elni REVIEW

ISSN 1618-2502

No1/2011

ENVIRONMENTAL
LAW NETWORK
INTERNATIONAL

RÉSEAU
INTERNATIONAL
DE DROIT DE
L'ENVIRONNEMENT

INTERNATIONALES
NETZWERK
UMWELTRECHT

elni REVIEW

CONTENTS

Editorial

The present issue of *elni Review* (1/2011) covers a variety of recent international environmental law issues alongside two country-specific contributions on EEE-waste regulation in Zanzibar, Tanzania and chemical substances legislation in China respectively. The key focus of the current edition of the journal, is *chemical substances regulation*.

Three articles approach this topic from different points of view:

First off, *Gareth Callegy* provides an overview of the legal impacts of the "Chinese REACH" legislation; an amendment to Chinese law which recently entered into force. By comparing the legal obligations arising from Regulation (EC) No. 1907/2006 (REACH) and the Chinese pendant, he points out inter alia the legal issues which European registrants will face when marketing chemical substances to the "Middle Kingdom."

Subsequently, *Julian Schenten* analyses the state of affairs as regards the regulation of Nanomaterials in the food sector. Focusing on Regulation (EC) No. 258/97 on Novel Food, he identifies the weaknesses in terms of health protection and points out necessary key features which reasonable regulation of such chemical substances should have.

The third article concentrating on chemicals is by *Vito Buonsante*; it creates a bridge between the REACH Regulation and access to documents claims. In this context the author examines the interaction and gaps in the REACH and Aarhus Convention systems as well as the role of the European Chemicals Agency (ECHA).

The other contributions cover a variety of up-to-date legal issues:

Head of Legal at Friends of the Earth England, Wales and Northern Ireland, *Gita Parihar*, shows the legal impacts of the Cancun UN climate negotiations which took place in December 2010. In doing so, she develops a line of reasoning which remains relevant beyond the Bangkok Climate talks in April 2011.

Asking in his title 'A human right to a clean and healthy environment in Europe: Dream or reality?', *Jan Van de Venis* provides an introduction to the development of a human right to a healthy environment on a global scale. He analyses the ways in which this human rights-based approach to environmental issues evolved, what tangible benefits such a right could bring, along with where it currently stands globally and, more specifically, in Europe under the European Convention on Human Rights.

The contribution that follows, *Tania Van Laer* examines whether EU law allows Member States to justify, on the basis of animal welfare, unilateral measures that impose trade restrictions. At the same time she considers the main principles of the free movement of goods as well as the established view of the Court of Justice.

The final article outlines the electronic waste situation in Zanzibar, Tanzania. In the absence of consumer protection provisions and specific environmental guidelines to regulate the import of these products or manage their safe disposal, the small island state is failing to implement the principles of the Basel Convention. Against this background *Aboud S. Jumbe* presents the current activities of the Department of Environment, Zanzibar, which is now in the advanced stages of preparing a legal document which contains a set of regulations on the import, handling, and disposal of used and waste electrical and electronics equipment.

Finally, the issue covers recent developments regarding the situation of access to justice in Ireland – the only EU country in which the parliament has not ratified the 1998 UNECE Aarhus Convention.

Contributions for the next issue of the elni Review are very welcome. Please send them to the editors by September 2011.

Julian Schenten/Gerhard Roller

May 2011

elni Forum 2011

24th May 2011
in Brussels, Belgium

"Access to Documents at European Level – Key issues and practical experiences"

Bondine Kloostra presents key issues on access to documents regarding environmental information, including a recent decision of the ECJ (Stichting Natuur en Milieu). Vito Buonsante and Ludwig Krämer will present their practical experiences in access to documents, including the access to documents held by the European Chemicals Agency (ECHA). Eva Kruzikova will provide the point of view of the EU Commission.

This event will be held at the EU Liaison Office of the German Research Organisations (KoWi), Rue du Trône 98, 1050 Brussels, 8th Floor.

For more information about participation, including registration forms, please visit http://www.elni.org/elni-events.0.html.

