Environmental Law Programme

FOCUS ON
COMPLIANCE AND ENFORCEMENT

- An Introduction to the Kyoto Protocol’s Compliance Mechanism
- Judicial Enforcement as an Effective Citizen’s Tool against Government Non-Compliance – The Case of La Oroya
- Designing Penalty Regimes for Environmental Offences: The Australian Debate on Penalty Infringement Notices
- Payments for Environmental Services Schemes – An Alternative Approach to Environmental Conservation
- The Legal and Economic Regime of Environmental Services in Costa Rica

2006 NEWSLETTER
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>3</td>
</tr>
<tr>
<td>Chair’s Message</td>
<td>4</td>
</tr>
<tr>
<td>An Introduction to the Kyoto Protocol’s Compliance Mechanism</td>
<td>5</td>
</tr>
<tr>
<td>Maria Socorro Z. Manguiat</td>
<td></td>
</tr>
<tr>
<td>Judicial Enforcement as an Effective Citizen’s Tool against Government Non-Compliance – The Case of La Oroya</td>
<td>6</td>
</tr>
<tr>
<td>Rozio Meza Suarez</td>
<td></td>
</tr>
<tr>
<td>Designing Penalty Regimes for Environmental Offences: The Australian Debate on Penalty Infringement Notices</td>
<td>9</td>
</tr>
<tr>
<td>Lily Mathews</td>
<td></td>
</tr>
<tr>
<td>Payments for Environmental Services Schemes – An Alternative Approach to Environmental Conservation</td>
<td>11</td>
</tr>
<tr>
<td>Thomas Greiber</td>
<td></td>
</tr>
<tr>
<td>The Legal and Economic Regime of Environmental Services in Costa Rica</td>
<td>12</td>
</tr>
<tr>
<td>Mario Peña Chacón</td>
<td></td>
</tr>
<tr>
<td>ELC Project Updates</td>
<td>14</td>
</tr>
<tr>
<td>The IUCN Commission on Environmental Law</td>
<td>17</td>
</tr>
<tr>
<td>Reports from CEL Specialist Groups</td>
<td>20</td>
</tr>
<tr>
<td>Reports from CEL Task Forces</td>
<td>25</td>
</tr>
<tr>
<td>The IUCN Academy on Environmental Law</td>
<td>27</td>
</tr>
<tr>
<td>News from the Regions</td>
<td>28</td>
</tr>
<tr>
<td>Fellows and Interns 2006</td>
<td>30</td>
</tr>
<tr>
<td>ELC Staff News</td>
<td>31</td>
</tr>
<tr>
<td>New Publications</td>
<td>33</td>
</tr>
</tbody>
</table>
I am happy to share with you this 2006 issue of the IUCN Environmental Law Programme (ELP) Newsletter.

An entire year has gone since our last newsletter was published, and this has been a year full of interesting developments for the ELP. First of all, new staff joined the Environmental Law Centre (ELC): Olga Buendia (Water Governance Research and Development Consultant), Sharelle Hart (Legal Officer) and Daniel Klein (Legal Officer). Olga joined us in April, Sharelle in June, and Daniel in August.

I am confident that the new officers will be able to maintain the level of excellence that has characterised the ELP from its beginning and provide a new spirit of teamwork towards the future challenges of the Programme. Please join me in wishing them all the best in their new positions. You will find more details about their background in the Staff News Section.

In April, the ELC hosted the Commission on Environmental Law (CEL) Steering Committee meeting, which gave the opportunity for ELC staff members to meet the CEL Steering Committee members, provided new guidance to the work of CEL and the ELC towards a more integrated programme, and showed once again the importance of maintaining close coordination between the Secretariat and the Commissions for effective delivery of IUCN Programmes.

As I reported in the last issue of the ELP Newsletter, 2005 was the year of establishing new CEL Specialists Groups. In June 2006, CEL convened a meeting of the Specialists Groups in the Iguazú Falls. You will find an update of the work of some of the Specialists Groups in this issue. We expect to continue updating you with the interesting work done by the Specialist Groups in areas ranging from armed conflicts to the implementation of the Convention on Biological Diversity, energy, water and protected areas. We also expect to have Specialists Groups pages in the new ELP Website interface, which will go on-line within the coming months.

After its development during the, 1980’s and 1990’s and particularly after the United Nations Conference on Environment and Development (UNCED) environmental law is now facing the challenge of its implementation. Compliance and enforcement lay at the very heart of any branch of law since it underpins its effectiveness. A set of rules that are not complied with and are not properly implemented does not produce the desired effect of regulating a particular human behaviour and thus compromises the effective governance of a society. This issue covers new developments and concepts relating to compliance and enforcement of environmental law both at the national and international levels, and contains a number of interesting articles relating to climate change, ecosystem services, mining, and penalty infringement notices.

With a view to showing you the wide range of initiatives and activities in which the ELP is involved, we have decided to include in this issue of the Newsletter a section on news from the regions, an update of some of our projects, and one on the IUCN Academy of Environmental Law. You will also have an opportunity to familiarise yourselves with the most recent publications from the ELP, and get to know those that are about to be published. All the ELP publications are available in PDF through the ELP website (www.iucn.org/themes/law).

2006 was critical in forging the future collaboration between the ELP and the IUCN Academy of Environmental Law. After the establishment of its Secretariat at the University of Ottawa, the Academy organised, like every year, a successful Colloquium, this time at Pace University, in White Plains. More information is in this issue of the Newsletter.

This issue of the ELP Newsletter is the first one under the responsibility of Sharelle Hart as new editor. I would like to invite you to get in touch with Sharelle for new ideas, topics, stories and contributions for the upcoming Newsletter issues.

Before closing, I should mention that Tomme Young, who worked for more than five years as senior legal officer, left the ELC. I shall take this opportunity to thank Tomme for her excellent contribution to the work of the ELP, and wish her all the best in the future.

Finally, I would like to take this opportunity to thank all contributors for their participation in this issue. I hope all our readers will enjoy this issue of the ELP Newsletter and we look forward to working with you in 2007.

Dr Alejandro Iza
Head, IUCN Environmental Law Programme

With a view to showing you the wide range of initiatives and activities in which the ELP is involved, we have decided to include in this issue of the Newsletter a section on
Chair’s Message

Dear Friends,

I am pleased to have the opportunity to write this foreword for the ELP 2006 Annual Newsletter, providing an overview of the work CEL has undertaken during this year.

This has been a busy and demanding year for CEL and I am proud that throughout the year we have continued to perform to our expected high standard, with the enduring support of the Steering Committee Members, Specialist Group Chairs and the ELC Director, Alejandro Iza. Among many other important things, there are a few that I would now like to share with you:

On April 5-6, our Steering Committee held its yearly meeting in Bonn. We were honored by the presence of special guests Wolfgang Burhenne and Parvez Hassan; the reunion was extremely fruitful. I would like to thank the ELC Director and staff for their hard work and dedication, as every detail was impeccably organized. I must stress that our Steering Committee members have done excellent work in increasing CEL’s membership. A great deal of progress has been made in both attracting new members and re-engaging former CEL members.

In June, CEL organized its first Specialist Groups Chairs meeting in Foz do Iguazu, Brazil. The meeting was highly successful, as the Chairs were able to interact very positively and many important projects were agreed. There is an exciting initiative on Governance shaping up which involves all the Specialist Groups and whose grounds were established on that occasion, which we’ll soon share with the whole CEL membership.

The Ethics Specialist Group held a planning meeting in September, “Toward a Code of Ethics for Biodiversity Conservation”, where significant advances were made towards the conclusion of this important CEL legacy.

Among the most positive news, CEL has launched a call for papers on two specific topics: Internalisation of International Environmental Law in National Legislation, and Development of International Environmental Law at the MEAs COP and its validity. This research award is part of the Commission’s permanent promotion of the conceptual development of environmental law and the dissemination of related and relevant information, especially among young lawyers and postgraduate students. The results will be made known next April 2007.

I must also mention that the Chair of our Human Rights Specialist Group, Romina Piccolotti, received an important distinction, having been designated Secretary of the Environment of her native country, Argentina. Our Steering Committee member Antonio Benjamin has been appointed as Minister of Brazil’s Supreme Court. This most deserved honor fills us with pride. We would like to wish Antonio and Romina all the best.

I sincerely hope for the year 2007 that our membership will actively engage in CEL’s initiatives through active dialogues, networking and information exchanges. I hereby renew my commitment to dedicate my best efforts to furthering the work for which our Commission was established.

My best wishes for 2007!

Sheila Abed
Chair of CEL
An Introduction to the Kyoto Protocol’s Compliance Mechanism

The objective of the Kyoto Protocol compliance mechanism is to facilitate, promote and enforce compliance with the commitments under the Protocol. The compliance mechanism is part of the Protocol’s system of reporting, review and compliance. It is among the most comprehensive and rigorous systems of compliance for a multilateral environmental agreement.

The Compliance Committee of the Kyoto Protocol, a group of 20 members and 20 alternate members serving in their individual capacity, considers questions relating to implementation through its two branches: the facilitative and enforcement branches. Questions of implementation can be raised by expert review teams under Article 8 of the Protocol, any Party with respect to itself, or a Party with respect to another Party. The secretariat and the Committee cannot trigger questions of implementation. The bureau of the Committee, consisting of the chairperson and vice-chairperson of the two branches, allocates a question of implementation to the appropriate branch, based on their mandates. In addition, at any time during its consideration of a question of implementation, the enforcement branch may refer the question to the facilitative branch.

The enforcement branch is responsible for determining whether a Party included in Annex I (Annex I Party) is not in compliance with its emission targets, the methodological and reporting requirements for greenhouse gas inventories, the eligibility requirements under the flexible mechanisms (joint implementation, the clean development mechanism and emissions trading). In case of disagreements between a Party and an expert review team, the enforcement branch shall determine whether to apply adjustments to greenhouse gas inventories or to correct the compilation and accounting database for the accounting of assigned amounts (i.e., a Party’s allowable level of emissions over the Protocol’s first commitment period (2008-2012)).

The mandate of the facilitative branch is to provide advice and facilitation to Parties in implementing the Protocol and to promote compliance by Parties with their commitments. It is responsible for addressing questions of implementation relating to response measures taken by Annex I Parties aimed at mitigating climate change in a way that minimizes their adverse impacts on developing countries and the use by Annex I Parties of the mechanisms as “supplemental” to domestic action. Furthermore, the facilitative branch may provide “early warning” of potential non-compliance with emissions targets, methodological and reporting commitments relating to greenhouse gas inventories, and commitments on reporting supplementary information in a Party’s annual inventory.

In the case of the enforcement branch, a specific consequence is provided for each type of non-compliance. For instance, where the enforcement branch has determined that the emissions of a Party have exceeded its assigned amount, it must declare that that Party is in non-compliance and require the Party to make up the difference between its emissions and its assigned amount during the second commitment period, plus an additional deduction of 30%. In addition, it shall require the Party to submit a compliance action plan and suspend the eligibility of the Party to make transfers under emissions trading until the Party is reinstated. No such correspondence exists in the case of the facilitative branch, which can decide to provide advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol, facilitate financial and technical assistance to any Party concerned, including technology transfer and capacity building and/or formulate recommendations to the Party concerned.
The enforcement branch has fixed timelines within which to resolve questions of implementation. Ordinarily, it would take the enforcement branch about 35 weeks to resolve a question of implementation. In time-sensitive requests, including those relating to eligibility to participate in the flexible mechanisms, the expedited procedures involving shorter periods will apply. Apart from the three-week deadline given to complete its preliminary examination, no fixed deadlines are provided for the facilitative branch. If, however, a Party has requested facilitation, it is likely to be interested in the speedy resolution of its request.

A feature often overlooked is the finality of decisions taken by the Compliance Committee. As a general rule, decisions taken by the two branches of the Committee cannot be appealed. The exception is a decision of the enforcement branch relating to emissions targets. Even then, a Party can only appeal if it believes it has been denied due process. Pending decision on the appeal, the decision of the enforcement branch stands.

The Compliance Committee of the Kyoto Protocol began its operations in March 2006. Since then, the Committee has developed further rules of procedure, which have been forwarded to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol for its adoption, and the facilitative branch has conducted deliberations on one submission. While the number of expert review team reports that may indicate questions of implementation, the number of possible disagreements between Parties and expert review teams on adjustments and corrections to the compilation and accounting database for the accounting of assigned amounts, and the number of Parties that may make submissions remain unknown, with only a little over a year before the beginning of the first commitment period, 2007 is expected to be a busy year for the Compliance Committee.

**Maria Socorro Z. Manguiat**  
Programme Officer  
Compliance Programme  
Climate Change Secretariat

The views expressed in this paper are personal and do not reflect the views of the Climate Change Secretariat.

For details on the procedures and mechanisms relating to compliance under the Kyoto Protocol, please refer to decision 27/CMP.1, available at http://unfccc.int/resource/docs/2005/cmp1/eng/01a03.pdf?_ga=1.167560931.627349265.1159144079

For more information on the work of the Compliance Committee for 2006, including the text of the rules of procedure that have been forwarded to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol for its approval and a report on the deliberations of the facilitative branch, please see the “Annual report of the Compliance Committee to the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (FCCC/AP/CMP/2006/6), available at http://unfccc.int/documentation/documents/advanced_search/items/2594.php?rec=J&prefix=60000040324&ogg

Documents of the Compliance Committee may be downloaded by logging on to http://unfccc.int/kyoto_mechanisms/compliance/items/2875.php

---

**Judicial Enforcement as an Effective Citizen's Tool against Government Non-Compliance: The Case of La Oroya**

**Introduction**

On 27 June 2006, Peru's highest court (the Constitutional Court) gave the Peruvian Ministry of Health 30 days to declare a health emergency and to put in place an emergency plan for the city of La Oroya. La Oroya is home to a multi-metal smelter (copper, lead, zinc, silver and gold) and is considered one of the most contaminated cities in the Western Hemisphere.

