
CEL STEERING COMMITTEE MEETING

13 - 15 JUNE 2005

CAPE TOWN, SOUTH AFRICA

Minutes of the Meeting

1. Call to Order

The Chair of the Commission on Environmental Law (CEL), Ms. Sheila Abed, called the meeting to order at 9:20 a.m. She conveyed the regrets of the following CEL Steering Committee members who could not be present at the meeting: Mrs. Edith Brown-Weiss, Mr. Veit Koester, Dr. Antonio La Viña, and Ms. Robyn Stein. She then declared the presence of a quorum.

2. Opening of the Meeting

The Chair welcomed the members of the Steering Committee and guests, and delivered her opening remarks. She described the new Steering Committee as a “dream team” and thanked the Head of the IUCN Environmental Law Programme (ELP), Dr. Alejandro Iza, for his extraordinary support. She explained that the meeting would focus on the amendment of the CEL Bylaws and the adoption of other specific regulations. She also introduced the CEL Liaison Officer, Mrs. Patricia Abed, and advised the Steering Committee to count on the CEL Liaison Officer as the link with the Chair. She also encouraged the members of the Steering Committee to acquaint themselves with each other.

3. Introduction of Steering Committee Members and Guests

The following members of the Steering Committee and guests introduced themselves upon the invitation of the Chair:

a. Members of the Steering Committee

Mrs. Sheila Abed de Zavala (CEL Chair, Paraguay)
Dr. Alejandro Iza (Head, IUCN ELP and *ex officio* member)
Ms. Tatiana R. Zaharchenko (Ukraine)
Mr. Giuseppe Zaccagnini (IUCN Legal Adviser and *ex officio* member)
Mr. Samuel Nguiffo (Cameroon)
Dr. Antonio Benjamin (Brazil)
Ms. Nawzat Ali (Jordan)
Ms. Melinda Janki (Guyana)
Dr. Daniel Sabsay (Argentina)

Mr. John Scanlon (Australia)
Prof. Michel Prieur (CEL Deputy Chair, France)
Dr. Wolfgang Burhenne (Member-at-Large)

b. Guests

Ms. Maria del Mar Zavala (Paraguay)
Mrs. Patricia Abed (CEL Liaison Officer)
Ms Maria Socorro Z. Manguiat (ELC Legal Officer, Chief Rapporteur)
Ms. Jil Self (ELC Programme Assistant)

4. Adoption of Agenda and Rules of the Meeting

Upon motion made and duly seconded, the agenda for the meeting was adopted.

The Chair then presented the rules for the meeting, which were agreed to by the members of the Steering Committee.

5. Presentation on the ELP

The Head of the IUCN ELP gave the Steering Committee an introduction to the IUCN ELP, of which CEL forms a part.

6. The CEL Mandate (2005 to 2008)

Mr. John Scanlon explained the framework within which CEL would operate, starting from the IUCN Statutes, the adoption by the IUCN World Conservation Congress (WCC, IUCN's highest decision-making body) of the IUCN Programme, the ELP Component Programme Plan and the CEL Mandate. He emphasized that the Commission is obliged to help implement the Programme, the resolutions and recommendations adopted by the IUCN membership at the WCC. The challenge would be to prioritize the actions that needed to be taken. He noted that not everything needs to be done directly by the Commission or by the Steering Committee.

The CEL Mandate was then reviewed by the Steering Committee, with the Chair emphasizing that the Mandate is very broad. The Deputy Chair, Prof. Michel Prieur, reiterated the need to prioritize and group activities into types of actions.

Dr. Antonio Benjamin observed that while great strides had been made in achieving gender and geographical balance within the Steering Committee, there was a need for representatives from China and Eastern Europe and more representation in Africa. The Chair also advised the Steering Committee of a special request from Central America to have a representative in the Steering Committee, and agreed on the need for more representation from Asia.

7. IUCN Intersessional Programme and ELP Component Plan

The Head of the IUCN ELP presented highlights of the IUCN Intersessional Programme and ELP Component Plan for the Intersession Period of 2005 to 2008.

8. ELC Strategic Plan Review

The Head of the ELP went on to make another presentation on the outline Strategic Plan, which he emphasized is an ELP and not just an ELC Strategic Plan. He pointed out that the completion of the plan depended in part on some outputs of the Steering Committee meeting, and posed some questions for the consideration of the Steering Committee.

9. CEL 2005/2006 Annual Work Plan Review

Ms. Manguiat made a brief presentation of selected resolutions and recommendations adopted at the 3rd IUCN World Conservation Congress that were of relevance to CEL.

