

# Environmental Law Programme

## FOCUS ON FUTURE DIRECTIONS OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

- The Development of International Environmental Law at the Multilateral Environmental Agreements' Conference of the Parties and its Validity
- Towards CBD CoP 9: How Much Progress Will Be Made?
- The Continuing Evolution of CITES
- The International Climate Change Regime: At a Crossroads Yet Again
- Future Directions of Multilateral Environmental Agreements: Soils and Synergies
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2007  
NEWS

LETTER

# 2007 CONTENT

## NEWSLETTER

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## Unifying Efforts for Coherent Implementation and Maximizing Results

I am pleased to share with you this 2007 issue of the IUCN Environmental Law Programme (ELP) Newsletter.

For this issue we have chosen the subject of future directions of Multilateral Environmental Agreements (MEAs).

The development of global and regional instruments for the protection of the environment continues to be a fundamental part of the work of the ELP, as it has been since its beginning.

Leaving aside the case of the Ramsar Convention on Wetlands which precedes it, the United Nations Conference on the Human Environment (Stockholm, 1972) was the starting point of the process for developing two major MEAs: the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) and the Convention on Migratory Species (CMS).

These agreements have helped to shape international environmental governance systems and have established the basis for the development of national policies and laws in a multiplicity of areas. They have played a catalytic role in raising the profile of environmental legal issues and the development of environmental legislation not only in developing countries but also in the developed world.

Environmental law gained further momentum twenty years after Stockholm with the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), the adoption of Agenda 21, and three further MEAs: the Convention on Biological Diversity (CBD); the United Nations Framework Convention on Climate Change (UNFCCC); and the United Nations Convention to Combat Desertification (UNCCD) in those countries experiencing serious drought and/or desertification, particularly in Africa. While these agreements have contributed to establishing the framework for environmental law and policy at the international level, they have also inaugurated an era of national and legal policy development in the environmental sphere.

The growing number of agreements, decisions and recommendations that have been adopted have also increased the challenges of implementing those agreements at the national level, particularly in the developing world. All this makes the need to enhance MEAs' linkages and more coordinated implementation even more evident. For instance, the WSSD Plan of Implementation stressed the need to integrate the objectives of the CBD into global, regional and national programmes and policies, and encouraged linkages and synergies between the convention and other multilateral agreements, through the development of joint plans and programmes.

The goals of the ELP are to promote the development and implementation of environmental law in the context of sustainable development, and to advocate environmental

law as a major tool to achieve good governance in this field.

The ELP has contributed to the implementation of MEAs in many ways: through its convening and facilitating power, its ability to link local issues to global ones, the development of explanatory guides and national legislation, and more recently through initiatives such as the joint UNEP-IUCN TEMATEA issue based modules. This year's newsletter contains six interesting contributions on MEAs and current trends in international environmental law.

As usual, the Newsletter provides an update of the IUCN Commission on Environmental Law (CEL), some of the highlights of the work being done by its committed volunteer network, recent book launches, and an update on projects and activities of the IUCN Environmental Law Centre (ELC). In addition, this issue contains an overview of the activities of the IUCN Academy of Environmental Law.

The ELP Newsletter tries to reflect as much as possible the diversity and multiplicity of activities of its various components at various levels. Therefore, it would not be complete without at least a snapshot of the work being done at the regional level by the legal staff working in the IUCN regional and country offices.

After a year and a half of great commitment and excellent work, Sharelle Hart is leaving the ELC and moving to Vanuatu. I would like to take this opportunity to thank Sharelle for her wonderful contribution to the ELP, and also for serving as Editor for two issues of the ELP Newsletter.

Finally, I would like to thank all those that have contributed to this issue of the newsletter, and reiterate the invitation to all CEL members to provide information on their areas of work, the publications they are producing and the suggestions they might have for future issues of the ELP Newsletter. I hope all the readers will enjoy this issue of the Newsletter and I look forward to working with you in 2008.



*Dr Alejandro Iza,  
Head, IUCN  
Environmental Law  
Programme*

## Chair's Message

### Dear Friends,

Another year has passed, inviting us to ponder the Commission's work, which I see as strong and consolidated.

I truly believe that the most important accomplishment of this intersessional period has been the strengthening of the Specialist Groups, supporting their work and giving them the recognition they deserve.

At present we have groups working on issues as important as ethics, energy/climate change, soils and oceans. There are some new groups, such as the groups on trade and environment and human rights and the environment. Other groups gather judges, or work on enforcement and compliance.

They all make great contributions, and surprise me every day with their commitment and dedication. This year we have worked on the guidelines for the application of the precautionary principle. This is a huge challenge; given that it is a controversial topic, and it is frequently avoided because of its economic, political and social implications. Nevertheless, the Ethics SG faced the issue, boldly stating their position from the very start.

There are so many important things being carried out at CEL: we are leading the discussion on the legal aspects of the new challenges in the energy arena; we are working on a legal framework for soil (something that is virtually non-existent); we are discussing the governance of high seas; we are taking the trade/environment discussion one step forward, linking the debate to the results of the millennium ecosystem assessment; we are attracting judges from all over the world to share their knowledge and challenges; and we are working on strengthening the legal aspects of indigenous peoples studies.

Another important issue to mention is that CEL is working on the promotion of inter-commission work, establishing a joint task force, together with the IUCN World Commission on Protected Areas.

We are opening spaces to interconnect with other networks, reaching and linking with other initiatives and at the same time concentrating on offering our membership technological tools to better interact between themselves and to disseminate the work of the most valuable of CEL's assets: human capital.

We have a lot to share and a lot to be proud of. I truly think we are on the right path.

All the best in 2008!



*Sheila Abed  
Chair,  
IUCN Commission  
on Environmental Law*

## The Development of International Environmental Law at the Multilateral Environmental Agreements' Conference of the Parties and its Validity

Recognition that many environmental challenges are global in nature has led to a proliferation of multilateral environmental agreements (MEAs).<sup>1</sup> To be effective, international environmental law must be dynamic and responsive to changing knowledge and environmental conditions. Within the MEA framework, Conferences of the Parties (CoPs) have been arguably exercising a law making function. However, the legal status of the acts and decisions of CoPs is unclear. To date, little consideration has been given to whether the exercise of their law making powers (if any) are properly conceptualised within the law of treaties or within international institutional law. This in turn has given rise to questions regarding the validity and legally binding nature of CoP made 'law'.

### MEAs, CoPs and the global nature of various environmental challenges

If effectively implemented, MEAs have an important role to play in environmental protection. While there are many criticisms regarding the shortcomings of MEAs,<sup>2</sup> the reality is that MEAs are being used and will continue to be used, at least for the immediate future, as a primary international environmental law making tool, and, therefore, measures to improve the effectiveness of MEAs should continue to be investigated, including the role of MEA CoPs.

### The roles of CoPs

Many of the existing MEAs, in particular, those post-dating 1972, establish a CoP that meets on a regular basis to, inter alia, provide guidance on the implementation of the MEA. The CoP is typically the plenary organ of the MEA.<sup>3</sup>

MEA law making processes essentially take place through CoPs and without this process of planning, information gathering, participation and awareness building, it is unlikely that the objectives of MEAs would be effectively achieved.<sup>4</sup> As the CoPs are freestanding and distinct both from the State parties to a particular agreement and from

existing intergovernmental organisations (IGOs), they are generally considered autonomous.<sup>5</sup> The roles of MEA CoPs vary in accordance with the terms of the articles of each Convention that establishes a CoP.

Generally, CoPs exist to:

- set priorities and review implementation of the MEA;
- make recommendations and decisions on implementation;
- revise the treaty if necessary; and
- act as a forum for discussion on matters of importance.<sup>6</sup>

Some MEAs also contain a catchall provision authorising the CoP to consider or fulfil additional functions as required.<sup>7</sup>

While the administrative functions of CoPs are not contested, the role, if any, of CoPs in the development of international law, by virtue of the exercise of any of these powers, is the subject of contention.

### CoPs and the development of international environmental law

It is submitted that CoPs have five potential law making powers:

- (a) the power to decide on amendments to MEAs and the adoption of protocols;<sup>8</sup>
- (b) decision making and resolution powers;
- (c) supervisory powers;
- (d) interpretation powers;
- (e) powers in respect of the creation of compliance mechanisms;<sup>9</sup> and
- (f) soft law powers.<sup>10</sup>

Whether the above functions constitute law making powers is by no means agreed. The issue that is particularly contentious is whether, on the assumption that the above powers do constitute law making powers, such powers are validly exercised. >>>

<sup>1</sup> There are over 500 international treaties and other agreements related to the environment, of which, a substantial percentage are multilateral. *Multilateral Environmental Agreements: Summary* (UNEP/IGM/1/INF/1). 30 March 2001. *Background paper presented by the Secretariat at the Open-ended Intergovernmental Group of Ministers or their Representatives on International Environmental Governance, first meeting*. New York, 18 April 2001. Available at: <http://www.unep.org/IEG/WorkingDocuments.asp> (1 January 2007).

<sup>2</sup> A review of many of these shortcomings can be found in C Bruch 'MEA Enforcement and Compliance Meeting Bulletin: A Summary Report of the High Level Meeting on Compliance with and the Enforcement of Multilateral Environmental Agreements (April 2006) *Ali-Aba Course of Study Materials*. Published by the International Institute for Sustainable Development.

<sup>3</sup> MEAs adopt different terms to describe their plenary organs, such as 'meeting of the parties' (MoPs) or 'conference of the contracting parties'. For example see Article 7.2 UNFCCC.

<sup>4</sup> The websites of MEAs generally give an outline of the number of CoPs held to date and the themes of the discussion at each CoP. For example, the themes of the CoPs of the *Convention on Biological Diversity* can be viewed at: <http://www.biodiv.org/convention/cops.shtml> (1 January 2007) and the Ramsar Convention at: [http://www.ramsar.org/index\\_key\\_docs.htm](http://www.ramsar.org/index_key_docs.htm) (13 January 2007).

<sup>5</sup> Eg. R Churchill and G Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law' (2000) 94 *American Journal of International Law* 623 at 623.

<sup>6</sup> UNEP, GEO 2000, 'Chapter Three: Policy Responses – Global and regional synthesis – MEAs and non-binding instruments'. Available at: <http://www.grida.no/geo2000/english/0136.htm> (1 January 2007).

<sup>7</sup> For example: 'consider any additional action that may be required': *The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*: Article. XIV(4)(f); 'fulfil such other functions as may be appropriate under the provisions of the present Convention': *Convention on Long-Range Transboundary Air Pollution*.

<sup>8</sup> Eg. P Szell, 'Decision Making Under Multilateral Environmental Agreements' (1996) 26 *Environmental Policy and Law Journal* 210 at 213.

<sup>9</sup> Eg. X Wang, 'Specific Trade Obligations and the Biosafety Protocol' (2003) *Bridges WTO News* 4. Available at [www.ictsd.org](http://www.ictsd.org) (17 January 2007).

<sup>10</sup> Eg. P Sands, *Principles of International Environmental Law Framework, Standards and Implementation*, Cambridge University Press, Cambridge at 16-17.



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### **A review of the validity of the exercise of CoP law making powers**

CoPs presently exercise their functions at the interface of the law of treaties and international institutional law. Under the law of treaties, all acts and decisions of CoPs within the framework of the particular treaty should be considered valid by virtue of the effect of Article 31 of the *Vienna Convention on the Law of Treaties*.

In view of Article 31(3), decisions and acts of institutions established by treaties, even if they are not binding, have assumed a particular importance.<sup>11</sup> If international institutional law applies to CoPs, the CoP, like an IGO, would be regarded as the author of the practice, not the State parties. Under this alternative, the CoP would benefit from implied powers and the law of treaties would essentially not be applicable. To date, very little consideration has been given to the international legal personality of the CoP.<sup>12</sup>

Further research is required to determine whether the law making powers of CoPs resemble those of international organisations or whether MEA based law making should

be within the law of treaties. This is critical to determine the validity of the exercise of such powers and to ensure ongoing legitimacy of international law that is made by an exercise of CoP powers.

### **Limitations in efficient and effective exercise of CoP law making powers**

Criticisms of the effectiveness of CoPs to develop international environmental law have also been made as:

- Agreement within the CoP is typically difficult to achieve.<sup>13</sup>
- CoPs have very inadequate parliamentary input, resulting in a democratic deficit.<sup>14</sup>
- CoPs rely for effectiveness on consent and the operation of community pressure – whether or not they have real enforcement power is debatable.

Notwithstanding these criticisms, CoPs have a vital role to play in ensuring the ongoing dynamism of MEAs.

<sup>11</sup> For example CITES Conf. Resolution 5.11 concerning the meaning of 'pre-Convention specimen', copy of the Resolution 5.11 available on the CITES website: <http://www.cites.org/eng/res/05/05-11.shtml> (22 January 2007).

<sup>12</sup> Eg. J Bruneel, *COPing with Consent: Law Making Under Multilateral Environmental Agreements* (2002) 15 *Leiden Journal of International Law* 1-52 at 18.

<sup>13</sup> United Nations Development Programme, 'Strengthening international governance: priority tasks' in *World Resources 2002-2004: Decisions for the Earth: Balance, voice and power*, World Bank, World Resources Institute, 2003: [http://www.wri.org/biodiv/pubs\\_content\\_text.cfm?cid=1804](http://www.wri.org/biodiv/pubs_content_text.cfm?cid=1804) (12 January 2007); and J Speth, 'A New Green Regime: Attacking the Root Cause of Global Environmental Deterioration' (2002) 44(7) *Environment* 16-25.

<sup>14</sup> J Crawford & S Marks, 'The Global Democracy Deficit: An Essay in International Law and Its Limits' in D Archugu et al (eds) (1998) *Re-Imagining Political Community*, London School of Economics and Political Science, London.

## Balancing objectives and clarifying the law making powers of CoPs

In light of the above criticisms and questions regarding the legal basis of CoP law making powers, it is submitted that the principal challenge in asserting a role for CoPs in law making is to balance the four following objectives:

- (a) law making efficiency that provides an effective, appropriate and timely response to the urgency of global environmental concerns;
- (b) promotion of legitimacy, transparency and accountability in the exercise of law making powers and in voting arrangements with respect to the exercise of those powers;
- (c) protection of the sovereignty of member States; and
- (d) the adoption of measures that preserve the validity and promote the enforceability of the exercise of CoP powers in the creation of binding international law.

CoPs play a crucial role in the vitality and continuing development of international environmental law. It is often through the CoP that the most stringent treaty obligations are created and CoPs are indispensable in addressing environmental crises that cannot wait for the development and entry into force of entirely new MEAs. International law making by CoPs largely overcomes the constraints of international law's consent requirements. Current ambiguities regarding the legal basis of CoP law making powers threatens the legitimacy of international environmental governance. Further research is required on the legal basis and parameters of the law making powers of CoPs to ensure the ongoing legitimacy of the development of international environmental law.

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A full copy of this paper is available at: [http://www.iucn.org/themes/law/pdffdocuments/CEL10\\_Camenzuli.pdf](http://www.iucn.org/themes/law/pdffdocuments/CEL10_Camenzuli.pdf)

## Towards CBD CoP 9:

### How Much Progress Will Be Made?

#### Introduction

Signed by a large majority of the world's nations in 1992 at the Earth Summit in Rio de Janeiro, the Convention on Biological Diversity (CBD) attempts to maintain biodiversity, the diversity of the natural underpinnings of life on Earth, while providing a comprehensive framework for action that enables better management of our natural assets and promotes sustainable development. The Convention's three objectives are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources. To date, the Convention has 190 Parties, making it an international environmental agreement with almost universal membership.<sup>15</sup>

The CBD takes the form of a modern framework agreement in two aspects: It stipulates, for the most part, overall goals and broadly phrased obligations, leaving large room for Parties to decide how to implement the Convention and achieve its goals; and, procedurally, it provides for the adoption of protocols and annexes as may be considered necessary in the light of new scientific evidence and technological developments.