Waving or drowning? : The legal impacts of the Cancun climate negotiations

Gita Parihar

1 Introduction

Negotiators from all over the world gathered in the beach resort of Cancun in December 2010 in the hope of rescuing the international climate regime from the ignominy of the failures of the Conference in Copenhagen. Their mission has been widely lauded as a success- but was it?

This article examines the decisions taken in Cancun and considers their legal impacts.[1] Firstly, it considers the decision relating to the Kyoto Protocol and its implications. The second part considers the decision in the Long Term Cooperative Action (or LCA) track, which focuses on the "*full, effective and sustained*" implementation of the UN Framework Convention on Climate Change (UNFCCC). The discussion highlights the fact that many of the most contentious issues in the negotiations have been left for Durban[2]. After touching on the question of whether agreement was reached at all, the article concludes that moving all significant progress in the negotiations into the LCA track whilst failing to conclude a second commitment period of the Kyoto Protocol will result in a severe weakening of the international climate regime and must be resisted. It also highlights the large gap between the targets on the table and those demanded by science and equity as well as going on to consider the implications of this in practical terms.

The decisions taken in Cancun have been dubbed "*the Cancun agreement*". However, the 'agreement' makes no commitments in terms of a treaty text. As will be explained below, the likelihood of a second commitment period being agreed under the Kyoto Protocol remains in grave doubt, a matter which is of continuing concern to NGOs and developing countries. For its part, the LCA decision states: "*nothing in this decision shall prejudge prospects for, or the content of, a legally binding outcome*"[3]. Therefore, the decisions present a set of outcomes from Cancun, but leave open contentious issues relating to legal architecture for further consideration in the coming year.

2 Kyoto, dead or alive?

For the purposes of clarity, this article separates discussion of the outcomes in the LCA and KP working groups, or 'tracks'. However, as will be seen below, the distinction between the LCA and KP tracks is considerably blurred as a result of the way in which developed country emissions reduction targets are recorded.

It is this author's experience that the bulk of discussions on the outcome of the climate talks tend to focus on the outcome in the LCA track. That is no coincidence; much of the momentum in the negotiations centres around that track. However, the provisions for measuring, reporting and verification of commitments being proposed in the LCA track for developed countries are much weaker than those under the existing Kyoto regime. A failure to agree a second commitment period under the Kyoto Protocol will mean a wholesale move by all developed countries, including former Kyoto parties, to this weaker regime, radically undermining the existing framework.

The Kyoto Protocol sets an overall aggregate goal for developed countries with individual economy-wide targets for reduction of emission amounts relative to a common base year of 1990. This provides a framework for parties' emissions reductions to be dictated by science and compared against one another. The targets are binding at an international level and performance against them is subject to stringent monitoring and verification at the international level. Methods of listing gases and calculating their global warming potentials have been agreed under the protocol, along with an entire body of detailed rules relating to the functioning of the Convention. The protocol also has facilitative and compliance branches, with penalties for non-compliance.

The Kyoto Protocol was negotiated in recognition of Art. 3(1) of the UNFCCC, which requires developed countries to take the lead in combating climate change in accordance with the principle of common but differentiated responsibilities. Its detailed structure was clearly intended to provide a framework for Annex 1 emissions reductions far into the future[4] and has been negotiated and refined over many years. Of course, the Protocol has its flaws and could be improved, to allow for compliance review during commitment periods for example, or to remove or severely limit the ability of developed countries to use offset mechanisms in order to comply with targets. However, as is clear from the outcome in the LCA track, any new framework for developed country commitments in the current politi-

1 The author is Head of Legal at Friends of the Earth England, Wales & Northern Ireland. Friends of the Earth International has been attending the international climate negotiations since their inception and campaigns for a justice-focussed, fair and equitable international climate framework which meets the demands of science. The comments in this article represent the personal opinions of the author.

2 And perhaps beyond, the relationship between the climate negotiations and the Conference on Sustainable Development (Rio 2012 or Rio + 20) is yet to be defined.

