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## Transnational Alignment of Nongovernmental Organizations for Global Environmental Action

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# Transnational Alignment of Nongovernmental Organizations for Global Environmental Action

## ABSTRACT

*This Note proposes an alternative to the current international legal system for addressing the worldwide environmental crisis. The author describes the conditions of the environment and argues that the current legal system is incapable of responding to the already severe global environmental crisis. The author suggests that a network of environmental nongovernmental organizations (NGOs) can obtain results that are currently beyond the capabilities of either individual states or traditional international organizations. The main function of this type of network would be to collect and disseminate information to facilitate environmental action. The author also proposes a specific construction for an environmental network. This network could act as a proponent of environmentally sound practices and as a watchdog for damaging events. Finally, the author suggests that an environmental NGO network could be most effective if it is recognized by, but not controlled by, an international organization or agreement. Regardless of the methods used, the author urges that this environmental action must occur immediately.*

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## I. INTRODUCTION

In January 1986, environmentalists from Hungary, Austria and West Germany held an open meeting in a Budapest restaurant and signed a statement declaring that they would "use all democratic, peaceful and constitutional means" to change the Hungarian and Austrian governments' decision to build the Nagymaros [Danube River Project] Dam. It was the first time that independent "Green" movements from East and West agreed to conduct a joint campaign in a Communist country.<sup>1</sup>

The view that civilization can master the environment threatens humanity's ability to control the future quality of life on the planet.<sup>2</sup> Known repercussions of existing global environmental damage, even if halted at its current level, may significantly alter life on earth. Further, significant latent ramifications may remain unnoticed for years. The ripple effect of these environmental changes ultimately could reshape not only human lifestyles, but also the balance of power in the international arena by modifying entire ecosystems and shifting the distribution of natural resources.

The present structure for global environmental protection has prompted many critics to call for drastic innovations within the existing framework of international law and organizations and even for radical restructuring of the entire international system. Most of these recommendations exhibit visionary concepts, but they do not account for the frailty of the human character.

This Note will describe an alternative approach to the environmental crisis that is outside the existing structure of the international system, but does not threaten that system. Proposals that people can implement immediately, without significantly restructuring existing institutions, may hasten ultimate acceptance of more far-reaching and perhaps permanent solutions. First, this Note discusses the environmental constraints facing humanity, the perceived inadequacy of the current structure of sovereign states within international law, and some of the proposed solutions. This Note next broadly describes a transnational approach to environmental action. This approach outlines methods that would stimulate the proper functioning of an international system as it presently exists, yet would not implicate the international law concept of "sovereignty."

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1. HELSINKI WATCH REPORT, FROM BELOW: INDEPENDENT PEACE AND ENVIRONMENTAL MOVEMENTS IN EASTERN EUROPE AND THE USSR 66-67 (Oct. 1987).

2. See Kennan, *To Prevent a World Wasteland—A Proposal*, 48 FOR. AFF. 393 (1970), reprinted in ENVIRONMENTAL PROTECTION 107 (L. Jaffe and L. Tribe eds. 1971).

This broad approach allows for many different avenues for the development of nongovernmental organizations (NGOs) and interorganizational networks. By operating outside the sphere of sovereignty, the transnational NGO format may be more palatable to nations as an opportunity for immediate environmental action. Finally, this Note proposes a particular alignment of NGOs that could act as a catalyst for environmental action by the current international system of sovereign states. This alignment of NGOs could act as a "conscience" of the traditional sovereignty system. Time, however, is the paramount consideration in any proposal for environmental reform because time is not only indifferent in its passing, but also completely irreplaceable, making it the most precious resource of all.

## II. THE ENVIRONMENTAL INEFFECTIVENESS OF THE CURRENT INTERNATIONAL LEGAL SYSTEM

### A. *The Status of the Environment*

The earth is a finite resource,<sup>3</sup> and the current scale of economic development may reach the point that "impoverishes rather than enriches."<sup>4</sup> Ozone depletion, global warming, acid rain, deforestation, and desertification are issues of global proportions,<sup>5</sup> posing potentially devastating effects on the world environment. Ozone depletion<sup>6</sup> and the resultant increase in ultraviolet radiation could increase skin cancer,<sup>7</sup> damage human eyesight and immune systems,<sup>8</sup> destroy major elements in the food chain,<sup>9</sup> and reduce food production.<sup>10</sup> The effects of global warming<sup>11</sup> could include flooded coastal cities from melting polar icecaps,<sup>12</sup>

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3. See Chayes, *International Institutions for the Environment*, in LAW, INSTITUTIONS, & THE GLOBAL ENVIRONMENT 3 (J. Hargrove ed. 1972).

4. Handl, *Environmental Protection and Development in Third World Countries: Common Destiny—Common Responsibility*, 20 N.Y.U. J. INT'L L. & POL. 603, 603 (1988).

5. See Taubenfeld, *The Atmosphere: Change, Politics and World Law*, 10 DEN. J. INT'L L. & POL'Y 469, 474 (1981); see also Handl, *supra* note 4, at 603.

6. For a description of the process of ozone depletion, see Kindt & Menefee, *The Vexing Problem of Ozone Depletion in International Environmental Law and Policy*, 24 TEX. INT'L L.J. 261, 262-267 (1989).

7. See Ho, *U.N. Recognition of the Human Right to Environmental Protection*, 2 EARTH L.J. 225, 237 (1976).

8. See Note, *The Montreal Protocol: The First Step Toward Protecting the Global Ozone Layer*, 20 N.Y.U. J. INT'L L. & POL. 793, 808 (1988).

9. *Id.*

10. *Id.*

11. Ozone depletion also contributes to global warming. For a description of the

imperiled fresh water supplies,<sup>13</sup> and drastically altered world food production.<sup>14</sup> Acid rain<sup>15</sup> kills lakes and forests,<sup>16</sup> damages outdoor structures,<sup>17</sup> and can contaminate underground supplies of drinking and irrigation water.<sup>18</sup> Unabated deforestation may cause the extinction of twenty percent of all species on earth by the turn of the century.<sup>19</sup> The loss of the biological diversity of tropical rain forests<sup>20</sup> would be particularly disturbing, since most new medicines and natural pesticides originate from newly discovered species in tropical rain forests.<sup>21</sup>

Aside from physical and biological effects, environmental degradation also may have political consequences. Environmental deterioration and the depletion of natural resources, for example, could lead to international tension,<sup>22</sup> as political strife is often present in areas of significant environmental stress.<sup>23</sup> Despite the presence of these dangers, some pre-

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global warming process, see Nanda, *Global Warming and International Environmental Law—A Preliminary Inquiry*, 30 HARV. INT'L L.J. 375, 375 (1989); Note, *Carbon Dioxide's Threat to Global Climate: An International Solution*, 17 STAN. J. INT'L L. 389, 390-92 (1981).

12. See Taubenfeld, *supra* note 5, at 477.

13. See Weiss, *A Resource Management Approach to Carbon Dioxide During the Century of Transition*, 10 DEN. J. INT'L L. & POL'Y 487, 488 (1981).

14. See Taubenfeld, *supra* note 5, at 477; see also Note, *supra* note 11, at 391. Though the wheat belt of Canada and the United States could become a dust bowl, the Soviet Union could increase food production from presently unarable land. See Weiss, *supra* note 13, at 499; see also Stevens, *In a Warming World, Who Comes Out Ahead?*, N.Y. Times, Feb. 5, 1991, at B5, col. 1.

15. For a discussion of acid precipitation or deposition, see *Canada-United States Institute Proceedings*, 5 CAN.-U.S. L.J. 1 (1982). See generally NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM, ANN. REP., 1989 AND FINDINGS UPDATE (1990).

16. See Roberts, *The Transnational Implications of Acid Rain—Introductory Remarks*, 5 CAN.-U.S. L.J. 2, 5-6 (1982).

17. *Id.*

18. *Id.* The national economy of Canada is severely threatened by acid rain's potential disruption of its tourist, timber, and commercial fishing industries. *Id.*

19. See Handl, *supra* note 4, at 605 & n.9.

20. Rain forests may contain 50% of all species on the planet. See Recent Development, *Environmental Law—Brazil Enacts New Protections for the Amazon Rain Forest*, 30 HARV. INT'L L.J. 503, 509-10 (1989).

21. See *id.* at 510.

22. See Handl, *supra* note 4, at 605; see also Mathews, *Tackling the Institutional Barriers*, 15 E.P.A. J., July-Aug. 1989, at 11. The unrest in El Salvador and Haiti may spring from environmental as much as political problems. See Handl, *supra* note 4, at 605-06.