The broad scope of the CBD has led the Conference of the Parties (CoP) to adopt a large volume of decisions aimed at supporting and guiding the implementation of the CBD's comprehensive commitments. More than 200 decisions have been adopted by the eight CoPs held since the Convention's entry into force in December 1993.<sup>16</sup> These include seven thematic Programmes of Work (PoWs),<sup>17</sup> a considerable number of Work Programmes on cross-cutting issues as well as the establishment of several Ad Hoc Open-Ended Working Groups.<sup>18</sup> In addition, the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) supports the work under the CBD by providing scientific and technical advice to the CoP, reviewing Programmes of Work and bringing forward new and emerging issues. >>>

<sup>15</sup> For an up-to-date list of all Parties, see <http://www.cbd.int/convention/parties>. The most important Non-Party to the CBD is certainly the USA. (See, in this context, the Declaration by the United States of America upon adoption, reprinted in: CBD Secretariat, Handbook of the Convention on Biological Diversity, 3rd ed., page 311). Though the USA subsequently signed the CBD in June 1993, it has, so far, not ratified it.

<sup>16</sup> CoP 1: Nassau, Bahamas, 1994; CoP 2: Jakarta, Indonesia, 1995; CoP 3: Buenos Aires, Argentina, 1996; CoP 4: Bratislava, Slovak Republic, 1998; CoP 5: Nairobi, Kenya, 2000; CoP 6: The Hague, The Netherlands, 2002; CoP 7: Kuala Lumpur, Malaysia, 2004; CoP 8: Curitiba, Brazil, 2006.

<sup>17</sup> Agricultural biodiversity; Islands biodiversity; Dry and sub-humid lands biodiversity; Marine and coastal biodiversity; Forest biodiversity; Mountain biodiversity; Inland waters biodiversity. Detailed information on all thematic programmes and their current development is available at the CBD website at: <http://www.cbd.int/programmes>.

<sup>18</sup> To date, four Working Groups exist under the CBD. They relate to Article 8 (j) CBD (indigenous and local communities), Access and Benefit Sharing, Review of Implementation, and Protected Areas, see <http://www.cbd.int/convention/bodies.shtml>.

## Working towards 2010

In 2002, the CoP adopted a Strategic Plan for the Convention which guides its further implementation at national, regional and global levels.<sup>19</sup> The mission of the Strategic Plan includes the commitment of Parties to the so-called '2010 Biodiversity Target' (or '2010 target') – to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national levels, and to contribute to poverty alleviation as well as to the benefit of all life on Earth.<sup>20</sup> Following the adoption of the Strategic Plan, the CoP developed a framework to enhance the evaluation of achievements and progress toward its implementation and that of the 2010 target.<sup>21</sup> At CoP 8 held in March 2006 in Curitiba, Brazil, a refined Multi-Year Programme of Work (MYPOW) for the CoP up to 2010 was adopted, specifying issues for in-depth review or consideration and strategic issues for evaluating progress or supporting implementation. The Programme intends to evaluate the progress in the implementation of the Strategic Plan and follow-up on progress towards the 2010 target and relevant Millennium Development Goals.

CoP 9 will take place from 18-30 May 2008 in Bonn, Germany and will be the last CoP before time runs out to achieve a significant reduction in the rate of biodiversity loss by CoP 10 in Japan in 2010. Thus, important progress needs to be made in these remaining two years, and CoP 9 in Bonn will have to prove to be more than a 'refuelling station'.

## KEY ISSUES AT COP 9

Some of the key issues that will be discussed at CoP 9 are outlined below.

### Forest biodiversity

Forests have always been a controversial subject because of linkages with climate change, international trade and national development priorities. This is one reason given for the fact that there is no legally binding agreement at the global level for management and use of forest biodiversity.<sup>22</sup>

The CBD addresses forest biodiversity through its PoW on forest biological diversity which was adopted in 2002 by CoP 6 and constitutes a broad set of goals, objectives and activities aimed at the conservation of forest biodiversity, the sustainable use of its components and the fair and equitable use of the benefits arising from the utilization of forest genetic resources. SBSTTA13 will consider the review of implementation of the programme of work carried out by the Executive Secretary<sup>23</sup> and assess the potential environmental, cultural, and socio-economic impacts of genetically modified trees on the conservation

<sup>19</sup> Decision VI/26. The Strategic Plan includes 19 objectives clustered under four strategic goals.

<sup>20</sup> The 2010 Biodiversity Target was adopted in by the CBD Parties at CoP 6 April 2002 (CBD decision VII/26, Annex, para. 11) and subsequently endorsed by the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa, in September 2002.

<sup>21</sup> CBD decision VII/30, paragraph 1. This framework includes the following seven focal areas. See also the CBD website at: <http://www.cbd.int/2010-target/goals-targets.shtml>.



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and sustainable use of forest biological diversity. SBSTTA will submit its decisions to CoP 9 where the programme of work on forest biodiversity is up for in-depth review. It is expected that CoP 9's in-depth review will provide yet another opportunity for advancing forest management discussions in the framework of the Convention.

### Invasive alien species

Another issue of great importance at CoP 9 will be the discussion on further steps to address the problem of invasive alien species (IAS). Although numerous international and regional agreements touch upon the issue of invasive species,<sup>24</sup> IAS are considered one of the main drivers of biodiversity loss and thus it is important that the issue is addressed in a holistic manner.

CoP 8 requested the Executive Secretary to consult with relevant international bodies and instruments, taking into account the observations of the report of the Ad Hoc Technical Expert Group on the gaps and inconsistencies in the international regulatory framework in relation to IAS, as to how to address the lack of international stan-

<sup>22</sup> The only (non-trade) international instrument is the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, also known as the 'Forest Principles' adopted at Rio de Janeiro in 1992. The United Nations Forum of Forests was established in 2000 to promote the discussion and policy development of forest-related issues and has in fact helped to air national concerns and approaches to forest conservation and management.

<sup>23</sup> Through Decision VIII/19, CoP 8 requested the CBD Executive Secretary to carry out an in-depth review of the expanded programme of work following the review process and also taking into account the framework for monitoring implementation of the achievement of the 2010 target and integration of targets into the programme of work (Decision VIII/15).

<sup>24</sup> For example the International Plant Protection Convention, the United Nations Convention on the Law of the Sea, the African Convention on the Conservation of Nature and Natural Resources and the Antarctic Treaty.

dards covering IAS. These findings will be considered by SBSTTA13 and CoP 9. SBSTTA13 will lead the way for CoP 9's in-depth review measuring the temperature of a debate that is expected to be 'intense' during the two weeks in Bonn next year.

### Access and Benefit Sharing

Access to genetic resources and the sharing of benefits arising out of their utilization (ABS) as enshrined in the third objective of the CBD will equally play an important role at CoP 9. The ABS requirements of the CBD are to be implemented at the national level. However, implementation of the CBD's obligations on ABS has been slow, and to date less than the half of the Parties have enacted legal instruments on ABS. Even fewer measures have been implemented to ensure fair and equitable benefit sharing on the side where utilization of the genetic resources is realized.<sup>25</sup>

To further progress ABS, the Conference of the Parties has taken various steps. In 2000 it established a Working Group on ABS (WG-ABS), which developed guidelines to assist Parties with the implementation of ABS.<sup>26</sup> Further to the call of the 2002 World Summit on Sustainable Development (WSSD), CBD CoP 7 mandated the WG-ABS to elaborate and negotiate an international regime on ABS (Dec. VII/19). Reaffirming this mandate, CoP 8 set the ambitious goal that the work shall be completed at the earliest possible time before CoP 10 in 2010 (Dec. VIII/4). The process of elaboration and negotiation of the international regime on ABS is highly complex and politically controversial. While the years 2005/06 were characterized by many as a phase of polarisation between the positions of 'provider countries' (Parties, which consider themselves primarily as countries providing genetic resources) and 'user countries' (Parties which see themselves mainly as countries with genetic resource users under their jurisdiction), there seems to be some new momentum since CoP 8. Nonetheless, the negotiations continue to face a number of political, technical and legal challenges. These include the question of how compliance with national ABS requirements and ABS contracts can be supported, whether and how minimum requirements on access legislation on the one hand and benefit sharing requirements on the other hand, should be established and whether and how traditional knowledge associated with genetic resources will be considered by the international regime on ABS. The concrete form (and number) of instrument(s), which shall constitute the international ABS regime will still have to be decided. After the fifth meeting of the Working Group on ABS (WG-ABS5) in October 2007 in Montreal and WG-ABS6 in January

2008 in Geneva, CoP 9 will have to pave a clear way forward for the final two years of negotiations if these are to be concluded successfully by 2010 as mandated.

### Other issues

Further topics of high significance at CoP-9 will be protected areas networks<sup>27</sup> and how to achieve progress on synergies between the CBD and other conventions – particularly the four other global biodiversity-related conventions<sup>28</sup> and the climate change regime.

### Conclusion

More than 15 years after the adoption of the CBD, the loss of biodiversity and degradation of ecosystems continues at an alarming rate, as documented, *inter alia*, by the Millennium Ecosystem Assessment, the 2<sup>nd</sup> Global Biodiversity Outlook (launched at CoP 8, 2006), and as repeatedly evidenced by the releases of the IUCN Red List of Threatened Species. Certainly, national implementation is the key to ensuring that biodiversity conservation takes place and sustainable uses of biodiversity are promoted and put into practice. Though progress has been made, implementation continues to be deficient in many respects. It is critical that at CoP 9 this issue is stressed to all States and governments as well as to the various stakeholders and the public at large. Such a message should bring about a new emphasis in global, national and local politics and practice and highlight the importance of biodiversity conservation and its intrinsic value for human development and its very survival.

The CBD is an ambitious framework for action. It has been criticized by many for extending its arms too widely, going beyond its original mandate and lacking real implementation. But if the three objectives that the Convention was set out to pursue are to be achieved, it is certain that still greater international cooperation and political will are needed. CoP 9 offers another opportunity to test the waters especially with only two years left before the awaited 2010 deadline.

*Daniel Klein, Legal Officer, Environmental Law Centre*  
*Sonia Peña Moreno, Policy Officer, Global Policy Unit*

<sup>25</sup> National and regional measures on ABS are available at the database maintained by the CBD Secretariat at: <http://www.cbd.int/information/abs-measures.shtml> – For a good overview of the implementation up to mid 2007 see the document UNEP/CBD/WG-ABS/5/3 (Analysis of Gaps in Existing National, Regional and International Legal and Other Instruments Relating to ABS) and other documents prepared by the CBD Secretariat for the Fifth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (WG-ABS-5).

<sup>26</sup> Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of Their Utilization, CBD Decision VI/24. The Bonn Guidelines are voluntary and not legally binding.

<sup>27</sup> The PoW on Protected Areas (adopted in 2004) includes the important objectives of establishing a world wide network of terrestrial protected areas by 2010, and of marine protected areas, by 2012. See <http://www.cbd.int/protected/decision.shtml>

<sup>28</sup> The 1971 Ramsar Convention on Wetlands, the 1972 World Heritage Convention, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the 1979 Convention on Conservation of Migratory Species (CMS).

## The Continuing Evolution of CITES

On 15 June 2007 the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) concluded its 14th meeting in The Hague, the Netherlands (CoP14). Articles describing the meeting's results have typically focused on decisions taken on species, for example, those added to the lists of species covered by the Convention (sawfishes, European eels and a timber species traded as Pernambuco) and those whose conservation and trade usually attract substantial attention from governments, non-governmental organizations (NGOs) and the media (elephants, tigers and whales). A few commentators have noted Parties' adoption of a new Strategic Vision: 2008-2013 as well as their plans to address the role of the internet in wildlife trade and to assess the impacts that implementation of CITES listing decisions may have on livelihoods of the poor.

These are all significant consequences of the meeting but there were others as well.

Major outcomes of the meeting included the adoption of: a results-based approach to future work programmes and budgets; a Guide to CITES compliance procedures; a process for periodically reviewing the CITES Appendices to ensure that species within them meet applicable listing criteria; a set of Guidelines for managing nationally established export quotas; the basis for increased cooperation with the International Tropical Timber Organization on trade in tropical timber (complementing a Memorandum of Understanding on commercially-exploited aquatic species concluded with the Food and Agriculture Organization of the United Nations in 2006); and the alignment of the Convention with international law as reflected in the United Nations Convention on the Law of the Sea. Key CITES programmes were also reviewed, including the National Legislation Project (which aims to ensure that Parties have adequate legislation for implementing the Convention) and the Review of Significant Trade process (which aims to ensure that Appendix-II species subject to significant international trade are not over-exploited).

The host country organized, for the first time in the history of CITES, a parallel ministerial roundtable which resulted in a Chair's report on the Convention's contribution to the broader biodiversity and sustainable development agendas, ways for strengthening its implementation and enforcement and the role it can play regarding timber and marine species.

These and other developments in CITES are aimed at making optimal use of the Convention's existing strengths (e.g. its rule-based structure and flexibility) and continuously improving the way in which it works (e.g. through additional simplification and streamlined procedures). Some newer trends also seem visible.

### Trend 1 – More coherence

In the new Strategic Vision, Parties have undertaken 'to ensure that CITES policy developments are mutually sup-



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portive of international environmental priorities and take into account new international initiatives, consistent with the terms of the Convention'. They have made express the contribution that sustainable international trade in CITES-listed species can make to relevant UN Millennium Development Goals and the World Summit on Sustainable Development target of significantly reducing the rate of biodiversity loss by 2010. As mentioned above, Parties have strengthened the Convention's collaboration with organizations and agreements dealing with natural resources (e.g. timber and fisheries). In order to support CITES-related conservation and sustainable development projects, they have taken steps to enhance cooperation with international financial mechanisms. Cooperation with relevant international environmental, trade and development organizations (including other biodiversity-related conventions) is also to be enhanced. In addition, decisions have been adopted that encourage interested Parties to undertake reviews of their national wildlife trade policies and to share the results of this experience. These actions reflect Parties' recognition that more coherence is needed in their plans and actions for addressing biodiversity conservation, responsible trade and poverty reduction.

### Trend 2 – More multilateralism

The compromise on disposal of ivory stocks and related resource generation, that was negotiated during CoP14 by African elephant range States with the support of States from other regions, provides an example of Parties' heightened commitment to finding internationally agreed solutions to difficult issues. Parties also agreed to develop a mechanism that would allow future multilateral decision-making on this issue to be done in advance of CoP meetings. Overall, cooperative management of shared wildlife resources has been increasingly encouraged. Collaboration between producer and consumer countries is also growing as evidenced by action plans on the control of trade in elephant ivory and bigleaf mahogany that were adopted at CoP14. To better advance multilateralism in general, Parties adopted decisions on the promotion of multilateral measures, cooperation between Parties and ensuring that CITES implementation at the national level is consistent with the pro-

visions of the Convention and decisions adopted by the CoP. They also encouraged Parties with stricter domestic measures or reservations, authorized under Articles XIV and XXIII, to review the effectiveness of those measures in achieving the objectives of the Convention.

### **Trend 3 – More balance**

The new Strategic Vision seeks to balance biodiversity conservation and its sustainable use. Parties are also working to bring more balance to the attention given to other aspects of the Convention, such as: science and policy; obligations of exporting and importing countries; legal and illegal trade; and regulatory and non-regulatory instruments. Recent CoP14 decisions ensure there is balance among the measures used to promote, facilitate and achieve compliance with the Convention and among different special interest groups that participate in the Convention (e.g. private sector bodies, local communities, indigenous groups and academia as well as conservation and animal welfare NGOs).

### **Trend 4 – More rationality**

CITES Parties have increasingly tried to ensure that decisions under the Convention are taken on the basis of the best available scientific information and reflect the differing conservation needs of species. They have recognized the importance of having expert, authoritative and impartial data. Such data enable them to take better-informed decisions and to better assess additional information that might be provided by non-professionals and those with certain personal or financial interests.

One of the longstanding strengths of CITES is its ability to evolve to meet changing circumstances and to solve specific problems. The recent trends described above show that the Convention, adopted in 1973, is becoming more and more relevant to global developments with age.

