

Institution-Building from Below and from Above:
The European Community in
Global Environmental Politics

ALBERTA M. SBRAGIA

DEPARTMENT OF POLITICAL SCIENCE
AND
CENTER FOR WEST EUROPEAN STUDIES
UNIVERSITY OF PITTSBURGH
4E23 FORBES QUADRANGLE
PITTSBURGH, PA 15260
TEL: 412/648-7405
FAX: 412/648-2199
E-MAIL: SBRAGIA+@PITT.EDU
<http://www.pitt.edu/~wesnews>
<http://www.pitt.edu/~wwwes>

Delivered at the European Community Studies Association (ECSA)
Biennial Conference at the University of Washington, Seattle
May 29 - June 1, 1997.

Abstract

Alberta Sbragia¹

The European Union is now an important actor in the arena of global environmental politics. It is a signatory to important global treaties and a significant participant in global negotiations. Surprisingly, however, its role has been given very little scholarly attention. This paper explores how the Community constructed over time an international presence in the environmental field. It argues that the Community, while not a "state" in the international arena, has undergone an institution-building process since 1973 which has garnered international recognition. CITES, the Vienna Convention, and UNCED are briefly discussed.

¹Institution-Building From Below and From Above: The European Community in Global Environmental Politics, November 1996.

**INSTITUTION-BUILDING FROM BELOW AND FROM ABOVE:
THE EUROPEAN COMMUNITY IN GLOBAL ENVIRONMENTAL POLITICS**

Alberta M. Sbragia¹

The European Community was created in a post-war world of proliferating regional and global institutions. Its unique characteristics did not insulate it from the international environment. How the Community was to relate to that environment was contested both within the Community and within its counterpart international institutions. What role should the Community play on the international stage?

The member-states which formed the Community retained their sovereign right to negotiate unilaterally in the myriad international organizations created after World War II. Their participation in the Community did not automatically preempt their right to negotiate and represent themselves at international bargaining tables. The one exception was clearly the GATT as the Treaty of Rome gave the Community exclusive competence for commercial policy (although the Community itself did not become a signatory to the GATT). (See for example Woolcock & Hodges, 1996) Given the retention of national sovereign rights in the international field outside of the GATT, the Community's role in external relations was problematic. Many of the member-states assumed that the international powers of the Community would be "enumerated" powers and that they, the member-states, would control that process of institutionalization.

In 1997, as we examine the international role of the Community, we find it playing a major role in many international fora concerned with "civilian" issues. While its negotiating cohesiveness is not as stellar as the proponents of a federal Europe would wish, its international presence is far

more significant than the Treaty of Rome would predict. This is particularly true in the global environmental arena. How did the Community gain the power to be represented when the Treaty of Rome did not even mention the notion of environmental protection? How did this international presence emerge? What were the dynamics? For its part, how did the global system react to the Community's representation once it was legitimated within the Community itself?

The emergence of the European Community as a player on the stage of global environmental politics raises two questions: 1) how did the Community qua Community gain the powers to act and 2) how did the international system respond to the Community's demands for participation? The first question leads us to consider the process of institutionalization at the Community level while the second leads us to the process of institutionalization at the global level.

THE EUROPEAN UNION AND EXTERNAL RELATIONS

The power to make negotiate and make treaties quickly emerged as one which the Commission wanted to institutionalize as a competence of the Community rather than resting primarily with the member-states. In the words of Eric Stein,

in its earliest years the Community was understandably absorbed in the demanding internal task of building the common market; but because it as born into an interdependent world economy it was from the outset compelled to deal with third countries and the proliferating international organizations. By the nature of things, the treaty power was the principal instrument for the Community to replace bilateral relationships between its Members and third countries and to create new relationships.(Stein, 1991, 141)

The Treaty of Rome specifically granted the Community the power to conduct external relations in the area of foreign commercial policy. The external role of the EEC in the trade arena

was exercised without contestation. The EEC was not a signatory to the GATT, but given that it as the sole negotiator for the Community, its status was not challenged by the United States. (See, for example, Meunier, 1996) The EC did however become a member of the World Trade Organization in its own right. (The EU's member-states also became contracting parties.) In fact, the EC's newly-found status in the international trade arena "gives formal international recognition to the role of the EC as laid down in the Treaty of Rome." (Scheuermans & Dodd, 1995, 35)

More recently, the European Court of Justice has given the member-states a much greater role in negotiations having to do with trade in services than they were given in trade in manufactured goods. Nonetheless, the capacity of the Community and the Commission in trade can be viewed as the most "federal" of all external relations. The Community, represented by the Commission, is generally able to act as a unitary actor in trade negotiations.² It is important to note here that the European Parliament plays a minor role in the formulation of external trade policy. That is not surprising. National governments, when operating in the international arena, are executive-driven: foreign affairs are relatively insulated from legislative control in all democratic systems. The process of democratization (as well as judicial review) was held at bay when it came to foreign affairs.

In contrast to the Community's role in trade relations, its position in other global arenas has been viewed as weak. The external (as well as EU) dimension of internal security policy (pillar 3) is widely viewed as ineffective, and studies of common foreign and security policy (CFSP) often argue that it is embryonic. The Community's international environmental relations, however, have received very little scholarly attention in spite of the explosion of activity in that area and the high level of scholarly interest in global environmental politics generally.

The Community's international environmental relations are at first glance interesting because they reside in pillar one (typically viewed as the most effective pillar) but their subject matter is not economic in the strict sense of the word. The legal status of environmental policy as a Community policy was unusual until the Single European Act, in that the Community approved environmental directives and entered multilateral environmental agreements without having the environment mentioned in the Treaty of Rome. It is a policy area in which the Community and the member-states share competencies, rather than being in the same category as trade, agriculture or fisheries. In environmental policy, the Community's powers are of a "concurrent nature" and are characterized by "the (only) partial delegation of power." (Hession & Macrory, 1994, 157) Therefore, international environmental agreements are known as "mixed agreements." (O'Keeffe and Schermers; Lang, 1986; Groux & Manin, 1985, 61-69)

Looking at the question from the perspective of the Community's internal arrangements, how did the Community organize itself to deal at the international level? How were the relative competencies of the Commission and member-states sorted out? How did the balance between the Commission and the member-states manifest itself in this area of external relations?

Finally, the global (and often regional) dimension of environmental policy is addressed within the United Nations framework. The United Nations and its specialized agencies are perhaps the most prototypical of international organizations. The Community is merely an observer rather than a member.

The politics of global environmental politics highlight the barriers the international system qua system poses for the EU as an external actor outside the trade arena. Institution-building at the EU level does not merely involve sorting out the various competencies of the Commission, the

member-states acting within the Community context, and the member-states acting unilaterally. It also involves the circumvention by the member-states of the structural barriers within the system to the EU's emergence as an international "actor". It is important to note here that the system is not only hostile to the juridical representation of an organization such as the Community but that it is not set up to even acknowledge the institutionalized "pooling of sovereignty" at the global level. Thus, how did the Community come to have international status as a Party to some treaties? Given that it is not a sovereign state, and that Contracting Parties to treaties are in fact typically sovereign states, how has the Community acquired that status?

