

**TOWARD EFFECTIVE PALESTINIAN
ENVIRONMENTAL GOVERNANCE**

ELI's Palestinian Law Drafting Assistance Project

*A proposal by the
Environmental Law Institute*

January 1994

Toward Effective Palestinian Environmental Governance

ELI's Palestinian Law Drafting Assistance Project

Synopsis: *The transition to Palestinian self-rule in the West Bank and Gaza Strip calls urgently for environmental safeguards to ensure that the anticipated economic development of these areas proceeds in a manner that does not cause grave or irreversible damage to environmental resources, including scarce fresh water supplies. The Environmental Law Institute has been asked by the Palestinian Technical Committee on Environmental Legislation to assist in developing environmental protection laws and institutions to address the demands of a rapidly growing Palestinian economy. Through ELI's proposed Palestinian Law Drafting Assistance Project, ELI staff and affiliated experts will work closely with members of the Palestinian Technical Committee to promote this objective.*

I. INTRODUCTION: ADDRESSING AN URGENT NEED FOR PALESTINIAN ENVIRONMENTAL LEGISLATION

The initial euphoria surrounding the White House signing of an Israeli-Palestinian transitional agreement has passed, leaving in its wake a pattern of violence that, while predictable, threatens to undermine the confidence of both Israelis and Palestinians in the prospects for peaceful coexistence in the months and years ahead. Amidst this chaos and flagging confidence, there is an urgent need for concrete steps that demonstrate the feasibility of establishing a viable system of Palestinian governance during the transitional period ahead.

Through a combination of bilateral aid and multilateral lending, the World Bank expects to channel an estimated \$2.5 billion into Palestinian economic development over the next few years. These and other investments from the private sector, it is expected, will be crucial to the creation of a Palestinian economic infrastructure capable of providing jobs for the Palestinian work force as well as domestic and international markets for Palestinian goods. Yet given the extreme vulnerability of fresh water supplies and the scarcity of arable land in the West Bank and Gaza Strip, the immediate implementation of environmental precautions is rightly seen as essential to the success of major development efforts.

Foremost among Palestinian leaders who are dedicated to developing a sound environmental protection system for the West Bank and Gaza Strip is Dr. Jad Isaac, director of the Applied Research Institute in Bethlehem. Dr. Isaac serves as the chief Palestinian negotiator at both the bilateral and multilateral sessions of the Middle East peace negotiations. In addition, he chairs the Palestinian Technical Committee on Environmental Legislation, which is charged with the task of preparing the necessary environmental laws and institutions for the West Bank and Gaza Strip.

On December 11, Dr. Isaac formally invited the Environmental Law Institute to work with him and his colleagues on the Technical Committee in preparing an environmental protection system for this region. [Dr. Isaac's letter and his institute's accompanying "Proposal for Drafting Environmental Legislation" are attached as Appendix A. Both of these documents reflect the strong sense of urgency felt by many Palestinian leaders regarding the need to establish a credible and effective environmental protection capability for the West Bank and Gaza Strip.]

II. ELI's PALESTINIAN LAW DRAFTING ASSISTANCE PROJECT

On the basis of discussions with Dr. Isaac and his colleagues on the Palestinian Technical Committee on Environmental Legislation, ELI has developed a preliminary work plan for providing timely law-drafting assistance:

Phase I: Identification of Priority Objectives

Some of the most urgent priorities for Palestinian environmental protection have been identified during recent communications between Palestinian environmental leaders and ELI's Middle East Program director, Philip Warburg. By telephone and fax, Mr. Warburg has held preliminary discussions with Dr. Isaac and his chief legal adviser, Jerusalem-based attorney Jonathan Kuttab. During a November 17 meeting at ELI's offices in Washington, Mr. Warburg and Mr. Kuttab began to define the elements of a Palestinian environmental protection system most urgently requiring swift development and implementation. These include:

Establishment of a central environmental protection authority with a strong "field" presence to ensure effective monitoring and enforcement of environmental standards. Well-drafted environmental laws will only translate into effective environmental safeguards if the necessary institutional mechanisms for implementing environmental protection policies are established. One key step toward addressing this need will be the creation of a central Palestinian environmental authority with clearly defined oversight duties and enforcement powers. Another vital step will be the establishment of a network of field offices with well-trained professionals capable of monitoring individual plant performance. Too often in ELI's international work, we have encountered central environmental agencies whose budgets take little account of the need for effective monitoring and enforcement "in the field."

Environmental impact assessment procedures for major development projects. A top priority for Palestinian environmental protection is the implementation of environmental impact assessment (EIA) procedures, requiring that major proposed development projects undergo thorough review prior to project approval and the commencement of construction. These EIA procedures will help ensure that major new factories, residential and commercial developments, and infrastructural investments such as highways, electric utilities, sewage systems, and water supply networks are implemented in a manner that minimizes adverse environmental consequences. Contamination of groundwater and other freshwater supplies, air pollution in heavily settled areas, and contamination of soil in agricultural areas would be primary areas of concern.

Setting standards for major environmental pollutants. Without clear standards, efforts to regulate new industrial enterprises, utilities, and other significant polluters in the West Bank and Gaza Strip will be impossible. The prompt promulgation of standards that can be applied to major new development projects will be a prerequisite to sound environmental planning.

Development of a permit-based system for the operation of major polluting industries. With standards for primary pollutants in place, a Palestinian regulatory agency will need to implement a system that applies those standards to individual facilities. A permit-based system of environmental regulation can play a central role in holding new as well as existing enterprises accountable for their environmental performance.

Information access and public participation. In the design and implementation of these and other environmental protection mechanisms, attention will be given to provisions granting public access to environmental information and guaranteeing the public a role in environmental decisionmaking. These safeguards will be vital to ensuring the responsiveness and accountability of newly created private enterprises and public authorities.

As a preliminary step toward assisting in the development of these laws and policies, ELI has provided the Applied Research Institute with copies of ELI resource memoranda that have been developed as part of ELI's law reform activities over the past four years in Central and Eastern Europe and Latin America. These manuals have been specifically designed to draw upon U.S. and other nations' environmental protection laws and policies. In preparing these materials, ELI has been careful to avoid the blanket promotion of U.S. models, using federal as well as state laws and policies to inform our analyses of the successes and failures of different approaches to environmental protection.

Among other documents provided to the Palestinian law drafters are sample comprehensive environmental laws that have been prepared in recent years in Central and Eastern Europe. Here, too, ELI has taken pains to highlight the shortcomings as well as the strengths of the approaches taken in nations where environmental law reform has accompanied recent, rapid political upheaval. Hungary, with its highly detailed draft "Basic Law on Environmental Protection," and Bulgaria, with its much more abbreviated 1992 Environmental Protection Act, are among the examples discussed in recent correspondence.

Through ongoing correspondence and telephone communication with Dr. Isaac and his colleagues, ELI is now refining a preliminary agenda for Palestinian law-drafting assistance. In evaluating different options for joint programs and activities, ELI will need to be especially sensitive to the political and economic constraints as well as the opportunities inherent in the transitional period.

Future steps, to be initiated upon the receipt of funding, are described in Phases II through V, below.

Phase II: Project Development Mission to West Bank and Gaza

In the second phase of this project, ELI's Middle East Program director Philip Warburg will lead a one-week project development mission to the West Bank and Gaza Strip. As a key part of this visit, ELI staff will meet with Dr. Isaac and his colleagues at the Applied Research Institute and on the Palestinian Technical Committee on Environmental Legislation. These meetings, in addition to strengthening the human ties needed for ongoing cooperation, will be geared toward refining the focus of ELI's law drafting assistance agenda. In particular, ELI will discuss with our Palestinian colleagues a range of options for future cooperation, leading to the development of a joint work plan between ELI, the Applied Research Institute, the Palestinian Technical Committee on Environmental Legislation, and other relevant institutions involved in the preparation of environmental laws and institutions.

As importantly, the project development mission will provide ELI with a more concrete understanding of the priority environmental problems facing the West Bank and Gaza Strip during the current transitional period. Organized site visits to Jericho, other major West Bank municipalities, and the Gaza Strip will highlight sites of major existing environmental hazard as well as areas where major new development is expected to occur.

Phase III: Organization of an intensive seminar on priority topics

ELI has already initiated discussions with Dr. Isaac and his colleagues at the Applied Research Institute about the appropriate topics to be covered during an intensive seminar highlighting features of environmental lawmaking and institution-building most relevant to the achievement of effective Palestinian self-rule. The purpose of this seminar will be to involve Palestinian environmental professionals -- scientists, engineers, attorneys, planners, and economists -- in an examination of key elements of an effective environmental protection system.

Relying on the ideas and suggestions made during interviews and discussions with Palestinian environmental leaders and officials, ELI staff and representatives of the Applied Research Institute will together determine the topics to be covered by this seminar. Based on preliminary consultations, the seminar will likely include a discussion of two priority topics: (1) environmental impact assessment and (2) the structure and functions of a central environmental authority and its relationship to monitoring and enforcement activities "in the field." Other topics that may be covered include: standard-setting for major air and water pollutants; the key elements in a permit-based monitoring and enforcement system; mechanisms for ensuring public access to pollution data and other environmental information; and procedures for facilitating public participation in the regulatory process.

This seminar will involve top U.S. and Palestinian environmental professionals as lecturers and discussion facilitators. It will be held at a conference facility in Jerusalem, the West Bank, or the Gaza Strip.

Phase IV: Targeted law drafting assistance

Building on the ideas generated during ELI's initial consultations, field study tour, and seminar, ELI staff and ELI-affiliated experts will begin working with Dr. Isaac and his colleagues on the drafting of specific environmental laws and regulations. ELI assistance to this effort will include participation in working sessions on particular laws and regulations, ELI hosting of U.S. visits by leading Palestinian environmental professionals, and the preparation of written comments on draft documents. Where particular subjects require in-depth research and analysis, ELI will prepare overview materials, undertake comparative analyses, and present options for addressing procedural and substantive concerns that are central to the law-drafting process.

Phase V: Project Evaluation

ELI's overriding objective will be to help catalyze the development and implementation of laws and policies that have a discernible impact on development planning during the period of Palestinian transitional rule. Our effectiveness in advancing this aim will be rigorously evaluated following the Law Drafting Assistance Project's first year of operation. The candid comments and criticisms of our Palestinian colleagues will be a vital part of this evaluation process, along with our own internal staff evaluations.

III. ELI's UNIQUE STRENGTHS IN ADDRESSING THIS CHALLENGE

ELI brings to the proposed Palestinian Law Drafting Assistance Project a number of distinctive strengths that promise to enhance the project's credibility and effectiveness. These strengths derive from ELI's two decades of experience as a leading research and training institute in environmental law and policy, as well as from the unique background and capabilities of the individuals who will be involved in this project.

ELI's Institutional Resources

Founded in 1969, the Environmental Law Institute (ELI) is a non-profit, non-governmental organization dedicated to publication, research, and education on environmental law and policy. Through both its United States and international programs, ELI has played a pivotal role in shaping the fields of environmental law, management, and policy. Within the United States, over 30,000 environmental professionals have participated in ELI workshops and seminars. ELI's international activities encompass global policy research, environmental education and training in Central and Eastern Europe, Latin America, and the Middle East, and a Visiting Scholars Program in Washington, DC. Central to ELI's mission is its commitment to bringing together professionals in government, industry, public interest organizations, and academia to develop sound solutions to environmental problems.

