CHAPTER 2
EU ENVIRONMENTAL POLICY: THEORETICAL AND HISTORICAL PERSPECTIVES

As the title suggests, the chapter has tried to understand the EU’s environmental policy from both theoretical and historical perspectives. It will take into account the relevant current theories to explain the evolution of the EU environment policy during the course of EU’s enlargement process over the past 46 years. To paint a clear picture of the development of EU’s Environmental Policy, it is necessary to evaluate its past. Chosen theoretical tool has also helped in defining the current and past important aspects of the Environmental Policy at any institutional level. To define the European integration alongside the evolution of its environmental policy, a theoretical framework called ‘task expansion’ has been considered. The ‘task expansion’ theory which has been given by Pollack (1994,96), is primarily focused on the outputs, the laws, regulations and policy documents of the EU. However, it does not emphasise as to how the integration has taken place in the EU. Among other theoretical perspectives, it seems proper to include those, which have been frequently appeared in literature concerning the EU. They are- realism, neo-functionalism, intergovernmental-ism, neo-institutionalism, ideational-epistemic approaches and policy networks.

Peterson’s (1995) division of theories can add more insight into understanding theoretical approaches. Firstly, he talks about macro type of theories like traditional integration theories, which includes neo-functionalism. Neo-functionalism examines the international state system in which the EU operates. Second category is systemic analysis, which explains political behaviour in the context of EU. Thirdly, Peterson talks about mesolevel perspectives, which shows the linkages between the EU’s macro-structure and micro-interests within the larger European society. Peterson notes that the macro theories are better equipped to explain the broad historical trends in integration, but unable to explain the choices made by specific actors operating within the EU structure. Nevertheless, such perspectives are oriented more towards the broader question of EU integration. In a larger context, neo-functionalism and intergovernmental-ism do provide insights into the task expansion of particular sectors (Cram 1993; Golub 1997). Likewise, the uniqueness of traditional approaches is to
study factors such as institutions that shape policy outcomes (Hix 1994). On the other hand, ‘new’ institutional and ideational perspectives provide important systemic insights into how the EU operates, whereas others operate at different levels. Some are macro theories as where others operates at a mesolevel. Eventually, all the above theoretical approaches contain interesting explanations about the ‘task expansion’. The chapter explores different perspectives of EU in the context of two phases. Firstly, it explains how the EU came into existence and its environmental policies evolved. Secondly, it deals with the EU’s enlargement process and its effect on the environmental policies.

**Neo-functionalism**

Before understanding neo-functionalism, it is necessary to have a brief idea about what is functionalism. Functionalism as a theory in international relations emerged during the inter-war period. Its origin can be traced back to the strong concern about the obsolescence of the state as a form of social organisation. Comparing with the realists’ point of view about the nation state, functionalists focus on common interests and needs shared by states (including non-state actors) in a process of global integration triggered by the erosion of state sovereignty and the increasing weight of knowledge. (Rosamond 2000) Functionalism’s deep roots can be traced back to the liberal/idealistic tradition that started with Immanuel Kant and goes as far as Woodrow Wilson’s “Fourteen Points” speech. (Rosamond 2000)

Functionalism is one of the pioneer theoretical tools to understand globalisation and strategy. According to it, states had built authority structures upon a principle of territorialism. In other words, state-theories were built upon the assumptions that identified the scope of authority with territory (Held 1996, Scholte 1993, 2000, 2001), aided by methodological territorialism (Scholte 1993). Functionalism proposed to build a form of authority based on functions and needs, which linked authority with needs, scientific knowledge, expertise and technology. It provided a supra-territorial concept of authority.

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1 Kant defined the international relation as “the lawless state of savagery” at a time when domestic politics was at the cusp of a new age of rights, citizenship and constitutionalism. Their abhorrence of the lawless savagery led them individually to elaborate plans for ‘perpetual peace’. The crux of the functionalism can be also seen as that liberal states tend to be in relations of amity with other liberal states and flourish their political and economic relationship peacefully.
In the light of functionalism, international integration can also be understood as the collective governance and 'material interdependence' (Mitrany 1933:101) between states. It gives the example of international agencies, which meet human needs, aided by knowledge and expertise. Consequently, the benefits rendered by the functional agencies would attract the loyalty of the populations across the globe and stimulate their participation and expand the area of integration. Functionalism can be seen to be based upon some strong assumptions. Firstly, the process of integration takes place within a framework of human freedom. Secondly, knowledge and expertise are currently available to meet the needs for which the functional agencies are built. Lastly, states will not sabotage the process.

The global dimension of functionalism came under criticism from Neo-functionalists. The neo functionalism reintroduced territorialism in the existing functionalism framework. Neo-functionalism established itself as a theory and a strategy of regional integration, building on the work of David Mitrany. Neo-functionalists focused their attention upon the process of integration among states, i.e., regional integration. Initially, states integrate in limited functional or economic areas. Thereafter, partially integrated states experience increasing momentum for further rounds of integration in related areas. This "invisible hand" of integration process has been termed as "spill-over" effect by the neo-functionalist school. There is also a possibility that the integration can be resisted, but it becomes harder to stop once it progresses. (Haas 1958: 514-518)

According to neo-functionalists, there are two kinds of spill-over: functional and political. Functional spill-over is the interconnection of various economic sectors or issue-areas, and the integration in one policy-area spilling over into others. Political spill-over is about the creation of supranational governance models for which the European Union and the United Nations Can be taken as examples.

