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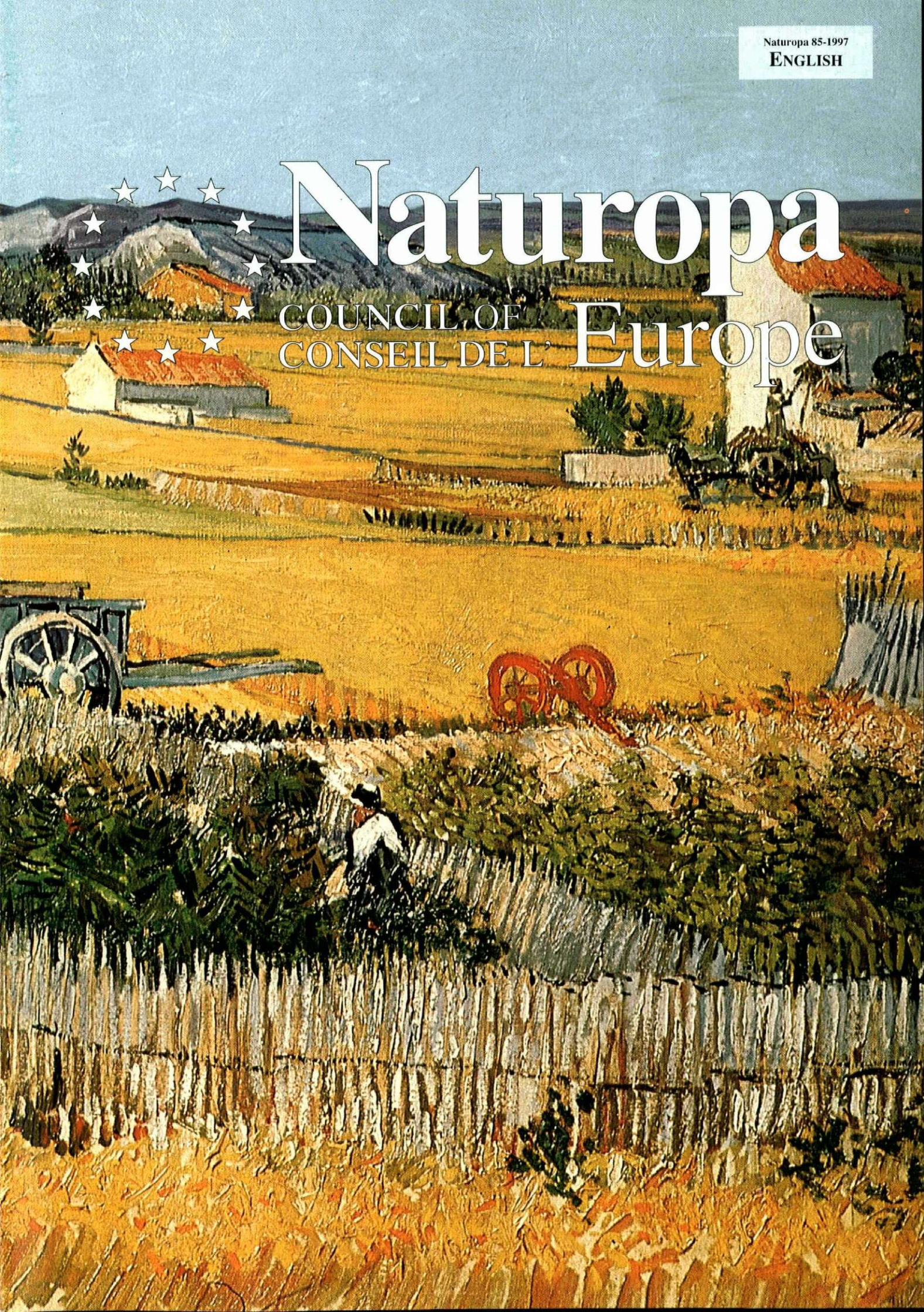

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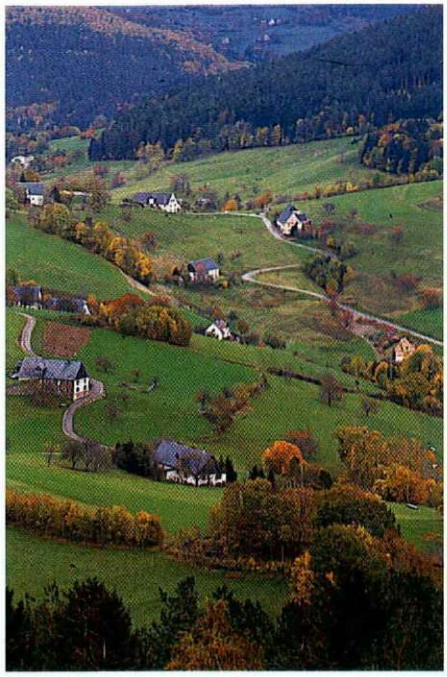

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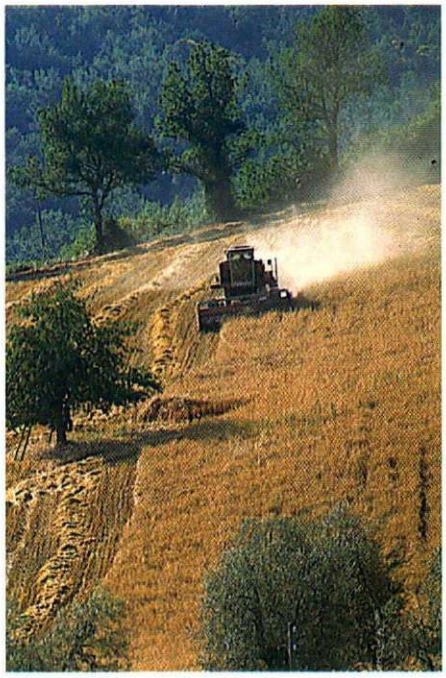

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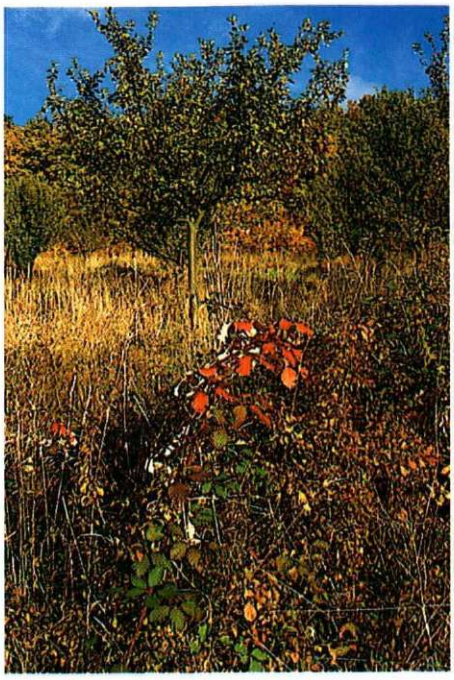

T. Réminiac

Editorial

Nature conservation and land use problems

Natural areas suffer from a legal system which is overly concerned with economic factors

Land, as a factor of production, has been the subject of impassioned theories by classical economists, from Ricardo to Marx. Since then, the notion of earth as propounded by these classical economists and by physiocrats has changed and is used today in the restricted sense of soil, which is a vital and limited element for all living beings.

Recommendation R (89) 15 of the Committee of Ministers on rational use of land - basis and limiting factor of our development - lists six functions performed by soil/land: acting as a filter, a buffer and a transformer of harmful substances; a genetic reservoir of organisms; a source of raw materials and water; productive (of biomass and food); the spatial base on which socio-economic structures rest; and as support for our historical and cultural heritage.

Because there is a limited quantity of land, it is appropriated by man and therefore has an economic value. The numerous uses for land may, however, be mutually incompatible and generate conflict. In this event, law plays an important part in determining the purpose for which soil is to be used and in settling potential or existing conflict.

In the majority of Council of Europe member States, land law and tax law do not take sufficient account of environmental considerations, in that they directly encourage the destruction or development of natural environments.

In some countries, land law promotes the economic exploitation of land and it is extremely difficult to set aside parcels of land for natural, non-agricultural use. Under tax law, non-built property is taxed proportionately much more highly than built property. For instance, owners of marshland are subject to higher tax which encourages them to drain it and plant crops or trees, in spite of all the international campaigns on the importance of wetlands. The tax regime for fallow land and "wasteland" is generally the same.

Therefore, in many countries the legal and tax regimes governing land have the effect of encouraging the economic exploitation of rural areas rather than the conservation or creation of a natural environment. The fact that natural heritage is subject to such a regime is patently discriminatory compared to historical and architectural heritage which, by contrast, benefits from fairly extensive protection provisions.

In these circumstances, I believe that it is important to assess the situation in Europe to see whether and how land law and tax law can be altered to encourage the protection and reconstitution of natural environments. At a time when there is increasing talk of ecological networking across Europe, I regard the introduction of land and tax law which encourages the ecological use of land as absolutely crucial.

This issue of Naturopa, devoted to "Nature conservation and land problems" hopes to make a contribution to the resolution of this question. ■

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Land ownership

Regulations governing protection and the price of land

Vincent Renard

Land ownership is clearly an important issue in nature conservation. The use of land, whether for ordinary urban development, for setting up industries which are totally or partially incompatible with the proximity of inhabited areas (nuclear power stations, "Seveso-type" factories, etc) or for major linear facilities (very high voltage electricity lines, railways, motorways), eats into natural areas, fragments and modifies landscapes and alters the natural balance.

One of the aims of the whole system of physical planning and of regulations for urban development has been to clarify the ways in which land can be used and hence the ways in which the conservation of natural areas can be reconciled with other uses.

The emergence of new legal instruments for protecting land has been accompanied by growing uncertainty as to the legal scope and conditions for the application of the regulations in question.

The impact of these regulations on land prices has for a long time been creating a problem with regard to compensation for servitudes, which has still not been satisfactorily resolved. Moreover, after the land price and housing boom of the late 1980s came to an end, the debate took on quite a different complexion: the risk that wasteland would be generated (in the agricultural, industrial, service and other sectors) came to assume greater importance than development pressure.

New forms of protection

Before the war, provision for protecting land was limited to a few core areas, such as forests, places of exceptional interest and national maritime waters. Since the second world war, however, the scope and especially the content of regulations have expanded, in particular since the 1960s as increasingly strong pressure for urban development has been matched by a growing awareness of environmental issues.

This has given rise to a large number of new regulatory protection instruments, such as national parks, nature reserves, listed sites (of all kinds), orders on biotopes and also, in a more systematic way, urban development plans.

Two approaches to such development have emerged, with varying degrees of importance and success depending on the country. Firstly, the regulatory approach, which is used in all European countries (and which is developing rapidly in central and eastern Europe), is based on restrictive regulations governing private property, such as restrictions on the type of use, density, height, coverage ratio etc; these limitations may extend to a ban on building.

Varying effectiveness

There is a growing number of such regulations and they have distinct targets (tourism and leisure, protection of species, landscape etc). They have been introduced by different bodies (ministries, local and regional authorities and organisations set up for the purpose).

It is important to emphasise the risk inherent precisely in having a large number of regulations; this may cause confusion as to their respective aims and purposes, thereby creating legal uncertainty.

The question of how regulations are applied, how their enforcement is monitored and how offenders are to be punished is also crucial. This is especially so for the application of urban development plans, since although they are common to all countries, the stringency with which they are applied varies widely, with a marked gradient from the north to the south of Europe.

The other approach is based on direct intervention, the acquisition by a public authority or relevant body (for instance, the Coastal Protection Agency in France) of the natural area to be conserved. The purpose behind this approach is often to open the area to the public, as in the case of forests, in which case its legitimacy cannot be questioned. However, the approach may also be partly based on a sense of powerlessness to enforce existing regulations (or even to introduce regulations). In this situation, acquisition of land by a public authority may seem the only means of effectively protecting an area in the long term. Yet, for all its legitimacy, this kind of intervention undermines the credibility of regulations.

In addition to its financial cost, when it concerns areas already protected by regulations, acquisition by a public authority can also prove to be dangerous because it introduces the idea that property owners whose application for planning permission is refused are in some way entitled to expect the local authority to buy the land from them, which brings us back to the problem of the effect of conservation on land prices.

Should compensation be given for protective servitudes?

Classifying land as a natural area which may not be built upon considerably limits its market price. Should the owner be compensated for this "loss of value"? This fundamental question has been tackled in different ways according to the country, but the following considerations invariably apply:

- countries with an explicit policy of compensating for protective servitudes (eg Denmark) apply it in a very limited way, and only when unusual or exceptional damage has occurred;

- it seems inappropriate to talk in terms of a "loss of value" in the strict sense, as long as planning permission has not been granted.

Otherwise this would bring us back to the stringent approach of the Civil Code, which stipulates that ownership is absolute; this is no longer applicable in built-up areas;

- what standard should be used to calculate the supposed depreciation? No satisfactory criterion has been devised for this.

The real question is rather how to decide who should pay for urban development, which considerably increases the value of land which can be developed for urban use, and how land owners, who do nothing to increase the value, can be made to contribute.

In our view, the Netherlands appropriately applies the principle whereby the appreciation in value derived from urban development belongs to the local authority, which has a monopoly on deciding which land can be built upon and ensures that the appreciation in value is fed back into the community by buying land at a price which does not include appreciation. This is a long way from the spectre of "fleecing" the public.

Or should land values be equalised through the negotiated "transfer" of the right to build?

Some have taken a more liberal view and advocated devising techniques for equalising land values, in particular by negotiating the transfer of the right to build from areas where building is not permitted (which are able to "pass on" rights) to areas where building is permitted (which are able to "accept" rights). Such mechanisms exist in, for example, France and Spain.

Only a qualified assessment of their application is possible. Firstly, although such mechanisms have existed for a long time, they are little used. Secondly, they only operate effectively in very specific circumstances, usually under the control of a person or body with extensive authority, in contrast to their image as an instrument of the market.

Lastly, this method is of questionable fairness, because it distributes the appreciation in value resulting from urban development - which is largely derived from the municipality's general development and from work undertaken by the local authority - solely amongst land owners, who do not necessarily include all the municipality's taxpayers.

Therefore, while this instrument is useful in an ideal context, in practice it can only be used in addition to other methods.

New horizons

The principle underlying the regulatory protective framework is the limitation of growth and urban containment, which are justified by sharply rising population and corresponding urban development.

Several structural trends are now being reversed. The population has virtually stabilised and might decrease early next century. Rural depopulation has come to an end in most European countries (although it might continue to be significant in central Europe, eg in Poland).

This means that efforts to contain growth and limit urban expansion could gradually give way to steps to tackle the problems associated with the increasing amount of wasteland. Initially this was agricultural; then came industrial wasteland, followed by new urban wasteland and that associated with the service and tourist sectors, etc.

Instruments for managing development have been devised with urban growth in mind and the time has probably come to give priority to re-using land for other purposes and, where possible, reversing changes. Such structural alteration to the land use system could play a key role in the future of nature conservation policy. ■

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Ownership of land and soil
An absolute right?

Susette Biber-Klemm

The French Civil Code defines ownership, and hence land ownership, as follows:

Ownership is the right to enjoy and alienate things in the most absolute manner, providing that the use made thereof is not prohibited by legislation or regulations.

