

EDITORIAL NOTE

This issue of the *Macquarie Journal of International and Comparative Environmental Law (MqJICEL)* marks the completion of the second year since its introduction in 2004. From the outset we have steadfastly adhered to our commitment to bring to its readers a broad range of viewpoints on the vast spectrum of environmental law issues that we hope will be of interest and assistance to the Australian and international environmental law community in better understanding the enormous challenges facing this and future generations.

Those of us associated with the Journal have been gratified and, at times overwhelmed, with the unequivocal encouragement and support we have received from our contributors, peer reviewers and student volunteers who have spent countless hours to ensure that the *MqJICEL*'s high standards are maintained and our biannual publishing schedule met.

None of this in the end would mean very much without the continued and enthusiastic support of you, our readers and it is to you that we owe a special debt of gratitude. The steady and in many ways remarkable growth in subscriptions in the two short years of the Journal's existence has enabled us to look forward to a promising future. It is now available in many libraries throughout the world. It confirms our belief that there was indeed a need for a balanced, peer reviewed environmental law publication of this nature and a forum for examining environmental issues on a comparative basis.

In the first three issues, the Journal has published a variety of full length articles by leading environmental law academics, students and practitioners on an wide range of topics including: *Access to Justice in International Law for Individuals and NGOs*; *The Appropriation of Indigenous Ecological Knowledge*; *Issues relating to Transgenic Fish*; *Australian Regulation of Gene Technology*; *Bioprospecting and the Genetic Resources of Hydrothermal Vents on the High Seas*; *Climate Change and Human Rights*; *Jurisdiction Over Minerals: Mining Offshore Antarctica*; *The Implications of the Concept of a Common Concern of Humankind on a Human Right to a Healthy Environment*; *Article 65 of UNCLOS and the Future of the International Whaling Commission*. *The Interface between Trade, Investment and Sustainable Development: Implications for India*; *EIA under the Protocol on Environmental Protection to the Antarctic Treaty*; *Environmental Ethics and Sustainable Development: Ethical and Human Rights Issues in Implementing Indigenous Rights, and the Trade-Environment Interface: Tensions Lurking Behind the North-South Tensions*.

Also included were interesting commentaries on the *Convention for the Safeguarding of Intangible Cultural Heritage* and the *North American free Trade Agreement (NAFTA)* and topical book reviews.

For those of you who have not yet obtained your subscription to the *MqJICEL*, please download and complete a subscription form found at http://www.law.mq.edu.au/MUCEL/resources/journal_brochure.htm

Macquarie University, through its Centre for Environmental Law (MU-CEL), had the honour of hosting the 3rd Colloquium of the IUCN Academy of Environmental Law. What follows is a brief report on this important gathering of international environmental law scholars from around the world.

REPORT

IUCN ACADEMY OF ENVIRONMENTAL LAW *3rd Colloquium of the Academy*

10 - 15 July 2005 - Macquarie University, Sydney Australia

More than 130 environmental experts from 27 nations¹ representing universities from each continent gathered to consider issues related to the Colloquium's theme '*Biodiversity Conservation, Law + Livelihoods: Bridging the North – South Divide*'. Macquarie University's Department of Indigenous Studies (Warawara), the Graduate School of the Environment and the Division of Environmental and Life Sciences also participated and assisted MU-CEL in hosting this important international event.

In his Message to the Academy, United Nations Secretary-General Kofi A. Annan stressed the 'sobering look' that the 2005 Millennium Ecosystem Assessment² presented of 'how human activities are causing environmental damage on a massive scale'. He welcomed the Colloquium's studies 'as to how environmental law can bring about the policy, institutional and behavioural changes needed to deal with the root causes of environmental degradation'. The full text of the Secretary-General's Message to the Academy is set out in Appendix A to this Report.

The opening ceremony chaired by MU-CEL's Director, Professor Michael I. Jeffery QC, commenced with an Acknowledgement of Country by Associate Professor Michael McDaniel, Director of Warawara. It featured welcoming addresses by Professor Tony Adams, Pro Vice-Chancellor (International) on behalf of Macquarie

¹ Australia, Belgium, Brazil, Canada, China, Egypt, Ethiopia, Fiji, France, Ghana, Germany, Italy, Kenya, India, Japan, Malaysia, Mexico, Nepal, Netherlands, New Zealand, Nigeria, Norway, Singapore, South Africa, Sri Lanka, Tanzania, United States of America, plus experts from indigenous peoples

² www.millenniumassessment.org, March 2005.

