

No 1/2008

ENVIRONMENTAL  
LAW NETWORK  
INTERNATIONAL

RÉSEAU  
INTERNATIONAL  
DE DROIT DE  
L'ENVIRONNEMENT

INTERNATIONALES  
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## REVIEW

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Agrobiodiversity on the Agenda

*Franziska Wolff*

Will the CBD fulfil our Expectations? Conserving  
Biological Diversity

*Monika Brinkmüller*

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

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## Editorial

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

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

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

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

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

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

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

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

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

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

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

*Martin Führ*

March 2008

### elni forum

#### Producer responsibility and WEEE revision

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

at the *Facultés universitaires Saint-Louis*,

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

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

*with an introduction by*

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

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

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

*with an overview by*

*Kurt van der Hertten, European Commission*

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

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

## The Alpine Convention – an international agreement with widespread dimensions

*Birgit Dette*

### 1 Introduction

The Alps are experiencing a dynamic development in different areas, such as economy, social development or cross-alpine traffic and at the same time are facing environmental changes that impair the living conditions of people as well as of its flora and fauna. It is therefore important that through the Alpine Convention an international treaty has been agreed upon for the protection of the Alps with an integrative approach, embracing ecological, economic and social aspects.

The following article will provide an overview of the objectives and content of the Alpine Convention. It will then take a look at its genesis and implementation as well as the different stakeholders that are involved therein. The article will further examine the specific characteristics of the Alpine Convention such as its mechanisms for dispute resolution and its aspects of public participation. In this context a parallel will be drawn to the Aarhus Convention which is likewise an NGO-driven international Convention.

### 2 Basic content and objectives of the Alpine Convention and its Protocols

The Convention on the Protection of the Alps, abbreviated to “The Alpine Convention”, was signed by the Alpine countries Austria, France, Germany, Italy, Liechtenstein and Switzerland and the European Community (EC) in 1991 and entered into force on 6<sup>th</sup> March 1995. Since then several Protocols to the Alpine Convention have been signed and were adopted by the Parties to the Convention (in the following the Parties)<sup>1</sup>. Both the Alpine Convention as such and its Protocols are multilateral international treaties which have a binding effect on the Parties and following the rules of international law.

The scope of the Alpine Convention covers the entire alpine region, encompassing some 190,000 square kilometres and 13.6 million residents. The main objective of the Alpine Convention is to ensure the protection and sustainable development of Europe’s most important mountain region. Through the Alpine Convention, the Parties commit themselves to guarantee ecologically sustainable development in the Alpine region on the basis of a cross-sectoral, holistic policy<sup>2</sup>. The key objectives in this respect are the long-term protection of the natural ecosystems and sustainable development of the economic and cultural interests of the indigenous population.

The Alpine Convention is a framework agreement between the Parties. In order to be operational, this framework Convention and its rather vague wording were to be completed by concrete protocols as foreseen by Art. 2 paragraph 2 and 3 of the Alpine Convention. Therefore, the Parties have adopted several “Implementing Protocols” in order to pursue a comprehensive policy for the protection and sustainable development of the Alps. Protocols have been developed to date for the sectors of Mountain Farming, Mountain Forests, Soil Conservation, Energy, Conservation of Nature and the Countryside, Land Use Planning and Sustainable Development, Tourism, Transport as well as a Protocol on Settlement of Disputes<sup>3</sup>. Each Protocol is an independent agreement in international law, as is the Alpine Convention itself, and must therefore be ratified individually. Since 18<sup>th</sup> December 2002 these Protocols have come into force under international law through the ratifications of Austria, Germany and Liechtenstein, and their content have thus become a constituent part of the law of the Parties<sup>4</sup>.

However, not all fields of action in Article 2 paragraph 2 of the Alpine Convention are yet covered by corresponding Protocols. Article 2 paragraph 2 of the Alpine Convention makes provisions for a range of further measures in the fields of population and culture, prevention of air pollution, water management and waste management. Guided not least by the circumstance that the protocols that have already been adopted have not yet been ratified by all Parties<sup>5</sup>, the Alpine Conference has not yet resolved to elaborate any further protocols.

The EC has so far ratified the protocols on energy, tourism, soil protection and mountain farming whereas it only signed the protocols on transport, spatial planning and sustainable development, conservation of nature and landscape. This has the effect that the latter ones are not yet part of the “Aquis Communautaire”. The reason for not ratifying the Protocols is to be seen in the legal effect which the ratification would have for the EC. The protocols would become

<sup>3</sup> For the status of ratification see footnote 1.

<sup>4</sup> Article 11 paragraph 2 of the Alpine Convention: “The Protocols adopted by the Conference shall be signed at the Conference meetings or subsequently at the depositary. They shall be applicable to those Contracting Parties which have ratified, accepted or approved them. In order for a Protocol to come into force at least three ratifications, acceptances or approvals shall be necessary”.

<sup>5</sup> Austria, France, Germany, the Principality of Liechtenstein, Slovenia and partly the Principality of Monaco have ratified the protocols whereas Switzerland, Italy and the EU have only signed them, see <http://www.alpconv.org>.

<sup>1</sup> For the status of ratification see [http://www.alpconv.org/page3\\_de.htm](http://www.alpconv.org/page3_de.htm).

<sup>2</sup> [http://www.stmugv.bayern.de/english/europe/reg\\_alpconv.htm](http://www.stmugv.bayern.de/english/europe/reg_alpconv.htm).

EC law with the consequence that existing EC law would have to be adapted to the provisions of the Alpine Convention<sup>6</sup>. However, this is in fact the consequence of the implementation of any international agreement that all Parties to the Alpine Convention are facing. Additionally, EC ratification would not entail fundamental changes in EC secondary legislation in many cases because the EC has already corresponding rules, such as the FFH Directive<sup>7</sup> for the transposition of the Protocol on the Conservation of Nature and Landscape. Ratification by the EC would also have a positive effect on the other Parties, such as Italy, Monaco and Switzerland which have also not yet ratified all Protocols. The EC should take seriously the legal and political commitment that the ratification of the Alpine Convention and the signature to the Protocols represents to the international Community<sup>8</sup>. This is even more important with a view to the fact that existing Community measures show a weakness regarding the protection of the mountain areas<sup>9</sup>. As a consequence, the EC should proceed with it as a good example and sign or, if this has already been done, ratify all Protocols and transpose them into EC law. At least for the Protocol on transport, the responsible EU Commissioner for Transport Jacques Barrot recently promised to some members of the European Parliament that a legislative proposal for the ratification of the Protocol on traffic will be presented as soon as possible<sup>10</sup>.

### 3 Genesis of the Alpine Convention

The idea of having an international cross-border Alpine Convention goes back to the nineteen fifties. The international Commission for the Protection of the Alps (CIPRA), an NGO active throughout the Alpine region, already called for such a convention in 1952 – the year of its foundation<sup>11</sup>.