In its precedent-setting ruling, the Court emphasised that the government is primarily responsible for protecting health, and the existence of an agreement with a private company does not excuse that mandate. The Court ordered the Ministry of Health to immediately provide health care for those harmed by the contamination, especially children and pregnant women. It also noted that plans and studies underway are not proof of adequate government control, and that the authorities must take effective actions to produce concrete improvements.1

From the compliance and enforcement perspective, the case of La Oroya is not typical. Usually the citizen (or the private sector) is seen as the one who must comply with the regulations, and the government, as the one who must enforce them. But, what happens when, as in the case of La Oroya, it is the citizen who must enforce the regulation against the government in order to correct or halt situations that endanger the environment or public health?

**The public health crisis in La Oroya**

The multi-metal smelting facility was purchased by Doe Run Peru in 1997 and is considered to be a huge source of heavy metal and sulfur dioxide emissions. La Oroya, located at an altitude of 3,700 metres in the Peruvian Andes, is surrounded by mountain peaks, making the area prone to temperature inversions that in turn trap the atmospheric contamination over the city. Sixty-five percent of the population of Yauli Province, in which La Oroya is one of ten municipalities, lives below the poverty line, and basic services are scarce. Many of the more than 30,000 inhabitants of La Oroya depend on the metal smelter as their primary source of income.2

Doe Run is to blame for severe public health problems in the poor city where it is located. Respiratory problems caused by sulphur dioxide contamination and lead poisoning are particularly widespread, and arsenic and cadmium contamination is also a problem. The levels of air contamination (including indoor contamination)3 vastly exceed recommended international standards established by the World Health Organization (WHO) and Peruvian law.4 Recent studies have demonstrated the extent of this contamination and the serious risk to health that it poses. Its effects cannot always be observed immediately, but are often irreversible. According to a
1999 study, 99.1% of the children in La Oroya suffered from lead poisoning while nearly 20% needed urgent hospitalisation. Four blood studies demonstrate that blood lead levels are well above safe levels. In 2005, 99.9% of the 788 children examined had blood lead levels that exceeded the maximum recommended level. The nearly 1% of children with blood lead levels 7 times greater than the WHO-recommended levels should have been hospitalised immediately. Because lead inhibits neurological development, the thousands of children poisoned by the smelter will be impaired for life. Sulphur dioxide levels are also generally high, and frequent bursts of extremely high environmental concentrations occur. These bursts can cause greater chronic respiratory illness, asthma and other ailments, and an increased number of premature deaths. In addition, when sulphur dioxide mixes with atmospheric water vapour to form acid rain, the contamination can stretch hundreds of miles, harming plant life, crops and soil productivity.

The socioeconomic conditions, such as infrequent access to showers, poor nutrition, and lack of medical care exacerbate the problem. Even if it were available, medical treatment would mean little as long as the reckless environmental contamination continues. Prolonged exposure to contamination has created a public health crisis in La Oroya.

How the case was brought before the court
On 6 December 2002, six citizens of La Oroya, backed by the Peruvian NGO (Sociedad Peruana de Derecho Ambiental) brought a Compliance Suit (Acción de Cumplimiento) to force the Ministry to comply with health and air regulation and to design and execute a Public Health Emergency Strategy to mitigate health impacts. According to Article 200(6) of the Peruvian constitution, the Compliance Suit can be brought against any authority or official who refuses to abide by a legal norm or administrative act. Though this type of suit requires immediate response by the courts, this didn’t occur until two years later. In April 2005, a Lima Civil Court ordered the Ministry of Health to implement concrete measures to protect the La Oroya population. Nevertheless, instead of complying with the court order, the government appealed the ruling thus further delaying action to protect the citizens.³

Failure of the Peruvian government to comply with its own regulations
The Peruvian government was informed about the public health crisis in La Oroya in 1999, yet it failed to provide medical care, ignored the situation and postponed solutions, thus exposing the residents to unnecessary and irreparable harm. The only health facilities in the city lack proper diagnostic equipment and medicines to deal with common health problems. Furthermore, access to these facilities is restricted to people who are officially employed and thus part of Peru’s social security program, or to those who can independently afford to pay for medical treatment.

According to the Constitutional Court’s ruling, the failures of the Peruvian government in the implementation of health and environmental requirements were:

a) Non-compliance with its Obligations Under the General Health Law: According to Articles 103, 105 and 106 of Law 26842, the Ministry of Health has the responsibility to establish environmental standards and to dictate the necessary measures to minimise and to control the health risks caused by environmental agents. Nevertheless, according to the Supreme Court, the compliance with this obligation has been only partial and insufficient. The government did not design and implement a plan to address the State of Emergency, including development of a strategy to protect vulnerable groups and the implementation of epidemiological and environmental monitoring programs (Article 15).

b) Non-compliance with its Obligations Under Air Quality Laws: The government exempted Doe Run Peru and other companies that had an "Environmental Mitigation and Management Plan" from being required to undertake baseline diagnosis of air quality. Such information is the basis for the development of the Air Quality Action Plan, according to Article 11 of the Decree 074-2001-PCM of Peru’s Environment Air Quality Standards Law.

c) Failure to Declare a State of Emergency: Article 23 in the National Environment Air Quality Standards Law requires the Ministry of Health to declare a state of emergency when air pollution significantly exceeds recommended levels. Declaring a state of emergency would enable the government to take a series of immediate steps to help protect public health, however, the government failed to implement such actions.

The perfect equation
This case shows us that having good legislation is not the complete solution for the protection of public health from environmental pollution and for the protection and restoration of environmental quality. The Peruvian legislation is clear that actions the government must take, i.e. the development of legislation that contains environmental management strategies to prevent or control pollution involving legal requirements that must be met, are only a first step. The next step, compliance (the full implementation of environmental requirements) is indispensable to achieving the goals of protecting public health and envi...
Therefore the perfect equation for protection of public health and the environment is a combination of good legislation, compliance and enforcement mechanisms.

Rocio Meza Suarez
Research Fellow, ELC (June - August 2006)
PhD candidate, University of Giessen, Germany

1 www.Earthjustice.com
3 A 2003 study of building interiors showed that 100% of the dwellings tested exceeded maximum recommended lead content levels, indicating that residents of La Oroya are exposed to significant contamination within their homes.
4 Atmospheric lead levels in La Oroya between January and August 2004 were four to five times the WHO-recommended levels, while levels of arsenic were measured at six to eight times the levels found in highly contaminated European cities. Company monitoring reports from 2004 indicated that cadmium levels, as well, were 20 times the level recommended by the WHO. Sulphur dioxide levels in 2003 were two to four times greater than levels the WHO considers harmful, and consistently reach peak concentrations that are known to generate significant human health impacts.
8 Adopted at the Global Judges Symposium held in Johannesburg, South Africa, 20 August 2002.

Judicial enforcement: an effective citizen’s tool against government non-compliance?

Citizens and non-government groups may become involved in enforcement by using formal enforcement mechanisms to bring enforcement actions against violators or against the government for not enforcing the legal requirements. Formal mechanisms are either civil or criminal. Civil actions may be either administrative or judicial.

Civil judicial enforcement actions are formal lawsuits before the courts. This type of enforcement action was used in the case of La Oroya. The Compliance Suit was brought by citizens against the authority who refused to abide by the legal norm. Although administrative enforcement is generally preferred as a first response (with some exceptions) because judicial lawsuits are far more expensive, require more staff time and may take several years to complete, judicial enforcement is often perceived as having greater significance and therefore has more power to deter potential violations and to set legal precedents.

The La Oroya case is a clear example of the important role that courts can play in enforcing regulations that have been violated, and in making final decisions regarding regulations that have been appealed. This is affirmed in the Johannesburg Principles on the Role of Law and Sustainable Development:

“(…) an independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law (…) Members of the Judiciary, as well as those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law (…) the fragile state of the global environment requires the Judiciary as the guardian of the Rule of Law, to boldly and fearlessly implement and enforce applicable international and national laws, which in the field of environment and sustainable development will assist in alleviating poverty and sustaining an enduring civilisation (…)”).
Designing Penalty Regimes for Environmental Offences: The Australian Debate on Penalty Infringement Notices

Introduction
What is the best way to punish people and companies who commit environmental offences? At first glance the current debate in Australia regarding the use of penalty infringement notices (PINs) for environmental offences seems to be a rather technical issue. But it raises important questions regarding the aims and purpose of punishment for these offences, and the most effective way of achieving those aims. This article provides an introduction to the debate and notes some of the issues arising – many of which may be relevant to other countries seeking to reform or refine their own environmental enforcement and penalty regimes.

What is a PIN? What is the debate about?
For the purposes of this discussion, a PIN is a notice (authorised by statute) given to a person or company, which sets out details of an alleged offence and gives the recipient a choice between paying a set fine and having the matter determined by a court (Australian Law Reform Commission Report No. 95 Principled Regulation: Civil and Administrative Penalties in Australian Federal Regulation 2002 – ALRC Report). PINs are commonly used in many jurisdictions for traffic offences such as driving over the speed limit or parking in contravention of the rules. As such, PINs were originally regarded as more appropriate for regulatory rather than criminal offences (New South Wales Law Reform Commission Discussion Paper 33 Sentencing 1996 – NSW LRC Paper).

However, in Australia the use of PINs has been considerably extended, so that PINs can now be used to penalise environmental offences such as polluting water. That is, not merely for procedural offences, but for breaches of the fundamental purpose of the environmental legislation (Environmental Law Roundtable of Australia and New Zealand Discussion Paper on Penalty Infringement Notices for Environmental Offences 2006 – ELR Paper). For example, water pollution in New South Wales can be the subject of a PIN, with a maximum penalty of AU$1500, however if the offence is prosecuted in court the maximum penalty is AU$2 million (ELR Paper). Is this appropriate? What type of PIN regime is most suitable for environmental offences? Or conversely, what type of environmental offences are most suitably penalised with PINs? The Environmental Law Roundtable of Australia and New Zealand is currently investigating how the PIN regime for environmental offences can be improved and harmonised across Australia and New Zealand.

The purposes of penalties: deterrence and remediation
A useful analysis of penalty regimes requires, at some level, an understanding of the purpose of the offence and its penalty. As compared to actions directly harming another person, actions disturbing the environment with consequences which are often indirect, distributed and long-term, have only relatively recently been recognised as causing harm. In response, specific environmental laws have now been enacted in most jurisdictions to create offence and penalty regimes. The primary purpose of criminalising environmental offences is to discourage such actions through deterrence (NSW Environment Protection Authority Prosecution Guidelines – NSW EPA Guidelines). More recently, penalty regimes have also begun to focus on remediation or amelioration of the harm caused, following the “polluter pays” principle (ELR Paper).

Therefore, to effectively achieve their purposes, penalties for environmental offences should:

- be significant enough to deter people and companies from committing the specified offences; and
- require offenders to remedy the harm they cause.

How well do PINs achieve their purposes?
Firstly, and perhaps most importantly, does the possibility of receiving a PIN deter people and companies from committing environmental offences? This is difficult to assess, and depends in part on factors other than the design of the PIN regime itself (such as the perceived chance of being caught). However, there is an argument that PINs, since they are not made public and are not treated as a criminal offence, lack the moral force or “embarrassment power” of a prosecution in court (NSW LRC Paper), and may be viewed merely as a business expense (ELR Paper). Unlike a public prosecution, they do not affect that increasingly important element of a company’s value, its reputation. Are they then taken seriously enough to be effective deterrents?

Secondly, do PINs require recipients to remedy the harm caused by the specified offence? This is an easier question, and the answer, plainly, is no. On the other hand, several jurisdictions in Australia have given their environmental regulatory agencies the power to order remedial actions irrespective of whether criminal proceedings are commenced (Lipman & Bates Pollution Law in Australia 2002 at 115), so it is possible that the recipient of a PIN may also separately be required to undertake remediation. But the fact remains that PINs are commonly given as a mere financial penalty, without any accompanying obligation to remedy the damage or alter behaviour or processes to avoid repeating it. As such they do not, in themselves, effectively achieve the aims of penalties for environmental offences.

Other concerns with PINs
A separate aspect of deterrence, relating also to natural justice, is the link between the seriousness of the offence (measured by the environmental harm caused) and the severity of penalty. Do PIN regimes address this? In some sense, yes, as laws commonly provide that certain levels or types of offences are to be prosecuted, and lesser ones may be the subject of PINs (see for example the three tiers of offences under the Protection of the Environment Operation Act 1997 (NSW)).

>>>
However, in practice this may be a difficult judgement. A regulatory officer usually needs to make a quick decision as to whether an offence is one for which a PIN should be issued or for which the offender should be prosecuted. Evaluating the seriousness of the offence may be difficult to do on the spot, as the full extent of the environmental harm may take some time to become apparent (ELR Paper). How do we prevent external factors from coming into play in the decision, such as the workload of the officer (ie. the time they have or do not have to spend on prosecution), and the regulator’s need for revenue?

If the officer decides that the offence falls into the category for which a PIN may be issued, there is then no choice in penalty levels: the prescribed fine must be levied, and paid, despite any mitigating or complicating circumstances. (The New Zealand Law Commission raised concerns with this “one-size-fits-all” approach in its study paper The Infringement System: A Framework for Reform 2005; see also the NSW LRC Paper.)

If an accused party does not think they are guilty, they are still best advised to pay the fine rather than going to the expense and risk of contesting the matter in court. The ALRC Report found this “coercive power” of PINs a significant concern.

One further issue is whether, for the more serious offences which are now the subject of PINs in some jurisdictions, the private nature of the proceedings are appropriate (ELR Paper). Where serious harm is caused, should justice be seen to be done, and should the public be able to participate?

**The great advantages of PINs: quick and cheap**

It may be the case then, that PINs are not ideally designed to achieve the generally accepted aims of penalties discussed above; nor are they ideal from a natural justice point of view. So why are they used? They are quick and cheap for authorities to administer (particularly compared to court cases), while still raising significant revenue for that authority. Courts would require many more resources if every matter now dealt with by a PIN had to be brought to court. Accused individuals and companies, too, would need to spend more money and time preparing for court cases, and would face much higher penalties. (See ALRC and NSW LRC Reports.) Both the regulator and those regulated support a low-cost, efficient mechanism.

