Last October, hundreds of international delegates - including several of the world’s best-known environmentalists - gathered at Pace Law School for one of the year’s largest and most important environmental summits on the planet, a weeklong colloquium that reaffirmed the school’s stature as an international leader in environmental law.

The summit was the fourth annual colloquium of the International Union for the Conservation of Nature and Natural Resources (IUCN) Academy of Environmental Law, and the first convened by the Academy in the United States. From October 16th to the 20th, academics, judges, legal professionals, government lawyers, and activists met at the New York State Judicial Institute on the Pace Law School campus to share experiences, forge partnerships, hatch plans to train a new generation of environmental lawyers, and step up efforts to create models for enforcement and compliance.

Delegates ended the summit by gathering at the United Nations in the Trusteeship Council Chamber, where they delivered a message to diplomats on the urgent need for the international community to strengthen environmental law compliance and enforcement. Such measures are essential to protect the world from a litany of environmental problems, from escalating air and water pollution in China and dust storms caused by illegal deforestation in Asia to “dead zones” in the Gulf of Mexico where marine life...
Protecting a Fragile Planet

continued from page 1

has perished and the effects of global warming, which though not fully understood could prove catastrophic for the planet.

“This was a reaffirmation of all of the work that has been accomplished since the 1972 Stockholm conference on the human environment,” said Professor Nicholas A. Robinson, founder and chair of the IUCN Academy of Environmental Law, who also founded Pace’s environmental law curriculum. “Stockholm was the first international conference ever to say that the environment is not just a local problem, it’s a global problem; and the Academy’s Colloquium at Pace was a dramatic demonstration of the interdependence of the environmental problems of the world and our ability to work on them in a mutually reinforcing and complementary way.”

He added, “But we’re still at a stage where we have not invented the way to have everyone coordinate together to manage the planet, and this is a step in that direction. Basically we are building networks in each of the geographic regions of the world to implement international norms for protecting the environment.”

Pace is at the center of these efforts. Professor Robinson inaugurated and cochaired the first three IUCN Academy colloquia—in Shanghai in 2003 on sustainable energy law with Professor Richard Ottinger; in Nairobi in 2004 on sustainable land use practices with Professor John Nolon; and in Sydney in 2005 on biodiversity protection with Professor Ann Powers, and the 2007 conference in Paraty, Brazil in June.

The colloquium, cosponsored by the International Network for Environmental Compliance and Enforcement (INECE) (the world’s most extensive network of environmental enforcement professionals, linking government and non-government practitioners from more than 150 countries), the United Nations Environment Programme, the IUCN Commission on Environmental Law, the U.S. Environmental Protection Agency and the NAFTA Commission on Environmental Cooperation (CEC), drew more than 220 delegates from 47 nations, including China, the Philippines, India, Brazil, Argentina, Egypt, Switzerland, Canada, Mexico, Australia, South Africa, Nigeria, Indonesia, and the Ukraine. They represented 65 universities, numerous government agencies, and dozens of international and national organizations, many of them leading the fight to protect natural resources in their respective countries by suing environmental offenders.

“We were able to attract many top level speakers,” said Professor Lee Paddock, director of environmental law programs at Pace and chief organizer of the colloquium. “Most of the top U.S. environmental enforcement officials attended the conference, many of them for three days.”

Viewed as a step toward building the legal foundations for a sustainable world, the meeting covered a web of complex issues, including domestic and international law, trade agreements and the environment, the Kyoto Protocol and efforts to diminish greenhouse gases, cross-border river pollution, corporate social responsibility, and the impact of culture and customs on environmental efforts.

The colloquium opened with a welcome from Dean Stephen J. Friedman and a message from Kofi Annan, then-U.N. secretary-general, who said, “The number of ratifications of major multilateral environmental agreements has been growing, an encouraging sign suggesting that more countries are committed to addressing global environmental issues. But the true test remains implementation and enforcement.”

Panel speakers touched on dynamite fishing in the Philippines, urban sprawl, and a lack of access to natural resources in the world’s flashpoints of violence, including a region of Cambodia where 5 million landmines pose a mortal threat to civilians.

Many felt that sustaining the rule of law and assuring environmental compliance would take a variety of efforts at the local, national, and international levels, though some delegates spoke of a cautious skepticism about internationally-driven, cross-border reforms.

“I think the value of law and of enforcement and compliance will be at the local level,” Andrew Revkin, New York Times environmental reporter and discussion leader, told a panel audience. “Globally I have big questions about whether it will be new legal instruments that determine what happens with something like climate change or biodiversity loss. The good news is that transparency is becoming the norm.”

“We’re heading into a realm now where it’s going to be harder and harder to cheat,” Revkin said. He noted it’s increasingly difficult to hide illegal deforestation due to earth-observing satellites and information that’s reported about offenders by NGOs worldwide.

The U.S. Environmental Protection Agency has developed sophisticated responses to reports about offenders, whether from NGOs or anyone aware of a violation. Pace Law School’s Vice Dean for Academic Affairs Jeffrey Miller recalled the EPA’s innovations when he was in charge of the national water pollution enforcement. Panelist Catherine McCabe, principal deputy assistant administrator in the EPA’s Office of Enforcement and Compliance Assurance, continued on page 14
Ensuring compliance with and enforcement of environmental laws is a fundamental part of good governance locally and globally and essential to the transition to sustainable patterns of development. This is a complex topic. Achieving the goal of compliance requires the partnership of government, business, and civil society and a wide variety of strategies and mechanisms. I would like to focus on one fundamental aspect of the challenge: the role of ethics and cultural values. International environmental agreements, governmental regulatory systems, economic incentives, reporting initiatives, and an independent judiciary are essential but not sufficient to motivate consistent and full compliance. A well-developed sense of social and ecological responsibility guided by a strong commitment to an ethic of respect and care for the community of life as a whole provides the inspiration, sense of purpose, and deeper motivation needed.