However it took more than thirty years before the idea of an Alpine Convention became reality when in 1986 CIPRA International revived the idea. CIPRA thereby followed a two-fold approach. First, the organisation, with CIPRA Germany leading the way, produced some well-researched fundamental documents, based in part on polls conducted in the countries of the

Alps<sup>12</sup>. Additionally, political contacts and lobbying also proved decisive, in particular with members of the European Parliament and the Council of Europe, the Working Community of Alpine Regions (Arge Alp), the government of Bavaria and the German Minister of the Environment. Germany then initiated the first Alpine Conference with the responsible ministers of the countries of the Alps in Berchtesgaden in 1989, in which the Alpine Convention was first negotiated.

Finally, the Alpine Convention was signed at the second Alpine Conference on 7<sup>th</sup> November 1991 in Salzburg/Austria, by the Alpine states of Austria, France, Germany, Italy, Liechtenstein and Switzerland and by the European Community. Monaco acceded to the convention through an additional protocol. Slovenia signed the convention on 29<sup>th</sup> March 1993. The convention entered into force on 6<sup>th</sup> March 1995. Germany ratified the Alpine Convention by act on 29<sup>th</sup> September 1994<sup>13</sup>.

The importance of NGO involvement in the preparation and negotiation of the Alpine Convention is one of its specific characteristics which is outstanding in international law. Various NGOs participated in the preparation of the Alpine Convention's text to an unprecedented degree. This approach was new in negotiations for a multinational environmental agreement, but one which turned out to be very successful. There is another international convention that experienced a similar genesis: the UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)<sup>14</sup>. Also in this case, NGOs played an important role in the preparation of the Convention<sup>15</sup>. As a result, the role of NGOs was recognized in the Preamble of the Aarhus Convention and it was recalled that NGOs should be given opportunities to play the same role in other inter-governmental negotiations on environmental instruments<sup>16</sup>. Thus, it is to be welcomed that the Aarhus Convention followed the same approach of public participation as the Alpine Convention and allowed NGOs to participate and bring their expertise into play. Both Conventions show that public participation can enhance negotiation processes which can also be a positive example for other international agreements.

<sup>6</sup> W. Schroeder, „Die Alpenkonvention – Inhalt und Konsequenzen für das nationale Umweltrecht“, NUR 2006 p. 136.

<sup>7</sup> Directive 92/43/EEC of 21<sup>st</sup> May 1992 on the conservation of natural habitats and of wild fauna and flora ; OJ L 206, 22.7.1992, pp. 7–50.

<sup>8</sup> M. Onida "Protection of mountain areas and Community environmental law" in "Sustainable development of mountain areas – Legal perspectives beyond Rio and Johannesburg", eds. T. Treves, L. Pineschi, A. Fodella, Milan 2004, pp. 263-271.

<sup>9</sup> Ibidem p. 270.

<sup>10</sup> Press release of 15<sup>th</sup> January 2008 by Sepp Kustatscher, Member of the European Parliament for the Green Party.

<sup>11</sup> A. Goetz, "The Alpine Convention as an Example of the Role of Non Governmental Organisations (NGOs) in the Adoption of an International Agreement", see Footnote 8, p. 234.

<sup>12</sup> Ibidem, p. 235.

<sup>13</sup> Federal Law Gazette 1994 II p. 2538.

<sup>14</sup> On the occasion of the 4th pan-European Conference of Ministers for the Environment on 25<sup>th</sup> June 1998, the UNECE-Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) was signed by 35 states as well as the EC in the Danish City of Aarhus - <http://www.unece.org/env/pp/>.

<sup>15</sup> For the NGOs that participated see K. Brady, New Convention on Access to Information and Public Participation in Environmental Matters, Environmental Policy and Law (1998) 28/2, pp. 69 - 75.

<sup>16</sup> Ibidem p. 74.

#### 4 Institutional structure

The Alpine Convention establishes different bodies and additionally involves external stakeholders for its administration and implementation.

The decisional body of the Alpine Convention is **the Conference of the Alpine Parties**, also called **Alpine Conference**. Members of the Alpine Conference are the competent ministers of the Parties. Decisions are generally reached unanimously<sup>17</sup>. The Alpine Convention foresees that also relevant international non-governmental organisations may be admitted to the Conference as observers<sup>18</sup>. The role which has been attributed to NGOs in this case is a very important one; it shows that the Alpine Convention presumes that the relevant NGOs can contribute to the implementation of the Alpine Convention by means of their long-standing experience and well-founded knowledge of the Alpine region.

Meetings of the Conference are normally convened every two years by the Party holding the Chair of the Convention in order to discuss current topics and to set out political targets. However, the Alpine Conference is not only a meeting event but a formal body with special functions according to Art. 6 of the Alpine Convention: At its meetings, the Alpine Conference shall examine the implementation of the Alpine Convention and the Protocols, along with Annexes, and, in particular, shall adopt amendments to the Alpine Convention as well as adopt Protocols, their Annexes and amendments made to them. It shall also approve the creation of Working Groups deemed necessary for the implementation of the Alpine Convention and shall take note of assessments of scientific information. For the time in which there was no permanent Secretariat to the Convention, the Alpine Conference was also responsible for carrying out essential secretariat functions.

The **Permanent Committee** is the executive body of the Alpine Conference itself. It is composed by delegates of the Parties of the Alpine Conference. Governmental and non-governmental organisations may also attend the meetings of the Permanent Committee if it decides on their participation<sup>19</sup>. The overall function of the Permanent Committee is the preparation of

the work of the Alpine Conference, including verification of the “state of the art” of the implementation of the Alpine Convention. In particular it shall carry out, according to Article 8 of the Alpine Convention, the following functions: analyse the information submitted by the Parties; collect and assess documents with regard to the implementation of the Convention and Protocols, inform the Alpine Conference about the implementation of the Conferences’ decisions; prepare programmes for meetings of the Conference; appoint Working Groups to formulate Protocols and recommendations as well as examine and harmonise the contents of draft Protocols from an overall point of view and propose them to the Conference; propose measures and recommendations for the achievement of the objectives contained in the Convention and its Protocols to the Conference.

In order to enhance the implementation of the Alpine Conference as well as facilitate the preparation of its decisions, working groups can be set up by the Alpine Conference<sup>20</sup> and by the Permanent Committee<sup>21</sup>. The working groups follow the rules of procedure of the Permanent Committee and are thus composed by delegates to be nominated by the Parties. Different working groups of this kind have been established to date, such as the working group on transports, UNESCO World Heritage, population and culture or the Platform “Ecological Network”<sup>22</sup>. The working groups have been created to prepare Protocols to the Alpine Convention or other fundamental decisions of the Alpine Conference as well as to provide for a continuous and professional input to Conventions’ institutions. In this way, they have essentially contributed and are still contributing to the development and completion of the Alpine Convention.

A major step towards implementation of the Alpine Convention was the decision passed at the VIIth Alpine Conference in 2002 in Meran in favour of a **Permanent Secretariat of the Alpine Convention**<sup>23</sup>. Unlike most environmental treaties<sup>24</sup>, the Alpine Convention did not provide for the creation of a secretariat in its text but simply stated in its Article 9 that “the Conference may decide unanimously to set up a permanent secretariat.” On this basis the Parties decided in 2000<sup>25</sup> in favour of the creation of a Permanent Secretariat. However, neither the Alpine Convention nor the Decision of 2000 indicated what nature and structure the Permanent Secretariat should take nor its

<sup>17</sup> For the exceptions see Article 7 paragraph 1 of the Alpine Convention.

