

INTERNATIONAL COUNCIL OF ENVIRONMENTAL LAW
CONSEIL INTERNATIONAL DU DROIT DE L'ENVIRONNEMENT

ICEL SECRETARIAT:

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ICEL: A Brief History

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I. Introduction

When Nagendra Singh and Wolfgang E. Burhenne launched the International Council of Environmental Law (ICEL) at the 10th IUCN General Assembly in New Delhi in 1969, it became the first non-governmental organization of jurists dedicated to establishing and advancing laws for environmental protection.¹ Its Statutes were premised on the “growing concern for the quality of the environment.”² Indeed, it was a pathbreaking initiative; no other global collective of environmental lawyers and practitioners existed. The IUCN Commission on Legislation was unable to fulfil this role as its membership was restricted to highly accomplished international environmental law specialists. Thus, by 1969 it still had only 45 members.³

Leading members of the Commission on Legislation, including Wolfgang Burhenne and Narendra Singh, came together to create an organisation that would strengthen environmental conservation by creating a strong network of environmental practitioners and lawyers including those from developing countries.

This essay recalls the history of ICEL on its 50th anniversary, presenting a brief overview of its mission and the way in which it has fulfilled it. It traces its contribution to the expansion and accessibility of literature on environmental law, and offers a glimpse into its role in building a robust network of environmental lawyers and practitioners with whose efforts it has been able to contribute to treaty-making, as well as international institution building. It concludes with a brief look at ICEL as it embraces a new future after the demise of its Executive Governor Wolfgang Burhenne, moving forward with a stronger governance and administrative structure.

¹ It is a non-profit, private organization under Article 60 of the Swiss Civil Code. Its legal seat is in Geneva and offices were in Bonn.

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³ Lausche, B.J. (2008) *Weaving a Web of Environmental Law* (IUCN: Bonn) 153. Available on: <<https://portals.iucn.org/library/sites/library/files/documents/2008-020.pdf>>

i. Aim and Vision

Intended as a sister organisation to the Commission, ICEL's statutes stipulated that it would "promote the progressive development of international and comparative environmental law and its related disciplines, to encourage a transformative effect on the principles of law and practices, through providing expert advice and advancing proposals that have a realistic prospect of being adopted."⁴ It was also to encourage the development of mechanisms for the "exchange of information on all aspects of environmental law, policy and administration."⁵ With the support of the Henry J. Kaiser Family Foundation and the Elizabeth Haub Foundations, over the years it has been able to fulfil this mandate, playing a key role in strengthening conservation laws worldwide and establishing new international environmental agreements as a foundation for sustainable development by sharing the expertise of its members, who today hail from all corners of the world and all legal traditions.

The vision that led to its formation is epitomised by its logo – the Dharma Chakra – Wheel of Righteousness, a Buddhist and Hindu symbol of order and right action.⁶ Wolfgang Burhenne and Narendra Singh were inspired by its history – it is one of the earliest symbols of man's acceptance of moral law. Among the oldest existing examples of a dharma wheel are found on the pillars erected by King Ashoka (304–232 B.C.E.), an emperor who ruled much of what is now India and beyond. In 1947, India adopted a new national flag, which has at its centre an Ashoka Chakra or Dharma Chakra.

The word 'dharma' can be understood in myriad ways – all of which boil down to the concept of duty and doing that which is right and in harmony with the essence of a sentient being or inanimate object. Doing so preserves order and harmony, without which a healthy environment and stable society are not possible. We are, however, traversing a path of increasing deterioration of ecosystems and environmental catastrophes caused by loss of equilibrium between the elements of nature. 'Dharma' connotes the right actions that need to be adopted in order to preserve the natural order. One of the pathways to this that the international community has embraced is sustainable development. Through this a balance can be struck between the environmental, social and economic needs of present and future generations. Maintaining order in the natural world also requires the participation of all those dependent upon it. Human beings interact with and impact the environment in myriad ways, and how it is governed has a direct bearing on their lifestyles and livelihoods. Conservation of natural resources requires their involvement. Moreover, partaking in decisions related to the environment is a key aspect of the right to have a say in decisions connected with their daily lives.⁷ Like the Dharma Chakra, ICEL's vision and mission epitomise an appreciation of the intricate relationship between nature and people, and the need to preserve harmony between all the elements by bringing all concerned individuals and organisations into the international environmental law movement.

⁴ "Statutes of the International Council of Environmental Law" (adopted at New Delhi on November 26, 1969 as amended with effect from 1st May 1980 and further amended with effect from 15th October 1987) Article 2 ("Functions") Para 1.

⁵ "Statutes of the International Council of Environmental Law" (adopted at New Delhi on November 26, 1969 as amended with effect from 1st May 1980 and further amended with effect from 15th October 1987), Article 2 ("Functions"), para. (1) (a) and (b).

⁶ Found also in Jainism and Hinduism, the Dharma Chakra is best known as a Buddhist symbol, and represents among other things, the teachings of the Buddha.

⁷ Kiss, G. (2014) Why Should the Public Participate in Environmental Decision-Making? Theoretical Arguments for Public Participation. 22 *Periodica Polytechnica: Social and Management Sciences* 1, 13-20.

ii. Affiliations

Strengthening the work of international organisations, including the United Nations, is another one of ICEL's objectives. Soon after being established it was granted special consultative status with the United Nations Economic and Social Council (1973) as an observer, which it has retained with representatives in New York City (Ann Powers) and Geneva (Melinda Bellini Shepard and Adriana Bessa). In Consultative Status with the UN Economic & Social Council (ECOSOC), ICEL provides expertise on environmental law to on-going regional and international consultations on strengthening environmental law and building capacity for its national implementation. ICEL regularly presents expert opinions in ECOSOC committees, and actively participated in the work of UN subsidiaries to ECOSOC. Owing to its ECOSOC status ICEL has been able to submit expert reports and participate in the ongoing negotiations related to an agreement on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) under the UN Convention on the Law of the Sea.

