trade duopoly with the United States. Initial Community competence for the Common Commercial Policy has ensured that, in the field of trade relations, the Union has developed an equivalent capacity to act. For the many states with which it maintains preferential trade relations it can be a dominating and sometimes inscrutable actor. Its exclusionary practices in this respect, and its aggressive pursuit of market opening, are incompatible with constructions of the Union as a value-based actor. Nevertheless the EU also uses its economic instruments to pursue objectives in the area of human rights and poverty alleviation. The EBA initiative and attempts by the Commission to open up a civil society dialogue on trade policy suggest a more inclusive identity.

Although the EU increasingly appears to outsiders as a single economic entity, its external representation and capacity to act still varies by issue. Changes in the global economy, and the growth of the Union's economic presence in areas such as services and investment, have exerted pressure for the EU to find some way of representing itself externally. While this is being achieved in respect of trade in services there are problems elsewhere which render the Union an incomplete economic actor. Pre-eminent here are the expectations and potential associated with the development of the Single Currency.

This chapter precedes the other substantive considerations of the Union as an actor for a reason. The economic presence of the Union, its construction as a single entity by outsiders and the progressive development of actor capability from its basis in merchandise trade continue to provide the essential base of and roles in the global system. The Union necessarily utilizes its trading strength to underpin what might be described as its broader foreign policy objectives, which are the subject of subsequent chapters. Trade policy has provided the foundation of the Union's relations with outsiders and many of the key instruments available to its emergent foreign policy. It also provides a yardstick for the assessment of actorness in other domains.

# 4 Environmental policy

## The Union as global leader

In contrast with its role as a world trading power, the Union's rise to prominence in global environmental politics was unforeseen. This chapter considers how this came about and how the Union, despite the special difficulties associated with mixed competence in this area, became a leading actor in both regional and global environmental governance. Its roles extend beyond participation in particular negotiations to encompass the propagation of environmental norms, the pursuit of sustainable development and, perhaps most important of all, leadership of attempts to curb the menace of climate change. As elsewhere, presence provides the foundation.

By any standards the countries of the European Union cast a long ecological shadow. Such presence is commensurate with the scale of industry, transport, energy consumption and agriculture within an economy second only in scale to that of the United States. Inevitably the EU will be amongst the largest polluters and resource exploiters on earth. One measure of the burden imposed by the EU on the earth's resources has been calculated in terms of annual 'total material requirement' – the volume of material, excluding air and water, that flows through an economy, about 80 per cent of which is released back into the environment within one year. The figure calculated for the EU, at the end of the twentieth century, was around 19 billion tonnes or approximately 50 tonnes per capita (the US equivalent was 84 tonnes), 'indicating continuous pressure on the global environment due to resource extraction for the EU economy' (Bringezu and Schütz 2001: 12, 16). Significantly, 40 per cent of the material involved was extracted beyond the borders of the EU (ibid.: 31).

In many other areas the countries of the EU exploit a substantial slice of the earth's resources. The scale of the European fishing 'effort' provides an obvious example, as EU-based trawlers range far beyond those depleted waters subject to the Common Fisheries Policy.[1] Apart from the sustainability implications of the Common Agricultural and Fisheries Policies (CAP and CFP) the EU's environmental presence is most directly experienced by the Union's immediate neighbours in Eastern Europe and the Mediterranean, but there has been an increasing realization that an economy the size of the EU's has major responsibilities on a global scale: for stratospheric ozone depletion, climate change, desertification and species loss.

In the beginning the Treaty of Rome was silent upon environmental matters which were, accordingly, almost entirely absent from considerations of Europe's role in the world system.[2] Just as there were no common environmental policies, the salience of

environmental questions for international politics was not yet widely apparent. The process whereby the natural environment became the subject of international and even 'high' politics merits study in its own right (Vogler 2002a). It was, in large part, a reaction to scientific understanding and public awareness of the gravity of transboundary environmental impacts (for example 'acid rain' deposition in Europe) and, during the 1980s, the result of a burgeoning concern with change and degradation on a global scale that coincided with the ending of the Cold War. This set the stage for the landmark 1992 Rio Earth Summit (UNCED) which agreed *Agenda 21* – a blueprint for sustainable development – and provided the stage for the signing of the Framework Convention on Climate Change (FCCC) and the Convention on Biodiversity. It also provided a significant opportunity for the development of a European environmental identity and the growth of related capabilities as an actor in the new environmental diplomacy. Participation in 'international environmental discourse' (Lenschow 2004) provided stimuli to domestic action and helped to embed sustainability concepts in the Union's view of itself and its mission.[3]

The initial thrust of environmental policy was to remove trade distortions arising from different national standards and policies, although measures were also introduced with the sole purpose of promoting the conservation of the environment. The Single European Act of 1987 strengthened the latter by according explicit treaty status to the Community's environmental objectives: to preserve, protect and improve the quality of the environment, to contribute towards human health and to ensure a prudent and rational utilization of resources (TEC Article 174). Also embodied in this article were the principles of prevention and that 'the polluter should pay'. Preventive policy has been further developed by adoption of the 'precautionary principle' that dispenses with the requirement that policy must always be based on full scientific evidence that harm to the environment has occurred.[4] As we shall see, this has had significant and controversial implications at the international level.

Since the Single Act there has been a cascade of legislation, making the environment the area in which there was the greatest increase in Community activity; and in which national policies were increasingly determined at the European level (Sbragia 1996: 243).[5] The paradox is that, despite this unprecedented legislative development, environmental concerns are still acute especially over climate change, energy consumption and waste disposal (European Environment Agency 2004: 6). Part of the explanation is to be found in the equally unprecedented number of cases at the ECJ relating to the enforcement of the environmental *acquis* (Knill and Lenschow 2002: 4).

Environmental policy has a markedly expansive quality that goes well beyond the strict responsibilities of the Commission's DG Environment. This, coupled with the inter-sectoral character of much environmental policy, can make 'internal' deliberations quite extensive and often difficult (Sbragia 1996: 244–6). They will involve trade, agriculture, industry, taxation, energy, transport, aid and scientific research. Since the SEA, treaty revisions have reflected this by indicating that environmental protection 'shall be a component of the Community's other policies' (TEC Article 6).

The promotion of policy coherence in the area of trade, agriculture development, fisheries and the environment involves a range of relevant Commission DGs and inter-service consultation procedures and may even require a decision to be taken at the level of the College of Commissioners. DG Environment, responsible for much, but by no means all, environmental policy, is surprisingly small in size compared with national ministries and other Commission DGs. DG Trade and DG Environment both have their own units specializing in the nexus between their two areas of responsibility. The DG Environment trade unit will operate in Geneva and attend meetings of the WTO's Trade and Environment Committee. Good working relations also exist on the overlapping agendas of DG Development and DG Environment (Interview, DG Development, 2001), but serious problems appear to occur with DG Agriculture who 'feel they are attacked from all sides' and insist on relating to other DGs through the formal system (ibid.). Issues will also be determined by the position of the various DGs and the constituencies whose interests they reflect in the Brussels 'pecking order'. Thus Trade, Agriculture and Fisheries are strong DGs with powerful Commissioners, a status not always enjoyed by the 'second division' Environment and Development DGs with 'junior' Commissioners.