**How can PIN regimes be improved?**

Assuming that PINs for environmental offences are here to stay, due to their undoubted speed and cost advantages, the ELR Paper asks: what can be done to make PIN regimes more effective, and when should PINs be used?

Some suggestions have already been put forward in the papers mentioned above, including:

- providing officers with clear guidance as to when PINs are appropriate and inappropriate (see the NSW EPA Guidelines for an example);
- only using PINs for administrative or strict liability offences, or for offences where the maximum penalty in court is below a certain amount;
- having two tiers of fines payable under PINs, with officers using their discretion as to which level to impose; and
- requiring offenders to remedy the harm they caused, as an alternative or in addition to imposing a fine.

Each of these ideas, together with the deficiencies they are meant to address, is worth considering when designing or reviewing a penalty notice system for environmental offences. The current Australian and New Zealand debate on PINs may provide some interesting recommendations, and the outcome may be that noteworthy thing, an example law simultaneously addressing the concerns of effectiveness, efficiency and natural justice.

*Lily Mathews*
Research Fellow, ELC (June - August 2006)
Associate at Baker & McKenzie Sydney, Environmental Markets group
Payments for Environmental Services Schemes – An Alternative Approach to Environmental Conservation

The Millennium Ecosystem Assessment has shown that the world’s ecosystems and their environmental services are constantly being degraded, despite their importance to human well-being and to biodiversity. In order to stop this degradation, governments need to act. Although the matter is urgent, the financial resources at hand to solve the underlying problems are scarce. This creates the ever-growing demand to search for the most effective way to govern environmental services. In this context, two approaches exist: the traditional way of command and control, and the use of economic or market-based instruments.

The traditional way of reacting to environmental degradation is to establish a legal norm that includes a sanction for non-compliance. In the area of water management, such command and control policy may be effective in reducing pollution from well-defined point sources, e.g. factories or sewage treatment plants. However, the effectiveness of such instruments is lessened when non-point sources of pollution need to be addressed, such as e.g. those occurring when numerous upstream landholders dedicate their land to intensive agricultural or cattle-ranching activities. Under such circumstances, downstream water pollution (or scarcity) is the cumulative result of individual actions carried out by geographically spread and heterogeneous upstream users.

Bearing these deficiencies in mind, commercial or financial mechanisms, especially payments for environmental services (PES), are increasingly being proposed as an alternative approach to conservation. PES schemes try to ensure that the true cost to the environment is included in pricing mechanisms. This is facilitated through internalization of environmental externalities (costs or benefits not borne by the user) by establishing appropriate prices and giving financial incentives. The idea is that users of land upstream may accept voluntary limitation or diversification of their activities in return for an economic benefit. The aim is therefore to bridge the interests of landowners and outside beneficiaries, so that both “sellers” and “buyers” of ecosystem services can profit while helping to protect ecosystems. PES schemes fit well into the current trend of decentralization and self-organized management systems, and are expected to have the potential of being more effective, flexible and cost-efficient than traditional command and control measures.

Having said this, it must be recognized that the idea of PES and its use as an instrument is relatively new and the experiences to date are neither numerous, nor based on a long-term timeframe. This explains the constant need for research and analysis regarding PES schemes. Current PES studies often focus on scientific issues such as how to identify and value environmental services and tend to neglect the importance of the legislative and institutional requirements for PES systems. It must not be forgotten that a PES scheme can only work effectively and efficiently within the right framework of “rules”.

This gap in knowledge and the lack of appreciation of the importance of a legislative framework for PES has led the IUCN Environmental Law Centre (ELC) to engage in this issue and to provide and promote legal research on different Payment schemes throughout the world.

PES is sometimes criticised as a “catch phrase” which requires further clarification on what it actually embodies: whether it comprises virtually all financial and legal incentive mechanisms for promoting conservation and good environmental citizenship; or only specific ones. Depending on the concrete definition of a PES mechanism, its legislative and practical requirements will differ considerably. In general, the following types of PES schemes can be differentiated: public schemes (at the local, national or sub-regional level); private/self-organized schemes and trading schemes.

As governments’ financial resources dedicated to the conservation of environmental services are very limited, the demand for corporate investment is increasing. Private or self-organized payment schemes have the potential of opening new financial sources by bringing outside (private) investors to the table which creates particular interest in these instruments. When setting up a self-organized private deal, possible legal pitfalls have to be avoided by the contracting parties.

The existing legal framework must first of all support the planned PES contract. This means that the parties to the contract have to ensure that the existing legislation provides a suitable regulatory framework. Trade in environmental services should be supported by such a framework. In addition, individuals or communities must have the right to change their land use and sell the resulting environmental services. The latter is only possible, if they own the environmental services provided by their lands. Supporting water legislation, corporate law, or legislation on property rights and land tenure and reliable contract law has to build the right framework to enforce such contracts. Such situations require a satisfactory “contractual culture” which means that contractual commitments must be sufficiently honoured by society or at least by the involved parties. If such a culture is lacking, the risk of drop outs in PES schemes increases.

With an enabling legal framework in place, the objective and the services regulated by the deal may then be defined as concretely as possible by the parties. The contract should explain the water management problem, the water-related ecosystem service that will help to solve this problem, and the seller/supplier of the environmental service as well as its buyer. The contract also needs to clarify the exact contributions of the seller. This means that it has to be defined whether his obligations will be input-oriented, specifying for example how the farmer must work his land, or output-oriented, describing the environmental outcomes expected from the seller. Furthermore, the exact duration of the contractual relationship has to be kept in mind. If long-term sustainability is the aim of the deal, the investor has to ensure that an appropriately long timeframe is used and also to envisage the dynamics regarding future land use changes, or at least to include securities in the contract. The latter is a safeguard, because if the service provider sells his property to another individual, the buyer still needs to secure that the contractual
service will be further provided. This can be done by requiring the seller to register the restrictions on the particular property in the public land registry (if one exists). Such restrictions will then also have to be honoured by the potential buyer of the land.

Of course, the actual matter of payments has to be specified, too. It is important to note that payments can be made to a number of individuals or their community. Especially in cases where indigenous communities are involved, the payments need to fit into the existing socio-cultural environment. If a few individuals receive payments while others do not, the risk of unbalancing a community which is based on strong cooperative bonds is created. Where land ownership is communal but individuals have long-term rights to use, it may even be necessary to involve both levels. It must furthermore be defined what the payments look like and when they will be made. This means that the parties have to determine whether the payments will be in kind or in cash. Additionally, the specific amount has to be agreed on. It is equally important to set the right timeframe and sequence for the payments. If all or the majority of the payments are already made at an early stage of the contract, the possibilities to enforce the contractual obligations over the full contract period will decrease.

Finally, the issue of compliance and enforcement should be addressed in a private PES deal. The first crucial point in this context is to clarify how contractual compliance will be determined. In order to do so, the baseline has to be set in the contract from which the evaluation of the seller’s performance can start. Furthermore, the authority to monitor the seller’s activities has to be granted to the buyer or an independent verifier. This also implies the necessity to decide on a clear monitoring process. In case the monitoring is out-sourced, an adequate structure to avoid corruption must exist. Otherwise, it is easy to imagine collusion between the sellers and the monitoring officials when approving and certifying compliance.

The contracting parties can also provide for specific regulations on how cases of non-compliance shall be handled and disputes are resolved. If an effective contract law is in place, a comprehensive non-compliance regime already exists by law. If this is not the case, or if the parties wish to include individual responses to non-compliance, further instruments, such as contractual penalties, can be included. The same applies to the resolution of any dispute arising in connection with the interpretation or application of the agreement. Depending on the legislation in place, such disputes will probably fall under the competence of a particular court. However, the parties can also decide to submit the dispute to an arbitral tribunal, if this is preferred. Consideration should then be given to submitting the disputes to arbitration under the 2001 Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment. In any case, it has to be ensured that both sides of the contract have locus standi, which means that they have the necessary legal personality before the court or tribunal.

Thomas Greiber
Legal Officer, Environmental Law Centre

The Legal and Economic Regime of Environmental Services in Costa Rica

Forests, forest plantations, wetlands, reefs and all ecosystems in general offer an extensive variety of goods and services to society. In spite of this, the prevailing economic system does not recognize the value of these environmental services, which implies that they have no value for the market. This has led society to over-exploit these ecosystems, resulting in the environmental fiasco that we are presently experiencing.

In order to counteract this development, environmental economists have proposed providing economic compensation to those who produce or manage environmental goods and services, in order to encourage the conservation and sustainable management of ecosystems. At the same time, they are in favour of economic sanctions for those who use the environmental goods and services without paying. However, in order for this to be possible, state intervention in the economic system is necessary, which historically has never been popular.

The enactment of the Forest Law of 1996 by Costa Rica was an innovative development in the international legal spectrum. It recognized for the first time the economic value of the environmental services that the forests and the forest plantations provide and created a legal system to execute such a process.

The economic regime of environmental services

The environment provides raw materials and energy to the economy without which production and consumption would be impossible. Consequently, the economy exploits the natural environment in order to acquire raw materials that permit the system to continue functioning.

On the other hand, the economic activities of production and consumption generate wastes which by necessity must return to the environment. These residues, depending on the extent of their manipulation and the capacity of the ecosystems to assimilate them, can form pollutants, and their rates of emission may exceed the ecosystems’ natural capacities of assimilation in the areas where the residues are dumped.

The current situation regarding environmental resources is characterized by the fact that the economic benefits generated by the destruction of the environment are privatized, while the costs of protection and restoration are borne by society.

As the public purse bears the cost and impacts, to defend and conserve the natural resources for future and present generations, the authorities are obliged to intervene in the situation in order to avoid what Hardin called the tragedy of the commons, i.e. the over-exploitation and exhaustion of common resources.
For this reason, production and consumption are now regulated by means of legislation that establishes maximum limits regarding pollution levels and the utilization of the ecological resources. In addition, taxes and environmental subsidies have been established, which will stimulate benefits to the environment and discourage those activities which damage the ecological balance.

**Legal regime of the environmental services**

Costa Rica, in compliance with the agreements concluded at the Earth Summit of 1992 in Rio de Janeiro, enacted Forest Law 7575 of 5 February 1996, an innovation in the legal spectrum which regulates and promotes, for the first time, the recognition of the environmental services provided by ecosystems. This was accomplished by creating a system of financial compensation for the owners and users of forests and forest plantations that generate a positive externality for society. This is partly financed through the use of resources originating from activities that generate a negative externality or cost borne by the environment (e.g. selective tax on the use of fuels and other hydrocarbons).

The Costa Rican forest law defines environmental services as those offered by the forests and the forest plantations that directly affect the protection and the improvement of the environment. It classifies them in the following way: mitigation of greenhouse gases (regulation, reduction, sequestration, storage and absorption); protection of water for urban, rural or hydroelectric use; protection and conservation of biodiversity and pharmaceutical, scientific and sustainable use, research and genetic improvement; protection of the ecosystems, life forms and natural scenic beauty for scientific and tourist purposes.

The objective of the payment for environmental services (PES) scheme is to provide compensation to the owners of forests and forest plantations for the services that their property offers to the national as well as the international community, by promoting reforestation activities, protection of the forest cover and plantation of trees in agroforestry systems.

The authority responsible for the management of the PES scheme is the Fondo Nacional de Financiamiento Forestal (FONAFIFO) which is the national fund for forest financing, a decentralized authority within the framework of the state forest administration.

Beneficiaries are considered to be all those natural persons or legal entities, owners, lessors and usufructuaries of property listed in the National Registry of Costa Rica that wish to receive payment for the diverse range of environmental services that are provided. Users involved in projects for forest protection who comply with certain requirements in accordance with the regulations will also be considered.

There are three different kinds of PES (depending on the type of project): reforestation projects, forest protection projects and projects for the establishment of forest trees in agroforestry systems.

The total amounts for the protection of forest per hectare per year 105,000 Costa Rican Colones (US$203). This amount is paid in five installments, one payment per year amounting to twenty percent of the total. In the case of reforestation projects, the sum of 269,500 Colones (US$521) is paid per hectare and is disbursed within a five-year timeframe. In agroforestry systems the total amounts to 387 Colones (US$0.75) per tree, disbursed within three years. In all three cases, it is possible to renew the contract.

In the case of breach of contract on the part of the beneficiary, the Fondo Nacional de Financiamiento Forestal will suspend PES, and the latter may initiate the legal and administrative procedures to recover the funds already paid, as well as the interest, and possible damages caused.

**The Certified Tradeable Offsets Scheme**

The Costa Rican Forest Law authorizes the State to internalize the costs of the environmental services of mitigating greenhouse gases in order to encourage the efforts on the part of the owners of forests and forest plantations and entitles the State to claim the environmental service at the international level. For this reason, upon signature of the respective contract, each beneficiary of the PES scheme is obliged to yield to the State the right to trade in the "avoided emissions" at the international level, >>>
which will support the financing of the PES scheme, as well as attract new resources to continue the scheme.

For this reason, the Certified Tradeable Offsets (CTO) scheme was created, which is defined as a specific quantity of reductions of greenhouse gases expressed in equivalent units of carbon that have been or will be reduced or compensated.

The PES scheme by means of the external and internal monitoring of the environmental benefits derived from carrying out projects, ensures that the mitigation is real, of demonstrable quantity, and complies with the requirements of the United Nations Framework Convention on Climate Change.

The timeframe of each certificate is 20 years, during which Costa Rica pledges to support the validity of the mitigation, guaranteeing additional compensation in the case that controversy arises with the mitigation certificates.

The Costa Rican experience has been positive, and has been able to count on sufficient economic support for the development and growth of the program up until today. The judicial and economic framework of the PES scheme should serve as a clear example to the international community demonstrating the feasibility and sustainability of this quality project, which creates benefits not only for society, but at the same time, for the owners and users of forests who receive economic benefits and are encouraged to promote conservation.