<sup>18</sup> The NGOs with observer status are as follows: AEM (European Association of Elected Representatives from Mountain Areas); Alpe Adria (Working Community of Alpine Regions, Eastern Alps); Arge Alp (Working Community of Alpine Regions, Central Alps); CIPRA International (International Commission for the Protection of the Alps); City of the Alps (Working Community of Alpine Cities); CAA (Club Arc Alpin); COTRAO (Working Community of Alpine Regions, Western Alps); Euromontana; FIANET (International Federation of National Associations of Cable Car Operators); International Steering Committee of the Network of Protected areas; ISCAR (International Scientific Committee for Alpine Research); IUCN (The World Conservation Union); ONU/UNEP-ROE (United Nations Environment Programme – Regional Office for Europe); Pro Mont Blanc; The Managing Authority of the European Cooperation Programme Alpine Space.

<sup>19</sup> See footnote 18.

<sup>20</sup> Article 6 e) of the Alpine Convention.

<sup>21</sup> According to Article 8 paragraph 6 e) of the Alpine Convention and Article 14 of the rules of procedure of the Permanent Committee.

<sup>22</sup> <http://www.alpconv.org>.

<sup>23</sup> Decision VII/2 of the Alpine Conference.

<sup>24</sup> See, for example, Article 12 of the Aarhus Convention or Article 13 of the Espoo Convention.

<sup>25</sup> Minutes of the Decisions of the VIth Alpine Conference on 31<sup>st</sup> October 2000 in Lucerne/Switzerland, Paragraph 7 A

relation with other bodies established under the Alpine Convention. This lack of indication had to be filled by the Parties when negotiating the creation of the Permanent Secretariat. Basic indicators were in this regard the independence of the Permanent Secretariat from the Parties and no further delay with a view to its creation. This was thought to be best achieved by a decision of the Alpine Conference which had a binding character on the Parties<sup>26</sup> and by a Permanent Secretariat in the form of a new body inside the Alpine Convention<sup>27</sup>.

Basically the functions of the Permanent Secretariat are to support the work of the different bodies of the Alpine Convention, e.g. by the preparation of the regular meetings of the Alpine Conference; the technical, logistical and administrative support for the implementation of the Alpine Convention; coordination of research activities, observation and information with respect to the Alps; public relations activities; administrative activities and archives<sup>28</sup>.

The Permanent Secretariat has its seat in Innsbruck with a detached office in Bozen/Bolzano. The responsibility is shared between the two offices. Whereas the office in Innsbruck is responsible for political-administrative duties, public relations and representative functions, the office in Bozen/Bolzano is responsible for technical-operational duties (i.e. the Alpine observation and information system, the coordination of the research in the Alpine region as well as any translating or interpreting duties).

An important role is attributed to the Secretary General as the head of the Permanent Secretariat who directs its activities and is responsible for its work before the Alpine Conference<sup>29</sup>. The Secretary General represents the Secretariat - both within the Alpine system and outside - towards third parties<sup>30</sup>; it thereby has an outstanding function as to the coordination and cooperation of the different bodies and stakeholders which are involved in the implementation of the Alpine Convention.

As set out by the preamble of the decision which established it, the Permanent Secretariat has been attributed the important function of facilitating the implementation of the Alpine Convention. With a view to its supporting and coordination activities it can thus be

considered a central body for the protection and sustainable development of the Alpine region. However, it is important to state that the responsibility for the implementation as such is mainly down to the Parties, in particular through their regional and local authorities, and that the supporting and coordination function of the Permanent Secretariat depends on a responsible implementation by the Parties. It would therefore be misleading to assume that the Permanent Secretariat's function, with no more than eight officials working in both offices, was to implement the Alpine Convention on its own or that it could monitor the application of international law at the local level. Thus, the success of the implementation process depends on the participation of all institutions and stakeholders involved.

Additionally the VIIth Alpine Conference decided to establish a **Compliance Committee**. The idea of such a Compliance Committee is also known in international environmental law from other Conventions such as the Aarhus Convention<sup>31</sup> or the Espoo Convention<sup>32</sup>. The idea behind such Committees is to guarantee the respect of the Conventions provisions which face the problem of not always being correctly transposed into national law or - if done so - are not always applied. Any provision is only as good as its implementation and as far as application can be ensured. The problem of implementing environmental law is thus well known and has been stated by all kinds of stakeholders for years<sup>33</sup>.

The Compliance Committee of the Alpine Convention is according to Article 6 e) of the Alpine Convention a permanent working group and not a decision-making body<sup>34</sup>. It meets at least twice a year and is composed of not more than two members from each Party or organisations which have observer status<sup>35</sup>. The Compliance Committee has the task of examining the regular reports of the Parties that have to be presented according to Article 5 paragraph 4 of the Alpine Convention<sup>36</sup>. Therefore, the first task of the Compliance Committee was to work out a standardised structure according to which the Parties have to present their implementation reports. Based on this questionnaire of 164 pages, first national reports were presented by the

<sup>26</sup> I. Papanicolopulu "The Secretariat of the Alpine Convention", see footnote 8, pp. 215-231 (pp. 218 and 220).

<sup>27</sup> See for the legal status of the Permanent Secretariat footnote 25, pp. 220-222. In this context the legal capacity of the Permanent Secretariat was discussed amongst the Parties to the Convention. It was decided that the Permanent Secretariat should only be allowed to enter into the agreement on its own headquarters in Innsbruck and Bozen, but not into any other international agreements, whereas it should have full legal capacity under national law once the headquarter was established.

<sup>28</sup> Art. A and B of Decision VII/2 of the Alpine Conference.

<sup>29</sup> Statute of the Permanent Secretariat, Art. 3 paragraph 2.

<sup>30</sup> See footnote 25 p. 27.

<sup>31</sup> <http://www.unece.org/env/pp/>.

<sup>32</sup> <http://www.unece.org/env/eia/>.

<sup>33</sup> See e.g. B. Dette "Access to justice in environmental matters - a fundamental democratic right" in M. Onida (ed.) "Europe and the environment - legal essays in honour of Ludwig Krämer" (Groningen 2004) p. 5.; B. Dette, "Access to Justice in Environmental Matters - the Aarhus Convention and Legislative Measures for its Implementation" in *Environmental Law and Policy at the turn to the 21st Century*, (Berlin 2006) p. 63.

<sup>34</sup> „Mechanismus zur Überprüfung der Alpenkonvention und ihrer Durchführungsprotokolle" in *Alpenkonvention - Nachschlagewerk Alpensignale* 1, p. 210, Publication of the Permanent Secretariat of the Alpine Convention, Innsbruck 2003.

<sup>35</sup> *Ibidem*, Annex II.1.1, p. 212.

<sup>36</sup> *Ibidem*, p. 210 and Annex II. 2.1, p. 212..

