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NETZWERK  
UMWELTRECHT

# elni

## REVIEW

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Agrobiodiversity on the Agenda

*Franziska Wolff*

Will the CBD fulfil our Expectations? Conserving  
Biological Diversity

*Monika Brinkmüller*

Access to Genetic Resources and the fair and  
equitable Sharing of the Benefits

*Susette Biber-Klemm*

'Biodiversity Damage' Liability in the Environmental  
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*Volker Mauerhofer*

Environmental Concept for the UN Conference on  
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The Economic Cost of Environmental Legislation

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The Alpine Convention

*Birgit Dette*

New Books

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## Editorial

The main topic of this issue of the elni Review is the *Convention on Biological Diversity* (CBD). The ninth meeting of the Conference of the Parties (COP 9) will be hosted by Germany and held in Bonn from 19 to 30 May 2008. The global community will discuss measures against the ongoing destruction of biodiversity as well as ways towards a fair and responsible use of genetic material. The issues for in-depth consideration include:

- Agricultural and forest biodiversity
- Global strategy for plant conservation
- Invasive alien species
- Ecosystem approach
- Progress in the implementation of the strategic plan and progress towards the 2010 target and relevant Millennium Development Goals.

Non-Governmental Organisations take great interest in the success of this process and have made a number of recommendations to the negotiating parties.

The COP 9 issues are discussed in several articles in this issue: “Agrobiodiversity” is still an unknown quantity for most people, observes *Franziska Wolff*. Her contribution provides background information on the loss of agrobiodiversity and discusses recent international policy developments as well as the challenges that lie ahead pertaining to a reversal of this trend.

*Monika Brinkmüller* asks “Will the CBD fulfil our expectations?” Her article considers whether the acronym CBD also stands for “Conserving Biological Diversity” in a fair and responsible manner.

Another important topic is the “Access to Genetic Resources and the fair and equitable sharing of the benefits that result from their use”, which is analysed by *Susette Biber-Klemm*. Furthermore, *Hartmut Stahl* discusses the environment programme for the UN Conference on Biological Diversity in this issue.

‘Biodiversity damage’ liability as laid down in the Environmental Liability Directive is the topic of the contribution by *Volker Mauerhofer*. He scrutinises the definition in the Directive and its distinction from more stringent EU, international and national norms.

In the context of the “Better Regulation” initiative on the EU level, *Jochen Gebauer* takes a look at the economic cost of environmental legislation. From an environmental law perspective, he discusses whether the German standard cost model measurement can contribute to the EU action programme in terms of the reduction of administrative burdens.

Finally, *Birgit Dette* elaborates on the Alpine Convention as an international agreement with wide-spread dimensions.

Last but not least, the “New Books” column presents a review of the second edition of the Negotiator’s Handbook on “Multilateral Environmental Agreements” by *Simone Hafner*.

The next issue of the *elni review* will focus on Environmental Impact Assessment and the Revision of the IPPC Directive. Please send contributions on this topic as well as other interesting articles to the editors by the end of June 2008.

*Martin Führ*

March 2008

*elni forum*

*Producer responsibility and WEEE revision*

**takes place on Thursday, May 15, 2008, at 6 p.m.,**

at the *Facultés universitaires Saint-Louis*,

Boulevard du Jardin botanique 43 (Metro Botanique/Rogier),  
1000 Brussels, Salle du Conseil, 4th Floor, at the invitation of  
CEDRE (Environmental Law Study Center)

***Enforcement of individual producer responsibility  
through (smart) Labelling of  
electric and electronic products?***

*with an introduction by*

*Gerhard Roller, University of Applied Sciences  
Bingen/I.E.S.A.R*

*Martin Führ, University of Applied Sciences  
Darmstadt/sofia*

***The state of revision of the WEEE-Directive***

*with an overview by*

*Kurt van der Hertten, European Commission*

Gerhard Roller and Martin Führ will present results of a research project that has been carried out by three Universities (Darmstadt, Pforzheim and Bingen) and funded by the German Ministry of Education and Research.

