

## Protection of the Human Environment— First Steps Toward Regional Cooperation in Europe †

*No man is an Island, intire of itselfe; every man is a piece of the Continent, a part of the Maine; if a Clod bee washed away by the Sea, Europe is the lesse.*  
John Donne (1572-1631)

The United Nations General Assembly in December, 1968, declared that there exists an international need for "intensifying action at the national, regional, and international level in order to limit and, where possible, eliminate impairment of the environment." Since then, in varying degrees, local and national governments and interested scientific and citizens' groups have acknowledged the desirability of achieving control of pollution and other environmental problems through regional as well as independent national action. But accomplishment of such steps is much more difficult than recognition of the need. Some of the promise as well as the difficulties can be seen in current European experience.

In recent months the wave of popular and governmental concern about the environment in the United States has been reflected and paralleled, if not precisely matched, by many kindred developments in Europe. The crisis over the deadly waters of the Rhine, the pall of polluted air over European cities, numerous continuing and some atrocious examples of ocean and seashore pollution have provoked an increasing private and governmental concern within European nations. Continental scientists, civic groups and governments have begun to recognize and identify, even if they have not been able to define accurately, the problems of earth, air and water which beset industrial communities in the western world with in-

---

\*Professor of Law, School of Law, University of California, Davis; Professor, Institut d'Etudes Européennes, Brussels; member, Board of Directors, Foresta Institute for Ocean and Mountain Studies; former Chairman of this Section.

†This article is intended to provide only an introductory survey of regional developments. Most of the programs discussed herein will be the subject of extensive reference documentation and analysis in the preparations for and conduct of the United Nations Stockholm Conference on the Human Environment in June, 1972. Footnote references will accordingly be limited. For example, no citations will be made to particular developments in international organizations, to which direct inquiry can be made for documentation.

creasing gravity. From the Elbe to the North Sea, and from the almost fetid Baltic to the now troubled pleasure beaches of the Mediterranean, many people in Europe realize that the continent's environmental troubles must be met by combined private and governmental action.

But how should the necessary ameliorative measures be achieved? Here the gap between growing public awareness and legal action is great. Within Europe, the concept that national legislative steps should be initiated to achieve hitherto undefined public goals in ecological protection has not yet attained the degree of recognition which may now be needed. Moreover, incompleteness in public responses and traditional gaps between civil needs and governmental programs augment the complexity of Europe's current environmental problems.

An ideal regional solution might require action of three principal types. First, numerous, nationally harmonized legislative, judicial and administrative measures are needed at the local and national level to resolve many environmental issues. Such coordinated action to diminish pollution and conserve resources has, of course, become imperative in Europe as well as elsewhere in the world. Therefore, to achieve genuinely effective regional results, many national actions must now be carried out simultaneously and their application harmonized between nations within the region.

Second, some measures should be taken by multi-national or supra-national action of an obligatory character. Such joint protection may be achieved by treaties or—in a limited area of cases—by the issuance of supra-national directives by a central institution. But Europe's beginning steps toward regional government have not yet produced substantial supra-national measures to preserve the environment.

Third, even without multilateral coordination or supra-national direction, unilateral voluntary action and self restraint on environmental use can be carried out by single nations to avoid hurting other countries possibly adversely affected within the region, as well as to resolve domestic ecological crises. Examples of these measures will be noted below. In a short survey, only a fragmentary view of some of the problems and developments can be gained—enough to focus attention, perhaps, on areas requiring action tomorrow.

### **Harmonization of National Measures**

#### *Council of Europe*

An impressive example of cooperative governmental efforts to aid national action to control environmental despoliation lies in recent measures

promoted by the Council of Europe.<sup>1</sup> 1970—the “European Conservation Year”—witnessed a major effort by the eighteen member organization to stimulate its participants to undertake a harmonization of national legislation for regulation of environmental issues. Expanding its earlier concern, the Council—at the European Conservation Conference at its headquarters in Strasbourg in February, 1970, adopted an impressive declaration calling for harmonization at the European level “to the extent necessary.”