3 First preambular paragraph, decision [-]1/CP16.

4 Art. 3(9) of the Protocol states "*Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this protocol*" and the rest of the Protocol is peppered with references to a "*first*" and "*subsequent*" commitment period - see for example Arts. 3(4), 3(7), 7(3), 7(4) and 2(10).

cal climate will lead to weaker and less stringent controls, rather than stronger ones.

The vast majority of developing countries and NGOs are advocates of a second commitment period of the Kyoto Protocol, with the EU a lukewarm advocate among developed countries. However, the prospect of a second commitment period under the Kyoto Protocol is under continued assault; in Cancun it was the turn of Japan to lead the attack. Japan stated in blanket terms that it would not agree to a second commitment period of the Kyoto Protocol, but only to a global agreement that included the US and China. Russia and Canada took a similar stance. This stand-off played a key part in the ambiguity of the Cancun outcome with respect to the future of Kyoto. It would appear that the idea of two separate regimes, recognising the different roles and responsibilities of developed and developing countries in contributing to climate change, is not palatable to some countries, despite the fact that these principles underpin the UNFCCC.

The political wrangling over Kyoto has bled through into the KP decision text[5] - a much smaller degree of emphasis is placed on the Kyoto Protocol than on the LCA decision. The targets referred to in the preamble lack ambition - the decision refers to IPPC conclusions that Annex 1 emissions need to be reduced to 25-45% below 1990 levels by 2020, but does not address the question of the risk this raises of continuing dangerous climate change, or of the need to deal with more recent scientific data[6]**.** At present, Art. 3(1) of the Kyoto Protocol contains an aggregate target for emissions reductions for parties. For the first commitment period of the Kyoto Protocol, this was the paltry figure of a 5% reduction from 1990 levels. The current decision text makes no reference to an aggregate target for the forthcoming commitment period.

Para. 3 of the Kyoto Protocol (KP) decision "*takes note of quantified economy-wide emissions reduction targets to be implemented by Annex 1 parties as communicated by them.*" These targets are described as being set out in 'document FCCC/SB/2010/INF.X'. A reference to exactly the same document is made when addressing targets under the LCA track (see further below). A footnote to the paragraph in the KP document states that the content of the table in the information document is shown "*without prejudice to the position of the parties or the right of Parties under Article 21, paragraph 7 of the Kyoto Protocol*"[7]. The footnote appears to have been a political compromise, extending a lifeline to Kyoto while putting off a final decision on its future. The document itself is described as an SB (or 'Subsidiary Body') document. As the Subsidiary Bodies serve both the Protocol and Convention, this conveniently dodges the question of whether targets for Kyoto parties will be part of a second commitment period of the Kyoto protocol, or form part of the more feeble system set out in the LCA track.

In the closing stages of the Cancun negotiations, the UNFCCC Secretariat clarified that, as at that time, the 'INF.X' document did not actually exist. This raises the question of which "*targets*" will find their way into the document. If (as many expect) it transpires that they are the Copenhagen Accord "*pledges*", then it is imperative to ensure that they are strengthened. UNEP has identified a 6-9 gigatonne gap between these pledges and the emissions reductions required to stay below 2 degrees[8]. As a result, rather than being targets in real terms, the pledges must be treated as a very deep basement from which parties must build towards adequate targets, rather than any kind of aspirational ceiling.

In contrast to the LCA decision text, there is no reference in the KP decision to holding workshops enabling parties to increase their levels of ambition, parties are simply urged to raise the level of ambition of the targets to be achieved by them[9]. This creates a strong inference that the LCA discussions are where the real thrust of negotiations on targets will take place, with such targets, at best, being transferred into targets for the second commitment period of the Kyoto Protocol if a second commitment period is agreed.

