

CREATOR OF THE PRESENT

Birthing International Environmental Law

By G. Tracy Mehan III

Notwithstanding the turn away from hunting in some circles, both the conservation and environmental movements are indebted to those who enjoy the chase and the taste of wild game. Besides Theodore Roosevelt, of course, Russell Train, first chair of the White House Council on Environmental Quality and second administrator of the EPA, comes to mind. (See my review of a recent book on Train, *A Man of Consequence: Conflicts of a Conservative Conservationist*, July/August 2007). He was a big game hunter who established the African Wildlife Leadership Foundation.

Each year 700,000 firearm deer licenses are issued in Michigan, 600,000 in Wisconsin, more men and women under arms than NATO. Hunters appreciate the outdoor life and understand the importance of protecting the habitat, the ecosystem if you will, of wild species. These consumptive users are a big constituency for land and water conservation. Whether an increasingly urbanized and suburbanized society, one increasingly diverse in ethnic and cultural terms, will provide comparable support for conservation and environmental protection in the years ahead is an open question.

These thoughts came to mind while reading Vivienne Klimke's useful hagiography *A Sustainable Life: Wolfgang E. Burhenne and the Development of Environmental Law*, the story of a key leader in the movement to create international environmental law despite his not having even finished high school.

Burhenne, who was drafted into the Waffen SS at the age of 17 and wounded on the Eastern Front, embraced the resistance to the Nazi regime while hospitalized at a military facility in Dachau. There he learned of the horrors nearby from concentration camp prisoners who worked in the hospital.

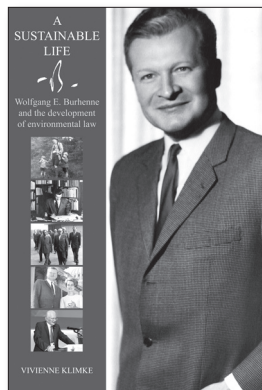
The details of his resistance efforts are a bit murky given that he did not know the names of those for whom he attempted to obtain arms kept at the hospital. He was betrayed by a "Kapo," one of the camp prisoners in a supervisory role at the hospital. With the help of a lawyer paid for by his mother, who argued

The constant in Wolfgang Burhenne's life was his love of hunting in the German forests and Alps, starting in boyhood and continuing through the war and into his 90s. He became a student of wildlife management and, by extension, habitat.

After the war, through an unpaid engagement with a hunting club, he eventually obtained employment with the hunting administration of the Free State of Bavaria. There he became involved in hunting legislation. And so his passion became the preoccupation of his professional life. Hunting shaped his ideas on sustainability, i.e., "use natural resources in a way that allows full recovery." "Sustainable use is a principle I have always known from hunting," maintained Burhenne.

Burhenne and his second wife, Françoise, were "directly involved in nearly all major international conventions concerned with conservation over the past 25 years, and the development of the World Conservation Union (IUCN) Environmental Law Center in Bonn," as described by the United Nations Environment Program when awarding them the UNEP International Environmental Prize in 1991. "No two people have done more to strengthen the position of international and national environmental law as a fundamental element of environmental management," according to the citation. He also received four levels of the Order of Merit of the Federal Republic of Germany. The Burhennes deservedly received the ELI Award in 1997.

Wolfgang Burhenne was a highly successful policy entrepreneur and the node connecting several non-governmental organizations and foundations, some of which he basically created from scratch. His wife provided the intellectual ballast



A Sustainable Life: Wolfgang E. Burhenne and the Development of Environmental Law. By Vivienne Klimke. Self-published (paper); 285 pages; 34 euros.

that Burhenne was a "hero" not yet recovered from his head injury, he avoided a conviction for undermining military morale that would have carried the death sentence. The SS police tribunal only found him guilty of theft, since there was no proof that he had stolen the gun in order to pass it on to the resistance. He was expelled from the SS and given an 18-month sentence of hard physical labor with preventative detention until the end of the war.

while he forged the alliances, negotiated the treaties and raised the money. Together they worked on countless drafts and treaties that are the foundation of much of international environmental law, among them the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the 1979 Convention on the Conservation of Migratory Species of Wild Animals, the 1982 UN World Charter of Nature, the 1985 ASEAN Agreement on the Conservation of Nature and Natural Resources, and the 1992 Convention on Biological Diversity.

Utilizing his observer status at the landmark 1972 UN Conference on the Human Environment in Stockholm, Burhenne brought together all the strands of environment, politics and law. As told by Klimke, "All the strings of parliament, politics and environmental conservation he held in his hands were vibrating with activity."

What gave Burhenne such leverage in international environmental policy, besides his political and social skills, was his mobilization of legal knowledge and talent, an activity in which Françoise was instrumental. He was able to find wealthy donors who were willing to support the development of international environmental law. The IUCN work, in particular, benefited from this support. He established one of the largest environmental law libraries in the world, ECOLEX, which is based in Bonn. He founded the International Council of Environmental Law, now an association of over 300 elected persons hailing from 10 statutory regions covering the world. Burhenne served in an executive function every year since its beginning. He was also an editor of the *Environmental Policy*

and *Law* journal for a time.

While chairman of the IUCN Committee of Legislation and Administration, he hired Françoise Guilmin, a French-speaking Belgian, then a doctoral candidate, to work on a project for the European Council in 1963. Her collection of environmental regulations of different countries was instrumental in the IUCN work leading to the CITES agreement. Both Burhenne and Guilmin were part of the drafting team for the African Convention on Conservation of Nature and Natural Resources.

In 1973 the IUCN established the Environmental Law Center in addition to the Law Commission. Françoise became its

head. There she kept a technical focus on information management, advisory services, and drafting law and policy instruments.

It is a tribute to Wolfgang Burhenne's drive and political acumen that he was a founding father of international environmental law without ever having attended law school. He appreciated the importance of the rule of law and wanted to extend the concept globally.

Closer to home, in Burhenne's beloved Alpine environment, where he hunted and vacationed, he played a critical role in establishing a multi-national approach to protecting its sensitive environment. His work of many years culminated in the Alpine Convention, the first convention for protection of a mountain region in the world. Austria, the European Union, France, Germany, Italy, Liechtenstein and Switzerland all signed on. It entered into force in 1995. It encompasses mountain agriculture, tourism, energy, and other components of ecosystem management. He also supported environmental studies and restoration in the Tyrol and was involved in the founding

of the Hohe Tauern National Park in Austria, the largest in that country. Burhenne was given Austrian citizenship for his work.

In the international environmental law class I teach, my students often debate whether or not the norms established by international treaty really constitute *law* as commonly understood, law that is enforceable. Given that treaties are agreements entered into by sovereign states which, to be candid, cannot be compelled to do anything they really do not want to do, there will always be skeptics. It is also true that many national governments do not have the resources to enforce or adequately police the norms within their own borders. And poverty presents its own challenges that often relegate conservation and environmental protection to a much lower place on the hierarchy of needs, at least in the short term. Indeed, as T. S. Eliot once wrote, "Between the idea/And the reality/Between the motion/And the act/Falls the Shadow."

Environmental treaties and conventions are not perfect and will not restore the garden to any prelapsarian state. Yet, for good or ill, law does have a teaching function as to what society, or the community of nations, believes is worth elevating as normative. Some legal positivists scoff, but that is the common understanding of most citizens who often respect the law more than some lawyers or jurists. Thus, the work of law-giving and treaty-making is important and worth the struggle and imperfections which inevitably afflict human enterprises. It is better done well than poorly, with prudence and wisdom. Wolfgang Burhenne, not a lawyer himself, understood this very well.

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