In September, 1970, the Council—in a meeting of cabinet ministers of the member governments—laid down a 51-point resolution, stating general principles for future national cooperation in regional planning. The ministers observed unanimously that planning affecting Europe is no longer possible on narrow national scales. It was agreed that air and water pollution stand foremost among the regional problems.

However, the Council of Europe, possessing as yet no legislative or supervisory powers, functions solely as a recommending body. Its efforts toward harmonizing national measures thus rest on persuasive rather than on coercive functions. Results in national measures appear fragmentary. Hence, the Council’s laudable exhortations must withstand cautious scrutiny in the ensuing months in determining whether such efforts can produce effective national harmonization.

Other examples, frequently overlapping, of non-obligatory European measures toward approximating national environmental regulation are provided by the activities of several organizations in which most European nations participate. Some representative steps have been taken in recent months through the harmonizing processes of: the United Nations’ Economic Commission for Europe (ECE), the Organization for Economic Cooperation and Development (OECD), the North Atlantic Treaty Organization (NATO), the European Communities (EC), and the Council for Mutual Economic Assistance (COMECON).

### *ECE*

The Economic Commission for Europe (ECE),<sup>2</sup> established at Geneva as one of the four regional subsidiary organs of the Economic and Social Council of the United Nations, has for many years been concerned with Europe’s resource problems. In the 1950s, the ECE took the lead in some

---

<sup>1</sup>Statute of the Council of Europe (Avenue de l’Europe, Strasbourg, France) 5 May 1949, 87 UNTS 103.

<sup>2</sup>U.N. ECOSOC Doc. E/C.N. 10/1 April 3, 1947, “Terms of Reference for the Economic Commission for Europe” (Palais des Nations, 1211 Geneva 22, Switzerland).

of the foremost international organization studies of joint national uses of water resources.

This organization possesses a hitherto unique potential effectiveness because it is one of the few official East-West forums in Europe. More recently, responding to the increasing awareness of environmental problems, the ECE established a pattern of calling meetings of governmental experts to prepare recommendations on resource and ecology problems. Such recommendations in the fields of water pollution and safety led to the organization by the ECE in 1967 of a significant planning meeting of governmental representatives on environmental problems as a whole. These preparations, together with the related United Nations steps toward the 1972 Stockholm Conference on the Human Environment, led to the convening, at the ministerial level, of environmental experts of ECE members at Prague in May, 1971.

Possessing only persuasive and no normative power, the ECE—like the Council of Europe—seeks to act through a process of recommendations. But—with due allowance for overlaps with other institutions—prospects now appear that some of the ECE recommended programs may now move more definitively to bring about harmonized national actions on Europe's water pollution, noise and other environmental crises in connection with steps proposed by other international agencies.

### *OECD*

Responding later than the more strictly European international organizations, the Organization for Economic Cooperation and Development (OECD),<sup>3</sup> with headquarters in Paris, moved in the late 1960s to compile information and develop comparative studies in four areas of environmental concern: water, air, urban development and transportation. By the end of that decade, the more specific problems of: effects of pesticides, noise, and eutrophication of lakes began to receive, within the OECD, the intensive governmental input that the statistical facilities of 22 of the world's major industrial nations could provide.

In July, 1970, the Organization pulled its efforts on resource problems into focus by establishing an "Environment Committee." Again utilizing the formidable governmental information resources available, the OECD Environment Committee has begun to compile data on the numerous inter-related environmental problems which may permit future recommen-

---

<sup>3</sup>Convention of the Organization for Economic Co-operation and Development, 14 Dec. 1960 (Chateau de la Muette, 2 rue André-Pascal, Paris 16, France), T.I.A.S. 4891.

dations of governmental action. Thus, the Council acted further in 1970 to establish procedures by which each of the 22 member governments will notify the Environment Committee about recent and pending control measures. The benefits of such notification procedures to general international as well as to European measures are promising.

