



INSTITUTE FOR ENVIRONMENTAL SECURITY

Study on  
**The Hague Espace  
for Environmental  
Global Governance**



**Wybe Th. Douma | Leonardo Massai | Serge Bronkhorst | Wouter J. Veening**

**Volume Two - Annexes**

**May 2009**



**STUDY ON  
THE HAGUE SPACE FOR  
ENVIRONMENTAL GLOBAL GOVERNANCE**

**VOLUME TWO - ANNEXES**



T.M.C. ASSER INSTITUUT

**May 2009**

## **Study on The Hague Space for Environmental Global Governance**

Volume Two - Annexes

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## Judicial

### 1. International Court of Justice (ICJ)

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations and sits in The Hague since 1946. The ICJ is located in the Peace Palace and acts as a world court, having replaced the Permanent Court of International Justice. It has a dual role: settling the legal disputes submitted to it by states in accordance with international law and providing advisory opinions on legal questions referred to it by duly authorized international organs and agencies.<sup>1</sup> It was set up in 1945 under the Charter of the United Nations in order to be the principal judicial organ of the Organization, and its basic instrument, the Statute of the Court, forms an integral part of the Charter.

Only state parties of the United Nations may apply to and appear before the ICJ. The Court is competent to entertain a dispute only if the states concerned have accepted its jurisdiction in one or more of the following ways:

- (1) by the conclusion between states of a mutual agreement to submit the dispute to the Court;
- (2) by virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of the parties may refer the dispute to the Court (such a clause is contained into several international treaties or conventions);
- (3) through the reciprocal effect of declarations whereby each Party has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another state having made a similar declaration. The declarations of 66 States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute.

In cases of doubt as to whether the Court has jurisdiction on a specific case, the decision will be taken by the Court itself.

The Court discharges its duties as a full court but, at the request of the parties, it may also establish a special chamber. In application of article 26, paragraph 1, of its Statute the Court is authorized “*to form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications*”. In 1993, the ICJ has established a seven-member Chamber for Environmental Matters (the “Chamber”).<sup>2</sup> The Chamber reflected the Court’s desire to demonstrate the particular interest that it attaches to environmental issues.<sup>3</sup> The Chamber was periodically reconstituted until 2006. In the Chamber’s thirteen years of existence, no cases were brought before it. Therefore, in 2006 it was decided not to hold elections

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<sup>1</sup> See: <http://www.icj-cij.org/icjwww/igeneralinformation/icjgnnot.html>.

<sup>2</sup> “In the Chamber’s 13 years of existence, however, no State ever requested that a case be dealt with by it. The Court consequently decided in 2006 not to hold elections for a Bench for the said Chamber.” Source: [www.icj-cij.org](http://www.icj-cij.org)

<sup>3</sup> See the ICJ Press Release 2005/10, of 22 April 2005, at: [http://www.icj-cij.org/icjwww/ipresscom/ipress2005/ipresscom2005-10\\_20050422.htm](http://www.icj-cij.org/icjwww/ipresscom/ipress2005/ipresscom2005-10_20050422.htm).

for a Bench for the Chamber. Even if the Chamber was never seized for an environmental dispute, the Court itself has dealt with cases on environmental protection, including various nuclear test cases (New Zealand vs. France, and Australia vs. France), as well as the Case concerning the Gabčíkovo-Nagymaros Project (Hungary/Slovakia). At the start of 2009, several cases are pending before it with an environmental component (notably Argentina v. Uruguay and Ecuador v. Colombia).

A few cases containing an environment component are summarized below.

*\* Nuclear Tests (Australia v. France)*

ICJ Judgment 20 December 1974

The International Court of Justice has brought to an end the proceedings instituted against France by Australia on account of French nuclear tests carried out at Mururoa, a French possession in the Pacific. In this judgement, the Court finds that the Australian claim 'no longer has any object' and 'is therefore not called upon to give a decision thereon'.

*\* Nuclear Tests (New Zealand v. France)*

ICJ Judgment 20 December 1974

Although the case was not joint to the previous one, it was decided on the same day with the identical outcome.

*\* Case concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*

ICJ Judgement 25 September 1997

In 1977 Hungary and Czechoslovakia concluded in Budapest a Treaty "concerning the construction and operation of the Gabčíkovo-Nagymaros System of Locks". The treaty provided for the construction of a major hydroelectric dam project on the Danube as a "joint investment", aimed at the production of hydroelectricity, the improvement of navigation on the relevant section of the Danube and the protection of the areas along the banks against flooding. The contracting parties were on equal footing in respect of the financing, construction and operation of the works. The Court was asked to determine whether Hungary was entitled to suspend and subsequently abandon its part of the Project; whether the then Czech and Slovak Federal Republic was entitled to proceed with a "provisional solution" involving damming the river at another location; and which were the legal effects of the notification by Hungary in 1992 of the termination of the Treaty. The Court found that both Hungary and Slovakia had breached their legal obligations. Hungary was not entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros - Gabčíkovo Project. Czechoslovakia was entitled to proceed, in November 1991, to the "provisional solution" as described in the terms of the Special Agreement but was not entitled to put it into operation, from October 1992. The Court called on both states to negotiate in good faith and take all necessary measures in order to ensure the achievement of the objectives of the 1977 Budapest Treaty. The Court found that unless Parties would have agreed otherwise, Hungary had to compensate Slovakia for the damage sustained by Czechoslovakia on account of the suspension and abandonment of works for which it was responsible by Hungary. Furthermore, Slovakia had to compensate Hungary for the damage it had sustained on account of putting into operation of the "provisional solution" by Czechoslovakia and its maintenance in service by Slovakia.

*\* Fisheries Jurisdiction case (Spain v. Canada)*

ICJ Judgement 4 December 1998

On 28 March 1995, the Kingdom of Spain filed in the Registry of the Court an Application instituting proceedings against Canada in respect of a dispute relating to the amendment, on 12 May 1994, of the Canadian Coastal Fisheries Protection Act, and the subsequent amendments to the regulations implementing that Act, as well as to specific actions taken on the basis of the amended Act and its regulations, including the pursuit, boarding and seizure on the high seas, on 9 March 1995, of a fishing vessel - the *Estai* - flying the Spanish flag. The Court found that "the essence of the dispute" is "whether" [the acts of Canada on the high seas in relation to the pursuit, the arrest and the detention of the ship on the basis of certain enactments and regulations adopted by Canada] violated Spain's rights under international law and require reparation". The Court must further establish whether the reservation contained in Canada's declaration applies or not to the dispute as thus characterized. The Court also found that the issue of the lawfulness of the Canadian acts, on which Spain insists, is an issue concerning the merits which has no relevance for the interpretation of Canada's declaration and the consequent decision on the Court's jurisdiction. The Court found that it has no jurisdiction to adjudicate upon the dispute brought before it by the Application filed by Spain.

*\* Aerial Herbicide Spraying (Ecuador v. Colombia), pending*

On 31 March 2008 Ecuador submitted its application instituting proceedings against Colombia in respect of a dispute concerning the alleged "aerial spraying [by Colombia] of toxic herbicides at locations near, at and across its border with Ecuador." In its Application Ecuador stated that "the spraying has already caused serious damage to people, to crops, to animals, and to the natural environment on the Ecuadorian side of the frontier, and poses a grave risk of further damage over time". It further contended that it has made "repeated and sustained efforts to negotiate an end to the fumigations" but that "these negotiations have proved unsuccessful". Ecuador requested the Court "to adjudge and declare that: Colombia had violated its obligations under international law by causing or allowing the deposit on the territory of Ecuador of toxic herbicides that have caused damage to human health, property and the environment and requested Colombia to indemnify Ecuador for any loss or damage caused by this conduct. By an Order of 30 May 2008, the Court fixed 29 April 2009 as the time-limit for the filing of a Memorial by Ecuador and 29 March 2010 as the time-limit for the filing of a Counter-Memorial by Colombia.

*\* Pulp Mills on the River Uruguay case*

On 4 April 2008 Uruguay initiated proceedings against Argentina claiming that the state had unilaterally authorized the construction of a pulp mill near the town of Fray Bentos, without complying with the obligatory prior notification and consultation procedure. Furthermore, that Argentina aggravated the problem by authorizing the construction of a second pulp mill and an additional port. In the view of Uruguay these construction works cause serious environmental harm to the River Uruguay and to the about 300.000 inhabitants who live in the proximity of the river. At the moment of writing the proceedings are still on-going. On 17 September 2007 the Court authorized the submission of a reply by Argentina and a rejoinder by Uruguay and fixed time limits for the filing of pleadings.



*It must be noted that the ICJ enjoys a unique position not only as an International Court, but also due to its location in the Peace Palace in The Hague, a city with which it is essentially bound to.*

*During the interview with the ICJ representative, the idea of establishing a legal facility in The Hague with a focus on IEL was discussed. This could provide lectures on IEL, including for instance the jurisprudence and cases of the ICJ in this area. The legal facility could also investigate why the environmental chamber of the ICJ did not function as expected. It would be also interesting to look at which MEAs refer to the ICJ as a dispute settlement mechanism. The Court could not contribute directly to the legal facility since in some cases there may be a conflict of interest but the legal facility could invite parties or experts who have cases in the ICJ to hold seminars or lectures once they are in The Hague. One difficulty is to get parties (states) of a case meet and talk with each other. One big problem in potential climate change litigations is the question of causation and standing. The idea of having a green page of the Hague Justice Portal was discussed. Expertise in IEL was discussed as a valuable asset.*

## 2. International Criminal Court (ICC)

At the first Hague Peace Conference of 1899 a first call for adjudication of war crimes was heard, and the concept of an International Criminal Court (ICC) was developed for the first time. The development of the ICC followed the creation of several ad hoc tribunals to try war crimes in the former Yugoslavia and Rwanda (International Criminal Tribunal for the Former Yugoslavia in 1993, seated in The Hague, and International Criminal Tribunal for Rwanda in 1994, seated in Arusha, Tanzania).

The U.N. General Assembly called the “United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court” in Italy, where the Rome Statute of the International Criminal Court was adopted on 17 July 1998. Almost all states participating voted in favour of the statute; only the United States, Israel, People's Republic of China, Iraq, Qatar, Libya and Yemen voted against. The ICC was established in 2002 as a permanent tribunal to prosecute individuals for genocide, crimes against humanity, and war crimes, as defined by several international agreements, and most prominently the Rome Statute of the International Criminal Court. The ICC is designed to complement existing national judicial systems in the field of criminal law. However, the Court can only exercise its jurisdiction if national courts are unwilling or unable to investigate or prosecute such crimes, thus being a "court of last resort," leaving the primary responsibility to exercise jurisdiction over alleged criminals to individual states.

The ICC is the first ever permanent, treaty based, international criminal court established to promote the rule of law and to ensure that the gravest international crimes do not remain unpunished.<sup>4</sup>

Although the Court is primarily of criminal law nature, the notion of environmental crime becomes broader and broader to coincide with some crimes against humanity, including war crimes. Article 8 of the Rome Statute of the ICC concerning war crimes<sup>5</sup> indicates that the Court shall have jurisdiction in respect of war crimes, in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes (paragraph 1). For the purpose of the Statute, “war crimes” mean: i) grave breaches of the Geneva Conventions of 12 August 1949, and ii) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, including “*intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated*” [article 8(2)(b)(iv)].

The ICC clearly defines the elements of the crime specified in Article 8(2)(b)(iv), that is war crime of excessive incidental death, injury, or damage in these terms:

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<sup>4</sup> See: <http://www.icc-cpi.int/about/ataglance/history.html>.

<sup>5</sup> See the text of the Convention at: [http://www.un.org/law/icc/statute/english/rome\\_statute\(e\).pdf](http://www.un.org/law/icc/statute/english/rome_statute(e).pdf).

1. The perpetrator launched an attack.
2. The attack was such that it would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
3. The perpetrator knew that the attack would cause incidental death or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment and that such death, injury or damage would be of such an extent as to be clearly excessive in relation to the concrete and direct overall military advantage anticipated.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

#### *Cases before the International Criminal Court*

The Chief Prosecutor of the court, Luis Moreno-Ocampo, has decided to open an investigation into three matters, after rigorous analysis in accordance with the Rome Statute and the Rules of Procedure and Evidence:

- *Uganda and the Lord's Resistance Army*, which was referred to the court on 29 January 2004 by the Republic of Uganda, a state party of the court. On 6 October 2005 the court issued its first public arrest warrants for the Lord's Resistance Army leader Joseph Kony, his deputy Vincent Otti, and LRA commanders Raska Lukwiya, Okot Odiambo and Dominic Ongwen.
- *The situation in Ituri*, Democratic Republic of Congo, which was referred to the court by the Democratic Republic of the Congo on 19 April 2004. On 17 March 2006 Thomas Lubanga, former leader of the Union of Congolese Patriots militia in Ituri, became the first person to be arrested under a warrant issued by the court;
- *The situation in Darfur*, Sudan, which was referred to the court in March 2005 by the United Nations Security Council.

#### Structure and powers

The International Criminal Court is composed of the Court itself, divided into a number of chambers (Pre-Trial, Trial and Appellate), the Registry, the Office of the Prosecutor and the Assembly of State Parties.

The initial impetus for its establishment came from within the United Nations. Although it is legally a separate entity established by a separate treaty between states, the UN has a clearly defined role towards the court. The court's relationship with the United Nations is governed by a Relationship Agreement between the Court and the United Nations, which mainly provides for Security Council referrals under the Rome Statute, and for United Nations assistance in payment for any prosecutions made under such a referral.

Countries ratifying the treaty establishing the ICC grant to this Court the authority to trial their citizens for war crimes, crimes against humanity and genocide. The treaty provides for ICC jurisdiction over-state party or on the territory of a non-state party where that non-state party has entered into an agreement with the court providing for it to have such jurisdiction in a particular case (consent).

Many states wanted to add "aggression," "terrorism" as well as "drug trafficking" to the list of crimes covered by the Rome Statute; however other states opposed this, on the grounds that these crimes were difficult to define, and that dealing with less serious crimes such as terrorism and drug trafficking would distract from the seriousness of the crimes the ICC was established to deal with. As a compromise, the treaty merely brands "aggression" as a crime without providing a definition, pending adoption of an amendment to the Statute. It may also be amended to include other crimes, including the *environmental terrorism* and other breaches to international environmental law. However, no amendments can be made to the Rome Statute until seven years after the Statute became legally binding. The review conference on the Rome Statute to be held in 2009 will decide on further amendments.

*The Hague location gives the ICC the unique opportunity to enjoy the benefits of sharing the seat city with other major international legal institutions, such as the International Court of Justice, Permanent Court of Arbitration, International Tribunal for the Former Yugoslavia and others.*

### 3. Permanent Court of Arbitration (PCA)<sup>6</sup>

The Permanent Court of Arbitration (PCA), also known as the Hague Tribunal, is an international organization based in The Hague in the Netherlands. It was established in 1899 as one of the acts of the first Hague Peace Conference, which makes it the oldest institution for international dispute resolution. In 2002, 96 countries were party to the treaty. The Court deals with cases submitted by and with the consent of the parties involved and handles cases between countries and between countries and private parties.

The PCA was established by the Convention for the Pacific Settlement of International Disputes, concluded in The Hague in 1899 and 1907 during the first and second Peace Conference. The most concrete achievement of the Conferences was the establishment of the PCA: the first global mechanism for the settlement of inter-state disputes.<sup>7</sup> The PCA headquarters are located in The Hague while regional offices have been established in Costa Rica, South Africa and Singapore on the basis of Host Country Agreements which are designed in order to facilitate arbitration in those countries by providing diplomatic immunities and other facilitations to the PCA staff.

The PCA is now perfectly situated at the juncture between public and private international law to meet the rapidly evolving dispute resolution needs of the international community. Under its own modern rules of procedure, the PCA administers arbitration, conciliation and fact finding in disputes involving various combinations of states, private parties and intergovernmental organizations. Not only do states more frequently seek recourse to the PCA,<sup>8</sup> but international commercial arbitration can also be conducted under PCA auspices.<sup>8</sup>

Taking into account the growing importance of environmental affairs in the modern world, the PCA has established a very elaborated Environmental Dispute Resolution mechanism, by adopting several Optional Rules to this effect: i) the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (approved June 19th, 2001 by the Administrative Council)<sup>9</sup>; ii) (approved April 16th, 2002 by the Administrative Council)<sup>10</sup>; iii) the Members of the Panel of Scientific Experts Established Pursuant to the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (Art. 27.5)<sup>11</sup>; and iv) the Members of the Panel of Arbitrators Established Pursuant to the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment (Art. 8.3)<sup>12</sup>. Although the founding documents of the PCA did not include any reference to the protection of the environment, since the establishment of the PCA Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment in 2001 the

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<sup>6</sup> Interview with Dane Ratliff, Legal Counsel on 10 April 2008.

<sup>7</sup> The 1899 Convention was revised at the second Hague Peace Conference in 1907. See: <http://www.pca-cpa.org/ENGLISH/GI/>.

<sup>8</sup> <http://www.pca-cpa.org/ENGLISH/GI/#Main%20Activities>.

<sup>9</sup> See: <http://www.pca-cpa.org/ENGLISH/BD/BDEN/ENVIRONMENTAL.pdf>

<sup>10</sup> See: <http://www.pca-cpa.org/ENGLISH/BD/BDEN/ENVIRONMENTAL.pdf>

<sup>11</sup> See: <http://www.pca-cpa.org/PDF/Sci%20Exp.pdf>.

<sup>12</sup> See: <http://www.pca-cpa.org/PDF/Env%20Arbs.pdf>.

administrative council of the PCA is constantly promoting the activities of the PCA in this field. The PCA does not have a specific department on international environmental law, but has one legal counsel dedicated to this topic, who is supported by other staff lawyers and interns.

The main activity of the PCA in the field of international environmental law is the promotion of international arbitration as dispute settlement mechanism for international environmental matters. The PCA is also very active in the development of international environmental law since it is participating in many negotiations for MEAs as well as it has convened in 2006 together with UNEP an Advisory Group to consider recent developments, including the work of PCA, in the field of dispute avoidance and settlement concerning environmental issues. The PCA is offering arbitration as a tool for compliance with international environmental law and it is not an enforcing body, although the cases arbitrated by the PCA in the Tribunal set under Annex VII of the UNCLOS could be considered as enforcement. In this field, the PCA is acting, or has acted, as registry in four of those cases. The cases arbitrated under the auspices of the PCA are the following:

- [Ireland v. United Kingdom](#) (“MOX Plant Case”), which was instituted in November 2001 and terminated on 6 June 2008 after the withdrawal by Ireland of its claim against the United Kingdom;
- [Malaysia v. Singapore](#), which was instituted in July 2003 and terminated by an award on agreed terms rendered on September 1, 2005;
- [Barbados v. Trinidad and Tobago](#), which was instituted in February 2004 and decided by a final award rendered on April 11, 2006; and
- [Guyana v. Suriname](#), which was instituted in February 2004 and decided by a final award rendered on September 17, 2007.

The Optional Rules seek to address the principal lacunae in environmental dispute resolution identified by the working group. According to the Optional Rules for Conciliation of Disputes Relating to Natural Resources and/or the Environment (Art. 1, Scope of Application), *‘These Rules apply to conciliation of disputes relating to natural resources and/or the environment. For the purposes of these Rules, ‘conciliation’ means a process whereby parties request a third person, or a panel of persons, to assist them in their attempt to reach an amicable settlement of their dispute relating to natural resources and/or the environment. The characterization of the dispute as relating to the environment or natural resources is not necessary for application of these Rules, where all the parties have agreed to settle a specific dispute under these Rules.* The PCA is presently active drafting environmentally related dispute settlement clauses at negotiations being facilitated by several United Nations convention secretariats. The United Nations Economic Commission for Europe for example, has approved a reference to the PCA Environmental Arbitration Rules in its draft “Legally Binding Instrument on Civil Liability under the 1992 Watercourses and TEIA Conventions”<sup>13</sup>. Furthermore, the PCA participated in several international negotiations at the Conferences of the Parties of MEAs, among others the United Nations Convention on Biodiversity (UNCBD) and the Intergovernmental Committee for the Biosafety Protocol, as well as the United Nations Framework Convention on Climate Change (UNFCCC). The PCA is also involved in drafting

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<sup>13</sup> See: <http://www.unece.org/env/civil-liability/meetings-working-group.html>

dispute resolution clauses for placement in Emissions Trading Contracts, and references to the PCA Secretary-General as appointing authority in proceedings under the UNCITRAL Rules may be found in the World Bank's Instrument Establishing the "Prototype Carbon Fund" (which states in Section 18(2) that: "Any dispute between the Trustee and a Participant arising out of or relating to this Instrument or such Participant's Participation Agreement shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The number of arbitrators shall be three. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague"). The International Emissions Trading Association ("IETA") recommends the PCA Environmental Arbitration Rules in its guidelines on drafting carbon contracts<sup>14</sup>. The PCA also provides guidance on drafting environmentally related dispute settlement clauses, and participates in international environmental conferences to that effect. Furthermore, a representative of the PCA was present at the World Summit on Sustainable Development in Johannesburg, and delivered a statement of the Secretary-General in plenary<sup>15</sup>.