This notion of property, which stresses the virtually complete absence of limits on its enjoyment, is found in the rules of private law of many European countries. It is also consistent with the idea that many land owners have of their rights.

It should, however, be pointed out in this connection that the substance of the right to own property, ie the prerogatives which it confers upon property owners, is determined by the legal system in force - as is stated in the second part of the Civil Code's definition. The notion of ownership is therefore not defined once and for all, but can evolve. As the ownership of land and soil, which are vital and not unlimited resources, has always been a subject of social controversy, the conditions of its exercise have been laid down in numerous regulations.

A rapid review of the notion of land ownership is very useful for understanding its current significance. Let us take a brief look at the main stages of its development.

Historical roots

In the Middle Ages and under the *Ancien Régime*, land ownership was subject to seigniorial and community constraints. The right to use land - for example to choose freely which crop to sow and when to do the work - was often limited owing to its collective use by associations of villagers. Individuals could not work "private" plots except in the centre of the village within a carefully defined area. With time, certain rights of ownership were eventually recognised in fields and pastures on which three-field rotation was in practice. Under this arrangement, the community just managed to ensure its survival, but the system was prejudicial to innovation and the spirit of enterprise.

Development of individual ownership

The new liberal legal systems which came into force in the wake of the democratic revolutions of the 18th and 19th centuries and the Declaration of the Rights of Man resulted in a real break with traditional legal concepts and modes of land use which stemmed from them. The idea of freedom to own property became central. The individual was recognised a direct right to the means of production which land represented so that he could create a secure foundation for his existence, his freedom and his independence.

It is from this idea that the principles underlying land law emanate: the right to acquire, use, enjoy and alienate land, the right to divide one's land, including through inheritance, and the right to mortgage one's land.

The combination of the new land ownership regime, the industrial revolution and the first agricultural revolution led to a new relationship with the land, which came to be considered a tool of production and an object of trade. Intensified land use and fragmentation

Wang Mo/Pluriel

H. Leuzinger

Intensified land use and fragmentation irreversibly changes the structure of landscapes

irreversibly changed the structure of landscapes.

New tasks for the state

At the end of the 19th century, the state undertook to develop infrastructures in order to cope with population growth and industrialisation. To carry out these grand designs, it needed land, which became a good that could be freely bought and sold. In the new legal framework, the state could acquire land in the public interest, and could use force to do so; in other words, it had the right to expropriate.

The first land improvement projects took place following the dividing up of community lands. In a context of recurring famine, population growth and frequent natural disasters (droughts in particular), it was necessary not only to facilitate ownership by individuals but also to protect the population and above all increase agricultural production. This was most commonly accomplished by clearing and draining new lands.

Moreover, the new legislation on expropriation allowed the state to undertake major land improvement projects, such as the correction of watercourses and the draining of wetlands. Because the means available to the state were much greater than those of the private sector, such projects proliferated in the rural landscape.

Restriction of property rights

Under current rules of law, the notion of ownership has again changed. For the sake of clarity, it is important to distinguish between the two main areas in which it is applied: private law, which primarily governs relations between individuals, and constitutional law, which lays down guarantees relating to property rights and concerns relations between individuals and the state.

In most European countries, the notion of ownership in private law is still clearly marked by the liberalism of the late 19th century from which it emerged, as can be seen in the definition in the Civil Code referred to at the beginning of this article. In the context of relations between individuals, ownership is interpreted essentially as a right conferring all prerogatives that a person can have over a good, without any limit other than the right of others to own property.

The notion differs, however, when seen from the standpoint of relations between state and owner. Most modern legal systems set additional limits on constitutional guarantees relating to the right to own property. The most important point for our purposes is that the state may override the right to own property if it is "in the public interest" for it to do so, ie when the untrammelled exercise of this right is prejudicial thereto.

In view of the threats to public property presented by the technical possibilities for land use that have emerged in the second half of the 20th century, there is again a tendency to consider that the environment, the soil and other vital natural resources are part of the public domain and must be protected and preserved in the interests of all. Thus, the state has both the right, by virtue of texts voted to this end, and the obligation, pursuant to the responsibilities dictated by the Constitution, to restrict private property to a certain degree in order to protect the interests of the community. ■

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This article is based on research which received financial support from the environment programme of the Swiss National Fund.

Political systems and land development

Wolfgang E. Burhenne

"The allocation of areas of the earth to various uses shall be planned, and due account shall be taken of the physical constraints, the biological productivity and diversity and the natural beauty of the areas concerned."

Article 9 of the World Charter for Nature, adopted and formally proclaimed by the General Assembly of the United Nations on 28 October 1982.

While the kind of land development pursued clearly depends upon natural parameters (the nature of the land, the quality of the water and of the air, climate, flora and fauna) and upon economic, social and technical contingencies, the political context of a country also has a considerable bearing. Nor is this factor necessarily stable for it is affected by the changes to which all political systems are subject.

Anthropocentric regulation

The need for regulation arises because relations between people must be governed. In this context, direct and indirect land development issues have always been vitally important. Specific ownership and land use rights have resulted in a regulatory system that has grown in line with population growth in the various social groups. The existing regulations in totalitarian systems throughout the world only reflect the interests of the ruling groups, whereas in democratic systems an attempt is made to find a compromise between the interests of all.

Originally, there was little need for land use regulations to take nature into account. For even where a shortage of resources arose, in one or another area, the regulations then drawn up were based only on anthropocentric reasons.

Long-term planning

All the provisions which aim to promote sustainable use of land for environmental purposes are relatively recent. This trend has been accompanied by the need to plan more and on a larger scale. Planning has been organised along very different lines depending on the political system. This has earned the term a negative connotation in liberal economies. A particular kind of planning based on the authority of the State has rightly been discredited, since it distanced citizens from decision-making.

For a long time, the administrative and business sectors could not envisage citizens playing a part in planning processes affecting their activities. Today, democratic systems guarantee at least the principle of such participation.

Regardless of the political system concerned, long-term planning of land development is now considered a pre-requisite for effectively implementing the principles of sustainable development.

An international consensus

This conviction forms the basis of Chapter 10 of Agenda 21, adopted by the United Nations Conference in Rio in 1992 after extensive debate. It is regarded as "soft law" (ie a non-binding rule) and some aspects of it have already been incorporated into customary international law. This seems simple, but in fact it required a consensus of the member States of the United Nations. The sections on the activities and arrangements required to implement the Agenda are preceded by an introduction and a section on its scope, which clearly establish that all development or use of land (considered a resource) necessarily requires integrated measures. Moreover, although the practical aspects of development or use are determined on a sector-by-sector basis, it is universally recognised that the political process needs to be reorganised and strengthened.

There is often talk of specifically protecting a given percentage of land in countries. However, such measures will remain unsatisfactory unless the whole country benefits from a minimum level of protection and consequently unless all human activities are assigned to particular areas. Other measures are now being taken to supplement the classic provisions for the protection of nature and the countryside with the international principles of biological diversity, which are universally applicable.

To sum up, it is worth noting briefly that before 1982, during the World Charter for Nature negotiations at the United Nations, the representatives of numerous States expressed reservations about the chapter cited above; today all political regimes throughout the world have accepted it. ■

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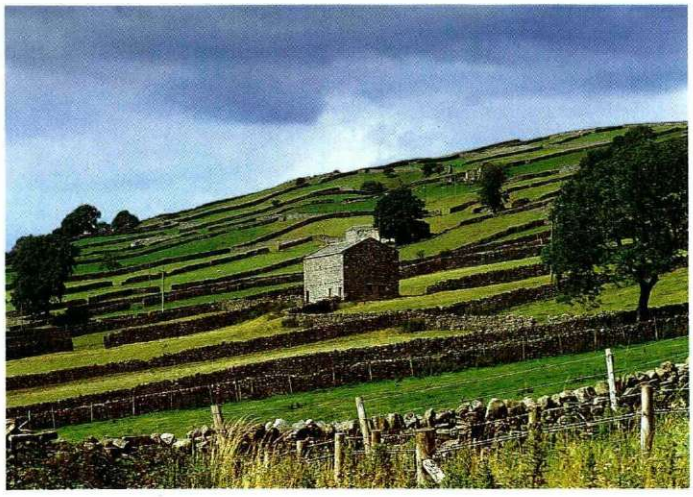
The kind of land development pursued depends upon natural parameters: natural, technical, economic and also political

Chenot/Sipa Image



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Decentralisation and environmental protection

José Luis Serrano Moreno

From a territorial point of view, the planet's ecological crisis can be understood as a problem arising from the discrepancy between the legal-political spheres of sovereignty, competence and jurisdiction and the space where ecological processes take place. At times, this discrepancy is because the ecosystems extend beyond the territorial limits of political systems possessing their own or derived authority. This is the case with all cross-border pollution and is equally the case with the planet itself, which is an ecological unit without a world environmental authority. At other times, just the contrary occurs: the political-administrative system is too wide and what is lacking is an environmental authority closer to each ecosystem. In the first case, ecology demands globalisation, and in the second the inverse: decentralisation. From the standpoint of environmental law, then, we can define decentralisation as an instrument to manage the territorial imbalance between nature and administration.

Multiple approach

The new Spanish State, born with the 1978 Constitution, opted for a three-pronged approach to the environment:

- in the first place, the citizens have the right to a satisfactory environment and the duty to preserve natural resources. This right is well set out in article 45 of the Constitution, but very inadequately guaranteed by article 53.3 which has created problems of interpretation for the last 20 years;
- secondly, the State reserves to itself the exclusive jurisdiction to adopt basic legislation for the protection of the environment;
- thirdly, the 17 Autonomous Communities into which Spain is divided have the right to lay down further rules for protection (article 149.1.23) and for the management of environmental protection (article 148.1.9).

As can be seen, this is a decentralised model in which the bulk of environmental protection falls on the administration closest to the citizen, and the central State retains only the necessary facility to harmonise the legislation through the basic law, to which the Autonomous Communities can add further legal protection. This decentralised scheme - much more complex than it appears - has produced great advances in the preservation of nature, but has also created new problems.

Increase in protected areas

Among the advances we must highlight is the creation of true environmental administration in the majority of Autonomous Communities, that is, administrations concerned only with environmental matters. Of course, among the advances we can also emphasise the increase in the protected natural spaces. For example Andalusia, the biggest Autonomous Community of Spain, has gone from having only one natural park (Doñana with 50 720 ha) at the beginning of the 1980s to now having more than 20% of its territory protected (1 498 291 ha).

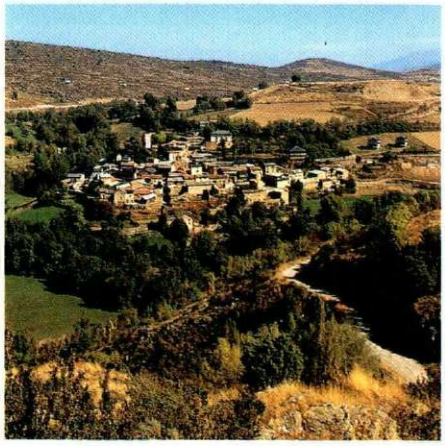
Negative effects

Among the problems we would point out only two.

Firstly decentralisation, which has resulted in a great increase in ecoterritorial concerns, has not been accompanied by a parallel concern for the other environmental means of protecting nature, which are temporal rather than spatial: prevention of pollution, impact assessment, responsibility for damage, etc.

Secondly, decentralisation has caused serious disputes about jurisdiction between the Autonomous Communities and the central State. Until 1995 the Constitutional Court had given four important judgements in environmental matters. All four arose from conflicts of authority between the Autonomous Communities of the Basque Country and of Catalonia on the one hand and the central government in Madrid on the other. On all four occasions, what we can call the protectionist interest was advocated by the regional governments and the developmental interest by the central State. In 1995, the Constitutional Court pronounced a significant judgement in which it partially accepted the allegation of unconstitutionality of the Law of the Preservation of Natural Spaces put forward by 13 of the 17 Autonomous Communities against the argument of the Madrid Government. In not one of the five cases could the Constitutional Court clarify in detail the true legal-environmental problem: what is the content and nature of the satisfactory environment recognised by article 45 of the Constitution.

Here is the most negative effect of decentralisation: in Spain the environment has become an administrative problem between the State and the Autonomous Communities and not what it really is: a legal-constitutional problem of the citizens. This is obviously due to a faulty construction of the Constitution which, by preventing the lodging of appeals against the violation of environmental rights, shifts the work of the Constitutional Court to interadministrative conflicts.



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Citizens' rights

As is to be expected, environmental disputes continue to occur and are on the increase. Lawyers know well that when a technical legal defect prevents a dispute from being litigated, the dispute ends by being litigated by whatever rule of the system presents a crack through which it can enter the court. This is just what has happened in Spain with the decision of the European Court of Human Rights in the López-Ostra case. Spanish judges rejected the claim of a citizen to prevent smells from a tannery some 12 metres away from entering her house. She appealed to the Constitutional Court, which determined that the right to a satisfactory environment given by article 45 is not protected through this type of appeal. The complainant then went to the European Court of Human Rights which did not hesitate to condemn the Spanish Kingdom, applying article 8 of the European Convention of Human Rights which deals with the right to honour and privacy! Spanish judges of first instance have already applied this decision directly to analogous cases. As can be seen, the faulty construction of the constitutional right to a satisfactory environment has caused the resolution of the conflict by the unexpected route of the right to privacy. Finally, we would stress the urgent need to adapt the legal environmental system, not only to the desirable aim of decentralisation, but also to the guarantee of the citizen's environmental rights. ■

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Rational land use and the countryside
The Council of Europe's work

Tarcisio Bassi

Land use

In 1972, the Committee of Ministers of the Council of Europe adopted the European Soil Charter and recommended that those responsible for land management should bear in mind not only the immediate needs of modern society (urbanisation, industry, agriculture, tourism), but also the part played by soil in landscape and vegetation of scientific, aesthetic and cultural interest to man.

The European Conference of Ministers responsible for Regional Planning (CEMAT) has also approved general principles concerning the rational use of land. The use of land should be governed by the principle of economy in order to maintain the diversity of its functions. Land is a limited natural resource which cannot be increased and which can be reclaimed only with difficulty and at great expense; it therefore warrants appropriate protection in line with the requirements of social and economic development, which should be ecologically balanced.

Political choices involving land use should be more clearly defined and co-ordinated between the various decision-making and executive sectors and levels; better co-ordination within and between sectors is essential when such choices are made.

The countryside

Rural areas account for over 80% of European territory and it is therefore only natural that their situation and development should have been carefully studied throughout the Council of Europe as part of the process of devising strategies for achieving comprehensive and balanced regional planning at European level. More recently, the Parliamentary Assembly adopted the European Charter for Rural Areas, which might lead to a Committee of Ministers convention.

In adopting the European Regional/Spatial Planning Charter, the European Ministers responsible for Regional Planning affirmed that rural regions with a primarily agricultural function have a fundamental role to play and that it is essential to create acceptable living conditions in the countryside, as regards all economic, social, cultural and ecological aspects as well as infrastructure and amenities. Specific measures need to be devised for under-developed and peripheral rural regions as distinct from those close to large conurbations. In the latter, the development of the urban framework, of social and economic structures and of transport must take account, in all spheres, of their specific functions and in particular of the conservation and management of the natural landscape.