23. See R. FALK, *THIS ENDANGERED PLANET* 295 (1971). The devastated environment of Poland has placed the health of one-third of its entire population at risk. See HELSINKI WATCH REPORT, *supra* note 1, at 91. The epic drought in East Africa, which

fer to delay action until all gaps in knowledge are filled. The uncertainty in the evidence, however, is such that "we would probably be even more worried than we are now if we knew more than we do."<sup>24</sup>

### B. *The Status of International Law*

The earth's ecosystem, an interrelated whole of air, water, soil, and wildlife,<sup>25</sup> is completely unregulated by civilization's artificial political boundaries.<sup>26</sup> Those who threaten the ecosystem anywhere, threaten it everywhere,<sup>27</sup> making unilateral attempts by individual nations to address environmental problems ineffectual.<sup>28</sup> One possibility for a uniform policy, the international legal system, currently is inadequate to cope with "the environmental specters at hand."<sup>29</sup>

Critics of the international legal system primarily have blamed the doctrine of state sovereignty, the foundation of international law, for the stalemate in environmental action.<sup>30</sup> "[N]ational sovereignty implies the full legal control over national resources."<sup>31</sup> Because the element of sov-

aroused a massive and heavily publicized Western relief movement for the region's starving masses in 1984, also could be a principal cause of the rebellion in Ethiopia that thwarted relief efforts. For a discussion of the rebellion in areas of desertification, see Schulz, *Mechanization and Marginal Lands in Southwest Asia*, in *DESERTIFICATION AND DEVELOPMENT: DRYLAND ECOLOGY IN SOCIAL PERSPECTIVE* 36 (B. Spooner & H. Mann eds. 1982). For a discussion of the Ethiopian relief effort in 1984, see Johnston, *Systemic Environmental Damage: The Challenge to International Law and Organization*, 12 SYRACUSE J. INT'L L. & COM. 255, 260 n.16 (1985).

24. Clapham, *Coals, Cars and Questions: Knowns and Unknowns About Acid Rain*, 5 CAN.-U.S. L.J. 32, 38 (1982).

25. See A. KISS, *SURVEY OF CURRENT DEVELOPMENTS IN INTERNATIONAL ENVIRONMENTAL LAW* 13, 15 (1976).

26. See Anand, *Development and Environment: The Case of the Developing Countries*, 20 INDIAN J. INT'L L. 1, 16 (1980).

27. See Kennan, *supra* note 2, at 107.

28. See Note, *supra* note 11, at 401.

29. Henson & Hively, *Toward an International Law of the Atmosphere*, 77 AM. SCIENTIST 324 (1989); see also A. SPRINGER, *THE INTERNATIONAL LAW OF POLLUTION* 31 (1983). Even the recent Montreal Protocol on Substances that Deplete the Ozone Layer, done Sept. 16, 1987, reprinted in 26 I.L.M. 1541 (1987), to the Vienna Convention for the Protection of the Ozone Layer, done Mar. 22, 1985, reprinted in 26 I.L.M. 1516 (1987), which imposes significant restrictions on the production of ozone-depleters, has been criticized as inadequate and defective. See Note, *supra* note 8, at 793-94, 799.

30. See C. JENKS, *LAW IN THE WORLD COMMUNITY* 31 (1967); see also W. FRIEDMANN, *THE CHANGING STRUCTURE OF INTERNATIONAL LAW* 235, 365-66 (1964).

31. W. FREIDMANN, *supra* note 30, at 17. Nations treasure the right to exploit state resources, see Weiss, *supra* note 13, at 504, and the sovereign right to exploit state re-

ereignty is embedded in current international agreements that address the environment,<sup>32</sup> states currently may preside over wholesale degeneration of the environment with virtually no fear of reprisal.<sup>33</sup> State sovereignty has "encouraged competition among nations to exploit natural resources on a global scale."<sup>34</sup> This competitive economic development among nations has frustrated international consensus on environmental objectives.<sup>35</sup> The international structure promotes competition between nations, but environmental protection requires cooperation among nations.<sup>36</sup>

Nations, however, generally act only when it is in their interest.<sup>37</sup> When weighing the immediate economic future against the entire planet's distant prospects, nations often choose self-serving present goals, to the long-term detriment of the environment.<sup>38</sup> Yet, "no effective protection can be obtained if governments . . . remain the sole judges of their interests and responsibilities in environmental policy matters, and if the only enforcement of international environmental agreements remains that administered by self-interested national governments."<sup>39</sup> Since na-

sources is strong in both civil and common law states, see W. GORMLEY, *HUMAN RIGHTS AND ENVIRONMENT: THE NEED FOR INTERNATIONAL CO-OPERATION* 37 (1976).

32. See Vienna Convention for the Protection of the Ozone Layer, *supra* note 29; Declaration of the United Nations Conference on the Human Environment, done June 16, 1972, principle 21, reprinted in 1 *INTERNATIONAL PROTECTION OF THE ENVIRONMENT—TREATIES AND RELATED DOCUMENTS* 118, 120 (B. Rüster & B. Simma eds. 1975). This Declaration is the environment's equivalent to the United Nations Universal Declaration of Human Rights.

33. See A. SPRINGER, *supra* note 29, at 31; see also Robinson, *Introduction: Emerging International Environmental Law*, 17 *STAN. J. INT'L L.* 229, 245 (1981).

34. L. CALDWELL, *IN DEFENSE OF EARTH: INTERNATIONAL PROTECTION OF THE BIOSPHERE* 109 (1972).

35. See Howland, *Chernobyl and Acid Rain Deposition: An Analysis of the Failure of European Cooperation to Protect the Shared Environment*, 2 *TEMP. INT'L & COMP. L.J.* 1, 29 (1988).

36. See *id.* at 26; see also R. FALK, *supra* note 23, at 326-67.

37. See Rosencranz, *The International Law and Politics of Acid Rain*, 10 *DEN. J. INT'L L. & POL'Y* 511, 514 (1981). Further, state freedom cannot be restricted except by consent or agreement. See Gaines, *International Principles for Transnational Environmental Liability: Can Developments in Municipal Law Help Break the Impasse?*, 30 *HARV. INT'L L.J.* 311, 316 (1989).

38. See L. CALDWELL, *supra* note 34, at 110-11; see also A. SPRINGER, *supra* note 29, at 31-32.

39. L. CALDWELL, *supra* note 34, at 154. At the 1972 United Nations Conference on the Human Environment at Stockholm, resulting in the formation of the United Nations Environment Programme (UNEP), the developed nations argued for strong pollution control while the developing nations vehemently protested that strong pollution con-

tions fear that environmental endeavors will jeopardize their competitiveness in the world economy,<sup>40</sup> the classic prisoner's dilemma develops.<sup>41</sup> The unsavory option left to nations is unilateral environmental regulation compensated by quotas, tariffs, or subsidies to protect economic competitiveness.<sup>42</sup>

The constraints on developing nations, which traditionally favor economic goals over environmental protection,<sup>43</sup> exemplify the dilemma created by the doctrine of national sovereignty. Developing nations often believe that the developed nations not only have caused the bulk of global environmental deterioration,<sup>44</sup> but also have environmentally exploited the developing nations by extracting natural resources<sup>45</sup> and dumping products restricted in developed nations into Third World markets.<sup>46</sup>

One author summarizes the concerns of developing nations in five major points.<sup>47</sup> First, developing nations fear that developed countries, through "rigorous environmental standards" and "neo-protectionism,"

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trol would strangle development. Later, at the 1982 Nairobi Session of a Special Character at UNEP headquarters, a celebration of the Stockholm Conference's tenth anniversary, the positions of the developed and developing nations were reversed. See Development, *The United Nations Environment Programme After a Decade: The Nairobi Session of a Special Character, May 1981*, 12 DEN. J. INT'L L. & POL'Y 269, 280-81 & n.73 (1983).

40. See Howland, *supra* note 35, at 25; see also A. KISS, *supra* note 25, at 14.

41. In a prisoner's dilemma situation, each party would gain the most if all parties cooperated. Each party, however, is uncertain whether the others will cooperate, and if less than all the parties cooperate, each party will gain more by not acting at all. "Consequently, the individually rational outcome is that none of the parties cooperate." Hahn & Richards, *The Internationalization of Environmental Regulation*, 30 HARV. INT'L L.J. 421, 429 (1989). For an example of the prisoner's dilemma, see *Auto Industry Supports Production Freeze to Protect Ozone Layer, If Globally Accepted*, 10 Int'l Env't Rep. (BNA) No. 6, at 275 (June 10, 1987).

42. See Howland, *supra* note 35, at 26. Both protective tariffs and quotas may raise problems under the General Agreement on Tariffs and Trade (GATT) and may create international tension. *Id.* at 27; see also A. SPRINGER, *supra* note 29, at 34. For an example of international posturing because of unilateral environmental action, see *U.S. Ozone Protection Policy Sabotaged, Natural Resources Defense Council Says*, 10 Int'l Env't Rep. (BNA) No. 5, at 196-97 (May 13, 1987).

43. See Sinjela, *Developing Countries Perceptions of Environmental Protection and Economic Development*, 24 INDIAN J. INT'L L. 489, 496 (1984); see also Leonard & Morell, *Emergence of Environmental Concern in Developing Countries: A Political Perspective*, 17 STAN. J. INT'L L. 281, 282-83 (1981).