Parties in the autumn of 2005<sup>37</sup>. In the case that the Compliance Committee were to find any shortcomings in the country reports as regards the implementation of the Alpine Convention, it would first give the Party concerned the possibility to remedy them and if not done so would then report them together with recommendations to the Permanent Secretariat, who would present them in turn to the Alpine Conference for a vote. A second major task of the Compliance Committee is to deal with the request of any Party or observer about the non-respect of the Alpine Convention. Again, the result of the examination of such cases of non-respect of the Alpine Convention is not a concrete sanction but may lead to a report with recommendations which is presented to the Alpine Conference for a vote. Although these consequences are not binding, they do, however, indirectly have an obligatory character for the Parties. This is because from a diplomatic point of view none of the Parties wants to be blamed for not respecting the Alpine Convention. The most remarkable aspect of the evaluation procedure is that observers with official status can also ask the Compliance Committee to start an evaluation procedure<sup>38</sup>. This is an important aspect for the work of the Compliance Committee because it is more likely that an observer will take up a case of non-respect of the Alpine Convention than that one Party would blame another Party for impairing the Alpine Convention or its Protocols. Again one can see the important role that the Alpine Convention attributes to NGOs of the Alpine region. By involving different stakeholders, it wants to strengthen the implementation of the Alpine Convention. A similar participation can be found in Article 15 of the Aarhus Convention, which allows for appropriate public involvement in its Compliance Committee that may include the option of considering communications from members of the public on matters related to the Aarhus Convention<sup>39</sup>. Various such communications have been handed in to date and have also been answered by the Compliance Committee<sup>40</sup>. Other international conventions do not have such public participation in their monitoring committees. Therefore, the approach taken by the Alpine Convention and by the Aarhus Convention to allow for public participation in their compliance committees is outstanding in international environmental law and can have positive effects on the ongoing discussion on implementation of environmental law.

<sup>37</sup> See for the reports [http://www.alpconv.org/page4CC\\_de.htm](http://www.alpconv.org/page4CC_de.htm).

<sup>38</sup> See footnote 34, Annex II. 2.3. and 3.2.8. W. Schroeder, footnote 6, p. 135.

<sup>39</sup> Article 15 of the Aarhus Convention states that "the Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention".

<sup>40</sup> <http://www.unece.org/env/pp/pubcom.htm>.

Up to now, the Compliance Committee has not seen a reason for starting an evaluation procedure on its own initiative nor was it asked to start an evaluation on the request of a Party. However, an observer, CIPRA, criticised some of the Alpine Convention contracting parties, including Germany, arguing that the Alpine Convention was not always being implemented in a correct manner. This procedure is still pending so that final conclusions cannot be drawn for the time being.

Generally speaking, the procedures are only effective on the condition that the requests of the Parties or the observers are dealt with by the Compliance Committee. What if a Party or an observer signals a case of non-respect to the Compliance Committee, but the Committee is not willing to include this observation in its preliminary report addressed to the Parties? Looking at the wording of the rules on the Compliance Committee<sup>41</sup>, it could be considered that any comment of the Parties or the observers on the national reports has to be included in the preliminary report of the Committee with the result that the Party concerned has to react to this observation and indicate what measures it intends to take. Another problem could be that – even though the comments on the non-respect of the Alpine Convention are included to the preliminary report – the Parties represented at the Compliance Committee could still agree to refrain from proposing concrete recommendations or decisions to the Alpine Conference against the Party concerned, if the Party signals remediation of the stated impairment<sup>42</sup>. It is therefore possible that a statement of an observer about an incorrect implementation of the Alpine Convention against a Party is not taken up in the form of a recommendation to the Alpine Conference. In such a case, no further objections are possible as the evaluation mechanism is consultative, non-confrontative and non-judicial.

Due to the little experience that has been gathered with regard to the procedures of the Compliance Committee of the Alpine Convention it seems too early to evaluate whether or not the Compliance Committee can be considered a successful instrument for the implementation of the Alpine Convention. From a theoretical-legal perspective the Compliance Committee with the involvement of external observers seem to be an appropriate implementation instrument. However, its success will surely depend on the willingness of the Parties to take up all considerations including those ones made by observers and to remedy them effectively.

In addition to these evaluation mechanisms there is a further instrument for ensuring the implementation of

<sup>41</sup> Article 3.2.3. of Decision VII/4: "[...] the Committee presents to the Party concerned the results of its consultations as well as the possible comments of the other Parties and the observers".

<sup>42</sup> Article 3.2.5. of Decision VII/4.



the Alpine Convention - the Protocol on the Settlement of Disputes that will be described below<sup>43</sup>.

## 5 Implementation of the Alpine Convention

Besides the formal act of ratifying the Alpine Convention and its Protocols, it is important that the content be implemented and “filled with life” through measures and projects at the relevant implementation level. The enactment of the protocols in 2002 signals a new development phase for the Alpine Convention, with the emphasis now on implementation<sup>44</sup>. The Alpine Convention itself establishes different bodies and mechanisms for its implementation, as has already been outlined in chapter 4. In addition, there are further instruments and partners that are involved in the implementation of the Alpine Convention. Not all international conventions have such a broad approach to ensuring their implementation.

### 5.1 The Multi-Annual Work Programme 2005-2010

The long phase of elaboration of the Alpine Convention has led to expectations which must now be fulfilled with resolute efforts by intensifying implementation. One key concern remains hereby the process of ratifying the Protocols to the Alpine Convention throughout the entire region of the Alps as soon as possible.

A further key concern is to implement the Protocols once they have been ratified. This was one of the reasons why the Parties adopted the “Multi-Annual Work Programme 2005 – 2010” at the VIIIth Alpine Conference in 2004 in Garmisch Partenkirchen. The Multi-Annual Work Programme represents a medium-term framework over a period of six years (3 presidencies) that defines the main tasks of implementing the Alpine Convention. It sets out six priorities for the implementation of the Alpine Convention which will be further described below: (1) preparation of Reports on the State of the Alps; (2) exchange of experience and cooperation; (3) joint projects on four key issues; (4) public relations; (5) completion of the set of agreements; (6) co-operation with other mountain areas and conventions<sup>45</sup>.

Since the adoption of the Multi-Annual Work Programme 2005 – 2010, many different projects and activities on all levels in all Alpine countries have been continued or newly launched. This article can only describe exemplarily some implementation measures, knowing that there are manifold activities and projects that could just as well have been mentioned and which are not less important than the ones named below.

### 5.1.1 Trend monitoring and interpretation – Report on the State of the Alps

*“The status and trend of the Alps are to be observed and interpreted in co-operation with the relevant experts to provide a basis for political decisions and contribute to an overall perception of the trends in the Alps. A Report on the State of the Alps will the outcome make accessible to the general public interested in these issues”.*

As stated in the Multi-Annual Work Programme, the Report on the State of the Alps is an instrument designed to provide a broader public with information and appraisals on the main developments taking place in the Alps; at the same time it serves as a basis for strategy development for politics and administration<sup>46</sup>.

It was not chance that the first published Report on the State of the Alps was the one on transport and mobility as this subject plays a major role in the development of the Alps and its inhabitants from an environmental, social and economic perspective. This first Report on the State of the Alps addresses coherently the subject of transport and mobility within the Alps, and between the Alpine space and other European regions. It is the result of a joint effort by authors from various contracting parties and was approved by the IXth Alpine Conference in 2006 in Alpbach/Austria. This report contributes to the implementation of the Transport Protocol to the Alpine Convention that represents one of the most important cornerstones of the whole Alpine Convention.

