Legislative Study No. 20

LEGISLATION ON WILDLIFE, HUNTING AND PROTECTED AREAS IN SOME EUROPEAN COUNTRIES

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

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by
Christian du Saussay
for the Legislation Branch
Legal Office

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FOREWORD

In its collection of legislative studies, FAO has already devoted two volumes to the protection of wildlife in Asia and Latin America. This study adds to the series by presenting the legislation of certain European countries. The characteristics of fauna protection in this region of the world are quite specific due, at once, to the density of man's pressure upon nature, the complexity of legal systems in operation and the improvement of administrative measures which may be applied. Nonetheless, the experience of Europe may be of profit elsewhere if one bears in mind both the special conditions in which it has developed and the specific requirements of the countries where it may be of use.

With this in mind it has seemed fitting to frame the study round the legal problems arising from wildlife protection and to compare the diverse solutions which national legislations have sought to bring to it.

Dante A. Caponera
Chief, Legislation Branch
Legal Office

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INTRODUCTION

Europeans have through the centuries undertaken the destruction of animals which competed with them in their farming and pastoral activities. Being a predator of livestock, the lion has disappeared, as almost have, for the same reason, the wolf and the bear. Industrialization and the concomitant population growth have reinforced the effects of the outright fight. To the hunt against 'harmful' animals have been added the thinning out of habitats, chemical poisoning, accidents from electric lines, automobiles or their headlights. An awakening of awareness of these ecological problems within this context has led European countries to look for the protection of their wildlife. The pursuance of this new policy forced them to create or adapt institutions and equip themselves with the necessary legal means.

At the institutional level, fauna protection gave rise to specific agencies to carry out well-defined missions in the sectors of hunting as well as national parks and nature reserves. However, this was not divorced from the preservation of nature and, more generally, of the environment, by national authorities.

Fauna survival in industrialized countries is, in fact, largely conditioned by such problems as the purity of water and air and the maintenance of forests or green areas. Natural interactions preclude isolating fauna protection from other environmental aspects. Originally these questions pertained to the Ministries of Agriculture - in particular, the water and forestry bureaus - which shared this authority with other departments such as those of land management, fine arts and culture as well as the Navy in France for hunting in coastal zones.

With time, this state of affairs has become disparate. Some countries such as Italy, Belgium, Spain and Portugal have kept the protection of nature under the authority of their Ministries of Agriculture which may act directly through its agencies or indirectly through decentralized services. Such is the case of Spain which has an Institute for the Preservation of Nature in charge of all related problems, particularly hunting and protected areas. It has a legal personality and is controlled by the Ministry of Agriculture.

Other countries, e.g., France and England, have instituted Ministries for the Environment. The English model gave a single Secretary of State authority over the environment, road infrastructure and land management. At the beginning, France made do with a 'small' Ministry exclusively devoted to the environment, including services for the protection of nature, prevention of pollution and the management of the rural or urban environment. It later became closer to the English model by combining the Ministries for Environment and Public Works.

These differences serve to show how difficult it is to draw environmental lines, both in the field of administration as well as in that of reality. In fact, it is impossible to place all authority in the matter of environment in the hands of a single ministry. The thought then arises that an ad hoc minister would be in a better position to support the environmental point of view against other agencies than a Minister of Agriculture in charge of the same functions.

Staffing of environment ministries as well as their administrative machinery is less than abundant. A reason for this may be the relatively recent creation of these agencies and it may be added that according to the general laws of

administrative 'biology' they grow with time. In addition, the relative scantiness of environment services is also connected with the intrinsic nature of their mission.

Environment administration is not only shared among several ministries but is also widely decentralized. Local communities and the regional authorities play an important and indispensable role. In these circumstances a ministry's task is not so much that of managing services as of coordinating and guiding activities carried out in the field by other bodies.

Such duties, however, presuppose the existence of specialized personnel, another argument usually put forth in support of ministries for environment. It is often said that foresters are too concerned with economic returns. In an environment ministry they are only one source of recruitment, competing with college graduates, public works engineers or management specialists. Besides, in any case, the institution being autonomous, develops its own ideas and methods of approach to problems which set it apart from agricultural or strictly forestry services.

In principle, a ministry is complemented at the national level by coordinating structures and advisory bodies.

The former are represented by limited ministerial councils as, in France, the 'Inter-Ministerial Committee on the Quality of Life' is charged with 'defining, stimulating and coordinating the Government's policy as regards the quality of life...' which, in French terminology, includes the protection of nature. It is composed of eleven ministers under the chairmanship of the Head of State. The Committee is endowed with special credits from the 'Fund for Action on the Quality of Life' which allows it to finance part of its more important operations for the implementation of its policy.

There are multiple advisory bodies, most of which specialize in this or that sector of the environment. We shall only mention those whose authority covers the whole of nature protection problems at the national level. These bodies consist of assemblies whose composition is always more or less the same. First of all, they include representatives of the different authorities concerned, i.e., the ministries, on the one hand, and the autonomous public institutions, on the other, being entitled to half the number of seats. The other half is distributed among representatives of societies for the conservation of nature, agricultural interests, tourism, hunting and scientific institutes. The French system sets apart a number of seats for 'competent persons', chosen and appointed directly by the Administration. This procedure is not only useful to grant the Administration a 'majority' but also to make up for absences or uneven representation which necessarily follows the strict assignment of seats, however they may be allotted.

As to the modalities of appointment, they include ex officio nominations, straightforward nomination by the Minister for Environment and the nomination by application by a legally designated body.

Such assemblies cannot be convened too often but, on the other hand, the Minister may need their advice urgently. The solution to these opposing situations is the creation of a standing committee within the assembly to prepare the work for the latter, express its opinions on current events, either by mandate or in case of emergency.

Although the advisory assemblies are not competent to make decisions, their consultative powers may be more or less broadened according as the Minister is free to request their opinion as required by law or else, that the assembly itself takes a certain question under advisement and offers an opinion moto proprio.

Concomitantly with the development of the administrative institutions, European nations were bound to introduce legal norms for the protection of nature in their legislation, which they did in two stages.

The first approach consisted in meeting the situation rapidly by dictating ad hoc laws or applying existing ones which had not been conceived hypothetically for the conservation of nature. We shall see that this is the case of hunting laws which underwent profound changes adapted to new requirements. This is also the case in France with nature reserves whose legal foundation began on the basis of a 1933 law concerning sites of natural beauty and historical, archeological or natural monuments. Nature reserves were later mentioned expressly in the body of this law through the addition of a specific provision (Art. 8 bis).

The second stage in this evolution was covered by certain countries which, like Belgium, France and Spain drafted general laws on the protection of nature. Clearly such laws do not constitute a code or even a legislative frame which can be called complete: they leave out a certain number of questions which continue to be regulated by other texts as, for example, the national and regional parks in France, but they do have the merit of serving as a basis on which a law on the protection of nature can be built.

Legislative texts concerning the protection of the fauna actually cover only some of its aspects; the fauna situation depends upon too large a number of factors to be taken entirely into account in a specific law. For example, to the extent in which forestry laws consecrate the maintenance of wooded areas, they contribute to the survival of sylvan fauna. Inversely, when agrarian law prescribes the consolidation of fragmented holdings together with the elimination of quickset hedges, it leads to the extinction of biotopes. Similarly wildlife could benefit directly or indirectly from the introduction in Europe of the United States' procedure governed by the relation of impact on the environment.

What is true of the legislation is also true of the institutions. The action of an agency for the protection of nature will be more or less effective according to the attitudes adopted by other authorities. In this regard, emphasis has been laid on the very important role of jurisdictions, either through the punishment of offences against the environment or reparation for ecological damage or else through the control of the legality of administrative decisions: clearing licenses, building permits, declaration of public interest, State concessions, etc.

Because of the density of European populations and the wide proportions' of their technical installations, Europe no longer has virgin areas nor possibilities for protecting wildlife fully from the pressure of mankind, and if their survival is to be insured the concept of management has to be applied. This means coming to know and master the evolution of different milieux, learning the positive or negative factors for the life or reproduction of different species and adopting the consequent measures.

The available measures in this field are of two kinds: there is, in the first place, a set of rules for the minimum protection of individuals throughout the territory or, if preferred, legal regimes for the protection of wildlife and, in the second, privileged areas for the protection of wildlife.

PART ONE

LEGAL REGIMES FOR WILDLIFE PROTECTION

Essentially, legal systems for the protection of wildlife consist in the regulation of the possibilities of killing or capturing wild animals, i.e., the hunting laws. However, the activity of hunters of all kinds is not the only threat hovering over the fauna due to the action of man. The hand of man, the use of toxic substances or even the introduction into a given country of foreign animals can have serious consequences for the survival of the species. Similarly, the evolution of agricultural techniques plays a part in natural balances. The reduction of cultivated areas has brought about a correlated impoverishment of the wildlife which used to find easy nourishment in those areas. The elimination of hedgerows is harmful to the avifauna, etc. The ideal would obviously be to have precise knowledge of the factors leading to fauna disappearance and their relative value but, for the time being, there is only fragmented or empirical information.

Side by side with hunting laws, there should be a set of measures capable of limiting the harmful effects of technological development on the fauna; such a legislation is at present being formulated. Its first elements are in the field of the international trade in wild animals, the use of plant protection products in agriculture or the protection of certain natural habitats.

The international trade in wild animals presents a double threat for the fauna of each country. In the first place, the ill-considered introduction and release of foreign species in biotopes which are not theirs present the risk of seriously upsetting ecological equilibriums. A new species may well proliferate to the detriment of the native fauna, either directly through uncontrolled predation, or indirectly by coming into competition with the latter for the sharing of food, destroying the vegetable cover, or even by carrying communicable diseases.

The damages wreaked by the introduction of rabbits in Australia, of goats in the Tortuga Island, of the catfish in European waterways are too well known to insist upon them. In addition, international trade in live specimens and animal hides and skins are a powerful incentive to over-exploitation of wildlife and poaching. This threat is greater for exotic than for European fauna. European nations are basically involved in this problem, being places of destination of trade in exotic animals. They have the financial means to keep zoological parks exhibiting living specimens from overseas, to collect valuable objects of animal origin, such as ivory, ostrich eggs and tortoise shells and to use the skins of felines or crocodiles in their clothing and accessories.

European legislators, who were initially concerned with protecting their own wildlife have adopted laws whose scope embraces the protection of exotic fauna. At the same time, these laws have profited from the entry into force in European countries of the Convention signed in Washington on 2 March 1973 on international trade in species of wild fauna and flora in danger of extinction. At present, this Convention is the main instrument for their protection while national legislation is their complement.

The Washington Convention is concerned with trade in living specimens as well as usable animal parts and contains three lists of animals to bring adequate solutions to international trade problems. The first two lists, agreed upon by the Parties are a scaling of the protection regime in relation to the threats against the species, while the third allows a Member State to name those other species whose exportation it intends to limit. The protection mechanism is based on the principle of double control, by the exporting and the importing States.

In its strictest aspect it requires an export and an import license for the issuance of which each State must insure that the transfer of the specimen is not harmful for the survival of the species in question and that the specimen has been obtained in full accordance with the law of the country of origin. When it is a live specimen, the exporting State must also control the conditions under which the shipment is made while the importing State must see to the conditions of acclimatization. The importer must in all cases verify that the specimen will not be used for mainly venal purposes. Judgment of these elements is entirely under the sovereignty of each national administration and independent from that of the other administration concerned. On both sides it calls upon the participation of scientific authorities in the process of decision-making. In order to avoid attempted fraud, the obtainment of an import permit is a prerequisite for the issuance of an export permit.

The less exacting regime applies to the species listed in Annexes II and III of the Convention and simply provides for control by the administration of the importing State of an export permit issued by the exporting State under conditions similar to those required for licenses concerning the species of Annex I.

Finally, the Convention establishes special stipulations for marine specimens and for the re-exportation of specimens in such a way that there will be no loophole in the control system.

In certain instances national laws add to the implementation of this Convention certain provisions which preceded it as in the case of England, with the Animals (Restriction of Importation) Act of 1964. The principle of regulation of international trade is established by law 1/. The list of species which come under it is drawn up by regulatory bodies so as to facilitate revision to a certain extent. In the case of the 1964 Animals Act the list is embodied in the law but it grants authority to the State Secretary for its revision.

The regulation consists in bringing imports and exports under prior authorization. Authorization may be granted by specimens or by series for fixed periods, in the second case it is required to keep a record of incoming and outgoing animals 2/.

At the beginning, the use of plant protection products was regulated to safeguard the health of human beings and other people's property. On the one hand, it was intended to avoid poisoning through the ingestion of contaminated vegetables, waters or meats and, on the other, to prevent harm to neighbouring domestic animals through the dissemination of pesticides in free air, in waterways, or transported by bees' sucking.

1/ Belgian Law of 12 July 1973 on the Preservation of Nature, Art. 5; French Law of 10 July 1976 on the Protection of Nature, Art. 5.

2/ Decree No. 77-1296 of 25 Nov. 1977 dictated for the implementation of Art. 5 of Law No. 76-629 of 10 July 1976. J.O. of 27 Nov. 1977, Art. 2.

Scientific studies have demonstrated the importance of these substances among the causes of the thinning out of wildlife. Public opinion and authorities were made aware of this thanks to campaigns carried out by societies for the protection of nature. The protection of wildlife against the ill effects of pesticides has recently entered in a modest way into present legislation 1/. The French Law on the protection of nature has forbidden '... the destruction, alteration or degradation of the environment particular...' to protected species (Art. 5). On this basis, an enabling decree has authorized prefects (Department Administrators) to prohibit 'the scattering of antiparasitic substances' which are capable of 'endangering the biological balance in an indiscrete manner' to the biotopes of these species 2/. Similarly, the Italian hunting law of 1977 charges the advisory bodies of the National Technical Committee on Hunting with 'studies and research aimed at regulating the agricultural use of chemical substances of such a nature as to jeopardize the stability of wildlife and alter natural environments' 3/.

