Book Review


The book is a compilation of seven papers submitted at the October 2002 meeting of the Avosetta Group of European Environmental Lawyers and also includes the Amsterdam Resolution, adopted by the meeting. The Avosetta Group defines itself as ‘a small informal group of lawyers whose main purpose is to further the development of environmental law in the European Union and its Member States’. Further information about the group, including a list of its members, can be found at [www.avosetta.org](http://www.avosetta.org). In light of the work of the European Convention on a proposed reform of the current Treaties the authors assess the ability of existing primary law and judicial institutions of the EU to obtain the crucial objective of sustainable development and comment upon the possible need for progressive development of the environmental law framework.

In the first Chapter, Gerhard Winter addresses the status and function of environmental principles in Community law. He establishes that the objectives contained in Article 174 (1), since they ‘give the exercise of Community competences a substantive orientation’, must be seen as principles, however qualified by the factors enumerated in Article 174(3), e.g. regional differences in environmental conditions and the economic and social development of the Community. He then proceeds to examine the legal effects of these principles (and some enshrined in other provisions of the EC and EU Treaties) in relation to Community organs, member states (MS) and enterprises respectively, and comments upon the need for reform proposals for a new European Constitution. The case law of the European Court of Justice (ECJ) is found to attribute binding value to the enabling as well as directive functions of the principles vis-à-vis Community institutions, often however in an implicit manner. No need is perceived for clarifying the legal character of environmental principles by amending EC Article 174. This should rather be dealt with by courts and legal scholarship. With regard to the MS the environmental principles can e.g. justify encroachments by MS on the basic freedom of movement of goods and limiting of market competition for the sake of environmental protection. The principle of integration of Article 6 EC can lead to MS having to respect the principles of Article 174 also when applying Community law outside the sphere of environmental law. Winter also asserts that the environmental principles have direct legal effect even for the actions of enterprises, since anti-competitive acts, which are otherwise proscribed, may be permissible when serving the goal of environmental protection. Finally the precautionary principle and the principle of sustainable development are analyzed in light of their origin in domestic German law. The principles are found to have been somewhat impoverished in their passing from

1 The resolution can also be found in *European Environmental Law Review*, February 2003, pp. 34–36.
German to EC law and in order to remedy this, the author considers the inclusion of two new principles in Article 174(2), namely the principle of sustainability of the use of natural resources and a principle of protection of the global environment. Although recommending some clarifying and complementing amendments to the EC Treaty, the author finds that the existing formulations of the principles in general are sufficient and have worked adequately. Regrettably, the language of this first chapter is noticeably heavier and less accessible than that of the following ones, possibly due to it being translated from an original German version.

Against the backdrop of the work with a Constitution for the European Union, Florian Ermacora elaborates upon the need for a constitutional right to a clean environment in Community law and analyses to what extent current Community law provides for such a right or elements of it. He asserts that such rights, in order to be effective, must comprise both a substantive right and a *locus standi* of the holder of the right. Since the case law of the ECJ pertaining to protection of fundamental rights is, in accordance with Article 6 EU, based on the general principles of law as applied in the MS and as derived from the Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), the rights enshrined in the Convention are of direct relevance for Community law. Ermacora concludes that recent case law by the European Court of Human Rights shows that a right to a healthy environment is included in the right to respect for private and family life of Article 8 in the Convention. In the secondary legislation of the Community, Directive 90/313 on the freedom of access to information on the environment (repealed by Directive 2003/4, to be implemented by 14 February 2005) and Directive 85/337 on the assessment of the effects of certain public and private projects on the environment, provide individual rights pertaining to the substantial aspects of a right to a clean environment, although not providing such a right *per se*. The recent case law of the ECJ regarding direct effect of EC law is not seen as indicating the existence of any right of individuals to a clean environment. The ECJ has, however, on some occasions stated that national acts implementing directives must be binding in order to grant individuals enforceable rights. Regarding the procedural side of the matter, no effective right can be ascertained in primary law since the ECJ 'dashed all hopes for a wider interpretation of Article 230 para. 4 EC'² in the *Unión de Pequeños Agricultores* case.³ Regarding a procedural right in secondary legislation, the future implementation of the Aarhus Convention is seen as having the ability to fundamentally change the current situation by entitling members of the public to access environmental proceedings.⁴ After assessing the current state of Community law the author asserts that the formulation of a right to a clean environment in an EU Constitution would concentrate the currently dispersed aspects of such a right, thereby providing clarity and legal certainty and also somewhat compensate the lack of implementation control by public authorities by providing individuals with the means to defend their rights. The *locus standi* of individuals should, says Ermacora, not be fully detached from the impairment of their legal spheres, since such a right has its base in an anthropocentric human rights tradition, but could for the sake of effectiveness be extended to include acts of environmental degradation which only indirectly affect the individual.

² According to this article ‘[a]ny natural or legal person may […] institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former’.

³ Case 50/00 P *Unión de Pequeños Agricultores* [2002] ECR I-6677.

⁴ The implementation is being carried out through a number of new and amended Community acts relating to the different aspects of the Convention. The provision on access to justice is still to be implemented.