Jean Monnet's approach to European integration, which aimed at integrating individual sectors in hopes of achieving spill-over effects to further the process of integration, is said to have followed the neo-functional school's approach. Unlike previous theories of integration, neo-functionalism declared itself to be non-normative and tried to describe and explain the process of regional integration based on empirical data. Integration was regarded as an inevitable process, rather than a desirable state of affairs that could be
introduced by the political or technocratic elites of the involved states' societies. Its strength however was also its weakness because it understood that regional integration was only feasible as an incremental process, its conception of integration as a linear process made the explanation of setbacks impossible.

To understand the evolution of EU environmental studies, relying totally on neo-functionalist framework could lead to a problematic situation. Neo-functionalism implies a unidirectional progression for 'task expansion', which cannot accommodate the environmental sector, notably the recent addition of subsidiarity principle. The subsidiarity principle emphasizes the likelihood of policy reversals, which the neo-functionalists term as 'spill back'. (Corbey 1995). This deterministic outlook concerning EU environmental policy reflects the inadequate theorising of national governments and popular loyalty, (Pentland 1973:85-86) in which internal politics of disagreement becomes the main hurdle. (Peters 1992:115-121) Such disagreement occurs because the national governments fear that regulatory task expansion might erode their national interests. The states become apprehensive about the authority of the non-environmental commission Directorate Generals (DGs), who might interfere in their environmental regulations in policy making. Consequentially, the neo-functional expectation that achievements in more technical environmental policy will 'spill over' into more politically contested environmental issues comes under question. The assumption of the environmental areas are easily separable from the political realm is itself debatable. Therefore, neo-functionalism suffers from a tendency to presume the naturalness of outcomes when reality is far more contingent on varying choices of conscious actors. (Tsebelis 1990:102)

**Neo-realism**

Neo-realism is the dominant paradigm to understand international security, which is recently threatened by environmental issues. It seems to be logical to start from EU security, which has come under challenges due to environmental degradation. However, neo-realism has been a neglected paradigm because of the widespread belief that it is unable to account for cooperation between the EU states and the impact of the EU institutions upon its members. This rejection rests on a flawed understanding of the
paradigm. There is more to neo-realism than the arguments of John Mearsheimer. Mearsheimer is an "offensive" Neo-realist and, as such, he sees the world in a more competitive and pessimistic light than his "defensive" Neo-realist counterparts. Defensive Neo-realists are able to explain cooperation between the EU states and the role of EU institutions better than offensive Neo-realists. Kenneth Waltz, the founder of Neo-realism uses a set of five criteria to determine great power: population and territory, resource endowment, economic capability, political stability and competence, and military strength (Kenneth Waltz 1979:131).

Therefore, Realism is a general approach to international politics, not a single theory. It dates back as far as Thucydides, the chronicler of the ancient Peloponnesian Wars, who wrote, "the strong do what they have the power to do, the weak accept what they have to accept" (Thucydides 1978: 402). Neo-realism draws on Realist core beliefs to build a deductive, social-scientific theory of international politics. Neo-realists base their understanding of the world upon four key assumptions.

First, anarchy (the absence of any common sovereign) is the distinguishing feature of international politics. Without a central authority to guarantee states' security, a self-help system exists, where states must rely upon their own means to protect their interests. In this anarchic international system, security is the highest goal of states.

Secondly, states are the most important actors in the international system. Non-state actors (NSAs), like corporations and multinational organizations, do play an important role, but the state is paramount. Neo-realism is often criticized for overlooking the importance of NSAs as it considers them to be the myth. As Waltz says, "The importance of non-state actors and the extent of transnational activities are obvious." Parsimony is an essential part of the theory, which explains that "States are not and never have been the only international actors. But then structures are defined not by all of the actors that flourish within them, but by the major ones" (Waltz 1986a: 88).

Thirdly, states are rational actors. Robert Keohane's explanation about this particular aspect is important. "To say governments act rationally . . . means that they have consistent, ordered preferences and that they calculate the costs and benefits of all alternative policies in order to maximize their utility in light both of those preferences and of their perceptions of the nature of reality" (Keohane 1986a: 11). Neo-realists
point out that the preferences of states are strongly constrained by the anarchy in the international system, which makes security the most important preference of any state.

Although states are rational, they may miscalculate from time to time because they operate in a world of imperfect information (Mearsheimer 1994-1995: 337).

Fourthly, states are unitary actors. States do not speak to the rest of the world through multiple voices. Although there may be domestic disputes over a particular policy direction, only one policy will be directed internationally (Rosenau and Durfee 2000: 14). For this reason, Neo-realists argue that domestic dynamics are inconsequential for explaining state interaction. This does not mean, however, that analysis must always remain at the structural level. Neo-realism freely admits that, to get a complete explanation of any event, a unit level or individual level of analysis may be used (Waltz1979:126; Buzan 1996:51). In fact, Waltz insists that a complete understanding of international politics cannot be reached without looking at domestic factors.

The proposition is that the central starting point for analysing international environmental politics (IEP) is the anarchic structure of world politics. Anarchy thus refers to the absence of central authority in world politics. The world politics is taken to be composed principally of states- political institutions defined in the conventional Weberian sense. It functions in terms of their ‘legitimate monopoly of violence within a given territory’- more commonly in IR referred to as the condition of sovereignty. States thus recognize no authority over them which can legitimately impose its will on them, and also recognise each other as sovereign in that sense.

By contrast, environmental degradation is typically transnational. ‘The earth is one, the world is not’, runs a standard assumption behind much environmental analysis. In this, the environment is similar to many other aspects of world politics, which cannot be neatly bound to territorial states and their various spheres like the economy, telecommunications and religious movements. As a consequence, IEP can also be defined in terms of the collective action to resolve problem like how do sovereign actors interact when they face some crisis, which cannot be individually resolved but need to be addressed with mutual consideration.

