

elni

REVIEW

Articles with focus on environmental law networks

- The Importance of International Environmental Enforcement Networks: INECE as an example
- European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)
- NEEL: the Network of EU Environment Lawyers
- The Nordic Environmental Law Network (NELN)
- Networking in the Nordic Countries
- The Avosetta Group

Articles with focus on other topics

- Towards an integrated approach for sustainability labelling and certification
- REACH: How far will the chemicals legislation reach to protect human health and the environment from hazardous chemicals?
- Rethinking the Role of Information in Chemicals Policy: Implications for TSCA and REACH

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ARTICLES

**The Importance of International Environmental Enforcement Networks -
INECE as an example**

Jo J.A. Gerardu and Durwood Zaelke*

1 Summary

There is a need for improved enforcement of environmental laws on a global scale. This is a fundamental component of promoting the rule of law and good governance to achieve sustainable development. The International Network for Environmental Compliance and Enforcement (INECE) is a trans-governmental network that fosters capacity building, education, and enforcement co-operation in furtherance of these goals. This article presents some of the results of more than 15 years of INECE activities.

2 Introduction

Since 1972, the number of environmental laws, regulations, international conventions and international organisations has grown, but environmental quality continues to decline in many fields. Weak compliance and enforcement is one of the key reasons for this disconnect.

To close this compliance gap, there is a need for improved enforcement of environmental laws on a global scale. Agenda 21, adopted in Rio in 1992, recognised this need and urged countries to develop enforcement activities.

The International Network for Environmental Compliance and Enforcement (INECE) is a global network of environmental compliance and enforcement practitioners from more than 120 countries. INECE seeks to raise awareness of the importance of compliance and enforcement to achieving sustainable development, to build the capacity of those who do environmental compliance and enforcement and to facilitate enforcement co-operation. By focusing on these priority areas, INECE can help practitioners around the world achieve international and domestic environmental goals and create a level playing field on a global scale. This article will provide a brief introduction to INECE, its goals and its accomplishments, citing some key examples of INECE's work.

3 History of INECE

In 1985, two important events took place. First, the Organisation for Economic Co-operation and Development (OECD) commissioned three studies on improving the efficiency and effectiveness of compliance monitoring and enforcement of environmental policies. These studies were conducted in the United Kingdom, the Netherlands and the United States. The general results were that few nations were meaningfully engaged in and promoting environmental enforcement.

In that same year, under a Memorandum of Understanding, the US Environmental Protection Agency (US EPA) and the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM) began an exchange of information and personnel on environmental enforcement. The US EPA had a great deal of experience in environmental enforcement and the Netherlands had just had a dramatic experience with fraudulent waste treatment that caused public and political concern. These exchanges were very valuable for both participants and the US EPA and VROM jointly prepared the first international enforcement workshop held in Utrecht, the Netherlands, in 1990, with a total of 13 countries and international organisations participating. Participants favoured an ongoing debate on international environmental enforcement and an elevation of environmental enforcement on the political agenda, and so an international network was born. This network became INECE and follow-up conferences occurred in Budapest, Oaxaca, Chiang Mai, Monterrey, San José and Marrakech, where experiences were exchanged and new networks were formed.

4 The mandate

In 1992, the United Nations Conference on Environment and Development was held in Rio de Janeiro, Brazil. Chapter 8 of Agenda 21 emphasised that environmental enforcement was an important factor for reaching environmental goals. Chapter 8 stated in part: 8.21.

“Each country should develop integrated strategies to maximise compliance with its laws and regulations relating to sustainable development. The strategies could include:

* This article could not have been produced without the active help of Dave Grossman, Staff Attorney with the INECE Secretariat.

(a) Enforceable, effective laws, regulations and standards based on sound economic, social and environmental principles and appropriate risk assessment, incorporating sanctions designed to punish violations, obtain redress, and deter future violations;

(b) Mechanisms for promoting compliance;

(c) Institutional capacity for collecting compliance data, regularly reviewing compliance, detecting violations, establishing enforcement priorities, undertaking effective enforcement, and conducting periodic evaluations of the effectiveness of compliance and enforcement programs;

(d) Mechanisms for appropriate involvement of individuals and groups in the development and enforcement of laws and regulations on environment and development.”

This mandate made it clear that environmental compliance and enforcement were critical to achieving sustainable development. The mandate also gave international organisations the confidence to move forward and support capacity building activities – capacity building that could result in better sustainable development and a level playing field.

INECE has characterised the relationship between sustainable development and environmental compliance and enforcement in the following schematic:



In other words, as defined at INECE’s 7th International Conference in Marrakech, “Environmental compliance and enforcement are the foundation for the rule of law, good governance, and sustainable development.”

