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## Presentation: IUCN Commission on Environmental Law

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## Presentation of the commission

# IUCN Commission on Environmental Law

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## About us

*The IUCN Commission on Environmental Law (CEL) consists of an extensive volunteer network of over 900 environmental law experts from more than 114 countries. CEL is divided into Specialist Groups on areas such as Armed Conflict and the Environment, Energy Law and Climate Change, Enforcement and Compliance, Ethics, Oceans, Coastal and Coral Reefs, Sustainable Use of Soil, Water and Wetlands and Indigenous Peoples & Human Rights. Together with the Environmental Law Centre (ELC), CEL makes up the IUCN's Environmental Law Programme (ELP).*

*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 organisations and others to network and to share information and discuss ideas. The mission of the ELP is to advance environmental law through the development of legal concepts and instruments, and to facilitate the use of environmental law as a tool 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.*

## BACKGROUND AND MISSION

The present-day Commission on Environmental Law began in committee form in 1960 by decision of the Seventh IUCN General Assembly (the overall governing body of all members of IUCN). The Assembly decision, in the form of a resolution, gives insight into the motivation for the committee's creation:

"Whereas there is a need for more mutual contact between the Union and the personnel of governments and parliaments who are especially concerned with the conservation of nature and natural resources, and whereas there is a need for more contact between these persons in different countries in order to promote legislation on this subject, the Union should establish a special Committee on Legislation and Administration."

A convergence of factors in the late fifties motivated this action, including an increasing influx of legislative materials coming to IUCN with no designated focal point and a growing number of requests from the United Nations and individual countries for legal and administrative assistance in matters of conservation and nature protection. Equally influential for this decision, law had been an integral part of the Union's mission from the beginning. Three years after the Committee's creation, the next IUCN General Assembly meeting in Nairobi took note of the ever growing demand for services in environmental law and called for reconstituting the Committee as a permanent Commission, a status it has retained ever since though the name has changed from time to time.

Beginning as the Commission on Legislation in 1963, it became the Commission on Environmental Policy, Law, and Administration (CEPLA) in 1970 with a broadened mandate in policy and administration. This designation continued until 1990 when the Commission name was simplified to its current form. Sheila Abed (the 6<sup>th</sup> Chair of this Commission) has chaired the Commission since 2004.

In 1960 when the initial Committee was created, the first priorities were twofold:

- to organize the existing accumulated materials and build a useable collection of legislative materials on conservation from member countries and internationally; and
- to begin to address incoming technical requests for legal assistance.

Throughout the years, with the assistance of the ELC and in collaboration with other IUCN Commissions, CEL has continued to focus on building strong legal foundations for conservation of the natural environment nationally and internationally by:

- gathering and monitoring information on national legislation, international treaties, policies, and trends;
- promoting and assisting with development and implementation of international environmental law; and
- promoting and assisting with technical assistance and capacity building in environmental law at individual, institutional and national levels.

In 1965, with help from project funds and small grants (particularly from WWF-Germany), the Commission was able to build a small secretariat with one full-time lawyer and a small office located in Bonn, Germany, the home of the first and most long-standing Chairman, Wolfgang Burhenne. In 1970, to ensure stability and continuity of this staff, IUCN headquarters created the ELC out of the small Commission unit.

Beginning in the 1990s, as the Commission began to markedly expand its membership, CEL began to place special emphasis on capacity-building at the regional level. Initiatives were undertaken, in partnership with other institutions, to train environmental lawyers and to organize or contribute to regional workshops relating to environmental law. An important underlying feature of the Commission's operations throughout its forty-plus year history has been its commitment to building and maintaining close links with a variety of international organizations and other non-governmental organizations from the International Council of Environmental Law to World Wildlife Fund and other specialized environmental organizations.

