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on the occasion of its entry into force

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**INTEGRATION OF THE LANDSCAPE INTO INTERNATIONAL POLICIES AND
PROGRAMMES AND TRANSFRONTIER LANDSCAPES**

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The first aim of the European Landscape Convention is to encourage States to introduce a national landscape policy that is not restricted to the protection of exceptional landscapes but also takes everyday landscapes into consideration. It further aims, through European co-operation, to create a genuine international impetus to reinforce the presence of the landscape as a value to be shared by different cultures.

The intention, then, is to promote the integration of the landscape dimension in international relations by taking advantage of the innovative nature of the European Landscape Convention. The inclusion of landscape considerations at major international meetings is by no means a foregone conclusion. It will be noted that Agenda 21 which resulted from the 1992 Rio Conference made no specific mention of the landscape. The only references are indirect allusions to the landscape in Chapter 11 on deforestation and Chapter 36 on educating the public and raising awareness. There was no reference, either, to the landscape in the implementation plan of the World Summit on Sustainable Development held in Johannesburg in September 2002.

In reality the landscape must, like the other elements of the environment, meet the requirements of the principle of integration. According to Principle 4 of the Rio Declaration, the environment must constitute an integral part of the development process. That implies the integration of landscape policy into other policies not only at the national level but also at international level. The Florence Convention encompasses this principle in its article 5-d, whereby each Party undertakes to:

“integrate landscape into its regional and town planning policies and in its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape”.

This commitment can be taken as aiming primarily at the integration of landscape in national policies, but also the inclusion of landscape in states' international action.

Articles 7 and 9 of the Convention are an illustration of the requirement for integration at both European and international level. These two articles are formulated in such a way that they do not express a mere wish, but a genuine obligation, since the States Parties “undertake” to co-operate or recommend (article 7) or “undertake” to encourage and adopt (article 9).

The requirement to integrate landscape into international policies and action is an innovation. We will endeavour to show that this is a real challenge for the Parties to the Convention which, once the Convention is in force, will necessitate the formulation of a common strategy in view of the multiplicity of international bodies that are directly or indirectly involved with the landscape. The Parties to the Florence Convention will also have to try to achieve compatibility among the multiple conventions which indirectly relate to the landscape, and thus become vehicles for the different messages contained in the Convention. The principles, spirit and original concepts of the European Landscape Convention will need to be explained and transmitted to the various international bodies.

At the same time, European co-operation should lead to an increase in local transfrontier co-operation for landscape enhancement. This, too, will require the Parties to exercise a degree of imagination to overcome the legal and practical obstacles which too often stand in the way of transfrontier co-operation, while at the same time availing themselves of the different international instruments that facilitate transfrontier action.

I. INTEGRATION OF THE LANDSCAPE INTO INTERNATIONAL POLICIES AND PROGRAMMES

Article 7 of the European Landscape Convention clearly expresses the need to integrate the landscape dimension into international relations in general. However, before studying the problem of how to bring about this integration, a preliminary question must be addressed: how does the Florence Convention relate to other conventions? This is because it is not possible to dissociate international policies and programmes from the legal instruments that support such policies.

A. Relationship with other conventions

The Convention contains one particular provision which partially deals with this issue in article 12 “Relationship with other instruments”¹. This is not the place to undertake an exhaustive legal analysis of the relationship between international conventions, which is a very complex issue in public international law. Let us merely present the principles which are normally applicable and the clause expressly relating to compatibility, which facilitates the search for maximum effectiveness for landscape conservation.

1. The principle of the autonomy of treaties

In international law, treaties are autonomous and independent of one another. Unlike domestic law, international law has no hierarchy of legal standards. All treaties are placed at the same level of obligation, and theoretically no differentiation is made between bilateral and multilateral treaties. Multilateral treaties do not benefit *a priori* from any legal superiority, although where international policy is concerned, there is a tendency to give multilateral treaties a certain precedence, thereby introducing a political, if not legal, distinction between universal treaties and regional treaties. The only case in which agreements can be subordinated to one another is the case of protocols which clarify or complement a basic treaty. According to Professor P.-M. Dupuy: “each treaty is independent of all others, being the expression of the will of the Parties to achieve an aim which is peculiar to it. Once the conditions for its validity and entry into force have been met, it exists independently and produces the legal effects that specifically attach to it”².

However, this legal autonomy of treaties often comes up against obstacles. Conflict or incompatibility between treaties calls for co-ordination or conciliation mechanisms which result either from the application of guidelines on interpretation, or compatibility clauses based on the principles of the Vienna Convention on the Law of Treaties.

2. Guidelines on interpretation

When several treaties conflict, there are no imperative rules to resolve such conflict in international law. International law itself resorts to the classic principles of law, which are then considered simply to be guidelines on interpretation. As a rule, two well-known maxims can be applied. The first distinguishes general standards from special standards, giving preference to special standards: *lex specialis derogat lex generali*. The second establishes a time-based rule for the application of texts, stating that the most recent takes precedence over previous rules: *lex posterior derogat priori*. However, in order to be able to apply these, there must not be any clause which contradicts them, or any contrary will of the Parties expressed in some form or another. Furthermore, the competing treaties have to be between the same Parties.

