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## REVIEW

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Nanomaterials as priority substances under the  
Water Framework Directive

*Catherine Ganzleben / Steffen Foss Hansen*

The Marine Strategy Framework Directive and its  
implementation in Spain

*Ana Barreira*

Hong Kong Convention and EU Ship Recycling Regulation: Can  
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Water services and why a broad definition under the  
WFD is needed to ensure the polluter pays principle

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Downsizing our Water Footprint

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The outcome of the UN Conference on  
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Greening the Constitution. The principle of sustainable  
development anchored in the Belgian Constitution

*Peter De Smedt / Hendrik Schoukens / Tania Van Laer*

Law and innovation in the context of nanomaterials:  
Barriers to sustainable development?

*Julian Schenten / Martin Führ*

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## Editorial

Water is a precondition for human, animal and plant life as well as an indispensable resource for the economy. Thus, according to the *European Commission* the protection of water resources, of fresh and salt water ecosystems and of the water we drink and bathe in is therefore one of the cornerstones of environmental protection in Europe. Against this background the present issue of *elni Review* focuses on the legal framework for (the protection of) water in Europe and explains, among other things, how far it can cope with possible threats from emerging technologies and to what extent some of the legislation has been implemented in specific member States of the EU. Moreover, insights are provided into some new political or scientific initiatives to further develop the legal framework for protecting water.

First off, *Catherine Ganzleben* and *Steffen Foss Hansen* examine whether Directive 2000/60/EC ('Water Framework Directive', WFD), which aims to reduce and minimise the concentrations of dangerous chemicals in European waters, and related legal requirements include the right instruments to capture nanomaterials. They also consider whether techniques are available to allow for monitoring nanomaterials in surface waters and review data from modelling exercises that estimate concentrations of nanomaterials in EU waters.

Subsequently, *Ana Barreira* provides an overview of the main elements of the Union's Marine Strategy Framework Directive (MSFD) and analyses how Spain, as an EU country with 8000 km of coastal fringe, is complying with the directive and will review its marine governance framework.

The third article is by *Thomas Ormond* and takes another perspective, evaluating how far international and European legal instruments for the regulation of ship dismantling (potentially) ensure the safe and environmentally sound recycling of European ships in regions like South Asia.

*Sarolta Tripolszky* explains the concept of the term 'water services' in her contribution and outlines the economic and legal consequences of a narrow and broad definition. In this context and with specific reference to a collective complaint started by the NGOs EEB and WWF in 2006 against 11 EU member states to enforce the correct implementation of the WFD, she also describes the development of this legal instrument.

The final article with a focus on water is by *Marga Robesin* and describes current discussions on the question of how to achieve substantial water footprint reduction, focusing in particular on certification and labelling.

A second series of contributions to this issue of the *elni Review* covers a variety of other up-to-date legal issues, including the advancement and legal implementation of the concept of 'sustainable development'. To this end, *Eckard Reh binder*, who attended the United Nations Conference on Sustainable Development (Rio+20) in Rio de Janeiro in June 2012, shares some critical comments on the summit outcome.

The following contribution by *Peter de Smedt*, *Hendrik Schoukens* and *Tania Van Laer* examines the anchoring of sustainable development in the Belgian Constitution, discusses the concept's juridical enforceability and subsequently analyses the consequences of this qualification for the application in the jurisprudence.

In a further article *Julian Schenten* and *Martin Führ* present empirical data obtained by several survey methods focusing on companies which manufacture and/or use nanomaterials. They analyse the findings under the perspective of the degree to which REACH (Regulation EC 1907/2006) promotes innovations for sustainability in the field of nanomaterials.

In June 2012 the EU General Court adopted long awaited decisions in two cases in which it interprets for the first time Regulation 1367/2006 ('Aarhus Regulation') – *Anais Berthier* examines what real added value these two decisions have with regards to access to justice.