44. See Sinjela, *supra* note 43, at 491, 497; see also W. GORMLEY, *supra* note 31, at 8.

45. See Sinjela, *supra* note 43, at 495.

46. See *id.* at 496.

47. W. GORMLEY, *supra* note 31, at 8.



will restrict the international trade of goods from developing nations. Second, developed countries will depend less on raw materials from developing countries because of increased interest in recycling and will demand fewer agricultural products in which pesticide residue is found because of a new emphasis on non-polluting technology. Third, developing countries fear their developmental aid will be reduced when developed countries concentrate on their own domestic environmental issues. Fourth, developed countries may dictate environmental standards to developing countries without regard to the effects of those standards on the developing countries. Finally, developing countries fear that developed countries will impose their own priorities of environmental issues on the developing countries.<sup>48</sup>

Facing suffocating poverty, developing nations perceive the expense of environmental protection as a threat to desperate attempts at improving citizens' lives or as an "unaffordable luxur[y]."<sup>49</sup> To overcome the environmental pollution resulting from poverty, such as sewage problems,<sup>50</sup> developing nations also are confronted with technological advances that can "endanger the very natural resource base upon which the long-term prospects of societal well-being rest."<sup>51</sup> Thus, Third World nations are facing a spiraling decline in their environment and an unprecedented ecological disaster.<sup>52</sup>

State sovereignty also plagues international organizations such as the United Nations.<sup>53</sup> Because intergovernmental international organizations are effective only to the extent that nations consent to any endeavor,<sup>54</sup> these organizations are subservient to the will of member nations.<sup>55</sup> Na-

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48. *Id.*

49. Garcia & Howland, *Cuban Environmental Law: An Analysis From the International Right to Developmental Perspective*, 2 LA RAZA L.J. 62, 65 (1988). "[P]ersons who do not know where their next meal is going to come from cannot be expected to worry too much about . . . the environment." Sinjela, *supra* note 43, at 493.

50. See Sinjela, *supra* note 43, at 497; see also Handl, *supra* note 4, at 607.

51. Handl, *supra* note 4, at 607. Developing nations hope that the development dilemma will fade as knowledge is gleaned from the mistakes of the developed nations' experience. See Robinson, *Problems of Definition and Scope*, in LAW, INSTITUTIONS, & THE GLOBAL ENVIRONMENT, 44, 49 (J. Hargrove ed. 1977); see also Sinjela, *supra* note 43, at 497. A country's natural resource base includes basic environmental elements such as air, water, soil, and wildlife.

52. See Handl, *supra* note 4, at 604. See generally Anand, *supra* note 26, at 1-19.

53. See Editorial Comment, *HABITAT and the Human Environment: Challenge to the Non-Governmental Company*, 2 EARTH L.J. 107, 108 (1976); see also W. GORMLEY, *supra* note 31, at 135-36.

54. See W. FRIEDMANN, *supra* note 30, at 34-35.

55. See J. SCHNEIDER, *WORLD PUBLIC ORDER OF THE ENVIRONMENT: TOWARDS*

tions are reluctant to submit to the control of an international authority, despite the threat to the global environment.<sup>56</sup> "The UN has neither the resources, the consensus, nor the prestige to impose its will on its stronger members."<sup>57</sup> Accordingly, the self-interested politics of state sovereignty undermine the objectives of the United Nations specialized agencies, converting them into mere pawns in a political chess game.<sup>58</sup>

One specialized agency, the United Nations Environment Programme (UNEP),<sup>59</sup> has the mandate to serve as a catalyst for environmental action.<sup>60</sup> UNEP fulfills this mandate through (1) global monitoring of the environment through the Earthwatch Program, (2) environmental planning and management using the information gathered by Earthwatch, and (3) the dissemination of environmental information worldwide.<sup>61</sup> Environmentalists have been disappointed by UNEP,<sup>62</sup> however, because the same tensions and clashing interests of state sovereignty that plague the United Nations also render UNEP impotent.<sup>63</sup> UNEP's most critical failures are its inability to raise public awareness and its lack of influence in national political forums.<sup>64</sup>

AN INTERNATIONAL ECOLOGICAL LAW AND ORGANIZATION 80-81 (1979).

56. See W. GORMLEY, *supra* note 31, at 219.

57. R. FALK, *supra* note 23, at 315. The United Nations also "suffers from a tendency to reach decisions on the basis of political, ethnic, and religious affiliations rather than through an interpretation of the facts." *Id.*

58. See D. WILLIAMS, *THE SPECIALIZED AGENCIES AND THE UNITED NATIONS—THE SYSTEM IN CRISIS* 233 (1987). The United Nations Specialized Agencies are in a

[s]tate of "crisis" [from] the culmination of certain factors which have long operated: the use of Specialized Agency forums to discuss subjects not clearly related to their functional responsibilities; the lack of co-ordination between the Agencies based on lack of authority in the United Nations; declining standards among the staff; voting procedures unrelated to national strength or to financial contributions; and, above all, profound differences of view among the members of the United Nations about the aims and methods of economic and social policy.

*Id.*

59. See *supra* note 39.

60. See Editorial Comment, *supra* note 53, at 312.

61. See Note, *The Challenge of International Environmental Management: A Critique of the United Nations Environment Programme*, 18 VA. J. INT'L L. 269, 270-72 (1978).

62. See Howland, *supra* note 35, at 10; see also A. SPRINGER, *supra* note 29, at 33.

63. See W. GORMLEY, *supra* note 31, at 136; see also Editorial Comment, *supra* note 53, at 312-13; Smith, *The United Nations and the Environment: Sometimes a Great Notion?*, 19 TEX. INT'L L.J. 335, 340 (1984).

64. See Note, *supra* note 61, at 280. Even UNEP's most successful achievement, Earthwatch, has proven only minimally effective. *Id.*; see also J. SCHNEIDER, *supra* note 55, at 125-26. UNEP also suffers from a lack of funding, and any actions that offend a

The United Nations has attempted to create an interactive partnership with nongovernmental organizations (NGOs) that are not formally connected with either a particular government or the United Nations by granting consultative status to these NGOs.<sup>66</sup> This system of consultative NGOs is in a state of crisis, however, because it still operates within the confines of state sovereignty. As a result, the NGOs have virtually no influence in United Nations policymaking.<sup>66</sup> Political constraints pervade the system, and most government delegates do not even bother to read material submitted by NGOs.<sup>67</sup> It is doubtful that NGOs can contribute to international policy within the confines of an intergovernmental organization<sup>68</sup> so long as their efforts are still filtered through an organization dominated by state sovereignty. These consultative NGOs are directing their actions to the wrong audience, an audience of governments.

### C. Current Proposals

The primary current environmental reforms proposed for the international legal system will affect litigation. These proposed reforms include shifts in established burdens of proof,<sup>69</sup> a form of universal jurisdiction over environmental violations litigable by any nation,<sup>70</sup> and standing before international courts for NGOs and other non-state actors.<sup>71</sup>

Traditionally, under the state sovereignty doctrine, only states have standing to litigate before an international court,<sup>72</sup> and states must consent to jurisdiction for each specific claim.<sup>73</sup> States, however, rarely con-

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contributing nation could result in a withdrawal of financial support. See Development, *supra* note 39, at 284. Former United States Environmental Protection Agency (EPA) Administrator William Ruckelshaus described United Nations funding for the environment as "laughable." *Ruckelshaus Sees Self-Interest as Key to Improving Global Environment*, 12 Int'l Evt Rep. (BNA) No. 5, at 234, 235 (May 10, 1989).

65. See Gunter, *Toward a Consultative Relationship Between the United Nations and Non-Governmental Organizations?*, 10 VAND. J. TRANSNAT'L L. 557, 559 (1977).

66. *Id.* at 558.

67. *Id.* at 578-82. NGOs denounce the artificially-tiered system of participation within the United Nations as a divide and conquer policy. *Id.* The participatory rights of consultative NGOs are categorized by the function, subject matter, or representative capacity of each NGO. *Id.* at 561. The power of NGOs is further circumscribed because they may not criticize United Nations member governments by name. *Id.* at 578.

68. *Id.* at 586.

69. See W. GORMLEY, *supra* note 31, at 38-39.

70. See J. SCHNEIDER, *supra* note 55, at 130.

71. See *id.* at 130-31; see also W. GORMLEY, *supra* note 31, at 225.

72. See Sands, *The Environment, Community, and International Law*, 30 HARV. INT'L L.J. 393, 397 (1989).

73. See W. GORMLEY, *supra* note 31, at 219-20.

sent to jurisdiction for environmental claims.<sup>74</sup> States also are reluctant to bring environmental claims for political reasons or because it could establish precedents that could be used against them in the future.<sup>75</sup> In general, international environmental litigants face almost insurmountable obstacles, including proving the occurrence of harm,<sup>76</sup> delineating causation from other ecological influences,<sup>77</sup> calculating the value of the damages to the environment,<sup>78</sup> and the inability of most remedies to satisfactorily compensate for the abuse to the environment.<sup>79</sup> The gradual evolution of reform in customary international law may be too slow to protect the environment adequately.<sup>80</sup> "The broader international effort to improve our stewardship of this . . . ecosphere must find the power it needs outside the law of liability and compensation."<sup>81</sup>

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74. *Id.* at 220.

75. See Sands, *supra* note 72, at 393, 406-07.

76. See Howland, *supra* note 35, at 31; see also W. GORMLEY, *supra* note 31, at 38.

77. See Nanda, *supra* note 11, at 384; see also Howland, *supra* note 35, at 32; Comment, *The Convention on Long-Range Transboundary Air Pollution: Meeting the Challenge of International Cooperation*, 30 HARV. INT'L L.J. 447, 461 (1989).