The protection of natural habitats is strictly regulated in parks and nature reserves but not, or hardly at all, outside them. Naturally it is much more difficult to safeguard biotopes in inhabited and cultivated fields than it is in areas specially dedicated to the protection of nature. Moreover, it is necessary to work on a point to point basis simultaneously because the biotopes to be protected are scattered in small units such as hedged-in areas or copses and also because the density of human habitation precludes too-far-reaching restrictions.

Such piecemeal measures could be adopted on the basis of a general authority with regulatory powers. As an example we have the case of Art. 3 of the Belgian Law for the conservation of nature which provides as follows: "With the purpose of safeguarding the species of native fauna, the King adopts protective measures for animals living in a wild state...".

The French legislation contains an innovation authorizing Prefects to take "the necessary measures over all or part of the territory of a Department intended to encourage... the preservation of ponds, fens, marshlands, hedged-in enclosures, bosks, heaths, downs, grassy areas or any other natural formation little used by man, in so far as these biotopes or formations are necessary for the feeding, reproduction, rest or survival..." of the protected species. "The Prefect, under the same conditions, may prohibit acts which may indiscretely disturb the biological equilibrium of the environment, particularly razing by fire, burning of stubble fields, burning and milling of standing vegetation, destroying embankments and hedgerows..." 4/.

1/ The Directive of the Council of the European Communities of 21 December 1978 prohibiting the placement on the market and use of phytopharmaceutical products containing certain active principles. The text, in fact, bans the use in agriculture of any substance which "produces or is capable of producing... unfavorable effects unacceptable to the environment". (Art. 6 - 6b). It moreover defines the environment as "the relationship between water, air and land, as well as all biological forms of life and human beings". (J.O. of the European Communities, No. L 33 of 8 February 1979, p. 36).

2/ Decree No. 77 - 12 95 of 25 November 1977, enabling the implementation of Art. 3 and 4 of the Law No. 76-629 of 10 July 1976. J.O. of 27 November 1977, Art. 4.

3/ Game Law No. 968 of 27 December 1977, Art. 4.

4/ Decree No. 77-1295, cit., Art. 4.

It is to be hoped that such provisions as these develop and are applied. For the immediate future, however, it is the hunting law which prevails among all the regimes of law for the protection of wildlife.

In common language the terms applied to hunting and hunters are used without defining the persons or the species in question. One goes "chasing butterflies", premiums are given to "viper hunters", not to speak of "camera hunting". In legal terminology these ideas have kept a much more restricted meaning. Although the concept varies from one country to another, "game" consists, grosso modo, of the mammals and birds. Hunting, hunters and poachers are defined in relation to the game.

This makes difficulties for the legislator who aims to protect species not belonging to the two zoological orders constituting game, but it does reflect legislation in force. The lawful possibilities of killing or capturing wild animals must therefore be analysed on the basis of hunting legislation. However this may be, one must agree that hunting and poaching, sensu stricto, are the most obvious threats to the survival of wildlife.

One of the strongest arguments advanced by hunters in their own defense lies on the positive part they play in ecological equilibriums: the hunter may, in fact, be seen as a natural predator, but it is necessary that this predator, endowed with almost unlimited power, apply self-discipline and that his predatory activity be limited.

SECTION I - THE HUNTER, PREDATOR OF THE FAUNA

To impose limits on the human predator presupposes that he be under regulation. This is why hunting legislation defines, on the one hand, the conditions of the individual right to hunt and, on the other, provide for public institutions on hunting.

A - The Individual Right to Hunt

The individual right to hunt contains two different elements: the enjoyment of that right and the conditions under which it may be exercised.

1. The Enjoyment of the Right to Hunt

In the Europe of the Middle Ages the right to hunt was, to a large extent, a lordly privilege. Hunting and, in particular, the chase with hounds was viewed as a fitting sport for sustaining the warring aptitude of the nobility. In benefit of its practice it was important to reserve the game for those upon whom the defense of the country depended. For this reason poaching was severely checked and vast forests were turned into princely or seignorial hunting grounds. From the point of view of the protection of wildlife, the feudal system offered the double advantage of narrowly limiting the number of hunters and of reserving vast areas for wildlife. As a matter of fact, numerous European natural parks have been created on former princely hunting grounds. [With time], those deprived of the right to hunt found the excessive protection of game increasingly intolerable.

At the time of the liberal revolutions the abolition of hunting privileges took on the value of a democratic victory which it still retains in certain countries such as France and Italy. In keeping with the liberal ideology the

right to hunt became bound up with the right of ownership. According to this concept landlords may hunt on their own lands as well as any other person authorized by them, which allows the commercial exploitation of the hunting rights. The owner may lease his lands to hunting clubs. The exercise of hunting may be placed under adjudication by the State during a given period on certain State lands. This is the case of France for the maritime public domain and the Alsatian State forests.

The connexion between the right to hunt and land ownership offers advantages for the preservation of the fauna. In a general way, it limits the number of hunters. When it gives rise to a lease, it permits increased regulation over the hunters. The State can, by means of judicial decisions, impose stricter rules than those contained in hunting police regulations, being within a contractual frame. The private owner is also interested in keeping the source of income from his wildlife capital.

But this principle has been vigorously contested precisely because it rests upon the criterion of fortune. The popular nature of hunting can be measured by the fact that certain sectors of public opinion accept that some sports such as equitation or sailing be burdened with taxes, but not hunting. Moreover game is viewed as a thing without master unless it is enclosed. Be it called res nullius as before or res communis as nowadays, practically speaking it is difficult to see why the owner should have a special right over a bird that merely flies over his land.

In addition some countries have made of the right to hunt a right attaching to the person, i.e., a public freedom. This is the case in Italy and Portugal, whose legislation proclaims the right of entering someone else's property to hunt. The owner may not oppose such entry without thereby committing an offence. It is evident that in such a case the Law must place a certain number of restrictions upon hunters' right of traverse. These limitations concern enclosed properties, lands under cultivation which may be damaged and hunting reserves 1/. The hunting reserves, in addition, allow the owners to avoid the obligation of suffering traverse. On the other hand, in order to avoid reserves being used as screens to conceal commercial usage, certain conditions are imposed upon the owners. In particular, they must contribute to the repopulation of their region by the annual delivery of a given number of animals to hunting authorities.

The juxtaposition of the two concepts of the right to hunt is not always marked. In France this right is attached to the ownership of the land, but in the south of the country, owners tolerate the passage of hunters in keeping with local customs of what is called "common hunting" ["chasse banale"]. In several French Departments the owners' rights are also assailed by the institution of approved communal hunting societies 2/. It consists in the constitution of individual hunting grounds administered by the society, that owners cannot refuse to join, which for them entails the surrender of their individual hunting rights. They can no longer hunt as owners, even on their own lands, but only as members of the societies and within the limits established by them. Moreover, owners are under the obligation of suffering the traverse of other members of the societies.

1/ Cf. Art. 842 of the Italian Civil Code.

2/ Cf. Law No. 64-696 of 10 July 1964.

Spain attaches the right to hunt to the person but the Law authorizes landowners to shut in their fields and forbids the transit of unauthorized hunters through such fields. In fact, hunting rights may only be exercised subject to toll traverse.

Whatever title the enjoyment of the right to hunt may confer, it is not a sufficient condition for the actual practice of hunting: legal requirements concerning the exercise of this right must also be observed.

2. The Exercise of the Right to Hunt

All legislations subject the exercise of the right to hunt to the obtainment of a license issued by a public authority. According to the country, such a license may be for a limited period and renewable or it may be valid for life. In the latter case its validity will be subject to temporary visas. It can be seen that the differences between the two systems are of a secondary nature: both allow periodical regulation of hunters.

The licensing procedure was instituted for three different purposes. In the first place it is a means of guaranteeing public law and order. Then, it is a source of State revenue: license renewal or the granting of visas is, in fact, an opportunity for the collection of taxes, part of which the State consigns to the bodies in charge of the management of hunting.

The license is also an instrument for the discipline of hunting. In this respect it is an efficient means for penalizing offences against the hunting regulation through suspension, refusal of renewal or definitive withdrawal. But, above all, it facilitates control over hunters' activities. Some countries issue licenses valid for the entire national territory and for all types of hunting 1/. Statistical work is also made easier with a system of specific licenses. Licenses may be specific for geographic regions or types of hunting. Thus, in France, the license means ipso facto membership in a Departmental federation of hunters and is valid only in the territory of the corresponding Department. In Belgium there is a separate license for bird trapping 2/.

Finally, the hunting license makes it possible to determine the knowledgeability of hunters, who must be able to identify the species which they may legally hunt and those which are protected. In addition, most countries have conditioned the issuance of licenses to the successful conclusion of an examination which, in particular, includes tests on zoological identification and ecology. The institution of serious examinations has the additional advantage of appreciably and "democratically" reducing the number of hunters as demonstrated by French statistics.

1/ Cf. Art. 6 of the Italian Law cit.

2/ In the legislation of certain countries licenses are issued for a given number of head of a given type of game. These are not to be confused with hunting licenses which are an especial system of protection of wild species.

The hunting permit system applies naturally to citizens or to permanent alien residents of the countries in question. Now, hunting can be a tourist attraction and in certain countries, especially Spain, is a not inconsiderable source of revenue, in view of which the laws provide, along with the permits, a system of temporary licenses usually limited to a few days which are issued to foreigners.

It is now fitting to see how hunting regulations and management can be organized by public institutions.

B - Public Hunting Institutions

Public hunting institutions are those enjoying the prerogatives of public authority to make their decisions binding. They should not of course be confused with societies or groups which come fully under Private Law and which hunters may create among themselves at any time. They are defined in conformity with the general administrative hierarchies in which there are central and local bodies.

1. Central Bodies

The central organization of hunting consists of two elements: a decision-taking body and an advisory body. To this very simple scheme some countries add a decentralized management body.

The highest power of decision, regulatory or individual, always pertains to the Minister, be it a Minister in Charge of the Environment as in France and Great Britain, or a Minister of Agriculture, as in the other countries under study. To assist him in the performance of his mandate, the Minister relies upon a collegiate advisory body. In Italy, a scientific branch of the University of Bologna - the National Institute of Game Biology - participates in the work of the advisory body which is the National Technical Committee on Hunting 1/. The composition and powers of these consultative organs are different one from the other.

In their composition they are more or less widely open to the various interests concerned. The Higher Council for Hunting in Belgium is limited to the representation of hunters. It consists of a maximum of thirty members who "represent in so far as possible the different regions of Belgium as well as the individual interests emanating from the different types of hunting" 2/.

In France, on the contrary, the National Hunting Council is very comprehensive in its conception. Of its 32 members there are only 11 hunters, 7 of whom represent the game regions and the other 4, specialized hunting, such as with hounds [stag, boar, e.g.], falconry, etc. The rest of the members represent the Administration for the Environment (seven), local organizations (two), professional farming societies (four) and the scientific institutions and those for the protection of nature (four). In addition the Minister for the Environment appoints six "competent personalities".

All the members may be nominated or elected by their peers when there is a single organization or appointed by representative institutions. In this last case the nomination of a member implies two successive procedures. It is advisable

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1/ Cf. Law of 27 December 1977, Art. 4 and 5.

2/ Royal Order of 1 July 1957. Art. 2 [Moniteur Belge], 31 July 1957.

to begin by designating the institutions most representative of a given interest which then give a mandate to the delegates by election or appointment, or on an ex officio basis according to their statutes.

The French National Hunting Council combines the different procedures. It should be pointed out that when a seat falls to election, as in France, those elected are fewer than the members selected and nominated by the Minister.

The consultative collegiate body is not in fact conceived as an independent assembly. Its function is to enlighten the Minister with its opinions. The logic behind this procedure is that it should not consider any questions other than those referred to it by the Minister. This is the case in France where the opinion of the National Hunting Council must also be requested by the Minister, as his obligation demands, before making any decision. The advisory body, as in Belgium, however, may seize itself of a question on its own initiative and express an opinion motu proprio. The same is true of Italy where the Law enumerates the items on which the Technical Committee on Hunting has consultative competence. They include studies and research and opinions on:

- evaluation of the sedentary and migratory fauna on national territory;
- protection of wildlife;
- regulation of farm production;
- regulation governing the use of chemical substances in agriculture;
- development of natural environments;
- enforcement of the hunting law; and
- harmonization of Italian hunting rules with those of the European Community and international conventions (Art. 4).

The opinions in all cases have a strictly advisory value and are not, in any case, binding upon the Minister to whom they are addressed.

Management tasks such as the maintenance of national reserves, repopulation or guardianship may be performed by the Ministry's agencies which, in most cases, is the Administration of Water and Forests or, in Spain, the Institute for the Conservation of Nature. In France these activities have been decentralized, having been placed in the hands of an autonomous public entity under the responsibility of the Minister in charge of the Environment: this is the National Hunting Bureau.

2. Local Bodies

The participation of hunters is broadest at the local level of hunting organizations, an efficient means for insuring discipline in their midst. The models presented by the different national laws under study are essentially distinguished by the participation, more or less wide, they grant to hunters.

A first type is based on the separation between the exercise of regulatory power over and the management of hunting at the local level. The regulatory power remains in the hands of the overall administrative authority which in France is the Department Prefects and in Italy the Presidents of Provincial Councils with management entrusted to societies of hunters or which include

hunters. In France it is in the hands of the Departmental Hunting Federations, of one or another of which all hunters are members by obligation. The Federations' statutes are determined by Ministerial Decree and there is only one Federation to each Department. In Italy, after having been entrusted for a long time to Provincial Committees, management has been placed under the authority of the Regions since the Law of 1977.