In carrying out the Palestinian Law Drafting Assistance Project, ELI will be well-served by several years of carefully developed law reform activity in Central and Eastern Europe as well as Latin America. In 1990, ELI launched an ambitious program promoting environmental law reform in the former Czechoslovakia, Hungary, and Poland. More recently, ELI's law reform activities have been extended to Bulgaria, Romania, the Ukraine, and the Russian Republic. In all of these efforts, ELI has worked closely with colleagues both inside and outside of government in these nations. Many of the resource memoranda developed as part of this program now provide an invaluable body of training materials for law reformers throughout the world. [A fuller description of ELI's Environmental Program for Central and Eastern Europe appears in Appendix B.]

With our partners in Latin America, ELI's Inter-American Program has presented workshops on developing new regulatory and economic approaches to environmental protection. ELI training efforts have included courses on the implementation of environmental impact assessment procedures for government officials, judges, and citizen activists in Brazil; training of Mexican non-governmental leaders on forestry protection strategies; and seminars in Colombia and Argentina on the role of economic incentives in supplementing environmental regulatory schemes.

More geographically immediate to the proposed project is the growing agenda of ELI's Middle East Program. A year and a half ago, ELI launched its Middle East Program with an initiative that brought Egyptians, Israelis, and Jordanian environmental leaders together in an unprecedented example of regional cooperation. In conjunction with leading non-governmental organizations from these three nations, ELI prepared a 500-page report examining prospects for cooperation in safeguarding the unique coral reefs and associated marine life in a shared regional sea, the Gulf of Aqaba. Egypt's Minister of Tourism, top Israeli environmental officials including the former Director General of Israel's Environment Ministry, and Jordan's leading marine scientist were among the 25 authors who contributed chapters to this report.

In February 1993, ELI published the product of this extraordinary effort at Middle East bridge-building. Titled *Protecting the Gulf of Aqaba: A Regional Environmental Challenge*, the report quickly became a key resource for Middle East peace negotiators. In May 1993, the U.S. State Department presented copies of the report to some 40 national delegations attending the third meeting of the Multilateral Working Group on the Environment, convened in Tokyo. This Working Group represents one of the five multilateral negotiating tracks established in October 1991, under the Madrid framework for the Middle East peace talks.

At the most recent meeting of the Multilateral Working Group on the Environment, held in Cairo on November 15-16, the first concrete agreement to emerge from the environmental talks focused on a key topic raised by the ELI report. Jordan and Israel, joined also by Egypt, agreed to establish a joint oil spill response capability for the Gulf of Aqaba. In conversations with top Middle Eastern and U.S. officials, ELI's report was

credited with having contributed very substantially to this historic breakthrough. [Appendix C contains a selection of articles and press releases describing the ELI report and the Middle East environmental negotiations in greater detail.]

Project Staff

ELI's Palestinian Law Drafting Assistance Project will be managed by ELI Senior Attorney Philip Warburg. Since November 1992, Mr. Warburg has directed ELI's Middle East Program. In addition to serving as the primary editor of *Protecting the Gulf of Aqaba: A Regional Environmental Challenge*, he has authored numerous articles and lectures on Middle East environmental cooperation. He has also served as an advisor to environmental law reform projects in Israel and Jordan, and has lectured at environmental conferences in those two countries.

Mr. Warburg brings an extensive and diverse professional perspective to his directorship of ELI's Middle East Program. From 1984 to 1986, while a student at Harvard Law School, he conducted extensive field research for the New York-based Lawyers Committee for Human Rights on military justice in the Israeli-Occupied Territories. In the course of this research, he developed strong professional and personal ties to the Palestinian and Israeli legal communities. Most pertinent to ELI's Law Drafting Project is the fact that Jonathan Kuttab, then a co-director of the West Bank-based human rights group Law in the Service of Man, is a member of the Palestinian Technical Committee on Legislation and is the chief legal adviser to Dr. Isaac at the Applied Research Institute.

In 1987, Mr. Warburg returned to the Middle East, where he worked for two years as a journalist based in Jerusalem. Reporting on issues related to Israeli politics, the Israeli-Arab conflict, and the peace process, he further developed a strong network of friends and associates in both the Israeli and Palestinian communities. His articles were published regularly in more than a dozen U.S. daily newspapers.

On joining ELI in January 1990, Mr. Warburg spent two years directing ELI's Environmental Program for Central and Eastern Europe. In that capacity, he launched and directed ELI's law drafting assistance initiative in the former Czechoslovakia, Hungary, and Poland. He also directed ELI's pilot groundwater protection workshop in Hungary, and organized U.S. training activities for visiting Central and Eastern European environmental professionals.

Lawrence Pratt, Director of Training and Senior Policy Analyst at ELI, will work with Mr. Warburg on relevant activities conducted as part of the Palestinian Environmental Law Drafting Assistance Project. Mr. Pratt manages ELI's training programs on environmental enforcement, negotiation skills, environmental management, and national-level policy development. Previously he worked for the U.S. Environmental Protection Agency designing market-based environmental health protection programs and directing numerous technical and policy training programs for U.S. and foreign officials.

As importantly, the project will take full advantage of ELI's extensive network of **professional Associates** -- lawyers from federal and state agencies, the private bar, and public interest organizations who volunteer their services as expert consultants on specialized areas of environmental law and policy. Over the past four years, ELI Associates have contributed literally thousands of hours to the institute's law drafting assistance efforts in Central and Eastern Europe and Latin America. This volunteer work has included travel to these two regions to advise non-governmental organizations as well as official law drafting teams on the development of particular laws, regulations, and institutions; participation as faculty members in ELI workshops, conferences, and roundtables held in these regions; and written commentary of draft environmental laws as well as on ELI Resource Memoranda prepared for our European and Latin American colleagues.

Elissa Parker, ELI Director of Research, Policy, and Training, and ELI President J. William Futrell will provide oversight of the project. Before joining ELI in 1984, Ms. Parker served as Special Assistant Attorney General to the Commonwealth of Pennsylvania, where she supervised the Commonwealth's environmental enforcement programs for western Pennsylvania. Mr. Futrell, who has served as ELI's President and Chief Executive Officer since 1980, is a former professor of law at the University of Georgia and the University of Alabama, where he specialized in environmental law, land use and administrative agency practice. He also served as President of the Sierra Club from 1977 to 1978.

IV. PROJECTED BUDGET

The overall projected budget for the Palestinian Law Drafting Assistance Project, including staff resources, office expenditures, and travel, is \$111,874. A categorized budget is included as Appendix D.

V. ELI'S TAX-EXEMPT STATUS AND ANNUAL REPORT

Appendix E contains the Internal Revenue Service's letter of determination regarding the Environmental Law Institute's tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1954. Appendix F refers to a separately enclosed copy of ELI's 1992 Annual Report.

APPENDIX A

*Letter from Dr. Jad Isaac and accompanying
"Proposal for Drafting Environmental Legislation"*



11 December 1993

Philip Warburg
Environmental Law Institute
1616 P St. NW, Ste. 200
Washington, DC 20036
Fax (202) 328 5002

Dear Mr. Warburg,

Thank you for your fax of 8 December. I have met with Jonathan Kuttab and have looked at some of your Institute's publications which I found very useful and interesting. As you probably know, in accordance with the Declaration of Principles, the Palestinians will form the Palestinian Environmental Protection Authority (PEPA). One of the priorities of the Authority is to devise environmental legislation for Palestine. In the meantime before which PEPA is officially announced by the PLO, there is a great need to start working on this project in anticipation of the expected boom in economic development projects. Palestinians would like to avoid the pitfalls that many developing countries fell into after jumping quickly into development projects without considering the environment. Consequently, I write this letter inviting you to work with us in initiating an environmental legislation project for Palestine. Also please find the enclosed two-page proposal from Jonathan Kuttab.

Thank you. I look forward to hearing from you.

Sincerest regards,


Jad Isaac
Director

Proposal for Drafting Environmental legislation
Applied Research Institute

Introduction:

After the signing of the PLO Israeli Agreement, rapid movement is taking place to turn over control of many sectors of life in the Occupied Territories to the Palestinian authority. Major legislative tasks confront the new Palestinian authority as it attempts to coordinate the laws between the West Bank and Gaza which were based on different legal systems, one Jordanian and the other Egyptian. In addition, there is need to prepare indigenous Palestinian legislation for running Palestinian society in accordance with the principles of self determination and the interest of the community as seen by Palestinians themselves.

At the same time, all indications point to a massive inflow of capital with a policy of rapid economic development that is necessary to improve quickly the standard of living and to provide support for the existing peace process.

The economy of the West Bank has been deliberately kept in an underdeveloped state for the last quarter of the century as part of the policy of occupation. At the same time, Israeli settlers, and other elements of Israeli society have severely dilapidated the natural resources and injured the environment including over exploitation of subterranean water resources, lowering of the water table, the pollution of the country side and the dumping of untreated sewage as well as industrial bi-products in the Occupied Territories where no environmental regulations exist.

The need for environmental legislation is particularly acute in third world countries that are embarking on rapid economic development and this task must be undertaken at the beginning before the new industries have taken place. Experience throughout the world has shown that once different industries and factories have been established, it is extremely difficult to force them to comply with environmental regulations or standards that were not in existence when the particular factory or industry was started. On the other hand, it is relatively easy to impose environmental regulations and restrictions as part of the licensing requirements before a factory or an industry is allowed to start. That way, the environmental cost where appropriate, is calculated into the planning for the factories and the industries and is viewed as part of the data which must be taken into consideration when the enterprise is launched.

For this reason, it is essential that serious thought be given to drafting environmental legislation as rapidly as possible and before the wave of investments and industrialization begin to impact the entire country.

At the same time, it must be noted that the task of drafting this legislation is quite formidable in that it requires individuals who are well versed in several legal systems as well as in the economic and social structure of the area. There are few legal experts in the Occupied Territories who are conversant with

several legal systems and who have the drafting skills required. At the same time, in the absence of a proper legislative body such as a parliament, there is need for an intensive process of education, consultation and cooperation to prepare draft legislation that is both sensitive to environmental concerns and to the need of development and the other social needs. Cooperation will be required with contiguous jurisdiction some of whom have only recently started drafting and implementing their own environmental legislation.

ARDG is uniquely situated to put together a team of experts that will survey existing legislation in a number of legal systems both regional and world wide and in guiding through the process of drafting legislation that is compatible with the existing legal systems and which lends itself to rapid implementation and codification by whatever Palestinian legislative authority is created.

Failing to carry out this task in a careful and professional fashion will leave the matter to politicians and legislators who have little or no environmental awareness and no expertise in the requirements of environmental regulation and legislation and who may even be hostile to any governmental regulation that would appear to be impeding dreams of rapid unplanned economic growth.

ARDG proposes to carry out this project through legal experts and researchers who will first gather the necessary information, thoroughly study a number of existing environmental laws, hold a number of seminars or conferences to discuss the particular areas of concern with the goal of arriving at a carefully annotated draft for Palestinian environmental legislation no later than one year after the initiation of the project.

