

fect of EC law.

Discussions on the role of non-governmental organizations (NGOs) were at the heart of the IES lecture series on the World Trade Organizations (WTO) on 25 October, 2006. Professor **Van den Bossche** of the University of Maastricht focused on a lawyers' perspective on NGO participation in the WTO. First,



he outlined some of the advantages and downsides of involving NGOs in WTO activities. Regarding the advantages he intimated that such involvement bolsters the pool for expertise; enhances the legitimacy of the WTO and empowers domestic NGOs, amongst others. In terms of the negative aspects of such involvement, he noted that NGOs often represent special interests; deplete legitimacy and that they render the convoluted nature of the WTO activities more so.

Second, he considered and compared the legal basis of WTO-NGO relations with that of other international bodies such as the Economic and Social Council (ECOSOC) of the United Nations (UN). While Article V:2 of the WTO Agreement refers to consultations and cooperation with NGOs, ECOSOC Resolution 1996/31 extends observer status to NGOs. Third, he reviewed the actual practice of NGO involvement against the legal provisions, as the case may be. He opined that since the Singapore Ministerial Conference of 1996 NGOs have been allowed to attend some of the meetings as well as symposia at the trade body. In addition, NGOs have access to information; are allowed to exchange information with the WTO Secretariat; engage in informal meetings with the WTO and are allowed involvement in dispute settlement through the submission of amicus curiae briefs. In reviewing the practice of NGO involvement in the WTO he was sceptical about the utility of NGO participation in the Ministerial conferences calling it "window dressing."

Professor Van den Bossche was also wary of the exaggerated importance often ascribed to amicus curiae briefs. He noted that the overall picture was that of a décalage as between the rules and practice of NGO involvement in the WTO. On the more optimistic side though, he stated that the paucity of NGO involvement in WTO activities ought to be put into context because NGO involvement is not even contemplated in the World Bank's and International Monetary Fund's (IMF) Articles of Association, in contrast with the WTO Agreement. Finally,

he discussed the criteria for the selection of NGOs that participate in WTO-related activities. They include the non-profit character of the organization and involvement in trade-oriented activities. His general conclusion was that in terms of NGO involvement in the activities of the WTO, the glass is half empty.

The second speaker was the London-based



representative of Oxfam International (OI): **Mr Luis Morago**. Amongst the issues addressed by Mr Morago, were the rationale for OI's involvement in trade related activities; OI's role and added value in the field of trade; challenges and OI's points to be tabled for a more positive agenda for development. Amongst the reasons for involvement was the realization that micro-projects and development activities had not made a big impact in terms of poverty reduction; the desire to tackle certain domestic problems; the need to influence some international organizations; the failure of traditional development assistance; the realization of the power of investments to foster development and the realization that trade rules were mainly supporting the interests of developed countries. In terms of the added value or achievements of OI he noted the growing presence in the trade debate of OI; improvements on intellectual property; reform in certain agricultural sectors and campaign backing the withdrawal of Singapore Issues (investments; competition, procurement and trade facilitation) from the multilateral trade agenda. Respecting the challenges that OI faces, he referred to the lack of technical capacity at the national levels; the culture of secrecy (with specific reference of the 133 Committee of the Trade General Directorate of the European Community) and incoherence. With regard to what OI will table for the future trade agenda, he intimated that his organization will be pushing for WTO reform for better governance and that OI will be looking closely at other processes such as regional trade agreements as well corporate practices.

A lively discussion followed. One of the main questions addressed to the speakers was the seeming contradiction of the realization by NGOs that investment is good for development, on the one hand, and their opposition to the Singapore Issues on the other. Mr Morago responded by noting that investment is good to the extent that it is regulated by governments. Professor Van den Bossche was of the opinion that multilateral rules on investment are very important as they guarantee security

and predictability for investors.

After the November mid-term break, **Stuart Harbinson**, special advisor to WTO chief Lamy and former Chair of the WTO Negotiating Committee on Agriculture, sketched the historical background of the current negotiations in order to clarify where we stand now and how future developments may look like. The iron triangle of agricultural market access - non-agricultural market access - agriculture domestic support was present as ever. Second, **Anastassios Haniotis**, Head of Agricultural Trade Policy Analysis at the European Commission, made clear genuine confusion has dawned on the negotiators. A brief overview of the latest EU offer at least brought some clarification into the room, if not yet into Geneva. Finally, **Carlos Cozende** of the Brazilian Mission to the EC presented the perspective of the developing countries. He argued that the EU proposals were not acceptable to the G20 because it implied the developing countries had to make further concessions on top of their Uruguay commitments whereas the EU and the US had only begun to address the trade distorting practices in their agricultural policies. These three exposés were followed by a lively Q&A session. This included, inter alia, a comparison of the multilateral and bilateral approach, and an analysis of the benefits of the currently ongoing 'quiet diplomacy'.