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*CITES Secretariat*

## The International Climate Change Regime: At a Crossroads Yet Again

### **State of the International Regime**

The UN Framework Convention on Climate Change (UNFCCC)<sup>29</sup> has its roots in UNCED in Rio de Janeiro<sup>30</sup> and has operated in coordination with the Intergovernmental Panel on Climate Change (IPCC).<sup>31</sup> The IPCC provides the scientific basis for international negotiations, with major reports issued to inform each of the major steps in the development of the international regime. The UNFCCC provides the context for more substantive negotiations on how to mitigate the effects of human induced climate change and how to adapt to the impacts that cannot be mitigated.<sup>32</sup>

The Kyoto Protocol was negotiated in 1997 and came into force in 2005. It requires developed states to reduce their emission for the commitment period from 2008-2012. Emission reduction targets were negotiated on a state by state basis, and range from 8% below to 11% above 1990 levels of emissions. The targets in the Kyoto Protocol can be met through a combination of domestic action and reliance on a number of mechanisms. These mechanisms are available to developed nations to supplement domestic action with reductions achieved outside their own jurisdictions: the Clean Development Mechanism (CDM), Joint Implementation, and Emissions Trading.<sup>33</sup>

### **1<sup>st</sup> Commitment Period Obligations**

In the first period, the former member states of the Soviet Union are likely to meet their target of returning to 1990 levels of emissions, mainly as a result of the collapse of their economies after the dissolution of the Soviet Union. Members of the European Union (EU) are generally on target to meet the goal of reducing emissions to 8% below 1990 levels, along with other European States.<sup>34</sup>

Four developed states are struggling to meet the emission reduction targets they accepted in Kyoto (Australia, the United States (US), Japan and Canada).<sup>35</sup> For Canada and Japan, some reliance on Kyoto Mechanisms will be necessary to achieve compliance. Other nations

<sup>29</sup> United Nations Framework Convention on Climate Change, Intergovernmental Negotiating Committee for a Framework Convention on Climate Change OR, 5th Sess., Annex, UN Doc. A/AC.237/18 (PartII)/Add.1 (1992), 31 I.L.M. 849, online: UNFCCC <<http://unfccc.int/resource/docs/a/18p2a01.pdf>> [UNFCCC or The Framework Convention]

<sup>30</sup> See *Report of the United Nations Conference on Environment and Development*, (Rio de Janeiro, 3-14 June 1992) ACONF 151/26 vol. 1 <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

<sup>31</sup> For information about the IPCC <http://www.ipcc.ch>

<sup>32</sup> The UNFCCC has been ratified by almost all UN member states. See online: UNFCCC <http://unfccc.int>

<sup>33</sup> See Kyoto Protocol, Articles 6, 12 and 17. Parties can also offset emissions through the use of sinks, to take greenhouse gases back out of the atmosphere.

<sup>34</sup> See <http://unfccc.int> for progress reports and annual emissions reports filed by Kyoto Protocol parties.

<sup>35</sup> Australia and the US are not parties to the Protocol, whereas Japan and Canada are.

are also relying to some extent on the mechanisms for compliance (eg EU Member States).

Experience with the CDM has been mixed. The volume of CDM credits has exceeded all expectations,<sup>36</sup> but there are concerns about the quality of CDM credits generated, such as HFC destruction projects in China, where CDM credits generated would provide an incentive to increase the production of ozone depleting substances.<sup>37</sup> Regional distribution is also a concern, with significant CDM credits generated in major developing states in Asia, but very little CDM activity in Africa, a region that would particularly benefit from CDM project investment consistent with sustainable development objectives.<sup>38</sup>

Work of the compliance committee has focussed on the facilitative branch. A number of concerns have been brought to the attention of the facilitative branch, including those about efforts by some Annex I parties to meet their emission reduction obligations. The facilitative branch appears reluctant to become actively involved in assessing whether a party is on target to meeting its obligations, to identify steps to meet the obligation and to motivate states to take their obligations seriously. This may be a result of a sense that the parties in question know what needs to be done and have the capacity to act, but have not shown the will to do so, making facilitation difficult. Whatever the reason, inaction from the facilitative branch will likely create serious challenges for the enforcement branch, the compliance committee and the Conference of the Parties (CoP), if parties are unwilling to purchase the credits necessary to come into compliance.<sup>40</sup>

### Towards a 2<sup>nd</sup> Commitment Period

The climate change regime faces a number of key challenges. The 4<sup>th</sup> IPCC assessment report highlights that targets negotiated for the first commitment period are inadequate.<sup>41</sup> Some developed states, including a number of EU states, are demonstrating that emission reductions are possible without compromising quality of life.

However, the three developed states with the highest per capita emissions are either not parties to the Kyoto Protocol or appear to have abandoned any serious efforts to meet their targets. Issues of responsibility and liability for impacts and adaptation remain unresolved. Discussions on how to engage major developing states, such as China, India, Brazil, South Africa, South Korea and Mexico in emission reduction efforts have been slow.

At CoP11 in Montreal, Parties agreed to initiate the process of negotiating future commitment period targets for developed states through the establishment of an Ad-hoc Working Group (AWG). This process is to be completed in time to avoid a gap between the 1st and 2nd commitment period, suggesting a 2009 agreement deadline.<sup>42</sup> Russia proposed allowing developing states to take on voluntary targets. A group of developing countries led by Papua New Guinea and Costa Rica submitted a proposal to consider avoided deforestation in future commitment periods. The role of a requirement under Article 9 of the Kyoto Protocol to periodically review its effectiveness was also considered.<sup>43</sup>

At CoP12 in Nairobi, December 2006, the work of the AWG on new targets was discussed.<sup>44</sup> Parties made limited progress but agreed on a workplan.<sup>45</sup>

The world community appears split on whether the basic structure of Kyoto is sound. The EU and developing nations are pushing for continuation under Kyoto with minor adjustments, while some non-European developed nations question the Kyoto structure. A key issue in this debate is whether the US will re-engage without fundamental changes to the Kyoto structure.<sup>46</sup>

CoP12 also dealt with the Russian proposal on voluntary targets resulting in a compromise agreement to hold a workshop in 2007 to explore opportunities for developing nations to take on voluntary targets.<sup>47</sup> Periodic review of the Kyoto Protocol under Article 9 was also discussed.<sup>48</sup>

<sup>36</sup> See M. Doelle, "From Kyoto To Marrakech: A Long Walk Through The Desert: Mirage Or Oasis?" (2002) 25 Dalhousie Law Journal 113.

<sup>37</sup> See B. Wittneben *et al.*, *In From the Cold: The Climate Conference in Montreal Breathes New Life into the Kyoto Protocol* (Wuppertal: Wuppertal Institute for Climate, Environment and Energy, 2006), and M. Doelle, "The Cat Came Back, or the Nine Lives of the Kyoto Protocol" (2006) 16 J. Env. L. & Prac. 261

<sup>38</sup> See <http://unfccc.int> for a current world map of CDM projects. See also D. V. Wright, *The Clean Development Mechanism: Climate Change Equity and the South-North Divide* (Berlin: VCM Verlag Dr. Muller, 2007)

<sup>39</sup> For a list of submissions to the facilitative branch [http://unfccc.int/kyoto\\_protocol/compliance/facilitative\\_branch/items/3786.php](http://unfccc.int/kyoto_protocol/compliance/facilitative_branch/items/3786.php)

<sup>40</sup> For a detailed review of the compliance process under the Kyoto Protocol, see M. Doelle, *From Hot Air to Action? Climate Change, Compliance and the Future of International Environmental Law* (Toronto: Carswell, 2005) at 109 - 145

<sup>41</sup> Emission reductions in the range of 80% for developed states and 50% globally by 2050 relative to 1990 levels are needed to avoid the most serious consequences of climate change. For summaries and pre-publication versions of the IPCC's 4th Assessment Reports, see <http://www.ipcc.ch> For the state of negotiations within the Ad-hoc Working Group under the Kyoto Protocol on future targets for developed nations, <http://unfccc.int/resource/docs/2007/awg3/eng/02.pdf>

<sup>42</sup> The process is under the Kyoto Protocol and therefore does not include the US and Australia, although the focus of the negotiations in many ways is to find a way to bring them back under the Protocol. The US presidential election in 2008 is one of the reasons a final agreement on future targets is considered unlikely until CoP 15 in 2009.

<sup>43</sup> See B. Muller, "Montreal 2005, What Happened, and What it Means" Oxford Institute for Energy Studies, (February, 2006) at 7 <http://www.oxfordenergy.org/pdfs/EV35.pdf>, and Doelle (2006) see note 9.

<sup>44</sup> For a good overview of the Nairobi negotiations, see W. Sterk, *et al.*, "The Nairobi Climate Change Summit (CoP 12-MOP 2: Taking a Deep Breath Before Negotiating Post-2012 Targets?" (2007) 2 Journal for European Environmental & Planning Law 139

<sup>45</sup> A promising result of the most recent meeting of the AWG in Austria in August was a general agreement that the scale of mitigation effort needed from developed nations is in the range of 25-40% below 1990 levels by 2020.

<sup>46</sup> The outcome of the 2008 election will be an important factor. It is important to note that US administration in 1997 was largely responsible for the current Kyoto structure and that support for cap and trade has grown significantly in the US.

<sup>47</sup> The proposal was controversial as it was seen by developing nations as an attempt to initiate negotiations on developing nation mitigation targets, opposed by a number of developing nations, most notably India.

<sup>48</sup> It was hoped that the first review would be comprehensive and proceed in parallel to the AWG to provide an avenue for negotiating developing country commitments on mitigation, and on a range of other critical issues. The initial review was concluded in Nairobi more or less as a formality.



Parties agreed to carry out a second review in 2008, but with a mandate that does not include the negotiation of future commitments.<sup>49</sup> Informal consultations under the UNFCCC initiated in Montreal to engage the US are ongoing although to date they have shown little sign of concrete results.

The international community has generally focussed on the UNFCCC process, although there are some other forums dealing with climate change issues eg the G-8 has made climate change a focus of its meetings for a number of years;<sup>50</sup> the Asia-Pacific Partnership; and a US initiative to bring together major emitters from developed and developing countries.<sup>51</sup> Clearly most nations are committed to the UN process and take the view that other processes should feed into the UNFCCC. Climate change has become a priority at the highest levels of the UN, as evidenced by efforts of the Secretary General to engage the UN General Assembly in the issue.<sup>52</sup>

### Conclusion

The climate change regime appears to be at another critical stage – the final stages of implementation by developed nations of first commitment period obligations; looking forward to the next CoP and beyond; and negotiations of the post 2012 regime. The first commitment period under the Kyoto Protocol is a modest first step toward the ultimate goal of preventing dangerous human interference

with the climate system. Consistent with the principle of common but differentiated responsibility in the UNFCCC, developed states have gone first in accepting binding emission reduction obligations under Kyoto. Some have opted out of Kyoto; others may have difficulty meeting their emission reduction targets.

There is an emerging consensus that further reductions in the range of 50% globally and 80% for developed states relative to 1990 levels are needed. While emissions in developing countries are low on a per capita basis, significant mitigation efforts are needed as countries invest in infrastructure and make decisions that affect the energy efficiency of their societies.

Challenges for negotiators are how to:

- Ensure post 2012 emission reduction commitments are adequate to avoid the most serious consequences of climate change (eg melting the Greenland ice sheet, collapse of the Gulf Stream);
- Engage the US in equitable and adequate climate change mitigation;
- Ensure mitigation efforts are integrated with other objectives to further sustainable development; and
- Engage developing states in a low emissions development path.

There is a need for sufficient commitment from developed states including the US to make climate change mitigation a win-win for developing nations, and a willingness from developing nations to choose a low emissions development path that leads to 50% global emission reductions in return for the assistance provided.

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<sup>49</sup> In spite of these qualifiers, the next review under Article 9 may still contribute to such negotiations, given that it is to be concluded a year before the negotiations on the post 2012 regime are likely to be concluded.

<sup>50</sup> For G-8 results in Gleneagles <http://www.g8.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1078995910202> For the G-8 declaration on climate change in Heiligendamm, <http://www.g8.de/Webs/G8/EN-/G8Summit/SummitDocuments/summit-documents.html>

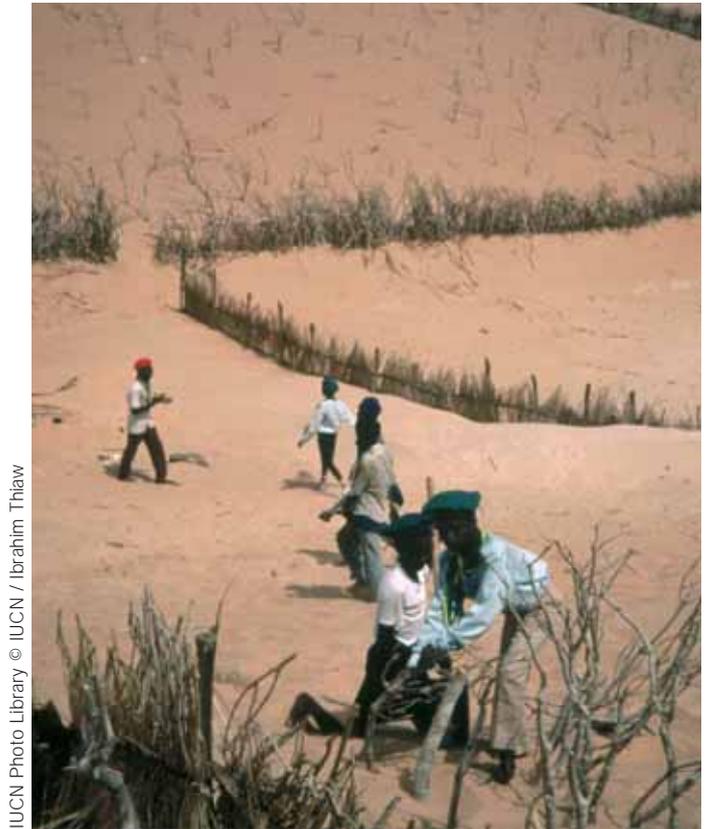
<sup>51</sup> For information on the partnership [www.asiapacific-partnership.org](http://www.asiapacific-partnership.org) Major emitters meeting in Washington, Sept 27-28, failed to yield concrete results.

<sup>52</sup> For an overview of UN climate change efforts and an update on the most recent General Assembly discussions on Sept 24, <http://www.un.org/climatechange>

## Future Directions of Multilateral Environmental Agreements: Soils and Synergies

For some time the soil science community has been calling to improve the synergies between three key MEAs, in relation to soil management: UN Framework Convention on Climate Change (FCCC), Convention on Biological Diversity (CBD), and the UN Convention to Combat Desertification (CCD). It has already been pointed out that a good working relationship and improved synergy between these multilateral environmental agreements (MEAs) on many aspects of climate change, biodiversity and desertification control would produce substantial benefits for the sustainable use of soils (Boer and Hannam 2003). Creating national legislation and policies aimed at improving soil management can help reduce net greenhouse gas emissions while simultaneously delivering positive outcomes for biodiversity conservation, and mitigation of desertification and land degradation (Hannam 2004). Although there can be complementarities between the goals of the three MEAs, this will not be without tradeoffs (Cowie, Schneider and Montanarella 2007). Thus, the challenge lies in developing soil management policies and legislation that promote optimal environmental outcomes, and in implementing these locally to promote the sustainable use of soils. Such a move would be consistent with the objectives of key global environmental strategies (see Millennium Ecosystem Assessment 2005).

At the recent International Forum in Iceland on *Soil, Society and Change*, a number of proposals were formulated to improve the synergies between three key MEAs. The first proposal seeks a joint mechanism amongst the Conventions and this would be initiated by the UNCCD to operationalize synergies in implementation of the MEAs. This process would begin with a request to the Intergovernmental Panel on Climate Change (IPPC) to develop a special report on land degradation and climate change (as done previously for the CBD with respect to biodiversity). This report, together with other existing documents addressing synergies in the subject matters of the three MEAs, would be assessed by an ad hoc group of experts under the Joint Liaison Group for the MEAs. Based on this assessment the group will compile guidelines for joint implementation of the three MEAs, in relation to soil management, targeting focal points and donors of these MEAs. A second proposal by the soil science community for achieving synergies in implementation concerns a certification mechanism independently developed by each Convention, for assessing the added benefit of actions under one Convention, to the subject matters of the other Conventions in areas of soil management. The third proposal is that a lead international agency be appointed to take responsibility for soil biodiversity aspects of the CBD's approved work program on agricultural biodiversity. A technical experts group could then be formed to further investigate the specific CBD's capabilities in soil biodiversity management. It was also proposed at the Forum that the IUCN Commission on



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Environmental Law Specialist Group on Sustainable Use of Soils and Desertification would be approached to develop guidelines for national governments to strengthen the capacity of their legal frameworks to implement the CCD and to develop new or improved soils legislation. Such a move would supplement the IUCN's Environmental Policy and Law Paper No 52 on Drafting Legislation for Sustainable Soils.