It regularly submits expert reports for a range of other UN undertakings as well, and is represented at various UN organizations by ICEL Representatives in New York, Geneva, Vienna, Paris, Bonn, Nairobi, Bangkok, Beirut, Santiago de Chile, Pacific and Rome. It also has representatives at UNEP in Nairobi (Donald Kaniaru), Bonn (Reinhard Krapp) and UN ESCAP in Bangkok (Patti Moore). Recently it has also been represented in meetings of the UN Environment Assembly (UNEA).

ICEL is also a permanent volunteer representative to the United Nations in New York, along with having consultative status as an NGO with UNEP. In addition, it has been granted observer status as an NGO with the Convention on Biological Diversity, UN Framework Convention on Climate Change, the Chemicals Conventions (Rotterdam, Basel and Stockholm), UN Convention to Combat Desertification, the Alpine Convention, the Council of Europe (INGO with participatory status) and the Global Environment Facility (CSO Member).

It also plays a key role in the International Renewable Energy Agency (IRENA), which was founded in Bonn, Germany, on 26 January 2009. ICEL has participated in several IRENA meetings and regularly organizes side events along with IRENA on the subject of renewable energy in the margins of the UN High Level Political Forum on sustainable development. These take place annually in New York. ICEL member Richard Ottinger (Professor at Pace University Law School, New York, and former member of the US House of Representatives), organises these events.

II. Bolstering the Changemakers

i. The Elizabeth Haub Awards

In the 1970s international environmental law was just beginning to gain ground. The community of environmental law practitioners was small; development and strengthening of environmental law required that their work be supported and recognised. With the aim of supporting the environmental law community, in 1973 ICEL undertook as its first initiative the establishment of the Elizabeth Haub Prize for environmental law. The purpose was to promote environmental law and recognize exceptional accomplishments, and "...not only for a positive contribution to the development and promotion of environmental law in a general way, but for an initiative leading to a new concept or idea in the field of environmental law."⁸

The annual award consisted of a \$1500 prize to support the environmental work of the awardee. Between 1973 and 2007 it was administered jointly by the International Council of Environmental Law (ICEL) and Université Libre de Bruxelles (ULB). From 2008 it was awarded by Stockholm University through an agreement between ICEL and Stockholm University. Some of the awardees have included noted jurists such as Joseph L. Sax (1977), Cyrille de Klemm (1988), Tommy Thong-Bee Koh (1996) and Ramon Ojeda-Mestre (2004).

In 1997, ICEL and Pace University School of Law came together to establish an award that would give recognition to the work of international civil servants, diplomats and negotiators – the Elisabeth Haub Award for Environmental Diplomacy. By awarding diplomatic initiatives and accomplishments in environmental law ICEL aimed to encourage "progress in the field of international law and policy."⁹

At the 2015 award ceremony Wolfgang Burhenne expanded upon the importance of this award:

"When the Elizabeth Haub award was created we sought to demonstrate that legal instruments alone cannot achieve our goals. We must also drive the formulation of broader, morally-binding objectives. Therefore, political processes paired with legal tools are indispensable to ensure...enduring success."¹⁰

The first Diplomacy Award was presented in 1999 to Ambassador Razali Ismail (Malaysia) and Ambassador Bo John Kjéllen (Sweden). These two awards have now been merged into one, given by Pace University Law School.¹¹

⁸ Definition of the award from ICEL's web site at: www.i-c-e-l.org/English/prizes.htm. See Lausche, B.J. (See above n 2) 153.

⁹ Quoted in Lausche, B.J. (See above n. 6) 153.

¹⁰ Interview of Wolfgang Burhenne on the occasion of the Elizabeth Haub Awards for Environmental Diplomacy, Available on: [http://www.kaltura.com/index.php/extwidget/preview/partner_id/1913571/uiconf_id/31364942/entry_id/1_eet1nkg1/embed/auto?&flashvars\[streamerType\]=auto](http://www.kaltura.com/index.php/extwidget/preview/partner_id/1913571/uiconf_id/31364942/entry_id/1_eet1nkg1/embed/auto?&flashvars[streamerType]=auto)

¹¹ No cash prize is given for the Elisabeth Haub Award for Environmental Diplomacy.

III. Supporting UNEP

From the beginning UNEP, ICEL and IUCN have joined forces to develop international environmental law – working closely to draft and negotiate soft law and binding instruments. With Mostafa Tolba at the helm as Executive Director of UNEP (1975–1992) a strong foundation was laid for a robust collaboration between the two organisations. ICEL, in fact, was at the forefront of strategy-setting for the newly formed UNEP by pushing for and supporting the Montevideo program.

UNEP was formed at the Stockholm Conference, in itself a landmark event as it set the tone for environmental law for the coming decades. It required governments, non-governmental organisations and the international community to take a number of steps to deal with a variety of problem areas ranging from conservation of natural resources and the regional seas to controlling different kinds of pollution. Priorities had to be set, in order to be able to implement the Stockholm Declaration effectively and involve key players at all levels in this endeavour. With this in mind, the Chairman of the IUCN Law Commission Wolfgang Burhenne began to advocate for an international meeting which would focus on prioritisation and coordination of actions, as well as the identification of gaps and problem areas. He wanted that UNEP take the lead and sponsor it. There was resistance, however, from UNEP's Governing Council. The organisation had not been involved in any such work and it did not consider it to be a priority.