Environmental policy has also been beset with problems of consistency between Member States. This is hardly surprising given their differing locations, degree of modernization and varying administrative traditions. However, it is also possible for large industrialized Member States at similar levels of development to have fundamental policy differences over such issues as pollution control and the regulation of the chemical industry. The situation is further complicated by the variety of Community decision-making procedures and shared competences to which environmental policy is subject. This may be seen, in part, as a consequence of the slow and somewhat *ad hoc* development of environmental policy – in comparison, for instance, with the initial establishment of Community competence for trade. Complexity also results from various bargained compromises between a range of interests eager, on the one hand, to restrain the expansion of the Community's competence and, on the other, to advance green legislation while ensuring that common policies do not provide a brake on progressive national developments. Thus, not only does environmental policy touch virtually the entire scope of the Community's policy competences, it can also be subject to almost the whole range of the EU's variegated decision-making procedures. This can be of some importance for the Union's performance as an actor in international environmental politics; not least as a source of bewilderment for third parties.

## Externalization of the EC's environmental policies

The same dynamics that have driven the production of environmental policies at Union level also served to internationalize them. There are three main drivers at work here. First, the pressure to respond to transboundary pollution and, increasingly, to global scale environmental changes in areas where the European Community was necessarily involved because of its legislative competence. Second, what may be broadly regarded as the trade implications of environmental policy. Third, and on occasion in contradiction to trade policy, the increasingly articulate demands of European publics and pressure groups for action on issues including animal welfare, climate change and genetically modified food.

The need to respond to transboundary threats provided the impetus for the earliest major international negotiations in which the EC was engaged, that is the negotiation of the Long Range Transboundary Air Pollution (LRTAP) Convention of 1979 and its subsequent protocols relating to transboundary fluxes of nitrous and sulphuric oxides. The opportunity for Community participation in these negotiations, involving over 30 North American and European states, arose in large part from the period of détente in Europe that marked the interval between the first and second Cold Wars. There was a clear link to Community policy on acidification (and so called 'acid rain') which had resulted in a stream of directives from 1970 onwards intended to regulate harmful emissions.[6] An essentially similar point can be made about increasing involvement in marine pollution control, which physically must include both Member States and third parties in the North Sea and the Mediterranean. The Union has also participated in negotiations relating to the sustainability of shared 'common pool' resources. Here, the international dimension of fisheries policy has meant that the Community, with competence in this area, has long been a significant actor. In 2004 it operated some 22 bilateral fisheries agreements, 15 of which involved paying financial compensation to African coastal states in return for access to their waters for EU vessels.[7] The EC is also a signatory, in its own right alongside the Member States, of the 1982 United Nations Convention on the Law of the Sea.

Direct interest in the global change phenomena that achieved such prominence in the 1980s is, perhaps, less immediately evident. In the case of stratospheric ozone depletion, the EC was slow to respond initially and beset by internal competence problems and the special interests of its national chemical industries. However, European publics soon became aware that the dangers of UV-B induced skin cancers and genetic mutations were not confined to the high latitudes of the Southern Hemisphere and the EC had, by the end of the 1980s, assumed a much more proactive stance. More recently there have been widespread concerns about GMOs and strong animal rights lobbies, both of which have significantly influenced EU policy interventions.

Climate change issues associated with the enhanced greenhouse effect dominated the international environmental agenda during the early 1990s. The EU was not amongst those most obviously at risk, although low-lying coastal areas (Netherlands and East Anglia) would be subject to inundation and there has been a dawning realization that climate change is associated with the abnormal weather experienced in Europe. Given the responsibilities of developed countries for the problem of global warming, it would have been unthinkable that the Union should not have been involved from the beginning with the negotiation and development of the 1992 Framework Convention on Climate Change, and in providing financial and other support for the Intergovernmental Panel on Climate Change. The EU has also become a leading participant in the other 'global change' Conventions such as those for biodiversity and desertification.

Apart from the salience of this new global environmental diplomacy, coincident with the ending of the Cold War, another source of opportunity was soon to emerge which led outsiders to construct the Union as an environmental leader – a mantle which, by the late 1990s, was being enthusiastically worn by EU spokespersons. The



source was the wholesale abdication of leadership in global environmental policy by the United States. Evident under the Clinton administration it was raised to a point of principle by its successor in the 2001 denunciation of the Kyoto Protocol on climate change. It was a pattern evident elsewhere in biodiversity, hazardous waste, GMOs and across the whole gamut of multilateral endeavour.

The second source of internationalization derives from the fact that implementation of measures to counter environmental threats, or promote good practice at national (or at EU) level, will inevitably impact upon trade, investment and other flows across national boundaries. This provided much of the motivation for the initial inclusion of environmental concerns in the EC's policy-making, and the need to ensure a 'level playing field' remains an incentive for the Community to negotiate with third parties on environmental issues.

The link between trade and environment has become increasingly salient and disputed. It has provided much potential for policy incoherence and indeed for well-publicized contradictions between the Union's role as trader and its aspirations to environmental leadership (Bretherton and Vogler 2000). Such contradictions were evident during the infamous Tuna-Dolphin case in which the EC joined Mexico in challenging the right of the United States to use trade instruments to enforce 'dolphin friendly' fishing practices.[8] They were present, too, in the long-running dispute over 'leghold traps', which set the various Community institutions at loggerheads over the rival demands of free trade and animal welfare.[9] However, antipathy between trade and environmental objectives is hardly the norm and, as we shall see, the Union has gone some way to integrate environmental concerns into its policies at the WTO.

In consequence of all this activity, and much that has not been mentioned, the Community (apart from or alongside the Member States) is now a signatory to, and participates in more than sixty major multilateral environmental agreements, as detailed in Table 4.1. The precise way in which participation occurs is subject to considerable variation and the question of EU actorness is altogether more complex in the area of international environmental politics than it is in the field of trade. The familiar Article 133 type procedures do occur where exclusive community competence has been established; as, for example, in negotiations about the conservation of fish stocks or where matters under discussion fall within the Common Commercial Policy or the Common Agricultural Policy. At the other extreme, there may be exclusive Member State competence equivalent to the Common Foreign and Security Policy within Pillar II. This will involve unanimity voting in the Council, giving each of the Member States an effective veto. The Commission will have a subordinate and implementing role, while the duties of spokesperson and leader of the EU will be assumed by the representative of the Member State that currently holds the Presidency.

Because of the way in which EU environmental policy has evolved, and because of the 'cross cutting' nature of the subject matter of this relatively new area of diplomacy, most negotiations will not align neatly with either exclusive Community or Member State competence. Instead, competence is often 'shared'; Member States and the Community having 'concurrent' powers. The exact mixture, which has major implications for the extent of EU actorness, will depend upon the location of internal competence and the granting of external recognition.

*Table 4.1* EC participation in multilateral environmental agreements

### ATMOSPHERE

C. on long-range transboundary air pollution GENEVA 1979 and Protocols 1984, 1988, 1991,1994, 1998, 1999.

C. for the protection of the Ozone Layer VIENNA 1985 and Protocol 1987 MONTREAL and Amendments 1990, 1992, 1997, 1999.

### TRANSBOUNDARY IMPACTS

C. on Environmental Impact Assessment in a transboundary context ESPOO 1991.

C. on transboundary effects of industrial accidents HELSINKI 1992.

### ANIMALS AND HABITATS

C. on the conservation of migratory species of wild animals BONN 1979.

C. on the conservation of European wildlife and natural habitats BERN 1979.

European C. for the protection of vertebrate animals used for experimental and other scientific purposes STRASBOURG 1985.

C. on the protection of the Alps SALZBURG 1991 and 3 Protocols 1994.

A. on the conservation of African-Eurasian waterbirds the HAGUE 1995.

### INFORMATION

C. on access to environmental information AARHUS 1998.

### MARINE POLLUTION

C. for the prevention of marine pollution from land based sources PARIS 1974 & Protocol 1986.

C. for the protection of the Mediterranean Sea against pollution BARCELONA 1976 and Protocols 1976, 1976, 1980, 1982,1995, 2002.