APPENDIX B

*ELI's Environmental Program for
Central and Eastern Europe*



Environmental Law Institute

1616 P St. NW
Washington, DC 20036

Telephone 202/328-5150
FAX 202/328-5002

ENVIRONMENTAL PROGRAM FOR CENTRAL AND EASTERN EUROPE

Activities Report, 1989-1991

October 1991

J. William Futrell, president

board of directors: Grover Wrenn, chairman • Ann Powers, secretary-treasurer

*Elizabeth Bauereis • Michael Bean • William Bondurant • Leslie Carothers • Anthony Celebrezze, Jr. • David Challinor • David Chittick
Richard Dewling • Brock Evans • Frank Friedman • Edmund Frost • David Hayes • Oliver Houck • Nancy Maloley • Langdon Marsh • Craig Mathews
James Moorman • Edmund Muskie • Helen Petruskas • John Quarles • Michael Richardson • James Rogers • David Sive • Allen Smith • Turner Smith
James Gustave Speth • Robert T. Stafford • Donald Stever • James Strock • Lee Thomas • Michael Traynor • Nicholas Yost • David Zoll*

TABLE OF CONTENTS

I.	Introduction	1
II.	ELI's Objectives	3
	A. Developing Effective, Enforceable Environmental Laws and Policies	4
	B. The Need for Public Participation	5
	C. Strengthening Regional Institutions	6
III.	ELI's Program Activities in Central & Eastern Europe	6
	A. Regional Beginnings: Critical Loads and Beyond	6
	B. The Law Drafting Assistance Project	7
	1. Law Drafting Assistance Missions	8
	(a) The CSFR and Poland	8
	(b) Hungary	9
	(c) Regional Efforts	10
	2. Working Paper Series	11
	C. Law and Policy Workshop Series	12
	D. Information Network	14
	E. Visiting Scholars Program	15
IV.	Program Activities for 1992	17
	A. Law Drafting Assistance Project	20
	1. Assistance Missions to the Region	18
	2. Working Paper Series	18
	3. Roundtable Discussion Series	19
	4. U.S. Study Tour	20
	B. Environmental Law Education Project	20
	C. Other Projected Activities	21
V.	Conclusion: ELI's Role in Fostering Responsive and Responsible Environmental Governance	22

I. INTRODUCTION

In the three years since its inception, the Environmental Law Institute's Environmental Program for Central and Eastern Europe has assisted countries in the region as they develop more effective environmental protection systems. The program works toward three main objectives:

- the development of effective and enforceable environmental protection laws and policies in selected target countries;
- the forging of a constructive, meaningful role for citizens in the creation and implementation of environmental protection regimes; and
- the strengthening of regional and international cooperation in addressing environmental problems.

In section II, below, each of these objectives is discussed more fully.

The Environmental Program for Central and Eastern Europe includes four major components:

- a Law Drafting Assistance Project;
- a Law and Policy Workshop Series;
- an Information Network; and
- a Visiting Scholars Program.

Section III describes these dimensions of the Environmental Law Institute (ELI) program. It is followed by an outline of ELI's projected activities for 1992, in Section IV.

Support for the Environmental Program for Central and Eastern Europe has come from a variety of governmental and non-governmental sources. The Andrew W. Mellon Foundation and the Rockefeller Brothers Fund have provided key program support during the formative phases of the program.

The German Marshall Fund of the United States provided important support for ELI's pilot training effort in the region -- the Hungary Groundwater Protection Workshop. This financing was augmented by the U.S. Information Agency, which sponsored a Hungarian Environmental Dialogue that helped lay a foundation of cooperation between U.S. and Hungarian environmental leaders who were involved in preparing and teaching the ELI workshop. In September 1991, the U.S. Information Agency approved a new grant to ELI for a broader Central European Environmental Dialogue, designed to forge close working ties between U.S. environmental professionals and their counterparts in the Czech and Slovak Federal Republic (CSFR), Hungary and Poland.

ELI's Law Drafting Assistance Project was launched with funding from the World Environment Center, under a cooperative agreement with the U.S. Agency for International Development. In addition to ongoing funding from the World Environment Center under this agreement, ELI has received a three-year grant from the Charles Stewart Mott Foundation to support its law drafting assistance efforts in the region.

ELI's counterparts in Central and Eastern Europe have also provided substantial support to the program. In advance of ELI's Groundwater Protection Workshop, the Hungarian Ministry of Environment and Regional Policy arranged for and financed the translation of hundreds of pages of exercise materials and background documentation that became part of the workshop training manual. At the actual workshop, the Ministry provided simultaneous translation services for all workshop sessions. In addition, it absorbed the costs of lodging and transporting all Hungarian participants from outside Budapest.

Further in-kind contributions to ELI's program have been made by the Environment Ministry of the Czech Republic and the CSFR's Federal Committee on the Environment. These agencies have aided ELI's law drafting assistance efforts by translating draft environmental laws into English. The Czech Environment Ministry has also translated ELI Working Papers and other ELI assistance memoranda into Czech.

Essential to the program's effectiveness are the pro bono services of leading U.S. law and policy experts. In conducting missions abroad as well as training activities for Central and Eastern Europeans visiting the United States, we have relied heavily on the voluntary efforts of U.S. environmental professionals. These individuals have been drawn from the U.S. Environmental Protection Agency, the U.S. Department of the Interior, the White House Council on Environmental Quality, a number of state environmental agencies, private law firms, non-profit organizations and academia.

II. ELI'S OBJECTIVES

A. Developing Effective, Enforceable Environmental Laws and Policies

Historically, Central and Eastern European countries have enacted laws addressing a broad range of environmental concerns. In some cases, these statutes and regulations established numerical ceilings for industrial effluents, and in a few instances, government agencies imposed fines and other penalties on flagrant polluters. For the most part, however, environmental laws amounted to little more than sweeping declarations of ideology, and enforcement efforts had little practical effect.

The primary objective of ELI's Environmental Program for Central and Eastern Europe is to catalyze the formulation of effective, enforceable environmental protection laws and policies in selected target countries. We hope to foster the creation and growth of environmental protection regimes that are effective not merely on paper but in practice.

As policymakers in Central and Eastern Europe work to address environmental problems, they must break through deeply ingrained barriers to responsible governance. One of ELI's goals is to help identify and draw upon the enormous reservoirs of skills and expertise that have lain dormant in government-funded research institutes and state enterprises. Integrating these resources into the policymaking process will greatly enhance the quality and caliber of environmental protection efforts in these nations.

As we work with top government officials, lawyers and NGO leaders from the region, we are helping them formulate systems of environmental protection that incorporate four essential features:

- clear, enforceable standards protecting environmental assets such as air, water and soil quality;
- regular and reliable monitoring to ensure compliance with these standards;
- an enforcement capability with power to sanction polluters, possibly coupled with a system of economic incentives rewarding "clean" industries and farm operations; and
- safeguards assuring the public a genuine role in formulating policy and implementing environmental programs.

We are seeking to involve both governmental and non-governmental actors in developing institutions that manifest these strengths.

B. The Need for Public Participation

A top priority of our program is to help build a constructive and creative role for public participation in environmental decisionmaking. In the years leading up to the dramatic political changes that have swept Central and Eastern Europe, environmental concerns often topped the list of popular grievances against incumbent regimes. In Hungary, organized opposition to the construction of the Nagymaros Dam during the 1980s ultimately brought construction of this ecologically damaging project to a halt. At the same time, the broad public involvement in this protest movement substantially spurred the forces of democratization in Hungary.

Environmental protest played a similar role in bringing about political change in CSFR. In 1987, a team of scientists broke the silence regarding industrial pollution in Bratislava by issuing a searing report, "Bratislava Loudly." The government immediately condemned and suppressed the report, interrogated dozens of people suspected of being involved, and imposed travel bans on several of the report's authors. Recently, Czechoslovak president Vaclav Havel described the report as the most momentous political event in the country between the 1977 landmark human rights declaration, Charter 77, and the 1989 "Velvet Revolution." Today, one of the report's key authors, Mikulas Huba, sits as a Green Party representative in the Slovak Parliament.

The transition from public protest to constructive dialogue among governmental and non-governmental constituencies poses a number of ongoing challenges. Law and policy reformers today are struggling to build institutional channels capable of ensuring that public concerns about the environment will make a constructive contribution to major policy decisions. As environmental officials and NGO leaders in the region have begun to discuss public participation in environmental decisionmaking, they have become interested in exploring specific components of environmental policy familiar to their colleagues in the West. "Citizen suits," "right-to-know," and "environmental impact assessment" have drawn the interest of environmental leaders throughout the region. But the task of melding democratic concepts into a practical, enforceable environmental protection regime is only beginning.

There are no patented methods to inspire public participation in an environmental protection system. Yet, through two decades of research and training here in the United States, ELI has been able to provide insights on a range of options, including methods of ensuring public access to information, the uses of public hearings, and the role of the courts. In recent ELI law-drafting assistance missions to the CSFR, Hungary and Poland, our colleagues from those nations have requested that we advise them on the gains and pitfalls of these and other policy alternatives.

C. Strengthening Regional Institutions

ELI's third objective is to strengthen regional and international cooperation in addressing environmental problems in Central and Eastern Europe. Environmental problems in this highly interdependent region must be viewed in a multinational context. As much as half of the health-endangering and environmentally devastating sulfur dioxide falling on Poland and Czechoslovakia originates outside those states' borders. Similarly, an estimated 96% of Hungary's surface water flows into the country heavily laden with industrial pollutants, household sewage and farm runoff from upstream Germany, Austria and the CSFR.

In order to foster regional cooperation, ELI strives to be a leader in advocating stronger roles for regional institutions such as the United Nations Economic Commission for Europe (UNECE). Since 1988, ELI has repeatedly challenged the UNECE to engage in debate on issues of transboundary pollution and global climate change.

Over the past four years, ELI attorneys have served as nongovernmental delegates to treaty negotiations carried out within the UNECE addressing a range of transboundary pollution issues. Our participation in these negotiations has convinced us of the utility of regional action both in solving transboundary problems and in implementing change at the national level.

We are addressing the need for regional cooperation in other ways as well. Regional solutions to transboundary pollution have been an important topic of ELI's workshop sessions with Hungarian water resource planners. Our Visiting Scholars Program has hosted top scholars from the region who are specialists in regional environmental protection accords. And finally, ELI has participated actively in a number of recent regional policy initiatives organized by the U.S. Environmental Protection Agency and the Regional Environmental Center in Budapest.

III. ELI'S PROGRAM ACTIVITIES IN CENTRAL & EASTERN EUROPE

ELI's activities in Central and Eastern Europe began in 1979, when we initiated a series of exchange visits and joint research projects with the Institute of State and Law in the Soviet Union. Throughout the 1980s, we hosted a steady stream of environmental law scholars from the Institute. Prominent among them was Oleg Kolbasov, who came to ELI for three months as a Visiting Scholar in 1986-87. While at ELI, Kolbasov conducted a comparative study of US and Soviet administrative law.

A. Regional Beginnings: Critical Loads and Beyond

In 1988, ELI formally established its Environmental Program for Central and Eastern Europe. At first, the program focused on transboundary air pollution in the region. One of our primary policy objectives at the time was to encourage the expansion of the UNECE agenda to embrace climate change-related concerns. Working with the International Institute for the Development and Survival of Humanity in Moscow, we worked to promote Eastern European discussion of a climate change agenda within the UNECE.

Through meetings in Budapest, Sofia and Stockholm, ELI played an active role in formulating a UNECE treaty on nitrogen oxide, signed in Sofia in November 1988. The "critical loads" approach to pollution control was a major focus of ELI's preparatory work for the treaty. In addressing this topic, ELI attorneys worked closely with Polish, Hungarian and East German environmental leaders who later became key contacts as ELI began building a program to assist the emerging democracies in Central and Eastern Europe.

