

TOWARD GLOBAL CITIZENSHIP IN
INTERNATIONAL ENVIRONMENTAL LAW

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I. INTRODUCTION

[The trend toward globalization is] being borne in on us by the onrush of economic and ecological forces that demand integration and uniformity and that mesmerize the world with fast music, fast computers, and fast food—with MTV, Macintosh, and McDonald's, pressing nations into one commercially homogeneous global network: one McWorld tied together by technology, ecology, communications and commerce.¹

This will be a critical year in seeing whether McWorld can adequately respond to the increasing urgency of global environmental issues. The ecological limits of the planet and of economic growth are forcing policymakers to look for international solutions

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1. Benjamin R. Barber, *Jihad vs. McWorld*, THE ATLANTIC MONTHLY, March 1992, at 53.

to global environmental problems. Although some headway has been made—for example, the increasing acceptance of “sustainable development” as an international goal²—the international legal system, reflecting as it does an archaic acceptance of the nation-state as the root of all power, may be fundamentally incapable of meeting these challenges. Without greater responsibility and rights for citizens, the current international legal order risks becoming irrelevant just when it is most needed.

This essay briefly explores some of the current trends in international society with an eye towards developing a sense of global citizenship—of environmental rights and responsibilities. Part II of the essay discusses the apparent inability of the international legal system to respond adequately to global environmental challenges.³ Part III suggests that the failure of the international legal system rests in its fundamental reliance on the conduct and activities of nation-states.⁴ Part IV explores the recent trend toward globalization in the environmental movement, in the economy, the press, and finally environmental law.⁵ Part V suggests that simultaneously with globalization, we must see an increase in democracy and citizen participation in international institutions.⁶ Finally, Part VI concludes with a survey of the major developments that will occur this year, including the United Nations Conference on Environment and Development.⁷

II. IS INTERNATIONAL LAW FAILING TO PROTECT THE ENVIRONMENT?

Today's most urgent environmental issues are increasingly global ones. Ozone depletion is no longer limited to Antarctica, but now extends over the United States as well.⁸ Atmospheric car-

2. See, e.g., THE WORLD COMMISSION OF ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 43-46 (1987) [hereinafter OUR COMMON FUTURE]; HERMAN E. DALY & JOHN B. COBB, JR., FOR THE COMMON GOOD: REDIRECTING THE ECONOMY TOWARD COMMUNITY, THE ENVIRONMENT AND A SUSTAINABLE FUTURE (1989).

3. See *infra* notes 8-26 and accompanying text.

4. See *infra* notes 27-32 and accompanying text.

5. See *infra* notes 33-55 and accompanying text.

6. See *infra* notes 56-64 and accompanying text.

7. See *infra* notes 65-70.

8. See Kathy Sawyer, *Ozone-Hole Conditions Spreading*, WASH. POST, Feb. 4, 1992, at A1 (discussing ozone depletion over New England states); William K. Stevens, *U.S. in Affected Zone, Summertime Harm to Ozone Detected Over Broader Area*, N.Y. TIMES, Oct. 23, 1991, at A1; see also Cynthia Pollock Shea, *Protecting Life on Earth: Steps to Save the Ozone Layer*, WORLDWATCH PAPER No. 87, at 5 (Dec., 1988).

bon dioxide has increased over twenty percent since the pre-industrial period.⁹ With current trends, global temperatures may rise between 2.6 and 5.8 degrees Celsius by the end of the century, and sea levels could rise over one meter.¹⁰ Atmospheric changes threaten the productivity of the phytoplankton that forms the base of the marine food chain.¹¹ Much of the earth's biodiversity, from the African elephant¹² to the spotted owl,¹³ is facing extinction.¹⁴ The growing list of pending environmental calamities should serve as a wake-up call to citizens everywhere—the global environment is in serious trouble.