THE EU AND THE INTERNATIONAL ARENA

The role of the EU in the international arena, the environmental arena included, has been nurtured by the implications of creating a common market on the one hand and by the European Court of Justice on the other. The institutionalization of the Community's international role occurred gradually, driven by the substantive aims of the Community, the ambitions of the Commission, and the decisions of the ECJ.

THE COMMON MARKET

The attempt to create a common market led the Commission in 1968 to propose a program to harmonize national regulations which threatened to create non-tariff barriers and distort competition. The national regulations which concerned the Commission included those in the field of environmental protection. The first environmental directives therefore were based on Article 100 of the EEC Treaty, for they involved ensuring the free movement of goods. In general, the Commission

used the objective of ensuring free movement to enhance its own reach; environmental protection was one avenue to such enhancement.(Pollack, 1996; Dietrich, 1996)

Although the Commission became more concerned with environmental protection as such, the implications of environmental regulations for the functioning of the common market were always a major concern. As Frank Boons has pointed out, "environmental programmes that are adopted in one country can have substantial consequences for economic actors in other countries."(Boons, 1992, 85) Furthermore, environmental regulations often raise questions of economic competitiveness. (Golub, forthcoming The economic implications of environmental protection led the Community to focus on international environmental agreements.

As the member-states became active in negotiating and signing multilateral environmental agreements, the Commission began to fear that "differences in national implementation measures would lead to disparities which, in turn, would hamper the proper functioning of the Common Market. " The Commission therefore included "cooperation" with third parties as a component of the very first environment action program.(Leenen, 1984/1, 94) It subsequently became a party to large number of multilateral conventions.

At a substantive level, therefore, the concern with the construction of the common market focused attention on international environmental agreements as these began to proliferate. National governments, acting unilaterally in negotiation and implementation, could well create non-tariff barriers under the rubric of environmental protection, barriers detrimental to the functioning of the market. Furthermore, the Commission saw environmental protection as giving it a policy reach which had not been included in the Treaty.

But while the substantive reasons might well have been compelling, the ability to be represented at the international level in the arena of environmental protection was not in the Treaty. In fact, environmental protection itself was not mentioned in the Treaty. The member-states had certainly not expected the Community to be represented in international environmental fora. How did the Community manage to become represented? Why was the international dimension able to be included in the very first action program on the environment? Here we turn to a key Community institution--the European Court of Justice.

The ERTA decision by the Court coupled with the decision by the heads of government to include the environment in the Community's policy competence gave the Community the opening to participate in international environmental politics. The SEA and Maastricht reinforced the ability to participate. The Court, through its case law, institutionalized the power of the Community to exercise **external** powers once the member-states decided that environmental protection was an arena in which EC legislation could be adopted.

THE EUROPEAN COURT OF JUSTICE

The fact that the EU has emerged as an identifiable international actor in the field of environmental protection is rooted in the actions of the European Court of Justice. In Nollkaemper's words,

the field of the external relations of the Community is, together with the problems of the direct application and priority of Community law, the field in which the Court of Justice has played its most innovative part. The extent to which the Community has become able to claim a place on the international plane over the years is mainly a consequence of the substantial body of case-law developed by the Court.(Nollkaemper, 1987/2, 61)

The ERTA (1971) case served as the keystone to the Community's emergence as an international actor because it created the "link...between internal and external powers." The Court ruled that if the Community had been given the power to legislate internally to the Community, it implicitly had been given powers to act externally as well. In its judgment it ruled that

each time the Community, with a view to implementing a common policy envisaged by the Treaty, lays down common rules, whatever form these may take, the member States no longer have the right, acting individually or even collectively, to contract obligations towards non-member States affecting these rule. (Mastellone, 1981, 104)

The ERTA case has emerged the most significant benchmark for delineating the Community's role in international environmental politics. Typically, the Community first legislates and then exercises external jurisdiction. The Court's case law did not, however, clarify whether the Commission or the Council Presidency would represent the Community in international fora. There is no automatic assumption that in external relations the Commission is the Community; the Council Presidency can fulfill that role. Furthermore, the Court's decision did not change the international status of the Community's member-states. In Eric Stein's words,

regardless of the scope of the horizontal and vertical transfer that distinguishes the Community from any other international organization, the Member States remain undisputed subjects of international law and retain their international personality. We thus have no less than thirteen international persons, that is twelve sovereign states with a partially circumscribed sovereignty, as well as a new international person...endowed with a substantial international capacity and external relations powers. (Stein, 1991,129)

COMMUNITY AND MEMBER-STATES ENTANGLED

International treaties highlight the entangled situation described by Stein. They cover areas not covered by the Community's directives--areas which therefore remain in the competence of the Member-States. Because the implementation of international environmental treaties will involve the competencies of both the Community and the member-states, such agreements are signed by both the Community and the member-states. They are known as "mixed agreements" and reflect the "mixed competence" intrinsic to environmental policy.³ Mixed agreements are legally very complex,⁴ but for our purposes, it is enough to say that they involve ratification by both the Community and the individual member-states. They symbolize the complex intertwining of member-state governments and supranationality which characterizes the Community.

The importance of the link drawn between internal and external powers lies in the fact that

the EC's external powers expand without the express approval of the Member States simply in the course of developing the EC's internal policies. An extra constraint has therefore been added to EC internal policy-making, since the Member States should now always consider whether the adoption of some desirable item of EC legislation might not result in the undesirable (to them) loss of external competence. (Haigh, 1992, 239)

For example, member states refused to approve a directive on the dumping of wastes at sea which the Commission "had put forward at least partly to be able to accede to international dumping conventions (the Oslo and London Conventions)." (Haigh, 1992, 240)

The member-states have never recognized international environmental relations as belonging to the exclusive competence of the Community and have gone to some length to ensure that their role is safeguarded. In the case of the Basel Convention on the transport of hazardous waste, for

example, the member states used "two marginal provisions...on technical assistance and research to argue that the convention did not come into the sphere of exclusive competence of the Community, but that it was a mixed agreement--i.e. that it contained provisions for which the Community was responsible and others which were of the competence of Member States." (Kramer, 1995, 85-6)

While the member-states have worked to ensure that they will not be excluded from the international arena, they have also ensured that the Community would be a presence in that same arena. The SEA and subsequently the Maastricht Treaty gave "express competence to the Community to conclude international environmental agreements, which then are binding on the institutions of the Community and on the Member States."(Kramer, 1995, 84) Before the coming into force of the SEA, however, the Community became a party to a number of important conventions. In Ziegler's words, the Community's "own competence to do so and the autonomous possibilities for its Member States were clarified only later by the jurisprudence of the Court of Justice." (Ziegler, nd, 2) For example, in 1975 it became a party to the Paris Convention of June 4, 1974 for the prevention of marine pollution from land-based sources, in 1977 to the Barcelona Convention of February 16, 1976 for the protection of the Mediterranean Sea against pollution and to the Bonn Convention of December 3, 1976 for the protection of the Rhine against chemical pollution, in 1981 to the Bonn Convention of June 23, 1979 on the conservation of migratory species of wild animals, in 1982 to the Bern Convention of September 19, 1979 on the conservation of European wild life and natural habitats, and in 1981 to the Geneva Convention of November 13, 1979 on long-range transboundary air pollution.(Ziegler, nd, 2-3)

The link between the Community and other international bodies was explicitly recognized by the European Council held in Stuttgart in June 1983. The Council stated it saw "the necessity to

take coordinated and effective initiatives both within the Community and internationally, particularly within the ECE" in combating pollution.(Johnson & Corcelle, 1995, 22) The Single European Act, for its part, in Article 130r(5) stated that "within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the relevant international organizations." It gave the Community a legal basis for the negotiation of international environmental accords. In 1987, the Heads of State and Government at the Dublin Summit decided that the Community should play a key role in the area of international environmental activity.