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## Recent Developments in International Water Law – The UNECE Water Convention Regime

### Introduction

As the world faces ever-increasing water scarcity challenges we are often reminded that international rivers and other shared watercourses are potential sites of interstate conflict. However transboundary water systems also hold out opportunities for greater levels of international cooperation to achieve ecologically sustainable development. Nowhere is this more evident than in the region embraced by the United Nations Economic Commission for Europe ('UNECE') which stretches from North America, through Western, Central and Eastern Europe, the Nordic countries, the Balkans, the Caucasus and Central Asia. Across this region there is high dependence on transboundary water resources, as more than 150 major rivers and 50 large lakes mark, cross or are located on the boundaries between two or more UNECE members. In 1992 the UNECE adopted the Convention on the Protection and Use of Transboundary Watercourses and International Lakes ('Water Convention') in an effort to combat problems of water stress, pollution, fragmentation of water basins and associated ecological degradation. Now in force for over a decade, and augmented by two protocols, the UNECE water regime offers a model for integrated watershed resource management that shares much in common with key objectives of the IUCN's Water and Nature Initiative. This note highlights some recent developments in the regime that have global resonance.

### The UNECE Water Convention

The Water Convention has been widely ratified in the UNECE region and now has 36 Parties, including the European Community. Over time, membership is likely to expand beyond the UNECE region because an amendment agreed to in 2003, if and when it enters in force, will permit non-UNECE members to join the regime. As a consequence, states on the periphery of UNECE can be brought within a normative framework that is more detailed and tailored to ecologically sustainable water resource management than the global regimes found in the 1997 United Nations Convention on the Law of Non-Navigational Uses of International Watercourses (which is yet to enter into force) and in the International Law Commission's continuing work on principles for managing shared ground waters unrelated to shared surface waters. Indeed the level of support that the Water Convention has attracted, and the sophistication of the regime, suggests that it should now be regarded as the leading international regime for transboundary watercourse management.

Two sets of obligations are combined in the Water Convention. The first are duties assumed by all parties (not just those sharing water resources) to prevent, control and reduce pollution and to ensure the conservation and restoration of ecosystems. In taking such measures the parties are to be guided by the precautionary principle,

the polluter-pays principle, and the commitment to inter-generational equity. Superadded to these general obligations is a second set of more specific duties applicable to riparian parties. These additional obligations relate to cooperation through joint bodies to establish agreed water-quality objectives and procedures for the monitoring and management of watercourses.

At the MOP4 in November 2006 the Parties adopted a set of strategies for monitoring and assessing transboundary water resources that are being used as the basis for a complete assessment of the state of health of water resources in the UNECE region. The complete assessment will shortly be completed. In recognition that climate change is driving changes to rainfall patterns across the region, and leading to more extreme weather events, MOP4 also saw the adoption of model provisions for domestic legislation to manage flooding. Rounding out MOP4's discussion of climate change was agreement on developing a UNECE strategy on Water and Climate Adaptation.

### Protocol on Water and Health

Two Protocols to the Water Convention elaborate upon matters addressed only in general terms in the framework text.

The first is the 1999 Protocol on Water and Health which entered into force in 2005 and responds to the continuing challenges faced by the UNECE in securing clean water supplies and sanitation for tens of millions of people in the region. This Protocol is the first international agreement specifically aimed to protect human health and well-being by ensuring adequate supplies of drinking water and sanitation systems. The Protocol continues the Water Convention's holistic and integrated approach to water management in recognising the benefits to human health of maintaining functioning freshwater ecosystems. Although data gathered by UNEP indicates that safe drinking water coverage figures for the UNECE region are steadily improving (and for Europe are estimated to reach 98 per cent by 2010), there remains room for considerable improvement.

The Protocol on Water and Health seeks to ensure that public authorities take necessary measures to make water and sanitation services effective and affordable. It recognises the synergistic relationship between social and economic development and poverty alleviation on the one hand with improved water supply, sanitation and healthy river ecosystems on the other. At MOP1 in January this year it was noted that a significant proportion of the population of the UNECE region do not have access to safe water and sanitation, and that extreme weather events associated with climate change are exacerbating the problem. At the meeting, the Parties agreed to focus on issues of awareness raising, capacity building, strengthening response capacities to drought and floods and further developing integrated management of water supply and sanitation systems. One of the most notable developments was agreement on a compliance procedure to facilitate and, if necessary, enforce compliance with the >>>



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Protocol. This adoption of yet another compliance mechanism for an environmental regime is further evidence of the growing emphasis by environmental lawyers on compliance issues.

### **Protocol on Civil Liability**

The latest addition to the Water Convention regime is the 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters. Only one state (Hungary) has so far ratified this Protocol which aims to fill a gap in the current UNECE arrangements for compensating transboundary victims of industrial accidents. The agreement serves to stitch two complementary regimes together, as it operates as a protocol to both the Water Convention and to the 1992 UNECE Convention on the Transboundary Effects of Industrial Accidents.

The Protocol on Civil Liability imposes both fault-based (for intentional, reckless and negligent acts) and strict liability on operators for transboundary damage caused by an industrial accident. For the latter, the Protocol sets financial limits on liability according to the hazard potential of the activity concerned, and operators must also meet minimum limits for insurance or other financial security for potential loss. The central mechanism of the Protocol is found in Article 13 which allows claims for compensation to be brought in the courts of a party where the damage was suffered, where the industrial accident occurred, or where the defendant has its habitual residence. In other words all victims are to be treated equally in the courts of all parties, wherever they decide to pursue action. Coupled with this is the provision in Article 18 for mutual recognition and enforcement of

judgments. There is also the possibility, under Article 14, for disputes between persons claiming for damage and persons liable under the Protocol to agree to submit their dispute to final and binding arbitration under the Permanent Court of Arbitration's Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment. This is the first reference in an international environmental agreement to these procedures, which have so far not been utilised.

### **Conclusion**

A central target of Goal 7 of the Millennium Development Goals is by 2015 to halve the proportion of people without access to safe drinking water and basic sanitation. The United Nations, to further emphasise the importance of water and sanitation for reducing disease, saving lives, and protecting freshwater ecosystems, has launched an International Decade for Action on Water – the 'Water for Life Decade 2005-2015'. Protecting freshwater systems has become increasingly urgent in many basins given the effects of global climate change which is producing diverse management challenges that range from severe drought to flash flooding events. In such a context, in which the opportunities for conflict over water resources appear ever more pronounced, the Water Convention regime stands as a practical and sophisticated model for peaceful, cooperative and integrated water resource management across the planet.

More information on the UNECE Water Convention regime can be found at: <http://www.unece.org/env/water/>

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### Snapshot of Some of the Projects of the Environmental Law Programme

Following is just a small snapshot of some of the current projects of the ELP.

#### **ECOLEX, THE LARGEST GATEWAY TO ENVIRONMENTAL LAW**

This year was a very important one for ECOLEX, the internet-based 'gateway to environmental law', managed by IUCN, FAO and UNEP.

ECOLEX is generated from an interface between two data banks: FAOLEX and ELIS, operated by FAO and IUCN respectively. This interface has been completely re-engineered during 2007, and will be available on the web at the end of the year. As its predecessor, the new ECOLEX will provide access to information, including full text, on treaties, national legislation, selected court decisions, as well as policy and law literature relevant to environmental and natural resources conservation and use.

In order to improve ECOLEX to the maximum extent possible, the information system operated by the IUCN ELC (called ELIS) has been migrated to another platform so that it is entirely compatible with FAOLEX. As a result, both components of ECOLEX are now fully co-ordinated, and function according to the same rules. Through ECOLEX IUCN is responsible for and custodian of, the data on treaties and policy and law literature, while FAO specializes in the national legislation.

Another major development during 2007 was the increased efforts of UNEP to populate the court decision data set. Over 400 specially selected court decisions were analyzed and entered into the system. They will also be available on line at the end of the year.

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#### **SUPPORTING IMPLEMENTATION OF BIODIVERSITY-RELATED MEAs**

Since early 2007, the *TEMATEA Issue-Based Modules* project has been managed by a joint UNEP-IUCN secretariat hosted within the IUCN Countdown 2010 Initiative.

A module on climate change and biodiversity has been developed by the ELC in the past (see Newsletter 2005/06, pages 14-15 for further background) and is now being updated on a regular basis in order to include the latest decisions coming from the Conferences of the Parties of biodiversity-related agreements. Furthermore, the development of a new module on Access and Benefit Sharing is currently underway (see Access and Benefit Sharing section below for further information on this module).

While the modules principally aim at assisting practitioners responsible for national implementation of multilateral environmental agreements (MEAs) they can also serve to inform international decision-making processes. The presentation of key obligations and commitments are structured around a core set of themes and are made available in a database via the internet ([www.tematea.org](http://www.tematea.org)). The development and further improvement of the Modules is an ongoing process, and feedback and comments are always welcome.

#### **WATER GOVERNANCE**

Contemporary approaches to water governance are based on integrating management of resource use and the environment within watersheds and river basins. This demands co-ordination among water users and across sectors, requiring mechanisms that are able to link various sectors and levels of organization. The ELC continues its successful involvement in the IUCN Water and Nature Initiative (WANI) which works towards such integrated and equitable management of the world's water resources for the benefit of future generations.

Having already drafted chapters of previous WANI toolkits, such as *Flow – The Essentials of Environmental Flows and Pay – Establishing Payments for Watershed Services* (copies may be downloaded from <http://www.iucn.org/themes/wani/>), the ELC has managed and/or contributed to the development of the latest toolkits, RULE, SHARE and NEGOTIATE, which are in their final stage of preparation.

All publications are targeted at people interested in designing, leading or participating in processes to enhance water resources management and resolve water conflicts.

RULE analyses the international state-of-the-art in designing and implementing legal, policy and institutional >>>



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mechanisms that contribute to effective water governance (see Newsletter 2005/06, page 16 for further background).

SHARE will provide an overview of the world's shared water resources, and drawing from case studies around the world, describes and analyses the legal frameworks, institutions, joint management interventions, and financing and partnership strategies that have been developed and used to support the joint management of trans-boundary waters.

NEGOTIATE will assist people to negotiate workable agreements on how to best use water. It will attempt to de-mystify or 'unpack' the various concepts and approaches to negotiation and will contain practical tools, steps and examples to assist all stakeholders engaged in water resources management be they from government, financing agencies, NGOs or local communities.

## FOREST GOVERNANCE

The ELC is involved in the IUCN project "Strengthening Voices for Better Choices" (SVBC) which started in 2005. Funded largely by the European Commission (EC), SVBC's main objective is to promote the development of improved forest governance arrangements in six key tropical forest countries: Brazil, Democratic Republic of Congo, Ghana, Tanzania, Sri Lanka, and Vietnam. In addition to this work at the national level, SVBC activities and findings aim to contribute to the ongoing regional and global forest policy processes, in particular the issue of illegal logging and the FLEG(T) process.

In this context, the IUCN-SVBC project has assessed the policy, legal, institutional and economic arrangements related to forest governance in the six pilot countries. The national reviews will build the basis for an upcoming publication which will be a global comparative analysis identifying key obstacles to forest conservation and sustainable and equitable forest management. Together, the findings of the national assessments as well as the global analysis shall form a cornerstone for IUCN's subsequent activities and recommendations.

The aim of the global analysis is to integrate three issues which are often analyzed separately: economic, statutory and customary legal aspects of forest governance.

Applying such an integrated approach is necessary to fully understand:

- the direct and indirect linkages between existing legislation and economic realities on the global, regional, national and local levels. While forest-related as well as extra-sectoral legislation influences economic developments in the forestry sector, economics again are a crucial factor that affects the drafting, implementation and enforcement of legislation. Helping to understand the interaction between law and economics as well as the resulting incentives or disincentives for forest conservation will distinguish this comparative analysis from others.

- that legislation comprises more than forest laws and regulations. Rather, customary rules and norms have to be integrated in laws and regulations to reflect a complete picture of the situation on the ground. As a consequence, the SVBC national assessments have also documented customary laws that govern individual and community access to and use of forest products at selected sites, and compared the statutory and customary frameworks to identify divergences and conflicts that are at the root of weak forest governance.

*Thomas Greiber, Legal Officer  
Environmental Law Centre*



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## ACCESS AND BENEFIT SHARING (ABS)

### Background

The fair and equitable sharing of benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and transfer of relevant technologies, is one of the three objectives of the Convention on Biological Diversity (CBD). As such it is meant to serve the two other major goals of the Convention, i.e. the conservation of biological diversity and the sustainable use of its components. At the same time, a functioning access and benefit-sharing (ABS) system can be a tool for achieving sustainable livelihoods and poverty reduction in many biodiversity-rich developing countries.

The implementation of the ABS related obligations under the CBD has proven to be one of the most difficult tasks since the Convention's entry into force in 1993. Recent developments at the international level show a new momentum towards the establishment of an international ABS regime under the CBD. Following the call of the Johannesburg Summit on Sustainable Development

(WSSD 2002) for the development of an international regime on Access and Benefit Sharing, the 7th Conference of the Parties to the CBD (CoP-7) in 2004 gave the Ad-Hoc Open-ended Working Group on ABS (WG-ABS) the mandate to elaborate and negotiate such an international regime on ABS. This mandate has been renewed at CoP-8 in Curitiba, Brazil, with the instruction to complete the work at the earliest possible time before CoP-10 in 2010 (Dec. VIII/4 A).

### **ELC's support to the international ABS process and national implementation**

The ELC is supporting the international process in a number of ways.

As part of the collaboration with the Federal Environment Ministry (BMU) of Germany – host country of CBD CoP-9 in May 2008 – the ELC is providing technical legal advice on various ABS related issues. The ELC is supporting Germany's efforts to engage in a constructive stakeholder dialogue on ABS and has produced an Information Brochure on ABS to this end.

At the fifth Meeting of the CBD Working Group on ABS (WG-ABS-5) in October 2007 in Montreal, Canada, the ELC held two side events in relation to ABS and, in collaboration with the Global Policy Unit, produced an IUCN position paper, to inform the WG-ABS Meeting. The ELC launched the first three books of the 'ABS Series' – a five-volume sub-series of the ELP's Environmental Policy and Law Papers (EPLP 67). *The ABS Series* represents the centerpiece of results from The ABS Project, which has been carried out by the ELC since 2003, with the financial support of the German Federal Ministry for Development Cooperation (BMZ). It provides intensively researched expert analysis by internationally respected authors and contributors on key issues of ABS: The first volume of the Series focuses on the aspect of access to genetic resources, while the second book addresses the "user side" and the main questions surrounding the benefit sharing obligation of Article 15.7 CBD. Book no. 3 of the Series looks at options for tracking and monitoring of the international flows of genetic resources. (All books are available online at the ELP's publication website, <http://www.iucn.org/themes/law/info04.html>)

The ELC is developing a new Module on Access and Benefit Sharing under the *TEMATEA Issue-Based Modules* project. The Module identifies international obligations and commitments (including CoP decisions, recommendations etc.) relating to access to genetic resources and associated traditional knowledge and benefit sharing, found throughout all relevant international and, as far as possible, regional agreements. The first draft of the module has been developed and early in 2008 it will be tested in a workshop in Peru and be made available for online peer review at the project website: <http://www.tematea.org>.

## **CAPACITY BUILDING IN INTERNATIONAL ENVIRONMENTAL LAW: COLLABORATION WITH UNITAR**

Based on the shared belief of UNITAR and the ELC that it is essential to devote increased attention to training in the field of environmental law, both institutions have joined forces in a new phase of collaboration. As a first concrete result of this collaboration, the ELC has prepared a new edition of the Course Book on Biodiversity, which forms part of the Distance-Learning Course on International Environmental Law, implemented by UNITAR and its partner organizations since the 1990s.

### **Course Book on Biodiversity**

The sixth Course ("International Environmental Law: Biological Diversity") provides a comprehensive overview of existing instruments and mechanisms for the protection and sustainable use of biodiversity. While it is based on the first edition written by Cyrille de Klemm and Clare Shine in 1998, the Second Edition prepared by the lawyers of the ELC, represents more than an update on the developments in the last nine years. The re-structured Course provides an in-depth examination of the "big five" biodiversity-related Multilateral Environmental Agreements (CBD, Ramsar, World Heritage Convention, CITES and CMS) as well as an overview of the relevant instruments and processes related to forests, specific plants and animal species. The regional biodiversity-related conventions are presented in a combination of text focussing on the essential agreements and information on additional instruments and further references in accompanying tables. An entire new Part on cross-cutting issues has been added to illustrate regulatory approaches as well as current topics which are used by, or dealt with, by a number of different biodiversity-related conventions and regimes, such as the ecosystem approach, sustainable/wise use, traditional knowledge, invasive alien species, financial instruments and the inter-relationship of biodiversity and climate change. This reflects the need to address the implementation of the various conventions in a synergistic manner.