My own wake-up call came on April 26, 1986—the day of the Chernobyl nuclear accident. Thirty-one people died immediately.¹⁵ The United Kingdom estimated that 1,000 people would die and 3,000 would contract non-fatal cancers.¹⁶ Over 225,000 people were evacuated from the region.¹⁷ This year, the world saw its first true environmental refugees as Czecho-Slovakia organized efforts to accept Chernobyl families of Czech and Slovak descent.

9. JIM MACNEIL, ET AL., *BEYOND INTERDEPENDENCE* 11 (1991) (citing WORLD METEOROLOGICAL ORGANIZATION/UNITED NATIONS ENVIRONMENT PROGRAMME INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *CLIMATE CHANGE: THE IPCC SCIENTIFIC ASSESSMENT* (1990)); see also JONATHAN WEINER, *THE NEXT ONE HUNDRED YEARS: SHAPING THE FATE OF OUR LIVING EARTH* 57-134 (1991) (discussing global warming).

10. See MACNEIL, *supra* note 9, at 13.

11. *Id.* at 11; see also Boyce Rensberger, *Ecology: Algae Growth Slows Under Ozone Hole*, WASH. POST, Feb. 24, 1992, at A2.

12. See SARAH FITZGERALD, WORLD WILDLIFE FUND, *INTERNATIONAL WILDLIFE TRADE: WHOSE BUSINESS IS IT?* 105 (1989); KENYAN WILDLIFE SERVICE, *COMMENTS BY KENYA WILDLIFE SERVICE ON ENDANGERED SPECIES ACT 1* (n.d.) (submitted in opposition to United States Fish & Wildlife Service proposal to list all populations of elephants as endangered except those in Botswana, South Africa, and Zimbabwe, which would retain threatened status).

13. See Final Rule Determination of Threatened Status for the Northern Spotted Owl, 55 Fed. Reg. 26,114 (1990) (hereinafter Final Rule); see also David S. Wilcove, *Of Owls and Ancient Forests*, in *ANCIENT FORESTS OF THE PACIFIC NORTHWEST* 76-83 (1990).

14. See, e.g., Edward O. Wilson, *The Current State of Biological Diversity*, in EDWARD O. WILSON, *BIODIVERSITY* 13 (Edward O. Wilson & Frances M. Peter eds., 1988) (estimating that we may be losing 17,500 species per year); Peter H. Raven, *Our Diminishing Tropical Forests*, in EDWARD O. WILSON, *BIODIVERSITY* 121 (1988) (estimating that we may lose 25% of all species within the next few decades).

15. *Program to Combat Effects of Chernobyl Prepared by UN Health Agency, Soviets*, 14 Int'l Env'tl. Rep. (BNA) 238-39 (1991) [hereinafter *Effects of Chernobyl*].

16. See Phillippe J. Sands, *Environment, Community and International Law*, 30 HARV. INT'L L.J. 393, 402 (1989).

17. *Effects of Chernobyl*, *supra* note 15, at 239.

Chernobyl caused untold billions of dollars in property damage and lost trade. Traces of radiation spread throughout the world. Even the United States reported radiation increases.¹⁸

The Chernobyl accident was the most far-reaching industrial disaster ever, with transboundary effects in over twenty countries. However, from a legal standpoint, the incident at Chernobyl is relatively simple. The incident implicated a fundamental doctrine of international environmental law: state responsibility.¹⁹ It was the prototypical international environmental dispute, with industrial activities under the control of one state harming another state's territory.