This first report will be followed by other Reports on the State of the Alps on other themes, with the aim of continuing to provide a dynamic picture of some of the important developments for the Alps and their population. The next Report on the State of the Alps will be dedicated to the subject of water in the Alps; work has already begun on data collection and analysis in view of this second report<sup>47</sup>.

### 5.1.2 Exchange of experience and co-operation

*“The Alpine Conference is to launch more activities aiming at strengthening co-operation and contributing to the development of a shared identity and the ability to take concerted action in the alpine region. Local authorities and regions are to assume a key role”.*

Out of the various cooperation activities that are going on at present, the current discussion on climate change was taken up by the Permanent Secretariat of the Alpine Convention with a workshop on “Climate Change” held on 5<sup>th</sup> and 6<sup>th</sup> December 2007 in Bozen/Italy<sup>48</sup>. This workshop is part of the Action

<sup>43</sup> Chapter 5.2.

<sup>44</sup> The Multi-Annual Work Programme of the Alpine Convention 2005 – 2010 (MAP) p. 6.

<sup>45</sup> The Multi-Annual Work Programme of the Alpine Convention 2005 – 2010 (MAP) p. 7 and 8.

<sup>46</sup> Report on the State of the Alps - Alpine Signals Special edition 1 on “Transport and Mobility in the Alps”, published by the Permanent Secretariat, Innsbruck, 2007, preface, p. XV.

<sup>47</sup> See footnote 46.

<sup>48</sup> <http://www.alpconv.org>.

Plan for the implementation of the Declaration on climate change adopted by the Ministers at the IXth Alpine Conference in 2006 in Alpbach/Austria<sup>49</sup>. The Action Plan will focus on short-term and long-term specific Alpine recommendations to act in prevention and response to the effects of climate change in the Alpine region. In advance of the workshop, good practices from regional and local authorities in the Alpine region were collected in order to not only have a theoretical discussion but also a practical approach. These good practices aim at identifying and adopting specific measures for the Action plan with the final objective of preventing and responding to climate change in the Alps.

### 5.1.3 Joint projects on four key issues

*“Priority issues out of all protocols are to be addressed in four topics through close co-operation with the regions and local authorities (1) mobility, accessibility, transit traffic; (2) society, culture, identity; (3) tourism, leisure, sports; (4) nature, agriculture and forestry, cultural landscape”.*

An example of a project that covers the topic of mobility as well of tourism and leisure is “SuperAlp!”<sup>50</sup>, which took place from the 10<sup>th</sup> to the 19<sup>th</sup> June 2007. Through “SuperAlp” a “sustainable” crossing of the Alps was achieved - starting in France and developing through Switzerland, Austria, Germany to reach Italy – walking on foot or using only existing sustainable means of transport such as regular scheduled trains, public buses, cable cars, existing bike rentals, but no cars. “SuperAlp” was realised in the context of the project “Alpine Awareness” which has as its objective to promote environmentally-friendly travel, to reach tourist areas in the Alps.

An example of an activity in the field of “society, culture, identity” was a lecture on the living together between the people, especially in the mountain regions, held from 1<sup>st</sup> to 3<sup>rd</sup> October 2007 by the famous author Mario Rigoni Stern for a group of students from different Alpine states. In the course of the lecture the students also had the possibility of becoming familiar with the declaration of “Population and culture” adopted by the IXth Alpine Conference in November 2006, which aims at promoting the socio-cultural dimension of the sustainable development in the Alpine region.

### 5.1.4 Public relations

*“The Alpine Conference is to address the general public, politics and the scientific community more directly, draw up an active communication policy, and establish a platform for strategic discussions on the future of the alpine region. The objectives of an integrated sustainable development are to be clarified”.*

As a matter of fact, the general public knows far too little about the Alpine Convention and its objectives. One very effective measure in that context has been to establish the so-called “Via Alpina”. The “Via Alpina” is a set of five walking trails through the Alps linking Trieste on the Adriatic Coast to Monaco and the Mediterranean; it is described in multilingual documentation and has been created through cooperation of the eight Parties to the Alpine Convention<sup>51</sup>. It enables all interested people to familiarise themselves with the Alps and the Alpine Convention by making concrete experiences when following this trail through the Alpine region<sup>52</sup>. In addition any interested persons can ask for the so-called “Tour Diary” that not only describes the five different trails but also provides the interested public with an introduction to the Alpine Convention and its institutions.

Another positive example was the realisation of the so-called “Youth Parliament to the Alpine Convention”<sup>53</sup>: 36 people between 16 and 19 years old came together from 9<sup>th</sup> -11<sup>th</sup> June 2006 in Innsbruck in order to discuss different topics of current interest from their point of view related to the sustainable development of the Alpine region. The resolutions adopted by the Youth Parliament were passed to the Alpine Conference. The Youth Parliament turned out to be very successful, not only because the resolutions adopted by the young delegates are a valuable input for the Alpine Conference, but also because an ongoing exchange between the participating schools has been launched as a result of the Youth Parliament. Due to this success, a second Youth Parliament was held from 22<sup>nd</sup> to 24<sup>th</sup> March 2007 in Innsbruck and the Permanent Secretariat plans to organise in such events with interested young people in other Alpine states.

### 5.1.5 Completion of the set of agreements

*“Protocols have been drawn up on most of the topics listed in Article 2 of the framework convention. The Alpine Conference is to intensify its activities to process the four areas still outstanding, i.e. “Population and Culture”, “Protection of the air quality”, “Water management” and “Waste management”.*

Unfortunately it must be noted that this field of activity is not currently advancing. So far, the Parties have not developed any further Protocols to the Alpine Convention. However, the completion of already existing Protocols is important in order to reinforce the activities named in Article 2 of the Alpine Convention with material obligations and fulfil the demand of the triangle of sustainability that embraces social development, economic development and environmental protection. As the Parties could not agree on prepara-

<sup>49</sup> Decision IX/7 of the Alpine Conference.

<sup>50</sup> <http://www.alpineawareness.net/superalp.php>.

<sup>51</sup> <http://www.via-alpina.org>.

<sup>52</sup> See also chapter 5.4.1.

<sup>53</sup> <http://www.jugendparlament.tsn.at/>; Decision IX/12 of the Alpine Conference.

tion of a Protocol on “population and culture”, they instead opted at the VIIIth Alpine Conference in 2004 in Garmisch-Partenkirchen/Germany for preparation of a political declaration. This was adopted at the IXth Alpine Conference in November 2006 in Alpbach/Austria and might lead to a Protocol within four years of its adoption<sup>54</sup>.