The competences of the PCA in the field of international environmental law cover all range of issues subject of the main MEAs, with a strong focus on the UNCLOS, UNCBD, UNFCCC and carbon contracts. The MEAs which have been dealt with by the PCA are listed below:

\* Convention Establishing the European Telecommunications Satellite Organization (EUTELSAT), July 15, 1982, 1519 U.N.T.S. 26342 (*entered into force* Sept. 1, 1985).

\* Convention for the Establishment of a European Organization for the Exploitation of Meteorological Satellites (EUMETSAT), May 24, 1983, 1434 U.N.T.S. 24265 (*proclaimed* June 19, 1986).

\* Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, June 23, 2000, 2000 O.J. (L 317) 3 (Cotonou Agreement).

\* Financial and Administrative Framework Agreement between the European Community and the United Nations, Apr. 29, 2003 Source: EuropeAid.

\* Framework Partnership Agreement between the European Community Humanitarian Aid Department (ECHO) and International Organisations, Apr. 29, 2003 (*not applicable for agreements concluded after December 31, 2007*<sup>16</sup>), Source: ECHO.

\* Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters to the 1992 Conventions on the Protection and Use of Transboundary Watercourses and International Lakes and on the Transboundary Effects of Industrial Accidents, May 21, 2003, 44 I.L.M. 258 (*not yet in force*).

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<sup>14</sup> See: <http://www.pca-cpa.org/PDF/IETA.pdf>

<sup>15</sup> See: <http://www.pca-cpa.org/PDF/Johannesburg.pdf>

<sup>16</sup> [http://ec.europa.eu/echo/partners/fpa\\_en.htm](http://ec.europa.eu/echo/partners/fpa_en.htm).

\* Agreement Regarding the Complete and Final Settlement of the Question of Reparations from Germany, Jan. 20, 1930.

\* Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 973 U.N.T.S. 14537.

\* Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 1651 U.N.T.S. 28395.

\* Protocol to the Antarctic Treaty on Environmental Protection, Oct. 4, 1991, 30 I.L.M. 1461.

\* Protocol on the Accession of the European Community to the Eurocontrol International Convention Relating to Cooperation for the Safety of Air Navigation of 13 December 1960, as variously amended and as consolidated by the Protocol of June 27, 1997, Oct. 8, 2002, 2004 O.J. (L 304) 210.

The environmental component appears also the PCA work, either in its publication<sup>17</sup> or cases in which the PCA International Bureau served as Registry, most famous of which being:

\* *Guyana/Suriname*

On February 24, 2004, Guyana gave written notification and a statement of claim to Suriname submitting a dispute concerning the delimitation of its maritime boundary with Suriname to an arbitral tribunal to be constituted under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS).

\* *Barbados/Trinidad and Tobago*

The Permanent Court of Arbitration acted as registry in an arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the Exclusive Economic Zone and Continental Shelf between them, submitted under Part XV of the United Nations Convention on the Law of the Sea (UNCLOS) to an arbitral tribunal constituted in accordance with UNCLOS Annex VII. The tribunal rendered its Award on April 11, 2006.

\* *Malaysia/Singapore*

The case concerned land reclamation by Singapore in and around the Straits of Johor and was instituted by Malaysia on July 4, 2003 pursuant to Article 287 of the United Nations Convention on the Law of the Sea (UNCLOS) and Article 1 of UNCLOS Annex VII. The parties signed a Settlement Agreement on April 26, 2005, and an Award on Agreed Terms was issued by the Tribunal on September 1, 2005.

\* *Belgium/Netherlands ("Iron Rhine Arbitration")*

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<sup>17</sup> See *International Investments and the Protection of the Environment: The Role of Dispute Resolution Mechanisms* (edited by the PCA), which is the second publication in the PCA's "Peace Palace Papers" series. The book reproduces the papers presented at the International Law Seminar on May 17, 2000, and deals with a topic of compelling interest to both practitioners and students of international law: the role of dispute resolution mechanisms in the field of international investment and protection of the environment. This initiative was inspired by the convergence of two recent developments: a rapid growth in direct foreign investment, and a sharp increase in environmental consciousness. See: <http://www.pca-epa.org/ENGLISH/EDR/publication.htm>.



In July 2003, The Kingdom of Belgium and The Kingdom of the Netherlands agreed to submit to an arbitral tribunal established under the auspices of the PCA a dispute between them concerning the so-called Iron Rhine railway line. An Award was rendered by the Tribunal on May 24, 2005. Pursuant to Requests submitted by Belgium, the arbitral tribunal also issued an Interpretation of the Award and Correction to the Award on September 20, 2005.

\* *Netherlands/France*

The International Bureau served as registry for this arbitration in application of the Convention of December 3, 1976 on the Protection of the Rhine against Pollution by Chlorides and the Additional Protocol of September 25, 1991.

\* *Ireland v. United Kingdom (“OSPAR” Arbitration)*

The arbitration was initiated by Ireland pursuant to the dispute resolution provisions of the OSPAR Convention (Article 32). The dispute concerns access to information about the mixed oxide (MOX) fuel plant located at the Sellafield nuclear facility in the UK. The Tribunal found that Ireland’s claim for information did not fall within Article 9 (2) of the OSPAR Convention, thus the breach of any obligation by the UK did not arise. The arbitration proceedings were initiated pursuant to the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic (“OSPAR Convention”). The Tribunal issued its award on 2 July 2003.

\* *Ireland v. United Kingdom (MOX Plant Case)*

The case was initiated by Ireland on 25 October 2001 and is handled by an Arbitral Tribunal constituted pursuant to Article 287, and Article 1 of Annex VII, of the United Convention on the Law of the Sea. It concerns the authorization of the mixed oxide fuel (“MOX”) plant located at the Sellafield nuclear facility in the United Kingdom. Proceedings were suspended until the European Court of Justice (ECJ) gave judgement in a related case concerning the European Community law issues (or until the Tribunal determined otherwise). The ECJ judgement was delivered on 30 May 2006. Subsequently, Ireland notified the Tribunal of the withdrawal of its claim against the United Kingdom. On 6 June 2008, the the withdrawal of Ireland’s claim against the United Kingdom was formalised through the Tribunal’s decision on costs, and the termination of the proceedings.

\* *Emissions Trading contracts*: there has no case been submitted so far, but the PCA was approached several times by states and private parties.

As for publications, The PCA has significantly expanded its research and publications activities with Kluwer Law International (KLI)<sup>18</sup>. Most items can be found on the Kluwer website and include, among other: *International Investments and Protection of the Environment: The Role of Dispute Resolution Mechanisms* (2001), *Arbitration in Air, Space and Telecommunications Law: Enforcing Regulatory Measures* (2002), *Resolution of International Water Disputes* (2003).

The PCA is housed in the Peace Palace in The Hague, which was completed in 1913 and specifically built to accommodate this institution. The Peace Palace hosts not only

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<sup>18</sup> See:

<http://www.aspenpublishers.com/pifs.asp?market=Kluwer+Law+International+MK&promoID=KLI>

the Permanent Court of Arbitration, but also the International Court of Justice, the Carnegie Foundation, the Hague Academy of International Law, and the renowned Peace Palace International Law Library, - all in a certain way related to international environmental law and shaping the image of The Hague as of a legal environmental capital.

*The idea of setting up a legal facility on IEL as well as interest in contributing to its development was discussed. In particular, the legal facility could benefit from the Peace Palace sources with regards the following:*

- *promote the possibility to access international justice in The Hague in the field of IEL (it could promote awareness around the globe on the opportunities for bringing cases on IEL in the courts and tribunals currently operating in The Hague) and this would serve the existing IOs in The Hague in order to increase the amount of cases/activities in IEL*
- *transform the early warning activities of UNEP in material for potential cases*
- *provide reports/advises which would show evidence of potential cases in IEL*
- *provide experts for capacity building and services for developing countries (negotiations, drafting environmental legislation, etc...)*

#### 4. Dutch Council of State

Article 21 of the Dutch Constitution deals with the protection of environment and more precisely states *“It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment”*.

The National Environmental Policy Plan (NMP) sets out Dutch environmental policy. The first version was published in 1989, followed by second and third versions in 1993 and 1998, respectively. NMP-4, laying out government environmental policy over the next few years, was published in 2001. Under the NMP, the government seeks to cut back on all forms of pollution by 80%-90% within one generation, meaning that by 2010, the present generation should be able to pass on a clean environment to the next one.

The Dutch Government works closely with industry and nongovernmental organizations on implementation of environmental policy. The Dutch Council of State (*Raad van State*) is a constitutionally established advisory body to the government which consists of members of the royal family and Crown-appointed members generally having political, commercial, diplomatic, or military experience. The Council of State must be consulted by the cabinet on proposed legislation before a law is submitted to the parliament. The Council of State also serves as a channel of appeal for citizens against executive branch decisions.

According to Article 73 of the Dutch Constitution (Chapter 4, Council of State, Chamber of Audit, Advisory Bodies):

- (1) *The Council of State or a section of the Council shall be consulted on Bills and draft general administrative orders as well as proposals for the approval of treaties by the Parliament. Such consultation may be dispensed with in cases to be laid down by Act of Parliament.*
- (2) *The Council or a section of the Council shall be responsible for investigating administrative disputes where the decision has to be given by Royal Decree, and for advising on the ruling to be given in the said dispute.*
- (3) *The Council or a section of the Council may be required by Act of Parliament to give decisions in administrative disputes.*

Article 74 says:

- (1) *The King shall be President of the Council of State. The heir presumptive shall be legally entitled to have a seat on the Council on attaining the age of eighteen. Other members of the Royal House may be granted a seat on the Council by or in accordance with an Act of Parliament.*
- (2) *The members of the Council shall be appointed for life by Royal Decree.*
- (2) *They shall cease to be members of the Council on resignation or on attaining an age to be determined by Act of Parliament.*
- (3) *They may be suspended or dismissed from membership by the Council in instances specified by Act of Parliament.*
- (4) *Their legal status shall in other respects be regulated by Act of Parliament.*

Finally, Article 75 states:

- (1) *The organization, composition and powers of the Council of State shall be regulated by Act of Parliament.*

*(2) Additional duties may be assigned to the Council or a section of the Council by Act of Parliament.*

The Council works in three chambers: chamber 1 – Spatial Planning, chamber 2 – Environment, chamber 3 - Appeal

Currently the council of State is dealing with the following legislative proposals in the field of environmental protection<sup>19</sup>:

1. Proposal for a law amending the Law Environment management (approving disposition for the application of general rules on particular activities within organizations)
2. Agreement containing amendments to the Convention on Environmental Impact Assessment in a Transboundary Context, signed at Espoo on 25 February 1991; Sofia, 27 February 2001 and Cavtat, 4 June 2004 (Trb. 2005, 186).
3. Proposal for a law amending the Environment Management Act and several related laws (modernization of the rules on the environment impact statement).
4. Draft decree on amendment of the Decree on type-approval of tractors and motors for mobile machines with respect to air pollution (amending transition term).
5. Draft decree on amendment of the Decree on type-approval of motor vehicles with respect to air pollution (exemption as meant in article 86 of the Law concerning the air pollution).
6. Draft decree on expropriation in the municipality Achtkarspelen.
7. Decree adapting trading in emission rights III
8. Draft decree on sensitive locations (air quality requirements).
9. Decree concerning rules for the implementation of the EC Regulation regarding import and export of dangerous chemicals (Decree implementing regulation on import and export of dangerous chemicals environment management 2008).

The advisory acts of the Council of State and its periodical reports are open to the public and are published since 1980.

Environmental protection is covered by several pieces of legislation in different areas. These are, for example, the noise levels for Amsterdam Airport Schiphol and the local discotheque, as well as the radius of stench circles around pig farms, how wastes are to be treated, what may be dumped where, etc. Many regulations are the result of agreements at EU level, thus giving the Council of State environmental functions international aspect.

The Environmental Management Act provides the basis for setting environmental

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<sup>19</sup> See: <http://www.raadvanstate.nl/>

quality requirements to be met by companies (establishments), as well as for matters such as environmental impact statements, environmental zoning, and how to deal with waste. The Act also provides for procedures relating to permits and exemptions.

The Council of State is situated in The Hague and it is linked strongly to other international organisations and government institutions located in the city.

## 5. Dutch Supreme Court

The Netherlands judiciary comprises 62 cantonal courts, 19 district courts, five courts of appeal, and a Supreme Court that has 24 justices. All judicial appointments are made by the Crown. Judges nominally are appointed for life but actually are retired at age 70.

The Supreme Court in the general system is the Hoge Raad (Supreme Council), which deals with matters of criminal law, tax law as well as private law. The lower courts are the kantongerechten (courts for petty offences and matters of relatively small importance), the rechtbanken (general courts of first instance) and the gerechtshoven (general courts of second instance). The administrative law system has a few supreme courts: the Afdeling bestuursrechtspraak part of the Raad van State (mainly dealing with planning law as well as environmental law), the Centrale Raad van Beroep (mainly dealing with social security and civil servants matters) and the College van beroep voor het bedrijfsleven (dealing with matters of trade and economic administrative law). The Hoge Raad has administrative law tasks as well (the chamber on criminal matters deals with punitive administrative law matters, tax law is considered a form of administrative law). The courts of first instance in administrative law are the rechtbanken. In tax matters the gerechtshoven are courts of first instance, in some matters of economic administrative law only the Rotterdam rechtbank is court of first instance.

Dutch judges may not test the validity of other laws against the constitution. As a consequence, the Netherlands do not have a Constitutional Court. The idea is that changes to the law should be made by politicians, since they have a mandate from the people. International treaties on the other hand may overrule Dutch law, even the constitution, and judges are allowed in most cases to test laws against them<sup>20</sup>.

The Supreme Court of the Netherlands, located in The Hague, examines whether the lower court observed proper application of the law in reaching its decision. At this stage, the facts of the case as established by the lower court are no longer subject to discussion. The appeal in cassation therefore fulfils an important function in promoting unity of law.

There are several Dutch (administrative) environmental laws, such as the Environmental Protection Act (*Wet milieubeheer*), the Pollution of Surfacewater Act (*Wet verontreiniging oppervlaktewater*), the Soilprotection Act (*Wet bodembescherming*), the Airpollution Act (*Wet inzake de luchtverontreiniging*). Sections of criminal law also fall under environmental law, such as penal provisions in the above mentioned environmental laws and the use of penalties instruments for protecting public health in the Dutch Criminal Code (*Wetboek van Strafrecht*). Private law is beginning to play an - increasingly more - important role in environmental law,

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<sup>20</sup> For example in case of treaties or agreements between two or more countries, parties sign a given treaty and have to bring their national laws into line with that treaty. So, national laws must not conflict with international treaties. If a court nevertheless discovers a conflict, the rules of the treaty always take precedence. A well-known treaty is the European Convention for the protection of Human Rights (the ECHR convention).

where citizens regularly instigate litigation before a civil judge demanding compliance with environmental laws and liability for environmental damage.

#### The Effect of International and European Environmental Law

In the famous *Costa-Enel* case (6/64) the Court of Justice of the European Community has ruled that European law is an integral part of the national legal system of the EC member countries and takes precedence over national law. Therefore it seems reasonable to affirm that international aspects influence the Dutch Supreme Court activities, including the impacts of international/European environmental law. Another judicial institution, which is increasingly influencing Dutch law, is the European Court of Human Rights, the judicial organ of the European Convention on Human Rights. As to the effect of general public international law in the Dutch legal order one has to look at articles 93 and 94 of the Dutch Constitution. These articles provide for the direct effect (self-execution) of provisions of treaties and of resolutions of international organisations if they are binding on all persons by virtue of their contents. When the Dutch judge rules that such a provision has direct effect, a citizen can invoke the provision in his case and the provision will then prevail over conflicting Dutch law.

## **Criminal Law**

### **6. Eurojust<sup>21</sup>**

Eurojust is a body of the European Union with legal personality and established in 2002 by Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>22</sup>. The main goal of Eurojust is the enhancement of the effectiveness of the competent authorities within Member States when they are dealing with the investigation and prosecution of serious cross-border and organised crime. Eurojust is the first body of its kind in the world and it assumes a unique role in the European legal area. Eurojust creates the first permanent network of judicial authorities by hosting meetings between investigators and prosecutors from different states dealing with individual cases and specific types of criminality. Eurojust is located in The Hague since 13 December 2003 (Eurojust Seat Decision)<sup>23</sup>.

The objectives of Eurojust listed in Article 3 of the Council Decision 2002/187/JHA of 28 February 2002 refer to:

- the stimulation and support of the quality of cooperation and coordination between investigators and prosecutors;
- the improvement of cooperation between the competent authorities of the member states through the exchange of relevant information among the member states;
- the support to the competent authorities of the member states in order to improve the effectiveness of investigations and prosecutions.

The general competences of Eurojust are listed in Article 4 of the Council Decision 2002/187/JHA of 28 February 2002 and cover the following:

- the range of crimes and offences in respect of which Europol has a general competence to act pursuant to Article 2 of the Europol Convention of 26 July 1995;
- crimes such as computer crime, fraud and corruption and any criminal offence affecting the European Community's financial interests, the laundering of the proceeds of crime, environmental crime, participation in a criminal organisation within the meaning of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union;
- other offences committed together with the types of crime listed above.

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<sup>21</sup> Interview with Ms Malci Gabrijelcic (Slovenia) (responsible for environmental crime) and Mr Antonio Santos Alves (Portugal), Eurojust 14 May 2008.

<sup>22</sup> Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA), Official Journal of the EC of 6 March 2002, L63/1, [http://www.eurojust.eu.int/pdfdec/1\\_06320020306en00010013.pdf](http://www.eurojust.eu.int/pdfdec/1_06320020306en00010013.pdf).

<sup>23</sup> Decision taken by common agreement between the representatives of the member states, meeting at head of state or government level of 13 December 2003 on the location of the seats of certain offices and agencies of the European Union, 2004/97/EC.



Eurojust accomplishes its tasks either through one or more of the competent authorities of the national members or as a College composed of 25 members, one nominated by each EU Member State, amongst them senior, experienced prosecutors and judges.

In accordance with Article 4 of Council Decision 2002/187/JHA of 28 February 2002, environmental crime is one area of competence of Eurojust, and, in particular, one area of competence of the College. The inclusion of such a crime under the competences of Eurojust is completely in line with the new approach of the European Union in the fight against environmental and maritime pollution also from a criminal law perspective. EU Member States have agreed to bring their laws for punishing environmental crime, such as industrial pollution and other relevant laws, closer together. To this regard, on 27 January 2003 the EU Council of Ministers adopted Council Framework Decision 2003/80/JHA based on Title VI of the Treaty on European Union relating to judicial cooperation in criminal matters, and defining a number of environmental offences for which Member States are required to define criminal penalties and containing provisions relating to judicial cooperation in criminal matters. Environmental crime within Eurojust covers all kinds of pollution related to criminal offences that are suspected to be organized crime with a cross border implication.

Nevertheless, the activity of Eurojust with regard to environmental crime has not been developed deeply by its establishment. Currently, there is no environmental department in Eurojust, but environmental crime is dealt with by a subgroup within the financial and economic crime team (there are fourteen teams in total).

The only decision of Eurojust referring to the environmental crime is the Prestige Case (Case Nr. 27/FR/2003) which concerned the extensive oil pollution in the Bay of Biscay, affecting large areas of the French and Spanish coastline due to the sinking of the tanker Prestige. In 2005, the College of Eurojust registered 588 cases, including two cases transformed from national cases to College cases on the basis of the provisions of Article 7(a) of the Eurojust decision. The Prestige case concerning Spain and France is one of these two cases. According to Article 7, the Eurojust decision enables the College to make formal requests to national authorities to act. In the Prestige case, criminal investigations in France and Spain were preliminarily considered by the College, which then asked the French and Spanish competent judicial authorities to accept that the Spanish judicial authorities had been better placed to take over and prosecute the case in Spain. Such request included a detailed reasoning which considered mainly the situation of the victims and the best option for them to exercise their right. Spanish and French authorities agreed to follow the Eurojust decision and to cooperate together on the issue.