In some respects, the Chernobyl accident was a 1980s version of the much-heralded 1941 *Trail Smelter* case.²⁰ In *Trail Smelter*, an International Arbitral Tribunal under the authority of the International Joint Commission held a privately owned smelter in Canada liable for damage in Washington State caused by sulfur dioxide emissions. The Tribunal levied damages and awarded injunctive relief²¹ in what is seen as a model for international environmental law decisions. *Trail Smelter* would seem to present a perfect precedent for the international adjudication of claims arising from the Chernobyl accident. But no such adjudication has occurred.²²

There are many environmental situations, like Chernobyl, where possible international legal remedies were ignored. For instance, although acid rain from the United States was a high priority issue in Canada during the Reagan administration,²³ the Canadian government failed to seek help in any judicial or arbitral forum. There have been only three intergovernmental environmental dispute resolutions since *Trail Smelter*: the 1956 *Lac Laneaux*

18. See Ronald Sullivan, *Fallout Found in U.S. Said to Pose No Risk*, N.Y. TIMES, May 13, 1986, at A6.

19. Under the state responsibility doctrine, states may be held responsible for the activities of private entities under their control, which may affect the use or enjoyment of areas within the territory of another state. See *Fifth Report on International Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law*, [1984] 2(1) Y.B. Int'l L. Commission 155, 157, U.N. Doc. A/CN.4/383/1984/Add.1.

20. *Trail Smelter Case* (U.S. v. Canada), 3 R. Int'l Arb. Awards 1905 (1938) (initial decision), *further proceedings*, 3 R. Int'l Arb. Awards 1938 (1941) (final decision).

21. *Id.* at 1965 (final decision).

22. See PHILLIPE SANDS, *CHERNOBYL: LAW AND COMMUNICATION: TRANSBOUNDARY NUCLEAR AIR POLLUTION—THE LEGAL MATERIALS* (1988); Sands, *supra* note 16, at 401-12.

23. Marc Clark, *Facing the Issues*, MACLEAN'S, May 2, 1988, at 12-13.

controversy between France and Spain,²⁴ the 1968 *Gut Dam* arbitration between the United States and Canada,²⁵ and the French Nuclear Test Cases in 1973.²⁶ Three cases in fifty years reflects a fairly dismal record for international environmental adjudications.

In part, international environmental law's dismal record in resolving disputes merely reflects the widely recognized problem that virtually no environmental treaty provides for compulsory adjudication or arbitration. Countries simply opt out when it comes to deciding tough environmental questions. Still, there is a more fundamental reason why international environmental law is not living up to its potential—a reason lying at the heart of traditional, public international law.

III. THE PROBLEM WITH INTERNATIONAL LAW

International law is formed primarily through the customary actions of individual states or through formal treaties between states.²⁷ In both cases, the creation of international environmental law depends largely on state actions; thus, in most cases, only countries are recognized as responsible actors. Citizens enjoy virtually no rights under international law, nor do organizations such as the World Wildlife Fund, Exxon, or Conoco. The World Court, for example, does not grant standing to citizens or non-governmental organizations (NGOs).²⁸ The international system is run by, and for, state departments and diplomats, with little recognition of individual sovereignty or responsibilities.

This archaic, undemocratic power structure of the international system has led Phillip Allott to liken international law to

24. *Affaire du Lac Lanoux* (Spain v. Fr.), 12 R. Int'l Arb. Awards 281 (1963).

25. *Gut Dam Claims* (Can. v. U.S.), 8 I.L.M. 118 (1969). *Dam*, however, arose from traditional water use disputes, not environmental pollution problems.

26. See *Nuclear Tests* (Australia v. France), 1973 I.C.J. 99 (interim order of June 22); (*New Zealand v. France*), 1973 I.C.J. 135 (interim order of June 22); see also *Developments in the Law: International Environmental Law*, 104 HARV. L. REV. 1484, 1500-01 (1991). Moreover, both *Lac Lanoux* and *Gut Dam* arose from traditional water use disputes, not environmental pollution problems, and, in the Nuclear Test cases, France refused to accede to the jurisdiction of the World Court.

27. See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 3 (4th ed. 1990) (stating that international conventions and custom are "obviously the important sources" of international law).

28. See Statute of the International Court of Justice, Article 34(1) ("Only states may be parties in cases before the Court.").