## PILC Alumni organisation revived!



On Friday 27 October, PILC-alumni **Zak Shusterman** and **Tom Antonissen** re-ignited the PILC Alumni association. With incentives from the IES, Zak and Tom will form the nucleus of what is hoped to be a flamboyant new alumni crowd (APILCA) that will give birth to many activities geared towards former students of the Programme on International Legal Cooperation. Should PILC alumni read this without having been informed personally about this re-launch yet, then please contact Zak and Tom directly via [apilca@ies.be](mailto:apilca@ies.be). Please send them your coordinates so that they can keep you informed about future activities. As PILC is celebrating its 35th anniversary this year, we are confident that many activities will follow!

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## New IES book on the impact of 9/11 on EFSP

In the autumn of 2005, the IES organised a lecture series on "The impact of 9/11 on European Foreign and Security Policy". Based on this series, initiator and then Senior Research Fellow **Giovanna Bono** edited a book bearing the same title.

The book, like the lecture series it was based on, argues that there has been insufficient understanding of the extensive nature of change that has affected European Foreign and Security Policy (EFSP) since the terrorist attacks of 9/11 and the launching of the 'war on terror'. In contrast to those who believe that the events

did affect EFSP but did not transform it fundamentally, the authors demonstrate the significant impact of events by analysing the attitudes of the EU towards the laws and norms governing the use of force, the modification in strategies towards the Balkans, sub-Saharan Africa, the Middle East and the UN, the changes in European military issues and the crisis in transatlantic relations. The book shows that since 9/11 there has

been a widening, deepening and 'securitisation' of EFSP. The widening is represented by a broader EU commitment to crisis management and postwar reconstruction at the global level that takes at times the form of 'state building'. The deepening

is represented by the emergence of new forms of flexibility: the strengthening of 'vanguards' leading on specific foreign and security policy issues. The process of 'securitisation' is reflected in the endorsement by the EU of the notion of 'threats'. Today, the 'threat' of 'terrorists' acquiring 'weapons of mass destruction' influences a wide range of new poli-

cies. Thus there has been the creation of new nexuses between internal and external security, and security and development. Overall, the EU has not yet been fully successful in resisting the demands of officials and experts who want to persuade the public of the need for 'exceptional measures' to combat terrorism. Hence, EU officials have not yet been able to unequivocally reaffirm in practice their adherence to international law.



On 21 November, the Board of the IES unanimously approved the **IES strategic Plan** for the coming five years. This plan, requested by the Flemish Ministry for Education, outlines the major goals to be achieved, ie further establishment of the IES as a core excellence centre for European Studies at the VUB and internationally; substantive focus on the EU in an international context; enhancement of the IES' role as a key player in core fields of the IES Research Strategy; further establishment of the IES as the focal point for European Studies at the VUB, with a coordinating role for all relevant MA programmes in European Studies; establishment of the IES as a training centre in European Studies; and maximising synergy between education, research, and academic services. The full plan can be downloaded from our website <http://www.ies.be/strategy/>

## News from the Research Floor

### ICL 2006 conference in Villach

Between September 26 – 29, the Technologiepark Villach was the venue of the ICL 2006 conference. This conference is a part of a series focusing on how ICT can be used in the learning process. The conference featured over 200 contributions from all over the world, with a representation from the 5 continents.

As a part of the demonstration-sessions, IES researcher **Ruben Lombaert** presented, and gave a live demonstration of the IES e-learning modules, which was received positively. The emodules of the IES are drawn up from the basic principle that puts the end-user in the central spot. This approach made a clear difference with other demonstrations, where quite a high level of ICT-skills were required to be able to use the e-learning software.

Later during the conference, Mr. Lombaert also chaired the session on New Learning Models and Applications, which featured contributions from Switzerland, Italy and Brazil.

### UN Climate Change in Nairobi



to 17 November in Nairobi, Kenya. In his capacity as special advisor to the German Federal Ministry of the Environment, Nature Conservation and Nuclear Safety, Prof. Oberthür formed part of the delegation of Germany to the conference. Among the major outcomes of the conference was an agreement to prepare for an in-depth review of the Kyoto Protocol that, in its current form, expires at the end of 2012.

IES Academic Director Prof. Dr. **Sebastian Oberthür** attended the 12th Conference of the Parties to the UN Framework Convention on Climate Change and the 2nd meeting of the parties to the Kyoto Protocol, which took place from 6

### Academic address for Erasmus Mundus

IES Academic Director Sebastian Oberthür delivered the academic address during the 2006 graduation ceremony of the Erasmus MUNDUS programme *Master in Economics of International Trade and European Integration* that took place at the VUB on 2 December 2006. The address had the title *"Beyond Economics: The EU in International Environmental Governance"*. Prof. Oberthür argued that economic thinking provides an important basis for exploring the role of the EU in international environmental policy and politics in general, but that it needs to be complemented with additional factors in order to arrive at a fuller understanding. The M.A. In Economics of International Trade and European Integration is a one-year interuniversity programme with participation from Belgium (VUB, University of Antwerp), Italy (University of Bari), Spain (University of Cantabria), the UK (Staffordshire University), the Czech Republic (Prague University of Economics), and France (Lille University USTL).