### **Future steps**

The topic of environmental governance has undergone substantial developments in recent years. The ELC is preparing a new edition of the Course Book on Environmental Governance.

*Daniel Klein, Legal Officer  
Environmental Law Centre*

## MARINE ISSUES

### Analysing ways forward for high seas governance

#### Background

Marine resources in areas beyond national jurisdiction (ABNJ) are under increasing risk from over-exploitation which is threatening biodiversity, ecosystem processes and function. There is a need for improved implementation of, and better coordination between, current legal instruments applicable to ABNJ. Additionally, there are gaps and shortcomings in the current legal framework and in the institutional governance structures, especially in relation to the consideration and assessment of measures to conserve marine biological diversity to fully reflect the evolving understanding of ecosystem-based approaches.

The European Union (EU) has proposed that an Implementation Agreement to the *1982 United Nations Convention on the Law of the Sea* (UNCLOS) be developed to provide for the conservation and management of marine biological diversity in ABNJ. An Implementation Agreement could provide a useful mechanism to augment, elaborate, and operationalize some of the general provisions of UNCLOS in relation to ABNJ and to coordinate ecosystem-based governance for conservation and sustainable use of resources and biodiversity in these areas.

#### Analysis of the key issues

The ELC in collaboration with the Global Marine Programme and the Commission on Environmental Law sub-group on High Seas Governance (part of the Specialist Group on Oceans, Coasts and Coral Reefs), have investigated the issue of a potential Implementation Agreement and other issues relating to high seas governance. It is clear that strategic decisions are required to determine which issues could be addressed in an Implementation Agreement and which could be advanced through other mechanisms and pathways. Consideration of what an Implementation Agreement might accomplish helps provide a means for the international community to discuss what initiatives and reforms could improve marine governance in ABNJ.

To further such discussions the ELC prepared a background paper on the proposed Implementation Agreement to UNCLOS for the European Expert Workshop in Berlin, Germany 18-20 April 2007. Kristina Gjerde, High Seas Policy Advisor for the IUCN Global Marine Program and co-chair of the sub-group on High Seas Governance also presented a useful overview paper on *'High Seas Biodiversity Conservation: Challenges and opportunities for meeting the 2010 and 2012 Targets'* which outlined a wide range recommendations that could be implemented to further high seas governance. Further information on the workshop can be found at: <http://www.countdown2010.net/marine>

Following on from the workshop the ELC finalised a much more detailed examination of the potential scope

of an Implementation Agreement and issues that will need to be considered in developing such an agreement. Based on the recommendations arising from the Berlin workshop the ELC facilitated further research in collaboration with the High Seas Governance Group and the Universiteit Utrecht, Netherlands Institute for the Law of the Sea, to develop three background studies:

- a gap analysis to identify regulatory and governance gaps;
- a case study to provide an example of a situation which is not currently covered under existing regulation; and
- an options paper on the potential scope and content of a possible Implementation Agreement.

#### Developing a way forward

Another mechanism to further discussions on high seas governance was the workshop in New York, 17-19 October 2007 'High Seas Governance for the 21st Century'. An initiative of the CEL High Seas Subgroup of the Oceans, Coasts and Coral Reefs Specialist Group, the Workshop was organized with the cooperation and support of The World Conservation Union (IUCN), the University of New South Wales Law School, Pace Law School, the Natural Resources Defense Council (NRDC), Bard Center for Environmental Policy, and Juice Energy Inc. The Experts Informal Workshop brought together over 50 global experts on international marine policy, science, law and economics to address urgent concerns about how to govern the high seas and what global priorities should be when it comes to the protection of the marine environment in areas beyond national jurisdiction.

Major financial support was provided by the Australian Mission to the United Nations, the Australian Department of Environment and Water Resources, the JM Kaplan Fund and the Netherlands Ministry for Agriculture, Nature and Food Quality.

The objective of the Workshop was to bring together leading experts in high seas governance to develop a range of policy and regulatory options and proposals for the further development of the high seas legal regime under the UN Convention for the Law of the Sea. A report from the workshop will be developed. For further information on the workshop contact Kristina M. Gjerde or Rosemary Rayfuse, the co-chairs of CEL High Seas Subgroup of the Oceans, Coasts and Coral Reefs Specialist Group.

*Sharelle Hart, Legal Officer  
Environmental Law Centre*

## The IUCN Commission on Environmental Law

### CEL STEERING COMMITTEE MEETING

The IUCN Commission on Environmental Law (CEL) Steering Committee held its annual meeting in the Parque Estadual Intervales in the State of Sao Paulo, Brazil on 18-19 May 2007. In an inspiring setting, the Steering Committee met for two days to discuss implementation issues and new directions for the CEL programme. A range of important CEL achievements such as revision of the Precautionary Principle Guidelines, participation in the IUCN Lebanon Task Force and further development of the Code on Ethics in Biodiversity were discussed along with the current status of the CEL Specialists Groups and their upcoming meeting in Istanbul in late June; the CEL incentives package (including the E-Helpdesk, the CEL Award and the CEL Online Papers, see further below); the ELP new intersessional plan; and the 2008 IUCN World Conservation Congress. Steering Committee members also planted a tree as a tribute to Professor Alexandre Kiss, a long standing member of CEL, who passed away earlier this year.

#### Package of Incentives for CEL and IUCN's Members

The Chair shared with the Steering Committee the a range of projects launched to promote more dynamic involvement with both the CEL membership and the IUCN institutional membership:

**a) CEL Help Desk:** The Chair highlighted that CEL brings together an extensive network of environmental law experts, specialized in a wide variety of fields, and that among the members' requirements identified by CEL there is a need for technical legal assistance. To respond to the needs of IUCN members, CEL has developed a programme and the Chair of CEL has sent a letter to institutional IUCN members to invite them to express their requests for technical legal advice. Members have been asked to specify the subject, urgency, status of the relevant discussions at the national level and relevance of the issue for the programme of IUCN. This offer is only open to institutional members (governments and NGOs) in developing countries.

**b) Paper contest for young professionals:** A contest has been initiated to encourage and recognise the work of young environmental lawyers. The call for papers will be launched each year and the best six papers will be published and the authors will receive a set of available EPLP publications. The authors of the top two papers will also be awarded a ten-day internship at the ELC. Their stay in Bonn will also allow them to visit the offices of the Convention Secretariats located in Bonn.

The Chair proposed that the Steering Committee members dedicate this incentive program in memory of Prof. Alexandre Kiss, who passed away earlier this year. This motion received unanimous approval from the Steering Committee.

The participants also agreed that the process for evaluation of the papers would be to divide the papers according to language, request the assistance of SC members which are native speakers of that language to evaluate the papers and rank them 1 to 5. The six highest ranked papers are then to be publicly communicated by the Chair upon receiving the results from the evaluation committee.

The winners of the first CEL "Alexandre Kiss Environmental Law Papers Award" are:

1<sup>st</sup> place: Louise Camenzuli (Australia), who submitted the paper "*The development of International Law at the Multilateral Environmental Agreement CoPs and its validity*",

2<sup>nd</sup> place: Tran Thi Huong Trang (Vietnam) who wrote on "*Legislation on Genetic Resources Conservation in Vietnam*", and

3<sup>rd</sup> place: Paule Jessie Nanfah (Cameroon), with "*L'évaluation environnementale dans la mise en oeuvre des conventions internationales*".

The papers can be downloaded from the ELP's website (<http://www.iucn.org/themes/law/cel10.htm>).

**c) Case Studies:** Since the last Steering Committee meeting, two case studies have been published. This has been done under a different series than the EPLP Series.

These first two publications are related to problems arising from the installation of paper mills in the southern cone:

- 1) The first Case Study is the one developed in answer to Bangkok's Congress RES 3.053 "*Protection of Chile's first Ramsar site, threatened by a cellulose factory*". This conflict arose due to concerns about a population of endangered swans and the impacts of a paper mill on the Cruces River. The investigation was coordinated by Chilean CEL member Miguel Fredes.
- 2) The second document relates to the dispute between Argentina and Uruguay with regards to the installation of two paper mills on the Uruguay River, a shared watercourse.

**d) Online Papers:** A new system for sharing papers that have been developed by CEL members has been introduced. A call has been made to invite CEL members to send papers which they would like to share through the ELP website. Papers received to date can be viewed at <http://www.iucn.org/themes/law/cel10.htm>. Those wishing to submit papers should email the documents (and any relevant information relating to copyright) to Andrea Lesemann ([Andrea.Lesemann@iucn.org](mailto:Andrea.Lesemann@iucn.org)).

**e) E-Courses:** The Chair explained that she had been exploring the possibility of implementing E-courses on Environmental Law not only in English but Spanish, French and Portuguese.

#### Matters arising from the IUCN Council

The Chair informed the Steering Committee that at the recent IUCN Council meeting, the *Guidelines for applying the Precautionary Principle to Biodiversity Conservation and Natural Resources Management* were approved, as re-drafted by CEL. The document is the result of a work->>>

ing group formed within the CEL, to focus on the content of the Guidelines for applying the precautionary principle to biodiversity conservation and natural resource management that were published in 2005. The 2005 Guidelines were developed over a number of years by the Precautionary Principle Project. That project was a joint initiative of Fauna & Flora International, IUCN-The World Conservation Union, Resource Africa and TRAFFIC, involving an international consultative process carried out from 2002 to 2005.

### CEL SPECIALIST GROUPS MEETING

On 29-30 June 2007, the Chairs of the CEL Specialist Groups met in Istanbul to discuss how to coordinate their work, to ensure that the Specialist Groups complement each others' efforts and contribute to the work of IUCN. The CEL Chair, Sheila Abed, invited representatives from each IUCN Region to the meeting. For the first time, the Chairs of the Specialist Groups were able to discuss the ways in which CEL may more effectively meet the needs of IUCN Members and the IUCN Secretariat.

The Specialist Group (SG) Chairs present at the meeting were: Melinda Janki (CEL SC Member, also present as Chair of the Protected Areas SG and the CEL/WCPA Protected Areas Task Force), Ian Hannam (Sustainable Use of Soils and Desertification), Nicolás Lucas (Trade & Environment), Wang Xi (Energy Law and Climate Change), Ricardo Lorenzetti (Enforcement & Compliance), Vladimir Passos de Freitas (Judiciary), Nilufer Oral (Oceans, Coastal and Coral Reefs), Brendan Mackey (Ethics) and Carl Bruch (Armed Conflict and the Environment).

Invited as special guests were Patti Moore (Head of IUCN Asia Regional Environmental Law Programme), Mohammed Shahbaz (IUCN West Asia Regional Committee), Pepe Clark (Legal Advisor, IUCN Regional Office for Oceania) and Xavier Bustamante (IUCN South America Regional Committee).

The Head of the Environmental Law Programme, Dr. Alejandro Iza, also participated, as well as CEL Steering Committee Member Prof. Antonio Herman Benjamin.

The Chair explained that she took the decision of inviting guests from the different regions to participate in the meeting, as she firmly believes that the Union will greatly benefit from more active interaction between Regional Committees, Regional Offices and Commissions, recognizing that lack of communication is a problem regularly mentioned at many IUCN meetings, at every level.

The two main purposes of the meeting were maintaining collaboration between all Specialist Groups and the Steering Committee, and to explore ways in which they may better articulate their work with the Regional Committees and Regional Offices. The Chair highlighted that it was essential for CEL to consider input of the regions at the time of establishing priorities and identifying major crosscutting themes, to more effectively deliver on the Commission's purpose and vision.

### Improving communication and interaction between Specialist Groups

Tools available for improving communications among Specialist Group members were presented. The Chair stressed the importance of making use of these tools, whose development implied an important investment of funds for the Commission. At the same time she requested that participants of the meeting and particularly the guests from the regions help her to recruit members for the Commission. She indicated that she would welcome recommendations to incorporate new committed experts, particularly of those regions where CEL is under-represented and specifically emphasised the need to recruit more members from WESCANA.

### Integrating Regional Offices with Specialist Groups

The Chair indicated that she would work on a draft CEL Communications Protocol. She hopes that implementation of the protocol will optimize communication between the CEL Steering Committee, CEL Specialists Groups, IUCN Headquarters, IUCN Regional Offices and institutional membership.

### SPECIALIST GROUPS

Group	Co-Chair	Co-Chair
Armed Conflict and the Environment	Michael Bothe	Carl Bruch
Energy Law and Climate Change	Richard Ottinger	Wang Xi
Enforcement and Compliance	Ricardo Lorenzetti	
Ethics	Brendan Mackey	Klaus Bosselmann
Human Rights and the Environment	Dinah Shelton	Romina Piccolotti
Indigenous Peoples	Laura Westra	John Scott
Judiciary	Vladimir Passos	
Oceans, Coasts and Coral Reefs	David VanderZwaag	Nilufer Oral
Protected Areas	Melinda Janki	Rodrigo Agostinho
Sustainable Use of Soils	Ian Hannam	Du Qun
Trade and the Environment	Nicolás Lucas	Marie Claire Segger
Water and Wetlands	Rosemary Lyster	Marta Rovere

### TASK FORCES

Group	Co-Chair	Co-Chair
Arctic Regime	Wolfgang Burhenne	
Protected Areas (Joint CEL/WCPA Task Force)	Melinda Janki	Ben Boer

## Specialist Groups

In 2007 the CEL Specialist Groups worked on a wide range of issues and a brief summary of the some of their activities is outlined below:

### Oceans, Coasts and Coral Reefs Specialist Group

The Oceans, Coasts and Coral Reefs Specialist Group has had a productive year. Recent and planned activities include:

- Contribution to the UN Informal Consultative Process on Oceans and Law of the Sea and UN General Assembly negotiations on the Oceans and Law of the Sea Resolution;
- Participation in the IUCN Academy of Environmental Law Research Workshop held in Ottawa, 19-21 April 2007;
- Collaboration with David Freestone, editor of the International Journal for Marine and Coastal Law, in the preparation of a special journal issue on the topic of ocean governance. Papers are being contributed by members on a range of governance topics including land-based marine pollution, shipping, regional fisheries management, regional seas cooperation, and high seas governance; and
- In October 2008 the group will contribute to the next IUCN World Congress including the convening of a panel addressing the future of international ocean governance.



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The Specialist Group is assisted through the work of six sub-groups. Some recent activities have included:

- Cooperation of the Mediterranean Specialist sub-group with the IUCN Centre for Mediterranean Cooperation, to convene a regional workshop on 'Shipping and Marine Biodiversity' in Istanbul, Turkey,

21-25 September 2007. The Workshop brought together legal experts with representatives from the shipping and oil industry, international organizations, scientists, academics, NGOs and governments to assess the status and threats from shipping pollution in the Mediterranean and to develop recommendations for future national, regional and international actions to better plan and regulate shipping activities. A final report and publication will be developed over the coming months.

- Co-organization of a workshop by the High Seas Governance sub-group on 'High Seas Governance for the 21st Century' which was held in New York, 17-19 October 2007. The objective of the workshop was to bring together leading experts in high seas governance issues from academia, government and non-governmental organisations, acting in their personal capacity, to develop a range of policy and regulatory options for the further development of the high seas regime under the UN Convention on the Law of the Sea. Recommendations and results from the Workshop are expected to be submitted for consideration by the UN Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction which is scheduled to meet again in April 2008.

The Specialist Group now has over 60 members. CEL members wishing to join the Specialist Group may contact Lauri MacDougall (lauri.macdougall@dal.ca).

*David VanderZwaag and Nilufer Oral*  
Co-Chairs Oceans, Coasts and Coral Reefs Specialist Group

### Sustainable Use of Soils and Desertification Specialist Group

The CEL Specialist Group on Sustainable Use of Soils was formed in April 2000. The Group has been implementing the 'Soil Resolution' passed by the World Conservation Congress (WCC) in 2000 by developing national legal guidelines and explanatory material and investigations into a global legal instrument for sustainable use of soils. A further Soil Resolution passed at WCC in Bangkok in November 2004 supplements the 2000 Resolution. The Co-Chairs of the Group are Dr Ian Hannam from Australia and Professor Du Qun from China. Professor Ben Boer from Australia was the inaugural Chair and remains an active Group member. Group Members come from Iceland, Germany, USA, New Zealand, Australia, Great Britain, Egypt and Belgium. Professor Antonio Herman Benjamin, Brazil, is the Group's Liaison Officer with the CEL Steering Committee. Two new additions to the Group in the past year include Professor Rob Fowler from Australia and Dr Bernard Vanheusden from Belgium. The Group also has an ongoing working relationship with a group of international soil scientists.