“post-feudal society encased in amber.”²⁹ At the international level, the Enlightenment is no more than an unrealized ideal. Compare, for instance, the international system to the United States Constitution. In the international legal system, sovereignty (thus, power and rights) rests with the states³⁰ not with the citizenry.³¹

The challenge for each of us is to rethink international law and society to make it respond directly to citizens. As Allott writes:

The task of humanity now is to take possession of the wasteland of international society in the name of people and in the name of justice, to redeem state-societies as systems for organizing the willing and acting of all human beings. It is through reconceiving itself that international society may humanize the state-system. It is by reconceiving international law that international society may set about the process of reconceiving itself as a society.³²

In short, we must find ways to democratize international institutions. Ultimately, this means vesting more rights and responsibilities in individuals, bypassing if necessary the role of states. Increasing individual responsibility also means we must begin to think of ourselves as global citizens, having primary responsibility and fidelity to the planet. Despite (or perhaps because of) the oppressive state of our global environment, the necessary shift to a sense of global citizenship may be finally occurring. Several identifiable trends, predominantly outside the realm of traditional international environmental law, suggest that we as global citizens may be able to break free of international society’s “amber” sarcophagus.

29. PHILLIP ALLOTT, *EUNOMIA: NEW ORDER FOR A NEW WORLD* 238 (1990). Allott writes further that the international system is

[c]apable only of generating so-called *international relations*, in which so-called *states* act in the name of so-called *national interests*, through the exercise of so-called *power*, carrying out so-called *foreign policy* conducted by means of so-called *diplomacy*, punctuated by medieval entertainments called *wars* or, in the miserable modern euphemism, *armed conflict*. That is the essence of the social process of international non-society.

Id.

30. See *id.* at 242-48 (describing “state” and its responsibilities as primary embodiment of international legal system).

31. See U.S. CONST. pmb. (beginning purposefully with phrase: “We the People of the United States . . .”).

32. See ALLOTT, *supra* note 29, at 254.

IV. GLOBALIZATION, OR "IT'S A SMALL WORLD AFTER ALL"

A. *Globalization of the Environmental Movement*

Environmentalists have long believed that industrialized society would inevitably press the limits of the Earth's capacity to sustain life.³³ Public concern with these limits, however, probably began to develop only with Neil Armstrong's walk on the moon. It was exciting to see what the moon looked like up close, but it was far more important to see what the Earth looked like from a distance. Earth looked like a small island floating in the Universe, which, of course, is exactly what it is.

In *The End of Nature*,³⁴ Bill McKibben writes about the size of the Earth in a particularly poignant way. He notes that typically we think of the Earth horizontally and are impressed by the many countries, rivers, and oceans that most cannot hope to visit in a lifetime. McKibben writes:

But from my house to the post office at the end of the road is a trip of six and a half miles. On a bicycle it takes about twenty-five minutes, in a car eight or nine. I have walked it in an hour and a half. If you turned that trip on its end, the twenty-five minute pedal past Bateman's sand pit and the graveyard and the waterfall and Allen Hill would take me a mile beyond the height of Mt. Everest, past the point where the air is too thin to breathe without artificial assistance. Into that tight space, and the layer of ozone just above it, is crammed all that is life and all that maintains life.³⁵

Understanding the smallness of the Earth is nothing new—understanding its fragility is. With this understanding comes the recognition that we all belong to one vulnerable community, desperately in need of help. This need is so great that we can no longer rely on governments to act in the community's best interests, but must shift more of the responsibility for global environmental protection to individuals.

This growing sense of the need for citizen responsibility for, and involvement in, global environmental issues in recent years has led to an explosion in the number of citizens organizations involved

33. See, e.g., Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968); DR. PAUL A. EHRLICH, *THE POPULATION BOMB* 15 (1968); BARRY COMMONER, *THE CLOSING CIRCLE* (1972).

34. WILLIAM MCKIBBEN, *THE END OF NATURE* (1989).

35. *Id.* at 6.

with international environmental issues. New organizations have been created,³⁶ and existing environmental groups, at least in the United States, have developed significant international components.³⁷ These groups will provide the necessary leadership and vision for a global environmental movement that holds primary allegiance to the planet's health, not to any one nation-state.