## Mehmet and other new faces on Security in a Globalized World

IES Researcher **Mehmet Y. Tezcan** participated in the 9th New Faces Conference on *Security in a Globalized World: Towards Regional Cooperation and Strategic Partnership*. The conference took place on 20-22 October 2006 in Oslo, Norway. The International Forum on Strategic Thinking of German Council on Foreign Relations (DGAP) and the Norwegian Institute of International Affairs (NUPI) jointly organized the conference.



Established in 1955, DGAP is one of the leading foreign policy think tanks in Germany. Its International Forum on Strategic Thinking promotes a comprehensive perspective on global security challenges and threats.

The participants of the New Faces Conference are promising young professionals and scholars pursuing an active career in the field of foreign and security policy. They come from all over Europe, the US, Asia and the Middle East, and are invited upon recommendation only.

This year's conference dealt with regional security cooperation. There were five panels: 1) Regional Security Cooperation: Current trends, 2) Chains of Interdependency: Coordinating Regional/Global Energy Security, 3) Reinventing the Carrot: ENP as an Alternative

to EU-Enlargement? 4) The Role of Regional Security Institutions and Strategic Alliances in Asia, 5) After the Roadmap: Cooperation between Multinational Actors in the Middle East. The 10 participants presented papers on how regional cooperation and strategic partnerships between single states, regional and international organizations as well as civil society and the private sector contribute to enhance security in a given policy area and/or region. These case studies aim at contributing to the closure of a gap in current policy research, where the literature is mostly geared towards economic aspects of regional cooperation, neglecting the increasing "securitization" of political and even economic agendas, institutions and fora. 10 other participants served as discussants in one of those five panels.

Mehmet presented his paper *The Geopolitics of the East-West Energy Corridor and the Viability of EU-Turkey Partnership for Security of Energy Supply* in the second panel. Energy security has recently become a very important issue in the European foreign and security policy circles. Mehmet's paper focuses on the case of the East-West Energy Corridor (EWEC). This is a multi-dimensional project for energy transport through Turkey from the

Caspian Basin and Middle East to Europe. Although only partly operational at the moment, it involves secure and continuous transfer of important amounts of oil and gas: about 6 million barrels of oil a day and about 40 billion cubic meters of gas per year. The EWEC is, therefore, vital for the future security of European energy supply in the age of the globally competitive energy market.

The paper first elaborates the internal geopolitics by giving details of the EWEC. It then explores the nature of the growing energy demand in the EU and second, locates it within the broader demand and supply situation at the global level. These are the external geopolitics of the EWEC. Aware of the geopolitical importance of the EWEC, the EU policy-makers hastily moved to incorporate Turkey into the EU's energy market through 'multilateral dialogue'. However, the way the EU policy-makers have hitherto handled the issue is quite problematic.

Therefore, the paper finally examines the determinants of failure in the EU-Turkey partnership for energy supply security. It answers the following questions: what went wrong in the negotiation of the Energy Community Treaty, and why did Turkey avoid signing the treaty that would make it a part of the EU's internal energy market? The paper concludes with some policy suggestions. DGAP will publish this paper in a forthcoming edited volume in 2007.

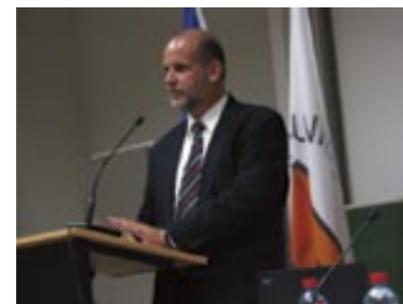
## Lecture series on WTO takes off

4 October marked the beginning of a new IES lecture series on "The WTO Doha Round, the EU and the Future of the World Trading System". The series' coordinator, Prof.



discussion and the effects of globalisation on our trading system.

On 11 October **Victor Do Prado** (WTO, Deputy Head of Cabinet of DG Lamy) and **Denis Redonnet** (European Commission, Deputy Head of Cabinet of Trade Commissioner Mandelson) presented their personal views on the Doha Development Round. Under the title *"The Doha Development Round: Key Issues and Players"*, Both speakers addressed the current suspension of trade negotiations in the World Trade Organisation and its underlying reasons. Some common elements in their lectures can be identified as Do Prado and Redonnet both emphasized the complexity of the WTO negotiation process, with its 149 participants dealing with 25 different issues. They also referred to difficulties resulting from the bottom-up approach (vis à vis a probably more effective top-down process), the concept of the single undertaking, and the rebalancing of power (e.g. increasing power of the G-20).