Global interest continues to grow in the investigation of an international instrument for soil and there are new initiatives in regional and national soil legislation and policy>>>

reforms (i.e. Balkans; Central Asia). The draft Soil Protocol for the Protection and Sustainable Use of Soil (SP) prepared by the Specialist Group was discussed at various international soil conservation forums and at two MEA Secretariats. In October 2006 Professor Boer made a presentation to a soil science conference in Ascona, Switzerland and delegates were interested in the underlying soil scientific values for the development of a sound legal instrument. In October-November 2006 Dr Hannam visited the ELC in Bonn Germany to revise the draft SP and a first draft of a commentary to the SP including legal and scientific background to each draft Article was prepared. In November 2006 Ian Hannam met with Mr Gregoire de Kalbermatten (Executive Secretary UNCCD) and Mr de Vanssay (from Committee on Science and Technology UNCCD) to follow up on various soil legislation items that had been raised at the International Soil Conservation Organization Congress in Marrakech, Morocco in June 2006. Mr de Kalbermatten outlined suggestions for developing further legislative supportive tools to support the UNCCD synthesis process. In November 2006 Professor Boer made a presentation to the CBD Secretariat in Montreal on the draft SP with encouraging support.



IUCN Photo Library © Hichem Azatfal

In April 2007 a joint presentation was made to the American Law Institute-American Bar Association seminar on International Environmental Law in April 2007 by Professor Boer and Mr Bill Futrell. The concept of the draft SP and various national soil law issues were presented, including specific USA soil conservation issues. Bill Futrell has been active in communications on the 2007 Farm Bill and developing a continuing legal education course on international environmental law – sponsored by the American Law Institute-American Bar Association Committee for Continuing Legal Education, of which soil law will be a part. Other activities include the commencement of an Environmental Policy and Law Paper (EPLP) on legal and policy issues managing land degradation in China, which will be the third EPLP on 'Soil Law'. This is a cooperative effort between the IUCN ELC, Specialist Group members and Chinese environmental lawyers including Co-Chair Professor Du Qun. In September 2007 a number of Specialist Group members participated in the International Forum 'Soils, Society and Climate Change' in Iceland. The Forum is a key part of the celebration of the Icelandic Soil Conservation Service centenary and there was a working group to discuss

capacity building approaches to legislative and policy issues for soil management. Discussions are also continuing with officials in the Balkans on an investigation into soil conservation laws and regulations in the region.

*Ian Hannam*

*Co-Chair Sustainable Use of Soils Specialist Group*

### **Indigenous Peoples Specialist Group**

The Specialist Group on Indigenous Peoples (SGIP) is undertaking research to analyse how current regimes in selected countries protect the rights of indigenous peoples in relation to conservation – including respect for indigenous knowledge and indigenous land rights. This research will then be collated into a publication to empower indigenous peoples and to increase understanding of these issues within the conservation community.

In June 2007, Dalhousie University in Halifax, Canada, in partnership with the Global Ecological Integrity Group (GEIG), hosted the highly successful Ecological Integrity and a Sustainable Society Conference. Members of the SGIP delivered a number of papers:

- SGIP Co-chair Laura Westra, a founder of GEIG, addressed the critical issue of Arctic peoples and Biodiversity – the interface between climate change and traditional ecological knowledge;
- SGIP Co-chair John Scott delivered an update on the indigenous peoples related work being carried out under the Convention on Biological Diversity (CBD) with a focus on the development of elements of a code of ethical conduct to respect the intellectual and cultural heritage of indigenous peoples;
- Ana Rachel Teixeira Mazaudou presented a paper on the Effects of 15 Years Post-CBD on International Legal Protection of Traditional Knowledge: an FAO and WTO Analysis; and
- Melinda Janki presented a case study on Guyana on the question as to whether protected areas can preserve cultural and biological diversity. Her paper highlighted recent legislation in Guyana which gives Amerindian peoples control over their traditional knowledge as well as statutory recognition of their spiritual relationship with their land.

The SGIP also used the conference as a chance to meet and discuss a more strategic approach in relation to indigenous issues that could be taken by IUCN. Members noted that it was disappointing that indigenous peoples were not specifically recognized in the IUCN 2009-2012 intersessional programme, but were included in a general category of 'vulnerable stakeholders.' Members highlighted that there is a need for indigenous peoples to be specifically recognized and protected as key players and rights holders in the conservation paradigm. Furthermore it was agreed that, although vulnerable and often poor, indigenous peoples have a lot to contribute to conservation and sustainable use of biodiversity, especially in the light of climate change. The SGIP is exploring how they can assist the implementation of the next and future IUCN programmes to be more inclusive of indigenous peoples' issues.



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The SGIP recommended that it was opportune for IUCN to build bridges and partnerships with indigenous peoples and in particular considered the following issues priorities:

1. The need for a policy on prior informed consent of indigenous peoples regarding establishment of protected areas;
2. The importance and usefulness of the recognition of community conservation areas;
3. Assistance in community mapping projects;
4. Partnerships with indigenous peoples in managing protected areas; and
5. Recognition and promotion of accredited training for indigenous peoples as park rangers and other jobs related to protected areas.

In view of the World Conservation Congress in Barcelona (October 2008), the SGIP, also discussed and started planning for an indigenous panel on climate change, traditional knowledge and biodiversity as a side event for the meeting and have identified key indigenous speakers who will be invited.

*John Scott and Laura Westra*  
*Co-Chairs Indigenous Peoples Specialist Group*

### **Energy Law and Climate Change Specialist Group**

The Specialist Group has had a busy year.

**CSD-15:** Co-Chair Dick Ottinger participated with Andrea Athanas, Nadine McCormick and other members of the IUCN delegation at the Commission on Sustainable Development, CSD-15 session, and attended the excellent side event that they organized on 'Biofuels: A tool for conservation,' with excellent presenters. The Specialist Group didn't play much of a role at the CSD meeting, however, since it quickly became obvious that no significant progress would be made on key Specialist Group issues.

**IUCN Global Programme Activities:** Dick Ottinger is currently serving on the IUCN Leveraging Initiative Executive Committee. The Specialist Group have strongly advocated that IUCN should be a key player on climate change and energy issues that so vitally affect biodiversity and expressed our interest in participating.

**Shanghai City Renewable Energy Law:** Co-Chair Wang Xi was requested by the municipal government of Shanghai to assist in drafting a renewable energy law for the City going beyond the requirements of the national law recently adopted by the China PRC. Dick Ottinger supplied background materials to assist in this project.

**Access to Energy Services as a Human Right:** Specialist Group member Professor Adrian Bradbrook of the Adelaide University Law School, Australia, is engaged in writing a major paper on energy as a human right which will conclude at the end of 2007. Professor Bradbrook is in the process of consultations with interested parties and preparing Guidelines for the content of a proposed human right of access to modern energy services.

**International Initiatives to Promote Renewable Energy:** Professor Bradbrook also presented a paper "International Initiatives to Promote Renewable Energy", at the invitation of the German government, for a REN21 workshop held at Paris last December to consider the agenda for a possible new international congress on renewable energy.

**Alternative Energy Project:** Starting in 2006, but not to be completed until later in 2007, Professor Bradbrook and Dick Ottinger are both writing chapters on renewable energy for a book sponsored by the International Bar Association, accepted for publication by Oxford University Press. It is titled *Beyond the Carbon Economy*. Dick Ottinger's chapter is entitled, *Renewable Energy in National Legislation: Challenges and Opportunities*, and Professor Bradbrook's chapter focuses on the international law aspects of renewable energy.

**Brazil Biofuels Conference:** Pace Law School and the prestigious Pontificia Universidade Catolica Do Rio de Janeiro (PUC) conducted a conference in Rio de Janeiro, Brazil, August 16-19, 2007 on Biofuels, using the Brazil Biofuels Programme as the centerpiece. The sponsors assembled a very impressive list of speakers including Specialist Group member Antonio Benjamin, now a Justice of the Supreme Court of Brazil; Roberto Rodriguez, the recently retired Minister of Agriculture of Brazil; and many other outstanding experts. CEL Chair, Sheila Abed, agreed for CEL to be a co-sponsor of the event.

**Roundtable on Sustainable Biofuels:** Dick Ottinger has accepted an invitation to serve on the Working Group on Environmental Impacts of Biofuels chaired by Jeffrey McNeely, IUCN Chief Scientist, as well as the Group on Social Impacts of Biofuels of the Roundtable on Sustainable Biofuels to create guidelines for the sustainable production and use of biofuels.

**The Development of an International Legal Management Regime to Achieve a Sustainable Energy Future:** Professor Bradbrook has prepared a new major research project entitled 'The Development of an International Legal Management Regime to Achieve a Sustainable Energy Future', and has applied for funding for the project from the Australian Research Council.

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**Fordham-Pace Law Schools Forum on Climate Change:** Pace Law School and Fordham University Law School held a forum on *Climate Change, North and South*, in October 2007, exploring the interstices of meeting climate change challenges in developed and developing countries. The Specialist Group was a co-sponsor.

*Richard Ottinger and Wang Xi*  
Co-Chairs Energy Law and Climate Change Specialist Group

#### **Armed Conflict and the Environment Specialist Group**

The Specialist Group on Armed Conflict and the Environment is undertaking two related activities: (1) assessing experiences in post-conflict management of natural resources and the environment (led by Carl Bruch); and (2) exploring current questions of the law of armed conflict as it relates to the protection of the environment (led by Michael Bothe).

On 17-18 September 2007, the Specialist Group co-convened an international meeting on 'Managing Natural Resources in Post-Conflict Societies: Lessons in Making the Transition to Peace.' Around 35 people participated in the meeting, which was held in Geneva in partnership with the United Nations Environment Programme (UNEP) Post-Conflict and Disaster Management Branch. Co-Chairs Carl Bruch and Michael Bothe led the meeting, with Hassan Partow from UNEP. CEL Steering Committee Member Nawzat Ali attended the meeting.

The meeting identified a range of post-conflict countries in which natural resources played an important role in peace-building and recovery. The participants shared observations regarding lessons learned and considered a range of follow-up actions to improve post-conflict management of natural resources, particularly as it relates to peace-building. The discussions from the meeting will frame the analysis that the Specialist Group is undertaking on post-conflict natural resources management.

For the second activity – examining the law of armed conflict as it relates to environmental protection – the Specialist Group will form an open-ended reflection group. The Specialist Group will start with a questionnaire to be elaborated by the Co-Chair Michael Bothe. Although the question of the application of the law of armed conflict for the protection of the environment has been an object of political and academic discussion for more than three decades, controversy persists which invites a fresh in-depth analysis of strengths and gaps. Based on this analysis, the Specialist Group will highlight opportunities for making recommendations for amending or developing new law and policy in the field.

For more information on the Specialist Group, please contact either Co-Chair, ccing the other [Carl Bruch (bruch@eli.org) or Professor Michael Bothe (bothe-bensheim@t-online.de)].

*Michael Bothe and Carl Bruch*  
Co-Chairs Armed Conflict and the Environment Specialist Group

#### **Ethics Specialist Group**

There is a common theme in the current work of the Ethics Specialist Group (ESG), i.e. the Earth Charter. The Earth Charter was adopted at the World Conservation Congress in Bangkok as a guide for IUCN's programme and policy development. ESG has dedicated a number of projects to implement the Earth Charter and advance IUCN's policies in order to foster IUCN's aspiration for global moral leadership in the area of biodiversity conservation.

Such a broad approach has made it necessary to work across Union and collaborate with members from all Commissions. In a way, ESG has become a hybrid. While firmly embedded as a Specialist Group within CEL with tremendous support from the CEL Chair and the Environmental Law Centre, ESG has also been a platform for the Union at large. This dual function is not surprising given the fundamental, cross-disciplinary nature of biosphere ethics. Respect for the community of life is, after all, the basis of everything the Union and its members are trying to achieve.

In 2007 significant progress was made in four areas:

- the understanding and legal exploration of Earth Charter principles (1);
- the application of the precautionary principle (2);
- the biosphere ethics project (3); and
- the governance for sustainability project (4).

1) ESG members – lawyers, philosophers and scientists – have contributed to the growing body of academic literature on the Earth Charter. A number of conference papers, articles and books have developed, for example, the legal status of the Earth Charter, its importance as a covenant, and the meaning of its principles and values with respect to justice, human rights and the precautionary principle. The IUCN Academy of Environmental Law has

adopted an ESG proposal for collaborative research projects related to the Earth Charter. On behalf of IUCN, Klaus Bosselmann attended a UNESCO workshop in Tripoli/Libya in June to launch the 'Arabian Network of Environmental Ethics' (ANEE). The workshop with participants from the Arabic region adopted the 'Tripoli Declaration' referring to the Earth Charter and further adopted a working programme for developing and implementing relevant values and principles in Arabic countries.

2) Consultation within the Commission on Environmental Law resulted in a commentary on the *Guidelines for applying the precautionary principle to biodiversity conservation and natural resource management*. The purpose of the consultation was to place the guidelines more closely within the context of IUCN's vision of 'a just world that values and conserves nature.' ESG has stressed the inherent links between sustainability and the precautionary principle.

3) Following the successful Planning Meeting at the IUCN HQ in September 2006, the Steering Group of the 'Code of Ethics for Biodiversity Conservation' prepared a report that identified key issues and outlined the further working agenda. At a workshop in Halifax in June 2007, it was decided to extend the scope of the Code project to incorporate foundational concepts of human-nature relationships. The broader approach is reflected in the new title 'The Biosphere Ethics Project.' In September 2007 a four-day workshop under this title was held in Windblown Hill near Chicago. It was jointly organized by IUCN-ESG and the Centre for Human and Nature, Chicago/New York. A final report on the project will be presented to the 2008 World Conservation Congress in Barcelona.

4) A project on governance for sustainability was commissioned by the Chair of CEL to provide guidance in the area of environmental governance at global, national and local levels. The project aims for an ethically based concept of good governance reflecting the normative characteristics of sustainability. The project was advanced at a research workshop of the IUCN Academy of Environmental Law in Ottawa in April, a workshop during the 5th Academy Colloquium in Rio/Paraty in early June, a meeting during an ecological integrity conference in Halifax end of June, and the above-mentioned workshop in Windblown Hill in September. The overall objective is a comprehensive report to be presented at next year's Barcelona Congress.

*Klaus Bosselmann*  
*Co-Chair Ethics Specialist Group*

### **Judiciary Specialist Group**

In 2007, the Judiciary Specialist Group grew with the admission of new members, from Argentina, Brazil, Spain and Tanzania. The aim is to receive new ideas and new experiences, using them to the advantage of the group.

In June 2007, some members of the group, such as Nicolau Konkell Júnior (Brazil) and Nestor Cafferatta

(Argentina) participated, with 80 more judges, in a seminar on Environmental Law, held in the city of Paraty, Brazil, which proved to be very useful for all the participants.

The next goal of the group is to reactivate the IUCN Portal, so that judges from every country will be able to have access to a number of judicial decisions from different Courts, which may serve as a foundation for similar decisions in other countries, members of Civil Law or Common Law.

During the CEL Specialist Group meeting in Istanbul, the Judiciary Specialist Group discussed with other groups the achievement of common goals, especially with the Oceans, Coastal and Coral Reefs, Indigenous Peoples and Trade & Environment Specialist Groups.

There is still a lot to be done. One of the goals is to attract to the group more judges from Africa, Asia and Eastern Europe. Contacts are already underway. Another proposal is the organization of regional essays contests on Environmental Law, addressed to judges. Therefore, it is necessary to find partners willing to disseminate Environmental Law.

*Vladimir Passos de Freitas*  
*Co-Chair Judiciary Specialist Group*

### **Water and Wetlands Specialist Group**

The Specialist Group on Water and Wetlands now comprises approximately 40 lawyers from all over the world. It has the potential to be a very effective group to work on water and wetlands issues.