78. See Sands, *supra* note 72, at 407; see also Rosencranz, *supra* note 37, at 518.

79. See A. SPRINGER, *supra* note 29, at 32.

80. See *id.* at 31.

81. Gaines, *supra* note 37, at 349. For more extensive studies of environmental liability and dispute resolution, see generally J. MACDONALD & J. CONWAY, ENVIRONMENTAL LITIGATION (1972); Beers, *Standing and Related Procedural Hurdles in Environmental Litigation*, 1 J. ENVTL. L. & LITIGATION 65 (1986); Bilder, *An Overview of International Dispute Settlement*, 1 EMORY J. INT'L DISPUTE RESOLUTION 1 (1986); Bilder, *International Dispute Settlement and the Role of International Adjudication*, 1 EMORY J. INT'L DISPUTE RESOLUTION 131 (1987); Chester, *Remedies in Canadian Courts*, 5 CAN.-U.S. L.J. 85 (1982); Hassler & O'Connor, *Woodsy Witchdoctors Versus Judicial Guerrillas: The Role and Impact of Competing Interest Groups in Environmental Litigation*, 13 B.C. ENVTL. AFF. L. REV. 487 (1986); Herzberg, *Remedies in American Courts*, 5 CAN.-U.S. L.J. 91 (1982); Partan, *The "Duty to Inform" in International Environmental Law*, 6 B.U. INT'L L.J. 43 (1988); Stein, *The Settlement of Environmental Disputes: Towards a System of Flexible Dispute Settlement*, 12 SYRACUSE J. INT'L L. & COM. 283 (1985); Sviridoff, *Recent Trends in Resolving Interpersonal, Community, and Environmental Disputes*, 35 ARB. J. 3, 7-8 (1980); Wilcox, *The Role of Environmental Groups in Litigation*, 10 ADELAIDE L. REV. 41 (1985); Note, *International Liability for Nuclear Pollution*, 11 SUFFOLK TRANSNAT'L L.J. 75 (1987); Note, *On the Brink of an Ecological Calamity: Acid Rain, Transboundary Air Pollution and Environmental Law in West Germany*, 12 SYRACUSE J. INT'L L. & COM. 325, 350-57 (1985) [hereinafter *On the Brink of an Ecological Calamity*]; Comment, *Resolving International Environmental Disputes Between Private Parties and States*, 1 EMORY J. INT'L DISPUTE RESOLUTION 81 (1986).

For an interesting comparison of civil and common law, see Merryman, *On the Convergence and Divergence of the Civil Law and the Common Law*, 17 STAN. J. INT'L L. 357 (1981).

Another popular proposal suggests that environmental degradation raises fundamental issues of human rights law.<sup>82</sup> An exception to the rule against international standing for non-state entities exists for human rights violations, allowing individual persons to litigate this type of claim before international courts.<sup>83</sup> The Declaration of the United Nations Conference on the Human Environment maintains that "[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being."<sup>84</sup> It has also been proclaimed that "[t]he right to live is the right from which all other rights stem."<sup>85</sup> United Nations recognition of an interconnection between human rights and a healthy environment would enable the United Nations Commission on Human Rights to include environmental violations within its broad scope.<sup>86</sup>

Many other innovative options abound.<sup>87</sup> Proposals concerning regional intergovernmental organizations or new organs within the United Nations,<sup>88</sup> however, still operate within the constraints of state sovereignty.<sup>89</sup> Thus, reform for environmental action must look beyond the boundaries of state sovereignty.

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82. See W. GORMLEY, *supra* note 31; see also Ho, *supra* note 7.

83. See Howland, *supra* note 35, at 30, 36.

84. Declaration of the United Nations Conference on the Human Environment, *supra* note 32, principle 1.

85. Declaration of the Hague, Mar. 11, 1989, *reprinted in* Sands, *supra* note 72, at 417.

86. See Ho, *supra* note 7, at 228. Another suggestion is to transform the United Nations Trusteeship Council into a United Nations Human Rights and Environment Council. See W. GORMLEY, *supra* note 31, at 129, 229-30.

87. Some of these other approaches to international environmental issues include intergenerational environmental trust funds, see R. FALK, *supra* note 23, at 334-40; individual state custodianship of the environment through powers delegated on behalf of the world community, see Chayes, *supra* note 3, at 12-15; a United Nations agency for environmental dispute settlement and a United Nations Environmental Councilship, see L. CALDWELL, *supra* note 34, at 162-69; a United Nations authority for environmental protection, see *24 Nations Call for Global Protection of Environment by 'Powerful' U.N. Authority*, 12 Int'l Env't Rep. (BNA) No. 4, at 176 (Apr. 12, 1989); an international fund for financing environmental technology in developing nations, see *Nations Back Tougher CFC Measures, but Decline Setting up Climate Fund*, 12 Int'l Env't Rep. (BNA) No. 5, at 225, 226 (May 10, 1989); state responsibility, see Howland, *supra* note 35, at 34; equitable use, see Weiss, *Conservation and Equity Between Generations*, in CONTEMPORARY ISSUES IN INTERNATIONAL LAW 245 (T. Buergenthal ed. 1984); insurance, see J. SCHNEIDER, *supra* note 55, at 108-10, 131-32; and environmental degradation as an international crime, see Howland, *supra* note 35, at 34.

88. See R. FALK, *supra* note 23, at 334-40.

89. See W. GORMLEY, *supra* note 31, at 34-35.

### III. TRANSNATIONAL APPROACH TO GLOBAL CONSENSUS

#### A. *Transnationalism*

The technical definition of "international" is contact between state governments.<sup>90</sup> Professor Jessup coined the term "transnational" to embrace the more frequent nongovernmental contacts that "transcend national frontiers."<sup>91</sup> Transnationalism<sup>92</sup> destroys the fiction, created by internationalism, that the sovereign state symbolizes a nation's government and populace as a single entity.<sup>93</sup> Instead, state governments must address a multitude of social concerns while subject to an array of political pressures and constituencies.<sup>94</sup> Thus, governmental action sweeps broadly, sacrificing "depth, objectivity, and efficiency."<sup>95</sup> Even an environmentally-oriented government may be trapped politically by the demands of a diverse national constituency.<sup>96</sup> Therefore, environmental advocacy must recast its image so it is no longer the separate concern of a distinct individual constituency fighting for limited government attention. Environmental action must take a transnational approach to become a concern that pervades every sector of each national constituency.

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90. P. JESSUP, *TRANSNATIONAL LAW* 1 (1956).

91. *Id.* International relations denote co-existence; transnational relations suggest co-operation. See W. FRIEDMANN, *supra* note 30, at 37. Nongovernmental entities include individuals, corporations, intergovernmental organizations, nongovernmental organizations, and other private groups. See P. JESSUP, *supra* note 90, at 2-4. A nongovernmental organization (NGO), acting in more than one state, is by definition a transnational entity.

92. For purposes of this Note, transnational relations will encompass "contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of governments . . . . Thus, a transnational interaction may involve governments, but it may not involve only governments: Nongovernmental actors must also play a significant role." Nye & Keohane, *Transnational Relations and World Politics: An Introduction*, 25 *INT'L ORGANIZATION* 329, 331-32 (1971).

93. See, e.g., *id.* at 724 ("[O]ver the bulk of recorded history man has organized himself for political purposes on bases other than those now subsumed under the concepts 'state' and 'nation-state.'"); see also W. FRIEDMANN, *supra* note 30, at 247.

94. See Sands, *supra* note 72, at 397; see also Slouka, *International Environmental Controls in the Scientific Age*, in *LAW, INSTITUTIONS, & THE GLOBAL ENVIRONMENT* 208, 221 (J. Hargrove ed. 1972).

95. Frantz, *The Role of NGOs in the Strengthening of Civil Society*, 15 *WORLD DEV.* 121, 123 (Autumn Supp. 1987).

96. See R. FALK, *supra* note 23, at 417; see also Leonard & Morell, *supra* note 43, at 305.

## B. *The Basic Functions of Transnational Networks*

Transnationalism is the preeminent vehicle for building a global environmental consensus.<sup>97</sup> An environmental consensus requires research and information.<sup>98</sup> To facilitate this consensus, a centralized entity, such as an international environmental network of NGOs, could function as a clearinghouse and focal point for environmental issues. This network could take on many forms, but it should fulfill certain basic functions, including gathering, analyzing, and disseminating information on a global scale.<sup>99</sup> This network should have a central data bank that would collect, catalog, store, and verify information.<sup>100</sup> This network also should analyze information by standardizing technical data from around the world,<sup>101</sup> establishing international environmental norms,<sup>102</sup> clarifying complex issues for the world public,<sup>103</sup> correcting misperceptions,<sup>104</sup> and accurately calculating the benefits and costs of environmental regulation.<sup>105</sup> In addition, this network must disseminate information by in-

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97. See Sands, *supra* note 72, at 399.

Indeed, the very term "community of states" seems increasingly self-contradictory. Notions of community suggest a sense of deep, horizontal comradeship among groups and individuals, growing out of its members' ability to imagine communion amongst themselves. Traditional notions of sovereignty, territory and state lie uncomfortably with the very idea of community, since they establish a territorial and proprietary notion of international relations which belies a sense of common interest and common action. Paradoxically, it is precisely non-state actors whose common interests are capable of developing into such powerful bonds, such as people, corporations and NGOs.

*Id.* (footnote omitted).

98. See Rosencranz, *supra* note 37, at 521; see also Nanda, *supra* note 11, at 376, 389.

99. See K. DAHLBERG, M. SOROOS, A. FERARU, J. HARF, & B. TROUT, ENVIRONMENT AND THE GLOBAL ARENA 19 (1985) [hereinafter K. DAHLBERG]. All relevant information, whether obtained directly or by other organizations such as the World Meteorological Organization (WMO), should be collected. For a description of WMO, see Weiss, *The International Implications of Seasonal Climate Forecasting*, 17 STAN. J. INT'L L., 315 (1981).