C. on the Law of the Sea MONTEGO BAY 1982.

C. for the protection and development of the marine environment of the wider Caribbean region CARTEGENA DE INDIAS 1983 and Protocol 1983.

A. for co-operation in dealing with pollution of the North Sea by oil and other harmful substances BONN 1983.

C. for the protection, management, and development of the marine and coastal environment of the East African region. NAIROBI 1985 and Protocols 1985, 1986.

Co-operation A. for the protection of the coasts and waters of the North East Atlantic against accidental pollution LISBON 1990.

C. for the protection of the marine environment of the Baltic Sea area. HELSINKI 1992.

C. for the protection of the marine environment of the Baltic Sea area HELSINKI 1972. (EC accession pending)

C. for the protection of the marine environment of the North East Atlantic PARIS 1992.

### WATERCOURSES

C. for the protection of the Rhine against chemical pollution BONN 1976.

C. on the protection of the Rhine BERN 1999

C. on the International Commission for the protection of the Elbe MAGDEBURG 1990 and Protocol 1991.

C. on the protection and use of trans-boundary watercourses and international lakes 1992.

C. on the co-operation for the protection and sustainable use of the Danube SOFIA 1994.

C. on the International Commission for the Protection of the Oder WROCLAW 1996.

### WASTES AND POLLUTANTS

C. on the control of transboundary movements of hazardous wastes and their disposal BASEL 1989.

C. on PIC procedure for hazardous chemicals and pesticides ROTTERDAM 1998.

C. on Persistent Organic Pollutants STOCKHOLM 2001.

### DESERTS

UN C. on Desertification PARIS 1994.

### CLIMATE CHANGE

UN Framework C. on Climate Change NEW YORK 1992 and Protocol KYOTO 1997.

### BIODIVERSITY AND FORESTS

UN C. on Biological Diversity RIO 1992 & Protocol on Biosafety CARTAGENA 2000.

A. on International Tropical Timber GENEVA 1994.

### MARINE LIVING RESOURCES

C. on future multilateral co-operation in fisheries in the North West Atlantic 1978.

C. on future multilateral co-operation in North East Atlantic fisheries 1980.

C. on conservation of Antarctic marine living resources CANBERRA 1980.

C. for the conservation of Salmon in the North Atlantic area 1982.

C. on fishing and conservation of the living resources in the Baltic Sea and Belts 1973. (EC Accession 1992)

UN A. on the conservation of small cetaceans of the Baltic and North Seas NEW YORK 1992.

UN A. on the conservation and management of straddling fish stocks NEW YORK 1995.

*The EC is a signatory to all the agreements listed. Source DG Environment website, MEAs , 17/08/04.*



### *Internal and external competence*

Initially, as we have seen, exclusive Community competence was limited to the areas where it was expressly provided in the Treaty establishing the European Communities (TEC). However, as the Community's policies developed, conflicts began to emerge between internal legislation and the external agreements made by Member States. In an important 'leading case', the ERTA judgement of 1970, the ECJ went well beyond the provisions of the TEC by establishing the doctrine of 'parallelism', that is to say when the Community acquires internal competence over a subject it also acquires external competence.[10] This had implications for the conduct of external environmental policy which did not have a treaty basis.[11] The ERTA case and subsequent judgements and practice thus provided a means whereby the Commission could assert its right to be involved in the conduct of international environmental negotiations.[12]

Unfortunately, competences cannot be precisely listed and a new negotiation will raise the question of determining competence, which can prove a controversial matter for Member State governments.[13] If the questions under consideration relate entirely to trade or to fisheries, then there is exclusive Community competence and Article 133 type procedures apply. Thus, at the UN Conference on Straddling Stocks and Highly Migratory Fish Stocks, concluded in August 1995, the EC had exclusive competence and the Commission negotiated for the Community on a Council mandate. When the European Community accession to the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) was proposed, Member States objected to exclusive Community competence on the following grounds. The CCAMLR is an advanced type of resource agreement because it involves a total ecosystem approach to marine conservation. Its purpose is manifestly not just to preserve fish stocks (a Community competence) but also to protect other forms of life dependent upon them – notably penguins. Penguins are, of course, birds. However, Community competence for the preservation of birds under its Bird Directive only extends to Europe, not the Southern Ocean (Macrory and Hession 1996: 132).

Most environmental issues involve mixed agreements and concurrent competence, where representation is legally shared between the Presidency and the Commission. For example, trade and air pollution issues in the stratospheric ozone negotiations fell within Community competence, while other matters were reserved to Member States.[14] Another example is provided by the Basel Convention on hazardous waste. It has trade aspects (where there is full Community competence), scientific aspects (where there is Member State competence), and environmental aspects – where shared competence prevails. The Biodiversity Convention negotiations were also marked by divided competences, with a strong Community position on trade and intellectual property, but Member State competence in other areas. At the beginning of the process of negotiating the Climate Change Convention there was little Community competence and the Commission was not a formal participant in the Intergovernmental Negotiating Committee (INC). Subsequent to this the EC signed the Climate Change Treaty alongside the Member States and EU delegations have always included the Commission, but competence can raise problems when nationally sensitive taxation and energy policy issues arise.

Finally, there are instances where, although clear Community competence is established, external actors will not afford recognition and participation rights to the EC as opposed to its Member States. A continuing example is provided by the Convention on Trade in Endangered Species (CITES) where the subject matter is clearly within Community competence but where the EC does not have status. Under these circumstances it is understood that Article 10 of the TEC imposes a 'duty of solidarity' on Member States to pursue a common position. This serves to highlight the importance of external conceptions of the European entity and the willingness that exists to recognize and treat with it. While competence issues may complicate the way in which the EU acts they are compounded by problems of external recognition.

### *External recognition*

The European Community, unlike the Union, is provided with a legal personality by the TEC, along with the right to conclude international agreements in areas of its exclusive competence. Thus, the European Community appears, alongside the Member States, as a signatory of various multilateral environmental agreements; the Montreal Protocol; the Framework Convention on Climate Change and the Convention on Biodiversity.

An important step towards external recognition was taken during the negotiations for the 1979 LRTAP Convention. The Commission was necessarily involved alongside Member States because it had acquired competence in matters of atmospheric pollution. It was agreed to allow the EC to participate alongside the Member States as a Regional Economic Integration Organization (REIO).[15] The EC remains the only extant example of an REIO, but the formula has determined its participation in subsequent global environmental conventions.[16]

Having REIO status has come to mean that the EC can be party to a convention without any of its Member States being a party. However, when one or more of the latter are also parties 'the organization and its Member States shall decide on their respective responsibilities for the performance of their obligations under the convention or protocol' (Vienna Convention 1985: Article 13(2)). Voting rights are accorded equivalent to the number of states that are parties, subject to the proviso that the organization shall not exercise its right at the same time as any Member State and *vice versa* (Vienna Convention Article 15). As one diplomat put it, 'We don't mind what they do as long as they all don't want to vote at the same time' (Interview, Brussels Mission, January 1996).

In cases not covered by the REIO formula, participation rights have been negotiated on a case-by-case basis; and have, on occasion, been contested by Member States. In practice the EC currently has full member status in only three international organizations (as opposed to treaty based organizations such as UNCTAD or various 'Conferences of the Parties' in which the EC operates as an REIO). They are the Food and Agriculture Organization (FAO), the European Bank for Reconstruction and Development (EBRD) and the World Trade Organization.[17] In other significant organizations, such as the International Council for the Exploration of the Seas (ICES), UNEP, the World Bank and the International Maritime Organization (IMO) the EC only enjoys, at best, observer status although it does have rights to participate in the Environmental Policy Committee (EPOC) of the OECD.