I. The Nature of Ethical Values

It is useful at the outset to clarify what is meant by ethics and ethical values. Freedom of choice together with the power of reason and the capacity for moral responsibility gives us as human beings our distinctive dignity. The most critical choices people make are ethical in nature. Ethical choices are concerned with the judgments we make about what is right and wrong, good and bad, in human conduct involving relations with other persons and the larger living world. Our ethical values are expressions of what kind of persons we choose to be and of what quality of life in our institutions, communities, and the larger world we wish to establish for present and future generations.

Our best ethical decisions reflect the influence of the heart and imaginative vision on the one hand and reason and scientific knowledge on the other. Shared ethical values create community and inspire cooperation.

II. Ethics and Compliance

There are a number of ways that ethical vision and commitment can support and promote creation of a culture of compliance. Some examples are the following. First, respect for the rule of law should be regarded as an important ethical principle that is essential to a commitment to compliance in government agencies and businesses. As one writer has put it “Ethics elevates compliance to a noble purpose, and compliance grounds ethics in the practical realities of day to day work.”

Second, a society’s ethical values are the foundation of its legal system. Laws that are inconsistent with a people’s ethical values are very difficult to implement and enforce. International law is grounded in the widely-shared values set forth in declarations like the Universal Declaration of Human Rights, the Rio Declaration, and the UN Millennium Declaration. The IUCN Draft Covenant on Environment and Development wisely begins with identification of the fundamental ethical principles on which the Covenant is based.

Third, government agencies and corporations are most likely to have a culture of compliance if they have adopted mission statements and ethical codes of conduct that clarify core values and mandate compliance and respect for the spirit as well as the letter of the law. The drafting of mission and vision statements and codes of conduct can itself be an important educational experience for organizations.

Fourth, the corporate social responsibility (CSR) movement is driven by ethical as well as practical business considerations, and it contributes to creation of a culture of compliance. A corporation’s commitment to social and ecological responsibility is influenced to a significant degree by what shareholders, stakeholders, and civil society at large view as the common good and understand to be just, fair, and right. Corporations know that the financial risks of developing a bad public image in this regard are considerable. Therefore, an ethically-concerned global civil society led by well-informed and well-organized NGOs can be a powerful force for change in the business world and government, and can have a major impact on corporate social responsibility and compliance.

Fifth, some NGOs, inspired by their commitment to the principles of environmental conservation and sustainable development, are becoming part of the new system of global governance that sets standards, labels products, and monitors compliance. Good examples are the Forest Stewardship Council, the Marine Stewardship Council, the Global Reporting Initiative created by CERES (Coalition for Environmentally-Responsible Economies) and the soon to be launched Sustainable Tourism Stewardship Council.

III. The Need for a New Planetary Ethic

These observations lead to the question: what kind of ethical framework is needed to promote a culture of compliance with regard to environmental and sustainable development law in the 21st century? One very good example of what is needed can be found in the Earth Charter, which is a civil society declaration of global interdependence and universal responsibility that contains fundamental principles for building a just, sustainable, and peaceful world community.


continued on page 4
In 1995 a civil society initiative undertook the task of crafting the Earth Charter under the oversight of an independent commission made up of leaders representing all regions of the world. The drafting of the Earth Charter involved a world-wide, cross-cultural dialogue on common goals and shared values. It was the most open and participatory process ever associated with creation of an international declaration. Members of the IUCN Commission on Environmental Law assisted with the consultation and drafting process. The Earth Charter, which was completed in 2000, builds upon the ethical visions found in diverse international law declarations and treaties, UN summit reports, and over 200 civil society declarations. It reflects the consensus on values for a sustainable future taking form in the emerging global civil society. The Earth Charter principles are divided into four sections on Respect and Care for the Community of Life, Ecological Integrity, Economic and Social Justice, and Democracy, Nonviolence and Peace. They set forth the kind of inclusive ethical framework for sustainable development that can inspire, motivate, and guide compliance in government agencies, businesses, and civil society.

Today the Earth Charter Initiative is overseen by a new 23 member International Council and a small secretariat with offices in Sweden and Costa Rica. The Earth Charter has been translated into over 30 languages and has been endorsed by thousands of organizations, including UNESCO’s Conference of Member States, the IUCN World Conservation Congress, and the International Council of States, the IUCN World Conservation Congress, and the International Council of Governments to act in protecting resources and public health. Knowledge, empowerment and governance are all critical to well functioning legal systems. Thus, the IUCN Commission on Environmental Law (CEL) plays a center role in realizing the IUCN’s 2005-2008 vision of “Many Voices, One Earth.”