In consultation with the ELC, it was agreed in 2006 that the Working Group would draft model water legislation which could be referred to by any country that was seeking to either introduce water legislation or amend its water legislation. A draft Model Water Law document was prepared by Rosemary Lyster and circulated to the group on 12 January 2007. Members of the group were requested to provide submissions by the end of February 2007. Unfortunately, the response by that date was rather disappointing. Only three members of the group responded to the email. Rosemary Lyster then decided to extend the deadline and emailed all members of the group on 15 April 2007 with a request to respond by the end of May 2007.

Marta Rovere made a presentation of the principal issues to be considered in 'Modern Water Law', at the CEL Specialists Group meeting in Iguazú. Later she circulated the draft Model Water Law document to the Spanish speaking group, who integrate the 'Foro de Especialistas de Aguas de Sudamérica' and are members of the Specialist Group on Water and Wetlands.

Since then, Marta has been working closely with the regional group to develop responses to the document. The ELC and Marta Rovere have worked with the expert body on several Water Projects and Expert Forums, where they discussed and made proposals to improve water legislation and water policies.

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It is hoped that when submissions have been received it will be possible to incorporate the comments into the draft Model Water Law document and finalize it for distribution to the ELC, CEL and members of the Specialist Group. Subject to funding, the report may be sent to a legal drafter to have the principles contained in the document written up as a Water document, which could also be translated into Spanish.

It may be necessary for the Commission on Environmental Law to examine ways to encourage greater participation within the Specialist Groups. For example, this Specialist Group example shows that small, regional working groups can produce good outcomes. Expecting responses by email may not always be the most effective way of keeping members engaged and also accountable. The Commission should expect that people who are appointed to the CEL and the Specialist Groups will actually contribute to the work of the Specialist Groups. After all, it is a prestigious appointment to belong to the CEL.

In another activity of the group, Rosemary Lyster and Marta Rovere both provided comments on the draft water law of Costa Rica, as requested by the IUCN Regional Office for Mesoamerica (ORMA). This is a good example of how the principles incorporated in the draft Model Water Law can be used to assist with the analysis of how to improve a country's draft Water Law.

Finally, in early October, Marta Rovere, Alejandro Iza and Sheila Abed presented the outcomes of an IUCN project on glaciers during the II Latin American Congress on National Parks and other Protected Areas held in Bariloche, Argentina.

*Rosemary Lyster and Marta Rovere*  
*Co-Chairs Water and Wetlands Specialist Group*

### **Protected Areas Specialist Group**

The Specialist Group on Protected Areas was re-formed with a new mandate following the CEL Steering Committee in May 2007 in Sao Paolo. The SGPA is co-chaired by Melinda Janki (Guyana) and Rodrigo Agostinho (Brazil). Membership is currently about a dozen members. The SGPA has provided advice to the IUCN Regional Office in Bangkok on comparative connectivity issues with Liliانا Maslarova providing advice on Eastern Europe. The co-chairs also delivered papers to the Latin American Parks Congress. Rodrigo Agostinho spoke about issues relating to protected areas in Brazil. Melinda Janki delivered a paper on governance and protected areas – using as an example of good governance the protected area which has been established by the WaiWai community over their lands in southern Guyana.

*Melinda Janki and Rodrigo Agostinho*  
*Co-Chairs Protected Areas Specialist Group*

### **Trade and Environment Specialist Group**

On October 4, the first of two papers being prepared by the Specialist Group on Trade and the Environment was presented during the II Latin American Congress on National Parks and other Protected Areas held in Bariloche, Argentina, 30 September to 6 October 2007. The paper, which is now being reviewed by members of the Specialist Group, explores ecosystem services flow in international trade, in particular virtual flows not captured by the market, and will serve as a basis for discussions on how the international trading regime can better respond to the 21st century challenge posed by global ecosystem change. The second paper under development takes a radically different perspective and will explore the normative conditions under which successful local sustainable development strategies, that have international trade as a central element, operate. This paper includes information gathered from a number of local experiences and is meant to provide a foundation for a discussion on how trade rules can be made to work in favour of such local and sustainable endeavours.

The Specialist Group is also taking the presentation of the first paper as an occasion to re-organize its membership. Over the next year, the group will be discussing the two draft papers as well as its participation in the upcoming World Conservation Congress in Barcelona, where the papers will be submitted for broader discussion within the Union.

*Nicolás J. Lucas and Marie-Claire Cordonnier Segger*  
*Co-Chairs Trade and Environment Specialist Group*

### CEL and WCPA Task Force on Protected Areas Law and Policy

In 2006 the Commission on Environmental Law (CEL) and the Commission on Protected Areas (WCPA) established a Task Force on Protected Areas Law and Policy. CEL and WCPA members Melinda Janki (for CEL) and Ben Boer (for WCPA) were appointed as co-chairs of the Task Force. Members of the Task Force are drawn from both CEL and WCPA and come from a wide range of countries.

The Task Force is focused on analysing existing governance in protected areas and providing advice on improving governance models. The general objective of the Task Force is to identify the legal principles and mechanisms that should be applied with using the IUCN management categories, including providing guidance on legal mechanisms for recognising privately owned, co-managed and community conserved areas. The specific objectives of the Task Force include analysing the legal issues raised by private/community owned/managed protected areas and proposing legal solutions to accommodate rights and enforce responsibilities. The Task Force will facilitate interaction between and conduct of workshops for members of the task force, protected area managers and legal researchers.

In the past year, groundwork research directed to the Task Force's terms of reference has been being carried out under a project established at the University of Ottawa in collaboration with the IUCN Academy of Environmental Law, under a grant from the Social Sciences and Humanities Research Council of Canada (SSHRC), as well as research support from Parks Canada. This enabled the employment of several senior

research assistants under the supervision of Professors Jamie Benidickson and Ben Boer. The research so far has resulted in a range of legal research analyses, a comprehensive electronically accessible bibliography, a matrix for the standardized analysis of protected areas legislation and a detailed list of contents of a preliminary report. A small workshop in November 2007 in Veracruz, Mexico, focussed on protected areas law and policy and the use of the IUCN categories of protected areas, with a view to generating several case studies for coastal areas and, in particular Ramsar sites in the State of Veracruz.

In 2007 the IUCN Environmental Law Centre initiated a major project on protected areas legislation. The Task Force studies currently being carried out through the SSHRC will also be used to support that project.

As case studies are developed and further research is done, material will be placed on both the CEL and WCPA web sites for the use of the Task Force. The website material will also be accessible to other researchers working in this field.

A workshop for members of the Task Force and development researchers is being planned for the spring of 2008, in order to review the research and case studies developed to that point, and to begin to draft a major report to be presented at the World Conservation Congress in Barcelona in October, 2008. That report is intended to include recommendations for the enhancement of legislative and policy frameworks; protected area case studies for different kinds of land tenure and marine tenure; a template for legislative drafting; and a comprehensive bibliography.

*Melinda Janki and Ben Boer  
Co-Chairs Task Force on Protected Areas*



## IUCN Academy of Environmental Law

It is now nearly five years since the initial launch of the IUCN Academy of Environmental Law by the Commission on Environmental Law (CEL) at a world-wide colloquium at Shanghai Jiao Tong University in 2003. Over the past year, the Academy has considerably developed its membership base, and has set up two major committees to carry forward its work in teaching and research. The Secretariat is now well established, with the financial support of Environment Canada, Health Canada and Hydro Quebec, together with the provision of office space, administrative and accounting services by the Civil and Common Law sections of the Faculty of Law at the University of Ottawa. The Secretariat has considerably expanded its operations in order to more adequately communicate with member institutions and meet the needs of Academy's committees and to facilitate interactions with key bodies, including CEL and the Environmental Law Centre (ELC).

### **Membership of the Academy**

Through meetings in Europe, China and South America along with other initiatives, membership development in the current year has been directed towards securing a representative institutional membership base. There are now some 70 institutions which have either renewed their membership or have been approved as new members. A special effort is being made to ensure that new institutional memberships are generated from under-represented regions.

### **The Academy's Annual General Meeting in Rio de Janeiro and meetings of the Governing Council**

The Academy's Collegium, consisting of representatives of member institutions, met in Rio de Janeiro prior to the Academy's 2007 Colloquium, followed by two meeting sessions of the Governing Council. A Nominating Committee was set up to provide guidance for the election of the Academy's first elected Governing Council late in 2007.

An Academy Teaching and Capacity-Building Committee was established with the purpose of advising the Academy with respect to the teaching and academic capacity-building activities of the Academy, and to develop programs and curricula for environmental law teaching and academic capacity-building. The Committee's co-chairs are Prof Rob Fowler of the University of South Australia and Prof Lye Lin Heng of the National University of Singapore.

An Academy Research Committee was also appointed, to provide guidance and direction for the Academy on new research needs, generating new research proposals and fostering publications and dissemination of research reports. This initiative follows a valuable discussion of research opportunities conducted in April with the financial support of the International Development Research Centre of Canada (see further below). The Committee's co-chairs are Prof Ben Richardson of Osgoode Hall Law School, Canada and Dr Simone Borg of the University of Malta.

### **The 2007 Colloquium: Rio + 15: A Legal Critique of Ecologically Sustainable Development**

The Academy's annual colloquium in Paraty, Brazil attracted around 100 participants from all regions of the world, with some 70 papers being given on a wide range of topics relating to the theme of the colloquium. The Colloquium was organized by the Law for a Green Planet Institute of Brazil on behalf of a consortium of Brazilian universities, in close collaboration with the Academy's Secretariat. Selected conference papers will be edited and incorporated into the regular series of IUCN Academy Research Studies to be published by Cambridge University Press.

### **The 2008 Academy Colloquium in Mexico**

During the 2007 Colloquium a Memorandum of Understanding was signed between the Academy and the President of the Metropolitan Autonomous University, Mexico, to hold the 2008 Colloquium in Mexico City on the theme of *Environmental Law and Poverty Alleviation* on 10-15 November 2008.

### **Research Workshop and Research Committee Initiatives**

An Academy Strategic Research Planning Workshop took place at the University of Ottawa under the auspices of the Academy in April 2007 with some 40 participants, including Thomas Greiber representing the ELC. As a result of the workshop and a meeting at the Brazil Colloquium, the new Research Committee has begun to explore a major research project on climate change. This project is envisaged to include a substantial conference on the topic in 2008 involving professors from a wide range of universities as well as members of the CEL Specialist Group on Energy Law and Climate Change and other partners. The project was further discussed at a small research workshop under the auspices of the Research Committee which took place on October 15, 2007 in Vancouver with the financial support of the University of Ottawa-based Emerging Dynamic Global Economies Network, of which the Academy is a member.

### **Teaching and Academic Capacity-Building Initiatives**

The Teaching and Capacity-Building Committee held a meeting in Bonn on 13 - 14 September. The meeting discussed a wide range of issues and made a number of substantial recommendations. These included provision of greater academic support for environmental law teachers by providing a range of services through the Academy's website and the development of a structure for the delivery of "teaching the teachers" course that can be presented jointly by expert environmental law teachers from member institutions of the Academy and regional/country experts, linking with the IUCN regional offices in the relevant region wherever possible.

The Academy was also called upon to support the teaching initiatives of Academy member institutions and to develop protocols concerning the role of the Academy in such initiatives. These protocols were recommended to include: procedures for assisting with the develop-

## IUCN Oceania

ment, promotion and delivery of specialist Masters programs within particular countries or regions, the processes of consultation between the Secretariat, member institutions and the Teaching and Capacity-Building Committee in relation to the development of new teaching and capacity-building initiatives, as well as processes for mutual consultation between the initiatives of the Academy in relation to teaching, capacity-building and research and the IUCN Environmental Law Programme.

### Curriculum development project on Compliance and Enforcement of Multilateral Environmental Agreements

Phase One of this academic curriculum development project is being conducted with financial support and close involvement of the UNEP Environmental Law Programme. Carl Bruch (ELI) has served as Lead Consultant with Jorge Caillaux (Peru) and Loretta Feris (South Africa) contributing major components of the curriculum. Phase Two of the project involves the pilot testing of the curriculum and materials by Academy member institutions in a number of regions, which is planned to be commenced in 2008.

### Academy website

The Academy's website has undergone substantial improvement since its inception in October 2006 with more regular news items being posted and efforts being made to ensure that items in the IUCN's official languages as well as Chinese are included (see <http://www.iucnael.org>).

For further information on the Academy, including membership inquiries, please contact:

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*Jamie Benidickson and Ben Boer  
Co-Directors  
Academy of Environmental Law*

Earlier this year, the IUCN Regional Office for Oceania announced the launch of an environmental law capacity-building and technical assistance program for the Pacific islands region. Consistent with the aims of the global IUCN Environmental Law Programme, this program aims to promote the development and implementation of environmental law that is effective and appropriate to the local context.

Early highlights of the regional program include:

- delivering a training session on community-based conservation and the law for participants from eight Pacific island countries;
- drafting by-laws for the establishment and management of national heritage sites in Fiji;
- providing written and verbal briefings on protected area management options in Fiji;
- reviewing draft environmental impact assessment regulations for Fiji; and
- launching an environmental law internship program.

Protected area law and policy is emerging as a key priority area for the program, with current work including: development of national protected areas legislation; advice on legal mechanisms for establishment of community-conserved areas; and, preparation for a national workshop on compliance and enforcement strategies for locally managed marine areas.

The program will be delivered in collaboration with the IUCN Environmental Law Centre (IUCN ELC), the IUCN Commission on Environmental Law (IUCN CEL) and the Secretariat of the Pacific Regional Environment Programme (SPREP). For more information about this initiative, contact Pepe Clarke, Legal Advisor, IUCN Regional Office for Oceania at [pepe.clarke@iucn.org](mailto:pepe.clarke@iucn.org)



*Pepe Clarke  
Legal Advisor, IUCN  
Regional Office for  
Oceania*

### **Shared waters: publication and training programme in Mesoamérica**

In 2007, the ELC and IUCN Mesoamérica published the book *Gobernanza de Aguas Compartidas: aspectos jurídicos e institucionales*. This is the result of a joint effort including contributions of the *Dialogue on governance of shared basins* held in Guatemala 2004 (Water Unit, IUCN Mesoamérica) and the input of the authors, Alejandro Iza and Grethel Aguilar. This publication provides information on legal and institutional frameworks at the global level and focuses on the experiences relating to shared waters in Mesoamerica. The book was launched during a training programme where a number of representatives from local governments, NGOs, civil society, and IUCN partners were trained. This programme was organised by IUCN Mesoamérica and the ELC in July 2007 and conducted in the following border areas: Mexico-Guatemala (Suchiate and Coatán Rivers); Guatemala-El Salvador (Paz River); and Costa Rica-Panamá (Sixaola River), all areas in which IUCN Mesoamérica is working through its Water Management Unit (Suchiate and Coatán Rivers through the Tacaná Project) and through the Alianzas Programme (through the Guatemala-El Salvador consortium of Rio Paz, and the Costa Rica-Panamá Consortium of Talamanca-Bocas del Toro).

### **EIA and SEA**

IUCN in Mesoamérica has been working on the strengthening of Environmental Impact Assessment (EIA) at the national and regional level. IUCN, with other partners, have been delivering capacity building and technical assistance in such topics as Strategic Environmental Assessment (SEA) and EIA. Some of the outcomes include the harmonization of EIA and SEA regulations, by means of technical assistance in the drafting of these regulations in countries such as Costa Rica, and Guatemala, and more recently Nicaragua, Belize and Panama.

### **Transboundary EIA**

Within the harmonization process IUCN Mesoamérica has been working closely with the ELC on transboundary EIA matters and published the book *Evaluación de Impacto Ambiental Transfronteriza en Centroamérica, Lineamientos Generales* (EPLP 62, authors Aguilar, Iza and Cedeño). A work plan has been defined to carry on supporting transboundary EIA activities in the region.

### **Towards the development of water laws in Central America**

Central America has an urgent need to update their water framework towards a more integrated approach. In this sense Costa Rica requested IUCN to undertake a review of their draft water law. IUCN Mesoamérica and the ELP activated the CEL network worldwide to receive inputs from many parts of the world (eg France, Australia, South Africa and Central and South America). The input was presented to the Ministry of Environment of Costa Rica. As a consequence, Panama also requested comments on its draft water law. Comments based on CEL input,

from Central and South American experts on water law, was presented to the Environmental Commission of the Congress of Panama.