International practice and case-law have not systematically established these guidelines inasmuch as the will of the Parties can very easily contradict them.

¹ M. Prieur, “The relationship between the Convention and other international instruments”, European Landscape Convention, *Naturoipa*, 2002, n° 98, p. 10.

² P.- M. Dupuy, *Droit international public*, Précis Dalloz, 1998, 4th ed., p. 275.

The multiplicity and complexity of contemporary international conventions have undeniably changed the logic of rules of interpretation by multiplying the links between conventions. Although there is still no formal hierarchy among conventions, those which deal with the same general subject matter, such as the environment, do nevertheless constitute a group or family of conventions which call for a minimum of links and compatibility. So, for instance, there is considerable solidarity between treaties dealing with related subjects which will lead, not to one treaty being subordinated to another, but rather to their being conditioned by one another. This *de facto* dependence among treaties is no more than a logical requirement of consistency in international action, which is more often than not dispersed and scattered. Synergy among international bodies in environmental matters, which will in future be the dominant feature of all universal and regional international organisations' programmes, entails synergy of the different conventions and, therefore, of the formal and informal mechanisms used to render them compatible.

3. Compatibility clauses and seeking maximum effectiveness for landscape conservation

To achieve compatibility between related treaties there is the possibility of using either explicit compatibility clauses, or rules codified by the Vienna Convention on the Law of Treaties.

Compatibility clauses between treaties do not exist in all international instruments by any means. In environment-related matters, they are quite rare³. Their content is very variable. They may be clauses:

- which oblige parties to withdraw from incompatible commitments;
- which place restrictions on entering into commitments in another agreement in the future;
- which recall that commitments entered into vis-à-vis third parties are not affected by the treaty;
- which express the common will to maintain rights and obligations resulting from treaties by which the Parties are bound elsewhere;
- which make it possible for parties to withdraw from obligations which are already covered by another convention.

All these clauses correspond to a search for pure technical certainty of the law.

The clause contained in article 12 of the European Landscape Convention is altogether different and appears to be rather original. It recognizes the supremacy of other existing or future international conventions, provided that such conventions enshrine stricter provisions concerning landscape protection, management or planning. In other words, it affirms the primacy or pre-eminence of any treaty which is more demanding or more favourable than the Florence Treaty where landscape matters are concerned. This kind of clause focuses on the substance and establishes the prime importance of the landscape as determined by the European Convention. This type of clause meets the requirement of maximum effectiveness regarding what the Convention seeks to achieve⁴. It necessarily follows, although in this case *a contrario*, that the Parties affirm the pre-eminence of the Florence Convention over any other international instrument that contains provisions which are less demanding in matters of landscape and are therefore deemed to be incompatible. However, this pre-eminence would be of relevance only to States Parties to the same treaties. This clause also has the effect of overturning the rule *lex posterior derogat priori* in this case, because any future convention whose provisions were less favourable to the landscape would be incompatible.

The originality of the article 12 clause is also due to the fact that it affirms the superiority of any rule that is more favourable to the landscape, whether that rule be contained in other conventions or in domestic law. In the latter case, article 12 permits States Parties to give precedence over the

³ 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals, 1992 Rio Convention on Biological Diversity, 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents, etc...

⁴ Ph. Weckel, *La concurrence des traités internationaux*, Law thesis, Université Robert Schuman, Strasbourg, 1989, p. 356.

European Convention to their more favourable domestic law, which amounts to the classic formulation of community environment law whereby a Member State can always apply stricter domestic measures where the environment is concerned. In this regard, article 176 of the Treaty establishing the European Community generally provides that protective measures adopted by the Community shall not prevent any Member State from maintaining or introducing more stringent protective measures. The reference to stricter domestic measures taking precedence over the Convention can also be found in the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals (article XII-3) and in the 1979 Bern Convention on the Conservation of European Wildlife and Natural Habitats (article 12).

The result of these formulations is that the criterion of compatibility is linked to the Parties' assessment of whether the measures in question are "stricter" where the environment is concerned or not. This amounts to having to judge whether these measures are sufficiently "stringent"⁵ to meet the general obligations of the Convention. However, as we know, the Convention does not only call for the "protection" of landscapes, it also imposes management and planning measures. This is why we feel, *a priori*, that article 12 will not, in practice, be frequently invoked, because there will be few occasions when conventions are encountered which are stricter where landscape is concerned. On the other hand, the *a contrario* interpretation of article 12 is likely to be used more frequently, because in many cases the Florence Convention will be in a position of taking precedence over another agreement or domestic provision which is less demanding where landscape is concerned.

The Vienna Convention on the Law of Treaties of 23 May 1969, which entered into force on 27 January 1980, endeavours to codify international law and practice in relation to treaties. It deals only partially with the issue of compatibility between treaties in its article 30, which concerns the application of successive treaties on the same subject. These provisions could be applied only vis-à-vis other treaties also relating to the landscape. Consequently, everything depends on whether the landscape is a "subject" in itself or whether it is dealt with indirectly⁶. This means at least the UNESCO World Heritage Treaty and the 1982 Benelux Convention on Nature Conservation and Landscape Protection.