The Maastricht Treaty reflected that commitment. Article 130r included a new objective for Community action: Community policy on the environment should contribute to "promoting measures at international level to deal with regional or worldwide environmental problems."⁵ That new provision indicated how far-reaching the internationalization of environmental problems had become. It also strengthened the Community's prerogative in the international field. In Hession's and Macrory's words, the new language in the Treaty confirms the independent nature of the Community's external power. This latter point is important as the Community previously had to rely on the existence of internal measures to justify external competence in application of the ERTA principle. [It] strengthens the argument that the Community's interest is general and is unrelated to any functional relationship with internal problems or measures. (Hession & Macrory, 1994, 158)

THE COMMISSION AND INTERNATIONAL ORGANIZATIONS

The framers of the Treaty of Rome were well aware of the international organizations whose universe they were joining. The role of the EEC multilateral fora was explicitly dealt with in the Treaty of Rome. The Treaty in fact gave short shrift to external relations (other than foreign commercial policy) except as regarded international organizations. In particular, the United Nations, GATT, OEEC (later OECD) and the Council of Europe were given special mention. Article 229, for

instance, specifically empowered the Commission to handle relations with international organizations, with specific reference to the United Nations, its specialized agencies, and GATT. In 1971, the EEC was only just about to upgrade the head of its Washington office to Director General and yet it maintained "permanent liaison, falling only just short of diplomatic missions with GATT in Geneva and OECD in Paris. When OEEC become OECD a special protocol gave to the EEC Commission the task and right to be involved in its work..." (Henig, 1971, 10) ⁶

Although the Community was only given observer status in those organizations, it is important that the Commission was explicitly given the role of representing the Community with regards to the international organizations mentioned. In what is known as pillar one in the post-Maastricht era, therefore, the Commission was given an international role although it was constrained by the very important fact that the Community was not a member of the organizations named. Furthermore, Article 229 does not authorize the Commission to engage in binding commitments. (Macrory and Hession, 1996, 135) As the Community de facto became more important in the international arena and its competencies expanded, its official role within the international arena became more complicated.

In a report examining the relationships between the Community and global and regional intergovernmental organizations, the Commission wrote

Not only does the Community have wide ranging relations with these intergovernmental organizations, but these have also undergone a certain evolution. New policies such as that relating to the environment, have involved it in new fields. Similarly, a larger place has increasingly been made for the Community by the international organizations such as the UN system, since in the exercise of its competence it has come to play a larger role. (Commission of the European Communities, 1989, 21)

The Community's participation in intergovernmental organizations, however, is often problematic. Given that the Community is now far more than an international organization but is not a state and that its unique structure is not recognized in international law, its role in international organizations is an awkward one. In the Commission's words,

The Community often shares observer status with intergovernmental organizations of the traditional type and is therefore in practice placed on the same footing as those organizations, at least for the present. The Community should be given a status higher than that of observer when the international organization in question is discussing matters falling within the jurisdiction of the Community, but in practice an approach along those lines often runs into difficulties. The basic problem is that traditional international law can accommodate only nation states, or groupings of nation states. Therefore, there has been some resistance to the implied change which is necessary in order for the traditional doctrine to accommodate the new legal entity constituted by the Community. (Commission of the European Communities, 1989, 19)

The key issue for the Commission has been to gain for the Community a separate "right of access to, and participation in, the work of the deliberative organs of international organizations and conferences." It was not sufficient for the Member States to agree to a common position amongst themselves and then have one of them state it within an international organization. The Community wanted to be recognized as a distinct entity with an international personality, and the acquisition of a separate status within international organizations symbolized that recognition. The recognition of such status was of "great importance." (Groux & Manin, 1985, 43)

In fact, the right of the Community to "have a seat" in the sense of taking part in meetings (but still officially as an observer and therefore without a vote) at international conferences or within international organizations did not come easily. In the case of the United Nations General Assembly, the Community did not receive the right to participate until 1974.⁷ (While the Commission can speak

at meetings of commissions of the United Nations General Assembly, it is not allowed to address the Plenary Assembly). By the mid-1980s, "this battle [could be] considered as almost over since the great majority of permanent international organizations have officially allowed...the EEC to take part in their proceedings." (Groux & Manin, 1985, 43,49) Nonetheless, the Community has no status with the Security Council, the Trusteeship Council, and the International Court of Justice. (Brinkhorst, 1994, 610)

In the case of UN international conferences for specific negotiations, the Community must receive the right to participate in each case. The Community is represented at the United Nations by the Head of the Delegation of the Commission who however does not hold ambassadorial status and by the Permanent Representative of the country holding the Presidency of the Council. (Brinkhorst, 1994, 610) Brinkhorst, the former Director-General of DGXI, the DG responsible for international environmental negotiations, argues that "there is a growing disparity between this patchy legal situation of the Community and its political projection at the United Nations."(Brinkhorst, 1994, 611) The Community as such has less legal standing than its political profile would suggest.

In the case of the environment, the Commission has had contacts with UNEP since the latter was founded in December 1972. The relationship was formalized in an exchange of letters between Dr. Mostafa K. Tolba, Executive Director of UNEP, and Gaston E. Thorn, President of the Commission in June 1983. Those letters call for regular contacts between the two institutions, exchange of documentation, participation of the Community in UNEP meetings, and consultations on the Regional Seas program, activities pertaining to the assessment of the environment, and environment and development. (Commission of the European Communities, 1989, 85-86)

Up until the mid-1980s, however, the Community generally did not try to be recognized as an official member of an international conference organized under the auspices of the United Nations. The refusal of the Soviet Union and the East European countries to recognize the Community in any fashion was thought to bode ill for any such initiative. (Groux & Manin, 1985, 45-46) As we shall see, the Commission did make a strenuous effort at the negotiations leading to the Vienna Convention to become a contracting party to that Convention--that effort as well as its eventual success signaled a new era for the Community in the international arena.