Finally, in 1980, by the eighth session of UNEP's Governing Council,¹² UNEP's member states began to acknowledge the usefulness of such an event. The Chair of the Governing Council, Magarinos de Mello presented a formal proposal for an international meeting on environmental law to be convened by UNEP. Held in Montevideo from 28 October - 6 November 1981, this historic meeting was co-sponsored by ICEL. Several members of ICEL also participated in the meeting as expert observers or government experts, including Wolfgang Burhenne.

The meeting focused on “subject areas where increased global and regional coordination and cooperation may encourage and further developments in the field of environmental law, in particular with regard to the interests of developing countries”, and outlined priority areas for the coming decade, along with a programme of periodic review of environmental law at the national, regional and international levels.¹³ Opening the meeting, UNEP's Deputy Director Peter Thacher highlighted the key role it would play in “the accelerated development of international law on environmental matters, but additionally as a means to bring about the coordinated, comprehensive approach on environmental law by the entire UN system and those other organizations who we welcome here as observers.”¹⁴ ICEL also submitted a joint statement along with the IUCN Law Commission and the European Council of Environmental Law (CEDE) on the importance of the meeting. Acknowledging the role played by ICEL in this endeavour, a special commemorative stamp was issued with the symbols of the two co-sponsoring organizations – UNEP and ICEL.¹⁵

¹² By the 8th session of UNEP's Governing Council.

¹³ UNEP Governing Council 8th Session, “Decision on Environmental Law”, UNEP/GC.6, Decision 8/15 (29 April 1980), para. 1.

¹⁴ EPL staff report (1981) ‘IUCN's 15th General Assembly’, 7 Environmental Policy and Law, 168.

¹⁵ ICEL continued to promote and support Montevideo I and its incorporation into the System-Wide Medium-Term Environment Programme.

The Montevideo Programme, now known as Montevideo I, identified several priority areas for the environmental law movement and set out action items for key actors and institutions. It was approved by UNEP's Governing Council in 1982, and became an essential framework for UNEP's mission and work. Indeed, "the Montevideo Programme has formed the basis of UNEP's activities in the field of environmental law since its adoption by the Governing Council."¹⁶

Following the recommendation that a review of progress should be conducted every decade the second Senior Government Environmental Law Experts meeting was convened in 1992.¹⁷ It looked into ways to strengthen the implementation of existing programmes and added to the legislative agenda the new challenges of loss of biological diversity and climate change. UNEP conducted the third review towards the end of the 1990s.¹⁸ In February 2009, UNEP's Governing Council adopted the Fourth Montevideo Programme for the decade commencing in 2010.¹⁹ ICEL has been an active participant in each of these meetings, helping shape UNEP's direction and that of international environmental law.

ICEL has also participated in all of UNEP's Governing Council Meetings, represented by Wolfgang Burhenne for years. He also formally and informally advised several delegates of the UNEP Governing Council and the Secretariat. This helped strengthen the relationship between the two organisations, which continues to this day.

IV. Information-gathering and dissemination

i. Library of Environmental Law

Collation and exchange of information is a central element of ICEL's mission. As explained in the *Journal of Environmental Policy and Law*:

"This system for the exchange of information among members is ICEL's most important function, being particularly useful when members have need for specific information about another country's law or when, in developing policies for their own country, they can benefit from others' prior experience."²⁰

The first step it took in this direction was the creation of a library which would be a hub of information for environmental lawyers, practitioners and interested citizens. Launched in 1971 and funded by ICEL, within a few years²¹ the library's collection consisted of over 21,000 books, articles and journals on environmental law and policy. By 1990 it also contained over 400 soft law instruments.

From 1992 to the early 2000s the collection of soft law instruments in the ICEL library was published in loose-leaf form by Oceana Publications, with Wolfgang Burhenne and Nicholas Robinson as editors, giving it the nickname 'Bu-Ro' (short for Burhenne-Robinson). This was

¹⁶ 'Senior Level Meeting on Environmental Law' (1982) 8 *Environmental Policy and Law*, 2.

¹⁷ It took place between from 30 October - 2 November 1991.

¹⁸ UNEP Governing Council Decision 20/3 (3 Feb. 1999).

¹⁹ ICEL. 'Governance of ICEL' Available on: <<https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-1>>

²⁰ 'ICEL' (1975-76) 1 *Environmental Policy and Law*, 41.

²¹ By the mid-1970s.

the first publication that focused solely on soft law instruments. Working with the Environmental Law Centre, ICEL has also sponsored three loose-leaf publications on international environmental law: International Environmental Law: Multilateral Treaties (begun in the 1970s); the Conservation in Sustainable Development series, a collection of environmental policy documents, and in 2000 absorbing into this series an earlier publication on International Environmental Soft Law.

The ICEL library continues to be maintained by ELC staff with regular contribution of materials by ICEL and others. What is more, it led to the creation of the largest available online information portal on environmental law globally having over hundred thousand documents, when in the 1990s ICEL began to fund the creation of a computerised database of treaties, national legislation, soft law instruments and legal literature linked to documents held in the libraries of the IUCN Environmental Law Centre for the IUCN Environmental Law Programme. This would go on to become a part of ELIS, one of the first computerized legal information systems. IBM played a key role during the initial stages of development of the ICEL-IUCN database. In 1992 the database was shared with the UN in the form of ECOLEX, an information service on environmental law operated jointly by IUCN, FAO and UNEP. Cooperation between UNEP and IUCN on this matter was first mandated by the Governing Council of UNEP in 1995, which evolved in 2001 into a partnership agreement between FAO, IUCN and UNEP for the integration of their data, as well as that of FAOLEX into ECOLEX.