CEL’s mission is “to advance sustainability through the development of legal and policy concepts and instruments, and through building the capacities of societies to develop and implement environmental law and policy in furtherance of IUCN’s mission.” CEL is committed to influencing, encouraging and assisting societies throughout the world to attain conditions where national and international law and policies incorporate the legal, ethical concepts necessary to support sustainable development; where every country, government and NGO has the capacity to actively participate in an international policy debate, implement agreements, ensure effective com-

**Reflections**

**The Need for a New Planetary Ethic**

**continued from page 3**

This year a promising dialogue has been opened in Europe with international banks and corporations on how they might use the Earth Charter as an inclusive and unifying ethical framework for corporate social responsibility challenges and initiatives. A dialogue is also underway with the Global Reporting Initiative on how the Earth Charter and the GRI complement each other and might collaborate.

One concluding comment. The agenda for this colloquium mentions cultural norms and the traditions of Indigenous peoples, but nowhere is the word religion used. If there is to be a successful transition to sustainable development and widespread compliance with environmental law, the cooperation and support of the world’s religions is essential. Billions of human beings look to their religious tradition for ethical guidance. For this reason, the Earth Charter Initiative continues a dialogue with the religions and urges religious institutions to use the Charter as an educational instrument and guide to action.

In conclusion, creating a culture of compliance requires ethical vision and commitment and the Earth Charter can help provide the vision and inspire the commitment needed.

[The Earth Charter can be accessed at www.earthcharter.org.]

**Reflections**

**Many Voices, One Earth**

Sheila Abed, Chair, IUCN Commission on Environmental Law

IUCN’s 2005-2008 Programme focuses on two critical issues: the direct and underlying causes of biodiversity loss and the link between environmental health and human well-being. Both of these are at the heart of the Millennium Development Goal 7 related to sustainable development. The IUCN Programme explicitly seeks to improve the attention of decision makers on the role of a healthy environment on sustainability. This requires focus on three key issues: knowledge, empowerment and governance. We must know more to succeed in our efforts. We must ensure that all people have access to and influence in the decisions that affect sustainable development; and we must enhance the rule of law and build the capacities of governments to act in protecting resources and
I believe that we need to address the question of regulatory versus market approaches to promoting sustainability. Very often they are portrayed as being, in a sense, alternatives to action. In my own experience and view, I believe that this is a false dichotomy. Markets need regulation. We have seen, particularly in recent years, how in the private sector, local and global markets respond to good, sound and intelligent regulatory environments. Progress very often is driven by society and through the state mechanisms and the legislative means that we have at our disposal, giving the private sector not only an incentive, but also the certainty that a certain shift in paradigm will have stability and therefore will change the way the market will work in the future.

As we talk about compliance and enforcement, we should always do so in connection with the ability of citizens and private sector entities to operate both with an incentive structure and with a compliance and enforcement structure, since both are essential ingredients that society needs to deploy if we are going to make progress on the issues that have been identified over the last 20 years.

People do break the law. The question is how do societies, legal institutions and we as citizens invoke the law, enforce the law and ensure that compliance with the priorities and limits that we have set for actors in our society are followed.

Just a few weeks ago we had another dramatic illustration of how international environmental law may be agreed to, yet its enforcement and its monitoring remain a great challenge—Côte d’Ivoire and hazardous waste. The Basel Convention was very clear in the rules that it laid down for the transport across boundaries of hazardous waste. Yet the world was confronted once again with a criminal act of negligence. In this case we once again see the difficulties involving shipment and disposal of hazardous waste that countries like Côte d’Ivoire have invoking international law.

These difficulties include the problem of exporting countries trying to trace the source of responsibility that ultimately would allow us to enforce the law. The example of Côte d’Ivoire is a great source of interest in terms of how we in the United Nations system, but particularly those who are empowered with the task of enforcing national and regional and international environmental law, can look towards the international community, including the academic community, to help us in addressing the pathways forward.

In UNEP environmental law remains a strong pillar of the offering that we provide to the international community and increasingly also to nation states. Over the years UNEP has been involved in many activities that support the development of environmental law to build the capacity of legal professionals and to build the institutions that underpin the compliance and enforcement regimes. But we are all very conscious that this is still a major piece of work and an unfinished task that requires all of us from IUCN to UNEP to NGOs to international academics and researchers to work together as a collective network to provide us not only with the understanding, but ultimately with the capacity to help countries enforce compliance.

Compliance and enforcement of both international agreements and national law; and every country, government, and stakeholder has ready access to knowledge and information on environmental law and policies.

Our priorities in accomplishing these goals include strengthening the CEL specialist groups that focus on specific issues such as biodiversity, oceans, climate, energy, and desertification, and on cross-cutting issues such as ethics, compliance, and enforcement. Supporting the IUCN Academy is also a key priority. At our CEL specialist group meeting this spring in Brazil, many of the specialist groups observed that the IUCN Academy could work directly with specialist groups to identify and engage in research that would advance their goals.

Providing technical assistance is another one of our priorities. The colloquium itself is a form of technical assistance. In addition, we hope that one of the outcomes of the colloquium will be new forms of technical assistance or new collaborations that will support capacity building. Progress is already being made on this front. The academy will be working with UNEP to develop a new graduate level curriculum on multi-lateral environmental agreements, compliance and enforcement. The colloquium is building a closer link between an international network on environmental enforcement and compliance and the IUCN.

Finally, one of our key priorities is to promote and enhance environmental legal instruments. This group...represents so many universities, in so many countries. We have an important influence on the next generation of environmental lawyers. We are many voices from many legal traditions, from many cultures, from many countries and from many customs and practices, but if we join our voices together as we are doing here and if we use our work here to gather additional voices, when we return home we can make significant contributions to protect our earth.