A second type of organization is to be found in Portuguese legislation in which the hunters' part is strengthened. Portugal is divided into three hunting regions, each with a Regional Hunting Commission. At a lower level there is a Hunting Commission for each commune which consists of three hunters and one farming representative, all elected by their peers. The members of the Communal Commissions elect four hunters' and two farmers' representatives to form the Regional Commissions, to whom are added two Water and Forests Agents. These organs have very broad terms of reference: beyond management as such over hunting, they exercise powers which in the other countries belong to the administrative authority, such as the issuance of hunting licenses or of orders for the destruction of harmful animals.

Besides the pyramid of public institutions dealing with hunting, it is worthwhile remembering the useful role which can be played by hunting societies. This possibility has already been mentioned in connexion with the judicial assignment of hunting on State lands and the "approved communal hunting societies" in France. The overall regulation of hunting, because it applies over vast territories, cannot always and everywhere have the refinement that would be desirable.

Local hunting societies are in a position to make their members observe rules which are perfectly fitted to local conditions. They can succeed all the more in this endeavor since, through them, it is the hunters themselves who are defending their own game heritage. This role presupposes placing these societies under the public domain to a certain extent. Their constitution must be approved by the administrative authority and their operation must be regulated. In compensation they are endowed with prerogatives of public authority such as compulsory membership or the power to regulate.

The purely individualistic notion of the hunter practicing his sport in isolation with only his license will gradually have to be replaced by that of the hunter who is a member of a society; it is the best device to insure the harmonious limitation of the predatory activity.

SECTION II - LIMITATIONS TO THE PREDATORY ACTIVITY

The predatory activity of man goes far beyond the limits of hunting in the narrow sense of the term. We are now touching upon the underlying ambiguity in which the laws concerning wildlife are still floundering. This legislation is overhung because it still consists of texts which have been added one to the other on the basis of hunting laws while legislators have never examined the needs for protecting wildlife in a global manner.

The laws in force contain a first set of provisions covering game, then texts to regulate the destruction of certain harmful animals and, finally, texts for the protection of certain species. There remains a very large number of animals, from the invertebrates to the mammals, about which the Law is completely silent: game

animals are only a small part of the wild fauna. In spite of this, it is all as if the laws concerning them constituted a sort of Common Law from which the others might depart. For this reason distinction must be made between the species falling within this regime and those without it.

A - Species Falling under the Hunting Regime

The species falling under the hunting regime are identified according to two methods. French legislation operates by a process of elimination: in principle, all mammals and birds are placed in the category of game, save those species particularly indicated and which are excluded by special provisions. The other countries proceed instead by enumeration: their laws establish closed lists of the species which may be lawfully hunted. We shall see below that the second solution seems better suited to a policy of wildlife protection. For the time being we shall only demonstrate that these solutions in a practical sense achieve the perfect identification of game animals.

The regimes applied to these species are not uniform. Two large groups can be observed: that of animals benefitting from ordinary hunting limitations and that of species which although still being game animals are nonetheless the subject of more complete protection measures. Thus, the Italian Law applies the notion of "species especially protected" and the English Deer Act of 1963 and the Badgers Act of 1973 grant these two animals protection in derogation of the Common Law. These two groups are not entirely homogeneous within themselves. There is, in fact, a whole graduated series of measures for the preservation of the hunting heritage. Some are of ancient date and grew empirically while others, more recently created, show a concern for rationalized planning.

1. Empirical Limitations

The catalogue of empirical limitations embraces all questions arising from game protection, to wit, the aim of the hunt, limitations on time, places, arms and techniques and finally, the purpose of the hunt.

a) Limits on the Aim of the Hunt

The aim of the hunt is already circumscribed since only game animals defined by law may be lawfully hunted. But within this group certain legislations introduce quantitative or qualitative limitations.

From the quantitative point of view the laws are generally silent as to the amount of game which a hunter may bag in one day. The Portuguese Decree-Law of 14 August 1974 specifies for each species the number that a hunter may kill in one day. By way of example: twenty turtle doves, two quails, one hare killed with a shotgun.

Bagging limitations have the advantage of preventing some hunters from profiting from exceptional weather conditions to kill too many animals. As a matter of fact we shall see further on that hunting can always be locally proscribed when animals are exposed due to inclement weather, severe cold, etc. But the game displaced from its territory or its paths and runs by the events which brought about a local hunting prohibition will be found highly concentrated and easy targets in other areas.

In the "refuge" areas where hunting cannot be suspended, the only way to prevent wholesale slaughter lies in the quantitative bagging limitation.

From the qualitative point of view it is not a matter of indifference for the survival of a species whether the specimen killed has or has not yet reproduced. In order to protect reproduction it is of course possible to forbid hunting during the periods when it takes place. Certain legislations supplement the regulation of hunting seasons by prohibiting the bagging of certain young or female individuals. In most cases this protection covers bird eggs and brooding places.

b) Limits on Time

All legislations limit hunting to the hours between sunrise and sunset. All of them also provide for a yearly season outside of which hunting is forbidden. To satisfy its purpose, this season must be placed after reproduction and before weather conditions are too adverse to the game animals. Natural conditions in this respect vary appreciably between one species and another, making it desirable that seasonal regulations be closely adapted to the practical conditions of the species.

In several countries it is the legislator who has defined the hunting seasons. The Portuguese Decree-Law of 1974 establishes the seasons, species by species. The strictness of such hunting calendars is attenuated by the authority of the Minister to modify them for the entire country or only parts of it. Similarly, Art. 11 of the Italian Law sets down the hunting season for each of sixty-nine game animals listed. These seasons may be shortened or readapted by the Regions.

There is another system which consists in charging the Minister directly with the definition of hunting seasons. Thus, in Spain, the law provides that the Minister of Agriculture publish an Order before 30 June of each year regulating the hunting seasons for each species in the different regions of Spain.

It is possible to go further and allow local hunting authorities to complete seasonal regulation for their own territories. In France, the approved communal hunting societies may restrict the duration of seasons within the dates determined by the Minister. In Spain, the supervisors of game preserves may submit hunting calendars departing from the common regulation to the Minister of Agriculture for his approval.

All legislations are concerned with exceptional adverse circumstances which may befall game during the hunting season. Following different practical modalities the texts ban hunting in snowy weather and empower the Minister to suspend hunting over all or part of the territory after events such as fires, floods or serious meteorological phenomena.

Finally, the observance of the hunting season limits is guaranteed in all legislations by the prohibition to carry, sell, exhibit or purchase game animals, living or dead, or their useful parts after a certain period following the close of the hunting season 1/. The raising of animals normally living in a wild state, for one thing, and the technical advances in cold storage, for another, obviously

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1/ In the same direction, a prohibition may be placed upon the carrying about of hunting weapons in working order during the off-season.

raise some difficulties in the practical application [of such a prohibition]. These possibilities are provided for by certain legislations in great detail so as to make it possible to ascertain that the animals in question have not been captured or killed in defiance of the law.

As to the duration and dates fixing the hunting seasons, the question must be handled on a case by case basis according to the occasion, over which the jurist has no competence. It is simply to be pointed out that certain legislations are very restrictive. Thus Portuguese Law permits hunting during the season only two days of the week: Thursday and Sunday. The limitation of excessive hunting time may well work against preservation of the fauna as, in fact, it seems to cause an increase in the number of hunters operating in one single day. This augmented "firepower" should rather lessen the chances of survival of game whose territory is so narrowly hemmed in. Carrying this argument to the extreme, a single day of hunting per year would doubtlessly be the best means to extinguish the hunted species completely.

Inversely, it may be remarked that hunting activities reduce game populations not only by their capture but also by upsetting them. The detonation of firearms, the tread of man and hound, when too frequent, lead animals to abandon their customary abodes in search of peace and quiet elsewhere.

c) Limits on Places

The problem of spacial limits arises mainly in countries where the right to hunt is not bound to the right of ownership. In the opposite case, with everyone hunting on his own lands, it is hardly necessary to establish game preserves or any kind of prohibition. Nevertheless, the Belgian legislation contains a concept covering this situation: landowners may only hunt on their own property if it has a minimum unbroken area varying between 25 h to the north of the Sambre-Meuse line and 50 h to the south of it.

Instead, legislations which authorize hunting on alien property are perforce led to provide for limitations of location. These may be placed into two broad groups.

The first does not look to the protection of the fauna although it may indirectly work to its benefit. It is concerned with the prohibition of hunting in military zones, airport surroundings, lands under cultivation or pastures when the passing of hunters could be harmful to crops or livestock, and finally, on closes. Moved by the purpose of impeding owners from abstracting their lands from hunting, without authorization, and by a concern for justice, certain legislators are very exacting in regard to exceptions pretended by agriculture. In particular, the Portuguese Decree-Law of 1974 places the right of a farmer to forbid hunting on his cropped land under express authorization from the administration.

The second group is that of game preserves, hunting reservations, nature reserves and parks. In this case hunting limitations are directly aimed at the protection of wildlife but it is not necessarily an absolute prohibition.

In game preserves the right to hunt belongs to the owner and persons authorized by him. This institution is not within the logic of legislation which attaches the hunting right to the person and not to the property. It is accompanied by the obligation devolving upon the holder of the right to participate in the repopulation of the game of the region.

With the term of "controlled hunting" the Spanish Law presents a peculiar model of game preserves. It covers lands exempted from the common hunting law in which the number of animals which a hunter may kill is determined beforehand. Controlled hunting may be managed either by the Administration (Instituto Nacional para la Conservación de la Naturaleza) or, under contract, by hunting societies (Sociedades Colaboradoras). Three quarters of the animals bagged are the first privilege of local hunters and secondly of members, with one quarter remaining available to other hunters.

In most cases hunting is prohibited in natural parks. It may, however, be of financial value for a park or of tourist interest, and so be admitted under very strict control. The Spanish Law thus places hunting in parks under a special regulation approved by the Minister of Agriculture.

In any case, selective shoots must be considered so as to put order among the populations of large mammals in natural parks as long as the natural predators such as the wolf and the lynx are not re-acclimated in sufficient numbers. To allow a population to keep on growing would lead to the destruction of the forest cover and the degeneration or disappearance of the population through epizootic diseases and lack of food.

Prohibitions are more frequent in reservations. In fact, the notion of hunting reservations implies more than the mere prohibition of hunting. It includes the maintenance of a stock of game animals for the repopulation of areas impoverished by excessive hunting or any other cause. It is not only a question of wildlife protection, properly speaking, but also of stocking hunting territories with game and improving their breeds. In this respect it is worth pointing out that excessive repopulation operations do not, strictly speaking, fall within the frame of wildlife protection. It is one thing to safeguard natural balances and quite another to release periodically game animals raised in semi-captivity on lands unfamiliar to them so they may serve as living targets for hunters.

d) Limits on Hunting, Arms and Methods

The weapons and techniques used for hunting are extremely varied. The principle which inspires legislators in this field is that of impeding the massive destruction of game by the use of techniques which are too murderous.

Legislations list the hunting procedures which are lawful, either in a global way or by species of game. Thus the French Rural Code provides 1/ "... that the license confers upon the holder the right to hunt ... by shooting or in flight and with methods employed for stag hunting ... All other hunting methods ... are strictly forbidden". The Portuguese Decree-Law of 1974 instead specifies the hunting technique which may be lawfully employed for each species. This enumeration is completed by the mention of certain means expressly prohibited and the regulation of lawful techniques.

The hunting means which are expressly prohibited naturally vary according to the country but one may mention among those most frequently encountered, the prohibition to hunt from an automobile or aircraft, the prohibition of different types

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1/ Art. 374.

of traps and snares, the use of poisons and stupefying substances. On the contrary, the use of nets and decoys for catching birds is not always forbidden and, in certain legislations, comes under a simple regulation.

The regulation of lawful hunting techniques is essentially concerned with the use of firearms. The possession and bearing of firearms are already under the regulations of the public police. As to hunting legislation, it usually prohibits the use of silent arms, weapons capable of spraying bullets and even sights allowing shooting accuracy beyond a certain range.

Finally, falconry may be controlled as, for instance, in Spain, where birds of prey are ringed and recorded in a special register 1/.

e) Limits Concerning the Purpose of the Hunt

In principle, hunting is a sport, that is to say that, at least in Europe, it is an end in itself for those who practice it. Historically hunting was, above all, a food-seeking activity as it still is among certain peoples outside Europe. Hunting can also be a lucrative activity; this is commercial hunting, the work of the hunter who sells his game in the market, to restaurants, food or pet shops. The old Portuguese legislation even provided for a special license for this type of hunter, called "wage-earner". It is obvious that the commercial pursuit increases the hunting pressure and that, moreover, its existence is much less justified than hunting for sport in a time of game scarcity.

Legislations tend to limit the possibilities of commercial hunting. It is a question of limitation and not absolute prohibition which would run counter to contractual freedom and which would doubtlessly seem excessive. The means applied to this end practically merge with those employed to guarantee other limitations. They consist, above all, in the prohibition to sell game after a certain period beyond the closing of the hunting season. There is then the prohibition to sell, buy or keep animals or parts of animals of a species under protection.

As one must take into account the possibilities of animal raising or freezing, the effective application of these rules makes it necessary to require of whoever offers for sale or keeps animals of the species in question proof that the origin of such animals or parts of animals is not at variance with the law in force. Finally, it should be pointed out that most legislations make concessions for popular customs and tastes. That is why the English Protection of Birds Act of 1954 prohibits the marketing of eggs of wild birds but allows the sale of plovers' eggs.