According to article 30.4 of the Vienna Convention, two situations can be identified:

- in relations between a State that is Party both to the Landscape Convention and to one of the other treaties on the landscape, and a State that is Party only to the Landscape Convention, only the latter, to which the two States are Party, governs their mutual rights and obligations (article 30, paragraph 4-b). There is then a plurality of contractual communities or a series of contractual groups: States which are linked by both the Landscape Convention and the other Conventions and those who are linked only by the Landscape Convention;
- in relations between States which are Parties to both the Landscape Convention and the UNESCO Convention (or, for Benelux countries, to the Benelux Convention), the latter, which are earlier, apply only insofar as their provisions are compatible with those of the European Landscape Convention (article 30, paragraph 4-a). This is the application of the *posterior derogat priori* rule.

In our view, these rules are not, in fact, truly applicable to the Florence Convention for the very good reason that it could be considered, at least where the UNESCO Convention is concerned, that the two conventions, while having a similar aim, do not have an identical objective within the meaning of

⁵ Article 24.2 of the Helsinki Convention on the Transboundary Effects of Industrial Accidents entitles Parties to take "more stringent" measures by bilateral or multilateral agreement. The same expression is used in Article 4.8 of the Protocol of 18 June 1999 on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Waters and International Lakes.

⁶ On the list of conventions relating directly or indirectly to the landscape, see our study on the law applicable to landscapes in comparative law and in international law (Council of Europe, Congress of Local and Regional Authorities of Europe, report on the preliminary draft European Landscape Convention by P. Hitier, CG (4) 6 Part II, Strasbourg 5 May 1997) and the Compendium of basic texts of the Council of Europe in the field of landscape, Council of Europe, T-FLOR 3 (2003) 3, Strasbourg 26 May 2003.

Article 30 of the Vienna Convention which refers to treaties dealing with “*the same subject-matter*”. The UNESCO Convention is concerned with natural and cultural world heritage of exceptional value, whereas the Florence Convention applies to all landscapes and is not directly concerned with monuments of the cultural heritage. The scope of the two conventions and their objectives are not the same. From a legal viewpoint, therefore, the two treaties should be considered as not constituting successive treaties dealing with the same subject matter within the meaning of article 30 of the Vienna Convention.

In fact, in view of the very innovative nature of the European Landscape Convention, the problem of its compatibility with existing treaties is still very theoretical. The article 12 clause which aims to maintain maximum effectiveness for landscape protection, will come into play only vis-à-vis any future treaties and, in particular, vis-à-vis present or future domestic law which must, in every case, be subordinated to the principles and rules of the Florence Convention.

B. Methods of achieving integration

The requirement to take account of the landscape dimension in international and policies and programmes is rather novel. It is not common for international conventions to contain an invitation to promote their aims beyond the bodies of the convention themselves and, consequently, beyond the parties, in many cases. There is, however, one precedent which does not go as far as article 7 of the Florence Convention, namely article 19 of the 1985 Granada Convention which requires Parties to encourage, within the framework of the international agreements to which they are parties, European exchanges of specialists in the conservation of the architectural heritage. This is much more restrictive than article 7, because it is limited to an integration which is only partial (only the exchange of specialists) and whose scope only extends to treaties.

Article 7 is more ambitious and consequently its implementation is much more complicated. Consideration needs to be given successively to when integration needs to take place and according to which mechanisms.

1. The international policies and programmes concerned

Three different circles of intervention can be distinguished: in the Council of Europe, in the European Union and in other international bodies.

a. In the Council of Europe

Even if the European Landscape Convention is open for accession to European States which are not members of the Council of Europe (article 14.1), we may consider that all States Parties will be *a priori* members of the Council of Europe. Consequently, it is initially in the different Council of Europe bodies that the landscape should be taken into account as a result of pressure from the Parties. This concerns all Council bodies, from the Committee of Ministers to the Congress of Local and Regional Authorities of Europe (CLRAE), including the Parliamentary Assembly, the European Court of Human Rights and the European Committee of Social Rights or the conferences of specialist ministers, such as the European Conference of Ministers responsible for Regional Planning (CEMAT). Inasmuch as article 7 does not limit itself to integrating the landscape into other international treaties, but rather targets all international policies and programmes, it is clearly within the framework of the many political and legal bodies of the Council of Europe that the landscape dimension will have to be incorporated.

In this way, the Parties will be able to play an important motivating role within the Council of Europe in relation to European Cultural Routes, the Pan-European Biological and Landscape Diversity Strategy⁷ and the work of the CEMAT Committee of Senior Officials. The organisation of international

⁷ The integration of an action plan for European landscapes in the activities of the Convention was foreseen at the Strategy meeting of the Council in Geneva on 10-11 May 2001.

colloquies and seminars by the Council of Europe is also an opportunity to integrate the landscape by raising the awareness of the various actors⁸. Finally, the preparation of a European Charter on General Principles for the Protection of the Environment and Sustainable Development is another opportunity to advance the multiple contributions of the European Landscape Convention⁹.

b. In the European Union

Eleven of the fifteen Member States of the European Union have signed the Florence Convention and three have ratified it. Of the ten new Member States in 2004, six have already signed the Landscape Convention and one has ratified it. Considerable progress had already been made in integrating the landscape into Community environment policy. The word “landscape” has been in Community legislation since 1985¹⁰ and is mentioned in at least six official texts: agricultural policy with agri-environmental measures¹¹, in the nature protection policy with the natural habitats directive, and in the directives on the assessment of the effects of certain public and private projects on the environment and on the assessment of the effects of certain plans and programmes on the environment¹². However the landscape remains a secondary objective. The new principles of landscape policy set out in the European Landscape Convention are worthy of greater attention on the part of the Community bodies. The States Parties to the Florence Convention who are also members of the European Union therefore have a motivating role to play, both in the European Parliament and in the Council of Ministers.