Obviously, the task of coordinating OECD studies and initiatives with responsibilities of other organizations, and in connection with conferences such as the recent ECE regional meeting and the forthcoming United Nations Stockholm Conference, requires special administrative liaison and possibly some permanent interdisciplinary organization. This organizational overlap represents one of the characteristic perplexing problems emerging in the world-wide concern with environmental issues. In such a context, the OECD, made up of the major group of nations chiefly responsible for the activities which have placed such stress upon resources and environmental conditions, thus possesses a unique potential for world-wide, as well as European, effectiveness, even though it is as yet primarily a coordinating and information body.

### *NATO*

Popularly regarded, perhaps, as solely a military-political organization, the North Atlantic Treaty Organization (NATO)<sup>4</sup> has nevertheless, particularly since 1956, developed momentum on nonmilitary cooperation between its members. This development's newest and potentially greatest thrust began in 1969 with the establishment at Brussels of the organization's committee on "The Challenges of Modern Society" (CCMS).

Again, although NATO cannot be regarded as a strictly "European" organization, most of its members are on the continent, and the greatest extent of economic activity (including military expenditures) have taken place in, and bear their principal effects upon, Europe. Those environmental projects considered by the members and appropriate committees within the CCMS program overlap significantly with other European efforts to resolve environmental crises. The measure of the inter-relationships remains to be determined. For example, CCMS projects on transmission of scientific knowledge to decision-making sectors of the government, air pollution and pollution of inland, coastal and marine waters possess significant common dimensions with other European projects. The question as to the body through whose aegis national measures will be coordinated stands as a thorny parliamentary issue.

---

<sup>4</sup>North Atlantic Treaty, 4 April 1949 (N.A.T.O. Brussels 39, Belgium) T.I.A.S. No. 1964, 34 U.N.T.S. 243.

One foreseeable development could be that environmental information developed through NATO resources, and in NATO's informational context, would be made available to individual nations without restrictive ties. Other, exclusively European organizations, could use such information as a basis for harmonizing recommendations for governmental action—or in some cases, directives. Some observers have commented that, whether because of greater budgetary resources or because of strategic factors, substantive problems within NATO appear to have received quicker and more effective national responses than those arising within other bodies. A pragmatic evaluation in this early period of European environmental cooperation would suggest keeping all options open for constructive action.

### *EC*

In assessing movements toward international economic integration, academic and popular attention in the past decade has centered upon the European Communities (EC).<sup>5</sup> Starting in 1952 with the European Coal and Steel Community (ECSC), and beginning their greatest thrust toward integration by establishing EURATOM and the European Common Market in 1958, the "inner six" nations of Europe have achieved, despite obstacles, delays and frustrations, a remarkable degree of unity in economic affairs. The present gross community production and international trade of the six nations are sufficiently impressive by all world standards. But if current negotiations toward expansion of membership through admission of England, Ireland, Norway and Denmark (and possibly other nations) should reach fruition, the potential European continental regional government would become formidable in virtually all dimensions, including ecological protection.

Some analysts of current efforts to preserve national resources and restrain pollution believe that only when a governmental body having power to regulate the conduct of people within its jurisdiction acts normatively on specific proposals can the necessary conservation measures be achieved. If this observation should be valid on the continent, the European Communities possess the only currently existing legislative structures to bring about adequate environmental protection in Europe.

In later paragraphs, this article will deal with the Community's efforts to achieve certain measures of environmental protection through binding directives. But since this section of the article deals with efforts toward

---

<sup>5</sup>Treaty of Rome, 25 Mar. 1957 298 UNTS 11. (Commission of the European Communities 23 au de la Joyeuse Entrée, Brussels 4, Belgium; Council of the European Communities, 2 rue Ravenstein, Brussels 1, Belgium.)

voluntary harmonization of national measures, it will merely be noted here that thus far the European Communities have not undertaken to issue wide scale non-binding recommendations to member states for harmonizing their national steps toward control of pollution, or achievement of other environmental goals.

In the first place, the Treaty of Rome setting up the European Economic Community ("Common Market") does not contain express grants of authority to the Communities to enter the field of environmental control—either through binding directives or even by hortatory recommendations. Moreover, the first twelve years of the Common Market have been marked by a series of political-economic crises which have impeded the growth of normal governmental powers within the Community institutions. Although the member nations have enjoyed a remarkable economic growth, and have achieved a wide degree of economic unity within certain fields, even the most favorable and optimistic observers of Europe recognize that the Communities remain far from a true "economic union," let alone a federal political entity such as is proposed by many sponsors of a "united Europe."