2. Rationalized Limitations

Rationalized limitations have been introduced in certain countries under the terms of "controlled hunting" or "hunting plans".

In principle the system is very simple. To begin with, hunting authorities must evaluate the population of a given species in a given area. Then the same authorities will be in a position to judge the seasonal amount that hunters may take from the population without jeopardizing its survival. Each hunter will be

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1/ Order of 12 June 1972. Cf. Salvador Grau Fernández "Derecho de Caza", 1973, p. 204.

assigned a certain quota of the total bagging or, otherwise stated, each hunter may kill a fixed number of individuals. The nature of the hunting plan is not only quantitative; it must also be qualitative in the sense that it should aim at the elimination of animals liable to upset the equilibrium of a population, excessive members of a sex or age group and those which show defects.

To insure the observance of hunting plans, hunters are issued identification markers such as rings or clamp buttons which they must affix to the body of the animals killed. The marking system must be so conceived as to avoid fraud: in particular, the device should be such that it cannot be applied lightly, removed and used again on the body of another animal. These markers are issued to hunters within the limits of their annual quotas and may warrant the collection of fees.

Quota distribution among hunters is variable. As we have seen in the case of controlled hunting in Spain, three quarters of the animals are allotted to local hunters or members of a hunting society leaving the remaining quarter available for other hunters. It is a question of equality among the hunters themselves and of local custom.

From the point of view of fauna protection it is most important to underline the advantages of rationalized hunting, the first of which is the authorization of the continuous adjustment of the hunting pressure to the evolution of game populations. The second, at least theoretically, is to reduce hunting regulations to a few, very simple provisions whose observance is easily controlled.

As it is, rationalized hunting limitations could not take the place of the set of empirical limits. A postulate for their implementation is the knowledge of the quantitative and qualitative dimensions of a game population. Therefore it can only be used for species of a certain size which are sedentary within a given zone, and this is what one finds in legislation. Italy, for example, applies the regime of controlled hunting to the game area of the Alps for large game such as wild sheep, chamois, boar, bear or pheasants and tetraonidae.

It should be added that even in zones under controlled hunting and concerning the corresponding game, empirical limitations are not altogether absent. Naturally time and place limits remain, but those concerning hunting arms and techniques are also kept. In fact, in the laws in force, controlled hunting corresponds to a system of protection over wildlife.

Finally, the planning of hunting must have a concomitant system of compensation for damages to crops which may be caused by the animals. It would not be fair, nor would it be to the advantage of controlled hunting, to allow farmers to suffer such damages when they can not destroy or drive off harmful animals. Most legislations provide for such compensation, the amount of which is drawn from hunting funds fed by taxes and dues paid in by hunters.

B - Species Falling Outside the Hunting Regime

The species excluded from the hunting regime fall into three categories: those which are endowed with immunity, those which are harmful and those in regard to which the Law is silent.

1. Species Endowed with Immunity

The term "species endowed with immunity" is not to be found in the law in force, which speaks of "protected species". It has seemed necessary, however, to discard the latter term for reasons of logic. As a matter of fact, in comparison with wild fauna, as a whole, game animals are already protected species, having the benefit of the protection offered by the hunting law. In addition, within the group of game animals, legislators use the expression "protected species" to cover animals which, without thereby being placed outside the hunting regime are nonetheless the object of stricter protection measures. Thus, by placing the bear under the regime of controlled hunting, the Spanish legislator declares that this species has seemed to warrant "special protection in view of its exceptional interest in the Spanish fauna" 1/.

Now then, certain species are placed under protection which leaves them entirely outside the right to hunt. Therefore it seems more justified to give them a specific label and apply the notion of immunity to them. They, in fact, enjoy absolute immunity to the extent in which the individuals of those species can neither be killed nor captured. The protection extends to the young, eggs and nests which must not be collected or destroyed. One can also think of prohibiting their being troubled or upset when nesting, such as by coming too close to the nests or by "camera hunting". It is a known fact that certain animals, once frightened by the blundering presence of Man, abandon their nests and eggs or their young.

The French Law of 10 July 1976 on the protection of nature requires the government, in addition, to establish by decree "The regulation of search, pursuit and approach for the purpose of taking photographs or recording sound and particularly the photographic hunt of animals of all species..." (Art. 4). However, it is difficult to go very far in this direction as the species in question do not limit their habitats to nature reserves: they also nest on lands devoted to human activities, farming in particular, and it is difficult to see how one could avoid their being troubled.

In addition, the English Protection of Birds Act of 1954, which appears as one of the most protective legislations, provides no penal sanction against those who kill, capture or destroy protected birds unless the act has been committed wilfully.

Legislations include two types of exceptions in the regime of immunity. The first is concerned with scientific experimentation duly authorized by public authority. The second covers humanitarian acts, thus permitting the dispatching of a hopelessly wounded animal or capturing it in order to return it to health and then freeing it, and also collecting abandoned eggs for hatching.

It might be thought a priori that such a list should only be drawn up in the case of legislations which do not enumerate game animals which may be hunted. This seems to be the opinion of the Portuguese legislator who, in setting forth the reasons for the 1974 Decree-Law to regulate hunting is satisfied with having adopted the method of enumeration of the species which may be hunted, "all others thereby remaining under protection". In reality, we have already seen that this

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1/ Order of 26 April 1971. B.O.E., 4 May 1971, p. 7096.

"protection a contrario" could not cover other than the species usually considered as game, i.e., mammals and birds. Now, it seems more and more necessary to cover other species with immunity. The law in force in several countries has already extended its protection to certain amphibian reptiles and arthropods.

In Spain, these are the chameleon and certain turtles. In Italy, the Provincial law of the Tridentine of 25 July 1973 covers ants, amphibians and snails, while the law of the Province of Bolzano of 13 August 1973 includes four mammals, five serpents, five lizards, six anoures, five models, the pulmonate snails, two insects and one crustacean.

This recent legislative tendency is bound to develop in future. As the lists of animals endowed with immunity become longer, the regime of protection will witness a certain diversification which, will bring it nearer to that of protected game animals. To take into account popular customs it will be necessary to introduce "relative immunities", allowing the possibility of capture under lawful conditions.

This is already provided for in Italian Provincial laws on snails whose gathering is authorized during certain times of the year at the rate of one kilogram per person.

Another argument may be advanced to justify a list of species endowed with immunity in legislations which enumerate game animals. The English Birds Act is in this class including, however, a list of birds concerning which the penal sanction of offences is more severe. On the other hand, it is not certain that the extension of the English system, which only concerns birds, to cover all species of fauna is advisable. It would, in fact, give rise to penalties badly understood by the public and too difficult to apply.

The most important point lies in the manner in which the list is drawn up and, in this respect, it seems advisable that making entries into the list be easier than withdrawals from it.

In addition, since species endowed with immunity could belong to other categories than that of hunting, their listing should be outside the competence of hunting authorities and within that of the national law-giver or of institutions in charge of the protection of nature.

In Italy, national law lists the species endowed with immunity without providing for the possibility of completing the list other than by enactment of a new law. But the great administrative decentralization of this Country makes it possible to palliate this difficulty since the list may be completed by local Provincial or Regional institutions for their own territories 1/. The English Protection of Birds Act of 1954 enables the State Secretary for the Environment to complete the list which is of legislative origin.

Other legal texts leave it up to the ministerial authorities to prepare the list and define the extent of immunity. For example, Spanish law merely states: "The species of scientific value or threatened with extinction, those useful to agriculture, the female and young of all those species of a recognized hunting

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1/ The Regions, in particular, may temporarily forbid the hunting of certain species, Cf. Arts. 2 and 12.

value and those dealt with in international conventions signed by the Spanish State will receive special protection". For the application of this law a list of protected species was established by the Head of State 1/ whereby the Minister of Agriculture may supplement it as necessary. Finally, it is quite conceivable that even in a centralized country the list established by the national authority be completed by local authority invested with regulatory powers.

2. "Harmful" Species

The legal notion of "harmful" only embraces a small number of animals which are dangerous or a nuisance to Man. Once again, the hunting origins of laws concerning wild animals place legislations on a false footing. The "harmful" animals are amongst those held to be such, whose destruction is carried out with hunting means. There are those against which it is customary to organize hunting beats or lay traps. Conversely, there are insects such as the mosquito whose eradication is actively pursued which are not in the category of "harmful". In fact we are now dealing with "harmful game animals".

Ideas concerning these species have developed considerably: where formerly they were the target of constant control, more refined measures are now used against them. Increased knowledge of natural balances has shown the error in a Manichean division of animals into friends and enemies of Man. There has been a simultaneous decrease in popular superstitions about the evil character of certain animals such as owls, which for a long time were nailed to the barn doors of French farms. It is known that harmful species are only that in certain circumstances and that, in any case, they have a positive role in ecological systems. It is significant in this respect that the most recent legislation on the subject, that of Portugal, brings together the provisions on harmful animals under the title of "Mastering Animals which Become Harmful", It is not so much a question of organizing the systematic destruction of these species as one of limiting their pressure where they are actually likely to cause damage. The attainment of this end brings up two series of problems one connected with the definition of harmful animals, the other with the regulation of control operations.

In principle, the determination of harmful animals calls for a national listing. When it is established by the legislator, the minister for the environment is invested with authority to decide as to possible exclusions as is the case in Italy or in the English Protection of Birds Act of 1954. Other countries such as France make this the duty of the Minister while, in Spain, it is that of the Head of State by decree.

Portugal offers an original solution altogether in keeping with the new concepts of the notion of harmful. Its legislation does not provide for the drawing up of a list. When a species shows itself to be actually prejudicial to agriculture, the farming societies, hunting or fisheries committees request the Bureau of Water and Forests authorization to "correct the density" of the species in question. The authorization defines the limits to be observed and the means and modes of hunting to be employed. Refusal of such authorization entails a right to reparations for damages suffered. But the most widely applied system is still that of a list conditioning the application of a set of provisions which define the modalities for the destruction of harmful animals and the means which may be employed to that end.

1/ Decree No. 2573/1973, 5 October, BOE of 18 October 1973, p. 20 138.

The modalities which may be applied for the destruction of harmful animals are separated into those in which there is the intervention of public authority and those in which the initiative of private persons is relied upon. In the first place, all legislations provide for the public authority to organize destroying operations, an authority which devolves upon the minister but also on local authorities. In France, for example, it is the prefects and mayors who, invested with police powers, order these operations. France is equipped with a corps of agents specialized in fighting harmful animals, the Wolf-hunting Officers (Louveterie) while, in other countries, there are Water and Forests agents or the members of local hunting committees. Operations are carried out with the voluntary or possibly compulsory participation of hunters. The public authority may also order operations without actually participating in them, which is tantamount to opening an exceptional hunting period against a specified harmful animal.

In the second place, there are provisions in legislations which authorize private individuals to take the initiative in animal destroying operations. The most prudent of these grant the right to landowners and farmers for the protection of their estates. In France, for instance, the landowner is at all times lawfully authorized to destroy or drive off the large quadrupeds living in a wild state, such as deer, boar, stags, etc., unless there is a hunting plan in force which protects these animals, and provides for compensation for damages to crops.

It is obvious that the greater the leeway given to private initiative in this field, the greater are the risks of poaching or involuntary destruction of harmless species. This risk gives the regulation of the means of destruction all the importance it deserves.

As a general rule, only the lawful hunting weapons and methods may be used against harmful animals, although legislations contain a certain number of exceptions. In France, for instance, prefects are competent to authorize the use of snares and greyhounds, which are usually proscribed for rabbit control. In Belgium, the landowner may defend his property against harmful animals with traps, provided the devices are so conceived that other species will not be caught in them.

Finally, it is worth pointing out that the destruction of harmful animals will cover not only adults but also the young, eggs and nests. In addition common sense leads to permitting the marketing of harmful animals killed outside the limits set by law for the sale of game.

3. Species Not Considered by Legislation

The greatest number of animal species is left by all legislations in a legal penumbra: it is difficult to see how it could be otherwise. In turn, it is important that public authority should not be destitute of the legal means to protect these species when it deems it necessary.

A few rare laws - one Spanish decree and two Italian provincial laws - have interceded on behalf of animals not belonging to the orders of mammals and birds. It would seem desirable to expand these unusual cases and to place the protection of wildlife under a specific law. This is a concern which informed the author of the French law of 10 July 1976 on the protection of nature which, in Art. 3, provides that "particular scientific interest or the requirements for the preservation of the national biological heritage justify the conservation of

undomesticated animals ... a prohibition is placed upon: the destruction or removal of eggs or nests, mutilation, destruction, capture or carrying off, taxi-dermal mounting of animals of these species, dead or alive, as well as their transport, peddling, utilization, offering for sale, sale or purchase..." The regulation for the implementation of this provision and the list of species covered by it will be included in a decree still to be published.

PART TWO

AREAS OF WILDLIFE PROTECTION

The areas of wildlife protection very often merge or overlap with areas devoted to the protection of the natural environment as a whole. In fact, protection measures aimed not only at all the individuals of a fauna but also at their living conditions, necessarily extend to cover all the elements of the biotopes, including their vegetable and mineral components. It must be added to this obvious fact that legal techniques applied to protection areas are not limited to the species of fauna or flora. They lend themselves to widely varied applications, from the conservation of historical sites to those of geological interest.

Therefore, the purpose of the study must be those areas intended for the protection of wildlife in general, excluding those devoted to the preservation of vegetable species, geological, prehistoric or historic sites, artistic or natural monuments and landscapes.