ii. Journal of Environmental Policy and Law

In 1975 ICEL launched a legal journal entitled Journal of Environmental Policy and Law, as a means to further its objective of “developing the exchange of information on legal, administrative and policy aspects of environmental conservation”.²² It is primarily meant to assist practitioners and lawyers in their efforts at the development and implementation of international environmental law. As recalled by Wolfgang Burhenne, the first Editor-in-Chief, a position he held till his demise: “the intention was not to be academic, but to be the ‘Time Magazine’ for environmental law and policy.”²³ The editorial by Wolfgang Burhenne and Martine Mattes in the first issue of the journal further expands upon this concept:

“As the product of much thought and preliminary work, the format chosen is not quite that of a journal, nor that of a magazine, but something of a compromise between the two. We mean to be read, and we mean to be useful... We see our audience as a special group of persons who are actively involved with problems of environmental law and policy. At the same time, we do not seek to create a scholarly journal, where experts speak to experts over their common expertise. Our central purpose is to report and analyze developments which should be of international interest – to inform those active in the environmental field in one country of the theories and practices being developed in other countries or at the international level.”²⁴

Other legal experts who have been editors of the journal include Martin Mattes (a visiting researcher from the United States),²⁵ David Zalob, a short-term researcher who took up the position in 1976, and Heather Mitchell (1977). In 1978, ICEL member Marlene Jahnke became the editor, with Mary Gospodarek as co-editor. From 1980 onwards, Marlene Jahnke continued

²² Burhenne W.E. and Mattes, M.A. (eds.) ‘Editorial’ (1975-76) 1 Environmental Policy and Law, 1.

²³ Lausche, B.J. (See above n. 6) 148.

²⁴ Burhenne W.E. and Mattes, M.A. (See above n 18).

²⁵ Three issues were published in 1975.

as the sole editor with Wolfgang Burhenne as editor-in-chief. They produced an average of six issues annually.

From the beginning it has been an important vehicle for disseminating information and initiating discussions on new and emerging issues in environmental law and policy. It has gained recognition for its analytical critique of environmental challenges in the developing and developed world, and insightful examination of advances in environmental law and policy, particularly emanating from the UN and regional organizations. In order to be able to contribute to the work of the environmental law community the journal also reproduces texts of environmentally relevant UN General Assembly resolutions, as well as policy and legal documents from international and regional conferences. Final, as well as draft texts of agreements being negotiated at a regional or global level, are also published from time to time, as are decisions of the UNEP Governing Council. Monitoring the activities of the UN in this way, the journal is able to identify information that is important for the furtherance of environmental law and policy, and activities that ought to be engaged in to strengthen environmental conservation. Indeed, it is an invaluable source of knowledge for law-makers, academics, and environmental lawyers. Currently in its 44th year of production,²⁶ it continues to be professionally produced with the support of ICEL.

iii. ICEL Newsletter

Further expanding its mission of increasing awareness on environmental issues and laws, in the early 1990s, ICEL launched a newsletter entitled *Environmental Notes for Parliamentarians*. Its aim was to educate parliamentarians on environmental issues and laws. Almost 3000 parliamentarians from around the world have subscribed to it, finding it very useful in their legislative and policy work.

V. Treaty-Making

ICEL's role in treaty-making is particularly noteworthy, including in the drafting of the Convention on Biological Diversity and the Draft International Covenant on Environment and Development among others.

i. Convention on Biological Diversity

In the 1980s ICEL began to focus its attention on a treaty that would help conserve biodiversity and genetic resources through the promotion of sustainable and equitable use. At the 15th IUCN General Assembly (Christchurch, New Zealand, 1981) ICEL presented a resolution calling upon the IUCN Secretariat to carry out a preliminary study "on the conservation, accessibility and use of genetic resources with a view to providing a basis for an international management regime and for rules to implement it."²⁷ A year later at the Third World National Parks Congress meeting in Bali, Indonesia, when the IUCN was called upon to investigate the "possible development of international instruments to regulate commercial exploitation of genetic resources,"²⁸ the mandate to develop a new treaty was put in place. However, its

²⁶ Through subscription fees.

²⁷ Resolution 15/10 adopted by the 15th Session of the IUCN General Assembly, Christchurch, New Zealand, 11–23 October 1981.

²⁸ World Parks Congress on National Parks, Recommendation 10, 11–22 October 1982, Bali, Indonesia.

drafting did not proceed at a good pace, owing to lack of prioritisation and resource restrictions. In 1984 ICEL members took further steps to kickstart the drafting of the convention, adopting a new resolution during the 16th IUCN General Assembly in Madrid, entitled ‘Wild Genetic Resources and Endangered Species Habitat Protection’. The five basic principles it laid down became the conceptual framework upon which the IUCN Commission on Environmental Policy, Law and Administration (CEPLA) began drafting the Convention. These were:

“(a) Wild genetic processes are both renewable and non-renewable, they must be maintained because they are the basis of ecological diversity.... (b) The world community has the responsibility to preserve these resources for future generations. States, as the Custodians of these resources, have a duty of stewardship (c) Conservation measures taken in pursuance of this duty should aim primarily at preserving wild genetic resources in situ and should include the adoption and implementation by Governments of legislation for the conservation of natural habitats, and particularly the habitats of endangered species.... (d) Financial resources necessary to implement these conservation measures shall be made available.... (e) In particular, commercial users of processes derived from wild genetic resources have to participate ... through financial contributions...”²⁹

Despite all these efforts the suggested timeline in the 1984 Resolution for a draft convention lapsed once more without results, mostly due to lack of resources. It took over a decade’s work and seven challenging sessions between 1991 and 1992 for the Convention on Biological Diversity (CBD) to finally be concluded on May 22, 1992, in Nairobi, Kenya. This day is now celebrated as ‘Biodiversity Day’. When it was opened for signature at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, a record number of 153 countries signed the convention. By the end of July, 1993, 165 countries had signed it and by the end of September, 1993, 30 nations had ratified it. As a result, the convention entered into force on December 29, 1993.

