post-conflict natural resource management and peace building (see www.eli.org/Program_Areas/PCNRM). In 2010, this project expanded from 120 to 150 case studies and analyses authored by more than 200 researchers and practitioners from 50 countries. The project partners are editing these case studies and analyses for publication in 2011: Earthscan will publish six edited volumes, and Cambridge University Press will publish a seventh, overarching volume co-

authored by Carl Bruch, David Jensen, Mikiyasu Nakayama, and Jon Unruh. These seven books will mark the culmination of a four-year effort that the Specialist Group helped launch, and they will lay the empirical foundation for improving operational guidance, capacity building, technical assistance, and further research and analysis.

(iii) Non Regression Principle and Environmental Law

As stated by Professor Michel Prieur, Co-Chair of the Group of Legal Experts on the Non-Regression of Environmental Law, the main objective of environmental law is to contribute to the minimization of pollution and the preservation of biodiversity without territorial restrictions, given that the environment does not have any borders. Today, environmental law faces a number of threats such as deregulation, the simplification of environmental legislation which is sometimes considered to be too complex, in particular at the national level, and the emphasis that is put on development at the expense of the protection of the environment. CEL has decided to take concerted action against this considerable challenge faced by environmental law and thus created a Working Group formed by members of the Commission to develop new principles that would permeate domestic legislation while reinforcing what is already in place.

(iv) Draft International Covenant on Environment and Development – 4th Edition

Following the mandate of the 4th IUCN World Conservation Congress (WCC-4) in 2008, the IUCN CEL, in cooperation with the International Council of Environmental Law (ICEL), called upon all members of IUCN-CEL to make proposals for amendments to the 3rd Edition of the Draft International Covenant. Following more than a year of preparation, compilation and review, ICEL in cooperation with the ELC invited experts to a meeting in early 2010 in Bonn (Germany). The diverse group of 18 participants volunteering in a personal capacity convened under the Chair of Donald W. Kaniaru (Kenya) for two intense days of deliberations and legal drafting.

In addition to an article by article evaluation of the provisions; proposals were made for necessary amendments and additions to the extensive explanatory text authored by Dinah Shelton (USA) who graciously agreed to provide her expertise once again. Contributing their vast expertise, attendees included inter alia three former Chairs of IUCN-CEL; a former member and Special Rapporteur of the International Law Commission; a Senior Legal Officer from the United Nations Office of Legal Affairs; the Secretary General of the Asian-African Legal Consultative Organization; a former Legal Advisor on Environmental Affairs at the World Bank; and a member of the Inter-American Human Rights Commission of the Organization of American States.

The 4th edition of the Draft International Covenant on Environment and Development, reflecting the most recent developments in international law and practice, was published and then conveyed to United Nations Member States on occasion of the High-level Event on Biodiversity on 22 September 2010 during the 65th session of the United Nations General Assembly.

(v) IUCN CEL Arctic Task Force

The IUCN-CEL Arctic Task Force undertook two initiatives in 2010 in support of action to improve Arctic environmental governance and thus fulfil parts of IUCN Resolution 4.033: Arctic legal regime for conservation from the 4th IUCN World Conservation Congress (WCC-4).

First, with the support of the Elizabeth Haub Foundation for Environmental Law and Policy Canada, the Task Force convened an informal consultation from 17-18 February 2010 in Ottawa (Canada). 21 diverse experts came together under the Chair of Dr. Wolfgang E. Burhenne and Co-

chair of Dr. Timo Koivurova with the main purpose of deliberating and proposing options for improving Arctic environmental governance. After drawing conclusions, participants formulated a list of “Action Items” focused on synergizing independent initiatives to support and thus strengthen Arctic environmental governance.

Second, considering the varied fora and wide-ranging publications addressing environmental governance in the Arctic region, the Task Force produced the publication *Arctic Policy and Law: Reference to Selected Documents*. This document attempts to connect governance policies in place, policy options proposed, gap analysis in key areas, and related documents to provide a more-complete picture for policy-makers as they confront the diverse governance systems at national, regional and international levels.