5 Why and what is INECE?

The INECE mission is to contribute to a healthy and clean environment, sustainable use of natural resources and the protection of ecosystem integrity through effective compliance and enforcement of environmental laws using regulatory and non-regulatory approaches.

To achieve this mission, INECE has formulated 3 principal goals:

- Raising awareness of the importance of environmental compliance and enforcement.
- Strengthening capacity for compliance and enforcement.
- Developing networks for enforcement co-operation.

INECE has evolved since its beginnings as a bilateral exchange between the U.S. EPA and the Netherlands Ministry of Housing, Spatial Planning and the Environment (VROM) to become a prime example of a transgovernmental network. Transgovernmental networks involve the competent institutions of states – such as legislators, regulators, and enforcement and compliance officials – interacting directly with their peers around the world. (More information about transgovernmental networks can be found in Chapter 12 of the INECE book *Making Law Work: Environmental Compliance & Sustainable Development*; the introduction is at http://www.inece.org/mlw/Chapter12_TransgovernmentalNetworks.pdf.)

At the moment, INECE is an informal global network of environmental compliance and enforcement practitioners from more than 120 countries. INECE participants include government regulators, judges, parliamentarians, public prosecutors, non-governmental organisations, international organisations, and international banks, among others. Prominent participants include the United Nations Environment Programme (UNEP), The World Bank and the European Commission, OECD, the Environment Agency (England & Wales) and Environment Canada, among others, provide additional support. INECE is an informal network, so members are not official representatives of their organisations. There is no formal membership; everyone dedicated to promote compliance and enforcement can participate in INECE activities.

An Executive Planning Committee (EPC) with world-wide representation and support co-ordinates the activities of INECE. To do so, INECE prepares 3-year strategic implementation plans. Decisions in the EPC are taken by consensus after discussions, by the co chairs.³

The EPC has created an INECE Secretariat that is hosted by the Institute for Governance and Sustainable Development. The Secretariat has offices in Geneva and Washington D.C. Durwood Zaelke was appointed the Director of the INECE Secretariat in May 2001.

³ Information about the EPC and the latest strategic implementation plans can be found on the INECE website at <http://www.inece.org>.

6 INECE activities

Over the years, INECE has developed a range of activities and product instrumental for achieving its goals. Some of these are described below, categorised according to the three principal INECE goals. A full overview of INECE activities is available on the INECE website at <http://www.inece.org>.

6.1 Raising awareness

INECE has developed several avenues for raising awareness of the importance of environmental compliance and enforcement to the achievement of sustainable development, including:

Events: INECE hosts regional meetings, topic-specific workshops, and international conferences to educate practitioners, foster enforcement co-operation and promote compliance and enforcement as key to achieving sustainability objectives.

Publications: INECE publishes a unique collection of compliance and enforcement literature, including proceedings from its seven international conferences and a quarterly newsletter that provides news and commentary on enforcement activities. INECE also published *Making Law Work: Environmental Compliance & Sustainable Development* in 2005, a compilation of the best literature and scholarship from around the world on topics relevant to environmental implementation, enforcement and compliance.⁴

6.2 Strengthening capacity

INECE has developed a range of instruments to strengthen the capacity of those doing environmental compliance and enforcement work around the world, including:

INECE Compliance and Enforcement Indicators: INECE works with countries to develop indicators to better measure and manage their compliance and enforcement activities. The indicators assist enforcement practitioners in evaluating their programs. INECE is developing a common framework and is implementing pilot projects through its Regional Networks.

Worldwide Training: INECE offers the Principles of Environmental Enforcement training course on the key components of effective compliance and enforcement programs. Thousands of participants have benefited from the Principles course since it was first presented in 1990. INECE and its partners

also sponsor environmental inspector training in countries throughout the world.

6.3 Developing networks

INECE facilitates networking as a principal means of enabling enforcement co-operation, including:

- **Topic-Specific Networks:** INECE promotes topic-specific networks to counter water pollution, illegal logging and wildlife trafficking, by co-ordinating regional meetings, assessing needs, publishing web resources, and linking people, projects and funding.
- **Prosecutor's Network:** Environmental prosecutors at the Sixth INECE Conference formed a network to co-ordinate training and foster enforcement co-operation.
- **Regional Networks:** INECE has supported new networks for enforcement co-operation in Africa, Asia, Central America and South America, including the ECENA network in the Balkans, the REPIN network for Eastern Europe, Caucasus and Central Asia, and AECEN in Asia. INECE has also been involved in the launch of the Maghreb Regional Environmental Compliance and Enforcement Network, initially consisting of Morocco, Tunisia, Algeria, and Mauritania. In addition, INECE works closely with existing networks in Europe (the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)) and North America (the Commission for Environmental Co-operation (CEC)).