In Community policies the landscape has increasingly established a place for itself, in particular through Interreg¹³ and Life programmes. Nevertheless, it is the traditional view of the landscape that prevails. For instance, the Sixth Community Environment Action Programme¹⁴ makes provision for a measure in favour of the landscape which is not expressed in the spirit of the Florence Convention. Provision is made to “promote the integration of conservation and restoration of the landscape values into other policies including tourism, taking account of relevant international instruments”. This wording, while promoting the integration of the landscape into other policies, limits itself to the aesthetic dimension, which is not the only dimension to be taken into consideration. The European Landscape Convention encompasses a reference to the social dimension through, in particular, the definition of landscape quality objectives which determine the landscape element of the day-to-day quality of life of the population.

c. In other international bodies

States which are Parties to the Landscape Convention are all members of the United Nations and, as such, participate in the activities of the United Nations Environment Programme (UNEP), in the Commission on Sustainable Development and in numerous other international organisations,

⁸ For example, the November 2001 Lisbon Seminar “Landscape heritage, spatial planning and sustainable development”, Council of Europe Publications, European Regional Planning Series, Strasbourg, 2003, n° 66.

⁹ Draft European Charter, CO-DBP (2003) 2, Council of Europe, 13 December 2002.

¹⁰ Regulation No 797/ 85 of 12 March 1985 on improving the efficiency of agricultural structures, OJEC L. 93/1 of 30 March 1985.

¹¹ G. Thomson, “La Communauté européenne et le paysage”, *Revue juridique de l’environnement*, 1993, n° 4, p. 541.

¹² Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (*Official Journal L 175*, 05/07/1985, p. 0040 – 0048); Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (*Official Journal L 073*, 14/03/1997, p. 0005 – 0015); Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (*Official Journal L 197*, 21/07/2001, p. 0030 – 0037).

¹³ See, for example, the inventory of landscape and cultural heritage of the Wadden Sea region, LANCEWAD Project, Interreg II C, North Sea, 1999-2001.

¹⁴ Decision No. 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJEC L 242 dated 10/09/2002).

including in particular the FAO and UNESCO. Whether we are talking about Conferences of Parties to universal conventions on the environment which are closely related to the landscape (Convention on Biological Diversity, Ramsar Convention, Convention concerning the Protection of the World Natural and Cultural Heritage, Convention against Desertification) or major conferences on the environment and sustainable development such as Rio in 1992 and Johannesburg in 2002, there is no shortage of opportunities to enhance the contributions the Florence Convention can make.

Many States are Parties to the Landscape Convention and to numerous regional conventions. At the Conferences of the Parties to these regional conventions, they will find an opportunity to put article 7 of the European Landscape Convention into action. The landscape is often already mentioned in a number of regional conventions. But it is simply mentioned as an element of the environment or referred to along with other public policies which have no specific content and define no particular strategy. For example, the Aarhus Convention, the Barcelona Convention and its protocols on the Mediterranean Sea, the 1994 Alpine Convention and the Chambéry Protocol on Nature Protection and Landscape Conservation, the Benelux Convention on Nature Conservation and Landscape Protection, the Nordic Convention on the Environment and the most recent of the regional conventions, on the Carpathians. This last-named convention, which was signed in Kiev in 2003, relates to the protection and sustainable development of the Carpathians. It provides for a policy of conservation, sustainable use and restoration of biological and landscape diversity and integration into other policies (article 4) and targets the landscape for sustainable tourism (article 9). However, landscape is not defined and no landscape strategy is put forward. The contribution of the Florence Convention will therefore be fundamental to breathe life into the concept of landscape and to guide actions or decisions formulated in all regional forums with responsibility for implementing regional conventions.

2. The mechanisms that need to be put in place

The Florence Convention commits States to integrate the landscape dimension into international policies and programmes. This commitment poses at least two questions: what is the landscape dimension? And how can integration be achieved?

One might think that “taking account of the landscape dimension” is a compact formula which expresses the idea either that the landscape needs to be brought to the fore when it had been forgotten as a value to be taken into consideration, or that the ways and means of taking account of the landscape need to be developed and explained when it was merely mentioned. In the first case, the Parties will have to pay attention to international actions and programmes which, probably unintentionally, will forget the landscape dimension in their proposals. It will then be necessary, in referring to the European Landscape Convention, to insist on the need to take account of the landscape as an ecological, cultural, social and economic value. In the second case, the landscape may be mentioned, but in terms, or through references, that do not correspond to the spirit or to the letter of the Florence Convention. In this case, it will be necessary to highlight the concepts that are contained in the Convention in order to show that they meet the modern-day demands of the population and integrate perfectly into the conditions for sustainable development.