Victor Do Prado analysed the different issues and the most important players in the Doha Development Round. He discussed current negotiation problems in agriculture and non-agricultural market access. Mention was made of other issues like e.g. services, intellectual property rights, anti-dumping and countervailing measures, subsidies, e-commerce, environmental issues, etc. Do Prado identified the current deadlock in agricultural

negotiations as the main reason for suspension. The unblocking of the 'iron triangle' (= EU, US and G-20) would probably foster progress in the negotiations again. The question, however, remains who moves first and at the moment it appears that no Member is prepared to do so.

Denis Redonnet gave a European point of view. He stressed the importance of a successful outcome of the Doha Development Round, but acknowledged the difficulties in achieving it because of several reasons such as complexity and political sensitivities (coming with the increasing public exposure of the WTO). The main challenge, according to Redonnet, is to find an acceptable trade-off between efficiency and legitimacy in the negotiation process on the one hand, and to search for a bal-



ance between what Members pay and what they win by liberalisation in certain sectors on the other hand. Redonnet stressed that the latter does not make any sense from an



economic point of view, but is very important for obvious political reasons. Moreover, he argued that the current standstill in negotiations can only be solved when there is more convergence between the EU and US standpoints. An agreement between the two most important players in the WTO is an absolute and necessary precondition for a successful outcome of the Doha Development Round. It is, however, no longer a sufficient condition as

the importance of other countries (e.g. Brazil, India, China, etc.) has increased substantially. In addition to this, the current malaise is not the consequence of new players coming to the fore (this was the case at Cancun), but can be reduced to 'business as usual' (the lack of agreement on market access, subsidies and domestic support). To conclude, Redonnet said that not North-North or North-South relations, but predominantly South-South affairs would increase complexity in the future negotiations.

On 19 October, Prof. **Pieter-Jan Kuijper**, Director Legal Service of the European Commission and former Director of the WTO Legal Affairs Division, talked about the relationship between the EU and the WTO from an EU perspective.



Firstly, he gave an introduction to the treaty structure and the institutional development of the World Trade Organization. Secondly, he addressed the issue of the EC membership in the WTO. Although he acknowledged that the Treaty of Nice resolved uncertainties concerning the respective competence of the European Commission and the Member States (in the field of services and intellectual property rights), he highlighted several problems with regard to the relevant procedural rules. In particular, Prof. Kuijper raised concerns that certain procedural loopholes (can) re-enforce the political interference of the Member States in the negotiation process.

**Harm Schepel**, Co-Director of the Kent Centre for European and Comparative Law, responded by stressing, in a simplified analysis, the structural similarities between the EU and the WTO.



According to him, both originated in an attempt of isolating technical trade issues from political matters that raise public concern. However, the ongoing process of legalization, which of course manifested itself differently in both organizations, led to a re-politization of trade. Furthermore, Schepel stressed the resemblance between the resistance of the European Court of Justice to give direct effect to WTO law and the original opposition of the EU Member States to the doctrine of direct ef-

## Garnet's 1<sup>st</sup> Financial and Monetary Governance Conference



IES Researcher **Mehmet Y. Tezcan** participated in the 1<sup>st</sup> Annual GARNET Conference on "Global Financial and Monetary Governance, the EU, and Emerging Market Economies".

The conference was organized in cooperation with the Dutch National Bank and the Reinventing Bretton Woods Committee in Amsterdam, the Netherlands on 27-29 September 2006.

The conference took on the issue of the fragmented institutions of global financial governance. Since the US president Richard Nixon 'closed the dollar window', let the US dollar float freely and put a formal end to the dollar-gold standard in August 1971, the global economy has been witnessing the eruption of various financial crises here and there. Meanwhile, new financial innovations came into the play leading to more and more financialization of global economy. In other words, instability and systemic chaos have long replaced stability and growth, the twin miracles of international monetary system in the postwar era.

The conference sought to contemplate and offer ways of global reinstitutionalization that can take us back to those stability and growth conditions. Given the increasing consequences of financial crises in the developing world at

the socio-economic level, institutional control of now 'loose canon' financialization declares more and more urgency.

During three days and in numerous plenary sessions and workshops, the conference participants including high-profile policy makers and university researchers searched for answers for important questions. These included: (1) what is the appropriate balance between public and private forms of authority in global financial governance in rules setting, enforcement, and decision-making, (2) what is the appropriate public-private balance in terms of burden sharing in both crisis prevention and resolution, (3) how might the global financial architecture be made more compatible with the specific aspirations of countries in terms of economic development and legitimate national political processes, (4) how best to balance issues of accountability and legitimacy at the national and global level, with the need to build an architecture which is sensitive to both national policy concerns and other social developmental objectives, (5) what are the implications of monetary and financial governance for questions of gender across a wide range of societies, (6) how can the economically disadvantaged best be represented in the global financial architecture, recognizing that improving their development prospects is a principal aim of global financial governance, (7) what role can and should the EU play in monetary & financial governance in the light of efficiency/legitimacy considerations? ...



