

## The Year in Review

Prepared by the IUCN Environmental Law Centre, Bonn

### (1) Introduction

The mission of the IUCN Environmental Law Programme (ELP) is to advance environmental law through the development of legal concepts and instruments, and through building the capacity of societies to employ environmental law in furtherance of the IUCN mission. The ELP is an integrated programme of activities that assists decision makers with information, legal analysis, advisory services, legislative drafting, mentoring and capacity building at national, regional and global levels. The Programme also provides the opportunity and a forum for governments, non-governmental organizations and others to network and to share information and discuss ideas.

ELP activities are carried out through the co-operation of the Commission on Environmental Law (CEL) and the Environmental Law Centre (ELC). One of six IUCN Commissions, CEL consists of an extensive global volunteer network of 700 environmental law specialists in more than 204 countries, with work primarily organized under eleven Specialist Groups (SGs) and two Intercommission Task Forces. The ELC comprises an office of legal officers and information specialists in Bonn, Germany working in collaboration with CEL members, IUCN staff, lawyers and focal points in IUCN headquarters and regional and country offices worldwide. The ELC also houses an extensive library consisting of environmental law holdings and is the Management Unit for ECOLEX, “The Gateway to Environmental Law” (see ECOLEX.org), a web-based information system operated as a joint initiative of the Food and Agriculture Organization (FAO), IUCN and the United Nations Environment Programme (UNEP).

### (2) Thematic issues

#### (A) *Ethics*

##### (i) Activities of the CEL Specialist Group on Ethics

The two main Ethics SG programmes for 2009 were the Biosphere Ethics Initiative and the Earth Democracy project, and the work of each has informed the other. In 2004, the 3rd IUCN World Conservation Congress passed Resolution 3.020, assigning the ESG with the task to create a code of ethics for biodiversity conservation. This work is now known as the Biosphere Ethics Initiative (BEI), which aims to develop and advance a living soft law programme of practical conservation ethics that is both globally applicable and region-specific.

Mutual learning through dialogue is at the heart of the BEI. Since 2004, the Initiative has held four formal dialogues: the Chicago Wilderness Dialogue; the South African National Parks Dialogue; Brazil’s Local Agenda 21 dialogue and the Yunnan Province of China Dialogue. The resulting key ethical values, principles, aims and questions form the basis of the evolving Biosphere Ethic.

Throughout 2009, an Ethics SG Co-Chair presented the BEI in various international fora, including: a University of Auckland LLM course on Law, Ethics and Governance for Sustainability; the annual meeting of the Global Ecological Integrity Group; the 6th Annual Globalization for the Common Good Conference at Loyola University in Chicago; the 5th Annual Symposium of the Center for Humans and Nature, co-sponsored by the ESG and the Center for U.S.-China Arts Exchange. CEL Ethics SG Co-Chairs represented BEI at the World Social Forum, presenting at the Local Agenda 21 Day events and co-hosting a workshop with the Environment Ministry of Brazil,

developing together the third BEI Relato (or case study) on Brazil's Local Agendas 21. BEI meeting participants also took part in the fourth BEI Relato on the Yunnan Province of China. BEI documents can be found at [www.humansandnature.org](http://www.humansandnature.org).

The Earth Democracy Project is a continuation of the "Governance for Sustainability" project, which began in 2006 and continued to evolve through 2009. A further component of the project is corporate governance and private sector engagement. In 2006, the Ethics SG set up a working group on Corporate Governance and since then has continued to be involved in the development of the IUCN Guidelines for Private Sector Engagement. The IUCN Council has created a Task Force and Work plan for further development.

A Symposium on Sustainability Governance, co-sponsored by the ESG and the European University Institute, was held 25 June at the European University Institute in Fiesole, Italy, to launch the Earth Democracy project. Related to the project, several books are in development.

Under the governance revisions as adopted by CEL in April 2009, Dr. Klaus Bosselmann now resides as Chair of the Ethics Specialist Group (ESG) ([k.bosselmann@auckland.ac.nz](mailto:k.bosselmann@auckland.ac.nz)) and Dr. Kathryn Kintzele ([kathrynkintzele@humansandnature.org](mailto:kathrynkintzele@humansandnature.org)) now resides as Deputy Chair of the ESG. Dr. J. Ronald Engel, founder of the Ethics Working Group in 1984, is now a "Friend of the Chair" of the IUCN CEL. ESG membership stands at 51 individuals from 17 countries, with over 200 affiliates.

## *(B) Biodiversity*

### *(i) Access and Benefit Sharing (ABS)*

The year 2009 was an important year for the issue of access to genetic resources and fair and equitable benefit-sharing (ABS) under the Convention on Biological Diversity (CBD). Substantial progress was made towards an international ABS regime, anticipated for potential adoption in 2010.

The ELC successfully completed a five-year ABS project which led to seven books, 35 articles, 22 presentations, five workshops and numerous other activities related to the issue of access and benefit-sharing. In the last year of the project, the ELC finalised its so-called 'ABS Series'. The 'ABS Series' is the first 'sub-series' within the IUCN Environmental Policy and Law Paper (EPLP) series, comprising five publications (See part 5 on publications.) The ABS Series is designed in a way to maximize the usefulness and accessibility of these writings to the broad range of participants addressing the ABS challenge at both national and international levels. It is translated in three languages and offers a real contribution that will enable progress on an issue which has, to date, faced hurdles due to both its complexity and its controversial nature.