For more information on IUCN’s Environmental Law Programme, see www.iucn.org/themes/law.
Gratitude

Pace expresses its thanks to the benefactors of the 4th IUCN Academy of Environmental Law Colloquium.

**Presented by:** IUCN Academy of Environmental Law, Pace University School of Law, Pace University, International Network for Environmental Compliance (INECE), International Union for the Conservation of Nature (IUCN)

**Cosponsored by:** United Nations Environmental Programme (UNEP), Commission for Environmental Cooperation (CEC)

**Supported by:** United States Agency for International Development (USAID), United States Environmental Protection Agency (USEPA), World Bank Institute, IUCN CEL Specialist Group on Enforcement and Compliance, Pace Academy for the Environment, Pace Law School Environmental Law Society, Pace Environmental Law Review

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**Information about Sponsoring Organizations**

**IUCN Commission on Environmental Law**
The Commission on Environmental Law (CEL) advances environmental law by developing new legal concepts and instruments, and by building the capacity of societies to employ environmental law for conservation and sustainable development through an extensive global volunteer network of over 975 environmental law specialists in more than 130 countries.

**IUCN Environmental Law Programme**
The Environmental Law Programme (ELP) is an integrated programme of activities that assists decision makers with information, legal analysis, advisory services, legislative drafting, mentoring and capacity building at national, regional and global levels. It provides an opportunity and forum for governments, non-government organizations, and others to network, to share information, and to discuss ideas.

The mission of the ELP is to advance sustainability through the development of legal and policy concepts and instruments, and through building the capacity of societies to develop and implement environmental law and policy, in furtherance of the IUCN Mission.

**International Network for Environmental Compliance and Enforcement (INECE)**
The International Network for Environmental Compliance and Enforcement (INECE) is a partnership of government and non-government enforcement and compliance practitioners and organizations from more than 150 countries. The INECE’s mission is to contribute to a healthy and clean environment, sustainable use of natural resources and the protection of ecosystem integrity through effective compliance and enforcement of environmental laws using regulatory and non-regulatory approaches. INECE activities are geared toward government officials and NGO partners active in environmental compliance and enforcement, and international organizations.

**United Nations Environmental Programme**
The United Nations Environmental Programme (UNEP), established in 1972, is the voice for the environment within the United Nations system. UNEP acts as a catalyst, advocate, educator and facilitator to promote the wise use and sustainable development of the global environment. Its mandate is to coordinate the development of environmental policy consensus by keeping the global environment under review and bringing emerging issues to the attention of governments and the international community for action. UNEP works with a wide range of partners, including United Nations entities, international organizations, national governments, non-governmental organizations, the private sector and civil society. UNEP work encompasses: assessing global, regional and national environmental conditions and trends; developing international and national environmental instruments; strengthening institutions for the wise management of the environment; facilitating the transfer of knowledge and technology for sustainable development; and encouraging new partnerships and mind-sets within civil society and the private sector.

**Commission for Environmental Cooperation**
The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC). The CEC was established to address regional environmental concerns, help prevent potential trade and environmental conflicts, and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the North American Free Trade Agreement (NAFTA).

**U.S. Agency for International Development**
The U.S. Agency for International Development (USAID) is an independent agency that provides economic, development and humanitarian assistance around the world in support of the foreign policy goals of the United States.

Shortly after the conclusion of the 4th IUCN Academy of Environmental Law Colloquium, Professor Richard Macrory of the University College, London, completed work on a report recommending a dramatic overhaul of the environmental enforcement system used in England. Macrory’s final report proposes a flexible and proportionate approach for the penalty system imposed for regulatory non-compliance and provides for a broad range of sanctioning options, allowing regulators to respond to the needs of individual cases and the nature of the underlying offense.

Professor Macrory’s recommendations to the British Government are set out below. A complete copy of his report is available at http://www.cabinetoffice.gov.uk/REGULATION/reviewing_regulation/penalties/index.asp.

- The Government should initiate a review of the drafting and formulation of criminal offenses relating to regulatory non-compliance.
- In order to increase the effectiveness of criminal courts for regulatory offenses, the Government should request that the Sentencing Guidelines Council prepare general sentencing guidelines for cases of regulatory non-compliance and that prosecutors should always make clear to the court any financial benefits resulting from non-compliance as well as the policy significance of the relevant regulatory requirement.
- The Government should consider introducing schemes for Fixed and Variable Monetary Administrative Penalties for both national regulators as well as local regulatory partners.
- Appeals of monetary administrative penalties should be heard by a Regulatory Tribunal instead of by the criminal courts.
- The Government should consider using Statutory Notices as part of an expanded sanctioning toolkit to secure future compliance beyond the areas in which they are currently in use. (Statutory Notices require the recipient to do or refrain from a particular behavior. They may specify the steps a business must take in order to be compliant and the timescale for these changes.)
- Regulators should have access to administrative financial penalties for dealing with the offense of failing to comply with a Statutory Notice.
- The Government should consider introducing Enforceable Undertakings and Undertakings Plus as an alternative to a criminal prosecution or the imposition of Variable Monetary Administrative. (Enforceable Undertakings are a flexible sanction that enables regulators to tailor their enforcement response to individual circumstances taking industry considerations and resources, such as management capacity and willingness to restore harm, into account. Undertakings Plus is a combination of an Enforceable Undertaking with an administrative financial penalty.)
- The Government should introduce pilot schemes involving the use of Restorative Justice techniques in addressing cases of regulatory non-compliance. (Restorative Justice is a philosophy that views harm and crime as violation of people and relationships and it focuses on what needs to be restored or repaid and what needs to be learned and strengthened in order for the harm not to re-occur. Restorative Justice could be implemented as a pre-court diversion, used instead of a Monetary Administrative Penalty or as both a pre- or post- sentencing option within the criminal justice system.)
- The Government should consider introducing alternative sentencing in criminal courts consisting of a Profit Order, Corporate Rehabilitation Order, and a Publicity Order. (Profit Orders would aim to ensure that the criminal offender should not gain from committing an offense and would seek to remove any financial gain that arose as a result of the non-compliance. Corporate Rehabilitation Orders would aim to rehabilitate the offender by ensuring tangible steps are taken that will address a company’s poor practices and prevent future non-compliance. Lastly, Publicity Orders would serve as an effective means of deterring regulatory non-compliance because of their impact on the public reputation of the business.)