Recognizing the community-wide need for common action on at least some environmental measures, the Commission has expressed its intentions to the Council to recommend, in the future, certain nonobligatory action which would be taken voluntarily by member states. Such intention appears to be an early step in the slow process by which the Treaty of Rome's lack of explicit recognition of resource and pollution problems will be remedied by tortuous constitutional evolution.

A process of harmonization of national ecological protection upon EC recommendation could develop from a recent western European institutional development planned and now being implemented by the Communities. By resolutions adopted in October, 1967, supplemented by later action, the Council of the Communities created a "*Group de travail de la recherche scientifique et technique* (Prest)." The activities of this scientific committee led to the invitation, in July, 1970, to nine non-members of the Communities to follow and participate in the works of the scientific and research body through membership in a new committee (COST). The six members of the Community thus invited the four nations (United Kingdom, Ireland, Denmark and Norway) now applying for membership, and five other nations (the "neutrals," Sweden, Austria and Switzerland, plus Portugal and Spain) to join with them in the consideration of seven key problems of modern scientific development. The seven areas of research for COST are: data collection, telecommunications, new methods of transport, oceanography, metallurgy, nuisances and meteorology.

Virtually all of these areas of inquiry of COST thus relate to environmental problems. The overlap between COST's activities and those of organizations such as the Council of Europe, ECE, OECD, NATO and others is obvious. But within the framework of an operating jurisdictional responsibility of the European Communities—and considering the potentials of an enlarged Community, the possibility for recommendatory action on environmental protection through the European Communities COST program deserves a special, although hitherto unheralded, attention.

### *COMECON*

Eastern European countries are not immune, even under their system of state-owned-and-controlled industry, from serious environmental deterioration. From the Black Sea to Siberia, Russia's inland water pollution is becoming serious. With a frankness unusual in such a tightly controlled press, Soviet journals have frequently noted incidents highlighting the USSR's primitive pollution-control systems, which—even when theoretically adequate—are not enforced with sufficient rigor. In the east, as in the west, a prime question is whether the Communist governments and parties are ready to meet the drastic costs of protection. Whether or not its eastern European "Council for Mutual Economic Assistance" (COMECON)<sup>6</sup> will act as an agency for ecological protection within COMECON or as a liaison for harmonization with Western European and other international measures, provides interesting speculative possibilities. In the late 1900s COMECON's Commission on Standardization sponsored meetings to establish standards of purity for surface waters, and for other principles of water classification.

### **Binding International— Supra-national Commitments**

As responsible members of the general international community, Europe's nations unquestionably consider themselves bound by whatever international law rules may protect the environment. But international law contains but few ascertainable norms in this domain. The "tragedy of the commons" which allows much of the globe to lie free for despoliation, reflects the lack of a customary international law to preserve territory not under national jurisdiction or to protect through law processes the people and territory of one nation from ecological depredation by others. Except for some as yet too uncertain principles such as "sic utere tuo" in ocean

<sup>6</sup>14 Dec. 1959, 368 U.N.T.S. 253.



and water law, and possibly some generalized application of the "Trail Smelter"<sup>7</sup> case doctrine for international claims for air and ocean pollution, the classic international law of Western European origin provides no customary normative support for conservation.

The first route is through well known, but hitherto inadequately used in the environmental field, bilateral and multilateral international agreement techniques. The second is the potential for supra-national enactments by decision-making organs set up in treaties establishing the European Communities.

### Treaties

Historically, some of the first modern international efforts toward conservation of nature were undertaken by European nations. In the mid-nineteenth century two conventions to control river navigation established tentative precedents for later efforts to control the quality of river water.

The European Commission on the Danube was organized in 1856 and was established by the Treaty of Paris.<sup>8</sup> Even in its revised form, as established by the 1921 Barcelona Convention on Navigation,<sup>9</sup> however, the Danube Commission possesses insufficient power to control pollution. The problem is a serious source of contention in this decade between Czechoslovakia, Hungary and Austria.

