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IUCN: International Union for the Conservation of Nature and Natural Resources

Note on the Legal Status of IUCN

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28 September 1998

The Legal Advisor of the International Union for the Conservation of Nature and Natural Resources, also known as the World Conservation Union (IUCN), has prepared this Note as an *aide memoire* on the legal status and personality of IUCN. The World Conservation Congress, IUCN's highest organ of governance, revised the IUCN Statutes of 1948 on 22 October 1996 at its meeting in Montreal, following a three-year period of consultation and deliberation.² The revised Statutes were adopted by unanimous consent of all IUCN State Members and Non-governmental Organization Members, including Part I, Article 1 which provides as follows:

The International Union for the Conservation of Nature and Natural Resources (IUCN) (also known as The World Conservation Union) is constituted in accordance with Article 60 of the Swiss Civil Code as an international association of governmental and non-governmental members. Therefore, it has legal personality and may perform any act in accordance with its objectives.³

The Objectives of IUCN were also revised and restated in Part II, Article 2 as follows:

“The objectives of IUCN shall be to influence, encourage and assist societies

¹ The Legal Advisor of IUCN is appointed by IUCN's governing Council, and is an office provided for in the IUCN Statutes, *infra* Note 3, as follows: “Article 85. The Legal Advisor shall provide legal advice to the World Congress, the Council and the Secretariat, and to such other components of IUCN as may be prescribed in the Regulations.” Nicholas A. Robinson, Professor of Law at Pace University in New York, USA, was duly appointed Legal Advisor in 1997. IUCN's Seat is located at Rue Mauverney 28, CH-1196 Gland, Switzerland.

² See Proceedings of the World Conservation Congress of IUCN, 13-23 October 1996, Montreal, Canada (ISBN # 2-8317-0394-8) (published by IUCN Publications Unit, Cambridge, U.K. 1996), pages 6-11.

³ Statutes of 5 October 1948, revised 22 October 1996 (including Rules of Procedures of the World Conservation Congress), and Regulations revised 22 October 1996 (ISBN 2-8317-0410-3) (published for IUCN by Imprimerie SADAG, Bellegarde, France 1997), page 2.

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.”⁴

IUCN is unique among international organizations in that it was created with and has consistently possessed a membership of sovereign States,⁵ governmental Agencies of States,⁶ and both international and national non-governmental organizations (“NGOs”), as well as non-voting Affiliate Members.⁷ IUCN’s decision-making process at its World Conservation Congress (IUCN’s general assembly of members, and its highest decision-making organ) occurs through a bicameral voting process. The IUCN Members’ delegates accredited to the Congress sit collectively, however the States and governmental agencies vote in one chamber while the NGOs vote in another chamber. Under IUCN’s Statutes, each State Member has three votes in the World Conservation Congress, one of which is shared by that State’s Government Agency Members, the national NGO Members have one vote, and the international NGO Members have two votes.⁸ This weighted voting, and the fact that a majority of the States must vote in favor of any decision taken at the World Conservation Congress for that decision to be adopted, defines the inter-governmental character of IUCN.

IUCN’s constitution is unique among international organizations, and therefore it is necessary to provide some clarifications regarding the IUCN’s Legal Status. This Note summarizes: (I) the State acts which created IUCN in 1948; the States that established IUCN knew that they were establishing a unique, new international organization for conserving nature and natural resources. The Note then examines: (II) the criteria under international law for recognizing IUCN’s status as an international organization, a juridical person and as a subject of public international law. The Note finally describes: (III) the recognition accorded to IUCN under agreements between a number of States where IUCN maintains offices, and IUCN’s status under municipal law. The facts and authorities set forth under these three headings describe IUCN’s status under contemporary international law, and indicate the nature of IUCN’s legal personality.

Now in its 50th year, IUCN is a *sui generis* international organization, whose State Members and Government Agency Members work in cooperation with its NGO Members, to provide expertise and services to further the equitable and ecologically sustainable use of natural resources at global, regional, national and local levels.

⁴ *Id.*, at page 2.

⁵ “States” meaning those states which are “members of the United Nations or any of its specialized agencies, or of the International Atomic Energy Agency, or parties to the Statutes of the International Court of Justice.” IUCN Statutes, Article 5(a).

⁶ The IUCN Statutes define “government agencies,” many of which are park departments or environmental ministries, - as “organizations, institutions and, when applicable, government departments which form part of the machinery of government in a State including those agencies of the components of federal states or of States having an analogous structure.” IUCN Statutes, Article 5(b).

⁷ International non-governmental organizations “shall be institutions and associations organized in two or more States,” IUCN Statutes Art. 5(e), and national non-governmental organizations “shall be institutions and associations incorporated within a State,” IUCN Statutes, Art. 5(d).

⁸ Statutes, Art. 34.