As an outgrowth of our intensive work with the UNECE and in response to suggestions from Central and Eastern European environmental professionals, ELI organized the first International Conference on Critical Loads in April 1989. The critical loads concept is an ecologically based approach that seeks to limit air pollutant emissions to the carrying capacities of natural ecosystems. It has broad application to acid rain control and has been the subject of ongoing cooperative research between the East and West under the auspices of the UNECE and the Swedish government.

The two-day ELI conference, held in Washington, drew participants from more than a dozen countries and international organizations. Also in attendance were U.S. Congressional staff members, officials from the U.S. Environmental Protection Agency, the State Department and other federal agencies as well as U.S. foundation representatives and environmental leaders.

Central and Eastern European participation was a conference priority. Thirteen papers were presented, including one by Bedrich Moldan of the Czech Academy of Sciences and another by Grazyna Mitosek of Poland's Environmental Protection Institute. Other participants from the region included Dr. Michael Nowak of the German Democratic Republic, who chaired the UNECE negotiations for a Protocol on Volatile Organic Compounds, and Sofija Vaujanac-Borovnica, Secretary of Yugoslavia's Commission for the Environment.

During the past two years, ELI has greatly expanded its commitment of staff and resources to Central and Eastern European environmental concerns, largely in response to the momentous political changes that have swept the region during this period. In October 1989, ELI President Bill Futrell and ELI's Senior International Representative, Patricia Scharlin, traveled to Hungary for an intensive series of meetings with top-ranking officials and non-governmental leaders. Out of those meetings emerged the blueprint for ELI's Central and Eastern European law and policy workshops, piloted by our Groundwater Protection Workshop in Budapest in March 1991.

In January of 1990, Philip Warburg became the full-time director of ELI's Environmental Program for Central and Eastern Europe. In the months that followed, our program developed a primary focus on the "industrial heartland" of Central and Eastern Europe: the CSFR, Hungary and Poland.

A May 1990 trip to the region consolidated ELI's focus on these countries. In Poland, meetings were held with top Environment Ministry officials, NGO leaders, and members of the Polish Academy of Sciences' Research Group on Environmental Law. In the CSFR, ties were established with key environmental officials and NGO leaders in Prague and the Slovak capital, Bratislava. These and similar meetings in Hungary revealed an enormous, urgent interest in obtaining U.S. insight and advice on environmental law and policy alternatives.

B. The Law Drafting Assistance Project

Launched in the fall of 1990, ELI's Law Drafting Assistance Project forms an integral part of the institute's environmental program in the region. As new economic and political systems take hold, environmental professionals now face the challenge of designing new policies, laws and regulations to address the region's grave environmental problems.

Through our work with environmental professionals in the CSFR, Hungary and Poland, we are playing a constructive and timely role in assisting the law-drafting efforts in these countries. By drawing on U.S. experience at the federal and state levels, we are able to highlight the more successful aspects of U.S. environmental laws and policies while steering our counterparts in the region away from the identified pitfalls in these systems.

1. Law Drafting Assistance Missions

ELI has forged active ties with leading citizen environmental activists, lawyers and government officials in the three Program countries. Through the Law Drafting Assistance Project, teams of U.S. experts have traveled to each of the three countries, providing thoughtful analysis of draft laws and policies as well as offering insights based on 20 years of U.S. environmental policy experience.

(a) The CSFR and Poland

In October 1990, Program director Warburg traveled to Poland and the CSFR with two leading U.S. environmental lawyers, Fran Dubrowski and Don Stever. Dubrowski, who worked for nearly a decade at the Natural Resources Defense Council, is now an independent attorney representing citizen groups and government agencies in environmental cases in Washington, D.C. Stever, who founded the environmental protection division in the New Hampshire Attorney General's Office and later worked for many years on environmental enforcement issues at the U.S. Justice Department, now heads up the environmental division at the New York office of the law firm, Sidley & Austin.

In Poland, the ELI delegation worked intensively with members of the Research Group on the Environmental Law, part of the Institute of State and Law of the Polish Academy of Sciences. Poland's Environment Ministry has given this team of law scholars the lead responsibility in preparing a draft omnibus environmental law. During four days of meetings, ELI's team of attorneys analyzed key sections of Poland's draft environmental law with a particular focus on provisions ensuring citizen organizations a more meaningful role in the formulation of environmental policy. Citizen suits, environmental impact assessment, and public "notice and comment" in environmental rulemaking were among the topics where our delegation's expertise proved especially valuable.

While in the CSFR, we provided advice on laws being prepared at the federal level and by the two republics. Participating in the discussions were representatives of the Czech Republic's Environment Ministry, the Slovak Commission on the Environment and the Institute of Public Administration, one of the lead federal agencies involved in preparing new environmental laws. In addition to giving advice on the country's new hazardous waste and air pollution control laws, our team of lawyers responded to many questions related to environmental impact assessment -- one of the topics in our Working Paper series, described below.

In June 1991, ELI returned to the CSFR, in response to a request from the Czech and federal environment ministries to assist in developing environmental impact assessment (EIA) laws. This mission was organized and led by Margaret Bowman, who has recently returned from nine months in the CSFR to join ELI's Central and Eastern European Program staff. Accompanying Bowman was Nicholas C. Yost, a Washington attorney who - as counsel to the White House Council on Environmental Quality in the late 1970s -- took

the lead in drafting EIA regulations under the National Environmental Policy Act. Yost is currently with the law firm Dickstein, Shapiro and Morin.

The Czech and Slovak EIA law-drafting group included representatives from all three environmental ministries, industry and prominent NGOs. Using a check list of ten points necessary for effective EIA, developed by Nick Yost for the mission, the ELI team helped the group to identify key weaknesses in the draft law. Particularly emphasized were suggested ways to provide for citizen participation in the EIA process.

In early October, ELI once again traveled to the CSFR -- this time with a delegation of U.S. waste law experts. Their purpose was to consult with officials at the Czech and Slovak environment ministries on new legislation addressing the CSFR's solid and hazardous waste problems. ELI's Margaret Bowman led this mission, and was accompanied by John Dernbach, an attorney for the Pennsylvania Department of Environmental Resources who has specialized in developing that state's laws and regulations on mining practices as well as on residual and municipal waste. Also participating was Mark Rachlin, a senior associate at the New York law firm Sidley & Austin who has specialized in U.S. hazardous waste regulation.

ELI attorneys and pro bono experts are now preparing a series of follow-up memoranda on key issues raised at the ELI working sessions on the Czechoslovak waste laws. In addition, a return visit to the CSFR by U.S. waste law experts is being planned for January 1992.

(b) Hungary

At the request of the independent Hungarian Lawyers' Association, ELI extended the Law Drafting Assistance Project to Hungary in March 1991. Our mission to Hungary that month, led by Philip Warburg, included Professor Jeffrey Miller, a former U.S. EPA enforcement chief who is now on the law faculty at Pace University Law School; Andrew Savitz, former General Counsel to the Executive Office of Environmental Affairs, Commonwealth of Massachusetts; Jim Morris, former Assistant Counsel to the Pennsylvania Department of Environmental Resources; and Ron Hoffer, Chief Hydrologist and Director of Technical and Regulatory Analysis at the EPA's Office of Groundwater Protection.

In Budapest, the ELI delegation discussed environmental enforcement and public participation concerns with government officials, judges and other legal experts. They also traveled to several environmental "hot spots" where they met with politicians, environmentalists and representatives of industry to gain a better understanding of the way environmental problems are addressed "in the field." The trip laid an important foundation of communication and understanding for ELI's efforts to advise Hungarian leaders now embarked on preparing a new comprehensive environmental law.

ELI is now working closely with Professor Andras Sajo, chairman of a newly formed commission charged with drafting Hungary's new environmental law. Sajo is a professor at

the Hungarian Academy of Sciences and a visiting professor at New York's Cardozo Law School, who is now preparing a new omnibus environmental law for Hungary. He has been commissioned by both the Ministry for Environment and Regional Planning and the Hungarian Parliament to prepare the new law.

On October 11, ELI convened an all-day working session to advise Dr. Sajo on the environmental impact assessment and civil liability sections of his draft law. To examine the law's environmental impact assessment (EIA) provisions, we brought together a diverse group of U.S. experts on EIA, drawn from government, the private sector and non-profit organizations. These included Dinah Bear, General Counsel to the White House Council on Environmental Quality; Ruth Bell, an attorney for the U.S. Environmental Protection Agency; David Bardin of the law firm Arent, Fox, Kintner, Plotkin and Kahn; Brad Bobertz, a staff attorney at ELI who authored ELI's Working Paper, Environmental Impact Assessment: Integrating Environmental Protection and Development Planning; Andrew Kimbrell, lead attorney for the Foundation on Economic Trends; and William Walsh of the law firm Pepper, Hamilton and Scheetz and head of the environmental working group of the American Bar Association's Central and Eastern European Law Initiative.

Participants at the session on civil liability covered a similar spectrum. ELI senior attorneys Jim McElfish, Jay Pendergrass and Philip Warburg were joined by David Bardin; Professor Jeffrey Miller of Pace University School of Law, formerly enforcement chief at the U.S. Environmental Protection Agency and now of counsel to the law firm Perkins Coie; and Anthony Roisman, one of the nation's leading "toxic torts" litigators, of the law firm Cohen, Milstein, Hausfield and Toll.

ELI's ongoing involvement in the Hungarian law drafting effort will include a series of follow-up memoranda on the EIA and civil liability sections of the law. At the invitation of Professor Sajo's commission, Professor Jeffrey Miller and Philip Warburg will attend meetings of the Hungarian law drafting commission in Budapest later this fall.

(c) Regional Efforts

In addition to its country-specific work, ELI is an active member of a regionwide law drafting initiative organized by the Budapest-based Regional Environmental Center. At the Regional Environmental Center's opening ceremony in September 1990, ELI President Bill Futrell led a seminar discussion on prospects for improving environmental enforcement in post-communist Central and Eastern Europe. In the spring of 1991, ELI was invited to join the Environmental Legislation Task Force, a Center-sponsored working group designed to assist environmental law reform efforts in the region.

ELI was one of two U.S. non-governmental organizations represented at the Legislation Task Force meeting convened at the Regional Environmental Center on March 27-28. Also in attendance were environmental leaders from the European Community and six Central

and Eastern European nations. In addition to commenting on draft environmental laws circulated at the meeting, ELI's representatives led two discussions -- on the applications of technology-based standard setting to pollution control, and on the status of environmental law reform efforts in the CSFR.

2. Working Paper Series

ELI's Law Drafting Assistance Project has undertaken a series of Working Papers on a range of topics, responding to inquiries from environmental officials and NGO leaders in the region. The Working Papers build on the U.S. experience and Western European experience with selected environmental law and policy approaches, highlighting key features of these systems that may be applicable to Central and Eastern Europe. In the coming months, topics addressed in these papers will serve as the basis for a series of roundtable discussions involving governmental and non-governmental leaders from the region.

Three Working Papers have already been distributed to our colleagues in the CSFR, Hungary and Poland. We have asked environmental leaders from these countries to respond in writing to these papers, reflecting on the transferability of the discussed schemes to their own environmental policy needs. To make the Working Papers more widely accessible, ELI colleagues in the region have already volunteered to translate the ELI reports into their native languages. Translation of the papers is currently under way.