A European campaign

In 1987 and 1988, the Council of Europe mounted a European Campaign for the Countryside, whose main aim was to promote the development of rural areas while preserving them and maintaining their quality for future generations.

The slogan adopted was "Conservation with change, development with preservation". At the many seminars which were organised during this campaign, the main reasons cited for needing, firstly, better co-ordination at European level and secondly, solutions to problems on a transnational scale, can be summed up as follows:

- the countryside, its way of life and its activities face major threats to their survival; agriculture, forestry and fishing are declining in several respects; current social trends have caused profound upheavals in traditional family structures in rural areas, without creating an acceptable alternative lifestyle for rural populations;
- the recession experienced over a number of years has led to a reduction in the resources available for redistribution to the countryside under financial equalisation arrangements, and this is in danger of upsetting the delicate balance between conurbations and rural areas;
- except to a very small extent, the countryside has been unable to adapt to modern technology;
- the harmful impact of human activity in physical and chemical terms, the visual pollution caused by the jumble of advertising hoardings, and the disfigurement of villages are all factors contributing to the destruction or deterioration of the countryside and the balance between human beings and nature in general;
- the construction of buildings of an inappropriate size and type, the use of non-traditional building materials and the abandonment of traditional buildings are resulting in the destruction or deterioration of the rural architectural heritage.

All rural planning policies should seek primarily to establish a balance between rural populations, employment and the use of natural resources so as to guarantee the sustainability of the economy and development of rural areas while at the same time ensuring that people can live and relax in unspoilt natural areas.

Co-ordination and co-operation between rural communities and regions, which often have small populations, are more essential than

Rural areas represent more than 80% of land in Europe

B. Jaubert/Sipa Image

elsewhere if rural populations are to be guaranteed a satisfactory level of facilities and public services.

Mountain regions generally have problems very similar to those of rural regions as a whole, but on a bigger scale, and therefore deserve specific attention within an overall policy of European regional planning.

What is the alternative?

The provision of financial compensation for the contribution made by rural populations to society (conserving the natural environment for city-dwellers' leisure activities; reducing the risk of forest fires; protecting soil from erosion in order to sustain plant and animal life; preserving the architectural and cultural heritage of rural areas etc) is surely justified and should be regarded as an alternative to a situation where rural populations engage in agriculture and forestry on a short-term and increasingly intensive basis in order to secure an adequate income. Such a measure would slow down rural depopulation and would no doubt be offset by a reduction in the social costs generated by the ever-increasing concentration of people in large cities.

In drawing up the main guiding principles for sustainable and comprehensive planning of Greater Europe in the next century, the European Conference of Ministers responsible for Regional Planning will attempt to put forward strategies for the countryside reflecting a new rural policy, extended to cover all 40 Council of Europe member States, whose aim will be to achieve a better economic, cultural and social balance between urban and rural populations and more rational and sustainable management of rural areas. ■

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Natural habitats in land use plans

Jérôme Fromageau

Land use plans, which originated in the major reforms of urban planning policies in the 1960s, established zoning for a particular territory, most often at municipal level.

Initially, land use plans were part of a relatively automatic procedure whose purpose was essentially to grant entitlement to build on the territory of the municipality and to codify the use of such entitlement. Created under the influence of the functionalist school, notably in France, such plans paid little attention to the environment.

The need to indicate clearly, zone by zone, the nature of the construction permitted or prohibited led to quite strict zoning resulting directly from the preparation procedure and not from respect for a principle. Basically, it involved limiting and controlling the construction of buildings and infrastructures, whilst agricultural and forestry activities remained completely unrestricted.

A major challenge

Since then, greater consideration has been given to protection of the environment, and natural spaces in particular. Although not a specific area in regional planning practice, the environment today represents a major challenge in terms of objectives and development. A veritable local charter for town planning, land use plans have become a prime vehicle of local environment policy. They enable projects to be drawn up which are geared to the mode of development of the local economy, in which socio-economic activities are incorporated in an environmental framework.

M. Haton/Pluriel

Ecological valuable areas enjoy special protection, such as the Vanoise massif, France

In view of this trend, and despite the complexity and profusion of bodies which may be involved in any action, zoning is well adapted to the conservation of natural spaces and landscape features.

Limited protection

But regardless of the extent to which environmental features are taken into consideration in land use plans, the protection of natural spaces is not guaranteed. Whereas provision is commonly made for such protection in natural areas by prohibiting changes in land use and any form of occupation that might prejudice the objective pursued, land use plans cannot prescribe administrative or restoration measures for habitats and landscapes.

Ecologically valuable areas enjoy special protection in addition to the preservation of agricultural activities and the protection of forest spaces. Conservation orders make it possible to afford the most vulnerable natural sites and habitats a form of "active protection" far stronger than the constraints imposed by land use plan regulations. All protected spaces - nature reserves, national parks, hunting reserves, national monuments, nature parks and sites of special scientific interest - have similar features: prohibition or limitation of human activities and even prohibition of access so that they remain uninhabited and undisturbed as much as possible. ■

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Replacing rules and regulations with contracts

Max Falque

The many rules and regulations introduced to protect environmental resources restrict property rights to varying degrees. If it is accepted that respect for property rights is actually one of the preconditions for the long-term preservation of environmental assets, contradiction and conflict will inevitably accompany the difficult process of striking a balance between the different interests.

There is no question of dispensing with state regulatory systems, but there is a case for verifying their legitimacy, defining their sphere of action and evaluating their actual success.

The origins of the current regulations

France's excessive regulatory zeal in environmental matters stems from the country's tradition of state control and more precisely from the law of 15 June 1943 passed under the Vichy government. This law established the general principle of no compensation for urban planning servitudes (restrictions imposed on property under urban development plans). It is hardly surprising that a regime with fascist tendencies should ride roughshod over Article 17 of the Declaration of the Rights of Man and of the Citizen which states that property is "inviolable and sacred", but that principle has been constantly reaffirmed and was enshrined, with a broader scope, in the law of 31 December 1976 on urban planning reform.

As far as urban planning is concerned, the aim was to control and regulate the market and the restrictions were mainly designed to set limits on urban development. Zoning procedures, which are as old as towns themselves, appear not only to be legitimate but also indirectly and paradoxically to protect private property values, especially insofar as they separate functions and limit environmental nuisance. Any inequality of treatment is justified in economic, social and physical terms and will in any case be rectified in the long or medium term by urban growth.

Property rights and environmental servitudes

Environmental concerns have meant that the zoning provided for in urban planning documents has been extended to cover the whole area of each local authority. As a result, the nature of the restrictions on property has changed, creating what might be termed "environmental servitudes" with the following characteristics:

- a major and lasting change in property values is brought about through the unequal treatment of citizens in terms of the burdens and obligations imposed on them in the public interest;
- these servitudes are active in nature since they apply to areas which need to be managed (marshes, woodlands, biotopes, etc);
- their imposition is usually arbitrary insofar as it is justified in highly subjective terms (aesthetics, landscape, "natural" habitat, etc);
- these servitudes are spoliatory in nature because they make it possible to subject the owners of property adjacent to major public amenities (motorways, sewage works, high-speed train lines, airports, industrial areas, etc) to nuisance factors for which they can gain no compensation.

These "environmental servitudes" are actually tantamount to "expropriation by regulation", for which there should be compensation in the same way as for physical expropriation. This refusal to compensate infringements of property rights has serious consequences for the environment:

- the lack of active management: if property owners can be deprived of most or some of their rights, the public authorities are not in a position to compel them to manage their property in accordance with environmental requirements[1]. In extreme cases it has been known for owners to take preventive measures and damage environmental resources which may subject them to a servitude[2];
- the decision as to the location of a facility or the route of a road or railway line is liable to be made according to political or partisan interests (for example, France's south-eastern high-speed train line).

Numerous examples show that a failure to respect property rights leads not only to the destruction of the environment and an increase in nuisance factors but also to extra costs which are borne by the taxpayer.

Finally, from a moral point of view, the unequal treatment of citizens in terms of the burdens and obligations imposed on them in the public interest and the constant risk of corruption when urban planning documents are drawn up are no less serious.

Far from making the task of environmental protectors easier, the negation of property rights insidiously undermines their efforts. Furthermore, it is hard to see how the public authorities and their semi-public agencies or the associations working with them could manage land at an acceptable cost without the active participation of its lawful owners[3]. This was precisely the origin of the recent controversy surrounding the implementation of the European Community's Natura 2000 directive.

Attempting to strike a balance

There has been considerable debate in the United States on the subject of *taking* (expropriation by regulation), and this has had the merit of redefining the limits between public and private interests. The success of environmental policies will depend on whether the correct balance is struck between both sets of interests.

Property rights[4], and their accompanying obligations, should be clearly defined so that property owners can continue to play their appointed role of protecting the heritage over the long term. To achieve this there must be fair prior compensation which goes beyond mere physical expropriation. Expropriation by regulation gives the public authorities free and unlimited powers which, under the guise of being in the public interest, primarily serve lobbies, private interests and statesmen (politicians and bureaucrats).

While property rights can give rise to social and environmental abuses they are naturally limited by the competing rights of other property owners. Only the public authorities can disregard the rules of good conduct, particularly the rule prohibiting any infringement on the property of others by virtue of the maxim *Sic utere ut in alienum non laedas* (you may make use of your property only in so far as you do not cause harm to others).

In conclusion, it can be said that environmental land management should be based on a range of contractual tools situated somewhere between public appropriation, which is often pointless and always costly, and supposedly "cost-free" regulations, which rarely have the desired long-term effect.

The success of our efforts to preserve our environmental riches at a socially and fiscally acceptable cost for the citizens will depend on the ability of the public authorities to negotiate with land owners. ■

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[1] However, property owners are sometimes subject to obligations to act, such as the obligation to clear undergrowth around houses, although a strict interpretation of liability without fault (under Art. 1383 *et seq* of the Civil Code) would perhaps have sufficed. As regards the aberrant and naïve "obligation to cultivate", there has never been any serious attempt to apply it.

[2] The Americans use a colourful term to describe this behaviour, "the three 'S's: Shoot, Shovel and Shut up". Where an archaeological find is made in the course of excavation work, the French equivalent is "Break it, bury it and shut up". It should be acknowledged that restrictive regulations lead all too often to the destruction of the environmental riches they are supposed to protect!

[3] It is estimated that there are some 4 million rural landowners in France, an "army" never mobilised by the public authorities, which seem determined either to ignore them or to fight them.

[4] *Droits de Propriété et Environnement* (Property Rights and Environment) by Mr Falque and Mr Massenet, Proceedings of the International Conference in Aix-en-Provence, 28-29 June 1996, Dalloz 4th quarter 1997, 320 p.

Land policies and the CAP

Jean Cavailhès

What impact are the common agricultural policy (CAP) and European land policy likely to have on nature conservation in Europe? As far as land policy is concerned the answer is simple: there is no unified land policy. As for the CAP, its obvious effects on landed property have so far acted to intensify the agricultural use of land. Yet agriculture plays an irreplaceable role in managing the landscape, rural areas and the countryside. But this job is badly co-ordinated with its production activities. The Commission's proposed reform of the CAP attaches greater importance to environmental aspects. But many difficulties continue to exist. Here, briefly, are a few ideas.

A "local" asset

Agricultural land has not been integrated into a "single market" for obvious reasons:

- firstly, landed property is immovable and the people who develop it rarely migrate; the markets where the supply and the demand for land come together are therefore local or micro-local markets;
- secondly, land is subject to different rules governing taxation, development methods, etc, and is also a patrimonial asset: the diversity of inheritance rights and family ways and customs must be taken into account;
- thirdly, competition for use of the soil is extremely varied, ranging from agriculture, forestry, industry and towns, etc, to non-use, depending on the density of population, urbanisation, the lie of the land or specialised regional produce, as in these areas, too, diversity is the rule.

Land is therefore essentially a "local" asset, about which one must be wary of making hasty generalisations.

A market of many facets

The multi-faceted situation of the landed property market is apparent at different levels:

- first of all, in the price of agricultural land: comparing different countries, what connection is there between the price of land in the Netherlands or Germany where it exceeds 100 000 FF/ha, and in France, Spain or the United Kingdom where the average price is only 20 000 FF/ha? In France, prices can be seen to range from 1 500 FF/ha in certain small agricultural regions to ... three million francs in others (not to mention exceptional transactions for vineyard plots);
- then, in the opening up of the market: almost 1.5% of agricultural land in France (4 to 500 000 hectares) changes hands every year, whereas the percentage in Germany is tiny;
- or again, in the attraction which small farms and agricultural landed property hold for town dwellers who buy them for residential or recreational purposes. There are a large number of purchases of this type in mountain, woodland or coastal regions, but none in the great agricultural plains. In France, in some years, they make up almost a third of the land which is bought and sold: in some regions, town dwellers are ousting farmers from the agricultural landed property market.

The CAP "at its beginnings"

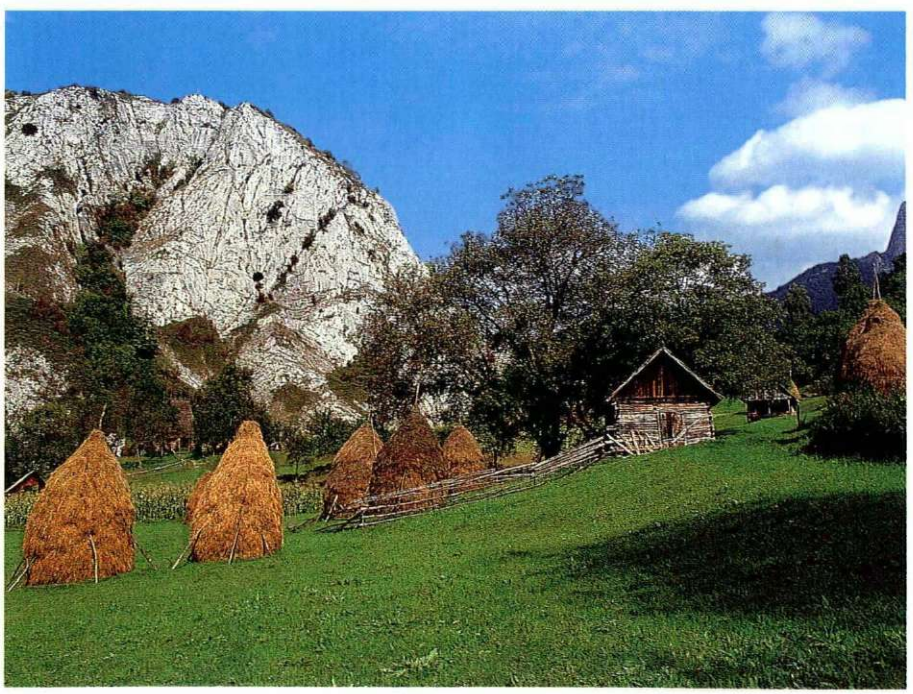
Yet, for all this diversity, the common agricultural policy has direct and indirect effects on the landed property market. For decades, the EEC concerned itself with producing more, at lower prices, in order to be self-sufficient and to export. Price support and the modernisation of agriculture were the watchwords of the CAP until the 1980s. The results were spectacular in terms of productivity, competitiveness and world market share. The intensification of land-use was one aspect of this agricultural revolution, and economists have described the effects it induced: land was expensive, rare, and coveted (in France, people spoke of a "hunger for land"). Every hectare that could be cultivated was worth developing, even to the detriment of nature, the landscape and the quality of the environment.

