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Introduction to the Symposium

*Philippe Sands**

This admirable collection of Articles and Notes contributes significantly to the development of—and dissemination of information about—European Community (EC or Community) environmental law. Indeed, it is a sign of the times that a U.S. law review should devote an entire issue to EC environmental law—a subject that is now receiving the attention of legal academics, practitioners, and environmental policy-makers at the national, regional, and international levels.¹

At the national level, for EC member states such as the United Kingdom, the Community rules on environmental protection often act as a driving force for innovative developments and significant improvements in existing mechanisms for environmental protection. At the regional level, other regional integration organizations such as the Caribbean Community and the South Pacific Regional Environment Programme are studying the EC as a model for harmonizing environmental standards. In addition, the Community model is likely to influence the environmental aspect of the proposed Mexico-United States free trade accord. And at the international level, EC environmental law is one of the major influences informing the debate as the international community prepares for the June 1992 United Nations Conference on Environment and Development.²

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¹ For a detailed account of Community environment law, see L. KRÄMER, *EEC TREATY AND ENVIRONMENTAL PROTECTION* (1990); S. JOHNSON AND G. CORCELLE, *THE ENVIRONMENTAL POLICY OF THE EUROPEAN COMMUNITIES* (1989); N. HAIGH, *EEC ENVIRONMENTAL POLICY AND BRITAIN* (2d rev. ed. 1989); Vols. 51 and 52, *HALSBURY'S LAWS OF ENGLAND* (4th ed. 1986); E. REHBINDER & R. STEWART, *ENVIRONMENTAL PROTECTION POLICY, INTEGRATION THROUGH LAW: EUROPE AND THE AMERICAN FEDERAL EXPERIENCE* (1985). See also Sands, *European Community Environmental Law: Legislation, the European Court of Justice and Common Interest Groups*, 53 *MOD. L. REV.* 685 (1990); Haagsma, *The EC's Environmental Policy: A Case Study in Federalism*, 12 *FORDHAM INT'L L.J.* 311 (1988); Vandermeersch, *The Single European Act and the Environmental Policy of the EEC*, 12 *EUR. L. REV.* 407 (1987).

² See Sands, *Community Environmental Law: The Evolution of a Regional Regime of Environmental Protection*, 100 *YALE L.J.* — (1991).

The Articles and Notes in this Symposium address many of the major themes underlying global efforts to adopt regulations for protecting the planet from transboundary environmental threats. How can economic development and environmental protection be reconciled? How can a single regulatory framework bring together a range of countries with different stages of industrial and economic development, and with widely differing cultural, ideological, and philosophical perspectives? What legal mechanisms exist to gather appropriate information on the state of, and threats to the environment, and to channel that information into a process that will lead to effective action? What roles can and ought the legal system assign to public authorities and private entities, including citizens? How can compliance at the national, regional, and international level with substantive and procedural obligations be ensured?

This Symposium focuses on the substantive and procedural aspects of EC environmental law. Mr. Zacker's *Environmental Law of the European Economic Community: New Powers Under the Single European Act* introduces the collection by examining the Single European Act's amendments to the Community's environmental authority under the Treaty of Rome. These amendments establish innovative mechanisms for ensuring a high standard of environmental protection throughout the Community. At the same time, the amendments allow member states to introduce more stringent standards, provided that these standards are genuinely designed to protect the environment.

Mr. Gorny's Article, *The European Environment Agency and the Freedom of Environmental Information Directive: Potential Cornerstones of European Community Environmental Law*, and the Note *Regulation 1210/90: Establishment of the European Environment Agency* consider the prospects for the new European Environment Agency (EEA), which has yet to find a home, and accordingly, has yet to commence operations. The two pieces reflect differing shades of optimism and expectation concerning the potential for the EEA, which has opened membership to non-EC states. Mr. Gorny also assesses a recently adopted directive that will provide European citizens—for the first time in some member states—the right to access certain environmental information. Experience in the United States suggests that such a right is a prerequisite to citizen and other private sector participation in the enforcement of environmental standards.