Topics covered by completed ELI Working Papers are the following:

Public Participation in Environmental Regulation: As they search for alternatives to the "closed-shop" administrative procedures that have long prevailed, Central and East European law drafters have turned to ELI for insights on mechanisms for ensuring public access to agency decisionmaking. Drawing upon the extensive U.S. experience in this area, the ELI Working Paper outlines a range of approaches including "notice-and-comment" rulemaking and adjudicatory administrative and judicial procedures.

Environmental Impact Assessment: Environmental leaders from the region express enormous interest in environmental impact assessment as a tool for ensuring that environmental values are incorporated into major policy and investment decisions. ELI's Working Paper looks at EIA in a U.S. and a comparative context. Particular attention is given to the scope of EIA review and the role of public participation.

"Best Available Technology" Applications: The law-drafting teams in Poland and Czechoslovakia have expressed great interest in technology-based standard-setting, particularly in the air pollution control context. In Poland's draft air pollution control law, there is a sweeping best available technology

("BAT") requirement, yet the scholars who prepared this language acknowledge that they have little grounding in the complex reality of BAT as applied in different sectors. The ELI Working Paper examines key features of BAT standard-setting over the past 20 years in the United States. The 1970 Clean Air Act and its later amendments are given particular attention.

Three additional Working Papers are now being prepared. These are described in Section IV, below.

C. Law and Policy Workshop Series

On March 18-21 of this year, ELI held the first of a planned series of law and policy workshops in Central and Eastern Europe. This pilot effort was a Groundwater Protection Workshop held in Budapest, Hungary. As its title suggests, the workshop was geared toward improving Hungary's groundwater protection capabilities. This goal was approached through a series of lectures and exercises designed to stimulate dialogue and introduce new ideas on a range of environmental policy issues. Topics included:

- environmental impact assessment as a means of ensuring that government policies and industry projects take environmental factors and the concerns of diverse constituencies into account;
- the use of permits in motivating industries to monitor their own discharges and comply with environmental standards;
- civil and criminal enforcement tools;
- "notice and comment" rulemaking and other means of involving the public in environmental decisionmaking;
- the mass media's role in raising public awareness and inducing government and industry to remedy environmental problems; and
- the courts as vehicles for safeguarding environmental values.

The workshop curriculum included a variety of interactive exercises interspersed with lectures and panel discussions. At a number of points, workshop participants broke into small working groups to perform assigned tasks including the preparation and convening of a mock public hearing. At the hearing, participants, assigned different roles, presented divergent views on the granting of an operating permit to a proposed industrial facility. Through this and other exercises, workshop participants learned about and experienced a range of policy approaches that we now take for granted in the United States.

Workshop sessions provided a constructive forum for dialogue between government officials and non-governmental activists -- parties whose interactions have historically been dominated by deep mutual suspicion. ELI's participatory training techniques contributed significantly to this encouraging breakthrough in communication. Participants expressed -- and exhibited -- genuine enthusiasm for ELI's teaching method, welcoming it as a change from the standard conference format of formal lectures and papers by noted experts.

The workshop also proved very effective in introducing a range of law, policy and technical options that are likely to prove useful in addressing groundwater problems as well as other environmental concerns in Hungary. In their evaluations, participants referred repeatedly to new ideas that they will seek to incorporate into Hungary's environmental protection regime.

Over 120 Hungarian environmental leaders from a diverse range of organizations and agencies sought to enroll in the workshop. Virtually all of the applications reflected a high level of interest in and commitment to environmental concerns. From this highly qualified pool of applicants, our staff selected 40 workshop participants, including:

- representatives of national, regional and local non-governmental environmental organizations;
- members of the Parliament's Environmental Protection Committee;
- officials from government ministries and regional authorities responsible for water management and environmental protection; and
- environmental officials from local water supply companies and Hungarian county governments.

ELI brought together a faculty for the course that included both top U.S. environmental law and policy experts and leading Hungarian environmental professionals. The U.S. teaching team included two former state-level environmental enforcement officials, a former head of enforcement at the U.S. Environmental Protection Agency who is a leading U.S. expert on citizen suits, and the chief hydrogeologist at the EPA's Groundwater Office. These individuals brought both extensive environmental policy expertise and a background in teaching environmental workshops according to ELI's interactive case-study model.

The Hungarian members of the workshop faculty included the chief hydrogeologist at the Hungarian Geological Institute, who is also an adviser to one of Hungary's emerging non-governmental environmental groups; a law professor who is the secretary general of the Hungarian Lawyers Association; and a senior official at the Ministry of Transport, Telecommunication and Water Management. These individuals worked closely with the U.S. faculty in preparing the workshop curriculum. During a visit to the U.S. in September 1990, they commented on preliminary drafts of workshop exercises. Later they reviewed

institutions that could advance the international dialogue on climate change. The report, Addressing Global Climate Change: The Emergence of a New World Order, was sponsored by the U.S. EPA's Office of International Activities.

During the recent political changes in Central and Eastern Europe, environmental developments in the region have been a major focus of our Visiting Scholar activities. In June 1990, Dr. Helmut Schreiber of the Institute for European Environmental Policy in Berlin (now an environmental economist at the World Bank) concluded his ELI stay with a public presentation on the role of Western assistance in addressing major environmental problems in Central and Eastern Europe. An article expanding upon Dr. Schreiber's talk later appeared in ELI's Environmental Forum magazine.

At another ELI Associates Seminar in June 1990, Dr. Hans Jürgen Maiwald of the former German Democratic Republic's Environment Ministry gave an address on air pollution control strategies in Central and Eastern Europe. His talk, delivered on the eve of East Germany's wholesale adoption of the Federal Republic of Germany's environmental standards, offered sobering insights on the institutional challenges posed by European integration.

In September 1990, ELI brought a delegation of five Hungarian environmental professionals -- non-governmental leaders as well as top government officials -- to the United States for an intensive ten-day visit. In Washington, D.C., the delegation met with representatives of U.S. government agencies, congressional committees, non-governmental organizations and industry groups. The Hungarians also traveled to Ohio, where they met with state environmental officials, citizens group leaders and industry representatives. They reported that these meetings gave them a better understanding of the ways that diverse constituencies can work together to address environmental concerns. During visits in Ohio to a solid waste landfill, a hazardous waste incinerator and an automotive assembly plant, our Hungarian visitors also learned about a range of pollution control options from plant engineers.

In November 1990, ELI organized a month-long research visit to Washington for Dr. Stanislaw Wajda, Poland's leading legal expert on transboundary water pollution. Dr. Wajda is a legal adviser to Poland's Environmental Protection Institute. Over the past decade, he has been a key adviser to his government on negotiating regional pollution control accords with Germany, the CSFR and the Soviet Union. As an ELI Visiting Scholar, he studied U.S.-Canadian acid rain negotiations as part of a comparative analysis of regional solutions to transboundary pollution problems. Dr. Wajda returned to ELI for several weeks of additional research in the spring of 1991. On April 25, ELI convened a seminar at which Dr. Wajda addressed the topic: "Cooperation and Confrontation in Transboundary Water and Air Pollution Issues."

Most recently, in July 1991, Fyodor Bratenkov, a law student at Leningrad University, spent a month at ELI examining U.S. environmental impact assessment procedures. His ELI visit was arranged in conjunction with the Natural Resources Defense Council.

As important as our workshops and technical assistance missions to the region will be, there is no substitute for enabling environmental leaders from Central and Eastern Europe to pursue their research needs here, and to gain firsthand familiarity with the workings of U.S. environmental law and policy. In the coming years, as we expand our environmental assistance efforts in Central and Eastern Europe, our Visiting Scholars Program will play an essential role in forging strong cooperative links between U.S. environmental professionals and their counterparts from the region.

IV. PROGRAM ACTIVITIES FOR 1992

A. Law Drafting Assistance Project

Law-drafting assistance will continue to be a priority commitment of our Central and East European Program. ELI will be conducting the following law drafting assistance activities in the next year.

1. Assistance Missions to the Region

In the coming months, ELI will continue to send assistance missions to each of the three program countries to advise on particular draft laws and regulations. ELI representatives will travel to Hungary in November and December, to participate in meetings of the Hungarian environmental law commission chaired by Professor Andras Sajo. In addition, ELI will be returning to the CSFR in January to meet with individuals at the republic-level environment ministries and district-level environmental departments to discuss implementation issues arising from the new waste laws and regulations. ELI has also tentatively scheduled a law drafting assistance mission to Poland for the spring of 1992.

2. Working Paper Series

In addition to the law drafting assistance missions, ELI will prepare and distribute three new reports in our Working Paper series. The topics of these Papers are as follows:

Effective Environmental Enforcement: The lack of effective and credible enforcement has been a major cause of environmental degradation throughout Central and Eastern Europe. Even when fines have been levied against major polluters, the violators -- invariably state enterprises -- have treated the penalties as simple accounting problems. While the gradual emergence of private enterprises may render economic penalties more effective, administrative agencies and citizen groups are generally unfamiliar with effective tools and strategies for punishing and preventing pollution. In this ELI Working Paper, a series of case studies will highlight a range of environmental enforcement challenges and successful U.S. responses at the state and federal levels.

Citizen Suits & the Role of the Courts: Throughout Central and Eastern Europe, the courts have essentially been closed to citizens and citizen groups concerned about environmental hazards. ELI's Working Paper on citizen suits will draw upon the rich U.S. experience in this area, describing the varied uses of the courts in reviewing government actions and challenging industry performance.

Public "Right-to-Know" and other Information Access Measures: Along with the move toward democracy, formerly closed government ministries have begun to provide broader public access to official environmental data and analysis. For the most part, however, this increasing openness has yet to be enshrined in legislative guarantees. Environmental organizations, other non-governmental groups and individual citizens must still depend upon the goodwill and cooperation of official information sources. This Working Paper will present a number of options for ensuring public access to government-held environmental information.

3. Roundtable Discussion Series

During 1992, ELI will hold a series of Roundtable Discussions on selected topics highlighted by the law-drafting assistance missions and Working Paper series. The Roundtable Discussions will draw participants from Poland, the CSFR, Hungary, the United States, and the European Community. The Discussions will be held at locations convenient to the three Central European countries. In selecting participants, ELI will ensure that a broad mix of expertise and experience is represented. It is anticipated that government, NGOs, academia and industry will be represented at each meeting.

Three Roundtable Discussions are now being planned:

Roundtable One: Environmental Impact Assessment. The first Roundtable Discussion will address issues concerning environmental impact assessment. This issue is especially timely at present, as new EIA laws and regulations are now being drafted in the CSFR, Hungary and Poland. ELI's law drafting assistance visits to these three countries have revealed a need for better communication on this subject. Law drafters in the CSFR and Hungary have expressed particular interest in learning about Poland's recent experience in establishing a quasi-governmental committee to review environmental impact statements prepared by project developers.

Roundtable Two: Public Participation in Rulemaking. The second Roundtable Discussion will focus on public participation in environmental decisionmaking. The Roundtable Discussion will explore successful methods of allowing constructive public participation in agency rulemaking and will discuss how these methods can best be implemented in the region.

Roundtable Three: Enforcement Options. The third Roundtable Discussion will address enforcement options for countries in the region. ELI's enforcement options Working Paper, now in preparation, will provide perspectives on strategies that have been successful in the United States, and will serve as a springboard for discussion about enforcement strategies that

may be appropriate to Central and Eastern Europe. The meeting will focus in part on vehicles for citizen enforcement, drawing upon the US experience in providing NGOs with access to the courts to compel industry compliance and ensure that government agencies are actively and effectively using their enforcement authority.