The Hampton and Macrory Penalty Characteristics

Regulators should:
1. Publish an enforcement policy
2. Measure outcomes not just outputs
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament
4. Follow-up enforcement actions where appropriate
5. Enforce in a transparent manner
6. Be transparent in the way in which they apply and determine administrative penalties
7. Avoid perverse incentives that might influence the choice of sanctioning response

The Hampton and Macrory Penalty Principles

A sanction should:
1. Aim to change the behaviour of the offender
2. Aim to eliminate any financial gain or benefit from non-compliance
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
4. Be proportionate to the nature of the offence and the harm caused
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate
6. Aim to deter future non-compliance
Scenes from the Colloquium

Prof. Jamie Benidickson, University of Ottawa Faculty of Law, Co-Director, IUCN Academy of Environmental Law

Prof. Nicholas Robinson, Prof. Wang Xi & Tony Oposa

Durwood Zaelke, INECE

Granta Nakayama, USEPA, Office of Enforcement and Compliance Assurance

John Garrison, US Agency for International Development, & Prof. Nicholas Robinson

Peter Lehner, Environmental Division, New York State Attorney General’s Office

Prof. Na Li, Jilin University School of Law, Wang Xi, Shanghai Jiao Tong University, Cao Mingde, Southwest University, & Qun Du, Wuhan University
The Energy Project is the recipient of several major new awards in the area of clean energy research, development and education:

- Through a five-year $1.5 million agreement, the Energy Project has been selected by the New York State Energy Research and Development Authority (NYSERDA) to lead a team of nearly 40 recognized scientists, policy analysts, economists, environmental and public health advocates and others in providing NYSERDA’s Environmental Monitoring Evaluation and Protection Program (EMEP) with technical and outreach assistance. The EMEP program, through its funded research activities, has contributed greatly to the body of scientific literature and understanding of the role of power plant pollutants in compromising human health and natural environmental systems. In order to maximize the value of this scientific research for purposes of policy formulation, the Pace-led team will forge effective channels of communication between the scientific and policy communities through such activities as preparing policy primers, hosting regional conferences, and developing educational curricula.

- The Energy Project is partnering with Rensselaer Polytechnic Institute’s Center for Future Energy Systems to examine the impact of greater utilization of renewable energy on the electric grid. Through a two-year, $1.23 million grant from the New York State Office of Science, Technology and Academic Research (NYSTAR) the study team will create a distributed power “test bed” to study how the grid might behave through the widespread adoption of clean, renewable energy sources. The project is designed to help understand the potential effects of meeting New York State’s renewable energy target of 25% of all power needs met through renewable energy sources such as wind, solar, biomass, and fuel cells. The Energy Project’s role in the effort will be to evaluate alternative economic and regulatory models for quantifying, recognizing and capturing these benefits for the distributed energy system owner. Distributed energy benefits are highly case and system-sensitive and will vary widely depending upon the specific technology, its application, the utility service territory, and other factors. Unfortunately, current economic and regulatory models do not fully recognize these benefits, resulting in DG deployment below socially efficient levels and a subsidization of the utility and its ratepayers by the DG system owner.

- The NY Wind Power Education Project (WPEP) is a collaborative effort of the Pace Law School Energy Project, Citizens Campaign for the Environment, and the New York Public Interest Research Group to increase the public’s understanding of wind power issues, including its environmental benefits, in the belief that a better informed public can participate more meaningfully in the environmental review process and other public discussions surrounding proposed wind facilities. Through funding support from the New York State Energy Research and Development Authority, the WPEP has developed a series of informative educational materials about wind power and its relationship to conventional forms of electric power production. http://www.law.pace.edu/energy/documents.html.
NYSBA Bestows Six Awards on Pace Law School Students and Faculty

Students and faculty representing Pace Law School received six awards at the 130th Annual Winter Meeting of the New York State Bar Association. The awards were announced in the Environmental Section luncheon on January 26, 2007, at the Marriott Marquis Hotel in New York City.

“These awards are another indication of the leading role that Pace law School faculty, staff and students are taking in addressing the critical environmental issues facing the region and the nation,” said Lee Paddock, director of Environmental Law Programs.

Professor John Nolon and Land Use Law Center Director Sean Nolon ’97 were each honored for their “extensive work educating state and local officials on land use and environmental impacts, which has resulted in a positive impact on New York’s natural resources.”