Additionally, the draft 'Chair's text' for discussion in the following year contains an option that would require changes to targets or greenhouse gases listed in Annexes A and B to the Convention to be adopted by consensus, removing the current option for a ¾ majority vote currently contained in the protocol and therefore making it harder for targets and additions to the list of greenhouse gases to be adopted.[10]

The KP decision confirms the mandate of the working group to "*complete its work [...] and have its results adopted [...] as early as possible and in time to ensure that there is no gap between the first and second commitment periods.*" Whilst at first sight this would appear to be a much stronger endorsement of legal form in the KP track than in the LCA track (unsurprising as the work of the AWG-KP relates to an existing treaty) it is worth bearing in mind that this mandate, first adopted in Montreal in 2005, has not yet resulted in a concrete commitment to adopt a second commit-

5 FCCC/KP/AWG/2010/L.8/Add.1.

6 See in this regard "*Reckless gamblers, how politicians' inaction is ramping up the risk of dangerous climate change*", A report for policy makers by Friends of the Earth England, Wales & Northern Ireland http://www.foe.co.uk/resource/reports/reckless_gamblers.pdf.

7 This paragraph relates to amendments to emissions reductions targets and greenhouse gases.

8 http://www.unep.org/publications/ebooks/emissionsgapreport.

9 Para. 4.

10 See EE Art. 21, Revised proposal by the Chair FCCC/KP/AWG/2010/18/Add.1.

ment period[11]. At least 143 instruments of acceptance need to be adopted before any amendment concerning a second commitment period comes into force and with less than two years to go until the first commitment period ends on 31 December 2012, time is running out[12].

In sum, the KP decision leaves open the possibility of a second commitment period to the Kyoto Protocol, but without any great conviction. Crucial to the likelihood of the second commitment period being agreed in practice will be the level of pressure placed on developed countries to stay within the Protocol and the attitude of developing countries in the coming year. Up until now they have made continuation of the second commitment period a central plank of their negotiating 'asks'. Country positions in relation to the protocol should become clear at the first intersessional meeting of the year which takes place on 3-8 April 2011 in Bangkok.

3 The LCA track: a road to where?

The decision in the LCA track[13] (LCA decision) extends the mandate of the LCA working group (AWG-LCA) for a further year. Cancun saw the expression of a wide range of debate about the appropriate form of the outcome of the LCA negotiations. The end decision leaves the question open, with nothing tying its answer to COP 16 in Durban. However, the matter is likely to be the subject of continued debate in the course of this year. The decision also records the understanding that not all aspects of the work of the AWG-LCA are concluded.

In contrast to the lack of reference to an aggregate target in the KP decision, para. 1 of the LCA decision refers to a global goal, though this goal is not defined. Para. 4 of the shared vision "*recognises*" that deep cuts are required in order to hold the temperature increase below 2 degrees Celsius above pre-industrial levels. Para. 138 and 139 subject this 2 degree target to review from 2013-2015, including with reference to whether the target should be increased to 1.5 degrees. The origins of these provisions can be clearly located in the Copenhagen Accord, which was 'noted' at COP 15 in Copenhagen, but not formally adopted.

Para. 5 and 6 of the decision contain references to a global goal for 2050 and a time frame for peaking of global emissions. These are weak: parties agree to "*work towards*" and "*cooperate in achieving*" these goals, both of which will be considered again in Durban. There is no goal set for atmospheric stabilisation of greenhouse gases, nor any reference to the concept of shared atmospheric space advanced by Bolivia and supported by many developing countries.

Para. 36 of the LCA decision contains an identical provision to that in the KP text, referring to developed country targets being contained in document FCCC/SB/2010.INF.X. Likewise, para. 37, with its reference to reduction targets in the range of 25-40%, mirrors provisions under the Kyoto Protocol. However, unlike the provisions in the KP decision, the LCA decision contains references to workshops to, among other things, "*clarify the assumptions and the conditions related to the attainment of these targets […] and options and ways to increase their level of ambition*."

Para. 40 onwards of the decision deal with reporting and review requirements for developed country parties. They refer to enhanced reporting in Annex 1 national communications on mitigation targets and on the provision of financial, technical and capacity-building support to developing country parties, annual greenhouse gas inventories and inventory reports and biennial reports on progress in achieving emissions reductions and provision of support to developing country parties. There are also enhanced guidelines for submission and review of information.

