NICCOLÒ LANZONI

Convention on BiologicalDiversity – Nagoya Protocol – access and benefit-sharing geneticresources – digitalsequence information
fifteenth meeting of the Conference of the Parties (CoP 15)

ABSTRACT

*In light of the recentdevelopments following the 15th meeting of the Conference-of the Parties to the Convention on BiologicalDiversity ("CBD"), thiscontributionaims to provide an in-depthanalysis of the issuesrelating to access and benefit-sharing("ABS") arising from the utilisation of digitalsequence information ("DSI") under internationallaw. Itwill be dividedintofour parts. After a quickexplanation of the ABSmechanism under the Nagoya Protocol, the first part examines the concepts of geneticresource and DSI and discusses the reasonsthatwouldjustify (*vel non*) the inclusion ofthe latter in the former; the second part investigates the practicalproblem-sconcerningthe application (or non-application) of ABS mechanisms to DSI, aswellas the pro andcons of the decision of the 15th CoP to establish a multilateralmechanism for the ABSof DSI outside the scope of the Nagoya Protocol. The third part explores alternativemultilateralmechanisms of ABS of specifictypes of geneticresources and/or DSI inorder to offer some suggestions on whatcharacteristicsthis new mechanismshould/couldhave in the future. Finally, the contribution makes some reflections on the phenomenonof de-materialisation of geneticresources and ABS of DSI.*

MARGHERITA RAMAJOLI

Technical assessments – law 7 August 1990, no. 241
environmentalassessment – judicial review

ABSTRACT

Technical assessmentshaveexperienced a profoundtransformativeevolution interms of substance and procedure.

In terms of procedure, technical assessments, whichwere once non-substitutable,havebeensubjected by the legislature to a process of simplification to overcomeproceduralstops and consequent delays. In point of judicial review, technical assessments,once unreviewable, havelost the dimension of a power reserved to the administration,which no longerhas a monopoly on choosing the best technical solution. However,environmentalissues, despitebeingparticularlysteeped in technical-scientificcontent,are notfullyfamiliar with thisdevelopment.

On the procedural side, Law no. 241/1900 considersenvironmental technical assessmentsasunavoidable, in the sensethatthey must always and in every case be expresslyformulated, and asinfungible, in the sensethatthey must be issued by the onlyadministrationidentifiedas the reserve holder of that act. A number of amendments toLaw No. 241/1990 havesuperseded the unavoidability of the technical environmentalassessment to the advantage of the speedyconclusion of proceedings in the particularcase of service conferences or silencebetweenadministrations. But there are stilltwodivergentlogics: the first reluctant, the second inclined to soften the speciality of theprocedural regime of environmentalinterests. On the procedural side, a part of

jurisprudencetends to conceive of environmental technical assessmentsasnothaving an autonomousindividuality, inasmuchasthey are incorporated in the weighting of interests,and consequentlyoperates a limited review.

The broadening of judicial review of technical environmentalassessmentsisthereforeto be welcomed, asit follows the general trend and leads the court to notexemptitself from reviewing the possibleerroneousness of the administration'sappreciation.In fact, only a judicial review with thesecharacteristicsguaranteeseffectiveness andfullness of protection.

L'AMBIENTE DA VALORE A PRINCIPIO (COSTITUZIONALE)

Constitution – Values – Principles – Environment – Environmental policies
EnvironmentalLaw – Future generation – Common good

ABSTRACT

Thisessaywonders the implications with the shift of the Republic'sobligation topromote the environment from the (non legal) realm of values to that of constitutionalprinciples. The argumentpresented shows thatthistransitionishighlysignificant,particularlyconsidering the ineffective and piecemeallegislation on environmentalprotection.Thislegislationhasfailed to adequatelyprotectnaturalresources and hasoftenresulted in unnecessaryconflicts.

The rejuvenatedrole of the Constitutionas a source of environmentallawis ofgreatsignificance. Itnotonly sets new priorities for the political agenda, butalsohasimplications for legalinterpretation. Thisisevident in some decisions by the Councilof State, whereenvironmentalprotectionis no longerderived from the related conceptsof landscape or culture, butratherhasacquireditsownsignificance, both from a normativeand axiologicalperspective.

NADIA SPADARO

L'ENERGIA RINNOVABILE TRA AMBIENTE E PAESAGGIO

Renewable energies – environment – landscape
maximum deployment of renewable energies principle – brownfield

ABSTRACT

This paper analyzes the s.c. energy-environment-landscape trilemma. The Authorexamines the renewable energy production plantsregulation, in particular the criticalissues and meritsregardingidentification of suitable and unsuitableareas to hostrenewableenergy production

plants. Italian legislator hasaffirmed the maximum deploymentof renewable energy principle; however, public administrations and jurisdictionshave to verify the balancing between energy-environmentalinterest, landscapeinterestand suitableterritorial layout interest. Thisproblem-could be solved by installingrenewable energy production plants in brownfields.