For more information on this topic, please see: www.cica.es/aliens/gimadus/10/REIGEMEN%20ECOSOCNOMICO.htm

Mario Peña Chacón
Environmental Legal Consultant
Ecolegis Environmental Law Services, Costa Rica

ELC PROJECT UPDATES

Snapshot of some of the Projects of the Environmental Law Programme

The ELP continues to work on a wide range of environmental law issues at the global level and in different regions around the world. Following is just a small snapshot of some of the current projects of the ELP.

SUPPORT TO IMPLEMENTATION OF BIODIVERSITY RELATED CONVENTIONS

ELC’s Module on Biodiversity and Climate Change under the UNEP Issue-Based Modules project

The Project

UNEP, the IUCN Environmental Law Centre (ELC) and the UNEP World Conservation Monitoring Centre (WCMC) are currently collaborating on the "Issue-Based Modules" project which was set up in 2005 with the assistance of the Belgian Development Cooperation. It aims to provide a practical tool to facilitate coherent implementation of biodiversity-related conventions with regard to issues of common concern. The modules are based on the assumption that several regional and global biodiversity-related agreements, or parts of them, as well as many decisions and recommendations adopted under the respective regimes, relate to the same themes.

Initially, four cross-cutting issues were identified in consultation with the secretariats of the five global biodiversity-related conventions as priority issues of common concern to all five conventions, and modules have been developed accordingly. These issues are Climate Change, Sustainable Use of Biodiversity, Inland Waters and Invasive Alien Species (IAS). A fifth module on Protected Areas will be developed in the coming year.

The Biodiversity and Climate Module

The ELC developed the Biodiversity and Climate Module, which looks at how the inter-relationship of biodiversity and climate change is treated across relevant agreements. In line with the other modules, it identifies and groups relevant implementation requirements arising from the agreements and presents them in a structured way. To this end, all relevant articles, decisions, resolutions and recommendations have been clustered into sections, which have again been broken down into activities and into components, as appropriate. By clustering obligations of different agreements under certain activities and components, the modules are expected to facilitate communication at the national level and to reinforce cross-sectoral understanding and cooperation on implementation. Short descriptions of the obligations and commitments help to focus on the essential elements. Author commentaries provide additional explanations and references and highlight possible synergies as well as overlaps within an agreement or between agreements. Collated into a database and available via the internet the modules shall be readily accessible for all actors involved in the implementation of biodiversity-related agreements as well as for the public at large. Currently, the modules exist in three languages (English, French and Russian).
Participation of end-users
In order to ensure that the modules are being built in the way that best reflects the needs and experiences at the implementation level, pilot countries are closely involved in both the development and implementation of the modules. To date, eight pilot countries representing two regions (Africa and Europe) have accepted to join the project, namely, Morocco, Senegal, Seychelles, Uganda, Belgium, Hungary, Norway and Russia. It is planned that, at a later stage, the project will be extended to other regions as well. Together with representatives of the secretariats of the five biodiversity-related conventions as well as of relevant UN bodies, such as UNDP, UNEP and GEF, the pilot countries participate in a Steering Committee, which has been established to guide the project and to promote the modules.

In addition, a peer review process has been put into place in order to ensure the practicability and usefulness of the tools. Experts at different levels and with expertise in the different regional and global agreements, including from the eight Pilot Countries as well as from inter- and non-governmental organizations, have been invited in two Peer Review phases to give their views and feed their experiences with the draft modules back into the process. Following the first peer review in 2005, the draft modules were revised and the scope of the modules extended to cover regional biodiversity-related agreements of the pilot countries' regions.

Activities in 2006
In 2006, the Second Peer Review was carried out, concluding with the Second Steering Committee meeting in June. Since then, most of the respective outcomes and recommendations have been implemented, the four modules are being completed and a process of updating and maintaining is being put into place. In order to encourage the use of the modules and to further improve them, activities to introduce the modules to a wider audience were continued in 2006, such as presentation of the modules at CBD COP-8 and other relevant international conferences. Two regional workshops with the pilot countries were held in Plitvice, Croatia (February) and Brazzaville, Congo (May), with participation and input from the ELC. In September 2006, the ELC presented the Climate Module to a workshop on biodiversity and climate change in Germany, organized by the German Federal Agency for Nature Conservation (BfN). The workshop reconfirmed strong interest by the relevant actors in implementation, policy-making and research.

Future steps
Future steps of the Issue-Based Modules project will include inter alia the extension of the modules to cover relevant environmental agreements of other regions, the development of an implementation guide as well as further promotion and dissemination of information on the modules. Other steps, such as the translation of the modules to the other UN languages, and the development of new modules on other cross-cutting issues, will depend on the availability of funding.

Conclusion
The modules can be an important and useful tool for coherent implementation of biodiversity-related (and potentially of other environmental) conventions. Many international resolutions and decisions have confirmed the importance and usefulness of the modules and their further development and implementation. Keeping up to date with developments and new COP decisions, but also potentially new regional and global agreements is essential. The ELC is responsible for updating the Biodiversity and Climate Module and will continue its efforts to further promote the modules and to encourage potential users in all sectors to participate in the open process of continuous development and improvement of the modules. The current version of the modules can be visited at: http://svs-unepibmdb.net/. Comments are welcome and can be submitted to comments@svs-unepibmdb.net.

Daniel Klein
Legal Officer, Environmental Law Centre

SPECIES ISSUES

The ELP has a long history of working on a wide range of legal issues relating to the conservation of species at the national and international level. For example, the original drafting of two well-established species conventions – Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Convention on the Conservation of Migratory Species of Wild Animals (CMS) – was developed by the IUCN Environmental Law Centre. Work on species issues is continuing and currently the ELC is conducting the legal analysis in a joint TRAFFIC-IUCN project looking at Wildlife Trade regulation for the European Commission. The aim of the project is to evaluate the content of the EC Wildlife Trade Regulations and to review implementation and interpretation with a view to developing options for mechanisms to improve the efficiency and effectiveness of the Regulations.

Wildlife trade in the European Union
Every year millions of plant and animal specimens are traded globally as live animals and plants or parts and products such as timber, traditional medicines, leather, fur or wooden carvings. CITES was developed as a response to the recognition that wildlife trade can endanger species populations if unsustainable. Currently international trade in more than 30,000 plant and animal species is regulated...
CITES is implemented across the EU through a comprehensive Regulation adopted in 1996 (Council Regulation (EC) No. 338/97) and a more detailed implementing Regulation (Commission Regulation (EC) No. 865/2006). The two Regulations constitute the legal framework for all EU Member States and regulate international trade with the EU as well as internal trade. Through the application of stricter import conditions, additional requirements for trade of live specimens and the use of trade suspensions, the EC Wildlife Trade Regulations go beyond the requirements of the Convention in some areas.

Background to the project

In line with the trend in CITES to simplify implementation of the Convention and the European Commission Action Plan "Simplifying and improving the regulatory environment" (COM (2002) 278), the European Commission has commissioned a "Study on the Effectiveness of the EC Wildlife Trade Regulations". In addition, since the original drafting of Council Regulation 338/97 changes to the trade in wildlife (e.g. changing dynamics in species that are traded and use of internet trading) and the expansion of the European Union mean that there is a need to review the regulations to ensure that they are adequate and appropriate to meet conservation objectives and also be practical and effective. The ultimate objective of the project is to review the Regulations and to propose legislative and non-legislative options for improving the regulations in a cost-effective manner.

Review of the EC Wildlife Trade Regulations

The study is currently underway and will be completed late in 2007. As part of the assessment into the effectiveness of the EC Wildlife Trade Regulations the ELC is undertaking an in-depth analysis of the provisions of the EC Wildlife Trade Regulations, noting whether there are any issues or inconsistencies. In particular the analysis is reviewing possible inconsistencies within and between the EC Wildlife Trade Regulations as well as with the provisions and Resolutions of CITES and EU Policies and Law, such as the Habitats Directive or the Birds Directive and the EC policy on invasive species.

The findings will then be integrated with information from the Member States and the European Commission regarding interpretation and implementation issues.

Analysis of information, reports and studies, consultation with Member States through a questionnaire and interviews and a workshop of key stakeholders will provide the basis for determining some potential legislative and non-legislative options. The draft options and an impact assessment of the options will then be assessed through further consultative processes. Any recommendations arising from the study will need to fulfil the obligations of Parties under CITES, contribute more effectively to conservation of wild fauna and flora and result in Wildlife Trade regulation that is simpler and easier to implement and enforce. What is required is finding the balance between sufficient controls on trade through regulations that are clear and effective in achieving the overall aim of promoting species conservation and sustainable wildlife trade.

Sharelle Hart
Legal Officer, Environmental Law Centre

WATER GOVERNANCE

The ELP has been actively engaged in several components of the IUCN Water and Wetlands Initiative (WANI) which aims to promote an ecosystem approach for catchment policies, planning and management. Currently the ELP is developing “RULE”, a publication which is a component of the IUCN water law toolkit series and considers the legal and institutional arrangements of water resources management.

Bearing in mind the challenge presented by the objectives of sustainable development to good water governance, the objective of this project is to contribute a new definition of good water governance that includes an appropriate focus on the environment. The publication will explore and highlight useful mechanisms for the incorporation of environmental considerations into water laws, policies and institutional arrangements that contribute to good water governance.

“RULE” will focus on the central role played by law and policy in designing systems that are critical to good water governance in a manner that is accessible to the non-lawyer. The goal is to design a publication that provides guidance to water professionals working in the broader water management sector. Its end-users include those charged with decision-making and implementation and decision-making duties in relation water; for example, government agencies, non-government organisations, development assistance agencies and the private sector. Intermediate users of the book are water academics, lawyers and students of water law and policy generally.

The publication will analyse and describe the international state-of-the-art in designing and implementing legal, policy and institutional mechanisms that contribute to effective environmental water governance. In drawing on comparative learning, it will provide practical information that can contribute a useful understanding of the most relevant issues in the area.

Olga Buendia Cao
Water Governance R&D Consultant, Environmental Law Centre
CEL STEERING COMMITTEE MEETING

The second CEL Steering Committee meeting was held at the IUCN Environmental Law Centre in Bonn, Germany on April 4-5 and was attended by Steering Committee Members Sheila Abed de Zavala, Giuseppe Zaccagnini, Professor Michel Prieur, Professor Antonio Herman V. Benjamin, Melinda Janki, Veit Koester, Dr Antonio G. M. La Viña, Al-Sharifeh Nawzat, Professor Daniel Sabsay, Dr Tatiana R. Zaharchenko, John Scanlon, Dr Alejandro Iza and Dr Wolfgang Burhenne.

Further participants included Marceil Yeater, Chief of the Legislation and Compliance Unit of the CITES Secretariat, Sue Mainka, IUCN Senior Programme Coordinator and Parvez Hassan, former Chair of the Commission.

The Commission dealt with a very full agenda, which included: analysis and revision of the CEL Work Plan and ELP current and projected initiatives, a rich discussion on the coordination of the CEL Specialist Groups and the role of the CEL Vice Chairs in facilitating their work, a report on the outreach and communication initiatives of the Commission and a presentation of the new draft ELP Website and Newsletter.

On the recommendation of the Steering Committee the Chair admitted 64 new CEL members from 31 countries, including three new Honorary CEL members and agreed to expand the Steering Committee to include new members from China, India and Central America.

Progress made towards the adoption of the ELP Strategic Work Plan

The CEL Chair stressed the importance of adopting a Strategic Plan and presented a first draft for discussion. She made suggestions regarding its structure and objectives and mentioned that the Strategic Plan is an essential road map guiding the efforts of the Commission and should be kept operational and basic, focusing on a few key areas of the broader CEL mandate.

The meeting agreed that it is useful to prepare a 6-year plan (2006-2012) but also agreed to give priority to the planning of the next 2 years leading to the IUCN Congress in 2008 and the adoption of a new intersessional plan.

CEL 2005-2006 Work Plan analysis and revision

The meeting reviewed the CEL Work Plan for 2005-2006 and discussed the progress made in all elements of the Plan. Sheila Abed concluded that the great majority of CEL’s goals for the year 2005-2006 were achieved and expressed her thanks to the Steering Committee for a successfully realised Work Plan.

Outreach and communication initiatives

The Steering Committee discussed the most effective ways of communication between the members of the Steering Committee as well as members of the Specialist Groups and all Commission members.

The meeting reviewed the Commission’s newsletter, which was circulated in December 2005, and agreed that such a newsletter should be circulated to CEL members every 3 months, with news on CEL projects and environmental law meetings. The Steering Committee members should send news and articles for the newsletter on their areas of expertise. The contributions can be in any of the three official IUCN languages.

Finally, the Steering Committee agreed to link with the ELP website and to provide the ELC for this purpose with information regarding the Steering Committee’s activities related to IUCN and Environmental Law.

Inter-commission work proposals

The meeting agreed to explore ways of collaboration with other IUCN commissions, as was discussed between CEL and WCPA in March 2006, during the CBD expert workshop on protected areas in Curitiba, Brazil and also agreed to launch a project on governance of specific areas of the environment, such as forests, protected areas, water and access to justice.

Follow-up of WCC Resolutions and 2005-2008 CEL Mandate

The CEL Chair made a presentation on the WCC Resolutions and the meeting agreed that the Commission should be active in the implementation of the following resolutions:

RES 3.072 – Legal Aspects of the Sustainable Use of Soils
RES 3.053 – Protection of Chile’s first Ramsar site, threatened by a cellulose factory
RES 3.048 – IUCN Guidelines for protected area management categories
RES 3.037 – Arctic Legal Regime for Environmental Protection
RES 3.021 – International Covenant on Environment and Development
RES 3.020 – Drafting a Code of Ethics for Biodiversity Conservation
RES 3.015 – Conserving nature and reducing poverty by linking human rights and the environment
RES 3.012 – Governance of Natural Resources for conservation and sustainable development
RES 3.029 – Capacity building of young professionals
RES 3.022 – Endorsement of the Earth Charter
RES 3.019 – Horizontal evaluation of international conventions, treaties and agreements
RES 3.075 – Applying the precautionary principle in environmental decision-making and management
RES 3.081 – Implementation of Principle 10 by building comprehensive good governance systems
RES 3.006 – Protecting the Earth’s waters for public and ecological benefits
RES 3.051 – Freshwater protected areas
Re-admission process conducted for CEL Membership, and formal admission of new members by the SC

The Steering Committee discussed the submitted nominations for CEL membership and decided to admit 64 new CEL members from 31 countries. Since the appointment of the new Chair, approximately 400 professionals have applied for membership and their applications have been approved.

