

THE ROLE OF NONGOVERNMENTAL ORGANIZATIONS IN INTERNATIONAL ENVIRONMENTAL LAW

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I. INTRODUCTION

The world is carved into countries by man-made borders, but nature transcends these boundaries and affects every part of the earth indiscriminately. To effectively manage and preserve the earth's natural resources, individual nations and organizations must work together in a system of cooperation. The Citizens Action Plan for the 1990s foreshadowed this movement with the statement: "A powerful common

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vision is emerging all over . . . A planetary cultural ecology is being born, embodied in a full range of ethical principles.”¹

International environmental law is a relatively new and rapidly changing field. In just a few decades of existence, the form, function, and effectiveness of environmental efforts have progressed dramatically. As the management of our world’s resources calls for continued vigilance and increased cooperation, the scope of international environmental law will continue to evolve even further.² One area of promising development is the increasing participation and influence of nongovernmental actors.³

This paper evaluates the role of nongovernmental organizations (NGOs) in international environmental policy-making and enforcement. Beginning with a brief history of international law, the development of an environmental facet is explored. Next, the current role of NGOs, including pros and cons of their participation, is discussed. The final analysis leads to the conclusion that NGO participation is essential to international environmental efforts, but limits and regulations are necessary to ensure continued productivity that will benefit the NGOs and independent nations alike.

II. THE EVOLUTION OF INTERNATIONAL LAW

The concept of an international society, in which independent nations are subject to a common international law, was first theorized by Hugo Grotius in 1625.⁴ However, a recognized system of international cooperation did not take shape until 300 years later when the League of Nations was formed in response to WWI.⁵ After the Second World War, when the League of Nations had proven to be ineffective, the United Nations was created in a renewed attempt to establish an international body of law enforcement.⁶ Its inception marked the beginning of meaningful interaction between independent countries on an international level. From

1. DAVID HUNTER ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY*, 264 (Robert C. Clark et al. eds., Foundation Press 2d ed. 2002) (1998).

2. See Kal Raustiala, *The “Participatory Revolution” in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537, 557 (1997).

3. NGO participation has increased in many areas of international law including, human rights, labor, religion, education, and the environment. See Karsten Nowrot, *Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law*, 6 IND. J. GLOBAL LEGAL STUD. 579, 589 (1999).

4. *De Jure Belli ac Pacis*, by Hugo Grotius, was the first formulation of international law and has served as a foundation for establishing international relations among independent nations. Evolution of International Law, <http://www.infoplease.com/ce6/society/A0858870.html>.

5. See History of the United Nations, <http://www.library.miami.edu/gov/League.html>. The League of Nations was created in 1920 to “promote international cooperation and to achieve peace and security.” *Id.*

6. Evolution of International Law, *supra* note 4.

that point on, the function of international law has been to promote global stability through diplomatic and political means.⁷ The sovereignty of independent nations is a fundamental principle of this system and individual nations are considered to have equal rights and duties in the international community.⁸

The focus on national sovereignty has resulted in an international community without a central governing body or a mandatory law enforcement system.⁹ International law is based on negotiations and agreements between countries or groups of countries, with an international court that is limited in jurisdiction to those nations who submit to it.¹⁰ Despite the loose construction, the international community has successfully developed international law in the forms of treaties, customary law, and soft law.¹¹

III. THE EMERGENCE OF INTERNATIONAL ENVIRONMENTAL LAW

From this foundation, an environmental sphere of international law emerged.¹² The traditional strategies for natural resource management stem directly from the principle of independent state sovereignty.¹³ The UN General Assembly Resolution of 1966 clearly articulates the common law rule that countries have the inalienable right to “exercise permanent sovereignty over their natural resources in the interest of their national development.”¹⁴ By embracing this principle in their individual efforts to develop economically, countries have exploited and degraded their natural resources to alarming levels.¹⁵ Because the earth cannot sustain the current level of natural resource consumption and degradation, this management approach must be revised.¹⁶

The current system of international environmental law is not conducive to cooperative efforts. The field lacks a specific framework, due to a haphazard development of independent responses to specific environmental issues.¹⁷ Even United Nations programs are under-funded with minimal

7. *See id.*

8. *Id.*

9. *See id.*

10. *See id.*

11. *See* Evolution of International Law, *supra* note 4.

12. *See id.*

13. *See* A. Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, 68 CHI.-KENT L. REV. 61, 66 (1992).

14. HUNTER ET AL., *supra* note 1, at 380. (citing G.A. Res. 2158 (XXI), U.N. GAOR Twenty-first session (1966) (Sovereignty)).