Please confirm your participation by e-mail to [cedre@fusl.ac.be](mailto:cedre@fusl.ac.be)

## Will the CBD fulfil our expectations? Conserving Biological Diversity – With Fairness and Responsibility

*Monika Brinkmüller*

*From 19 to 30 May 2008 Germany will host the 9<sup>th</sup> meeting of the Conference of the Parties to the Convention on Biological Diversity<sup>1</sup> (CBD COP 9). At this meeting, the global community will discuss measures against the ongoing destruction of biodiversity as well as ways towards a fair and responsible use of genetic material. Non-Governmental Organisations take a strong interest in the success of this process and have made a number of recommendations to the negotiating parties.*

### 1 The 2010 biodiversity target

At the World Summit in Johannesburg, heads of state and governments from all over the world agreed to at least slow down the rapid loss of biological diversity by 2010 (2010 target). While at a global level the target is 'to achieve a significant reduction of the current rate of biodiversity loss', the target addressed to an EU and pan-European level is even more ambitious: to 'halt the loss of biodiversity'.

The significant reduction of biodiversity loss calls for solid counteractions and internationally coordinated action. These are key issues of the Convention on Biological Diversity (CBD).

The main goals of the Convention are:

- the conservation of biological diversity,
- the sustainable use of its components,
- and the fair and equitable sharing of the benefits from the use of genetic resources.

### 2 COP 9 key issues

In May Germany will host the 9th meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD COP 9).

The COP 9 will work on the following key issues:

- developing forest and marine protected area systems,
- new instruments for financing protected areas,
- agricultural biodiversity and biosafety matters,
- a new regime on access and benefit sharing, and
- implementation of the convention to meet the 2010 target. As we know nearly all Member States are far from achieving it.

### 3 NGO Coordination

The German League for Nature and Environment (DNR) and the German NGO Forum on Environment and Development started a COP 9 NGO Coordination Project in 2007 to coordinate NGO activities around the UN Conferences MOP 4 (Meeting of the Parties to the Cartagena Protocol) and COP 9. It is particularly important for the project to organise the participation of NGOs in the main subjects of COP 9/MOP 4 so that the concerns of civil society will be heard.

#### 3.1 Global Network of Protected Areas

Without massive efforts it will not be possible to reach the 2010 target. One important instrument is the establishment of a global network of protected areas on land by 2010 and at sea by 2012.

All Member States are equally bound to identify and establish protected areas, but as reviews show most countries are far from meeting their commitments.

In order to achieve substantial progress, COP 9 should take the following decisions:

1. conservation of the last intact primary forests as an essential contribution to protecting biodiversity as well as climate protection,
2. designating marine reserves covering 40% of the high seas by 2012,
3. adoption of a programme for protecting savannahs and steppes.

The European heads of states decided to stop the loss of biodiversity in Europe by 2010 – and to slow it down worldwide, but they are far from reaching their target, even given the three years that remain. They have to insist that every effort is made to reach that ambitious target.

The protected area network NATURA 2000 is the core of Europe's contribution to a global network of protected areas. It sets an example for other regions of the world. The EU should press ahead with the completion of NATURA2000 and should resist all attempts to weaken or water down the rules and regulations relating to NATURA 2000.

As host to COP 9, the German government should guarantee that CBD commitments are complied with in Germany. Government and federal states have to implement the National Biodiversity Strategy to make a substantial contribution to the programme of work of the CBD.

### 3.2 *Financing*

These great challenges, especially the establishment of a global network of protected areas, need sufficient financial support. In addition to expanding “classic” financial mechanisms, it is necessary to develop new, innovative resources. This could be a so-called “Stop the Loss Fund” supported by Member States, foundations, sponsors and others. Trust funds, emission certificates for climate and biodiversity protection and/or a de-bureaucratisation of the Global Environment Facility are further possibilities.

Subsidies that have a negative impact on biodiversity have to be drastically reduced. It is essential that they are redirected towards supportive instruments for the protection of biodiversity.

All financial mechanisms are – even in the planning stage – to be checked for their social compatibility and for protecting the rights of indigenous peoples.

### 3.3 *Fair use of genetic resources – an additional CBD agreement is necessary*

Parties to the CBD have agreed upon fair and equitable sharing of the benefits from the use of genetic resources. COP 7 in Kuala Lumpur commissioned a working group to draw up an international framework regulating Access and Benefit Sharing (ABS). For years now the negotiations were slowed down by some industrialised countries such as Canada, Australia, New Zealand and Japan. However, these once deadlocked positions seem to be improving now.

COP 9 needs to set the course for an international, legally-binding obligation that effectively prevents biopiracy. The United Nations declaration on the rights of indigenous peoples from 2007 has to constitute the basis for the inclusion of the rights of indigenous peoples in a future ABS regime.

We support the plans for a certificate of compliance that includes the origin of a genetic resource, traditional knowledge and the negotiated restrictions of use. The certificate will guarantee that “free and prior informed consent” was obtained from indigenous peoples, local communities and countries in which genetic resources originated before they were “accessed” and used. It will also help to guarantee compliance to national ABS laws.