Throughout the year, the ELC provided legal advice to the German Ministry of Environment, Nature Conservation and Nuclear Safety under a project called "ABS 2010" for the negotiating of an international regime for ABS under the CBD. As part of this project, the Centre supported the organisation and implementation of a workshop on "Matters related to Traditional Knowledge associated with Genetic Resources and the International ABS Regime" on the island of Vilm in Germany. During the workshop, the ELC gave presentations on access to genetic resources, on fair and equitable benefit sharing and on issues of compliance.

The ELC also supported the German Ministry of Environment, Nature Conservation and Nuclear Safety in organising an ABS roundtable which brought together representatives of various user sectors. The aim of this roundtable was to provide information about the current state of negotiations for an international ABS regime as well as to exchange best practice experiences on ABS issues. A wide spectrum of participants was invited to the event, including representatives of industrial organizations and non-commercial users. A Legal Officer of the ELC gave a presentation on international access standards.

The ELC also participated in meetings of the EU expert group on ABS. Throughout the year, the ELC supported this expert group in the development of the EU position on different issues under negotiation in the context of the future international regime on ABS.

On 3-5 February an ELC Legal Officer gave a presentation on the ABS system under the Multilateral System of the International Treaty on Plant Genetic Resources (ITPGRFA) at an intergovernmental meeting of experts on biological prospecting in the Antarctic Treaty area in Baarn, Netherlands. The outcomes of the meeting were used for the Antarctic Treaty Consultative Meeting, in Baltimore (6-17 April 2009).

The ELC also took part in the 7<sup>th</sup> meeting of the ABS Working Group in Paris, France, in April 2009, and in the 8<sup>th</sup> meeting of the ABS Working Group in Montreal, Canada, in November 2009. In Paris, an ELC Legal Officer presented a paper on the relationship between the international regime on ABS under the CBD and the ITPGRFA and the FAO Commission on Genetic Resources for Food and Agriculture and discussed how such regimes could coexist. In Montreal, the ELC organized a side event to present the last two books of its 'ABS Series'.

Finally, the ELC supported the Kingdom of Saudi Arabia through its National Commission for Wildlife Conservation and Development (NCWCD), the IUCN member organisation in Saudi Arabia, in developing a draft National Strategy on ABS in Relation to Genetic Resources as well as in drafting a Strategic Plan for the Collection and Documentation of Biodiversity-Related Traditional Knowledge and Practices. These policy documents met priority needs which were previously identified by different stakeholders in Saudi Arabia to help the Kingdom of Saudi Arabia remain competitive by strengthening its work in the area of ABS and traditional knowledge. Furthermore, these policies shall contribute to closing the current information gap on ABS in the Arab region and serve as an example for others to refer to or to follow.

#### (ii) Ecosystem services - Payment for Ecosystem Services (PES)

The Millennium Ecosystem Assessment has shown that, despite their importance to human well-being and to biodiversity, the world's freshwater ecosystems and water-related ecosystem services are being degraded rapidly. In order to stop this trend and to achieve the Millennium Development Goals (MDGs), in particular MDG 7 to 'ensure environmental sustainability', governments and international processes are looking for the most effective ways to govern water-related ecosystem services. Two approaches exist: the traditional strategy of 'command and control' regulation and the use of economic or market-based instruments, such as payments for ecosystem services (PES). Analysis and engagement with partners working on ecosystem services transactions, policies and laws over the past 10 years have demonstrated a clear need to better understand the legal and institutional frameworks that have the potential to promote or hinder the development of PES schemes, as well as the complex legal considerations that affect ecosystem services projects.

In response to these concerns, the ELC and The Katoomba Group worked on a joint initiative from 2007 to 2009 to analyse the legal and institutional frameworks of water-related PES schemes and projects in four Andean countries, namely Brazil, Bolivia, Colombia and Peru. At the end of 2009, the joint IUCN-Katoomba Group publication Payments for Ecosystem Services – Legal and Institutional Frameworks was released within the IUCN EPLP Series.

After a preliminary ELC workshop on PES in December 2007 in Bonn, Germany, and a second PES workshop jointly organized by ELC and The Katoomba Group in August 2008 in Lima, Peru, a third PES workshop was organized by the ELC together with IUCN's Regional Office for South America and the Network of People Interested in Environmental Services (Red de Interesados en Servicios Ambientales – RISAS) in September 2009 in Quito, Ecuador. The objectives of this two-day event were to facilitate further discussions on PES by bringing together Ecuadorian policy-makers, civil society and international PES experts; and to advise the Ministry of the Environment of Ecuador in the further development of an Ecuadorian PES strategy based on the recommendations made in the ELC and Katoomba Group publication.

The findings of the four national assessments and related analysis were also presented by the ELC at an international level. The ELC informed an international audience at the World Water Forum in March 2009 in Istanbul, Turkey, about the outcomes of the ELC's PES project in a side-event jointly organized with the IUCN Water Programme. Furthermore, the ELC presented its work

at the First Congress of Environmental Services Networks in Iberoamerica in September 2009 in Bolivia under the title “From Theory to Practice: Challenges of the Integration of Incentives for Management of Environmental Services in National and Sub-national Conservation and Sustainable Use of Natural Resources.”