There will be no lack of opportunity to put article 7 into effect. However, the Parties will have to demonstrate political will and imagination to achieve any success in integrating landscape into the many international policies and programmes in which they are involved. We already know how difficult it is to achieve integration into national policies as provided for in article 5.d. It requires not only a shared awareness of the heritage value of the landscape, but also co-ordination and intervention mechanisms to allow those responsible for landscape policies to have their say in decision-making. On a different scale, the same applies to integrating landscape into international bodies. article 7 commits the Parties to “co-operate” and “recommend”. This involves devising mechanisms adapted to the procedures of each of the bodies or organs concerned. It is impossible, from a legal or institutional point of view, to formulate precise proposals here. The mechanisms that need to be put in place will have to correspond exactly to the operational methods of each of the institutions concerned.

We can nevertheless make some general suggestions. In order to be able to “co-operate”, the Parties will have to organise themselves. This means, first, that in the bodies that will be set up to monitor implementation of the Convention as provided for in article 10, the committees of experts will have to ensure that monitoring the implementation of article 7 is on their agenda by proposing strategies adapted to the international programmes concerned. A strategy could be worked out in this respect, together with priorities. For example, one could imagine a strategy devised to ensure that the principles of the Florence Convention are more systematically integrated into Community law. The best integration would be to decide, once the Convention had entered into force, to invite the European Community to accede to the Convention as provided for in article 14.1. Preparations ought to be made for this initiative and article 7 is the perfect tool to facilitate these preparations. Similarly, specific co-operation ought to take place at institutional level between UNESCO and the Council of Europe on the basis of article 7 of the Landscape Convention and 13.7 of the Convention concerning the Protection of the World Cultural and Natural Heritage.

The committees of experts referred to in article 10 will also have to set up *ad hoc* “landscape” groups or committees, bringing together the States Parties to other conventions so that they can organise their co-operation in advance according to the specific nature of these conventions and draw up a strategy for action. This means there would be an Aarhus Convention “landscape” monitoring committee, a UNESCO Convention “landscape” monitoring committee, an Alpine Convention “landscape” monitoring committee, and so on.

“Co-operating” will then make it necessary to make provision, on the occasion of Conferences of Parties to other conventions, whether universal or regional, or at general international forums, for the Parties to the Florence Convention to take the initiative to call a meeting of their *ad hoc* “landscape” committee in order to agree more specifically which positions to take and proposals to make. These “landscape” committees would be not only pressure groups to ensure that adequate account is taken of the landscape, but also ambassadors on behalf of the European Landscape Convention. As is customary, the secretariat of the Landscape Convention should also participate in these meetings.

article 7 requires parties not only to “co-operate” but also to “recommend”. For instance, the Parties to the Landscape Convention are invited to formulate proposals which could be included in the decisions or recommendations of the bodies or programmes in which they participate. We can see here the extent to which article 7 is indissociable from article 12, studied above. The compatibility of conventions will be a direct result of the monitoring and co-ordination undertaken by the States Parties. *De facto*, the Florence Convention will take on an increasing importance, giving it a certain fundamental pre-eminence over other conventions because, as it is the only convention which is substantively cross-discipline, it is the only one which is able to serve as a guide for national and international policies on landscape.

Consequently, the European Landscape Convention could influence international policy on the environment, sustainable development and regional planning.

II. TRANSFRONTIER LANDSCAPES

Article 9 of the European Landscape Convention provides for specific transfrontier co-operation on the landscape. This is an important focus of European co-operation.

According to the Explanatory Report:

“This article requires the parties to set up transfrontier programmes for the identification, evaluation, protection, management and planning of landscapes which straddle borders. In doing so, they are asked to rely as far as possible, in accordance with the subsidiarity principle defined by the European Charter of Local Self-Government, on local and regional authorities, and to use the implementation tools advocated in the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities in Europe of 21 May 1980 and its additional protocols”.

There are many opportunities for transfrontier co-operation and what often happens in this field is that practice precedes laws. However, for several years, international treaties and Community directives have provided a legal framework for transfrontier co-operation.

Such co-operation may take account of the landscape directly or indirectly, and permanently, through *ad hoc* legal instruments. However, provision must also be made for occasional transfrontier co-operation, for a specific project or programme, within which the landscape may be able to play an important role.

A. Permanent instruments for local and regional transfrontier co-operation

There is an ample arsenal of legal support for transfrontier co-operation. Besides the numerous private agreements or informal practice, instruments of public international law are supported by bilateral agreements between neighbouring States. The landscape is only indirectly involved in the few agreements that relate to protected transfrontier open spaces¹⁵.