The procedure for appointing new members was discussed. Candidates for membership may be nominated by the Chair or a Steering Committee member. Membership applications can be submitted and discussed further via email.

Finally, the meeting unanimously agreed to appoint the following distinguished professionals as honorary CEL members:

- Bob Debus from Australia
- Jorge Caillaux from Peru
- Amedeo Postiglione from Italy

CEL SPECIALIST GROUPS MEETING

The CEL Chair Sheila Abed convened an historic first meeting of CEL Specialist Group Chairs in Foz do Iguaçu, Brazil on 1-2 June 2006.

The Specialist Groups (SG) Chairs present at the meeting were Klaus Bosselmann (Ethics SG), Ben Boer (Protected Areas Inter-Commission Task Force) Ian Hannam (Sustainable Use of Soils SG), Nicolás Lucas (Trade & Environment SG), Richard Ottinger (Energy Law and Climate Change SG), Lee Paddock (Enforcement & Compliance SG), Vladimir Passos (Judiciary SG), Romina Piccolotti (Human Rights and the Environment SG), Marta Rovere (Water SG), David VanderZwaag and Nilufer Oral (Oceans, Coastal and Coral Reefs SG), and Eugenia Wo Ching (Biodiversity SG) as well as the Steering Committee Members Professor Antonio Benjamin and John Scanlon, Head of the Environmental Law Programme Dr Alejandro Iza, and the special guests Professor Ron Engel, and Dr Jorge Caillaux.

The purpose of the meeting was to gain a collective understanding of each others work, to promote co-operation between all Specialist Groups and the Steering Committee, to discuss SG workplans and priorities in the context of the CEL Mandate and ELP Programme, and to explore sources of funding for their work. The Chair noted the importance of promoting work between the Specialist Groups and with other Commissions and the identification of major crosscutting themes. She also informed the SG Chairs that at the last Bonn Steering Committee (SC) Meeting, the SC Members stressed the importance of the role of the Specialist Groups’ Chairs and Co-Chairs as CEL leaders and working partners for an active and successful Commission, and discussed the need to adopt agreed ways of effective communication and co-ordination within and between the Specialist Groups, and with the Steering Committee.

The meeting also explored the relationship of the IUCN Environmental Law Programme with the academic research agenda of the IUCN Academy. The Chair accepted the recommendation of the SG Chairs to institutionalize the SG meeting on an annual basis.
Specialist Group Workplan

Some important conclusions, recommendations and observations that arose from the presentations and subsequent discussions were:

- A strongly expressed request for documents to be translated in at least all of the official IUCN languages.
- The value of taking a multi-disciplinary approach and involving non-lawyers in CEL and its SGs.
- The importance of CEL members, and in particular SG members, being well acquainted with the IUCN Mandate, Programme and relevant Congress resolutions and the need for the ELC to assist in this regard.
- The usefulness of relevant ELP studies and publications and for CEL to make the best use of them, such as the Draft Covenant on Environment and Development (IUCN/ICEL).
- To link CEL’s work closely with the ELC in Bonn and through it with the IUCN Secretariat more generally, especially in accessing programme funding, accessing relevant information and participating in major UN events, such as CSD 15.
- To take the opportunity to hold side meetings of CEL and CEL SGs at CoPs and UN meetings.
- The importance of communications and of the expanded use of the ELP website, such as dedicated pages for SGs and ListServers.
- Drawing upon the IUCN Academy as a research arm of the Environmental Law Programme.
- Having CEL/ELC evaluate the possibility of launching an Environmental Law e-training initiative.
- A request that CEL sign an MOU with INECE.
- A proposal that links be established with collegiate organizations and institutions, such as the International Commission of Jurists, Schools for the Judiciary, Bars, etc.
- Noting that law students are an interesting target for the creation of correspondents’ networks, and work on best practices.
- The definition of values will provide a strong basis for sustainability supporting the work of the Ethics SG.
- The need to integrate the cross-cutting SGs with the thematic SGs and also with other Commissions for example Human Rights, Compliance and Enforcement and Ethics.
- To design a strategy to promote the engagement of people of the underrepresented regions in the Commission.
- The need for everyone to work with the CEL Chair to build membership of CEL and its SGs.
- The immense value of having a meeting of SG Chairs, which should become an annual event.

Discussion of the Commission’s Strategy and how SGs can help advance the achievement of the Mission, Goals and Objectives set out in the CEL Mandate.

After dynamic discussion, the following recommendations were made:

- Specialist Groups should promote through their work, the work of CEL, and add precise work to the goals and objectives of CEL.
- Dialogue must be fostered among all Specialist Groups and with the other IUCN Commissions, as well as joint work in crosscutting issues (for example, Water SG/Soils SG/Human Rights, Energy & Climate SGs).
- Specialist Groups’ Chairs should promote with their members, the organization of regional activities.

The Academy

Professor Boer reported that the license agreement between IUCN and the Academy has been signed and mentioned that the Academy wishes to collaborate with CEL and ELC on research and educational program. Professor Paddock added that one of the things that the Academy wants is to team Universities from different parts of the world.

SPECIALIST GROUPS

<table>
<thead>
<tr>
<th>Group</th>
<th>Co-Chair</th>
<th>Co-Chair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armed Conflict and the Environment</td>
<td>Michael Bothe</td>
<td>Carl Bruch</td>
</tr>
<tr>
<td>Implementation of the Convention on</td>
<td>Eugenia Wo Ching</td>
<td>Kent Nnadozie</td>
</tr>
<tr>
<td>Biological Diversity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy Law and Climate Change</td>
<td>Richard Ottinger</td>
<td>Wang Xi</td>
</tr>
<tr>
<td>Enforcement and Compliance</td>
<td>Lee Paddock</td>
<td>Ricardo Lorenzetti</td>
</tr>
<tr>
<td>Ethics</td>
<td>Brendan Mackey</td>
<td>Klaus Bosselmann</td>
</tr>
<tr>
<td>Human Rights and the Environment</td>
<td>Dinah Shelton</td>
<td>Romina Piccolotti</td>
</tr>
<tr>
<td>Indigenous Peoples</td>
<td>Melinda Janki</td>
<td>Laura Westra</td>
</tr>
<tr>
<td>Judiciary</td>
<td>Paul Stein</td>
<td>Vladimir Passos</td>
</tr>
<tr>
<td>Oceans, Coastal and Coral Reefs</td>
<td>David VanderZwaag</td>
<td>Nilufer Oral</td>
</tr>
<tr>
<td>Sustainable Use of Soils</td>
<td>Ian Hannam</td>
<td>Du Qun</td>
</tr>
<tr>
<td>Trade and the Environment</td>
<td>Nicolas Lucas</td>
<td>Marie Claire Segger</td>
</tr>
<tr>
<td>Water and Wetlands</td>
<td>Rosemary Lyster</td>
<td>Marta Rovere</td>
</tr>
<tr>
<td>Environmental Governance</td>
<td>Katharina Kummer</td>
<td></td>
</tr>
<tr>
<td>Protected Areas</td>
<td>Melinda Janki</td>
<td>Ben Boer</td>
</tr>
</tbody>
</table>

TASK FORCES

| Arctur Regime                        | Wolfgang Burhenne |
| Protected Areas (Joint CEL/WCPA Task Force) | Melinda Janki, Ben Boer |
The CEL Specialist Groups have been working on a wide range of issues in 2006 and a brief summary of the some of their activities is outlined below:

**Oceans, Coasts and Coral Reefs Specialist Group**
The Specialist Group on Oceans, Coasts and Coral Reefs (Oceans SG) has replaced the previous SG on Ocean Law and Governance which was established in 2003. The Co-Chairs of the Oceans SG are David VanderZwaag, Canada Research Chair in Ocean Law & Governance, Marine & Environmental Law Institute, Dalhousie University and Nilüfer Oral, Law Faculty, Istanbul Bilgi University Law School. The Oceans SG is planning to address a wide array of ocean/coastal crises and challenges primarily through thematic sub-groups. Each of the sub-groups has prepared detailed workplans to promote the mission of the IUCN, the CEL and the Oceans SG.

Sub-groups established to date are:

- **High Seas Governance**, co-chairs: Kristina Gjerde and Rosemary Rayfuse
- **Shipping**, co-chairs: Moira McConnell and Charlotte Breide
- **Land-based Marine Pollution Activities**, chair: Ann Powers
- **Mediterranean Sea**, co-chairs: Davor Vidas and Maria Gavouneli
- **Black Sea**, chair: Nilüfer Oral
- **Caribbean and Latin America**, co-chairs: Barbara Lausche (Caribbean) and Maria-Helena Fonseca Souza Rolim (Latin America)

In addition to the activities of the sub-groups, the Oceans SG will engage in various "at large" activities such as creating an Oceans SG portal on the IUCN website, promoting ocean-related panels or sessions at the 2007 IUCN Environmental Law Academy Conference, "Rio Plus 15" in Brazil and developing research and other synergies with IUCN's Global Marine Program, the Environmental Law Centre and the Environmental Law Academy. The SG also hopes to assist with the organization of a side event at the UN Informal Consultative Process on Oceans and Law of the Sea in June 2007.

The Oceans SG and its various sub-groups encourage new members and proposals for establishing additional working groups and at large activities. Please contact Lauri MacDougall (lauri.macdougall@dal.ca) if you have any interests and/or ideas.

**Sustainable Use of Soils and Desertification Specialist Group**
The Specialist Group on Sustainable Use of Soils was formed in April 2000. The Group has been progressively implementing the "Soil Resolution" which was passed at the World Conservation Congress in October 2000 in Amman Jordan, which gave responsibility to the ELP to develop national legal guidelines and explanatory material, and to investigate a global legal instrument for sustainable use of soils. The Amman Resolution was supplemented by a special soil Resolution passed at WCC in Bangkok in November 2004. 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 member. Members come from Iceland, Germany, USA, New Zealand, Australia, Great Britain, and Egypt. Professor Antonio Herman Benjamin of Brazil is the Group’s Liaison Officer with the CEL Steering Committee and maintains a very active interest in the Group’s progress. An important aspect of the Group is its cooperative working relationship with the Soil Scientists Reference Group.

Over the past year, emphasis has been placed on communicating the progress of the Specialist Group outcomes based on the recommendations in the ELP Soils publications 45 and 52.

An "International Workshop on Strategies, Science and Law for the Sustainable Management and Conservation of the World’s Soil Resources" was held in Iceland in September 2005. Two Specialist Group members were part of the Organizing Committee and it was attended by most members of the Specialist Group. A focal aspect of the workshop was the discussion on a draft international instrument for sustainable use of soil, and a concordat on sustainable use of the world’s soil resources. A draft "Protocol for the Conservation and Sustainable Use of Soil" was tabled and comments received during the workshop were presented in the revised draft that was tabled at the June 2006 Specialist Group Chairs meeting in Brazil. In April 2006 the Chair, Co-Chair and Professor Nicholas Robinson (past CEL Chair) provided technical advice and legal capacity training in Xining, Qinghai, a western province of China, for 30 legislative officials of the GEF-PRC Partnership Project of OP12 (capacity building for combating land degradation in dry-
land ecosystem in PRC). The ELP Soils publications were used as working guidelines in the training.

The growing global interest in the work of the Group was reflected when the Chair was invited to present the opening keynote address to the 14th International Soil Conservation Organization Congress in Marrakech, Morocco in May 2006 on the progress made on the development of national and international frameworks for the sustainable use of soil and in particular the draft Protocol. The Congress, held under the Patronage of His Majesty King Mohammed VI of Morocco and the Moroccan High Commission of Forestry and Water Combating Desertification, was a special event of the 2006 UN Year of Deserts and Desertification. At the invitation of the Chinese Ministry for Water Resources four Specialist Group members participated in an international workshop in Beijing in August 2006 on the reform of the 1991 Water and Soil Conservation Law of the People’s Republic of China, as a joint arrangement between the Asian Development Bank and PRC government. The workshop reviewed aspects of international and national environmental law on soil and water conservation relevant to the reform of the PRC 1991 Law. Case studies on soil and water conservation law from Australia, United States, New Zealand and the European Union were examined. Experiences gained from this workshop will be used as a guide for interaction between the Specialist Group and other countries reforming their soil legislation.

Ian Hannam  
Co-Chair Sustainable Use of Soils Specialist Group

Indigenous Peoples Specialist Group  
The Specialist Group on Indigenous Peoples has recently re-established and now has 20 members including the two recently appointed co-chairs: Melinda Janki and Laura Westra. The members hail from Asia, Africa, North and South America, Europe and Australia and bring a wonderful combination of perspectives, experience and expertise to the group. Members include practising lawyers, academics and individuals working in NGOs.

Our work plan includes an ongoing discussion on the evolving concepts of the meaning of "indigenous peoples". We are currently looking at international law and policy, as well as national law, with a view to identifying key concepts and legal principles.

The group also hopes to carry out a series of case studies on implementing Article 8(j) of the Convention on Biological Diversity and to contribute to the next COP in 2008.

Melinda Janki and Laura Westra  
Co-Chairs Indigenous Peoples Specialist Group

Trade and Environment Specialist Group  
The environmental movement can congratulate itself – the interface of environment and trade has become a growing and fertile field of research and action. The movement has impacted the rhetoric of every major trade organization, the letter of many trade agreements and the discourse of other social movements. Institutes and programs specifically devoted to the subject have multiplied, street protests around trade and sustainability have become more visible, international trade negotiations are slightly more transparent and environmentally preferable products are now on the radar screen of decision makers.

