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The Environmental Law Programme

of

IUCN

The World Conservation Union

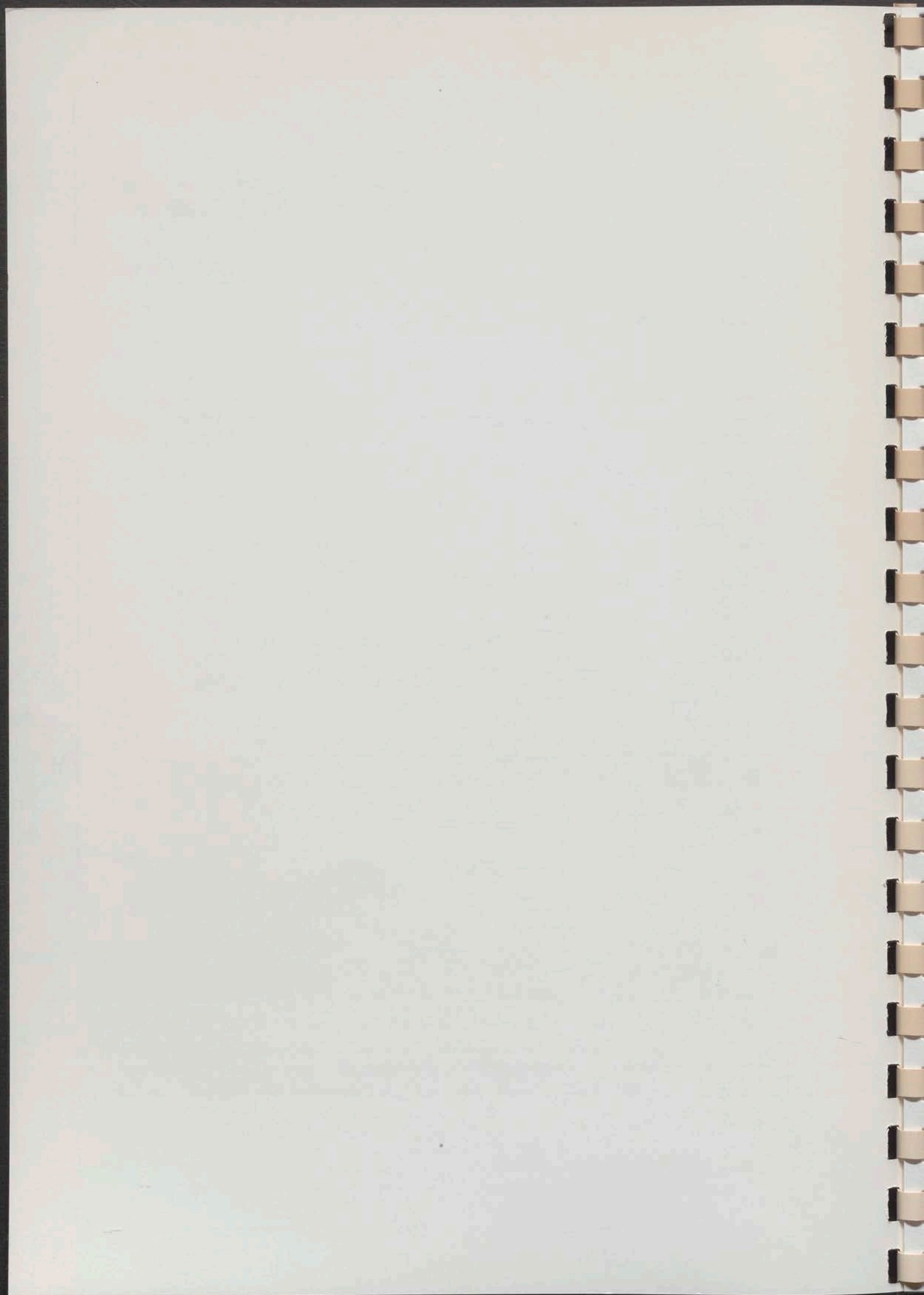
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l'Alliance mondiale pour la nature

September 1989



THE ENVIRONMENTAL LAW PROGRAMME OF IUCN
AND THE WORLD ENVIRONMENTAL SUMMIT

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THE ENVIRONMENTAL LAW PROGRAMME OF IUCN -
THE WORLD CONSERVATION UNION

1. INTRODUCTION

1.1 ENVIRONMENTAL LAW IS IMPORTANT

The volume of international law on environmental matters has grown dramatically over the past 20 years. In 1945, according to the data compendium prepared at the Environmental Law Centre, there were only sixteen international treaties related to an environmental theme; by 1989 there were over three hundred.