Realists tend to argue that the structural overhaul of world politics is simply impossible to achieve because states will not cede authority to any such global institutions (Bull
1977:293-295; Shields and Ott 1974). Therefore the world is for realists 'doomed' to un-sustainability and crisis. On one hand, on specific environmental problems, sufficient cooperation will never be achieved, as individual state interests prevent such cooperation from emerging. On the other hand, environmental degradation gets nationalized, resulting in the emergence of environmental security discourse. Even though IEP has a range of meanings, the origin of this discourse is the realist assumption that states are the primary actors and their principal motivation for action is individual state interests. Accordingly, environmental security refers to the attempt to overcome the anarchy that prevails in the environmental sphere by rendering national interest behind.

New-institutionalism

New-institutionalism has been the mainstay of much analysis in IEP since the late 1980s. Institutionalists agree with realists that an overarching change in organising the principles of world politics is impossible to achieve, but disagree with realists concerning the implications of International anarchy. The starting point is a critique of realist accounts of collective action problems, especially developed theoretically in terms of game theory. The principal theoretical development, most famously by Robert Axelrod (1984), was to show that the standard model of Prisoner's Dilemma (PD) was entirely consistent with substantial co-operation between actors. If one assumes that the game was iterated allowing strategic interaction ('tit for tat', or conditional cooperation strategies) to elicit cooperation from other actors, and that communication between both actors may generate trust. Both the actors are absent from the classical PD situation articulated by realists, but they are present in most situations of international cooperation, including environmental questions. Liberal institutionalists then strengthen this argument by arguing that states act as 'absolute gains maximizes' rather than 'relative- gains maximizes'. (Keohane 1989) Thus the potential 'zone of agreement' is much larger than the single point assumed by realists focusing on relative gains. If 'cooperation under anarchy' (Oye 1986) is possible, a further consequence is that the role of institutions is significantly greater than realists accept.
For realists international institutions are fundamentally epiphenomenal, while for liberals they can play noteworthy roles in forging cooperation between states, acting as entrepreneurial leaders, helping to find points of agreement, reducing transaction costs, facilitating information flows, building trust, and so on. None of these alter the fundamentally state centric nature of international politics for institutionalists, but they are significant in promoting interstate cooperation. This is the case even when some analysts (Haas 1993; Ostrom 1990; Young 1997a) appear to make the institutions themselves the focus of the analysis. These institutions are for them fundamentally interstate institutions which arise because of the logic of anarchy.

A new institutionalism approach clarifies the complex relationship between EU actors at the supranational, national and sub national levels and how those shape environmental policy. This approach accepts the importance of agenda setting as well as the ability to veto actions. The perspective explains 'task expansion' in terms of organizations enhancing their institutional mandates, which define their worldviews (Peters 1992:115-21). Therefore a new institutionalist explanation of EU environmental task expansion suggests that institutional actors in the European Parliament and other organisations seek to fulfil their mandates and carve out a larger role for themselves by expanding the quantity of environmental regulation (Judge 1993). Another institutional-based explanation of the EU policy process, principal-agent analysis, suggests that these motivations will lead to complex relationships between the institutions (Pollack 1997). In creating the EU treaties the member states delegate power to the commission to perform certain regulatory tasks, such as protecting the environment, that are better performed at the EU level than within the individual member states. These institutional interpretations differ from neo-functionalism as they do not presume an integrationist motivation on the part of EU actors.

Although institutionalists’ perspectives provide necessary insights into the EU political system, but their ability to explain EU task expansion remains limited. Institutional analysis emphasizes the role of formal institutional bodies, but opposed to the informal networks like civil society, media and NGOs. Institutional approaches are good at explaining why certain decisions recur over time, they are however less able to explain non incremental policy change. (Pollack 1996:453-454) The institutional explanation focuses on how the EU institutions exert pressure for change and on how to take new decisions.
Intergovernmentalism

Intergovernmentalist theory contains more sophisticated accounts of the domestic political process shaping national preferences and other factors (Moravcsik 1993: 486-7, 514-5). A realist-intergovernmental approach highlights national governments and interests seeking integration on certain issues and pushing the process forward. It also notes the importance of external pressures, particularly independence and the national governments ability to learn to co-operate to protect national interests (Taylor 1975: 338-47).

Intergovernmentalism remains a powerful, relatively parsimonious explanation of EU environmental task expansion. It recognizes the importance of external pressures, economic independence, the critical influence exerted by member states in the EU process (especially in the council of ministers) and linking of the national political process to the EU system. For intergovernmentalists, task expansion occurs when the member states agree that the co-operative environmental policies are mutually beneficial, based on an assessment of their own domestic political concerns and transnational environmental pressure.

Few EU environmental policy studies rely solely on intergovernmental's framework for their explanation. Current versions of the intergovernmentalism emphasize the policy impact of treaty renegotiations (Moravcsik 1993: 496-9), although they have been applied in day to day process of environmental policy making (Golub 1997: 4). However, intergovernmentalism underestimates the role of actors in defining problems and shaping agendas. It also plays down the influence of non-state actors and small EU states in furthering task expansion (Peters 1994). Although we can't ignore the ultimate council veto, many key moments in the policy-making process occur before the decision is taken. It constrains national actors later in the process. Even when the member state governments make a determined effort to control the process, they may not be able to manage the future implications of these decisions. It happens due to several factors like the restricted time horizons of actors and some unintended consequences (Pierson 1996: 131-43). Moreover, autonomous EU institutions like the European Parliament constrain the member states’ ability to table some issues for the legislative procedures. (Garret and Tsebelis 1996: 285-94; Golub 1996a: 330-5)
Ideational-Epistemic Approach