## Europe in school

*Training Sessions: Teaching Europe in practice: experiences from the field.*

Europe Direct West-Flanders (Europe Direct is the successor of the former Euro Info Points) and IES researcher **Ruben Lombaert** teamed up and set up a project to bring Europe to the last year students of secondary schools.



As the targeted schools included schools offering general, technical, and professional education, their audiences required a specific approach and quite a bit of research to adapt the message to the receiver.

Remarkable was the lack of knowledge about the European Union, and especially about the reach of EU policies. Often, things that are a firm part of the daily life of youngsters (e.g. easy travelling in a border-check free zone such as the Schengen area) are not seen as resulting from EU-policy. Youngsters under the age of 20 consider this normal (they never knew another world). The same applies to the Euro, which was already there when these youngsters started receiving pocket money and opened their first bank accounts.

When explained how the institutions work in their daily practice, youngsters start looking at the European political game surrounding them in a completely new way.

Actions like these are only a first step in raising awareness, but as any political scientist knows, a political structure cannot last without having credibility and legitimacy in the eyes of its citizens.

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## Edward Lorenz Butterfly Effect

The EU has become an unlikely and wonderful butterfly. When the EU flaps its wings to reduce the environmental impact of cars, electronics, and hazardous substances, Europe's regulations are taken up by producers and governments across the world.



Edward Lorenz's idea of the 'Butterfly Effect' can be seen in global regulatory trends. The European Union is active in an experiment

in the environmental product regulation of cars, electronics and hazardous substances. Producers wanting to sell their products in Europe have to meet the EU's standards. But, an unintended consequence is that Governments in China (PRC), S. Korea, and some US States are taking aboard measures inspired by the EU's actions.



The Korean Ministry of Commerce sponsored a workshop on June 15 2006, in Seoul, S.Korea, to look at the challenges of today's environmental product regulation. IES Researcher **Aaron McLoughlin** was invited to speak about the EU's environmental product regulation regime.

Mr. JaeHoon Lee, South Korea's Vice-Minister of Commerce, Industry and Energy, opened the one-day conference. His message addressed



meeting the challenges of climate change and global environmental product regulation.

Aaron joined a panel of speakers from around Asia. South Korean and Chinese government officials, Korean academics, lawyers and industry, and Japanese industry were on the panel.

The EU may not yet be a beautiful butterfly but when it flap its regulatory wings the unintended consequences are felt far and wide.

*Photo (above): Vice-Minister Mr. JaeHoon Lee and IES Researcher Aaron McLoughlin*

## Visiting Fellow Pascual Correa Alvarez in the Czech Republic

From 16 to 20 October, visiting Fellow Prof. Dr. **Pascual Correa Alvarez** from the University of Santa Clara (Cuba) visited Brno in the Czech Republic.

Pascual lectured on Cuban Environmental Policy and Implementation of Principle



10 of the Rio Convention in the Faculty of Foreign languages of the Masarik University of Brno. Both professors and students from the Faculties of Law, Social Sciences and History were present. He gave a similar lecture to students and professors of the Faculty of Geography, and lectured in the *Friendship Cuban Czech Association* about Cuba nowadays. Pascual is a postdoctoral research fellow at the IES working on environmental law issues in the framework of a grant issued by the Brussels Region on "Research in Brussels". Pascual joined the IES in early 2006 and will stay at the Institute until early December.

## New faces @ the IES



Following the IES call for PhD-projects, Albanian born **Zana Vathi** joined the Institute in November. Zana's project on "Migration issues and Human Rights Discourses in the EU" was selected as one of two best projects out of over 40 candidates.

She will work closely with Senior Research Fellow Richard Lewis, and under the promotorship of Prof. Dr. Alison Woodward. Zana has a multidisciplinary background (politics, law, ethnicity, ...) from the University of Sussex (UK) where she obtained her MA.



Selected in the same PhD-call, **Alexander Mattelaer** (Belgian) joined us in September on his selected PhD-project on "European security policy motivation: lessons from ESDP operations in Africa". His promoters are Prof. Dr. Gustaaf Geeraerts (VUB) and Dr. Sven Biscop (Royal Institute for International Relations). Alexander studied political science in Leuven and worked at the Brussels-based think-tank "Security and Defence Agenda" before taking up his position as doctoral researcher at the IES.