### (iii) Forests

The World Forestry Congress was held in Buenos Aires, Argentina 18-22 October. CEL was involved in a side event on 19 October addressing Forestry Law in Argentina. This side event was co-organized by the Institute for Political and Social Studies (IEPS) and the Federal Forestry and Environmental Law Institute of the Catholic University of Santa Fe’s Law School and Political Science Department with the support of IUCN and CEL. Ms. Nancy Tognola, Forestry Law specialist, Dr. Néstor Cafferatta, renown doctrinaire in Environmental Law and Ms. Sheila Abed, Chair of CEL, spoke in the event.

### (iv) Protected areas

- Guidelines for Protected Areas Legislation

The ELC continued to work throughout the year on the Guidelines for Protected Areas Legislation, a three year project of the ELC, carried out in cooperation with both the Commission on Environmental Law and the World Commission on Protected Areas (WCPA).

The consultation process on Draft 2 of the Guidelines started in fall 2008 was closed in March. A compilation of the numerous comments received, via the electronic survey or otherwise, was prepared for author Barbara Lausche, and served as a basis for her preparation of Draft 3. Meanwhile, first drafts of the 14 accompanying case studies were prepared. These include eight case studies of national and sub-national legal frameworks (Australia, New South Wales; Canada, Ontario; France; Peru; Philippines; South Africa), and six site and type-specific case studies : The Gully, Canada (MPA); Pumalin, Chile (private PA); Indian ICCAs; Ampezzo, Italy (Community Conserved Area); Booderee, Australia (Co-managed PA); the ‘W’, Benin, Burkina Faso, Niger (transfrontier PA).

These documents were presented mid-year at an interdisciplinary review workshop in Bonn. Over twenty experts from CEL, WCPA and CEESP participated, entrusted with the task of critically reviewing Draft 3 of the Guidelines and the case studies from a legal and technical point of view. Their review provided each author with a wealth of recommendations to address in the next redraft. This occupied the second part of the year, together with the start of a very thorough editing process of the case studies.

At the end of the year, Draft 4 (pre final) of the Guidelines was ready and sent for final review to the project Steering Group. The launch of the Guidelines and accompanying documents will take place during CBD COP 10.

- Protected Areas in Tunisia/North Africa

In July, the ELC started the implementation of the project “Improving Security and Promoting Sustainable Livelihoods through the Conservation and Management of Arid Zones in North Africa”. This project is part of a cooperative arrangement with the IUCN Centre for Mediterranean Cooperation. In collaboration with a consultant from Tunisia, an ELC legal officer analysed Tunisian legislation on protected areas and identified gaps in legislation in view of the IUCN protected areas categories and management guidelines. The ELC participated in several Steering Committee meetings which were held in Tunis, Tunisia, between September and December 2009. These meetings brought together representatives from different national Ministries and agencies with a stake in the issue of protected areas.

### (v) Species (TRAFFIC/CITES)

In 2009, the ELC implemented a CITES project in collaboration with the wildlife trade monitoring network TRAFFIC. The ELC gave technical support to the European Commission through the analysis of the status of implementation of the EC Wildlife Trade Regulations by EU Member States. Based on information submitted by the Member States in their Biennial Reports 2007-2008, the ELC provided an overview of the efforts of EU Member States to comply with the provisions of the Regulations and assessed their effectiveness in implementation and enforcement.

*(C) Climate change and energy*

*(i) Climate change*

- ELC activities

Since the beginning of 2009, an ELC Legal Officer has been following the UNFCCC climate negotiation process, focusing primarily on negotiations under the Kyoto Protocol. The Legal Officer conducted an analysis of a key forest-related section of the Kyoto Protocol (Land Use, Land Use Change and Forestry, or LULUCF) and of the outcomes of COP 15/CMP 5 sessions in Copenhagen for the IUCN Climate Change Delegation and Policy Group. The Legal Officer also participated in the IUCN delegation in the climate change intersessional negotiations in Bonn in March, June and August, in Bangkok in October and in the COP 15/CMP 5 in December.

While at the COP 15/CMP 5 meetings in Copenhagen, the ELC Legal Officer took part in a roundtable discussion on “Emerging Issues in Climate Change Law” as part of a series of workshops under the Centre for International Sustainable Development Law (CISDL). During a day-long seminar on climate finance also in conjunction with the CISDL workshop series, the ELC Legal Officer participated in a panel on forest carbon finance, presenting on “REDD Revenue Distribution at the National Level: Regulatory and Contractual Options.” Finally, the ELC Legal Officer and Programme Director attended a CISDL book launch for new publications in 2009 that featured the IUCN EPLP n°77 “Legal Frameworks for REDD: Design and Implementation at the National Level”. (See chapter 5 for more information on the publication)

Also in Copenhagen, together with IUCN colleagues from the Forest and Economics Programme as well as the IUCN Netherlands Committee, an ELC Legal Officer spoke at an UNFCCC press conference on the status of the REDD+ mechanism in the climate negotiations and in the context of national-level legal frameworks. IUCN emphasized the strong work to date on REDD+ and urged Parties and national leaders and environmental ministers to recognize the international consensus and push ahead on its implementation under the UNFCCC.

The EPLP publication with REDD case studies “Legal Frameworks for REDD: Design and Implementation at the National Level,” was released at UNFCCC COP 15 in Copenhagen. On 3-4 October, the ELC organised a meeting with co-authors during UNFCCC and Kyoto Protocol negotiations in Bangkok to review work to date and develop a series of abridged checklists for design and implementation of REDD legal frameworks to be included in the publication. The meeting offered participants a chance to discuss work with experts, Parties and stakeholders, as well as inject the publication with the latest considerations from REDD negotiations.