Para. 44 sets out a process for international assessment of emissions removals under the SBI "*taking into account national circumstances, in a rigorous, robust and transparent manner, with a view to promoting comparability and building confidence*." There is no mention or acknowledgement of the rules and procedures set out under the Kyoto Protocol, which are designed to ensure comparability, or how this process would interact with the obligations on parties under that protocol. It is unclear why confidence-building is needed, given that, with one exception, developed countries are already subject to a legally binding framework for emissions reductions. Para. 45 deals with low–carbon development strategies or plans and para. 46 and 47 consider a work programme "*for the development of modalities described above, building on existing reporting and review guidelines, processes and experiences*." Again, there is no reference to the existence of the Kyoto Protocol and its processes and no guarantee that these are what is being alluded to, nor any reference to compliance. Instead these paragraphs points to a much weaker monitoring regime than that in Kyoto.

A key uncertainty here relates to which developed countries these provisions will apply. At present all Annex I parties other than the US are members of the Kyoto Protocol. The 'monitoring-lite' provisions in the LCA, if intended to refer solely to the US, could be regarded as an acceptable form of compromise.

11 See also L. Rajamani, *From Berlin to Bali and Beyond: killing Kyoto softly?* ICLQ 57 pp. 909-939, foreshadowing the demise of the protocol following the agreement of the Bali Action Plan.

12 It is worth noting that measures such as provision application are being considered to address any gap between commitment periods, see Legal Considerations relating to a possible gap between the first and subsequent commitment periods http://maindb.unfccc.int/library/view_pdf.pl?url=http://unfccc.int/resource/docs/2010/awg13/eng/10.pdf.

13 FCCC/AWGLCA/2010/L.7.

Republican gains in the recent elections have lead to a general lack of expectation that the United States will be able to increase its pledges on greenhouse gas reductions, or be part of a more binding system of monitoring. However, it would be big step backwards for the international environmental legal order if other Annex I countries were to regress to such a system after years of being subject to the Kyoto regime.

In contrast, the LCA decision text shows real movement on developing countries actions and monitoring. Para. 49 takes note of such developing country actions as are contained in a yet-to-be issued document known as 'FCCC/AWLCA/2010/INF.Y' Developing countries that wish to voluntarily inform the COP of their intention to implement NAMAs, or 'nationally appropriate mitigation actions' are invited to submit information on those activities to the secretariat. Para. 52 requires developed countries to provide enhanced financial, technological support needed for implementation of these actions. There are provisions for workshops relating to these actions. Developing countries are invited to submit to the Secretariat information on nationally appropriate mitigation actions[14] for which they are seeking support, with developed country parties submitting information on support available. A registry will be set up to record such information.

Developing countries are now subject to much enhanced reporting requirements, with national communications every 4 years, biennial update reports that will be subject to international consultation and analysis, international measuring, reporting and verification for internationally supported actions and domestic MRV for domestically supported actions[15]. Again, this is a significant shift, especially when one considers that the provisions of the Copenhagen Accord provided for emerging economies to monitor their efforts and report results to the UN every two years whilst recognising the need "*to ensure that national sovereignty is respected*." Para. 65 encourages developing countries to prepare Low Carbon Development Strategies.

The above provisions narrow the distinction between developed and developing countries under the LCA track, indeed a provision has been inserted specifically into the LCA decision to clarify that the content and frequency of national communications from non-Annex 1 parties will not be more onerous than that for Annex 1 parties[16].

This close textual analysis of the provisions of the agreement underscores the power play that took place during the negotiations. On the one hand developing countries showed a willingness to move forwards, accepting the need to take action and increased monitoring, reporting and verification requirements in the LCA track. On the other, Annex I parties refused to make any commitment to maintain the legal framework which applies to all but one of them in the KP track, choosing instead to adopt much weaker language in the LCA than that which governs their existing commitments.

3.1 A new international climate governance structure

Notably, the LCA decision takes significant steps towards setting up a new international climate infrastructure. This includes a number of new frameworks and mechanisms such as an adaptation committee, a green climate fund, a technology mechanism and a 'spillover mechanism'[17]. An adaptation framework is instituted to enhance adaptation actions by all countries, including an adaptation committee to provide technical support to parties, facilitate sharing of information and best practices and advise the COP on adaptation-related matters. A work programme is set up to consider approaches to address loss and damage associated with climate change (previous references in draft text to a loss and damage mechanism have been removed). Work to operationalise these structures will begin in the course of this year.