B. Globalization of Society

As the environmental movement has become more global in scope, so too have the world's economy and culture. Modern technology has enabled information, capital *and* people to flow unimpeded across oceans and political boundaries. The resulting global market is the natural home for today's multinational corporations. An individual country's development path may now depend more on entities such as Coca-Cola and McDonald's than on national or international governmental policy. As the world's economies become increasingly entwined, advertising and consumption preferences tend to homogenize the cultures of the world.

The trend toward a unified culture is reinforced by the globalization of the press.³⁸ The world has become one public relations market. News networks such as CNN provide world leaders with access to citizens worldwide and bring one view of world events to practically the entire planet. The potential power of the global press is reflected in worldwide attempts to manipulate public opinion, including for example the concurrent attempts by President Bush and Saddam Hussein to use the press during the Gulf Crisis, and the appearances on American television of then Soviet President Mikhail Gorbachev and Russian Premier Boris Yeltsin immediately after the Soviet hardliners' failed coup. Gorbachev and Yeltsin were not talking primarily to President Bush, Prime Minister Major or some other world leader; they were talking to, and

36. Relatively long-established international organizations, such as Friends of the Earth International, Greenpeace International, and Conservation International, have been joined by relatively new organizations such as the Center for International Environmental Law-U.S.

37. For example, Greenpeace, National Audubon Society, Sierra Club, Nature Conservancy, Natural Resources Defense Council, Environmental Defense Fund, Environmental Law Institute, and World Wildlife Fund all have international departments.

38. See generally Benjamin R. Barber, *supra* note 1, at 55-59 (impact of press on globalization).

answering questions from, citizens of the United States, bypassing diplomats and state departments.

A uniform global culture is both threatening and promising. We should lament the loss of cultural diversity—of the richness of different human experiences, beliefs, and customs, especially because traditional cultures may hold the information and knowledge necessary for modern culture to achieve sustainability. Nonetheless, if economic trends continue to move us toward a uniculture, then we should at least try to make that culture environmentally sustainable. To the extent modern trends unify different cultures, an effective global response to environmental problems may become possible.

C. *Globalization of Environmental Standards*

With the globalization of environmentalism, the market, and the media, it should not be surprising to see a trend toward harmonized legal standards and norms, particularly concerning the environment. Some of this harmonization is occurring through traditional international means, such as treaties. For example, the 1991 Economic Commission for Europe's Convention on Environmental Impact Assessment in a Transboundary Context aspires to harmonize procedures for environmental planning and decision-making in border areas.³⁹ Also interesting is the 1974 Nordic Environmental Protection Convention,⁴⁰ in which member states mutually granted foreign citizens and corporations equal access and treatment to judicial and administrative proceedings. This trend extends beyond Europe as well. In April 1991, legislative leaders from seven Central American countries formed the Interparliamentary Commission for the Environment and Development, with a primary goal of conforming that region's environmental laws.⁴¹

The general movement toward free trade, and more specifically toward regional free trade blocs, is the major force behind this harmonization of law. Trade can be an engine for the harmonization of environmental laws. The development of regional trade blocs in the European Community (EC) and, more recently, in

39. United Nations Convention on Environmental Impact Assessment in a Transboundary Context, 30 I.L.M. 800 (1991) (done at Espoo, Finland, Feb. 25, 1991).

40. Nordic Environmental Protection Convention, Feb. 19, 1974, 1092 U.N.T.S. 279.

41. *Congressional Leaders in Seven Nations Form Group to Conform Environmental Laws*, 14 Int'l Env'tl. Rep. (BNA) 193 (1991).