4. U.S. Study Tour

To complement its law drafting assistance efforts in the region, ELI will host a U.S. study tour for selected Central and Eastern European environmental experts in 1992. ELI has tentatively identified waste regulation as the subject of its study tour. By learning firsthand how hazardous and solid waste laws are implemented in the U.S. at the federal and state levels, experts from the region will gain knowledge useful in developing waste policies and laws in their own countries.

The ELI U.S. study tour is presently scheduled for the summer of 1992. Participants will include lawyers, policymakers and scientists who are working directly on developing their country's waste laws and policies. While in the U.S., the group will meet with ELI staff, federal government officials and waste experts from industry, academia and NGOs. Their visit will include a field trip to one or more states with problems similar to their own countries' waste-related concerns.

B. Environmental Law Education Project

ELI's latest initiative in Central and Eastern Europe is an Environmental Law Education Project. Through this project, ELI will assist law schools in the region to develop more effective environmental law programs. In the next six to eight months, ELI will be inviting law professors from the CSFR, Poland and Hungary to spend one month at ELI as Visiting Scholars. While at ELI, the Central and East European scholars will meet with ELI Staff and U.S. law professors to discuss teaching techniques, substantive curriculum choices and clinical options. ELI will also arrange for these scholars to visit U.S. law schools with well established environmental law programs.

Dr. Gyula Bandi, Secretary General of the Hungarian Lawyers Association and a law professor at Eötvös Lorand Scientific University in Budapest, is currently planning a three-month stay at ELI as a Visiting Scholar in the spring of 1992. Dr. Bandi is a member of the team of lawyers now charged with drafting Hungary's new comprehensive environmental law. While at ELI, he will work with ELI attorneys and other U.S. law and policy experts on selected sections of the new law.

ELI's Environmental Law Education Project will not only focus on strategies for developing courses and clinical programs for law students, but also on establishing continuing legal education programs for practicing attorneys, to assist the Central and East European countries in meeting the immediate need for trained environmental lawyers. The Visiting Scholar visits may be the starting point in a broader effort to build ongoing partnerships between innovative law faculties here in the United States and environmental law educators

in the region. Joint curriculum development projects and co-teaching of environmental law courses may be future features of this endeavor.

C. Other Projected Activities

In addition to launching the Environmental Law Education Project and continuing to build our Law Drafting Assistance Project, ELI will move forward with the planning of future ELI law and policy workshops in the region. As a first priority, we are now seeking support from the U.S. Environmental Protection Agency to hold a second Groundwater Protection Workshop in Hungary.

V. CONCLUSION: ELI'S ROLE IN FOSTERING RESPONSIVE AND RESPONSIBLE ENVIRONMENTAL GOVERNANCE

Democratic elections are exciting signs of emerging democratic values in Central and Eastern Europe. The roots of democracy must reach beyond electoral politics, however, into a variety of mechanisms ensuring broader, more sustained public participation in policymaking.

A vibrant non-governmental presence is crucial both to the process of democratization and to the effective safeguarding of environmental values in the region. Dramatic reforms have allowed once-stifled non-governmental organizations to emerge. Yet, without major changes in laws and public institutions, these citizen organizations will remain peripheral to the decisionmaking process on matters of urgent environmental consequence. ELI's Environmental Program for Central and Eastern Europe is helping to foster institutional reforms that will enable diverse constituencies to have a genuine impact on environmental policy. In Hungary, Poland and the CSFR, we are working with environmental leaders to design and implement key institutional reforms geared toward strengthening the public's ability to influence environmental policy.

ELI has brought leaders from inside and outside government together to face the challenges of environmental protection in their countries. We have also made great efforts to bring environmental leaders from diverse geographical backgrounds into our program activities, rather than relying simply on capital city elites. Creating a forum for these groups to solve problems together is a step towards removing the barriers that have traditionally stood in the way of responsible and responsive governance.

Beyond fostering a more constructive dialogue between disparate constituencies, ELI is confronting the ongoing challenge of helping to create legal and regulatory frameworks that will advance environmental goals and incorporate public participation. We are working closely with parliamentarians and ministry officials as they design and implement new environmental enforcement programs. At the same time, we are helping them develop ways of ensuring that public participation will be enshrined in governing laws and regulations, and will not be dependent on the goodwill of individual officials.

Three years after launching the Environmental Program for Central and Eastern Europe, ELI has crossed an important threshold. From an initial phase of helping to shape the general parameters of the environmental debate, we are now able to provide specifically targeted assistance to a new breed of policymakers, law-drafters and leaders of a growing non-governmental sector.

APPENDIX C

Articles and Press Release

ELI NEWS

Enhancing Environmental Protection Through Improved Law, Policy, and Management

FOR RELEASE ON MARCH 2, 1993:

REPORT CALLS FOR MIDDLE EAST ENVIRONMENTAL COOPERATION

The Environmental Law Institute today released a report outlining a strategy for safeguarding the Gulf of Aqaba, a leading issue in the Middle East peace negotiations. *Protecting the Gulf of Aqaba: A Regional Environmental Challenge* focuses the insights of 25 scientists, planners, attorneys, and policymakers on measures to protect this small, semi-enclosed sea.

Bordered by Egypt, Israel, Jordan, and Saudi Arabia, the Gulf of Aqaba is a unique ecosystem hosting over 200 varieties of coral and 1,000 species of tropical fish. Vital to the region's burgeoning tourist industry, the Gulf's marine and coastal resources are threatened by mounting environmental hazards. Sewage, industrial pollutants, oil spills, and unregulated tourism have already degraded key stretches of coastline in the heavily settled northern Gulf. Without concerted Gulf-wide action, more sweeping environmental devastation is inevitable.

"A single major oil spill could destroy the Gulf's ecological balance," says Philip Warburg, director of ELI's Middle East Program, who has coordinated the work of the report's five editors and 25 chapter authors. "The Gulf is little more than 100 miles long and only 15 miles across at its widest point. Its ecological diversity is concentrated along a narrow, highly vulnerable coastal fringe. Numerous minor spills have already hinted at the massive damage likely to result from a major accident."

At multilateral talks in Tokyo and The Hague over the past year, peace negotiators from 37 nations have called for a cooperative effort to protect the Gulf from the ravages of uncontrolled development. *Protecting the Gulf of Aqaba* responds to this call. In the report, Middle East environmental leaders join their counterparts from the United States, Europe, and New Zealand in exploring ways to address current and anticipated threats to the Gulf's environment.

"Working together, the Gulf-bordering states can accomplish what none of them alone can achieve: sustainable development of a shared, highly valued resource," Warburg notes. "Regional environmental cooperation can, in turn, foster better political relations between Middle East nations."

Protecting the Gulf of Aqaba outlines a Gulf-wide strategy for oil spill preparedness and emergency response. The report also calls for regional cooperation in setting and enforcing pollution controls for ship traffic, factories, and sewage plants. To protect sensitive habitats from tourist and commercial traffic, the report presents an agenda for Gulf-wide coastal and marine resources management, including the creation of marine parks and specially protected areas.

Over, please



Among the report's authors are top Middle East government officials and environmental experts. Egypt's Minister of Tourism describes his government's plan for "sustainable tourism development" along the Gulf coast. Jordan's leading marine scientist presents an agenda for Gulf-wide cooperation in scientific research. And top officials from Israel's Environment Ministry describe their country's coastal zone management policies, calling for regionally coordinated management and environmental impact assessment procedures for major new development projects along the Gulf.

In preparing the report, ELI has worked closely with three Middle East non-governmental organizations: the Arab Office for Youth and Environment in Cairo, the Israel Union for Environmental Defense, and the Jordanian Society for the Control of Environmental Pollution. "These organizations are playing a key role in advancing a unified ecological agenda in a region where political boundaries fail to reflect the interdependence of nations sharing very finite resources," says Warburg.

The Environmental Law Institute was founded in 1969. It is a non-profit, non-governmental organization dedicated to publication, research, and education on environmental law and policy. Central to ELI's mission is its commitment to bringing together professionals in government, industry, public interest organizations, and academia to develop sound solutions to environmental problems.

Protecting the Gulf of Aqaba: A Regional Environmental Challenge was supported by grants from the Conanima Foundation and The Hauser Foundation.

For more information and a copy of the report, contact: Philip Warburg (202-939-3823) or Stephen R. Dujack (202-939-3815).

ELI REPORT

Report points path to Middle East cooperation through action to protect a shared resource

Bordered by Egypt, Israel, Jordan, and Saudi Arabia, the Gulf of Aqaba presents an important opportunity for cooperation among countries involved in the Middle East peace process by encouraging a regional response to an environmental problem. To further that end, ELI Senior Attorney Philip Warburg brought together two dozen environmental experts—half from the states bordering this arm of the Red Sea—to produce a new ELI report, *Protecting the Gulf of Aqaba: A Regional Environmental Challenge*.

When the Institute released the report at a recent ELI Associates Seminar, it won praise from the head of the U.S. delegation to the Environmental Working Group of the Middle East Peace Negotiations. *Protecting the Gulf of Aqaba* presents "a cookbook of things that can be done" in a region where diplomacy is usually difficult, said Thomas Miller, who promised to distribute the book at the next meeting of the working group.

The report outlines a gulf-wide strategy for oil spill preparedness and emergency response. It also calls for regional cooperation in setting and enforcing pollution controls for ship traffic, factories, and sewage plants. To protect sensitive habitats from tourist and commercial traffic, the report presents an agenda for gulf-wide coastal and marine resources management, including the creation of marine parks and specially protected areas. Chapter authors include such top government officials and scholars as Egypt's minister of tourism, the director of Jordan's Marine Science Center, and the former director general of Israel's Environment Ministry.



Miller: ELI report on Gulf of Aqaba a "cookbook of things that can be done."

Warburg opened the seminar by describing the ecological and political setting of the region. The gulf hosts some 200 varieties of coral and 1,000 species of tropical fish. The local ecosystem is showing the signs of very real environmental decay resulting from untreated municipal sewage pouring into its waters, frequent small oil spills, the escape of phosphate dust during shipping operations, and a rapidly growing tourist industry. Yet political tensions between the gulf-bordering states have prevented regional cooperation in addressing these problems.

The gulf's slow rate of water circulation and renewal, combined with the ever-present danger of a major oil spill, makes this waterbody a key area for environmental protection measures and international emergency preparedness, Warburg said. "Israel and its neighbors share a finite and hotly contested geography. One of the key challenges is how to translate the peace negotiations into a process that builds on common values and works toward common goals. The talks promoting regional cooperation on environmental pro-

tection provide an important avenue toward finding that common ground."

Sylvia A. Earle, data coordinator for the *Gulf of Aqaba Environmental Data Survey* conducted by the U.S. Agency for International Development, portrayed the waterbody as "a natural laboratory, unique in the world." The gulf is narrow—only 17 miles across at its widest—but very deep. A noted marine ecologist, Earle has studied the results of the Kuwaiti oil fires on the Persian Gulf, which she said provides "a specter for the potential damage" of a major oil spill in the Gulf of Aqaba.

Earle went on to describe some of the initiatives that are already bringing together scientists from each of the region's countries. The United States and Japan have both brought international teams of scientists together to gain experience in developing response plans for oil and chemical accidents in coastal areas. The hope is that the confidence gained and the ties formed by these teams will be communicated to politicians in the disputing nations.