To facilitate co-operation between local and regional transfrontier authorities, the Council of Europe encouraged the drafting of a European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, which was opened for signature in Madrid on 21 May 1980 and entered into force on 22 December 1981. It has been ratified by 31 States, 21 of which have already signed the Landscape Convention, which ought to facilitate the extension of this type of co-operation. All States Parties to the European Landscape Convention should undertake to ratify it in order to facilitate the implementation of article 9. The purpose of the Convention is to regulate neighbourly relations across frontiers and apportion powers among the public authorities. It is accompanied by a series of annexes in the form of model agreements for use by States. The additional Protocol to the Outline Convention, opened for signature in November 1995, concerns the legal personality of transfrontier working communities and the legal value of their acts. Among the model inter-State agreements, the one on regional transfrontier consultation refers to nature protection and the sites to be protected, while that on the creation of transfrontier parks expressly concerns co-operation in the area of the landscape, as does the model agreement on the creation and management of rural transfrontier parks, which concerns the maintenance and improvement of the natural landscape and its specific nature. The maintenance and improvement of the natural landscape and its specific nature are also the subject of the model agreement on the creation and management of transfrontier parks by associations governed by private law. Since all of these models are merely examples, it is quite possible to include the landscape in them and to make provision for common landscape enhancement programmes in accordance with the guidelines set out in the European Landscape Convention.

¹⁵ Julien Prieur, *Développement durable des espaces naturels protégés et coopération transfrontalière*, DESS dissertation, CRIDEAU-CNRS-INRA, Université de Limoges, 2003.

Whether or not based on the Outline Convention, numerous transfrontier co-operation agreements already exist¹⁶. For example, the 1986 Benelux Convention on Transfrontier Co-operation between Territorial Communities or Authorities, the Agreement between Denmark, Finland, Norway and Sweden of 26 May 1977, the German-Dutch Convention on Territorial Community Transfrontier Co-operation. A recent agreement implementing the Madrid Outline Convention was signed in Brussels on 16 September 2002 between France, Belgium, the French Community, the Walloon region and the Flemish government on transfrontier co-operation between the territorial communities and local public bodies.

Despite this considerable progress facilitating transfrontier co-operation, it must be acknowledged that environmental problems, and landscape problems in particular, rarely constitute the subject of such co-operation. In the list of areas of co-operation, although the environment and spatial planning are mentioned, with the exception of agreements relating to transfrontier parks or reserves, the landscape is not the subject of any specific agreements in the sense of being the particular focus of co-operation (which does not mean that there are none at all¹⁷). A contract was signed on 7 July 2000 between two regional bodies in Hungary and Slovakia in the basin of the Rivers Sajó and Rima setting up regional frontier co-operation. The preamble to the contract makes express reference to the need to improve nature and landscape protection but does not spell out how co-operation in relation to the shared landscape can be developed.

It is also appropriate to mention the Initiative on the Sustainable Spatial Development of the Tisza/Tisa River Basin signed by the Ministers responsible for regional planning of Hungary, the Slovak Republic, Romania, Serbia-Montenegro and Ukraine at the 13th European Conference of Ministers responsible for Regional Planning (CEMAT) in Ljubljana on 16 September 2003, whereby the Parties agree to take particular account of the provisions in the Guiding Principles for Sustainable Spatial Development of the European Continent concerning the specific territory of river basins and alluvial valleys, and in particular the protection of fragile ecosystems and landscapes¹⁸.

The European Landscape Convention should provide an opportunity to give new impetus to transfrontier co-operation by encouraging States and local authorities to share their experiences and enter into new agreements devoted exclusively to common landscape programmes, in line with the provisions of article 9 of the Convention¹⁹.

It would be helpful to draw up a new model agreement for States to use which would embody the principles and guidelines of landscape policy as laid down in the Florence Convention. A joint working group from the two secretariats of the Madrid and Florence Conventions could, within the Council of Europe itself, give true operational synergy to the two conventions.

B. *Ad hoc* transfrontier co-operation

It appears that the development of procedures relating to transfrontier impact studies will, in the future, be a more reliable means of taking account of transfrontier landscapes than institutionalised co-operation through permanent agreements. Obviously impact studies are an *ad hoc* intervention, which do not go any way towards monitoring landscape management and planning as required by the

¹⁶ See the list in the Handbook on transfrontier co-operation for local and regional authorities in Europe, Council of Europe Publication, Transfrontier Co-operation in Europe, n°4, 3^e ed., Strasbourg, 2000, p.75 et seq.

¹⁷ See list of agreements, *op. cit.*, note 13, p. 26.

¹⁸ Landscape protection, management and planning are included in the Programme of work and action for implementation of the Initiative. See also the Declaration on co-operation concerning the Tisza/Tisa River Basin adopted by the Ministers responsible for Regional Planning of Hungary, the Slovak Republic, Romania, Serbia-Montenegro and Ukraine at the 13th Session of the European Ministers responsible for Regional Planning (CEMAT) held in Ljubljana on 16 September 2003 (13 CEMAT (2003) 7 FINAL E).

¹⁹ In the same spirit and, more generally, UNESCO, in the context of the “Cultural Landscapes” Workshop for the 30th anniversary of the World Heritage Convention, extended an invitation to “establish a solid legal framework for transfrontier initiatives and co-operation between local authorities”, Report, World Heritage 2002, Paris, 2003.

Florence Convention. At best, they may constitute an opportunity to provide some protection, occasionally avoiding irreversible deterioration.

Although, unfortunately, the Convention does not call for impact studies to take direct account of effects on the landscape, it is certainly the intention of those responsible for drafting the Convention to encourage States to take such measures under the terms of article 6-E. Paragraph 61 of the Explanatory Report makes express reference to impact studies taking the landscape into consideration. It can therefore be presumed that this requirement is also implicit in the context of transfrontier landscapes.