I. The Acts Constituting IUCN

When IUCN was founded in 1948 it marked the culmination of over three decades of work following the initial recommendations of a diplomatic conference in 1913.⁹ Acting in response to recommendations from the *Ligue Suisse pour la Protection de la Nature*,¹⁰ and the International Association of Game, Fish & Conservation Commissions,¹¹ and the Congress of Zoology,¹² the representatives of seventeen nations¹³ convened in Berne, Switzerland, in 1913 and agreed to establish an international commission for the international protection of nature. Unfortunately, World War I interrupted this initiative, and when in 1921 the seventeen States met in Paris to reactivate the Commission, there was insufficient support from the *Ligue Suisse pour la Protection de la Nature* and Swiss Confederation to launch the body. Thereafter, in 1925 and 1928, the International Union of Biological Sciences¹⁴ called for the establishment of an international union for conservation, and finally in 1935 the International Office for the Protection of Nature was established as an expert NGO to further cooperation with national conservation programs.

Immediately following the Second World War, governments, scientific bodies of experts and NGOs again called for establishing an international organization to address the conservation of natural resources around the world. The United Nations Education Scientific and Cultural Organization (UNESCO) agreed to convene a meeting to establish the new body, but refused to limit membership to governments alone. A preparatory meeting was convened in Brunnen, Switzerland, in 1947 and was attended by representatives of the UN Trusteeship Council, UNESCO, the Food and Agricultural Organization (FAO), 23 States and NGOs.¹⁵ The Conference prepared a draft of a provisional constitution for the International Union for the Protection of Nature, and called upon UNESCO to convene a conference to establish the new union and build on the initial 1913 diplomatic recommendations.¹⁶

Following this, the UNESCO General Conference instructed its Director General to convene an international technical conference for the protection of nature at its second session sitting in Mexico. The *Ligue Suisse pour la Protection de la Nature* urged UNESCO and the Republic of France to convene the meetings in France, and eventually it was mutually agreed that France

⁹ The early history of IUCN has been compiled by Sir Martin Holdgate, former Director General of IUCN, and published as The Green Web – A Union for Conservation (IUCN, Earthscan and Island Press, forthcoming 1998).

¹⁰ The *Ligue Suisse pour la Protection de la Nature* is an NGO, founded by Paul Sarasin and others in 1909 in Switzerland, now known also as Pro Natura.

¹¹ The International Association of Game, Fish & Conservation Commissions is an intergovernmental body comprised of Canada, Mexico and the United States.

¹² The Congress of Zoology is a scientific body of experts.

¹³ Argentina, Austria, Belgium, Denmark, France, Germany, Hungary, Italy, Netherlands, Norway, Portugal, Russia, Sweden, Switzerland, United Kingdom and the USA.

¹⁴ The International Union of Biological Sciences is an expert scientific body.

¹⁵ These NGOs included the International Union of Biological Sciences and the International Office for the Protection of Nature and the *Ligue Suisse pour la Protection de la Nature*.

¹⁶ Johann Buttikofer, International Conference for the Protection of Nature: Proceedings, Resolutions and Reports, (Brunnen, 1947, Swiss League for the Protection of Nature).

would invite other States, UNESCO would invite international organizations, and the *Ligue Suisse pour la Protection de la Nature* would invite the NGOs.¹⁷

UNESCO convened the Constitutive Conference of the International Union for the Protection of Nature in France at Fontainbleau, from 30 September to 7 October, 1948. UNESCO also convened a scientific technical meeting on conservation at the same time as the intergovernmental meeting to establish the new union. The need for the new IUCN to have scientific commissions of experts was evident from its founding; most of the scientific experts for conservation were in universities and institutes, and not employed by States or their ministries. Since 1948, IUCN has enjoyed the contributions of the world's leading experts on subject related to conservation.

At Fontainbleau, it was agreed that the new Union should have both State and NGO Members, giving it a unique constitution well suited for special challenges of harnessing public and private interests needed to achieve conservation.¹⁸ It was also agreed that the new Union should assist the then newly established United Nations system. The Preamble to the Statutes in 1948 stated, *inter alia*, that:

“‘Protection of Nature’ is a matter of vital concern to all nations, and furthering of it is the primary concern of no single effective international agency [and]... it would be of assistance to various governments, the United Nations and its Specialized Agencies and other interested international organizations, if an effective international agency were established for the ‘Protection of Nature.’”

Acting on these premises, the Statutes specifically provided in IUCN's framework for scientific experts, organizing them into commissions whose mandates would be decided by the general assembly, and whose chairs would be elected by the general assembly of the Members. This continues to be how IUCN involves scientists directly in its work, most recently in 1996, when the general assembly was reconstituted as The World Conservation Congress, held in Montreal, Canada, and the IUCN Members voted on the mandates for six commissions of experts and elected their chairs.

The IUCN's governing structure was similarly structured to efficiently utilize both public and private expertise.¹⁹ Originally the IUCN general assembly was comprised of both State and NGO Members voting together; the division of the assembly's governance into State and NGO voting chambers was established in amendments to the IUCN Statutes adopted in 1956 at Edinburgh, Scotland. IUCN's founding States also decided to create a novel means of

¹⁷ Holdgate, *op. cit.*, *supra* note 8, chapter 2.