The areas which concern us in this Study should also be considered separately from hunting preserves. From a practical point of view the latter sometimes presents a protection regime as efficient as that of many national parks. This is why the "United Nations List of National Parks and Equivalent Reserves" includes certain hunting preserves 1/, but these are exceptions. The principle is still that of assigning hunting reserves for the maintenance of the hunting capital and not wildlife. Measures are taken there for the improvement of game breeds and predators are fought against, practices which are at variance with the respect of natural equilibriums which correspond to the areas of protection of the wild fauna.

So defined, the scope of this Study embraces a very wide variety. Protected areas, in fact, represent differently balanced compromises between three types of interests which they necessarily must contend with.

The first is of course that of preservation of natural life in its wild state which implies a maximum or total elimination of human enterprise.

The second interest is of a recreational nature. It is commonly recognized that the development of urbanization and technology deprives many men, especially city dwellers, from a contact with nature indispensable to the full expansion of their personality. It is one of the roles assigned to protected areas to permit the satisfaction of this need by opening for public visit the landscapes and populations of a preserved nature. But the access of visitors to areas of protection unavoidably brings with it a deterioration of the environment and disturbances of the fauna which could be very adverse.

The third of these interests is of an economic and social order. Protected areas have economic implications which are at once positive and negative.

1/ Cf. by way of example, the title devoted to France, 1971 edition, p. 210 et s.

On the positive side they are a means of economic development and creation of employment. Their tourist attraction permits the running of hotel enterprises as well as multiple handicraft concerns. In principle, this interest complements the recreational purpose provided it does not give rise to a chaotic proliferation of installations. On the other hand, this same interest is in contrast with the preservation of nature to the extent in which it creates pollution and increases the harmful effects of the presence of Man.

On the negative side, protected areas means the freezing of lands which thus almost entirely lose their potential for economic utilization. This situation hurts in the first place, the owners of lands comprised within the protected perimeters. In the second place, it is a burden on the national community or local communities barred from installing in the areas of protection lines of communication, hydro-electric dams, factories and sport infrastructures, or even from working mineral deposits.

The contrasting requirements of these interests are not given equal weight throughout; their analysis permits a definition of the protection areas. The Council of Europe has published criteria for the classification of each zone which embrace four categories 1/.

The first is that of total reserves where all human presence is prohibited except to duly authorized scientific researchers. Overflying by aircraft at low altitudes across these zones is also forbidden.

The second category is different from the first in that it allows continuing certain traditional human activities which appear to be components of the natural balance. Such is the case, in particular, of the mowing of meadows or the grazing of cattle. Admission of visitors is subject to the observance of very strict rules.

Thus far the concern for nature preservation is exclusive. On the other hand, the following two categories pursue a double end, both protective and recreational. The third allows new human activities of an agricultural, hotel or handicraft nature under strict control as well as the non-motorized public circulation, for which areas are parceled out. Regulations concerning hunting, fishing, peace for the animals and immunity of vegetable life are also very strict.

In the last category the recreational purpose is more important than that of the protection of nature. It includes zones with villages, various economic activities, even with partial authorization of motorized public circulation.

Protected areas may consist of a single one of these zones; most often they bring together several zones pertaining to different categories. A national park may embrace a whole reserve, a protection zone open to the public and a zone predominantly devoted to recreational activities.

Zones are not the only element which enter into the typology of protected areas; it is also necessary to take into account the institutions responsible for these areas, which may be private individuals, local public communities or States. International fora have concerned themselves with the definition of protected areas by combining the criteria of zones and institutions.

1/ Terminology of protected zones in Europe, Council of Europe, Strasbourg, 1973.

The concept of "national park" was first described in the Convention on the Preservation of Fauna and Flora in their Natural State signed in London on 8 November 1933, and then in the Convention on the Protection of Flora, Fauna and Natural Panoramic Beauties of the Nations of America signed in Washington on 12 October 1940. On the basis of both Conventions, the International Union for the Preservation of Nature has defined the criteria for the inclusion of a park or reserve in the United Nations List of National Parks and Similar Reserves 1/. To be considered a national park or a reserve, a region must be under a statute of strict protection, not too small and have the management staff and budget to guarantee efficient protection.

The difference between a national park and a reserve is that the first must be managed by the central government and open to the public, whereas the second may be regional or private or even closed to the public. By deduction one will use the term of regional natural park for an area managed by local communities and open to the public. From the point of view of the offset of interests that come into play it may be said that a reserve is at the exclusive service of nature protection, that a national park has a protective purpose which prevails over the recreational interest, and that a regional park is half-way between the two.

But it must be remembered that the application of these three categories to concrete situations is awkward and that the terms in current use do not always coincide with those situations. For instance, the English National Parks are rather closely related to regional parks, the Belgian National Reserves are open to the public, etc.

However, despite their diversity, reserves and national or regional parks raise similar problems for the student. They may be grouped round two main axes: one, the institutions of protected areas, the other, their legal and financial means.

SECTION I - INSTITUTIONS OF PROTECTED AREAS

The high population density of the countries of Western Europe make it very difficult to create protected areas without running into more or less serious human problems, for which reason it seems desirable that park and reserve institutions be open to the representation of local interests. No area could effectively be protected without the participation of its residents or the communities belonging to it.

Conversely, excessive local influence could favor the economic development of the region to the detriment of the protection of nature. It is in this situation of delicate balance that the institutions of protected areas find themselves both as regards their creation and their administration.

A - Creation of Protected Areas

The creation of protected areas raises two series of disparate questions. First of all it is a question of knowing to what extent it is the object of a true policy, that is to say, a group of coordinated measures aimed at a definite goal and, second, of considering the procedures applied for the establishment of parks and reserves.

1/ Cf. Introduction to the 1967 edition.

1. Policy for the Creation of Protected Areas

The evolution of State legislations has been accompanied by the recognition of protected areas under international law to which it is worthwhile referring,

a) National Policies

The movement which originated in the United States of America with the Yellowstone Park in 1873 was only belatedly followed by Europe, where some governments established protected areas at the time of the First World War, as Switzerland did in 1914 and Spain in 1915. A second wave of such accomplishments is particularly illustrated by Italy in the 30's. But time had to pass for the world to become aware of the acuteness of the environmental problems, which came about during the last decade, before a real development of legislation on this matter could be witnessed. Apart from this, it is fitting to add that private initiative has quite often gone before public action.

The first nature reserves were created by private societies in several countries, such as Great Britain and France. All at once the success of these pioneers and the limitations of their means prompted State action, which took on different forms.

In Italy, legislative texts were drawn up case by case. One after another, the laws and decrees have defined individual institutions for each national park or reserve 1/, and so it is that there is no statute covering the different categories of protected areas. The drawbacks of this state of affairs, especially in the case of national parks, are of concern to Italian authorities and a draft law to serve as a frame is now being formulated 2/.

Another approach was that taken by the French law-giver who, for the establishment of nature reserves, began by resorting to the legislation for the protection of monuments and scenic sites 3/. The problems raised by the safeguard of natural spaces are effectively related to those found in the case of historic or artistic monuments. Institutions as well-established as the United States National Park System or the English National Trust have competence in both areas.

It has nonetheless seemed preferable to dedicate specific laws to the particular nature of environmental problems. Moreover, the initial situation had the disadvantage of having to resort to, in these matters, administrative bodies normally competent for the protection of scenic sites, such as that for National Education or Fine Arts. In addition, French legislation on protected areas progressively affirmed its full autonomy. It first sanctioned the national parks statute by Law No. 60-708 of 22 July 1960 and then, by Decree No. 67-158 of 1 March 1967 (superseded

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1/ Law of 3 December 1922 on the Gran Paradiso National Park; 11 January 1923 on the Abruzzo National Park; 25 January 1934 on the Circeo National Park; 24 April 1935 on the Stelvio National Park; and 2 April 1968 on the Calabria National Park.

2/ Cf. Donatello Serrani - "La disciplina normativa dei Parchi nazionali", Guiffrè ed, Milan 1971, and "Agricultura" No. 55 of 29 October 1977 published by the Ministry of Agriculture.

3/ Law of 2 May 1930, Art. 8 bis.

by Decree No. 75-983 of 24 October 1975), the statute of regional national parks. Finally, Law No. 76-629 of 10 July 1975 on the protection of nature-regulated natural reserves by putting a limit on the connexion between the latter and legislation on historical sites.

Even before the creation of their first protected areas some countries equipped themselves with general statutes. Such is the case of Spain which began by approving the Law of 7 December 1916 on national parks, which was completed by Royal Decree of 23 February 1917.

The evolution which has taken place in all countries has therefore tended toward the definition of model laws providing for the protected area institutions that might be created.

Such acts have been conceived to serve as a legal basis for all of a country's parks or reserves, that is, they must lend themselves to application in quite different concrete situations. It is not therefore advisable to make their content too detailed and aspire to solve all problems which may arise. The administrative authority must be allowed a certain latitude to adopt the fitting regulations for their application.

Contrarywise, too much looseness or lack of precision in the basic acts would deprive the institutions founded by them of firmness. When the legislator does no more than set forth the preservation measures which the Administration may undertake within a national park without making them compulsory, he is placing its efficient protection in the hands of that Administration and opening the door to incongruities. A judge would not be able to punish offences against a park's legal statute to the extent that it was not imperative for the Administration. This is the case of the French Law of 22 July 1960 on national parks in which preservation measures are merely set forth as possibilities: Art. 2 of the Law states that "the decree by which a national park is created ... may place under a special regime and, when appropriate, prohibit hunting, fishing, etc., inside the park... etc.".

Therefore it is not surprising that the Law of 1960 governs the Vanoise National Park where protection measures are very strict, as well as that of Cevennes where these measures are much less so.

Similarly, the Spanish Law of 2 May 1975 on protected natural spaces defines four types of areas without indicating with precision the protection measures for them. In view of this it would seem advisable that model statutes drawn up by legislators, without pretending to regulate everything, do contain nonetheless a minimum of rules to be obligatorily observed by the corresponding protected areas.

The legal instruments of a coherent policy having been established, it remains to be seen how they are to be implemented. At the beginning a great empiricism prevailed in this regard. The first achievements in this matter took advantage of former princely hunting grounds or State forests, or else sprang from private initiative. In principle, a rational policy for the natural space should be guided by the concern to insure the preservation of all natural elements of outstanding importance and to manifest the diversity of the vegetable and animal populations. To keep to wildlife, it is a question of arranging halting places along the paths of migratory animals and protecting the biotopes of species threatened with extinction.

In addition it is desirable to keep a balance between different types of zones. The very importance of the protection of nature demands that recreational zones be developed to avoid the excessive pressure of visitors on national parks. For this purpose, "green belts" round large cities, and wooded suburban areas play a particularly useful role.

Administrations in charge of the environment have undertaken methodical census programmes of the areas to be classified as such or for the improvement of those already existing. But one must consider that the possibilities in Western Europe are limited by the density of populations. Planning in this sector must necessarily suffer many compromises. In the case of France the intended creation of a new national park in the Mercantour has given rise to heated local opposition; another park may be established in the Haute-Ariège. Eventually there will remain no more space sufficiently under-populated to avoid insurmountable human obstacles to the creation of a real park 1/.

b) International Cooperation

International Law, concerned over the survival of wild species which it considers the common heritage of mankind, has also preoccupied itself with natural areas.

The importance of international cooperation arises in the first place with the protection of migratory species. Migration routes are generally known and one is aware of the fact that migrators need safe halting places for the development of their biological cycles. Hence it is reasonable to persuade countries to establish "relay stations" along the migration paths through coordinated action. As regards the humid zones, this is the objective aimed at by the Convention signed in Ramsar in 1963.

One could also consider the creation of a real network of nature reserves representative of the various biotopes of Europe or of the world, which is the aim to which the Biogenetic Reserves Project of the Council of Europe and the Man and Biosphere Project are devoted. In both cases, it is not a question of setting up new categories of reserves but rather of classifying areas placed under the national laws for the performance of comparative scientific work and the integration of national policies within a regional or worldwide frame.

Finally, there is one field of action open to international cooperation: that of the protected areas straddling national borders. Many European parks and reserves are situated on border regions because, in principle, they are less populated. Moreover they are often the mountainous regions of the Alps, the Pyrenees or the Tatras, which host a specific fauna whose biotopes deserve protection. It follows that it is clearly of interest for the countries concerned to demarcate areas in such a way that they be adjacent on both sides of a frontier. The unit thus constituted offers the widest space for the protection of nature at the cost of a minimum of land assigned to this purpose.

1/ Cf. O. Vallet, "L'Administration de l'environnement", Berger Levraul ed., Paris, 1975 p. 229. For Great Britain, cf. the Sanford Report on National Parks published in 1974 and, for Italy, No. 55 of "Agricoltura" cit.

On the basis of this principle it is advisable that the management of areas crossed by national borders be subject to international coordination, for which there are several possibilities.

In the first place one might envisage scientific cooperation to come to know better a fauna that ignores frontiers and makes frequent seasonal movements from one country to another. Any possible epizootic diseases could more successfully be tracked down and controlled. This type of cooperation undoubtedly presents the least juridical-administrative problems; it is, however, liable to be restrained by a "parochialism" which is sometimes rife in scientific circles.

In the second place it is possible to harmonize protection measures for each area. A common definition of infractions would permit better surveillance and cooperation in repressing them. The wardens of one park could cross the frontier and verify offences committed in the other park. Spain and France have set out in this direction with their National Parks of the Val d'Odessa (Spanish side) and of the Pyrenees (French side). A bipartite international commission is at present attempting to formulate the text of a convention for this purpose.

Cooperation can be carried further to embrace all problems connected with park management. There exist examples of such collaboration: one might mention the W National Park between Niger, Benin and Upper Volta, the Waterton Glacier International Peace Park between the United States and Canada, or the Tatras National Park between Poland and Czechoslovakia.