On 10-14<sup>th</sup> November an ELC Legal Officer gave a presentation on “Legal Considerations for REDD Readiness Planning” during a REDD workshop in Ghana, Accra organised by the IUCN Forest Program. The workshop was organised for the DANIDA “Towards Pro-Poor REDD” project and the presentation was for IUCN staff members as well as for REDD project coordinators from Ghana, Liberia, Guatemala, Indonesia and Cameroon. The Legal Officer also participated in discussions for strategic planning of REDD national activities.

In December, the ELC received funding to begin a two-year project entitled “Catalyzing Action and Enhancing Synergies of Biodiversity and Climate Change,” focusing on three Least Developed Countries in Africa. The project will work to improve capacity and mechanisms for legislative planning and regulatory implementation of synergistic climate and biodiversity

adaptation, with connections to processes and decisions under UNFCCC, CBD and other biodiversity-related agreements.

During 2009, the ELC refined plans for a project on climate adaptation governance in Mesoamerica under the BMU Climate Initiative Programme, and ELC officers and potential partners developed a wide array of climate law concept papers in 2009 as well.

- Activities of the CEL Specialist Group on Energy Law and Climate Change

The principal activity of the CEL Energy Law and Climate Change Specialist Group in 2009 was preparation for and participation in the COP 15/CMP 5 Copenhagen Climate Change Conference. In addition, Pace Law School and the CEL SG worked with the Alliance of Small Island States (AOSIS) and the Most Vulnerable Countries group to prepare a White Paper on energy efficiency and renewable energy options that was delivered by the IUCN UN Representative to all members of the General Assembly for its Special Session on Climate Change on 22 September. The SG also worked with AOSIS and Most Vulnerable Countries group in their preparation for COP 15/CMP 5.

The chair of the energy law and climate change SG attended the COP 15 conference as an IUCN representative and as part of the Environmental Grantmakers' Association delegation representing major U.S. climate change funders. He was assigned to the Kyoto Protocol proceedings and reported on its progress. He also sent daily reports back to IUCN and Pace and wrote an article on COP 15 to be published shortly by the Pace Environmental Law Review.

## (ii) Energy

- ELC activities

As part of IUCN Energy, Ecosystems & Livelihoods Initiative and the IUCN project "Making Blue Energy Green," the ELC participated in a two-day workshop in February at the headquarters of E.ON Corporation in Düsseldorf, Germany. The workshop focused on mitigating impacts from marine-based energy alternatives on ecosystems and livelihoods, including the role of Environmental Impact Assessments (EIA) and Strategic Environmental Assessments (SEA) for offshore renewable energy development. During the workshop, an ELC Legal Officer presented on international, regional and national legal issues relating to offshore renewable energy development.

In November, the ELC completed a comprehensive study of EIA legal requirements for small-scale renewable energy projects in the South Pacific, focusing on the Marshall Islands, Palau, Samoa, Tonga, Tuvalu and Vanuatu. The report, which also includes an assessment of comparative and international best practices for EIA in the sector, contributed to a two-day workshop in Fiji for the "Managing the Ecosystem and Livelihood Implications of Energy Policies in the Pacific Island States" project, conducted by the IUCN Energy, Ecosystems & Livelihoods Initiative and the Union's Regional Office for Oceania.

An ELC Legal Officer attended meetings of the Roundtable for Sustainable Biofuels (RSB) and the Tripartite Group on Biofuels Standards in Brussels in March. Throughout 2009, the Officer contributed to periodic development and review of RSB principles and methodologies for standards to ensure sustainability of biofuels, in conjunction with the IUCN Energy, Ecosystems & Livelihoods Initiative and the Business and Biodiversity Programme.

- Activities of the CEL Specialist Group on Energy Law and Climate Change

As a member of the Roundtable on Sustainable Biofuels, the Chair of the SG participated in the drafting of proposed certification requirements for sustainable biofuels. He wrote a chapter on biofuels for a book on *The Future of International Environmental Law* to be published by UN University Press this summer and delivered papers to the IUCN Academy of Environmental Law's annual Colloquium in Wujan, China on "Implementation of Sustainable Biofuels Standards" at a special pre-conference workshop on biofuels, and at the main session addressing governance on "Implementation of Energy Efficiency Standards and Renewable Energy Incentives." These may be published as part of the Academy proceedings.

Pace Law School and the CEL Energy and Climate Change SG submitted a research paper requested by Shanghai Jiao Tong University Law School on environmental law in the United States in a project on reform of environmental laws in China commissioned for the School by the Government of China. The paper summarizes what works and does not work in US environmental law, and what might be applicable for China.

The Chair of the Energy and Climate Change SG wrote to all the Group's members asking for suggestions on research projects in which they would like to engage and received useful responses. Suggestions received included various issues such as governance of offshore renewable energy, carbon capture and storage, biofuels in Africa, climate change and human rights, bioenergy standards for developing countries, and Clean Development Mechanisms (CDM) for small-scale energy projects.

#### *(D) Water*

##### *(i) Inland waters*

The ELC continued to work with the IUCN's Water and Nature Initiative (WANI) in 2009. WANI works with more than 80 partner organisations across the world to demonstrate water management that supports healthy rivers and communities. In order to support learning on mainstreaming ecosystem-based approaches in water resource management, WANI has developed a five-part toolkit series since 2003. The series is made up of publications aimed at practitioners, policy-makers and students from NGOs, governments and academia. The series include case studies to show how key principles of sustainable water management are implemented.