This perspective states that ideas and knowledge influence actors to redefine their interests and policies. This approach considers idea as a tool, which serves as a road map for actors to define their interests in policy making (Goldstein and Keohane 1993:12-13). An agency is also needed to defend the ideas and arguments for which scholars suggest of epistemic communities. The epistemic community is a policy network organized around shared causal beliefs, especially in areas involving a high degree of policy complexity and uncertainty. (Haas 1992:3) Any agency belonged to the communities can make use of those ideas only after securing the position of authority within decision-making process. (Haas 1990:226-31)

The community focuses on the formulation of the actors' interests in times of uncertainty. It can be better understood when the EU goes for agenda setting during policy making. There is no scope for institutional bargaining here. (Raustiala 1997: 507-8) Nevertheless, ideational approaches clarify how substantial policy change occurs and how interests evolve over time. In the sphere of environmental policy making, important scientific knowledge about pollution and new ideas such as sustainable development may alter actor interests, convincing them to incorporate more EU regulations which in turn spark further task expansion.

The role of ideas has begun to gain some prominence in European environmental studies. (Lenschow and Zito1998; Weale1992). The perspective faces some difficulties as well, particularly about the ambiguous distinction between ideas and interests and whether interests follow ideas or vice versa? The receptivity of policy actors to ideas may remain a function of their perceived interests (Litfin1994:186-8). Policy uncertainty may lead policy-makers to interpret the knowledge in different ways, as opposed to the following approach - again raising the question of actor agency and individual interest. The epistemic community approach is an attempt to explore the question of agency in policy analysis. It also recognizes the potential international scope of ideas. However, the narrow criteria of what constitutes an epistemic community suggest that other vehicles also translate ideas into the EU policy process. (Zito 1998)
Europe, European Integration and Its Enlargement

Since the Second World War international politics has witnessed the emergence of a new political phenomenon: the co-operation and integration of states on 'regional' scale. The prime example among these regional groupings is the EU. In the process of regional integration, the EU has gradually become an important factor in the domestic as well as foreign affairs of the member states. The process of formation of EU began in 1952 through a series of international treaties among the ‘original six’ (Italy, Belgium, France, Netherland, Germany and Luxemburg) member states. It has since expanded to include most of the European continent including the most recent inclusion of Bulgaria and Romania. There were numerous influences leading to the creation of this nucleus of supranational governance. Firstly, condition of physical, economic and social devastation in post war Europe, secondly, the division of Europe in the course of the Cold War and thirdly, the desire among western powers, especially the USA to strengthen Western Europe economically and politically. The most visible driving force at that time, and for most of the EU’s history, has been the reconciliation between France and Germany, of which European integration has been both a consequence and a guarantee.

Earlier the regulation was in the specific sectors of the economy (coal, steel, agriculture), but over the time the European institutions have been entrusted with responsibilities of an increasing range of tasks. At the end of the twentieth century, these included monetary policy, the protection of human rights, and co-ordination in foreign policy and military security, thus encroaching on what may regard as the core of state sovereignty.

These responsibilities have also increased its role in the international affairs. The EU’s power to negotiate external trade agreements went hand in hand with the establishment of customs union in the 1960s. But in the 1970s came the first attempts to co-operate in foreign policy matters for the member states- an ambition that was upgraded to a ‘Common Foreign and Security Policy’ (CFSP) of the union in 1992 Maastricht treaty. The same treaty also contained plans for a single European currency- the Euro-that was launched at the beginning of 1999.
Since the end of the Cold War the perspectives for European integration have changed fundamentally. With the Iron Curtain gone, an originally western European project has received a pan-European dimension. Central and East European states, as well as Malta and Cyprus, joined the EU in 2004, and the resulting challenges of a ‘wider European Union’ has raised fundamental questions of the nature and direction of the integration process. The ‘Eastern Enlargement’ has generally been seen as a qualitative leap for the EU to transform it in a more promising manner. Concerns writ large that the enlarged Union, if not reformed substantially would find it difficult to take decisions and maintain a reliable legal framework led to several attempts to reform the treaties.

Until the late 1980s, the process of European integration was associated most often in the public mind with economic and agricultural matters. The issues that drew the attention of policy makers and the media even if the public was often less than thrilled included subsidies to farmers, the promotion of free trade, competition policy, battles over the budget, harmonization of standards and the role of the European Community in international trade. For no particularly logical reason, a number of social scientists described these as matters of ‘high’ or ‘hard’ policy.

Since the early 1990s, the balance has shifted. The debate over European integration has expanded to incorporate a broader set of so-called ‘soft’ or ‘low’ policy areas such as consumer affairs, regional policy, development aid, social policy, technology and the environment. The change in focus came partly out of a new awareness that economic integration demands cooperation in a broader variety of policy areas than those originally envisioned by the authors of the Treaty of Rome.

The effect of European Integration has been to reduce the differences in the approaches taken by the member states, and to compel them to move more towards a common definition of environmental problems and of the best ways of addressing them. It has had at least four key effects on the domestic policies of the member states:

- They have had to think much more about such issues in supranational terms, with the common European interest replacing multiple tests of national interests as the key driving force in their considerations. The need to build a single market has compelled them to work cooperatively both on defining problems and on agreeing responses to such problems.
They have had to adopt the same institutional, legal and procedural responses to these problems. There are 15 sets of national institutions, and the items on national environmental agendas are occasionally different. For example: the British have their concerns with nature and wildlife, the Germans have their concerns with forests, the older industrial region have their concerns with urban renewal, the southern states have their concerns with the condition of the Mediterranean, and so on. However, where universal problems have been identified, universal responses have been adopted under the guidance of EU law, thereby bringing the policies of the member states much more closely into alignment with one another.