The Council of Europe has earnestly exhorted the countries of Western Europe to initiate similar experiments 1/. For the time being the only international agreements of this nature are those joining the Rhineland-Palatinate "Land" and Luxembourg (Agreement of 17 April 1954) for the creation of the Germano-Luxembourgean National Park, and the Treaty of 3 February 1971 between the Nordchein Westphalia "Land" and Belgium for the creation of a national park in Hautes Fagues-Eifel.

2. Procedures for the Creation of Protected Areas

The importance of procedures for the creation of protected areas lies in the fact that they condition the efficiency of protection and its duration. They must make it possible to determine the degree of tolerance or adherence of local interests, without which the classification of an area might give rise to conflicts and lead to lack of observance of protection measures. They must also define the conditions in which an area may be partially or wholly declassified and avoid its being surrendered too easily to economic pressure.

Problems in this connexion have different components according as the initiative is taken by the State or at the local level.

1/ Cf. Consultative Ass. of the Council of Europe, 21 st Regular Session, Recommendation 587 (1970) on the creation of regional natural parks and natural parks across borders.

a) Procedures for State Initiative

i. Classification

Procedures for the creation of protected areas on State initiative call for decisions by the highest administrative authority, most commonly, governmental decrees and, exceptionally, decisions of the Minister for the Environment. Some areas have been established by law or decree-law, a procedure which is no longer justified in so far as area statutes have been drawn up by legislators. The creation of an area, it follows, amounts to implementing a legislative text by administrative means.

All the same, the essential problem is that of the place that it is advisable to give to the expression of different interests alive at the time of creating a protected area. It has been possible to create some national parks without any previous consultation, as was the case of Italy in the period between the two Wars, but such actions have given rise to abundant criticism. It has been noted in Italy that local populations and authorities took badly the constraints imposed by decisions of the central power and respected the corresponding regulations equally badly. For that matter, European legislations, quite generally, provide for consultation even when the classification affects lands to which the public is assured exclusive enjoyment.

Obviously, the organization of consultations varies according to the administrative institutions of the countries concerned and the scope of the proposed conservation measures. However, three broad kinds of consultation can be distinguished: at the level of national authorities, of local authorities and of the public.

At the national level one may first request the opinion of the ministries interested in the project, for example, the Ministry of Defense whenever overflying at low altitudes is to be prohibited, or the Ministry of the Navy with regard to coastal parks. As a second resort it is possible to have recourse to the advisory councils on the environment or the protection of nature where such bodies exist.

At the local level, consultation will be addressed to the central administrative services concerned, bodies representing organized interests such as departmental or provincial hunters' organizations, chambers of agriculture, of commerce or of industry and, finally, local authorities, especially those of the communes. Through these consultations which allow civil servants or competent persons in close touch with local problems, or elected representatives of the people, to express themselves, the reaction of the interested parties directly affected by the project will be apprehended.

It is possible to go further and allow each one in turn, particularly the inhabitants, owners and societies for the preservation of nature to have his say by means of a popular survey. But the procedure involved in such a survey entails rather burdensome formalities: for it to make sense it must include a set of rules governing the publicity of the survey, the appointment of an impartial interrogator, the modalities for public expression and information thereon. It may be added that popular surveys are used much less frequently than consultations with administrative or representative bodies.

The Spanish Law of 2 May 1975 limits itself to providing that "in the case of communal properties or of certain mountainous regions called "montes del común de vecinos" the persons concerned shall be heard in conformity with the law in force" (Art. 8, sub-par. 2). In a general way it may be said that legislations set aside popular surveys when the community has title to the enjoyment of classified lands, be they State owned or merely leased.

Popular surveys are provided for only in cases where classification takes in private lands over which the owners will keep their title but to a lessened degree. Even then an effort at economy is made by seeking the owners' agreement.

Thus, in the case of the English national parks, the corresponding project is published in the press and is only put to a popular survey when objections have been formally raised. It is the same in France as regards nature reserves, where the written approval of the owners of or holders of title over the landed property in question may avoid a popular survey which, also in France, is obligatory for the creation of a national park. Considering the dimensions of such an area, it would actually be unlikely that the written agreement of all interested parties could be collected.

Whether the opinions spring from administrations, local communities, organized interests or simply private individuals, they are always of an advisory nature. The only exceptions to this principle are the opinions of certain ministers directly concerned with the classification: those of national defense and air transportation in the case of prohibition of overflying, that of agriculture in cases involving State forests managed by it, that of maritime transportation for coastal areas, etc.

Independent from these very limited cases, the competent authority to decide on classification is not legally bound by the opinions expressed, so that, in fact, the weight of such consultations depends upon the stand taken by the central authority. It is to be desired, even in the interest of the protected areas, that this authority really discuss the matter in concert with the consulted bodies. It will be able, in particular, to modify its original projects in conformity with the observations made at the local level, a possibility which, moreover, is expressly provided for by certain legislations, as in the case of the Decree No. 77-1298 of 25 November 1977 on nature reserves in France, as well as the Law of 22 July 1960 on national parks, which establishes a procedure in two stages.

A draft project drawn up by the Minister for the Environment is presented to local authorities for their opinion, and then to the national advisory bodies. At this point the Head of State will decide whether to abandon or pursue it. In the affirmative case the amended draft project - which has become a project -gives rise to a new local consultation by means of a popular survey. The final decision is expressed by decree.

Consultations shall not be allowed to paralyze the progress of a procedure for creation through delays in the expression of opinions. Such an abuse can be thwarted by establishing reasonable periods for the submission of opinions, at the end of which a person consulted who has not voiced his opinion shall be considered as approving the project. Another similar solution consists in saying that the opinion of the body consulted shall be disregarded if not expressed by the end of that period. There are illustrations of these techniques in the Decree of 25 November 1977 on nature reserves in France or in the Belgian Law of

1973 on the preservation of nature. Without strictly observed periods for consultation, the procedure of classification, especially when affecting large territories, can be protracted for a very long time: local interests are most often little prone to make real or supposed sacrifices and political opposition parties too often take advantage of the opportunities offered them to exploit local grievances.

The case of the Mercantour National Park in France is significant in this respect because its creation, already under study in 1974 has not yet been concluded after five years. However, slowness in the procedure does present certain positive elements especially in connexion with declassification.

ii. Declassification

A protected area is often in the position of a besieged fortress. The unspoilt nature, the beauty of wildlife and the preserve sites are constantly titilating the cupidity that economic powers attempt to mobilize, to say nothing of the exploitation of deposits of various kinds, of hydraulic energy or the opening of a road. These threats are translated at the legal level by requests for partial declassification as total declassification gives rise to too many political difficulties without economic usefulness. What is to be feared then is the progressive deterioration of protection efforts through the establishment of installations which, though localized, affect natural equilibrium far beyond the bounds of their geographic emplacement.

As a general rule, the legislations studied make no provision for declassification, leaving this procedure subject to the principle of formal parallelism, that is to say, it requires the same acts and the same consultations as for classification.

The slowness of the procedure which has been mentioned as a disadvantage in the case of classification, becomes an advantage in the case of declassification. It gives the interested societies, in particular, the time to mobilize public opinion and exercise pressure in favour of the maintenance of the integrity of the threatened area. By way of illustration we may mention what in France is known as the "la Vanoise affair". A project for the partial declassification of this National Park to make way for the building of ski lifts and opening of ski resorts appeared to have been approved at the end of preliminary consultations, the central Administration having received a majority of favorable opinions from local communities. But the project had to be abandoned after the popular survey revealed a strong opposition.

In addition mention must be made of the danger presented by "disguised declassification". The authorities in charge of the management of protected areas often have the right to authorize certain works or building activities which in principle should be compatible with the end to which the area is put. Now, in the exercise of this competence it is possible to grant authorizations which, in fact; are tantamount to veritable declassification without the corresponding procedural guarantees. This situation is not considered by legislations which, by hypothesis, constitutes an abuse of power. It is up to the judges to censure such actions and the rest depends on the efficacy of the system of legal control over administrative acts in the country in question.

b) Procedures for Local Initiative

The procedures for the creation of protected areas open to local initiative concern nature reserves and regional natural parks. The former may be proposed by ordinary private landowners, while the latter require the participation of local communities, although the mechanism is the same in both cases. It calls for approval from the central Authority to the project submitted by the local individuals or communities. The study can then be carried out in the ordinary way. A place apart must however be given to the English experience with the National Trust which constitutes an altogether original model.

i. Nature Reserves and Regional Natural Parks

The approval given by the Minister for the Environment to local projects can be analysed as an agreement of a contractual nature. Legislations define the broad lines of the regimes of protection applicable to reserves and parks.

To take the example of France, voluntary nature reserves are provided for by Art. 24 of the Law of 10 July 1976 on the protection of nature, and regulated by Arts. 17-25 of Decree No. 77-1298 of 25 November 1977. The regional natural parks instituted by Decree No. 67-158 of 1 March 1967 are now governed by Decree No. 75-983 of 24 October 1975.

By means of the procedure of approval private individuals or local communities enjoy the benefit of protection measures contained in the legal text and the accompanying technical or financial assistance from the State while, in return, they undertake certain engagements and place themselves under the control of the central Authority.

The act of approval defines the area boundaries, the precise protection measures to be applied to it and the necessary preparations and work. It brings up two series of questions, one relating to the conditions under which it may be granted, the other, to its effects.

- Conditions of Approval

The procedure of which the approval is the conclusion always emanates from a request from local originators, the corresponding brief being regulated by law. It must, in principle, include the elements which will appear in the act of approval. In the case of regional natural parks in France it is a draft "constitutive charter" drawn up by common agreement between the Region and the interested local communities.

The brief then becomes the object of negotiations with the central Administration and possible corrections. Its acceptance by the Minister for the Environment gives concrete form to the agreement. The problem lies, in the first place, in knowing to what extent this acceptance must be preceded by consultations. As concerns nature reserves one must be prepared against difficulties which may be brought up by holders of titles other than the owner. For this reason the French Decree of 25 November 1977 requires that the request be accompanied by "if appropriate, the agreement or the opinion of holders of title over real property and the opinion of persons having right of enjoyment or exploitation of the land". (Art. 17).

The French Legislature has also deemed it necessary to provide for consultation with various bodies: town councils, civil and military administrations concerned, the departmental commission on scenic sites when dealing with the protection of nature and, if hunting is to be limited, local hunters' organization 1/.

In the case of regional parks consultations are useless because, by hypothesis, the formulation of a project results from the agreements of elected representatives of the peoples and the Region has no legal means to oblige a commune to include its territory within the limits of the park.

Basically, the decision depends upon the discretionary power of the central Authority which is free to grant or deny its approval. Nevertheless the creation of a nature reserve must not be allowed to be a means for a landowner to elude the obligations imposed by soil management plans and possibly carry out speculative operations. For this reason French and Belgian legislation stipulate that approval may not be granted for projects incompatible with management and urbanization plans.

- Effects of the Approval

Normally, the approval constitutes the act which will bind the interested parties. To express it in terms of contractual law it has the same value as the acceptance of the offer. One exception must be pointed out as concerns regional natural parks in France for which the approval is a mere preliminary, the final decision resting with the Region. Art. 4 of the Decree of 24 October 1975 in fact provides that: "The creation of a regional natural park is to be decided by the Regions concerned, after approval by the Minister for the Environment of the contents of the Constitutive Chart".

The approval is granted for an indefinite period in the case of natural parks which therefore concern public communities, but this is not the case with reserves created on private property, where legislations provide for specific durations renewable by tacit agreement. In Belgium these periods are for ten years, and six in France. The owner may interrupt the process by expression of his will. In France such a notification must be presented at least two years before termination of the period.

During the life of the approval, modifications to the statute and boundaries of the area can only be effected with agreement of the parties, but following the same procedure established for the act of approval itself. Observance of the provisions of the act of approval calls for controls on the part of the central Administration. The obligations devolving upon managers of the park or reserve may moreover be extended and include the observance of regulatory measures adopted for the Conservation Police by the competent Ministers; this is the case with approved reserves in Belgium or regional natural parks in France. The sanction consists, in all cases, of the withdrawal of the approval given by the Minister for the Environment, possibly accompanied by prior formal notice. The Law

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1/ These consultations include deadlines for replying. According to French legislation, four months' silence is tantamount to acquiescence. Contrary opinions must be explained.

relating to regional natural parks in France specifies that "this decision carries with it the prohibition from using the denomination of 'regional natural park' in any manner whatsoever". In view of the tourist attraction of such a denomination and the possibility of using it in advertising handicraft and agricultural products, the sanction takes on a real economic character.

The stability of protected areas created by local initiative rests, in short, upon the maintenance of the agreement between the originators and the central Administration, which can only guarantee the efficacy of protection measures corresponding to the title of reserve or park.

It must be added that voluntary reserves, which remain private real estate, are not immune from expropriation for public purposes. According to French legislation it is only necessary to seek the advisory opinion of the Regional Delegate for the Environment, plus other normal procedures to expropriate a voluntary reserve.

ii. The National Trust

A foundation of a particular nature, the National Trust, is legally a society whose creation goes back to 1894. It is endowed with a legal statute formulated by the National Trust Acts of 1907, 1937 and 1971, to mention only the main texts.

The National Trust is authorized to purchase real estate or receive it by endowment for its preservation. Its activities include the preservation of England's historic and artistic heritage as well as scenic areas and natural riches, under which title the National Trust took the initiative to institute a number of natural reserves.

The National Trust does not benefit from any State aid other than fiscal exemptions as a "charitable institution", such as duties on the transfer of property and income taxes. However, two factors have made a strong contribution to the success of the institution: the first is the result of England's very high death duties, which drive heirs to landed property to parcel out their estates and sell to satisfy the fisc. This makes it of interest to them to transfer their property to the National Trust which will allow them a certain right of enjoyment over it.