All analysts agree that as environmental problems multiply, and more and more aspects of these problems are recognized as of common concern to all people, international legal instruments will continue to develop and existing national legislation will be made stronger and more effective.

Laws and institutions are the machinery by which scientific and technical understanding is converted into prescriptions for action which communities and individuals are bound to take. Thus a major contribution of the law to conservation is to draw together the contributions made by other disciplines, and to convert them into rules of human behaviour that have a modicum of stability and permanence.

The adoption of a legal rule is not the end of a process but a beginning, and its implementation and enforcement are essential for it to play its full role. Monitoring how the various international agreements work in practice is therefore crucial, and so is obtaining information on the application of modern national legal techniques.

All these are matters in which IUCN has a deep interest, and in which the IUCN Environmental Law Programme plays an active part.

1.2 ENVIRONMENTAL LAW IS URGENT

As we learn more about the way the natural world works, the fundamental role of the environment as our "natural capital" and foundation of the development process becomes more obvious. That environment is not compartmentalized in the same fashion as human society. Pollutants spread across frontiers and move between air, soil, rivers and the sea. Living resource yields depend on our skills in managing the wider ecosystems that support them. Scientific advances are demonstrating daily the interdependence of environmental systems and the need for regional, or even global, approaches to their conservation and management.

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This calls for new concepts - like the ecosystem approach to resource management and the precautionary principle in pollution control. It calls for the replacement of legal and administrative systems that have often been sectoral and reactive by more forward looking and integrated ones. It calls for new thinking and new action by international lawyers. And it is urgent, for the world is deteriorating around us.

In many countries, and in numerous international situations, existing international law has developed in a piecemeal fashion; often as a result of hasty responses to unexpected crises. Developed and developing countries alike have bodies of law that are still evolving rapidly and are at widely different stages in different nations and regions. Many want to modernize their laws and develop a proper framework for the regulation of their vital and irreplaceable environmental resources. Many want help to do so and need such help urgently. The IUCN Law Programme can provide that help.

2. AIMS AND OBJECTIVES

The mission of the IUCN Law Programme is to assist in laying the strongest possible legal foundation for the conservation and management of natural resources, as the essential basis for sustainable development. To underpin and support conservation efforts, whether national or international, the Law Programme has the following objectives:

- to identify areas where improved policy, legal or administrative instruments or mechanisms would significantly contribute to the process of conservation and sustainable development;
- to contribute to the improvement of environmental law at international and national levels by promoting adequate legal responses and developments;
- to assist and advise governmental and non-governmental institutions on the elaboration of international or national legal instruments;
- to provide technical support for the legal and institutional aspects of the whole IUCN programmes;
- to provide input to the activities of other institutions which seek IUCN assistance in their development of environmental law and policy;
- to monitor developments and trends in the field of environmental policy and law, both at international and national levels;
- to provide information on national and international environmental law to partner organisations and users throughout the world.

3. ACTIVITIES

The Law Programme has a three-pronged approach:

- it promotes conservation and conservation-oriented national and international law and its implementation;
- it assists the governmental and non-governmental community in this field;
- it monitors environmental law, as a basis for action and for the benefit of partners world-wide.

The Law Programme is supported in these activities by a comprehensive computerized data pool.

3.1 THE LAW PROGRAMME AS A PROMOTION FORCE

Initiatives for the development of international treaties in the field of conservation are a major feature of the Programme, which has been instrumental in the development of several conservation Conventions now adopted by States. A major effort is now being devoted to the elaboration of a global international instrument for the conservation of biological diversity.

The Programme also contributes to the implementation of existing international accords, e.g. by conducting studies on the ways in which State Parties to these instruments have performed their obligations at national level.

Analyses of existing legal conservation systems, of legal devices which have been adopted in some jurisdictions and may usefully be adapted for use elsewhere, and of legal rules which actively hinder the achievements of conservation goals, are undertaken under the aegis of the Programme.