Finally, in a statement by *Almut Gaude* from BUND, the German branch of Friends of the Earth (FoE), the NGO expresses its perspective on the Rio+20 conference outcome.

We hope you enjoy reading the current journal. Contributions for the next issue of the *elni Review* are very welcome and may be sent to the editors by mid-February 2013.

*Julian Schenten/Martin Führ*

## The outcome of the UN Conference on Sustainable Development "Rio+20" Some critical comments\*

*Eckard Rehbinder*

### 1 Introduction

The United Nations Conference on Sustainable Development (Rio+20) took place in Rio de Janeiro between 20 and 22 June 2012. Against the backdrop of a worsening global environment it dealt with a broad range of issues of policy for sustainable development at international, regional, national, and local levels, including reform of the UN institutions in the field of sustainable development. The conference was the largest of all UN summits on environment and sustainable development ever held as from 1972, assembling, apart from representatives of governments and intergovernmental organisations, about 40,000 participants from the press and stakeholder organisations. Around the conference, a great number of – partly high level – side events were held. The conference was concluded with a Declaration ('Outcome of the Conference') named 'The Future we want'.<sup>1</sup>

The outcome was applauded by the host country and representatives of many participating governments as the best possible solution. The Secretary-General of the United Nations, Ban Ki-moon, and the Secretary-General of the Conference, Shah Zukang, who had criticised the foreseeable outcome of the conference throughout the negotiations that took place before the conference, finally found it politically difficult not to follow this positive assessment. By contrast, in the opinion of many stakeholders Rio + 20 was a missed opportunity – to the extent that environmental NGOs renamed the Conference as 'Rio minus 20' and expressed their rejection of its outcome by converting the title of the declaration to 'The Future we don't want'.<sup>2</sup> Indeed, the outcome of the Conference must be denoted as meagre. Its major features are the lack of responsiveness to the worsening global environment, a predominantly simple affirmation of the status quo of policy and law for sustainable development and a marked tendency of departure from multilateralism towards 'delegation' of the protection of global natural resources to states. However, the Conference has at least to be given credit for initiating, in important areas in which

agreement could not be reached, an organised short-term process for reaching agreement in the near future.

Apart from the outcome of the Conference, the negotiation style employed in the Rio + 20 process is worth being noted.<sup>3</sup> The negotiation process started with a compilation text ('Zero Draft') that was issued on 11 January 2012 and assembled all proposals developed in regional preparatory meetings and submitted by governments. Then the attempt was made to gradually reach agreement on the various issues in an initial discussion and three rounds of 'informal-informal consultations' that took place between January 2012 and the beginning of June 2012. The Negotiated Draft as of 28 March and the Co-chairs' Suggested Text of 17 April 2012 still contained an enormous amount of 'bracketed' formulations and were far from being acceptable to all groups of states. The Draft of 2 June 2012 represented the outcome of the last round of these consultations; while agreement on major points was achieved, many issues had remained controversial and could not either be resolved by the meeting of the Preparatory Committee that took place from 13 to 15 June. Finally, at the request of the Preparatory Committee, Brazil in its capacity as host country took over the consultations and immediately produced a new draft which must have been prepared in advance ('Brazilian Draft' of 16 June 2012). The Brazilian diplomats did not so much aim at producing good substantive results but simply achieving agreement. The Brazilian Draft was then discussed and refined in several negotiation groups in which each of the nine stakeholder groups could only make statements of two minutes. The final text was adopted by the delegates ad referendum on 19 June 2012. It was declared that negotiations on particular issues were no longer possible so that the conference in the proper sense that started on 20 June 2012 was reduced to a forum for the states to make general statements on the text and their own policy for sustainable development.