Sarah Olinger ’07, David Johnson LLM ’06, and Kristin Sentoff ’07 placed first, second, and tied for third, respectively, in the Professor William R. Ginsberg Memorial Essay Contest, which is designed to challenge law students to analyze the environmental issues confronting us today. For winning first place, Sarah was awarded $1,000 and her essay will be published by the NYSBA. Second and third place winners receive certificates and publication consideration by the NYSBA.

Jorge Figueroa ’08, who is in Pace Law School’s joint degree program with the Yale School of Forestry and Environmental Studies, received one of two minority environmental law fellowships for summer interns. As a Minority Fellow in Environmental Law, Jorge will participate in activities of the state and city bar associations and will receive $6,000 for use during the summer while working on environmental cases for government or not-for-profit law offices.

National Environmental Law Moot Court Competition Hosted by Pace

Georgetown University Law Center’s Mika Ikeda and Kendrick Wilson faced stiff competition from a field of over 200 competitors from sixty-five national law schools and emerged to win the 19th National Environmental Law Moot Court Competition at Pace University School of Law on February 22-24, 2007. The event, hosted annually by Pace Law School and administered by a student-run board and staff, is the premier environmental law moot court competition in the country.

The competition simulates the process for preparing a legal case and presenting that case to a United States Court of Appeals. Students are given a complex environmental issue and must prepare and file legal briefs supporting the position of one of the parties to the case. They then travel to Pace Law School to argue the case before attorneys who serve as judges in the preliminary, quarterfinal and semifinal rounds. Judge Carlos F. Lucero, United States Court of Appeals for the Tenth Circuit, presided at the final round of the competition on February 24, together with Judge Robert S. Smith, State of New York Court of Appeals and Judge Kathie A. Stein, Environmental Appeals Board of the US Environmental Protection Agency.

A strong effort was shown by the two finalist teams, Lewis & Clark Law School and The University of Memphis School of Law. Washington University School of Law took home the award for Best Brief. Derek Johnson of Chicago-Kent College of Law received the award for the Best Oralist.

Major donors of this year’s competition were Conestoga-Rovers & Associates, the National Association of Clean Water Agencies, the ABA Section of Environment, Energy, and Resources, and the Environmental Law Institute®.
Pace Law School established its Land Use Law Center over 12 years ago as a complement to its well-established environmental law program. Since then, students have benefited from the breadth of curricular coverage and involvement with the tangential extracurricular activities of the two academic enterprises. Volume 23, Number 3 of the Pace Environmental Law Review memorializes this collaboration. It is a special issue, containing seven recently published articles and chapters written by Professor John R. Nolon, founder of the Land Use Law Center.

The issue features insightful commentary on the intersection of these two fields of law—including policy and research challenges for the future—written by distinguished professors Linda Malone, David L. Callies, and A. Dan Tarlock, all of whom have contributed to programs and publications of Pace Law School land use and environmental programs. Professor Nolon’s articles explore the intersection of environmental and land use law within the historical context of the American land use regime, the federal system, and at the local level. The articles and commentaries are available online at http://library.law.pace.edu/PELR/nolon.html, and the special issue can be ordered by emailing Ann Marie McCoy at amccoy@law.pace.edu.

Professor Nolon’s articles and chapters present relevant historical and policy background and describe considerable contemporary progress in using the legal system to effect needed and positive change. Although this legal system is fragmented and flawed, evidence that it can become more integrated and effective is presented and evaluated. The importance of seizing the opportunity to reform land use and environmental law in these critical times is captured in this excerpt from Katrina’s Lament: Reconstructing Federalism:

“In his book, Collapse: How Societies Choose to Fail or Succeed, Jared Diamond reflects on the costs to society caused by ignoring early warnings of long-term problems, such as those caused by major natural disasters, surface water pollution, and other serious damage to the physical environment. He describes how ancient and contemporary societies either disappeared or were significantly damaged by rigid adherence to cultural values in the face of drastic environmental change. Despite the evidence he marshals regarding the prospects of societal collapse, Diamond ends his book on an optimistic note. Societies, as the book’s title implies, can choose to succeed. One of the choices necessary for success, he posits, is to make a commitment to ‘practice long-term thinking, and to make bold, courageous, anticipatory decisions at a time when problems have become perceptible but before they have reached crisis proportions.’ He writes, somewhat tentatively, that ‘courageous, successful, long-term planning also characterizes some governments and some political leaders, some of the time.’”

Understanding that land use and environmental law are tools for positive change is of critical importance. That knowledge gives professors another means of educating and motivating students, who are optimistic by nature. With this orientation, law school graduates and other practitioners can become Champions of Change in a world that increasingly needs inspired leadership.
The emergence of biofuels as an alternative energy source has generated considerable excitement and controversy. Unsustainable levels of greenhouse gas emissions, mainly due to fossil fuel combustion, have led to increased attention to renewable energy sources. However, even as low-emission fuels created from organic matter offer a beacon of hope for sustainable energy, they also present their own unique challenges. Critics claim that producing these fuels is itself fossil-fuel-intensive, obviating many of their benefits. In addition, rapid growth in demand for feedstocks (i.e., corn, sugar, soybeans, etc.) could generate too much diversion of cropland to fuel crops and from other uses (e.g., export to the developing world) and accelerate an international loss of biodiversity.

The enormous promise of biofuels is matched only by the complexity of the issues they raise. This conference will offer a forum for experts from around the world and from diverse disciplines to discuss and debate the pitfalls and promise of this exciting new technology.