Miller, who directs the Office of Israeli and Arab-Israeli Affairs at the U.S. Department of State, presented perspectives on the progress of the Environmental Working Group, one of five multilateral working groups in the Middle East peace negotiations.

"The process is as important as the substance [of the negotiations], and our efforts have been to try to get as practical and concrete as we can." *Protecting the Gulf of Aqaba* could be instrumental to that process, he said.

To order a copy of this report, call 1-800-433-5120 or 202-939-3844.

—Juliet Serenyi

Coral reefs are a catalyst for peace in the Mideast

Philip Warburg is director of the Middle East Program at the Environmental Law Institute in Washington, D.C. Warburg, a former law clerk to U.S. District Judge Stanley Marcus in Miami, wrote this article for The Herald.

By PHILIP WARBURG

With ongoing violence in the Occupied Territories and battles raging in the Hezbollah-dominated villages of south Lebanon, few took note of this past week's landmark leap toward Middle East peace. At negotiations focusing on environmental cooperation in Cairo, historically warring Israel and Jordan reached their first agreement in nearly two years of intensive negotiations. The accord, joined also by Egypt, calls for a cooperative response to oil spills and other ecological disasters in a shared regional sea, the Gulf of Aqaba.

The Cairo agreement illustrates that environmental concerns can break through national barriers and political divides. In the conflict-ridden Middle East, an ongoing series of environmental talks have given quiet but powerful momentum to the peace talks initiated in Madrid in October

PLEASE SEE MIDEAST, 6M

MIDEAST, FROM 1M

1991. While disputes over the return of territories often become mired in zero-sum wrangling, immediate and concrete mutual gains can result from environmental cooperation.

So why the Gulf of Aqaba? Bordered by Egypt, Israel, Jordan, and Saudi Arabia, it is one of the world's most spectacular diving spots. Pioneering oceanographer Sylvia Earle describes the Gulf, a narrow but vibrant sliver in the Syrian-African rift, as offering a unique opportunity for "oceanography in a teacup." Some 200 varieties of coral inhabit its shore-hugging reefs, in contrast to Hawaii's more modest 45 species and Bermuda's mere 15. Add more than 1,000 species of tropical fish, and you have a highly valued magnet for foreign tourist revenues.

The tourist trade is, in fact, booming along the short, crowded Israeli and Jordanian shorelines at the northern end of the Gulf. Along Egypt's Sinai peninsula, on the Gulf's western shore, tourism is surging ahead at a 42 percent annual rate. Egypt's Tourism Ministry predicts that, by the year 2000, demand will exceed five million nights per year in three-to-five star hotels.

Yet the Gulf's environment is endangered. Sewage now pours into the Gulf from the Israeli resort city, Eilat, causing frequent beach closures and killing off coral along the country's ten-mile coast. While the Jordanian port of Aqaba, two miles away, diverts its sewage to an inland date plantation, minerals blown into the water from shiploading operations have stunted marine life in nearby waters. And in Egypt, sewage from major new resort communities may destroy irreplaceable coral reefs unless safe alternatives to sea disposal are adopted.

The maxim that pollution knows no state boundaries assumes daily and disturbing relevance in a water body as confined and vulnerable as the Gulf. Yet these shared hazards offer important prospects for regional cooperation. The bordering states can work jointly to develop less damaging land-based alternatives to sewage pollution of the Gulf. They can also collectively implement tough new controls on port facilities and ship operations.

In this sense, the Cairo commitment to prepare a Gulf-wide oil spill response strategy is an

inspiring start. The negotiators know that a single major accident could virtually destroy coral life in the Gulf, devastating the region's tourist trade. Unlike January's Shetland Islands tanker grounding, there is no vast ocean to cleanse away the consequences of carelessness in the Gulf.

Progress toward Palestinian autonomy in the West Bank and Gaza Strip offers similarly compelling ground for environmental cooperation. At present, Israel draws 40 percent of its water from the so-called Mountain Aquifer, which underlies major portions of the West Bank as well as the Judean Hills, within Israel's pre-1967 borders. In some areas, the aquifer is already gravely contaminated by untreated sewage from Jerusalem and a number of West Bank towns. Poorly regulated pesticide use and haphazard disposal of hazardous wastes further jeopardize the aquifer's long-term viability.

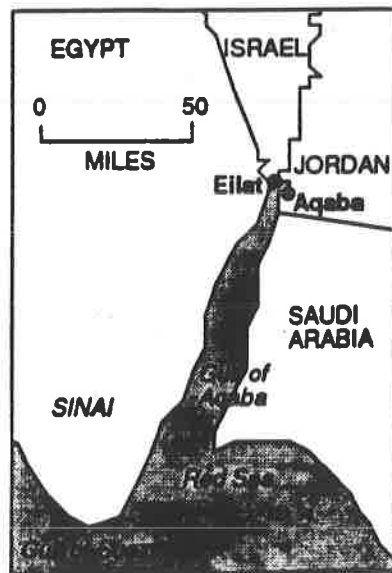
In a region haunted by extreme water scarcity, Israelis and Palestinians cannot afford to turn a blind eye to the shortsighted misuse of shared water supplies. Bilateral and regional commitments are needed both to address urgent questions of fair allocation and to reverse the already menacing pollution of limited freshwater resources. In the Gaza Strip, overpumping has irreversibly contaminated shallow coastal wells with seawater from

the adjacent Mediterranean. Raw sewage from teeming Gaza refugee camps has also dumped dangerous bacterial pollutants into the Strip's water supplies, rendering them unsafe for human consumption.

In fulfilling regional environmental commitments, individual Middle East governments must actively educate and police their own populations. Over the past decade, Egypt, Israel, and Jordan have made real headway in establishing environmental laws and institutions, and in recent months, the Palestinian "transition team" has begun to address these important challenges.

"Palestinians are seriously examining environmental issues as they plan for the kind of state they wish to establish," said Jonathan Kuttab, a member of the Palestinian Technical Committee on Legislation. "Drafting environmental legislation is one concrete step we are taking to bring into reality the exciting developments initiated by the Rabin-Arafat accord. Implementing and enforcing those and other laws will be necessary next steps as we begin to take our place in the family of nations."

Until recently, Middle East security has been defined by two rather forbidding criteria: military strength and control of strategic territory. Progress toward environmental cooperation gives a momentous boost to a dramatically different vision of Middle East viability. Fueling this progress is a shared awareness that the promise of political coexistence could all too easily be shattered by violent rivalry over squandered resources.



WORLD WATCH
(November-December 1993)



PROMISING INITIATIVES

THE AQABA PARADIGM: A SHARED OASIS

BY AARON SACHS

The Middle East, as a region, is home to what historians call an "oasis civilization." Since biblical times, rich cultures have flourished along the fertile banks of the Nile, Jordan, Tigris, and Euphrates rivers. But oases are defined by the shifting sands that surround them. Only because the Arabs and Jews had wandered for decades in the dunes did their Promised Lands seem truly to flow with milk and honey. If all cultures bear the stamp of their geographical landscape, oasis civilizations reflect less the fecundity of river valleys than the dry heat and wide-open spaces of the desert. Middle Eastern culture has always been characterized by deprivation, high mobility, and explosive tensions. Promised Lands are in short supply.

The Gulf of Aqaba, a tiny inlet of clear, unexpectedly deep water, is one of the Middle East's last true oases. Lined by the sheltering cliffs of the Syrian-African rift, it lies placidly at the northeastern tip of the Red Sea. But the four countries that share its banks have never been particularly good neighbors, and the region's underlying tensions have begun to erode the fragile peace of the Gulf's landscape—despite the recent breaking of the long Arab-Israeli stalemate. A strained regional economy is driving the governments of Israel, Jordan, Egypt, and even the oil-rich Saudi Arabia, to compete more earnestly for the Gulf's precious resources. Already, new tourist resorts, mineral export facilities, and fish farms—as well as desalination

plants, which are trying to turn the Gulf into an oasis in the literal sense of the word—have triggered increased sewage dumping and thermal pollution, frequent oil spills, and an influx of toxic chemicals.

Over the past two years, however, since the launching of the Middle East peace talks, diplomats have recognized the ironic truth that scarcity, while often the cause of conflict, can also be the key to cooperation. Ecologists, the prophets of interdependence, have forced them to rethink their position. While politicians busied themselves negotiating territorial exchanges and drawing lines in the sand, pollution was seeping across borders indiscriminately. Middle Easterners are suddenly confronting the fact that if one person spoils the oasis, nobody gets to drink.

While this diplomatic breakthrough might seem subtle in contrast to September's dramatic unveiling of the Gaza-Jericho plan, it is not insignificant. Progress in the bilateral Arab-Israeli negotiations was so slow in coming because peace ultimately depends on each country's willingness to give something up. But the complementary rounds of multilateral talks, to which all interested parties were invited and which were broken down into five working groups—on refugees, economic development, arms control, water, and the environment—consistently fostered a spirit of shared goals and values. In the environmental sessions, especially, diplomats realized that a regional approach led to many more

mutual benefits than sacrifices.

Because the Gulf of Aqaba is such a self-contained, explicitly shared resource, negotiators at the first meeting of the working group on the environment singled it out as a priority over more general regional issues such as waste disposal and desertification. All the littoral nations immediately recognized the importance of protecting the Gulf's fragile coastal ecosystems—its sandy beaches, its warm lagoons and seagrass beds, its inner lining of world-renowned coral reefs. Arab scientists and diplomats, many of whom had never met a Jew before, found themselves agreeing with Israelis that they should invest jointly in technologies that would prevent oil spills. Such proactive arrangements would not only save money but also protect each country's tourist industry.

Pollution prevention, as duly noted by the negotiators, is especially critical in the Gulf because its small size—it is only 180 kilometers long and about 20 kilometers across—limits its absorptive capacity. Moreover, the calm of its surface results from very weak tidal currents, which are hard-pressed to flush the Gulf's waters out to the Red Sea. While, remarkably, about 1,000 species of fish now prosper in the Gulf of Aqaba, compared to only 300 in the Persian Gulf, which is more than 50 times larger, a major oil spill in the Gulf of Aqaba would destroy a much greater proportion of the fish population than in its more expansive neighbor. A couple of decades ago, intense development on the tiny north shore of the Gulf—where Eilat, Israel and Aqaba, Jordan now compete for tourists who come to see the coral reefs—revealed just how delicate the Gulf's ecosystems are. During one two-year period, according to Khalil Hosny Mancy, Professor of Environmental and Industrial Health at the University of Michigan, marine pollution caused the density of coral reefs around Eilat and Aqaba to decline by about 45 percent.

Issues in the bilateral talks that remain unresolved make joint efforts at pollution prevention rather difficult. But members of the working group on the environment are staying in touch, through both official seminars and

non-governmental initiatives, and laying the groundwork for region-wide cooperation. Soon after the first multilateral session on the environment, the Environmental Law Institute (ELI), a non-governmental organization based in Washington, brought together a cosmopolitan group of scientists, lawyers, and policymakers to work on a definitive catalogue of strategies for maintaining the Gulf's ecological—and economic—integrity. Published in March of 1993, ELI's report, *Protecting the Gulf of Aqaba: A Regional Environmental Challenge*, covers issues as diverse as oil-spill prevention, integrated coastal zone management, international governance, aesthetic resource protection, and environmental information systems. ELI Senior Attorney Philip Warburg, the principal editor of the report, hopes that its specific recommendations—for instance, to establish an international Gulf of Aqaba Authority—will help policymakers act quickly and effectively to preserve the Gulf as soon as regional politics permit.