It is clear that informal preparatory negotiations are indispensable for the success of an intergovernmental conference. Moreover, the negotiation procedure adopted was in a way a reaction to the failure of the Copenhagen Climate Conference that was considered to be due to the somewhat 'demanding' negotiation

\* The author attended the Rio+20 Conference as representative of ICEL and the Centre international de droit comparé de l'environnement (CIDCE, Limoges/France). Major parts of this article are based on the article by the author "UNCSD/Rio + 20. Contribution to the development of environmental law", *Env. Pol. & Law* 42 (2012), pp. 210-219.

<sup>1</sup> A/CONF.216/L.1.

<sup>2</sup> <http://www.petitions/the-future-we-dont-want/>; see also Earth Negotiations Bulletin vol. 27 no. 51, p. 22-23 (25 June 2012).

<sup>3</sup> See for the following text Earth Negotiation Bulletin vol. 51 no. 27, p. 3-4 (25 June 2012).

behaviour of the Danish presidency. Nevertheless, it appears odd to organize a conference in which all negotiations take place in closed informal consultations or preparatory meetings and the conference in proper sense is reduced to an acclamatory body.

## 2 Institutional reforms

One of the major themes addressed by the Conference was the reform of the UN institutions in the field of sustainable development.

There has been widespread criticism of the functioning of the UN institutions in the field of sustainable development, especially with regard to its environmental dimension. The Conference opted for sweeping reforms of the system of governance for sustainable development – the contours of which, however, remain far from clear so that the conference did not provide more than giving an impulse to further negotiations.

Environmental NGOs as well as some legal and political science scholars had argued strongly for the conversion of the United Nations Environmental Programme (UNEP) into a special World Environment Organisation (WEO). The idea underlying this proposal was that this would improve global environmental governance because it would render the legal status of UNEP equal to that of UN organisations – the mission statements of which potentially conflict with environmental protection.<sup>4</sup> The proposal was taken up by the African states which, limited to this issue, broke out of the Group 77/China but later on were pulled back into the common boat of developing states. Ultimately the Conference only agreed on a mandate to strengthen and upgrade the role of UNEP as the leading global environmental authority (para. 88). Theoretically this mandate also comprises the option of establishing a separate WEO. However, it is improbable that the General Assembly will embark on this road. This outcome cannot simply be denoted as a defeat for the environmental dimension of sustainable development. Converting UNEP into a separate UN organisation would entail a lengthy ratification process, a potentially small number of member states, the need for the organisation to take care of its own financing and the loss of direct support by the General Assembly and the Secretary General of the UN.

Another institutional issue addressed at Rio + 20 was the unilateral structure of the Economic and Social Council (ECOSOC) that exercises a central coordination function within the UN in the field of sustainable development. The Conference resolved on a process to reorganise and open ECOSOC to the extent that the environmental dimension of sustainability should be included and stakeholder groups represented (paras. 76[h], 83). Whether this alone will ensure full integration of the three dimensions of sustainable development (if at all possible) remains to be seen. In a way, the coexistence of UNIDO and UNEP may present a major stumbling block. Furthermore, the Conference decided to introduce a High Level Political Forum that shall follow up on the implementation of sustainable development and devised a negotiation process to define the format and organisational aspects of the forum (paras. 84-86). The forum is to subsequently replace the Commission on Sustainable Development (CSD) which has been accused of unsatisfactory performance in recent years. However, according to the broad mandate set forth in the declaration, the forum will contain many elements of CSD, so that the advantages of creating a new institution instead of reforming the existing one are not immediately apparent.

By contrast, the idea of having a UN High Commissioner or Ombudsperson for Future Generations who would have a broad mandate to represent the interests of future generations in sustainable development (para. 57 of the Negotiated Draft and Co-chairs' Suggested Text of 28 March/17 April 2012) has not survived the informal preparatory negotiations.<sup>5</sup>

## 3 Developing the Rio principles and beyond

The Rio Declaration of 1992<sup>6</sup> set forth 27 principles that have greatly influenced the later development of international environmental law. The new declaration by and large only formally reaffirms the Rio principles, specifically mentioning, in the interest of developing countries, the principle of common but differentiated responsibilities (para. 15).<sup>7</sup> To a certain extent, the declaration is also a source for a few emerging new principles.