Much important environmental diplomacy is conducted under the auspices of the UN General Assembly. Membership is for states alone and the normal pattern is for the Presidency to represent the Union. The Community was restricted to participation in conferences and the deliberations of the Economic and Social Committee and Specialised Agencies, with observer rights at the General Assembly.[18] Prior to the Rio 'Earth Summit' (UNCED) in 1992, after much effort by the Commission, the EC was granted 'full participant status' at the conference.[19] This meant that the EC temporarily acquired rights equivalent to those of participating states, except for voting and the submission of procedural motions. A permanent memorial (indeed a construction) is to be found on the first page of *Agenda 21*, which contains the footnote:

> When the term Governments is used, it will be deemed to include the European Economic Community within its areas of competence.

In relation to *Agenda 21* these areas of competence are, indeed, extensive – ranging across a great deal of the ground covered by that huge document. The same formula was used for EC participation in subsequent UN conferences on Habitat, Health and Environment and the Food Summit of 1996. At the 2002 Johannesburg World Summit on Sustainable Development (WSSD) the EC was the only one of over 3,000 recognized organizations to be treated as a participating state (UN 2002: 74) and the Commission President addressed the plenary session alongside the other heads of government.[20]

### *Shared competence and environmental negotiations*

Because multilateral negotiations are at the heart of global environmental governance, it is worth considering how the Union manages to act under shared competence. The procedure for opening a negotiation where Community competence pertains allows the Commission to take the initiative and seek a mandate from the Council (Article 300 TEC). However, it is sometimes the case that the Community will not have extensive competence and the Commission may be relatively inactive. Without Community competence there is reliance upon a 'lead country approach', involving inputs from key Member States which have particular interests and expertise (Interview, Council Secretariat, July 1997).[21] In practice less than half the Member States are usually active and three or four positions are likely to emerge, rather than 25. Where there can be no Commission proposal for a mandate, the formal responsibility falls upon the Member State holding the Council Presidency. Hence, for example, the March 1997 Council decision on the EU position for the Kyoto climate change conference was engineered by the Dutch Presidency. If a small Member State, such as Luxembourg, holds the Presidency, as it did for the Kyoto negotiations in the autumn of 1997, it may only be able to employ two or three of its officials to specialize in

environmental matters and there will necessarily be a greater reliance upon other Member States and upon the General Secretariat of the Council. The Commission will also tend to be involved for, even if it does not enjoy the formal right of initiative, Member States are often reliant upon its resources and expertise if the business of negotiation is to be efficiently carried forward.

The negotiating mandate agreed by the Council is a confidential document. Under the revised terms of Article 300 (TEC) it will be adopted by different decision-making procedures depending upon the issues under consideration. The mandate will establish competences for a 'mixed' negotiation, provide a set of binding directives and give greater or lesser freedom of manoeuvre to the Commission in the conduct of negotiations (Macrory and Hession 1996: 135–6).

The manifestation of the Union that other parties to an international environmental negotiation see across the table will also be determined by the Council acting with reference to Article 300. If Community competence is exclusive, the Commission will negotiate but the delegation will include at least one Member State representative, and there may even be a full Article 133 type committee dealing with the Commission in much the same way as in a trade negotiation. Otherwise, in a 'mixed' negotiation, there will be separate Commission and Member State delegations who will divide up responsibilities according to their competence.[22] Normally, when there is a common position which is not covered by exclusive Community competence, the Presidency will speak for all. This is especially important in cases where the EC does not have full rights of participation and the Presidency will speak using the formula, 'On behalf of the Community and its Member States'.

When there are problems in a 'mixed negotiation' it may be possible for a direct link to be established between the EU delegation and the Council or COREPER, especially when negotiations extend over a long period.[23] But generally this will not be possible and issues will have to be resolved in coordination meetings between officials attending the negotiations. Coordination meetings cover the day-to-day planning of negotiating strategy. They are held every morning during a negotiation but sometimes at midday and in the evening too. This can be onerous for Member State representatives who may find themselves rising at 6 am and being forced to hold national delegation meetings late at night (Interview, UK Department of Environment, September 1997). Much depends upon the leadership role of whichever Member holds the Presidency. If the Presidency is not strong the Commission sees its role as 'doing the work for them' and also acting as a 'sheepdog' to round up straying Member State representatives (Interview, DG Environment, June 1996). On the other hand even a 'strong' Presidency will, on occasion, see the need to delegate responsibility for making first drafts of EC positions to Member State representatives who either volunteer or are requested to 'take the lead'. In such circumstances Member State representatives assist the Presidency but do not supplant it as formal negotiator.

How do all these complexities affect the performance of the Union as an actor? Difficulties in coping with the demands of a 'mixed' negotiation were evident in the performance of the European side in the talks leading to the 1987 Montreal Protocol on stratospheric ozone depletion. This important piece of international policy-making created a regime which continues to address the phasing out of chemicals, such as



chlorofluorocarbons and halons, which had been shown to destroy the earth's protective stratospheric ozone layer. The United States, with domestic legislation banning some uses of the offending chemicals already in place, encountered resistance from European chemical industries. There were accusations, at the time, that the EC was condemned by its internal arrangements to move 'at the speed of the slowest ship in the convoy' and that constitutional wrangling between Member States and the Commission spilled over to affect the negotiations.[24] However, the voting changes brought about by the Single European Act helped to resolve these problems. The final comprehensive package involving production and consumption cuts, and subsequently a CFC phase out, owed much to the Europeans, and produced a more extensive and effective agreement than had initially been on offer (Haigh 1996: 246). The Union has since been a proactive participant in the international stratospheric ozone regime. In general, both Member State and Commission sources have attested to the improvement in Community/Member State coordination at negotiations and the way in which participants have learned to negotiate as the European Union, although there are still difficulties in areas such as forestry. The Union is at its strongest as a single actor when operating under exclusive Community competence, but it is not necessarily the case that a mixed competence delegation led by the Presidency will be ineffective. As we will see in the discussion of climate change below, there can be confusion and adverse tactical consequences when negotiating at 16 (and now 26). Nonetheless, this has not precluded the Union from extensive and significant participation in virtually all of the major environmental negotiations held since the 1980s.

### *Instruments and implementation*

In this, as in other areas, capabilities are a key component of 'actorness'. They are potentially available to the Union through its presence, its expertise and its extensive network of economic dependencies plus the bilateral diplomatic links of the Member States. The latter have attempted to coordinate their international activities through an EU climate change network that links national specialists in this area and, more recently, in a green diplomacy network. There is evidence of an increasing willingness to employ policy instruments in the direct support of external environmental objectives. A prominent example is provided by the coordinated diplomatic campaign in support of Kyoto ratification alongside the deployment of trade inducements.

A special characteristic of environmental politics is its necessary reliance upon scientific knowledge. The creation of the European Environment Agency was designed to provide a unified facility in this area and there has also been a realization of the critical importance of an independent earth observation capability for effective participation in global environmental governance. Since 2000 the Union has developed a space policy through the coordination of national efforts and working in partnership with the European Space Agency. The significant outcome for environmental policy is the Global Monitoring for Environment and Security (GMES) project. GMES, which will be fully implemented in 2008, provides an information infrastructure coordinating disparate European remote sensing resources in ways that support EU decision-making and participation in multilateral agreements. In the words of the

Commission's space 'white paper', 'GMES ensures Europe's interest to be [sic] an actor at the global level, relying on independent means for gathering data and information' (Commission 2003f: 15).

