Chapter VIII
Environmental Protection in Other Subject Areas of International Law

A. REGIONAL ECONOMIC INTEGRATION

1. The European Union

The European Union, originally consisting of six Western European countries and expanded to 27 states, began as a set of three regional communities, which merged into a single entity (the European Community) that was transformed into the Union.

The founding documents, the 1951 Paris Treaty creating the European Coal and Steel Community, the 1957 Treaty of Rome establishing the European Economic Community (EEC), and the 1957 Euratom Treaty, were focused exclusively on building a customs union and other forms of economic integration. There was no mention of environmental matters.

The Stockholm Conference raised the profile of environmental issues in the Communities, as it did elsewhere. Shortly after the Conference, in 1974, the EEC Commission adopted the first Program of Action on the Environment. By this point, economic distortions caused by the different environmental laws in the member states had become evident, as had recognition that the goal of economic integration, to improve the well-being of Europeans, could not take place without environmental protection. Since 1974, the Commission has continued to elaborate periodic Programs of Action of the European Communities on the Environment, although a treaty basis for action was lacking until the Communities merged as a consequence of the Single European Act.

a. The Treaty Framework

At present, the legal foundation for environmental action by the European Union is the consolidated treaty approved in Amsterdam on October 2,
1997 (TEU). See EU Consolidated Versions of the Treaty of European Union and the Treaty Establishing the European Community, 2002 O.J. (C 32). TEU Art. 3 sets forth the objectives of the EU and includes the field of environmental protection. Art. 174(2) adds that the Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. Further details are contained in Arts. 174 to 176. Art. 174(1) designates the four aims of the Community environmental policy: (1) preserving, protecting, and improving the quality of the environment, (2) protecting human health, (3) prudent and rational utilization of natural resources, and (4) prompting measures at the international level to deal with regional or worldwide environmental problems.

Art. 174(2) proclaims that the Community’s environmental policy shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay. According to Art. 174(3), in preparing its policy on the environment, the Community shall take account of: available scientific and technical data; environmental conditions in the various regions of the Community; the potential benefits and costs of action or lack of action; the economic and social development of the Community as a whole and the balanced development of its regions. Art. 174(3).

While the TEU confers specific powers on the Community in the field of environmental protection, it also establishes limits on those powers. In particular:

1. Such powers are to be exercised only if the Community’s environmental objectives can be attained better at the Community level than at the level of the individual member states. This flows from the principle of subsidiarity, one of the basic principles of the Community.
2. According to Art. 174(2)(2), harmonization measures for environmental protection shall include, where appropriate, a safeguard clause allowing member states to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.
3. The protective measures adopted pursuant to the environmental principles proclaimed by the Treaty shall not prevent any member state from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaty, however, and be notified to the Commission. Art. 176. Concerns about the impact of environmental measures on free trade are evident, and arise not only inside the European Community but also in the larger context of globalization.
4. Finally, while Art. 174(4) recognizes the capacity and the authority of the Community to conclude arrangements with non-member states