North America requires a level playing field.⁴² Because disparate environmental standards could pose a major obstacle to free trade, we now see an increased effort to strengthen environmental standards in countries such as Mexico⁴³ and more recently Chile.⁴⁴ Although the effects of free trade policies on environmental protection are complicated and currently unpredictable, trade pressures may lead to an upward ratcheting of environmental laws in countries with weak or no laws.⁴⁵ Those countries that have developed technologies to comply with tougher standards will likely never accept lower standards. For example, tougher environmental standards in Germany provide a precedent for stronger EC standards.⁴⁶

As countries adopt stronger environmental laws,⁴⁷ they often look to the experience of other countries, particularly the United States and other western democracies. The result is a growing ac-

42. Although no North American Free Trade Agreement yet exists, the United States and Mexico began serious talks in June 1990. Such an agreement already exists between the United States and Canada. See CONGRESSIONAL RESEARCH SERVICE (LIBRARY OF CONGRESS), PUB. NO. 91-262E, NORTH AMERICAN FREE TRADE AGREEMENT: ISSUES FOR CONGRESS (updated July 12, 1991).

43. See Draft of the Interagency Task Force Coordinated by the Office of the United States Trade Representative, Review of U.S.-Mexico Environmental Issues (Oct. 1991); see also William Reilly, *Mexico's Environment Will Improve With Freer Trade*, WALL ST. J., Apr. 19, 1991, at A15.

44. Nathaniel C. Nash, *Chileans Pay Dearly For Economic Growth*, N.Y. TIMES, Nov. 10, 1991, at E6.

45. See Robert Housman & Durwood Zaelke, *Trade, Environment and Sustainable Development: A Primer*, HASTINGS INT'L & COMP. L. REV. (forthcoming Spring 1992) (currently available upon request from the Center for International Environmental Law-U.S.). It is equally possible that trade-driven harmonization of standards could adopt a least-common-denominator approach, effectively reducing environmental protection in countries with high standards. *Id.*

46. See, e.g., UNITED STATES DEPARTMENT OF COMMERCE, THE EUROPEAN COMMUNITY AND ENVIRONMENTAL POLICY AND REGULATIONS 4 (1991) (available from author upon request) (noting that "German industry has now become the European leader in the field and, therefore, German initiatives are sometimes harbingers of EC-wide policies; the EC's proposal for an eco-labelling scheme is based on Germany's 'Blue Angel' system."); see also Ordinance on the Avoidance of Packaging Waste of June 12, 1991 (translation of the German Blue Angel ordinance available from author upon request); Draft Proposal for a Council Directive on Packaging and Packaging Waste, DG XI-A4 (Dec. 18, 1991) (Draft no. 3).

47. See, e.g., *Columbia: New Constitution Contains Provisions Guaranteeing Environmental Protections*, 14 Int'l Envtl. Rep. (BNA) 297 (1991); *European Community: EC Environment Ministers Agree to Limit Nitrate Pollutions on Farms*, 14 Int'l Envtl. Rep. (BNA) 321, 323 (1991); *Yugoslavia: Serbian Parliament Approves Measures Requiring Repairs for Environmental Damage*, 14 Int'l Envtl. Rep. (BNA) 585, 589 (1991).

ceptance of certain legal norms or concepts.⁴⁸ Environmental impact assessment (EIA) laws, many copied from one another, have been adopted in sixty-four countries. The widespread acceptance of EIA laws may lead to their recognition as customary international law binding even those states with no such laws.⁴⁹ Other principles that are becoming increasingly accepted at both international and national levels include the precautionary principle,⁵⁰ the polluter pays principle,⁵¹ and the goal of sustainable development.⁵²

One possible result of the increasing harmonization of laws may be expanded roles for environmentalists, no matter what country they are from, in front of national courts around the world. For example, additional treaties may follow the aforementioned 1974 Nordic Environmental Protection Convention⁵³ in granting foreign individuals their national standard of treatment with respect to judicial and administrative proceedings. The European community has also expanded access to their national courts. As a result, Germans, for example, are beginning to have more rights with respect to certain transnational harms in France, and vice versa.

