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CENTRE FOR INTERNATIONAL LEGAL COOPERATION



REPORT of ACTIVITIES in 1994

Contents

1. Introduction	2
2. General issues	3
3. Cooperation with CIS countries	4
4. Cooperation with Indonesia	7
5. Cooperation with other countries: China	9
6. Miscellaneous	9

Attachments:

- A. Project overview**
- B. List of members of Board and Staff**

REPORT of ACTIVITIES in 1994

1. Introduction

The challenge

The Centre for International Legal Cooperation entered the year 1994 with a recently acquired new identity, new fields of interest and a new chairman. New statutes in which the transformation of the Council for Legal Cooperation with Indonesia into the Centre for International Legal Cooperation was formalised, were adopted in June 1993. In that same period the first contacts for legal cooperation with the new states which had emerged from the former Soviet Union, were established. In November 1993 the General Board had said farewell to Hugo Scheltema who had been its chairman for 9 years and had welcomed Ynto de Wit as its new chairperson. To put it shortly, it was a new start.

Circumstances were not unfavourable. The 1993 annual report mentions new contacts, missions and requests which could lead to new projects in various parts of the world. It was observed that multilateral institutions like the Worldbank and the European Union showed a growing interest in legal reform and legal assistance. The Netherlands Government launched a new program for supporting processes of social transformation in Eastern Europe and countries of the former Soviet Union, the Matra program.

However there were still many uncertainties. The projects had yet to be formulated and funding had to be found. The general subventions, promised by the Government, covered only part of the costs and were granted only for 1994. The Centre's own financial resources permitted operations during a period of not more than one year. Moreover it still had to be proven that the efforts would result in concrete and realistic projects, generating sufficient income for the Centre to safeguard its continuity.

So this was the challenge at the beginning of 1994. Therefore the immediate target of the staff and the board of the Centre was that the year 1994, covered by this report, should bring the first tangible results. This report describes the results. It firstly points out some general issues in chapter 2. Chapter 3, 4 and 5 give more detailed information on the projects carried out in 1994. Some miscellaneous activities are described in chapter 6.

2. General issues

Strategy

During the meeting of the General Board in May 1994 it was said that the number of projects being prepared or carried out was quite satisfactory and that as a result the short term perspectives were hopeful. However in the long run financial support for the organisational costs of the Centre would be indispensable and the General Board concluded that it should be the main objective of the Centre's survival strategy to secure this outside funding.

Based on this starting point the Executive board during its six meetings in 1994 built its strategy which consisted of three elements: securing financial support for the basic costs of the Centre for a period of two years; ensuring the commitment of the relevant ministries to the work of the Centre; increasing the involvement of the law faculties.

Regular talks were held during 1994 with the Ministry of Justice and with most of the faculties of law. At the end of 1994 we could list the (financial) support of the Ministries of Education and Justice and of almost all law faculties for 1995. The Ministry of Foreign Affairs said it could only give support through the projects funded by the ministry.

In the course of 1994 three project proposals for providing legislative assistance to Russia, Byelorussia and Kyrgystan were submitted to the Ministry of Foreign Affairs and all of them were positively assessed. The Ministry of Justice was prepared to pre-finance some of these projects. This ministry sees as its task in some cases to support directly initiatives for international legal assistance which may lead to successful applications for funding from other sources. Other successful applications were made to the Ministry of Education for four projects in Russia (CROSS), Indonesia and China. The European Commission granted funding for two projects in Russia (Tempus program), respectively in Ukraine (Takis program). More details on these projects are given below. The growing number of projects enabled the Centre to involve more experts from law faculties and other partner institutions in the implementation of the projects.

International contacts

Contacts were established with the Worldbank in February 1994, when Andrew Vorkink -at that time Assistant Legal Counsel for Eastern Europe - paid a two day visit to the Netherlands, which was arranged by the Centre. The Worldbank attaches more and more importance to legal reform in countries in Eastern Europe and in developing countries and applauds similar initiatives from individual countries. It is much interested in co-ordinating its activities with bilateral projects, particularly where it comes to the element of technical assistance. Therefore Mr Vorkink was highly interested in the Dutch advisory activities in the field of the new civil codes of several of the member-countries of the CIS.