But we are not satisfied. The 21st century begins with 60% of ecosystem services degraded – concerns include issues such as the need for clean air, water and food supplies, flood control, disease regulation and the spiritual connection with the land – the climate is changing rapidly, poverty is still widespread and social inequality is as high as ever. The drivers behind global environmental transformations such as population and economy remain strong and are expected to grow steadily in the coming decades. And trade plays a crucial role in this process: according to the World Trade Organisation world merchandise exports exceeded the US$10 trillion mark for the first time in 2006.

The environmental challenge keeps changing qualitatively, and the Trade and the Environment Specialist Group (TESG) wants to help IUCN define an agenda in tune with the times to come.

On the one hand, TESG wants to take note of the latest scientific understanding of the systemic relations between ecosystems and human well-being. Like they did 20 years ago with climate change, the scientific community is calling our attention to a major, global environmental issue that needs urgent attention: ecosystem degradation and socio-ecological resilience. The Millennium Ecosystem Assessment reported extensively on this, and its findings are there for all to see and to act upon (www.maweb.org).
is a powerful driver of ecosystem change globally. For example, Nations trade ecosystem services at massive scales and without accounting for them, making large tradeoffs among ecosystem services (especially in poorer regions), with significant implications for socioecological resilience. TESG wants to look at these flows of benefits and liabilities and to assess trade rules accordingly.

On the other hand, TESG also wants to look at local dynamics. There are many experiences around the world in sustainable production, consumption, livelihoods, in which trade plays a central role. These experiences or strategies of socioecological resilience are treated as particular or idiosyncratic projects with little national projection, and hence are politically fragile. Why aren’t these processes a matter of state policy? TESG wants to look at these cases and determine which normative environments support them and which undermine them, and then assess trade rules accordingly.

TESG plans to organize up to three regional workshops in 2007 and commission a few key papers to frame the discussions. The end product will be a proposal on how IUCN could position itself with regards to environment and trade, to be delivered to the 2008 World Conservation Congress. TESG has been in existence for slightly over a year now. It got off to a slow start, only natural for a new group, but we expect the approach we are proposing will soon spark a lively process leading to the next Congress.

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

Energy Law and Climate Change Specialist Group

The Energy Law and Climate Change Specialist Group has more than 60 members from some 40 countries throughout the world. More than half are from developing countries.

Our most important task is to help the IUCN Energy and Biodiversity Leveraging Initiative prepare a position paper on the IUCN position on energy and biodiversity and to prepare for IUCN’s participation in the 15th session of the Commission on Sustainable Development (CSD-15). Five SG members are writing papers on energy and biodiversity for this endeavour.

Another paper, energy efficiency: The best immediate option for a secure, clean, healthy future, authored by SG Co-Chair Richard Ottinger was published in the November special issue on climate change of the UN Journal, Natural Resources Forum.

SG Member Durwood Zaelke of INECE and SG Co-Chair Richard Ottinger will be representing IUCN CEL in a major research project launched by the Government of Norway and led by Professor Hans-Christian Bugge of the University of Oslo on meeting the climate challenge: new legal instruments and issues in national and international energy and climate law. International partners in the project are the Institute for Environmental and Energy Law, Catholic University, Leuven, Belgium; the Research Center for European Environmental Law, Bremen University, Germany; the Center for International Sustainable Development Law, Montreal, Canada; and Pace University School of Law School/IUCN CEL SG. The organizing meeting was held in Oslo, 11-13 September 2006.

The SG was also asked to assist the United Nations Department of Economic and Social Affairs (UNDESA) in conducting a Forum for Parliamentarians from Indonesia, India, China and Thailand on sustainable energy in November 2006, following the very successful Forum for African Parliamentarians that was held in Cape Town in 2005.

Richard Ottinger
Co-Chair Energy Law and Climate Change Specialist Group

Armed Conflict and the Environment Specialist Group

On September 21, 2006, the Specialist Group on Armed Conflict and the Environment and the Environmental Law Institute convened a seminar in Washington, DC on “Protecting the Environment in Times of War.” This seminar provided a historical overview of the development of international law designed to prevent, minimize, mitigate, and redress environmental impacts of armed conflict. It also sought to highlight potential gaps in the legal and institutional frameworks governing the environment during armed conflict.

Drawing upon the discussions, co-chairs Professor Michael Bothe and Carl Bruch developed an initial program of work for the IUCN CEL Specialist Group on Armed Conflict and the Environment. In light of the previous work on the topic, the unresolved issues, and recent experiences and developments, the Specialist Group will focus its efforts particularly on legal and institutional aspects of managing the environment in post-conflict societies. This topic is important in countries around the world. Effectively addressing environmental issues can be central to a country’s transition to peace. This is true in situations where natural resources fuel conflict (e.g. control of diamonds or timber), environmental management is a source of social unrest (e.g. land tenure), or management of natural resources is important to a return to peaceful social relations (e.g. delivery of water services).

The last 15 years has witnessed tremendous growth in approaches and experience in addressing the environment in post-conflict societies. This is often for humanitarian and environmental reasons, trying to ease the transition to peace and effectively manage the environment in a time when priorities – and resources – are elsewhere. There are also implications for liability: assessing the environmental situation when determining priorities for relief can also provide evidence in law suits brought by victims of armed attacks on the environment, be they civilians or combatants.

The co-chairs propose that the Specialist Group take stock of recent experiences in addressing the environment in post-conflict societies, identify lessons learned and gaps, and develop policy and legal recommendations for addressing the gaps. This work would take place over the next two
To help build the capacity of CEL, the other IUCN commissions and the IUCN membership (civil society and government) to critically reflect upon, and actively engage, the major ethical challenges facing the global environment today;

2. To further the theory and practice of environmental law (international, national, local);

3. To build upon the many efforts of CEL (incl. World Charter of Nature, Draft International Covenant for Environment and Development, Earth Charter) to advance legal concepts and instruments that integrate human rights, sustainable development and care and respect for the larger living world; and

4. To promote the Earth Charter as a strong affirmation of global interdependence and the universal responsibility of every person and community for the indivisible values of justice, peace, and ecological integrity.

The focus of ESG work in recent years has been on advancing a critical analysis of the Earth Charter and the role it can play in building credible and effective global ethics and international law. The ESG has sought to advance understanding and implementation of the principles of the Earth Charter in a rich variety of contexts: global and development ethics; the progressive conceptual development of environmental law; climate change; biodiversity; biotechnology; poverty; precautionary principle; ecological integrity and environmental human rights. ESG members have considered the conceptual foundations of the Earth Charter in numerous conferences and publications.

Much of ESG’s current work has been triggered by two resolutions adopted at the 2004 IUCN World Conservation Congress in Bangkok. To help implementing Resolution WCC 3.020 (“Code of Ethics for Biodiversity Conservation”) and Resolution WCC 3.022 (“Endorsement of the Earth Charter”) the ESG has:

• prepared reports and submissions on the “Guidelines for Applying the Precautionary Principle for Biodiversity Conservation and Natural Resource Management”, the current review of IUCN’s Programme and the IUCN project “The Future of Sustainability”;
• held a Consultative Group Meeting (jointly with the Centre for Humans and Nature - CHN) near Chicago, 27-30 August 2005, to develop recommendations for implementation of the two resolutions and to consider how the ESG could contribute to this work and related activities; and
• held a Planning Meeting (again jointly with CHN) in Gland, 25-26 September 2006, to develop a Code of Ethics for Biodiversity Conservation.

The 2005 Consultative Group Meeting resulted in a Work Plan outlining the organization, membership, governance and resource requirements of the ESG as well as priority projects. Among these are “The Earth Charter and IUCN Policy and Programme” (WCC Resolution 3.22.2), “The Earth Charter and Education, Communication and Ethical Dialogue” (WCC 3.22.3), “Drafting a Code of Ethics for Biodiversity” (WCC 3.20.2) and “IUCN engagement with philosophical and religious schools of thought regarding...”
nature conservation throughout the world” (WCC 3.20.3).

The 2006 Planning Meeting at the IUCN HQ in Gland brought together some 30 experts of biodiversity conservation in developing and developed countries including chairs of IUCN committees, the Acting Director General and senior IUCN staff. The meeting adopted a number of recommendations highlighting the urgency, process and objectives of a Code of Ethics. ESG looks forward to closely working with CEL, IUCN, the IUCN Academy of Environmental Law and the wider IUCN membership on this important project. If successful it would give IUCN strong moral leadership that the world so desperately needs.

Klaus Bosselmann
Co-Chair Ethics Specialist Group

Judiciary Specialist Group
The Co-Chairs of the Judiciary Specialist Group are Justice Paul Stein, of the Supreme Court of New South Wales, Australia and Vladimir Passos de Freitas, Ex-President of Federal Court of Appeal 4th Region, Brazil. The group is not only composed of judges but has members with diversity in expertise and from a range of countries. With the addition of many new members in 2006 this will further contribute to the outcomes of the group.

The group’s aim is to promote and support the role of judges in Environmental Law through capacity building initiatives. The group is collaborating with UNEP to implement a portal of international judicial decisions as part of the ECOLEX database. The aim is to provide judges with access to materials on Environmental Law cases so that they are able to assess the decisions made by Courts on similar cases in other countries or other continents. There are difficulties associated with such work (e.g. determining which cases to include and determining appropriate keywords) but the experience and knowledge of members of the Specialist Group means that they are able to make a valuable contribution towards this project.

To support judicial capacity building one of the recent IUCN Environmental Policy and Law Papers focuses on the role of judges in environmental law. The book - Greiber, T. (2006) Judges and the Rule of Law. Creating the Links: Environment, Human Rights and Poverty. IUCN, Gland, Switzerland and Cambridge, UK was released in September 2006. The publication is a presentation of the proceedings and outcomes of "Judiciary Day" which was a side event to the 3rd IUCN World Conservation Congress.

One of the ideas of the group is to organise a contest for African judges with an Environmental Law theme and the prize being funding to participate in a Symposium in another country. Such work is important to provide support to judges so that they are able to benefit from the experience of an International symposium, with colleagues from other countries.

Vladimir Passos de Freitas
Co-Chair Judiciary Specialist Group

Enforcement and Compliance Specialist Group
The May meeting of Specialist Group chairs in Brazil was very helpful in getting a better sense of how the Enforcement and Compliance Group could better support the work of other Specialist Groups. Two ideas in particular emerged, both involving the Specialist Group on Oceans, Coasts and Coral Reefs. The first of these ideas is to work on capacity building for compliance in the Black Sea region. Oceans co-chairs David VanderZwaag and Nilüfer Oral attended the 4th IUCN Academy of Environmental Law Colloquium October 16-20, 2006 at Pace Law School in White Plains, New York and discussed possible areas of collaboration. In addition, the Oceans Specialist Group has expressed an interest in working on high seas vessel pollution enforcement.

The International Network for Environmental Compliance and Enforcement is the largest international network dealing with environmental enforcement. INECE, founded by the Dutch and United States governments over 17 years ago, has historically dealt with air and water pollution and hazardous waste issues. More recently, INECE has become more involved in the conservation or "green" enforcement agenda and featured several of these issues in its 7th International Conference held in April 2005 in Marrakech. Several IUCN CEL members participated in the Marrakech conference as a result of special invitations from INECE. INECE is co-sponsoring with IUCN the 4th IUCN Academy Colloquium. Because INECE has an already very strong international enforcement network, we hope to continue strengthening the relationship with INECE to better provide assistance on conservation related enforcement issues. More information on INECE is available at www.inece.org.

The 4th IUCN Academy of Environmental Law Colloquium was held in White Plains, New York and focused on environmental compliance and enforcement issues. Over 240 participants attended from more than 40 countries. Attendees were provided with information about CEL and the Specialist Group on Enforcement and Compliance in an effort to seek further members. Further information on the Colloquium can be found at www.law.pace.edu/environment/colloquium.html

Lee Paddock
Co-Chair Enforcement and Compliance Specialist Group
REPORTS FROM CEL TASK FORCES

Task Force on the Arctic

Threats to the Arctic environment have been known for years: caused by global factors such as the deposition of globally-dispersed contaminants through long range transport via the atmosphere, or regional undertakings such as mining, tourism and military activities. These threats are now increasing, in particular as a result of climate change. Arctic ice melting, in addition to the ramifications it will have on the global climate, is already altering the Arctic environment, including the ability of indigenous peoples to carry out their traditional way of life, and the ability of ice-dependant species to survive. But it also significantly increases the possibilities for human activities to take place in areas nowadays out of their reach. These are the prospects for fishing, shipping as well as oil and gas exploitation and exploration.

To arm the Arctic against these threats requires a three-pronged legal regime: at global, regional and national levels. Such a regime already exists. The question is how effective it is, and how can it be strengthened. At the global level, the answer is clear: achieve more effective support for the global conventions and a more vocal “Arctic voice” in their implementation. At this point in time, however, it also means a change of policy on the part of the United States administration towards key conventions such as the Law of the Sea and the Kyoto Protocol. At the regional level, the views differ: should the present regional soft law regime be continued, or should a binding regime be put into place? The Arctic Council scope of competences and powers are at the heart of this discussion. The second alternative pleads for a new binding convention, with wider competences rooted in binding commitments. But not all Arctic states, prominent among them the USA and Russia, favour such a transformation – although most of the proponents agree that the Arctic Council needs strengthening. The key concerns are, therefore, how to strengthen the regional regime, and how to improve the global commitments. CEL has considered both.