The 1992 Reform

When the CAP was reformed in 1992, the role of agriculture in the quality of the environment began to be taken into consideration. Pollution of agricultural origin (nitrates, etc) had to be limited and the part played by farmers in protecting the landscape, biodiversity conservation and in managing the land that was open to residential and recreational activities had to be recognised. For although there are natural areas where there is no agriculture, particularly in mountain areas, millions of hectares are cultivated while conserving an environmental interest. In France, for example, there are almost five million hectares of national parks and regional nature parks which, for the most part, are inhabited and cultivated. Society is becoming more and more interested in that part of the natural environment which is being developed and "domesticated" but not "artificialised".

The 1992 Reform of the CAP included certain supporting measures which took the agricultural production of environmental assets into consideration: more direct aid was made available to extensive stock-raising systems, agro-environmental aid enjoyed real success. Unfortunately, these measures were offset by others which maintained the movement to intensify agriculture. For example, the "set-aside" which initially concerned 15% of the area given over to large-scale farming, encouraged farmers to exploit their other land more intensively. In the same way, direct aid paid to farmers provided an income which was capitalised in land prices, which also encouraged the intensive use of land. Or again, extensive grazier stock-raising, which is so important to life in mountain, hill and

In the 1992 reform of the CAP, supporting measures were more important for extensive stock-raising systems



B. Neeleman

Pierangeli/Sipa Image

foothill regions, was not treated as well by this reform as intensive stock-raising in the plains, which enabled farmers to receive subsidies for both raising cattle and large-scale farming (maize for fodder) and to benefit from the fall in the price of concentrated foods.

"The Santer package"

The 1992 Reform did not, therefore, bring about the break with previous policy that some had hoped for (and that others had apprehended!). But today, the situation is evolving. First of all, in relation to landed property, since the price of land is continuing to fall almost everywhere in Europe (in the United Kingdom, it has been divided by 2.5 since 1983), reflecting a fall in the demand for land. In most countries, people have ceased to be "hungry for land" and are now "sated with land": agriculture is abandoning land to be reclaimed by the forests or left to lie fallow (and also, and most importantly, to be built on). Society is also making stronger demands for agriculture to limit its negative effects (that is to say the pollution it creates) and to increase the positive co-products of its activity in the form of landscape, biodiversity and management of the countryside. The Commission's proposed reform of the CAP ("the Santer package") takes all this into account. Referring to the examples given above, the compulsory 0% rate of frozen land, a fall in the price of cereals which would be only partially compensated for by new subsidies, and an end to subsidies for maize for fodder would, as we can see, go further than the 1992 Reform.

The production of environmental assets

Nevertheless, considerable obstacles remain to improving the production of environmental assets through agriculture. They come from what economists call the failure of market forces: a landscape is an asset which cannot change hands directly on a market, biodiversity is potential wealth for future generations, and anyone who goes walking in the countryside pays nothing to benefit from the landscape which is being looked after by a farmer. Market mechanisms cannot regulate supply and demand in these situations. A public regulating body must compensate for these failings by subsidising producers in order to encourage them to offer these assets in sufficient quantity (and by making them pay for the pollution they spread). That entails defining a rule of ownership of environmental assets, calculating their economic value, remunerating producers and making consumers or taxpayers pay: it is obvious that all that is not a simple matter! ■

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Agricultural reform and the environment
The example of Spain

Paul Trappe

Since the second world war and following a remarkable social and economic programme to improve its infrastructure (dams, reservoirs to collect rain-water, irrigation and drainage networks), Spain has decided to create the necessary conditions for the development of irrigated agriculture in valleys and coastal plains to encourage small-scale farming. On the institutional front, this reform has been characterised both by meticulous planning and implementation at state level (Ministry of Agriculture, National Institute of Settlement, other specialised institutes and ministerial services - hydrology, civil engineering, electricity, etc. - and their local branches) and by the careful transition from centralised control to independent management by co-operatives and private contractors and farmers.

The main lines of the reform

From the outset, the reform was confined to areas which it was easy to irrigate. In hilly areas where artificial irrigation was not immediately planned, settlers were given larger plots of land than in the plains (about 13 hectares as opposed to six) and experiments were carried out in extensive terrace farming over a trial period.

No agrarian reform was introduced in areas within large properties which could not be irrigated and could only be farmed extensively. This goes a long way towards explaining why the traditional landed estates or *latifundia* of the *secano* (unwatered land) were only affected by the reform at a later stage, if at all.

A major effort has been made to desalinate the soil using natural methods. Two projects are references here: the preliminary pedological studies conducted as part of the Guadalhorce (Málaga) project and the well-known example of the natural desalination of the marshes at the mouth of the Guadalquivir, which can now be used as farm land after a process lasting some 30 to 50 years.

Huge areas of land have been reforested throughout the country, include arid and rocky regions, but also, as a priority, the drainage basins of dammed lakes. Between 1940 and 1982, 3.2 million hectares of land were reforested and this process is continuing, helped by an increase in air humidity owing to the large number of dammed lakes and associated irrigation systems. However, forest fires cause major damage: 412 000 hectares of forest were destroyed by fire in 1985. Now, preventive measures are being stepped up, while fire-fighting is more and more frequently the responsibility of local authorities.

The present re-organisation, which affects every region in Spain, began before 1931 in the reign of Alfonso XIII but really took off after the second world war. Following the agreement on American aid in 1950 and the accession of Spain to the United Nations in 1956, funds flooded in from abroad, particularly from the United States and Germany, giving considerable impetus to agricultural reform and environmental protection. Since its accession to the European Union (known then as the EEC) in 1986, Spain has received regular aid through the structural funds which will continue at least until the turn of the century. For the period from 1994 to 1999, some 28 billion ECU will have been awarded, mainly for the purposes of structural adjustment in the most economically disadvantaged regions.

Independent management

Most projects, after an initial stage of supervision by the public authorities, are managed independently by local authorities or private individuals, the main idea being to establish suitable forms of co-operation between settlers. Associations for this kind of purpose were, however, somewhat unusual in Spain.

It was made compulsory for all those affected by the re-organisation to belong to a co-oper-

P. Trappe

The imperial canal, for irrigation of the Ebro plain and for goods transport

ative. If this institutional requirement had not been fulfilled, the reform would have had practically no chance of success. Compulsory affiliation was regarded as a legitimate requirement, because it promoted social integration and boosted the economic potential of new farmers. For the 25 years after they had settled, the new farmers were placed under the supervision of the Ministry of Agriculture. A third of the yield from each plot of land handed over - ie. about six hectares of irrigated land - was to be given to the ministry as payment for the land, whose selling price was set at a relatively low level. Once this had been repaid in full, the farmer was free from official supervision and normally had no more payments to make.

Spanish co-operatives are typically European: the only restrictions concern the specific objectives for which they were created and do not relate to any other aspects of the life of their members, in contrast to what generally occurs in collectivist systems. These co-operatives, whose main activities are marketing, storage, breeding, milk processing, and advice and maintenance work on agricultural machinery, have also contributed to the social integration of newly settled farmers.

The role of agro-industries

Another aspect, often described as the key to the success of development policies - but only seen in embryonic form in many projects implemented in Europe and the third world - is the role of agro-industries. In Spain, these industries, which are taken into account in development programmes from the outset, have mostly been operational within the time limits. This was the case, for example, with small-scale cement works (providing parts for the construction of canals, aqueducts, pipelines and wells), wood-workers, and manufacturers of various types of building material. From the early 1960s onwards many agro-industries were set up to process legumes. Subsequently, flour-mills and saw-mills joined industries already present before the re-organisation, such as pottery and chemicals.

Combating drought

The collection and methodical distribution of rain-water, along with drainage via well-designed networks adapted to the environment, are the basis of this highly distinctive system. The system functions less well when there is a deficiency in rainfall over several consecutive years. This was the situation in Andalusia from 1992 to 1996, a period when agricultural output was practically zero in the absence of any irrigation. However, despite these five years of drought, the reservoirs in the region still contained enough water to provide rationed water supplies for households, tourist facilities and industry. At the end of the dry period, the reservoirs still averaged 10% full.

An exemplary scheme

In agricultural and environmental terms, the Spanish programmes of structural adjustment are models of their kind. Their purpose is not just to preserve the environment but also to revitalise it through restoration schemes. It is clear that periods of drought can throw some countries into a critical situation. But it is also clear that structural prevention measures can and must be taken. Such measures are complex and costly. They must deal not only with the economic infrastructure but also with social infrastructure - institutions, rules and regulations, administration and planning, training, and, vitally importantly, social supervision at the various institutional levels. A number of countries have drawn inspiration from Spain's experience in this area. ■

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Nature conservation and land use in the UK

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The primary mechanism for maintaining, enhancing and safeguarding wildlife and natural features in the United Kingdom is the designation of land as a Site of Special Scientific Interest (SSSI) or in Northern Ireland an Area of Special Scientific Interest (ASSI). The "specialness" of these sites is determined by the government's advisers on nature conservation and include areas of geological and geomorphological interest as well as for faunal and floral interest. Nearly 6 500 sites have been notified comprising 4 000 000 ha. Most of this special land is owned by farmers with the remainder held by government departments like the Ministry of Defence, private industry, conservation bodies and the government's advisers on nature conservation. Some of the best areas of the SSSI/ASSI series are specifically managed to enhance their nature conservation interest and are declared as National Nature Reserves. There are some 350 of these reserves comprising 270 000 ha.

Importance of voluntary principle

The SSSI/ASSI mechanisms available to maintain and enhance these special areas are very much reliant upon the voluntary principle. Owners and occupiers of such land are required by law to consult with the government's advisers where they wish to undertake an operation identified as likely to damage the special interest. On the vast majority of sites the government's advisers have a good working relationship with the owners and occupiers, ensuring that appropriate management to maintain the nature conservation interest is sustained. In some cases additional protective measures are introduced but damage can still occur.

Where development requiring planning permission is proposed on SSSI/ASSI land, such initiatives are invariably refused where it would result in damage to the nature conservation interest.

The government uses the SSSI/ASSI mechanisms as a basis for meeting its international obligations under the Ramsar and Bern Conventions and the EC Directives on the Conservation of Wild Birds and Conservation of Natural Habitats and of Wild Fauna and Flora.

Other protection examples

In addition to this national series there are sites of regional and local importance which may be designated as Local Nature Reserves managed by local authorities, or nature reserves established and managed by a variety of public and private bodies including county wildlife trusts and the Royal Society for the Protection of Birds.

National parks are areas of outstanding natural beauty. There are 11 parks in being, comprising 1 401 100 ha. These areas are not owned by government but again primarily by farmers. The park authorities are required to protect and enhance the natural beauty of the parks and have recently acquired legal responsibilities with regards to wildlife and cultural heritage. In carrying out these responsibilities, the park authorities must promote public understanding and enjoyment and ensure the social and economic well being of those that live and work in the parks.

The government and its advisers have also introduced schemes to encourage management of land for nature conservation.

P.W./English Nature

ASSI, Cumbria, United Kingdom

Schemes such as Environmental Sensitive Areas, Countryside Stewardship, and Tir Cymen (Wales) are part of the UK's agri-environment measures and are available in special sites and elsewhere.

This year will see the publication of a leaflet by the government advisers on nature conservation, explaining the UK site safeguard system for a wider European and international audience. ■

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Land use in Ukraine:
threats and hopes

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Ukraine is located in central Europe and its territory covers 603 500 km² including 579 400 km² of land which differs greatly in function, quality and legal status. For instance, agricultural land occupies 418 400 km² (69.3%), meadows and pastures 76 300 km² (12.6%), forests and woodlands about 103 700 km² (17.2%), and surface waters 24 100 km² (4.0%). In total arable lands occupy about 331 900 km² (55.0%).

From ancient times to the present day, agricultural development has been defining the economic, social and cultural profile of the country. Traditionally land was at the top of national values in Ukraine. Due to land over-exploitation and land misuse that took place during the last centuries and as a result of former regimes that ignored the natural processes, Ukraine now belongs to the countries with highly transformed natural environments.

The black soil (tchernoziom) - of which 8% of world reserves are in Ukraine - is a main resource for agricultural development in Ukraine. Unfortunately, fertilised lands suffer from erosion. According to official data, in 1996 about 170 000 km² (40.9%) of agricultural lands were affected by water and wind erosion. During the last ten years Ukraine has lost on average about 0.02% of the fertilised layer of land. In some regions this figure exceeds 1.2%. As a result of the Chernobyl incident, more then 84 000 km² of agricultural land are contaminated by nuclear precipitation (Cs-137), especially in the northern region.

The 1991 change

Since 1991 Ukraine has been developing its independent economic and environmental policies after the break-up of the USSR and aiming for sustainable development. Changing and optimisation of the system of land use towards an environmentally friendly one is one of the crucial issues of ongoing reforms. According to official data, at 1 January 1997 54.9% of land was owned by the State, 41.0% belonged to the non-governmental agricultural enterprises, and 4.1% were under private ownership. Transition to the market economy creates both new opportunities for land reform and new threats for land misuse, if urgent measures are not taken in time.

Land use in Ukraine is regulated by the Land Code of Ukraine (1992), the Law of Ukraine on Environmental Protection (1992), the Law of Ukraine on Nature Reserve Fund (1992), the Water Code of Ukraine (1995) and some other legal documents. The State Programme of the Future Development of Nature Reserves in Ukraine (1994) and the recently adopted concept of the National Strategy on Biological Diversity Conservation in Ukraine (1997) consider land conservation and rehabilitation as an important precondition for nature protection, biological diversity and landscape conservation. The national programme of land conservation is now under preparation. It will define legal, economic, institutional and ecological backgrounds for land protection and rehabilitation in Ukraine by the year 2010.

A chance for the future

International conventions, treaties and initiatives also provide valuable instruments for optimisation of land use in Ukraine. The most important are the Convention on Biological Diversity and the Pan-European Biological and Landscape Diversity Strategy, because these provide methodological frameworks for nature conservation and sustainable use on the base of cross-sectoral co-operation.