A request of the European Commission to draft a proposal for legal assistance to Ukraine to support its Civil Code drafting team resulted in a promising cooperation with a German sister organisation of the Centre, the 'Stiftung für Internationale Rechtliche Zusammenarbeit' in Bonn. A joint proposal for assistance to Ukraine - which is described below - was drafted and accepted by the Commission.

Another interesting contact was established in December 1994 with a consortium established by two major American consultancy firm, Checchi Inc. and ARD. This 'Rule of Law Consortium' is involved in various USAID sponsored legal reform programs. Checchi approached the Centre to conclude a contract for providing Dutch consulting services in the field of Civil law legislation to CIS countries.

3. Cooperation with CIS countries

Since 1993, which may be called year of transition, the focus of the Centre's activities has switched from Indonesia to the countries of the former Soviet Union, the Commonwealth of Independent States (CIS). Many of these countries feel a need for foreign expertise to assist them in their efforts to reform their legal systems. A number of bilateral and multilateral donor organisations are prepared to support legal reform in these countries, because of the obvious interrelations with the proces of transition to a market economy. This explains why most projects in which the Centre is involved, happen to be in the field of civil and commercial law.

Russia: Assistance in preparing a new Civil Code

After the consultations in 1993 on the first part of the Russian Civil Code, the Russian Minister of Justice had asked the Dutch minister of Justice to consider an extension of the cooperation which he described as 'extremely useful'. The content of further cooperation was discussed during a meeting of CIS legal experts organised by the Inter Parliamentary Assembly of the CIS in March 1994 in St.Petersburg. In the months following a proposal was drafted and submitted to the Ministry of Foreign Affairs for funding from Matra program. After approval the first consultation on the second part of the Russian Civil Code (about special contracts) could take place in Leiden in November, along the same lines as earlier cooperation had taken place. The Russian team had prepared a draft text and a list of questions, which were both translated in Dutch in advance to give Dutch experts a chance to prepare themselves properly. The Dutch team of experts was headed by mr W. Snijders, vice-president of the Supreme Court and Government Commissioner for the New Civil Code.

Meanwhile the Russian team had also revised its draft of the first part of the Civil Code which was, after discussions and some adaptations, accepted by the State Douma, and the Federative Council and signed by president Jeltsin on 30 November 1994. The co-operation will be continued in 1995.

Russia: EU/Tempus project with Lomonosov University, Moscow

This project which was submitted and approved in 1993, started in January 1994 as a 'Preparatory Joint European Project' (pre-JEP). This meant that the participating universities were enabled to make acquaintance with each other and to prepare jointly a complete proposal for a three year, full JEP. Activities in 1994 included a visit of a group of professors of the participating European law faculties of Nijmegen, Leuven and Leiden, to Moscow in April, a visit of representatives of the Moscow university (including professor Suchanov, the dean of the law faculty) to the three West-European Universities and visits of three young staffmembers of Lomonosov for study during periods of 3-4 months. During the visit of the delegation of the Lomonosov university in May, a workshop was organized to discuss the contents of the future JEP 1995-1997. The proposal which resulted from this workshop was submitted before the end of June and approved by the Commission in December 1994.

Russia: CROSS project with Moscow Juridical Institute

CROSS, which is the Bureau of the Netherlands Ministry of Education for Cooperation with Russia in the field of Higher Education, has selected the Centre and the Institute for East European law and Russian Studies as the coordinators of a co-operation between the Moscow Juridical Institute of the State Committee of Higher Education and three Dutch law faculties (resp. of the Erasmus University, University of Tilburg and the Open University in Heerlen) and one Flemish law faculty (University of Leuven). A visit of the rector of the Institute, professor Kutafin, and one of his colleagues, professor Kashkin, made it possible to draft a concrete proposal. The project will focus on economic and commercial law and will be closely connected to the above-mentioned Tempus project. It focusses on updating the knowledge of teachers at the Institute and pays special attention to the dissemination of legal knowledge and teaching materials to other faculties in the Russian Federation. The first staffmembers of the Juridical Institute are expected to come to the Netherlands in January 1995.