### 5.1.6 Cooperation with other mountain areas and conventions

*“The Alpine Conference is to pursue co-operation with other mountain areas and conventions”.*

The cooperation between other mountain areas and conventions has been an ongoing activity of the Alpine Convention for many years. In 2001, when Italy had the Presidency of the Alpine Convention, the Alpine-Carpathian Partnership was launched and developed through a sequence of meetings<sup>55</sup>. Although the Alpine Convention cannot be translated as such to other regions, many of its principles and the experiences accrued when negotiating and implementing the Alpine Convention proved very useful for paving the way for the Carpathian Convention. This close cooperation finally led to a Memorandum of Understanding between the Alpine and the Carpathian Convention, which is “aimed at providing a durable basis for the collaboration between the bodies of the two Conventions in the field of information and experience exchange. Besides this another objective is the development and implementation of common projects”<sup>56</sup>. The international mountain cooperation was further strengthened at the VIIIth Alpine Conference in 2004 in Garmisch-Partenkirchen/Germany when the existing mountain partnerships with the Carpathians, the Caucasus and Central Asia were explicitly welcomed. In order to strengthen these partnerships and fulfil the objective of the Multi-Annual Work Programme the Alpine Convention adhered to the “International Partnerships for the sustainable development in mountain regions” that was determined at the World Summit on Sustainable Development in Johannesburg in 2002<sup>57</sup>.

### 5.2 Protocol on the Settlement of Disputes

The additional Protocol on the Settlement of Disputes was approved in the course of the VIth Alpine Conference held in Lucerne/Switzerland in October 2000.

This Protocol on the Settlement of Disputes is an additional Protocol that stems from the idea that the Alpine Convention lacked provisions for its implementation and therefore needed to be completed. The

approach of setting out rules on dispute settlement is known from other international Conventions such as the Aarhus Convention or the Espoo Convention<sup>58</sup>. In contrast to the Alpine Convention these conventions already stipulate the provisions on dispute settlement in their conventions’ texts. However, being an independent protocol, the Protocol on the Settlement of Disputes is an international agreement in itself. Thus, the provisions of this Protocol have the same legal effect as if they were directly included in the text of the Alpine Convention.

In signing this Protocol, the Signatories undertook to establish a procedure which will be followed when two or more of the parties to the Protocol disagree on the interpretation or implementation of the Convention or one of its Protocols.

The system foresees an initial consultation procedure during which the Parties undertake to solve the dispute in question peacefully, and a second procedure before a court of arbitration, which will be especially appointed for that case. The Parties will resort to this arbitration procedure only when consultations have failed<sup>59</sup>. Once the actual arbitration procedure has been initiated, each Party will appoint an arbitrator and the two appointed arbitrators will then jointly name a President of the Arbitration Court<sup>60</sup>. The decision of the Arbitration Court is final and binding for the Parties concerned. The Arbitration Court will announce its arbitration decision to the Parties and the Chair of the Alpine Convention no later than 6 months from its being appointed<sup>61</sup>. The Chair will then inform all Contracting Parties and observers of the decision according to art. 5 paragraph 5 of the Convention<sup>62</sup>.

### 5.3 Public relations

Another important measure of implementing the Alpine Convention is the generation of public awareness in order to strengthen the acceptance of its objectives and encourage active involvement on the part of the general public. Due to the fact that the Alpine Convention was concluded as an international agreement at government level, public awareness at the beginning was minimal. With the creation of the Permanent Secretariat that is also responsible for public relations, the public awareness of the Alpine Convention will further increase, as has already been shown by different activities and projects such as the workshop on “Climate change” held in Bolzano in 2007<sup>63</sup>.

<sup>54</sup> Protocol of the VIIIth Alpine Conference Topic 11.

<sup>55</sup> “International Mountain Partnerships”, p. 40: Publication by the Austrian Ministry for life and the Alpine Convention, Vienna 2006.

<sup>56</sup> Memorandum of Understanding for the Cooperation between the Alpine Convention and the Carpathian Convention Article II.

<sup>57</sup> See footnote 55, p.5.

<sup>58</sup> Art. 16 of the Aarhus Convention and Art. 15 of the Espoo Convention.

<sup>59</sup> Art. 1 and 2 of the Protocol on the Settlement of Disputes.

<sup>60</sup> Ibidem Art. 3.

<sup>61</sup> Ibidem Art. 11 and 12.

<sup>62</sup> Ibidem Art. 14.

<sup>63</sup> See footnote 48.

#### 5.4 Cooperation with different stakeholders

Alongside the legal implementation through decisions taken by the Alpine Conference or by administrative institutions in the Alpine countries, practical implementation at European, national, regional and local level initiated by different stakeholders is crucial for transposing the principles of the Alpine Convention into practical terms. In this context the cooperation between the institutions of the Alpine Convention and existing Alpine networks as well as the involvement of Alpine NGOs play a fundamental role.

##### 5.4.1 The cooperation with Alpine networks

In order to strengthen the involvement of different stakeholders, the Alpine Convention foresees an official cooperation with partners such as the “Alliance in the Alps”, the “Via Alpina”, the Community of Interests “Alpine Town of the Year” as well as “ALPARC” (Alpine Network of protected areas)<sup>64</sup>.

The “Alliance in the Alps Network of Communities” is an association of over 200 local authorities and regions from seven Alpine States that was founded in 1997. It was launched by the NGO activity of CIPRA, in cooperation with the Alpine Research Institute (AFI) in Garmisch-Partenkirchen. Its member communities together with their citizens strive to develop their alpine living environment in a sustainable way according to the principles set out by the Alpine Convention. They additionally strive to provide for an exchange of experience and information beyond the boundaries of language and culture<sup>65</sup>. Therefore its objective is to implement a sustainable policy in all fields of the Alpine Convention and cross-border collaboration.

The “Alpine Town of the Year” is an association of all alpine towns which have been awarded the title of “Alpine Town of the Year” since 1997. The title commends an alpine town for its particular commitment to the implementation of the Alpine Convention and is awarded by an international jury<sup>66</sup>.

The Via Alpina is a system of five different trails that lead through the eight Alpine countries, linking Trieste on the Adriatic Coast to Monaco and the Mediterranean. It is described in multilingual documentation and contributes to close-to-nature, soft tourism. It was created through cooperation of the eight Parties to the Alpine Convention<sup>67</sup>.

For all these Partners, the cooperation with the Permanent Secretariat of the Alpine Convention has been established by Official Memorandums of Understand-

ing<sup>68</sup> in which the objectives as well as the instruments of their cooperation with the Secretariat of the Alpine Convention are officially stipulated. All three of them are important Partners for the implementation of the Convention’s objective, especially as regards spatial planning and tourism. These Partners are independent from the Secretariat of the Alpine Convention from an organisational as well as from a financial point of view<sup>69</sup>.

The Cooperation with ALPARC (Alpine Network of protected areas) is organised in a different way. ALPARC is a network and an exchange platform of all large protected areas in the Alpine region. It brings together more than 350 protected areas which cover about 21 % of the surface covered by the Alpine Convention. ALPARC was created by France in 1995 as a contribution to the implementation of the Alpine convention<sup>70</sup>. The VIIIth Alpine Conference held in Garmisch Partenkirchen/Germany in 2004 decided to incorporate the Coordination Unit of the Alpine Network of Protected Areas into the Permanent Secretariat of the Alpine Convention as a Task Force<sup>71</sup>. Since 2006 this coordination unit (“Task Force Protected Areas”) is therefore under the authority of the Permanent Secretariat in Innsbruck in order to enhance the implementation of the Protocol on Nature Conservation of the Alpine Convention and to strengthen the protected areas within the Alpine Conventions’ and domestic policies.