¹⁸ In his history of IUCN, Sir Martin Holdgate comments upon this decision as follows: “There may have been four particular reasons why this hybrid status was chosen. First, it may have helped gain recognition among intergovernmental bodies like the UN agencies. Second, State members were in a position to pay significant dues. Third, if the Union had a number of State members, governments were likely to take its findings more seriously. Fourth, the hybrid structure must help co-operation across the divide between governmental and non-governmental sectors.” Holdgate, *op. cit.*, *supra* note 8, Chapter 2.

¹⁹ Initially, IUCN's Members included 18 States, seven international non-governmental organizations and 117 national non-governmental organizations.

associating the State Members with the NGO Members. The Statutes for the new Union were structured under the expansive provisions of Article 60 of the Swiss Civil Code.²⁰ In this format, the constitutive process for the new Union permitted States to become Members of IUCN simply by announcing their decision to “adhere” to the Statutes, and Government Agency Members to join with the consent of their State, and the NGO Members to be admitted to Membership by decision of the IUCN governing Council, which was constituted by election of the IUCN Members voting in the IUCN general assembly.

The Statutes constitute a treaty obligation on the part of the States adhering thereto,²¹ and a corporate and contractual obligation on the part of the NGOs admitted to membership.²² The Statutes provided that “[t]he Executive Board may take such action as it considers desirable to give the Union legal capacity in the countries in which it operates that may be necessary for the fulfillment of its objects.”²³ Under the principles of the international law of cooperation in the Charter of the United Nations, IUCN became a yet another of the growing number of specialized international organizations established immediately following the second world war, mandated to draw together the expertise on how best to conserve nature and natural resources.

So successful have IUCN and its Members been in this mission, that IUCN's concept of “sustainable development,”²⁴ was endorsed in the 1987 Report of the UN World Commission on Environment and Development,²⁵ and later became the policy theme for the recommendations of the United Nations Conference on Environment and Development (UNCED) in 1992.²⁶ One of the hallmarks of UNCED recommendations was the call for a *partnership* between public and private interests to work toward realizing sustainable development. IUCN's State Members, Governmental Agency Members, and NGO Members have the past 50 years have demonstrated how one unique international organization can work to make this partnership a reality.

²⁰ “Art. 60. Associations which have a political, religious, scientific, artistic, charitable, social or any other than an industrial object, acquire the status of a person as soon as they show by their constitution their intention to have a corporate existence. The constitution must be drawn up in writing and state the object, the capital and the organization of the society.” The registration of such an association is option and does not affect its status. This text is from the 1925 translation of The Swiss Civil Code by Ivy Williams (Vol. I, ReMaK Verlag Zurich, 1987 edition), page 21.

²¹ A number of State Members publish the IUCN Statutes in their formal collections of treaties in force, e.g. The Netherlands.

²² Initially, IUCN's Members included 18 States, seven international non-governmental organizations and 117 national non-governmental organizations.

²³ IUCN Statutes, Art. XII, 1st paragraph.

²⁴ This concept was first presented in 1980 in IUCN's *World Conservation Strategy*, announced together with the United Nations Environment Programme (UNEP, an organ of the UN) and the World Wildlife Fund (and NGO, and IUCN Member). IUCN, World Conservation Strategy – Living Resource Conservation for Sustainable Development (Gland, Switzerland, 1980); reissued in 1991 as Caring for the Earth: A Strategy for Sustainable Living.

²⁵ Report of the UN World Commission on Environment and Development, A/42/427, published under the title, Our Common Future, (Oxford University Press, 1987). In addition to endorsing the concept of sustainable development, The WCED Report noted, *inter alia*, that “IUCN, working in close collaboration with UNEP, WWF, the World Bank and various international technical assistance agencies, has established a ‘Conservation Monitoring Centre,’ to provide data on species and ecosystems for any part of the world quickly and easily.” (Para. 54) and also recommended that “Governments, directly and through UNEP and IUCN, should support the development of regional and subregional cooperative arrangements for the protection and sustained use of transboundary ecological systems with joint action programmes to combat problems such as desertification and acidification.” (Para. 33).

²⁶ **AGENDA 21**, Report of the UN Conference on Environment and Development (UNCED, 1992).

Today, IUCN's State, Government Agency and NGO Members meet every three years in the World Conservation Congress to adopt the programme and budget for the Union, establish the mandates for its commissions of scientific experts, elect the governing Council and chairs of its commissions, and adopt policy directives for the Union. IUCN has members and offices in each region of the world. IUCN currently is comprised of 74 States, 107 governmental agencies, and 679 non-governmental organizations.²⁷ Altogether, IUCN has some 927 Members in 138 States, as well as Palestine and certain territories [See the Appendix for the List of States and the Members' distribution]. The Seat or headquarters of IUCN is situated in Gland, Switzerland, where its governing Council meets. All regions of the world are represented in IUCN's Council.

²⁷ See IUCN Membership List (1 June 1998, Gland, Switzerland). The Appendix is reproduced from this publication.