(vi) The BRIC Initiative

The IUCN Commission on Environmental Law decided to prioritize Climate Change, Sustainable Energy and Biodiversity in an initiative that involves workshops in Brazil, Russia, India and China (BRIC). It is the Commission’s sincere hope that the dialogue will provide an unprecedented opportunity to establish a legal dialogue between the BRIC countries and at the same time create a calendar of activities to be carried out in each of the BRIC countries.

The first dialogue was held in New Delhi in August 2010. This dialogue addressed one of the most important and urgent issues of our era – anthropogenic climate change. This challenge was examined from the special perspectives of the BRIC nations given the global implications these countries' economies have on the environment. The dialogue’s theme was also unique in considering BRIC climate change issues from a legal perspective inclusive of energy and biodiversity considerations.

(3) Outreach and capacity building

(A) Outreach

(i) Interns

Twelve interns from Europe, the Americas and Australia worked at the ELC in 2010. Coming from Australia, Ecuador, France, Germany, Ireland, Italy, Panama, and the United States, they contributed to activities and projects of the ELC for periods of three to six months. Interns worked on diverse topics including: access and benefit sharing; water; rights-based approaches to conservation; guidelines for protected area legislation; and climate change adaptation.

(ii) Lectures on International Environmental Law

As in previous years, ELC legal officers taught a course in International Environmental Law at the University of Applied Sciences in Cologne, Germany in February. The course is part of an international masters program on Resource Management in the Tropics and Subtropics. ELC legal officers provided a general introduction to International Environmental Law as well as to the legal aspects of Biodiversity, Climate Change, International Freshwater.

(iii) CEL’s Group of Young Professionals

The Group of Young Professionals is an initiative of CEL’s Steering Committee which was developed as a response to IUCN Resolution 3.029. It was established with the objective of providing a space for young leaders who are interested in the field of environmental law. The group, chaired by

Bruno Monteferri (bmontferri@spda.org.pe), has more than 25 members from countries such as the USA, Belgium, Colombia, Peru, and Argentina. To visit the blog go to: <http://celgroupofyoungprofessionals.blogspot.com/>

(iv) Alexandre Kiss Environmental Law Papers Award

César Ipenza, winner of the CEL Alexandre Kiss Award, was the guest of the IUCN ELC for one week. The Commission's Award was created in memory of Professor Alexandre Kiss, an early and lifelong member of CEL whose life was dedicated to the advancement of environmental law. The purpose of the Award is to encourage the work of young environmental lawyers, and is the result of a world-wide contest, in which César Ipenza participated with a paper entitled 'Biofuels: are they an efficient energy alternative? A joint protocol for multilateral environmental agreements – CBD and UNFCCC' ("Los Biocombustibles/Agroenergéticos: ¿son una energía alternativa y eficiente? Un protocolo conjunto para dos acuerdos ambientales multilaterales – CDB Y CMNUCC").

Mr. Ipenza is presently one of the Legal Counsels advising the Minister of the Environment in Peru, focusing on conservation issues, indigenous peoples, energy policy and artisanal and informal mining activities. He has been a member of the IUCN Commission on Environmental law since 2006. The prize attached to this Award is a visit to the IUCN Law Centre in Bonn for a period of one week.

(B) Capacity building

(i) Environmental Law Information Services – ECOLEX

The ELC continues to act as management unit of ECOLEX - the gateway to environmental law - an internet-based, non-profit information service on environmental law operated in partnership between IUCN, FAO and UNEP. ECOLEX offers global coverage for the entire range of environment and natural resources related subjects.