The Chair then presented a draft work plan for CEL, which she explained was based on a common work plan format for Commissions. She explained that human health and environment, human rights and environment, and environment and trade were themes along which she hoped to form Specialist Groups. She also informed the Steering Committee that dealing with environmental disasters was a priority for the IUCN Council, and that a high-level Task Force to develop a conceptual framework on environmental disasters, to be led by the IUCN Commission on Ecosystems Management, had been formed.

The presentation was followed by an open discussion, where the Steering Committee agreed that the work plan to be developed would cover the next 18 months, i.e., from June 2005 to December 2006, subject to review by the Steering Committee at its next meeting in early February 2006.

After lengthy discussions, a document entitled “Elements of a CEL Work Plan (2005 to 2006),” attached hereto as Annex I, was adopted. The Chair will send reminders to Steering Committee members regarding commitments made under the work plan and will monitor their accomplishment.

10. CEL Budget Submission for 2005

The Chair presented the Commission budget for the year 2005, advising the Steering Committee that CEL’s expenses would be audited by Ernst & Young and that the quarterly financial reports will be available to anyone from the Steering Committee who wants a copy. She brought the Steering Committee’s attention to the US \$40,000 support to subsidiary structures (e.g., Specialist Groups) that had been allocated under the CEL budget, and observed that due to the slow expenditures, US \$100,000 was still available for workshops and publications. She pointed out that for the first year of CEL’s operations, expenditures on activities should not go beyond what is available in the budget, but the long-term vision is to raise funds for additional activities. The Head of the ELP clarified that some of the activities do not need funding, some of these can be funded by ELC projects, and others can be the subject of joint fundraising between CEL and the ELC.

11. Adoption of the New CEL Bylaws

The Steering Committee discussed certain issues relating to the Bylaws, and then assigned its redrafting to a smaller group.

These issues centered on:

a. membership in the Commission

- the ideal size of the CEL membership

The Steering Committee did not set a fixed number for CEL membership, but emphasized the importance of a committed membership.

- different categories of members
- the process of nomination to CEL membership

It was agreed that referees for the nominees need not be confined to two persons from the same region. In addition, the names of nominees to CEL membership will not be posted on the ELP website, as proposed in the draft Bylaws, but will be made available through the CEL members' portal. IUCN national committees will then be advised of the new members upon their appointment.

- responsibilities of members

The meeting agreed that a policy on the rights of CEL members will be developed for next year's Steering Committee meeting.

b. composition of the Steering Committee

It was pointed out that while geographical balance was sought to be achieved within the Steering Committee, CEL is moving away from the practice of having regional Vice Chairs to emphasize that the commitment of each CEL Steering Committee member is to the global interest of the Commission.

c. the role of the Legal Adviser in the SC and the Executive Committee.

It was agreed that the Legal Adviser will not be a member of the CEL Executive Committee, but will remain a non-voting member of the CEL Steering Committee. The Head of the ELP will continue to be a member of the Executive Committee, but will be a non-voting member. One member of the Steering Committee, to be elected by the Steering Committee, will join the Executive Committee.

After a discussion of the redrafted Bylaws, the members of the Steering Committee unanimously adopted the new CEL Bylaws, a copy of which is attached hereto as Annex II. The Steering Committee further authorized the Executive Committee to finalize the Bylaws and make editorial changes that do not affect the substance of the Bylaws.

12. Rules of Procedure for Admission to CEL Membership

The Steering Committee reviewed the CEL membership list as it stood immediately after WCC 3, with a view towards making recommendations to the Chair regarding the

roster of honorary members, and whom among the former CEL members they would endorse for nomination for the present Intersessional period.

There was a consensus that a letter will be sent to all former members, telling them that they are no longer members, according to the IUCN Statutes, and that there is now a new process of nomination for CEL membership. If they are interested to apply for membership, they will also be invited to fill up a standard form and to return this form within 40 days from the letter's being sent out. The Chair will then respond to the applicants within two months from the deadline set out in the letter, but the Steering Committee will endeavor to complete its mail balloting on CEL membership within two months. The letter will not be a guarantee of appointment to CEL membership. The Steering Committee members will then contact those former members whose nominations they will support.

The Steering Committee members were also invited to advise the Chair of other qualified nominees for CEL membership.

13. Steering Committee Rules Review and Discussion

The revision of the draft "Steering Committee Internal Regulations" was assigned to a smaller group. These internal regulations were subsequently incorporated into the redrafted CEL Bylaws that were adopted during the meeting.