II. IUCN's Legal Status Under International Law

A. International Law Criteria for Determining International Personality

IUCN's legal personality has been recognized under international law. IUCN is an international person in terms of the criteria accepted in international law as indicia of legal personality. In light of decisions of the International Court of Justice, and State practice, Dr. Ian Brownlie restates these as follows:

“(1) a permanent association of states, with lawful objects, equipped with organs; (2) a distinction, in terms of legal powers and purposes, between the organization and its member states; (3) the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more states.”²⁸

While one may restate these criteria broadly, Dr. Ian Brownlie cautions that “these criteria relate to delicate issues of law and fact and are not always easy to apply.”²⁹ Dr. C.F. Amerasinghe has aptly described the nature of international institutional law as “inherently a *lex specialis*, a law proper to each organization, lacking general implications.”³⁰ The International Court of Justice, ruling in the *Reparations for Injuries Suffered In The Service of the United Nations* [1949 I.C.J. 174], observed that “the rights and duties of an entity such as the Organization must depend upon its purpose and functions as specified or implied in its constituent documents and developed in practice.”³¹ Dr. Amerasinghe elaborated on the International Court of Justice ruling in the *Reparations* case, “(i) the fulfillment of these criteria is to be tested in relation to the ‘intention’ behind the establishment of the organization as reflected in the objective circumstance of such establishment including the constitution of the organizations ...and (ii) any negative elements in those circumstances, including the constitution, must be taken into account in determining whether the international personality does not exist.”³²

Commentators have applied these criteria to evaluate whether or not an organization has international personality by either the inductive approach (examining the rights and duties conferred by States upon the organization and deriving therefrom the status)³³ or the objective

²⁸ I. Brownlie, *Principles of Public International Law*, pages 681-2 (4th edition, 1990).

²⁹ *Id.*, page 682.

³⁰ C.F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge Univ. Press., 1996), at page 15. He cites Jenks, *Proper Law*, pp. 6-7, to the effect that “There are still no general rules or principles relating to international bodies corporate to which we can automatically turn when in search of their personal law.”

³¹ 1949 I.C.J. 174 at 180.

³² *Id.*, at 84.

³³ See, e.g. Bowett, *The Law of International Institutions* (Stevens & Sons, London, 1975 ed.) at 302: “... it seems that whilst specific acknowledgment of the possession of *international* personality is extremely rare, it is permissible to assume the most organizations created by multilateral inter-governmental agreement will, so far as they are endowed with functions on the international plane, possess some measures of international personality in addition to

approach (examining those aspects of the organization's structure which indicate international characteristics, and finding therefrom that international law would accord recognition to the organization).³⁴ Under either of these methods of evaluation, IUCN has the constitutive indicia of international personality.

Before explaining in detail how IUCN has international personality in terms of the criteria set forth above, the anticipatory summary may be useful: As described below, IUCN is a permanent association of States with other international organizations, and with non-governmental organizations to advance conservation of nature and natural resources. IUCN is equipped with the organs necessary to these objective, including a plenary assembly of Members in which the States vote as an intergovernmental chamber, a governing Council and specialized commissions of experts, and a permanent international secretariat, including a headquarters and offices around the world.³⁵ Moreover, there is a clear distinction in terms of legal powers and purposes, between IUCN and its Member States; the biosphere of the Earth consists of interrelated natural systems which extend beyond the jurisdiction and control of any one State. The State Members of IUCN have acknowledged this scientific interdependence necessitates their cooperation through IUCN. IUCN meets needs of its Member States that individually they cannot alone meet. Finally, IUCN has duties assigned to it by States under its Statutes, under several different environmental international agreements, and through its regional and bilateral agreements with certain States, which oblige IUCN to operate on the international plane and not solely, or even partially, within the national systems of one or more States.

In the founding of IUCN, and in the repeated acts enhancing IUCN's functions, the States Members of IUCN have defined its duties and functions on an international plane. As Dr. Manuel Rama-Montaldo has observed, "it may now be considered to be customary international law that every time States create an organization fulfilling those objective preconditions they endow it with international personality as already defined. However, since it is for the States to create the preconditions of the existence of a complete international person,

the personality within the systems of municipal law of the members which all the agreements on privileges and immunities (and often the basic constitutions) provide for."

³⁴ Finn Seyersted, Objective International Personality of International Organizations (1963), at 46 *et seq.*

³⁵ International Law commentators T. Buerghenthal and H.G. Maier note, in Public International Law (West Pub., 1990) at pages 36-37, that international organizations "must have a permanent secretariat or institutional structure. Some authorities also assume that they must have a membership consisting entirely or principally of states." IUCN's mission requires the close collaboration of States and NGOs, and since States have the controlling vote over decisions affecting them, the IUCN framework meets these criteria. Only States "adhere" to the IUCN Statutes as an international agreement, with an automatic right of admission; government agency and NGO Members of IUCN must be admitted by Council, on application, and associate with the Statutes under the associations provisions of Article 60 of The Swiss Civil Code (government agencies and NGOs lack capacity to adhere to the Statutes as an international agreement, but can be admitted to IUCN as an association). This is a unique accommodation of the three different legal capacities of the three types of IUCN Members, and has worked well and been accepted since 1948.

they are also entitled to limit by constitutional provisions some or other of the rights arising from that personality.”³⁶ The States that established IUCN by the Act of the UNESCO Conference in 1948, and the States that have since adhered to the IUCN Statutes, have established IUCN as an international juridical body for the specifically delimited role of advancing conservation and sustainable natural resource use, a mission on which all States depend and as to which no State alone can work in isolation.