### 3.1 Sustainable development

The new declaration addresses the principle of sustainable development at great length. More clearly

<sup>4</sup> See, for example, F. Biermann, *World Environmental Organization*, in: Wiley-Blackwell Encyclopedia of Globalization, 2012; F. Biermann & S. Bauer (eds.), *A World Environmental Organization: Solution or Threat for Effective International Environmental Governance?*, 2004; W.B. Chambers & J.F. Green (eds.), *Reforming International Environmental Governance: From Institutional Limits to Innovative Solutions*, United Nations University, 2004; S. Charnowitz, *A World Environmental Organization*, United Nations University, 2001.

<sup>5</sup> As to declarations of the Conference on the implementation of, and coordination between, multilateral environmental agreements, see Rehinder, *Env't'l Pol. & Law* 42 (2012), p. 210, 215-216.

<sup>6</sup> General Assembly, Report of the United Nations Conference on Environment and Development, Rio de Janeiro 3-14 June 1992, A/CONF. 151/26, Annex I.

<sup>7</sup> See Rehinder, *Env't'l Pol. & Law* 42 (2012), p. 210, 211-212.

than the Rio Principles (Principles 3-5), the declaration is based on the three-dimensional concept of sustainability – its economic, social and environmental dimensions. It seems clear that in principle all three dimensions of sustainability are considered to be equivalent. It is very rare that the Declaration contains language that reflects the idea that there might be true conflicts between the three dimensions of sustainable development and that planetary boundaries and regional ecological limits – in particular the absorption, regulation and regeneration capacities of environmental media and ecosystems and the risk of reaching tipping points – must be respected even at the expense of economic and social development.<sup>8</sup> The necessary trade-offs are mostly concealed behind the veil of integration. The Declaration departs from the idea of the interrelatedness and mutual supportiveness of the three dimensions of sustainable development and seems to set all its hope in integrating them. The prevailing understanding is that of a necessary win-win situation. The decisive question of how to bring about the integration of the three dimensions of sustainable development is left to the states.

The implicit belief in the equivalence of the three dimensions of sustainability is also mirrored by the new strategy of a ‘green economy’ that is destined to specify the principle of sustainable development or at least delineate the path towards achieving it. The concept of a green economy has not been defined. The Declaration contributes to understanding its concept of a green economy by referring to an economy that will enhance our ability to manage natural resources sustainably and with lower negative environmental impacts, increase resource efficiency and reduce waste (para. 60). However, this wording is much less clear than the respective UNEP definition.<sup>9</sup> It shows a preference for remaining in the realm of non-obligatory commitments. Moreover, the emphasis laid on the evaluation of the range of social, environmental and economic factors and their integration into decision-making “*where national circumstances and conditions allow*” (para. 63) and the general reference to national circumstances, objectives, responsibility, priorities and policy space (para. 58[b]) are indications of a highly open-ended concept of green economy. This seems to be a concession to the developing countries – most of which were concerned that the

green economy was in reality a developed country strategy that did not fit their own development priorities and beyond – could serve as a justification for environmental conditionalities on official development aid and finance for sustainable development.

The development and implementation of strategies on the path towards sustainability requires the setting of sustainable development goals and timetables to achieve these goals. There is already vast national experience in this field which suggests that such goals should also be set at international level. The existing Millennium Development Goals of 2000<sup>10</sup> are not comprehensive and, apart from access to drinking water and sanitation, they do not include the environmental dimension of sustainable development. In this field, international goals or targets are rare.<sup>11</sup> Against this background, it was hoped that the Rio Conference would be able to establish a procedural and substantive roadmap for setting more comprehensive and ambitious sustainable development goals (SDGs).