In many cases, the Commission is a non-voting participant but the member states are members of the international organization and field national delegations. Furthermore, the organization often deals with matters which fall under both Member State and Community jurisdiction. Those areas are known under the rubric of "mixed competence." Thus, Community representation is often that of "dual representation." In such cases, the Community is represented by both the Commission and the Member-State holding the Presidency of the Council. The Commission typically speaks on those issues which fall under the Community's exclusive competence although it may also be asked to speak in areas of mixed competence. Such "dual representation," for example, is in place at the UN General Assembly, the Economic and Social Council and UNCTAD.. (Commission of the European Communities, 1989, 21)

It is important to note that "dual representation"--which includes the Commission and the Presidency as representatives of the Community--incorporates both the "supranational" and the "intergovernmental" in the Community's external face. That type of representation in bodies such as the United Nations does not date from the going into force of the Maastricht Treaty with its provisions for CFSP. Rather, it has its institutional roots in the original mandate in the Treaty of

Rome which gave the Commission the right to be involved with the United Nations and the ECJ's ERTA decision which coupled internal and external powers.⁸ Institutionalization has been influenced by a wide variety of factors--not the least of which has been the new prominence of environmental regulations as challenges to cross-border trade--but clearly the Court has played a pivotal role in setting out the essential framework within which the Community's external representation would evolve.

Over time, the Community has become a unitary actor more frequently, has worked out a working relationship between the Commission and the Council Presidency, and has secured international recognition. Each step in this process was hard-fought, but the Community is clearly more unitary, more "balanced", and more recognized than it was in 1973 when environmental policy was added to its competencies.

GLOBAL ENVIRONMENTAL POLITICS

The dynamics found in the field of global environmental politics reflect the tensions found in the international arena more generally. Although environmental protection is a relatively new field within global politics, the Community did not find it easy to be accepted by the global system. Although unique, the Community was not a state, and the system (the United States in particular) had difficulty in accepting it as a negotiating counterpart. The legal complexities of "mixed agreements," the shifting patterns of competencies over time, the evolution of power from the member-states acting unilaterally to their collective action on the international stage in partnership with the Commission, the general lack of precedents and benchmarks in understanding the Community's international role, and the problems for monitoring compliance of these ambiguities

were instrumental in making it difficult for the diplomats to accept negotiating with the Community. From the point of view of third parties, it was difficult know which authority --Brussels or the national governments--would be responsible for implementation and enforcement. That ambiguity made acceptance of the Community particularly problematic.

INTERNATIONALIZATION OF ENVIRONMENTAL ISSUES

The Community has had to face the question of its international standing in the field of environmental protection because of the explosion of multi-lateral activities in this area. In Edith Brown Weiss's words

In 1972 international environmental law was a fledgling field with less than three dozen multilateral agreements. Today international environmental law is arguably setting the pace for cooperation in the international community in the development of international law. There are nearly nine hundred international legal instruments that are either primarily directed to international environmental issues or contain important provisions on them. This proliferation of legal instruments is likely to continue.(Weiss, 1994, 30)

The density of environmental negotiations at the international level is striking. According to Weiss, "between 1990 and 1992, there have been about a dozen highly important multilateral negotiations occurring more or less in parallel."(Weiss, 1994, 30) Not surprisingly, the implications of this much activity for traditional notions of sovereignty have not gone unnoticed.⁹

Scholars have increasingly paid attention to the creation of global institutions (regimes) in the environmental arena.(Young, 1989; Young, 1991; Young, 1993; Alker & Haas, 1993; Haas, Keohane, & Levy, 1993; Hurrell & Kingsbury) The efforts of the United Nations play an important role in such an effort. In particular, the establishment of the United Nations Environment Program

(UNEP) at the 1972 UN Conference on the Human Environment in Stockholm "was probably the most important institutional consequence of increased concern with global environmental change in the Cold War era."(Alker & Haas, 1993, 15) UNEP's impact has been felt at the regional as well as at the global level. The Mediterranean Action Plan was an offshoot of UNEP, for example.(Haas, 1990)

The most recent example of such global institution-building is the Framework Convention on Climate Change, signed at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in June 1992, the Conference on Environment and Development with its resulting Rio Declaration, Agenda 21, and Commission on Sustainable Development, and the Convention on Biodiversity also signed at Rio.

INTERNATIONAL NEGOTIATION

EU participation in international negotiations is complex. Its participation in binding commitments is rooted in Article 220. Typically, in areas characterized by mixed competence, the Commission will be the negotiator acting under a mandate unanimously agreed to by the Council. The Commission, while it is negotiating, "continuously consults with a special committee composed of Member States' representatives. In practice, Member States also participate in the negotiation of the environmental agreements."(Kramer, 1995, 84) In areas where the member-states retain jurisdiction, they will negotiate on their own. Given the institutional evolution of the Community, each treaty negotiation has had a different dynamic. The actual representation of the Community is more flexible than the legal scholars might predict. At times the Commission may be asked by the Council to speak for the Community in areas which do not fall within the exclusive competence of the

Community while at other times the Presidency may speak even in such areas. When the Presidency speaks for the Community, it will do so using the formula "on behalf of the Community and its Member States."(Macrory & Hession, 1996, 136)

The following cases give a brief sketch of the key elements of the institution-building process--and its interaction with what can be seen as "the" key third party, the United States--which has characterized the Community's involvement in international environmental negotiations.

GLOBAL TREATIES AND INSTITUTION-BUILDING

CITES: In the case of the 1973 Convention on International Trade in Endangered Species, the major global treaty on nature protection, the Community was not a signatory but did enact a regulation implementing the Treaty (EEC/3626/82) which protected more than 250 species of fauna and flora more stringently than did the CITES Convention itself.(Johnson & Corcelle,1995, 306) ¹⁰ The fact that the Community was not a signatory was at least partly a question of timing--it did not have competence for environmental protection at the time the treaty was negotiated. The member-states in 1977 agreed that it should become a signatory, but the Treaty did not allow for the accession of regional economic integration organizations. (Weiss, 1996; Johnson & Corcelle, 1995, 417) In 1983, an amendment to the Treaty (the so-called Gaborone Amendment) was negotiated with the United States acting as the principal negotiator. The Gaborone Amendment would have allowed the Community to accede to the Treaty, but the United States, concerned that the institutional structure of the EC would not be able to effectively implement CITES restrictions, decided not to follow through and accept the amendment. The Community is therefore not yet a signatory, primarily because of American opposition.

The knotty question of whether the EC can actually ensure compliance with global treaties as effectively as can national governments operating at the national level has remained largely unresolved from the American point of view. It is the concern with whether the EC can comply on the ground that has undergirded a sustained American skepticism or opposition to the EC's being recognized as an actor in international environmental negotiations.

Although the Community was not a signatory, the member-states' participation in the Conference of the Parties held in 1985 in Buenos Aires was coordinated on a daily basis by the Italian Presidency. It must be remembered that in 1985 no treaty basis for environmental protection existed and the Community had not been allowed to sign--yet a regulation implementing CITES had been approved at the Community level and the member-states were acting in the EC framework because of that regulation. In those areas where a common position had been formulated, those positions "were presented to the Conference on behalf of the Community by the presidency, the Commission, or by the delegation of the Member States having a special interest or specific knowledge on the matter"(COM(85)729 final,2)

Nonetheless, in the Commission's words, "the Conference witnessed a number of Community incidents."(COM(85)729 final,2) The member states disagreed with the Commission on a variety of issues as well as disagreed with each other. In some contentious areas, no common position was arrived at.