14. Rules of Procedure for Specialist Groups

The refinement of these rules was assigned to a smaller group, after a brief discussion of some issues, including:

a. Specialist Group membership

They agreed that each CEL member cannot join more than two Specialist Groups without the approval of the Chair. It was also agreed that it was not necessary for a Specialist Group member to be a CEL member. Reference to the requirement that lawyer-members of the Specialist Group become CEL members was removed.

b. Chairmanship of a Specialist Group

To the extent possible, Specialist Group Chairs should be lawyers. If, however, a non-lawyer is the most qualified person to chair a Specialist Group, then this person may be appointed as a Co-Chair. The Steering Committee agreed to give the CEL Chair wide discretion in the final selection of Specialist Group Chairs and Co-Chairs.

c. Specialist Group Coordinator within the SC

It was agreed that a Specialist Group Coordinator would be appointed from among the Steering Committee members.

d. Annual Review of the SGs

The Rules of Procedure should indicate that the Specialist Groups will be reviewed annually. The Steering Committee agreed that Specialist Groups will be required to

report on their activities twice a year, and that the ELC will set the timing for the SG requirements to coincide with IUCN reporting requirements.

The Rules of Procedure for Specialist Groups were merged into the redrafted Bylaws, which were adopted during this meeting.

15. Review of Past Activities of Specialist Groups

The CEL Chair shared information provided by the Specialist Group Chairs with the Steering Committee. The Steering Committee then went through a process of evaluating the Specialist Groups and agreed to retain the following Specialist Groups, subject to the review of their names, mandates and compositions under the subsequent agenda item:

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|--------------------------------------------------------------|-------------------------------|
| a. Armed Conflict and the Environment; | g. Indigenous People; |
| b. Implementation of the Convention on Biological Diversity; | h. Judiciary; |
| c. Energy Law and Climate Change; | i. Oceans; |
| d. Enforcement and Compliance; | j. Sustainable Use of Soils; |
| e. Ethics; | k. Trade and Environment; and |
| f. Human Rights and the Environment; | l. Water and Wetlands. |

16. Next Steps: Work Groups and Task Forces

The Steering Committee agreed to create the following additional Specialist Groups:

- a. Protected Areas; and
- b. Environmental Governance.

In addition, a Working Group on human health and the environment was also created. The Working Group will be requested to scope out the legal issues in this area, including how to give effect to WCC 3 resolutions adopted on this matter, and advise the Steering Committee on the need for the establishment of a CEL Specialist Group on this topic.

Task Forces on natural disasters and the Arctic regime were also created.

The list of Chairs and Co-Chairs appointed, as well as further steps to be taken to find other Chairs and Co-Chairs, is attached as Annex III.

The following persons volunteered to coordinate the Specialist Groups, Working Groups and Task Forces listed beside their names:

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|-----------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| a. Daniel Sabsay – Judiciary, Enforcement and Compliance; | e. Michel Prieur – Oceans and Environmental Governance; |
| b. Melinda Janki – Indigenous Peoples; | f. Robyn Stein – Water, Energy Law and Climate Change, and Soil and Desertification; |
| c. Samuel Nguiffo – Human Rights; | g. Antonio Benjamin – Ethics; |
| d. Tatiana R. Zaharchenko – Protected Areas and Biological Diversity; | h. Antonio La Viña – Trade and Environment; |

- i. Wolfgang Burhenne – Arctic Regime; and
- j. Sheila Abed – task forces and working groups.

The CEL Chair advised the Steering Committee that she would meet with the Co-Chairs of the Specialist Groups in October 2005.

17. Review of agreements and MOUs with other institutions.

This matter was not discussed at the meeting.

18. Policy to Adopt for Signing Agreements

The CEL Chair presented “Draft Guidelines for the Joint Action of CEL and Other Entities.” The group agreed to adopt a simpler document that leans more towards general principles. Mr. Giuseppe Zaccagnini reminded the Steering Committee that CEL is not a distinct legal entity and cannot sign binding agreements on behalf of IUCN, unless authorized by the Director General. Most of the agreements signed by CEL have been in the form of Memoranda of Understanding.

The redrafted Guidelines were merged into the CEL Bylaws as an annex and were adopted by the Steering Committee.

19. Review of Draft Charter for Partner Centres

The Steering Committee agreed that while it would continue to collaborate with partners, it would discontinue the practice of having CEL partner centres. Former CEL partner centres would be advised of this decision.

20. IUCN CEL “Label”

Mr. Scanlon gave the Steering Committee a briefing on the IUCN Academy on Environmental Law.

The Steering Committee requested the CEL Chair to contact the IUCN Director General as soon as possible, asking the Director General to expedite the drafting of the licence conditions for the use by the Academy of IUCN’s logo and to involve the IUCN ELP in this process. Thereafter, the CEL Chair is requested to negotiate a Memorandum of Understanding with the Academy to clarify the Commission’s relationship with them.

The Chair requested Mr. Scanlon and the Head of the ELP to assist her in this matter.