3.2 Human rights

The preamble to the LCA text now includes a specific reference to UN Human Rights Council resolution 10/4 which recognises the particular impact of climate change on the human rights of those already vulnerable due to geography, gender, age, indigenous or minority status or disability. However, resolution 10/4 makes reference to specific rights that are impacted, such as the right to life, food and health, which are not repeated in the Cancun decision. Para. 8 of the shared vision text states that parties "*should*" (rather than the stronger 'shall') in all climate change-related actions, fully respect human rights. The adaptation section contains language on climate displacement[18], but is very weak, merely asking parties "*to enhance understanding, coordination and cooperation*" on "*measures to address climate-induced displacement at national, regional and international levels.*"

While it is welcome to see specific references to human rights in the text, the references are limited and must be be implemented[19]. At minimum, specific policies and proposals adopted under the LCA track, including those adopted under the new mechanisms

14 Aimed at achieving a deviation in emissions relative to 'business as usual' emissions in 2020.

15 Para. 60-67.

16 Para. 60(b).

17 Or mechanism to address the indirect consequences of proposals to address climate change.

18 Para. 14(f).

19 See the proposals of the human rights and climate change working group, (a grouping of lawyers from organisations including CIEL, Earthjustice, Friends of the Earth and Nord-Sud XXI) on how rights could be incorporated into the text.

should ensure respect for human rights obligations. This requires respect for the procedural rights necessary to uphold such obligations, namely rights of information, participation and access to justice[20].

4 Consensus: were the Cancun agreements actually agreed?

In the closing hours of Cancun, there was an added twist to the tale. Against a background of ringing endorsements of the decisions by other countries, Bolivia roundly rejected both the KP and LCA Cancun decision documents in the closing plenaries[21]. However, the decision was still adopted 'by consensus' by the Chair of the Conference of Parties/Meeting of Parties. To fully explore the meaning and nature of consensus would require an article of its own, but a useful analysis of its advantages and pitfalls is contained in an article from over 30 years ago concerning UNCLOS[22]. This points out that consensus is used when the nature of issues at stake is such that states could only reap maximum advantage in the context of an internationally agreed regime, noting "*consensus does not imply unanimity, but a very considerable convergence of opinions and the absence of any delegations in strong disagreement, however few in number*." It is hard to see how the very strong and clear dissent by Bolivia meets this criteria[23]. The consequences of this series of events for future negotiations under the international climate framework remain to be seen.

5 Conclusion

Any triumphant announcements on the conclusion of a future global climate agreement in a year or so would do well to include an assessment of what has been gained and what has been lost in the attempt to arrive at a 'balanced' result. If the balance is achieved by developing countries moving forward (as they have under the LCA) while developed countries fall back and abandon Kyoto, this is not only contrary to the principle of equity and common but differentiated responsibility that underpin the climate regime, but also stifles the momentum needed to make real progress in addressing climate change.

The advances made under the Kyoto Protocol have been modest, but its monitoring structures have much potential, if adequately stringent targets can be agreed. It is clear from the above analysis that what is being proposed for developed country targets under the LCA track will not 'build upon' Kyoto at all but instead be a pale shadow of it. It would be a sad day for the international legal order if the Kyoto Protocol, once regarded as a state-of-the-art treaty that would usher in a new, enlightened age of environmental governance, were fall by the wayside at exactly the time when the science is pointing to the need for more rigour, not less. Soon, vital decisions will have to be made as to whether the Protocol's provisions are to be weakened, unpicked in order for certain provisions to be salvaged for the LCA track, or sidelined entirely. These decisions will determine the stringency of the international commitments for developed country parties (other than the United States) for the foreseeable future. It is vital that in the coming months, developing countries (who for their part showed a real willingness to move forward in Cancun)[24], NGOs and the interested public continue to put pressure on developed countries to agree a second commitment period to the Kyoto Protocol.