However, the discussion about the SDGs revealed the deep divide that has always existed between the industrialised and developing states in terms of sustainable development. Especially financial responsibility for implementing the goals, the role of scientific expertise in setting the goals and priority themes to be addressed were controversial.<sup>12</sup> Finally it was at least agreed that an intergovernmental negotiation process be initiated for setting SDGs by 2014 (paras. 246-251). The Declaration sets some benchmarks for this process, such as the establishment of an open working group, transparency, openness to stakeholders, scientific input, action-orientation and focus on priority areas.<sup>13</sup> However, the relationship of the working group to CSD or the High Level Political Forum remains unclear and there is no guidance on the contents of the SGDs such as the selection of themes, time-lines and the requirement of concrete targets. Thus the SGD process largely remains an open-ended process.

<sup>8</sup> This ‘ecological imperative’ has been stressed by the representatives of the scientific community as well as by the ‘Elders’ of sustainability; see Earth Negotiations Bulletin vol. 27 no. 51, p. 19 (25 June 2012). Isolated statements of the Declaration on ecological limits are contained in paras. 39/40, 56[a], 76[a], 202, 246; see Reh binder, *Env’tl Pol. & Law* 42 (2012), p. 210.

<sup>9</sup> UNEP, *Towards a Green Economy. Pathways to Sustainable Development and Poverty Eradication*, 2011, p. 16-20, [www.unep.org/greeneconomy](http://www.unep.org/greeneconomy); UNEP Governing Council/Global Environmental Forum, Nairobi, 20-22 February 2012, Proceedings, UNEP/GCSS/XII/14, Annex III Part B.

<sup>10</sup> United Nations General Assembly, Resolution 55/2, A/RES./55/2, 18 September 2000.

<sup>11</sup> See, e.g., the fish stock targets agreed upon at the Johannesburg Conference on Sustainable Development, Johannesburg Plan of Implementation, *supra* note 13, para. 31, and the target of limiting the global temperature increase to no more than two degrees (centigrade) agreed upon at the Cancún Global Climate Conference, Framework Convention on Climate Change, 16<sup>th</sup> Conference of the Parties, Cancún, 10-11 December 2010, Decision 1/CP.16, para. 4, confirmed by Decision 1/CP-16, United Nations, General Assembly, FCCC/CP/2010/7/Add. 1.

<sup>12</sup> See Earth Negotiations Bulletin vol. 27 no. 51, p. 21 (25 June 2012); vol. 27 no. 42, p. 1 (14 June 2012).

<sup>13</sup> See Reh binder, *Env’tl Pol. & Law* 42 (2012), p. 210, 216.

### 3.2 Access to information, public participation and access to justice

Principle 10 of the Rio Declaration contained sweeping language about access to information, public participation and access to justice. The most important attempt of implementing Rio Principle 10 at regional level has been the Aarhus Convention on Access to information, public participation in decision-making and access to justice in environmental matters.<sup>14</sup> Hopes that other countries than the European and Central Asian parties to the convention would accede to it or it would serve as a model for parallel regional conventions have not been fulfilled.<sup>15</sup>

The new declaration refrains from giving major impulses to states as well as the international community to broaden access to justice in environmental matters. In this respect the declaration merely states that besides broad public participation broad “access to [...] judicial and administrative proceedings [is] essential to the promotion of sustainable development” (para. 44). In contrast to Principle 10 as well as the Johannesburg Plan of Implementation (para. 128)<sup>16</sup> this statement is only narrative and its content is weak. It is remarkable that the Conference, despite its repeated call for respecting the rule of law (paras. 8, 9, 10, 252, 266), has not been able to mainstream the issue of access to justice in environmental matters. At least a statement whereby states are called upon to consider legally binding frameworks to provide for access to justice would have been appropriate.