Following the Eurojust decision on the Prestige case, the Prosecutor General of Spain issued a decree including the notification of the relevant Spanish and French judicial authorities to Eurojust. In the decree, it is clearly stated that the Spanish public prosecution office should ensure the defence of interests of the French victims determined in the denunciation and take responsibility for providing any useful information at any time in the frame of the European Convention as well as regarding the final result of the case. As a consequence of the Prestige case decision, France formally requested in 2003 Eurojust to speed up the transmission of information and

facilitation of mutual legal assistance on such a case. Three co-ordination meetings were therefore organized by Eurojust (two in 2003 and one in 2005), the first in May in La Corunna in Spain and the second in November in Brest in France, both in close co-operation with the European Judicial Network and the liaison magistrates. The first meeting was convened in order to assist the magistrates in gathering experience about how to deal with such a case. To this aim, also colleagues leading similar investigations such as the shipwreck of “Erika” investigated in the Court of Paris and “Mar Egeo” investigated in the Court of La Corunna were invited to participate and to share their experience. The purpose of the second meeting was to investigate the possibility to merge the ongoing prosecutions into a single proceeding to be conducted by one of the countries and draw on legal expertise to this aim. The third coordination meeting was held in The Hague in January 2005.

Apart from the Prestige case, Eurojust also participated in 9th meeting of the Prosecutors General in the Baltic Sea Region held in Copenhagen on 1 October 2004 where the Expert Group on Environmental Crime in the Baltic Sea Region drawn its attention on the conclusions from the 5th Baltic Sea States Summit held in Laulasmaa, Estonia on 21 June 2004, where the heads of government emphasised the need to further protect and preserve the sensitive marine environment of the Baltic Sea. The Prosecutors General in the Baltic Sea Region recognized in particular the practical working methods applied by the Expert Groups on Trafficking of Human Beings and on Environmental Crime and the latter’s project groups, enabling the Prosecution Service as well as the Law Enforcement Authorities to benefit from the mutual co-operation reaching their joint goals.

Implementation of the Eurojust decision has not been completed by all Member States and the promotion of international environmental law in the city of The Hague may turn out to be an incentive to urge those member states which still have to implement the decision (Cyprus, Greece and Spain) to proceed with it. Indeed, the lack of implementation of the Eurojust decision in some member states limits the effectiveness of Eurojust work. Eurojust activity is increasing and member states are becoming every year more aware and confident about the real and potential added value of such a unique body.

*The creation of a legal facility on IEL in The Hague was discussed , in particular how it may contribute to the improvement of legal certainty in the area of environmental crime, in particular in respect of how crime is described in the member states legislations (since proving environmental crime is one of the main problems prosecutors face in this field). The problem of how to prove and describe damage to the environment is currently one of the key priorities of home authorities in charge of prosecution and national departments dealing with environmental law.*

*The benefits from the existence of a legal facility on IEL in The Hague were discussed, as to the following:*

- source of information on IEL can be very useful for the work of Eurojust, especially in consideration of the lack of internal resources dealing with this aspect*
- awareness raising on IEL issues, damages and crimes within and outside the EU (organisation of thematic seminars)*
- training of prosecutors, police officers and environmental inspectors in the field of IEL*

## 7. Europol

Europol is the EU's law enforcement organisation which aims at improving the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime. Europol is a European Police Office operating through a single national unit in each Member State (Article 1 of the Europol Convention<sup>24</sup>).

In accordance with Article 2 of the Europol Convention of 26 July 1995, the objectives of Europol relate to the improvement of the effectiveness and cooperation of the competent authorities in the Member States in "preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned." To this aim, "Europol shall initially act to prevent and combat unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime". Moreover, the Council "may decide to instruct Europol to deal with other forms of crime listed in the Annex to this Convention or specific manifestations thereof". Such a decision shall be taken by the Council "acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union". The list of other serious forms of international crime included in the Annex referred to in Article 2 contains a specific reference to the "illegal trading and harm to the environment" and, in particular:

- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters.

Also, the Annex referred to in Article 2, refers to the "crime connected with nuclear and radioactive substances" meaning the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980.

Europol releases every year a report on the EU Organised Crime providing an updated snapshot on the different organised crime groups growing and developing across Europe. The 2005 EU Organised Crime Report<sup>25</sup> referred also to environmental crime

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<sup>24</sup> Council Act of 26 July 1995 drawing up the Convention on the establishment of a European Police Office (Europol Convention) in Official Journal C 316 of 27 November 1995.

<sup>25</sup> 2005 EU Organised Crime Report, Council of the European Union, Brussels, 17 November 2005 [http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2005/EU\\_OrganisedCrimeReport2005.pdf](http://www.europol.eu.int/publications/EUOrganisedCrimeSitRep/2005/EU_OrganisedCrimeReport2005.pdf) ; 2006 EU Organised Crime Report, Council of the European Union, Brussels, 17 November 2005 [http://eurojust.europa.eu/press\\_releases/annual\\_reports/2006/Annual\\_Report\\_2006\\_EN.pdf](http://eurojust.europa.eu/press_releases/annual_reports/2006/Annual_Report_2006_EN.pdf) - no mention of environment – M.

and more exactly underlined the discrepancies and gaps between EU and national legislation on environmental crime which facilitates the development of organised crime in this sector. The 2006 EU Organised Crime Report<sup>26</sup> referred to environmental crime too and more exactly underlined the discrepancies and gaps between EU and national legislation on environmental crime. Among the crime categories and in particular the crimes against the natural environment, the 2006 report mentioned the illicit trafficking of illegal waste like cases of illegal waste disposal, especially hazardous waste and illegal trade in protected and threatened species. The report mentioned that in 2004 the organised environmental crime in the Member States concerned mainly illegal waste disposal with a clear focus on hazardous waste materials. The report underlined the difficulty to determinate the organised crime groups' involvement in environmental crime mainly because such a crime has not a high priority for law enforcement authorities in some Member States in comparison with other crimes. Nevertheless, the report noted that the illegal trafficking of disposing hazardous waste has been becoming more and more attractive for criminals for many different reasons. Firstly, the growth of the economy in certain countries and the consequent growing of waste produced are not accompanied by advanced waste disposal systems. Moreover, such a trafficking is likely to generate high profits which, together with the lack of intelligence in many member states on the issue and the low level of penalties in this field, attract the criminals towards such an activity. In particular, the UK authorities confirmed that illegal waste dumping is growing in the country because of the high level of landfill costs and the lack of legitimate sites for the disposal of hazardous waste. Moreover, the legislative gap in terms of waste dumping is opening the way to the organised crime and management of clandestine waste disposals as well as exploitation of public tenders, in particular the 2006 report referred to the "Italians mafiatype organisations".

Finally, the cases of cross-border transport of waste and illegal trade with regard to protected and threatened species increased in the EU after the enlargement of the 1st of May 2004. On this issue, a recent paper<sup>27</sup> investigating environmental crime in five new member states reported a total number of 63 cases of organised environmental crime. The 2005 Report concludes that "environmental crime is sometimes taking place next to other criminal activities" in many Member States.

In terms of EC law, after many years of negotiations a Council Framework Decision 2003/80/JHA of 27 January 2003 on the protection of the environment through criminal law was adopted in 2003.

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<sup>27</sup> Fröhlich, Tanja. 2003. Organized Crime in the Sphere of the Environment in a few Candidate Countries: Betreuungsgesellschaft für Umweltfragen Dr. Pope M.B.H.(BfU).

## 8. International Association of Prosecutors (IAP)

The International Association of Prosecutors is a non-governmental and non-political organisation established in June 1995 with its headquarters at the United Nations offices in Vienna. The reasoning behind the establishment of such an association was the need to increase the international cooperation of prosecutors as well as their mutual assistance, in particular after the growth of serious transnational crime, drug trafficking, money laundering and fraud. The IAP activities rely on several final objectives:

- The promotion of the effective, fair, impartial and efficient prosecution of criminal offences;
- The respect and the protection of human rights as laid down in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;
- The promotion of high standards and principles in the administration of criminal justice;
- The promotion and the enhancement of international standards and principles aiming at a proper and independent prosecution of offences;
- The enhancement of assistance for prosecutors operating internationally in the fight against organised or other serious crime through the promotion of international co-operation in gathering and providing evidence, in tracking, seizing and forfeiting the proceeds of serious crime, and in the prosecution of fugitive criminals, as well as the promotion of speed and efficiency in such international co-operation;
- The promotion of measures for the elimination of corruption in public administration;
- The promotion of professional interests of prosecutors;
- The promotion of good relations between individual prosecutors and prosecution agencies;
- The exchange of information and expertise between prosecutors;
- The promotion of examination of comparative criminal law;
- The enhancement of cooperation with international juridical organisations.

The IAP is composed of prosecutors from over 120 countries in the world and it holds an annual conference on matters of interest for the members, such as the role of the prosecutor, extradition, mutual legal assistance, crimes against children and electronic fraud, fraud and corruption, human rights, the role of the prosecutor in the new millennium, etc.

The international character of the IAP has been very useful for the dissemination of mutual legal assistance and support also to prosecuting services in developing countries. The location of the IAP in the city of The Hague is fostering the international dimension of such an association. To this aim, the IAP works closely with the United Nations Secretariat to secure the assistance of experienced prosecutors for projects and advice in developing countries. Among the IAP activities, there are the promulgation of IAP *Standards* for prosecutors; the publication of a *Directory of Prosecution Services* and the publication of an electronic journal, *The International Prosecutor*, as well as of a quarterly Newsletter. Moreover the IAP cooperates with the Asia Crime Prevention Foundation, the Council of Europe, the United Nations (in particular ECOSOC and United Nations Centre for International

Crime Prevention), the International Criminal Defense Attorneys Association (ICDAA), the International Criminal Tribunal for the Former Yugoslavia (ICTY), Eurojust and the Southeast European Prosecutors Advisory Group.

The activities of the IAP, namely the organisation of periodical conferences and the release of relevant publications, will provide the opportunity for prosecutors to exchange information and to rely with other criminal justice systems. Although the IAP has been so far not directly involved in any kind of environmental crimes, the establishment of The Hague as an international platform for international and European environmental law and the increased diffusion crimes concerning directly or indirectly the protection of the environment, especially in relation to the developing world, as well as the strong international dimension of such an institution may facilitate a more direct contribution of the IAP to the international environmental law aspects.

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## **9. International Criminal Law Network (ICLN)**

The International Criminal Law Network has been established by experts on international criminal law together with the Dutch governmental parties and Science Alliance with the aim to enhance the cooperation and interaction between academics, policymakers and legal professionals in the field of international criminal law.

The ICLN organizes periodical conferences and professional courses on international criminal law, as well as trainings to the partners of the network. The ICLN also produces a quarterly e-mail newsletter and runs a web site with information and material at disposal of legal subjects, groups, partners, etc.

The Public Founders of the ICLN are the Municipality of The Hague, the Dutch Ministry of Foreign Affairs and the Dutch Ministry of Defence. Among the institutional members, there are The Hague Institute for the Internationalisation of Law, Europol, ISISC, Columbia University, New York, the University of Salzburg, The Netherlands Forensic Institute, Interpol, the Jongbloed Legal Bookstore, the ESAG, the Wolf Legal Productions, the Colombian Commission of Jurists, the Public Prosecution of the Sultanate of Oman, the Attorney General's Office of Zimbabwe, the Justice and Prosecution Society of Macau, the Whitney R. Harris Institute for Global Legal Studies. Among the cooperating organizations, there are the Center for International Legal Studies, the Peace Palace, the Science Alliance, the International Association of Prosecutors and the International Criminal Defence Attorney Association

## Dutch Governmental Organisations

### 10. Ministry of Environment (VROM)

The main overall objective of the Ministry of Housing, Spatial Planning and Environmental Management (VROM) is: 'working for a permanent quality of the living environment'. The VROM is responsible for co-ordinating environmental policy at the governmental level. VROM establishes conditions for the above in agreement with citizens, interest groups and social organisations. It creates regulations and distributes subsidies for improving the country's living environment. VROM is headed by the Minister and, apart from Central Departments, has five separate Directorates: Directorate General (DG) for Housing, DG for Environmental Protection, National Spatial Planning Agency, Government Buildings Agency and the Inspectorate.

The Netherlands is a strong advocate of international treaties in areas including climate, environment and spatial planning. Complementary to decisions taken within the European Union (EU) and the United Nations Economic Commission for Europe (UN-ECE), the Netherlands believe in the role of demand driven bilateral co-operation and active multilateral co-operation. Bilateral co-operation in most cases builds upon an agreement (Memorandum of Understanding, Agreement on Co-operation, etc.) between the Ministers of the Environment of the two countries involved. Sometimes at either side other Ministers join in (such as the Ministers for Nature Conservation, for Water Management and/or for Energy).

Table. Bilateral co-operation

Country	Since	EU Accession	Climate Change	Public Participation	Compliance and Enforcement	Other
Bulgaria	1998	+	+	+	+	waste management
Czech Rep	1991/1998	+	+	+	+	IPPC, compliance and enforcement
Hungary	1988	+	+	+	+	
Georgia	2001				+	environmental impact assessment and strategic environmental assessment
Latvia	1991		+			waste management
Lithuania	2000		+	+	+	waste management
Poland	1987	+	+	+	+	environmental impact assessment
Romania	1997	+	+	+	+	environmental education
Russia*	1991		+		+	waste management
Slovak Rep	1991/1994	+	+	+	+	spatial planning
Turkey	2001	+		+	+	water management, environmental impact assessment
Ukraine*	1994			+	+	

\* = Ministry of VROM together with the Dutch Ministries of Water Management and of Nature Conservation.



The most important element of co-operation with the Central and Eastern European countries for VROM is financial support of projects of the EAP Task Force, Project Preparation Committee, Regional Environmental Centers, NGO's, and UN-organisations. Projects on EU accession, joint implementations to combat climate change, public participation, compliance and enforcement, environmental impact assessment (EIA) and strategic environmental assessment (SEA) enjoy priority. VROM also is active in pre- and post-accession assistance through the programs Matra and PSO. Further ways of exchanging know-how and expertise include visits where participants exchange experience and ideas. Another way is offered by the annual workshop for EU accession countries in The Hague.

New opportunities for co-operation between the Netherlands and other countries, both Central and Eastern European countries and developing states have been increased by the implementation of the Kyoto Protocol under the UNFCCC through the so-called flexible mechanisms. VROM was one of the first ministries in the EU to adopt a formal strategy for the use of these mechanisms called ERUPT (Joint Implementation) and CERUPT (Clean Development Mechanism).

VROM allocates a budget for financing projects in Eastern European countries in the field of environmental protection. In addition, VROM also supports projects related to the European Bank for Reconstruction and Development (EBRD) and the World Bank (WB). For this purpose a special Dutch Environmental Technical Co-operation (TC) Fund was established at the EBRD.

The above-listed initiatives and programmes, in which VROM takes part, show that it is a true player in the field of international environmental legal cooperation. Like most other Dutch governmental institutions, the ministry is located in The Hague. It needs to be stressed that the official attribution to The Hague of status 'platform for international environmental law' would very much increase the visibility of VROM in the international legal arena. Such status of the city could also contribute to the organisation of international conferences, hosting conference of the parties, international meetings, etc.

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## 11. Province of Zuid-Holland

The Netherlands administrative and historical structure comprises 12 provinces. The Hague is the administrative capital of one of the largest provinces, the Province of Zuid-Holland.

The Provincial Executive is concerned with regional and supra-regional interests. It must address major challenges in spatial development, infrastructure, health and welfare, nature management, water management, and in strengthening the economic potential of Zuid-Holland.

*The Provincial Executive's Working Programme for 2003-2007*<sup>28</sup> is divided into seven main themes:

- City and Countryside
- Our Community, Our Concern
- Your Safety
- Economy and Employment
- Traffic and Transport
- Administration
- Organisation

Each section describes what the Province intends to *do* during the next four years. It must be noted that environmental considerations are incorporated in every one of the above-mentioned action themes. Directorate Greening, Water and Environment is one of the four Directorates of the Provincial administration, that is presided by the Commissioner of the Queen.

It is often necessary to defend provincial interests at the European level. Much of the Dutch national legislation is determined in Brussels. In return, Zuid-Holland proactively strives to influence European Union policy decisions, both independently and as part of the 'Regio Randstad' cooperative alliance<sup>29</sup>. The Province also very active in international projects related to the protection of environment. The Province of Zuid-Holland is currently involved in a regional initiative aimed at the collaboration among regions in the EU in the mitigation of greenhouse gas emissions.

Some parts of Zuid-Holland are heavily urbanized. However, two thirds of the province retains a rural character. Maintaining an appropriate balance between urban and rural interests is no simple matter. The Province wishes to ensure that everyone is able to enjoy the best possible standards of housing, business accommodation and recreational facilities. However, the spatial choices are often complicated by such factors as smog, global warming, rising water levels, too much or too little rain, population growth and changing lifestyles prompting additional demand for recreation and leisure facilities.

The Province of Zuid-Holland is a very special part of Europe and it is a very active region in many respects. For example, the Port of Rotterdam – the largest harbour in

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<sup>28</sup> See: [http://www.pzh.nl/images/126\\_146661.doc](http://www.pzh.nl/images/126_146661.doc)

<sup>29</sup> The Randstad Region includes the provinces of Nord-Holland, Zuid-Holland and Utrecht.

the world – plays a key role in the European economy. The Westland region is well known for its diverse glasshouse horticultural industry, while The Hague is primarily known as the judicial capital of Europe. Zuid-Holland also has many international attractions, such as the annual flower show at Keukenhof near Lisse, Madurodam in The Hague and the Boymans van Beuningen Museum in Rotterdam. Therefore, the provincial government, seated in The Hague, has a great opportunity of regional, national and international environmental cooperation.

## 12. City of The Hague

The City of The Hague is very active in the field of the protection of environment and international cooperation. The historical core business of The Hague is peace and justice and around these themes new areas have been developed recently: environmental protection is one of those.

Among others, the city takes part in the Eurocities project – a network of 56 cities to co- operate in their efforts to promote an international exchange on local environmental policies and good practice – and in the European Commission Sustainable City project, which is linked to the implementation of Local Agenda 21 policies; in 1996 The City of The Hague became one of the five recipients of the European Sustainable City Award. Moreover, The Hague participates in environment-related twin- town activities: for instance in the re-forestation project in the Nicaraguan town of Juigalpa or water projects in Warsaw.

As signatory to the Climate Convention, The Hague has committed itself to halve its CO<sub>2</sub> emissions by the year 2010 as compared to 1987 levels. As of 1993, an energy plan has been established in order to realise this commitment, which is aiming to reduce total emissions by 300,000 tonnes. The advising works of parallel created Energy Teams, insulation of houses with the help of subsidies provided by the City and the promotion of wind energy help to achieve this goal.

In addition, The Hague promotes a selective collection policy of waste, including a special collection system for organic waste and small-scale chemical waste. New building regulations require the separation of recyclable material; a team was created in order to inspect the same with regards to buildings scheduled for demolition. The municipality subsidises the setting up of compost bins. The waste policy has so far produced excellent results.

In terms of measures targeting traffic, The Hague set a target of stabilisation of car movements, which it hopes to achieve by means of parking space management, diverting traffic to ring roads, combined with the promotion of public transport and bicycle use. The green belts along the tram lines prove the endeavour of the City to the preserve biodiversity, together with the ban on chemical pesticides and herbicides from large green areas, in line with the *Green Spaces Master Plan of 1992*.

Finally, the City promotes sustainable building by the following set of measures: the 1992 Environmental Guide on Sustainable Buildings, which lists the environmental effects of forty building materials; the Environmental Allowance is a grant awarding the use of environmental-friendly building materials and the recycling of sludge leftover from construction works. There is also a ban in force on the use of tropical wood.

The Hague brings together several international organizations and actors; recently also many non-governmental organizations have chosen The Hague as location. The number of NGOs located in The Hague is increasing constantly. The European Climate Foundation is one of those. The idea to put the main NGOs in the same

building – in front of the Peace Palace – was very successful and a new building is currently under development.