In 1867 "*Le Statut International de la Navigation du Rhin*,"<sup>10</sup> entered into by the Grand Duchies of Baden and Hesse, the kingdoms of the Netherlands and Bavaria, and the Empire of France (!) founded an inter-governmental structure which the Rhine's bordering states now are amplifying to use as a basis for clearing up the river's close-to-tragic pollution. But if Coleridge could ask, in 1800,

The River Rhine, it is well known,  
Doth wash your City of Cologne.  
But tell me, Nymphs, what power divine,  
Shall henceforth wash the River Rhine?

what would he say about the river's condition almost two centuries later?

The new, separate convention adopted in 1965 by the Rhine's bordering states has not prevented the continued close-to-lethal Rhine pollution.<sup>11</sup>

---

<sup>7</sup>Trail Smelter Arbitration, 3 U.N. Rep. Intl. Arb. Awards 1905.

<sup>8</sup>46 British and State Foreign Papers 63, 66, 107 (1965).

<sup>9</sup>7 L.N.T.S. 36, 116 British and Foreign State Papers 527 (1925).

<sup>10</sup>17 Oct. 1868, 59 British and Foreign State Papers 470.

<sup>11</sup>New York Times, Mar. 22, 1970 14:1.

The Rhine Commission established by the Convention consists of representatives of the riparian states, passes recommendations only on unanimous vote, and possesses only advisory and negotiating powers.

Current national corrective efforts in Switzerland, Germany and the Netherlands, and the Council of Europe's initiatives for the adoption in 1972 of a new convention between the concerned nations to protect the Rhine and other European inland waters, may offer a chance to remedy the record of the past.

The history of earlier European treaty commitments for conservation may also serve more to underscore the inadequacies of that approach than to illustrate lines of progress. In 1902, several European nations entered into the "International Convention for the Protection of Birds Useful to Agriculture."<sup>12</sup> This treaty was amended in 1903 to cover *all* birds save necessary exceptions. As of 1968 there were but eight signatures.<sup>13</sup>

The International Plant Protection Convention of 1951<sup>14</sup> arose essentially from European initiative. Its ratification has been accomplished, moreover, primarily by western European nations. But the substantive achievements of this convention, even in Europe, lag so far behind the depredations of increasing population, technology and industry that a realistic assessment can again only emphasize the difficulties in seeking ecological protection through generalized treaties without national action or central administration.

Pressed by the adversity of the several oil spillage disasters with their resulting public outcry, European nations combined in June, 1969 to adopt the "North Sea Convention against Oil Pollution."<sup>15</sup> This treaty was contemporaneous with the two treaties seeking to specify the rights of coastal states in the Torrey Canyon type of ocean casualty, and the determination of civil liabilities for accidental oil-pollution damage, signed under the auspices of the Intergovernmental Maritime Consultative Organization late in 1969 at Brussels.<sup>16</sup>

Within the past two decades, most of Europe's nations have participated in the general international efforts to achieve limited protection of ocean and littoral resources. In addition to the two IMCO conventions, a general 1954 convention sought to limit the intentional discharge of oil in coastal

<sup>12</sup>March 19, 1902, 102 British and Foreign State Papers 969.

<sup>13</sup>European Conservation Conference Doc. CCN-ICBP (69) 41 p. 2.

<sup>14</sup>6 December 1951, 150 U.N.T.S. 67 (1954).

<sup>15</sup>Signed June 2, 1969.

<sup>16</sup>International Convention Relating to Intervention on the High Seas In the Case of Oil Pollution Casualties, Nov. 29, 1969, and International Convention on Civil Liability for Oil Pollution Damage, Nov. 29, 1969, in 64 AM. J. INT'L L. 471 and 481 (1970).

waters.<sup>17</sup> This treaty was contemporaneous with some efforts to conserve specific fisheries. Of more general scope, the so-called "Geneva Conventions of 1958"<sup>18</sup> constituted an important international landmark toward achieving international cooperation on many aspects of the uses of the high seas, continental shelves and contiguous zones of direct and important concern to much of Europe as well as the rest of the world.