The subjects of these analyses are chosen with a view to providing recommendations in the legal field, especially where action is clearly desirable. For example, a comparative study of plant species conservation legislation will contain recommendations and guidelines for those seeking to develop new and improved law in this field.

The promotion of conservation-oriented legal instruments is also achieved by offering IUCN's experience in this field as a contribution to the work of other international organisations. Thus IUCN, through its Law Programme, has participated in the work of the World Commission on Environment and Development, and provided input in various ways into the development of treaties by the United Nations Environment Programme, both at the global level (e.g. to control hazardous wastes) and regionally (e.g. via the Regional Seas Conventions). The IUCN Law Programme began the process that led to the Convention on International Trade on Endangered Species, and in 1989 prepared a draft new Convention on the Conservation of Biological Diversity now being discussed at intergovernmental level.

3.2 THE LAW PROGRAMME AS A SOURCE OF ASSISTANCE

Many developing countries are presently engaged in a review of the tools at their disposal to achieve sustainable development. Such an exercise, whether carried out under the framework of a national conservation strategy or not, inevitably results in a re-evaluation of their environmental legislation. IUCN, through its Law Programme, has assisted a number of governments in carrying out such an evaluation. The Programme not only makes recommendations on action that needs to be taken, but also offers assistance with regard to instruments that need to be drafted and adopted to improve the existing legal framework. This assistance takes the form of comments and recommendations on drafts being prepared in the country concerned; such legislation may also be drafted under the aegis of the Law Programme, by consultants recruited for this work operating in close association with officials of the government concerned.

3.3 THE LAW PROGRAMME AS A SOURCE OF INFORMATION

Information on environmental law generally, and national legislation and Conventions in particular, is difficult to obtain on a global basis.

Governments, especially in the developing world, as well as non-governmental organisations (NGOs), industry, international organisations, and individual experts, need this information for a variety of reasons, for example :

- to obtain an overview of the existing legislative response to a particular problem (with a view to drafting new legislation);
- to gain knowledge of the law in force in a particular country or region (with a view to acting accordingly when carrying out a specific project or undertaking);
- to obtain information about existing law with a view to promoting improvements.

The Law Programme provides such information to IUCN members, partners and outside users, based on the data bases at the Environmental Law Centre.

As a special sectoral source of UNEP/Infoterra, and as a unique repository of such information world-wide, the ELC at present answers more than one hundred such queries a year, in addition to building specific theme-oriented data bases tailored to the needs of specific partners.

3.4 THE LAW PROGRAMME DATA BASE

The objectives -- to promote, assist, and inform -- presuppose a knowledge of the state of environmental law worldwide, both at national and international levels.

A major activity of the Programme is, therefore, to develop and maintain a data bank on existing legal instruments and literature in the field.

The data bank is operated on an IBM/38.

The software used, Romulus, was developed especially for the IUCN Environmental Law Information System; a complex package specifically tailored to the IBM/38. It includes interface with type-setting equipment, thus permitting preparation of publications.

The IUCN "Environmental Law Information System" (ELIS) is composed of four main data bases: national legislation, international treaties, supranational instruments and legal literature. It now comprises over 75,000 entries, reflecting the variety and wealth of today's legal arsenal in the field of natural resources management, environmental planning and pollution control.

This data bank, which now primarily contains the bibliographic data of the texts in question, is backed by a paper and microfiche library of the documents themselves, thus permitting information to be provided in the form of reference listings on a geographic or broad subject basis, and supplemented by the relevant texts.

Sub-files are being created and maintained for the use and benefit of special users. These deal with species of fauna and flora covered in legislation; protected areas legislation and site protection under specific international conventions; and data on the legal status of multilateral treaties.

In addition, parts of the data bank are developed for the use of partners, as is the case for Enlex, a data bank on environmental law in the Member States of the European Community, sponsored by the EC Commission.

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4. THE STRUCTURE

The IUCN Law Programme is operated by the IUCN Law Centre (ELC) and the IUCN Commission on Environmental Policy, Law and Administration (CEPLA).

The ELC is located in Bonn, Federal Republic of Germany. The Centre has a professional staff of four and a supporting staff of three, assisted by part-time personnel. All but two are engaged primarily in the management of the flow of information and data.