100. See Note, *supra* note 61, at 279; see also Chayes, *supra* note 3, at 11. An environmental data bank could highlight gaps in research and limit costly duplication of research. See W. GORMLEY, *supra* note 31, at 136.

101. See Clapham, *supra* note 24, at 34-35; see also Smith, *supra* note 63, at 349.

102. See Kennan, *supra* note 2, at 109.

103. See L. CALDWELL, *supra* note 34, at 155; see also J. SCHNEIDER, *supra* note 55, at 78.

104. See Taubenfeld, *supra* note 5, at 470; see also Hahn & Richards, *supra* note 41, at 429.

105. See Howard, *The Economic Impact*, 5 CAN.-U.S. L.J. 41, 42 (1982); see also

forming and educating the world public.<sup>106</sup> Even significant environmental damage is not visible until the situation becomes extreme, and therefore, the world public must be convinced to act through education.<sup>107</sup> Heightened public awareness could "ameliorate the naive but still widespread feeling that environmental and development goals are in fundamental conflict."<sup>108</sup> Direct information and knowledge also could overcome pervasive apathy<sup>109</sup> and, perhaps, even influence people to alter their individual lifestyles voluntarily to lessen strain on the environment.<sup>110</sup>

People, however, do not assimilate information independent of the source.<sup>111</sup> The general public must perceive the information received as objective and unbiased.<sup>112</sup> Any environmental network that wishes to earn the public trust should not espouse or affiliate with any national, political, ethnic, cultural, religious, commercial, or economic interest.<sup>113</sup> "[E]nvironmental statesmen and diplomats [must be] true international servants, bound by no national or political mandate, by nothing, in fact,

K. DAHLBERG, *supra* note 99, at 25. An accurate assessment of costs and benefits must include the actual cost of environmental regulation balanced against the societal cost of no environmental regulation, and it must take into account any potential savings or income generated from new environmental protection industries. For example, annual acid rain damage to European agriculture, industry, and human health is estimated at \$13 billion, while the annual costs of pollution control in Europe would be approximately \$6.7 billion. *See* Comment, *supra* note 77, at 451; *see also* Roberts, *supra* note 16, at 6 (cost to Canadian economy); Howard, *supra* at 44-45 (discussing Canadian annual acid rain damage (\$285 million), annual United States health costs from sulfur dioxide (\$17 billion) and new industries for pollution control). Analysis also might include development of alternative clean technologies. *See* Note, *supra* note 61, at 279.

106. *See* Nanda, *supra* note 11, at 390; *see also* L. CALDWELL, *supra* note 34, at 156. While some people are uninformed, *see* Note, *supra* note 11, at 389, others suffer from a cacophony of information, *see* J. SCHNEIDER, *supra* note 55, at 5.

107. *See* Nanda, *supra* note 11, at 381; *see also* Taubenfeld, *supra* note 5, at 479.

108. Chayes, *supra* note 3, at 22-23.

109. *See* Rosencranz, *The Law and Politics of Transboundary Air Pollution: The European Experience*, 5 CAN.-U.S. L.J. 102, 102 (1982); *see also* L. CALDWELL, *supra* note 34, at 146.

110. *See* E. EL-HINNAWI & M. HASHMI, UNITED NATIONS ENVIRONMENT PROGRAMME—THE STATE OF THE ENVIRONMENT 173 (1987).

111. *See* S. COTGROVE, CATASTROPHIC OR CORNUCOPIA—THE ENVIRONMENT, POLITICS AND THE FUTURE 81 (1982).

112. *See* Editorial Analysis, in LAW, INSTITUTIONS, & THE GLOBAL ENVIRONMENT 169, 175-76 (J. Hargrove ed. 1972). For a discussion of other reasons for independent NGOs, *see infra* Part IV. and accompanying text.

113. *See* Chayes, *supra* note 3, at 10-11, 15; *see also* Skolnikoff, *Comments on Professor Chayes' Paper*, in LAW, INSTITUTIONS, & THE GLOBAL ENVIRONMENT 27, 30 (J. Hargrove ed. 1972).



other than dedication to the work at hand."<sup>114</sup> Non-alignment brings credibility, as exemplified by the prestige bestowed on the International Red Cross.<sup>115</sup> On the other hand, opinion polls indicate that the general public perceives government as ineffective and untrustworthy concerning environmental issues.<sup>116</sup> The public is also skeptical of industry's concern for the environment.<sup>117</sup> Even the United Nations suffers from a credibility gap.<sup>118</sup> Environmental groups, in a manner similar to the Red Cross, tend to forego political alignment, viewing "environmental protection as a matter of public interest rising above class and party."<sup>119</sup> Accordingly, environmental NGOs enjoy a high degree of trust and credibility with the general public.<sup>120</sup>

### C. Formation of a Consensus

Any attempts to create an environmental consensus on the international level will be futile without consensus formation at the national public level.<sup>121</sup> Transnational environmental NGOs are uniquely positioned to stimulate public opinion throughout the world and to focus

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114. Kennan, *supra* note 2, at 113.

115. See Editorial Comment, *The International Red Cross Organization*, 14 AM. J. INT'L L. 210, 211 (1920). Non-policymaking bodies, in general, secure greater respect and an aura of integrity. See Robinson, *supra* note 51, at 170.

116. See, e.g., McCallum & Covello, *What the Public Thinks About Environmental Data*, 15 E.P.A. J. May-June 1989, at 22; see also *Environmental Program Offered by President of Friends of the Earth, Now in Parliament*, 10 Int'l Env't Rep. (BNA) No. 4, at 382-83 (Aug. 12, 1987).

117. See Hahn & Richards, *supra* note 41, at 426; see also THE CONSERVATION FOUNDATION, STATE OF THE ENVIRONMENT: A VIEW TOWARD THE NINETIES 21 (1987).

118. See Editorial Comment, *supra* note 53, at 108; see also R. FALK, *supra* note 23, at 315.

119. S. COTGROVE, *supra* note 111, at 90. Similarly, the West German Green Party declares itself neither left nor right, but in front. See Howland, *supra* note 35, at 23. Other NGOs also prefer political non-alignment. See Colamosca, *Amnesty International at 20*, THE NEW REPUBLIC, May 23, 1981, at 13.

120. See L. MILBRATH, ENVIRONMENTALISTS—VANGUARD FOR A NEW SOCIETY 92-93 (1984); see also McCallum & Covello, *supra* note 116, at 22; *Survey Shows Environment as Top Issue, but Lack of Confidence in Policy Development*, 10 Int'l Env't Rep. (BNA) No. 12, at 667-68 (Dec. 9, 1987).

121. See W. GORMLEY, *supra* note 31, at 228. UNEP Executive Director Mostafa Tolba declared mounting public pressure to be the planet's source of hope because only governments, not the United Nations, are accountable to public pressure. See *Governing Council Endorses Blueprint for Development into Twenty-First Century*, 10 Int'l Env't Rep. (BNA) No. 7, at 313-14 (July 8, 1987).

public pressure within states for global environmental action,<sup>122</sup> and they have begun to make their presence known.<sup>123</sup> Moreover, a network of environmental NGOs could focus the efforts of various NGOs for the most efficient use and impact of information.

Essentially, movement toward a global environmental consensus requires an informed world citizenry pushing the government toward acceptable environmental policies from below.<sup>124</sup> NGOs can provide the information that will help to initiate this chain reaction.<sup>125</sup> "International environmental protection does not require the creation of new institutions; it requires that existing institutions be led to do that which they have long had the power to do."<sup>126</sup>

Ultimately, the pressure from an informed public is translated into national policy within individual states<sup>127</sup> and culminates with international action.<sup>128</sup> For example, the constant publicity and public concern about the "hole" in the ozone layer mobilized government action, resulting in the Montreal Protocol.<sup>129</sup> The Montreal Protocol exemplified the ability of public pressure to force results that government officials had not deemed "necessary or attractive."<sup>130</sup>

Once policy objectives are in place, the NGO changes from a promoter into public watchdog.<sup>131</sup> In this capacity, the NGO exposes infractions of environmental law or policy to the moral pressure of public opinion as a

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122. See Sands, *supra* note 72, at 394, 401, 411; see also L. CALDWELL, *supra* note 34, at 76; E. EL-HINNAWI & M. HASHMI, *supra* note 110, at 174.

123. See Hahn & Richards, *supra* note 41, at 423, 440; see also Smith, *supra* note 63, at 344; J. SCHNEIDER, *supra* note 55, at 81. "There is a universal recognition and acceptance among peoples of an obligation to protect the global heritage for future generations. It is deeply rooted in human behavior and in the religious and cultural norms of societies." Weiss, *supra* note 87, at 246.

124. See Editorial Comment, *International Environmental Action: The Road After Stockholm*, 2 EARTH L.J. 311, 314-15 (1976); see also W. GORMLEY, *supra* note 31, at 130-31.

125. See J. SCHNEIDER, *supra* note 55, at 127; see also W. FELD & R. JORDAN, INTERNATIONAL ORGANIZATIONS 231-32 (2d ed. 1988).

126. Ho, *supra* note 7, at 247.

127. See Hahn & Richards, *supra* note 41, at 426, 435, 441-42; see also Austin, *Environmental Pollution Information—Disclosure and Access*, 4 CONN. J. INT'L L. 413, 416 (1989).