Ukraine: EU/Tacis project providing assistance in preparing a New Civil Code

At the request of the European Commission (Tacis program), the director of the Institute of East European law and Russian Studies, professor F.J.M. Feldbrugge and the director of the Centre, mr J.F. van Olden, visited Kiev in January 1994 to assess the needs for international advice in the field of civil law codification. A proposal was drafted as a follow up to this visit and was submitted to the Commission. Approval of this

proposal was unexpectedly delayed because the Commission wanted to integrate already existing German-Ukrainian legal contacts in the proposed project. As a result of this development the first conference, scheduled to take place in June, in Kiev, could not be financed by Tacis. However one of the counterpart organizations, the Ukrainian Legal Foundation, was able to find alternative funding and made participation of a Dutch delegation possible. The delegation was headed by mr W. Snijders (Supreme Court). A positive result of this course of events was that the Centre and the German 'Stiftung für Internationale Rechtliche Zusammenarbeit' jointly drafted an adapted proposal, which was presented to the Commission in October 1994 and accepted by it soon thereafter. The contract finally was signed in December 1994. The project starts in early 1995. It includes translating, commenting and discussing of drafts texts for the Civil Code. Several meetings with Dutch and German experts will be held in Leiden, Kiev and Bonn over a period of 12 months.

Kazakhstan: Assistance in preparing a New Civil Code

Also Kazakhstan is presently working on a New Civil Code and has expressed its interest in making use of the expertise available in the Netherlands. A first consultation in Almaty took place in July 1994. The cooperation is based on the same formula as used for the Russian-Netherlands cooperation. A second consultation took place in Leiden, during two weeks in October 1994. Efforts to obtain substantial funding from Dutch companies which showed an interest in supporting legal reform, were only partly successful. The cooperation was mainly funded by the Dutch Ministry of Justice with additional funds from ABN/AMRO. Continuation of the cooperation in this form in 1995 is uncertain. The activities are likely to be integrated in an upcoming project which aims at supporting the drafting of one "model civil code" for all CIS countries (see below).

Byelorussia: Matra project providing Assistance in preparing a New Civil Code

Instigated by the Dutch Ministry of Foreign Affairs, professor Feldbrugge and Mr Van Olden visited Minsk in January 1994 and drafted a project proposal in close cooperation with the Institute for State Development and Legislation of the Byelorussian Parliament. After obtaining approval from Matra, a first consultation could be held in Minsk in June 1994. A second one took place in Leiden from October 24 until November 4, 1994. According to the project plan, further consultancy activities will take place in 1995.

Kyrgystan: Assistance in preparing a New Civil Code

In October 1994, the Bureau for legal affairs of the Kyrgyz Cabinet of Ministers approached the Centre, requesting assistance on short notice for its efforts to review the draft civil code. A proposal was drafted and simultaneously submitted to the Ministry of Foreign Affairs (Directorate General International Cooperation, DGIS) and to the Ministry of Justice. Because DGIS procedures would take more time than the the duration of

the whole envisaged project, the Ministry of Justice was asked to pre-finance the project, to which the Ministry agreed. The project is likely to start in early 1995.

CIS-countries: Assistance to the drafting of a Model Civil Code

In March 1994 a Dutch team, headed by mr W. Snijders, was invited to participate in a meeting of the Interparliamentary Assembly of the CIS-states in St. Petersburg, dedicated to harmonization of civil law legislation and the development of a model Civil Code. The Interparliamentary Assembly received financial support under a USAID 'Rule of Law' program to organize a follow-up meeting of legislative experts in September, which was also attended by two Dutch experts. In December 1994 the US consultant which carried out this Rule of Law program, ARD/Checchi, approached the Centre to negotiate a contract entrusting the Centre with providing assistance to the Inter-parliamentary Assembly of the CIS in its legislative work on a model civil code and other commercial legislation. The assistance would include organising working conferences similar to the September meeting and making available Dutch experts. 85% of the costs would be borne by US funding, the remaining 15% would have to be financed by other donors, possibly the Dutch Ministry of Foreign Affairs. At the end of the reporting period, negotiations were in an advanced stage.