CEPLA is one of the six IUCN Commissions, composed of experts from throughout the world who volunteer their knowledge and services. CEPLA currently has 118 members from 50 nations. It is structured according to fields of expertise within various legal disciplines, thus allowing consultations between groups of members according to the subject considered.

This combination of modern computer facilities, volunteer expertise and small core staff has enabled IUCN to set in place the elements of an efficient Law Programme.

Lack of resources, however, has not permitted the Law Programme to realize its potential to the full, and IUCN is presently seeking support to enable it to do so.

5. LAW PROGRAMME PRIORITIES

To meet the urgent challenge, and contribute effectively to the development of a sound legal basis for worldwide conservation and sustainable development, the Law Programme has three major needs:

- a secure funding base for its present core operations;
- an upgrading of the computer system, to increase capacity and efficiency and enable it to link with and be accessible from other systems;
- additional targeted support to develop fully the potential of this infrastructure, which will, for example :

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- improve data collection to ensure systematic geographical and subject coverage;
- improve data analysis (abstracts, indexation) with a view to enhancing the retrievability of selected features;
- improve information dissemination and feedback by linkages with regional and national partners;
- enable the Programme to perform regular comparative or national analyses of specific legal aspects, with a view to ascertaining gaps and shortcomings, and to making recommendations;
- enable the Programme to respond quickly to calls for assistance in assessing needs and drafting conservation legislation for developing countries (by the provision of stand-by funding for a few such requests a year);
- enable the Programme to contribute to the development of a forward-looking jurisprudence in the field of conservation, by permitting it to convene workshops of experts to respond to new or emerging challenges.

6. BUDGET

The Law Programme's regular annual budget is presented in the following table:

Budget Summary 1990 - 1991 (DM x 1000)

EXPENDITURE	1990	1991
. Personnel	480	490
. Travel	22	25
. General Costs	145	150
. Computer Services	91	95
. Consultants/Field Costs	250	260
. Environmental Law Experts Network and Commission Operational Fund	160	200
T o t a l	1148	1220

I N C O M E	1990	1991
. IUCN Contribution	267	290
. Projected Contributions	310	350
. Yet to be identified	571	580
T o t a l	1148	1220

In addition to the figures shown in this table, some DM 360,000 is contributed annually by partner organisations in the form of hardware and software support, library services and publications.

ANNEX I - IUCN LAW PROGRAMME: ITS ACHIEVEMENTS

The Law Programme promotes:

- The development, negotiation and adoption of new international instruments; it was at its initiative and largely due to its impetus that the following international treaties have been adopted:
 - The African Convention on the Conservation of Nature and Natural Resources (Algiers, 1968);
 - The Agreement on the Conservation of Polar Bears (Oslo, 1973);
 - The Convention on International Trade in Endangered Species of Wild Fauna and Flora - CITES (Washington, 1973);
 - The Convention for the Conservation of Migratory Species of Wild Animals (Bonn, 1979);
 - The ASEAN agreement on the Conservation of Nature and Natural Resources (Kuala Lumpur, 1985).
- Adaptation of conservation Conventions to new circumstances, conditions and technical progress. The Programme:
 - prepared the instruments amending the Ramsar Convention in 1982 and 1987 (at the request of the Parties to that Convention;)
 - prepared a revision of the 1969 African Convention (at the request of the OAU) with a view to broadening and modernising the Convention.
- The elaboration of regional agreements as provided for under existing Conventions. For example, the Programme:
 - prepared guidelines for a Western Palearctic Agreement under the Migratory Species Convention;
 - drafted the first text of the now-adopted Wadden Sea Agreement at the request of the Government of the Federal Republic of Germany and
 - drafted agreements on the White Stork and Siberian Crane as first proposals for discussion by potential parties.