15. *See* Tarlock, *supra* note 13, at 66. National self-interests often lead to minimal standards for environmental protection. *Id.*

16. *See* HUNTER ET AL., *supra* note 1, at 2.

17. *Id.* at 371. Two important factors of international environmental law are the interdependence of the world’s ecology and economics. To address these issues, countries are

authority to affect meaningful changes.¹⁸ The few principles guiding the development of international environmental law come from various sources.¹⁹ Two noteworthy instruments are the Stockholm Declaration and the Rio Declaration.²⁰

The Stockholm Declaration contains two principles that are essential to international environmental law.²¹ First is the suggestion that a healthy environment is a human right.²² Second is the establishment of a balance between state sovereignty and the obligation to abstain from harming the environment of other countries or the global commons.²³ These principles emphasize the importance of human and environmental needs and attempt to prevent harmful activities without limiting the sovereignty of individual nations.²⁴

The Rio Declaration is significant because it reflects political support of environmental principles while realistically portraying the state of environmental protection.²⁵ Participating nations recognized that long-term social and economic progress is linked to environmental protection.²⁶ They also agreed that increased scientific knowledge and understanding is an essential component to protecting the environment.²⁷ Agreement on these issues was an important step at Rio despite the countries being unprepared to act affirmatively in response to the environmental issues raised. The compromises reached in the declaration served as a starting point for future discussion on these issues.²⁸

A. *Globalization and the Ideology of International Environmental Law*

Management and preservation of the environment across international borders is imperative, as environmental issues do not do not begin and end

beginning to act proactively rather than responding to problems once they arise. Evolution of International Law, *supra* note 4.

18. *See id.* at 219-20. United Nations Environmental Programme (UNEP) was the first UN agency with an environmental focus. *Id.* UNEP's largest source of funding comes from voluntary donations by member governments. *Id.* Since its creation in 1972, the level of contributions has significantly decreased due to a lack of confidence in the organization. *See id.* at 219-21. The United Nations Development Program (UNDP) has proven more successful with a budget over six times that of UNEP. *See* Evolution of International Law, *supra* note 4, at 230.

19. HUNTER ET AL., *supra* note 1, at 372.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. HUNTER ET AL., *supra* note 1, at 372.

25. *Id.* at 374.

26. U.N. Conference on Environment and Development, Rio de Janeiro, Braz., June 14, 1992, *Rio Declaration on Environmental Development*, 31 I.L.M. 874, princ. 11.

27. *Id.* at princ. 9, 15.

28. HUNTER ET AL., *supra* note 1, at 374.

at national boundaries. Rather than focus on state sovereignty and national power struggles, environmental issues require a focus on common concerns.²⁹ To properly address environmental issues, some advocate for an ideological shift toward an international society with common goals, rather than sovereign states with competing individual agendas.³⁰

The process of globalization is in concert with this idea. Globalization is often defined as the denationalization of political, economic, and social structures that have traditionally been controlled by sovereign nations.³¹ A more globalized and integrated international community has already developed through an increase in technology, communication, and international businesses.³² As a result, an increased awareness of interconnectedness is reflected in efforts to protect the environment through international cooperation.³³

The International Union for the Conservation of Nature and Natural Resources (IUCN), Draft Covenant on Environment and Development explains the concept of a common concern of humankind, with respect to environmental protection and sustainable development.³⁴ This concept is based upon the interdependence of the planet's resources and the collective interest of humanity in preserving those resources.³⁵ The common concern for the global environment suggests that conservation should not rest within the sole jurisdiction of individual states.³⁶ Instead, conservation should be a cooperative effort, in which all countries agree to joint efforts toward a common goal.³⁷ Despite these conclusions, the fundamental conflict between common concern and state sovereignty has prevented the implementation of this principle except in the areas of global climate change and biological diversity.³⁸

29. See Raustiala, *supra* note 2, at 577.

30. HUNTER ET. AL., *supra* note 1, at 283. Christian von Wolff and Emmerich de Vattel advocated for a society of the human race. *Id.*

31. Nowrot, *supra* note 3, at 586.

32. See *id.* at 587-88.

33. *Id.* at 588.

34. HUNTER ET. AL., *supra* note 1, at 397.

35. *Id.* at 396.

36. *Id.* at 397.