From the academic point of view, the expertise of governmental and non-governmental organizations is integrated by the Hague Academic Coalition (HAC) including the Campus Den Haag, the TMC Asser Institute, Clingendael, with the aim of raising the effectiveness and efficiency of the institutions' work in relation to The Hague's role as a city of peace and justice. In 2006 the newly established Hague Institute for the Internationalisation of Law (HIIL) joined the coalition<sup>30</sup>. The HAC intends to promote research, education and public debate in support of the development of international policy, law, governance and international negotiation towards justice, peace and sustainable development. In particular the HAC wants to support the work of the various international agencies in these fields based in The Hague.

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<sup>30</sup> For more information please visit: [www.haguejusticeportal.net](http://www.haguejusticeportal.net)

## **Education and Research**

### **13. Institute of Social Studies**

The Institute of Social Studies (ISS) is an international institute of higher education on social and economic change with a focus on development processes. The ISS is one of the five international education institutes of the Netherlands, each focusing on a different scientific field. The ISS contributes to the Dutch academic scene through PhD research projects, appointment of professors, and so on.

Within the framework of the ISS activities, the Economics of Sustainable Development Staff Group includes teaching, advisory and research priorities with a focus on sustainable development and economic processes. Due to the rapid development of the society and to the increase of poor international economic conditions, these two items are always more strictly interrelated as they shall comply with a correct management of natural and human resources available. From an international environmental law perspective, the recognition of sustainable development as a global principle to be promoted came first with the Earth Summit in Rio de Janeiro in 1992 and finally with the World Summit on Sustainable Development held in Johannesburg in 2002.

In particular, such activities aim at the assessment of the impact of structural and financial reforms on growth, stability, distribution and poverty, as well as at the study of the different aspects of a long-term sustainable growth and an equitable human development.

The academic activity of the SG Economics and Sustainable Development can be divided in two main areas of study:

- The design, implementation and impact of structural adjustment and stabilisation policies (and market reforms more in general) and the role of accompanying international finance and aid flows. The impact of such policies is investigated in particular in respect of income distribution, poverty and human development;
- The long-run aspects of sustainable human development, poverty and income distribution and natural resource use with a deep look at the influence of long-term economic growth and development of human and physical resources.

Another important part of the SG Economics and Sustainable Development research activities focuses on measurement tools considering that a way to promote the linkage between sustainable development and economic growth is to include somehow issues such as human development and sustainability into political and economic decision. Projects in this area deal with the analysis of poverty and of macro-economic strategies that reduce poverty, as an important aspect of human development. Moreover, there are research projects on environmental degradation, poverty and to include environmental and social indicators into the accounting matrices.

The Economics of Sustainable Development Staff Group is also responsible for a Major in the MA in Development Studies: Economics of Development (ECD) and the postgraduate Diploma in Modelling and Accounting for Sustainable Development (MASD).

The ECD major is composed of three modules:

- Macroeconomic Policies and Adjustment investigating the problems of macroeconomic adjustment and stabilisation in the developing countries.
- Sustainable Growth and Human Development dealing with economic approaches to sustainable growth and human development.
- International Trade, Finance and Development investigating the theories of trade, trade policy, North-South interaction, and the international institutional structures behind the governance of both trade and finance.

The MASD diploma provides the students with training on the use of computer-based quantitative techniques required for the preparation of socio-economic policy and formulation of sustainable development programmes.

#### 14. T.M.C. Asser Instituut

The T.M.C. Asser Instituut is an independent academic and inter-university institution in which all Dutch law faculties participate. The institute carries out fundamental academic research in the field of International and European law; it also conducts contract research, consultancy projects and provides legal advice. The Asser institute organises postgraduate programmes and specialised seminars on a wide range of topics, as well as conferences and meetings attracting a large and international audience. The TMC Asser Press is the own publishing house of the institute, publishing the results of the academic research carried out. In order to provide for a broad flow of information, the institute maintains several websites in relation to particular legal fields as well as a library that is in connection with all the other national libraries.

The Asser institute conducts many of its activities in relation to environmental law. It carries out lecturing on international and European environmental law and the practical application and enforcement. The various courses address both graduate and Master level students, as well as civil servants, diplomats, judges and public prosecutors and practitioners. The Director-General of the institute holds a chair in International Environmental Law at the University of Groningen and held a four-week course at the University of the Dutch Antilles. Other related courses include:

- Russian environmental and energy law, 2 days course as part of the Masters at the Institute for Energy and Environmental Law, University of Leuven, Belgium (W.Th. Douma, February 2008)
- WTO law and the environment exception, 1 day courses as part of a larger course for diplomats sponsored by Commission of the EU, Brussels, Belgium (W.Th. Douma, November 2006 and 2007)
- Integrated permitting under the EC's IPPC directive and Latest developments on EC waste law, Luxemburg, European Investment Bank (W.Th. Douma, 27 September 2006)
- International and European Environmental Law, a 4 week course for Master students, Chulalongkorn University in Bangkok, Thailand (W.Th. Douma, November 2001)
- European Environmental Law, Graduate and Masters courses in Dutch and English at Law Faculty, University of Groningen, The Netherlands (W.Th. Douma, 1993-1998)

The Asser institute publishes extensively on environmental law. Among TMC Asser press publications, it is noteworthy to mention *'The Kyoto Protocol and Beyond - Legal and Policy Challenges of Climate Change'* (W.Th. Douma, L. Massai and M. Montini (Eds.)). Several staff members of the institute wrote their dissertations on environmental topic: *'Rights and obligations of states with respect to ships and shipwrecks which pose a danger to the environment'*, F. Nelissen and *'The Precautionary principle. Its application in International, European and Dutch Law'* (W.Th. Douma).

The institute conducts practical environmental work for private companies, law firms, ministries, and international organisations. This work ranges from carrying out conformity studies (identifying problems in implementing international and European



norms at the national level), writing new laws based on international and European standards or advising on approximation of non-EU legal systems to EU standards, to advising on legal aspects of concrete environmental issues.

An overview of selected projects:

- The Hague, City of International Environmental Law, F.A. Nelissen, W.Th. Douma and L. Massai, (2006 – present)
- Implementing the Kyoto Protocol in Ukraine, L. Massai, Kiev, Ukraine (2007)
- Implementing the Kyoto Protocol in the Western Balkans (Serbia, Montenegro, Macedonia, Albania), L. Massai, Belgrade (2006)

In the past years, numerous events were organised in the Asser institute on environmental topics: most recently, a roundtable for ambassadors on climate change. Among the upcoming activities of the institute a conference on the implementation of EU environmental law is scheduled; the 2008 topic of the annual Asser colloquium will be energy and climate change.

Finally, the institute manages a website on European Environmental Law ([www.eel.nl](http://www.eel.nl)) and has established a network of national specialists in – mostly – European countries to provide updates.

## **15. The Netherlands Institute of International Relations “CLINGENDAEL”<sup>31</sup>**

The Netherlands Institute of International Relations - 'Clingendael' – is a non-profit foundation aiming at the enhancement of the common understanding on international affairs and policy operating in The Hague since 1983. More specifically, the Clingendael activities relate to the following issues: European integration, transatlantic relations, international security, conflict studies, policy making on national and international energy markets, negotiations and diplomacy, and relations to the United Nations and other international organisations. The activities of the Clingendael concern academic research, preparation and publication of studies, organisation of courses and training programmes, as well as the provision of useful information as well as consultancy services. The Clingendael also advises the government and its ministries, the parliament and social organisations, organises conferences and seminars, maintains a library and documentation centre, and publishes a monthly newsletter.

The Clingendael holds different programmes on diplomatic studies, European studies, security and conflict and energy. The department on EU studies include 8 researchers dealing in part with EU external relations and environmental protection. The Clingendael International Energy Programme (CIEP) is an independent forum for governments, non-governmental organizations, the private sector, the media, politicians and stakeholders interested in the developments in the energy sector. CIEP is composed of 10 researchers and it organizes seminars, conferences and workshops on three main issues:

- Regulation of energy markets (oil, gas, electricity) in the European Union;
- The international economic and geo-political aspects of oil and gas markets, particularly with respect to the European Union security of supply;
- Energy and sustainable development.

On the issue of development of international environmental law, Clingendael aims, mainly through the CIEP, at the dissemination of relevant information on the international and political developments within the energy sector, as well as at the identification of areas of research and debate in that field. This is reached through the organisation of courses and seminars, as well as experts training on the issue.

The international debate on energy supply has mainly focused in the past on the liberalisation of the markets. Nowadays, there are two principal aspects of energy international attention focuses on: the impact of the energy use into the ecologic sphere and the security of energy supply in a world where oil prices have increased significantly and geopolitics play a prominent role. This is also reflected in terms of international and European environmental law, a field where the link with the production of energy and the reduction of pollution in many sectors is crucial. Starting from the Earth Summit of Rio de Janeiro in 1992 and moving through the World Summit on Sustainable Development of Johannesburg in 2002, new international agreements and conventions combining the environmental protection with a sustainable use of energy resources have been adopted in the recent past, i.e. the Rio

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<sup>31</sup> Interview with Louise van Schaik on 25 April 2008.

Declaration, the Millennium Development Goals, the United Nations Framework Convention on Climate Change. As well, the European institutions have shown in the recent past a strong commitment towards the enhancement of combination between environmental protection and energy supply and several pieces of legislation have adopted accordingly. The international community has recognised the energy issue as key factor for the promotion of a more sustainable world and has identified the integrated approach as the most appropriate to deal with such a global issue. To this regard the relation and the cooperation between the developed and developing countries has become of vital importance.

Within the framework of the CIEP two major events have been organised in 2006 in The Hague, namely:

- A seminar on the "The Return of King Coal: New Perspectives for Coal as a Clean Energy Source?" addressing the role of coal and clean technologies in the international energy market. The focus of the seminar was on carbon capture and storage (CCS) and coal for use in power generation, an issue currently as stake within the international climate arena.
- A lecture on "Dutch Energy Policy in an International Perspective" given by the Minister Laurens Jan Brinkhorst, where the strategic context of future energy markets and policy-making was discussed.

*The promotion of the debate on international environmental law in The Hague was discussed, by the strengthening of ties and contacts with international organizations working in the same field in the city.*

## **16. Grotius Centre for International Legal Studies**

Since 1999 a branch of Leiden University has been located in The Hague: the Grotius Centre for International Legal Studies focuses on all aspects of international law. In the Grotius Centre, the expertise of Leiden University's Faculty of Law is combined with the position of The Hague as the Legal Capital of the World.

The Grotius Centre houses a variety of activities and programs, covering all aspects of international law, at the highest level of academia. The academic expertise of Leiden University is paired to the everyday practice of the various international legal organisations in The Hague, such as:

- the International Court of Justice (ICJ)
- the International Criminal Tribunal for the former Yugoslavia (ICTY)
- the Organisation for the Prohibition of Chemical Weapons (OPCW)
- Permanent Court of Arbitration (PCA)
- the International Criminal Court (ICC).

The purpose of the Grotius centre is the dissemination of knowledge on all fields of international law, through:

- high quality courses for professionals
- distinguished professional seminars
- the LL.M. program in Public International Law
- a pan-European Moot Court Competition
- insightful yearly conferences
- strategic expert meetings

Campus The Hague aims to function as a centre for innovation and is designed for professionals interested in education at university level. Post-academic training for people working in the public sector, the legal sector or corporate world is available. Professionals are also offered the opportunity to study part-time for a bachelor's or master's degree in law and political science. Furthermore, short track courses in a number of interests are offered each year.

## **17. Carnegie Foundation/Peace Palace Library<sup>32</sup>**

The Carnegie Foundation is the owner of the Peace Palace in The Hague, which was founded in 1903 from a donation of over one million dollars by Andrew Carnegie. The Peace Palace is home to a number of international judicial institutions, including the International Court of Justice (ICJ), the Permanent Court of Arbitration (PCA), the Peace Palace Library and The Hague Academy of International Law (HAIL).

The Carnegie Foundation has tried throughout the years not to be simply a management authority, but rather to facilitate conferences and high level events in the field of international law.

In one hundred years, thanks to Andrew Carnegie's enthusiasm in 1905 to provide a library for the Permanent Court of Arbitration, the Peace Palace library has grown from a small collection to one of the largest collections in the world in the field of international law, public and private international law, foreign national law, international relations and diplomatic history.

The Library of the Peace Palace has one of the world's largest collections in the field of international law, public and private law, and foreign national law, as well as an extensive collection on international political and diplomatic history and the history of peace movements. Also, it hosts the Grotius Collection, the collection on the important 17th century Dutchman Hugo de Groot, founder of the science of international law. In 1913, the Peace Palace Library (PPL) was opened as the world first single library on international, comparative and foreign national law.

The latest figures on IEL material in the library are:

- 74 items in international environmental law,
- 41 items in European environmental law,
- 844 items related to environmental law in general

The Peace Palace Library Collection can be with a full right called a mirror of the historical development of international law, and as a consequence, of international environmental law. Its location in The Hague is a historical and political necessity, from which so many international organisations take the profit.

The Hague Academy of International Law is a centre for research and teaching in public and private international law and it is located in the Peace Palace. The Hague Academy's main objective is the enhancement of scientific and advanced studies on the legal aspects of international relations. The Hague Academy is not a University, nor does it have a permanent teaching staff, but it is run by a scientific body, the Curatorium, which decides on the programmes as well as on high level speakers to be invited on a case by case basis.

One of the main activities of The Hague Academy is the organisation of summer courses which take place every year in a period of six weeks between July and

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<sup>32</sup> Interview with Steven van Hoogstraten, head of the Carnegie Foundation and Treasure of the Hague Academy of International Law, 12 June 2008.

August. The summer courses deal with both private and public international law and gather together students from all over the world; they have the opportunities to visit and get contact with the major institutions of international law located in The Hague, such as the International Court of Justice, the international criminal courts, the Iran-U.S. Claims Tribunal, the Bureau of the Permanent Court of Arbitration, the Conference on Private International Law, and other institutions. The Centre for Research of the Hague Academy is also at disposal in certain periods of the year for high-level research and working under the direction of qualified professors. In conjunction with the summer course, the Academy organizes every year a *Centre d'Etude de Recherche*, a four-week period during which researchers from all over the world dedicate to in-depth research of selected topics. The results of this research are renowned publications including a selection of papers provided by the researchers.

The Hague Academy organises also an external programme, based on training programmes to various countries in Africa, Latin America and Asia and nowadays also in Central and Eastern Europe and in Asia. The external programme aims at the promotion of knowledge of international law and its developments. Moreover, The Hague Academy has also established as of 2004 a new programme of intensive refresher seminars in international law aimed at practitioners and those persons interested in international law.

International environmental law is regularly one of the themes studied in the Academy. A few examples follow. The programme of the Public International Law section of the 2006 summer school included a section on international co-operation which covered, *inter alia*, issues like communications (road, railroad), the law of the sea (air and space law) International trade law, international law of development and technical assistance institutions. Such a programme, although not including a specific section on international environmental protection, presents many connections with the international law and treaties on environmental protection. Furthermore, in 2008, international environmental law is the subject of the *Centre d'Etude de Recherche*.

The activities and the competences of The Hague Academy in the field of environmental protection can be considered also when looking at the list of publications for the collected courses, which includes several texts on the relation between international law and the protection of the environment. Such relations include international liability, international economic law, environmental damage and private international law, enforcement of international environmental law, environmental policy and economic instruments.

*The establishment of a legal facility on IEL in The Hague was discussed, in particular how it would add to the idea of a world legal capital. The Peace Palace Library's role as immense source of information for such a facility was noted. The difficulty to make international organisations talk to each other and the lack of synergy in the field of IEL were also discussed.*

## 18. CEDAR

CEDAR is an international forum for the implementation of economic, social and cultural rights and cooperates with development and human rights organisations in Africa, Asia and Latin America and their associated local, national and continental networks. The CEDAR main goal is to focus and to promote the implementation of economic, social and cultural rights laws, as a part of international human rights law. CEDAR has its headquarters in the T.M.C. Asser Institute in The Hague and it operates through a wide and well structured international network with a main focus in the developing world.

In respect of CEDAR competences in the field of international environmental law, it is important to stress that many activities in this field are implemented through the network itself and in particular through the implementation of projects *on the promotion of sustainable development and environmental protection* in the territory of developing countries. With regard to the CEDAR activities and the link with international environmental law in respect of the city of The Hague, three main areas can be identified:

- CEDAR is a board member of the Alliance for the University of Peace (UPEACE) located in Costa Rica. The University of Peace was established in 1980 through the support of the UN (check) and it is known at the global level for its importance and relevance in the academic arena. With regard to international environmental law, UPEACE supports several project in environmental law in the world and the fact the CEDAR, located in The Hague, is one of the board member of such a prestigious university gives the city of The Hague a certain relevance at the international level and an important link in terms of institutional setting;
- The city of The Hague launched in June 2000 at the Peace Palace the Earth Charter. In the course of such occasion, CEDAR was invited by the city of The Hague to provide a speech in the launching of the conference on the relation between the Earth Charter and international law. Such an active participation of CEDAR in the launch of the Earth Charter was followed by the appointment by the CEDAR's headquarters (TMC Asser Institute) of one staff member working on the relevance of the environmental concerns in the national constitutions worldwide;
- Finally, in the academic area a link between CEDAR and international environmental law can be identified in the recent developments with regard to international human rights law and international humanitarian law. In this respect, because of the recent transformation of traditional conflicts between states to interstatual conflicts, it has to be registered a move from humanitarian law toward international human rights law. Law on war moved from an intergovernmental level to a national/intrastate level and the issue of global justice was also affected by such developments. Law is a changing and not static phenomena. Law is following the transformation of the world and of the international events and therefore global justice is not intended exclusively in social, economic and cultural terms, but also with a focus on environmental protection and ecologic concerns.

## Various Other Organisations

### 19. Global Programme of Action for the Protection of Marine Environment (GPA/UNEP)<sup>33</sup>

The Global Programme of Action (GPA) aims at the development of a conceptual and practical guidance for decision-makers at the national and/or regional level dealing with actions to prevent, reduce, control and/or eliminate marine degradation from land-based activities. The GPA supports the states in the identification of adequate policies and measures aiming at the prevention and protection of the marine environment. The GPA has been operating in The Hague since 1997/1998, coordinating the UNEP Regional Sea Programme which is operating via regional offices. Each regional office has a legal officer which deals with all aspects of IEL aiming at the implementation of the all the UNEP environmental programmes. The GPA founding documents is the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and the Washington Declaration (1995) and is a soft law instrument with no binding effects on parties.

#### *The Global Programme of Action for the Protection of the Marine Environment from Land-based Activities*

*“14. The Programme of Action, therefore, is designed to be a source of conceptual and practical guidance to be drawn upon by national and/or regional authorities in devising and implementing sustained action to prevent, reduce, control and/or eliminate marine degradation from land-based activities. Effective implementation of this Programme of Action is a crucial and essential step forward in the protection of the marine environment and will promote the objectives and goals of sustainable development.*

*15. The Global Programme of Action reflects the fact that States face a growing number of commitments flowing from Agenda 21 and related conventions. Its implementation will require new approaches by, and new forms of collaboration among, Governments, organizations and institutions with responsibilities and expertise relevant to marine and coastal areas, at all levels, national, regional and global. These include the promotion of innovative financial mechanisms to generate needed resources.”*

#### *Washington Declaration*

*“Declare their intention to do so by:*

*1. Setting as their common goal sustained and effective action to deal with all land-based impacts upon the marine environment, specifically those resulting from sewage, persistent organic pollutants, radioactive substances, heavy metals, oils (hydrocarbons), nutrients, sediment mobilization, litter, and physical alteration and destruction of habitat;”*

In particular, the GPA invites the UN states to undertake the following activities:

- Identification and assessment of problems related to the most common sustainable development criteria (i.e. food security and poverty alleviation, public health, etc.), to the impacts of contaminants (i.e. sewage, persistent

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<sup>33</sup> Interview with Nancy Bennett and Rossana Silva Repetto of 19 February 2008.



organic pollutants, etc), physical alteration (habitat modification and destruction), sources of degradation (i.e. coastal area, atmosphere, etc.), the affected or vulnerable areas of concern (i.e. critical habitats, habitats of endangered species, etc.);

- Establishment of priorities for action in respect of the above factors;
- Identification of objectives for priority problems for source categories and areas affected on the basis of the established priorities.
- Identification, evaluation and selection of strategies and measures to achieve such objectives.
- Development of criteria for evaluating the effectiveness of strategies and measures.