**Gloria Gonzalez Fuster** (Spanish) was selected by the IES and her promoter Serge Gutwirth to fulfill the research requirements within an EC-funded experts

project called REFGOV (Reflexive Governance in the public interest). Gloria, who studied law at the Universidad Nacional de Educacion, journalism at the Universidad Autonoma de Barcelona and Languages and Literature at the ULB, will look at data-protection issues in the framework of this project. Previously, Gloria held various posts at the DG Education and Culture of the EC.

## Richard Lewis visits Berkeley

On October 30th Senior Research Fellow Richard Lewis was hosted by the Institute of European Studies at the University of California at Berkeley. He was invited to speak

at a lunchtime meeting arranged by Beverly Crawford, Associate Director of the Institute and Philip Martin of UC Davis. Richard's theme was the identity crisis in Europe created by heavily concentrated immigration in certain parts of Europe and notably in cities. The discussion was lively and Richard was invited to return to UC Davis by Professor Martin.

IES Berkeley is involved in a University of

California-wide Comparative Immigration and Integration Programme under the leadership of Professor Martin. Its aim is to develop data and analysis for rational decision making on



emotionally charged migration issues on both sides of the Atlantic. The programme's two major activities are the production of the newsletter *Migration News* covering significant developments in the field throughout the world and organising seminars and research on topics of current interest. California is a microcosm of immigration issues in the United States in that it has a huge number of both legal and undocumented migrants from Mexico and other parts of Latin America.

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It is hoped that the contact with Professor Martin will lead to further activities in the field of migration between IES Berkeley, or UC Davis, and our own IES.

This is the first time that Richard has visited the Berkeley campus which has impressive classical university and modern architecture (including a modern art museum) and ranks amongst the most prestigious of US state universities. It lies about 30 minutes drive from downtown San Francisco and is surrounded by mountains and Californian redwood forest. The Institute of European Studies (the preposition of is preferred to our for) was created in 1999 by the unification of staff, resources and programmes of the UC Center for German and European Studies and UC Berkeley's Center for Western European Studies.

The Berkeley based IES initiates and finances research, disseminates research finding to the scholarly community and provides a community for students and faculty who share a European focus to their work

# Implementing Principle 10 of the Rio Declaration in the Republic of Cuba

Feature article by visiting professor Pascual Correa (with thanks to Jeroen Soete for the summary).

Between February and December 2006, the IES has had the pleasure of hosting Pascual Felipe Correa Alvarez, a senior scholar from the University of Santa Clara, Cuba. Pascual, who is a professor in International Law and Environmental Law, worked at the IES through a 9-month scholarship from the Brussels Capital Region on a project under the supervision of former IES Senior Research Fellow Marc Pallemarts and current Academic Director Sebastian Oberthür, entitled "Implementing Principle 10 of the Rio Declaration: a comparative study of Law and practice in the European Union and Cuba, with a special emphasis on practice in the Brussels Capital Region".

## Introduction

The United Nations Conference on Environment and Development (UNCED) constituted a landmark in international thinking about sustainable development. The Rio Declaration (1992) established a global consensus that development and environmental protection are interrelated. However, and despite some progress, there has been an insufficient level of integration of environmental and social considerations into mainstream economic decision-making. Therefore, it can hardly come as a surprise that the state of the global environment has deteriorated even further, that poverty levels did not decline and that the gap between the quality of life in industrialized and developing countries has widened. Integrating environment and development, undoubtedly continues to be a major challenge for sustainable development governance in Latin America and the rest of the world.

An essential precondition for good governance is public participation. This view is recognized in the tenth principle of the Rio Declaration: "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."<sup>(1)</sup>

It can indeed be expected that an increased role for civil society in the political process, will

enhance an effective integration of environment and development<sup>(2)</sup> and foster sustainable development. For the public participation to be successful, three prerequisites stand out: public access to the necessary information, the decision-making process and to the judicial system.

The aim of this text is analyzing to what extent the previously mentioned provisions are implemented in the Republic of Cuba. It makes an assessment of the Cuban environmental policy, it explores the possibilities of public participation in the environmental field and the challenges that stand in its way.

## A. Public access to information

The real breakthrough in Cuban environmental legislation occurred after the establishment of CITMA (Ministerio de Ciencia, Tecnología y Medio Ambiente) as a Ministry-in-fact and the articulation of the goals set by the National Strategy for the Environment. The result of the interaction was the approval of a new framework law in 1997. This Law No.81 on the Environment establishes in article 4 that: "every person must have adequate access, in conformance with established legal requirements, to all available information in the possession of state agencies and bodies regarding the environment"<sup>(3)</sup>

One of the thirteen legal principles under art. 4, law no. 81 gives attention to environmental education.<sup>(4)</sup> The latter is the cornerstone of effective participation in environmental decision-making, because it furnishes the public with knowledge and information about the environment's importance and its vulnerability to degradation. The Cuban popular and mass media have a key role to play in the supply of education at a more general level, which is a necessary step towards effective participation in the decision-making process.