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- The development of "Soft Law" instruments, i.e. documents which formally fall short of binding obligations, but which influence the practice of States in international affairs:
 - the ELC and CEPLA were the motivating force in the preparation and the drafting of the World Charter for Nature, adopted by the UN General Assembly in 1982.
- The inclusion of an ecologically sound perspective in the work of other organisations active in the development of environmental law. The Programme:
 - monitors the work of many international fora, such as UNEP, including expert groups on the elaboration of guidelines and conventions on hazardous wastes, dangerous chemicals, and ozone layer protection;
 - advised on environmental aspects of the IMO draft Convention on Salvage and monitored the progress under the Law of the Sea Convention, the Tropical Timber Agreement and others.
- The implementation of global and regional accords. For example, the Programme:
 - at the request of the Commission of the European Communities, carried out a survey of the implementation of the EEC CITES-related Regulations in the twelve EEC Member States, in partnership with the WCMC;
 - prepared, for the Standing Committee of the Bern Convention, a report on the implementation of the Convention by its Parties;
 - elaborated, for the Secretariat of the Ramsar Convention, a scheme of analysis for national legislation on wetlands with a view to carrying out surveys of the legislation of Parties to the Convention in this field.
- New directions in conservation law, by providing progressive perspectives in the exploration of new horizons. The Programme has:
 - presented submissions on the future of environmental and conservation law to the World Commission on Environment and Development;
 - supported and promoted the work of Islamic law scholars in their analysis of Islamic principles relevant to environmental conservation concerns.

The Law Programme assists with -

- Interpretation of legal instruments, upon request:
 - on several occasions the Secretariat or standing bodies of international conventions, or other interested parties have consulted the ELC on the interpretation of certain clauses; this was the case for Articles VII and V of CITES, and, for Article 4, on habitats, of the Bern Convention.
- The provision of comments and advice on legal instruments under preparation or negotiation. The Programme:
 - has provided comments and recommendations on proposed national legislation in numerous instances at the request of institutions in both developing and developed countries;
 - offered critical comments and proposals during the process of negotiation of Conventions. This was the case during the negotiation of the LOS Convention and in the aftermath of its adoption; and during the negotiation of the Conventions on the Conservation of Antarctic Marine Living Resources and the Regulation of Mineral Related Activities in Antarctica, and is presently the case for several instruments being negotiated.
- Drafting of national legislation in the field of conservation and the general environmental conservation framework, at the request of the national institution concerned, e. g. :
 - Implementation of CITES (India)
 - Biosphere Reserves (India)
 - Environmental framework (Saudi Arabia)
 - Environmental framework (Gambia)
 - Requests for such assistance have been received from Vietnam, Vanuatu, Fiji, Solomon Islands, and others.
- Analysis of the legal situation in particular regions or concerning particular themes, with a view to detecting interesting developments, new methods, or drawing attention to gaps and inadequacies; recent examples include:
 - A study of wildlife legislation in the 45 African States;
 - A study of conservation and forestry legislation in seven central African States to support a review of tropical forest conservation in those countries;

- A synthesis of legal problems encountered in forestry legislation in the Sahel;
 - An overview of various aspects of wetlands conservation law, resulting from an international conference on the subject;
 - An analysis of existing plant species conservation law, including habitat and conservation mechanisms.
- Preparation of guidelines for the elaboration of legislation in particular sectors:
- legislation for the implementation of CITES;
 - legislation on protected areas;
 - plant species conservation legislation.

The Law Programme informs those in need of facts and texts by provision of:

- Regular information services on newly acquired legal and policy literature (2000 titles a year);
- Regular information services (on request) on new legislation/treaties/literature on specific subjects (users profiles);
- Specialised publications, namely tri-lingual (English, French, German) loose-leaf collections of:
 - Environmentally relevant multilateral treaties, and of their status (ratification, etc.);
 - EEC instruments in the field of conservation, natural resources management, and pollution.
- A "question-and-answer" service, available to users throughout the world, at cost. Information is provided in the form of a print-out of relevant references, and/or copies of the relevant documents (insofar as copyright law permits).
- Preparing special data files or data bases for particular uses, under special agreement, such as :
 - a database of animal species mentioned in legislation and international treaties, cross referenced to the relevant text, in a subfile prepared primarily for use by CITES (presently over 15000 taxa).
 - A database of flora species mentioned in international treaties and the legislation of 29 European countries in a project which was carried out at the request of the Government of the Federal Republic of Germany.

- detailed information on the legal status of the 300 environmentally relevant treaties maintained in the ELC data bank, giving at a glance information on entry into force, ratification, reservations, etc.
- data on legislation available in the States Parties to the Protocol on Protected Areas concluded under the Mediterranean Convention, which is being stored in a subfile for the Tunis-based Centre created under the Protocol.
- data on legislation and administrative instruments designating and applicable to Ramsar sites, which are being compiled in a subfile for the Secretariat of the Convention.
- a databank of the national environmentally relevant legislation of the 12 Member States of the European Communities which is being constituted for the Commission of the European Communities and in partnership with the Electronic Data Centre of the Italian Supreme Court.