For the first time there was a comprehensive regime for all facets of biodiversity conservation, stipulating standards for sustainable use of natural resources and ensuring equitable benefit sharing, based on a broad ecosystem approach.

ii. The Draft International Covenant on Environment and Development

As the number of international and regional agreements on environmental law began to grow during the 1960s and 70s, the international community began to feel the need for an overarching framework within which the various principles and rules could be understood, in order to bring about greater harmony in their implementation and improve cooperation in this regard. In 1983, the World Commission on Environment and Development (WCED) was established by the UN General Assembly to look into this matter. Its report entitled ‘Our Common Future’, also known as the Brundtland Report, put environmental issues and sustainable development firmly on the political and legal agenda.

One of the groups that contributed a great deal to their research was organized by IUCN Law Commission Chairman, Wolfgang Burhenne. This small working group of lawyers suggested

²⁹ 16th Session of the General Assembly of IUCN, Resolution 16/24: ‘Wild Genetic Resources and Endangered Species Habit Protection’. Madrid, Spain, 5–14 November 1984.

that WCED should “recommend that the United Nations transform the principles of the World Charter for Nature...into a covenant on the natural environment, analogous to the work done to structure the Universal Declaration of Human Rights....”³⁰ The paper by the working group was further reviewed by a small group of international experts (organized by WCED) chaired by Robert Munro of Canada (a Law Commission member), and including Françoise Burhenne-Guilmin, as well as a number of members of ICEL and the Law Commission. Several of the recommendations made by the Working Group were adopted by the WCED legal group, including the recommendation for a “Universal Declaration and a Convention on Environmental Protection and Sustainable Development”³¹ for which the WCED legal group drafted twenty-two articles.³² The final WCED report agreed with the Working Group on the importance of such an agreement:

“Building on the 1972 Stockholm Declaration, the 1982 Nairobi Declaration, and many existing international conventions and General Assembly resolutions, there is now a need to consolidate and extend relevant legal principles in a new charter to guide state behaviour in the transition to sustainable development. It would provide the basis for, and be subsequently expanded into, a Convention, setting out the sovereign rights and reciprocal responsibilities of all states on environmental protection and sustainable development.”³³

ICEL continued to work tirelessly towards this. At the 17th IUCN General Assembly (1988) it put forward a resolution which was adopted. It recommended that IUCN’s law and policy programme include “work towards the convention on environmental protection and sustainable development called for by the WCED Report ... [and suggested] that such a treaty embody the principles of the World Charter for Nature”³⁴ The Draft International Covenant on Environment and Development was published in 1995 as a part of the IUCN Environmental Policy and Law Paper Series. It was launched as a part of the UN 50th year anniversary celebrations at the United Nations Congress on Public International Law in New York (March 1995), with Wolfgang Burhenne representing ICEL at the event.

Revising the Draft Covenant

International environmental law is one of the most dynamic areas of law, constantly evolving in response to new challenges. In order to remain relevant and useful, a document such as the draft covenant should be in line with new needs and developments. With this in mind the draft covenant has been revised several times.

The first revision arose out of the need to keep it consistent with the ‘Earth Charter’ that emerged after the 1992 Rio Conference. In May 1999 ICEL and IUCN convened a small group of public international law experts in New York to undertake the review process. Consultations were held with the drafters of the Earth Charter to ensure consistency, and ICEL and the IUCN

³⁰ ‘Proposals for International Environmental Law Developments toward the Year 2000’ (1986) 16 Environmental Policy and Law 3/4, 94.

³¹ The World Commission on Environment and Development (1987) *Our Common Future* (Oxford University Press: New York), 332– 333.

³² Annex 1 of the Final Report.

³³ The World Commission on Environment and Development (1987) *Our Common Future* (Oxford University Press: New York), 332– 333.

³⁴ The World Commission on Environment and Development (1987) *Our Common Future* (Oxford University Press: New York), 332.

Commission on Environmental Law presented the revised text during the 54th Session of the UN General Assembly in November 1999.³⁵

Another review was required at the beginning of the new millennium to account for the many new developments in environmental law that had occurred. ICEL and the IUCN Commission on Environmental Law organised a small meeting of experts in March 2003³⁶ at the Environmental Law Centre in Bonn. The meeting aimed “to assess the impact on the Covenant of the results of the Johannesburg World Summit on Sustainable Development (WSSD), especially on the matter of implementation of international agreements.”³⁷ It was also felt that it would be advisable to revise the Covenant as a whole, in order to take account of international law developments that had taken place since the last revision. Owing to this, a number of changes were made to the text. Noteworthy among them was the inclusion of the ‘social and economic pillars’ of sustainable development, in order to “avoid falling into the trap of concentrating solely on the ‘environmental pillar’.”³⁸

A fourth review was undertaken by ICEL following the adoption of Resolution 4.101 by the 4th IUCN World Conservation Congress in 2008. ICEL once again called upon its members, as well as members of the IUCN Commission on Environmental Law to make proposals for amendments to the third edition. After over a year of preparatory work, a meeting was convened by ICEL in collaboration with the IUCN Environmental Law Programme, from 14–15 January 2010, in Bonn, Germany. Under the chairmanship of Donald W. Kaniaru eighteen eminent individuals undertook a rigorous evaluation of each article, proposing amendments and suggesting additions to the extensive commentary.³⁹

Although the Covenant is yet to be adopted, its principles have gained acceptance in legal circles and become a part of legal frameworks – one of the primary aims of the drafters. The foreword to the fourth edition acknowledges this:

“Over the six years since the third edition was prepared, the Draft Covenant has continued to serve as an authoritative reference and checklist for legislators, civil servants and other stakeholders worldwide in their endeavours to ensure that principles and rules of international environmental law and development are thoroughly addressed when they are drafting new, or updating existing, policies and laws.”⁴⁰

Efforts by ICEL, IUCN and the Commission on Environmental Law towards the development and promotion of the Draft Covenant have been acknowledged. At the 3rd World Conservation Congress in Bangkok, Thailand (November 2004) a resolution was adopted giving recognition to these organisations, as well as to the Elizabeth Haub Foundation for Environmental Policy and Law of Canada for providing funds for meetings, and producing and publishing the third edition of the Draft Covenant.