128. See W. GORMLEY, *supra* note 31, at 233; see also Hahn & Richards, *supra* note 41, at 422, 427-28.

129. See Hahn & Richards, *supra* note 41, at 435.

130. *Id.*

131. See P. LOWE & J. GOYDER, ENVIRONMENTAL GROUPS IN POLITICS 35 (1983).

sanction, with the goal of encouraging compliance.<sup>132</sup> Amnesty International successfully utilizes this approach to induce observance of the Universal Declaration of Human Rights mandate by comparing a signatory nation's actual conduct against the spirit of the voluntary Declaration.<sup>133</sup> With detailed information about specific violations, Amnesty International can focus world attention and condemnation on a national government by quickly mobilizing worldwide letter-writing campaigns from individual citizens<sup>134</sup> and alerting mass media on a global scale.<sup>135</sup> Thus, with a global consensus in place, the NGO could commence a perpetual cycle of correction and modification of current practices through the conduit of public opinion.

Regrettably, certain states continue to rely on the fiction of state sovereignty, to the detriment of the world community.<sup>136</sup> The fiction of state sovereignty can work to serve humanity only if humans never forget it is a fiction. Because global environmental action currently operates within, and therefore is constrained by, state sovereignty, environmental strategies must utilize avenues outside sovereignty to be effective.<sup>137</sup> Existence beyond the scope of sovereignty, however, need not impinge on sovereignty.<sup>138</sup> Transnational environmental strategies and the system of state sovereignty must coexist and should counterbalance each other for the benefit of the world community.

#### D. *Successful Environmental Groups as Models for a Transnational Network*

Although no global transnational environmental NGO network currently exists, the grassroots environmental movement is vigorous within

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132. See Sands, *supra* note 72, at 415; see also Hahn & Richards, *supra* note 41, at 437-38 (showing that non-binding agreements can be used to bring "moral pressure" to bear).

133. See Sands, *supra* note 72, at 416-17; see also Colamosca, *supra* note 119, at 15. Note that even though Amnesty International can act as a "watchdog" in upholding the Universal Declaration of Human Rights, an environmental network still can expose environmental degradation to the world without a formal environmental agreement. Nevertheless, such an agreement would give more force to any sanctions and should continue to be the goal of a transnational environmental network.

134. See Durrell, *The Conscience of Amnesty*, 4 CAN. LAW., Oct. 1980, at 21, 23.

135. See Colamosca, *supra* note 119, at 15.

136. See Howland, *supra* note 35, at 29.

137. *Id.* The sovereignty of states "is only half the equation. Without energetic action and cooperation from and among environmental organizations and governments, . . . multilateral bodies will become dead institutions." R. FALK, *supra* note 23, at 324.

138. See Editorial Comment, *supra* note 124, at 315.

several states. Groups that have been created around this movement provide an insight into future creation of a transnational network. In addition, the existence of these groups indicates that the people within the international community are ready to address environmental issues on a global scale.

The most dramatic example of transnational grassroots activity for the environment is the Green movement in Europe.<sup>139</sup> The Green movement covers much of Western Europe and is gaining support.<sup>140</sup> This group was instrumental in West Germany's radical reorientation during the early 1980s, in the face of ecological collapse in the famed Black Forest.<sup>141</sup> Within a single decade, the West German Green Party transformed West Germany from an industrial powerhouse, skeptical of environmental regulation, into an aggressive international proponent for the environment.<sup>142</sup> The West German Green Party, formed by the merger of several environmentalist groups operating at the local level, used the political process to voice concerns about the nation's forests.<sup>143</sup> As a result, the West German Greens had won twenty-seven seats in the national legislature at the time of reunification,<sup>144</sup> and Petra Kelly, one of the Green Party's principal leaders, was a member of the German Parliament.<sup>145</sup>

Arguably, grassroots movements could be limited to industrialized or Western democracies. Even in authoritarian and developing nations, however, hope exists. Socialist ideology, for example, is not antithetical to potential grassroots environmentalism. Socialist doctrine champions the "betterment of society"<sup>146</sup> and the "well-being of people."<sup>147</sup> The Soviet Constitution charges citizens of the Soviet Union with protection

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139. Hill, *A Management Job for the Human Race*, 15 E.P.A. J., July-Aug. 1989, at 4, 5-6.

140. *Id.*; see also *French Green Party Posts Major Gains in Elections for Mayoral, Council Seats*, 12 Int'l Env't Rep. (BNA) No. 4, at 185-85 (Apr. 12, 1989); *Social Democrats, Reacting to Success of Greens, Eye Tougher Pollution Controls*, 10 Int'l Env't Rep. (BNA) No. 8, at 387 (Aug. 12, 1987).

141. See *On the Brink of an Ecological Calamity*, *supra* note 81, at 325-26.

142. *Id.* at 331-33, 339-42.

143. *Id.* at 332.

144. *Id.*

145. See *How We Can Save It*, 15 GREENPEACE at 4, 5 (Jan./Feb. 1990).

146. Garcia & Howland, *supra* note 49, at 72.

147. See Kolbasov, *Legal Protection of the Environment in the USSR*, 1 EARTH L.J. 51, 51 (1975). "In order to be consistent with socialist ideology, both the costs and the benefits of protection should be shared equally by all in society." Garcia & Howland, *supra* note 49, at 76.

of the environment.<sup>148</sup>

The primary purpose of citizen participation in the Soviet Union is educating the public,<sup>149</sup> although the All Russian Society for the Protection of Nature (All Russian Society), the most significant environmental organization in the Soviet Union,<sup>150</sup> has a statutory right to advance comment on government regulations.<sup>151</sup> Because major voluntary environmental societies, like the All Russian Society, are chartered officially by the Soviet government,<sup>152</sup> many in the West dismiss these groups as "window dressing" by the Soviet government.<sup>153</sup> United States environmentalists, nonetheless, describe the work of Soviet environmental groups as impressive.<sup>154</sup> Several "official" environmental groups, together with non-environmental groups, successfully pressured the Soviet government to cancel a river diversion project of the Siberian River because of the gravity of potential ecological damage.<sup>155</sup>

Under Soviet leader Mikhail Gorbachev's *glasnost*,<sup>156</sup> informal independent groups are emerging and receiving media attention, with a publicity-conscious style similar to Western counterparts.<sup>157</sup> Unofficial envi-

148. See Futrell, *Public Participation in Soviet Environmental Policy*, 5 PACE ENVTL. L. REV. 487, 489 (1988); see also Kolbasov, *supra* note 147, at 54. The Soviet Constitution states:

In the interests of the present and future generations the necessary steps are taken in the USSR to protect and make scientific, rational use of the land and its mineral and water resources, and the planet and animal kingdoms, to preserve the purity of air and water, ensure reproduction of natural wealth, and improve the human environment.

SOVIET CONST., art. 18, *reprinted in* Futrell, *supra* at 489. For a similar discussion of Cuban environmental law, see Garcia & Howland, *supra* note 49.

149. See Futrell, *supra* note 148, at 488.

150. See *id.*

151. *Id.* at 501. "This has been compared to the circulation of a rule or regulation by an American administrative agency with a request for comments." *Id.* For a more detailed discussion of the All Russian Society's activities, see Yost, *The Citizens' Role in Nature Protection in the U.S.S.R.*, 11 Env'tl. L. Rep. (Env'tl. L. Inst.) 50051 (Aug. 1981).

152. See Tarnavskii, *Law and Voluntary Nature Conservation in the USSR*, 4 CONN. J. INT'L L. 369, 375 (1989).

153. See Futrell, *supra* note 148, at 491.

154. *Id.* at 499.

155. See HELSINKI WATCH REPORT, *supra* note 1, at 167-68; see also Futrell, *supra* note 148, at 504.

156. Gorbachev stated that "[w]e must expand publicity, things must be more open, our people should be aware of everything that takes place in the labor collective, in the region, the city, the province, and the country as a whole." Tarnavskii, *supra* note 152, at 374.

157. See Futrell, *supra* note 148, at 504-05; see also Tarnavskii, *supra* note 152, at 378.

ronmental movements, however, existed before *glasnost*.<sup>158</sup> Inspired by West Germany's Green Party,<sup>159</sup> these Soviet ecological movements gained momentum after the Chernobyl nuclear disaster,<sup>160</sup> and now are becoming visible to the West. Armed with information from Western media<sup>161</sup> or from simply observing the condition of the environment,<sup>162</sup> these groups are beginning to command the attention of the Soviet government.<sup>163</sup> Despite political attempts to block the transfer of information,<sup>164</sup> new technologies increasingly render information barriers either ineffective or economically infeasible.<sup>165</sup> Thus, "even highly authoritarian governments have been forced to take steps to correct [environmental] problem[s] by instituting pollution controls or by cancelling or modifying development projects."<sup>166</sup>

Developing nations are experiencing a similar growth in activity by environmental NGOs,<sup>167</sup> with a parallel growth in public environmental awareness.<sup>168</sup> The perception is fading that NGOs were only another

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158. See HELSINKI WATCH REPORT, *supra* note 1, at 163.

159. See *id.* at 18-22, 59-69, 90-95, 163-66 (discussing environmental movements in Czechoslovakia, Hungary, Poland, and the Soviet Union).

160. *Id.* at 3-4.

161. *Id.* at 171, 186.