The second factor is the rule of inalienability established by the National Trust Act of 1907, allowing the Trust to declare the inalienability of real estate it proposes to protect. The institution will no longer be able to sell or cede the property in question but it will be safeguarded from any expropriation or enforced cession on the part of communities and public services unless it is through the enactment of a law by Parliament. This last measure of protection is such as to encourage possible donors who thus obtain a guarantee of perpetual preservation of the property for as long as it is humanly foreseeable,

B - The Administration of Protected Areas

The problems of administration of protected areas can be classed together with the matters covered by the administrative unit, on the one hand, and the choice between centralization and decentralization on the other.

1. The Administrative Unit

By administrative unit it should be understood that the authority instituted in a given area has been invested with competence to solve all legal or administrative questions which may arise and effect the proper maintenance of the area. Its principle is simple: it makes parks or reserves seem to appear as islands withdrawn from the application of the common law and from administrative authorities normally competent in sectors such as land, agriculture or forest management.

In practice the situation is quite different. The problem of the authority to be placed in the hands of the responsible body of an area varies according to the types of area and as a function of three factors: the assignment of an area for strictly protection purposes or for recreation, the public or private ownership of the land and the more or less restrictive protective measures which are applied.

A priori, the simplest administration would be that of a reserve which is nothing but that. On the contrary, a park open to the public with a rather recreational purpose and established on private property will present a maximum of administrative difficulties particularly in connexion with urbanization and land management.

One must also take into account the protection rules applicable to the area, which may carry very precise prohibitions or regulations, and administrative tasks will be easier. Since in this case its competence is bound, it will be legally obliged to make certain decisions and it is thus less important whether authority is unified or shared. Things are different when the laws state the purposes and leave a large margin of judgment to the administrative authority. Administrative concentration is all the more useful when the power of decision is discretionary. The scattering of responsibilities among several administrative bodies and overlapping of competence may compromise or interfere with the vocation of preservation assigned to an area.

It should be added that lack of administrative unity inevitably means a retrocession in the protection of nature to the extent in which the various authorities sharing the management of the area - local communities, water and forests, planning agencies, etc. - are, as experience has shown, more responsive to arguments of immediate economic benefit than to the remote interests of natural equilibrium.

The Italian National Parks are a case in point. The Directors of the Gran Paradiso and the Stelvio are competent to authorize any building on the territories which they administrate with the exception of State roads. Laws governing the other parks are much less restricted and, outside certain zones, leave the power to authorize building in the hands of the local communities.

Similarly, in England, the Committees charged with the administration of the National Parks share their competence with the county authorities for territorial management.

In France, criticism has been levelled at the "lack of administration" of the approach zones surrounding national parks, spaces where diverse administrative bodies (Public Works, Agriculture and the Delegation for Territorial Management) carry out improvement programmes without coordination or participation of the Parks Administration. As a result more importance is given to economic development to the detriment of the protection of nature, whereas these zones should act as a buffer between the neighbouring industrialized spaces and the protection area proper.

2. The Choice between Centralization and Decentralization

The administration of a protected area is decentralized when the services which manage it constitute an autonomous legal person, competent to go before the law, to own property, have a budget of his own, etc. On the contrary, when the area is only one administrative unit of a bigger whole and the authorities responsible for it are directly answerable to a ministerial hierarchy, it is centralized.

It is easy to see that the formula of centralization could not be applied to all the protected areas of a country and that only decentralization is suitable for parks and reserves created through local initiative. The data of the problem are different according as the creation of an area depends upon the State or another person.

a) State-created Areas

Centralization has the advantage of concentrating administrative and financial means and by its nature it facilitates the implementation of national policy on protected areas as well as appearing a priori the most economical form of management on the whole. Men, material and credits can be transferred from one area to another as required. The central authority is always in a position to impose its views and control the acts of agents responsible for the areas and modify them. Moreover, centralization lends itself better to the formation of a body of specialized agents separate from the traditional administrations to the extent that it offers wide possibilities for a career in nature protection; in a word, it is in principle the most favourable kind of organization for administrative continuity. The drawbacks of centralization arise when it is intended to associate local interests to the proper functioning of an area. Therefore it is not surprising to see that all States have opted for centralization for the management of nature reserves which, in effect, are relatively limited spaces set apart from the enterprise of economic and social interests and raise the fewest human problems.

There are divergences when it comes to national parks, for which Spain and Belgium have chosen centralization while Italy combines both formulas. The Gran Paradiso and Abruzzo Parks are autonomous establishments whereas the other parks are administrated by the "Azienda di Stato per le foreste demaniali", an agency of the Ministry of Agriculture. France and Portugal have bestowed legal personality upon their parks while England has found a rather original solution in so far as its national parks are managed by bodies which depend from the local administrations, thus carrying the principle of decentralization to the extreme.

Within the frame of decentralization the internal organization of institutions in charge of park management differ, in principle, in that administrative authority is shared between a director and a deliberating assembly. This assembly, known as the administrative council, approves the park budget and management plans and gives advice on all matters concerning the park. The director, who is in every case appointed by the central authority, prepares and executes the decisions of the administrative council. When police authority normally pertaining to local authorities is transferred to the park, it falls into the hands of the director, as in the case of France.

The composition and modalities of selection of the members of the administrative council are a measure of the effort toward decentralization. Concrete solutions vary widely, not only between one country and another, but also within one single country, and it is not advisable that such questions should receive inflexible answers valid for the entire territory of a nation.

The Law may list the categories of interests which may be represented at an administrative council, as well as the modalities for the appointment of persons and the duration of their terms. But it is preferable to leave up to the constitution of each park the definition of the balance of different interests in relation to local information. The choice is not always very wide: it includes local communities, organizations representing hunters and fishermen, the administrations affected by the park such as those of agriculture and water and forests, scientific institutions - universities in particular - park inhabitants and its users, and organizations for the protection of nature.

As to the procedures for selection of members, they may consist simply in appointment by the central authority, or appointment at the proposal of a legally designated body, or yet emanate from the exercise of other functions, in which case the seat is held ex officio. As a general rule, legislations combine these various procedures. It should be added that the balance between existing interests must take into account the possibility that some members may hold two offices, such as a mayor who represents local communities may also be the chairman of the Department hunters' federation, etc.

The Portuguese Law No. 9/70 presents a variant in that it confers all management attributes to a commission of three members: the Director, appointed by the central Administration, one Representative of the Special Hunting and Fishing Fund and one Representative of the Land Settlement Board. Possibilities for the delegation of power in the Director are very limited (order expenditures, receive income and fix fines for repairs). There is no sharing of authority between an official and an assembly but rather the collegiate guidance by a commission comprising representatives of administrations outside of water and forests in charge of the protected areas. The Portuguese model accepts the principle of decentralization but keeps out of it the effects connected with the participation of local interests.

The legal personality conferred upon the organism managing the park does not carry with it absolute economy. The Director does not come under hierarchical authority of the Minister, but his action and that of the administrative council remain under a control of oversight. It will be recalled that this differs from the ministerial power in that the authority assigned to the "controller" is strictly limited by law. The overseeing is mainly exercised on the approval of the budget, management plans for the interior regulations of the park and acts such as the purchase or sale of real estate property.

Overseeing is exercised by the central Administration which manages nature reserves, to which is added the monetary control of the Ministry of Finance. It is worthwhile adding that the executive members and the Director belong to the cadres of the high central administrations. Even in countries such as France, which have a ministry for the environment, they are usually water and forestry agents.

One must not exaggerate the practical difference between centralized and decentralized administration. We have just seen the limits of the latter; the former may show modalities which bring it close to the decentralized model. When local interests are not involved in the decisions taken for the management of a park, it is still possible to allow them representation in the consultative commissions. This is what the Portuguese Law provides for by placing side by side with the decision-making body a scientific commission called "technical", open to

representatives of the communes as well as hunting, fishing and nature protection bodies. Likewise, the Spanish Law provides for the organization of "directorates" with the participation of "the representatives of local corporations and all title holders affected by the creation of the natural space, the latter to be elected by and within the membership of federated organizations".

These commissions are obviously limited to submitting opinions which they have no legal means of enforcing.

b) Areas created by Local Initiative

Areas created by local initiative are administrated by their originators or, at least, by institutions depending from them; they necessarily fall in the decentralized category.

The specific nature of their administrative problems are mainly due to the contractual character of the bonds between them and the guardian authority, with the State offering a certain number of advantages to the administrators of these areas. In France it partly finances regional natural parks and the Spanish Law provides for the same. In addition, the State may grant assistance in staffing and material as well as of a technical nature. At the very least it insures the guarantee of a juridical status and the right to employ the title of park or reserve as the case may be. As a counterpart, the State exercises control over the administrator for the observance of his undertaking concerning the protection of nature and management of the area.

Guardianship in this case is less concerned with the appropriateness of a given expenditure or the legality of a given administrative act than with the respect for the overall regulation and the objectives assigned to the area. By way of sanction it may withdraw its initial approval.

In the case of natural parks created through the initiative of local communities there also arises the question of the juridical form with which the administrative body will be invested. Legislations have avoided establishing a model statute. Some only go as far as stating that the park will be administrated by the public entity which created it, as in the case of Spain, while others have set down certain principles which may be applied within different institutional bounds. The French Decree of 1975 specifies that the constitutive charter of a regional natural park includes "... the definition of the organism in public or private law especially charged with the management of administration of the park with the participation of representatives of persons living on, or owners of land within the park and of its users who may be grouped into societies...". This text implies that the park should be administrated by an organism different from the communities which created it but offers a choice after the different types of legal persons within the law in force.

The park may be entrusted to a public establishment: in France it would be a joint syndicate of the communes, Departments and Region connected with the park. Its administration may also be entrusted to a society or foundation under the sovereignty of Private Law. French praxis has preferred public institutions, which are more numerous than foundations and societies, for purely empirical reasons. The Law compels local communities to finance the public institutions they may have constituted and these, in turn, offer greater guarantees of financial continuity than could a legal person under Private Law.

Management of a park by a private person, legal or physical, over lands belonging to him and classified at his own initiative does not, in principle, call for comment. Nevertheless on this subject England offers an original example with its National Trust, some of whose features it is worthwhile recalling. The Statutes of the National Trust are defined by law. They provide for a General Assembly open to all members and for a Council which is responsible for the Institution. The Council consists of 52 members, 26 of whom are elected by the General Assembly and 26 nominated by the organizations designated by the legislator. Among them are the British Museum, the Royal Academy, the Society for the Promotion of Nature Reserves, and the Council for the Preservation of Rural England. In this manner, the Trust is safeguarded from the unexpected arrival at its head of irresponsible or incompetent groups.

SECTION II - THE LEGAL MEANS OF PROTECTED AREAS

The preservation of fauna and nature, the chief objective of protected areas, is represented in law by a certain number of limitations upon human activity.

Legislations define protection measures whose more or less extensive character makes it possible to classify the areas to which they apply. Observance of these measures requires adequate legal means, and difficulties in this regard vary according to the type of area being considered. Obviously, the simplest case is that of reserves in the full sense of the word, immune from all human presence, where the problem consists in the well-defined demarcation of the zone and efficient surveillance of its purlieus; opening a protected area to the public complicates matters in a singular manner.

Finally, the presence of private property and residence within the boundaries of a park raises problems of a most difficult order. Legal means should be differentiated according as they are intended to insure the efficacy of measures of protection from the public or from private owners and holders of rights over the land.

A - Public Discipline

The term "public" is meant to include visitors to the area as well as persons using communication routes for their circulation. The latter are merely tolerated, whereas the former are, at the same time, a reason for the existence of the area and a threat to it: a protected area needs visitors to justify its recreational purpose, yet their pullulation or behaviour may jeopardize the preservation of the natural elements. The choice of means to force both to respect natural life is limited to administrative police measures and different means of persuasion to complete them.

1. The Administrative Police

The measure of an administrative police describes the rule of law to limit the exercise of an individual liberty with absolute application to all persons within the category concerned. Protection measures taken in the parks may be analysed as police regulations since they are general, absolute and impersonal.

Their application requires the existence of a control to ascertain infractions, as well as a system for repression. In Anglo-Saxon Law these matters are the subject of specific provisions embodied in each legal or regulatory text, but it is different with countries under Codified Law.

Matters concerning repression come under the criminal law and so the French penal code punishes by fine "whoever may have contravened the decrees and orders legally established by the administrative authority..." (Art. R 26. 15e). Nevertheless it is not unusual to see the code supplemented with specific penal provisions inserted in the text of the law or regulation, but such provisions are not systematic and do not regulate all penal problems. The law to be applied, then, is a combination of the code and the law in question, but whether the penal regime is prescribed by texts specifically for the protected areas or is the result of a code possibly completed by such texts, it will always contain a certain number of indispensable elements.

It must, first of all, indicate who are the agents charged with the control and ascertainment of infractions. In addition to general police and gendarmerie parks also have sworn wardens for this purpose, whose powers must be correspondingly defined in order that they may be efficient. It would be very difficult to verify infractions if wardens were not able to challenge suspected persons, search their bags or vehicles, or take provisional hold of the objects used to commit the infraction or those upon which the infraction has been perpetrated.

Infractions concerning natural property are, in principle, breaches of regulations and the corresponding punishment is relatively light, most often consisting of fines and sometimes short-term imprisonment.

It is customary to provide for the possibility of settlement, allowing the administrative authority not to proceed criminally against the offender, by the latter's payment of a sum known as a compensatory fine. In the case of petty offences, the system of settlement has the advantage of appreciably reducing the cost of repression since the expenses of criminal proceedings are avoided, together with accelerating the collection of fines and lightening the burden of the corresponding tribunals from annoying tasks. Unless otherwise indicated, fines collected devolve to the Public Treasury.