The interest of CEL in these questions started in 2001, when CEL member Linda Nowlan prepared the EPLP No 44 “Arctic legal Regime for Environmental Protection”. A meeting of Experts was convened by CEL in Ottawa in the Spring of 2004 to review the situation and to consider if and how CEL could assist with regard to the ongoing discussion and increasing calls for improvement of the Arctic legal regime. The meeting concluded that, while a strengthening of the current regime was desirable, what and how this could be achieved could only be considered in detail if an “issue-oriented” analysis was made, which would permit to examine, issue by issue, the level – global, regional, national – at which action could best be taken. WCC Resolution 3.037 on the Arctic legal regime for environmental protection subsequently requested CEL to participate in the work of the Arctic Council, making its services and expertise available in relation to appropriate legal frameworks. It is against this background that the CEL Task Force was created by the first CEL Steering Committee after WCC 3, to monitor the evolution of the discussions concerning the Arctic legal regime, and to be attentive to developments in which CEL could play a useful role.

As a result, the IUCN Director General and later the CEL Task Force Co-ordinator contacted the then Russian-led Arctic Council Presidency. No response was, however, received. The CEL Task Force Co-ordinator subsequently contacted the Standing Committee for Parliamentarians of the Arctic Region, and was invited to the 7th Conference of Parliamentarians of the Arctic Region, meeting in Kiruna, Sweden, in August 2006, which included on its agenda the question of the strengthening of the Arctic legal regime. This was an opportunity to present the “issue oriented approach” taken by the CEL Expert Meeting. The Kiruna Conference Declaration recommended “to initiate, as a matter of urgency, an audit of existing legal regimes that impact the Arctic, and to continue the discussion about strengthening or adding to them where necessary”. Prominent participants in the Kiruna Conference on this agenda item were Hans Corell, former Under-Secretary General for Legal Affairs of the United Nations, who underlined the inter-dependence of the global and regional regimes in the context of the Arctic.

Another event where the Task Force was represented was the Arendal Seminar on multilateral agreements and their relevance to the Arctic, held in September 2006 at the initiative of UNEP-GRID-Arendal and the Standing Committee of Parliamentarians for the Arctic Region. The Seminar followed up on the Kiruna “audit” proposal and developed a set of recommendations on ways and means to ascertain the effectiveness and relevance of MEAs in the Arctic and to examine the need and options for improving the existing regime.

All in all, the possibility to improve the overall legal regime for the Arctic remains politically charged and difficult. At this point in time, the role of the CEL Task Force can only be to support action geared at improving participation in and implementation of the relevant global regime for example, as proposed in Kiruna, through a UN Treaty event at the United Nations aiming at increasing ratification of global treaties affecting the Arctic, as well as supporting the issue-oriented analysis which might clarify how best the regional regime can be strengthened.

Wolfgang E. Burhenne
Chair, Taskforce on the Arctic
CEL and WCPA establish Task Force on Protected Areas

Early in 2006 the CEL Chair Sheila Abed and World Commission on Protected Areas (WCPA) Chair Nik Lopoukhine agreed to set up a Joint Task Force on Protected Areas. They appointed Melinda Janki (CEL) and Ben Boer (WCPA) as co-chairs of the Task Force. Four members of the Task Force are drawn from CEL and four from WCPA. In due course, a broader Reference Group of protected areas managers and legal specialists from CEL and the WCPA may be asked to review the work of the Task Force and to make further inputs.

The Task Force is directed to investigating the need to strengthen implementation and enforcement regimes for publicly owned, privately held, indigenously owned and/or managed areas as well as community-conserved areas, on a global, regional and national basis. It covers both terrestrial and marine areas.

The Task Force’s Terms of Reference recognise that protected areas provide a wide range of social, economic and spiritual values and benefits to individuals, communities, economies and society in general. The application of, among others, the World Heritage Convention, the Ramsar Convention on Wetlands and the Man and the Biosphere program over the past few decades has resulted in a wealth of experience in the development on the operational guidelines, tool-kits and other management mechanisms. Many of the national laws and policies developed under these instruments have proved to be successful in maintaining the integrity of these global-level protected areas. However, in many areas, national and local management regimes have proven to be inadequate. The time has come to review and learn from the experiences of applying protected area management regimes as well as to investigate the management of areas which do not come under these regimes.

A particular focus of the Task Force will be on private and community-conserved areas which are not generally recognized by government legislative frameworks. The contribution of such forms of protection are thus seldom enumerated as a part of the protected area estate, nor are the protected area values of these places either officially captured or recognized. The application of the IUCN Protected Area Categories to these areas is not fully realized either.

The Task Force aims to encourage the idea that all protected areas regardless of jurisdiction, ownership or model of governance should be recognized for their contributions to protection of biodiversity, to sustainable development, and to improved livelihoods.

The general objective of the Task Force is to provide governments, tribal peoples, local communities, non-government organisations and others with information and guidance on the development of protected areas law and associated policy instruments, in particular related to the implementation of the Protected Area Programme of Work under the Convention on Biological Diversity, including guidance on private, co-managed and community-conserved areas.

The specific objectives are:

1. To develop guidelines on how best to incorporate each identified form of protected area into national legal frameworks and customary law management systems using agreements, leases, legislation and other mechanisms.
2. To facilitate contact among, and, where necessary and feasible, to conduct workshops involving, the task force, protected area managers (including managers of community conserved areas), legal researchers and other groups involved in developing and implementing legal and management frameworks for protected areas.

A series of case studies will be commissioned with the intention of identifying innovative approaches and examples of private or community owned/managed protected areas. On the basis of these case studies and law and policy research, the Task Force will prepare a series of reports and law and policy analyses in order to recommend legal and other appropriate measures.

The Task Force is intended to complete its work before the next World Conservation Congress in 2008.

Ben Boer and Melinda Janki
Co-Chairs Taskforce on Protected Areas
Secretariat established at the University of Ottawa
The year 2006 has seen some major developments in the progress of the IUCN Academy of Environmental Law. The Academy, which is an initiative of the Commission on Environmental Law, was officially launched at an international colloquium at Shanghai Jiao Tong University in 2003. Subsequent colloquia have been held in Nairobi (2004), Sydney (2005) and White Plains, New York (2006). The United Nations Environment Programme has been a major supporter of the colloquia.

Initial Secretariat support to the IUCN Academy of Environmental Law was provided by the Environmental Law Centre. Initial Secretariat support to the IUCN Academy of Environmental Law was provided by the Environmental Law Centre. The Secretariat is currently funded by Environment Canada and Health Canada, with supporting contributions from Hydro Québec and the International Development Research Centre of Canada.

The Governing Council of the Academy of Environmental Law met in Ottawa in May 2006, and met with the President of the University, Gilles Patry, and with Professor Daniel Gervais (Acting Dean of Common Law) and Professor Nathalie Des Rosiers (Dean of Civil Law). The Council appointed Professor Jamie Benidickson of the University of Ottawa’s Faculty of Law and Professor Ben Boer of the Australian Centre for Environmental Law, University of Sydney, as co-directors of the Academy. Ben has also been appointed as a Visiting Professor in the Civil Law and Common Law sections of the Faculty of Law for a two-year period in order to facilitate his work with the Academy Secretariat in its global outreach. Jamie teaches Canadian and international environmental law, water law, and legal history at the University of Ottawa.

At the end of May 2006, IUCN entered into a Licence Agreement with the Academy. This agreement specifies various conditions under which the Academy operates. The Academy’s role includes undertaking academic research, studies and conferences on the further conceptual development of environmental law, with the objective, consistent with the IUCN’s mission.

In September 2006, the Academy was officially incorporated under Canadian law. The Academy’s by-laws include details of membership, election of the Academy’s Governing Council and office holders and meetings of members.

The Academy Secretariat has now embarked on a major membership drive to ensure that environmental law teaching institutions from around the world become Academy members.

Over the next few years, the Academy plans to establish research, and teaching and capacity-building programmes on a collaborative basis with its member institutions and the IUCN Environmental Law Program.

2006 Academy Colloquium
The highly successful 2006 colloquium was organized by the Chair of the CEL Specialist Group on Enforcement and Compliance Professor Lee Paddock and his team at Pace University, New York. The colloquium attracted over 250 registrants from 47 countries. The theme of the colloquium was Implementing Environmental Legislation: The Critical Role of Enforcement and Compliance. Details of the colloquium can be found at http://www.law.pace.edu/environment/2006-colloquium-index.html

UNEP-IUCN Academy Curriculum Development Initiative
Linked with the Pace colloquium was a meeting of reviewers of a major initiative on curriculum development in the area of compliance and enforcement of environmental law. This initiative, funded by UNEP and with close collaboration with UNEP lawyers, is being carried out under the auspices of the Academy, with partner universities and the Washington-based Environmental Law Institute.

Membership inquiries for the IUCN Academy of Environmental Law can be directed to:

Ms Bernadette Blanchard
IUCN Academy of Environmental Law
Faculty of Law
University of Ottawa
57 Louis Pasteur
Ottawa, Ontario K1N 6N5
Canada
Email: bernadette.blanchard@uottawa.ca
Telephone: +1-613.562.5800. Ext. 3260
Fax: +1-613-562-5184
Customary law, traditional practices and water governance

The city of Antigua, Guatemala was the venue of the "Workshop of Experts in Water Governance, Customary Law and Indigenous Rights", organized by the IUCN Environmental Law Centre. The workshop took place from 18 to 20 September 2006.

This event was carried out within the framework of the project "Customary Law, Local Practices and Good Governance of Water Resources", managed by Dr Alejandro Iza, Director of the IUCN Environmental Law Centre, and coordinated by Marta Rovere, Co-chair of the Specialist Group on Water and Wetlands. Sheila Abed, President of the IUCN Commission on Environmental Law was also a participant at the workshop. Marianela Cedeño of IUCN – Regional Office for Mesoamerica (ORMA) provided technical and administrative assistance to the workshop.

In the initial phase of the project, case studies in four Latin American countries (Guatemala, Colombia, Ecuador and Paraguay) were developed, which analyzed in detail the traditional practices in water governance and their relation with each country’s public policies and regulations. Following this first phase, a workshop provided a forum for the debate, analysis and exchange of information gathered in the case studies, with a view to identifying gaps and deficiencies in regulations and public policies with regard to the implementation of traditional practices in the use of water by local and indigenous communities, as well as to prepare proposals for the development of mechanisms that promote the implementation of these practices in the legislative framework. The final phase of the project will be the publication of the case studies and the analysis developed during the workshop.

Dr Iza explained that customary law is a fundamental issue for the Environmental Law Programme and in this case is directly connected with the theme of the water, as this is a pilot project which seeks to move forward the analysis of this topic, to improve governance systems and to strengthen the structures for water use. He also commented that this initiative intends to promote the analysis of this topic based on the reality of these countries, to look into how these traditional practices interact with the statutory laws, if they are recognized in them, and, if not, what can be done so that they are incorporated into the legal dynamics of each country.

While the work initially focused on water governance, it is expected to be continued in other topics of interest such as forests and land. The aim of this project is to rescue these traditional practices, which exist in oral form, give shape to non-written law which forms a part of the day-to-day life and reality of local and indigenous communities.

Sharing experiences

Participants worked for two days with the consultants responsible for carrying out the case studies: Jeanette de Noack (Guatemala), Eugenia Ponce of León Chaux (Colombia), Juan Pablo Cinto (Paraguay) and Mónica Tobar (Ecuador).

Marta Rovere presented a comparative table of the case studies, summarizing the situation of Guatemala, Colombia, Ecuador and Paraguay with regard to the following themes:
1) Status of indigenous communities;
2) Relationship with the ownership and use of natural resources;
3) Traditional practices in the management and use of water resources;
4) Relationship between customary law and written law regarding natural and water resources;
5) Policies and norms that address customary law and traditional practices regarding the use of water;
6) Mechanisms to promote the implementation in legislation and policies; and
7) Institutional frameworks to promote strengthening the governance of water resources to maintain traditional practices in the use of water.

Following this presentation the experts briefly described the country case studies and identified key aspects which were debated during the second day of the workshop. In particular, the gaps and deficiencies in regulations and public policies regarding the implementation of traditional practices in the use of water were discussed. As a result of this debate and analysis, proposals were drawn up focusing on:
1) Differences between the formal system and indigenous system and the resulting conflicts;
2) Institutional aspects and participation;
3) The trilogy of national laws, indigenous laws and human rights; and the
4) Political impact of the communities within the existing institutions.

One of the critical issues of the debate was the importance of evaluating the contribution that IUCN and the Environmental Law Programme can offer in order to capitalize on the experience of each one of the countries and to expand upon the implementation of the concept of traditional practices in the use of water and other related issues.

Sheila Abed and Dr Iza during the visit to one of the Guatemalan indigenous communities as part of the field work carried out in the workshop.

A significant amount of relevant information was gathered during the workshop, which facilitated the exchange between
countries and called attention to this topic, especially in contexts where public participation and the search for more transparent processes of governance are advocated.

The results of this project will be published soon and will also be available on the web site of the Environmental Law Centre.

Nancy Stream Monge
Communications Officer, IUCN ORMA

IUCN Senegal

Developing an environmental law programme at a country level, as IUCN has in Senegal since 2005, requires strategic thinking on how to coordinate actions in a comprehensive and complementary way. A good example of such action is demonstrated by the work of the IUCN office in Senegal regarding the Judiciary.

IUCN has provided ongoing assistance to the Legislature, for example through support to the Network of Parliamentarians on environmental issues and regarding the development and passing of new bills and also has a long-standing cooperative relationship with the Executive through cooperation with ministerial departments and local governments. To strengthen this work IUCN has developed, for the first time in Senegal, a specific programme regarding the Judiciary and environmental issues. IUCN has conducted similar work in Pakistan, which was used as a reference for the work in Senegal.

Senegal is possibly the most well-furbished West African country in terms of environmental legislation, both qualitatively and quantitatively. However despite numerous rules and mechanisms in place since the late 1990’s, such as the “Constitution de partie civile” and many legal provisions (particularly penal provisions), the country is still faced with a severe lack of implementation and judicial control of its environmental law.

IUCN adopted a two-pronged approach towards capacity building for the Judiciary. The two main actors in court are the Magistrates (from civil, administrative and penal Courts) and the prosecutors (including representatives from local governments, NGOs, associations and also individuals). In the first instance IUCN wanted to make sure that those involved have a clear understanding in practical terms as to how to participate in court processes and which legal mechanisms to utilise.