³⁵ It was published by IUCN in 2000 with the title: Draft International Covenant on Environment and Development — Second Edition: Updated Text.

³⁶ 10-11 March.

³⁷ Burhenne, W., ‘Foreword to the Third Edition’, Draft International Covenant on Environment and Development – Third Edition: Updated Text (IUCN Environmental Policy and Law Paper No. 31 Rev. 2) (IUCN:2004) p. xi.

³⁸ Draft International Covenant on Environment and Development – Third Edition: Updated Text. Available on: <<https://portals.iucn.org/library/sites/library/files/documents/EPLP-031-rev3.pdf>>

³⁹ Draft International Covenant on Environment and Development – Third Edition: Updated Text. (See above n 34).

⁴⁰ Draft International Covenant on Environment and Development – Third Edition: Updated Text. (See above n 34).

iii. World Charter for Nature

“The seas, the oceans, the upper atmosphere belong to the human community. . . One cannot freely overuse [such] international resources. People of good will. . . are looking to you for positive results from this Assembly. . . That is why, if I had any advice for you, I would suggest the establishment of a Charter of Nature”⁴¹

These were the words with which President Mobutu of Zaire advocated on behalf of a World Charter for Nature. At the Twelfth General Assembly of the International Union for Conservation of Nature and Natural Resources in September 1975 in Kinshasa, Zaire, President Mobutu first put forward the idea of such a Charter being drafted. The IUCN General Assembly approved his proposal and appointed a task force to begin drafting it. This included representatives from ICEL and IUCN Commission on Environmental Law, as well as international environmentalists, lawyers and policy-makers. In November 1979, the task force presented its draft to President Mobutu on behalf of the IUCN. In June 1980, Zaire submitted the Draft World Charter for Nature to the Secretary-General of the United Nations. As explained by the Representative of Zaire, Mr. Kamanda, during debates:

“It is a flexible text which proposes conservation measures with a view to serving as a moral code of conduct.”

The UN World Charter for Nature was adopted by United Nations on October 28, 1982, with 111 countries in favour and 1 against. The sole dissenting vote came from the United States.

iv. UNCLOS and BBNJ

The 1982 UN Convention on the Law of the Sea was a defining moment in the development of international law related to the oceans, dealing with protection of the marine environment and sustainable use of the planet’s shared water resources among other issues. IUCN became involved with UNCLOS in 1974, soon after the third UNCLOS Conference. At the Caracas meeting, IUCN took special interest in the work of Committee III for UNCLOS III, chaired by Alexander Yankov, an ICEL member from Bulgaria who chaired the committee from 1973–1982. This committee was responsible for Part XII of the draft on environmental protection and marine conservation. Wolfgang Burhenne also arranged for ICEL member Adolf Schneider to give detailed reports on each session of UNCLOS III. Schneider and Lee Kimball produced a joint report on nine sessions, which was published in the *Journal of Environmental Policy and Law*. For that meeting and thereafter, a small IUCN task force of lawyers and scientists with expertise in marine ecosystems was established to monitor and review the Treaty deliberations, in particular Part XII of the draft, and to advise IUCN on further actions that may be needed.

Yet, despite all these initiatives the Law of the Sea negotiations closed without IUCN and the Environmental Law Programme responding early enough in the process to effectively influence the final outcome. Marine conservation was still a very new field and it took time to find experts and bring them together to strategize and decide upon an action plan. Owing to this, provisions for environmental protection and resource conservation remained weak. Thereafter the Environmental Law Programme increased its focus in this direction.

⁴¹ Burhenne W. and Irwin, W. (1983) *The World Charter for Nature: A Background Paper* 14.

In 1981, the Environmental Law Programme completed a study entitled ‘The Environmental Law of the Sea’, which was published in IUCN’s Environmental Policy and Law Series, and later reprinted in the Fund for Environmental Studies (FUST) ‘A’ series. It consisted of five chapters with nine main contributors: Cyrille de Klemm, Douglas Johnston, Jan Schneider, Martine Rémond-Gouilloud, Lawrence Enomoto, James Barnes, Daniel Navid, Françoise Burhenne-Guilmin, and Norman Letalik. Detailed recommendations on measures to strengthen the legal framework for marine conservation were included. The Environmental Law Programme also made revisions to its publication on the Law of the Sea to reflect the final text of the treaty, and began monitoring the progress made by the Preparatory Committee for the International Seabed Authority and the Law of the Sea Tribunal. The IUCN Marine Programme took the lead in monitoring developments related to the treaty.

