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Family name, first name:

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Study Course:

WHS

ERM

other

Semester:

Junior partner chair civil law and public law with special references to the environment and law of Europe

Summer Term 2009, Wednesday, 07.07.2010, 15.30, Audimax 1

## Module International Environmental Law – Written Exam –

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Please give reasons for your answers and cite relevant provisions! **Please write readable!!!**  
30 points = 4,0; time for Part 1 ~ 60 min., for Part 2 ~ 30 min.

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### Part 1:

“International Environmental Law – IEL” (in total 40 points)

**Question 1** (20 points): Please discuss and describe how the desertec project (see article on the backside) is or could be linked to international environmental law. Please name the provisions!

*Answer: The desertec project is an industry based project and a private initiative. Therefore there is no direct link to international environmental law which regulates the relation between states; but of course, the problem or challenge behind is linked to climate change. The use of solar power (and other alternative energy sources) is probably the best way to reduce the emission of GHG; the relevant international provisions are the Climate Change Convention and the Kyoto Protocol. The parties of the CCC and the Kyoto Protocol are obliged to be active in measures against climate change following the principle of common but differentiated responsibility (Art. 3 para 1 CCC) and this means as a minimum to support such activities if possible. The desertec project, though a private initiative, but of course probably funded by the European states and the European Union) follows the statement that the developed states shall take the lead in combating climate change. Desertec follows also the principle of cooperation (Art. 3 para 5 CCC).*

*Desertec contains also the transfer of technology from the developed states to the developing states, following the commitments in Art. 4 para 3 and para 5 CCC; in particular the development and the enhancement of endogenous capacities and technologies of developing states is supported (Art. 4 para 5 CCC).*

*The desertec project may be supported by using the instruments of the CCC and the Kyoto protocol, in particular CDM (Art. 12 Kyoto Protocol). This requires that one party not included in Annex I (which is the case for all north African states) assists one party of Annex I (which is the case for all states of the EU) in reducing GHG emissions. This could be the case in the desertec project, as long as the energy produced in the desertec project is used in the non-annex I states and replaces energy produced by other means oil, coal or gas. As long as the energy is transported to the European states and replaces there GHG emitting energy sources, this may be regarded as an original reduction of GHG.*

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**Question 2** (20 points):

Environmental impact assessment (EIA) is a tool for the assessment of possible and likely effects of projects on the environment. The role of EIA is to prepare a solid base of data and information about the environmental situation around a proposed project to enable the authority to make a sound decision including environmental concerns. EIA is required for all World Bank financed projects and is well known in all developed states and in the majority of developing states. Please name at least one provision on EIA in (international) hard law and one provision in (international) soft law. Please use these examples to explain the difference and the relation between hard law and soft law.

*Answer: EIA in soft law is regulated in Principle 17 of the Rio Declaration, in hard law for example Art. 14 para 1 a) Biodiversity Convention or in the Espoo Convention. Principle 17 of the Rio Declaration is a soft law provision.*

Declarations, like the Rio Declaration, recommendations, policies, declarations of principles, codes of practice, recommendations, guidelines, resolutions, standards, programmes for example of the UNEP etc. are soft law, because they are legally not binding and there is because of that no judicial control. The provisions in the mentioned conventions are hard law provisions because they are binding. Hard law exists in form of an international agreement, regardless how it is called (Convention, Pact, Protocol, Treaty, and Agreement etc.), customs and general principles of law. There is judicial control, if agreed as compliance mechanism and the political situation allows it. Soft law often lacks of precision. Hard law is often precise and consists of specified provisions. In respect to EIA there is not much difference between Principle 17 of the Rio Declaration and the mentioned provisions in the Biodiversity Convention, because both are related to national law; in respect to the Espoo Convention there is a major difference between Principle 17 of the Rio Declaration and the Espoo Convention's provisions: The Espoo Convention finally regulates a procedure on transboundary participation in EIA procedures. This is linked even more to international cooperation and information issues, regulated for example in Principle 18 and even more the Principle 19 of the Rio Declaration. More differences: soft law is usually politically easier to agree, whereas in respect to hard law it is often difficult to obtain consensus. Soft law is often preparing hard law.

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## Part 2:

“Environmental Liability Law” **(A)** or “Introduction to the German Legal System” **(B)** or “Incorporation of International Environmental Law into Legal Systems in sub-Saharan African Countries” **(C)**, or “European Environmental Law and its Transposition into National Law” **(D)**, each 20 points – Please answer **only one** of the following four questions.

**Question A:** Company A plans to build an installation for keeping cattle designed to accommodate 300 pieces of cattle in the south of Brandenburg. Because of high unemployment rate, the public opinion, local policy and even the neighbours support these plans because of 25 jobs promised by company A.

1. What kind of license is needed? Please describe in short words the licensing procedure.
2. Actually the support of the project is quite strong, but this may change, when the cattle makes noise and smells. What can A do to achieve the highest legal security for their investment.

### Answer:

1. The installation is listed under point 7.1 a) ee) in the annex to the 4<sup>th</sup> Ordinance of the Federal Immission Control Act. It is listed in column 2. This means that this installation requires a license based on the Federal Immission Control Act. Listed in column 2 means – following Art. 2 para 1 no. 2 of the 4<sup>th</sup> Ordinance – that for this installation a license is issued in the simplified procedure of Art. 19 Federal Immission Control Act (FICA). The licensing procedure follows the procedure in Art. 10 except para 2, 3, 4, 6, 8 and 9:
  - Written application (para 1)
  - Participation of other authorities (para 5)
  - Decision of the authority within 3 months (para 6a) including statements and justification (para 7)
  - Distribution to the applicant and any person who has raised objectionsThis means: no public participation and no exclusion of all objections not raised during the inspection period.
2. Within the simplified procedure also Art. 14 FICA is not applicable. This is a disadvantage because Art. 14 FICA blocks all claims on the base of civil law (means: neighbours!) which are not based on specific private law titles (like contracts). This means: claims on base of Art. 906, 1004 German Civil Code are excluded which is a big advantage in case of noise and especially smells. Thus, it may be recommended to start a formalised licensing procedure with public participation but also with the consequence that private claims are excluded after licensing (Art. 14 FICA). There are two possibilities to change into the regular procedure: (1) plans may be widened to accommodate 350 cattle; (2) change into the formalised procedure by application on base of Art. 19 para 3 FICA.

## Question B:

1. Name the 5 fundamental structural principles of the German Constitution. Explain one of them more in detail.
2. Name the relevant periods of German legal history. Explain one period more in detail.!

**Question C:** With the aid of suitable examples, discuss the main impediments to effective implementation of multilateral environmental agreements' provisions by developing countries especially Sub-Saharan African countries.

**Question D:** Present and analyse shortly objectives, scope and main trends of the Council Directive of 27 June 1985 on the assessment on the effects of certain public and private projects on the environment (85/337/EEC) and

1. amendments to this Directive concerning access to information and public participation (access) in the decision - making process
2. implementation of the Council Directive 85/337/EEC into the national law of some EU member states (Germany, Poland)

Good Luck !!