ECOLEX has gained significantly in visibility and use during 2010. In addition, needed system improvements have been mapped out, and some already carried out: the user interface has been upgraded and allows sophisticated searches in the separate databases comprising ECOLEX (international treaties, national legislation, court decisions and literature) as well as searches across two or more of these data bases. ECOLEX is available free of charge at www.ECOLEX.org

(ii) CEL Judiciary Portal

This Portal is an online tool that gathers environmentally-relevant judicial decisions from different countries around the globe. A Memorandum of Understanding (MoU) was signed in Brazil in December 2009 between the Superior Court of Justice of the Federative Republic of Brazil (STJ) and CEL to provide a framework of cooperation for the creation and development of the Judiciary Portal. This project is of great importance as it will give judges from around the world an opportunity to interact and have access not only to jurisprudence, but also to scientific and legal articles related to environmental law. The Judiciary Portal is available in four languages (Spanish English, French and Portuguese), and the material selected will be made available to ECOLEX. The Portal was launched April 30th during the Ibero American Chief Justices meeting held in Montevideo. You may access the Portal at: <http://www.redesocial.srv.br/POCSTJ/STJ/STJHome/>

(iii) TEMATEA

The TEMATEA project is a joint UNEP-IUCN initiative aiming to support more coherent national implementation of biodiversity-related conventions. The issue-based modules are web-based tools that provide a logical framework of commitments and obligations from regional and international biodiversity-related agreements. They aim to facilitate coherent and coordinated action at the national level by reinforcing cross-sectoral understanding and cooperation, emphasizing the relevance of biodiversity to other sectors. The modules are further supported at the country level to promote national cooperation and communication across sectors and conventions.

In 2010, the ELC updated and upgraded the biodiversity & climate change, inland waters, invasive alien species, protected areas, access and benefit-sharing modules. The updated modules were submitted to the TEMATEA secretariat before the CBD COP in order to allow participants to make use of TEMATEA in their preparations for the meeting.

(iv) Capacity Building in South Caucasus

The ELC, in collaboration with the IUCN Programme Office for the Southern Caucasus, Adelphi Research and InWent - Capacity Building International, continued its series of training courses focusing on nature conservation and natural resources management in three Southern Caucasus countries (Georgia, Armenia and Azerbaijan). This project, part of the capacity building initiative "Regional Environmental Policy in the South Caucasus," foresaw a total of three training courses and an international seminar for government and civil society stakeholders.

In June 2010, the ELC developed, organized and implemented the project's final training course on "Access and Benefit-sharing (ABS)" in each of the three project countries. In September 2010, the ELC organized an international seminar in Germany on protected areas governance for a group of 15 government officials from the target countries. The seminar programme "Involvement of the Public in Protected Areas Management" comprised a two-day seminar at the ELC office, as well as 3 days of field visits and discussions in and around Bonn. Participants were provided with the opportunity to exchange views with experts, including IUCN staff, members from the IUCN network and a number of guest speakers.

(4) Further publications in 2010

Publications are available at

http://www.iucn.org/about/work/programmes/environmental_law/elp_resources/elp_res_publications/

- *Pagos por Servicios Ambientales – Marcos Jurídicos e Institucionales* (IUCN EPLP 78, Spanish version). This is the Spanish version of the publication entitled *Payment for Ecosystem Services: Legal and Institutional Frameworks*, an initiative of the IUCN ELC and The Katoomba Group. Available at http://cmsdata.iucn.org/downloads/eplp_78_sp.pdf
- *Legal and policy issues for managing land degradation in the People's Republic of China* (IUCN EPLP No. 80) This is the third EPLP on 'Soil Law' and is the outcome of a cooperative effort between the IUCN ELP, the Agriculture, Environment and Natural Resources Division of the Asian Development Bank, CEL Soil Specialist Group members and Chinese environmental lawyers (Editors: Professor Du Qun and Dr Ian Hannam). This publication summarizes the legal and policy framework for prevention and control of land degradation in the PRC at the national level and in the six provinces and regions of the western dryland.

Publications of the CEL Specialist Group on Energy & Climate Change

- Richard L. Ottinger and Victor Tafur (2010) *Legal Frameworks for Emerging Technologies: Bioenergy* In: David Leary and Balakrishna Pisupati (Eds.) *The Future of International Environmental Law* p.247 United Nations University Press, Tokyo, Japan
- Richard L. Ottinger (2010) *Copenhagen Climate Conference – Success or Failure?* In: *From Silos to Systems: Issues in Clean Energy and Climate Change – a report on the work of the REIL Network 2008-2010, Report 26*, Yale School of Forestry & Environmental Studies

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