Thus, both the Commission and the Presidency played an important role in the negotiations. While the Community did act in a unitary fashion on some issues, disagreements in both discussions and voting indicated that it was not yet ready to act in a unitary fashion. Clearly, the Community

would have been more influential if it had been able to act more cohesively. Yet it is unprecedented for a non-signatory to have the kind of influence which it did have on some issues.¹¹

OZONE American (as well as Soviet) opposition to the Community's emergence as a signatory to global treaties persisted throughout the 1980s. The US originally opposed the EC signing both the Vienna Convention on the ozone layer and the Montreal Protocol, at least partially because treating the Community as one political unit had implications for how individual member-states might or might not comply with the treaty. (Haigh, 1992, 242; Hampson with Hart, 265) In those treaties, however, the member-states backed the Commission's insistence on the Community becoming a contracting party.

The politics of ozone, however, have one clear feature. The Commission's "insistence on special statutory treatment" became a key negotiating point, one which, from the point of third parties, was typically shrouded in confusion over what the power of the Community in the area actually was. The question of whether and when the Community exercised exclusive competence was particularly difficult to answer from a legal standpoint. The political ramifications of an answer to that question were often too problematic. As the Community's Legal Adviser John Temple Lange put it, "precisely because the limits of exclusive competence are politically important, they are particularly difficult and controversial to define." (Cited in Benedick, 1991, 95) The confusion over the entanglement between Community and member-states fuels concern over compliance. Who is responsible for ensuring compliance with the final treaty--Brussels or national capitals? Given the importance for economic actors of the Montreal Protocol, it was particularly important for many countries, the US included, that the accountability for compliance be relatively straightforward.¹²

In spite of the irritations caused to third parties (and at times to the member states themselves) by the Commission's relentless pursuit of ensuring its international status, the Community was so important it could not be ignored or dismissed. The cohesion of the Community in the area of ozone generally has been such that it has emerged as a key actor.(Szell, 1993, 36; Litfin, 1995) During the Vienna Convention negotiations, the European position was so cohesive in its opposition to binding commitments that a framework convention laying out general principles only was seen as the only feasible option. The Community was in fact a unitary actor, with the member-states and the Commission acting in unison.(Jachtenfuchs, 1990, 264)

Leaving aside the content of the environmental restrictions adopted, the Commission strenuously negotiated to be allowed to become a contracting party without restrictions.(Benedick, 1991, 95) Given the lack of explicit competence for environmental protection before the adoption of the SEA, the Commission viewed the negotiations as a way to "obtain greater competence in environmental affairs within the Community. Had it succeeded, it could claim the right to propose Community legislation to implement the ozone convention and future protocols." (Jachtenfuchs, 1990, 263) The Council had agreed in January 1982 that the Community should become a contracting party, and in October 1984 had agreed that the Community should be allowed to become a contracting party without any conditions being attached. However, both the United States and the USSR had proposed restrictions. The US wanted "a prior participation by one Member State " and the USSR wanted prior participation by a majority of the Member States. (COM(85)8 final, explanatory memorandum) A compromise was finally reached which was acceptable to the Commission.

Negotiations over the Montreal Protocol to the Vienna Convention had some of the same features. The status of the Community--which had both symbolic and substantive implications--was the subject of heated debate and only a last minute compromise put forth by New Zealand's environment minister allowed the negotiations to conclude.(Hampson with Hart, 1995, 265) Richard Benedick, the American negotiator, gives a sense of how important the dispute became:

After a nerve-racking midnight standoff over this issue, during which the fate of the protocol hung in the balance, a compromise was reached at the last possible moment this concession would obtain only if all member countries plus the EC Commission became parties to the protocol and formally notified the secretariat of their manner of implementation.(Benedick, 1991, 96-97)

However, the issue of competence was highlighted when the issue under discussion was a fund to help developing countries obtain advanced technology. The Community could not be involved, and "on this point the Member States acted on their own."(Haigh, 1992, 241)

During the Protocol negotiations, the Community again kept the agreement from being as stringent as the United States and the Scandinavians wanted. After a political change at the Community level which transformed the politics of ozone, the Community emerged as a policy leader during the negotiations for the London and Copenhagen amendments. Regardless of whether the Community was a "leader" or a "laggard", however, the Community was cohesive enough to emerge as a key negotiating partner.

CLIMATE CHANGE: By the time the climate change negotiations began officially in February 1991, the EC had become a recognized power in the area of international environmental politics. The United Nations General Assembly had created the Intergovernmental Negotiating Committee (INC) for a Framework Climate Convention under whose auspices the negotiations were

conducted. Within that framework, "the EC assumed a lead role in the negotiations by virtue of its commitment to returning its joint carbon dioxide emissions to 1990 levels by the year 2000." (Porter & Brown, 1996, 95)

While the Community's commitment did indeed provide a benchmark, the Commission's role in the actual negotiation of the Framework Convention was rather limited. The Member-States however were involved.

Given the role of the United States in international politics, environmental politics especially, it was essential for the success of the Rio Conference (at which the UN Framework Convention on Climate Change was to be signed) that President Bush personally attend. The American position, however, was opposed to binding commitments to reduce carbon dioxide emissions to a specific level by a specific date. The European Community was viewed by the United States as a key adversary, and President Bush demanded the Europeans change their position. Bush "personally called German prime minister Helmut Kohl to ask him to drop his government's demands for the stabilization commitment in return for Bush's participation in the Earth Summit. (Porter & Brown, 1996, 96)" Whether that call was to Kohl as a German or whether it was to Kohl as a key player in the EC's politics of climate change is impossible to say, but it may be irrelevant. By that point, the European Community and its member-states were so entangled in a way which does not easily fit the legal language of "competencies."

Member-states used their bilateral contacts with Washington to lobby the Bush Administration to support the EU's position (unsuccessfully of course). The member-states and the Community were intertwined in such a way that the EC could be seen as a unitary actor using multi-lateral diplomatic channels to convince the United States to change its position. (Porter & Brown,

1996, 95) In the context of transatlantic negotiations, the member-states have been in a much stronger position than has the Commission (a situation which began to change under the Clinton Administration).¹³ The member-states clearly dominated that exchange--but acted in a unitary fashion. From the American point of view, it was the EC/Germans/Dutch/British who were lobbying rather than the member-states acting unilaterally.¹⁴

The entanglement of the Community and the Member-States when dealing in transatlantic negotiations is evident in the negotiation of Article 4(2) of the Convention. In Nigel Haigh's words,

...the UK Secretary of State for the Environment, Michael Howard, allegedly with the encouragement of some other Environment Ministers from EC Member States, traveled to the United States and agreed a form of words with US officials which forms the basis of Article 4(2) of the Convention. Whether this can be regarded as an EC contribution to the framing of the Convention is a matter of opinion. Formally it was not since no formal Council decisions were taken on the subject, but without the machinery provided by the EC for discussion between ministers it may not have happened. (Haigh, 1996, 181-82)

The United States is such an important actor that it is difficult to analyze the EU's role without taking into account the impact of American policy. Given that climate change policy is essentially an issue of international political economy because of the wide-ranging impacts on industrial activity and structure of carbon dioxide emission reductions,¹⁵ the economic interdependence within the industrialized world cannot be ignored by the EU. It is for that reason that in 1992 EU finance ministers insisted that any EU carbon tax be implemented only on condition that the United States and Japan acted in kind. Japan agreed on condition that the United States enact some kind of carbon tax. The Clinton Administration refused. Although there are significant member-state differences on the carbon tax issue (the UK opposes it in principle), there is no doubt

that a change in the American position would transform the politics of the carbon tax debate within the EU as well as the international politics of climate change. (Porter & Brown, 1996, 149; Zito, 1995)