They have had to become used to multi-level governance in the formulation and implementation of environmental policies. Not only they have had to reach agreement among themselves, but they have also had to reach common agreement in the face of demands made by the extra-European actors in negotiations on such issues as global warming and trade in endangered species of wildlife.

They have become subject to far greater external pressures, their policies now being driven by the compromises reached as a result of discussion among the member states, rather than as a result of domestic debates among interested parties, notably industrial and agricultural interests. Policies are driven by differences in the economic priorities of richer and poorer states, by the need to build the infrastructure needed to promote the Single European Market, and by the cumulative interests of national and pan European Interests groups.

The response has been remarkable. By the end of 1999, the EU had published five environmental action programmes, adopted nearly 850 pieces of environmental laws, published numerous green and white papers, created a European Environment Agency to improve the quality of data gathering, established a green forum to promote non-governmental input into policy-making, run several programmes designed to finance environmental protection, and developed strategic approaches to problems in several key policy areas, including air and water quality.
What is Environmental Policy?

The institutions of the European Union have an odd notion of the meaning of the word 'environment'; for instance, the way in which responsibilities have been divided among the directorate general of the European Commission while the environmental DG(EDG) is responsible for the most of the issues conventionally defined by the national policy makers as 'environmental' (such as air and water pollution, and waste management), fisheries conservation as part of the remit of the Fisheries DG, forestry and the control of pesticides are the responsibility of the Agricultural DG, and organic farming comes under Health and Consumer Protection. At the same time, EDG is responsible for a number of issues which are not 'environmental' as the term is conventionally understood at the national level, including noise pollution and civil protection. So since the inclusion of the word 'environment', it has been in debate and get defined according to the sectors it has been attached to.

A search through EU documents for a definition of 'environmental policy' raises as many questions as it answers. For example, the annual Directory of Environmental Legislation in Force (Published by European Commission) is restricted mainly to legislation generated by the EDG. The EDG has been responsible in the past for consumer credit, cancer prevention and the control of narcotics. At the same time, the directory excludes law on fisheries management, energy conservation and agricultural, apparently these are matters which come under the aegis of other DGs. A search through EUR-Lex directory of EU legislation adds to the confusion. The pages related to environmental policy list the EU's activities on areas like waste management, air quality and biodiversity, but exclude its work on fisheries conservation, forestry and the control of pesticides.

These idiosyncrasies are reflected in studies of European environmental policy, most of which selectively focus on the issues dealt with by the EDG, while largely ignoring those dealt with by other DGs. The advice they provide is sometimes contradictory, often incomplete, and occasionally eccentric. For example, John Salter's guide to EU environmental law includes secondary 'environmental' laws dealings with such matters as the control of animal and vegetable diseases, the acidity of wine, and even television and broadcasting (Salter 1995). Ludwig Kramer argues that environmental issues include the protection of archaeological heritage (Kramer 1995 :41). Richard Macrory
suggests that the regulation of pollution and the protection of wildlife should be described by many environmental lawyers as their ‘core concerns’. It is also clear that many other areas of law- such as health and safety at work, land use planning and consumer protection- have ‘substantial environmental implications’, and that ‘the principles upon which apparently unconnected areas of law, such as competition or trade law, operate may be far from neutral in their potential impacts on the environment’. (Macrory 1996:3)

The problem to finding a suitable definition is the consequence of the manner in which the European response to environmental issues has evolved. The response was driven less by a rational attempt to understand and resolve environmental problems, but more by the often reactive and improvisational manner in which the interests and priorities of European integration developed. Community activities on the environment were initially driven by a desire to remove barriers to free trade and to protect human health. The community was active on issues such as air and water pollution, the control of chemicals and pesticides, and the conservation of fisheries, but was less active on issues such as forestry, land and soil management, or energy conservation, none of which were raised in the early debates over free trade. In some cases, policy priorities were determined by institutional accident; for example, the high level of EU activity on chemical policy is explained in part by the fact that European environmental laws were initially developed in the Directorate General of the European Commission responsible for industrial affairs, thus chemicals were very much a part of the programme to develop a common policies on industry from the outset.

In a sense, trying to define the parameters of the environment is an exercise in futility, because almost every activity in which human take part and governments take an interest- particularly agriculture, industry, transport, energy, rural development and urban development- has an environmental element. As the European Green Forum puts it,

"There is no such thing as ‘environmental sector’. Pollution and other types of damage to the natural environment and human health take place in the real sectors of the society such as agriculture, industry and transport. Successful policies leading to sustainable development will have the potential to benefit the whole of society. This will require the full participation of stakeholders in all sectors”. (Statement on environmental integration to the 1998 Cardiff summit of the European Council, DGXI Web page, 1998)
However, it is important to be clear about the meaning of ‘the environment’ for three main reasons:

- According to the Single European Act (SEA), ‘environmental protection requirements’ had to be integrated into all the other activities of the EU. This cannot be done effectively unless it is understood just when and where the environment needs protection, what kind of activities have or do not have an environmental component and where the responsibilities of the EDG begin and end.

- The EU institutions must work with national and local administrative agencies that have their own understanding of the term. If the three levels have different ideas about the parameters of environmental policy, effective coordination and co-operation will be difficult to achieve.

- No analysis of EU environmental policy can be complete unless the parameters of that policy are fully understood and unless the activities of the EU in all the areas conventionally defined as being part of ‘environmental policy’.