In respect of the protection of the marine environment from land-based activities, these are the milestones of GPA in terms of global and regional conventions and events:

1974 - The regional seas Conventions and related Protocols (e.g. North Sea, 1974; Mediterranean, 1976; Kuwait region, 1978; South-East Pacific, 1981; Wider Caribbean, 1983);

1982 - United Nations Convention on the Law of the Sea (UNCLOS)

UNEP started addressing issues related to impacts on the marine environment from land-based activities;

1985 - Montreal Guidelines for the Protection of the Marine Environment Against Pollution from Land-based Sources

1992 - United Nations Conference on Environment and Development (UNCED) and Agenda 21, Convention on Biological Diversity (CBD)

1995 - UNEP Governing Council decisions 18/31 and 18/32 pertaining to the Washington Conference and persistent organic pollutants (POP's), adoption of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities and adoption of the Washington Declaration, Jakarta Mandate on the Programme of Action for Marine and Coastal Biodiversity within the CBD

1996 - GPA Implementation Plan presented to the Commission on Sustainable Development (CSD-4), United Nations General Assembly resolution 51/189 on the institutional arrangements for the implementation of the GPA

1997 – 1998 - UNEP Governing Council decision 19/14 on global and regional GPA implementation, Establishment and operationalization of the UNEP/GPA Coordination Office in The Hague, The Netherlands

The implementation of the GPA is the result of the joint activity of governments, stakeholders, local communities, public organizations, non-governmental organizations and the private sector which work together in the definition of national and regional programmes of action. Such activity has the support of the UNEP, as the secretariat of the GPA, and its partners. In order to facilitate compliance with the GPA, UNEP uses a wide range of soft law instruments. In December 2006 the document entitled “Guidance on the implementation of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities for 2007–2011” was released by the UNEP.

The GPA is implemented through the cooperation on a regional basis and the UNEP Regional Seas Programme is a perfect example of a functioning integrated framework

for national action programmes. Moreover, governments recommended the establishment of the GPA Clearing-House as a tool to mobilize experience and expertise, including facilitation of effective scientific, technical and financial cooperation, as well as capacity-building. The clearing-house provides a rapid and direct referral system to relevant information and data so as to provide appropriate advice and assistance.

The GPA Coordination Office is primarily funded through the regular budget of UNEP (Environment Fund) and a Technical Co-operation Trust Fund financed by various governments including the Netherlands, Norway, Finland, Belgium, United States of America, and the United Kingdom. Projects for the implementation of the GPA by Governments are financed by sources such as the Global Environment Fund (GEF).

Among its tasks, the UNEP/GPA Coordination Office assists the duty of States to preserve and protect the marine environment from land-based activities, mainly through several capacity building and technical programmes, such as National Programmes of Action or the Integrated Coastal Area and River-basin Management (ICARM).

The legal officer of the UNEP/GPA Coordination Office is also the person responsible for the legal issues under the UNEP Regional Seas Programme. Therefore the legal co-ordination of the Programme is in The Hague. She sometimes is requested by ministries to write briefings on certain issues, but she is not allowed to take sides.

In a broader context, the United Nations Environmental Programme (UNEP) has been publishing extensively on international environmental law, mostly on compliance issues and in connection with judicial trainings. UNEP also publishes collections of environmental case law. Its recent publications include:

- Compliance Mechanisms Under Selected Multilateral Environmental Agreement (2007)
- Judicial training modules on environmental law
- Selected Texts of Legal Instruments in International Environmental Law (2005)
- Judicial Handbook on Environmental Law (2005)
- Manual on Compliance with and Enforcement of Multilateral Environmental Agreements (2006)
- Symposium of Judges and Prosecutors of Latin America (2003)

No cases of environmental nature have been submitted or dealt with by the GPA which was occasionally asked by ministries to provide a briefing but without taking sides.

*The legal facility's role in increasing the visibility of organisations in and outside The Hague and as a tool for the communication among IOs located in The Hague was discussed. The potential of environmental mediation (after a problem emerges but before going to court/tribunal) was noted; as well education and training of environmental mediators.*

## **20. Organisation for the Prohibition of Chemical Weapons (OPCW)<sup>34</sup>**

The Organisation for the Prohibition of Chemical Weapons (OPCW) was established in 1997 within the framework of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) signed in Paris in 1993 and with the aim to monitor the effective implementation of such a convention. The OPCW is an independent international organization finalized at the support and assistance with the destruction and non-proliferation of chemical weapons. At the moment of writing the OPCW is composed of 183 countries and operates through a team of 200 international experts on the field. There are still five signatory states that have yet to ratify the Convention and seven non-signatory states. The founding document is the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. The headquarters are in The Hague.

The relation between the OPCW objectives and environmental protection is clearly indicated in the statute of the organisation. In particular:

Article 2(1) definition of chemical weapons: a) toxic chemicals and their precursors, b) munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices, and c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b);

Article 2(2) defining toxic chemical as “any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals”;

Article 4(10) on the protection of environment: “Each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall transport, sample, store and destroy chemical weapons in accordance with its national standards for safety and emissions”;

Article 5(11) on safety of people and environmental protection: “Each State Party, during the destruction of chemical weapons production facilities, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall destroy chemical weapons production facilities in accordance with its national standards for safety and emissions.”

Article 7(3) on safety of people and environmental protection: “Each State Party, during the implementation of its obligations under this Convention, shall assign the highest priority to ensuring the safety of people and to protecting the environment, and shall cooperate as appropriate with other States Parties in this regard”.

### **PART VI ACTIVITIES NOT PROHIBITED UNDER THIS CONVENTION IN ACCORDANCE WITH ARTICLE VI**

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<sup>34</sup> Interview with Rene Betancourt on 9 April 2008.

## C. PRODUCTION

7. Each State Party, during production under paragraphs 8 to 12, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall conduct such production in accordance with its national standards for safety and emissions.

Moreover, the OPCW supports the exchange of scientific and technical information among Member States to promote the peaceful uses of chemistry and provides funding for several projects in the developing countries on research activities aimed at environmentally sound technologies for the destruction of hazardous chemicals, analytical methods relating to toxic chemicals, safer alternatives to scheduled chemicals, medical treatment of accidental exposure to hazardous chemicals, and practical applications of chemistry in industrial, agricultural, medical, pharmaceutical or other peaceful purposes. The OPCW requires its Parties to establish a national authority, often created within an existing Ministry, responsible for the development of national legislation and for ensuring compliance on national issues related to chemical weapons. The implementation of the Chemical Weapons Convention is left to the state parties, which in accordance with Article VII of the Convention shall adopt the necessary measures to implement their obligations under the Convention. National legislation in this field includes administrative, criminal, environment and trade law. The OPCW checks the compliance of the parties with the Convention, namely ensures that adequate national legislation is adopted; it also provides support for the establishment of such legislation (legal trainings). The compliance system of the Convention depends on the type of chemical weapons at stake (there are three different lists of chemical weapons) and is based on initial and challenge inspections. Initial inspections are conducted on a regular basis; they are on-site inspection of facilities to verify declarations submitted pursuant to Articles III, IV, V and VI and on the Annex on Implementation and Verification. Challenge inspections which can be requested by each Party and they are “on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of this Convention, and to have this inspection conducted anywhere without delay by an inspection team designated by the Director-General and in accordance with the Verification Annex” (Article IX,8 of the Convention). At the moment of writing challenge inspection has never occurred and this demonstrates that diplomatic efforts in potential cases of conflict between two parties have been successful.

The OPCW is active in the following sectors of IEL: air pollution (prohibition of incineration of weapons), water pollution (sea dumping), waste management (dumping in the sea, incineration), as well as soil protection, biodiversity, etc. The OPCW has a database of national legislation on environmental issues.

*The establishment of a legal facility on IEL was discussed: in particular the idea of fora setting regular meetings where experts and representatives of the IOs located in The Hague could meet and share information on different aspects of IEL and also information on MEAs.*

## 21. Institute for Environmental Security (IES)

The Institute for Environmental Security (IES) started its work programme in 2003. It chose location near the Peace Palace as a reflection of one of its basic tenets, namely that the rule of law is a fundamental condition for long-term security. On the other hand, security is a condition for the development and application of law.

IES' mission is to advance environmental security, both on field and policy level, using a multidisciplinary methodology in which legal analysis and compliance with and enforcement of international environmental law are key elements.

The definition of environmental security is derived from the Millennium Ecosystem Analysis (2005) and refers first of all to the delivery of ecosystem services to meet the needs of man and nature. A break-down in this delivery may lead to competition over scarce environmental resources, which, under circumstances, in its turn may lead to (violent) conflicts.

In the IES methodology identification and mapping of environmental risks in concrete situations using state-of-the art remote sensing, field verification and Geographical Information System analysis, is followed by an overview and analysis of the international legal norms applicable to that situation. Examples are the overviews of norms in relation to the forest fires on Kalimantan and the threats to the transboundary mountain gorilla park between Rwanda, Uganda and DR Congo), and the design of solutions to the observed risks based upon the responsibilities and liabilities defined by those norms. An analysis of the *de facto* power and influence relations which govern the situation at hand is the next step in the methodology and recommendations are formulated based upon the combined analyses.

Identifying options for (transboundary) cooperation (peace parks) and the legal form this may take, is very much part of these recommendations, see f.e. the report on the cooperation between Rwanda, Uganda and DR Congo.

IES considers financial instruments such as payments for ecosystem services as prescribed by international environmental law and is concretely involved in setting up contracts with ecosystem managers for these payments in the Guiana Shield ecoregion (Guyana, Suriname, French Guiana, the Colombian and Venezuelan Amazon and Brazil, North of the Amazon). This project is financed by the EU and implemented by UNDP, which has contracted IES as technical and policy adviser.

New field projects are being set up in DR Congo (Lake Tumba) and in Ethiopia –exact location to be decided.

Most of the field projects are carried in the ESPA-programme (Environmental Security for Poverty Alleviation, a five-year programme financed by the Directorate General for International Cooperation of the Dutch Ministry of Foreign Affairs.

IES takes actively part in the policy dialogues concerning the environmental aspects of the European Foreign and Security Policy, NATO, OSCE, the Trans-Atlantic Dialogue and concerning the security aspects of the negotiations conducted by the UN Framework Convention on Climate Change (UNFCCC). In December 2007 and in December 2008 it organised conferences in the European Parliament to reflect upon the outcomes of the Bali, respectively Poznan Conferences of the Parties of the UNFCCC and to discuss the way forward.

In March 2007 the first conference *Forces for Sustainability* was held in the Peace Palace with aim of bringing together the world of the environment with the world of

the military and the security sector, with a focus on how these two sectors could work together in f.e. Afghanistan. The second meeting took place in October 2008 in Barcelona, during the IUCN 5<sup>th</sup> World Conservation Congress, with as important outcome the conclusion that from the security and military communities a strong signal should be sent to the crucial negotiations to be held in December 2009 in Copenhagen on the successor to the Kyoto Protocol. These activities are organised in the framework of the IES CCIS programme (Climate Change and International Security).

In January 2009 IES started a project financed by the Dutch Ministry of the Environment on the policy coherence between the fields of climate change, aid, trade and international finance.

The IES *Pathfinder* project looks at the legal possibilities of restricting the import of illegally extracted natural resources in conflict zones.

In 2007 IES produced a report on the international legal aspects of the bombing by the Israeli Air force of the oil tanks on the coast of Lebanon in July 2006, in which amongst others the relevance of the Statute of Rome of the The Hague-based International Criminal Court was discussed.

IES is the initiator of the feasibility study on the usefulness and necessity of a legal facility in The Hague in the field of international environmental law, which is the subject of the report preceding this Annex.

All reports and publications are listed on the IES website [www.envirosecurity.org](http://www.envirosecurity.org), which also has reference to an Environmental Security Action Guide, a list of Essential Reading and an overview of all programmes, projects and current activities.

## 22. The Netherlands Red Cross

(Red Cross/Red Crescent Centre on Climate Change and Disaster Preparedness)

The Netherlands Red Cross is located in The Hague. It is part of the international Red Cross and Red Crescent Movement, which consists of the International Committee of the Red Cross, the 181 National Red Cross and Red Crescent Societies, and the International Federation of Red Cross and Red Crescent Societies.

The Netherlands Red Cross helps, protects and takes care of victims of war, conflict and disaster, and those who need assistance because of other circumstances. The Netherlands Red Cross Society was established in 1867, and since then has developed approximately 350 branches, covering the whole country, cooperating in 73 districts. The work in the branches is carried out by some 34,000 volunteers; they are supported by the professional staff located in The Hague.

The Netherlands Red Cross is part of the international Red Cross and Red Crescent Movement. The Movement consists of the International Committee of the Red Cross, the 181 National Red Cross and Red Crescent Societies, and the International Federation of Red Cross and Red Crescent Societies.<sup>35</sup>

### The Climate Centre

In 2002 the Netherlands Red Cross and the International Federation of Red Cross and Red Crescent Societies (IFRC) established the Red Cross/Red Crescent Centre on Climate Change and Disaster Preparedness (RC/RC Climate Centre). The organisation is located in The Hague but has a global function, in order to facilitate cooperation between national RC/RC societies, as well as between climate scientists and policy makers. The purpose of the Centre is to promote understanding of the risks of climate change and ways to address them, particularly by means of disaster risk reduction programs.

The Climate Centre coordinates programmes and provides technical advice in close cooperation with the International Federation of Red Cross in Geneva and the regional delegations. Furthermore the Climate Centre disseminates documentation, information and experience and helps to find financial assistance to implement regional programmes and activities. It also provides guidelines on how to integrate climate change into planning and programmes – for instance in 2007 the Red Cross Red Crescent Climate Guide, which aimed at fostering a deeper understanding with regards the risks of climate change. The publication built on the Centre's work carried out in more than thirty Red Cross and Red Crescent National Societies, mostly in developing countries.

As for other publications, the *“Preparedness for climate change 2006-2007; understanding and addressing the risks of climate change”*<sup>36</sup> intended to represent the Red Cross/Red Crescent's answer to the problem of changing climate. It calls for a better international understanding of climate change and of how extreme weather

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<sup>35</sup>There is more information about the International Federation on [www.ifrc.org](http://www.ifrc.org); about the International Committee - on [www.icrc.org](http://www.icrc.org); about the International Movement - on [www.redcross.int](http://www.redcross.int)

<sup>36</sup> See: <http://www.climatecentre.org/downloads/File/programs/Pfcc%202006-07%202p.pdf>

events could affect vulnerable people, which was expected to lead to stronger risk reduction programs. In conjunction with the report, a programme was implemented with voluntary participation from all the national RC/RC societies in developing countries. The programme *'Preparedness for climate change - understanding and addressing the risks of climate change'* was implemented in 2006 and 2007, with financial support from the Netherlands Ministry of Foreign Affairs, Directorate-General for International Cooperation. The initiative is hoped to contribute to network-building among national societies and international organisations and will lead to recommendations to address climate related risks.

Other activities of the Red Cross/Red Crescent Climate Centre include the provision of regular updates on climate-related news, policy and science, of training and capacity building on climate risk management and of assistance with communication and media strategies.



### 23. Unrepresented Nations and People Organisation (UNPO)<sup>37</sup>

The Unrepresented Nations and Peoples Organization (UNPO) is a democratic membership organization representing peoples' rights in international and national environments. The members of UNPO are indigenous peoples, occupied nations, minorities and independent states or territories who have joined together to protect their human rights, to preserve their environments and to find non-violent solutions to conflicts that affect them. UNPO provides an established international forum for Members' aspirations and assists them in effective participation at the international level. The members that established and run the organisation follows the five principles that form the basis of the UNPO Charter:

- Non-violence;
- Human Rights;
- Self-determination and democracy;
- Environmental Protection;
- Tolerance.

Since the founding of UNPO and after more than a decade's worth of work in world politics, six Members, Estonia, Latvia, Armenia, Georgia, Palau and East Timor, have been admitted to the United Nations.

UNPO was established with the aim to support the members also in international fora, such as the United Nations, which is the key place where their concerns can be raised. The primary objective of the UNPO program at the United Nations is to provide UNPO members with assistance in gaining access to and effectively using the different United Nations bodies such as the UN Commission on Human Rights, the Permanent Forum on Indigenous Issues, the Working Group on Indigenous Populations and the UN Human Rights Council.

UNPO has had its headquarters in The Hague for seventeen years. UNPO has an international network of consultants and representatives in Belgium, Switzerland and the United States amongst others. UNPO does not have a department on environmental law since environmental issues are part of a general programme of human rights and democracy advocacy.

UNPO's mandate is to provide its Members with access to the international fora, such as the agencies of the UN, which are intended to defend the rights of indigenous people, mitigate the effects of threats such as climate change and protect the natural environment. Environmental law is mentioned in the UNPO founding documents, namely the UNPO covenant<sup>38</sup>.

UNPO is active on the following areas of law:

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<sup>37</sup> Questionnaire filled by Erin Normile, head of administration (+31 703646504)

<sup>38</sup> "... convinced that the protection of the environment and its natural resources, in particular in the context of climate change and related shortages of potable water, is linked to the fundamental rights of Nations and Peoples everywhere, necessitating respect for the enshrined rights of free, prior and informed consent, so as to guarantee their right to determine their own future and the protection and respect for their ancestral lands and resources ..." [www.unpo.org/content/view/6192/60/](http://www.unpo.org/content/view/6192/60/).

- highlighting infringements of international human rights law and redressing injustices that affect indigenous and marginalised people;
- currently engaged in a question of constitutional law regarding the land rights of the Rehoboth Basters in Namibia. UNPO has also worked closely with the Ogoni of the Niger Delta in campaigning for sustainable and equitable development of Nigeria's oil resources. Most recently this has involved publicising the continued and damaging policy of gas flaring in the Niger Delta;
- A UNPO conference held in Brussels on the issue of de facto states in May 2008 also brought to light elements and gaps in international law that affect UNPO members such as Abkhazia, Somaliland and Taiwan and which often have important environmental implications in cases of cross-border pollution, waste smuggling, and public health.

These are examples of topics UNPO hopes to address in the coming months with further events.

As stated above, UNPO's focus to date has been to campaign and raise awareness of environmental issues such as gas-flaring in the Niger Delta, flower cultivation in Ethiopia, unsustainable mining operations in Bougainville and West Papua, and the rights of indigenous people to fishing grounds in North America. This frequently involves bringing international attention to instances where environmental law is being contravened or implemented ineffectually.

UNPO could add to the city of The Hague the following:

In terms of development of international environmental law:

- With almost twenty years of experience in dealing with environmental issues from across the world, UNPO has a broad range of case study evidence to draw upon;
- Over this time UNPO has also built up a database of contacts that allow it to call upon a cross-discipline body of activists and academics when addressing environmental issues;
- Because UNPO Members live and work in areas of environmental concern, they are in a unique position to gauge the impact of environmental policy over the long-term and provide feedback for the development of future environmental law;
- Sharing case study experience between Members from across the world promotes cooperation, best practice, and showcases potential shortcomings in approaches to international environmental law and its application.

In terms of compliance with international environmental law:

- As noted above, UNPO is able, through its Membership, to maintain contacts in sensitive environmental areas not always open to international observers;
- This contact allows it to monitor the observance of international environmental law, escalate its Members' reports to international fora, and assess the level of compliance being given to international environmental

- law;
- UNPO ensures that the issues of compliance with international environmental law are kept in the public eye through its website, campaigns, and events;
  - The documents associated with the UNPO website and campaigns constitute a record of compliance and associated case study evidence that serves to inform and support future compliance assessments carried out by UNPO;
  - UNPO is also in a position to inform non-state actors and de facto states of the prevailing international environmental law trends – promoting the compliance of environmental law to those outside the formal, states-based, institutions
  - UNPO has experience of providing activists with information and training - this could extend to alerting those living with the failures of international environmental law of the obligations their states should be observing, thus allowing local activists to judge, document and raise concern over environmental law contraventions.