SIMONE CARREA

United Nations Convention on the Law of the Sea (UNCLOS)
*Customary International Law – Responsibility of States with regard to the protection of the marine environment – Obligations*erga omnes

ABSTRACT

The article, inspired by the recentjudgment of the International Court of Justicein the case Nicaragua v. Colombia *of 21st April 2022, analyses the relevance of theprinciples of International Lawconcerningprotection of the marine environment in thecontext of the litigation of maritime international disputes, by especiallyfocusinguponthe relation between the general duty of each State to protect the marine environment,on the one hand, and the obligation to respect the sovereignty and the exclusiverightspertaining to other States, on the other hand.*

TUTELA DEGLI ANIMALI E LIBERTÀ RELIGIOSA

Protection of animalsat the time of killing – regulation 1099/2009/CE
obligation to stunanimalsbeforethey are killed – ritualslaughtering
freedom of religion

ABSTRACT

The articlecomments the decision of the Court of Justice of the European Union inthe case C-336/19, concerning the Regulation 1099/2009/EC on the on the protectionof animalsat the time of killing. The Court clarifiedthatMember States are notobligedto ensure the derogation from the principle of priorstunning of animalsduringslaughter,in relation to slaughtercarried out for religiouspurposes. Indeed, national lawcan ensure a fair balance betweenanimal welfare, as a valuerecognised by Article 13TFEU, and the right to manifestreligion, guaranteed by Article 10 of the EU Charterof FundamentalRights. The Court of Justice hasheldthat the possibility of importingfood from abroadallowsreligiousminorities to respect the preceptsimposed by theirbeliefs, withoutsacrificing the animal welfare standards in force within a given nationallegal system. However, the Court didnot take into account thatthisperspectivecould be weakenedif an increasingnumber of States decided to adopt more restrictiverules againstslaughterwithoutpriorstunning. In general, the decisionoffers the floorto some reflections on the 'global appeal' of EU law and on the reconciliation of international trade rules and instrumentsprotecting non-trade values.

RESPONSABILITÀ OMISSIVA DEL PROPRIETARIO IN MATERIA DI ABBANDONO DI RIFIUTI

Environment – Pollution – Farmland – Remediation of contaminatedsites – Culpable liability of the landowner

ABSTRACT

Thisessayanalyzes a decision of the ItalianCouncil on remediation of contaminated-sites. In particular, the articleaddresses the issue of the responsibility of thelandowner-for the wasteabandonmentcaused by third parties. The ruling analyzedisrelevant bcause the ItalianCouncilholds the landownerresponsible for the pollutioncaused by third parties for negligence on the protection of hisland.

ALESSANDRO GASPARINI

Environment – wasteabandonment – strict liability

ABSTRACT

The paper analyzes the recentjudgment of the RegionalAdministrative Court(Brescia) with regard to the ordinance of uncontrolledwasteabandonment and theobligations of remediation and removal of waste, contemplated by the EnvironmentalCode.The Court ruling establishes a principle of no-fault (strict) liability towards thepropertyowner, in contrast to the legislative discipline.

VERSO UNA REGOLAMENTAZIONE DELLE EMISSIONI ODORIGENE

Air protection – Emissionsinto the atmosphere – Odouremissions
Olfactoryharassment – Odourpollution

ABSTRACT

By virtue of the implementation of Directive 2015/2193/EU, relating to the limitationof emissionsinto the atmosphere of certainpollutantsoriginating from mediumcombustionplants, whichtook place with Legislative Decree no. 183 of 15 November2017, the article 272-bis wasincluded in ourEnvironmental Code, whichdictates amore specificregulation of the odouremissions. Althoughsuchprovisionlays the foundationsfor a seriousapproach to the prevention, control and reduction of emissionsof odoroussubstances, itpresentsconsiderablecriticalities, both in terms of form andsubstance. With the contributionprovidedherein, therefore, starting from the analysisof the sentence of the Umbria RegionalAdministrative Court (TAR) n. 262 of 4 May2022, an attemptis made, on the one hand, to provide a general picture of the institutionin question, alsocarrying out an interpretation activity of the law, on the other, toinvestigate the multiple problematicaspectsthatmay be highlighted with regard to itsscope and effectiveness.