University; Australian Senator Christine Milne, Vice-President of the World Conservation Union (IUCN); Professor Nicholas A Robinson (Pace University), Chair of the IUCN Academy of Environmental Law; Mr Howard Bamsey, Acting Secretary, Australian Government Department of Environment and Heritage on behalf of the Commonwealth government; Hon Bob Debus, MP, Attorney-General and Minister for the Environment, State of NSW; and Professor Charles Okidi, (University of Nairobi) in place of Mr Bakary Kante, Director of Policy Development and Law, UNEP who was unable to attend.

In his two public lectures as the Academy's 2005 Distinguished Lecturer in Environmental Law, Professor Joseph Sax (University of California, Berkeley), identified a key root cause for the inadequacies of conservation, and environmental law in general, as deriving from legal functions arising from narrow legal definitions of property. Professor Sax explored the legal consequences when property concepts disengage commodities from ecosystems which produce them, or from wider natural and human communities which sustain them and which they in turn sustain. Drawing on both environmentally negative and positive cases from legal practice in the USA, he outlined the characteristics of a legal system capable of sustaining biodiversity and human livelihoods alike.

The Colloquium's Keynote Address was delivered by Dr Françoise Burhenne-Guilmin, a former Head and currently Senior Counsel at the IUCN's Environmental Law Centre in Bonn. Dr Burhenne-Guilmin was a key participant in the drafting of the Convention on Biodiversity ('CBD') and the Convention on the International Trade in Endangered Species ('CITES') and is a co-author of the authoritative 'Guides' to the CBD and the Cartagena Protocol (Biosafety). Her address placed the development of the CBD in its historical perspective and provided a thoughtful and insightful perspective on the broad range of biodiversity conservation initiatives that are presently being pursued in the context of international environmental law.

In six plenary sessions, scholars, judges and officials evaluated the need to strengthen the rule of law, including rooting out corruption in government and building wider knowledge about how the law can conserve biological diversity and essential ecosystems services alike in developing and developed nations. From a global perspective, scholars identified measures that all nations should advance for protection of the marine environment, since the treaty norms for oceans do not yet effectively protect marine life.

Panels also examined the legal confusion, currently existing under the CBD and in the national laws of many States, in the definitions of 'access' to and 'benefits' from genetic biological materials and regarding 'knowledge' (whether indigenous, traditional, or derived from new research) and intellectual property law. Panels noted a lack of integration between and among the different international agreements governing biological diversity, and with other fields such as international trade, which impedes realizing the objectives of conserving biological diversity or stabilizing ecosystem services to human society.

Panelists set forth proposals for how universities could integrate participation of indigenous scholars into the research on access and benefit sharing, and on building sustainable resources reforms. Plenary panels also examine the risks to society arising from current failures to integrate the laws for wildlife conservation, agricultural animal husbandry, and public health. In particular, the emergence and rapid spread of Acute Respiratory Syndrome ('SARS'), and the potential pandemic and unscientific culling of migratory birds in connection with new viral strains of Avian Influenza ('Bird Flu'), were urgent reasons to fashion new legal procedures to link the legal norms governing animal farms and feed lots, wild fauna conservation, and protection of the public health.

Small panels and discussion groups in seventeen 'breakout' sessions then applied these broad themes to the legal regimes governing biological diversity in different more particularized contexts. Panels debated papers on the legal procedures for the following:

- (a) legal tools for sustaining biodiversity amidst global warming and the climate changes it induces,
- (b) implementing ecosystem management for managing the spread of alien species,
- (c) strengthening biodiversity in land development, management and planning,
- (d) safeguarding endangered species of flora and fauna,
- (e) conserving soils and managing arid land uses,
- (f) adapting the coastal and marine challenges confronting small island states,
- (g) managing alpine and mountain environments and coping with the changes in Antarctica and the Arctic resulting from climate change and other human pressures;
- (h) how to enhance cooperation and synergies among the 'competing' biodiversity secretaries for CITES, the Bonn Migratory Species Convention, the UNESCO World Heritage Convention, and the Ramsar Convention on Wetlands of International Importance;
- (i) the special roles of the CBD and the IUCN.