The climate change negotiations once again highlighted the concern of third parties that implementation be transparent. Article 22(2) specifies that regional economic integration organizations which accede to the Convention (i.e. the Community) must "declare the extent of their competence with respect to matters governed by the Convention." (Macrory & Hession, 1996, 114)

The entangled legal situation in areas of "mixed competence" and "mixed agreements" however makes this difficult. Thus far the Community's statement is lacking specifics. That perhaps is not surprising, especially given the lack of specifics in the Framework Convention on Climate Change itself. As Macrory and Hession point out, " In the absence of a clearly defined area of exclusive Community competence for climate change and in the absence of a clear obligation detailing specific action it is extremely difficult to isolate Community and Member State obligations."(Macrory & Hession, 1996, 114)

UNCED: Once the General Assembly in December 1989 decided to convene a UN Conference on Environment and Development in 1992, the question of the European Community's participation arose. In March 1992, the Council of Ministers approved the full participation of the Community in the UNCED--'on equal terms with the member states'(Jupille & Caporaso, 1996, 20).

However, as Jupille and Caporaso point out, when Portugal, in the exercise of the Community Presidency, asked during the New York PrepCom (IV) meeting that Commission President Delors be treated during the concluding ceremonies at Rio as if he were a head of state, a fierce dispute

erupted with the United States and the member-states themselves were unwilling to go that far. (Jupille & Caporaso, 1996,21).¹⁶

A compromise position was put together which acknowledged the special position of the Community in the world of international affairs. The compromise allowed the Community to participate fully in the UNCED deliberations--the only international organization to be given that privilege. This privileged position was however not to be viewed as a precedent, and the Community would still not be allowed to vote. The following excerpt summarizing the compromise gives a sense of how the Community's actual participation was to take place:

The EEC will represent exclusively the Community's position to the Conference on issues falling within the EEC's exclusive competence. In cases of mixed competence, the EEC and its member States will determine which, as between them will represent the positions of the Community and its member States. The EEC shall inform the UNCED secretariat prior to consideration of an agenda item by the Conference if the EEC will be representing a position of the Community and its member States with respect to specific matters within the scope of that agenda item. (Jupille & Caporaso, 1996, 21)

On April 13, 1992, the General Assembly approved a special decision to grant the Community's request to be granted "full participant status." Brinkhorst, then the Director-General of DGXI, describes the content and significance of that decision in the following terms:

This status conferred on the EEC rights enjoyed by participating states, including representation in committees and working groups of the conference, the right to speak and to reply, and to submit proposals and substantive amendments. On two counts the position would be different from that of Member States: the EEC would not have the right to vote (including the right to block a consensus) nor to submit procedural motions. Although EC representatives made it clear from the beginning that the EC would not request a 13th vote,

no new ground could be broken on this point in view of the clear language to the contrary of the UN Charter. the decision was considered as an important breakthrough of the general procedural rules prevailing at meetings of UN conferences. (Brinkhorst, 1994, 612)

The Community had played what Brinkhorst characterizes as a "certain mediating role" between developing countries on the one hand and the United States and Japan on the other. The G-77 therefore actively supported the granting of "full participant status" to the Community. (Brinkhorst, 1994, 613).

The Council Presidency played an active role during the negotiations. According to one negotiator from a non-member state, at certain points the Presidency on behalf of the Community was negotiating with the G-77 with the United States and Russia sitting on the sidelines. In his words, "the Community was a powerhouse." Although the Commission's presence was weakened by the refusal of the Commissioner for the Environment to attend, the Community played an important role. The Commission's civil servants were involved and the Council Presidency was very visible. Third parties certainly interpreted the Presidency's actions as those of the Community. Given the codes of international negotiations, the fact that Ken Collins, the Chair of the important parliamentary committee on the environment, did not attend mattered much less than did the fact that the Council Presidency was active.

The relationship between the Commission and the Presidency seems to have been relatively smooth. The Council of Ministers had decided in March 1992 that the Presidency would typically represent and negotiate for the Community in areas of mixed competence but that the Commission could act in the same fashion if it were so agreed. In areas where important EC directives had been

approved--toxic chemicals, waste, and fisheries--"the Commission representatives spoke exclusively on behalf of the Community." (Brinkhorst, 1994, 613)

The Community in fact was able to act in a unitary fashion more easily on environmental issues than on those dealing with development aid policy. No common EC position had been developed, and the Community in that area was unable to exert the kind of influence it did in the environmental arena. (Brinkhorst, 1994, 614)

The Community did sign Agenda 21 even though it is not a legally binding document. From a legal perspective,, such a signature was unusual. Martin Hession argues that "the general powers of the Commission to maintain all appropriate relations with organs of the United Nations (Article 229) cannot be considered sufficient for such general political declarations."(Hession, 1995, 156)

In fact, the Community has been active in its relations with the Committee for Sustainable Development (CSD) which was established by Chapter 38 of Agenda 21 as a Commission of the UN's Economic and Social Council. The General Assembly, in establishing the CSD in January 1993, explicitly called for the full participation of the Community. The Council of Ministers had on November 23, 1992 accepted a Commission recommendation that the Community should participate fully in CSD activities. The member-states which were elected to membership on the Commission (the Community itself would not seek election) would, on issues within the Community's exclusive competence," exercise their votes on the basis of a Community position decided on in Community coordination. On issues of mixed competence, co-ordination would take place with a view to securing a common position of the basis of which the Community members of the CSD should vote." (Brinkhorst, 1994, 615)

The Council of Ministers in its meeting of March 4, 1996 laid out the guidelines to be used by the Union during the 4th Session of the Commission which met in New York from April 18 to May 3, 1996. These guidelines were also to be used in the preparation for the European Union's participation in the 1997 Special session of the United Nations General Assembly which is to review the progress made in the implementation of the commitments made at Rio. (5309/Presse 45), 5-7.

CONCLUSION

The European Community has over time developed the international standing and the capacity to become an important international actor in the area of international environmental relations. Third parties as well as the United Nations system have gradually acknowledged the Community's unique status vis a vis its member states and are in the process of adapting international institutions to accommodate its unusual demands.

What is striking about the Community's role is that an institutionalized balance between the Commission and the member-states acting collectively within the framework of the Union is being constructed at the same time that the Community is emerging as an important actor in the global environmental context. The Presidency is a key Community institution in the foreign environmental affairs of the Community. The Commission, for its part, is playing a role much more important than might have been expected given the importance of states in the international system. The member-states, although in constant conflict with the Commission over the internal allocation of responsibilities, are nonetheless consistently agreeing to have the Community play an important international role in the environmental arena.

The institutionalization of "dual representation" represents an innovative way for the Community to be represented while maintaining a central role for the member-states. The Community has found a way to incorporate both intergovernmentalism (in the form of the Council Presidency) and the "federal" (in the form of the Commission) in its external personality.