21. “Networking” Strategy Presentation

22. Outreach and Communication

The CEL Chair presented some ideas on the networking strategy as well as outreach and communication. The Steering Committee noted the importance of having one ELP website that integrates information from CEL and the ELC and the role of the ELC in helping coordinate communications. Details of the arrangements to operationalize the CEL Communication Strategy will be discussed between the CEL Chair and an ELC team.

23. Development of measurable goals and evaluation methodology

Due to lack of time, the Steering Committee agreed that this matter will be discussed by e-mail, with the Chair sending her proposals to the members of the Steering Committee to kick off discussions.

24. Other Matters

a. Precautionary Principle

The Steering Committee decided to authorize Dr. Benjamin to attend the precautionary principle meeting taking place in Jacksonville, Florida from 21 to 23 July 2005 on behalf of the IUCN Commission on Environmental Law to provide specialized legal advice on the issue, in accordance with resolutions and recommendations adopted by the IUCN General Assembly and World Conservation Congress, and to convey the following messages to the meeting:

- a. The precautionary principle is a major development in environmental law;
- b. The application of the principle has had theoretical and practical impact all around the world;
- c. Its impacts have been positive and its application has not blocked the economic development of least developed countries; and
- d. The principle should not be weakened.

The Steering Committee noted that CEL's presence in the meeting does not imply an endorsement of the process. Nor will any of Prof. Benjamin's legal advice represent an IUCN policy position on this issue, as CEL's input will be technical in nature. Prof. Benjamin is thereafter requested to provide a brief report on the meeting to the CEL Chair.

b. CEL Executive Committee

After motion made and duly seconded, Mr. John Scanlon was elected to the Executive Committee. Mr. Scanlon will serve on the Executive Committee until the next Steering Committee meeting.

c. Other Members of the Steering Committee

The Steering Committee agreed to defer to the wise judgment of the CEL Chair on the appointment of additional members of the Steering Committee from the underrepresented regions of the world such as South and East Asia, and finding other appropriate means for addressing this issue. The Steering Committee notes, however, that the Steering Committee is no longer structured around the system of appointing Vice Chairs, and its members have committed to assist the CEL Chair in finding appropriate representatives from these regions.

d. Honorary Members

The Steering Committee recommended the following persons to the CEL Chair for appointment as honorary CEL members:

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|------|-----------------------|-------|--------------------|
| i. | Wolfgang Burhenne; | viii. | Patricia Birnie; |
| ii. | Parvez Hassan; | ix. | William Futrell; |
| iii. | Nicholas A. Robinson; | x. | Angela Cropper; |
| iv. | Alexandre Kiss; | xi. | Judge Paul Stein; |
| v. | Donald Kaniaru; | xii. | Dinah Shelton; |
| vi. | Julio Barberis; | xiii. | Charles Okidi; and |
| vii. | Tommy Koh; | xiv. | Justice Bhagwati. |

The Chair will communicate to these persons in writing, advising them of the decision of the Steering Committee. It was noted, in regard to this process, that CEL Steering Committee members appointed by IUCN Council are not eligible for nomination as CEL honorary members.

e. Observer Status

The Steering Committee agreed to appoint Dr. Wolfgang Burhenne as the CEL Focal Point for the IUCN's Observer status before the UN General Assembly, and noted that the goal is to build a team to tackle this issue. The CEL Executive Committee will discuss this matter further when they meet for the IUCN Council's session in September 2005. In the meantime, members of the Steering Committee are invited to contribute to preparing for these discussions.

Clarifications were also made regarding the procedure for including CEL members in the IUCN delegation for meetings of the multilateral environmental agreements.

f. Next Steering Committee Meeting

The Steering Committee decided that its next meeting will be held in March 2005 at the IUCN Environmental Law Centre in Bonn, Germany. The date will be finalized after the verification of dates of important environmental meetings taking place around that time.

g. Vote of Thanks

Upon motion duly made and seconded, the members of the Steering Committee approved a vote of thanks to the Chair, to Ms. Patricia Abed, and to the Director of the ELC and his staff.

25. Meeting Adjournment

After thanking those present at the meeting for their support, the Chair adjourned the meeting at 18:30.

I hereby certify that these minutes represent an accurate summary of the proceedings of the IUCN Commission on Environmental Law Steering Committee meeting held from 13 to 15 June 2005 in Cape Town, South Africa.

Maria Socorro Z. Manguiat
Chief Rapporteur

Noted by:

Mrs. Sheila Abed de Zavala

Dr. Alejandro Iza

Mr. Samuel Nguiffo

Dr. Antonio Benjamín

Ms. Melinda Janki

Ms. Nawzat Ali

Mr. John Scanlon

Dr. Daniel Sabsay

Ms. Tatiana R. Zaharchenko

Prof. Michel Prieur

Mr. Giuseppe Zaccagnini

Dr. Wolfgang Burhenne