Six further panels explored issues of the Colloquium as they arose in the legal regimes and practices of Australia, Africa, Asia, the European Union, Latin America, Oceania and North America.

All of the delegates walked across campus on the second day of the Colloquium to visit the University's Wallaby Research Facility for an Aussie barbeque 'lunch with the wallabies'. Research staff from the Division of Environmental and Life Sciences provided small group tours of the facility outlining a number of research projects currently being conducted and many of the international visitors were able to observe some of the endangered species of wallabies at various points on the tour.

The following day delegates were provided with a biodiversity conservation tour to Ku-Ring-Gai Chase National Park led by Professor Ben Boer and the Hon Brian Preston (of the Australian Centre for Environmental Law, University of Sydney and recently appointed Chief Judge of the NSW Land and Environment Court) to examine biodiversity conservation issues associated with the protection of some of the remnant St. Ives Blue Gum High Forest areas present in the park as well as some of the many natural and Aboriginal cultural sites.

Justice Keith Mason, AC, President of the NSW Court of Appeal hosted a reception at the Court for members of the judiciary who participated in the Colloquium and a small number of guests and Professors Michael Jeffery and Donna Craig similarly hosted a welcoming dinner at their home in Kenthurst at the outset of the week-long event. Arrangements were also made for delegates to visit the Macquarie Art Gallery and the Macquarie Observatory.

On the final day of the working sessions at an afternoon plenary session the delegates adopted by consensus a '*Statement of the Third Colloquium of the IUCN Academy of Environmental Law*' to be known as the 'Macquarie Statement'. The full text of the Macquarie Statement appears as Appendix B to this Report.

The Colloquium concluded with a closing banquet at the Tarongo Zoo and delegates were treated to an inspiring address by A/Prof. Anita Heiss (Warawara), one of Australia's most prolific and well-known Indigenous authors of fiction and non-fiction. A NSW Indigenous dance company provided a magnificent 'Bush Couture' modern dance performance and accompanying music.

The Editorial Committee³ established to prepare the Colloquium's manuscripts for the Cambridge University Press publication held its first meeting to begin its work. The Academy's Collegium met on 17 July 2005.⁴

Michael Jeffery, QC
Editor-in-Chief
Chair, Coordinating Committee
3rd IUCN Academy of Environmental Law Colloquium

³ The Editorial Committee consists of Professor Michael Jeffery QC (Macquarie University), Karen Bubna-Litic (University of Technology, Sydney), Dr Françoise Burhenne-Guilmin (IUCN-CEL), Professor Fernando Cavalcanti Walcacer (Pontifical Catholic University, Rio de Janeiro), and Professor Jeremy Firestone (University of Delaware).

⁴ University representatives confirmed the establishment of the Academy's secretariat at the University of Ottawa, and conferred with Dr Adel Omar Sherif, the Deputy Chief Justice of the Supreme Constitutional Court of Egypt, on the Academy's cooperation with Judicial Institutes, deciding to incorporate into the Academy a process to consult routinely with the courts on environmental legal education.

Appendix 'A'

UNITED NATIONS



NATIONS UNIES

THE SECRETARY-GENERAL

MESSAGE TO THE THIRD COLLOQUIUM
OF THE IUCN ACADEMY OF ENVIRONMENTAL LAW
Sydney, 11 July 2005

The Millennium Ecosystem Assessment released earlier this year was the first comprehensive global evaluation of the world's major ecosystems. The product of an unprecedented, four-year study involving natural scientists, scholars and environmental leaders from all over the world, it offers a sobering look at how human activities are causing environmental damage on a massive scale. It challenges all countries, all people and the IUCN Academy of Environmental Law to do more to protect the environment on which our lives depend.