In terms of enforcement of international environmental law:

- UNPO's documenting of compliance failures establishes a valuable catalogue of evidence that can be informative when considering the enforcement of international environmental law
- Publicising and documenting the costs of contravening international environmental law is an overlooked but important role UNPO is well-suited to perform and would be important in projecting the enforcement of international environmental law to a wide audience;
- In which way could your organisation benefit from the promotion of the city of The Hague in the field of the development, compliance and enforcement of international environmental law

IEL has an increasing importance for the following reasons:

- Increasing public awareness of international environmental law has been raised as the costs of environmental degradation begin to affect more people, especially those in the developed world;
- International environmental law has also taken on a new importance as the issues facing the world become increasingly transnational and states are less able to respond adequately to issues of pollution, the influence of transnational corporations, or resource scarcity;
- However the growing importance of international environmental law reflects the fact that it has been a long overlooked area of international law – it will be crucial to build upon this initial wave of interest and enthusiasm to develop instruments that meet the challenges of twenty-first century environmental threats.

Existing gaps in IEL:

- Unrecognised states such as Somaliland, Abkhazia, and Taiwan are major gaps in the existing environmental law provisions. International organisations find themselves unable to engage formally with these de facto

states, despite the latter's internal capacity, simply because they lack international recognition;

- Meanwhile, mismanaged or kleptocratic states such as Nigeria and Burma/Myanmar exploit the resources at their disposal to the detriment of the people and often in contravention of international environmental norms because there is a distinct lack of meaningful international censure measures
- The failure to take into account the opinions of indigenous people in Chile, Ethiopia, and Vietnam in the face of large-scale dam construction programmes is a major oversight and risks damaging sites of important cultural significance and natural beauty
- Such serious failures alienate and disillusion those whom international environmental law is expected to protect and can encourage the adoption of illegal and destabilising responses to environmental threats.

Potential cases in IEL where gaps could emerge are:

- Illegal cutting of forests
- Illegal waste transport
- Adverse effects of climate change (refugees of small islands)
- Oil spills in case of war situations
- Marine environment
- Pollution caused by maritime transport (Ivory Coast case)

UNPO comments on these issues are:

- The illegal cutting of forests and transport of waste, and the adverse effects of climate change are the most important facing UNPO's Membership at the current time.
- Illegal deforestation remains a major gap in current international environmental law for a variety of reasons. These include state actor complicity in illegal logging in countries where an international sanctions regime, the presence of valuable hardwoods, cowed civil society, and rising commodity demand from regional neighbours combine to make the enforcement of international environmental law difficult. Burma/Myanmar is one such case
- De facto states such as Abkhazia and Somaliland are situated on some of the world's major crossroads between continents which leaves them at risk from the illegal transport of hazardous wastes. Although they possess the institutional infrastructure of a state, their lack of recognition on the international stage means that they are not party to international agreements and they are not consulted on issues such as illegal waste transport despite the fact that they are best placed and most at risk from the transport of such waste transport. International law needs to take into account the possibilities and capabilities these de facto states offer
- Rising sea levels around the islands of the Pacific Ocean is having the greatest impact on the lives of indigenous people. Often they live in the low-lying areas most affected and because of their economic marginalisation have the least means with which to respond to the challenges of climate change. In instances where indigenous people are internally displaced within a state, the avenues for redress and relief are often limited by prejudices and legal codes influenced by later settlers or migrants. International

environmental law therefore has a key role to play in setting a legal standard for the protection of indigenous people when faced with the cultural, economic, and social costs of climate change.

These gaps exist because of the ongoing reliance on a states-based approach to international consultation and agreement formulation. Where this involves pariah states such as Burma/Myanmar or failed states such as Somalia the regimes involved are frequently ambivalent, knowing that little can be done to ensure compliance or enforcement of international environmental law. Moreover, this approach prevents de facto states such as Abkhazia, Somaliland, and Taiwan from engaging with established states and international institutions chiefly the United Nations and its agencies, in meaningful discussions. This approach has thus ignored the new threats and opportunities introduced by globalisation. These changes no longer respect state borders or controls, still less where such borders or controls are only nominal.

*UNPO could benefit from the promotion of The Hague in IEL by increasing its visibility at the international level and increasing its activities in IEL.*

*The Hague could address these issues because is uniquely placed to attract environmental legal expertise to discuss and debate the ways forward for international environmental law. The existing legal expertise and resources provides The Hague with an opportunity to work across legal disciplines to generate new thinking on questions of environmental law. Armed conflict in the twenty-first century will be characterised by the increasing demand for access to natural resources like minerals or water. These conflicts are likely to be intra-state, low-level and potentially destabilising. The Hague is in a position to raise the profile of these issues, highlighting how much conflict and the international system has altered since the 1899 Peace Conference. This is an especially important role to adopt when commodity price increases and doubts over the state of the world's economy are drawing attentions away from the environmental issues that underpin some of these very problems.*

## 24. The Hague Justice Portal

<http://www.haguejusticeportal.net/>

The Hague hosts not only a great number of well known international courts and tribunals, but also an increasing number of other international public and private organisations offices. As a follow-up of such a development, a few organisations located in The Hague decided to cooperate in The Hague Academic Coalition (HAC), which consists of the Carnegie Foundation, the Grotius Centre and The Hague campus of Leiden University, the Netherlands Institute of International Relations “Clingendael”, the Institute of Social Studies and the T.M.C. Asser Institute. With the support of the City of The Hague, the HAC wants to improve access to information on international developments in the fields of justice, peace and security in The Hague courts, tribunals and organisations and to stimulate the debate along such issues. The HAC aims at the promotion of research, education and public debate in support of the development of international policy, law, governance and international negotiations towards justice, peace and sustainable development.

The HAC also supports the activities of the various international courts, tribunals and other international organisations based in The Hague. Among its activities, there are, *inter alia*:

- Organisation of conferences, postgraduate and post-academic courses;
- Promotion of research and consultancy activities;
- Managing publications;
- Organisation of public events.
- Operating the Hague Justice Portal.

The Hague Justice Portal was formally launched on 6 April 2006 and has been enjoying growing popularity ever since, with an occasional 30,000 page views a day, from 157 connecting countries. It aims to provide information and news on The Hague organisations in the fields of international peace, justice and security. The Hague Justice Portal reports on activities of different international courts, institutions and organisations located in The Hague and provides a calendar of related events. Furthermore, it hosts valuable databases, such as the one that contains the Permanent Court of Arbitration’s arbitral awards, or the database of domestic jurisprudence relating to international criminal law (in the framework of the DomCLIC pilot project). The Hague Justice Portal also publishes a quarterly online journal with commentaries related to international law issues and an overview of court documents. Other features of the portal include forums, polls, links and an up-to-date list of vacancies at international organizations in The Hague.

## 25. Shell

The Shell Group, which has located one of its most important offices in The Hague, includes a wide range of energy and petrochemicals companies providing various products and services and focusing their activities not only on oil. In particular, in terms of production of goods and services, Shell can differentiate between:

- produces for motorists: station locator, car and motorcycle oils, fuels, credit cards, loyalty schemes, etc.;
- products and services for business: products and services in the field of exploration and production of energy, gas and power, lubricants, fuels and bitumen, chemicals, renewables, shipping and trading.

Shell has a global dimension with offices in 140 countries in the world.

In particular, Shell activities in the field of energy include the finding and production of oil and gas, the production and marketing of natural gas and electricity, the production of a wide range of fuels and lubricants, as well as products from petrochemicals. Moreover, Shell plays also an important role in the field of renewable energies through the building of commercial scale wind parks as well as the selling solar photovoltaic panels to businesses and consumers. Shell is also active in the field of research and new technologies and in particular in the field of hydrogen powered cars, buses and vans.

Shell is a big component of the energy markets worldwide with a particular attention on sustainability and the protection of environment and how to address environmental and social concerns in relation to its activities. Such a commitment is confirmed by the periodical release of a Sustainability Report which highlights the company activities in the energy sector with a particular focus on sustainability.

The location of Shell in The Hague and the presence of such a big key player of the private sector in the field of energy is important for the establishment of The Hague as a platform for international and environmental law. The energy challenge is nowadays linked to the ecological problems and legislators are always paying more attention on such an aspect. The new approach which has guided the international community and the EU since the beginning of the nineties aimed at identifying a balance between the combination of the environmental protection concerns and the economic development of our society. Within such premises, new instruments such as ecological taxes or markets of certificates or emission permits have been introduced in environmental policy and law and big companies in the energy sector can play a key role in the implementation of such measures. In particular, Shell is one the key players of such new instruments introduced in the EU aiming at the promotion of renewable energies, as well as at the reduction of greenhouse gas emissions in a more efficient way.

The commitment of Shell towards environmental and social aspects is promoted also the website of Shell, which highlights the company details and progresses in contributing to sustainable development. The site provides additional environmental and social performance data and more detailed information on our approach to sustainable development and related issues.

## **26. European Climate Foundation**

The European Climate Foundation is an institution established in 2008 and focusing on activities aimed at the mitigation of greenhouse gas emissions in Europe. Its main mission is to facilitate policy developments that reduce greenhouse gas emissions in Europe. Key factors behind the ECF's work are the promotion of energy efficiency, renewable energy, maintenance of the earth's ecological systems and equitable distribution of energy services. The main activity of the Foundation is the re-granting of funds to activities fighting climate change. It has a staff of twenty people and a budget of EUR ten million in 2008, which is expected to double in 2009.

The activities of the ECF cover mainly six different areas:

- power generation
- energy efficiency
- clean transportation
- European climate policy
- EU role in international diplomacy
- Capacity building

ECF is part of a global partnership called Climate Works, which through the cooperation of regional foundations involved in the promotion of climate friendly initiatives, carries out strategic and fundraising tasks. ECF also works with international negotiators on different areas, such as mitigation, adaptation, carbon finance and deforestation. The Foundation does not deal with commercial investments and it is not involved in the carbon markets or green investment scheme.



## ANNEX II

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## **1. IUCN (World Conservation Union), Academy of Environmental Law**

The IUCN Academy of Environmental Law is hosted by the Faculty of Law of the University of Ottawa. It focuses on research and teaching of environmental law mainly by encouraging the development of collaborative research programmes between member institutions. This involves inter-disciplinary research on the operation and development of environmental law, as well as conference and publication activities designed to stimulate the exchange and dissemination of environmental law research.

The Academy promotes teaching capacities in environmental legal education in universities and related institutions, such as the United Nations Environment Programme, focusing on developing countries and economies in transition. This involves the preparation of environmental law curricula, the conduct of “training the trainers programmes”, the development of electronic teaching materials, on-line teaching, and other forms of web-based learning. Furthermore, the Academy organises regularly events and conferences on topics related to International Environmental Law (IEL).

Further information on the IUCN Academy of Environmental Law can be found at <http://www.iucnael.org/> .

Since the Academy is currently trying to enhance its regional coverage worldwide, the idea of The Hague as potential host for the European regional branch office was discussed. In cooperation with the Academy headquarters the regional office should aim at generating its own resources and organising seminars, trainings and conferences.

## **2. Center for International Environmental Law (CIEL)**

The Center for International Environmental Law (CIEL) is a non-profit organisation that aims at protecting the environment, promoting human health, and ensuring a just and sustainable society by the use of international law and institutions. It does so with the provision of a wide range of services, such as legal counsel, policy research, analysis, advocacy, education, training and capacity building.

CIEL headquarters are located in Washington DC with a regional branch office in Europe, located in Geneva. CIEL is a public-interest environmental law organisation. Its mission is to protect the global environment and human health while promoting sustainable development. CIEL provides legal services in international and comparative national law, including policy research and publications, advice and advocacy, education and training, and institution building. Its programmes cover areas including biodiversity, climate change, persistent organic pollutants, law and communities, human rights and the environment, trade and sustainable development, and international financial institutions and export credit agencies.

CIEL's Geneva office focuses on the relationship between trade, investment, environment and development. Particular attention is paid to developments at the World Trade Organisation and the World Intellectual Property Organisation, with a view to reform the global framework of economic law, policy and institutions. CIEL also focuses on developments at the regional level, including the negotiation and implementation of regional and bilateral trade and investment agreements. Working towards a more balanced global economy that is environmentally sustainable and beneficial to all people in a more equitable way, CIEL provides support to national missions and intergovernmental and non-governmental organisations. CIEL also has a strong tradition of educating public-spirited lawyers and building institutional capacity through its teaching and training programmes, including its internship and fellowship programme.

CIEL is therefore involved in the development of IEL, as well as compliance (WTO, investment disputes, human rights issues). In terms of enforcement of IEL, CIEL is not directly involved in disputes before American courts. CIEL acts more as a support tool for interested parties. In the field of IEL, the topics relevant to the work of CIEL are: intellectual property law, adaptation to climate change, chemicals and the financial aspects of environmental law.

In terms of gaps in international environmental law, the need to integrate issues related to human rights and health into this field was mentioned. Amongst others, the potential tasks of a legal facility were discussed, notably the focus on education and training activities in IEL and the assessment of how to attract governments and stakeholders in The Hague and why in the past similar initiatives have not worked out (i.e. international tribunal on? law of the sea).

### **3. Institute for European Environmental Policy (IEEP)**

The Institute for European Environmental Policy (IEEP) is an independent non-profit institute that aims at promoting environmental sustainability in Europe through policy analysis. It carries out research and consultancy work on the development, implementation and evaluation of environmental and environment-related policies in Europe. The institute is also involved in awareness raising activities. IEEP headquarters are in London with a branch office in Brussels.

IEEP has a limited role in the field of international environmental law since the focus of its activities is more at the European level. In total, IEEP employs about thirty people. Its main role is to provide advices to the EU and to national public authorities in the development and implementation of European environmental law. IEEP is also involved in policy focused research in the field of European environmental law (EEL). IEEP is mainly active in the development of policy reports and advises; it for instance carries out a study on the regulation of cars or on the monitoring and reporting requirements under the EU ETS. On a less regular basis, IEEP is invited to investigate how Member States effectively transpose European legislation. In terms of development of EEL, IEEP regularly publishes a handbook on EEL. IEEP is not involved in any educational activities, such as courses or summer schools, but it occasionally organizes workshops or seminar with invited experts.

In respect of IEL, the activity of IEEP is rather limited and mainly focuses on the study of the EU's role in IEL making. Occasionally, IEEP is also engaged in projects on IEL: for instance it has carried out a project recently, supported by the Belgian Ministry of Environment, on the implementation of the Aarhus Convention.

In terms of gaps in IEL and the role of The Hague, the idea to investigate the field of humanitarian law and the issue of environmental refugees was discussed. Within this framework, the problems related to the difficulty to link a potential case of refugees from developing countries due to problems related to environmental protection (i.e. climate change) to an unlawful activity of a state or a public/private entity were mentioned.

The role of the legal facility in the field of training of judiciary was stressed, as well as the increasing demand in the field of training judges on IEL issues, especially in consideration of the training of judges in the field of international law traditionally offered in The Hague.

#### **4. Food and Agriculture Organisation (FAO)**

The Food and Agriculture Organisation of the United Nations (FAO) was founded in 1945 and it is a neutral organisation composed of developed and developing countries, grouped together with the aim of defeating hunger in the world. It is a platform to negotiate agreements and debate policy. It also facilitates the modernisation and improvement of agriculture, forestry and fisheries practices in developing countries and countries with economies in transition. The headquarters of FAO are located in Rome.

FAO provides assistance to its members in the field of improving and modernizing agriculture, forestry and fisheries. Furthermore, it is a centre of excellence and of knowledge dissemination, a place where governments meet and discuss the organization's main topics. Finally, FAO personnel are active in the field and work together with locals especially located in developing countries upon request of these countries.

FAO also has a wide network of regional offices (Chile, Ghana, Egypt, Hungary, Thailand), subregional offices (Barbados, Zimbabwe, Gabon, Ghana, Ethiopia, Tunisia, Turkey, Hungary, Samoa), liaison offices (USA, Switzerland, Belgium, Japan) and country representations. The country representation offices are small and usually include one representative, one civil servant and a few assistants; they aim at providing assistance and helping the professional team provided by FAO to implement specific projects in developing countries.

While agriculture and food related activities constitute the core of the FAO's mandate, Article 1(2) of the FAO's constitution mentions among the functions of the organization the promotion of national and international action in respect of "the conservation of natural resources and the adoption of improved methods of agricultural production". It is important to emphasize that the constitution was adopted even before the principle of the protection of natural resources had been adopted by the Earth Summit in Rio de Janeiro in 1992. FAO was the first UN agency to have a reference to the protection of environment mentioned in its mandate.

FAO has a department on natural resources management and environment, which deals with the scientific and technical aspects related to natural resources and environmental protection affecting food and agriculture. Any legal issue, including those related to international environmental law, is addressed in the Legal Office. The Legal Office is composed of approximately ten persons and is divided in two branches. The branch on General Legal Affairs (LEGA) provides advice to the Organization on corporate legal matters, relations with other organizations and issues related to conventions to which FAO is a depositary (International Treaty on Plant Genetic Resources for Food and Agriculture 2001, Convention on Fishing and Conservation of Resources 1958 and many other environmental treaties mostly on regional fisheries) and to other conventions which tackle problems related with the FAO's main activities. The second branch is called Development Law Service (LEGN) and the core of its activity is providing legal assistance to the member parties upon request in sectors like forestry, fisheries, sustainable use of fauna, protected areas, water resources, plants (vegetal and animal health), food, trade and agriculture.

Assistance is usually provided via specific and thematic projects where the legal part is combined with technical and more scientific assessments (economic, social, etc..). Projects are usually implemented by the staff of the Development Law Service, which is composed of selected international legal consultants and local experts. FAO's activities in this regard imply assistance in the review and reform of national legislation in a participatory way and by on-the-job trainings. Often the legal part of such projects focuses on the approximation of national legislation with international law and soft law, as well as on the correct implementation of international environmental law. Furthermore, the Development Law Service provides assistance in the development of bilateral or regional treaties (i.e water resources or forestry in central Africa).

Part of the work of the Development Law Service is related to research and publications. There are two types of publications: FAO Legislative Studies and FAO Legal Papers Online.

The activities of the Development Law Service contribute to the development of international environmental law either through specific and concrete assistance projects, or with the publication of research studies and papers. FAO is not active in the field of enforcement and compliance with IEL since it is a neutral organization that remains independent. Indirectly, legal studies and papers published by FAO may contribute to the dissemination of information and awareness of particular cases related to the protection of environment in the sectors of food and agriculture. For instance, cases where a state request FAO assistance in order to investigate the reasons of a lack of enforcement of environmental law may contribute to shed some light on the general discussion on the enforceability of IEL.

FAO is also an important source of information in terms of environmental law. FAOLEX is an important database which includes national legislation from all state parties which are obliged to provide FAO regular information on developments in the field of national environmental legislation. FAOLEX also contributes to ECOLEX, a database that combines information from FAO, IUCN and UNEP. Similar to FAOLEX, Fishlex and Waterlex are also managed by FAO.

In terms of cooperation with other entities, FAO is affiliated with UNEP, the World Bank, as well as conventions and secretariats which deal with issues related to food and agriculture (i.e. CITES, UNCBD, UNFCCC, IUCN). Cooperation with other MEAs is more often technical than legal. Usually, this concerns the preparation of information, technical reports, contribution to secretariats' documents, reactions to COP decisions. Finally, it is important to mention that cooperation with other actors is only pursued if there is a particular interest in this respect shown by state parties.

A strong focus is placed on environmental policy since the FAO technical departments which are more staffed in comparison with the legal office cover these aspects. The main function of policy departments is providing assistance to the parties in the development and identification of national policies and strategies in the field of the management of natural resources. In this respect, not only legal concerns are taken into consideration, but also technical and socio-economic aspects.

Gaps in IEL exist in the field of enforcement and compliance. For instance in the sector of bioenergy the principles enshrined in the CBD, WTO, HR, UNFCCC are all applicable but the need for an international entity regulating biofuels is envisaged.

## 5. WTO Commission on Trade and Environment

The World Trade Organisation (WTO) is an international organisation that deals with the rules of trade between nations, through the application of the worldwide-adopted WTO agreements.

Two main bodies deal with international environmental law (IEL) in the WTO. These are:

- 1) The Commission on Trade and Environment (CTE) established in 1995, also called *regular CTE*;
- 2) Since the launch of the Doha negotiations round, the CTE Negotiating Group deals with IEL and conducts its work in accordance with a specific mandate:
  - a) investigate the relationship between the WTO rules and multilateral environmental agreements (MEAs) (in cooperation with the secretariats of the MEAs
  - b) environmental goods and services liberalisation to be performed also in cooperation with the secretariats of the MEAs. The Negotiating Group on cooperation is mainly set to respond to two questions: 1) how can the existing mechanisms be strengthened to enhance the exchange of information, and 2) the issue of observers status (in the WTO since 2000 there is a political deadlock on the issue of observers status and this affects the observers status of international organisations since the year 2000).