We really live in an era of new chances and opportunities. Taking these chances means restoration of high value of land and the securing of the future for our descendants. ■

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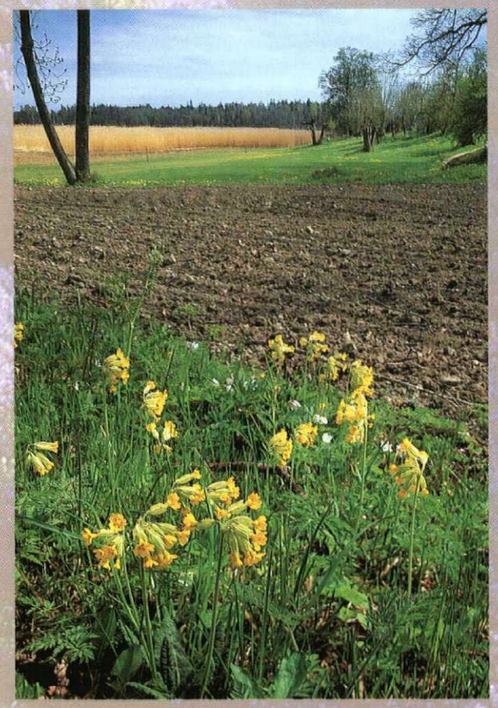

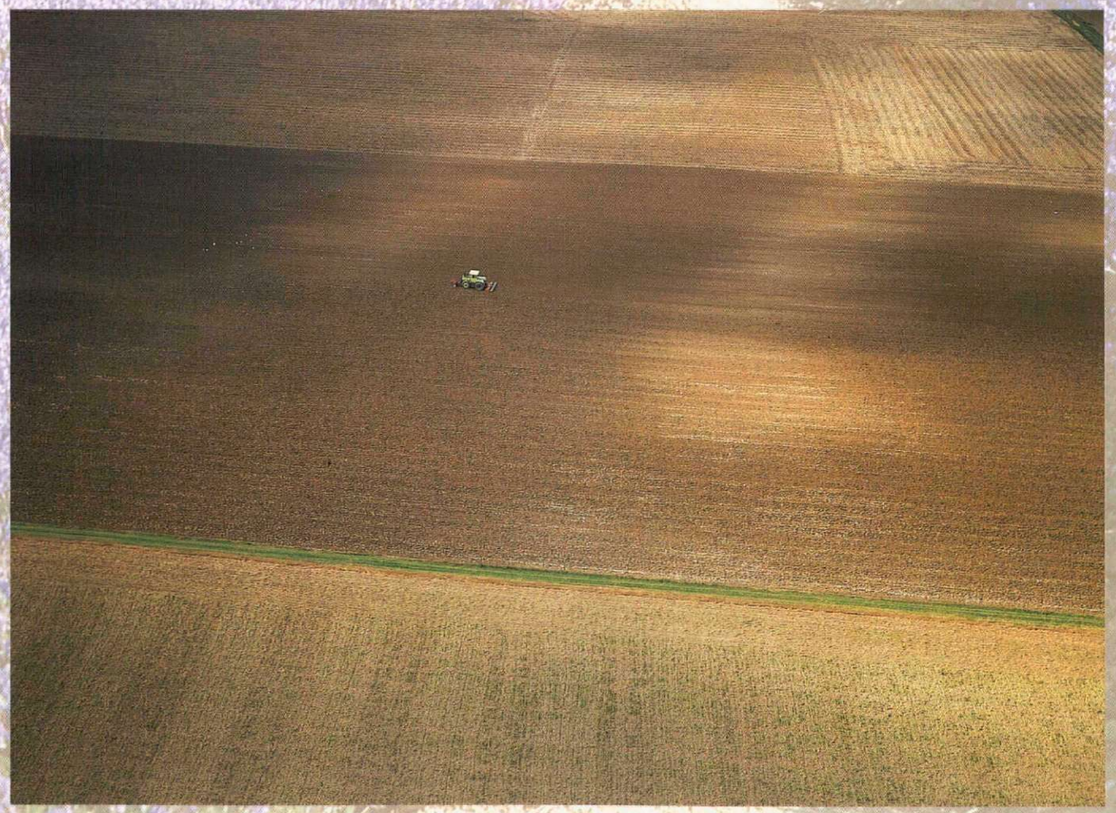

The transfer of property rights in the USA

Harvey M. Jacobs

Since the emergence of the contemporary environmental movement in the early 1970s, the protection of nature has been an issue strongly supported by the American people. Public opinion polls show that a strong majority of the American public self-identify as environmentalists, and that they consistently support public actions to conserve all aspects of nature.

The paradox is that while Americans support the concept of nature conservation, the practice of it is complicated by conflicting social values. The USA is a country with an almost overwhelming respect for private property. Many of the original (and continuing) immigrants came in search of secure land tenure - ownership without obligations to landlords or the state. The Fifth Amendment to the US Constitution contains a clause that specifically protects private property from unreasonable intrusion by governmental action. Throughout the 20th century a continuous debate has been the extent to which government regulation is a violation of the Fifth Amendment; that is, is regulation a legally and constitutionally legitimate way to protect natural resources?

Transfer of development rights

Legal scholars have determined that the technical answer to this question is almost always yes. Few regulations, developed by agencies of local, state or federal government, are so stringent as to violate the guidelines set down by the US Supreme Court in its interpretation of the Fifth Amendment. However, the development of regulations occur much more within a political climate, then a strictly legal one. And it is for this reason that transfer of property rights, or as they are known transfer of development rights (TDR), was invented.

TDR are an approach to regulation that seeks to achieve strict control of private property, while providing the landowner with a degree of market-based compensation. Land in an area is divided into two districts, a transfer district and a receiving district. Landowners in the transfer district have their land restricted because of its value for nature conservation. In restitution they are allowed to transfer (through sale) the reduced value of their land to landowners in the receiving district. Landowners in the receiving district are permitted to acquire rights to develop property at higher densities from landowners in the transfer district.

Land use regulations designate both the restriction of landowners in the transfer district, and the ability of landowners in the receiving district to use land at a higher density. The price for the transfer of rights is determined solely between the buyer and seller, and reflects market conditions. The role of government is to establish the market of rights, and to monitor their transfer through a public data base.

When it works as designed, TDR provide for:

- equity to the public-at-large through strict regulation of land;
- equity to the landowner through market-based compensation; and
- more efficient development of land in receiving districts.

Because of their potential, TDR have been enthusiastically received in the USA. And while there have been some significant implementations of the concept, most notably to protect the pine barren ecosystem in the state of New Jersey, on the whole TDR has generated more talk than execution. Why?

Fairly limited use

The answer is politics. TDR work when supply and demand are in equilibrium. The transfer and receiving districts must be of the right size for this to occur. But in practice, too many TDR feasibility studies result in transfer districts that are too large, and receiving districts that are too small, so supply far outstrips demand. This happens because citizens know what areas they want protected, but they are much less willing to accept higher densities in receiving districts to counterbalance their protection goals. TDR programmes have succeeded where there is a strong development market, a well-defined, often small, transfer zone, widespread public recognition of the importance of the resource to be protected, willingness among land owners in the receiving district to acquire available development rights, and political decision-makers are willing to take risks.

As nature conservation continues to be a prominent social value in the USA, TDR will remain of interest as a policy implementation tool. However, its use will likely remain limited. Since the political problem with strict regulation remains, attention has shifted to use of a TDR cousin - purchase of development rights. ■

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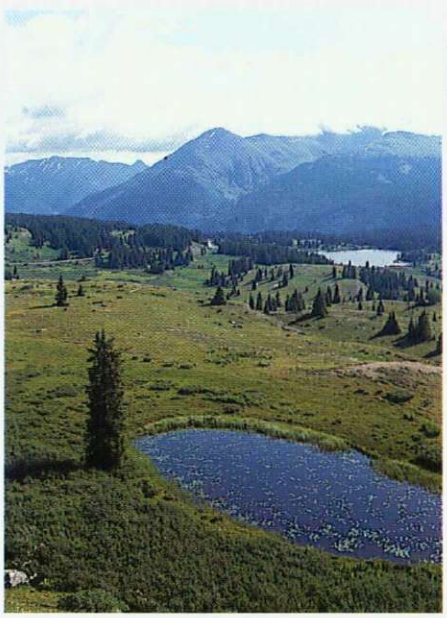

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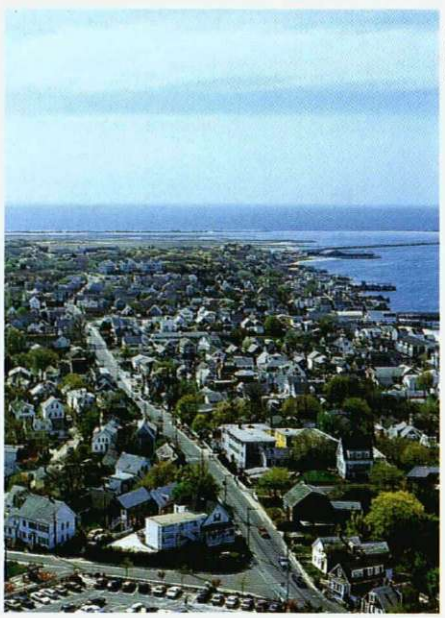

H. Moine

Land development and the environment

Aimé De Leeuw

The problem

Countries frame their agricultural policy according to the economic and social principles that govern their general policy. The importance of agriculture in the national economy determines the amount of investment in it by the authorities. Priority in this field is given to measures designed to improve agricultural facilities, are generally accompanied by extensive operations such as the removal of hedges and the destruction of mixed landscape, alterations to watercourses and the road network, drainage and irrigation work, etc. These activities leave scars in the traditional landscape of the countryside that may significantly alter its ecological and historical fabric.

The solutions

It is essential to take both legal and technical measures to respond to criticism and avoid serious conflict between environmentalists and those who advocate improving agricultural facilities.

Public awareness of the issue, however fuzzy initially, began with the publication of works that had an international impact (e.g. *Silent Spring* by Rachel Carson, 1964) and was intensified by European Conservation Year (launched in 1970 by the Council of Europe), The Club of Rome's first report and the United Nations Conference on the Human Environment (Stockholm, 1972). This heightened awareness gradually brought pressure to bear on decision-makers and eventually influenced the legislative process.

Changes made or planned concern current legislation, structures and administrative formalities.

But these changes are not enough; certain additional steps must be taken.

The rural environment

Planning and development of the rural environment must be further encouraged. Open spaces are shrinking all the time. Rural land must therefore be used properly and distributed in such a way that people can live in and with it on a harmonious, sound basis, while various economic activities can be carried out efficiently and develop properly.

We believe that the most effective way of solving these problems is to plan and develop the rural environment. The main aim is to improve living conditions in rural areas, in keeping with local potential.

Comprehensive planning of the rural environment has already begun but needs to become more widespread, as it compels all users of the environment to work together and obviates confrontation between interest groups through its all-embracing approach which seeks to reconcile their demands.

Compensation and management contracts

The system of compensating farmers and the use of management contracts should be instituted on a general basis. New ways of managing land and compensating farmers are sowing the seeds of a new policy, but it still provokes negative reactions.

Admittedly, it is not easy to calculate the benefits to be granted to farmers as an incentive to protect the environment, or to choose the bases of management contracts. But this is not the first time that the need to reframe the policy for protecting the natural environment has been expressed.

Consultation and participation of interested parties

Consultation and participation of all parties should be organised. In the difficult struggle that is beginning, there is an important strategy that has not yet been implemented - that of dialogue and the training and information measures that would make dialogue possible.

Land development by reallocation is not a "neutral" act. In changing the environment, it changes the life of the local community. This human impact brings psychological and sociological consequences that are sometimes beneficial, but sometimes difficult to accept. It is essential to gauge the nature and extent of these consequences before it is too late.

Organising the participation of the parties concerned in regional planning, urbanisation, reallocation or other forms of land development is an issue of current concern but for which, it must be admitted, a satisfactory solution has not yet been found.

Impact studies

Finally, impact studies should be encouraged. In seeking a solution to the problems land development causes for the environment, we should also explore the possibilities offered to us by scientific instruments - impact studies in particular.

The impact on the environment can be defined as the difference between the changed future environment after implementation of the development project, and the future environment as it would have developed without the project.

While the method initially met with diverse reactions and much scepticism, it is now, after refinement and improvement, quite commonly used.

Seeking dialogue

The suggestions outlined in the preceding paragraphs call for certain reservations.

Taking the needs of the environment into account unquestionably means increasing administrative obstacles and constraints and makes the preparation and implementation of land development projects more expensive. This is the price that must be paid to achieve a balance between the interests of agriculture and the environment.

Naturally, these reservations must not discourage us from seeking solutions. We consider it erroneous to speak of a "conflict" between land development and the environment.

Each individual, like each social group, has very specific ideas on the ideal management of his or her environment. Economists and ecologists are frequently at loggerheads in this area. However, if we look closely at the positions of the parties concerned, it becomes clear that the economy and ecology are not irreconcilable; it is indeed possible to reach conclusions that would be acceptable to both groups and would alleviate the difficulties encountered in attempts to plan and manage the environment.

We believe that opinions should be considered in a fully informed way, i.e. objectively, in a spirit of mutual respect and in an attempt to reconcile the needs of the environment and the need to restructure agriculture. Satisfactory solutions for all can only be achieved by dialogue conducted in an objective and lucid way. ■

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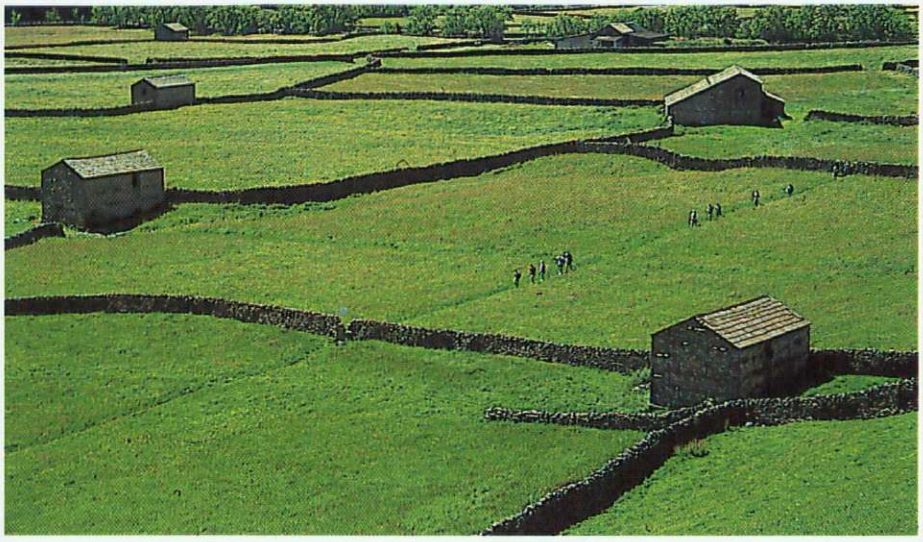

J. Grayson/Bruce Coleman Ltd

Public and private interests need to find a balance allowing for nature conservation

Environmental servitudes

Karl-Heinz Ladeur

In all European Community countries, the law on the environment and on spatial planning provides numerous opportunities to impose restrictions (for the purposes of environmental protection) on the use to which owners may put their property. These restrictions can be divided into two kinds:

- firstly, regulations which allow restrictions necessitated by land use plans and sectoral plans (eg State planning of infrastructure) or which attach obligations to various building measures;
- secondly, the designation of protected areas of nature, where environmental protection is explicitly given priority over economic uses and where changes which would be environmentally harmful are therefore ruled out.

European law also contains a series of guidelines which oblige member States to designate a network of protected sites for the protection of birds or, more generally, for the protection of flora, fauna and biotopes. The resulting restrictions are constitutionally justified by the need to find a balance between private interests and public interests, and in particular to maintain the capacity to re-establish natural areas. In the long term, these measures also serve to protect the property but, in the short term, they may give rise to serious conflicts which result in compensation.

Law on town planning

Building law not only establishes a general obligation to go to arbitration where there are various competing interests, but also requires a differentiated classification of building areas and, if appropriate, of specific environmental measures. One of the concerns is not to blight the countryside with unchecked development and to provide for green spaces in town centres. Building law is taken even further in the new German Building Code, which imposes upon property owners not only restrictions on use but also obligations concerning the planting of trees and plants. This constitutes an important planning tool for an active environmental policy.