In 2009 the WANI toolkit entitled *RULE: reforming water governance* was published. The publication of the next toolkit *NEGOTIATE: Reaching agreements over water* is planned for 2010.

The Fifth World Water Forum, which took place on 16-22 March in Istanbul, is the largest international event related to water, ending in World Water Day on 22nd March. IUCN participated in the forum and organised a side-event launching the publication of *RULE: reforming water governance*. During this event, an ELC Legal Officer together with a Forum Officer of the World Water Council (WWC) put forward the advantages of creating a helpdesk to aid parliamentarians in the development of water-related legislation. The helpdesk aims to enhance parliamentarian's capacity to fulfill their roles by improving the sharing of information between Parliaments.

During World Water Week in Stockholm, Sweden (16-22 August), one of the most important water events in the world, WANI's latest toolkit *RULE: reforming water governance* was brought to the attention of experts via an event held by the ELC and the Global Water Programme (GWP)

Finally, ELC Director Alejandro Iza gave a presentation on water law in the context of climate change at the VII Central American Parliamentarians Conference on Water Resources in San José, Costa Rica on 24-25 September. In particular, Dr. Iza emphasized that international climate negotiations could have an important impact on future legal frameworks for water at the regional, national and local levels.

##### *(ii) Marine Issues*

- Activities of the CEL Specialist Group on Oceans, Coastal and Coral reefs

The Oceans SG of CEL took part in a number of processes relating to governance of the Mediterranean Sea in 2009. On 14-15 January, Oceans SG members participated in a meeting of experts on the Mediterranean Sea convened by the European Commission in Brussels for the purpose of gathering independent expert advice on issues relating to the governance of the Mediterranean Sea. In addition, the Oceans SG actively contributed to drafting of the publication *The role of maritime zones in promoting effective governance for protection of the Mediterranean marine environment, Report of the Expert Group on Governance of the Mediterranean Sea, 2009*

(published on the website of the EC DG Maritime Affairs and Fisheries [http://ec.europa.eu/maritimeaffairs/mediterranean\\_en.html](http://ec.europa.eu/maritimeaffairs/mediterranean_en.html)). Finally, the Oceans SG was represented at a panel on “Improving governance of the Mediterranean Sea” presented at European Maritime Day – Rome, Palazzo Colonna, 18-20 May.

The Oceans SG also contributed to developments in a number of other areas relating to marine law. From 17-19 June, three SG members served on the IUCN delegation to the tenth meeting of the UN Open-ended Informal Consultative Process on Oceans and Law of the Sea. From 18-20 November, the Oceans SG was active in a Convention on Biological Diversity expert workshop on Scientific and Technical Aspects relevant to Environmental Impact Assessment in Marine Areas beyond National Jurisdiction in Manila. From 1-5 November, the Oceans SG assisted with the convening of a panel session, Marine & Coastal Environmental Governance and Sustainability, at the 7th Annual Colloquium of the IUCN Academy of Environmental Law, Wuhan in China. Also in 2009, the Oceans SG worked in partnership with GMP-IUCN USA to coordinate the Indian Ocean High Seas Seamount project, the first GEF-funded project for the high seas.

For a list of publications to which the Group or its members have contributed, see [http://www.iucn.org/about/union/commissions/cel/cel\\_working/cel\\_wt\\_sg/cel\\_sg\\_oceans/](http://www.iucn.org/about/union/commissions/cel/cel_working/cel_wt_sg/cel_sg_oceans/)

#### *(E) Soils*

- Activities of the CEL Specialist Group for the Sustainable Use of Soils and Desertification

The WCC Soil Resolution of 2000 and two WCC Supplementary Soil Resolutions of 2004 and 2008 continued as the basis of SGSS&D activity in 2009. Priority areas included the continuing investigation into options for an international instrument for soil; national soil legislation reform; legal studies and publications; and promoting soil legislation activities within a network of law, soil science and environmental organizations.

At the international level, a main highlight of 2009 was preparing the “Draft Protocol for Security and Sustainable Use of Soil” as a response to the UNCCD 10 Year Strategy and Framework (2008-2018). The Draft Protocol was presented to the Soil Legislation side event at UNCCD COP9 in Buenos Aires, Argentina on 28 September, organized by CEL and University of Buenos Aires Law Faculty.

At the national level, SG members advised Mongolia, Tajikistan, Kyrgyzstan, and various Balkan states, on laws for sustainable land management and soil protection, using methods and approaches developed by IUCN ELP. A special highlight was an agreement signed in September between CEL, IUCN Academy of Environmental Law and University of Buenos Aires to collaborate in teaching of soil legislation. Another significant area of collaboration included a meeting with the Organization of the American States in Washington DC, to discuss improvement of soil protection law in Central and South America. Liaison continued with the World Association of Soil and Water Conservation, gathering background information on current perceptions and experiences of national laws for soil and land management.

The CEL Specialist Group for Sustainable Use of Soils and Desertification (SGSS&D) has 15 members from 11 countries. During 2009, SGSS&D members made presentations at 12 environmental law and soil forums on a range of topics, including: international and national law aspects of soils; remediation of contaminated land; legal frameworks for soil protection in the EU; national legislative approaches to desertification and land degradation; USA laws to protect soil and water; and the need for a protocol to the convention to combat desertification.