In the past years the main focus has been put on the negotiations in the CTE. The regular CTE is a place for members to raise issues, new proposals and it is rather limited to discussions, whereas the Negotiating Group has a more specific focus and mandate that should result in some sort of outcome on the issue of WTO/MEA relationship. The final outcome could be a ministerial declaration to reinforce cooperation. The aim of the environmental goods and services branch is to eliminate barriers on goods.

The relation between the different dispute settlement mechanisms in the WTO and MEAs is investigated in order to identify which mechanisms prevail in case of a conflict between measures taken within the framework of a MEA reflecting a trade measure and WTO. In this case it is relevant to look at whether parties at stake are members to the MEA or WTO, or to both regimes.

Amongst others, the following cases dealt by the WTO panel have an environmental protection component:

- GMO (Genetically Modified Organisms) case and EC (European Commission);
- Chile v. Spain (EC) case about swordfish, where Chile blocked access to its ports for transit stock swordfish harvested in international territory. This ended with the signature of a bilateral agreement (amicable solution) to be renewed every two years.

As to the negotiating group mandate, in case of dispute between WTO jurisdiction and MEAs, the WTO panels should consult the MEAs. Although this mechanism already exists, some parties would like to see something more specific which could

preserve the objectives and goals of the different MEAs in the WTO system (EC position). Reluctance on this point comes from the U.S., Australia, Mexico and other countries which consider the existing exception clause in the current WTO system (article 20) sufficient to justify derogations to WTO law (i.e. cases on shrimps, brazil tyres). The position of the majority of the members is that there is no need for green WTO law and that the potential for conflict between WTO and MEAs is rather minimal: existing rules would give enough flexibility. It is difficult to foresee how the negotiations could result, since there is no fixed deadline and the negotiations on this issue (which under the dynamic of WTO negotiations is considered a single undertaking) strictly depend on the result of negotiations on two more important aspects within the WTO system, notably on agricultural and non agricultural problems (industrial goods). An agreement on these two areas is necessary in order to see the negotiations also on other items to progress. In July 2008 negotiations at the ministerial level collapsed and it is difficult to predict when an agreement would be found on this matter.

In the negotiating group on item b) (environmental goods and services) the US and the EC identified a set of climate friendly goods and technologies and proposed to include this matter in the context of negotiations. The response from the other parties was not positive because of the political reality at the stage the proposal was tabled. Most of these goods and technologies are exported by industrialised countries.

There are regular meetings between the CTE and the secretariats of the most relevant MEAs. The CTE participates in the COP meetings of the MEAs which includes trade related measures (Basel, CITES, PIC, POP, CBD, UNFCCC, Montreal). Viceversa, the MEAs secretariats take part in the negotiations of the CTE group. Often, side events are organised by the CTE at the COPs meetings with the aim to clarify the several misunderstandings on how the trade system is responding to environmental protection issues. As well, in respect of the technical assistance activities MEAs secretariats are sometimes invited. MEAs information sessions held in the context of the regular CTE work occur once per year. MEAs secretariats participate in the CTE meetings of the negotiating groups three or four times per year and they are not invited for the informal meetings.

Although a basic cooperation between the CTE and the MEAs can be registered, the need for more cooperation was stressed, as well as the importance to extend the scope of it and formalizing what is already done in this respect.



## **6. UNITAR United Nations Institute for Training and Research**

Since its foundation in 1965, the United Nations Institute for Training and Research (UNITAR) has been operating in the field of capacity building.

The Secretariat of UNITAR is located in Geneva and is composed of approximately 60 persons. UNITAR works with internal experts but also utilizes, for a large part, external experts, such as personnel in other UN agencies, universities and NGOs.

More than 50% of the activities of UNITAR are related to environmental protection issues. These activities are split in two main sections: an environment unit (that has different programmes on climate change, chemicals and probably in the future biodiversity) and the environment governance programme (democratic governance).

The main activity of UNITAR is to provide training for the Member States in different areas. The thematic areas on which UNITAR's activities are focused are: peace, security and diplomacy (international law programme), environment, and governance.

The environment programme is based on distance learning and probably e-learning in the near future. It lasts eighteen months and it includes ten modules. Occasionally, a comparative environmental law fellowship is organised (four weeks course with twenty participants and covering a full range of environmental law issues) but this programme is not active at the moment because of lack of funding.

Occasionally, also two to three-day colloquiums for magistrates and judges are organised.

The Environment Unit (EU) provides training and capacity building to countries and provides institutional support to governments. It is composed of three branches (climate change, environmental governance and chemicals). On chemicals issues the support is provided to states (mainly developing countries) regarding the implementation of conventions. On climate change support is provided for the design and preparation of the national action programmes for adaptation (NAPA). On environmental governance the focus is on the implementation of principle 10 of the Rio Declaration which has been developed by the Aarhus convention and a toolkit for environmental officials in this respect is provided.

UNITAR is located in the International Environment House (IEH) in Geneva which hosts all major environmental organisations and MEAs secretariats. In this framework, sometimes UNITAR provides trainings to MEAs secretariats and/or agencies.

In the fellowship environmental law programme, MEAs secretariats provide experts to UNITAR and vice-versa. On chemicals for instance, the secretariat comes up with certain types of priorities and if there are funds available from Member States this can be implemented. The secretariat of the Aarhus convention asked support to UNITAR for providing training in some countries of the western Balkans and central Asia, such

as Kazakhstan, Serbia and Montenegro. EU countries regularly ask UNITAR's help to assist other countries in some specific issues.

The possibility for the legal facility to organise a short seminar (few days) in The Hague to attract participants from all over the world was emphasized, as well as the need for facilitating other meetings organized in The Hague. The importance of The Hague as an important place for international lawyers because of its history and the chance to visit interesting and important international organisations was also mentioned.

## **7. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)**

Adopted in 1998, the Aarhus Convention (AC) is an environmental agreement linking environmental rights and human rights, government accountability and environmental protection. It ensures public participation in the negotiation and implementation of international agreements through interaction between the public and public authorities.

### **COMPLIANCE**

The compliance mechanism of the Aarhus Convention is quite unique: it represents a combination of issues and in addition to the usual triggers included in the compliance regime of other MEAs, triggering is allowed for any member of the public who can write to the committee. Another important feature of this mechanism is that the compliance committee is independent, not made up of parties, but of individuals. It is a non judicial process, but rather consultative and not confrontational. It is a mechanism aimed at facilitating the start of investigations. So far, only one case was a party versus another party case (Romania v Ukraine). The compliance committee was elected in 2002.

The approach of the compliance committee of the AC is very liberal since it allows for triggering possibilities together with light powers of the committee: the major power of the committee is to bring cases to the parties of the AC. In the majority of cases the parties have endorsed the proposals of the compliance committee at the MOP level. In concrete terms, the powers of the committee and of the MOP are quite limited and the “named and shamed” is the major power of the system. Only in a few cases did the committee and MOP not agree with each other.

The secretariat of the AC is rather small: a five person professional staff and a two person secretarial staff.

### **ENFORCEMENT**

Enforcement within the AC is based on the reporting mechanism: the AC is an interesting model since, once again, what it distinguishes it from others is the role of the public. The national implementation reports to be assessed by each MOP are based on information obtained in consultation with public. This has contributed to the much higher reporting rate of the AC in comparison with other MEAs. At MOP1 26 out of 30 parties submitted their reports in time. The system appears to be very effective. In other MEAs the reporting rate has a much lower percentage.

Another important issue is that the contents of the report are prepared through consultative process: input from the public, usually environmental NGOs. The role of the public is another example on how to strengthen the reporting mechanism.

One problem is related to the issue of language. Cases are very complex and supportive documentation is very often issued only in original language.

In terms of gaps in IEL, the following issues were discussed:

- complexity and difficulty of generating new international environmental laws, although the need for adequate legislation is evident;
- relationship between Geneva and Brussels and the role of more coordination between EU and UNECE.

## **8. Convention on the Transboundary Effects of Industrial Accidents**

The Convention on the Transboundary Effects of Industrial Accidents aims at the prevention, preparation and response to transboundary effects of industrial accidents, either in terms of air or water pollution. The Convention also encourages inter-parties cooperation on research and development, information and technology exchange. The Convention was adopted in 1992 and entered into force in 2000.

The strong majority of cases related to the Convention concern water pollution, namely installations which are located in the proximity of state borders.

The main features of the convention are:

- identification of installations
- notification to neighbouring countries
- adoption of measures to prevent, prepare and respond to industrial accidents
- public participation

The approach and main features of the convention are very similar to the EC Seveso directive, as well as its obligations. The main difference is that the convention concerns transboundary pollution and the relation between two countries, while the Directive deals with the relation between installations.

The record of the EU member states' attitude towards the convention is positive. The Member States usually comply with the obligations of the convention since they are also used to the obligations of the Seveso directive. The Central Asia and Eastern European countries (ECA) have more problems with compliance.

The main focus of the convention is to assist the ECA countries to establish a better industrial safety policy. The Committee of the Parties (COP) of 2004 launched an assistance programme (AP) for these countries and also for those countries that should implement the convention in the near future but have not yet ratified it. The AP is based on two phases: preparatory and implementation phase. Ad hoc fact finding missions have been created to evaluate the preparatory phase of the AP in EC countries.

On enforcement, the COP of 2000 established a working group on the implementation reports. All parties are required to prepare a Report on the implementation of the convention. The reporting format is a questionnaire which must be filled by the parties.

No compliance mechanisms exist in this convention, since the convention is very technical and focuses on the implementation phase. The convention contains an article where dispute settlement is regulated (such as in cases where country A recognises a dangerous industrial plant in country B). The report on implementation is due every two years. Unfortunately, the reporting obligations are not taken seriously by the parties and this is demonstrated by the fact that the last report did not change from the previous one of two years earlier. In this case, there is a lack of an adequate enforcing

mechanism which should involve all authorities which have the competence with the issue at stake.

The only tool the convention authorities have in order to compel the convention parties to meet their obligations is to present the report at the COP and have a decision of the COP urging parties to comply. For instance in 2006 one party did not report: the COP expressed its concerns about this and asked the UNECE executive secretary to write to the minister in charge and this worked perfectly.

The secretariat of this convention has a staff of only two persons.

The idea to create a joint body with the water convention in order to improve enforcement issues was discussed. In this respect, the convention uses country experts, often working for different ministries (fact finding missions). There are focal points in all countries and training sessions on the implementation phase are usually held.

## **9. Convention on Environmental Impact Assessment in a Transboundary Context Project (ESPOO Convention)**

The Espoo (EIA) Convention sets out the obligation to assess the environmental impact of certain activities at an early stage of planning. Under the Convention states are obliged to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries. The Convention was adopted in 1991 and entered into force in 1997.

The ESPOO convention compliance and enforcement system operates on the basis of national reports: the Convention requires that Parties submit national responses to questionnaires in every two or three years. This information is provided for the review of compliance. Under the review of compliance the MOP (Meeting of Parties) established the implementation committee that provides assistance and orientation but it is not a judicial body. The eight members of the Implementation Committee (IC) are elected by MOP but election is not restricted to government persons. It uses many sources for its activities: submissions by parties about compliance and a party to party system. The IC met for the first time with the new operation rules in force in October 2008.

Example of most relevant cases:

### *a) Submission by Romania against Ukraine.*

An NGO in Ukraine made a complaint to the committee but the committee did not take action. Nonetheless, on the basis of this initiative the committee developed a long list of criteria/sources to be followed in order to make the IC aware of a case. The main difference with the Aarhus system is that the IC is not an ultimate trigger: it can decide whether to proceed or not due to the list of the mentioned criteria.

### *b) Poestra canal project in the Danube delta*

In 2004 Romania made a submission about Ukraine (project in the Danube delta) and also initiated a separate procedure, namely an inquiry procedure which the IC has no power to interfere with. The inquiry procedure is described in the Convention as a scientific analysis whether a project is likely to have transboundary impact or not. In this case it took two years and was decided that the Convention should apply because of potential transboundary effects. MOP endorsed the findings of the scientific report and endorsed the non compliance by Ukraine with the ESPOO. A decision to take an action on Ukraine (a type of warning) was adopted and the IC is scheduled meet at the end of October 2008 (at the time of writing) to decide whether the action has to be issued or not.

*c) Moxx plant case (party to party case):* the EU member states brought another state in front of the tribunal of the Law of the Sea and then the Commission took action against this member state in front of the European Court of Justice (ECJ). The ECJ judgement was in favour of the Commission.

In September 2004 a meeting was convened by UNEP in Geneva in order to discuss the Danube delta case with different MEAs secretariats and experts; this shows that there are other bodies interested in the process of the ESPOO convention.

The IC can act also on its own initiative when the committee becomes aware of a possible case of non-compliance.

The IC made lot of efforts to be more open and transparent, but they do not have an ultimate trigger for public participation. This could change; although in this subject parties have more discretion than under the Aarhus convention.

An amendment was made to open the convention to non ECE members (i.e. open to UN members) but is not yet in force. Another active but slow process is in South Korea: this involves the South Korea - North Korea - China - Russia - North East Asia area; these countries are interested in publishing transboundary EIAs but politics have so far obstructed an agreement. Iran and Iraq participate in the meetings; Lebanon was also interested and there are efforts to involve the Mediterranean countries (Med Action Plan UNEP).

The ESPOO convention is complemented by the SEA protocol (which is not transboundary, there is a transboundary issue but it is not its fundamental part), which is not yet in force and is open to all UN members. An automatic trigger may be needed in the future to improve the enforceability of this convention.

The secretariat of the ESPOO convention consists of two people. Sometimes external consultants are engaged for short term projects. In the case of the inquiry procedure a scientific panel has been established, consisting of an independent chair and one member of each of the two parties.

The idea to have a pool of experts advising on situations involving environmental harm was highlighted. The importance of UNEP guidelines/manuals as principles to be developed further was stressed. An ad hoc study on this matter could help, but with limited proportions compared to the UNEP compliance manual. The necessity to have common principles to be shared by the different secretariats was emphasized.



## **10. Convention on Long-range Transboundary Air Pollution**

The Convention on Long-range Transboundary Air Pollution was signed in 1979 and entered into force in 1983 and contains eight protocols. Parties to the Convention commit to limit, reduce and prevent air pollution, including long-range transboundary air pollution, by developing policies and strategies and exchange information, consultation, research and monitoring.

The Convention has its own compliance committee, called Implementation Committee (IC). States are obliged to report annually to the Convention and the secretariat refers to the countries which do not meet their targets. Self submission by countries not meeting their obligations is also possible. In general, countries are very keen to explain what the problems are and often it is the Parties who endorse the decisions of the IC at the COP meetings.

The text of the Convention refers to air pollution and transboundary air pollution. In reality the Convention only applies to transboundary air pollution, thus respecting the sovereign rights of the parties which deal with their internal air pollution through domestic legislation.

IC can invite countries to take the necessary steps to comply with the obligations. So far there is an average of six to eight cases per year and this could increase. In particular Spain and Greece are two countries with major problems in meeting their obligations in the later protocols. In the last protocol the targets have been calculated for each country separately, while in previous protocols the targets were equal for all parties. In the case of Spain and Greece, the obligations were very relaxed before, but in the most recent protocol, the EU regulation is used as a basis. Spain and Greece claim they are respecting the limits of the early protocols.

The European Commission is working on the new National Emissions Ceilings (NEC) directive. The implementation and transposition of the EC directives in the EU gives the Air Convention important information on how the EC is going to implement. The USA and Canada are parties to the Convention while there is a lack of participation from Eastern Europe and Central Asia. In particular, parties from Central Asia are not very active: some did not ratify the Convention and its protocols; issues like capacity building are also problematic, as well as the lack of resources. As far as the Convention is concerned, an action plan for capacity building was set up and convention parties are trying to engage each other on the implementation side.

The Convention has a common but differentiated approach: in other words a regional approach as an alternative to world wide conventions. It suffers from enforcement and compliance problems, that usually occur with framework conventions.

Other problems mentioned by the Secretariat include the lack of contacts with other secretariats; this depends on the self initiatives of the secretariats, the single conventions and on the issues tackled by them, i.e. biodiversity convention and links with United National Economic Commission for Europe (UNECE) conventions (indicators, agriculture, biofuels, etc)

Within the air convention the work is shared by the parties and several task forces (sixteen-seventeen of them) are lead by parties that organize meetings and workshops as well as produce related documents. Reporting on emissions used to be collected by the Secretariat. Last year a centre was set up in Austria, which is a contact point for submitting the emissions data.

The secretariat of the Air Convention is composed of four professionals.

The common but differentiated approach under IEL was discussed: regional approach as alternative to world wide conventions. Usually problems in framework conventions are related to the issues of enforcement and compliance. There lack of coordination and contacts among secretariats was stressed; thus mainly depending on self initiatives of the secretariats and on the single conventions, i.e. biodiversity convention and links with UNECE conventions (indicators, agriculture, biofuels, etc).

## **11. Convention on the Protection and Use of Transboundary Watercourses and International Lakes**

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) aims at strengthening national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters. It was signed in 1992. The core of the Water Convention (WC) is to control environmental harm in the field of transboundary waters. The major requirement foreseen by the WC is to create a comprehensive mechanism among state parties. There are two protocols to the WC: one on health (in force) and one on civil liability (not yet in force).

In accordance with the WC, parties who share a river basin are required to create a joint body (two persons approximately), for the organisation and management of the river basins. River basin organisations are already in place in the EU. There are also regional joint monitoring programs which deal with technicalities and adjustments to be undertaken by the parties to the WC. The WC creates obligations from one side for all states, and from the other for states which share a river basin.

There is no formal compliance procedure for checking and reporting. Parties did not agree so far on a compliance procedure; in some cases there are not even diplomatic relations in place among state parties. However, an article on dispute resolution is included in the text of the WC. In lack of a compliance mechanism, several alternative tools exist. First, regular workshops are held, the last one of which focused on the creation of joint bodies in ECA countries (external experts focused on the needs for ECA countries). Secondly, an assessment of transboundary waters was made to understand directly how waters are managed.

There are regional initiatives in the field of water protection: for instance in the area of the Mediterranean Sea and in countries bordering with the ECA region. The EU Water Framework Directive also has a reference to the WC.

The Secretariat consists of two persons and one junior staff member; sometimes support is provided by external consultants.

## 12. UNEP Regional Office for Europe

The UNEP Regional Office for Europe (UNEP/ROE) facilitates the implementation of UNEP's (United Nations Environment Programme) agenda in Europe. The office is located at the [International Environment House](#) (IEH) in Geneva, with liaison offices in Brussels, Moscow and Vienna: the first two maintain contacts with the European Union and Russia, while the third serves as the Interim Secretariat of the Carpathian Convention.

The main activities of UNEP/ROE include the support of policy dialogue in the representation of UNEP and the mitigation of security risks through cooperation with the [Organisation for Security and Cooperation in Europe \(OSCE\)](#) and the [U N Development Programme \(UNDP\)](#) assessing environmental security threats. These organisations and others work together in the Environment and Security (ENVSEC) initiative.

UNEP/ROE is active in promoting sustainable consumption, protecting biodiversity (the [Pan-European Biological and Landscape Diversity Strategy](#) was launched in 1994) and promoting enforcement and compliance with environmental law and MEAs. In particular, UNEP/ROE focuses on four conventions: the [Bucharest Convention \(the Black Sea\)](#), the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Teheran Convention), the [Framework Convention on the Protection and Sustainable Development of the Carpathians \(Carpathian Convention\)](#) and partly [the Aarhus Convention](#).

UNEP/ROE also organises outreach activities to national civil society organisations through its thirty-one National Committees. UNEP's TUNZA network organises youth, children and environment activities; the publication of the TUNZA magazine is coordinated by UNEP/ROE.

The UNEP/ROE provides training in cooperation with the with the University of Geneva and the UN Institute for Training and Research (UNITAR): the Geneva Programme in Environmental Diplomacy's is a one-week course and its curriculum focuses on the skills necessary for participating in global environmental negotiations.

The problem of enforcement/compliance/dispute settlement in the field of IEL and the several attempts to solve these issues undertaken in the past were discussed. All major MEAs are struggling with enforcement/compliance/dispute settlement issues and they all face the same problem. A clear need for coordination among secretariats was mentioned as well as the need to address these concerns in a major tool to assist all MEAs. In this respect, the need for an intergovernmental exchange was stressed, with the importance of direct action to be taken by the international community.