Development of biotopes in urban areas

The obligation to pay compensation derives both from servitudes (imposed) and from positive measures to be taken when a use previously authorised is made more difficult or impossible or where another provision makes specific expenditure necessary (Articles 40 and 41 of the Building Code). In certain circumstances, property owners may also require that the local council take over the land, which sometimes confronts the latter with a financial risk which is hard to calculate. This is why a strategy of co-operation is ultimately desirable in complex cases. In a nutshell, environmental protection is necessary and may be achieved by planning and by setting restrictions on land use within urban areas.

The law on nature protection

This law places more extensive restrictions on property in order to protect nature and the countryside. These restrictions are generally applicable to land outside designated residential areas. In this case, building is prohibited as a rule and other uses may be subject to specific restrictions, notably those involving the use of natural and land resources (gravel pits etc). All countries can and should designate protected sites and areas, including major nature reserves. In these areas, farming or any other land use may be restricted or totally precluded (usually by specific protection orders) without there being a fundamental right to compensation. This is not the case if the restrictions on land use imposed on property owners are no longer considered acceptable and the transaction amounts to compulsory purchase; the terminology varies here. It is difficult to make such a distinction because the restrictions which prevent property owners from damaging the property of others, by ensuring that they observe the existing legal limits, are not considered as giving rise to compensation. This generates a continuous conflict with farmers, whose use of environmentally harmful fertilisers and pesticides has until now been deemed "normal", sometimes explicitly so in legislation. This causes enormous problems. In some German Länder, farmers receive compensation when they limit their use of fertilisers and pesticides in order to protect ground water supplies. Moreover, it is particularly difficult to determine what constitutes a "reasonable" restriction in respect of agriculture, since the criteria for normality are defined by farmers themselves. As regards nature protection, the issue at stake has long since ceased to be to protect specific regions from economic activity, and is to systematically integrate nature protection into the development of agricultural regions. It would be helpful here to consider including provisions designed, for instance, to protect the roadsides and the edges of fields in planning and nature protection legislation.

Protecting flora on the edges of fields

This relatively simple instrument may be used to divide agricultural land into plots and to protect flora and fauna, but also helps to slow soil erosion. Here again, it is hard to determine where the obligation to give compensation should begin and end. The Federal Länder in Germany have avoided this problem by concluding agreements with farmers and by compensating them for these restrictions as well as for assuming responsibility for maintaining certain parts of the countryside. ■

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The disappearing moors in Poland
Promoting their regeneration

Andrzej Hopfer and Henryk Piaścik

Marshes are water-saturated habitats with characteristic vegetation and accumulation of organic matter mainly in the form of peat. The most common ones are peat moors differentiated by climate and geomorphology.

An increased interest in the problems of moors is observed worldwide resulting from their specific characteristics and their role in the natural environment. Vast knowledge on the subject has been accumulated in western and northern Europe, concerning ombrophile moors which have developed as a consequence of domination of precipitation over evapotranspiration. Under Polish climate conditions, moors develop as a result of water flowing from other areas and represent 95% of bogs area. The total area of such land is in excess of 1.3 million ha, representing over 4% of the country's surface area.

Moors develop on the basis of ground water which rests close to the surface in a form of an underground reservoir with a low flow rate. They are found in places where ground water flows out to the surface resulting from gravitation or develop through surface water from flowing water or run-offs. Moors form an important and curious element of the landscape. In the natural environment they function as places for collection of water, retention of biogenic components, presence of rare habitats of plants and animals. They influence the environment's biodiversity and function as a refuge and hiding place. They accumulate organic matter in the form of peat as the basic component of the moors.

Moor landscape in Poland

A. Hopfer

Hazards and their consequences

The moors are a very unstable habitat susceptible to disturbance of the ecological balance. This results from the medium which determines their existence: water. The basic threat to moors, therefore, is disturbance of the water relationship.

In Poland, more than 80% of moors have been drained for agricultural use. Upon removal of the water factor, the moors transfer from the accumulation stage to the deccession stage. During that stage a decrease in organic matter content and a systematic lowering of their surface are observed. Under Polish economic and climatic conditions, 5 to 20 tonnes of organic matter are mineralised per hectare every year, accompanied by nitrogen release which may influence water eutrophication. The level lowers one cm per year on average when the area is used as sod and around 3 cm per year when used as a field.

The decrease in organic matter content is accompanied by a decrease in retention and water resources in the environment. Removal of the water leads to elimination of moors from the environment which in turn favours fires on dried-out moors, in particular on those with green vegetation with shallow root systems. As a result of draining, changes in the vegetation and animal life are also observed. Thus, during the deccession stage the moors cannot fulfil their functions. Another important hazard to moors is pollution from human settlement (sewage, biogenic elements and waste). Their excessive concentration and the environment's eutrophication may decrease the biodiversity level of these ecosystems and their values, or even lead to their disappearance. Moors are also threatened by the pressure of tourism and recreation. These activities, lacking organisation and control, are destructive, in particular to the refuge status.

Damage prevention

It is necessary to:

- maintain the moors so far preserved in their natural form and to grant the status of protected areas to those with high natural values;
- restore the natural status of some of the moors which has been changed as a result of draining and use;
- use drained moors in an ecologically oriented way.

In Poland around 2% of moors have been preserved in their natural state as peat moors. These habitats should not be drained and those possessing the highest values should be given the status of protected biotopes.

All activities in this field should be based on an inventory and evaluation of moors which have not yet been drained. The natural status should be restored in case of moors which have been drained and used for other purposes. Restoring the natural status should apply to partly drained moors, those which can be easily restored, those drained as a result of river-bed erosion, those which are not used and those which have been damaged by exploitation of peat or meadow lime.

The principles of managing moor habitats should be applied in co-ordination with ecological development of the natural environment and should aim at preventing the hazards and using their values. The ecological use is best secured by use as meadows and discontinuation of field plant cultivation. When moors are used for forestry purposes, the composition of timber stands should be changed from birch to spruce and an adequately high level of ground water should be maintained. ■

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Differences in taxation
Taxes on natural assets in OECD countries

Guillaume Sainteny

Many countries already make use of tax instruments to encourage people to conserve the environment or are in the process of introducing such incentives; they include Sweden, Norway, Denmark, the Netherlands, Italy, Belgium and Greece. The European Union and the Organisation for Economic Co-operation and Development strongly recommend the use of tax instruments in environmental policy.

Taxation is of importance in environmental matters because most of the damage to our natural surroundings is caused by immoveable assets, themselves subject to taxation.

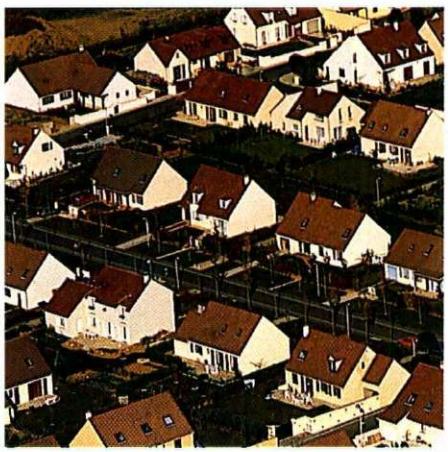
A criticised tax system

If we take the example of immoveable assets, from an environmental point of view the tax system is open to four main criticisms:

The same rates of taxation apply to assets with very different rates of return, in particular immoveable and moveable property. Although taxation of capital at 1.5 or 2% has little incidence where the assets owned consist of bonds or shares with a high rate of return and remains bearable for owners of built immoveable assets, it becomes confiscatory and is a direct incentive to sell or transform the assets in question where a person owns unbuilt land (natural areas), on which the return is almost always lower than 2%.

The fact that the same rate of taxation applies to very different kinds of unbuilt land (regardless of whether the areas in question are vanishing, or whether the land is used for intensive farming, etc) and to tracts of land managed according to very different methods (which may or may not have a beneficial impact on the environment) firstly penalises non-intensive, less productive uses of land and, secondly, prompts owners of unbuilt land to seek ever higher yields in an attempt to offset new taxes with new revenues. The system does not even bring true equality since tax exemptions sometimes favour certain areas which are less interesting from an ecological point of view or act as an incentive to carry out work, transforming natural areas.

Apart from the technical reasons for taxing capital - improved knowledge of what people own, facilitating the assessment of other taxes - and the social justifications - the fact that inequality in terms of wealth is greater than inequality in terms of income, particularly in France - there is only one economic ground proper for such taxation: promoting optimum allocation of production factors. By increasing the cost of owning assets, taxation of capital penalises safe investments in unproductive assets, favours greater capital mobility and prompts economic agents to make better choices, opting for assets offering higher, short-term profitability. However, although the economic argument for taxing capital - penalising unproductive assets and encouraging mobility - is understandable and logical in the case of productive capital, it is wide open to challenge when applied to natural areas, which are in fact all the richer for being less intensively used (wetlands are an example) and better protected for being immobile.



Gimies/Sipa Image

Marne-la-Vallée, France

There are huge differences in the way unbuilt land is taxed by the different OECD countries. If both capital taxes and transfer duties on gifts are taken into account, immoveable assets are taxed at far lower rates in Germany than in France; this applies above all to farms and forests (the difference being even greater for the latter) because these two categories of assets are undervalued in Germany, placing farmers and forest-owners at an advantage. The difference in taxation is considerable, more than 1 for 10 (500 000 000 FF) for woods and forests for example, even with the 30-year exemption in France, and about the same (20 000 000 FF) for agricultural capital.

Death duties

By way of example, the following are exempt from death duties:

- in Germany, property transferred to public authorities or charities;
- in the United States, donations to charities;
- in Japan, donations to scientific organisations serving the public interest;
- in the Netherlands, property acquired by public corporations in the general interest.

Britain grants considerable relief (30 to 50%) from transfer duties on gifts of agricultural assets, and gifts to natural persons and trusts are exempt. In Luxembourg, assets whose conservation is in the public interest are exempt from the annual tax on net assets for 60% of their value.

Property taxes

The situation with regard to property taxes also varies greatly from one country to another.

In Britain, agricultural land and public parks are exempt. The same applies to farm-land in Ireland and in certain States of the USA. In Germany, green spaces and property owned by public corporations or assets serving the public interest are exempt but, above all, the values assessed for tax purposes are far lower than the real values of the assets in question, especially in the case of agricultural and forestry capital. As a result of the valuation method used, forests are assessed at only 1% of their real value and farms at 5% (20% for residential land and buildings). The property, tax pressure therefore represents 0.015% of the real value of forestry assets in Germany, compared with 0.27% in France (which is 18 times higher), and 0.075% of that of agricultural assets, compared with 1.2% in France (16 times higher).

Woods and forests planted with slow-growing species of trees are exempt in Spain, as are registered natural areas and sites in the Netherlands.

The overall effect of these imbalances is apparently to make the total capital tax pressure (property tax (*taxe foncière*), wealth tax (ISF) and transfer duties on gifts) on agricultural assets higher in France than in Britain, Germany or the United States (see tables 1 and 2).

The consequences

The purpose of this too-brief description is merely to show, firstly, the impact on natural assets of taxes, which in view of such assets' low profitability can very quickly become confiscatory with all the ensuing repercussions (carving-up of natural areas, more intensive farming, and so on) and, secondly, the differences in taxation of natural assets between different countries. Without going so far as to recommend the universal application of a form of "most favourable national tax system clause" to such assets, attention must be drawn to these disparities and to the

Table 1
Annual average tax pressure, 1984, (property tax (*taxe foncière*) + wealth tax (ISF) + transfer duties on gifts) (%)

Pre-tax net assets (FF)	Agricultural land farmed by the owner	Share-cropped agricultural land	Rural assets leased under long-term leases	Woods and forests	Woods and forests subject to 30-year exemption	Building land	Residential property
100 000	1,12	0,83	0,83	-	0,25	0,62	0,46
200 000	1,12	0,83	0,83	-	0,25	0,62	0,46
500 000	1,12	0,83	0,83	-	0,25	0,62	0,46
1 000 000	1,35	1,06	0,83	-	0,25	0,85	0,69
2 000 000	1,58	1,29	0,86	-	0,25	1,08	0,92
5 000 000	1,72	1,60	1,05	0,08	0,33	1,39	1,23
10 000 000	1,85	2,15	1,40	0,13	0,38	1,94	1,78
20 000 000	2,08	2,86	1,72	0,19	0,44	2,65	2,49
50 000 000	2,32	3,43	2,03	0,39	0,64	3,22	3,06
500 000 000	2,48	3,79	2,29	0,71	0,96	3,58	3,42

Table 2
International comparison of tax pressure (property tax + wealth tax + transfer duties on gifts) (%)

Value of assets (FF)	UNITED STATES		UNITED KINGDOM		GERMANY		
	Agricultural assets	Built land	Agricultural assets	Built land	Forestry assets	Agricultural assets	Built land
100 000	0	1,09	0	0,6 → 1,6		0,015	0,075
200 000	0	1,09	0	0,6 → 1,6		0,015	0,075
500 000	0	1,09	0	0,6 → 1,6		0,015	0,075
1 000 000	0,003	1,09	0	0,86 → 1,86		0,015	0,075
2 000 000	0,03	1,12	0,38	1,86		0,015	0,075
5 000 000	0,52	1,61	0,87	1,85 → 2,85		0,015	0,075
10 000 000	0,93	2,02	1,16	2,85		0,015	0,079
20 000 000	1,24	2,33	1,30	2,09 → 3,09		0,015	0,090
50 000 000	1,57	2,66	1,39	3,09		0,016	0,104
100 000 000	1,86	2,95	1,44	2,38 → 3,64		0,022	0,121

repercussions of overtaxing natural areas. A more thorough study of the legislation and its consequences might lead the Council of Europe or the European Commission to issue recommendations on the subject. ■

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National protection
The case of protected areas in Turkey

Ruşen Keleş

In the Constitution

Everyone has the right to live in a healthy and balanced environment, according to article 56 of the Constitution of 1982. The Constitution emphasises that it is the duty of the State and citizens to improve the natural environment and to prevent environmental pollution. The Constitution also provides legal guarantees for the protection of natural and man-made environmental values. Article 35 prohibits the exercise of the right to property in contravention of the public interest. Article 43 puts the coastal areas under the sovereignty and at the disposal of the State, with the consequence that in the utilisation of the sea coast, lake shores or river banks, and of the coastal strip along the sea and lakes, public interest is to be taken into consideration with priority.

Prevention of loss of agricultural land is also the duty of the State (art. 44). Similarly, providing of land to farmers with insufficient land could not lead to a fall in production or to the depletion of forests and other land and underground resources. The responsibility of the State to ensure the conservation of historical, cultural and natural assets and wealth is also underlined in the Constitution (art. 63). More specifically, the State is charged with the duty to enact the necessary legislation and to take appropriate measures for the protection of forests and their extension. No amnesties or pardons to be granted for offenses against forests shall be legislated. The restraining of forest boundaries is also prohibited by the Constitution (art. 169), except in respect of areas whose preservation as forests is considered technically and scientifically useless, but whose conversion into agricultural land has been found definitely advantageous.