37. *Id.*

38. See *id.* at 397-98. The Climate Change Convention and Biodiversity Convention adopted the concept of common concern which is viewed as a "framework for international negotiations . . . while still allowing flexibility in negotiating each specific regime. See Tarlock, *supra* note 13, at 398. The Rio Declaration does not mention "common concern," but implies that sustainable development is a common concern of the international community. *Id.*

B. *Obstacles to Globalization*

State sovereignty is a significant hindrance in developing international environmental law.³⁹ The political commitments of nations make compromises between multiple countries exceedingly difficult as the number of interests grow.⁴⁰ A second obstacle is the lack of scientific technology to establish a cause-and-effect relationship between human activities and environmental degradation.⁴¹ Science, by nature, is rife with uncertainty. This stems from the unlimited variables that affect the enterprise and the resulting premise that “no fact can be proven beyond a shadow of a doubt.”⁴² Without firm scientific foundations for environmental issues, countries are reluctant to concede liability, commit money, or call for change in practices.⁴³

Fortunately, the involvement of NGOs helps alleviate these sticking points. NGOs have the potential to unite diverse parties in pursuit of common environmental goals, a step toward the concept of a global society of humans.⁴⁴ NGOs also have the resources and capability to fill much of the scientific void that stifles the development of international environmental law.⁴⁵ The contribution of NGOs in these areas has already impacted the legal and political climate of international law.⁴⁶ To sustain this level of progress, it is essential that NGOs continue to play an active role in the international arena.⁴⁷

IV. NGOs IN INTERNATIONAL ENVIRONMENTAL LAW

NGOs have existed for centuries. Today there are an estimated “six thousand international NGOs, and millions of national and local [organizations].”⁴⁸ The surge of NGO participation in a multitude of areas can be attributed to several factors including a slowdown of development since the 1970s, unmet social and economic needs, and a dramatic communication revolution that allows people to explore and discuss these

39. *Id.* at 72.

40. *See id.*

41. *See* HUNTER ET. AL., *supra* note 1, at 37.

42. *Id.* at 36.

43. *See id.* at 37.

44. *See* Tarlock, *supra* note 13, at 65 (stating that NGOs help formulate and implement environmental standards at both the global and national level).

45. *Id.* at 65-66. NGOs often have different or better information than governments. Raustiala, *supra* note 2, at 557.

46. HUNTER ET AL., *supra* note 1, at 258-62. Several examples of NGO participation are provided by the authors.

47. *See* Raustiala, *supra* note 2, at 585-86 (suggesting that both substantive state regulation and NGO contributions are needed to continue the modern trend).

48. Dr. Michael Williams, *Global Civil Society: Expectations, Capacities and the Accountability of International NGOs* (2003), <http://www.21stcenturytrust.org/williams2.html>.

issues.⁴⁹ The ultimate goal of NGOs is to pursue objectives left unattended by national governments such as protecting rights, improving living conditions, and protecting the environment.⁵⁰

These organizations present such diversity that a single definition is almost impossible to formulate. The World Bank broadly defines NGOs as “groups and institutions that are entirely or largely independent of government and that have primarily humanitarian or cooperative rather than commercial objectives.”⁵¹ These organizations include private, corporate, religious, indigenous, community and international institutions.⁵² They may be large or small, with agendas ranging from local to transnational issues.⁵³

A. Textual Endorsements of NGO Participation

NGOs do not have legal status in the international forum, but they are increasingly afforded the opportunity to participate in different aspects of international law.⁵⁴ As the world’s environmental issues increase and become more complex, the need for NGO expertise will also increase. The work on air pollution, ozone depletion, climate change, and biodiversity in the 1980s and 1990s demonstrates the complexity of current issues and negotiations.⁵⁵ These complex regimes involve the greatest NGO participation and foreshadow a need for further participation.⁵⁶ In fact, Agenda 21 creates a presumption that NGOs will play an increasingly stronger role in future international law-making and discusses the need for formal participatory procedures to facilitate their changing role.⁵⁷ Chapter 27 of Agenda 21 is devoted solely to outlining the role of NGOs as “partners for sustainable development.”⁵⁸

Most treaties formed within the last 20 years demonstrate a movement toward NGO participation in international environmental law as well.⁵⁹ In some cases, NGOs have played a significant role in the creation of international agreements. The Convention on International Trade in Endangered Species (CITES) of 1973 was a pioneering agreement in this

49. Olena P. Maslyukivska, *Role of Nongovernmental Organizations in Development Cooperation*, § 1.1 (1999), <http://www.undp.org/pppue/pppueold/library/files/maslyu01.html>.

50. *Id.*

51. *Id.* § 1.3.

52. *Id.* §§ 1.3-1.5

53. *See id.* Despite corporate funding of some NGOs, the organizations are non-profit. Maslyukivska, *supra* note 49, §§ 1.3-1.5.

54. *See* Tarlock, *supra* note 13, at 66.