Having received 60 ratifications, the Convention on the Law of the Sea entered into force on 16 November 1994. Considering that there had never been an environmental law of the sea before this, ICEL and IUCN’s inputs towards this development of international environmental law were extremely important.⁴²

Conservation and sustainable use of biological diversity in areas beyond national jurisdiction:

ICEL is currently involved with the drafting of a legally binding international instrument under UNCLOS for the conservation and sustainable use of biological diversity in areas beyond national jurisdiction – known as ‘BBNJ’. In 2015, through Resolution 69/292 of 19 June 2015, the UN General Assembly decided to develop an instrument dealing with these issues under UNCLOS. Prior to holding intergovernmental conferences, it established a Preparatory Committee to make substantive recommendations on the elements of a draft, taking into consideration reports submitted by the co-chairs on deliberations in the Ad Hoc Open-Ended Informal Working Group which was set up to study issues related to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. The Preparatory Committee held two sessions in 2016 and two in 2017. During its fourth session (10 - 21 July 2017) the Preparatory Committee submitted its report to the General Assembly.

The First Session of the Intergovernmental Conference then took place from 4 to 17 September 2018, and the Second Session from 25 March to 5 April in New York. ICEL member Hiroko Makuri-Gottlieb is one of the leading representatives of the NGO community and has been closely involved with the negotiations. She also co-organised the side-event on 27 March 2019 (‘Exploring options for fostering conservation and sustainable use of the ocean through ABS of MGRs of ABNJ: engagement of multi-stakeholders, including the private sector, for informed decision making’).

v. Other Negotiations

ICEL has played a key role in developing a number of other international treaties, including the Bonn Convention on Migratory Species, which was drafted as a result of a proposal by Wolfgang Burhenne which was supported by ICEL. It also helped shape climate change law through the UNFCCC negotiations, and has also participated in deliberations leading to the adoption of the Sustainable Development Goals in 2015.

⁴² Commentary from Nicholas Robinson on May 2006 draft (transmitted by email dated June 13, 2006) Quoted in Lausche, B (see above n. 6).

A Comprehensive Environmental Regime for the Arctic

ICEL has been deeply concerned about the worsening environmental conditions in the Arctic, caused by increasing resource extraction, pollution, climate change and so forth. The Arctic has no comprehensive environmental law regime, in addition it raises special jurisdictional issues, particularly as it is home to several indigenous groups claiming territorial rights.

In 2000, at the 2nd World Conservation Congress, IUCN adopted a resolution recognizing the Arctic as a priority ecosystem for IUCN. It called for the preparation of an Arctic Strategy and Action Plan. Thereafter, a joint IUCN/ICEL project was initiated by Wolfgang Burhenne, Executive Governor of ICEL, and Charles Di Leva, head of the Environmental Law Programme, to examine the various environmental law issues and explore the possibility of developing a more comprehensive environmental instrument for the region. A report on legal issues pertaining to the Arctic was drafted by Linda Nowlan, CEL member and Executive Director of the NGO, West Coast Environmental Law. The report analyses the current environmental legal regime for the Arctic and considers the usefulness of a sustainability treaty which would have similar high standards related to environmental protection as those in place in the 1991 Protocol on Environmental Protection to the Antarctic Treaty. Such a treaty could encompass the sustainable development focus of the Arctic Council, and incorporate innovative legal measures that encourage the involvement of indigenous peoples. The report was published in the IUCN Environmental Policy and Law Paper Series in 2001.⁴³

In March 2004, Wolfgang Burhenne and Nicholas Robinson on behalf of ICEL and ELP, and ELC Senior Counsel Françoise Burhenne-Guilmin, convened an informal meeting of experts in Ottawa, to discuss the 2001 report and consider possible future actions. The meeting was supported by the Government of Canada and the Elizabeth Haub Foundation for Environmental Policy and Law. The author of the 2001 report, Linda Nowlan, discussed her research and findings. The meeting concluded by supporting further analysis aimed at understanding how to strengthen the legal regime. It also recognised that this would require a multi-pronged approach requiring strengthening of laws as well as institutions responsible for implementation. This meeting led to the CEL Steering Committee giving further support to the issue by creating a Specialist Group on the Arctic in May 2004. It also led to the adoption of a resolution at the 2004 World Conservation Congress calling for continued action and cooperation between IUCN, CEL and the various groups and programmes of the Arctic Council. It also asked that the Arctic Council and Arctic indigenous peoples be involved in all work being done on the agreement. Although the Arctic Specialist Group lasted only one year, it was decided that a special task force on the 'Arctic Regime' would be created with Wolfgang Burhenne as the chair.

Work on an Arctic Environmental Law Regime continues within the Commission, with the support of ICEL. However, as important as such an agreement would be, there is lack of clarity on what it should look like. Some even question whether a treaty or charter would be the best way to manage and protect the Arctic environment. ICEL and IUCN are working to build consensus on the issue, and increase awareness on the importance of such an agreement.

A Global Pact for the Environment

⁴³ Nowlan, L. *Arctic Legal Regime for Environmental Protection*. IUCN Environmental Policy and Law Paper No. 44. (IUCN, 2001). Available on: <<https://portals.iucn.org/library/sites/library/files/documents/EPLP-044.pdf>>

The ongoing UN Global Pact negotiations have also benefitted greatly with ICEL's involvement. It has, in fact, played a key role in the conceptualisation of the Global Pact, as the ICEL Draft Covenant on Environment and Development (1995) and commentaries in five editions, developed in conjunction with IUCN, was the basis for the principles in the proposed Global Pact for the Environment. It has also been involved in furthering the drafting of the Global Pact right from its conceptualisation. The preparatory consultations on the Draft Global Pact led by Laurent Fabius, former Prime Minister of France, included the Executive Governor of ICEL, Prof. Nicholas Robinson, and ICEL member Prof. Eckart Rehbinder. This resulted in a white paper entitled 'Toward a Global Pact for the Environment' being published in September 2018. President Macron presented the French proposal to the member states of the United Nations in New York in the autumn of 2017. He recommended that negotiations on the contents of a pact be conducted within a UN working group, followed by a state conference to adopt it.