The Law Programme data tool : ELIS

The achievements referred to above are, to a large extent, based on the collection of documents available in the library of the Environmental Law Centre, and on the computerised records of these documents in the Environmental Law Information System (ELIS).

- ELIS is composed of four main data bases :
 - International treaties (multilateral and bi-lateral); approximately 800 records.
 - Binding instruments of international and supernational organisations (EEC, Benelux, OECD); approximately 350 records.
 - National legislation; approximately 37000 records.
 - Legal and policy related literature; approximately 39000 records.
- ELIS aims at covering conservation issues as well as natural resources management, pollution control, and land use planning; its broad subject categories are : soil/ air/ water/ sea/ hazardous substances/ wastes/ noise/ fauna/ flora/ protected areas/ hunting/ fishing/ forestry/ land-use planning/ general environmental concerns/ general nature conservation concerns.

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- *ELIS documents legal instruments and literature throughout the world; as competences in the field of environmental legislation are often decentralised, ELIS deals with legislation at state, provincial and regional levels in those jurisdictions where this level of government plays an important role in setting the rules of environmental law.*
- *ELIS is geared to give information to people throughout the world. The system therefore has been conceived to absorb a certain amount of information in the original language, while at the same time allowing abstracts, indexations and titles in English or another language if the contractor so desires. The multilingual capacity of the system and software makes it a unique tool. English so far has tended to become the "lingua franca" of the system, but abstracts are also stored in French and the system is capable of handling information in many other languages.*

ANNEX II - CURRENT LAW AND POLICY PROGRAMME

1. Progress in Conservation and Environmental Legislation

This activity will be IUCN's contribution to the efforts currently deployed worldwide, especially in developing countries, to elaborate a sound environmental legislative infrastructure. It will include :

- maintaining the legislation and literature information base needed to promote the development of sound environmental conservation legislation
- assisting governments in strengthening their legislative and regulatory instruments in this field by providing information and technical advice
- consolidating the legislative assistance services of IUCN with a view to enabling prompt response to requests from governments
- contributing to the development of liability and related insurance questions by organizing a workshop of specialists in these fields
- preparing an analysis of conservation related legislation in the Sahel region with a view to ascertaining gaps and obstacles
- providing information upon request and through information services and newsletters

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2. Conservation-oriented International
and Regional Law

This activity is aimed at further providing IUCN's input into on-going development of international law, and will include :

- maintaining the data base on international treaties, EEC instruments and literature relevant to environmental conservation;
- up-dating and publishing the compendia of multilateral treaties and EEC instruments in this field;
- monitoring developments in international policy and treaty law and providing an input, as appropriate (e. g. proceedings of IMO, UNEP Regional Seas Programme, Law of the Sea etc.);
- elaborating proposals for new developments in international law, e. g. taking into consideration conservation concerns in the international law of war and military activities;
- developing further the Islamic Law Principles related to conservation;
- assisting in the implementation of the recommendations of the World Commission on Environment and Development in the field of international law and policy;
- promoting regional legal instruments for conservation
- providing information upon request.

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3. Supporting The Legal Basis For
Conserving Biological Diversity

This activity will provide the supporting elements in the legal field to the species programme. It will include :