55. Raustiala, *supra* note 2, at 568.

56. *Id.* at 568-69.

57. Institute for International and European Environmental Policy (ECOLOGIC) and Foundation for International Environmental Law and Development (FIELD), *Participation of Non-Governmental Organizations in International Environmental Governance*, 7, available at http://www.ecologic.de/download/projekte/1850-1899/1890/ngo%20_summary_en.PDF.

58. *Id.* (internal quotation omitted).

59. Raustiala, *supra* note 2, at 542.

area, which has since influenced the Montreal Protocol and Climate Change Convention.⁶⁰ CITES gave the Secretariat permission to seek assistance from NGOs in managing the convention, while also giving NGOs the freedom to participate in meetings.⁶¹ A relevant portion of this authorization reads:

Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object: (a) international agencies or bodies, either governmental or nongovernmental, and national governmental agencies and bodies; and (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located.⁶²

CITES went a step further than any other treaty, even subsequent treaties, by granting NGOs a “right” to participate once admitted.⁶³ In this collaborative relationship, the CITES Secretariat frequently consults the IUCN for management purposes, and NGOs have actively participated in the CITES meetings.⁶⁴

The Montreal Protocol used language almost identical to CITES in allowing NGO participation, with the exception of granting a “right” to participate. The qualifying language of the Montreal Protocol limited NGO inclusion to organizations “qualified in fields relating to the protection of the ozone layer.”⁶⁵ The threshold requirement for admission is not difficult for interested parties to meet, but effectively limits participants to those who are appropriate.⁶⁶

Article 7 of the Framework Convention on Climate Change again used similar language, but softened the standard for participation even further by requiring parties to be “qualified in matters covered by the Convention.”⁶⁷ Even more active participation was granted to NGOs who are encouraged to participate in the North American Agreement on Environmental Cooperation (NAAEC), a side agreement to the North American Free Trade

60. *Id.* at 547.

61. *Id.*

62. Convention on International Trade in Endangered Species, art. XI, ¶ 7, U.S.-Switz., Sept. 13, 1973, 27 U.S.T. 1087.

63. *Id.*

64. Raustiala, *supra* note 2, at 547.

65. United Nations Protocol on Substances That Deplete the Ozone Layer, art. II, ¶ 5, Sept. 16, 1987, 26 I.L. M. 1541 (entered into force Jan. 1, 1989).

66. Raustiala, *supra* note 2, at 543.

67. United Nations Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 (entered into force Mar. 21, 1994).

Agreement (NAFTA).⁶⁸ Under the NAAEC, the Secretariat allows NGOs to submit claims against parties for failing to enforce domestic environmental law in compliance with the agreement.⁶⁹ Not only are NGOs given the power to trigger investigations through this instrument, but they are also allowed to serve on the panels that assess the claims and investigations.⁷⁰

B. *The Role and Benefits of NGO Participation*

The various types of NGOs in existence play different roles in developing environmental law.⁷¹ Local organizations focus on local needs and often operate on minimal budgets provided by private donors.⁷² International organizations generally focus on universal environmental issues that affect multiple countries.⁷³ Within those two extremes, there are organizations of every size working on city and national levels.⁷⁴ The agendas of NGOs vary, which results in a wide range of activities including community action, research, communication, training, and advocacy.⁷⁵ NGOs often partner with each other to share resources, knowledge, and achieve project goals.⁷⁶

Currently, NGOs participation in international law is limited to the initial policy debates and monitoring or implementing performance under established agreements.⁷⁷ Only sovereign states are allowed to vote, which limits NGO involvement during the final negotiations and voting stages to observation.⁷⁸ Still, NGOs are able to capitalize on their scientific resources and relative freedom from political affiliation to perform several distinct functions within these windows of participation. First, they bring attention to new potential environmental issues.⁷⁹ During the negotiation and drafting stages, NGOs provide fresh perspectives and extensive research on issues.⁸⁰ After agreements are made, they serve as watchdogs to monitor the compliance of member countries.⁸¹ Finally, NGOs implement

68. Raustiala, *supra* note 2, at 549.

69. *Id.*

70. *Id.*

71. See Maslyukivska, *supra* note 49, § 1.5.

72. *Id.* (stating that most local NGOs “arise out of people’s own initiatives”).

73. *Id.*

74. *Id.* (illustrating NGOs at the community, city, national, and international levels).

75. See *id.* § 1.4.

76. See Tarlock, *supra* note 13, at 65. Partnerships often form and dissolve quickly to particular issues in various locations. See HUNTER ET AL., *supra* note 1, at 256. Communication via the internet facilitates immediate collaboration and action by NGOs. *Id.* at 257.

