

Robert Schuman Centre for Advanced Studies

Development of Environmental Policies in the United States
and Europe: Convergence or Divergence?

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Robert Schuman Centre for Advanced Studies

BP Chair in Transatlantic Relations

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I. DIFFERENT POINTS OF DEPARTURE¹

Active protection of the environment began in both the United States and Europe in the 1960s, though many measures in the area of water management, nature protection, town and country planning, and waste management were adopted earlier. The political, legislative and administrative actions in the years following the publication of Rachel Carson's famous book *Silent Spring* led, on both sides of the Atlantic, to more organized, deliberate and planned measures which, since that time, have come to be grouped under the term "environmental policy".

Yet this coincidence in time clouds the fact that the points of departure for the United States and Europe were completely different. Indeed, in the 1960s the European Union² did not even exist by its present name, and the underlying argument of this paper is that a comparison between the United States and "Europe" does not do justice to the European integration process nor does it help to facilitate understanding of present or future developments.

When the United States started to develop an active environmental policy, it was a sovereign nation state which possessed all the constitutional, institutional, economic, and political requirements to conceive and implement a coherent and consistent environmental policy at home and abroad. However, until the 1960s water and air issues were mainly dealt with at the level of the individual states within the U.S. Growing public concern about environmental pollution caused Congress to adopt federal air pollution legislation in 1965 and 1967 which was considerably reinforced by the Clean Air Act Amendments of 1970 which were, in later years, extended and finetuned. A similar development occurred in the water sector: relatively soft federal provisions of 1965 were considerably sharpened and "federalized" by the Federal Water Pollution Control Act Amendments of 1972. President Richard Nixon established the Environmental Protection Agency (EPA), which received powerful and comprehensive regulatory implementing and enforcing functions from Congress. Responsibility for other parts of environmental policy was also largely in the hands of Congress: product and process legislation was traditionally dealt with by Congress under the Interstate Commerce Clause. The fact that the federal government owned about one-third of the land in the United States facilitated the taking of nature conservation measures, without serious interference with private property or the prerogatives of the states. Furthermore, Congress had the power to levy taxes and charges and used it to introduce pollution taxes and subsidies, in particular for state environmental measures. Overall, since the end of the 1960s, a number of strong, extremely detailed and prescriptive legislative instruments have been adopted, which, together with

federal executive institutions, have formed the backbone of United States environmental policy ever since.

The European Union was in a quite different situation. It was not a nation, but a supranational joint venture of nation-states (fifteen at present) that could only act where the EC Treaty expressly so provided. Its Member States had very different perceptions and objectives of the European integration process; this, in turn, influenced their attitude to day-to-day Community decisions.

Environmental concerns in Europe developed at the level of EC Member States; they concerned different subjects, with variable intensity, consequences and reactions from the national legislatures and policy makers. The European situation should be compared not with that of the United States but with that of all all the States of Northern and Central America in order to understand the importance of the "sovereignty" of the nation-State. Sovereignty was at the core of all sorts of difficulties that slowed down European integration and consequently the making of common European environmental standards.

The EC Treaty of 1958 did not contain any explicit reference to the environment or to environmental policy; explicit provisions on environmental policy were not introduced in it until the Single European Act of 1987³. Also, the EC Treaty was not — and is not — a constitution for the European Union.

- The Treaty allows the Community institutions — the "federal level" in U.S. terminology — to act only when they are entitled to do so under the Treaty provisions. The basic competence for dealing with (environmental) matters is vested in the EC Member States. While, in theory, this might not be very different from U.S. law, Congress may, in practice, deal with almost all matters of environmental law and policy, in particular as regards pollution control, environmental subsidies, product and production standards, and land use.
- There is no European "Congress". European Community environmental legislation is adopted jointly by the Council of Ministers which is composed of representatives of the governments of Member States, and by the European Parliament, the members of which are directly elected. This means that Member States have a decisive influence on the question of which environmental matters they want regulated at "federal level" and which they prefer to keep for themselves. The European Parliament cannot overturn the Council; and the European Commission only has the right to propose legislation, not to adopt it.