On the positive side of the balance, public participation – and ancillary to it information of the public – is emphasised, both with respect to the international level and the national and sub-national levels. The Conference even boasted of being the first conference on sustainable development that from the very beginning has had major inputs from all stakeholders.<sup>17</sup> This constitutes a major achievement. It is safe to say that the enormous activation of civil society that took place before and at the Rio Conference will have consequences for the future of sustainability policy, especially at international level. However, it is equally true that there has been a great disproportion between process and substance, between mere participation of stakeholders and their ability to influence the outcome of the conference – to the

extent that the environmental NGOs even demanded elimination of the reference to “full participation of civil society” in the relevant paragraph of the declaration.<sup>18</sup>

With respect to the procedural structure of participation of civil society at international level, especially in the High Level Political Forum, UNEP and the new process for setting sustainable development goals, the Declaration contains some elements on which one can build in the future. The Declaration names the participation model practiced by CSD and more generally best practice and models from relevant multilateral institutions as well as new mechanisms to promote transparency and effective engagement of civil society (paras. 76[h], 84, 85[h], 88[h], 248). ECOSOC is only covered by the general pronouncement on participation in all relevant international forums (paras. 76[h], 83).

As regards the national and sub-national levels, the Declaration calls upon states to introduce or improve participation of the civil society as a means to foster sustainable development (paras. 13, 43, 44, 49 et seq., 58[c], 135). This includes the participation of local authorities, the role of which in achieving sustainable development is underlined (paras. 42, 43). However, a clearly defined participatory model that could serve as a reference for states in further developing their own legal system is missing. Everything is left to the disposition of the states. From a legal point of view it should be added that without legally ensured broad access to justice public participation in environmental matters is without teeth.

### 3.3 The principle of non-regression

Although the international community at Rio + 20 has not been able to give impetus to the further development of the Rio Principles, one must at least give the Rio Conference credit for having set the stage for some innovations in the field of principles of environmental law.

The most important one is the principle of non-regression (or non-deterioration). The non-regression principle is a response to the challenge of a deteriorating global and regional environment and the perceived trend to sacrifice environmental protection to economic development. Its message is that at least a standstill in favour of environmental protection should be ensured. The principle was elaborated by Professor Michel Prieur from the Centre international de droit comparé de l'environnement (CIDCE, Limoges)<sup>19</sup> and after effective lobbying inserted into the negotiating text at the demand of the Group 77/China while the

<sup>14</sup> Of 25 June 1998, ILM 38 (1999), 515.

<sup>15</sup> Exceptions: African Convention on the Conservation of Nature and Natural Resources of 2003 (Article XVI); Bali Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters, UNEP/GCSS/XI/5, part A, 26 February 2010.

<sup>16</sup> World Summit on Sustainable Development, Johannesburg, 26 August – 4 September 2002, Resolution 2, Annex, A/CONF.199/20.

<sup>17</sup> Para. 1 of the declaration; statement by the Brazilian President Dilma Rousseff; Earth Negotiations Bulletin vol. 27 no. 51, p. 1 (25 June 2012).

<sup>18</sup> See Earth Negotiations Bulletin vol. 27 no. 51, p. 22-23 (25 June 2012).

<sup>19</sup> M. Prieur, Urgent necessity of recognising the non-regression principle, in: A economia verde no contexto do desenvolvimento sustentável, Fundação Getúlio Vargas, Direito RIO, 2011; M. Prieur & G. Sozzo, Non-regression in international and comparative environmental law, 2012.

United States, Canada, Japan and also the EU remained critical. During the negotiations the proposal underwent a process of gradual reduction.<sup>20</sup> Ultimately the new declaration did not formally recognise the non-regression principle. Instead, paragraph 20 of the Declaration states that “*it is critical that we do not backtrack in our commitment to the outcome of the Rio Conference of 1992*”.