##### 5.4.2 The involvement of non-governmental organisations

The possibility for the NGOs to participate in the implementation of the Alpine Convention is not only a right “on paper” but is also executed by them in concrete terms. Important initiatives for implementing the Alpine Convention were taken by NGOs<sup>72</sup>. For example, CIPRA realised that the implementation of the Alpine Convention is not a top-down activity for the ministries only but also a bottom-up activity for the local communities and regions by dint of initiating the network “Alliance in the Alps” as a pilot project with 27 Alpine communities in 1996<sup>73</sup>. Additionally, specific action plans were asked for, which not only made

<sup>64</sup> See Article 4 paragraph 3 of the Alpine Convention.

<sup>65</sup> <http://www.alpenallianz.org>.

<sup>66</sup> <http://www.alpenstaedte.org>.

<sup>67</sup> <http://www.via-alpina.org> and chapter 5.1.4.

<sup>68</sup> <http://www.alpconv.org>: The MoU with the Alliance in the Alps Network was signed on 16<sup>th</sup> November 2004; the MoU with “Via Alpina” was signed on 9<sup>th</sup> February 2005 and the MoU with “Alpine Town of the Year” was signed on 11<sup>th</sup> January 2008.

<sup>69</sup> The Via Alpina is an Interreg Project financed partly by the European Commission as well as by the parties to the Convention. The Alliance in the Alps is financed by external projects as well as partly by membership fees.

<sup>70</sup> “Strategic document”, p. 3, publication of the Alpine Network of protected areas.

<sup>71</sup> From a financial point of view ALPARC has funds from the French government and its Alpine regions as well as from the voluntary participation of other Alpine Convention contracting parties and third parties. Other financings are exclusively referred to specific projects, see footnote 50; p. 4.

<sup>72</sup> See footnote 11, p.238.

<sup>73</sup> <http://www.alpenallianz.org>.

demands of the authorities at all levels but also formulated contributions to be made by NGOs to solve the various problems<sup>74</sup>. A further key contribution made by the NGOs has been to maintain a regular supply of well-researched information and organise an information campaign on the subject of the Alpine Convention throughout the Alps<sup>75</sup>. In this way the attention of the general public was drawn to the significance of the Alpine Convention for the individual regions of the Alps and for Europe as a whole.

## 6 Consequences of the Alpine Convention in German Law

The Alpine Convention has been ratified by the Federal Republic of Germany in 1994 and its Protocols in 2002<sup>76</sup>. International law demands that the ratified treaties are implemented in national law, whereas it leaves the means of doing this up to the Contracting Parties<sup>77</sup>. Thereby one can distinguish between obligations for the legislator when transposing the Alpine Convention and obligations for the administration and the courts when applying the provisions once the Alpine Convention is transposed.

According to Article 59 paragraph 2 of the Grundgesetz (German Constitution), the Alpine Convention and its Protocols became part of the German legal order<sup>78</sup>. A further legal act for transposing the Alpine Convention and its Protocols into the national legal order was not deemed to be necessary. For the Alpine Convention this stems from the fact that it is a framework Convention, which leaves the substantive obligations for the Parties to the Protocols<sup>79</sup>. For the Protocols, the German legislator was of the opinion that a transformation of their substantive provisions by legal acts was not necessary due to the fact that there would already be respective provisions under national law or because the transformation could be ensured by political programmes<sup>80</sup>. Even though this presumption should not be true, the Protocols could be directly applied depending on the self-executing character of their provisions<sup>81</sup>.

Conflicting provisions of the Alpine Convention with existing federal legal acts are to be solved according to

the general rules of conflicting legislation<sup>82</sup>. According to the “lex-posterior rule”, the later legal act has priority with a view to the earlier one. Even more important for the Alpine Convention is the “leges-speciales-rule” according to which the more specific rule prevails over the general one, which is thought to be the case for the Alpine Convention and its Protocols.<sup>83</sup>

The administrations and the courts are directly bound by the provisions of the Alpine Convention and its Protocols as far as they are “self-executing”. In this sense a provision is thought to be “self-executing” if its content, objective and wording are sufficiently precise and no further provision for its execution is needed<sup>84</sup>. The Alpine Convention itself cannot be considered to be self-executing as it leaves the regulation of the substantive provisions to the Protocols. For the Protocols the administrations and the courts will have to decide on a case-by-case basis as to their “self-executing” character. However, numerous provisions are thought to be of such a self-executing character<sup>85</sup> and would take precedence over federal law as they are specific provisions for the alpine region<sup>86</sup>. But even if some of the provisions would be thought not “self-executing”, the Alpine Convention and its Protocols will have guiding functions for the interpretation of national law. This means that the administrations and courts have to interpret national law in the light of the Convention and its Protocols, which can in unclear cases mean that the Convention or the Protocols will prevail<sup>87</sup>. One should not underestimate this “interpreting function” as the federal environmental law is based on so-called “indefinite legal notions” that very often need to be put into concrete terms. For example, according to Article 14 of the Protocol on Soil Conservation, a permit for a ski run in a forest area with protection functions is only allowed in exceptional cases. This will have consequences for the environmental impact assessment according to Article 12 of the German Environmental Impact Assessment Act so that ski runs could only be allowed if they have no negative impact on the alpine soil.

## 7 Summary

The Alpine Convention is a binding international agreement for the protection and sustainable development of the Alpine region which has around 13.6 million people living in this unique landscape. In order to be operational, it has been completed up to now by different Protocols that also have the quality

<sup>74</sup> See footnote 11, p. 240.

<sup>75</sup> See footnote 11, p. 239.

<sup>76</sup> Federal Law Gazette 1994 II, p. 2538 and 2002 II, p. 1785b.

<sup>77</sup> Streintz, Art. 59 number 65, p. 1384 in Sachs, Grundgesetz Kommentar, 3rd edition, Munich 2003.

<sup>78</sup> In German legal literature different theories exist about the legal effect of the legislative act that creates the constitutional conditions for the Federal Republic of Germany being allowed to sign international treaties see, see for further details footnote 77, Art. 59 number 60 - 69.

<sup>79</sup> See BT-Drs. 12/7268 p.2.

<sup>80</sup> BT Drs. 14/1980 p.6.

<sup>81</sup> “Die Umsetzung der Alpenkonvention in Bayern” in „Alpenkonvention konkret, - Ziele und Umsetzung Alpensignale 3. Alpen Convention, Innsbruck 2004.

<sup>82</sup> BVerwGE 47, p. 365 and 368 (Judicial ruling of the Federal administrative Court).

<sup>83</sup> Schroeder, footnote 6, p. 137.

<sup>84</sup> Streintz, footnote 77 number 68, p. 1385.

<sup>85</sup> „The Alpine Convention – Handbook for its Implementation”, Publication by the Austrian Ministry for environment and the Alpine Secretariat, 2007.

<sup>86</sup> Schroeder, footnote 6, p. 137.

<sup>87</sup> Ibidem, p.137.

of binding international agreements. Some Parties to the Convention, including the EU, have not ratified all Protocols so that further ratification initiatives are to be expected.

The Alpine Convention and its Protocols embrace ecological, economic and social aspects in the sense of sustainable development for the Alps. Thereby, they go far beyond being a multilateral environmental agreement and their scope covers aspects from traffic, transport, energy, tourism to the conservation of nature and the countryside.