- The European Union does not own land and most EC Member States do not own significant amounts of land either.
- The European Union has practically no income of its own; it receives a fixed percentage (1.27 percent) of the national income of Member States which makes it practically impossible to influence environmental changes within the European Union by economic or fiscal incentives or subsidies.
- The European Union has no power to levy environmental taxes, unless all Member States unanimously agree in Council — which they have not done so far.

To these "constitutional" differences have to be added the political, economic, social, cultural, and environmental differences among the constituent members of the European Union, and the absence of European media (television, press, radio), of a European public opinion, and of a European-wide common interest which could be formulated, promoted or defended at some level.

II. THE PERIOD TO THE MID-1980S

Environmental policy in the United States was marked from the beginning of the 1970s by strong centralization; the adoption of federal legislation concerning air and water pollution, industrial permitting, nature protection and soil clean-up policies; and powerful enforcement mechanisms, in particular via the EPA. During the 1970s, EPA and other federal agencies pursued a vigorous and robust policy of standard-setting and enforcement of environmental standards.

This centralized policy approach, though it might not have been all-embracing and comprehensive, came progressively under attack from sources which favored environmental policy at state level and, more importantly, from economists and regulated businesses. EPA's activity was seen as excessively interfering with the market and not giving due account to economic considerations. In the early 1980s, deregulation was started by the Reagan administration, and while the basic environmental legislation adopted by Congress was not abolished, the regulatory responsibilities of EPA were narrowed and measures taken to return greater responsibility to the states for regulating the environment. President Reagan's Executive Order 12291 required EPA and other federal regulatory agencies to conduct cost-benefit analyses of all regulatory proposals and adopt the most economically efficient or cost-effective alternative. Compliance with those requirements was policed not by the courts, but by the Office of Management and Budget⁴. Also, economic impact assessment requirements and other economic barriers to environmental regulations were established.

The United States was represented in international environmental negotiations by the State Department and the Department of Commerce. Little consideration was given to the creation of a Cabinet-level Department of the Environment or to international representation by the EPA. This fact demonstrates that environmental concerns remained secondary to trade and economic considerations in United States external policy.

European environmental policy developed only slowly, with adoption of specific measures aimed at tackling a specific problem. The first EU environmental directives date from 1975 and dealt with waste oils, the quality of surface waters, wastes and the quality of bathing waters⁵. They were followed by product-related provisions, and subsequently, after the end of the 1970s, by provisions on nature protection and air quality. Industrial accidents and the problem of *Waldsterben* (dying forests), which was attributed to environmental causes, increased public and political concern in Western Europe. This allowed the adoption at EU level of new environmental directives that showed strong concern for health issues, frequently took a preventive approach, and progressively encompassed all areas of environmental policy. Thus, when the EC Treaty was amended in the mid-1980s, there was a general consensus among Member States that provisions for a comprehensive European Community environmental policy should be added. The new Treaty provisions in the Single European Act which entered into effect in 1987 laid down, among others, objectives and principles of environmental policy based on objectives and policies which the European Union and its Member States had agreed to in 1973, underlining thus the continuity and consistency of this policy. Cost-benefit considerations were mentioned, but in the sense that actors should take account of the advantages and charges of environmental action or lack of action⁶.

EU environmental legislation was negotiated not by the Member States' foreign affairs ministries or trade departments, but by the environmental departments that had progressively been established within the Member States since the early 1970s. Because the European Commission, which has a monopoly on initiating legislative proposals under the EC Treaty, also had an environmental department since the early 1970s, environmental matters were, from the very beginning of European environmental policy, kept outside the direct influence of Member States' foreign policy or trade policy, and EU environmental policy was accepted as being autonomous from commercial and foreign policy.

As regards the international level, the European Union had no overall general competence to act. It had responsibilities for commercial matters, but the exact extent and content of this competence was constantly disputed by

Member States which, in the name of national sovereignty, preferred to be represented separately on the international scene rather than as part of the European Union. These differences of view on commercial policy issues favored a development of foreign environmental policy which was independent from commercial policy and general foreign policy.