The National Environmental Information System performs an indispensable educational role by letting people know what is happening in and to their environment, providing the public with "the opportunity to participate in decision-making processes" as established in Principle 10 of Rio. The information should make it possible to evaluate and diagnose existing environmental conditions, without the need for payment and without detriment to recognized intellectual property rights.



## B. Access to the decision-making process

One of the legal principles under art.4 of Law 81 states that "public knowledge of environmental actions and decisions and consultations with the public will be assured in the most effective manner possible, but in every case must occur"<sup>(5)</sup>. The use of environmental licenses<sup>(6)</sup> and environmental impact assessments provide opportunities for public participation in the environmental decision-making procedures, through public consultations. Resolution 168<sup>(7)</sup> (1995) specifies that the request for an environmental license must contain information about the characteristics of the project and its possible implications, which furthermore has to be

provided to the citizens in a timely way. It also lays down that public consultation be carried out, in accordance with the methodologies adopted by the Environmental Center of Inspection and Control (CICA).<sup>(8)</sup> The latter contain a requirement for prior consultation with local populations, group organizations, NGOs, organs of popular power, and neighborhood committees, but do not specify the ways in which these methodologies should function. These CICA methodologies should implement a mechanism of public hearing as a formal meeting between citizens, CITMA and government authorities in order to discuss the environmental impact assessments of some environmental decision-making. Another possible strategy to expand public involvement would be to provide specific entities or individuals with notice of draft EIAs and draft environmental licenses before the issuance of final and approved licenses. In this way, the entities or individuals are offered an opportunity to provide comments and/or alternatives. Neither the public hearings nor the EIA guidelines are legally binding. In some cases, however, authorities are obligated to justify their decisions and provide an explanation if they did not follow public opinion. Likewise, the EIA guidelines only constitute a policy document. The implementation of policy recommendations therefore depends on the discretion of the appropriate CITMA official managing a particular EIA project review.

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## C. Access to administrative or judicial means

Law no. 81 on the Environment stipulates that "every natural or legal person, as authorized by law, must have adequate and sufficient

access to administrative or judicial means to demand compliance with this Law."<sup>(9)</sup> In Cuba however, the right to access administrative and judicial bodies to demand compliance with the law is revolutionary. If Cuban civil courts have the jurisdiction to review the lawfulness of CITMA environmental decisions remains and to what extent Law no. 81 and other laws will initiate administrative and judicial processes reviewing the decision-making process, remains until now unclear. The Cuban Code of Civil Procedure<sup>(10)</sup> expressly provides for judicial review by Cuban civil courts of actions that are final, once administrative remedies have been exhausted. The Code lists certain subjects as exempt from judicial review, but environmental issues are not listed because they post-date the Code.<sup>(11)</sup> A literal reading of the Code would thus recognize a right of judicial review. However, in Cuban judicial practice, this has never occurred.

The second question concerns the right of "standing to bring proceedings"? The trend in Latin American and European civil code jurisdictions is moving rapidly towards the acceptance of expanded standing and allowing judicial review for prospective, environmental injury on the part of individuals and environmental organizations.<sup>(12)</sup> There have been some cases in the Cuban legal system of individuals, whose property was harmed by industrial activities, which were granted standing to bring proceedings.

The Cuban Constitution embraces: the right to file complaint and send petitions to the authorities (art.63); the right for an indemnification for those who suffer damage, unjustly caused by state employees in function (art. 26); the obligations and rights of the State, the companies and the citizens towards environmental protection (art. 27)<sup>(13)</sup>.

## Conclusion

Cuba is a country striving to implement Principle 10 of the Rio Declaration. In order to achieve that goal, it has introduced several reforms in its legal system, including the Cuban Constitution. The Cuban environmental information system and environmental education are the main pillars for strengthening the access to information and fostering the right to participate in decision-making processes. CITMA should provide a mechanism through which the public can request all information relating to the environment from CITMA's agencies in all provinces of Cuba.

Some mechanisms to promote and achieve public participation are already in place in Cuba. Environmental Impact Assessments can play an important role in bringing the public into the environmental decision-making loop. EIA Regulations in Cuba should provide a framework for public participation in environmental decision-making by ensuring access to information, the opportunity to be heard, transparency in decision-making and a mechanism for implementation and enforcement.

The EIA process in Cuba should introduce formal consideration of the environmental impact report and public comments thereon, so that government decision-makers cannot ignore issues raised in environmental impact reports or by the public. Neither the EIA process nor public participation in general should stop at the point at which CITMA approves a project. To the contrary, post-project analysis can reveal a number of environment-related project shortcomings.