The binding nature of the Alpine Convention and its Protocols is a signal in itself because international environmental law is often governed by soft law. However, any agreement is only as efficient as its implementation. Therefore, the major challenge for the Alpine Convention for the coming years is the implementation process which is very comprehensive, taking into account the broad field of application of the Protocols of the Alpine Convention. In order to ensure the implementation of the Alpine Convention and its Protocols, different bodies are involved and various instruments and mechanisms have been created. Besides the Alpine Conference, the Permanent Committee, the Permanent Secretariat and the Compliance Committee, also external stakeholders and partners, are involved in the implementation process such as the Alliance in the Alps, the Via Alpina, the Community of Interests "Alpine Town of the Year" as well as the Alpine Network of protected areas. In the case of non-respect of the Conventions' provisions, a mechanism of dispute resolution is foreseen. The guiding document for the implementation process in

the next years is the Multi-annual Work Programme 2005-2010, which sets out overall implementation targets and additionally points out priority issues.

An important aspect of the genesis and the implementation of the Alpine Convention and its Protocols is the involvement of non-governmental organisations of the Alpine region and the cooperation with external partners. Non-governmental organisations are even recognised as "official observers" in the Compliance Committee and their expertise is welcomed in the implementation process. Thus the Alpine Convention is an outstanding example of public participation, which can also have positive effects for other international agreements.

It would not do justice to the Alpine Convention and its Protocols to reduce their impact on the need to carry out implementation measures. The Alpine Convention and its Protocols will also have consequences for the administrations and the courts. Many provisions of the Protocols are considered to be of "self-executing character" and have interpreting functions so that they have consequences for concrete permitting procedures and environmental impact assessments procedures. As a result this can have the consequence that a permit, e. g. for a ski run, would have to be refused.

In conclusion, the Alpine Convention and its Protocols set out binding standards for the protection of the Alpine region. Within the next years it will have to be seen how these standards are further fulfilled by all bodies and partners involved.

## New Books

### *Multilateral Environmental Agreement, Negotiator's Handbook*

The beginning of the global environmental policy dates back to the year 1972 when the United Nations Conference on the Human Environment (UNCHE) was held in Stockholm. In recent decades, Multilateral Environmental Agreements (MEAs) have grown steadily. Today, they are a key instrument for addressing environmental objectives between states. MEAs cover global environmental issues such as biological diversity, climate change, sustainable development, land degradation and marine pollution. What distinguishes them from other agreements is their focus on environmental issues, their establishment as binding international law, and their inclusion of multiple countries.

MEAs can be divided into two main periods. In the first period MEAs concentrated more on individual issues and sectoral agreements. The second period

began with the United Nations Commission on Sustainable Development in Rio de Janeiro in 1992, setting the focus on framework agreements which also address sustainable development and the sustainable use of resources. MEAs have to deal with an increasing complexity of environmental problems, with different areas of international law such as trade law, maritime law and intellectual property law and with a multitude of diverse actors. For example, at the UN Climate Change Conference in Bali, representatives of over 180 countries and observers from inter- and non-governmental organisations took part in the negotiation process. By virtue of this complex matter, the knowledge of treaty making and implementing is essential for a negotiator.

The second edition of the Multilateral Environmental Agreement, Negotiator's Handbook is the outcome of a co-operation between Environment Canada, United Nations Environment Programme (UNEP) and the UNEP Partner University Joensuu in Finland. The book is intended as a reference tool for those who are in the working field of MEAs. The authors want to contribute with this work to a more efficient and effective outcome of international environmental negotiations and meetings. The book is regarded as a living document which still needs to be developed further.

The book is divided into seven chapters, starting with the context and history of MEAs. Chapter two lays out the elements and different forms of MEAs and explains treaty making principles. In the third chapter the main part of the book is presented: a guide through the machinery of an MEA process. Chapter four provides an overview of the trends in MEA negotiations. The handbook takes a look at a typical day in UN negotiations, explains the negotiation phases and gives a checklist along with indicated timelines. The last two chapters contain case studies, an overview of selected MEAs and a glossary.

In the short second chapter the reader is introduced to the different forms, treaty-making principles and key elements of MEAs. This chapter contributes to the definition of terms, the basic understanding and character of MEAs. The meaning of frequently-used terms like agreement, convention, covenant and protocol are explained and distinguished from each other. The principles of a treaty that every negotiator should keep in mind are explained. Beside the principles of signature and ratification and how an MEA enters into force, it is also explained by whom and how treaties can be interpreted.

Chapter three focuses on procedural and financial rules as well as institutional and negotiation structures as drafting and strategic issues. The chapter resembles a catalogue with brief outlines and - where necessary - additional examples. Especially the difficult topic of drafting treaties is explained by extracts taken from different MEAs. Chapter three is a very detailed one and possibly too broad for a legal expert. However, we have to keep in mind that many negotiators are technical specialists or strategic actors with no legal background. The chapter wants to raise awareness about the importance of procedural and structural questions

of MEAs since satisfying outcomes can only be achieved with this knowledge.

Chapter four addresses cross-cutting issues, governance principles and objectives, international co-operation and trends in MEAs negotiations. It takes the importance of international and institutional frameworks for a successful implementation of MEAs into account. For a successful implementation, a treaty needs development assistance like loans and grants, capacity development and technology transfer for developing countries. The authors address the issue of principles and objectives which negotiators have to bear in mind when dealing with a sustainable implementation of MEAs.

Next, the authors identify substantive and procedural innovations in negotiations by analysing existing MEAs. For example, the Kyoto Protocol introduced flexible mechanisms into international agreements. For a negotiator it is essential to know about these instruments and innovations. Yet even if the authors elaborated the innovations well, the chapter remains on a descriptive level. An evaluation of the innovations or a forecast for the future would have been helpful.

Chapter five shows the span of the entire process and products of an MEA negotiation, from pre-negotiation over formal negotiation to ratification. Every phase and product is described in a short subchapter.

The book fulfills its aim of providing broad insights into the subject of MEAs. Also, it is very useful to prepare negotiators for conventions. The detailed table of contents enables the reader to obtain a quick overview of pertinent information, which reduces criticism of the scanty index. The additional information in the appendix with regard to case studies and selected MEAs make up useful additional information, but references to other sources for readers desiring to deepen their knowledge are lacking. An improvement to the first version of the book is the new added glossary.

*Simone Hafner*

**Multilateral Environmental Agreement, Negotiator's Handbook**, Second Edition 2007, University of Joensuu- UNEP Course Series 5, ISBN 978-952-458-993-2

## Imprint

**Editors:** Miriam Dross, Martin Führ, Gerhard Roller

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

**Focus of the forthcoming issue :**

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

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

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

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

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

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## elni Membership



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

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

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

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

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

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

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

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

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

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

The Institute fulfils its assignments particularly by:

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

Main areas of research:

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

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

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

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

The areas of research cover

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

sofia is working on behalf of the

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

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## elni

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

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

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

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

### **Coordinating Bureau**

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

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

### **elni Review**

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

### **elni Conferences and Fora**

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

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

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

### **Publications series**

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

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

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