162. See Tarnavskii, *supra* note 152, at 371-72; see also Mitchell, *How "Soft," "Deep," or "Left?" Present Constituencies in the Environmental Movement for Certain World Views*, 20 NAT. RESOURCES J. 345, 355 (1980).

163. See Tarnavskii, *supra* note 152, at 371-73; see also HELSINKI WATCH REPORT, *supra* note 1, at 167. These environmental groups now are establishing networks with each other and Western counterparts. *Estonian Group Joins Friends of Earth at First East-West Environmental Summit*, 11 Int'l Env't Rep. (BNA) No. 11, at 610-11 (Nov. 9, 1988); see also Voordouw, *Open Learning and Team-Working: A Perspective From the Youth Organisations*, in NEW IDEAS IN ENVIRONMENTAL EDUCATION 93 (S. Briceño & D. Pitts, eds. 1988); *U.S. Environmentalists Visitors to U.S.S.R. Find Greens Movement Gaining Strength There*, 12 Int'l Env't Rep. (BNA) No. 5, at 236 (May 10, 1989).

164. See J. SCHNEIDER, *supra* note 55, at 78.

165. See Nye & Keohane, *supra* note 92, at 743; see also Sands, *supra* note 72, at 400. New technology can also aid in information gathering. Seismic monitoring of large disturbances in the ground can verify the occurrence of underground nuclear testing. See Greenpeace Action, *Campaign For a Comprehensive Test Ban Treaty* (Information Brochure). Hopefully, the recent improvements in East-West relations will remove obstacles to the transfer of information. See Howland, *supra* note 35, at 37.

166. Leonard & Morell, *supra* note 43, at 291.

167. See Smith, *supra* note 63, at 344; see also Leonard & Morell, *supra* note 43, at 291.

168. See Leonard & Morell, *supra* note 43, at 286, 290; see also Sinjela, *supra* note 43, at 502. NGOs are more knowledgeable about the issues facing developing nations.

imposition of Western culture as NGOs champion the needs of developing nations.<sup>169</sup> The resultant heightened awareness of environmental problems has mobilized the public<sup>170</sup> and influenced government decision-making on development projects.<sup>171</sup> Developing nations are realizing that environmental concern does not conflict with economic development, but rather they are necessarily linked because "‘economic development’ without due regard to environmental factors can end up robbing a country of the very basics of life itself."<sup>172</sup>

#### IV. A PROPOSAL FOR AN ENVIRONMENTAL NETWORK

##### A. *Environmental Authority Network*

Environmental NGOs are appearing throughout the world. Since the scope of environmental problems is global, these groups must act in concert to maximize mobilization of the people and governments of the world. This section sets forth guidelines for one method of aligning the efforts of NGOs to produce rapid and objective results without the political restrictions of the current sovereignty system.

An Environmental Authority Network, composed of transnational NGOs and unfettered by sovereignty or legislative constituencies, could operate to influence states without infringing upon their sovereignty.<sup>173</sup>

Recent Development, *The First World Industry Conference on Environmental Management: A Giant Step Toward Environmental Excellence*, 1 TEMP. INT'L & COMP. L.J. 133, 145 (1985).

169. See D. WILLIAMS, *supra* note 58, at 263-64.

170. See Leonard & Morell, *supra* note 43, at 294-96.

171. *Id.* at 293, 297; see also Recent Development, *supra* note 20, at 508-09. For example, "[e]ven though the Irish government had been willing to become a 'dust bin' for Europe and the United States, growing popular awareness helped to prevent this" destructive development strategy. *Id.* at 299. "[T]he Irish Industrial Development Authority has cited environmental concern as the reason for discouraging a number of industrial inquiries regarding the possible location of new plants in Ireland." *Id.*

172. Sinjela, *supra* note 43, at 499-501.

173. See R. FALK, *supra* note 23, at 325; see also P. LOWE & J. GOYDER, *supra* note 131, at 85.

All of this would seem to speak for the establishment of a single entity which, while not duplicating the work of existing organizations, could review this work from the standpoint of man's environmental needs as a whole, could make it its task to spot the inadequacies and identify the unfilled needs, could help to keep the governments and leaders of opinion informed as to what ought to be done to meet minimum needs, could endeavor to assure that proper rules and standards are established wherever they are needed, and could, where desired, take a hand, vigorously and impartially, in the work of enforcement of rules and standards. It would not have to perform all these various functions itself—except perhaps where

Network membership should be limited to private nonprofit organizations,<sup>174</sup> with "equitable geographical representation."<sup>175</sup> Dividing the globe into quadrants, transnational membership standards should require that participants in the Network, as organizations, have a membership consisting of private individuals representing each quadrant with no more than fifty percent of total membership residing in any single quadrant.<sup>176</sup> This quadrant system should prevent individual nations and regional international organizations from obtaining Network membership by masquerading as environmental NGOs.

The Network should have several primary functions. Its most important responsibilities would be to act as an informational clearinghouse by collecting, analyzing, and disseminating data for public consumption.<sup>177</sup> The Network also should coordinate current research and experimental activities concerning environmental issues.<sup>178</sup> In addition, it should monitor the current state of the global environment.<sup>179</sup> Another important task for the Network is establishing universal criteria and standards for environmental protection.<sup>180</sup> In addition, the Network could formulate an environmental alert system of advance warnings for environmental hazards<sup>181</sup> or investigate environmental problems and develop solutions or options.<sup>182</sup> Training environmental researchers<sup>183</sup> and advising governmental officials<sup>184</sup> are other functions the Network might consider. Further, the Network might choose to adopt the Declaration on the Human Environment<sup>185</sup> or the World Charter for Nature<sup>186</sup> as an as-

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there was no one else to do so. Its responsibility should be rather to define their desirable dimensions and to exert itself, and use its influence with governments, to the end that all of them were performed by *someone*, and in an adequate way.

*Id.*

Interestingly, an independent Soviet peace organization also has advocated monitoring governmental performance with an NGO Network. HELSINKI WATCH REPORT, *supra* note 1, at 242.

174. See K. DAHLBERG, *supra* note 99, at 51-52.

175. Gunter, *supra* note 65, at 567.

176. Europe and North America could not be assigned to the same quadrant without barring membership to the most powerful environmental NGOs currently in operation.

177. See Recent Development, *supra* note 168, at 149; see also L. CALDWELL, *supra* note 34, at 170.

178. See Kennan, *supra* note 2, at 109.

179. See L. CALDWELL, *supra* note 34, at 170.

180. See *id.*

181. See *id.*

182. See *id.*

183. See *id.*

184. See Kennan, *supra* note 2, at 115.

185. See Robinson, *supra* note 51, at 61-62.



pirational guideline or as a gauge in the manner that Amnesty International uses the Universal Declaration of Human Rights.<sup>187</sup>

The Network might perform other secondary functions as well. The Network could, upon request, devise environmental impact statements for the public record,<sup>188</sup> or highlight gaps in current research that need further study.<sup>189</sup> The Network also may arbitrate environmental disputes,<sup>190</sup> negotiate exchanges between parties, such as the "debt-for-nature" swaps, to encourage conservation in developing nations,<sup>191</sup> determine ecological standards for sustainable development,<sup>192</sup> and advise and support local environmental NGOs to further facilitate the dissemination of information as well as encourage public involvement.<sup>193</sup> In addition, the Network might conduct speaking tours, host environmental summits and conferences,<sup>194</sup> and advise government and industry officials on environmental matters.<sup>195</sup> Another function of the Network may be recognition of environmentally sound products or environmental accomplishments by members of industry with official environmental product tags or emblems to identify and encourage consumer support for environmen-

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186. G.A. Res. 7, 36 U.N. GAOR Supp. (No. 51) at 17, U.N. Doc. A/51 (1982). See generally Wood, *The United Nations World Charter for Nature: The Developing Nations' Initiative to Establish Protections for the Environment*, 12 *ECOLOGY L.Q.* 977 (1985).

187. See *supra* notes 136-38 and accompanying text.

188. See Chayes, *supra* note 3, at 20; see also Robinson, *supra* note 51, at 248-49.

189. See, e.g., Lynch & Talbott, *Legal Responses to the Philippine Deforestation Crises*, 20 *N.Y.U. J. INT'L L. & POL.* 679, 710-12 (1988).

190. See Note, *supra* note 61, at 281.

191. See, e.g., Lynch & Talbott, *supra* note 189, at 709-10; see also *International Group Buys Some Foreign Debt in Swap for Creation of Conservation Areas*, 10 *Int'l Env't Rep. (BNA)* No. 8, at 388 (Aug. 12, 1987); *Costa Rica, Setting for IUCN Meeting, Reflects Strong Commitment to Conservation*, 11 *Int'l Env't Rep. (BNA)* No. 3, at 170-71 (Mar. 9, 1988); Uhlig, *Mexican Debt Deal May Save Jungle*, *N.Y. Times*, Feb. 26, 1991, at A3, col.1.

192. Sustainable development is "development that is compatible with environmental stability in the long run." Handl, *supra* note 4, at 606.

193. See Leonard & Morell, *supra* note 43, at 310. Environmental activism can help to ameliorate feelings of powerlessness that pervade society. See S. COTGROVE, *supra* note 111, at 79; L. MILBRATH, *supra* note 120, at 87.