The impact of EC environmental law outside the Community is also explored. Ms. Schultz and Ms. Crockett, in their Article *Development of a Unified European Environmental Law and Policy*, consider the prospects of a pan-European approach to environmental protection, extending to the European Free Trade Association and Central and Eastern European nations. The Article discusses the present and future roles of the EEA and the newly-established European Bank for Reconstruction and Development in furthering unified European environmental protection and policy. 1990 saw the emergence of several new European-wide institutions, and it no longer seems fanciful to imagine that, within a few decades, EC environmental standards and techniques could span from Ireland and Iceland in the west to Siberia in the east, and from Norway and Finland in the north to Cyprus and Turkey in the south. In the meantime, as some of the formerly socialist countries of Central and Eastern Europe apply for membership in the EC, the question arises as to how they will be able to comply with Community environmental standards. In the context of German unification, the Note *German Unification and EC Environmental Policy* explains the application of EC environmental standards to East Germany, providing for a period of transition before the full rigors of EC environmental law apply.

With regard to substantive law, the Notes in this collection provide evidence of the ever-broadening scope of Community environmental law, its increasing stringency, and some of the different techniques being used in the regulatory process. Of the five Notes concerning air pollution issues, two are concerned with global warming and climate change. The Note *Regulation of Ozone-Depleting Substances in the European Community* assesses the latest proposed Community regulation on ozone-depleting substances, an area of Community leadership, which would lead to a mandatory phase-out of such substances. *The EC's Action Programme for Improving Efficiency of Electricity Use* considers the Community's Action Programme on Energy Efficiency, designed in part to combat global warming, and suggests that Community environmental policy is markedly less successful when based on a voluntary framework. *EC Regulation of Sulphur Dioxide Levels: Directive 89/427* addresses regulation of sulphur dioxide emissions, the leading cause of acid rain in the Community, by referring to a recent directive that will harmonize testing methods and impose new reporting requirements. *Regulation of Air Pollution from Mu-*

nicipal Incineration Plants in the European Community: Directives 89/369 and 89/429 assesses the two 1989 directives limiting emissions from existing and new waste incineration plants, which will require the use of expensive pollution control equipment. The Note finds these directives wanting in a number of important regards. The Note *Proposed EC Directive on Auto Exhaust Emissions* examines existing and proposed directives on automobile emissions, and concludes that while these directives represent significant advances, they still do not go far enough.

Three Notes address Community waste issues. *Municipal Waste Water and Sewage Sludge Management in the European Community* examines the proposed directive on municipal waste water treatment, which requires minimum treatment of municipal waste and includes a prohibition of sewage sludge dumping at sea. *The European Community's Amended Waste Directive: Prospects for Compliance* assesses the directive amending the Community framework waste directive, which would lead the Community towards self-sufficiency in waste disposal, development of disposal plans and a network of disposal installations, and increased reporting requirements. In considering the Community's attempt to reduce and eventually eliminate waste from the titanium dioxide industry, *Pollution Caused by Waste from the Titanium Dioxide Industry: Directive 89/428* identifies the political difficulties associated with reconciling environmental protection with economic development, as well as the ensuing legal consequences. Finally, *Marketing and Use of Dangerous Substances* discuss Community regulation of dangerous substances, and the Community's attempts to minimize distortions in the single market resulting from divergent standards of environmental protection in the member states.

The Symposium concludes with the *Report of the Working Group of Experts from the Member States on the Use of Economic and Fiscal Instruments in EC Environmental Policy*. The *Report* is significant in that it provides clear guidance for national and international efforts to identify appropriate market mechanisms for environmental protection. Such instruments may well complement the regulatory approach in achieving environmental objectives.

This collection of Articles and Notes provides evidence of the speed with which Community environmental law is developing. Indeed, beyond the subject areas covered in this collection, the Commission is also proposing the introduction of a broad range of new mechanisms for implementing many of the substantive

environmental standards that are now in place, including the harmonization of rules governing civil liability for damage caused by waste (including environmental damage),³ eco-labelling,⁴ and corporate environmental audits. In the meantime, the authors and editors of this fine collection provide timely assistance and insight, and they are to be congratulated for so doing.

³ Proposal for a Council Directive on civil liability for damage caused by waste, COM(89) 282 final, O.J. C251/3 (1989).

⁴ Proposal for a Council Regulation (EEC) on a Community award scheme for an eco-label, COM(91) 37 final (Feb. 11, 1991).