B. The Lex Specialis of IUCN As An International Person

Thus, in terms of these criteria of international law, IUCN’s structure and activity illustrate the international personality of the Union. IUCN is organized as an international organization, solely in command of the decisions affecting its operations. IUCN exists to further the conservation of nature and natural resources, in order to maintain the integrity and diversity of nature and the equitable and sustainable use of natural resources.³⁷ To these ends, the Members of IUCN agree and have the right to participate in the World Conservation Congress,³⁸ to nominate candidates for election to IUCN’s offices, to submit motions to the Congress, and to vote in sessions of the Congress, and at other times via mail ballot.³⁹ The Members undertake express obligations to support IUCN’s objectives, to pay the assessed dues, and to submit information to IUCN relevant to these duties.⁴⁰ Failure to meet these obligations results in the suspension of the right to vote or be a member,⁴¹ and both State Members and NGO Members over the past 50 years have had these sanctions applied to them.

In furtherance of IUCN’s objectives, many nations have undertaken to host the World Conservation Congress (e.g. Argentina, Australia, Canada, Costa Rica, India, U.K., U.S.S.R. or Zaire), and have entered into formal, written agreements with IUCN both to contribute to bearing the extraordinary costs associated with the Congress and to ensure that “all persons entitled to attend the World Congress shall be admitted to that State without discrimination” and that “all participants ... shall have the right of free expression in the sessions of the World Congress and associated meetings.”⁴² IUCN’s Members determine their internal procedures, and have adopted formal Regulations to that end.⁴³ The Rules of Procedure of the World Conservation Congress were initially adapted from the Rules of Procedure of the United Nations General Assembly; as currently in force, the Rules of Procedure⁴⁴ provide the methods of voting separately for States and for NGO Members; States enjoy a weighted three votes, with their Government Agency Members voting within one of the votes allotted to the State of which that agency member is a

³⁶ Manuel Rama-Montaldo, “International Legal Personality and Implied Powers of International Organizations,” 44 BRITISH YEARBOOK OF INT’L L. 111 at page 147 (1970). Dr. Rama-Montaldo, concluded that

“among customary rights arising from the functional structure of international organizations might be placed the right to organize the working of its internal organs, the right to establish the procedure, rights of the staff, and even the creation of new organs. All these have a functional basis.” *Id.*, at pages 152-3.

³⁷ IUCN Statutes, Article 2.

³⁸ *Id.*, Art. 12(a)(1).

³⁹ *Id.*, Art. 12(b).

⁴⁰ *Id.*, Art. 12(c).

⁴¹ *Id.*, Art. 13.

⁴² *Id.*, Article 21(a) and (b).

⁴³ Regulations, revised 22 October 1996; *op. Cit.*, *supra* Note 2.

⁴⁴ Rules of Procedure of the World Conservation Congress, Annex to the Statutes, Part VII, *supra* Note 2.

part.⁴⁵ The IUCN Statutes provide that a decision of the Congress shall be deemed taken only if a simple majority of the States voting agree to favor a question put to a vote, and a simple majority of the NGOs voting also so agree.⁴⁶ All the business of the Union, including appeals from various decisions, is taken by the Congress.⁴⁷

One of the clear attributes of international legal personality is an entity's autonomy in its decision-making process. IUCN clearly possesses this. No State or other international organization can direct IUCN; only its Members have this right. The World Conservation Congress elects a Council, which has the powers of the Congress when the Congress is not sitting, and can amend the Regulations of IUCN.⁴⁸ The Council also appoints the Director-General of IUCN. When adhering to IUCN's Statutes, the State Members of IUCN agree to "respect the exclusively international character of the responsibilities of the Director General and the staff, and not seek to influence them unduly in the discharge of their responsibilities."⁴⁹ The Congress also defines the mandates and programmes for the specialized Commissions of experts, each of which has the academic or professional independence of its discipline; this expertise and its role in IUCN is independent and accountable ultimately to the Congress alone. The Council reports solely to the Congress and the Members.

C. State Practice With Respect to IUCN's International Personality

Beyond these constituent characteristics of IUCN, external recognition of the Union's functional attributes also indicates its international status. As set forth below, (a) IUCN is treated international organizations with the capacity to enter into agreements with other international organizations. (b) IUCN is recognized as an international juridical person in a number of treaties, including four multilateral agreements. (c) IUCN's mission and role within the international law principles of cooperation, give it a *sui generis* character among international organizations.

(a) First, IUCN has entered into a number of international agreements with other organizations. For instance, IUCN and the United Nations through the United Nations Environment Programme, have agreed to establish a Joint Environmental Law Information System (JELIS). IUCN has several special agreements with UNESCO, and provides services to the UNESCO Secretariat for UNESCO programmatic obligations. By mutual agreement, IUCN prepares for the United Nations Secretary General the United Nations List of Protected Areas. IUCN has entered into formal agreements for cooperation with the United Nations Development Programme and the United Nations Environment Programme, among other agencies.