Recent developments in international law relating to impact studies reinforce impact studies on projects that have a transfrontier impact. However, it is always national impact studies which encounter the greatest difficulties in terms of satisfactory implementation.

1. Extension of transfrontier impact study procedures at European level

This extension is the result of the combined action of Community law and the Espoo Convention, complemented by the Kiev Protocol.

a. Community law

Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment contains an article 7 which is devoted to the procedure to be applied when a project has presumed effects in another Member State. These provisions are reinforced by Directive 97/11 EC of 3 March 1997²⁰. Recital 12 justifies this transformation as follows:

“Whereas it is desirable to strengthen the provisions concerning environmental impact assessment in a transboundary context to take account of developments at international level”.

Although impact studies are imposed only for projects which are likely to have major effects on the environment, when they do have to be undertaken, they have to take the effects of the project on all elements of the environment, expressly including the landscape, into consideration. Even if no specific impact study is undertaken, one can rest assured that, under the control of the public, the administration and the courts, the landscape will be taken into consideration. Even more account will be taken of it if, happily, co-operation between the two States concerned has already jointly determined the landscape quality objectives of the site, or if a common development programme has been developed.

The procedure to be applied has three phases: initial information provided spontaneously by the State of origin or requested by the affected State “as soon as possible and no later than when informing its own public” (article 7 of the Directive); express declaration by the affected State of its intention to participate in the procedure within a reasonable time determined by the State of origin; consultation between the States concerned, which shall together determine the time frame for the consultation. The purpose of consultation is to study potential transboundary effects and measures envisaged to reduce them. The public and local authorities concerned must be given an opportunity to participate in these procedures, to which end they must have access to the information exchanged between the States within a reasonable time and be able to forward their opinion to the competent authority before the project is authorised.

A notable extension of this procedure is provided by Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, applicable in Member States on 21 July 2004. Inasmuch as these plans necessarily have long-term effects on the landscape, particularly where they concern spatial and environmental planning, the landscape is directly concerned by this new instrument for the prevention of any adverse impact on the environment.

²⁰ In particular because of the Community’s accession to the Espoo Convention on 25 February 1991.

b. The Espoo, Helsinki and Kiev Conventions

The United Nations Economic Commission for Europe at Geneva has fostered a number of international conventions with a view to promoting the peaceful prevention of international conflict arising out of problems associated with the environment. The Espoo Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 entered into force on 10 September 1997. It regulates the activities of 40 States, including 24 of the 27 signatories or parties to the Landscape Convention. Again, the landscape is mentioned here as an element of the environment (article 1.VII). In addition to activities which are always the subject of an impact study, listed in Appendix I, the Parties may enter into discussions in relation to other activities which, in the view of the affected State, are likely to have a significant adverse transfrontier impact (article 2.5). The criteria for determining significant adverse impact are set out in Appendix III. This lists particularly sensitive areas and sites of scientific, archaeological, cultural or historical interest, which necessarily include the landscape. Implementation of the mechanism involves specific national measures which must, furthermore, be harmonised in the two neighbouring States. To this end, article 8 makes provision for specific bilateral agreements between neighbouring States. The first appraisal, given at the 2nd Conference of the Parties in Sofia in February 2001, revealed only one Agreement of 14 March 1997 between Latvia and Estonia on the assessment of environmental impact in a frontier context. In other regions, agreements are in the negotiation or experimentation stage (Estonia-Finland; Austria-Hungary; Netherlands-Germany; Netherlands-Flanders).

The Helsinki Conventions of 17 March 1992 concern transboundary watercourses and international lakes and the transboundary effects of industrial accidents. These two conventions also make provision for impact studies, and their implementation requires co-ordination with the more general, but earlier, Espoo Convention.

Finally, the Protocol to the Espoo Convention, signed in Kiev in May 2003 by 35 States and the European Community, deals with the assessment of the environmental impact of strategic decisions. It is guided by the Community directive of 27 June 2001 and makes provision for a procedure similar to the Espoo procedure. Here again, frontier landscapes are directly involved (article 2.7 and annex III, paragraph 8), and their future conservation will require special attention.

2. Difficulties of implementation

Faced with the ubiquity of transfrontier impact studies, States appear to be somewhat confused. They have to adapt their domestic law to take account of impact studies by instituting procedures to permit the participation not only of neighbouring States and local authorities but also of populations, and, in addition, they have to negotiate bilateral agreements to harmonise national procedures.

Discrimination and inequalities between States should be avoided. Indeed, agreements must reflect reciprocity and equivalence. The problems that arise are those of information and consultation periods, of the language(s) to be used and the translation of complex documents, of whether or not impact studies should be routed through Foreign Ministries, of additional costs which will have to be borne by the applicant. Differing views of the content of the impact study can affect the extent to which the landscape is taken into consideration by each State.