For the purposes of the chapters that follow, ‘the environment’ is defined as the natural surroundings in which humans exist and the natural resources on which they depend. ‘Environmental issues’ are those which deals with the impact of human activities on those surroundings, those resources and on human themselves. ‘Environmental policy’ are actions deliberately taken or not taken by the government with the aim to manage human activities in order to prevent harmful effects on nature and natural resources while ensuring that man-made changes to the environment do not have a harmful effect on humans.

*The EU’s Environmental Policy, 1957-1987*

The environment was an unidentified policy agenda before European integration. It is often stated that, prior to 1973, there was no European Communities (EC) environment policy. In principal this fact is correct. Nevertheless, a number of pieces of environmental legislation had been adopted during that period. For that reason and in order to present a historically and analytically complete picture, the entire period will be assessed here. In the beginning it is necessary to ask two questions. First, how did the EC’s environment policy evolve? Second, what all factors were responsible for the
evolution of this? At a time when the EC's environmental policies are increasingly being followed by the public, private co-operations as well as various interests groups (Sands 1990: 2), it is important to gain a thorough understanding of the historic evolution of European environmental policies as a whole.

The legal instruments that the relevant community institutions are equipped with, 'in order to carry out their task' have a significant importance in making the policies. They are applicable to all issue-areas within the competence of the EC and have been not changed by the amendments introduced by the SEA or the Maastricht treaty creating the EU. The article 189 of the European Economic Community (EEC) treaty sets out five different types of legal instruments. The first paragraph states: 'In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this treaty, make regulations, issues directives, take decisions, make recommendations or deliver opinions.' the last two have no binding force and should therefore not 'properly be regarded as legislative instruments' (Haigh 1990:2).

A regulation has general application and is 'binding in its entirely and directly applicable in all member states' (Article 189/2). It has generally been used for precise purposes such as financial matters or the daily management of the Common Agricultural Policy (CAP). Only rarely has it been used for environmental matters. (Haigh 1990:2) A directive is 'binding, as to the result to be achieved', while it leaves it to the national authorities as to the 'choice of form and method' (Article 189/3). According to Nigel Haigh, 'it is therefore the most appropriate instrument for more general purposes particularly where some flexibility is required to accommodate existing national procedures and, for this reason, is the instrument most commonly used for environmental matters' (Haigh 1990:2).

Finally a decision is, 'binding in its entirety upon those to whom it is addressed'. (Article 189/4). With respect to environmental protection, decisions have been used in connection with international conventions and with certain procedural matters.

For analytical purposes the above period can be divided into two different phases. The first one begins with the entry into force of the Treaty of Rome and the establishment of the European Economic Community in 1957 and ends in 1972 with the Stockholm Conference on the Human Environment. With the approval of the first Community
Action Programme on the Environment by the Council of Ministers in November 1973, the second phase begins which, according to this chronology, lasts until the adoption of the SEA in Luxembourg in December 1985. On 17th and 28th February the SEA was signed in Luxembourg and the Hague and, after ratification by the 12 national parliaments (and referenda in Denmark and Ireland). It came into force on 1st July 1987.

Phase I: 'Incidental' Policies, 1957-1972

The three European Communities began their journey as experiments in economic integration, with relatively narrow and specific objectives. The primary aim of the six founding member states was to establish a ‘common market’ in which goods, peoples, services and capital could move without obstacles. (Article 3) When the Treaty of Rome, establishing the European Economic Community (EEC), was signed on 25th March 1957, it did not include any explicit reference to the ideas of environmental policy or environmental protection. As Rolf Wagenbaur has pointed out that there are two articles in the original treaty that can be regarded as the direct instrument.

According to him, ‘the ambitions of the founding fathers went far beyond’ the objective of the common market (Wagenbaur 1996:16). First, Article 2 of the Treaty of Rome calls for the promotion throughout the community of “a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the states belonging to it”. The Community institutions tend to interpret this mandate to include not only an improved standard of living but also an improved quality of life (Rehbinder and Steward 1985:21). Although this interpretation which suggests that environmental protection might be among the Community’s objectives, is not uncontroversial, the general view of the literature seems to be that it is “reasonable to interpret the Preamble and Article 2 of the EEC Treaty as including economic concepts of environmental pollution, such as those of external cost and of the environment as a common good” (Rehbinder and Steward 1985:21).

Second, Article 36 refers, at least implicitly, to the protection of the environment. It states that it is justifiable to restrict imports, exports or goods in transit on grounds of
“public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value.” In both cases therefore exists a certain obligation to safeguard the environment. However, given the very general phrasing of Article 2 and the negative provision of Article 36, allowing for trade restrictions for reasons of public health and the protection of humans, animals and plants only a derogation from the supreme principle of freedom of exchange, it is obvious that the ‘common market’ and the four ‘freedoms’ that constituted the core of the Treaty’s objectives (Wagenbaur 1990:16). Within this context it is worth noting that the European Court of Justice made an attempt to define the substance of the common market, stating that it involves “the elimination of all obstacles to intra-Community trade in order to merge the national markets into a single market bringing about conditions as close as possible to those of a genuine internal market.” Again, there is some room to perceive environmental protection as being related to the objective of such common market but only in so far as it touches upon intra Community trade obstacles, particularly non-tariff barriers.

In the beginning, EC environmental legislation was therefore accounted to a twofold restriction. First, there were no explicit, formal legal provisions to support any Community-wide action and, second, whatever action could be taken under the available general provisions had to be directly related to the objective of economic and community harmonisation. (Mcgrory 1990: 304). This meant that the pace of the environmental protection was essentially set by strongly environmentally-oriented member states as opposed to anyone on the Community level.