The issue of harmonization of the existing MEAs was discussed, in particular the examples of the clustering of the 3 chemical conventions or the joint secretariat of Rotterdam and Stockholm conventions. The necessity to reflect on why the earlier attempts did not take off and to involve representatives from developing countries already from the initial phase was emphasized. The importance of The Hague and the key potential role in this initiative was highlighted.

The discussion concerned also a softer approach which could result in a forum or a group of expertise where training for environmental negotiations could be envisaged. The previous and current activities of UNEP in this respect were mentioned as well as the activities of the ISS in The Hague.

### **13. Stockholm Convention on Persistent Organic Pollutants (POPs Convention)**

The Stockholm Convention on Persistent Organic Pollutants (POPs) is an international legally binding agreement, signed in 2001 and entered into force in 2004. POPs according to the Governing Council of the United Nations Environment Programme ([UNEP](#)) are “chemical substances that persist in the environment, bio-accumulate through the food chain, and pose a risk of causing adverse effects to human health and the environment”.

The cooperation between the POPs Secretariat and the Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is strong. The POPs Convention shares a secretariat with the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. Fifty people work altogether in Geneva, ten PIC people in Rome (the PIC secretariat is financed partly also by FAO) and there are thirty people in the Basel Convention secretariat. Only three lawyers work in the secretariats of the three conventions: usually not too many legal issues are raised by countries. The Conventions share the following joint services: legal, administrative, information and technology, conference servicing. Other technical units stay separate.

There is further cooperation in the field of green customs in place: UNEP is performing certain custom activities, provides training to customs officials to teach them what they have to look at: concrete trainings based on the cooperation among the PIC, POP, Basel, and CITES Conventions.

Furthermore, there is an on-going synergy exercise between the Secretariats: an ad hoc joint working group of the three conventions has been established and recommendations have been developed to enhance coordination and cooperation. These latter were adopted in June 2008 by the Basel Convention Secretariat and final adoption is expected in May 2009.

Enforcement in the Basel Convention in practice is weak, even in Western Europe. The Convention has a compliance mechanism. Negotiations are on-going on PIC and POP compliance mechanisms: the system could be triggered by three means: self compliance, party to party trigger, secretariat trigger.

The Basel Convention Secretariat is in need of technical assistance and properly trained border officials. It sets out as a goal to work with the countries to improve enforcement and help them to enforce the national legislation regarding the convention.

The issue of cooperation in the field of green customs was mentioned: customs issues, training for customs officials on the cooperation of different environmental conventions (PIC, POP, Basel, CITES). In addition, the need to provide assistance to countries in developing national legislation was mentioned. Finally, the need for technical assistance and training to border officials was reiterated.

## 14. UNEP, Economics and Trade Branch

The Economics and Trade Branch (UNEP-ETB) is located within the United Nations Environment Programme's Division of Technology, Industry and Economics (UNEP-DTIE). Its mission is to conserve the environment, reduce poverty, and promote sustainable development. In order to achieve these goals, UNEP-ETB endeavours at enhancing the capacity of governments, businesses, and civil society to integrate environmental considerations into economic, trade, and financial policies and practices.

Many conflicts in law arise in particular in respect of the relation between different MEAs and the WTO. The WTO dispute settlement system works well and its procedures are quicker than the long ICJ process. The WTO panels are composed of mainly trade experts while the appellate body is more judicial. There is no expertise of environmental law in the panel and appellate body. They use the expertise of colleagues in their own organisation.

The Brazil tyres case proved that the WTO is a trade forum with no concerns in environmental protection. There is a need for a robust dispute settlement system looking at environmental disputes. The WTO dispute settlement system in reality is not very effective but it is often used in the public arena and in the media to facilitate pressure on states.

A joint WTO/UNEP document was published on enforcement and compliance comparing the MEAs systems and the WTO system. Also, there are different initiatives and projects to stimulate the dialogue between the WTO and MEAs which affects in particular MEAs dealt with by UNEP and WTO, namely UNCBD, CITES, Basel Convention, PICs and POPs Convention. Here are some examples:

- CITES: joint initiative (involving four countries) helping parties to assess impact of trade policies on their economies, society and wildlife
- Country studies (thirty) on trade liberalisation, to understand what that means for developing countries
- UNCBD secretariat to assess the impact of agriculture and trade liberalisation on biodiversity (this does not involve legal conflicts which are also very rare in the event of IGO composed of state parties)

The need of a mechanism to address disputes in MEAs and also environmental issues falling outside the MEAs was stressed. Furthermore, a place where MEAs and WTO could dialogue was also considered. In this respect training sessions where experts can have presentations was addressed, as well new guidelines on trade and environment for instance, border trade adjustment measures in the field of climate change which could raise an issue in the WTO regime.

## **15. Convention on International Trade and in Endangered Species of Wild Fauna and Flora (CITES)**

CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) aims to ensure that international trade of species of wild animals and plants does not threaten their survival. The [text of the Convention](#) was signed in 1973 and it entered in force in 1975.

CITES compliance guidelines (Resolution 14.3) were negotiated since 2001 and adopted in June 2008 in The Hague. The CITES dispute resolution system refers to the Permanent Court of Arbitration (PCA) but this clause has not been used so far.

In terms of enforcing the CITES rules at the national level, there is a strong need for training civil servants in the state parties, in order to facilitate compliance by means of awareness raising and get people interested in complying with this convention. Since enforcement will never be perfect, there is a high need of working in enhancing compliance.

CITES identified the focus on socio-economic aspects and therefore tries to prevent criminal activities and discourage criminals. This is done partly by getting industrial associations more involved or through good public education and well trained civil servants.

One problem related to enforcement deficiencies is the bad quality of national legislation and policy: to change this, there are national legislation projects aiming at improving legislation. They are usually implemented by CITES staff (two lawyers) and sometimes with the support of national authorities and local experts.

One way to ensure compliance with CITES is the classification of parties in different categories on the basis of four criteria (national authorities, prohibition to trade, penalisation of illegal trading, confiscate authority). If none of the four criteria met, a recommendation to suspend trade can be made made.

The CITES compliance system has teeth: it can make recommendations to parties not to trade with other parties. This has been already used in the past in case of non compliance with reporting, significant trade in species, illegal trading (Nigeria) and legislative categories.

CITES also has an enforcement assistance programme, working with enforcement authorities at the national level. The Secretariat also cooperates with an INTERPOL working group (Lyon), by sharing general law techniques with border officials. The Convention has links with chemicals MEAs: joint trainings are provided and there is a green customs initiative.



In respect of enforcing the CITES rules at the national level: the strong need for training civil servants in the state parties was emphasized, as well as facilitating compliance by means of awareness raising. The importance of enhancing compliance was stated. The problem of the bad quality of national legislation and policy was considered.

The need for the legal facility to assess cross-cutting issues and look at old and good working regimes and see how this may apply to other MEAs was mentioned. Finally the necessity to go upstream and to prevent (not only law enforcing but also monitoring) was stressed.

## **16. UNFCCC/Kyoto Protocol Secretariat**

The United Nations Framework Convention on Climate Change (UNFCCC) is a framework for intergovernmental efforts to tackle the challenge posed by climate change. The Convention provides a platform for governments to gather and share information on greenhouse gas emissions, national policies and best practices. It entered into force on 21 March 1994.

The Kyoto Protocol is an international agreement linked to the UNFCCC, which sets binding targets for 37 industrialised countries and the European community for reducing greenhouse gas (GHG) emissions. The Kyoto Protocol was adopted in 1997 and entered into force in 2005. Among the 192 ratifying members of UNFCCC, 184 also acceded to the Kyoto Protocol.

The UNFCCC Secretariat is the largest MEA Secretariat: it has a staff of 450 people.

UNFCCC currently offers training programmes for journalists in developing countries, in order to make them more familiar with the issues and problems tackled during international negotiations. There are about thirty journalists participating from developing countries. The project covers negotiations under the Bali action plan, notably financing journalists to attend COP in Poznan and other meetings up to Copenhagen.

Training courses for negotiators are provided by UNEP in cooperation with the UNFCCC:

- Training on general IEL issues organised by the UNEP regional offices and held often in UN cities like Bonn, Geneva, Vienna, Nairobi;
- Preparatory meetings for climate negotiators are usually held before the COP and organised all around the world. These can be short two-day meetings in order to develop a common position but can also be longer preparatory meetings of one month.

About the city of Bonn: a new home (in the old congress) for UN bodies has been created. The UN agencies have a coordination body in Bonn and also have good cooperation with the city of Bonn. The government of Germany has established the Bonn Fund to support UNFCCC meetings held in Bonn. There is a common services unit (for all UN organisations) responsible for the relations with the host countries of the UN and organising meetings of UN agencies heads.

## **17. IUCN Environmental Law Centre (ELC)**

The IUCN Environmental Law Centre (ELC) was established in Bonn in 1970. The ELC is part of the IUCN staff acting as legal secretariat of the IUCN, which is located in Gland, Switzerland. A few other lawyers are employed in the IUCN regional offices. The IUCN ELC has a staff of five lawyers and several documentation offices working with FAO and UNEP on the joint initiative ECOLEX, which is a database of environmental legislation and other related material and information. FAO provides information on national legislation, while UNEP on court decisions and the ELC on international agreements and literature.

The ELC is part of a network of environmental law expertise including the IUCN Environmental Law Programme (ELP) and it works in collaboration with the IUCN bodies, notably:

- IUCN Commission on Environmental Law
- IUCN headquarters and regional and country offices (42 all around the world)
- Academy of environmental law

The Environmental Law Programme (ELP) provides the principal source of environmental law expertise to the IUCN Programme. The work of ELP is carried out by the IUCN Environmental Law Centre (ELC) and the IUCN Commission on Environmental Law (CEL), in collaboration with IUCN Regional and Country Programmes as well as IUCN's Global Thematic Programmes.

The ELP supports the development and implementation of international and national environmental law, provides technical assistance and promotes capacity building in developing countries, while also maintaining the world's premier environmental law information and database service.

The main objective of the IUCN ELC is the further development of IEL through providing assistance and capacity building in many countries.

The main activities of the IUCN ELC are:

- Providing technical assistance
- Capacity building activities such as providing trainings, fellowship programmes in cooperation with UNITAR
- Hosting fellows and interns from around the world dealing with IEL

ELC does not provide trainings or courses in house but it pursues these activities on a project by project basis. ELC will organise a training course in the south Caucasus in 2009 on nature conservation (objective: to assist these countries to approach the *acquis communautaire*); the target audience is people from ministries and NGOs. The training is funded by the German government, through the INVENT agency. ELC activities are sometimes also supported by the Commission of environmental law, depending on the type of projects concerned.

IUCN had a specialist group in the commission of environmental law with a mandate on enforcement and compliance and a few years ago a colloquium on this topic was organised by the AEL.

The AEL focuses on academic work and teaching of IEL, while the Commission of environmental law deals with other issues and networking. The commissions are re-established every four years and had their latest congress in October 2008, in Barcelona, where they adopted a decision on new environmental protection issues to be considered by the IUCN.

## **18. INECE International Network for Environmental Compliance and Enforcement**

The International Network for Environmental Compliance and Enforcement (INECE) is the only global network of environmental compliance and enforcement practitioners. INECE has different goals: raising awareness of compliance and enforcement, fostering enforcement cooperation; strengthening capacity to implement and enforce environmental requirements.

INECE has more than 4000 members including international organisations, governmental agencies and non-governmental organisations. INECE was founded in 1989 by the Dutch Ministry of Environment (VROM) and US environment agency (EPA) with the support of UNEP, the World Bank, the European Commission and the OECD.

The mission of INECE is to ensure compliance and enforcement of environmental legislation worldwide aiming at a clean environment and sustainable development. Amongst others, INECE's goals are:

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

As of 2004, INECE has planned and executed six successful international conferences with exponential increases in the number of individuals, countries, and international organizations invited to participate; collaboratively they developed training and workshop materials; and published comparative country studies.

The INECE secretariat is located in Washington DC.

## **19. IMPEL Implementation and Enforcement of Environmental law Network**

The EU Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association established by the Member States and the EEA countries. IMPEL was established in 1992 and it is located in Brussels, Belgium.

The main objective of the network is to enhance the effective implementation of environmental legislation. To this aim, IMPEL promotes exchange of information and experience on the development of environmental legislation among the Member States. The main result of the IMPEL network is the mentioning in several EU legislative tools (action programmes and recommendations) of its activities such as capacity building, criteria for environmental inspections, common views on legislation enforcement and so on.

IMPEL core objectives are listed below:

- promote the exchange of information and experience between national, regional or local authorities competent for the implementation and enforcement of EC environmental law in the broadest sense, e.g. ministries, regulators, agencies and inspectorates, hereinafter called Environmental Authorities;
- promote the development of national networks of Environmental Authorities with special concern for the cooperation between these authorities at all government levels;
- promote mutual understanding of the common characteristics and differences of national regulatory systems;
- carry out joint enforcement projects;
- support, encourage and facilitate capacity building and training of inspectors and enforcers;
- identify and develop good and, whenever possible, best practices, produce guidance, tools and common standards and actively contribute to further improvements as regards inspection, permitting, monitoring, reporting and enforcement of EC environmental law;
- develop a greater consistency of approach, as appropriate, in the interpretation, implementation and enforcement of EC environmental law in the countries applying this law;
- provide feedback on better legislation issues with regard to practicability and enforceability and provide advice on the practicability and enforceability of new and existing EC environmental law to the European Commission and other EU Institutions, gathering information on experience of implementing and enforcing this law, from the practitioners' point of view;
- explore the use of innovative regulatory and non-regulatory instruments as alternatives for or complementary to existing regulation

## **Project**

### **The city of The Hague: Platform for International Environmental Law**

7 April 2008

#### **QUESTIONNAIRE**

##### **1. Project background**

The T.M.C. Asser Institute and the Institute for Environmental Security have initiated the project “Feasibility study on The Hague Espace for Environmental Global Governance” with the support of the Dutch Ministry of Foreign Affairs, the Ministry of Housing, Spatial Planning and the Environment and the city of The Hague.

The city of The Hague hosts a distinctive range of international organisations which contributed to recognize The Hague at the global level as the *Legal Capital of the World*.

In the past decades the increase of environmental threats and problems worldwide has contributed to put the strengthening of environmental protection and the promotion of sustainable development at the forefront of the international debate. The significance of international environmental law and multilateral environmental agreements (MEAs) has therefore acquired a substantial importance in the international arena.

Starting from the fact that many international legal institutions are already located in The Hague and considering that many of them have also a competence on international environmental law, this projects aims at the preparation of a feasibility study to identify the potential contribution that The Hague could offer in terms of addressing issues related to international environmental law. In particular, the feasibility study will examine:

- The current infrastructure of The Hague in respect of international organisations operating with a competence on international environmental law;
- Potential existing gaps in the field of the enforcement of international environmental law;

- The possible added value the city of The Hague could offer to facilitate the development, compliance and enforcement of international environmental law;
- The actions to be undertaken to promote and support the city of The Hague to facilitate development, compliance and enforcement of international environmental law.

## **2. Purpose and scope of the questionnaire**

This questionnaire is aimed at the collection of information in respect of the activities of the main international organisations, institutions and stakeholders located in the city of The Hague with a relevance in terms of international environmental law. This information will be included in the aforementioned feasibility study.

The scope of the questionnaire is to address the international organisations located in The Hague and their activities and focus in the field of international environmental law. In particular, such activities may include judgements, dispute settlements, advises, opinions, research activities, implementation of international and local projects, general activities at stake.

This questionnaire represents the beginning of a process marked by a series of meetings. Please note that you may be contacted again in order to be updated with the further developments of this project.

## **3. Project Summary**

Project Title:	Feasibility study on The Hague Espace for Environmental Global Governance
Project coordinator:	Institute for Environmental Security
Partners:	T.M.C. Asser Instituut
Principal investigator:	T.M.C. Asser Instituut
Telephone number:	0031 (0)70 3420309
Fax number:	0031 (0)70 3420346
Duration:	November 2007 – October 2008
Funders:	Ministry of Foreign Affairs and Ministry of Housing, Spatial Planning and the Environment (Netherlands) and city of The Hague
Location:	The Hague

## **4. Instructions**

The Questionnaire will be presented by the principal investigator to the list of international organisations located in The Hague and selected for the investigations.

The Questionnaire will be discussed together with key experts in international environmental law in the selected organisations and all relevant answers, comments and suggestions will be taken into consideration in the final report.



Finally, please consider that the following questionnaire is a standard model which may result in some parts incompatible with the activities and scope of your organisation, centre or secretariat.

## 5. Questionnaire

### a. Your organisation

#### 1. Details

Name: \_\_\_\_\_  
Location: \_\_\_\_\_  
Main field of activity: \_\_\_\_\_  
Contact person: \_\_\_\_\_  
Telephone number: \_\_\_\_\_  
Fax number: \_\_\_\_\_  
Email address: \_\_\_\_\_

#### 2. How would you describe/which is the dimension of your organisation?

- Local (city of The Hague)
- National (The Netherlands)
- Regional (EU)
- International

#### 3. How long has your organisation been operating in The Hague?

\_\_\_\_\_  
\_\_\_\_\_

#### 4. Does your organisation have its headquarters in The Hague?

\_\_\_\_\_

- a) Does your organisation have offices in other countries? If yes, where?

\_\_\_\_\_

#### 5. Does your organisation include a department on environmental law/policy/protection?

\_\_\_\_\_

- b) If yes, how many persons are working in this department?

\_\_\_\_\_

#### 6. What is the mandate of your organisation?

\_\_\_\_\_

\_\_\_\_\_

#### 7. Is environmental law mentioned in your founding documents?

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c) If yes, please provide the reference

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**b. Past activities**

1. On which areas of law is your organisation active?

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2. Which are the sectors in the field of international environmental law where your organisation has a competence or has worked on?

- Air pollution
- Climate Change
- Water pollution
- Waste management
- Nature protection
- Biodiversity
- Noise pollution
- Soil protection
- Noise pollution
- Chemicals

...  
 Other (please specify): \_\_\_\_\_

3. Have there been cases of environmental nature submitted or dealt with by your organisation?

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a) If yes, please provide reference numbers and details of cases

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b) If there have been cases of environmental nature submitted but they were not dealt with, what was the reason for dismissal?

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4. Which multilateral environmental agreements have your organisation been dealing with?

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5. What could your organisation add to the city of The Hague in terms of:

a) Development of international environmental law?

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b) Compliance of international environmental law?

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c) Enforcement of international environmental law?

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6. In which way could your organisation benefit from the promotion of the city of The Hague in the field of the development, compliance and enforcement of international environmental law?

Increase of visibility at the international level

Increase of the activity in the field of international environmental law

...

Other (please specify): \_\_\_\_\_

7. On the basis of the cases your organisation has been dealing with, do you consider international environmental law having an increasing importance?

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**c. Future aspects**

1. According to your knowledge, are there gaps identified in the field of international environmental law in terms of enforcement and compliance?

a) If yes, please mention examples

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b) Potential cases where gaps could emerge are:

- Illegal cutting of forests
- Illegal waste transport
- Adverse effects of climate change (refugees of small islands)
- Oil spills in case of war situations
- Wildlife in the sea
- Pollution caused by maritime transport (Ivory Coast case)
- Whaling

Could you please comment on these issues?

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c) Why do you think these gaps exist?

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2. What do you think the role of The Hague could be in addressing these issues?

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3. To your opinion which actions could be identified for the purpose of strengthening the position of the city of The Hague to facilitate development, compliance and enforcement of international environmental law?

— Establishment of a new international organisation dealing with the enforcement of international environmental law

— Secretariat of a multilateral environmental agreement (MEA) or convention on international environmental law (i.e. Bonn Secretariat for the United Nations Framework Convention on Climate Change)

— Office of an existing international body, MEA or convention on international environmental law

— Location for conferences, meeting of the parties, official seminars and workshops on international environmental law

— Establishment of a forum on international environmental law to which intergovernmental organisations, NGOs, corporations and private parties may refer to (i.e. system for resolution of controversies over environmental protection)

— Establishment of a centre for international environmental law active in both academic and practical activities

— Other (please specify): \_\_\_\_\_

4. What do you think the role of The Hague could be in addressing these issues and what form this could take?

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5. Would you be interested in getting updates on the further developments of this project and eventually participating in the next meetings? \_\_\_\_\_



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