(b) Second, States have assigned duties and obligations to IUCN under a number of international agreements. Not all the States Parties to these international agreements are Members of IUCN, and thus a significant number of IUCN non-Member States have acted to accept IUCN's juridical role under these treaty regimes. Under the UNESCO World Heritage Convention (1972), the States Parties have constituted a World Heritage Committee; the Convention

⁴⁵ Statutes, Art. 34, *supra* Note 2.

⁴⁶ Statutes, Art. 31.

⁴⁷ Statutes, Art. 30.

⁴⁸ Statutes, Art. 101. Members may review such amendments at the Congress, *Id.*, Art. 103.

⁴⁹ Statutes, Art. 82.

requires that this Committee “cooperate” with IUCN and provides that the Committee “for the implementation of its program and projects may call upon such organizations, particularly....the International Union for the Conservation of Nature and Natural Resources.”⁵⁰ IUCN prepared the initial proposals for and participated in the drafting of the Washington Convention on the International Trade in Endangered Species (1973), and has the role as chief scientific advisor to the Conference of the Parties in application of Article XI, paragraph 7.⁵¹ IUCN is expressly assigned secretariat functions for the Conference of the Parties under the Ramsar Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (1971), where the States Parties provide in Article 8 of the Convention that IUCN “shall perform the continuing bureau duties under this Convention.”⁵² IUCN is an active expert participant in several of the Antarctic Region treaties, and the States Party to the Wellington Convention on the Regulation of Antarctic Mineral Resource Activities (CMAMRA) (1988) expressly have authorized the Commission established by the Convention to “cooperate with the International Union for the Conservation of Nature and Natural Resources...”⁵³ In light of these formal treaty obligations that States have invested in IUCN, as well as IUCN’s participation in the formulation and negotiation and implementation of the Rio de Janeiro Convention on Biological Diversity⁵⁴ (IUCN serves as a principal scientific advisor to the Conference of the Parties in application of Article 23, paragraph 5) and other international agreements in the field of expertise of IUCN.⁵⁵ IUCN has also initiated and facilitated adoption of numerous “soft law” instruments such as The World Charter for Nature.⁵⁶ It is evident that IUCN is both a “subject of international law” as that term is used in Article III of the Vienna Convention on the Law of Treaties,⁵⁷ and also has international personality since it performs independently such international expert and policy roles – initiating studies, proposing protocols and new conventions, entering into agreements with States and international organizations, assisting States in treaty implementation, providing expert advice, and the like.

(c) Third, IUCN’s role internationally has expanded substantially as States and scientists have come to understand more completely the challenges of maintaining healthy conditions on Earth. Since the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, all States have acknowledged the importance of IUCN’s functional mission. IUCN’s evolution is not unlike that of other *sui generis* international organizations, such as the International Committee of the Red Cross (ICRC), which juridically is also organized under Article 60 of the Swiss Civil Code, but now has international status under Humanitarian Law and International Law, and has duties assigned to it under the Geneva Conventions,⁵⁸ and has been accorded Observer Status by the United Nations General Assembly. Unlike the ICRC, IUCN has immediate and controlling participation of States in its governance as full Members of the

⁵⁰ UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), in force, 1037 U.N.T.S. 151, in force.

⁵¹ 993 U.N.T.S. 243, in force.

⁵² 996 U.N.T.S. 245

⁵³ Article 34, CMAMRA, Doc. AMR/SCM/88/78, 27 I.L.M. 859 (1988), not yet in force.

⁵⁴ -- UNTS --, 31 I.L.M. 818 (1992).

⁵⁵ See, e.g. IUCN’s work on the Algiers African Convention on the Conservation of Nature and Natural Resources, 1001 U.N.T.S. 3 (1969), in force.

⁵⁶ UN General Assembly Resolution 42/186 of 11 December 1987.

⁵⁷ Vienna, 1969, entered into force 1988, 1155 U.N.T.S. 331.

⁵⁸ See The Geneva Conventions of August 12, 1949 (ICRC Publications, Geneva, Switzerland).

organization. IUCN's international legal status has evolved since 1948, and is evolving further. IUCN may perform any international act, which it is in a practical position to undertake within the limits set forth in the IUCN Statutes, and so long as IUCN does not impose obligations on its Member States unless they have agreed to be them.⁵⁹

This pattern of international organizations serving specified functions has been in existence since the founding of the Rhine (1815) and the Danube (1856) Commissions,⁶⁰ the Universal Postal Union (founded in 1874), the ICRC as noted above, and others. The International Court of Justice recognized the capacity to function on the international plane was an essential element of international personality.⁶¹ Since IUCN has developed new programmes beyond those of any of its Members, IUCN serves them in ways they could not do directly. It is evident that IUCN meets the criteria for international personality: IUCN's World Conservation Congress and Council express a will detached from that of the Member States and possess defined objectives to be attained through the fulfillment of the functions of the Union.⁶²

As developed in practice, the States adopting the IUCN Triennial Programme in the World Conservation Congress have assigned to IUCN numerous international duties, especially with respect to working to build the capacity of developing nations for sustainable development. No one part of the world can save a migratory species if the habitat of that species is preserved in one nation but destroyed in another; no State can stop hazardous chemicals from entering its ecosystems and food chains from another State, unless the discharges in the other State are controlled; no downstream State can prevent the flooding from natural resource misuse by an upstream States. Solving these problems calls for the programme of an institution such as IUCN. The IUCN Triennial Programme facilitates the cooperation of the public and private sectors, the work of national and local authorities, and of scientists and citizens alike.