Significantly, the external role of the Commission was legitimized by the European Court of Justice. The Court, as it has so often, gave a powerful "federal" impetus to the Community by recognizing the external dimension of what we now know as pillar one. It, however, did not exclude the member-states. The entanglement between the Community and the member-states is packaged under the rubric of "mixed competence" and "mixed agreements." The arcane and convoluted legal spiderwebs which make up the area of "mixed competence" and "concurrent powers" are in fact the foundation stones for the balance between Brussels and national capitals which makes the Community both so complex and so successful as an instrument of integration.

The environmental arena has proven to be a fruitful arena for institution-building. The Community has been able to increase its stature, its international reach, and its effectiveness within international organizations. Each global treaty has proven to be a step in a process of institution-building which is still ongoing. Its future role in the Commission for Sustainable Development and General Assembly activities in the post-Rio period is likely to continue on a similar trajectory--incremental steps which increase its status as well as its access to the decision-making centers within international fora (such as informal meetings), and therefore the likelihood that it will be able to act in a unitary fashion.

The Council Presidency, flanked by the Commission, and the Commission, flanked by the Council Presidency, are likely to force the international system to acknowledge an entity which does

not require the constituent units to subordinate themselves to a "federal" government or to a "center" as conventionally understood. The ever more institutionalized coupling of the "supranational" and the "intergovernmental" in the conduct of international environmental politics represents a case of institution-building at both the Community--and at the global--level.

REFERENCES

Alker, H. R., and Haas, P. (1993). The rise of global ecopolitics. in N. Choucri (ed.) Global accord: Environmental challenges and international responses (pp. 133-171). Cambridge: MIT Press.

Benedick, R.E. (1991). Ozone diplomacy: New directions in safeguarding the planet. Cambridge: Harvard University Press.

Berejikian, J.(forthcoming) The Gains debate: Framing state choice. American Political Science Review

Boons, F. (1992). Product-oriented environmental policy and networks: Ecological aspects of economic internationalization. Environmental Politics, 1(4), 84-105.

Brinkhorst, L.J. (1994). The European Community at UNCED: Lessons to be drawn for the future. in D. Curtin and T. Heukels (eds.) Institutional Dynamics of European Integration (pp. 609-618). Dordrecht: Martinus Nijhoff.

COM(85)729 final

COM(85)8 final

Conca, K (1994). Rethinking the ecology-sovereignty debate. Millennium, 23,

Commission of the European Communities. (1989). Relations between the European Community and international organizations. Luxembourg: Office for Official Publications of the European Communities.

Dietrich, William F. (1996). Harmonization of automobile emission standards under international trade agreements: Lessons from the European Union applied to the WTO and the NAFTA. William and Mary Environmental Law and Policy Review. 20(2), 175-221.

Gardner, A. A new era in U.S.-EU relations: The shift from consultation to joint action, forthcoming.

Golub, J. (Forthcoming) Global Competition and EU Environmental Policy: Introduction and Overview. In J.Golub (Ed.) Global Competition and EU Environmental Policy. London: Routledge.

Groux, J. & Manin, P. (1985). The European Communities in the international order. Luxembourg: Official Publications of the European Communities.

Haas, P.M. (1990). Saving the Mediterranean: The politics of international environmental cooperation. New York: Columbia University Press.

Haas, P.M., Keohane, R.O. & Levy, M.A. (Eds.).(1993). Institutions for the earth: Sources of effective international environmental protection. Cambridge, MA: MIT Press.

Haigh, N.(1992). The European Community and international environmental policy. in A. Hurrell & B. Kingsbury (Eds.) The international politics of the environment: Actors, interests, and institutions. Oxford: Clarendon Press.

Haigh, N. (1996) Climate change policies and politics in the European Community (155-185). In T. O'Riordan & J. Jager (Eds.) Politics of Climate Change: A European Perspective. London: Routledge, 1996.

Hampson, F.O with Hart, M.(1995). Multilateral Negotiations: Lessons from Arms Control, Trade, and the Environment. Baltimore: Johns Hopkins University Press.

Henig, S.(1971). External relations of the European Community: Associations and trade agreements. London: Chatham House.

Hession, M. & Macrory, R. (1994). Maastricht and the environmental policy of the Community: Legal issues of a new environment policy. In O'Keeffe, D. & Twomey, P.M. (Eds.) Legal Issues of the Maastricht Treaty. London: Wilery Chancery Law.

Hession, M. (1995). External competence and the European Community. Global Environmental Change: Human and Policy Dimensions. 5,

Hurrell, A. & Kingsbury, B (1992). The international politics of the environment: An introduction (1-47). In A. Hurrell and B. Kingsbury (Eds.) The international politics of the environment. Oxford: Clarendon Press..

Jachtenfuchs, M. (1990). The European Community and the protection of the ozone layer. Journal of Common Market Studies. .

Johnson, S.P. & Corcelle, G. (1995). The environmental policy of the European Communities (2nd ed.). London: Kluwer Law International.

Johnson, S.P. (1993). The Earth Summit: The United Nations Conference on Environment and Development (UNCED). London: Graham & Trotman/Martinus Nijhoff.

Jupille, J. H. & Caporaso, J.A. (1996) "The European Community in global environmental politics," ECSA Workshop, The role of the European Union in the world community," Jackson Hole, Wyoming, 16-19 May.

Kramer, L. (1995) E.C. treaty and environmental law (2nd ed.). London: Sweet & Maxwell.

Lang, J.T. (1986). The ozone layer convention: A new Solution to the question of Community participation in "mixed" international agreements. Common Market Law Review, 23, 157-176.

Leenen, A. Th.S. (1984). Participation of the EEC in International Environmental Agreements. Legal Issues of European Integration 1984/1, Special Issue: The European Communities as an International Organization, Deventer, Netherlands: Kluwer, 93-111.

Litfin, K.T. (1995a). Rethinking sovereignty and environment: Beyond either/or. SSRC Workshop, Rethinking Sovereignty and Environment, University of Washington, October 13-15.

Litfin, K.T. (1995b). Framing science: Precautionary discourse and the ozone treaties. Millennium: Journal of International Studies, 24, 251-277.

Macrory, R. & Hession, M. (1996) The European Community and climate change: The role of law and legal competence. (pp. 106-154) In T. O'Riordan and J. Jager (Eds.) Politics of Climate Change: A European Perspective. London: Routledge.

Mastellone, C. (1981). The External relations of the E.E.C. in the field of environmental protection.

The International and Comparative Law Quarterly, 30, 104-117.

Meunier, S. (1996). Divided but united: European trade policy integration and EC-US agricultural negotiations in the Uruguay Round. ECSA Workshop, The Role of the European Union in the world community, Jackson Hole, Wyoming, May 16-19.

Nollkaemper, A. (1987/2). The European Community and international environmental cooperation-- Legal aspects of external community powers. Legal Issues of European Integration: Law Review of the Europa Institut, University of Amsterdam. Deventer, Netherlands: Kluwer,

55-91.

O'Keeffe, D. and Schermers, H. G. (eds.) Mixed Agreements.

Pollack, M.A. (1996) Ignoring the Commons: International Trade, the International Environment, and EC Environment Policy. Paper delivered at the Council for European Studies Conference of Europeanists, Chicago, 14-16 March.