77. Raustiala, *supra* note 2, at 571.

78. See *id.* at 570.

79. HUNTER ET AL., *supra* note 1, at 262.

80. See Tarlock, *supra* note 13, at 63-65.

81. HUNTER ET AL., *supra* note 1, at 261.

environmental protection programs all over the world, while creating incentives for countries to adopt environmental practices of their own.⁸² The innovative perspectives and proposals of NGOs are often catalysts for progress.

NGOs are in an optimal position to identify potential threats to the environment and raise public awareness regarding those issues. Because they are not politically bound to national interests, independent organizations are able to evaluate factors and dynamics from an unbiased perspective.⁸³ Access to a wealth of scientific technology increases their ability to identify potential problems and lends credibility to their findings.⁸⁴

Governments benefit from NGO participation and contribution during negotiations as well.⁸⁵ Some countries have even been represented by NGOs in an attorney-client relationship during treaty negotiations. For example, the Foundation for International Environmental Law and Development (FIELD) represented several island nations during the climate change negotiations.⁸⁶ Governments continue to seek help from NGOs in negotiating and investigating environmental problems because the answers to environmental problems lie in the development of science and technology, an area of expertise for many NGOs.⁸⁷

NGOs are also instrumental in promoting environmental accountability of international players. One example of forcing accountability occurred when the World Bank was persuaded by NGOs to create an inspection panel to review the Bank's activities.⁸⁸ The panel was created during construction of the Arun hydroelectric dam in Nepal, allowing citizens and organizations to demand accountability for the Bank's actions.⁸⁹ For the first time, parties affected by the Bank's activities were able to file claims with the panel.⁹⁰ When justified, the panel conducted investigations, followed by reports to the Bank management and executive directors.⁹¹ The claims filed during the construction of the Arun Dam contributed to the Bank's decision to withdraw its support from the project.⁹²

82. Tarlock, *supra* note 13, at 73.

83. *See id.* at 65.

84. *See* HUNTER ET AL., *supra* note 1, at 256.

85. *Id.* at 259.

86. *Id.*

87. *Id.* at 256.

88. *Id.* at 260.

89. HUNTER ET AL., *supra* note 1, at 260.

90. *Id.*

91. *Id.*

92. *Id.* Individual claims helped demonstrate the shortcomings and negative impacts of the project. *Id.* Without the creation of the panel, the claims would likely have gone unheard and the project completed. HUNTER ET AL., *supra* note 1, at 260.

Compliance with international agreements is enforced in similar fashion. As many international instruments lack forceful mechanisms for accountability and implementation, the pressure from NGOs serves as an additional tool. While countries are often responsible for self-reporting, NGOs are able to investigate and provide compliance reports for countries who have signed an agreement.⁹³ NGOs maneuvered into this enforcement role through the gaps of international law.⁹⁴ Because they are not bound by international laws, they are able to intervene in the affairs of nations and exert influence on domestic political agendas.⁹⁵ This unique ability of NGOs helps the international community enforce environmental norms and agreements, while also benefiting individual countries, particularly the less developed, who do not have the regulatory structure to monitor compliance independently.⁹⁶ Some NGOs work closely with secretariats to compile data and enforce compliance.⁹⁷ In fact, the World Conservation Monitoring Center works with the secretariats of five biodiversity-related treaties because its data compilation is so extensive.⁹⁸

In addition to working in the realm of policy-making, NGOs are able to work locally and make immediate impacts in areas that are in dire need of help. This can occur through grass-roots organizations created to address specific local problems or through cooperation with larger organizations who provide funding and resource assistance for local issues.⁹⁹ NGOs are extremely effective in delivering project assistance because their structure allows for adaptability and experimentation.¹⁰⁰ NGOs are able to identify local needs, recruit experts as necessary, implement new technologies, and communicate openly with local leaders.¹⁰¹ Often the necessary technologies and funding come from partnerships between NGOs and donor corporations. For example, the international organization CARE has partnered with Ethos Water to finance the construction of a water sanitation facility in the Kampene village of the Democratic Republic of Congo.¹⁰²

The final and most creative function of NGOs is their development of incentives for environmental practices.¹⁰³ The incentive program targets

93. *Id.* at 261.

94. *See* Tarlock, *supra* note 13, at 73.

95. *Id.*

96. *See id.*

97. HUNTER ET AL., *supra* note 1, at 261.

98. *Id.* WCMC provides data management to CITES, the World Heritage Convention, Convention on Biological Diversity, the Convention on Migratory Species, and the Ramsar (Wetlands) Convention. A centralized data point increases the information available and improves the application of agreements. *Id.*

99. *See* Maslyukivska, *supra* note 49, § 1.5.