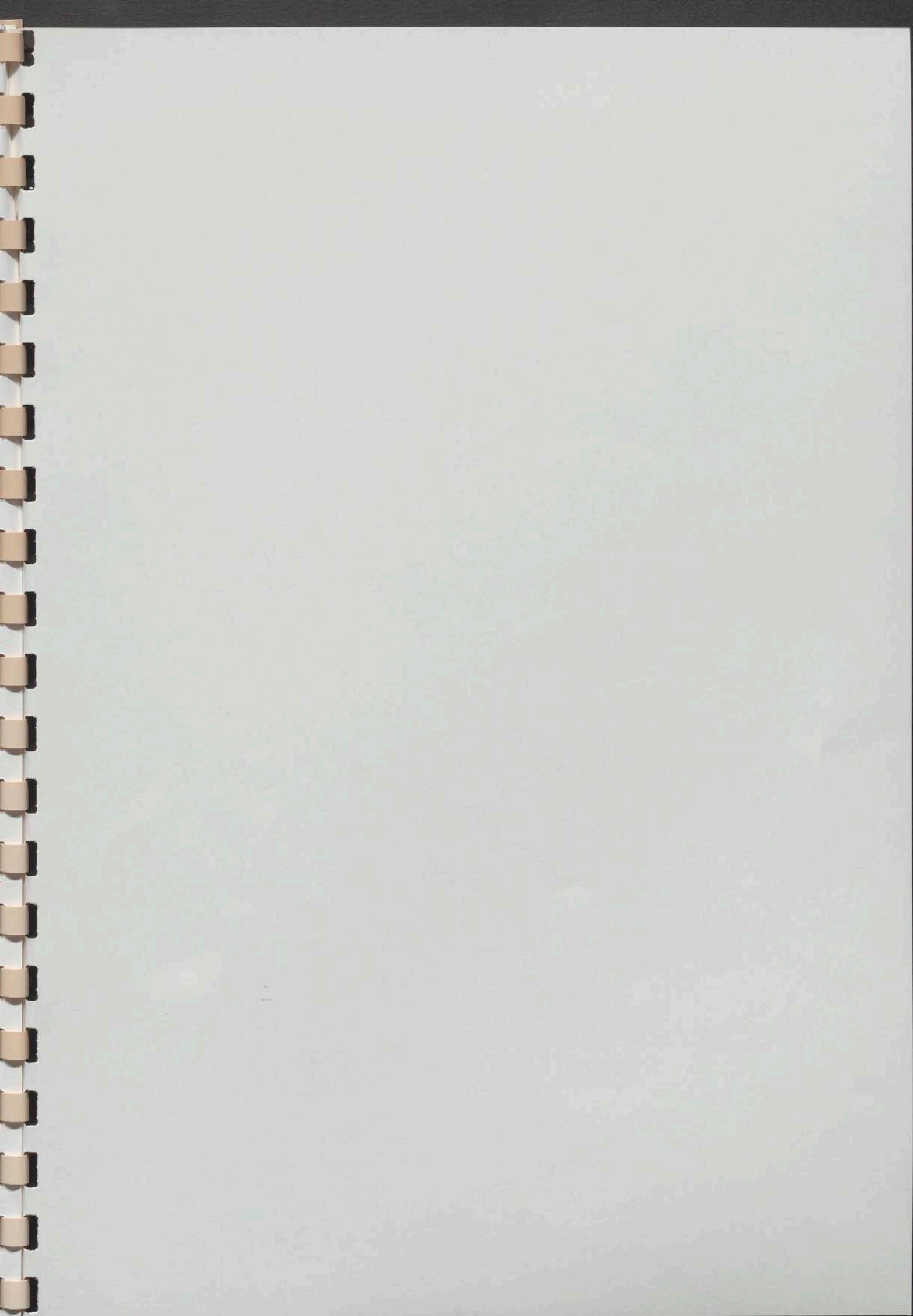
- the maintenance of a data base on animal species dealt with in legislation;
- the maintenance of a data base on flora species dealt with in legislation;
- the drafting and promotion of an international treaty on biological diversity;
- the promotion of implementation of the Migratory Species Convention and assistance in developing Agreements under the Convention;
- developing guidelines for wildlife conservation legislation;
- promoting the implementation of CITES and development of guidelines for drafting national legislation to implement the Convention;
- the provision of information to membership and other collaborators.

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4. Legal and Institutional Elements
of Habitat Management

This activity will include:

- maintaining a data base on legislation on protected areas, habitat conservation and other conservation-related planning controls;
- contributing to the development and implementation of the Ramsar Convention and the World Heritage Convention;
- contributing to the implementation of the Mediterranean Protocol on Wildlife and Protected Areas Conservation by providing information, developing national legislation guidelines, and analysing legal requirements;
- contributing to the development of a Convention on the Conservation of the Alps;
- developing the elements of a study on the legal and institutional aspects of landscape conservation;
- maintaining under review legislation and institutions applicable to wetlands conservation and further developing analysis and recommendations;
- providing information to membership, partners, and users worldwide.



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