The IUCN Academy of Environmental Law Research Studies’ third colloquium brought together more than 130 experts from 27 nations on nearly every continent. This book brings together a number of the papers presented there and offers a global perspective on biodiversity conservation and the maintenance of sustainable cultures. It addresses issues from international, regional, and country-specific perspectives. The book is organized thematically to present a broad spectrum of issues, including the history and major governance structures in this area; the needs, problems, and prerequisites for biodiversity; area-based, species-based, and ecosystem-based conservation measures; the use of components of biodiversity and the processes affecting it; biosecurity; and access to and sharing of benefits from components of biodiversity and their economic value.

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Biodiversity Conservation, Law + Livelihoods

Bridging the North–South Divide

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Acknowledgments

We wish to warmly acknowledge the contributions of the many individuals and institutions that enabled us to bring together in this volume the majority of the research papers presented at the third Colloquium of the IUCN Academy of Environmental Law hosted by Macquarie University’s Centre for Environmental Law in Sydney, Australia, in July 2005.

After five years of diligent work on the part of members of the International Union for the Conservation of Nature and Natural Resources (IUCN) and in particular the members and former Chairs of the IUCN Commission on Environmental Law (CEL) and the IUCN Environmental Law Centre, the Academy was formally launched in Shanghai, China, in November 2003. Shanghai was also the location of the Academy’s first Colloquium hosted by Shanghai Jiao Tong University. The second annual Colloquium was held in Nairobi, Kenya, with Sydney being chosen as the site of the third Colloquium in what has developed in a short space of time into one of the most important annual events on the international environmental law calendar.

Macquarie University’s former Vice-Chancellor, Professor Di Yerbury, enthusiastically supported the activities of the Academy and ensured the success of the third Colloquium through a generous grant from the University’s Millennium Fund. Special thanks must be accorded to both Professor Tony Adams, Pro Vice-Chancellor (International), who filled in at the opening ceremony for Professor Yerbury, who was overseas and unable to officiate, and Professor Elizabeth More, Vice-Chancellor (Administration), who represented the University at the closing banquet held at Sydney’s Taronga Zoo overlooking Sydney Harbour.

The leadership of Professor Michael Jeffery, QC, Director of the University’s Centre for Environmental Law and Coordinator of the Colloquium Committee, was essential to the success of the week-long event. His job was made easier with the enthusiastic support and around-the-clock work of his Centre colleagues Donna Craig, David Leary, and Susan Shearing.

Much of the success of the Colloquium was due to the tireless yet cheerful administrative support provided by a dedicated cadre of student volunteers, and special thanks must be given to Kate McLoughlan, Michael Collins, and Marcia Valsinger-Clarke for their roles. The Biodiversity Conservation Day Tour to Kuring-gai Chase National Park led by Professor Ben Boer (University of Sydney) and Chief Judge Brian Preston of the NSW Land and Environment Court was a memorable highlight of the Colloquium, and we owe them both a debt of gratitude for their superb efforts. Likewise, we wish to thank Professor Liz Deane, the Dean of Macquarie University’s Division of Environmental
We thank United Nations Secretary-General Kofi A. Annan for his support of the Academy and for providing the introduction to this publication. Essential financial support was provided by the United Nations Development Programme, and we wish to warmly acknowledge the assistance provided by UNEP’s Bakari Kante and Lal Kurukulasuriya. Financial support was also provided by the NSW government, represented at the Colloquium by the Hon. Bob Debus, Attorney-General and Minister for the Environment, and the Commonwealth government, represented by Mr. Howard Bamsey, Acting Secretary, Department of Environment and Heritage.

Australian Commonwealth Senator and IUCN Vice-President Christine Milne lent her strong support as outlined in her opening remarks.

We also wish to warmly acknowledge the contributions of Professor Joseph Sax, who gave the Academy’s Distinguished Lectures and contributed throughout the Colloquium, and Dr. Francoise Burhenne-Guilmin, who delivered the Keynote Address.

We are most appreciative of the support and hospitality of the Hon. Justice Keith Mason AC, President of the NSW Court of Appeal, who graciously hosted a reception at the Court and conducted a tour of the Banco Court for invitees.

The Colloquium could not have been a success without the participation and contributions of the more than 130 leading environmental lawyers, judges, and academics representing 27 countries around the world, and the research papers comprising this volume attest to the exceptional expertise and experience of those involved. A special thanks must be given to Professor Robert Percival and Associate Professor Lye Lin Heng for their assistance in crafting a statement, to be known as the “Macquarie Statement,” which was adopted by consensus on the last day of the Colloquium.

Thanks also to those who assisted the Editorial Committee in working on this publication, including Macquarie students Jane Scanlon, Emiliano Schivazappa, and Nik Hughes. We are grateful to Cambridge University Press and its representative, John Berger, for the publication of these research papers and the compendium material. And of course this volume would not have been possible without the devotion and enthusiasm of the project manager, Mary Paden, of Aptara Inc., on behalf of Cambridge University Press.

We would be remiss in failing to accord Professor Nicholas A. Robinson, Chair of the Academy, a special note of thanks; without his inspiration and dedication neither the Academy nor the impressive body of research knowledge contained in this and earlier colloquia publications would have seen the light of day. His guidance, leadership, and scholarship are evident throughout all Academy activities.

The Editors
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.

Kofi A. Annan
Macquarie Statement

14 July 2005
Sydney, Australia

Delegates at the IUCN Academy of Environmental Law’s Third Annual Colloquium hosted by Macquarie University through its Centre for Environmental Law reached a consensus on the need to protect biological diversity as a fundamental part of efforts to ensure a healthy environment for present and future generations of humans and other living species.

The statement, to be known as the “Macquarie Statement” was debated in the final plenary session of the five-day gathering in Sydney of more than 130 environmental experts from 27 nations to consider the theme of “Biodiversity Conservation, Law + Livelihoods: Bridging the North–South Divide.” The complete text of the statement follows:

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.
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