100. *Id.*

101. *Id.*

102. CARE International, <http://www.careusa.org/partnerships/corporate.asp>.

103. Tarlock, *supra* note 13, at 73.

developing countries who carry the heavy burden of international debt, coupled with a need to develop economically.¹⁰⁴ Without help from outside players, developing countries lack the money and technology to develop in an ecologically sustainable way.¹⁰⁵ This dilemma spawned the concept of debt-for-nature swaps, in which NGOs purchase a country's debt from a bank.¹⁰⁶ The NGO acts as a creditor and uses the money paid on the debt to purchase threatened land or to finance environmental programs.¹⁰⁷ In some cases, the debt is forgiven in exchange for allowing the NGO to manage the country's natural resources.¹⁰⁸

An example of this program occurred in Bolivia when Conservation International purchased \$650,000 of Bolivian debt at an 85% discount from Citicorp.¹⁰⁹ Conservation International cancelled the debt on the condition that Bolivia would protect 3.7 million acres of rain forest.¹¹⁰ These debt-for-nature programs appear to be an effective method of protecting resources in less developed countries. Although the fundamental principle of state sovereignty is threatened as countries relinquish the right to control resources within their borders, these programs provide an important opportunity to save high priority areas.¹¹¹

The help of NGOs in performing these functions creates numerous benefits for the development of environmental law and for individual countries. First, because NGOs are not bound by national politics, they can promote universal, single-purpose environmental standards.¹¹² For the same reason, they are not pressured to compromise environmental needs for other national interests.¹¹³ NGOs are also able to work with a wide variety of partners, including local environmental groups, and within underdeveloped countries that have few resources to represent their interests.¹¹⁴

By allowing NGO participation, countries benefit from their wealth of knowledge and do not incur the cost of accumulating the information.¹¹⁵ The channels of communication between NGOs provide a constant stream of information to the parties involved in negotiations. With increased communication, parties are better informed and can make more intelligent decisions.¹¹⁶ In addition, the influence of NGOs can often prevent the

104. *Id.* at 74.

105. *Id.*

106. *Id.*

107. *Id.*

108. Tarlock, *supra* note 13, at 74.

109. *Id.*

110. *Id.*

111. *Id.* at 74-5.

112. *Id.* at 65.

113. Tarlock, *supra* note 13, at 65.

114. *See id.*

115. Raustiala, *supra* note 2, at 559.

116. *Id.* at 563.

adoption of the “lowest common denominator” agreements, which can be the least effective measures because they impose the least burden on state interests.¹¹⁷ The international community as a whole benefits from the environmental protections promoted by NGOs.¹¹⁸

C. Concerns Associated with Increased NGO Participation

While the participation of non-state actors provides a variety of benefits, there are concerns that must be addressed as well. A primary concern is that NGO participation presents a threat to state sovereignty.¹¹⁹ In a system that holds sovereignty in the highest regard, this concept can be unsettling. Because NGOs do not represent a defined constituency, their increased influence and advocacy of borderless environmental agendas may undermine the interests of some sovereign nations.¹²⁰ Allowing NGOs to control resources within countries and granting the right to vote on international laws are examples of threatening activities.

While state sovereignty may impede progress at times, undermining the sovereignty of independent nations could be devastating for international cooperation. If the notion of sovereignty is diminished, countries may become unwilling to participate in international affairs. A lack of cooperation by the international community could cause the system to break down and result in a lack of law enforcement. NGOs may make significant contributions to the system, but they cannot replace independent nations, upon which the system depends.¹²¹ Only states can create hard laws and only states can implement laws on national and local levels.¹²² It is imperative that NGOs work in concert with national governments to promote more effective policies, rather than displace them.¹²³

The second concern involves accountability and transparency of NGOs.¹²⁴ With respect to accountability for actions, NGOs have little.¹²⁵ Unlike governments, they do not face the prospect of re-election.¹²⁶ Unlike businesses, they do not answer to shareholders.¹²⁷ A board of trustees may offer some supervisory control, but actions of most organizations are largely unmonitored.¹²⁸ The consequences of minimal accountability were evident

117. *Id.* at 564.

118. *See id.*

119. *Id.* at 585.

120. *See* Raustiala, *supra* note 2, at 585.

121. Mike Edwards, *Time to put the NGO House in Order*, FINANCIAL TIMES, June 6, 2000, available at [www.http://fpc.org.uk/articles/77](http://fpc.org.uk/articles/77).

122. *See* HUNTER ET AL., *supra* note 1, at 273.