Although formulated in descriptive rather than normative language, the strong warning against backtracking can be interpreted or at least developed in the sense of a real legal principle. It remains to be seen whether the momentum for the non-regression principle created at the conference can be upheld and give rise to an intensive discussion among scholars and a later formal recognition as a principle of international environmental law.<sup>21</sup>

#### 4 Human rights and the environment

The Rio Declaration of 1992 did not yet address the role of human rights in the field of sustainable development. However, in the post-Rio process human rights have been gradually recognised as a major component of sustainable development. In the first place, respect for conventional human rights is an essential component of the social dimension of sustainable development. The new declaration recognises this understanding, *inter alia* referring to the Universal Declaration of Human Rights and other international instruments for human rights (paras. 8 and 9). As regards the human rights of the ‘third generation’ (social human rights), most human rights conventions already recognise such rights, e.g. the right to food, drinking water and sanitation, shelter and employment. Therefore the Conference did not see any need to generally address the role of human rights of the third generation in the process toward sustainable development. It limits itself to reaffirming some social human rights. This self-restraint may be defended with the argument that the social human rights are better left to adjudication and gradual development by the various international and regional human rights bodies.<sup>22</sup> On the other hand, a firm recognition by the international community that the realisation of social rights depends on targeted action by states for creating and maintaining the material bases for the exercise of these rights would not have interfered with the competences of human rights bodies.

In contrast to the human rights of the third generation associated to the standard of living, the status of the human right to a decent environment is far from being clear. A few regional human rights conventions such as the African Charter on Human and Peoples Rights of 1991 and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 explicitly recognise the right to a decent environment besides the right to health. Moreover, older human rights conventions such as the Universal Declaration on Human Rights and the European Convention on Human Rights have been interpreted to the extent that the right to life, health and physical integrity and – in the case of the European Convention – the right to a private life encompass, albeit to a limited extent, the right to a decent environment.<sup>23</sup> There are a number of national constitutions that recognise the human right to such an environment while others only establish an objective duty of the state to protect the environment. Against the backdrop of this considerable uncertainty about, and variation in, the recognition of human rights to the environment it would have been appropriate for the Declaration to unequivocally lend support to the recognition of this right. Unfortunately, it has refrained from doing so. This is the more deplorable as the Declaration explicitly recognised the right to development (para. 8), thereby creating an imbalance between the economic/social and the environmental dimensions of sustainable development in the field of human rights.

#### 5 Special areas of concern: climate, biodiversity, forests, soils and oceans

Apart from oceans, the Declaration does not contain statements and assessments on key global environmental problems such as climate change, impairment of biodiversity, loss of forest cover of the world and soil degradation that could be considered as new. For example, with respect to climate change, the most urgent global environmental problem, the Declaration simply underlines the seriousness of climate change and its consequences and the gap between the obligations assumed by states and the development of greenhouse gas emissions. Moreover, it indirectly confirms the target of a maximum 2 degree (centigrade) increase of global temperature agreed upon in the Cancún Climate Conference<sup>24</sup> and calls for full implementation of the existing

<sup>20</sup> See Reh binder, *Env't'l Pol. & Law* 42 (2012), p. 210, 213.

<sup>21</sup> Moreover, the new declaration has further developed the principle of social and environmental responsibility of the private sector, especially in the form of partnership between states, local governments and the private sector as well as the social and environmental responsibility of individual enterprises; see Reh binder, *Env't'l Pol. & Law* 42 (2012), p. 210, 214.

<sup>22</sup> To this extent D. Shelton, *Looking Past Rio+20 – Options for Environmental Governance*, *Env't'l Pol. & Law* 41 (2011), p. 251, 256.

<sup>23</sup> See D. Shelton, *Human Rights and the Environment: Jurisprudence of Human Rights Bodies.*, *Env't'l Pol. & Law* 32 (2002), 158; *id.*, *Human Rights Bodies: Decisions and Actions*, *Env't'l Pol. & Law* 34 (2004), 66; *id.*, *Human Rights and the Environment: Problems and Positions*, *Env't'l Pol. & Law* 38 (2008), 41; S. Kravchenko & J.E. Bonin, *Human Rights and the Environment*, 2008; P. Aerni et al., *Climate Change and International Law: Exploring the Linkages between Human Rights, Environment, Trade and Investment*, *German Yearbook of International Law* 53 (2010), p. 139.