194. See, e.g., L. CALDWELL, *supra* note 34, at 172-73; Recent Development, *supra* note 168, at 133.

195. The Network could aid in the decision-making process, see K. DAHLBERG, *supra* note 99, at 52; review contracts, see Leonard, *Confronting Industrial Pollution in Rapidly Industrializing Countries: Myths, Pitfalls, and Opportunities*, 12 *ECOLOGY L.Q.* 779, 800 (1985); and counsel litigants, see Sands, *supra* note 72, at 416.

tally aware companies.<sup>196</sup> The Network should concentrate on its function as an environmental leader, rather than becoming involved in politics or diplomacy.<sup>197</sup>

A critical issue will be funding the Network without compromising impartiality.<sup>198</sup> Generally, funding diversification can protect credibility.<sup>199</sup> The Network must obtain funding cautiously and publicly to maintain the perception of impartiality.<sup>200</sup> Direct funding could be limited to dues and other funds obtained by Network NGOs from the private membership within their individual organizations.<sup>201</sup> Direct funding could be supplemented by a single community donation fund consisting of all other private, public, and corporate contributions.<sup>202</sup> The Network also might generate income from selling publications, offering training

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196. See Recent Development, *supra* note 168, at 145; see, e.g., Council of European Communities Second Action Program on the Environment, May 17, 1977, tit. IV, ch. 5, sec. (e), reprinted in 2 Reference File, Int'l Env't Rep. (BNA) 131:0301, 131:0325 (1978).

Some groups already have begun to provide this service. Green Seal, Inc., "the first national, independent, nonprofit environmental-labeling organization," recently was instituted to assist environmentally conscientious consumers in their purchasing decisions. The Green Seal organization will soon allow manufacturers to identify "environmentally preferable [household] products" with a seal of approval that "will help to eliminate consumer confusion about the validity of [manufacturers'] environmental claims." *The Debut of Green Seal*, HUMANE SOC'Y U.S. NEWS, Winter 1991, at 2, col. 1. In 1990, one of the first environmental product symbols was awarded by Green Cross Certification Company (Green Cross) in conjunction with the EPA, to "products made from or packaged in the highest possible percentage of recycled material." Freeman, *Ecology Seals Vie for Approval*, ADVERTISING AGE 30, 30 (Jan. 29, 1991). Environmentalists and legislators currently are debating whether these labeling efforts should emanate from the private sector, like Green Seal, rather than government-backed legislation like Green Cross. Goroboil, *Bill Aimed At Identifying Environmentally Safe Products* Gannet News Service, Feb. 4, 1991 (LEXIS, Nexis library, Currnt file).

197. See R. FALK, *supra* note 23, at 321.

198. Antrobus, *Funding for NGOs: Issues & Options*, 15 WORLD DEV. 95, 97 (Autumn Supp. 1987); see also Drabek, *Development Alternatives: The Challenge for NGOs—An Overview of the Issues*, 15 WORLD DEV. ix, xiii (Autumn Supp. 1987).

199. See L. CALDWELL, *supra* note 34, at 173; see also Heijden, *The Reconciliation of NGO Autonomy, Program Integrity and Operational Effectiveness with Accountability to Donors*, 15 WORLD DEV. 103, 106 (Autumn Supp. 1987).

200. See Antrobus, *supra* note 198, at 97; see also Drabek, *supra* note 198, at xiii.

201. See L. MILBRATH, *supra* note 120, at 74; see also Heijden, *supra* note 199, at 110.

202. See, e.g., Smith, *supra* note 63, at 342. Some donations might be in kind, such as media donations of printspace or broadcast time. For a discussion of the importance of media exposure, see Hahn & Richards, *supra* note 41, at 426-27.

services, and consulting.<sup>203</sup> -

### B. Sources of Legitimacy

Transnational NGOs have begun to focus on global action,<sup>204</sup> but the creation of more than one NGO network could further confuse the people and governments of the world. Although any global action, no matter how factionalized, will be superior to none, the legitimacy of one particular network, as distinguished from other networks, would lead to more efficient action by the NGOs and more respect for the network from the world community. This legitimacy can be derived from several sources, but it is important that these sources recognize, rather than control, the network. Recognition would allow the network to remain independent of the concerns of individual sovereign states, and yet the network could act to streamline global environmental efforts.

The United Nations is the most prestigious and obvious source of endorsement for an Environmental Authority Network. By endorsing or acknowledging by resolution the Network's existence as an independent entity, the United Nations could stamp the Network as the "instrumentality to which the international community looks" for environmental leadership and guidance.<sup>205</sup> Precedent for international endorsement of an independent NGO by an intergovernmental entity exists in the League of Nations recognition by resolution of the International Red Cross.<sup>206</sup> The Network would continue to exist and operate independently of the United Nations, just as the International Red Cross always has operated, as an independent NGO.

A more typical method of legitimizing a network would be an international agreement establishing or endorsing an independent environmental network.<sup>207</sup> Although states may not have confidence in each other, or themselves as a group, to put nationhood aside for the benefit of the international community,<sup>208</sup> they may trust an independent third party,

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203. See Antrobus, *supra* note 198, at 100.

204. See *supra* note 123 and accompanying text.

205. See Chayes, *supra* note 3, at 15-16.

206. The International Red Cross was recognized for "purposes [of] the improvement of health, the prevention of disease and the mitigation of suffering throughout the world." Editorial Comment, *supra* note 115, at 213-14.

207. An example of such an agreement would be the Cape Spartel Lighthouse International Commission. This commission created a lighthouse off the coast of Northern Africa necessary for the safe travel of member nations' ships arounds a dangerous coastline. See Current Note, *The International Lighthouse at Cape Spartel*, 34 AM. J. INT'L L. 770 (1930).

208. It is doubtful, however, whether states will find a nongovernmental defender of

with no other interests than the task at hand, to advance impartially the interests of the environment. Hopefully, the opportunity to encourage both respect for a healthy environment and observance of current treaty obligations<sup>209</sup> will outweigh the risk of international condemnation from any potential infractions of such an agreement.

Individual states can avoid committing to potentially undesirable consequences by making a declaration of international recognition rather than a binding obligation, and even minimal infringement on sovereignty, as permitting the transfer of information across national boundaries, remains voluntary.<sup>210</sup> The flexibility of a non-binding agreement is more politically palatable,<sup>211</sup> especially when national leaders can get credit for environmental action. Even such an agreement between a handful of the major Western industrial nations would be progress. Not only do these nations compose the forefront of the environmental movement<sup>212</sup> and have considerable influence among other nations,<sup>213</sup> they also combine to inflict the greatest harm on the global environment.<sup>214</sup>

Eventually, once sovereign states have joined a voluntary international agreement on the environment, "participation in such endeavors becomes a privilege and a necessity. The effective sanction in this area of non-binding international law is that of 'non-participation,' exclusion from common endeavors and facilities."<sup>215</sup> One environmental success story is the International Convention for the Protection and Rational Management of Fur Seals in the Bering Sea,<sup>216</sup> a co-operative agreement between Canada, Japan, the Soviet Union, and the United States. This non-binding convention exemplifies "sustained yield management" because each party has a continuing interest in the success of the program.<sup>217</sup>

Nonetheless, NGOs do not require the approbation of governmental or intergovernmental entities to form the Environmental Authority Net-

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the environment to be in their own self-interest, no matter how unobtrusive on sovereignty the Network might be. See Chayes, *supra* note 3, at 16.

209. See Sands, *supra* note 72, at 417.

210. Technology quite possibly could render any attempted interference with information transfers meaningless.

211. See W. GORMLEY, *supra* note 31, at 222-23.

212. See Robinson, *supra* note 51, at 233.

213. See *Public Attitudes Toward Nature Said Important Base for Conservation Legislation*, 10 Int'l Env't Rep. (BNA) No. 7, at 342 (July 8, 1987).

214. *Id.*

215. W. FRIEDMANN, *supra* note 30, at 369.

216. See L. CALDWELL, *supra* note 34, at 61-63.

217. L. CALDWELL, *supra* note 34, at 61-62.

work. NGOs may always voluntarily create their own network. Ample evidence exists that NGO networking already has begun.<sup>218</sup> Establishing international recognition of an environmental authority for the world community in this manner, however, will exact a great expenditure of the most precious resource of all, time.

## V. CONCLUSION

Operating outside the confines of national sovereignty, an environmental NGO network would be a palatable alternative to more radical change and would allow for more immediate action on behalf of the environment. The narrow and intense focus of the network would act as a catalyst for the proper functioning of the existing international system.

Conceivably, through mechanisms like the Environmental Authority Network, the United Nations eventually might find itself fully counterbalanced on all significant issues, such as world hunger and overpopulation, by an independent, transnational, function-based forum outside the sphere of sovereignty. The United Nations then would be forced to face a transnational representation of the human race in a "forum of the world's conscience."<sup>219</sup>

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218. See Garilao, *Indigenous NGOs as Strategic Institutions: Managing the Relationship with Government and Resource Agencies*, 15 *WORLD DEV.* 113, 116 (Autumn Supp. 1987); see also *Grassroots Campaign Aims at Winning Support for Measures to Protect Earth's Ozone Layer*, 12 *Int'l Ent'l Rep. (BNA)* No. 5, at 244 (May 10, 1989); *Activists Plan Global Mobilization to Campaign on Greenhouse Concerns*, 11 *Int'l Env't Rep. (BNA)* No. 11, at 595 (Nov. 9, 1988).

219. J. STONE, *QUEST FOR SURVIVAL* 97 (1961).