4. Cooperation with Indonesia

Cooperation with Indonesia was still suffering from the negative effects of the events of March 1992. Although cooperation with Netherlands institutions was no longer automatically considered as 'blacklist work', any link with development cooperation was still unacceptable. Fortunately sources of funding could be found for the activities described below: the new Dutch-Indonesian Cultural Agreement, the Ministry of Justice and the Amsterdam Chamber of Commerce. However on the long run all these sources have only limited possibilities.

Contrary to the limited number of projects (see below) there were numerous visits of high officials interested in exchanging views and in maintaining (official) contacts. Visits could be noted of the Minister of Justice, Mr Oetoyo Oesman, both his Directors General, Mr Saleh Baharis (legislation) and professor Sunaryati Hartono (BPHN), furthermore of Assistant Minister Sutadi (Bappenas) and the president of the Mahkamah Agung, mr Purwoto Gandasubrata. For all these visits the Centre arranged programs and meetings in close co-operation with other relevant institutions. So far no concrete projects resulted from these visits. Generally speaking, the perspective for substantial legal cooperation with Indonesia remained rather gloomy.

Indonesia: Law Studies

This project, for which the original proposal was drafted as early as in 1992, had been further adapted during a visit to Indonesia in December 1993 and was finally submitted to the Advisory Committee on the Indonesian Dutch Cultural Agreement just before January 1st 1994. In October 1994 the Netherlands Embassy reported that a decision was taken during the joint meeting of the Steering Committees in Jakarta, but a written confirmation was not received before the end of 1994. At its request the Centre was informed that the meeting had stressed the need for legal cooperation between both countries and had decided that the proposal should be integrated in an Indonesian proposal on environmental law research. A redrafted proposal would have to be submitted in a future round of project proposals for which a date had not yet been set. The first half of 1996 was mentioned as the most probable deadline.

Indonesia: Indonesian-Dutch Law Dictionary

The work on this project was continued during 1994 and was even intensified by means of recruitment of an additional translator (50%). A working method and the structuring of the information categories of each entry was elaborated and extensively discussed in the Supervisory Committee. It was decided to focus the first list of legal terms on contract law. Two editors working on the project, Mr A. Massier and Ms M. Termorshuizen visited Indonesia in April 1994 to discuss co-ordination with a complementary Dutch-Indonesian legal thesaurus project carried out by the National Law Development Agency (BPHN). The working schedule of the Dutch team was somewhat delayed because of problems with the installation, and use of the software. Nevertheless at the end of the year considerable progress had been made and a preliminary list, showing the systematic treatment of the entries, could be compiled. In October it was reported from Jakarta that the joint meeting of the Steering Committees of the Indonesian Dutch Cultural Agreement had approved a request for supplementary funding of the project, which will enable the Centre to attract more staff in the course of 1995.

Indonesia: Seminar on commercial law

In June 1994 a seminar, which had originated from a request of the Indonesian Coordinating Ministry for Economy, Finance and Industrial Development made during a visit of a delegation of the city of Amsterdam to Jakarta in 1992, finally could be realised. In the course of time the set up and the subject of the seminar had been adapted in accordance with evolving Indonesian wishes: it was organised as part of an ongoing legal project funded by USAID (ELIPS project) and the subjects were only partly related to the Dutch Civil Code and focussed on Indonesian draft laws on arbitration and securities. The participation of Dutch experts in the seminar, professor Hartkamp, professor Van Delden and mr Vegter was financed by the Amsterdam Chamber of Commerce through the Amindho foundation. No commitments for future joint seminars were made.

Indonesia: Environmental legislation

The Dutch Ministry of Education, Culture and Science sponsors a small but effective project on environmental legislation at the various levels of administration: national, provincial and municipal. The project will last 11 months and includes research in the Netherlands as well as in Indonesia. After preparations, it started in September 1994. It is carried out under supervision of the Van Vollenhoven Institute in Leiden. The project ends with a joint seminar in 1995.