Public review of the decisions of CITMA is another possibility of public participation. Our analysis indicates that the Cuban Code of Civil Procedure expressly provides for judicial review of actions, although this has never occurred in Cuban judicial practice. There have been some cases where NGOs had success in opposing governmental projects, but they did not need to obtain legal standing.<sup>(14)</sup>

There is no legal requirement in Cuba to inform the public or to be allowed to comment on a project or its EIA document before a project is approved. It is thus very important that Law No. 81 provides a basis for legal action to stop objectionable projects, though Cuba does not yet really have, the administrative or civil procedures in place to accommodate such private causes of action. CITMA provides administrative review of its environmental impact and licensing decisions within the agency on behalf of the applicant, but has yet to confer the same right on citizen groups. The Director of CITMA's Office of Environmental Policy recognizes the need to implement the exercise of these public rights.<sup>(15)</sup>

Several obstacles restrict the access to justice, i.e. the cost of an environmental suit, the lack of possibility of legal action by natural persons in defense of collective rights, the difficulty of proving environmental damage. The process of carrying out tests to prove potential or actual damage in environmental matters is not easy and often demands costly specialized studies. In implementing Principle 10 of the Rio Declaration into Cuban environmental legislation, access to justice reveals itself as the most delicate challenge. In the Cuban legal system, we first have to determine who has legal standing for bringing a case to court. In the case of defending third generation rights (such as the right to a healthy environment), it is necessary to revise the traditional criteria of legal recourse, namely those granted to individual rights. Without redefining these legal rights, a judge, might reject the case.

Whether and how CITMA goes forward to provide administrative review for public organizations, and whether the courts will accept review and participation in appeals from these organizations, will go a long way towards testing Cuba's commitment to the implementation of the third pillar of Principle 10 of Rio-access to justice in environmental issues. A solution for this legal dilemma could be the introduction of (a) Public Interest Action (Acción Popular), which would grant legal standing to all

citizens and residents in defense of certain collective rights or interests; (b) legal standing of government agencies. In Law No 81, the Cuban state assumes the role to defend and protect the general interests of society in environmental issues through CITMA and the Attorney General. Cuban environmental legislation should recognize the right to legal action by non-governmental organizations or associations whose objectives are to protect and conserve the environment.

Many governments view public participation as a threat, limit access to environmental information, and provide little or no judicial recourse. One might have thought that Cuba would lead this pack. This could be a hasty conclusion. Anyhow, it is certain that the shape of Cuban decision-making will change to the extent that it adopts more expansive concepts of administrative environmental law.<sup>(16)</sup> Cuban environmental law may be incomplete and its implementation difficult, but it is under way of being fully achieved.

## Footnotes:

- (1) Principle 10 of the Rio Declaration
- (2) Daniel E. Ryan. Integrating Development and Public Participation into International Environmental Governance: a Latin American perspective on a World Environmental Organization. Fundación Ambiente y Recursos Naturales (FARN); Argentina
- (3) Law 81 art. 4 (e)
- (4) "Environmental education which is organized and developed through an interdisciplinary and cross-disciplinary approach, giving rise to the development of analytical thinking in individuals and social groups, and allowing the formation of a systemic and integrated vision of the environment, directed in particular to children, adolescents and youth and to the family in general."
- (5) Id. At (k)
- (6) Article 24 of Law No. 81 emphasizes that all activity capable of producing significant environmental effects, requires an environmental license from the Ministry of Science, Technology and Environment. In Cuba, projects or activities that do not have an environmental license when required, or that do not comply with the requirements and controls set out by the license, may be temporarily or permanently suspended by the Ministry of Science, Technology and Environment without prejudice to the imposition of corresponding liabilities. Such a degree of administrative power is not common for environmental agencies in other parts of the world.
- (7) Resolución No 168/95. Ministerio de Ciencia Tecnología y Medio Ambiente. Gaceta Oficial de la Republica de Cuba. Numero 26 Pág.407. Edición Ordinaria, La Habana, 9 de Octubre de 1995.
- (8) Artículo 15. Resolución No 168/95. Ministerio de Ciencia Tecnología y Medio Ambiente. Gaceta Oficial de la Republica de Cuba. Numero 26 Pág.408. Edición Ordinaria, La Habana, 9 de Octubre de 1995.
- (9) Id at (i)
- (10) See Law of Civil, Administrative and Labor Procedure, art. 564.
- (11) See Law supra note at art. 657
- (12) See Dutch environmental organizations go to court. Milieu kontakt Oost-Europa, pag. 32-56.
- (13) See José M. Borrero Navia, Los Derechos ambientales: Una versión desde el Sur. Pag. 94-143
- (14) Constitución de la Republica de Cuba. 1976. Reformada en 1992.
- (15) See supra note 19 at 11.
- (16) Interview with Orlando Rey Santos, CITMA. Journal of Land Use and Environmental Law. Volume 16. The Florida State University. Page 69
- (17) See supra note 13 at 10.