Although creditable, these multilateral efforts to agree on control of resources and protection against pollution are at best fragmentary and insufficient to match contemporary needs. Too often the treaties recommend norms for state and individual conduct which fall short of the scientific and substantive standards for adequate environmental protection. Moreover, even these tentative steps frequently have not achieved enough substantive compliance to make the conventions effective. Nor has the treaty process thus far produced structural processes for administering and settling disputes on Europe's key environmental problems.

#### *Unitary Supra-national Regulation*

Earlier in this article, we noted that the European Communities provide the only structure within Europe which possesses governmental powers by which a central authority can adopt normative measures binding subordinate governments and persons within their jurisdictions. The six-nation Council, and to a lesser extent—through delegation—the executive Commission, possess powers to enact norms binding within the Common Market.

Not enough experience has been gained from the European Communities' supranational action to permit judgment on its efficacy—even in general community affairs. For environmental action, the process is still in a germinal stage.

Community action can become binding upon member states, their citizens and residents, through directives, regulations and decisions. The beginning steps affecting environmental protection have been initiated through the issuance, by the six-member Council by unanimous vote, of "directives," which, under Article 100 et seq., of the Treaty of Rome, are

---

<sup>17</sup>International Convention for the Prevention of Pollution of the Sea by Oil, May 12, 1954, 3 U.S.T. 2989, T.I.A.S. No. 4900, 327 U.N.T.S. 3.

<sup>18</sup>Convention on Fishing and Living Resources of the High Seas, April 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285; Convention on the High Seas, April 29, 1958, 13 U.S.T. 2312 T.I.A.S. No. 5200, 450 U.N.T.S. 82; Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205; Convention on the Continental Shelf, April 29, 1952, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

binding upon the member states. But the form and manner of achieving the results sought by the directive are left to the determination—and appropriate execution—of the national authorities of each state.

Several directives moving toward the promulgation of community-wide automobile pollution standards, were adopted by the Council in the Spring of 1970.<sup>19</sup> One of the directives related to permissible noise levels, and others sought to control the toxic content of exhaust emissions. They were issued by the Council under its powers for harmonization of national laws affecting motor vehicles, justified under the Treaty to prevent the adoption of national measures whose differences would cause obstacles to community trade. Thus the Communities' "commerce" power, rather than any explicit or inherent power to preserve and control the environment was the constitutional source of authority in these cases.

The importance of the jurisprudential and constitutional aspects of the European Communities'<sup>20</sup> development justifies, for this article, a mention of some of the underlying problems under the Treaty of Rome. Since the Treaty of Rome does not contain explicit powers granting—in the commercial and industrial field—environmental-control authority to the community institutions, incidental regulation of environmental hazards must be accomplished through authority arising from other elements of the Treaty. As noted, Article 100—relating to harmonization of factors which may restrict intra-community trade—provides a solid base for community action when the regulation affects the content of a particular product—such as automobiles or detergents—which may be made the subject of a proposed directive.

When the objective of the proposed regulation does not deal with the qualities or characteristics of a product which is in trade, the source of community authority is more difficult to establish. If the regulation is of a process or a function—such as making cement or discharging effluent into streams, regulatory authority may be derived from power to regulate factors affecting competition—Articles 85 and 86. But this extended concept of legislative power has yet to be clearly articulated or applied. Moreover, much internal debate has developed over the potential scope of *implied* community powers under Article 235 of the Treaty, which may serve as an additional source of central authority over environmental affairs.

At this stage in the growth of the Communities, political sensitivities

<sup>19</sup>European Community No. 134, May 1970.

<sup>20</sup>By emphasizing the authority and problems of the European Economic Community, these paragraphs are not intended to downgrade the significant, though limited, powers of EURATOM and the European Coal and Steel Community to affect environmental matters. Those institutions' authority deserves separate analysis and discussion in future studies.

restrain any rapid exercise of control by supra-national authority to achieve conservation objectives. Neither any widespread extension of existing powers of harmonization and competition-control, nor an urgent assumption of "implied powers" under Article 235 by Community institutions, can be foreseen—at least until after the Common Market's economic consolidation is attained.