This 3 day conference will bring together experts from the world of government, law, industry, and agriculture to discuss emerging developments in the biofuels and renewable energy field. This year’s conference in Brazil is particularly special for several reasons. First, the issue of biofuel as an alternative to fossil fuel is both compelling and urgent. Second, Brazil’s world leadership in the field makes it the ideal country to host the conference. Third, the conference kicks off the exciting new partnership between Pace University School of Law in New York and PUC-Rio; this year’s conference is the first of a bi-annual series of colloquia to be hosted by Pace and PUC on issues of bilateral and/or international importance. Though the conference arises from a Brazilian-U.S. institutional partnership, the impact of biofuels is international in scope.

WHY BIOFUELS? WHY NOW?

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SPEAKERS & PANELISTS

Antonio Herman Benjamin, Justice on the Supreme Court (Superior Tribunal de Justiça) of Brazil and founder of the Brazilian NGO Instituto O Direito por Um Planeta Verde (Lawyers for a Green Planet)

Jose Goldemberg, Former Secretary of the Environment, Sao Paulo State, and Professor of Environmental Law, Federal University of Sao Paulo

Richard L. Ottinger, Dean Emeritus of Pace Law School, Faculty Supervisor, Pace Law School Energy Project; former member of U.S. House of Representatives

Arthur Haubenstock, Renewable Energy Specialist, Pacific Gas & Electric Company, the largest utility on the U.S.’s West Coast

Norman de Paula Arruda Filho, General Director, Getulio Vargas Foundation Advanced Institute of Administration and Economics Vladimir Passos de Freitas, Professor of Environmental Law at the Pontific Catholic University of Paraná State

Jose Rubens Morato Leite, Professor of Environmental Law at the Federal University of Santa Catarina State

Sebastião Antunes Furtado, Partner, SFSR, LLP

Professor David Cassuto, Professor of Law and Acting Director of the Brazil Program, Pace Law School

Professor Marla Wieder, Visiting Co-director of the Environmental Law Program & Adjunct Professor, Pace Law School

Romulo S.R. Sampaio, Visiting Professor, ISAE/FGV; Partner, SFSR Sociedade de Advogados

Antonio Augusto Reis, Associate Environmental Legal Counselor, Lobo & Ibeas Advogados

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For more information on the sponsoring institutions:

Pace University School of Law:
www.law.pace.edu

PUC-Rio:
www.puc-rio.br

NELPI:
www.law.utulsa.edu.nelpi
Threat of a suit could go a long way toward forcing compliance. “I’ve developed the theory that suing private polluters is actually one of the more effective ways on a site-specific basis to accomplish meaningful change,” said Melissa Powers, professor at Lewis and Clark School of Law and an attorney in its environmental law clinic. Half of the clinic’s cases involve species and natural resource protection; the remainder is pollution control litigation against federal and state agencies and private polluters.

“In our experience, when we sue agencies, we have a harder time getting meaningful relief from the courts,” she said. “We also have a harder time actually getting meaningful settlement agreements from the agencies, which are more inclined to litigate the cases. In contrast, when we have filed 60-day notices against private entities, more often than not, those entities are willing to come to the table and to negotiate a settlement agreement rather than spend their money in litigation, which they often calculate, is going to be a losing proposition for them. So through citizen suits, we tend to get meaningful and prompt compliance with the environmental statutes, and we also tend to get penalties.”

Pace Law School pioneered an important model for citizen involvement in New York State, where in 1986, the Hudson Riverkeeper showed how citizens can document violations and bring citizen suits to prod government action. The first Riverkeeper, John Cronin, now a resident scholar at Pace, spoke eloquently of the need for updating environmental laws.

“Frankly, most of environmental law is out of date,” he said. “We’ve spent the last 30 years fighting a rearguard action to just hold antiquated laws in place. The 1972 Clean Water Act had a wonderful goal. The first goal was the elimination of discharge of pollutants into the nation’s navigable waters by 1985. It’s 21 years later. We have missed it by a long shot, and there’s been no meaningful effort in Washington, and not even state by state, to recalculate that date.”

Cronin called for a global commitment to invest in the development of environmental technologies - “not just treatment technologies, but real-time monitoring technologies and remote sensing technologies, so that we can know in real time what’s going on in waterways like the Hudson and in other rivers and estuaries of the world.”

Among the colloquium’s most dramatic talks were those of attorneys who won major successes by making bold moves back home, including M.C. Mehta, who led a fight to save the Taj Mahal from the ravages of industrial pollution. Mehta won a landmark judgment from India’s Supreme Court forcing polluters to clean up or shut down. Environmentalists worldwide view the decision as a major victory. “India now has the most extensive body of judicial decisions in the world on the duty to protect the environment,” Professor Robinson noted. “What people take away from this is the importance of the Indian Supreme Court and that it is a model for other supreme courts. They can make the same kinds of decisions.”

Even more dramatic was a talk by Tony Oposa of the Philippines, whose life has been threatened because of his work to save the environment. His deputy, Elpidio de la Victoria, was...
shot in the back and killed earlier in the year by an assassin, a corrupt policeman hired by an organized crime ring.

Oposa, a Harvard Law School graduate, discussed the shooting and the environmental work that caused it. Oposa and de la Victoria worked to protect the fish and corals of the Visayan Triangle, the heart of the Sula-Sulawesi Marine Triangle, by seeking to protect small-time fishermen from overfishing by large-scale commercial fleets. Oposa sought to prohibit dynamite blasting and other coral-killing means of fishing.