123. *See* Edwards, *supra* note 121; *see* Raustiala, *supra* note 2, at 585-86.

124. *See* Maslyukivska, *supra* note 49, § 2.7; *see also* Edwards, *supra* note 121.

125. Edwards, *supra* note 121.

126. *Id.*

127. *Id.*

128. *Id.*

in the Brent Spar incident, where Greenpeace forced Shell to cease scuttling an oil rig in the North Sea, subjecting the company to significant financial loss.¹²⁹ Greenpeace was able to exert enough influence to control the activities of a multinational corporation, but was not subject to accountability standards for its reliance on misinformation.¹³⁰

With respect to financial accountability, transparency may not be necessary or possible for small grass-roots organizations, but it is important for larger players.¹³¹ Some well known international organizations are funded by state governments.¹³² A large number of organizations seek and receive substantial contributions from multinational corporations as well.¹³³ Despite their positive impacts, these financial partners raise concerns about whose interests are actually advocated by the NGOs.¹³⁴ Critics argue that these organizations have become special interest groups subject to the control of their financial backers, rather than independent NGOs.¹³⁵

This issue of questionable interests relates to the final concern of unequal representation of the north and south. While NGOs often promote global agendas, those with sufficient resources to participate in policy-making decisions are based primarily in developed countries where resources are available.¹³⁶ As a result, the developing countries with limited financial resources, located primarily in the south, lack representation by their own administrations and by international organizations.¹³⁷ Not only does this reinforce the unequal balance of power between the north and south, but it raises suspicion in the developing countries.¹³⁸ The location of NGOs, coupled with corporate and government funding, begs the question

129. Nowrot, *supra* note 3, at 598.

130. *Id.* Greenpeace campaigned against Shell and launched a boycott against the company, despite information from independent experts that the environmental risk was minimal. *Id.* Ultimately it was revealed that Greenpeace relied upon incorrect information. *Id.*

131. See ECOLOGIC AND FIELD, *supra* note 57, at 10.

132. See Ian Brown, *This Fatal Compromise*, THE GUARDIAN, Nov. 19, 2004, available at <http://www.globalpolicy.org/ngos/fund/2004/1119fatalcomp.htm>. CARE USA, a branch of the international program, received 75% of its 2004 funding from the U.S. government, while CARE UK obtained 64% of its budget resources from the Department of International Development. *Id.* Copies of CARE income tax returns are available online at <http://www.careusa.org/about/990.asp>.

133. See Katherine Mangu-Ward, *The Age of Corporate Environmentalism: big business has learned that it's pretty easy being green*, REASON, Feb. 1, 2006, available at <http://www.reason.com/0602/fe.km.the.shtml>.

134. Arundhati Roy, *Help that Hinders*, LE MONDE DIPLOMATIQUE, Nov. 2004, available at <http://www.globalpolicy.org/ngos/credib/2004/1104hinders.htm>.

135. *Id.* See also Saskia Sassen, *A New Geography of Power?* (1999), <http://www.globalpolicy.org/nations/sassen.htm>.

136. See ECOLOGIC AND FIELD, *supra* note 57, at 9.

137. See *id.*

138. HUNTER ET AL., *supra* note 1, at 262-63. The officials of developing countries often fear that NGOs are actually advocates for the interests of developed nations. *Id.*

of who really benefits from NGO activities.¹³⁹ As organizations negotiate development strategies with impoverished nations who desperately need assistance, it is questionable whether the NGOs are acting on behalf of the countries' environmental concerns or the interests of donor governments and corporations.¹⁴⁰

To ensure the credibility of NGOs and fairness in the international system, the representation of the north and south by NGOs must be equalized.¹⁴¹ To date, this problem has been left unaddressed.¹⁴² To promote more equalized representation, financial resources are a key component for the small NGOs of underdeveloped countries.¹⁴³ Funding of their participation is essential and could come from sources such as mandatory government contributions, accreditation fees and their distribution, or other innovative sources.¹⁴⁴ When financial resources are raised, the allocation of those funds should be reserved for qualified NGOs of underrepresented or underdeveloped countries.¹⁴⁵ Only with equal representation can a true global community exist.