The 1983 Law

The Environment Law of 1983 (No. 2873) defines the concept of "environmental protection" as the activities for the preserva-

tion of ecological balance, prevention of degradation and pollution in the air, water and land, and for their improvement. According to the general principles of the Environment Law, it is the duty of the people to protect the environment and to comply with the measures taken for that purpose. Health of all living beings is to be taken into account with priority as a factor in all measures taken to protect and improve the environment. The law seems to have accepted the principle of "sustainable development" by stating that all kinds of regulations and measures to be adopted with a view to protect and improve the environment must be in compliance with the goals of economics and social development: All economic enterprises and other institutions are required, in their decisions of land and resource use, and project evaluation, to strike a balance between the goals of environmental protection and development. They must choose the most appropriate methods and technology in order to achieve that end.

An environmental impact analysis has to be made by all entrepreneurs for their planned establishments, in order to avoid their adverse impact upon environmental values.

Other legislation

In addition to the Environment Law, the Municipal Law and the Law on Public Health, numerous special legislation possess rules to be applied for the protection and preservation of environmental assets. The Law on the Protection of Cultural and Natural Values (2863), the Law on the Protection of the Bosphorus (2960), the law on the Protection of Coastal Areas (3830), Urban Development Law (3194), the Law on the Encouragement of Tourism (2634), the Forests Law (6831), the Law on Water Products (1380) are a few of these legislation.

In order to protect the values of historical and natural importance of cities and towns, the above-mentioned laws empower the central authorities or the provincial agents of the central government, to intervene in, and in certain cases, to take over the planning powers of local authorities. This frequently gives way to tensions between the centre and the cities and towns in the periphery.

Urban development legislation openly prohibits the decrease of the amount of land allocated for open spaces in the master plans by modifying them. Similarly, the legislation on the protection of agricultural land is not favourable to the utilisation of highly productive agricultural land for non-agricultural purposes as required by the growth of urban population and rapid urbanisation. Although a special by-law prohibits the utilisation of the 1st to 4th category of productive land for urban development needs, in many parts of the country, particularly in the south, west and Marmara regions, *de facto* occupations of these lands as a result of the pressures on land created by rapid urban growth, large-scale cooperative housing schemes, and even by public and private industrial establishments, make the implementation of legal provisions almost impossible.

Role of the Environment Ministry

Formulation of policies for the protection of the environment, prevention of pollution, and improvement of the quality of the environment are entrusted with the Ministry of Environment established in 1991. In addition to its central organisation, the Ministry has also local organisations set up in the provinces. In about a dozen areas of natural or historical interest, "special protection areas" have been established in order to protect these areas sensitive to pollution and degradation. Special building and planning principles are implemented in theses regions by the Special Protection Agency, which is attached to the Ministry of Environment. Planning and building powers of the municipalities that are situated in these areas are transferred to the cited central institutions.

Such an arrangement is certainly incompatible with the principles of local self-government enshrined in the European Charter of Local Self-Government. Several concerned ministries and local authorities have important roles to play in the implementation of environmental policies and the co-ordination between these activities is provided by the Ministry of Environment.

Participation of citizens

Beyond any doubt proper protection of environment can only be ensured by the effective involvement of the citizens in decision-processes regarding environmental issues. Channels for participation for associations, foundations, labour unions, co-operatives and professional organisations are largely open. But an effective contribution depends upon the level of consciousness of the public as a whole towards the environmental values to be protected.

There are nearly 200 associations actively working in the fields of the protection of flora and fauna, other natural assets and historical buildings. Although an actual, personal and legitimate interest in the issue at stake is a precondition for seeking the annulment of an administrative act or decision in the courts, the Administrative Procedures Law makes an important exception for those matters of public interest like city master plans, historical buildings and the protection of the environment. In other words, citizens sensitive to environmental issues have the right to apply to the courts for the annulment of the administrative decision concerned, no matter whether their rights are violated or not. They may also have recourse to administrative authorities to stop any public or private undertaking that harms the environment. Citizens and civic society organisations play an important and increasing role, by using this right provided by the Environment Law (art 30), in the protection of environment in the country.

Conventions and treaties

In addition to the internal legal provisions and to the public awareness, Turkey has certain international responsibilities for environmental protection. It is a member state of numerous international organisations and has ratified at least 30 international treaties and conventions, in this capacity, which aim at the protection of the environment. It has the obligation to put into effect the legal norms of these legal documents, which charge Turkey to protect the environment not only for present, but for future generations and for mankind. The Convention of Granada on the Protection of the European Architectural Heritage (1985), Bern Convention on the Protection of European Wildlife and Living Habitats (1979), Ramsar Convention on Wetland of International Importance (1971), Vienna Convention for the Protection of Ozone Layer (1985), Basle Convention on Hazardous Waste Traffic (1989), MAR-POL Convention for the Prevention of Pollution from Ships. Barcelona Convention on the Protection of the Mediterranean Sea against Pollution (1976) are several of these international agreements which possess binding rules. These and other international agreements together with Bergen Declaration (1990), Paris Charter (1990), Rio (1992) and Frankfurt (1989) Declarations enlarge the scope of the international legal as well as ethical responsibility of each member of the international community, including Turkey, vis-à-vis the protection of the environment. ■

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Private law systems of land acquisition and management

Clare Shine

The conservation of important natural areas is traditionally associated in many countries with State ownership and regulatory control. This may offer the best guarantee of long-term protection, particularly against expropriation, but is often costly and cumbersome and may exclude many ecologically valuable sites. This paper describes some mechanisms developed in certain countries to promote the dynamism of private actors in acquiring and managing land for conservation.

Site acquisition

Private acquisition strategies are most advanced in countries where the voluntary conservation movement predates the adoption of nature protection legislation (a non-exhaustive list includes the Netherlands, United Kingdom, United States and Canada). This proof of popular support for conservation has tended to facilitate the development of a policy framework (appropriate legislative and fiscal measures, financial assistance) conducive to long-term NGO investment in land and trained personnel, giving beneficiary organisations a quasi-institutional status.

The Dutch example

In the Netherlands, targeted financial support is provided to *Vereniging Natuurmonumenten* (Society for the Preservation of Nature), a private law foundation established in 1905 specifically to protect areas of natural beauty through acquisition. Its purchases of "core areas" within the statutory National Ecological Network are jointly funded by national and provincial governments, which also meet about half of the management costs. *Natuurmonumenten* now has 750 000 members and owns 250 sites (70 000 ha).

The British example

In the United Kingdom, special legislation adopted in 1907 confers unusually wide powers on the private National Trust for Places of Historic Interest and Natural Beauty (established as a charity in 1895) in support of its statutory purpose to promote the "permanent preservation for the benefit of the nation" of the natural features, animals and plants of certain land. It may declare its properties inalienable (the land cannot be expropriated without a special parliamentary procedure), regulate activities therein and conclude restrictive covenants with willing landowners which permanently limit future development of their land. Tax exemptions apply to donations of land or money to the Trust, which is the largest landowner in England and Wales after the Government (240 000 ha, including 468 Sites of Special Scientific Interest and 55 National Nature Reserves; 2 285 000 members). Acquisitions are specifically targeted at the natural coastline, 850 km being protected by ownership or restrictive covenants.

Management by NGOs

Most landholding NGOs allocate their finite resources to sites which meet particular criteria and can be conserved on a long-term basis. One deterrent to acquisition is obviously the risk of expropriation for reasons of public interest. Countries such as Belgium, France and Portugal have therefore introduced legal rules to safeguard approved voluntary reserves of ecological importance against expropriation by public agencies, except in the most exceptional circumstances.

Freehold

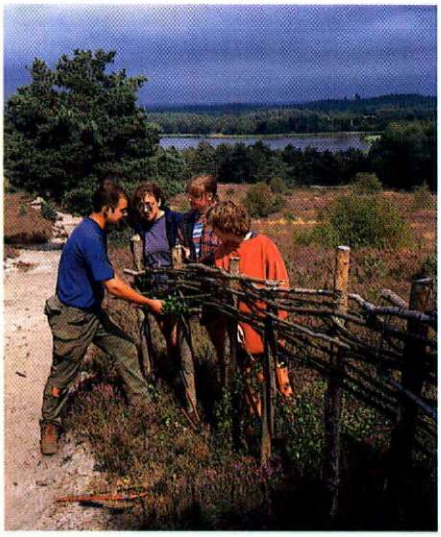
Whilst freehold acquisition secures permanent control over the site, purchase and management costs are often prohibitive. Techniques developed to defray such costs include:

- resale of the land to public agencies under an agreed conservation plan (e.g. in some American states);
- rental of the land under tenancy agreements containing binding conservation conditions, where permitted under national legislation. In the United Kingdom, for example, where 60% of the National Trust's properties are farmed, 1995 agricultural legislation permits "farm business tenancies" which may contain express prohibitions on land drainage, wetland damage or hedge destruction.

Other solutions

An alternative and increasingly popular way of securing site conservation is via the acquisition of a limited interest in land, such as:

- leasehold (where legislation permits tenure of sufficient length to achieve conservation objectives);
- conservation easements (notably in Canada and the United States, where the Nature Conservancy and Land Trusts protect over 4 million ha). Where legislation removes the traditional requirement of dominant/servient tenements and contiguity, a landowner may voluntarily "donate" an easement (permanent restrictions on use of the property) to an approved agency or private conservation organisation, usually in return for significant tax benefits. The organisation monitors compliance and can bring legal proceedings for enforcement.



I. Shaw/National Trust Photographic Library

Example of site management in the United Kingdom

Contracts

Contracts are another mechanism which facilitate cost-effective habitat management by private actors. They may be:

- public-private (English Nature is authorised by legislation to contract out the management of national nature reserves to "approved bodies", which include NGOs and one corporation); or
- private-private (the French Hunting Conservation Foundation contracts the management of its sites to the departmental hunting federation, subject to an approved management plan).

In all countries cited, a diversity of funding sources and a supportive tax framework contribute to the public service provided by private conservation associations. ■

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Active policy on building land
The example of nature protection in Austria

Gerlind Weber

Over the last few decades, many regions of Austria have experienced a building boom, unfortunately eating into undeveloped land. Ecologically and economically unsuitable sites have often been built upon. Increased building on the outskirts of towns and the chaotic and unjustified encroachment of housing into unspoilt countryside can be seen all over the country. This has happened in spite of the fact that for 40 years Austria has had a land development plan designed, among other things, to prevent the unchecked development of residential areas.

Gaps in the law

A look at the background of land development law reveals why the latter has not been able to fulfil its chief task satisfactorily, ie to encourage the concentration of development in specific areas and to ensure that the countryside is not damaged. Between the mid-1950s and the early 1970s, although planning legislation fell within the competence of the Länder, eight Land parliaments decided, in drawing up the initial legal basis required, to adopt the same method - one which has proved ineffective. They considered that building on land was only one of a number of possible uses open to owners. Moreover, they failed to take account of the fact that designating plots as building land usually earned a profit for the owner, whereas designation as agricultural land caused the land to depreciate. Land development legislation did not provide for any compensation for loss resulting from decisions on land use.

In practice, the combination of these two oversights had the following consequences:

- in the hope of making large profits, owners of land took steps as soon as initial development plans were drawn up to have their land designated as building land;
- given the close contact of the local authorities responsible for deciding land use with their electorate, the former often succumbed to political pressure and allocated far more plots than were needed over the ten-year planning period to the building of housing and commercial or industrial premises.

Since the appreciation in the value of land designated as building land was safer and more profitable than any other form of investment, owners of land still to be designated were reluctant to sell it. The market in building land therefore declined, forcing the authorities to issue yet more designations as building land in places which were increasingly inappropriate for development. They hoped in this way to meet the large demand for this kind of land which existed in a prosperous country. In the end, they in issued too many exceptional building permits outside towns.

Austria has experienced a building boom, eating into undeveloped land

G. Weber

With hindsight, it is clear that the excessive amount of building land, used in a sporadic and extremely disorganised fashion, and the extensive encroachment of housing into natural areas in recent decades led to the legally sanctioned blighting of Austria's countryside, the squandering of precious space and the loss of natural resources. Protecting nature by ensuring organised housing development could never be achieved by a land development process that lacked the appropriate mechanisms.

The home building boom in some Länder, the inability of a growing proportion of the population to find suitable accommodation because of the excessive price of building land and the difficulty of finding suitable land on which to set up or expand businesses compelled the authorities to intervene. They needed to find politically acceptable solutions in order to avoid exacerbating the damaging ecological, social, economic and aesthetic consequences of land development without an active land policy.

One possible solution

At the beginning of the 1990s, five of the nine parliaments of Austrian Länder decided to draw up legislation enabling local councils to conduct an active policy on building land. The first effects of this solution can already be seen in the Land of Salzburg.

What is called the "Salzburg model" is based on the principle that each local council should conduct an active policy on building land in order effectively to achieve land development aims. To this end, it is necessary to break with the legal tradition of "making the most of the situation" according to which the designation of land for building leaves no option for its owner, at any time. The designation of land for building must bring with it an obligation to use the land within a specified period. Greater account will then be taken of public interest, and there will be a rapid change of direction.

In practical terms, apart from a few exceptions, all building land designations have to be based upon a contract between the local council - the authority responsible for the plan - and the owner of the land in question and building on the area concerned has to take place within a set period not exceeding ten years.

Since owners of land can rarely determine the speed of building, such contracts also provide for an obligation to sell within a certain period so as to allow a third party to satisfy the requirement to build.

D. Karp

Land development law must ensure that the countryside is not damaged and that the concentration of development in specific areas is encouraged

Encouraging building ...

However, the legislation is also intended to produce a socially acceptable solution to the problem of excessively high building land prices. Thus the land development law of Salzburg now includes a provision stipulating that, in order to meet the development aims set, up to 50% of all areas declared usable for building must be made available by their owners for the building of vitally needed housing, if the land is suitable for this purpose. In practical terms, this rather restrictive provision has so far been interpreted in the following way: where necessary, up to half of the land for which contracts have been concluded must be made available at a reduced price (eg half the market value) for those applying to build, particularly to build accommodation for rent. The contract also legally obliges local councils not only to ensure that building land is used within the set period of time, but also to exert some influence over those who apply to build and over land prices.

Such stringent intervention is only politically viable if there is provision for objectively based exemptions. For instance, land usable for building with a surface area of 2 000 m^2 or less is exempted from the obligation to conclude a contract; the same applies where land owners or their immediate descendants can prove that they will need the land themselves in the course of the next ten years. The burden of proof lies mainly on owners.

... and saving green spaces

Nevertheless, since the above-mentioned provisions were only guidelines for any future designation of current green spaces as building land, this was only a partial solution. Other solutions were needed to answer the politically very delicate question of how local councils could effectively free themselves from the old planning constraints. The key problem in this context was the rapid reabsorption of surplus building land.

In order to tackle this thorny problem, the local councils of the Land of Salzburg were legally required to draw up their land use plan - at once, or at the latest within six-and-a-half years of the entry into force of the land development law - on the basis of a land inventory which was required to indicate building land needs over the next ten years and to designate the remaining building land as green spaces. To ensure that the authorities were not compelled to pay out excessive compensation to owners prejudiced by the redesignation of their land, eligibility for compensation was generally limited to land which had been designated as building land for less than ten years ago.