One may thus question whether the availability of supra-national measures through the directive—regulation—decision processes yet adds much to what the Community members can achieve by the Treaty procedure. But the availability of the supra-national measures constitutes highly important, as well as flexible, future potentials for direct environmental protection. Through application and interpretation by Community legislative and administrative practice, the European Court of Justice, and national bodies, these direct processes could provide an expanded Community with an effective means of accomplishing much of the inevitably necessary European-wide environmental regulations. Such supra-nationality thus offers greater promise for effectiveness and feasibility than the pre-existing, cumbersome treaty approaches hitherto available to the diverse members of the continent.

**National Measures—Unilaterally Taken,  
But with International Effect**

In a region still governed by unitary national governments for the most part, Europe's principal efforts to control pollution and other environmental problems are usually taken at the national level. But since the thrust of this article is with regional efforts, it will not be possible to deal herein with the national measures which are being applied with increasing rapidity and stringency in various European nations for resource conservation, environmental planning and pollution control. The increasing "citizen concern" in Europe over the adverse effects of pollution and other environmental disadvantages has substantially enlarged the arena of national legislation. For such measures, particularly in the area of forestry development and—in some nations such as Germany—internal water control, and in England smog control, a solid and occasionally effective tradition exists. To these beginnings, some interesting and significant new enactments have been added in the past decade.

Many of these measures have been adopted at the local, provincial or national level to meet specific environmental needs. Rotterdam's justly-praised air pollution detection and warning system, the United Kingdom's Clean Air Act, and Russia's program for new directives to enforce with

penalties pre-existing statutory limitations on inland water degradation, are examples in this sphere.

Other enactments have sought to provide a comprehensive system for the protection and allocation of particular resources such as fisheries, forests and water. In 1957 West Germany sought to establish a federal legal structure for water control in the 1957 Act of Regulation of Matters Relating to Water. Similarly, the 1964 French Act No. 64-1245 on the Administration and Classification of Waters and the Control of Water Pollution, represents a relatively far-reaching effort to supply national coordination<sup>21</sup> if not detailed administration. A list of such examples could be expanded considerably. Many problems, both substantive and administrative, remain to be resolved in such new national efforts and in their coordination with neighboring state resource regulation.

A more comprehensive approach has been tried by Sweden in its 1969 enactment of the Environmental Protection Act.<sup>22</sup> In the United Kingdom, an effort to achieve national coordination of environmental measures was undertaken by the executive branch in the establishment of a new Ministry for the Environment, in October, 1970.<sup>23</sup> A government white paper described the duties of the new ministry as embracing:

The preservation of amenity, the protection of the coast and countryside, the preservation of historic towns and monuments, and the control of air, water and noise pollution.

The tempo has been slower in other nations. In Italy, for example, a more deliberate approach was reflected in the establishment by the Senate, in March, 1971, of a committee of ten senators and six scientists to "study ecological problems and recommend legislation to solve them."<sup>24</sup>

Of special interest to contemporary movements in the United States to apply "common law" remedies, it appears that West Germany is one of the few European nations that has begun to enforce environmental protection through judicial remedies. A late 1970 German court judgment gave a suspended prison sentence, and imposed substantial fines, on a Hamburg shipowner for pumping polluted water into the Rhine.<sup>25</sup> The court action rested upon statutory authority, of course. Lacking a tradition of common

---

<sup>21</sup>As this article was being submitted for printing, the French government announced the establishment of a High Authority for Environment, and the appointment of a minister for the Protection of Nature and Environment.

<sup>22</sup>"Preliminary Review of Country Monographs on Problems Relating to Environment" E.C.C. Doc. ENC/PG/6 10 Feb. 1970, p. 11.

<sup>23</sup>New York Times, 16 Oct. 1970, p. 3.

<sup>24</sup>New York Times, 9 March 1971.

<sup>25</sup>New York Times, 11 Dec. 1970, p. 6, col. 3.

law and equitable procedures, most European nations must base court remedies, civil and criminal, upon legislative enactment.