Similar trends may be occurring in the United States. Most notable is a recent case in which a Texas court allowed Costa Rican workers to sue in Texas for occupational injuries incurred in a Costa Rican pesticide factory.⁵⁴ From this modest beginning, it is not inconceivable that national courts might eventually apply national environmental standards on behalf of any foreign citizen suffering from transnational environmental harms emanating from that state or a multinational corporation registered in that state.⁵⁵

48. Central and Eastern Europe, for example, seek membership in the European Community and naturally look toward EC standards for guidance.

49. *Developments in the Law*, *supra* note 25, at 1513-14.

50. See James Cameron & Juli Abouchar, *The Precautionary Principle: A Fundamental Principle of Law and Policy for the Protection of the Global Environment*, 14 B.C. INT'L & COMP. L. REV. (1991); Lothar Gundling, *The Status in International Law of the Principle of Precautionary Action*, 5 INT'L J. OF ESTUARINE & COASTAL L. 23 (1990).

51. See, e.g., *The Application of PPP to Accidental Pollution*, ENVTL. POL'Y & L. § 162 (May 19, 1989).

52. See, e.g., EXPERTS GROUP ON ENVIRONMENTAL LAW OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT (1978); OUR COMMON FUTURE, *supra* note 2.

53. Nordic Environmental Protection Convention, Feb. 19, 1974, 1092 U.N.T.S. 279.

54. *Dow Chemical Co. v. Castro Alvaro*, 786 S.W.2d 674 (Tex. 1990).

55. Eventually, national environmental standards may merge to a point where courts are applying harmonized global standards. See PETER SAND, LESSONS LEARNED IN GLOBAL ENVIRONMENTAL GOVERNANCE 30 (1990). Even in the absence of harmonized legal standards, multinational corporations are increasingly adopting internally uniform

Obviously, this would be a major breakthrough toward global citizenship.

V. DEMOCRATIZATION OF INTERNATIONAL LAW

If globalization provides us with the "global" part of global citizenship, then democratization provides us with the "citizenship" part. The end of the Cold War may catalyze the democratization of international law; international law need no longer be seen through the prism of superpower conflict. No longer preoccupied with the U.S.-U.S.S.R. relationship, governments may make more room for citizens to secure a greater role on the international scene.

A. *Reforming International Institutions*

The end of the Cold War has led to growing support for restructuring the United Nations. Calls are being made for a decrease in the power of the security council, and an increase in the power of a permanent United Nations civil service.⁵⁶ Some want the United Nations to have four major divisions, including one on environment and development.⁵⁷

These calls for restructuring are nothing new, but they are receiving much more attention for several reasons related to the end of superpower conflict. Issues such as the environment are beginning to be seen as more critical than traditional security problems. Moreover, the current United Nations system simply doesn't make sense in light of the present political environment. For example,

standards for their operations in all countries. See, e.g., Ann Rappaport & Margaret Flaherty, *Multinational Corporations and the Environment: Context and Challenges*, 14 Int'l Envtl. Rep. (BNA) 261, 263 (1991). This voluntary corporate harmonization not only demonstrates that higher environmental standards may provide a long-term competitive advantage, but it may also facilitate the harmonization of legal standards. *Id.*

56. See, e.g., Paul Lewis, *U.N. May Deprive the Major Powers of Its Top Posts*, N.Y. TIMES, Sept. 17, 1991, at A1; John M. Goshko, *U.N. Summit Stresses Global Cooperation*, WASH. POST, Feb. 1, 1992, at A1, A11 (discussing calls for fundamental reforms of U.N. Security Council).