As a consequence, when the European Union appeared at international level for discussions on environmental matters, it was mainly represented by the environmental directorate general of the European Commission and by (some or all) environmental departments of the EU Member States. In order to find a common European position, long concertations prior to and during international negotiations were necessary, and where a consensus was not reached, the Commission of the European Communities defended what it considered to be the European Union interest, while individual Member States often promoted their own interests. This incapacity of speaking with one voice often irritated representatives of other nations who did not fully understand these consequences of the European efforts to progressively integrate sovereign States into one European Union. In general, prior to 1987 the European Union was almost never noted as being one autonomous body in international environmental negotiations; rather, the larger EU Member States such as France, United Kingdom or Germany dominated the scene. This is why the publications of this period hardly ever mention the European Union's foreign environmental policy and law⁷.

Global environmental conventions prior to 1985 were generally only open to signature by States, not by regional integration bodies such as the European Union. However, European regional environmental conventions increasingly provided for signature by the European Union from the mid-1970s on. The first important convention to provide for the European Union's accession was the Convention on Long-range Transboundary Air Pollution (LRTAP) of 1979⁸. That convention was generated by efforts after 1975 to improve East-West political relations. The European Union had asked to have a clause inserted into the Convention according to which "regional economic integration organisations" could accede to it. The Soviet Union, which was very interested in establishing the Convention, opposed such a clause; thus the United States could not, as a member of the Western camp, oppose it too vehemently! Finally, the Soviet Union accepted the clause and the United States was satisfied to bring the European Union into the East-West dialogue.

However, after 1981 the United States, led by the State Department, changed policy and opposed European Union accession to global environmental Conventions. The U.S. tried for several years to allow such accession only under the two conditions: (a) that the European Union made a precise statement

on the Community competence in the subject-matter dealt with by the convention in question (declaration of competence). This was difficult for the European Union, as its founding Treaty is not a constitution and therefore the repartition of competences between the European Union and its Member States is not static, but evolving; and (b) that a majority of EU Member States had also ratified the convention in question.

The European Union invoked the precedent of the LRTAP Convention and slowly obtained inclusion of the same clause as in that Convention in other agreements. From time to time it made a declaration concerning competence⁹. However, these declarations did not really clarify anything. And the divergence with the United States on the European Union's accession to conventions did not disappear: for instance in 1983 the European Union achieved an amendment to the CITES Convention on trade in endangered species, to allow its accession. The United States was not in favor of this accession and has not, to this day, ratified this amendment; it seems to have encouraged other contracting States not to ratify it either. As a consequence, the amendment has not yet been ratified by the necessary number of contracting parties, so that the European Union cannot adhere to that Convention. While the EU had completely transposed the requirements of the CITES Convention into European law, it was thus formally barred from speaking with one voice at the CITES conferences and neither the United States nor other contracting parties have made particular efforts to improve this unpleasant situation.

Bilaterally, the United States and the Commission of the European Communities exchanged, as early as 1974, letters to promote cooperation in environmental matters¹⁰. It is rather typical that these letters were signed, for the European Commission, by the Commissioner responsible of environmental affairs and for the United States by the Assistant to the Secretary of State for Environmental Affairs in the State Department. The cooperation was to concentrate on the exchange of information on environmental issues. As the United States did not have an environmental department and might have been unwilling to let the Environmental Protection Agency animate this cooperation, the Department of Commerce and the State Department conceived the bilateral meetings from their very beginnings in particular as an exchange of information under trade and commercial auspices. However, such discussions had less interest for the European Commission for which the environmental department was the leading interlocutor. Thus, the bilateral meetings which were organized more or less every two years, focused on matters which concerned potential trade conflicts. Intensive technical cooperation took place in matters such as chemical and air pollution, and useful results were reached. In contrast, hardly any time was devoted to questions of how environmental degradation could be prevented or repaired at national or international level, what lessons were to be

learned from legislation adopted so far, and what new concepts or measures might be developed to combat environmental impairment in the future.

III. THE PERIOD SINCE THE MID-1980S

In the United States, environmental protection measures have mainly focused on the administration of federal statutes and attempts to establish cost-benefit and risk assessment as conditions for federal action¹¹. Divergence of views between the Executive and Congress on basic questions has frequently paralysed legislative measures and prevented innovative new measures.