Due to the uncertainty about the jurisdictional basis for community environmental protection measures, the community institutions have, at least until the SEA, based their environmental policy primarily on Article 100 and, to some extent, on Article 235 of the Treaty of Rome. Article 100 authorizes the Council, provided it acts unanimously, to ‘issue directives for the approximation of such provisions laid down by law, regulation or administrative action in member states as directly affect the establishment or functioning of the common market.’ Article 235 is also based on unanimous decision. It accords the council the authority to take ‘appropriate measures’ to ‘attain in the course of the operation of the common market, one of the objectives of the community where the ‘treaty has not provided the necessary powers’ to do so.
Therefore, the ‘justification for using these two articles as the foundation of a deal common environmental policy depends ultimately on basic Community goals’ (Rehbinder and Steward 1985:20). According to Article 3 of the EEC Treaty, “approximation of the laws of the member states’ is to promote the proper functioning of the common market and the Community’s objectives set out in Article 2”. (Rehbinder and Steward 1985:20) The use of Article 235 was essentially dependent on a generous reading of Article 2. To sum up, while politically it was possible to use Article 100 and Article 235 for environmental objectives, these provisions as Rehbinder has pointed out, were originally,

“designed to give Community institutions powers to ensure the establishment and functioning of the Common Market as an economic institution and were not aimed at environmental protection as such.” (Rehbinder and Steward 1985:16)

Though there is a lack of coherent framework, the council passed several concrete pieces of environmental legislation prior to the First Action Programme on the environment. From 1964 to 1975 a number of initiatives were adopted under Article 30, 92, 93 and 95 of the EC Treaty to prevent excessive subsidisation of the regeneration or incineration of used oil (Rehbinder and Steward 1985:16). In 1967 a directive was used for the first time to deal with environmental matters, establishing a uniform system of classification, labelling and packaging of dangerous substances. The jurisdictional basis for Directive 67/548 was Article 100 of the Treaty of Rome.

In 1970, Directives 70/157, regulating permissible sound level and exhaust systems of motor vehicles, and 70/220, limiting vehicle emissions, were again passed with reference to Article 100 of the EEC Treaty, while Regulation 729/70 with respect to country side protection in agriculturally less favoured areas was based on Article 43 and 209. In 1971, the only ‘environmental’ directive that was passed extended the deadline for the implementation of the 1967 directive on dangerous substances. In the last year of the first phase, the council passed three directives that can be considered to have an environmental impact, two of which were related to agricultural issues and therefore took their jurisdictional basis from article 42 and 43 of the EEC Treaty. Directive 72/306, regulating vehicle emissions caused by diesel engines, once again referred to Article 100.
As a result, there were not altogether the absence of environmental measures during the first 15 years of the EC’s history; they cannot be regarded as adding up to any sort of proper and coherent policy. Only nine directives and one regulation were adopted during that time and, on the whole, these measures were incidental to the overriding economic objective. (Mcgrory1990:304) This is reaffirmed by the fact that all ‘environmental’ directives, with the exception of the ones pertaining to agriculture, were adopted on the basis of Article 100 and thus perceived as approximation measures with respect to the ‘establishment or functioning of the common market’.

During this first phase, there was no institutionalization process in terms of environmental protection. A limited number of pieces of legislation were passed but these were not based on an established set of rules pertaining to the protection of the environment. In fact, the issue area of the environment did not yet exist per se. It was therefore impossible for the participants to perceive their behaviour as a reflection of a set of rules within this issue area.

Phase II: The Environment Revolution, 1972-1986

The second phase in the evolution of community’s environmental policy starts with the Paris Conference on 19 and 20 October 1972. In Versailles, the meeting held among the founding six members and newly member states (United Kingdom, Denmark and Netherland) by calling upon the institutions of Community to provide them with a legal sanction for an official EC environmental policy by 31 July 1973. As there were political, social and economic changes taking place, the environment has also attracted the political as well as public attention. The work of the Club of Rome- published as - *The Limits to Growth* (Meadows et al., 1972)- concluded that the roots of the environmental crises lay in exponential growth, and that the exhaustion of resources would lead to catastrophe, a point that was briefly underlined by the economic and energy crises of 1973-74.

With this new focus on qualitative political issues, it was not surprising that there should be public concern about environmental deterioration. To the extent to which human activities had caused systematic problems with potentially harmful consequences for almost everyone in industrialized societies had already been illustrated in 1962 in the publication of *Silent Spring* by Rachel Carson, which drew public attention to the harmful effects of chemicals pesticides and insecticides.
A political focus for the new interests in the environment was provided by the 1972 United Nations Conference on the Human Environment; held in Stockholm. For the first time, representation of a substantial number of national governments (113 in all) met to discuss the problems of the environment, and agreed that the scale of such problems was worsening, and that the need for international cooperation in formulating a response was growing (McCormick 1995: 75-85).

Phase I (1957-72)

1959- Passage of first Euratom environmental law (Directive 59/221)

1967- Passage of first EEC environmental law (Directive 67/548)

1972- (June) United Nations Conference on the Human Environment, Stockholm; (October) EEC heads of government agree that Community environmental activities should be accelerated

Phase II (1973-86)


1974- Creation of the European Environmental Bureau

1977- Adoption of Second Environmental Action Programme (1977-81)

1980- Court of Justice decision Commission vs. Italy (91/79) upholds validity of using Article 100 of Treaty of Rome as justification for community environmental law

1981- Creation of DGXI

1983- Adoption of Third Environmental Action Programme (1982-86); barrels of waste from Seveso accident found

1984- Creation of COE, first community environment fund

1985- Court of Justice decision Procureur de la Republique v. ADBHU (240/83) confirms that environmental protection is one of ‘essential objectives’ of the community; European Council confirms importance of Community environmental policy; Creation of CORINE

Table 2.1: Phases of Environmental Laws in EU

The Commission forwarded a ‘Programme of environmental action of the European Communities’ to the council on 17th April 1973. Pursuant to the commission initiative
the First Community Action Programme (EAP) on the Environment was formally approved by the council and by the representatives of the member state on 22 November 1973. The programme must be regarded as a landmark in the evolution of Community environmental efforts. It marked the beginning of an actual policy, which set the objectives, stated the principles, selected the priorities and described the measures to be taken in different sectors of the environment for the next two years. As Eckhard Rehbinder states, it "opened up a field for community action not originally provided for in the treaties" and accordingly to the Commission, "added a new dimension to the construction of Europe" (Rehbinder and Steward 1985: 17-18).