Aside from structural concerns, the Cancun outcome is highly worrying, both in terms of both equity and science. As set out above, UNEP has assessed the pledged targets to be 5-9 gigatonnes short of what is necessary to prevent a 2 degree rise in temperature, a goal which many regard as insufficient in any case. The equity gap between responsibility for climate change and the need to make emissions will only increase over time, the longer it takes to agree reductions, the deeper the cuts will have to be and the less just the overall outcome.[25]

At this stage, it is highly unlikely that the climate negotiations will provide a comprehensive framework to regulate carbon emissions within the timeframes demanded by science. Even if developed countries (bar the US) take on adequate reduction commitments under the Kyoto Protocol and provide appropriate finance and technology to ensure that developing countries can also take action to deviate from their baseline emissions, there are still sectors (such as international maritime transport and aviation) and gases that are not regulated. If we are genuinely to prevent large-scale climate related devastation, it is

20 These rights are set out in Principle 10 of the Rio declaration and have been developed in the Aarhus Convention. The LCA text recognises the importance of ensuring the participation of stakeholders at para. 7, but does not specify how this is to be ensured, nor does it refer to these rights.

21 See "*Why Bolivia stood alone in opposing the Cancun climate agreement*" by Pablo Solon, The Guardian, Tuesday 21 December 2010 http://www.guardian.co.uk/environment/cif-green/2010/dec/21/bolivia-oppose-cancun-climate-agreement.

22 B. Buzan, *Negotiating by Consensus: Developments in Technique at the United Nations Conference on the Law of the Sea*, American Journal of International Law, Vol 75 No 2 (Apr 1981) pp. 324-348.

23 The article identifies a major difficulty of the consensus procedure as being the slowness of the outcome. However, as it points out, this concern only has substance if there is some faster way of proceeding. It is hard to identify any faster method in the climate negotiations, where the need for an internationally agreed regime is paramount. Of course, as highlighted by Bolivia, there is also an urgent need to make cuts of the level demanded by science, posing grave difficulties if the cuts agreed by countries are too low.

24 Many developing countries are taking concrete steps to meet this challenge, see for example http://www.theclimategroup.org/our-news/news/2011/3/7/new-report-china-charts-clean-industrial-revolution-to-power-its-new-economy/ re China's carbon reduction intensity target in its new five year plan.

25 D. A Brown, *An Ethical Analysis of the Cancun Climate Negotations Outcome*, http://rockblogs.psu.edu/climate/2010/12/an-ethical-analysis-of-the-cancun-climate-negotiations-outcome.html.

time to consider what options exist for regulation of actors outside the process (such as transnational corporations) and how to accelerate progress on emissions reduction at the national level. In developed countries in particular, this will require a fundamental shift in lifestyle and consumption patterns that cannot be engineered at the international level. Nevertheless, there is no substitute for ensuring that the international framework to regulate greenhouse gas emissions is as ambitious, equitable, comprehensive, and stringent as possible. The success of negotiations over the coming year or so will indicate whether this challenge has been met.

Imprint

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

We invite authors to submit manuscripts to the Editors as files by email 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.

If you join the Environmental Law Network International (for details see next page), the PDF-version of the biannual elni Review is included. If you want to receive the print version of the elni Review the fee is € 52 per year (consultants, law firms, government administration) and € 21 per year for private users and libraries.

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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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 NASSDE55.

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

Name:_____

Organisation:_____

Profession:_____

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Date:_____

Öko-Institut e.V.
Institut für angewandte Ökologie
Institute for Applied Ecology

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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I·E·S·A·R
Institute for Environmental Studies and Applied Research
FH Bingen

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 develop-ing 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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sofia

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 conversation
- 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 Na-ture 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. 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

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. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review 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).

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

Publications series

elni publishes a series of books entitled "Publications of the Environmental Law Network International". Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

elni Board of Directors

- Martin Führ - Society for Institutional Analysis (sofia), Darmstadt, Germany;
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