A further dimension of capability is the capacity to implement agreements once they have been made. This will bear, not only upon their effectiveness but upon the credibility of the Union, and there have been accusations that the Union cannot be relied upon to carry through its undertakings in the same way as might be expected of a sovereign state. The 'implementation deficit' in respect to environmental legislation has been much discussed (Knill and Lenschow 2002). The EU is engaged in a two level, or often three level, process, where Directives and Regulations agreed at Union level have to be made effective in concrete ways through the enforcement and monitoring of rules at national and local levels. As the 'completion' of the Single Market demonstrated, this is never easy. Although the EU procedures for monitoring and enforcing the compliance of its Member States are considerably in advance of those to be found in most international organizations, this is not the standard against which the EU will be judged. In fact there are advantages in implementing international environmental agreements through the EU, where procedures require that the necessary legislation shall be prepared at the time of ratification by the Member States and the Community, and where the possibility exists that a common external commitment can be based upon differentiated contributions between Member States at different levels of economic development (see Table 4.2).

## External environmental roles

It is a pattern, observable elsewhere in the Union's external relations, that it exercises its most powerful sway over its immediate neighbours. Regional environmental policy is no exception. As we have seen, it was in attempting to solve transboundary atmospheric problems that the Community 'cut its teeth' as an international environmental actor. In attempts to manage regional seas, rivers and other shared ecosystems there

*Table 4.2* The EU burden sharing agreement, June 1998

| *Country* | % | *Country* | % |
|---|---|---|---|
| Austria | −13.0 | Italy | −6.5 |
| Belgium | −7.5 | Luxembourg | −28.0 |
| Denmark | −21.0 | Netherlands | −6.0 |
| Finland | 0 | Portugal | 27.0 |
| France | 0 | Spain | 15.0 |
| Germany | −21.0 | Sweden | 4.0 |
| Greece | 25.0 | United Kingdom | −12.5 |
| Ireland | 13.0 | | |
| European Union overall reduction in $CO_2$ emissions for EU 15 | | | −8% |

Source: Council Conclusions, Meeting No. 2106, 16.6.98.



has been a similar pattern. The Union has been obligated by its presence, by its close ecological interdependence with neighbouring states and, indeed, by the expectations and requirements of their governments, to develop an active regional role.

What is more intriguing and problematic, is the clear aspiration of the Commission and certain Member State governments to move well beyond such essentially regional concerns and to adopt a global leadership and 'agenda setting' role. This has been evident across the whole raft of 'global' environmental issues – stratospheric ozone, climate change, desertification and biodiversity – that have emerged over the last two decades. Even though the scale of the Single Market ensures that the EU will be a necessary participant in global negotiations, there is not the kind of direct link between presence and actorness that exists in the regional context. Given its internal disparities, and the problems of mixed competence, the aspiration to leadership might well be regarded as perverse. Yet the opportunity provided by the retreat of the United States from its previous role as environmental policy innovator and global leader has been seized with alacrity in Brussels.

### *The EU as regional environmental actor*

Just as the presence of the Single Market exerts enormous influence over its immediate neighbours, so the related environmental policies and standards of the Union will be very influential. Access to the market requires the attainment of certain environmental standards (phytosanitary regulations or product or emission standards). As well as the exercise of its gatekeeping role, the Union can also deploy a range of other instruments in support of its environmental policy objectives in relation to its neighbours. Access to scientific advice and information is significant but the critical instrument has been the provision of financial aid.

Union environmental policy operates at several regional levels. The EC is a signatory to large-scale international agreements directly affecting the territories of its Member States – the 1979 LRTAP and its associated protocols creating a regional air quality regime have already been mentioned. At a sub-regional level are agreements relating to the management of seas; notably the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and the 1983 Bonn Agreement, which provides a framework for international cooperation in tackling oil and other pollution of the North Sea.

The most potent manifestation of the Union as a regional environmental policy actor is, however, in its largely bilateral dealings with neighbours. This is evident in the Union's dealings with the countries of the old Soviet bloc. At the same time, and in some ways counterbalancing the new Eastern policy, there exists a continuing environmental relationship with the countries of North Africa and the Eastern Mediterranean. Both Eastern Europe and the Mediterranean are of some significance for the Union on a number of policy dimensions, and form the subject of Chapter 6. What follows extracts just one of these dimensions.

During the Soviet era, Eastern Europe and the USSR itself were renowned for their profligacy with natural resources and their neglect of good environmental housekeeping. This had the most dramatic and direct impact upon the countries of

the Community in 1986, when the explosion of a nuclear reactor at Chernobyl in the Ukraine caused radioactive debris to be blown on the wind as far as the most westerly parts of the EC. Unsurprisingly, the major part (56 per cent in financial terms) of the Union's immediate post-Cold War environmental policy towards its Eastern neighbours has involved financial and technical assistance with improving the safety of nuclear installations and, indeed, with the closure of the Chernobyl complex itself.[25]

Other aspects of Union policy towards the East developed from 1991 in the context of the 'Dobris Assessment' of the state of the European environment, which launched a process of consultations and biannual Ministerial meetings in which the Union has played a leading role. The Environment Programme for Europe (agreed at the Sofia Ministerial Meeting of 1995) was not, as some in Eastern Europe had hoped, an 'environmental Marshall Plan' (Liberatore 1997: 201). Instead, the Community contribution was initially, between 1991 and 1995, to fund a specific series of projects and activities within the Phare (Poland–Hungary: Aid for Reconstruction of the Economy) programme and the Tacis (Technical Assistance to the Commonwealth of Independent States) programme for the countries of the former Soviet Union.

In the next decade the relationship of the Union towards the candidate countries of Eastern Europe was transformed by preparations for accession. This required that the environmental *acquis* of the Community, the whole body of law built up since the early 1970s (some 300 legal acts) be 'transposed' into the national legislation of the new members. The necessary changes in environmental policy and performance were extensive and costly and the extent to which they will transform the environment of Eastern Europe policy is not yet clear (Carmin and Vandeveer 2004). According to the Commission, enlargement 'may in fact be the biggest single contribution to global sustainable development that the EU can make', allowing new members to 'leapfrog development upgrading environmental protection, social development and economic growth' (Commission 2001d: 13).[26]

Those countries not favoured with candidate status are subject to the EU's Neighbourhood Policy. Under the sustainable development strategy any bilateral and multilateral agreements concluded with them will be required to contain an environmental dimension, although this was usually the case with existing undertakings. Here the most important relationship is with Russia. She suffers from very high levels of environmental degradation and pollution – one salutary indicator is that an amount of oil greater than that released into the environment in the *Exxon Valdez* disaster is spilled every day in that country (Commission 2001g: 6). Yet Russia is also a store of vast natural resources including forests and fresh water and a source of both threat and great economic opportunity for the European Union – not least in realizing the gains from energy efficiency. The EU engages in environmental dialogue with the Russian Government with a view to the harmonization of environmental standards and monitoring procedures, promoting nuclear safety and opening up the market for environmental investment.

A similar pattern of dialogue, technical collaboration and the funding of specific projects describes the other important and long-standing set of environmental policy relationships with the non-member countries of the Mediterranean. The ecology of the Mediterranean is particularly fragile and southern Member States have a direct



concern with its conservation. Environmental cooperation is part of the larger Barcelona Process and Mediterranean Partnership that aims to establish a Free Trade Area by 2010. A significant environmental dimension is provided by the Short and Medium Term Action Programme for the Mediterranean (SMAP). It covers five priority fields of action: integrated water and waste management, dealing with 'hot spot' areas of heavy pollution and threat to biodiversity, integrated coastal zone management and countering desertification. The programme involves the Union and its Mediterranean neighbours in a continuing consultative network that will not only 'promote the transfer of Community experience in the field of financing techniques, legislation and environmental monitoring and integration of environmental concerns in all policies' but also provide financial incentives via the MEDA instrument and European Investment Bank (Commission 1998: 21).