To support the negotiations towards a Global Pact, upon release of the Secretary General's report ICEL released twelve charts that elucidate the environmental law principles that Governments have already accepted through international agreements. The charts show the links between the proposed global pact and general principles of international environmental law, multilateral environmental agreements (MEAs), and regional agreements for the African Union, ASEAN (Association of South East Asian States), SACEP (South Asian Cooperative Agreement), CIS (Commonwealth of Independent States), OAS (Organization of American States), CARICOM (the Caribbean Community), the League of Arab States and the Pacific Islands Forum among others. The countries that are a part of the European Union, Brazil, United States of America, China, Japan and Russia have also accepted most of these principles. ICEL has also created a chart showing the legal foundation provided by the agreed upon principles of international environmental law for each of the UN Sustainable Development Goals. These charts are intended to be a public resource for the UN Ad Hoc Open-ended Working Group that will negotiate the global pact. They complement and support the findings in the Secretary-General's Report on a Global Pact for the Environment.

ICEL also published an independent assessment of the UN Secretary General's Report and the proposed Global Pact in collaboration with the International Group of Experts for the Pact and the World Commission on Environmental Law of the International Union for Conservation of Nature, explaining why and in what way consensus on the Global Pact can be reached. The report questions,

'Why does the Secretary-General's Report matter, to States, to us in our chosen discipline of environmental law, and ultimately to world security and order?'⁴⁴

It answers this question by analysing the development of principles of international environmental law, the effectiveness of international environmental law, the key role of international environmental law in achieving the SDGs and the 2030 Development Agenda, as well as gaps in the law, its implementation and governance frameworks. It places this examination within the context of the many challenges of our times – climate change, increasing natural disasters, decline in biological diversity, population growth and its impacts

⁴⁴ <https://law.pace.edu/sites/default/files/Alumni/NOTE%20UN.pdf>, 4.

on the environment, food production and so forth. The report found the Secretary General's 'analysis is sound and we share the Report's over-all analysis and conclusions.'⁴⁵

The global pact, if adopted, would for the first time provide the international community with a general treaty that would cover all environmental issues and entrench the legal value and position of key principles found in national and international environmental law documents. This would help to fill gaps in the law, facilitate implementation, and what is more, do so in relation to the various sectoral agreements that currently exist, i.e. biodiversity, climate change, pollution, waste management and so forth.

Clarity on the status of principles of international environmental law would empower governments to enact stronger environmental law, and courts to better interpret and implement environmental law. Overall it would strengthen the implementation of environmental rights and duties. As stated by Yann Aguila President of the Environment Commission of the Club des Juristes, Antonio Herman Benjamin Justice at the National High Court of Brazil; chair of the IUCN World Commission on Environmental Law, Laurent Fabius Former President of COP 21 and 128 others,

'While we celebrate the 70-year anniversary of the 1948 Universal Declaration of Human Rights, the moment has come for a new chapter in the history of international law. We are calling for the adoption of a third pact, enshrining a new generation of fundamental commitments: the rights and duties of states, public and private entities, and individuals relating to environmental protection.'⁴⁶

Signed by a group of 27 experts, the ICEL report was released in conjunction with the 10th December 2018 event at the United Nations, sponsored by the Permanent Mission of France to the United Nations, the Permanent Observer Mission of IUCN to the United Nations, and the International Council of Environmental Law.

ICEL also participated at the First Substantive Session of the Ad Hoc Open-Ended Working Group towards the Global Pact in Nairobi from 14-18 January 2019. It was represented by its Vice-Chairman, Justice Antonio Herman Benjamin. Dr. Victor Tafur represented ICEL at the March and May sessions in Nairobi.

VI. The Future: Restructuring ICEL

Wolfgang Burhenne passed away on January 6, 2017, and ICEL was left without a leader and a stable organisational structure. It needed funding, administrative headquarters and a new administrative structure. Meeting a year after his demise, the members decided that the organisation needed to be restructured and Nicholas Robinson, the current Executive Governor, was requested to take charge of this process.

Work is being done to restructure the organisation and give it greater stability. For one, the secretariat has found a new home. It had been at Pace University following Wolfgang Burhenne's death. Now it is being established in Madrid.

⁴⁵ <https://law.pace.edu/sites/default/files/Alumni/NOTE%20UN.pdf>, 3-4.

⁴⁶

ICEL statutes were revised in Paris in 2017, which brought in a number of changes to the administrative structure. For instance, over several decades two ‘Executive Governors’ exerted the secretariat function. For decades Wolfgang Burhenne held one of these positions, and he was assisted until 2016 by his Executive Assistant Aaron Laur. Now, however, there can be only one Executive Governor who is the functioning director and chief executive officer. The position is currently held by Prof. Nicholas Robinson.

New ways of raising funds for the organisation are also being considered, including through membership fees and contributions from universities. Moreover, the administrative and governance structure of the newly restructured organisation will be clearly laid out, which will enable it to transform into a stronger organisation that will stand the test of time and take the vision of its founders even further.

It has already stood the test of time and is now restructuring itself to meet the challenges of this new era, which will require an even higher level of coordination between members and experts to deal with the growing environmental challenges and the resultant human rights violations.

VII. Conclusion

Over the past four decades ICEL has left its mark on environmental law and policy, supporting law makers, legal practitioners, activists and academics alike, and nurturing the development of soft law and treaty instruments. Its continuing effectiveness is testament to a committed leadership and members, whose sole focus is conservation of the earth’s finite resources and the establishment of strong environmental governance at national, regional and international levels. Indeed, it has carved a key space for itself in the international environmental law movement.