### **Working together with Com+: training the media**

Com+ is an alliance of international organizations and communications professionals that work towards sustainable development and includes partners such as WBCSD, CNN, BBC, Reuters, World Bank and IUCN, among others. This year the ELP together with IUCN Mesoamérica are joining efforts with Com+ towards the organization of a workshop aimed at journalists and reporters in the region. This workshop is being held in Honduras, in close coordination with the Honduras Congress, so the media can be trained in environmental law issues. The topic will be Situation of Marine Resources in Central America and the Caribbean, where participants from all over the region will meet in *Islas de la Bahía* to learn more about our marine resources and the impacts of development.

### **Towards the Mesoamerican Environmental Law Congress in 2009**

IUCN Mesoamérica has started developing an agenda for the Environmental Law Congress in Mesoamérica, organized by IUCN (members, CEL, ELC and Mesoamérica) in partnership with other environmental law organizations in the region. This Congress is programmed to take place in 2009, with initial meetings of the organizational committee. An agenda for preparatory workshops has been drafted.



*Marianela Cedeño B.  
Unidad de Política y  
Gestión Ambiental  
IUCN/Mesoamérica  
(ORMA)*

## Fellows and Interns 2007

### 2007 InWEnt Fellow



#### **Siu-Lang Carrillo Yap**

*June – September 2007*

Siu-Lang Carrillo Yap spent a period of three and a half months as an intern at the ELC. Siu-Lang's internship was part of the International Leadership Training on Biodiversity Management in which she participated as an InWEnt fellow. She is currently completing her Masters thesis on the property rights of indigenous communities at the Catholic University of Peru

and has just been accepted to do her PhD at the University of Göttingen in Germany.

During her stay at the ELC, she focused on customary law and indigenous people's issues, providing assistance on two projects: 'Strengthening Voices for Better Choices', a multi-year global forest governance project which has identified the obstacles to sustainable and equitable forest management in six countries and she conducted legal research on international forest law for the development of the UNITAR course book on biological diversity.



#### **Violeta Gustale Gill**

*May – September 2007*

Violeta Gustale gained her law degree at the Asunción National University, Paraguay. She worked on a number of community projects in Asunción and has been a staff member of IDEA, a Paraguayan NGO, since 2001. During her three months internship at the ELC Violeta undertook legal research on the concept of sustainable use as well as on

global and regional biodiversity-related environmental agreements, and prepared input on both topics to the UNITAR course book on biological diversity.

### 2007 Interns



#### **Rosalía Ibarra Sarlat**

*March – May 2007*

Rosalía Ibarra Sarlat, a Mexican lawyer, is a PhD candidate at the University of Alicante, Spain. She is currently writing her doctoral thesis on Clean Development Mechanisms within the context of Sustainable Development.

As an intern at the ELC the primary focus of her work was to help to prepare the second edition of the '*Manual*

*de Derecho Ambiental en Centroamérica*', which involved updating, revising and writing additional information in each chapter of the publication. She also revised and prepared the manuscript '*Gobernanza del agua en Mesoamérica: dimensión ambiental*' for its publication.



#### **Andrea Düppen**

*July – September 2007*

Andrea Düppen spent three months with the ELC working mainly on projects concerning the topic of Access and Benefit-Sharing of Genetic Resources (ABS). She took part in writing an information brochure for users of genetic resources in Germany as well as an article for a German environmental magazine on the topic and worked on creating a new module on

ABS for TEMATEA ([www.tematea.org](http://www.tematea.org)).

Andrea was also involved in the process of updating and developing new content for a course book on biological diversity for the UNITAR distance learning programme on international environmental law. Having completed her final exams in law in November 2007, she returned to the ELC to work as a researcher, *inter alia*, on the development of another course book for the UNITAR programme.

## ELC Staff News

### Departure of...



#### **Christophe Krolik**

*October – December 2007*

Christophe Krolik, a French Law teacher and PhD candidate from the University of Limoges-CRIDEAU, joined the ELC for a two-month internship. His PhD research relates to The Law of Energy for Sustainable Development.

At the ELC Christophe provided legal assistance on IUCN projects with the primary focus being energy related

questions. Among other things, he undertook extensive legal research and prepared a background paper on a rights-based approach to energy, attended meetings as well as an international conference on renewable energies.

Christophe also assisted in research and development of a concept paper on transboundary environmental impact assessment.



#### **Water Governance R&D Consultant, Olga Buendia:**

Olga came to the ELC as an intern in April 2006 and quickly evolved into Water Governance R&D Consultant to conduct legal analysis on a number of water related projects and issues including the RULE and NEGOTIATE publications in the IUCN Water and Nature Initiative (WANI) series. In September this year she

moved back to Madrid to take up a position in the environmental department of a private law firm. We wish her all the very best in her new position.



#### **Legal Officer, Sharelle Hart:**

In her 18 months at the ELC, Sharelle has worked on a range of projects including several on marine issues (especially relating to high seas governance); was editor of a publication on transboundary natural resources which should be available early in 2008; conducted a legal review of the European Union Wildlife Trade Regulations and supported the IUCN delegation

at CITES meetings. Sharelle is moving to Vanuatu where her husband will be working with a renewable energy NGO and they are expecting their first child early next year.

We will miss her for many reasons: among them, her very down to earth and positive attitude, calmness and composure in the face of deadlines, superb communication and organizational abilities and, last but not least, for her lively personality. We wish her all the best and will remain in touch.



*In front, left to right: Jil Self (Programme Assistant), Sharelle Hart (Legal Officer).  
Middle row: Andrea Lesemann (Documentation Officer), Ann DeVoy (Project Assistant), Daniella Montag-Doms (Finance Officer/Human Resources Officer), Anni Lukács (Senior Information/Documentation Officer), Daniel Klein (Legal Officer).  
Back row: Thomas Greiber (Legal Officer), Monica Pacheco-Fabig (Assistant Documentation Officer), Dr Alejandro Iza (Director), Andrea Düppen (Legal Consultant).  
Missing from the photo: Françoise Burhenne-Guilmin (Senior Counsel).*

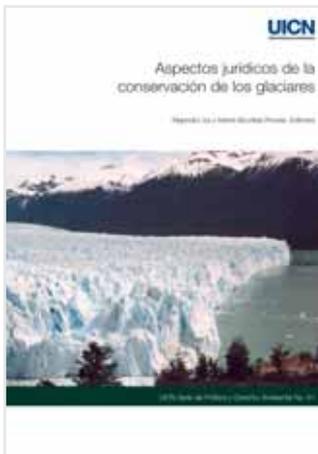


**Gobernanza de aguas compartidas: aspectos jurídicos e institucionales**

Aguilar, Grethel; Iza, Alejandro; IUCN EPLP No.58

This book, part of the Environmental Policy and Law Paper Series, was elaborated by Grethel Aguilar, Regional Director of IUCN-Mesoamerica and Alejandro Iza, Director of the IUCN Environmental Law Centre.

It uses international law as a starting point and explains how its provisions and principles can be used as a mechanism for a good management of shared basins and the promotion of good water governance at the transboundary level. The aim of this book is to help to strengthen the capacities of decision-makers and water stakeholders, promote the cooperation between States that share water resources, and contribute to further regional integration within the context of a political border that must be understood as a space to test and to forge cooperation and in which water has a fundamental role to play. The book provides the most important legal and institutional features of water management at the global level but with special emphasis on Central America.

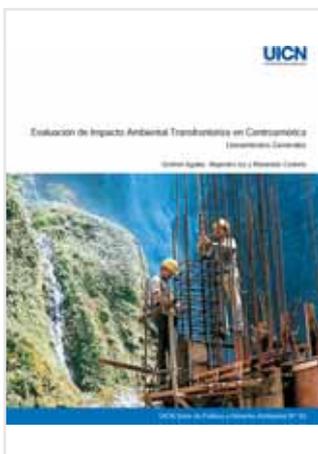


**Aspectos jurídicos de la conservación de los glaciares**

Alejandro Iza y Marta Brunilda Rovere (Editores); IUCN EPLP No.61

This publication highlights the main gaps in policy and legislation relating to the conservation of glacier ecosystems in South American countries. Through an in-depth study of the legal status and applicable laws and policies in Argentina, Chile, Bolivia, Colombia, Peru, Ecuador and Venezuela, the book offers a series of specific recommendations for the design of a legal framework aimed at protecting these vulnerable ecosystems. The book is supplemented by an analysis of the legal situation of glaciers at the international level. The gap analysis and prospective recommendations look at glaciers from different perspectives: protected areas, landscape conservation, river basins utilization, climate change, and environmental services. This unique publication aims at raising awareness on the part of the general public regarding the importance of these ecosystems for the survival of mountain ecosystems and their role as a provider of various environmental services, such as water.

The reduction of glacier masses will have a significant impact on the landscape, the utilization and quality of water, the flora and fauna in the Andean Region, and the livelihood of the local population. The deterioration of the glacier ecosystem has been hastened by climate change, and as well as by the impact of infrastructure projects, such as the case of Pascua Lama (Chile).



**Evaluación de Impacto Ambiental Transfronteriza en Centroamérica: Lineamientos Generales**

Aguilar, Grethel; Iza, Alejandro; Cedeño, Marianela; IUCN EPLP No.62

Central America is a region that shares ecosystems, river basins, and protected areas. The development of projects, plans or activities likely to produce transboundary impacts need to be appropriately considered, and an EIA process established and anchored in regional policies and legislation. This book, elaborated by Dr. Alejandro Iza, Director of the ELC, Dr. Grethel Aguilar, Regional Director, IUCN ORMA, and Marianela Cedeño, environmental lawyer at the IUCN Regional Office in Mesoamerica analyses the relevant initiatives on transboundary EIA in the world, and advances the basic elements of a regional agreement on EIA in a transboundary context for Central America.



**Addressing the Problems of Access: Protecting Sources, While Giving Users Certainty**

Cabrera Medaglia, Jorge; López Silva, Christian; IUCN EPLP No.67, ABS Series No.1

This book provides a systematic analysis of the requirements of access law, both the CBD requirements and the basic requirements of enforceable legislation, which are often not considered in analysis of ABS legislative issues. Often key legal issues that have a significant impact on enforceability of ABS agreements are not addressed in national legislation, therefore, this book addresses these issues with the aim to recognize and understand the nature of the legal impediments that must be addressed for the drafting of functional ABS legislation. Although the book will be premised on the issues of access, it will inevitably make reference to corresponding issues of benefit sharing that are relevant for articulating the legal principles that inform a functional ABS system. In addition, this publication will provide information regarding the kinds of issues and solutions that can function legally to enable ABS implementation. Its conclusions will look at particular legal concepts that, if accepted, could form the basis for functional ABS systems that respond to the identified concerns.

accepted, could form the basis for functional ABS systems that respond to the identified concerns.



**Beyond Access - Exploring Implementation of the Fair and Equitable Sharing Commitment in the CBD**

Walløe Tvedt, Morten; Young, Tomme Roseanne; IUCN EPLP No.67, ABS Series No.2

In the 12 years since the adoption of the Convention on Biological Diversity, its provisions for access and benefit-sharing remain the least implemented of any of the commitments in the convention. Fewer than 11% of CBD Parties have adopted substantive ABS law, and nearly all of these are developing countries. This experience has been almost entirely with the 'access' side of the equation - source country regulation of collection, testing and utilisation of genetic resources. Most of the CBD's specific ABS obligations, however, relate to the other side of the equation - benefit-sharing. This book goes beyond the provider-side or „access“ elements of ABS, considering the full range of ABS obligations, and how existing tools in user countries' national law can be used to achieve the CBD's third objective. This book addresses the specific obligations of the Convention; the laws of particular user countries which have either declared that their ABS obligations are satisfied by existing

national law, or begun legislative development; and the requirements, weaknesses and gaps in achieving benefit-sharing objectives, and the ways in which new or existing legal tools can be applied to these requirements.



**A Moving Target: Genetic Resources and Options for Tracking and Monitoring their International Flows**

Ruiz Muller, Manuel; Lapeña, Isabel; IUCN EPLP No.67, ABS Series No.3

In current discussions of the „Certificate of Origin, Source and Legal Provenance,“ attention has been given to the legal and practical implications associated with tracking the flow of genetic resources. Knowing what is where, how it got there, and whether conditions and restrictions were complied with is a critical aspect if an ABS regime is to be effective in its implementation. This book will provide insights into options and components for the development of a national/international system for the tracking and monitoring of genetic resources to ensure compliance with ABS provisions of the Biodiversity Convention. It includes discussions addressing the practical options for such a system, its costs and economic impacts, and its possible role in the ABS framework.

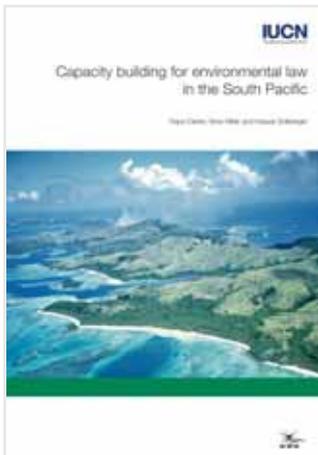


### **Evaluación de impacto ambiental y diversidad biológica**

Iza, Alejandro; Astorga Jorquera, Eduardo; Soto Oyarzún, Lorenzo; IUCN EPLP No.64

This is a comparative study of the regulatory frameworks of Environmental Impact Assessment (EIA) of selected South American countries (Argentina, Bolivia, Brazil, Chile, Ecuador and Peru). Taking into consideration the different legal situation of each country, this book analyzes the extent to which these regulatory frameworks integrate the biological diversity factor.

Taking as a starting point the environmental policy of each of these countries, the publication offers an in-depth analysis of the sectoral legislation of the selected countries and the manner in which the concept of biological diversity has been incorporated into the EIA by these countries. The publication also includes an analysis of some relevant cases and an annex with the resolutions of the Convention of Biological Diversity which are most important in the EIA context.



### **Capacity Building for Environmental Law in the South Pacific**

Clarke, Pepe; Millar, Ilona; Sollberger, Kaspar

The report provides a concise overview of the following topics: environmental issues in the South Pacific, environmental law and policy in the South Pacific key institutions and existing capacity-building programs and proposed capacity-building strategies and activities. Detailed consideration of international and regional environmental law in the South Pacific, and reviews of selected national environmental laws in a series of country profiles are provided. Profiles of relevant institutions and strategies for building the capacity of key stakeholders, including government agencies, civil society organisations, academic institutions and the judiciary are presented. A range of proposed activities intended to build environmental law capacity in the region, including: outreach and consultation; communication and networking; technical assistance; professional and academic exchanges; training programs; community education; conferences, seminars and meetings; and, the establishment of environmental law programs and centres throughout the region are reviewed.



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## IUCN – The World Conservation Union

### **IUCN Vision**

A just world that values and conserves nature

### **IUCN Mission**

*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*

Founded in 1948, The World Conservation Union brings together States, government agencies and a diverse range of non-governmental organizations in a unique world partnership: 1.086 members in all, spread across some 147 countries.

As a Union, IUCN seeks 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. A central Secretariat coordinates the IUCN Programme and serves the Union membership, representing their views on the world stage and providing them with the strategies, services, scientific knowledge and technical support they need to achieve their goals. Through its six Commissions, IUCN draws together over 10,000 expert volunteers in project teams and action groups, focusing in particular on species and biodiversity conservation and the management of habitats and natural resources. The Union has helped many countries to prepare National Conservation Strategies, and demonstrates the application of its knowledge through the field projects it supervises. Operations are increasingly decentralized and are carried forward by an expanding network of regional and country offices, located principally in developing countries.

The World Conservation Union builds on the strengths of its members, networks and partners to enhance their capacity and to support global alliances to safeguard natural resources at local, regional and global levels.

## IUCN Environmental Law Programme

### **IUCN Environmental Law Programme Mission**

*To assist in laying the strongest possible legal foundation for environmental conservation in the context of sustainable development to support international and national efforts.*

The IUCN Environmental Law Programme (ELP) is an integrated programme of activities developed to achieve the IUCN vision and mission. The Programme is delivered through the collective efforts of the –

**Commission on Environmental Law** – an extensive global volunteer network of over 500 environmental law specialists in 138 countries,

**Environmental Law Centre** – a professional international office established in Bonn, Germany, in 1970 with 15 highly skilled legal, policy and information specialists, and

**IUCN Lawyers** based in regional and country offices around the world.

Visit the IUCN Environmental Law Programme's website at:

**[www.iucn.org/themes/law/](http://www.iucn.org/themes/law/)**

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