### *The EU as global leader?*

In the politics of global environmental change, the Union's representatives were by the 1990s quite self-consciously claiming leadership. The concept of leadership has a number of relevant meanings. It is associated with rule and dominance and with the Union's presence and negotiating strength in multilateral environmental regimes. Yet it can also mean, to guide, to go ahead or even to inspire. Each of these aspects of leadership are present to some degree in four roles to which the Union may lay claim. First, there is the role of architect of sustainable development. Very closely related, and at points indistinguishable, is a normative actor role in the dissemination of environmental principles and practices that may inspire, influence or show the way ahead. Much of this chapter has been concerned with another active role, as participant in global governance regimes. Finally, all are combined in a fourth role that deserves more extensive treatment and for which the Union has perhaps become best known. This is the EU's leadership role in the politics of climate change.

The concept of sustainable development was coined in 1987 by the Brundtland Commission, as 'development which meets the needs of the present without compromising the ability of future generations to meet their own needs'(WCED 1987: 8). It emerged in anticipation of the Rio Earth Summit of 1992 and the political requirement to engage the environmental concerns of the developed North with the pressing development needs of the South. Since then the idea of sustainability has been enlarged and refined such that it encompasses not only the protection and maintenance of the natural environment but also of the economic and social systems with which it is critically interlocked. The range of the EU's policy concerns – the internal market, trade, agriculture, fisheries, environment, transport, overseas development – indicates the relevance of sustainability thinking, even if many of them had originally been designed with very unsustainable production objectives in mind. Thus attempts have been made, since the Cardiff Council in 1998, to integrate environmental considerations across the range of the Union's policies and more specifically in the strategy drawn up in advance of the 2002 WSSD 'to make sustainable development an objective in bilateral development cooperation and in all international organisations and specialised agencies' (Council Conclusions, Göteborg 2001: 26).

Thus, the ambitions of the 2000 Lisbon Agenda have a counterpart in the 2001 Göteborg Council's strategy for the establishment of a new approach to policy-making.[27]

It is easy to be cynical about such high-level promotion of sustainability – the 1999 Helsinki Council even called for a 'net reduction in the use of natural resources in order to bring economic growth in line with the Earth's carrying capacity' (Bringezu and Schütz 2001: 6). Nonetheless, it forms part of the identity that the Union is constructing for itself and has already had some real external policy implications which are more than declaratory.

The world trade, agricultural and fisheries regimes are arenas in which the EU is at its most capable as an actor and provide the acid test of its commitment to sustainable development. Thus, when Union spokespersons enunciate green policies in the WTO and elsewhere their critics will inevitably refer, not only to the continuing sustainability implications of an unreformed CAP, but also to the Common Fisheries Policy (CFP). Operated under Community competence the CFP brings the Union into contact with significant numbers of states and international organizations.[28] Continuous over-fishing and the desperate need to conserve stocks both within and beyond EU waters has meant that fisheries policy is essentially becoming sustainability policy.[29] The pursuit of sustainable development objectives appears to have had some influence here with DG Fisheries and Maritime Affairs, who have been persuaded to modify their bilateral fisheries agreements with developing countries to incorporate impact assessment, funding to promote sustainable fisheries and 'capacity building'.

At the WTO during the Doha Round the Union has single-handedly attempted to place the trade-environment relationship on the negotiating agenda. There is some evidence that sustainability commitments have allowed environmental and even animal rights provisions to be inserted into the preparation of trade negotiations and actions – a process enabled by significant backing from some Member States and from 'civil society' groups (Interview, DG Environment, 2001). There have also been less obvious actions such as the re-definition of harm in anti-dumping action. Previously there had been an exclusive focus on injury to producers, but 'Community interest' has been re-defined to include environmental harm.

In April 2001 the Council instructed the Commission to undertake sustainability impact assessments (SIAs) on all its trade agreements – this to include the DDA and all regional and bilateral FTAs. At the WTO it has called for action to consolidate the status of multilateral environmental agreements (MEAs) in relation to WTO rules, such that they are mutually supportive rather than subordinate, and for the creation of a transparent and participative relationship between the various secretariats. It has also called for the removal of trade barriers to environmental goods and services and for the adoption of eco-labelling to surmount the difficulties posed by WTO rules that forbid discrimination against goods on the grounds that their 'process and production methods' may be environmentally damaging. Accounts of WTO negotiations indicate that, although not all these objectives have been achieved, EU representatives took them seriously and were prepared to use the Union's formidable trade muscle in support of them (Jawara and Kwa 2004: 62).

In considering the EU as an economic power it was observed that the Union had, on the basis of its presence, become the pre-eminent global regulator and standard setter. In environmental policy this was a role traditionally played by the United States, where State authorities invented many of the concepts and instruments that are commonplace today, including emissions trading. There are some signs that the Union has begun to disseminate its practices in a similar way, becoming 'a policy *shaper* rather than a policy *taker* in international environmental affairs, generating rather than simply responding to policy imperatives' (Lenschow 2004: 143). Notable examples are provided by pioneer work on 'eco-labelling' and the 'precautionary principle', which has begun to be adopted outside the EU and was an important contribution to the development of the Biosafety regime. The EU's support for precaution is significant because it contradicts a fundamental principle of the WTO trade regime that disallows discrimination against products without clear evidence of harm (Bail *et al.* 2002: 410–22). As will be discussed below, the creation of a large-scale international trading system for carbon emissions will, if successful, constitute the Union's most compelling policy innovation to date.



The most evident indication of EU leadership has been in its growing role within multilateral environmental regimes – whether in strengthening the Montreal Protocol, creating the Intergovernmental Panel on Forests, or promoting the Basel Convention on hazardous waste (Commission 1997c). Claims to environmental policy leadership are credible in areas where Community competence has been long established and which are a natural extension of the Union's role as pre-eminent trade actor. In 1992 the Community was the first to adopt legislation on the export and import of certain dangerous chemicals and has been in the forefront of negotiations to establish a binding prior informed consent procedure (PIC) for the movement of hazardous chemicals such as asbestos and pesticides across frontiers. It has also pressed other signatories of the Basel Convention on the matter of a total ban on the export of hazardous wastes from OECD to non-OECD countries.

Responding in part to European public unease about developments in the genetic modification of food, the EU was also at the forefront of attempts to provide an international regulatory framework for GMOs. It can claim some credit for facilitating the negotiation of the 2000 Cartagena Protocol on biosafety. Here, as elsewhere, comparison can be made with an inactive Japan and an obstructive United States.[30] Its paramount claim to environmental leadership, however, is in the rescue of the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

### *Climate change*

Although often compared to the problem of stratospheric ozone, climate change has an all-encompassing character and is still subject to a degree of scientific uncertainty and contestation. Attempts to control those human activities that are increasingly believed to cause the enhanced greenhouse effect have dominated international environmental diplomacy for over a decade, from the signature of the United Nations Framework Convention on Climate Change in 1992 to the ratification of its landmark Kyoto Protocol in 2004. During this period the attitudes of US governments, presiding over an economy responsible for some 25 per cent of global carbon dioxide emissions,

have ranged from constructive abstention under Clinton to denunciation of the Kyoto Protocol and active obstruction under the Bush administration. This has provided an historic opportunity, even an obligation, for the EU to lead and sustain the emergent climate regime.