## ACHIEVEMENTS TO DATE

### HISTORICAL ACHIEVEMENTS

In the sixties, the Commission began to take on a leadership technical role with development of early international conservation agreements. Early work, for example, with the African Convention, was undertaken at the request of or in collaboration with the FAO and UNESCO, this being an era prior to the creation of UNEP in 1973 following the United Nations Conference on the Human Environment (Stockholm, 1972).

Throughout the 70s and 80s the Commission played a significant role in the development of international instruments relating to biodiversity conservation, contributing to what is now known as the Convention on Biological Diversity (CBD).

Starting in the Asia Pacific, a CEL-led "Training the Trainers Programme" on Environmental Law was initiated in 1997 in Singapore. Training activities in the field of environmental law continued to be developed after this in many other parts of the world to increase capacities worldwide.

Through its liaison to the UN System, CEL began in the 90s to develop a practice of monitoring and participating in meetings of the United Nations General Assembly, UNEP Governing Council and UN/ECE, and other bodies, such as the UN Commission on Sustainable Development. A representative of CEL was always in attendance at those meetings as well.

### MORE RECENT ACHIEVEMENTS

The CEL Working Group on the Non-Regression Principle<sup>1</sup> submitted a proposal to the European Parliament which was successfully adopted on 29 September 2011. The resolution is on the establishment of an EU common position ahead of the United Nations Conference on Sustainable Development-Rio +20.

The joint WCPA/CEL Specialist Group on Protected Areas Law and Policy comprises some 30 lawyers and protected areas specialists. In cooperation with the ELC, the World Commission on Protected Areas (WCPA) and the Global Protected Area Programme (GPAP), CEL developed Guidelines for Protected Areas Legislation, the result of a major four year project, which arose from a project coordinated by a Steering Committee drawn from CEL and the WCPA. The Guidelines are illustrated by 15 case studies drafted by some members of the Specialist Group. These case studies focus on protected areas legislation enacted in different jurisdictions and regulating different types of protected areas.

CEL assisted with the creation of the "High Seas Alliance", a partnership of organizations and groups aimed at building a strong common voice and constituency for the conservation of the high seas.

<sup>3</sup> See paper by Michel Prieur in this issue.

At the 9<sup>th</sup> International Conference on Environmental Compliance and Enforcement held in Whistler, British Columbia, Canada, in June 2011, the Specialist Group on Environmental Compliance and Enforcement convened a workshop on the establishment of a network for prosecutors to develop and bring cases for environmental crimes, which are often organized internationally. As a result of strong consensus among participants concerning the need for international cooperation between environmental prosecutors and the value of sharing best practices, the International Network for Environmental Compliance and Enforcement (INECE) and IUCN-CEL agreed to jointly launch the Global Network of Environmental Prosecutors (GNEP), whose mission is to create linkages among environmental prosecutors around the world for the purpose of protecting the environment and human health, and to promote sustainable development. Its principal objective is to build a global community of environmental prosecutors and to facilitate the exchange of tools, capacity building, and information that assists environmental prosecutors in their work.

Of the other many topics to mention where CEL members have made achievements, there is the newly-created International Judicial Institute for Environmental Adjudication, which was created with CEL's sponsorship and is led by a former CEL Chair, Prof. Nicholas Robinson.

## CURRENT INITIATIVES

Over the years, CEL has been able to examine and work in line with new trends of environmental law. The Commission has been able to promote the creation of a Global Network for Prosecutors with allies like the INECE, and has been working with some of the most important environmental agencies in the world. Work by the **Specialist Group on Environmental Compliance and Enforcement** relating to the GNEP led to the creation of a small working group of environmental prosecutors that has been nominated to take the first steps in this initiative. During the workshop convened by the Specialist Group in June 2011 (mentioned in the section above), there was agreement that efforts were needed for international co-operation around issues such as fighting serious types of organized environmental crime.