<sup>24</sup> See *supra* note 11.

multilateral agreements including the most recent specifications of the relevant obligations (paras 190-192). The statements on other global environmental problems are similar with respect to the description of existing threats and their consequences, the reference to targets and strategies set elsewhere and the implementation problems and needs.

However, any assessment of this dearth of substantive treatment of the key global environmental themes must consider that most of the relevant work is proceeding separately from the decennial rhythm of the world conferences on sustainable development in specialised agenda-setting and negotiation networks under the respective multilateral conventions. What a world conference such as Rio+20 could theoretically have added, though, is to give impulses for new conventions or the adjustment of existing ones to new challenges. In this respect, the record of Rio+20 is also modest. The discussion of a possible convention on all types of forests has been delegated to the UN Forum on Forests (Declaration, para. 195) and this body does not consider this to be a priority; it deferred the discussion to after 2015. The recognition that soils belong to the world's most endangered natural resources and that land degradation poses global challenges (para. 203) has not inspired states to initiate work at a comprehensive international soil accord that goes beyond the existing Convention on Desertification.

However, some progress has been made with respect to oceans and seas. The conservation of marine water quality, resources and biodiversity is not only the basis for maintaining and creating sustainable livelihoods of people living in coastal areas, it is also of crucial importance to the conservation of the global environment including the protection of global climate. Maritime transport, discharges of pollutants from land-based sources and mining activities in the oceans and seas for crude oil and minerals are exerting ever increasing pressures on maritime ecosystems. Recent disastrous accidents at oil platforms illustrate the need for international regulation. The new declaration responds to these challenges by recognising the need to supplement the Convention on the Law of the Sea by an instrument that focuses on protecting the deep sea against pollution and loss of biodiversity. Furthermore it devises a process for opening negotiations on this subject (para. 162).

## 6 Conclusion

Despite a voluminous declaration, Rio+20 produced only few tangible results. In particular the whole concept of sustainable development has remained open-ended. This has also infected the new strategy of a green economy which nevertheless holds some promise for the future. In contrast to the warnings of the scientific community, the Rio+20 Declaration does

not clearly recognise that there are planetary and regional ecological boundaries of development. However, since many important sustainability issues are negotiated in specialised agenda-setting and negotiation systems, the future of global sustainability will also very much depend on progress that can be made in these systems. With respect to some important controversial issues at least a process for reaching future agreement has been initiated. This is true for the Sustainable Development Goals, public participation within the UN institutions, the strengthening of UNEP, the creation of a High Level Political Forum and the intended supplementation of the Law of Sea Convention by a new protocol. Nevertheless, the overall impression that one can take home from Rio+20 is that of a weakening of international law-making in favour of national activities for achieving sustainable development without much international guidance.

A major achievement of the Conference has been the firm commitment by states to increase the role of public participation, especially at the international level. The enormous activation of civil society that occurred in the preparation of and during the conference will leave its stamp on future developments. However, it cannot be overlooked that there also was a considerable gap between process and substance, i.e. between participation and the ability to really influence the outcome of the Conference. Moreover, public participation still largely is a concept that responds to the preferences and needs of educated and well-to-do people and does not really reach the poor, especially those in developing countries. The need to address these questions poses major challenges for the future.

## Imprint

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**elni membership**

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

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

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

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

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

#### The Environmental Law Division of the Öko-Institut:

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

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

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

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
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- Research for European Institutions
- Advisory service for companies and know-how-transfer

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

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

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

The areas of research cover

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

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## elni

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

*Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.*

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

### Coordinating Bureau

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

### elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focusing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

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

The elni Review is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt).

### elni Conferences and Fora

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

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

### Publications series

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

### elni Website: elni.org

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

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