In these circumstances climate change has acquired a political salience well beyond the humdrum and technical treatment of other environmental issues. It has become a principal agenda item at G8 summits and European Council meetings and the stuff of conversation between heads of government.

The main focus of efforts to construct a global climate regime has been on the need to control emissions of the three principal 'greenhouse gases' – carbon dioxide, methane and nitrous oxide (there are three other industrial gases, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride). Carbon dioxide is seen as the principal culprit – responsible for some 80 per cent of global warming potential – but there is no simple answer equivalent to that available for the ozone regime, where the offending chemicals could simply be banned. Neither are there 'end of pipe' solutions of the type found in the long range transboundary air pollution regime, where the chemicals responsible for acidification can be removed at source. Instead there is a need to reduce the use of those fossil fuels which provide the essential bases of industrial society. The 1997 Kyoto Protocol, championed by the EU, provides for a 5.2 per cent reduction in developed world greenhouse gas emissions with an EU 15 commitment to an 8 per cent reduction (from a 1990 base) by 2012. Beyond this the EU's sixth Environmental Action Plan acknowledges that effective control of climate change will ultimately require reductions of the order of 70 per cent (*OJ* L242, 10.9.2002: 1).

The problem of achieving such reductions is compounded by the fact that the scientific basis of the enhanced greenhouse effect continues to be disputed, despite the increasing certainty of successive IPCC assessments of the trend of global mean temperatures and more immediate evidence of unusual and turbulent weather. Further very difficult dimensions of the problem arise once the developing countries and their likely contribution to global warming over the coming years are brought into consideration. A related and equally controversial matter is the need to conserve forests – due, in part, to their role as 'sinks' for carbon dioxide. Thus the ramifications of climate change potentially go far beyond the current concern with reducing gas emissions, and call into question the sustainability of the world trade and monetary regimes – by implication, involving many of the external roles of the EU alongside its internal tax, energy and transport policies. An abiding concern must be the potential costs and competitiveness implications of climate policy for an already sluggish EU economy and, indeed, the principal justification for US rejection of Kyoto has been economic. By forging on alone the EU has abandoned its previous stipulation that all industrialized countries must be engaged in making emission reductions and ensured that, in the first phase at least, the costs of the climate regime will be mainly borne by its Member States. There are also, of course, potential benefits in terms of energy efficiency and the gains from emissions trading.

The EU has been a major participant in the attempt to create an international climate change regime since its inception in the late 1980s. This was despite the fact that climate change policy remains an area in which the main competencies rest with the Member States. This is not the place to examine the long-drawn-out and complex negotiations involved in setting up the climate regime or, indeed, the difficult internal disputes that attended them. What is clear from the accounts of this period, however, is that the EU was routinely regarded as an entity with the capability to act.[31]



As a climate change negotiator the Union was, however, beset by a number of difficulties. In an area largely beyond exclusive Community competence, the rotating presidency (held by Luxembourg during the Kyoto talks) did not encourage efficient and settled representation. Processes of policy formulation were largely intergovernmental and although QMV generally obtained, 'the close relationship with national energy policies' (where Article 175 TEC specifies unanimity) produced a 'tendency to work at the level of the lowest common denominator' (van Schaik and Egenhofer 2003: 4). Inconsistencies between Member State approaches led, on occasion, to what Grubb and Yamin (2001: 285) described as a 'Herculean' task of coordination. This is compounded by the differing external orientation of Member States, particularly towards the US, and the temptation to circumvent the Presidency through bilateral talks.

The difficulties of mixed competence and diverse national energy interests should not obscure the fact that at a strategic level the Union was able to set objectives and lay serious claim to have been a leader in climate change policy – in comparison with the passivity or opposition of the other major developed countries. Prior to the signature of the FCCC the common European position was for binding commitments to emission targets. However, US opposition, in an election year, led to the negotiation of a much weaker Article 4 of the FCCC, which merely expressed the 'aim [for Western industrialized countries] of returning individually or jointly to their 1990 levels of ... anthropogenic emissions of carbon dioxide and other greenhouse gases'. The 1995 Berlin Conference of the Parties formally judged this to be unsatisfactory and set itself the target of producing new commitments by December 1997 at the Conference of the Parties scheduled for Kyoto (CoP 3). At this meeting, in the view of one observer, 'the EU countries remained the most proactive with the EU as a group ... seeking specific commitments in emission reductions below 1990 levels on specific "targets and timetables" '(Grubb 1995: 3).

Actually delivering the ambitious declaratory targets for greenhouse gas emissions set by the Union in advance of Kyoto was bound to present problems, but a common stance was achieved through the mechanism of the 'burden sharing agreement' or 'bubble' (see Table 4.2). This has served to aggregate the interests of 15 states and to reconcile differences between economies at different levels of development through differential contributions to a common target for emission reductions.[32] It was on this basis that the EU entered the final Kyoto negotiations with a proposed target of 15 per cent reductions in emissions for the developed countries. The question of emissions targets had the highest visibility, but there were other issues including the responsibilities of developing countries, the relationship between sinks and sources of emissions, the review of national inventories and commitments and the introduction of the so-called 'flexibility mechanisms'. These involve emissions trading along with Joint Implementation (JI) and the Clean Development Mechanism (CDM). JI and CDM allow industrialized countries to offset some of their national emission reduction

commitments by funding energy saving measures in transitional or developing countries. Flexibility was at the heart of the US position at Kyoto along with a commitment merely to return emission levels to 1990 levels by the period 2008–12, and a controversial demand from the Senate that any agreement be dependent upon commitments to emission reductions by developing countries.[33]

The Protocol negotiated at Kyoto in 1997 was inevitably a compromise, which reflects, only in part, the objectives of the EU. The industrialized countries agreed to an average 5.2 per cent cut in emissions for a basket of six greenhouse gases by 2008–12. The parties committed themselves to different targets – the US, 7 per cent, Japan 6 per cent and the EU 8 per cent overall. The price of achieving these limited targets was the inclusion of the 'flexibility' mechanisms. It is, perhaps, the great irony of the Kyoto process that by 2001 the EU was to find itself committed to the defence of policy mechanisms that ran quite contrary to its own regulatory tradition, against their original US authors! From another perspective this may be seen as a policy transfer, accelerating existing moves from a 'command and control' approach towards the use of new market-based policy instruments (Damro and Méndez 2003).

The post-Kyoto phase of negotiations involved the laborious task (outlined in the Buenos Aires CoP of 1998) of fleshing out the detail and implementation of the 'heads of agreement' agreed in 1997. The process was scheduled to end at the 2000 Hague CoP 6 in the dying days of the US Clinton administration. This bad-tempered and ill-organized meeting became bogged down in the discussion of the compensatory role of forest sinks but it was already clear that, in the words of the CoP President, Jan Pronk, as far as preserving Kyoto was concerned 'the EU had become the only game in town' (*Earth Negotiations Bulletin (ENB)*, July 2001: 34).

The arrival in office of the administration of George W. Bush finally put paid to attempts to placate the United States and somehow induce its ratification of Kyoto. Indeed, in March 2001 the US formally denounced its signature of the Protocol. The Union was now faced with the dilemma of whether to proceed on its own. Its momentous decision to do so was affirmed at the Göteborg European Council of June 2001 and the heads of government further expressed the determination that the renewed CoP 6 *bis* to be held in Bonn in the subsequent month 'must be a success' (Göteborg European Council Presidency Conclusions 2001: 28). This hope was realized at a political level and the subsequent CoP 7 held at Marrakech provided the technical detail necessary for a ratifiable legal instrument.