The report tells us how biodiversity is declining at an alarming rate. Twenty-five percent of commercially exploited marine fish stocks are over-harvested. The conversion of wetlands, forests and mangroves is reducing the capacity of ecosystems to mitigate the effects of extreme weather events such as the recent tsunami in the Indian Ocean. If the world is to meet the agreed target of reducing the loss of biological diversity by 2010, and achieve the Millennium Development Goals by 2015, we will need dramatic steps to change course.

Laws, regulations, enforcement measures, policy reforms, market mechanisms and investments in the management of critical ecosystems must all be part of the picture. Your colloquium on the law of biodiversity can provide essential guidance. We need legal tools that will turn recommendations into practice. And we need your suggestions as to how environmental law can bring about the policy, institutional and behavioural changes needed to deal with the root causes of environmental degradation.

The Millennium Ecosystem Report did not only sound an alarm; it also proposes solutions and strategies for restoring and maintaining ecosystems. It is encouraging to know that the World Conservation Union is involved in the search for solutions on an issue of great urgency to all humankind. Please accept my best wishes for the success of your deliberations.

A handwritten signature in black ink, appearing to read 'K. Annan', written in a cursive style.

Kofi A. Annan

Appendix ‘B’**‘MACQUARIE STATEMENT’****STATEMENT OF THE THIRD COLLOQUIUM OF THE IUCN ACADEMY
OF ENVIRONMENTAL LAW**

At the Third Colloquium of the IUCN Academy of Environmental Law, more than 130 environmental experts from 27 nations representing universities from each continent gathered to consider the theme of ‘Biodiversity Conservation, Law + Livelihoods: Bridging the North-South Divide’. Papers presented by the participants and discussions in both plenary and panel sessions reflected a broad recognition that efforts to protect biological diversity are a fundamental part of efforts to ensure a healthy environment for present and future generations of humans and other living species.

The colloquium took into account the findings of the Millennium Ecosystems Assessment that, despite past warnings, threats to biodiversity and general environmental degradation have continued unabated, making it difficult to meet the original target of reducing the loss of biodiversity by the year 2010 and to meet Millennium Development Goals by 2015. To improve our capacity to meet these goals, the colloquium emphasized the following themes.

Human activity, including anthropogenic causes of climate change, is contributing to an alarming rate of species extinction that is reducing the diversity of the biosphere to the detriment of present and future generations.

Environmental law must focus on redressing the factors that contribute to the reduction in biological diversity at their sources by creating appropriate incentives for changing behaviour. Further, environmental law must develop and put into effect the legal tools that will turn established and evolving scientific and policy recommendations into enforceable norms, institutions and procedures. At a global level, this must build on the established principle of common but differentiated responsibilities.

The establishment and maintenance of protected areas on a national, regional or global basis can play an important role in protecting endangered species and preserving biodiversity by conserving ecosystems and natural habitats on which species depend.

Recognizing the complex interdependencies of living organisms in ecosystems, efforts to preserve biodiversity must emphasize a broad ecosystem approach, rather than focusing primarily on preventing extinction on a species-by-species basis or park-by-park basis.

As globalization spreads concepts of private property, it is important that concepts of property law be reconceptualized to ensure the protection of public values and to prevent the destruction of the economy of nature and the environmental services that ecosystems provide.

Measures that promote the conservation and sustainable use of biodiversity ultimately will contribute to a more peaceful and prosperous world for the benefit of both current and future generations. All countries should follow sustainable development paths, learning from, and avoiding, the mistakes of the past.

As knowledge of the causes and consequences of environmental problems continues to improve, it is imperative that legal concepts be adapted to take into account new information and to improve the capacity of law to respond to environmental imperatives. The considerable expertise possessed by members of the Academy of Environmental Law can be leveraged to make significant contributions to improved public policy through collaborative and comparative law research projects. These projects can help improve our understanding of what policies work and why and enhance our ability to employ law to achieve our shared goals.

Special and deliberate efforts should be made to develop a critical mass of expertise and institutional arrangements in developing countries, paying particular attention to the interests of minority, indigenous and marginalized peoples to ensure equitable national and regional sustainable development.

Every country and regional entity must put into place legal and policy mechanisms as well as institutional procedures that protect the rights of minorities, indigenous and marginalized people in relation to their settlements, knowledge, customary law and access to justice, ensuring that they have priority in benefits derived from sustainable use of biodiversity.