Examples of incorporation of Community directives into national law reveal a number of different solutions to this. In the Netherlands, interesting practical measures have been inserted into the law on management of the environment: at the request of a neighbouring country, translation of the announcement of the impact study and publication in a journal; transmission of the study by the Minister for the Environment; period of four weeks for comments to be made. In Germany, the consultation period is determined by mutual agreement and may not exceed three months. The competent authority may require the applicant to provide a translation of the summary of the study, provided the other State respects the principle of reciprocity. In the Walloon region of Belgium, the Decree of 4 July 2002 implements both the Directive and the Espoo Convention. It makes an

interesting distinction with regard to Walloon projects having an impact on other regions and projects of other regions having an impact on Wallonia, but makes no provision for the translation of documents or for the participation of the public of regions outside Wallonia. In Portugal, it is the Minister for Foreign Affairs who forwards the information. The affected State has 30 days in which to respond. In France, following the Decree of 20 March 2000, it is the Prefect who forwards the dossier to the authorities of the neighbouring State, after having informed the Minister for Foreign Affairs²¹.

An interesting experience aiming at harmonisation of national procedures has resulted from trilateral co-operation between Germany, the Netherlands and Denmark in the border area of the Wadden Sea. A summary, in English, of the preliminary note giving notice of a project is posted on the internet and addressed to the competent local and national authorities. The impact study is forwarded on request; responsibility for its translation lies with the party requesting it. In view of the differences that exist between the laws of the three countries, it is planned to further reinforce and improve the exchange of transfrontier impact studies²².

Given these difficulties, it is apparent that it will be essential, in the future, to harmonise the law on transfrontier impact studies and transfrontier landscape policy. Initially, the Parties to the Florence Convention should draw up recommendations on transfrontier landscape policy. Then, there should be co-ordination between the Member States of the European Union and the States Parties to transfrontier conventions in order to place the landscape properly in the different transfrontier impact studies. It would be desirable if the formula of “landscape” committees, referred to above, were used. Finally, the Parties should themselves be the prime movers of bilateral agreements on transfrontier impact studies, which alone can provide a genuine legal guarantee with regard to information and the participation of the population in the realisation of impact studies.

The recognition by the European Landscape Convention of public participation in landscape policy cannot be limited to national frontiers. It is clear that the implementation of article 9 on transfrontier landscapes must also meet the general obligation of adequately securing such participation, especially as it is also inherent in the law on impact studies. Although transfrontier impact studies are, in fact, national impact studies which have an effect in other countries, public participation must be organised in such a way that the public of other countries can benefit from the same guarantees as the domestic public. Providing adequate information on landscape matters is, therefore, essential.

There is also a need to ensure synergy in the mechanisms of transfrontier impact studies and the rights recognised by the Aarhus Convention. There is a link between Espoo and Aarhus in that the latter refers to impact studies and specifically to the assessment of transfrontier impact on the environment in article 6.2 in relation to the information to which the public is entitled during the decision-making process. Similarly, the minimum relevant information required by article 6.6 of the Aarhus Convention ties in with the information to which Espoo refers. If a particular transfrontier activity is subject to both conventions in two States Parties, the Aarhus Convention and its article 6 will apply in preference to the Espoo Convention, because it stipulates more detailed obligations.

²¹ For Greece, see Georgios Papadimitriou and Petros Patronos, *The implementation of the Espoo Convention, an Hellenic approach*, Ant. Sakkoulas, Athens and Bruylant, Brussels, 2002.

²² Official declaration of the Wadden Sea Tripartite Conference at Esbjerg in 2001, paragraphs 50 to 53.

**Proposed recommendations on articles 7 and 9
of the Landscape Convention**

1. Article 7

To facilitate the implementation of *article 7* when the Convention enters into force, it would be appropriate to:

1. organise within the Council of Europe a co-ordination unit to permit integration of the landscape into the organisation's activities and programmes;
2. formulate a general strategy for including the landscape in international plans and programmes;
3. set up *ad hoc* "landscape committees" with responsibility for formulating specific strategies for including the landscape in each universal and regional convention involving the landscape in some way and to which a number of the Parties to the Florence Convention are parties;
4. invite the States Parties to meet at Conferences of Parties to such conventions to consult on common proposals in the spirit of the Florence Convention.
5. formulate strategies for including the landscape in international programmes in which the Council of Europe participates;
6. invite Member States of the European Union to co-ordinate their action through a landscape committee of members of the Union, the better to integrate landscape into Community policies and Community law on agriculture and the environment;
7. prepare the invitation to the European Community to accede to the European Landscape Convention;
8. make preparations to negotiate a co-operation agreement with UNESCO on the landscape.

2. Article 9

To facilitate the implementation of *article 9* when the Convention enters into force, it would be appropriate to:

1. encourage all States Parties to ratify the Madrid Outline Convention on Transfrontier Co-operation in order to facilitate the implementation of transfrontier landscape policies;
2. set up a joint working group between the Secretariats of the Madrid Convention and the Florence Convention;
3. draw up a new model transfrontier co-operation agreement devoted exclusively to landscape issues;
4. formulate general recommendations on transfrontier landscape policies;
5. set up landscape committees for the Parties to the Espoo and Helsinki Conventions and to the Kiev Protocol to facilitate their compatibility with the Florence Convention;
6. formulate recommendations for transfrontier impact studies to take account of the landscape;
7. draw up model bilateral agreements on transfrontier impact studies;
8. encourage States Parties to draft domestic legislation appropriate to transfrontier areas.