For a list of publications to which the Group or its members have contributed, see: [http://www.iucn.org/about/union/commissions/cel/cel\\_working/cel\\_wt\\_sg/cel\\_sg\\_soils/](http://www.iucn.org/about/union/commissions/cel/cel_working/cel_wt_sg/cel_sg_soils/)

#### *(F) Cross-cutting issues in environmental law*

- (i) Rights-Based Approaches (RBA)

During the 2008 IUCN World Conservation Congress in Barcelona, several rights-related resolutions and recommendations were adopted. In order to implement these, especially Resolution “4.056 - Rights-based approaches to conservation,” the ELC continued to work on RBA in 2009.

The ELC launched a publication entitled Conservation with Justice: A Rights-based Approach within the IUCN EPLP Series. In addition, an ELC Legal Officer co-edited the joint IUCN-CIFOR publication Rights-based Approaches: Exploring Issues and Opportunities for Conservation, which summarizes key issues and questions in RBA and reviews rights and social justice-related policies of major international organizations. (See part 5 for more information on both publications)

To further encourage the implementation of a RBA to conservation, the ELC developed a portal ([www.rights-based-approach.org](http://www.rights-based-approach.org)) to serve as a public clearinghouse for collecting and sharing RBA-related information through voluntary contributions from IUCN staff and members. The portal was launched in October at the XIII World Forestry Congress in Buenos Aires, Argentina, where the ELC organised a side event to present the complementary RBA tools. The event was opened by the IUCN Deputy Director General, who explained the mandate of IUCN Resolution 4.056 requesting IUCN to engage with members and partners to facilitate the exchange of experiences on and implementation of RBA to conservation.

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

In 2009, the IUCN CEL Specialist Group on Armed Conflict and the Environment continued its work on two primary themes: (1) legal protection of the environment in times of armed conflict (led by Co-chair Michael Bothe), and (2) the role of natural resources in post-conflict peacebuilding (led by Co-chair Carl Bruch). A broad spectrum of interested persons from academia and practice are involved in each of the themes.

On the first theme, the SG participated in an expert meeting to inventory and assess international law protecting the environment during armed conflict, organised in Nairobi in March 2009 by UNEP and the ICRC. Building on the Nairobi meeting as a stock-taking exercise, the CEL SG Co-chair developed and circulated a questionnaire to shed some light on controversial questions of the *lex lata* and to collect ideas on possible suggestions for the development of the law. The responses pinpoint matters of controversy, such as the interpretation of the relevant provisions of Protocol I Additional to the Geneva Conventions and the customary law status of these provisions. Additionally, some respondents questioned whether some action, including action by IUCN, might be appropriate (e.g. rules for the designation of protected areas in armed conflict). A consolidated paper is being prepared by the Co-chair which will serve as a basis for a follow-up workshop to be held in October 2010.

On the second theme, the SG has partnered with the Environmental Law Institute, the United Nations Environment Program, and the University of Tokyo to examine experiences in post-conflict natural resource management and peacebuilding (see [www.eli.org/Program\\_Areas/PCNRM](http://www.eli.org/Program_Areas/PCNRM)). In 2009, this project expanded greatly to now include more than 120 case studies and analyses authored by more than 180 researchers and practitioners from over 40 countries, with plans for future publication. In 2009, the SG and its partners convened a series of events to review the initial project findings, including seminars, workshops, and briefings in Montreal, Tokyo, New York, Nairobi, and Washington, DC. These events have raised awareness of practitioners, leaders, and scholars regarding how natural resources can be managed to facilitate the transition to peace, while also helping to ground truth the emerging findings.

#### (iii) Draft International Covenant on Environment and Development: 3rd Revision

In 2008, the 4th IUCN World Conservation Congress (WCC-4) mandated the IUCN Commission on Environmental Law (IUCN-CEL) in cooperation with the International Council of Environmental Law (ICEL) to update the provisions and explanatory text of the Draft International Covenant on

Environment and Development following Resolution 4.101. Soon thereafter, ICEL under the direction of Dr. Wolfgang E. Burhenne called upon all members of IUCN-CEL to make proposals for amendments to the second revision. Following more than a year of preparation, compilation and review, ICEL in cooperation with the IUCN Environmental Law Centre (IUCN-ELC) has invited experts who have taken part in the process to a meeting in early 2010 in Bonn (Germany) where amendments will be deliberated and finalized.

(iv) IUCN Commission on Environmental Law (IUCN-CEL) Arctic Task Force

As access increases and Arctic States jostle over issues of sovereignty, the IUCN-CEL Arctic Task Force continued in 2009 to support action to improve participation in and implementation of the relevant Arctic environmental governance regime. Following the judgment of diverse bodies that more effective support for global conventions and an increased “Arctic voice” in implementation is necessary, the Task Force continues to acquaint stakeholders with its estimation that analysis of existing governance instruments applying to the Arctic could be beneficial before further commitments are made.

In the interest of fulfilling Resolution 4.033: Arctic legal regime for conservation from the 4th IUCN World Conservation Congress (WCC-4 ) the Task Force spent 2009 planning an informal consultation of diverse experts in Ottawa (Canada). The purpose of the meeting is to formulate a list of “Action Items” focused on synergizing independent initiatives to support and thus strengthen the environmental governance regime.