7 Practical examples

The environment does not end at a nation's borders; we get air pollution from other countries, and we pollute other countries by way of air, water or (chemical) waste. No nation is an island (even islands), so it is important to make sure that environmental enforcement is a way of life for every country, to enable us to meet the goals set in Rio de Janeiro in 1992. That is why so many countries are engaged in networks like INECE. But these networks only matter if they actually succeed in promoting sustainable development and creating a level playing field for all around the globe by ensuring enforcement is "done".

Below are five examples of INECE activities in the past years that were not only successful, but also represent a microcosm of the broader results of INECE.

7.1 Enforcement indicators project

The INECE Indicators Expert Working Group continued to provide tools for institutions throughout

⁴ Website: INECE maintains extensive Web resources for practitioners to share ideas and learn from topic-specific forums, news, regional pages, digital libraries, interactive discussions and searchable databases at www.inece.org.

the world to better measure and manage their compliance and enforcement programs through indicators pilot projects. These include a pilot project targeting Costa Rican forestry law enforcement, a project in the Philippines, and projects in conjunction with the World Bank Institute (in Argentina, Brazil, and Mexico) and the OECD (in Russia and Ukraine). The INECE Indicators Expert Working Group published the Performance Measurement Guidance for Compliance and Enforcement Practitioners, and in response to strong demand from its participants, is developing a new training program based on the Guidance. INECE, in partnership with UNEP, also launched a pilot project to assist countries in identifying opportunities to create efficiencies in the implementation of biodiversity-related multilateral environmental agreements through the use of Environmental Compliance and Enforcement indicators. INECE and UNEP are working with Brazil, Costa Rica, Kenya and South Africa to assess specific compliance and enforcement challenges associated with the implementation of biodiversity laws.⁵

7.2 Enforcement of emission trading

INECE continued to demonstrate leadership in promoting good practices for monitoring, reporting and verification in emissions trading systems. In partnership with the Environment Agency (England & Wales), VROM, the European Commission, the US EPA, Resources for the Future, and American University Washington College of Law, INECE brought together sixty-five participants from governments, international organisations, non-governmental organisations, third-party verifiers, and industry at the "Confidence Through Compliance in Emissions Trading Markets" workshop in Washington, D.C. in November 2005.

The key outcomes of the workshop included:

- a focused agenda for future co-operation and research on monitoring, reporting, and verification;
- raised awareness of compliance as essential to establishing confidence in emissions markets; and
- new knowledge from shared experiences from the E.U. Emission Trading System for carbon dioxide, the US programs for sulphur dioxide and nitrogen oxides, and programs in Japan, Canada, and Australia.⁶

⁵ More on indicators can be found at <http://www.inece.org/forumsindicators.htm>.

⁶ The agenda, background paper, and presentations from the workshop are available at <http://inece.org/emissions/>.

7.3 Enforcement co-operation on waste in harbours

IMPEL has undertaken an enforcement co-operation project to crack down on transfrontier shipments of waste in the European Union. INECE has worked to build on the good results of the IMPEL project in several ways, including through creation of a case study and class exercise to accompany some of its Principles of Enforcement training designed to build the capacity of enforcement officials attempting to address the challenges posed by illegal wastes in ports.

7.4 Enforcement co-operation on illegal logging

INECE worked with Law for a Green Planet, the Brazil Ministry of the Environment, the Brazil Environmental Agency, the State Court of Amapá, the Sociedad Peruana Derecho Ambiental, IMAZON, and the US Embassy to design an enforcement cooperation project focused on illegal forestry practices in the Amazon, including plans for an August 2006 seminar to build enforcement capacity for judges, public prosecutors and other key stakeholders. INECE also launched a new forum to address illegal logging, which can be found at <http://inece.org/forumslogging.html>.

7.5 Promoting good water governance

INECE, in conjunction with the Smithsonian Institution and UNDP's "Institute@" program, developed a training program designed to build capacity on the environmental compliance and enforcement aspects of good water governance. The course includes modules on writing an enforceable requirement, ensuring compliance with enforceable requirements, and using performance indicators for environmental compliance and enforcement programs, and includes case study and class exercises focusing on the pollution of rivers. INECE, through the US EPA, delivered an early version of the course at the Commission on Sustainable Development in April that led to additional capacity building in Colombia.⁷

7.6 Enforcement co-operation on transport of waste.

In 2000, 29 containers arrived in the harbour of Rotterdam with, according to the bill of lading, chemicals. The origin of the shipment was "company X" in the USA. On the Dutch side, the company receiving the containers denied being the buyer. Company X then claimed that the containers

⁷ The course can be found online at <http://inece.org/water/>.

where in transit to Nigeria, but communication between the Dutch Government and Nigeria showed that the receiving company in Nigeria had only a post office box and had no agreement with the Nigerian government to import these chemicals.