In Europe, after the Single European Act, the evolution of environmental policy was marked by the re-evaluation of the objectives of environmental policy; continued attempts to integrate environmental requirements into other policy areas such as transport, energy, regional policy, agriculture and industry; greater coherence and covering of new areas of environmental legislation to progressively align national environmental policies; and increasing attention to climate change issues, which gradually became a top political priority. Also, Europe imported tools such as environmental impact assessments, access to information and environmental management systems from the United States; other tools, though, were rejected, such as a "superfund" system for repair of environmental damage, an environmental liability system, and an enforcement agency modeled after the EPA.

On the international scene, when the Vienna Convention on the Protection of the Ozone Layer was negotiated in 1985 under the auspices of UNEP, the European Union achieved, against considerable objections more from the United States than from the Soviet Union, the insertion of a provision into the Convention which allowed accession to the Convention by regional economic organizations¹². As a consequence, the Montreal Protocol negotiations which concerned the restriction of production, use and consumption of ozone-depleting substances, was, for the European side, to a large extent led by the European Community which managed successfully to find common language for all its Member States and to speak with one voice. This joint European position produced a Protocol in which the United States did not fully impose its position, but had to accept considerable concessions. The European Union even obtained a clause which allowed joint implementation of the obligations under the Protocol¹³.

The negotiations on the Montreal Protocol were the first ones at international level in which the European Union and the United States confronted each other on environmental matters. The Member States of the European Union realized that their negotiating position was greatly improved by acting under the umbrella of the European Union and that the collective gain achieved by this approach outweighed the political advantages of each State negotiating for itself. They also discovered that the fact of the the negotiations

being led by the environmental department of the European Commission, together with the EU Council Presidency, did not mean that their national or the joint European economic interests would be neglected.

This outcome encouraged the European Union to appear more frequently in international environmental negotiations with an agreed negotiating mandate and to try to speak with one voice. Despite many setbacks this policy was, overall, successful, due in particular to the following factors:

- The Single European Act (1987) gave the European Union a mandate to contribute to the search for solutions to global environmental problems and clarified that the European Union had the competence to act internationally, both aside from and jointly with its Member States. The new obligation under the EC Treaty to promote a high level of environmental protection within the European Union and worldwide favored efforts to reach environmentally sound solutions in international negotiations; hence the European Union did not try to subordinate environmental interests to commercial or economic interests and did not enter international negotiations with the explicit or implicit concept of agreeing only to solutions that were profitable to the European economy.
- Environmental legislation within the European Union progressively covered more areas, became more coherent and managed to give a political and legal framework to environmental measures in all Member States of the European Union. The former national policies in the area of the environment were thus more and more aligned. The solutions found at European Union level thus served as the basis for positions and compromise proposals that were put forward during international negotiations.
- Europe was normally represented at international environmental conferences, meetings and negotiations by the environmental departments of Member States and the European Commission's directorate for environmental affairs; the Member State holding the Presidency of the EU Council and the Commission acted as spokespersons. This was in marked contrast to the United States, whose delegations were normally led by the State Department or the Department of Commerce, but practically never by EPA, and on which the state-level environmental offices (of California, Texas, etc.) were never represented.

When the Berlin Wall came down in 1989, the Soviet Union collapsed and the countries in Central and Eastern Europe emerged as fully sovereign nations, and the United States remained the only global player. Some cooperation was established between the U.S. and the European Union in Central and Eastern

Europe, particularly in setting up of the Regional Environmental Center for Central and Eastern Europe in Hungary 1990. However, this cooperation remained marginal, as each side tried to promote its own way of life as a model for Eastern Europe, even in environmental matters. While the United States acted much more speedily and efficiently in the beginning, the European Union took a progressively stronger position as countries in Central and Eastern Europe began to seek membership in the European Union and thus started to adapt their environmental legislation and institutional systems to those of the EU. At global level, the European Union got the general impression that worldwide environmental problems were seen by the United States mainly *in terms* of economic globalization. This impression was based on:

- discussions *in* the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in which the United States opposed consideration of environmental aspects;
- negotiations at the Rio Conference of 1992, where the United States rejected precise targets and timetables for greenhouse gas reductions and, more generally, refused to accept broad environmental texts on which to base global environmental measures for the next decade; e.g., the thorough scrutiny of the Declaration on Environment and Development by the U.S. State Department which led to the rejection, by the United States, of the words "precautionary principle" in favor of the words "precautionary approach";
- discussions on the North American Free Trade Agreement (NAFTA), where only strong internal pressure from environmental groups got some environmental considerations incorporated into the Agreement and accompanying Side Agreement;
- the negotiations of various global conventions, in particular the Basel Convention on the shipment of hazardous waste, the Protocols to the Geneva Convention on long range transboundary of air pollution, the New York Convention on Climate Change and the Kyoto Protocol, as well as others. At all these international discussions, the United States was seen as trying to subordinate environmental questions to economy/trade issues and to avoid, if possible, any substantive environmental provisions at all;
- continued attempts by the United States to have points removed from the agenda of the United Nations Environment Programme and to reduce the funds made available to UNEP.

The fact that Al Gore, author of *Earth in the Balance: Ecology and Human Spirit* in which he had pleaded for a global Marshall Plan for sustainable development, became Vice-President of the United States, but was not able, in any way, to politically advance or even discuss the environmental ideas which he had proposed in his book, clearly demonstrated the preponderant influence that economic interests had gained in the United States.

An illustration of these issues is the controversy on the noise level of airplanes. As ICAO, the international body on civil aviation question, had not revised the international noise standards for airplanes since 1977, the European Union finally adopted stricter European standards in 1999 which the United States considered protectionist and discriminating¹⁴. The European Union offered to consider delaying their application if the United States showed willingness to push ICAO to adopt more stringent global standards. The United States, however, filed an official complaint and asked the European Union to adopt a more economical solution.

In waste management, the United States favored the so-called prior informed consent (PIC) approach for exports of hazardous waste to developing countries. Under this PIC approach the importing country obtains the relevant information and then decides whether it accepts the material or not. The European Union, however, accepted the argument put forward by NGOs that, in principle, hazardous waste should not be exported to developing countries at all. The EU thus negotiated and agreed to the introduction of such an export ban under the Basel Convention on the shipment of hazardous waste¹⁵. In contrast, the United States did not ratify the Basel Convention or its amendment on the export ban.

As regards the export of chemicals, the European Union progressively sharpened its position, accepting first the PIC approach and moving then towards the elaboration of an international convention under which the most dangerous chemicals should be banned altogether. These efforts led to the signature of the Stockholm Convention on Persistent Organic Pollutants (POP) in 2001, to which the United States also finally agreed.

The same pattern can be seen earlier on the issue of leghold traps which the European Union had banned from use. To protect wild animal welfare, the EU had added an import ban on furs from specific wild animals that came from countries which had not banned leghold traps. While the European Union hoped for worldwide standards on humane trapping of animals, it was forced by several countries led by the United States to withdraw its import ban. No serious effort was subsequently made to enact worldwide humane trapping standards.

Other examples which cannot be discussed here for lack of space, concern the negotiation of the Cartagena Protocol on Biosafety, the general discussions on biotechnology, on artificial growth promoters in meat, on heavy metals in specific products (batteries, cars, electrical and electronic goods), ecolabels, or standards for environmental management systems.

The increasing difference of view on global environmental issues culminated in the discussions on climate change and the conclusion of the Kyoto Protocol. The European Union saw the Kyoto Protocol as a prolongation of the commitments accepted under the Climate Change Convention¹⁶. The United States considered the Kyoto Protocol flawed, essentially because (a) it only contained obligations for industrialized countries to reduce greenhouse gas emissions, but not for developing countries. The United States considered climate change a long-term problem which could and should be thoroughly researched before action was taken; and in this long-term perspective (as far out as 2100) the U.S. argued that developing countries, too, should contribute to the reductions; (b) the Kyoto Protocol did not expressly enable industrialized countries to comply with their reduction commitments by investing in reduction technologies in developing countries or otherwise allow industrialized countries to meet their obligations in ways that would not require emission reductions at home. For Europeans, it was remarkable to see that the United States did not offer an alternative solution to reduce greenhouse gas emissions and did not either pursue any consistent policy at home.