Two elements are added to the basic penalty, to wit, on the one hand, the confiscation of the natural property object of the infraction or the devices employed for committing it and, on the other, reparations for the damage suffered by the area as a result of the infraction.

However severe repression may be, the efficacy of police regulations, in practice, depends on the incentives accompanying them.

2. Incentives

Incentives in protected areas consist of material facilities or services tending to encourage a certain mode of behaviour from the public. It is not a question of legal norms, and they are not mentioned in legislative or regulatory texts. We shall merely pass in review some types of incentives in use in European parks. One group is intended to make the public know the rules to be observed within the area and to make them aware of ecological problems, and includes the distribution of leaflets, organizing exhibitions in the "home in the park" and, in general, all activities known as the "interpretation" of nature.

A second group of persuasive measures tends to lead visitors toward specified zones and discourage them from straying. It includes marked out paths, possibly placing means of locomotion at the disposal of the public, belvederes and lookouts pointed out by signs, and material obstacles to prevent access to certain places, such as markers across a path or thorny vegetation.

The third group includes hotel facilities, parking areas and picnic sites.

Admission fees for entrance to the park are not considered by the legislations of the countries under study, access being free and general. But it is worthwhile bearing in mind this possibility which has been suggested as a means to prevent the entrance of a number of visitors exceeding the capacity of the park.

B - Problems Connected with Private Property

The population of Europe is too high for anyone to find wide uninhabited expanses; the development of protected areas has largely been conditioned by demographic reality, which explains the fact that most parks are situated in mountainous areas, as well as the small number of nature reserves and the institution of these privileged management zones which are the regional natural parks.

Whichever the formula, protected areas in Europe face the acute problems of private property which, in effect, serves as legal support for the social and economic interests which often exert their pressure upon the parks themselves and their purlieus. European legislators have taken trouble to insure control over classified lands and, as counterpart, to find compensation for interests that may be encroached upon.

1. Land Control

Control over the land may be obtained by three means: appropriation, exercise of the right of user and easement.

Appropriation is theoretically the most satisfactory solution. When the administrator of a park is at the same time the owner of its land he will exercise upon it not only the authority conferred upon him by public law but also the prerogatives attaching to ownership.

This is the reason why many large national parks have been instituted on State forests, former princely hunting grounds. If the area has legal personality, it will not, in principle, own the land which would always belong to the State, but this is a minor question of assignment of domain. As regards the problem of private property, what is essential is that the State or its public institutions be the owners of the land. Juridically the public collectivity has available several possibilities for becoming owners of a piece of land: it may receive it as a free gift, it may acquire it amicably or by expropriation. This last resort is always provided for in legislation. But in practice these various means are relatively little used.

In Great Britain the National Trust is an example of a private foundation administrating a public service and enjoying substantial donations. But it must be remembered that the English fiscal system tends precisely to make large private estates disappear by its exceptionally heavy duties on property transfer. Donations to the National Trust are exempt from taxes and are accompanied by clauses which allow the heirs to continue their residence on the property of the donors. In these circumstances they appear rather like the product of a spoliation policy.

The counter-proof exists in the "Conservatoire du littoral français". This public institution whose mission is to safeguard sea and lake shores from urbanization through the acquisition of lands should, in principle, enjoy the benefit of donations but, to this day they have been very limited 1/. Gifts are rare and donors generally prefer to place their trust in private institutions.

As to acquisitions through purchase or expropriation, they require the investment of funds which, by force, limits them to case by case operations. On the other hand, when reserves are created on the initiative of private persons, they must perforce own the lands since this is a necessary condition for the approval.

If the public community is not the owner, it can nonetheless gain exclusive use of the land through lease or by its being placed at the disposal of the community gratuitously. Even these procedures can only have a subsidiary role unless an "obligatory lease" is instituted, as under Portuguese law. It is hardly likely that a number of owners should be willing to lease the lands necessary for the constitution of a protected area, to say nothing of the corresponding cost. Moreover, leasing and a fortiori, gratuitous loans offer no guarantee of future stability.

Donations, purchases and expropriations are then contributory means for including a particularly interesting piece of land within an area, but not to form the whole of it. The subsistence of private property within parks must be recognized subject to a certain subservience which legally emanates from easements in public law established by the legislator. Easement under public law amounts to an obligation or charge on a real estate property.

This last point distinguishes it from police measures, which are not individualized. Laws on parks and reserves do not specify the legal nature of the provisions they carry with them. They merely assert that such or such activity is prohibited within the protected boundaries. The prohibition will be a police measure or an easement according as it applies to all persons or to the owner of lands within the area.

In concrete terms the greater part of easements so established are concerned with obligations "not to act", such as the prohibition to build, to carry out commercial or industrial activities, etc. In regional natural parks one finds obligations "to act" in connexion with buildings to be erected or reconditioned in the traditional style and with specific materials.

These easements added to the obstacles laid by police measures upon the inhabitants are rather heavy to bear, for which reason legislations offer compensations.

2. Compensations

Compensations may be collective or individual. When they are collective they apply to the communes whose territory lies within a park, and to their inhabitants in general. They include, in the first place, the granting of public funds for the improvement of collective appurtenances. In the case of French national parks, the

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1/ There has been only one and, even then, the donor negotiated the surrender of her property in exchange for the payment of taxes she owed to the "Conservatoire" which gives ground to the idea that the donation is in fact a "dation in payment" as in England.

area of park purlieus falls in with this idea of privileged parceling with indemnification for losses suffered by the communes in the park itself. This mechanism obviously presupposes that the territory of the commune not be wholly embraced by the park. Again, an argument adduced by the French Administration to attract the adherence of the communes avails itself of the improvement of the purlieus in exchange for the strict protection implied by the park. The same type of collective compensation prevails in regional natural parks which are sometimes made to be seen as one of the means reanimating rural life in depopulated fields.

In addition, opening a protected area to the public creates a certain amount of employment, both in the park guarding and hotel services, and priority in such employment may be reserved for park inhabitants. But one must see the limits of such compensation. It does allow a peasant to become a warden, chambermaid or the like, but it generates much more interesting sources of income likely to elude the inhabitants and thus give rise to certain bitterness. The concession or authorization to operate hotels, refuges and restaurants will be granted to those who possess both the necessary capital and experience, i.e., persons alien to the park.

Portuguese law brings interesting solutions to these problems by establishing the principle of indemnification for loss of value or yield which the application of easements and administrative measures cause to private property, with several modalities. Interested parties are first offered the possibility of participating, to the extent of their rights, in a mixed economy venture in charge of the management of hotel and tourist facilities of the park. Otherwise they receive a percentage of park receipts. Moreover, the occupation of a private property or the mere reduction of its lucrative possibilities justifies the payment of compensatory rental, unless the Administration has proceeded to expropriation.

Finally, persons residing within the park boundaries have priority in the recruitment for "remunerated duties and functions for all activities carried out in the park" 1/.

At the individual level, when a real compensation exists, mention must be made of deviations from the protection regime in favour of the inhabitants. These derogations are mainly in regard to the gathering of natural fruits and mushrooms as well as the right of putting to pasture a certain number of cattle or sheep. Yet the only true individual compensation consists in indemnification. Easements may carry indemnification with them to the extent that they are not intended for urbanization. Expropriation may also be used as indemnification for burdens suffered, be it by amicable agreement or by requisition of the administrated party.

Spanish law sums up the possibilities of indemnification by specifying that expropriation "may only be resorted to in cases where the owners or holders of titles to rights, affected by the creation of the natural space have failed to agree with the Administration on another form of indemnification or compensation for losses caused by the application of the special regulation". It adds that "indemnification or compensation may consist in a payment in cash or share in the profits of the operation, to be rendered in its entirety or according to terms commonly agreed upon". (Art. 14, par. 1 and 3).

1/ Law No. 9/70 of 19 June 1970, bases VI and VIII.

CONCLUSION

The panoply of legal means available for the protection of the fauna in Europe has already afforded highly satisfactory results. Animal populations on the way to extinction have found new strength, starting with a few remaining stocks, such as the bison in Poland or the ibex of the Alps. Nevertheless there remain some gaps to be filled if it is meant to give preservation of nature its full significance. The improvements brought to the hunting laws or protected areas should not lead, in fact, to a radical division of nature, whose wealth is guarded in one place and totally neglected elsewhere. This requires that the benefit of legal protection regimes be extended to all threatened species which, in turn, requires that these regimes consider all the causes of depletion and, finally, that parks and reserves be considered in a dynamic fashion. They must, in fact, allow not only the preservation of that which exists but also the restoration of natural life more wid wherever such action is possible, through the recovery of former agricultural or industrial areas, among other measures.

ANNEX

LIST OF MAIN LEGISLATIVE AND REGULATORY TEXTS CONCERNING FAUNA, HUNTING AND PROTECTED AREAS 1/

I. BELGIUM

Hunting

- Hunting Law of 28 February 1882.

Protected Areas

- Law of 12 July 1973 on the preservation of nature. Miniteur belge No. 175, 11 September 1973, p. 10306.

II. SPAIN

Hunting

- Hunting Law No. 1/1970 of 4 April 1970. Boletín Oficial del Estado No. 82, 6 April 1970, p. 5348.

Protected Areas

- Law No. 15/1975 of 2 May 1975 concerning protected natural spaces. B.O.E. No. 107, 5 May 1975, p. 9419, and Royal Decree No. 2676/1977 of 4 March 1977 approving the enabling Regulation for the above law. B.O.E. No. 258, 28 October 1977, p. 23773.

III. FRANCE

General Fauna Protection

- Law No. 76-629 of 10 July 1976 concerning the protection of nature. Journal officiel de la République française No. 162, 12/13 July 1976, p. 4203; Decrees Nos. 77-1295 and 77-1296 of 25 November 1977 adopted for the application of Arts. 3, 4 and 5 of Law No. 76-629; Decree No. 77-1300 of 25 November 1977 adopted for the application of Law No. 76-629, and concerning the National Council for the Protection of Nature. J.O. No. 275, 27 November 1977, pps. 5560, 5561 and 5568, respectively.

Hunting

- Rural Code, Arts. 365 to 400. Decree No. 55-433 of 16 April 1955 J.O. No. 94, 18/19 April 1955, p. 3871.

1/ A more complete list of legislation on these subjects is published in Reference Document No. 14 of the FAO Legislation Branch, 1980.

Protected Areas

- Law No. 63-754 of 30 July 1963 instituting a plan for big game hunting in order to establish a necessary balance between agriculture, forestry and hunting. J.O. No. 178, 31 July 1963, p. 7075.
- Law No. 75-602 of 10 July 1975 instituting the "Conservatoire de l'espace littoral et des rivages lacustres". J.O. No. 160, 11 July 1975, p. 7126.
- Decree No. 75-983 of 24 October 1975 instituting the regional natural parks. J.O. No. 251, 28 October 1975, p. 11089.
- Law No. 76-629 of 10 July 1976 concerning the protection of nature. J.O. No. 162, 12/13 July 1976, p. 4203 and, enabling decrees of 25 November 1977, Nos. 77-1298 concerning nature reserves and 77-1299 concerning simplified procedure applicable to breaches of regulations in national parks. J.O. No. 275, 27 November 1977, pps. 5565 and 5568, respectively.

IV. ITALY

Hunting

- Law No. 968 of 27 December 1977 establishing the general principles and provisions governing fauna protection and safeguard and establish the hunting regime. Gazzetta Ufficiale della Repubblica Italiana, No. 3, 4 January 1978, p. 43. This law is completed by Regional and Provincial legislation for which it is the frame.

Protected Areas

- The legislation consists of the constitution of each part, amended and completed by enabling regulations. For the Abruzzo National Park, cf. Royal Decree No. 257 of 11 January 1923, G.U. No. 44, 22 February 1923, and Law No. 1511 of 12 July 1923. G.U. No. 173, 24 July 1923; for the Calabria National Park, cf. Law No. 503 of 2 April 1968. G.U. No. 112, 4 May 1968, p. 2788; for the Circeo National Park, cf. Law No. 285 of 25 January 1934. G.U. No. 54, 5 March 1934; for the Gran Paradiso National Park, cf. Royal Decree Law No. 1584 of 3 December 1922. G.U. No. 291, 13 December 1922; and for the Stelvio National Park, cf. Law No. 740 of 25 April 1935.
- For nature reserves, cf. Orders for their creation.
- Regional legislations also provide for regional park reserves.

V. PORTUGAL

Hunting

- Law No. 2132 of 26 May 1967 establishing the hunting regime. Diário do Governo No. 123, 26 May 1967, p. 1151 and Decree No. 47-347 of 14 August 1967 carrying the enabling regulation for the above law. D.d.G. No. 189, Suppl. 14 August 1967.

Protected Areas

- Law No. 9/70 of 8 June 1970 charging the Government with being the promoter of nature and natural resource protection over the whole of the national territory, in particular, the creation of national parks and other types of reserves. D.d.G. No. 141, 19 June 1970.

VI. UNITED KINGDOM

General Fauna Protection

- Protection of Birds Act. Ref. 1954 - 2 and 3 Eliz. II - ch. 30; 1967 - ch. 46; 1976 - ch. 42.
- Deer Act 1963. ch. 36.
- Badgers Act 1973. ch. 57.

Hunting

- Game Laws (Amendment) Act 1960. Ref. 8 and 9 Eliz. II - ch. 36.
- Game Act 1970. ch. 13. (Amending the 1831 Law on the subject). Protected Areas
- The National Trust Acts 1907-1971. ch. VI.
- National Parks and Access to the Countryside Act 1949. Ref. 12, 13 and 14 Geo. VI - ch. 97.