Other current initiatives include: the **CEL's Oceans, Coasts and Coral Reefs Specialist Group** which hosted a meeting in Istanbul of the scientific experts of the Group of Experts on the Eastern Mediterranean Sea. The objective was to share information on various issues of importance affecting biodiversity in the eastern Mediterranean Sea. The final outcome of the meeting was a joint statement, according to which the participants agreed, amongst other things, that:

- Expert meetings should continue with following meetings to include experts in law, representatives from

international, regional and national authorities, as well as researchers in the subject matters of the gaps identified;

- The IUCN should continue to raise awareness of the needs of protection of biodiversity in the eastern Mediterranean; and
- Greater awareness can be furthered through publications.

The **joint WCPA/CEL Specialist Group on Protected Areas Law and Policy** will start work with the Species Survival Commission on the implementation of the CBD's Aichi Biodiversity targets<sup>2</sup>, specifically with regards to issues related to Access Benefit Sharing (ABS).

CEL is also working strongly in the field of ethics. In fact, **CEL's Ethics Specialist Group (ESG)** is the only body within IUCN to tackle and approach the topic. The two main projects of the ESG are: (1) the Biosphere Ethics Initiative – seeking to highlight ethical principles in action around the world; and (2) the Earth Democracy project – seeking new or modified forms of governance that would allow for a flourishing, sustainable future for the entire community of life.

Working towards more coordinated and collaborative work to fulfil the “One Union, One Programme” goal, The **Specialist Group on Indigenous Peoples, Customary Law and Human Rights** (SPICEH) was established in late 2011 as a joint initiative of CEL and the Commission on Environmental, Economic and Social Policy (CEESP) of IUCN. The new specialist group aims to create a participatory process to support and to advise IUCN and its membership on indigenous peoples, customary and environmental law and human rights law issues related to conservation.

During the course of 2011 the **CEL Specialist Group on Water and Wetlands** (SGWW) established three Sub-groups: Climate Change – Adaptation and Mitigation, Legal and Institutional Arrangements for Transboundary Water Cooperation, and The Human Right of Access to Water and Sanitation. Co-chairs were appointed to each sub-group and each prepared a detailed Work Plan to guide its work. In addition, the SGWW established an Executive Committee of 22 members to carry out an initial review of outputs produced by the sub-groups. The SGWW Chair met with the Senior Legal Specialist from the Organisation of American States' (OAS) Department of Sustainable Development in order to discuss the development of case studies regarding the legal and institutional frameworks of the basins in which the OAS has development interventions since the early 1960s.

In addition, **CEL's Specialist Group on Soils** continues to develop proposals and propel policies that are well-known and

<sup>2</sup> In 2002, the CBD Conference of the Parties (COP) adopted a Strategic Plan for the Convention, which contained the ambitious 2010 Biodiversity Target: “to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on earth”. COP 10 Decision X/2 marked the adoption of a revised Strategic Plan for the Convention (2011-2020), and a set of 20 targets for 2015 or 2020, (the Aichi Biodiversity Targets), organized under five strategic goals. The goals and targets comprise both: (i) aspirations for achievement at the global level; and (ii) a flexible framework for the establishment of national or regional targets.

accepted throughout the world. CEL is also the only IUCN body dealing with the important issue of environment in conflict zones. The Specialist Group currently works side by side with the United Nations and their specialized offices. The current work of the IUCN **CEL Specialist Group on Armed Conflict and the Environment** focuses on two primary themes: (1) legal protection of the environment in times of armed conflict, and (2) the role of natural resources in post-conflict peace-building.

CEL members were also part of the World Water Forum addressing issues surrounding water law, another topic in which the Commission is active. The Commission's contribution to the **Energy and Climate Change** field is also sustained and constant. In 2011 CEL members participated in the inaugural meeting of International Renewable Energy Agency (IRENA).