The first step was to develop a clear and comprehensive guide. This was prepared by a group of specialists made up of Advocates, Magistrates and Professors. The guide, a first of its kind, was successfully promoted through lectures, “real-life” exercises and debates during a two-day course in July 2006. The guide was unanimously welcomed by 40 Magistrates who attended from all over the country and were from different courts and jurisdictional levels. Through this process an official partnership was established with the Senegalese School for Magistrates (“Centre de formation Judiciaire”), to integrate IUCN support within the official ongoing channels for training Magistrates.

The next step was to train environmental Associations and civil society groups which are eligible to use environmental litigation as a means of action.2

As a result of these actions hopefully more environmental cases will be brought to Courts in the future; Magistrates will be in a better position to receive and handle (quite often) technical environmental cases; Penal law will better play its roles of sanction and prevention and Administrative procedures will be used more often, balancing powers and ensuring independence of local governments in making local regulations. More generally, acceleration in environmental litigation and jurisprudence should boost the increasing culture of law in Senegal, towards more effective democracy in a country where socio-cultural factors, such as the “private arrangements” culture, which still strongly undermines the independent functioning of justice in public environmental matters.

For information on legal activities in Senegal and in West-Africa, contact Laurent Granier (laurent.granier@iucn.org), IUCN Senegal Environment Legal Advisor and Focal Point for Environmental Law in West Africa.

Laurent Granier
Environmental Legal Advisor, IUCN Senegal

1 Based on the French system, an action allowing environmental associations which are recognized as “general interest” to launch or join a penal case for “the defence of the public interest”. Substantial financial compensations can be allowed, making the procedure a powerful tool for associations to act as watchdogs and, practically, to finance their activities.

2 Senegal, like many other African countries, does not escape the “NGOs business” phenomenon, making it difficult to identify the real aim of such structures. It is therefore important to carefully target associations that are willing to play a counter-power role.

Final ceremony to distribute diplomas at the training workshop for Magistrates on access to justice and environmental litigation in Senegal, Judicial Training Centre, Dakar, 18-19 July 2006
Capucine Chamoux
September – November 2006
Capucine Chamoux, a French PhD candidate from the University of Aix en Provence-CERIC, joined the ELC for a three-month internship in September 2006. Her PhD research relates to access to environmental information in international and EC law.

At the ELC Capucine provided legal assistance on a project evaluating the effectiveness of the European Commission Wildlife Trade Law and comparing it with EC policies and the provisions of CITES. Capucine participated in project-related meetings and was also a rapporteur at a workshop attended by representatives of the European Commission and Member States.

She also assisted in the editing of a policy paper concerning the Arctic legal regime, a continuation of the work begun by Carine Nadal.

Lily Mathews
June – September 2006
Lily is a former corporate solicitor at Freehills, Australia, now working at Baker & McKenzie in Sydney. She gained her BA and LL.B (Hons I) at the University of Sydney. In her three months at the ELC, amongst other things, she contributed to and reviewed the South Pacific capacity building report; prepared a short paper on protected areas law in Australia (for the series of national overviews collated by Carine Nadal); and attended an international legislators’ forum on energy security and climate change, in Brussels. She also researched and prepared a paper on national policies to promote renewable energy, which will form a chapter in a book to be published next year on moving beyond the carbon economy (under the guidance of Professor Dick Ottinger, Chair of the CEL Specialist Group on Energy Law and Climate Change).

Lily also conducted background research on other energy and environment topics, including energy efficiency and energy as a human right. She has also contributed a short article to this newsletter on Penalty Infringement Notices.

Rocio Meza Suarez
June – August 2006
A PhD candidate at the University of Giessen, Germany, Rocio is writing her thesis on the right to free, prior and informed consent for indigenous people regarding mining activities that damage the environment and human health. She has her BA and LL.B from the Catholic University, Peru and Master of Law in Environmental Law and Policy from the University of Kent, UK.

In her three months at the ELC, Rocio’s activities included producing a document entitled “Legal analysis – Regulatory Regime of Protected Areas in Costa Rica”, proofreading the Spanish version of the ELP Newsletter, translation into Spanish of the Terms of Reference of the IUCN Commission on Environmental Law Specialist Group on Indigenous Peoples, researching the article “Judicial enforcement as an effective citizen’s tool against Government non-compliance with health and environmental regulations: The case of La Oroya” included in this Newsletter; and updating and revising of Volume 1 of the Manual de Derecho Ambiental para Centroamérica.

She also worked on the development of Volume 2 of the Manual de Derecho Ambiental para Centroamérica – Instrumentos Internacionales, which involved the selection of relevant international treaties for inclusion, legal research, formatting and indexing. She also found time to prepare the bibliography for her PhD thesis.

Ilona Millar
January – April 2006
Ilona Millar, an Australian lawyer with a Masters in Environmental Law from Sydney University, spent three months at the ELC. Ilona carried out research on legal frameworks for terrestrial and marine protected areas and assisted with the development of a project proposal to prepare Guidelines for Protected Areas Legislation. Ilona also spent time working on the South Pacific Regional Environmental Law Capacity Project, co-authoring a background scoping study and drafting a project proposal to provide legal technical advice and training to government and non-government organisations in South Pacific countries.

During her time at the ELC, Ilona also attended the World Heritage and Climate Change Expert Meeting at
UNESCO, on behalf of a number of Australian non-governmental organisations. Her two papers, “The duty to transmit World Heritage Properties under threat from climate change to future generations: The World Heritage Convention and supporting obligations under International law” and “Climate Change and the Great Barrier Reef World Heritage Area: The failure of Australia to meet its obligations under the World Heritage Convention, and the case for danger-listing” were provided as background documents to the meeting.

Ilona also helped prepare the IUCN ELP report for the 2005 edition of the Yearbook of International Environmental Law and delivered a lecture on the topic of marine biodiversity and whaling to students undertaking an international masters programme on Resource Management in the Tropics and Subtropics at the University of Applied Sciences in Cologne.

Carine Nadal
May – July 2006
Carine is an LL.M student specialising in Environmental Law at the University of London and holds a Diploma in International Environmental Law from the United Nations Institute for Training and Research (UNI-TAR) in Switzerland. She gained her LL.B at the University of Nottingham, United Kingdom.

During her internship at the ELC Carine undertook two main projects, one on national Protected Areas Management and the other on Arctic regional governance.

She was responsible for the research and collation of an extensive range of materials and resources on protected area legislation in a variety of countries worldwide. Her work entailed a critical analysis of national protected area legislation against various criteria including the extent to which national legislation reflects the IUCN Protected Area Categories. To this end, she took the initiative to liaise with experts on protected areas in the selected countries and also to draw upon the expertise and resources offered on site by the ELC staff and library. Her contribution has proved valuable in preparing a presentation for visitors to the ELC who seek legal advice on drafting national law on Protected Areas.

Carine was also entrusted with researching, collating resources and formulating a detailed synopsis of the main issues related to regional governance in the Arctic. Her work provided the basis for the preparation of a paper on these issues presented at a symposium organised by the Elizabeth Haub Foundation in September 2006 in Murnau, Germany.

Carine Nadal
Senior Legal Officer, Tomme R. Young:
In her more than six years at the ELC, Tomme was responsible for the Access and Benefit-Sharing Project financed by BMZ, which produced a wealth of innovative materials on these issues. She also focused on other work under the Convention on Biodiversity, as well as on questions of implementation of CITES, the World Heritage Convention and the Law of the Sea. On the thematic side, she was the environmental law focal point for work on invasive species, forests, species conservation, protected areas, agriculture, biosafety/GMOS, and financial and crosscutting issues (incentives, certification, conservation finance, and environmental liability). Tomme contributed a great deal to the work of the ELP in all these fields, and was a tireless staff member. She is now working as a consultant based in Bonn. We continue to be in touch with her and we wish her all the best for the future.

Appointment of...
Water Governance R&D Consultant, Olga Buendia:
Olga, a young Spanish lawyer, specialized in natural resources and environmental law at the University of Denver College of Law (DU), Colorado, U.S., where she gained her Master of Laws (LL.M.). During her studies at DU, Olga worked as a research assistant focused on water law issues and interned with the USEPA Region 8 assisting lawyers from the Legal Enforcement Department. Previously, she had received an Erasmus scholarship to study law in Amsterdam and lived in the Netherlands for three years working in a prominent consultancy firm. Last year Olga started her PhD studies at the Universidad de Zaragoza, Spain, with a special focus on water law. She speaks fluent English as well as Spanish and is now learning German.
Legal Officer, Sharelle Hart:
Sharelle has joined the team at the Environmental Law Centre as a Legal Officer. She holds a Masters in Environmental Law from the Australian National University as well as a degree in Agricultural Science and First Class Honours in Environmental Science. Sharelle brings a diverse range of legal, scientific and environmental experience to the ELP having worked for the Australian and Fijian Departments of Environment, non-government organisations, and the private sector. Her areas of work have included threatened species conservation, invasive species management, import risk assessment, capacity building, wildlife trade and animal welfare.

Legal Officer, Daniel Klein:
Daniel joined the Environmental Law Centre as a Legal Officer, being the second "new face" in the ELC’s team after Sharelle Hart joined the Centre in June. Daniel obtained his law degree from the University of Heidelberg and specialized in international law at the Universidad de Salamanca, Spain, and at the Tulane Law School in New Orleans, USA, where he received his Master of Laws (LL.M). Among other things, he has worked for an environmental legal consultancy in Heidelberg, and for UNEP in Nairobi. Previously, he worked as a research fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, where he also wrote his doctorate thesis. While German is his mother tongue, he is fluent in English, Spanish and also speaks French.

THE ELC TEAM

Front, left to right: Thomas Greiber (Legal Officer), Alejandro Iza (Director), Daniel Klein (Legal Officer)
Back row: Olga Buendia (Water Governance R&D Officer), Monica Pacheco-Fabig (Assistant Documentation Officer), Françoise Burhenne-Guilmin (Senior Counsel), Ildikó Holok (Student Assistant), Daniella Montag (Finance Officer/ Human Resources Officer), Anni Lukács (Senior Documentation and Information Officer), Sharelle Hart (Legal Officer), Ann DeVoy (Project Assistant), Andrea Lesemann (Documentation Officer), Jil Self (Programme Assistant), Capucine Chamoux (Intern). Missing from the photo: Maaike Bourgeois, Senior Assistant Documentation Officer.
New Publications...

**Judges and the Rule of Law – Creating the Links:**
*Environment, Human Rights and Poverty*
Edited by Thomas Greiber, 2006, IUCN Environmental Policy and Law Paper No. 60

This publication is a collection of distinguished papers and speeches that led to the success of the Judiciary Day, a two-day major event jointly organized by the IUCN Commission on Environmental Law (CEL) and the ELC at the 3rd IUCN World Conservation Congress (WCC). EPLP No. 60 seeks to raise awareness about the crucial role of the judiciary to implement environmental law and thus conserve the environment. Adoption of environmental laws must be complemented by an efficient judiciary that people can rely on to adjudicate disputes. Clear linkages between sustainable and equitable economic development on the one hand and the existence of a functioning legal and judicial system on the other hand have been proven. Unfortunately, lack of exposure to environmental law by members of the judiciary may hinder its implementation. Appropriate training of judges is clearly required. To prepare judges with the knowledge that they require to assess environmental cases, training should focus on issues such as jurisdiction in environmental law, its special instruments, problems of enforcement and fundamental issues relating to scientific information and data. Besides its role as the guardian of the rule of law, the judiciary can also play the part of a decision-maker and opinion-former. However, judicial activism to advance or improve environmental law is seen differently in legal systems such as the common law or Roman law systems. The empowerment of affected people to exercise and insist on their rights is equally important for the implementation of environmental law. Public Interest Litigation is rapidly evolving to try to deal with the imbalance in power in many parts of the world between those who degrade the environment for mostly economic profits and those people suffering from environmental degradation but lacking the skills or resources to defend their rights. These are just some of the topics among many cutting-edge themes regarding the importance and role of the judiciary in environmental conservation that are discussed in this publication.

**Les conventions locales de gestion des ressources naturelles et de l’environnement :**
*Légalité et cohérence en droit sénégalais*
Laurent Granier, 2006, IUCN Environmental Policy and Law Paper No. 65

In Senegal, local conventions for natural resources and environmental management are increasingly being used. They are contractual tools negotiated between local population groups (such as farmers, community-based organizations), the administration (such as Water and Forest Department, National Parks authorities), as well as local governments and any other public or private entities having a stake in the management of a particular area, or of specific natural resources. They can address, for instance, the management of a forest, or deal with a larger ecosystem, such as a river delta. Their aim is to jointly define management rules, and implement them in a concerted manner. Their origin is the relatively new trend and rules to decentralize responsibilities for management, as well as pilot projects in multidisciplinary efforts in this field, but also the rediscovery of decision-making processes attuned to customary traditions. While their principle is anchored in the relevant legislation, they do not benefit from a solid legal infrastructure. This study describes their origin, functioning, and characteristics. It also takes stock of their legal basis, looks at their coherence within the national legal system, and considers their future perspectives. Comparable instruments are now in use elsewhere in Africa, for instance in Mali, Burkina Faso and Niger. It therefore looks as if they constitute a new trend in African environmental law. Annexed to the study is the text of one local convention, developed with the support of the IUCN office in Senegal, and a selected bibliography. This will hopefully guide the interested reader to further information on these interesting and innovative instruments of contemporary African environmental law.
Upcoming Publications:

The following publications will be available early in 2007. Further details will be announced on the ELP website (www.iucn.org/themes/law).

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

Edited by Matha B. Rovere and Alejandro Iza, IUCN Environmental Policy and Law Paper No. 61

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

Grethel Aguilar and Alejandro Iza, IUCN Environmental Policy and Law Paper No. 58

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

Grethel Aguilar, Alejandro Iza and Marianela Cedeño, IUCN Environmental Policy and Law Paper No. 62
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 350 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/