Many of the European-wide and United Nations programs now in progress will produce catalogues of legal and functional measures undertaken by individual European nations on environmental matters. Reference to, and precise analysis of, such studies will be essential to the development of inter-nation, regional cooperation. At this point, it is difficult to identify those national measures undertaken by European nations which are responsive to regional or general international environmental needs. Indeed, most of the national and local legislation must be recognized as responsive to internal demands.

Both implicit and explicit in much of the current national legislation, however, is the idea that national measures should be undertaken in the light of the emerging international environmental programs which include the goals of protecting neighboring nations from the conceivably adverse impact of national despoliation. The 1969 Swedish Act for Environmental Control, for example, in addition to stepping far ahead of conventional conservation acts, reflected a concern by the legislators of Sweden for that country's role in the European and international conservation movement. Similarly, some aspects of other national anti-air and water pollution measures demonstrate a receptivity, on either bilateral or multilateral bases, of individual nations, to a sense of responsibility for the impact of their own national practices upon neighboring states. Reciprocity appears essential for the long-run growth of such self-restraint.

Virtually every European nation has enacted significant conservation legislation within the last few years. All have participated in varying degrees in one or more of the regional, inter-governmental efforts sponsored by diverse organizations such as the Council of Europe, ECE, OECD, NATO, COMECON and the European Communities.

In aiding their governments to cooperate in these regional activities, Europe's governmental, labor and industrial leaders appear to sense a common long-run responsibility toward resolving mankind's unprecedented dilemmas arising from the population explosion and technological and industrial growth. But the tentative and uncoordinated steps surveyed in this article constitute only a beginning. Possibly this interregnum between the unconcerned past and a protected and controlled environment is a necessary transition in Europe's centuries of development. To prepare Europe's inescapably important role in the fragile and finite world's international environmental programs, more intensive efforts must be devoted to fundamental economic assumptions, public attitudes toward popu-

lation growth and consumption, and to the systems by which Europe will work out its own regional needs and participate internationally.

One of the inquiries deserving more comprehensive effort is the task of allocating responsibility and functions between private interests and governmental agencies. Reacting by response to crisis, often on tardy, grudging or hostile bases, most of the entities—governmental and private alike—which produce the greatest stresses on Europe's environment, have not yet worked out the cost-benefit studies, planning and guidance systems which will be needed.

The need exists, both in the area of substantive law applicable to use of resources, and in its techniques for administration and use. Some significant private contributions have emerged. For example, the "Helsinki Rules"<sup>26</sup> adopted by the International Law Association in 1966 provide a rational starting point for the formulation of rules by which nations will share responsibility for use and pollution of inland waters. Although adopted by a worldwide private association, the Helsinki Rules bear a special pertinence to Europe's water problems.

Similarly, the nineteen-member petroleum company foundation which has worked since 1963 toward "Conservation of Clean Air and Water in Europe" (CONCAWE),<sup>27</sup> with headquarters at the Hague, has already taken significant measures toward meeting that industry's burdens in conservation of resources and prevention of pollution. Evidences of similar future developments in other European industries are increasing.

Based in Rome, an influential international study group is undertaking by computer and other mechanical and intellectual techniques a project to prescribe remedies for the "Predicament of Mankind." The group has identified forty-seven "Continuous Critical Problems" which must be resolved "before time runs out." One of the founders and spokesmen has observed:

A critical turning point has been reached. We and mankind generally must invent anew the modes by which to survive and progress on our changed planet, where we can no longer afford to grow exponentially, but must strive to reach a state of healthy, dynamic stability through continually adjusted balances between man, society and environment.

The European developments discussed in this article will provide the scene and laboratories for much of the necessary innovation and experimentation in the legal, social and scientific processes required for this search.

<sup>26</sup>See 1966 Report of the International Law Association's Committee on the Uses of the Waters of International Rivers.

<sup>27</sup>p. 21 "What Is CONCAWE?" Report NR 2/70 Aug. 1970 Stichting CONCAWE 21 President Kennedy LAAN, The Hague.