The objective of the first EAP was ‘to improve the setting and quality of life, and the surroundings and the living conditions of the Community population’. In order to achieve the objective, the Council adopted 11 principles, determining the main features of the policy. Three significant principles in this whole lot are firstly, the emphasis was laid on preventive action. Secondly, it was asserted that ‘the expense of preventing and eliminating pollution should, in principle be borne by the polluter’.

Finally, the programme stipulated that ‘for each different type of pollution, it is necessary to establish the level of action’ befitting the type of pollution and the geographical zone to be protected. In this scenario, the Commission meant that it had the authority to act ‘whenever lack of action would thwart the efforts of more localized authorities and whenever real effectiveness is attainable by action at Community level. Generally, the First EAP called for measures in three different categories: the reduction of pollution and nuisances as such; the improvement of the environment and the setting of life as well as the joint action in international organizations dealing with the environment. The second category of measures essentially fell under common policies, such as the common agriculture policies (CAP), social policy, regional policy and the information programme.

It was followed by the Second EAP in 1976, covering the period of 1977-86. The journey from First EAP to the Second EAP coincided with the publication of the first report, by the commission, on the state of the environment in the Community, as provided for in the 1973 programme, reviewing all the environmental measures taken up to the end of 1976. The aim of the Second EAP was to continue and expand the actions taken within the framework of the previous one. Special emphasis was placed
on reinforcing the preventive nature of Community policy. Furthermore, the programme paid special attention to the non-damaging use and rational management of space, the environment and natural resources. With respect to the actual reduction of pollution, the programme accorded special priority to measures against water pollution.

Prior to the adoption of the Third EAP in 1983, the second EAP was extended by one and a half years. Due to the problems of institutional transition caused by the accession of Greece and the upgrading of the Environment and Consumer Protection service to a Directorate General for environment, Consumer Protection and Nuclear Safety, the extra time was needed to make the necessary adjustments (Rehbinder and Steward 1985:18).

The continuity of Community environmental policy was assured on 7 February 1983 when the Council adopted a resolution on a Third EAP covering the years 1982-1986. While the Third EAP certainly remained within the general framework of the policy as outlined in the previous two, it introduced a number of new elements. Mainly, it asserted that, while originally 'the central concern was that, as a result of very divergent national policies, disparities would arise capable of affecting the proper functioning of the common market,' the common environmental policy is now motivated equally by the observation that the resources of the environment are the basis of but also constitute the limit to further economic and social development and the improvement of living conditions. It therefore advocated 'the implementation of an overall strategy which would permit the incorporation of environmental considerations in certain other Community policies such as those for agriculture, energy, industry and transport'.

According to resolution, the EC environment policy could, in fact, no longer be disassociated from measures designed to achieve the fundamental objectives of the Community.

This acceptance of environmental policy as component of the Community's economic objectives was fundamental as it was the first attempt to do away with the clear subordination of environmental concern vis-a-vis the overriding economic goal of the common market. Admittedly, the wording of the resolution was carefully chosen. The Third EAP had clearly gained in terms of its political status. Between February 1983 and the adoption of the SEA in December 1985, over 40 directives, eight decisions and ten regulations that all had at least some regard to the environment were adopted by the Council.
Overall, EC environmental ‘legislation’ between 1973 and 1985 re-emphasizes on Community institutions’ engagement with a considerable amount of environmental activities, while the available legal foundations remained limited. There was no jurisdictional mandate for the protection of the environment; the community therefore proceeded with its environmental efforts on the basis of what Ernst Weizsacker has called a ‘Kunstgriff’ or Knack, using Article 100 and 235 of the original EEC Treaty. This is, of course, the most fundamental difference with respect to the present phase of the community environmental policy as it has been unfolding since the adoption of the SEA.

In the end, this second phase, the institutionalisation process mentioned at the outset is becoming discernible. Member states have begun to understand that certain collective actions are necessary in order to address a more or less specific set of problems in the newly defined issue area of the environment. However, the environment does not stand on its own feet yet. It is still at least partly subordinated to the paramount objective of the economic growth. Although explicit rules exist in the form of the various directives passed, their ability to follow the prescribed behavioural roles, constrain activity and shape expectations is limited because of the absence of an ambiguous legal foundation. Despite ongoing gradual process of institutionalisation, no proper EC environmental regime can therefore be in place. Though explicit and agreed upon by the member States’ governments, the rules in fact remain weak and exert little independent compliance pull. Within this context the conclusion imposes itself that the institutionalisation process of the EC’s environmental policy, notwithstanding the above-mentioned weaknesses, has progressed far enough to warrant the description of an international environmental regime.

It may be argued in the conclusion that these different theories examine the EU’s Environmental Policy in all its weaknesses and strengths. The pulls and pressure were so formidable that even the slow pace of clustering of the agreement Environmental Policy had not been able to make them into a legal framework until the 1987 Act of EU. The EAP’s were also important steps in the formulation of an environmental law, which later on become a mandatory condition for any country to become a member of the Union.