After news of de la Victoria’s murder, environmental law professors from 20 countries rallied to Oposa’s defense, writing the Philippine president to demand protection for Oposa and the endangered fish and corals.

Earlier, Oposa had gained fame for a court case that he brought on behalf of his children to stop unsustainable logging practices in Philippine forests. The Philippine Supreme Court ruled that Oposa could sue for himself. The role of law professors is also important. If you become passive and if you think nothing can happen, then students will not be committed.

M.C. Mehta

“Lawyers have to play a wider role. If lawyers cannot give proper information and if they are not committed, then it is not possible for the judges to deliver good orders and judgments. First, lawyers have to educate themselves on environmental issues. Second, they should go into the field before accepting any case. I have never accepted a case without doing the research and seeing the situation for myself. The role of law professors is also very important. If you become passive and if you think nothing can happen, then students will not be committed.”

students globally.

“In the United States and in Europe, it’s easy to think about fighting environmental cases as simply a social or political battle. But in much of the developing world, your life is on the line if you want to save the environment,” Professor Robinson said.

Professor Robert F. Kennedy Jr., codirector of the Pace Environmental Litigation Clinic, delivered a keynote address that touched on the political battle lines faced by environmentalists. “The worst thing that can happen to the environment is if it becomes the province of a single political party,” he said. Environmental work should be “nonpartisan or bipartisan” and an act stemming from our character.

“We’re not protecting the environment so much for the sake of the fishes and the birds,” he added; “we’re protecting it because we recognize that nature is the infrastructure of our communities, and that if we want to meet our obligation as a generation, as a nation, as a civilization - which is to create communities for our children that provide them with the same opportunities for dignity and enrichment as the communities that our parents gave us - we’ve got to start by protecting our environmental infrastructure: the air we breath, the water we drink, the fisheries, the wildlife, the public lands that enrich us, that connect us to our past, to our history, that provide context to our communities, that are the source ultimately of our values and our virtues and our character as a people.”

Kennedy noted that in 100 percent of cases, “good environmental policy is identical to good economic policy, if we want to measure our economy based on how it produces jobs and the dignity of jobs over the generations, over the long term, and how it preserves the value of the assets of our communities.”

“If on the other hand we want to do what they’ve been urging us to do on Capitol Hill, which is to treat the planet as if it’s a business in liquidation, convert our natural resources to cash as quickly as possible, have a few years of pollution-based prosperity, we can generate an instantaneous cash flow and the illusion of a prosperous economy.”

“But our children are going to pay for our joyride … with denuded landscapes and poor health and huge cleanup costs that are going to amplify over time and that they will not be able to pay. Environmental injury is deficit spending. It’s a way of loading the costs of our generation’s prosperity onto the backs of our children.”

The conference concluded with a number of proposals for future action. A new partnership among law schools, facilitated by the IUCN Environmental Law Programme, INECE, and the United Nations Environmental Programme (UNEP), will bring practical experience of skilled environmental attorneys to classrooms worldwide and speed the spread of research on compliance and enforcement. The IUCN Academy is a partner with UNEP in designing a worldwide law school curriculum on environmental law compliance and enforcement.

In addition, a consortium of delegates has drafted plans to establish environmental litigation clinics across Central America, similar to Pace Law School’s clinic, in an effort to bring environmental cases to court. The colloquium also served as the launch event for a legal curriculum to be used worldwide to educate the next generation of environmental lawyers on how to enforce international environmental agreements.

“As a result, you will start to see the legal tools used in comparable ways,” said Robinson. “We have the same treaties,” he noted. “The trouble is we haven’t aligned our legal systems in support of these treaties, and this curriculum will help us see how to do that.”

Work at Pace continues, with plans underway for the next IUCN Academy colloquium in Brazil, where Pace Law Professor David Cassuto already conducts comparative law studies in Brazilian-U.S. environmental law. What is clear is that merely three decades after Pace Law School’s founding, it has become a prime mover in environmental legal education nationally and internationally.

“The fact that many people came to our 2006 conference is a confirmation of Pace’s leadership in tackling tough environmental challenges,” Robinson said. “It was the right time. The earth’s environmental problems are getting worse, not better, despite the work we’ve done, and we’re just going to have to redouble our efforts in the future years.”
The IUCN Academy of Environmental Law is a global educational organization dedicated to advancing knowledge of environmental law through an international network. The Academy works to engage participating universities, government departments and other institutions in innovative multi-disciplinary research into how law can best address environmental problems around the world.

The Academy's aims focus on research and teaching in environmental law. This especially involves collaborative and inter-disciplinary research on the operation and development of environmental law. Therefore, a major focus of the Academy is on encouraging the development of collaborative research programs between member institutions. It also includes conference and publication activities designed to stimulate the exchange and dissemination of environmental law research.

Website: http://www.iucnael.org/

2007 IUCN Academy of Environmental Law Colloquium

“Rio+15: A legal Critique of Ecologically Sustainable Development”

The 5th IUCN Academy Colloquium will take place in Rio de Janeiro and Paraty, Brazil between May 31 and June 5, 2007 exactly fifteen years after the 1992 United Nations Conference on Environment and Development, the Earth Summit.

Please see the Academy’s website at http://www.iucnael.org/67 for further details.