Finally, bilateral environmental meetings between the U.S. Government and the European Commission took place at almost annual intervals during the 1980s and the first half of the 1990s. These meetings covered a very broad range of subjects, such as the attitude to adopt in different international forums, product-related issues, biotechnology, and biodiversity. Their focus was again largely on the prevention of barriers to trade, less on the optimum protection of the environment. This emphasis, together with formal procedures within the context of WTO and other forums such as ICAO, slowly reduced the importance of the environmental aspects of the files, which in turn had the effect of decreasing technical interest in such discussions. In contrast, bilateral technical discussions on specific files such as analysis standards or test methods for specific products continued and often produced satisfactory results.

IV. DIVERGENCIES AND THEIR CAUSES

The main differences between the United States in the concept of approaching environmental problems are the following:

(1) As in its internal situation, the European Union sees globalization more and more clearly as including, with the same degree of importance, trade issues, environmental concerns and social questions. A correct balance between the diverging interests has to be found on a case-by-case basis. In contrast to that the United States works towards global institutions and instruments which give greater importance to economic aspects of free trade than to environmental protection. The global market is to be interfered *with* as little as possible by environmental considerations. Globalization is thus as far as possible, economic globalization.

(2) Since the European Union does not see itself as a global player — perhaps apart from agricultural matters which are not to be discussed here — it is a feature of its foreign environmental policy to look for multilateral solutions that are globally acceptable. These solutions might even appear to be not to the best advantage of European economic interests.

The United States tends to perceive international environmental negotiations as international trade negotiations. This leads it to defend interests that sometimes appear to be those of United States industry, not those of the global environment.

(3) The nation-states forming the European Union accept that their sovereignty is affected by the Treaty on European Union and that the European Court of Justice controls their legislative, regulatory and administrative environmental activity to ensure its compatibility with the EC Treaty and its principles, as well as with legislation adopted by the European Union. Therefore, not only do they have few fundamental problems in accepting global solutions that do not entirely conform to their economic interests and preferences, but they are also prepared to accept compliance mechanisms and control procedures which further encroach on their sovereignty. By contrast, the United States appears to accept binding commitments and obligations by the international community and influencing its policy at home only when this brings economic advantage. While internal enforcement mechanisms and control procedures by the administration and by the courts are quite strong, the United States does not seem to accept that international environmental law also needs strong compliance mechanisms and control procedures which might even impinge on national sovereignty.

These differences have many causes, among which the following appear to be the most important:

(a) Traditionally, Europe has had a stronger commitment to social and, more recently, to environmental concerns than the United States. The idea of

Adam Smith in *Wealth of Nations* that an individual who acts in his own self-interest and intends only his own gain "is led by an invisible hand to promote... the public interest" has had strong support in U.S. economic theory, legislation and regulatory practice, but has never gained the same importance in Europe. Governments were seen as charged not only to promote individual life, liberty and the pursuit of happiness, but also to reduce inequalities in society. This led to far-reaching interventions in the social area and, more recently, in the environmental area. There is — with many nuances from one Member State to the other — a sort of consensus in the European society that public intervention must also ensure a decent state of the environment and that environmental protection cannot be left to market forces. Thus, while many businesses in the United States might be philosophically opposed to the current regime of environmental regulation and consider it illegitimate¹⁷, this attitude does not exist in this form in Europe, where the environmental departments do not consider themselves the spokespersons of vested economic interests.

(b) In the United States, environmental protection policy was perceived as a centralizing policy that attracted criticism in conservative circles that opposed State intervention in the market and from those favoring states' rights. This coalition gained considerable influence in policy circles as well as in academic and public opinion.

In Europe the majority of EC Member States are convinced of the necessity to pursue a vigorous and active environmental policy which includes market interference; and as Member States have established an Environmental Department of their own in the European Commission, EU measures are seen less as centralizing than as integrating or harmonizing measures. There are certainly conservative and business objections to aspects of environmental policy in Europe as well, and under their influence policy has sometimes undergone considerable changes. However, the objections to European environmental policy have not taken on a fundamental character, and EC Member States would probably prefer to pursue national policies again rather than accept European environmental policy that gives too much weight to business interests.