⁵⁹ F. Seyersted, Objective International Personality of Intergovernmental Organizations: Do Their Capacities Really Depend Upon Their Constitutions, 4 Indian Journal Int'l L. 1, 25-26 (1964).

⁶⁰ The Permanent Court of International Justice observed in the *European Commission of the Danube Case*, P.I.C.J., Ser. B, N. 14, at p. 64: "As the European Commission is not a State but an international institution with a special purpose, it only has the functions bestowed upon it by the Definitive Statute with a view to the fulfillment of that purpose."

⁶¹ *Reparations Case*, supra [1949] I.C.J. Reports at page 118: "The progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States." *Id.*, at 179 "It is difficult to see how such a convention could operate except on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane...."

⁶² Manuel Rama-Montaldo, "International Legal Personality and Implied Powers of International Organizations," 44 BRITISH YEARBOOK INT'L L. 111 at page 155: "international personality is not a mere formal concept but entails precise legal consequences which may be summed up as enabling the person to operate on an international plane, manifesting itself as a distinct entity and entering into relationships with other international persons. This personality is dependent upon general international law in the sense that it is customary to assume that States creating an organization with the characteristics defined above endow it with a full legal capacity. But since it is for them to create the organizations, they might also limit some rights arising from personality if particular provisions of the constitution so specify."

III. IUCN's *Legal Capacity under Municipal Law*

When IUCN was established in 1948, its constitutive act was signed before IUCN's general assembly decided at its first meeting where its headquarters would be located; the Member States thus established IUCN initially outside of any national system.⁶³ Nonetheless, while IUCN meets the generally accepted criteria for international status under public international law, it remains necessary for each State to also accord to IUCN such legal capacity as IUCN requires for its operations with and within that State.⁶⁴ It is generally acknowledged that the presence of "international personality" under international law does not necessarily determine the organization's status under municipal law.⁶⁵

IUCN has entered into agreements with a number of States where it operates offices, to accord it such privileges and immunities as are necessary for the performance of the Union's functions in that State. Agreements have been entered into between IUCN and the Swiss Federal Council, the United States of America, Ecuador and Kenya, with respect, *inter alia*, to exemption from taxation of personnel, exemption from duties, free movement of staff, etc. These agreements are premised upon a recognition of IUCN's international personality, and constitute "organizational immunities" as appropriate to the objectives and functions of IUCN.⁶⁶ As noted above, IUCN regularly enters into written Conference Agreements with the States that undertake to host the World Conservation Congress, and its predecessor general assemblies.⁶⁷

IUCN's Members have chosen to resolve questions of a private law nature with respect to the headquarters secretariat of IUCN, by making a choice of law provision through choosing to be constituted in accordance with Article 60 of the Swiss Civil Code. Recourse to Swiss law has facilitated the organization and operation of the IUCN Secretariat. Such a choice of law provision is in keeping with the functional development of IUCN's programmes.⁶⁸ In a similar

⁶³ IUCN's first headquarters was established in Belgium; in 1960 the headquarters seat was moved to Switzerland.

⁶⁴ See Peter H.F. Bekker, The Legal Position of Intergovernmental Organizations (Martinus Nijhoff, Kluwer, for the T.M.C. Asser Instituut, 1994), at pages 62-3: "National courts have accepted in practice the legal personality of international organizations even in the absence of express provisions to that effect... legal personality in the legal order of member and non-member States in practice has always been granted on one or two grounds: (1) the State recognizes the international personality of the organization and legal personality under domestic law follows from personality under international law; or (2) the organization has been lawfully established by foreign States and according to the rules of *private international law* legal personality acquired abroad is accepted."

⁶⁵ See, generally, F.L. Kirgis, Jr., International Organizations In Their Legal Setting, at page 29 (1977).

⁶⁶ "Organizational immunities" mean "the body of law pertaining to the privileges and immunities of international organizations as such." Peter H.F. Bekker, The Legal Position of Intergovernmental Organizations (Martinus Nijhoff, Kluwer, for the T.M.C. Asser Instituut, 1994), citing G.H. Glann, M.M. Kearney and G.J. Padilla, "Immunities of International Organizations," 22 VIRGINIA J. INT'L L. 247 AT PAGE 266 (1982).

⁶⁷ Bekker, *op. Cit.*, *supra* note 52, describes these generically at page 139 (Para.4.2.3.4): "In such cases the host relationship is only a *temporary* one, which makes the conference agreement in effect a simplified headquarters agreement, being limited in time."