Porter, G. and Brown, J.W. (1996) Global Environmental Politics (2nd ed.). Boulder, CO: Westview.

Sbragia, A. with Hildebrand, P. (forthcoming). The European Union and compliance: A story in the making. In E.B. Weiss & H. Jacobson (Eds.) Engaging countries: Strengthening compliance with international environmental accords. Cambridge, MA: MIT.

Sbragia, A. (1996). Transatlantic relations: An evolving mosaic. International conference, Policy-Making and decision-making in transatlantic relations, Universite Libre de Bruxelles, 3-4 May.

Scheuermans, F. & Dodd, T. (1995) The world trade organization and the European Community. The European Parliament: Directorate General for Research, External Economic Relations Division, Working Paper, External Economic Relations Series, E-1.

Sell, S. (1996). North-South environmental bargaining: Ozone, climate change, and biodiversity. Global Governance, 2.

Stein, E. (1991). External relations of the European Community: Structure and process (pp.127-188). Collected courses of the Academy of European Law. Academy of European Law (ed.) Volume I, Book I, Kluwer.

Szell, P. (1993). Negotiations on the ozone layer (pp.31-47). In G. Sjostedt (Ed.) International Environmental Negotiation. Newbury Park, CA: Sage.

Weiss, E.B. (1996). The natural resource agreements: The living histories. unpublished.

Weiss, E.B. (1994). International environmental law: Contemporary issues and the emergence of a new world order. Business & the Contemporary World. VI(2), 30-44.

Woolcock, S. & Hodges, M. (1996). EU policy in the Uruguay Round (pp.301-324). In H. Wallace & W. Wallace (Eds.) Policy-Making in the European Union. Oxford: Oxford University Press.

Young, O.R. (1989). International cooperation: Building regimes for natural resources and the environment. Ithaca, NY: Cornell University Press.

Young, O.R. (1991). Political leadership and regime formation: On the development of institutions in international society. International Organization, 45, 281-308.

Young, O.R. (1993). Negotiating an international climate regime: The institutional bargaining for environmental governance (pp.431-452). N. Choucri (Ed.) Global accord: Environmental challenges and international responses. Cambridge, MA: MIT Press.

Ziegler, A.R. (nd) International cooperation for the protection of the environment in the European Community: Shared tasks and responsibilities of the Community and the Member States. University of St. Gallen, Switzerland, unpublished.

Zito, A. (1995). Integrating the Environment into the European Union: The history of the controversial carbon tax. C. Rhodes & S. Mazey (Eds.) The State of the European Community. Volume 3. Boulder, CO: Lynne Rienner.

ENDNOTES

1. I would like to thank James Caporaso, Michelle Egan, Joseph Jupille, Mark Pollack, Kurt Riechenberg, Alec Stone, Steven Weber for their comments on earlier drafts of this paper. This paper has been written as part of the University of California - (Laguna Beach) project on The Politics of Institution Building in the European Union. An earlier draft of this paper was published by the Center for German and European Studies at the University of California - Berkeley.
2. Woolcock and Hodges, for example, conclude that in the Uruguay Round, "in fourteen of the fifteen negotiating groups, the EC performed on a par with, for example, the USA, if not better, in terms of presenting coherent consistent positions."(Woolcock & Hodges, 1996, 323)
3. Pillar one includes areas of exclusive competence--trade in manufactured goods--and areas of so-called "mixed competence." The latter is seen by many Commission officials as far from ideal. In the words of one, "pillar one is being polluted by 'mixicity'--the notion of mixed competencies."
4. John Temple Lang defines a mixed agreement in the following fashion:

International agreements are described as "mixed" when both the European Community and some or all of its Member States become, or are intended to become, parties. In practice this is usually where the Community has exclusive competence over part of the subject matter of the agreement and non-exclusive or concurrent competence over the rest of the subject matter. However, the phrase "mixed agreements" is also used to describe the much rarer situations in which either part of the subject matter of the agreement is outside the competence, even the concurrent competence, of the Community, or the Community becomes a party even though it has no exclusive competence over any part of the subject matter. (Lang,1986, 157-8)
5. The other three objectives are preserving, protecting and improving the quality of the environment, protecting human health, and the prudent and rational utilization of natural resources.
6. With regards to the OECD, the Commission points out that

although the Community is not a member of that Organization, its status there is higher than that of an observer. Supplementary Protocol No. 1 to the Convention on the OECD stipulates that the Commission shall take part as of right in the work of the Organization and that representation of the Communities shall be determined with the institutional provisions of the Treaties. (Commission of the European Communities, 1989, 19)

7. Much to its dismay, however, the Community has the same formal status vis a vis the UN General Assembly as the Commonwealth Secretariat, the International Committee of the Red Cross, the League of African Unity, and the Organization of the Islamic Conference. It is certainly true that such organizations have little similarity with the Community, representing "both in law and in their factual position a totally different political reality." (Brinkhorst, 1994, 610)

8. The trade arena stands as a contrast. In the case of the Uruguay Round, member-states did not field national delegations. The Commission was the sole representative and the Presidency was not a partner nor was it included in the negotiating team. The member-states gave the Commission the right to negotiate for the Community even in those areas (such as services and intellectual property rights) characterized by "mixed competence." (Woolcock & Hodges, 1996, 302)

9. See, for example, (Litfin, 1995; Conca 1994, Hurrell & Kingsbury, 1992)

10. Guy and Corcelle, Second Edition, p. 306.

11. For a more in-depth discussion of the EU's role in CITES, see (Sbragia with Hildebrand, forthcoming)

12. The politics of ozone depletion have been very much concerned with economics. As Jeffrey Berejikian argues, "the central concern of the EC was the economic impact of ozone layer protection." (Berejikian, forthcoming)

13. For a discussion of how the Clinton Administration began to view the Community as a more important transatlantic partner, see (Gardner, forthcoming; Sbragia, 1996)

14. The member-states, however, maintained control of the negotiations over the Global Environmental Facility. The Community is not a member of the GEF but is trying to become one. At least some of the member-states, however, are opposed to the Community's membership.

15. Michael Grubb has argued that the impact of reducing greenhouse gases will be significant.. In his words "No previous environmental problem has been at once so closely related to major sectors of economic activity." Cited in (Sell, 1996, 106-7)

16. I have drawn heavily from Jupille and Caporaso's excellent paper . Preparatory committees were very important in the UNCED process. In Stanley Johnson's words,

Few international conferences can have been so thoroughly prepared as the United Nations Conference on Environment and Development. UNCED's Preparatory Committee (which became known as PrepCom) held four meetings, each of them four or five weeks in length, which were attended by most of the member states of the United Nations, by the intergovernmental bodies both inside and outside the United Nations system, by a host of non-governmental

organizations including the business, scientific and academic communities, as well as the representatives of "green" groups and charitable and other bodies interested in the environment and development. The task of these successive meetings of UNCED's PrepCom was to define the issues, to help shape the programmes and other proposals, to assess financial implications where this was possible and, finally to narrow down the areas of disagreement so that the Rio Conference might ultimately be confronted with a manageable agenda (Johnson, 1993, 19)