(3) CEL meetings and initiatives

*(A) CEL Steering Committee Meeting*

The first 2009-2012 CEL Steering Committee meeting was held in Porto de Galinhas in the State of Pernambuco, Brazil from 29 April to 4 May. The meeting was co-hosted by the Brazilian Association of Environmental Prosecutors (Associação Brasileira do Ministério Público de Meio Ambiente—ABRAMPA). CEL’s Bylaws, the Environmental Law Programme, its mandate within IUCN and the IUCN’s mission and programme for 2009-2012 were presented to the new members. Additionally, the Steering Committee members discussed strategies to move forward, including the creation of a new Protocol on communication, information exchange and joint work between CEL and the Environmental Law Centre, and activities set to respond to IUCN’s Core Programme Area and Thematic Programme Areas. Minutes of the meeting are available at: [http://cmsdata.iucn.org/downloads/cel\\_2009\\_sc\\_meeting\\_minutes\\_final\\_1.pdf](http://cmsdata.iucn.org/downloads/cel_2009_sc_meeting_minutes_final_1.pdf)

*(B) First CEL Specialist Group Meeting for IUCN 2009-2012 Mandate*

The first CEL Specialist Group meeting for the 2009-2012 mandate took place in Washington DC from 17-18 November. The event was hosted by the American University Washington College of Law (WCL). Participants recommended ways to advance CEL’s mandate, including via: working methods of Specialist Groups; IUCN-CEL BRICs Dialogue on Climate Change and Biodiversity; fundraising; and deliverables for 2010. As part of an ongoing effort to encourage coordinated work between CEL and the ELC as components of the ELP, and the Academy of Environmental Law as an important partner ELP, Mr. Yves Le Bouthillier (Director of the Academy) and Dr. Françoise Burhenne (representing ELC Director Alejandro Iza) were invited to give presentations at the meeting. Prior to the Specialist Group Meeting, CEL members were invited to participate in the conference, “Developments in International Environmental Law” organized by CIEL (Center for International Environmental Law) and the American University’s Washington College of Law. While in Washington, CEL members were invited by Prof. David Freestone to the George Washington University where they had the opportunity to promote their Specialist Group’s activities among

students. Both side activities played an important role in CEL's effort to give greater visibility to the Commission and the Union. Minutes of this meeting are available at: [http://cmsdata.iucn.org/downloads/sg\\_meeting\\_draft\\_minutes\\_1109.pdf](http://cmsdata.iucn.org/downloads/sg_meeting_draft_minutes_1109.pdf)

*(C) The BRICs Initiative*

The CEL Steering Committee decided to get more involved with government and academia in BRIC countries (Brazil, Russia, India and China) given the global implications these countries' economies have on the environment. The CEL Chair and Deputy Chair visited Russia and India during 2009 under this initiative. Also, in 2009 CEL agreed to organize a BRICs Dialogue on Climate Change, Sustainable Energy and Biodiversity, to take place in New Delhi in August 2010.

(4) Outreach and capacity building

*(A) Outreach*

(i) Interns

Eight interns and fellows from the Americas and Europe worked at the ELC in 2009. Coming from France, Ireland, Germany, Canada, Mexico City and the United States, they contributed to activities and projects of the ELC while also researching subjects of their own interest. Interns worked on diverse topics including: ABS; environmental law in the DRC; guidelines for protected area legislation; rights-based approaches to conservation; and review of CITES implementation in EU member States.

(ii) Lectures on International Environmental Law

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

The ELC also gave a lecture on international freshwater law at a summer school organized by the Cologne University of Applied Sciences (ITT - Institute for Technology and Resources Management in the Tropics and Subtropics) in cooperation with IHP (International Hydrological Programme) Secretariat, Koblenz, Germany. This summer school took place in March and focused on the topic 'Transboundary Water Management'.

(iii) CEL's Group of Young Professionals

The CEL Group of Young Professionals is an initiative of the CEL' Steering Committee as a response to Resolution WCC3.029 and with the objective of providing a space for young leaders interested in environmental law. Although the group is fairly new, it is growing at a rapid rate. Mr. Bruno Monteferri actively chairs this group, which communicates through a blog (<http://celgroupofyoungprofessionals.blogspot.com>).

(iv) Alexandre Kiss Environmental Law Papers Award

The winner for the second edition of the Alexandre Kiss Award for young professionals in Environmental Law is Mr. César Ipenza from Peru. He submitted a paper on alternative and efficient energy (Titled "Los Biocombustibles/Agroenergéticos: ¿son una energía alternativa y eficiente? Un protocolo conjunto para dos acuerdos ambientales multilaterales – CDB Y

CMNUCC”). Mr. Ipenza will be using his first place prize by visiting the Environmental Law Centre in June 2010 in Bonn, where he will have the opportunity to further advance his research.

(v) CEL Helpdesk

CEL maintains a Helpdesk in order to facilitate access to its extensive network of environmental law experts from a wide variety of sub-disciplines. Members can request technical legal advice through a letter which must be sent and addressed to the CEL’s Chair, Ms. Sheila Abed ([Sheila.abed@idea.org.py](mailto:Sheila.abed@idea.org.py)). This tool was re-activated and several member queries were addressed in 2009.

*(B) Capacity building*

(i) Environmental Law Information Services – ECOLEX

The 16th Steering Committee meeting of ECOLEX was held at the ELC on 27-28 May. Important decisions were taken during the meeting regarding the future of ECOLEX, including a planned re-engineering of ISIS and future collaboration with other institutions (CIESIN, Columbia University) and within the partnership (e.g. UNEP Informed project to serve the needs of biodiversity-related MEAs). The most significant event of the year was the addition to the portal of a data set of decisions of the parties to selected MEAs, searchable as a subset of the treaty database. The data were made available to ECOLEX by CIESIN.