Without such a – preferably obligatory – certificate, all research, patenting of products from genetic resources or their derivatives or the market access of such products should be forbidden.

### 3.4 *Agriculture needs a turning point*

An environmentally sound agriculture is absolutely essential for the protection of biodiversity. The COP 9 should address negative economic, social and ecologi-

cal impacts of industrial production of food and renewable raw materials – especially when talking about bioenergy production as this is a new issue for the CBD. This mode of production does not make a contribution to rural development and constitutes an additional danger to biodiversity.

The negative impact of synthetic pesticides on biodiversity should be recognized. Using genetically modified organisms is not an option for reducing the risks of pesticide use. On the contrary, it would represent an even greater danger to biological diversity.

One important issue is securing the rights of farmers and pastoralists since they play a major role in keeping genetic resource divers. This includes the rights to breed, to access to water and land as well as the right to participate in political decisions.

Industrial production of plants and animals should not be privileged as it is now.

In addition to the many negative impacts, this mode of production is not very adaptable when facing climate change. COP 9 should set the course for supporting organic farming and a system of small-scale farmers and pastoralists.

We disapprove of terminator technologies (genetically engineering plants to produce sterile seeds) as well as of EU research on using terminator technologies to allow for coexistence. COP 9 has to strengthen the existing moratorium on terminator technologies and should recommend forbidding them altogether.

One major issue at the 4th Meeting of the Parties to the Cartagena Protocol (MOP 4) (12-17 May 2008) will be a liability and redress regime (Art. 27 Cartagena Protocol) covering damage resulting from transboundary trade with genetically modified organisms. MOP 4 has to decide on an effective regime and should not delay such a decision by waiting for further research results.

Furthermore, both COP 9 and MOP 4 should urge Member States, governments and other relevant organisations to keep genetic engineering away from gene banks and regions of origin.

## 4 COP/MOP put to the test

The Conference in May will show whether the CBD can meet the expectations and whether the Member States will make the right decisions for reaching the targets that they once agreed upon. The NGO community, at any rate, will take a close look at all major international meetings leading up to the conference to see if the states will conserve and use biological diversity with fairness and responsibility.

Further information: [www.biodiv-network.de](http://www.biodiv-network.de).

## Imprint

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Miriam Dross and Martin Führ

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Martin Führ (fuehr@sofia-darmstadt.de)

The Editors would like to thank **Vanessa Cook** (Öko-Institut) for proofreading the *elni Review*.

**Focus of the forthcoming issue :**

The next issue of the *elni Review* will focus on Environmental Impact Assessment and the Revision of the IPPC Directive.

Manuscripts should be submitted as files by email to the Editors using an IBM-compatible word processing system.

The *elni Review* is the double-blind peer reviewed journal of the Environmental Law Network International. It is distributed twice a year at the following prices: commercial users (consultants, law firms, government administrations): € 52; private users, students, libraries: € 30. Non-members can order single issues at a fee of € 20 incl. packaging. The Environmental Law Network International also welcomes an exchange of articles as a way of payment.

The *elni Review* is published with financial and organisational support from Öko-Institut e.V., and the Universities of Applied Sciences in Darmstadt and Bingen.

*The views expressed in the articles are those of the authors and do not necessarily reflect those of elni.*

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## elni Membership

If you want to join the Environmental Law Network International, please use the membership form on our website: <http://www.elni.org> or send this form to the **elni Coordinating Bureau**, c/o IESAR, FH Bingen, Berlinstr. 109, 55411 Bingen, Germany, fax: +49-6721-409 110, mail: Roller@fh-bingen.de.

The membership fee is €52 per year for commercial users (consultants, law firms, government administration) and €21 per year for private users and libraries. The fee includes the bi-annual elni Review. Reduced membership fees will be considered on request.

Please transfer the amount to our account at **Nassauische Sparkasse** – Account no.: **146 060 611, BLZ 510 500 15**, IBAN: DE50 5105 0015 0146 0606 11; SWIFT NASSDE55XXX.

“Yes, I hereby wish to join the Environmental Law Network International.”

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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 as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.*

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

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

*elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.*

### **Coordinating Bureau**

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

### **elni Review**

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further 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 gather together scientists, policy makers and young researchers, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brus-

sels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

### **Publications series**

- 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. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

### **ElNi Website: elni.org**

On the elni website [www.elni.org](http://www.elni.org) one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.