D. *Proposals for Capitalizing on NGO Participation*

Currently, accreditation of NGOs is the only requirement for participation in international lawmaking.¹⁴⁶ Accreditation is typically granted if an organization establishes expertise or interest in the subject matter of the international forum.¹⁴⁷ Considering the concerns of sovereignty, accountability, transparency, and unequal representation, something more than accreditation may be necessary regardless of whether NGO participation increases or stays at the same level.¹⁴⁸

One proposed solution addresses these concerns while still moving toward a global community by recognizing NGOs as legal subjects of international law.¹⁴⁹ NGOs have gained acceptance as important actors in the international legal system and formal recognition would further

139. See Roy, *supra* note 134.

140. See *id.*

141. Edwards, *supra* note 121.

142. ECOLOGIC AND FIELD, *supra* note 57, at 9.

143. See *id.* at 15.

144. *Id.* Michael Edwards of the Ford Foundation suggests a WTO Participation Fund for NGOs that need assistance. This would help ensure that developing countries are represented. Edwards, *supra* note 121.

145. ECOLOGIC AND FIELD, *supra* note 57, at 15.

146. *Id.* at 7.

147. *Id.* at 3.

148. *Id.* at 10.

149. Nowrot, *supra* note 3, at 601.

legitimize their role.¹⁵⁰ This step would also reflect the increasing diversity within the international system.¹⁵¹

There are two benefits to this suggestion. First, NGOs would be held to the same standards and bear the same duties as nations in the international community while enjoying increased legitimacy and influence.¹⁵² As legal subjects, NGOs would be accountable for their internal management and their actions.¹⁵³ Second, this integration would provide more complete representation within the international community. NGOs would no longer be dependent upon nations to make decisions and follow through on agreements.¹⁵⁴ Their equal status would further allow for full participation and promotion of global initiatives from a non-state viewpoint.¹⁵⁵

To implement this significant systemic change, advocates of granting legal status to NGOs must overcome the argument that NGOs do not represent anyone, and therefore are not legitimate advocates for any constituency.¹⁵⁶ While there is validity in the argument, the contribution of scientific technology and global perspective by NGOs may provide a benefit that outweighs the dangers posed by a lack of constituency.¹⁵⁷ Perhaps the decisive issue is the larger question of whether increased participation is a step toward a better system, or an invitation for disputes and increased problems.

Less drastic suggestions for NGO participation involve various rules and regulations, without granting legal status.¹⁵⁸ Proposals include regular reporting requirements, disclosure of funding structure, and transparency in various areas.¹⁵⁹ In some instances, these regulatory practices are beneficial to NGOs as a tool for establishing credibility. But in some cases, specifically for small organizations without formal systems in place, the requirements may be overly burdensome.¹⁶⁰ In such cases, regulations that are intended to improve the level of participation may actually prevent organizations from contributing valuable information.¹⁶¹ To ensure an

150. *Id.* at 634.

151. *Id.* at 645. NGOs, multinational corporations, individuals, and others are becoming more active in the international community. *Id.*

152. *See id.* at 596, 601.

153. Nowrot, *supra* note 3, at 598.

154. *Id.* at 595.

155. *See id.*

156. HUNTER ET AL., *supra* note 1, at 265.

157. ECOLOGIC AND FIELD, *supra* note 57, at 4-5.

158. *See, e.g., id.* at 11-16.

159. *Id.* at 10.

160. *Id.* Many grassroots organizations do not have the necessary resources or structure to accommodate such reporting requirements. *Id.*

161. ECOLOGIC AND FIELD, *supra* note 57, at 10.

effective result, it may be necessary to tailor the rules and regulations to fit the individual class of NGO.¹⁶²

V. CONCLUSION

NGO participation in international environmental activities is a rapidly increasing, yet informal practice. Despite their increase in activity and influence, requirements on NGO participation have remained minimal.¹⁶³ As NGO involvement continues, the need for formal rules relating to participation, accountability, and legitimacy is becoming apparent.¹⁶⁴ The current structure allows NGOs to make significant contributions to the international forum, but the lack of rules could potentially curb their credibility and ability to participate in the future.¹⁶⁵

The international community needs NGO participation. Whether their role expands or stays the same, a system of accountability will protect the beneficiaries of NGO actions, the sovereign nations, and the NGOs themselves.¹⁶⁶ Change has the potential to take many forms, but a shift toward formalized involvement will not only enhance NGO contributions, but will also allow state-actors to rely on their legitimacy and actually enhance their own powers as well.¹⁶⁷ The contributions of NGOs are too valuable to leave unattended without regulations and protections.

162. NGOs vary in levels of participation and resources, which could justify or require adaptable rules or regulations. *See* Maslyukivska, *supra* note 49, § 1.4.

163. ECOLOGIC AND FIELD, *supra* note 57, at 10.

164. Nowrot, *supra* note 3, at 596.

165. ECOLOGIC AND FIELD, *supra* note 57, at 11.

166. *See generally*, Nowrot *supra* note 3.

167. Raustiala, *supra* note 2, at 585-86.