5. Cooperation with other countries

China: Leiden - Beijing Legal Transformation project

Early 1994 the Centre was requested by the Law faculty of the University of Leiden to assist in the drafting of a project proposal for cooperation with China in the field of law, which had to be submitted to the Ministry of Education, Culture and Sciences. This proposal was included in a larger scheme of scientific cooperation between China and the Netherlands, which subsequently was discussed and approved during a visit of a high ranking Dutch delegation in June 1994. The first phase of this cooperation includes three courses in China in 1995, to be given by Dutch experts on Company law and Tax law, which will be organized in close cooperation with the Chinese counterparts: the State Education Committee and the Chinese Academy of Social Sciences. Research is an important element in the project. The Centre provides administrative and organizational services to the project.

6. Miscellaneous

Data bank

Work on the data bank, which is developed in cooperation with the Netherlands Helsinki Committee, was continued in 1994. The data bank will include all past and present projects carried out by Dutch organizations in this field; it will provide information on persons involved, donor organizations and budgets. After concluding the design-phase of this mini-project in April 1994, it took some time to find another trainee to realise the program. Work was resumed in October 1994 and the software will probably be ready for implementation in early 1995.

Seminar

On May 31, the Centre organized in cooperation with the Netherlands Helsinki Committee a seminar on projects of legal cooperation in Eastern Europe. After the opening of the seminar by the Dutch Minister of Foreign Affairs, mr P.J. Kooijmans, a number of presentations were given on various projects. Subsequent discussions focussed on successes and failures and factors contributing to the effectiveness of projects.

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Attachment A

PROJECT OVERVIEW*

Country	Project	Donor	Duration	Remarks
Russia	Assistance in preparing Civil Code	Ministry of Justice, Ministry of Foreign Affairs/Matra	Sept. 1993 - July 1995	
	University cooperation with Lomonosov University, Moscow	European Union/Tempus	Dec. 1994 - Dec. 1997	with Universities Nijmegen, Leiden and Leuven
	University cooperation with Moscow Juridical Institute	Ministry of Education, Culture and Science/CROSS	Jan. 1995 - Jan. 1997	with Open University, Erasmus University, University Tilburg and Leuven
Ukraine	Assistance in preparing Civil Code	European Union/Tacis	Dec. 1994 - Dec. 1995	in association with German Foundation for International Legal Cooperation, Bonn
Kazakhstan	Assistance in preparing Civil Code	Ministry of Justice, ABN/AMRO	July 1994 - Jan. 1995	
Byelorussia	Assistance in preparing Civil Code	Ministry of Foreign Affairs/Matra	June 1994 - Nov. 1995	
Kyrgyzstan	Assistance in preparing Civil Code	Ministry of Justice, Ministry of Foreign Affairs/DGIS	Jan. 1995 - Aug. 1995	

* situation as per 31 december 1994

PROJECT OVERVIEW (page 2)

Country	Project	Donor	Duration	Remarks
CIS-countries	Assistance in preparing Model Civil Code	USAID/Rule of Law Consortium, USA, Ministry of Foreign Affairs	Jan. 1995 - Jan. 1997	
Indonesia	Law Studies with Indonesian Law faculties	Netherlands-Indonesian Cultural Agreement		proposal has to be redrafted
	Indonesian-Dutch Law Dictionary	Ministry of Justice, Netherlands-Indonesian Cultural Agreement	Aug. 1993 - Dec. 1999	
	Seminar Commercial Law	Amsterdam Chamber of Commerce	June 1994	in cooperation with Indonesian Coordinating Ministry of "EKUIN"
China	Environmental legislation	Ministry of Education, Culture and Science	Sept. 1994 - Aug. 1995	with Van Vollenhoven Institute, Leiden
	Leiden-Beijing Legal Transformation Project	Ministry of Education, Culture and Science	Jan. 1995 - May 1996	with Chinese Academy of Social Sciences and State Education Committee

Attachment B

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Attachment B (page 2)

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Attachment B (page 3)

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