⁶⁸ D.W. Bowett, The Law of International Institutions, (Stevens & Sons, London, 1975), at page 326: "In seeking the law appropriate to govern its relations with outside entities, an organization may, according to the circumstances, turn to international law, including possibly conventions to which it is not a party, or general principles of law (including general principles of the conflict of laws), to the 'domestic law' of the organization itself or even to systems of private law."

fashion, IUCN has chosen Swiss law to govern the disposition of assets in the unlikely event of dissolution.⁶⁹

IUCN's State Members recognize the international personality of IUCN even in the absence of formal agreements with IUCN, in accordance with international law and their municipal law.⁷⁰ States that are not Members of IUCN have legal procedures to recognize the juridical status of IUCN under their municipal laws, as is demonstrated by IUCN's work in over 65 nations, which have not as yet adhered to the IUCN Statutes. Of course, all non-member States are also obliged to recognize IUCN's international personality under the principles of international law of international organizations set forth above.

⁶⁹ *Ibid.*: "Whether or not a particular organization will wish to provide in its constitution for the contingency of dissolution will depend upon political factors...dissolution is ...very sensibly anticipated in the constitutions of the financial agencies."

⁷⁰ See generally Henry G. Schermers and Niels M. Blokker, International Institutional Law, (Martinus Nijhoff, Kluwer, 1995), at page 1000: "International organizations with personality in national law have the capacity to perform all acts which legal persons may normally perform." Often the law of the host State is used for a source of rules to govern conduct. *Id.*, at page 1002.

IV. Concluding Notes

IUCN has grown enormously since 1948. Its founding Members have regularly expanded its mission and called upon it to do more. It has moved from protection of nature to the equitable and ecological sustainability in the use of natural resources. At the same time it has moved to be fully international in the geographic representation on its governing Council, and in the operations of its Commissions and Secretariat around the world. The expansion of IUCN's operations since 1948 has taken place during a period when "the scope and content" of international law itself has rapidly developed.⁷¹ With the advent of the United Nations Conference on Environment and Development, issues of the environment have taken a center stage internationally.

Founded as an intergovernmental organization, with non-governmental organization members, IUCN is unique among international organizations. The presence of NGO Members is a part of the cooperative partnership that has characterized IUCN since 1948; the bicameral nature of IUCN's governance in the World Conservation Congress enhances IUCN's international personality. Today, in its structure and functional programme, IUCN embodies what the United Nations Conference on Environment and Development called for in 1992 in **Agenda 21**: "a global partnership for sustainable development."⁷²

IUCN's Council in April of 1998 decided to request the United Nations General Assembly to grant it Observer Status. In doing so, it reflected its Members interests to work more fully within the United Nations system for sustainable development, as expressed in a Resolution of the World Conservation Congress adopted in Montreal in 1996.⁷³

⁷¹ P.K. Menon, writing in "The International Personality of Individuals In International Law: A Broadening of the Traditional Doctrine" 1 J. TRANSNATIONAL L. & POLICY 151 (1992) observes "During the last few decades, especially after the establishment of the United Nations, profound changes have taken place in the scope and content of international law. One of the most important changes is the massive horizontal expansion of the international society composed of nation States due to the sweeping wave of the decolonization process. Another major development is the phenomenal growth of international organizations as permanent institutions for the cooperation of States. A third important change is in the subject matter of international law which is at present becoming actively concerned with various vital topics affecting the promotion of human welfare rather than the mere prevention of national warfare."

⁷² UNCED, **AGENDA 21**, Para. 1.1: "Humanity stands at a defining moment in its history. We are confronted with a perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill health and illiteracy, and the continuing deterioration of the ecosystems on which we depend for our well-being. However, integration of environment and development concerns, and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can – in a global partnership for sustainable development."

⁷³ Resolution 1.80, "Relations with the United Nations System," which declares, in part, "that the effective implementation of IUCN's Mission requires closer work with the many organs of the UN, including its specialized agencies and programmes, and with other related international organizations," and in which the World Conservation Congress "requests the Council to undertake a comprehensive review of IUCN's relations with the United Nations, its specialized agencies, and other international organizations, and to report to the next World Conservation Congress." See Resolutions and Recommendations of the World Conservation Congress, 13-23 October 1996, Montreal, Canada (ISBN 2-8317-0391-3), published by IUCN Publications Services Unit, Cambridge, U.K. 1997.

IUCN's juridical personality derives from its structure and role as an international association of States, Government Agencies and NGOs united to conserve the integrity and diversity of nature and to ensure that any use of natural resources is equitable and ecologically sustainable. It functions world-wide, and on an international plane, and is charged by its Members to perform any act in conformity with these objectives. There are many different institutional rules for international organizations, and as the international legal commentators Dr. Henry G. Schermers and Dr. Niels M. Blokker have noted, "While the institutional structure and development of each organization is unique, to the extent that it is not pre-determined by binding rules with which states must comply when setting up an international organization this development represents in some measure an *acquis institutionnel*, an institutional achievement or status quo which has been accepted and is used and developed further."⁷⁴

State practice with respect to the establishment and continued development of IUCN reflects this on-going development of public international law with respect to international organizations. IUCN's continues its work in an international plane as a juridical person under international law.

28 September 1998
White Plains, New York

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⁷⁴ Henry G. Schermers and Niels M. Blokker, International Institutional Law (Martinus Nijhoff, Kluwer, 1995), at page 1195.