## CHALLENGES FOR THE FUTURE

The work of CEL will bear in mind the need to:

- Elaborate legal recommendations for environmental protection and ensure they are taken into account during and after Rio +20 in June 2012, and the IUCN V<sup>th</sup> World Conservation Congress in September 2012 in order to have a long-lasting impact;
- Support and adapt to new trends emerging in international environmental law, and address new topics such as spatial planning, through for example further developments in the context of protected area law (e.g. connectivity conservation);
- Address the effectiveness of environmental law; e.g. with regards to implementation, compliance and enforcement – these concerns were also reflected in a petition drafted by lawyers and organisations for Rio+20 and signed in Limoges, which refers inter alia to the need to address gaps in environmental law and includes a list of possible new conventions e.g. a global soil convention;
- Address the relationship of environmental law with other fields, such as human rights and the environment, trade, security and military activities, by for example working across specialist groups and encouraging work across disciplines;
- Sensitise the judiciary and decision-makers (e.g. prosecutors and parliamentarians) to the role they can play in strengthening environmental law.

## FACTS AND FIGURES

### STRUCTURE OF THE COMMISSION

The Commission is governed by a Chair, elected every four years, and a Deputy Chair selected from the Commission

membership. The Commission is made up of the following working groups which aim to increase CEL input in priority areas into the work of IUCN:

Armed Conflict and the Environment; Co-Chairs: Carl Bruch, Michael Bothe

Energy Law and Climate Change; Chair: Richard Ottinger

Enforcement and Compliance; Chair: Kenneth Markowitz

Ethics; Co - Chairs: Klaus Bosselmann and Kathryn Kintzele

Oceans, Coastal and Coral Reefs; Co-Chairs: David VanderZwaag, Nilufer Oral

Sustainable Use of Soil; Chair: Ian Hannam

Water and Wetlands; Chair: Owen McIntyre

Judiciary; Chair: Ricardo Lorenzetti

Group of Young Professionals; Chair: Bruno Monteferri

SPICEH; Co-Chairs: Rodrigo de la Cruz, Kristen Walker. (This is a joint group between two Commissions: CEL and CEESP.)

Protected Areas: In early 2010, the WCPA Steering Committee and the CEL Steering Committee decided to replace the Task Force on Protected Areas Legislative Frameworks with a joint WCPA/CEL Specialist Group on Protected Areas Law and Policy; Co-Chairs: Antonio Benjamin, Ben Boer

Arctic Regime Task Force; Chair: Wolfgang Burhenne

Access and Benefit Sharing Task Force; Chair: Tomme Young

CEL Working Group on the Non-Regression Principle; Chair: Michel Prieur

## MEMBERSHIP

As with all Commissions, individuals become members of CEL by nomination by the Chair or any Commission Member.

Through the eighties, membership remained at around a hundred individuals. By the 1990s the pool of potential candidates had expanded substantially worldwide as environmental awareness grew. New members began to be invited in earnest and membership numbers began to grow substantially. By the mid-nineties, the Commission had some 300 members from 89 countries and this more than doubled by the end of the decade to some 700 international and environmental law specialists. Today, more than 900 CEL members represent diverse areas of expertise within the field of environmental law and policy. They are drawn from academia, public service, the private sector, and non-governmental organizations. An ongoing priority has been to increase membership in developing countries.

### RESOURCES

From the beginning, members have been the backbone of the Commission's substantive work programme, providing volunteer and consultant resources, networking, and

information exchange on specialized issues, new developments and project requests, supplemented by short-term researchers and students. Funding always remained a special challenge for the Commission since only limited resources were available. Thus, from the early years, the Commission, with the assistance of the ELC, built alliances and partnerships with other environmental organizations and private donors to support substantive input to the work of IUCN as well as other international organizations, and to maintain its worldwide membership network.

Universities and State Agencies have also started to support the Commission. Some of the major funding partners have been the Worldwide Fund for Nature (formerly World Wildlife Fund), the Karl Schmitz Scholl Fonds, the Elizabeth Haub Foundations, the International Council for Environmental Law, the University of Buenos Aires, the George Washington University, the University of Texas and ABRAMPA (Brazilian Association of Environmental Public Prosecutors). In addition, international organizations such as the United Nations Environment Programme and many governments have become strong supporters of ELP projects over the years.