(c) The United States considers discussions within the European Union and the international discussion as often not "scientifically sound" since cost-benefit considerations and risk assessments do not play a preponderant role in them. It takes the view that the United States approach to cost-benefit and risk analysis constitutes such sound science. In Europe, approaches based on economic theory have not gained the same influence on environmental policy, particularly since opinions other than those of economists--such as those from natural science (biology, geology, geography), philosophy, religion, social

science (history, political science, law) — are heard in public and contribute to forming public and political opinion. Furthermore, the concepts of cost-benefit, risk assessment and life-cycle analysis are regarded, in marked contrast to the United States, as not scientifically sound, because economists have not managed to develop generally acceptable, reliable standards for measuring the benefits of an unimpaired environment or for expressing in money terms such things as the loss of biodiversity. Market instruments such as environmental taxes and charges and emission trading instruments are also used within the European Union, but more cautiously and without the belief that the market is a remedy to all or most environmental problems.

Expressed in simple terms, the general feeling in Europe was and is that there are environmental assets that money cannot buy, and that the United States considers "cost" to be the cost of a measure to business, but does not include, in its cost-benefit considerations, advantages and disadvantages of a measure to the society as a whole, including future generations.

In this context, it should be noted that the United States does not apply the principles of cost-benefit analysis, life-cycle analysis, or risk assessment to legislative decisions taken by Congress; of course, Congress does not require cost-benefit analyses on environmental aspects of the National Missile Defense System, the decision to drill for oil in Alaska, or the decision not to ratify the Kyoto Protocol on climate change. Rather, the economic principles mentioned are applied to regulatory measures taken by EPA and others. As Europe has no regulatory agency comparable to EPA, either at European ("federal") or at State level, most of its regulatory environmental measures are adopted by the European or national legislatures. Europeans therefore frequently consider the American request for more consideration of the above-mentioned economic principles as misplaced.

(d) Overall, in Europe protection of the environment--like social rights, gender equality or human rights--is perceived as part of the foundations of any society. All opinion polls show that there is a consensus on the need to protect the environment, to reduce pollution, protect biodiversity, and promote changes that go beyond the consumption society; and that people are gradually becoming accustomed to the idea that changes in lifestyle are necessary. It is true that the green political parties in several Member States that have appeared since the early 1980s seldom represent more than ten percent of the electorate. However, the influence of their political thinking goes far beyond that percentage and has brought considerable changes in traditional political parties and general policy thinking. And the European Union Member States which promote a strong, consistent and progressive environmental policy do not fare less well economically than the Member States with weak environmental

policies. They believe that investing in clean technologies, alternative energy, environmental techniques pays off and that the environmental challenge is a powerful and new stimulus for innovation and modernization. This consensus has also often been influenced by environmental accidents or setbacks which demonstrated that public authorities can not be allowed to neglect environmental concerns¹⁸.

Discussion of environmental issues within the United States and by the United States in international forums gives Europeans the impression that environmental policy is considered as a fashion in the U.S., without much consequence for things that really matter in society. Notions of "prevention" and "precaution", the principle of "polluter pays", and the need to integrate environmental requirements into energy and transport, agriculture, industrial and foreign policy, do not seem to play an important role in American political debate.

V. CONCLUSION

In conclusion, it is submitted that at the global level, conceptual differences between Europe and the United States have led to different approaches to environmental issues. Though these differences began to become manifest during the 1980s, the end of the East-West conflict did not significantly contribute to the divergence. Rather, by that time, on the one hand, the European Union was more systematically represented on the international scene, backed by a generally accepted set of principles and objectives in the EU Treaty and by fairly strong internal legislation that facilitated a consensus among Europeans in global negotiations; while, on the other hand, the economy-oriented approach to environmental policy that had prevailed in the U.S since the early 1980s came to dominate its external as well as internal environmental policies. These trends have contributed significantly to the present state of affairs which is marked by divergence on several important global environmental issues and by a relatively cool and distant bilateral diplomatic relationship.