In order to halt a chaotic rush to build before land use plans "downsized" where they concern building land come into force, the authorities decided that land which had already been designated as usable for building could only be put to this use if it was legally part of a detailed building plan. The effect of this provision was to impose a legal "freeze" on all remaining unused building land. This may only be used for building if the local council decides to give its approval, granted if the application meets politically acceptable housing standards, and subject to the terms of a contract in the same way as under land use plans.

Assessment

The first results of the contract system in the Land of Salzburg are available for the Land's capital, the city of Salzburg. Of 319 ha of unused building land, roughly half has been declared unaffected by the requirement for a contract, because the areas concerned were relatively small or because they were already covered by planning permission issues in the prescribed form.

Of the unused building land for which a contract is required, an agreement has been reached with the owners concerned on nearly half. This agreement stipulates that the land must be made available for building within ten years. Under this agreement, the remaining building land will be redesignated as agriculture either immediately or within a specific period, when the land use plan has been amended.

On the areas usable under contract, some 3 300 homes may be built in the coming years. This means that the housing shortage which has dogged the town of Salzburg for so long now seems to have been resolved. There has also been a general upturn in the property market. Land prices have fallen rapidly, although roughly a quarter of building land is affected by redesignation for agriculture. In this case, an ambitious and successful policy on building land has gone hand in hand with economic land use. ■

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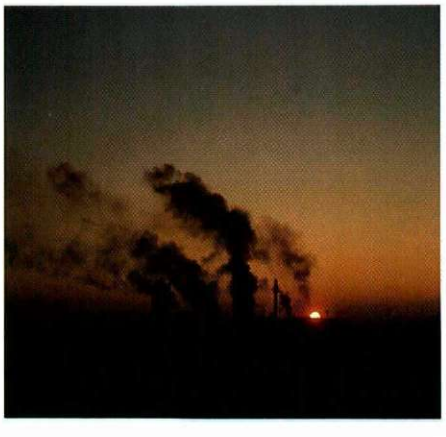
A new Convention
Impact assessment in a transboundary context

Wiek Schrage

The ECE Convention on Environmental Impact Assessment in a Transboundary Context (after this called the EIA Convention) has been prepared in order to further enhance environmentally sound and sustainable development by providing information on the interrelationship between economic activities and their environmental consequences, in particular in a transboundary context. The EIA Convention, elaborated under the auspices of the United Nations Economic Commission for Europe (ECE), was adopted at Espoo (Finland) on 25 February 1991. It was signed by 29 countries and by the European Community. By July 1997 17 countries (Albania, Armenia, Austria, Bulgaria, Croatia, Denmark, Finland, Hungary, Italy, Luxembourg, Netherlands, Norway, Poland, Republic of Moldova, Spain, Sweden and Switzerland and the European Community) had deposited their relevant instrument with the Secretary-General of the United Nations. The Convention entered into force on 10 September 1997.

Integrated approach

This Convention specifies the procedural rights and duties of Parties with regard to transboundary impacts of proposed activities and provides procedures, in a transboundary context, for the consideration of environmental impacts in decision-making procedures. The Convention stipulates the obligations of Parties to assess the environmental impacts at an early stage of planning and prescribes measures and procedures to prevent, control or reduce any significant adverse effect on the environment, particularly any transboundary effect, likely caused by a proposed activity or any major change to an existing activity. The EIA Convention stipulates that an EIA procedure as provided for in this Convention has to be undertaken for a proposed activity planned by one Party, which is likely to have a significant transboundary impact within an area under the jurisdiction of another Party. Activities which could have a significant impact on the environment are covered by the EIA Convention in its Appendix I. Moreover, it looks into alternatives to the proposed activity and brings facts and information on environmental impacts to the attention of the decision-makers and the public.



T. Réminiac

Planning is also an instrument allowing to co-ordinate activities across different sectors and interests with an impact on the physical, economic and social environment in view of a mutually desired development policy and, in this respect EIA is a major tool for an integrated approach. The co-ordination process starts at a very early stage of any activity with a spatial impact and follows the planning and implementation process to the very end: assessment of need, general concept, strategy, feasibility, construction plans, financing, work-plan, etc. This approach needs consideration also in a transboundary context following the provisions of the Convention. It is assumed that costs and implementation of a project can be improved if the crucial decisions on need and location are co-ordinated in the planning process and EIA is used to improve the more technical aspects of the project. Borders should be considered as a change of looking for new solutions outside formalised planning financing structures. The special situation along borders requires solutions adapted to the regional situation. This goes for the organisation of a transboundary information and communication system as well as the definition of a common development strategy or the choice of important projects requiring joint solutions.

Anticipatory policies

Article 2, paragraph 7 of the EIA Convention requires Parties to undertake EIA following the provisions of this Convention at the project level and calls upon Parties to endeavour to apply the principles of EIA to policies, plans and programmes. Some countries introduced legislation a number of years ago to arrange for the application of EIA to decisions at the plan level, for instance for energy, waste management, water supply, and land use. Policies, plans and programmes adopted at all levels of government may have significant environmental impacts, either directly or indirectly. To take these impacts fully into account, such policies, plans and programmes should be subject to EIA. The application of EIA principles to policies, plans and programmes is widely considered as a way of substantially strengthening environmental management. Suitable approaches in this respect are documented in the ECE publication *Application of Environmental Impact Assessment Principles to Policies, Plans and Programmes.*

Field of application

Normally, Parties must apply the provisions of the EIA Convention when two requirements are met. According to Article 2, a Party has to take the necessary legal, administrative or other measures to implement the provisions of this Convention, such as the establishment of an EIA procedure that permits public participation and the preparation of the EIA documentation according to Appendix II, for (i) proposed activities listed in Appendix I to the EIA Convention and (ii) which are likely to cause a significant adverse transboundary impact.

Many activities listed in Appendix I to the EIA Convention are fairly well defined. However, the words "major", "integrated" and "large" are also used to set a threshold for several activities in Appendix I to this Convention. It must be decided whether an activity is referred to in the list of proposed activities in Appendix I to the EIA Convention, before the significance of the likely transboundary impact can be considered.

The consideration of the "significance" of an adverse transboundary impact will always be part of the decision to apply the EIA Convention. The conclusion that an adverse transboundary impact is likely to be significant would be based on a comprehensive consideration of the characteristics of the activity and its possible impact. At the national level, various approaches to determining the significance of an impact has been developed in ECE countries. They are described in the ECE publication *Policies and Systems of Environmental Impact Assessment.* ■

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Private collection/Edimédia

Unknown 16th century Flemish painter

Towards a land policy ...
... that protects nature

Jacqueline Morand-Deviller

Serving the cause of the environment and attempting to reconcile the complementary aims of protecting the environment and development has become a political priority in most European countries.

However, it must be remembered that this aim is recent and fragile. The environmental cause was like a tidal wave that surged up from the depths of the collective conscious and suddenly swamped politics: an indication that the "natural", pending the "supernatural", was beginning to make itself felt in the era of *homo faber*, in which people destroy and develop for the greater glory and, sometimes, to the shame of the human race.

Finding compromises

Pursuing a land policy that protects the environment leads decision-makers to seek effective compromises that are often fragile balances between two fundamental aims: regional planning, whether rural or urban, and environmental protection. All land policies are inevitably torn between these two requirements; what is new is that the second aim now has as respectable a status as the first. Rather than a Hegelian dialectic, what is now important is to amalgamate diversity and to reconcile differences by mutual enrichment.

Land policies have acquired a range of instruments whose common characteristic is their reaction to threats, usually in emergency situations: disasters resulting from land reallocation and heedless overexploitation of resources in a way that destroys natural balances, inconsistency of certain development decisions, rapid and uncontrolled urban planning in times of growth (the economic recession has seen to the abatement of this fervour) and indifference to the heritage.

The law as a tool

The law, a toolbox of sorts, has fittingly played its role. Laws and decrees have usually been enacted with a broad consensus - there was unanimity in the French parliament for the laws concerning mountains (1985) and the coast (1986). There is not yet an excessive amount of French legislation - a danger where European legislation is concerned. Nature conservation owes much to the warnings of legal experts and the firmness of judges, who act almost as police officers in this field and are often compelled to make the State, caught between the constraints of viability and profit, see reason.

Cancellations by the French administrative courts of major planning projects on the grounds of an inadequate impact study, failure to respect outstanding areas or damage to the character and interest of neighbouring areas have made elected representatives cautious with regard to the law, heralding, it is to be hoped, a general attitude of respect and vigilance.

Citizens as participants

Expert engineers invested with indisputable knowledge and rather more disputable monopolies are now seeing the foundations of their apparently impregnable fortresses tremble when the public utility of a motorway, canal or high-speed railway line is questioned. Tax-paying citizens, who are increasingly well-informed, do not wish to be mere bystanders; they are demanding a role in the decision-making process, and are becoming even more effective by joining forces in associations.

This heightened awareness and action on the part of the public has compelled the authorities to give greater consideration to governing citizens first: governing "things" will follow.

The law is now accepting concepts as fundamental as sustainable development and the precaution principle. The environment is becoming a force to be reckoned with and, however critics may feel about it, this "soft law", established in legislation and treaties, is a direct source of law and is much more efficient than pious hopes.

Many questions remain to be answered, in particular that of the best administrative level for decisions and their implementation. Should land and environment policy be decentralised? Probably yes, but to what extent? A policy of proximity and stimulating competition between local authorities must also obey a general rule and decisions at national level.

And, after all, risks arising from decentralisation are surely similar to those resulting from excessive centralisation, i.e. the monopoly of power by an elite few.

Rethinking land control

Land control - this is an expression used mainly by planners. It implies mastering the land in order to develop it freely. But the aim of land control should be different; it should involve choices and balance, which can only result from patient dialogue and a broad consensus. Contractual procedures, too little used in France, would help achieve this aim. ■

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At the Council of Europe

New publications

The Centre Naturopa is preparing two booklets this year, as part of its new series of publications *Questions and Answers*, one on sustainable tourism and the other on agriculture and biodiversity.

This series was launched in 1996 with the booklet *Biodiversity: questions and answers* and is published in English and French in an A5 format. It is aimed mainly at local and regional elected representatives, NGO officials, research and training institutes, journalists and others working in the sector concerned.

The series is lavishly illustrated and sets out, in accessible language, the various points of conflict between a given economic activity and the conservation of biological and landscape diversity. At the same time, answers are given, using numerous examples of action taken. The series also mentions codes of good conduct and other instruments as well as the competent bodies and institutions in this field. Particular attention will be paid to activities carried out as part of the Pan-European Biological and Landscape Diversity Strategy. The goal is to give a comprehensive overview of the issue under discussion and to encourage the reader to look for supplementary information.

The Centre Naturopa is also aiming to encourage governments and organisations which have expressed interest in translating the first issue of the series into their language or in printing additional copies of it at their own expense.

Agriculture and biodiversity

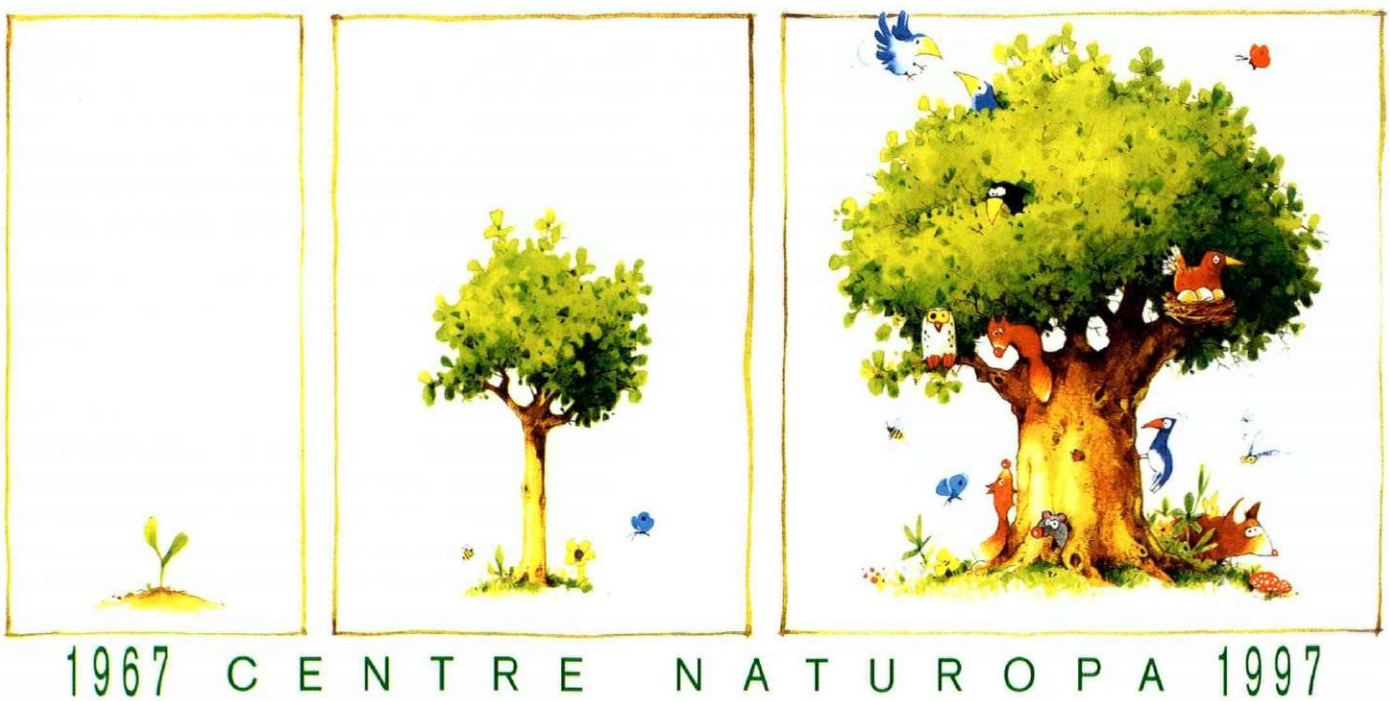
At the request of its National Agencies, the Centre Naturopa will devote the second issue in the series to the relationship between the agricultural sector and the goals of biodiversity conservation. The aim of this issue is to place agricultural biodiversity in its current context, on a pan-European scale, to draw attention to the threats it faces and to propose solutions to be put into practice by the different partners to improve the situation in the future.

Sustainable tourism

The booklet looking at tourism, the third issue in the *Questions and answers* series, will present the concept of the sustainable development of tourism and will discuss the various issues involved. Designed to supplement the issue of *Naturopa* on the same topic, it will cover in particular the need to incorporate protection of the natural equilibrium and respect for the landscape into the planning of tourist activities and into the various sectors affected by tourism, including local and regional planning, road building, the treatment of waste, the management of water, etc. Drawing upon previous experience and real examples, it will attempt to propose or outline solutions to the various problems raised in the publication.

The Centre's anniversary

As announced in this year's first issue (No. 83), the Centre Naturopa is celebrating its 30th anniversary in 1997. At this occasion, and in order to promote debate on communication for better nature conservation - one of the Pan-European Strategy's priorities, set out in its Action Theme 3 - a seminar on the theme "Environmental Conservation and Media" was organised for the National Agencies. Specialists were invited to Strasbourg to discuss the following issues: changing strategies, the media's approach to nature, how to involve the media in our awareness-raising campaigns, environmental communication on the Internet, etc. The seminar's proceedings are available from the Centre Naturopa. ■



F. Pillot/Council of Europe

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