Success at Bonn had been preceded by an intense diplomatic effort to persuade waverers and to break the unity of the 'umbrella group' that united the US with other sceptics. EU diplomatic missions were undertaken to Australia, Canada, Japan, the Russian Federation and Iran while the UK, Germany and France applied coordinated bilateral pressure on key governments, notably that of Japan. There now began the process of ensuring the widest possible participation of industrialized countries to ensure the entry into force of the Protocol by 2002.

Because this involved not only 55 ratifications but that they should also account for no less than 55 per cent of developed world carbon dioxide emissions, further intense diplomatic effort was required, particularly towards Russia whose ratification became critical to surmounting the 55 per cent emissions hurdle. The negotiations



that extended through 2003 and 2004 involved two high level summits in November 2003 and May 2004 assisted by Troika visits. The outcome reveals the EU as an actor capable of coordinating a range of instruments and inducements. The key was Russian ambition to join the WTO. The EU side demanded the raising of low Russian gas prices and the deregulation of the natural gas industry as the price of its support. The eventual deal, finalized at the May 2004 EU–Russia summit in Moscow, changed the terms of EU support for WTO admission to an increase in prices by 2010 and, critically, Russian agreement to ratify Kyoto. This was finally achieved in the latter part of 2004.[34] On 16 February 2005 the Protocol entered into force.

Even achieving the 8 per cent emissions reduction target required by the Kyoto Protocol poses difficulties, that only serve to accentuate the profound challenges that lie beyond the 2008–12 'first commitment period'. The EU approach to implementation, upon which its credibility as a climate leader ultimately depends, has been twofold. First, the Commission has developed the European Climate Change Programme (ECCP) which is comprehensive in identifying in excess of 40 potential sources of emissions reductions and which serves as a framework for specific directives to be brought forward over a ten year period. To reverse what appears to be a rising trend of carbon emissions, Member States will have to implement policies in the spheres of energy, transport and construction which are likely to be 'visibly unpopular in nature' (European Parliament 2002: 10). The Commission's proposals for the first phase of the ECCP certainly address such issues, requiring, *inter alia*, 'a modal shift from road and air' to cleaner transport via railways and waterways (Commission 2001h: 14).

Most critical to the effective implementation of Kyoto is the EU's other policy approach that takes up the 'flexibility mechanisms' through instituting the world's first large-scale transnational carbon emissions trading scheme.[35] Operational at the beginning of 2005, the scheme covers power generation and other large installations responsible for some 45 per cent of total EU carbon dioxide emissions. Under its terms Member States issue an allocated number of permits to emit which under this 'cap and trade' system will be progressively reduced on an annual basis. Permits are tradable across the European Economic Area (and ultimately beyond it) such that firms have the choice of either cutting their emissions and profiting from the sale of excess permits or continuing to emit higher levels of carbon dioxide while bearing the financial penalty of purchasing additional permits. This new market in rights to pollute is designed to allow firms flexibility in their energy use, coupled with incentives for efficient and reduced use of hydrocarbons, while ensuring that aggregate emissions will fall. As well as providing a direct response to the long-running question of how the EU will back up its aspirations to climate leadership with credible implementation of its commitments, the scheme is also designed to be extendable beyond the EEA. There are embryonic attempts at emissions trading elsewhere and within individual US states. By elaborating its own dominant scheme the EU may well become the international standard-setter and 'find itself in control of the most important international regulatory effort to limit greenhouse gases' (Legg and Egenhofer 2001: 4). If this were to occur it will be a powerful demonstration of the Union's presence.

## Conclusion

The European Union has developed a wide-ranging set of environmental policies to deal with questions of air and water pollution, waste management and the conservation of nature. The external aspects of these competences meant that, by the end of the 1970s, the Community had begun to establish itself as an international environmental actor – and the first, and indeed only, recognized REIO.

Unlike the Common Commercial Policy, competence is normally shared between Community and Member States and agreements and negotiations are 'mixed'. This can raise particular, and on occasion niggling, coordination difficulties in the conduct of environmental diplomacy and provides scope for divergence between Member States, laying Union policy open to charges of immobility and reduction to the lowest common denominator. However, the Union has over the years managed to fulfil our criteria for actorness and to define policies across the whole gamut of sustainability issues. This inevitably involves trade, agriculture and fisheries questions which yield both opportunities and coherence problems.

A significant regional environmental role, arising from the environmental presence of the Union and its close and increasing interdependence with its neighbours, has been evident for some time. The accession process that necessitated the adoption of EU environmental standards by applicants, and the incorporation of environmental objectives and funding into the agreements that the Union concluded with its neighbours has created a dimension of green regional actorness. However, as we have seen, the EU's policy aspirations have since the 1980s had a global dimension. This development provides an excellent example of the interaction of presence, opportunity and external expectations in the construction of actorness.

Opportunity was afforded by the rise of global environmental diplomacy in the wake of the ending of the Cold War. Centred upon the UNCED process it provided the Union with a new stage. During the 1990s the abdication of responsibility by the US and the central role that Union delegations had assumed in various MEAs generated growing demands for European leadership, contrasting with previously grudging acceptance of the Community as a participant in its own right. This has helped to build a green identity for the EU. Its inspiration owes much to European societies and governments in Scandinavia, Germany, the Netherlands and Austria. They brought to the EU a strong commitment to environmental causes and green politics which has now been externalized (Andersen and Liefferink 1997).

By the millennium there were huge expectations amongst environmentalists that the EU would act to 'save' the Kyoto Protocol. Important as it has been elsewhere in, for example, propagating the precautionary principle, EU environmental policy was raised to an entirely different level of political significance by the struggle over the climate change regime. It appeared at times as if the credibility of the Union was as much, if not more, dependent upon the success of the Kyoto Protocol as it was on the fate of the CFSP or the new European Security and Defence Policy.

# 5 The EU as development and humanitarian actor

In the distinct, yet overlapping, policy areas of development cooperation and humanitarian assistance, Union activity is truly global in scope. It is also significant: the EU (that is the Community together with the Member States) is the world's largest donor of both development and humanitarian assistance, accounting for 51 per cent of the global total in 2002 (Overseas Development Institute (ODI) 2004a: 2). Moreover the Community itself had, by the mid-1990s, become the world's fifth largest aid donor (Cox and Koning 1997).

The Union has not only acquired a role as an aid donor. The years since the EC was created have seen the evolution of increasingly complex relationships with developing countries in all parts of the world, denoting an important role in North/South relations. Nevertheless, the EU has yet to develop a coherent, overarching approach to development policy. Indeed the Union's engagement with the countries and regions of the South has been described as 'a policy patchwork' characterized by considerable variations in focus and intensity (Holland 2002: 1). These variations have arisen, not primarily from the differing circumstances and needs of the Union's 'development partners', but from a range of internal and external factors which have combined to construct the opportunity structure, and hence shape the direction, of EU development policy.

Below we briefly consider the contextual factors that have shaped EU practices as a prelude to discussion of the Union's roles as a development actor in three areas – its long-standing, highly structured relationship with (sub-Saharan) African, Caribbean and Pacific (ACP) states; its relatively new and more traditional relations with Asian and Latin American (ALA) states; and the role of the European Community Humanitarian Office (ECHO). Relations with former colonies in North Africa, other Mediterranean non-EU members and members of the former Eastern bloc evolved differently again, and are discussed in Chapter 6. Due to its greater longevity and distinctive nature, the EU–ACP relationship will receive particular attention below.

## The policy context: presence and opportunity

Most significant among the internal factors that have influenced the Union's development practices and priorities has been the historical legacy of European imperialism. Both the Union's presence in North/South relations, as the political and cultural 'metropolis'