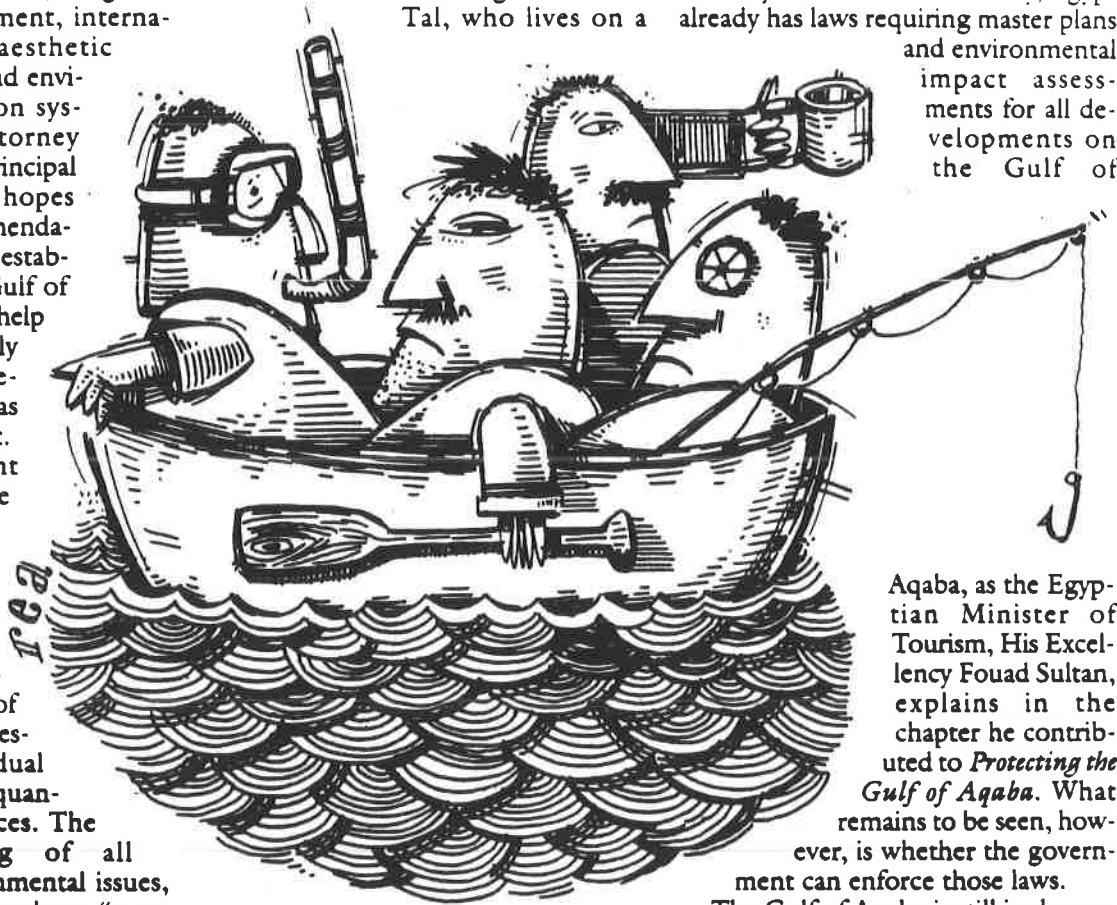
Happily, the recent breakthroughs in the peace talks may present opportunities for regional environmental cooperation much sooner than originally expected. And, meanwhile, activists in each of the littoral states can pressure their own individual governments not to squander the Gulf's resources. The successful handling of all transboundary environmental issues, Warburg explains, depends on "a systematic commitment *within* individual states to develop the necessary laws, monitoring tools, oversight methods, and enforcement capabilities."

In Israel, where national law requires that sewage not be dumped into the sea, the mayor of Eilat, Rafi Hochman, has been facing criminal charges for months because his municipality has failed to divert its wastewater from the Gulf of Aqaba. Ironically, the

city of Aqaba, which is less than two miles away from Eilat, has complied with a similar Jordanian law by using a technology which the Israelis pioneered. Their wastewater goes through a treatment plant and is then used to irrigate a nearby date plantation. Mayor Hochman's trial has been put on hold, because Israel recently approved an emergency plan to take Eilat's sewage to some neighboring settlements. But according to Alon Tal, Director of the non-governmental Israel Union for Environmental Defense, the plan does not address the impact of the effluent on the local groundwater.

Tal, who lives on a

tries with economic incentives to preserve their ecological resources. If developers pollute swimming areas with industrial wastes, after all, or kill too much coral, or even ruin too many views, the tourists simply won't come. No doubt the average Egyptian would be better served if the national government spent available funds on cleaning up the Nile and fighting air pollution in Cairo rather than on building resorts. But, given Egypt's financial situation, the country will probably continue to invest in coastal tourism—which is the most profitable sector of the tourism industry worldwide. Thankfully, Egypt already has laws requiring master plans and environmental impact assessments for all developments on the Gulf of



Aqaba, as the Egyptian Minister of Tourism, His Excellency Fouad Sultan, explains in the chapter he contributed to *Protecting the Gulf of Aqaba*. What remains to be seen, however, is whether the government can enforce those laws.

kibbutz outside Eilat, says that his organization plans to file suit if the municipality continues to shirk its responsibility.

The key to the preservation of the Gulf of Aqaba, though, is probably the way in which each country develops its tourist industry. Tourism, worth about \$3 trillion globally, has already caused significant damage to coastal ecosystems. But it also provides poor coun-

tries with economic incentives to preserve their ecological resources. If developers pollute swimming areas with industrial wastes, after all, or kill too much coral, or even ruin too many views, the tourists simply won't come. No doubt the average Egyptian would be better served if the national government spent available funds on cleaning up the Nile and fighting air pollution in Cairo rather than on building resorts. But, given Egypt's financial situation, the country will probably continue to invest in coastal tourism—which is the most profitable sector of the tourism industry worldwide. Thankfully, Egypt already has laws requiring master plans and environmental impact assessments for all developments on the Gulf of

PROMISING INITIATIVES • *Continued*

Sea—has demonstrated the crucial role of an ecological regionalism in the world's attempts to cope with its political and economic crises. The plights of both the Baltic and the Gulf of Aqaba have forced long-standing enemies to realize that they can't afford not to work together. In a place like the Middle East, individual countries simply wouldn't be able to survive without regional resources. "The sea is life," says an old Arab proverb, "the sea is sustenance. Without it we perish under the sand."

Of course, cooperation in the Middle East is perhaps more delicate than in any other region of the world. Mahmoud A. Al-Khoshman, a chemical engineer and lecturer with the Jor-

danian Society for the Control of Environmental Pollution, and a co-editor of the ELI report on the Gulf, has been harassed by Islamic fundamentalists in Jordan, just because the ELI project also involved Israelis. At a recent presentation in Washington, however, Al-Khoshman continued to emphasize the importance of regional cooperation. He noted Jordan's dependence on Israeli technology, Saudi water, and Egyptian labor, and he spoke at great length of the Palestinians who have been swarming into his country ever since the Gulf War. More than most people, the Jordanian environmentalist is aware that borders are dubious, that all oases are shared oases. His refrain, during that presentation, stated a simple but courageous truth: "We have to interact with the world."

APPENDIX D

Projected Budget

<p>ENVIRONMENTAL LAW INSTITUTE PALESTINIAN LAW DRAFTING ASSISTANCE PROJECT 1994 BUDGET</p>

ELI LABOR ¹		\$ 57,459
TRAVEL		23,808
OTHER DIRECT COSTS		
<i>Telephone/Fax/Postage</i>	\$5,000	
<i>Office Supplies</i>	1,500	
<i>Photocopying/Printing</i>	3,500	<u>10,000</u>
TOTAL DIRECT COSTS		91,267
G&A @ 22.58%		<u>20,608</u>
TOTAL		<u>\$111,875</u>

¹ Includes Salary, Fringe Benefits and Overhead for Senior Attorneys, Director of Training, Research Assistants, Support Staff, and Director of Research.

APPENDIX E

*Letter of Determination
by the Internal Revenue Service*

20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

101
102



Internal Revenue Service
Washington, DC 20224

Date: MAY 20 1973

In reply refer to

T:MS:EO:R:2-MTF

The Environmental Law Institute
Suite 608-1346 Connecticut Ave. N.W.
Washington, D.C. 20036

Gentlemen:

We have considered your application and based on the information supplied we rule that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. This ruling assumes your operations will be as stated in your exemption application.

In this letter we are not determining whether you are a private foundation as defined in new section 509(a) of the Code. Your attention is invited to new section 508(b) of the Code which sets forth requirements for establishing that an organization exempt under section 501(c)(3) of the Code is not a private organization. When procedures are developed to implement these requirements we will advise you how to proceed to notify the Internal Revenue Service if you do not believe yourself to be a private foundation.

For years beginning prior to January 1, 1970, you are required to file the annual information return, Form 990-A. For each subsequent year, please refer to the instructions accompanying the Form 990-A for that particular year to determine whether you are required to file. If filing is required, you must file the Form 990-A by the 15th day of the fifth month after the end of your annual accounting period.

You are not required to file Federal income tax returns unless you are subject to the tax on unrelated business income under section 511 of the Code. If you are subject to this tax, you must file an income tax return on Form 990-T. In this letter we are not determining whether any of your present or proposed activities is unrelated trade or business as defined in section 513 of the Code.

The Environmental Law Institute

You are not liable for Federal Unemployment Taxes. You are liable for social security taxes only if you have filed waiver of exemption certificates as provided in the Federal Insurance Contributions Act. (Your District Director will be glad to tell you more about it.)

Donors may deduct contributions to you, as provided by section 170 of the Code. Bequests, legacies, devises, transfers, or gifts to you or for your use, are deductible for Federal estate and gift tax purposes under sections 2055, 2106, and 2522 of the Code.

If you change your purposes, character, or method of operation, please let your District Director know, so that he may consider the effect on your exempt status. Also, please keep him informed of any changes in your name or address.

You need an employer identification number, even if you do not have any employees. This number is to be used on all your tax returns and in your correspondence with the Internal Revenue Service. If you do not have such a number, please file Form SS-4, Application for Employer Identification Number, with your District Director.

We are informing your District Director of this ruling.

Thank you for your cooperation.

Sincerely yours,

John R. Bachir

Chief, Rulings Section
Exempt Organizations Branch

Department of the Treasury

Internal Revenue Service
Washington, DC 20224

Date

Dec. 26, 1973

LS FORM 1070-73



The Environmental Law Institute
1346 Connecticut Ave., N.W. Suite 400
Washington, D.C. 20036

EL#: 52-0901863

Gentlemen:

Based on the information you recently submitted, we have classified your organization as one that is not a private foundation as defined in section 509(a) of the Internal Revenue Code because you are an organization described in the following Code Section:

- Sec. 509(a)(1)
- Sec. 509(a)(2)
- Sec. 509(a)(3)
- Sec. 509(a)(4)

This classification is based on the assumption that your operations will continue as stated in your notification. All changes in your purposes, character, or method of operation must be reported to your District Director so he can consider their effect on your status.

Sincerely yours,

J. J. [Signature]
Chief, Rulings Section
Exempt Organizations Branch

APPENDIX F

*ELI Annual Report for 1992
(separate enclosure)*

APPENDIX F

*ELI Annual Report for 1992
(separate enclosure)*