(ii) CEL Judiciary Portal

A Memorandum of Understanding (MoU) was signed in Brazil on 9 December between the Superior Court of Justice of the Federative Republic of Brazil (STJ) and CEL to provide a framework of cooperation for the creation and development of the Judiciary Portal. This project is of great importance as it will give judges from around the world an opportunity to interact and have access to selected court decisions of relevance to environmental law. The Judiciary Portal will be available in four languages (Spanish English, French and Portuguese), and the material selected will be made available to ECOLEX.

(iii) TEMATEA

ELC Legal Officers made an update of the TEMATEA Issue-Based Modules in July and August. The TEMATEA project is a joint UNEP-IUCN initiative aiming to support more coherent national implementation of biodiversity-related conventions. The issue-based modules are web-based tools that provide a logical framework of commitments and obligations from regional and international biodiversity-related agreements. Modules are further supported at the country level to promote national cooperation and communication across sectors and conventions.

(iv) Capacity Building in South Caucasus

The ELC, in collaboration with the IUCN Programme Office for the Southern Caucasus, Adelphi Research and InWent - Capacity Building International, started a series of training courses focusing on nature conservation and natural resources management in three Southern Caucasus countries (Georgia, Armenia and Azerbaijan). This project, part of the capacity building initiative "Regional Environmental Policy in the South Caucasus," foresees a total of three training courses and a study tour for government and civil society stakeholders from the respective countries to be implemented between 2009 and 2010. The trainings commenced in June with the introductory topic "Integrated Biodiversity-related Legislation to Approximate the EU Acquis Communautaire." Building onto this

introductory course at the request of national Ministries of the Environment and the current conservation policy agenda in the region, the second course was held in December and addressed "Ecological networks: Design, legal basis, institutional framework and implementation in practice." All training courses were supported by an online portal (<http://gc21.inwent.org/caucasus-environment>), which offers the functions of an expert help desk and network platform.

(v) Capacity Building in the Democratic Republic of Congo (DRC)

- **Comparative Analysis of the Draft Environmental Framework Law in DRC**

On 23-24th April 2009 the ELC and the IUCN DRC programme organised a workshop in Kinshasa to discuss the future environmental framework law for the DRC under the auspices of the DRC's Ministry of Environment, Nature Conservation and Tourism. The DRC is in the process of adopting an environmental framework law to establish the main principles for environmental protection. Two environmental framework laws were sent to Parliament for adoption; one from the ministry and another from parliamentarians. In order to engage in a constructive dialogue for the adoption of the environmental framework law, IUCN experts drafted a comparative analysis highlighting advantages and weaknesses of each proposal and underlining their complementarities. The analysis was drafted by the ELC with support of CEL.

- **Further development of environmental law in DRC**

The ELC has drafted a strategic plan to support the further development and implementation of environmental law in DRC. This strategy shall be part of UNEP's multi-year programme in DRC. However, this project is not yet funded.

(5) Publications in 2009

All publications are available at

[http://www.iucn.org/about/work/programmes/environmental\\_law/elp\\_resources/elp\\_res\\_publications/](http://www.iucn.org/about/work/programmes/environmental_law/elp_resources/elp_res_publications/)

- **Contracting for ABS: The legal and scientific implications of bio prospecting contracts** ABS Series n°4 IUCN EPLP 67/4 edited by Shakeel Bhatti, Santiago Carrizosa, Patrick Mc Guire, Tomme Young

- **Covering ABS: Addressing the Need for Sectoral, Geographical, Legal and International Integration in the ABS Regime** ABS Series n°5 IUCN EPLP 67/5 edited by Tomme Young

- **Towards Sustainable Fisheries Law, A comparative analysis** IUCN EPLP n°74 edited by Gerd Winter

- **Shared Resources: Issues of Governance**, IUCN EPLP n°72 edited by Sharelle Hart.

- **Rights-based Approaches: Exploring Issues and Opportunities for Conservation** Published by the Centre for International Forestry Research (CIFOR) and IUCN edited by J. Campese, T. Greiber, T. Sunderland and G. Oviedo

- **Conservation with Justice: A Rights-based Approach** IUCN EPLP n°71 edited by Thomas Greiber, Melinda Janki, Marcos Orellana, Annalisa Savaresi and Dinah Shelton

- **Legal and Institutional Frameworks and Their Impact on Water Related Payments for Ecosystem Services** IUCN EPLP n°78 edited by Thomas Greiber

- **Legal frameworks for REDD. Design and implementation at the national level**, EPLP n°77 edited by John Costenbader
- **Study on the Economic Value of Groundwater and biodiversity in European Forests** edited by Thomas Greiber, Chantal Van Ham, Gerben Jansse, Marta Gaworska
- **Le cadre juridique international du bassin de la Volta** IUCN EPLP Series n°73 Amidou Garané
- **Gobernanza de Aguas Compartidas: Aspectos Jurídicos e Institucionales (Legal and institutional aspects of transboundary water governance)** IUCN EPLP n°58 edited by Grethel Aguilar and Alejandro Iza
- **Gobernanza del Agua en Mesoamerica: Dimension Ambiental** (Water governance in Mesoamerica: Environmental Aspects) IUCN EPLP Series n°63 edited by Grethel Aguilar and Alejandro Iza
- **Derecho Ambiental en Centroamérica (Environmental law in Central America)** IUCN EPLP series n°66 (Tome I et II) Grethel Aguilar and Alejandro Iza

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