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ENDNOTES

¹ The author only expresses his personal opinion. He attaches importance to the fact that he was never directly involved in bilateral discussions with the United States.

² The term "European Union" is used throughout this contribution, though the original EC Treaty of 1958 established the "European Economic Community". The term "European Union" only exists since 1993; it was introduced by a Treaty amendment, to underline the political objective of the European Community and to take account of and further promote progressive economic and political integration of the Member States. The European Union - unlike the European Community which continues to exist as one of the "pillars" of the European Union - does not have legal personality; therefore, environmental and other legislation is adopted by the European Community(EC), not by the European Union(EU).

³ See Articles 174 to 176 EC Treaty (environmental policy), furthermore Article 2 (objectives of EC), 6 (integration of environmental requirements into other policies) and 95 (environment and EC-wide free trade) EC Treaty.

⁴ See T.Smith, Regulatory Reform in the USA and Europe, *Journal of Environmental law* 1996, p.247(p.263f.); E.Rehbinder-R. Stewart, *Environmental Protection Policy*, Berlin-New York 1985, p.303.

⁵ See Directive 75/439 (waste oils), OJEC 1975, L194, p.23; Directive 75/440 (surface water) OJEC 1975, L 194, p.26; Directive 75/442 (waste) OJEC 1975, L 194, p.39; Directive 76/160 (bathing water) OJEC 1976, L 31, p.1.

⁶ This is the wording of ten of the eleven official languages of the EC Treaty. The English version alone states "the potential benefits and costs of action or lack of action", as it was considered by the drafters that "costs and benefits in the English language also included societal advantages and charges.

⁷ See E.Rehbinder-R.Stewart (note 4 above); M.Tolba-O.El-Kholy, *The World Environment 1972-1992*, London 1992; S.Johnson-G.Corcelle, *L'autre Europe "verte": la politique communautaire de l'environnement*, Paris-Bruxelles 1987; Commission of the European Communities, COM(80) 222 of 7 May 1980.

⁸ Geneva Convention on Long-range Transboundary Air pollution of 13 November 1979, UN Doc.ECE/HLM.1/R.1

⁹ See, for instance, Declaration on the Montreal Protocol on substances that deplete the ozone layer, OJEC 1988, L 297, p.8: "...the Community has competence to take action relating..to the environment. The Community has exercised its competence..in adopting...The Community may well exercise its competence in the future by adopting further legislation in this area..".

¹⁰ Commission: Method for cooperation between the Commission and the Government of the United States in environmental matters - exchange of letters, SEC(74) 2518 of 1 July 1974.

¹¹ See for more details T.Smith, Regulatory reform in the USA and Europe. *Journal of Environmental Policy* 1996, p.257; J.Anderson: US environmental law: the challenge of the next generation. *Environmental Law Review* 2000, p.61.

¹² Vienna Convention on the Protection of the Ozone Layer of 22 March 1985, OJEC 1988, L 297, p.10.

¹³ Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September 1987, OJEC 1988, L 297, p.21, Article 2(8).

¹⁴ Regulation 925/1999, OJ 1999, L 115, p.1.

¹⁵ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 22 March 1989, UN Doc.UNEP/IG.80/3; amendment of 1995 on the export ban (not yet entered into force).

¹⁶ See New York Framework Convention on Climate Change of 9 May 1992, OJEC 1994, L 33, p.13, Article 4(2): "The developed country parties..commit themselves specifically as provided for in the following: (a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions...".

¹⁷ See J.Lofton, Environmental enforcement. The impact of cultural values and attitudes on social regulation. *Environmental Law Reporter* 2001, p.10906; R.Stewart Antidotes for the "American Disease". *Ecology Law Quarterly* 1993, p.85.

¹⁸ Waldsterben (dying forests)(Germany, early 1980s); Rainbow Warrior incident (France 1985; Chernobyl accident (1986, Italy, Austria, Sweden); Braer accident (United Kingdom 1993); mad-cow disease (United Kingdom 1990s); Donana accident (Spain 1998) etc.