Some of the containers in Rotterdam harbour started leaking and a search by the Inspectorate of the Ministry of VROM showed that more than 3.000 different chemicals were in these contaminated containers.

Company X stated that the material originated from "closing our warehouse". This was contradicted by information received from the US EPA, which indicated that in the Spring of 2000, company X received an order from the local environmental authorities to remove "improperly stored wastes" from its warehouse.

In 2001 the Netherlands government requested in writing that company X return the waste materials voluntarily to their State of dispatch, the United States of America. In the meantime, the containers were leaking and storage was no longer an adequate solution. Investigators from US EPA came to Rotterdam and took samples for their case against company X, while in the administrative court in the Netherlands the Inspectorate won its case against company X.

Given the dangerous situation with thousands of unknown chemicals, and the fabricated bill of lading, which was of no use, the Netherlands government asked, company X again to send their materials back to the USA. Because company X remained unwilling to do so, the Netherlands government started incinerating the chemicals to remove the dangerous situation. The costs were more than 1 million Euro.

While official requests were sent to the US government, it was the communications through INECE network channels with the US EPA that contributed to solving the case expeditiously.

The case was brought into court, civil as well as criminal, and the court, very recently, ordered the owner of the companies, who now lives in Florida, to spend six months in home confinement in Pennsylvania under electronic monitoring and to perform 500 hours of community service in his original hometown, at least half of it during the home confinement period.

The owner and his companies are jointly and severally liable to pay \$1,2 million to the Dutch government, \$409.640 to Europe Container Terminals BV where the waste was stored in Rotterdam, and \$150.000 to EPA, with payments to be made over a five-year probation period imposed on all three defendants. The owner was fined \$100.000 and ordered to pay a \$1.500 special assessment. Each of

the companies must pay a \$50.000 fine and a \$6.000 assessment.⁸

8 Literature

We invite you to visit the library on the INECE website (www.inece.org), where proceedings of all 7 international conferences, capacity building support documents, principles of environmental enforcement, newsletters, information about Making Law Work, and many other resources are available. Three references are given:

- Agenda 21, the Rio Declaration on Environment and Development, and the Statement of principles for the Sustainable Management of Forests were adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 3 to 14 June 1992. (<http://www.un.org/esa/sustdev/documents/agenda21/index.htm>).
- Zaelke, Durwood c.s., Making Law Work, volume 1 and 2, Cameron May, 2005, London UK.
- Wasserman, C.E., Improving the Efficiency and Effectiveness of Compliance Monitoring and Enforcement of Environmental Policies, United States: A National Review," October 16, 1984 prepared on behalf of the Organisation for Economic Co-operation and Development Group of Economic Experts for a more detailed overview of the U.S. enforcement program: <http://www.inece.org/1stvol1/wasserman.htm>.

⁸ Full text of the criminal information against the owner and the 2 companies is available at <http://www.usdoj.gov/usao/pae/News/Pri2005/sep/PyramidInformation.pdf>.

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

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The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R. carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research:

- **European environmental policy**
 - Research on implementation of European law
 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
 - Advice for legislation and institution development
 - Know-how-transfer
- **Companies and environment**
 - Environmental management
 - Risk management

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The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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elni

In many countries lawyers are working on aspects of environmental law often with environmental initiatives and organisations or as legislators, but have limited contact with other lawyers abroad, although such contact and communication is vital for the successful and effective implementation of environmental law.

In 1990 a group of lawyers from various countries therefore decided to initiate the Environmental Law Network International (elni) to promote international communication and cooperation worldwide. Since then elni has grown to a network of about 350 individuals and organisations from throughout the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities:

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by the Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit making research institute. The Bureau is currently hosted by the University of Applied Sciences in Bingen. The Bureau acts as an information centre where members can obtain information about others working in certain areas thus promoting the development of international projects and cooperation.

elni Review

The elni Coordinating Bureau produces and sends to each member the elni Review twice a year containing members' reports on projects, legal cases and developments in environmental law. elni therefore encourages its members to submit such articles to be published in the Review in order to allow the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and Fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to bring together scientists, policy makers and young researchers, giving the opportunity to exchange views and information as well as developing new perspectives.

Publication Series

The elni publications series contains 12 volumes on different topics of environmental law.

- Environmental Law and Policy at the Turn to the 21st Century, Liber amicorum, Betty Gebers, Ormond/Führ/Barth (eds.) Lexxion 2006.
- Access to Justice in Environmental Matters and the Role of NGOs, de

Sadeleer/Roller/Dross, Europa Law Publishing 2005.

- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd. London 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd. London 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wil-mowsky/Roller, P. Lang 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

elni Website: elni.org

The elni website at <http://www.elni.org> contains news about the network and an index of elni articles, gives an overview of elni activities, and informs about elni publications. Internships for young lawyers/law students at the Öko-Instituts environmental law division are also offered on the web.