57. See JOSEF VAVROUSHEK, MINISTER OF THE ENVIRONMENT FOR THE FEDERAL COMMITTEE OF THE ENVIRONMENT IN THE CZECH AND SLOVAK FEDERAL REPUBLIC, INSTITUTIONAL REFORMS FOR BETTER ENVIRONMENT (Europe and Global Scale) (Nov. 1991) (available from author upon request); see also Edouard Schevardnadze, *Ecology and Diplomacy*, 20 ENVTL. POL'Y & L. 20, 23 (suggesting an organization patterned after security council to address environmental issues affecting national security). See also Hilary F. French, *Strengthening Global Environmental Governance*, in STATE OF THE WORLD 155, 169-73 (Lester R. Brown ed., 1992).

who should receive the former Soviet Union's veto within the security council? More importantly, why should two members of the EC (France and the United Kingdom) get a veto when Germany (the strongest economy within the EC) does not? Victory in a war fifty years ago may no longer be a sufficient reason for disproportionate power at the United Nations.

Short of completely restructuring the United Nations, certain modest reforms can be seen in the way traditional international environmental law defines which states have a right to complain about common environmental problems. For example, the new noncompliance procedure adopted at the 1990 London Conference by the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer provides that any party may submit reservations regarding any other party's implementation of the Protocol.⁵⁸ The key is that no specific harm to a state's resources in the traditional *Trail Smelter*⁵⁹ sense is needed. Similar concepts underlie general rights to audit compliance, as seen in treaties such as the Convention on International Trade in Endangered Species (CITES).⁶⁰ Moreover, the EC Commission recently has been more aggressive in bringing proceedings to the European Court of Justice against member states not in compliance.⁶¹ These changes suggest that governments will take on the role of "private attorneys general" in the international sphere. Can such a role for non-governmental organizations and citizens be far behind?

B. Reforming Citizens' Rights in International Society

Global environmental problems cannot be solved without increasing the role of citizens. In certain limited ways, the role of citizens in international law has been expanding. Since 1987, for example, citizens have enjoyed access to a citizen complaint regis-

58. See Report of the Second Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, June 1990, ¶ 40, Decision II/5, UNEP/Oz L. Pro.2/3, at 11; see also Peter Sand, *supra* note 55, at 31.

59. See *supra* notes 20-26 and accompanying text.

60. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.

61. See, e.g., EEC Commission v. Belgium (no. 239/85) COMMON MKT. L. REV. 248 (1988) (holding that Belgium failed to implement council directive on hazardous waste). The EC's authority to bring cases directly before the European Court arises under Article 169 of the Treaty of Rome, Treaty Establishing the European Economic Community, Mar. 25, 1957, art. 169, 298 U.N.T.S. 11). See generally Sands, *supra* note 15, at 414-17 (discussing increasing role of non-governmental organizations in European Community).

try in Brussels where they can claim violations of EC standards. Some citizen complaints have resulted in significant actions by the EC. Most notably, a citizen complaint by Friends of the Earth (FOE) in 1989 triggered the EC's investigation into the United Kingdom's efforts to privatize its water supply.⁶² FOE demonstrated how several privatized systems would not meet environmental standards. Greenpeace Luxembourg also recently assisted a group of French nationals to persuade the European Court of Justice to temporarily close a French nuclear power plant, due to the French nuclear authority's failure to comply with certain EC procedural requirements.⁶³

Perhaps the best example of the expanding role of the public is the success of citizens and NGOs in lobbying efforts to make the Antarctic an international park. The Antarctic Treaty was signed in October 1991,⁶⁴ prohibiting mining and exploitation of the region for fifty years. Only years earlier, governments were prepared to allow, albeit regulate, mining in Antarctica. A major cause in the shift toward preservation was the thousands of individual signatures from citizens around the world collected by groups such as Friends of the Earth International, World Wide Fund for Nature, and Greenpeace International.

VI. CITIZENS AND THE ENVIRONMENT IN 1992

For several reasons, this may be the best year for global citizens to demand stronger and more democratic environmental institutions. First, 1992 marks the 500th anniversary of Columbus's discovery, an ideal time to evaluate the environmental effects of the colonialism that is still reflected in today's international economic order.⁶⁵ For environmentalism to prevail on the international level, we must creatively and positively address the development of the impoverished countries. Voices calling for the empowerment of the developing countries and for increased state sovereignty and the

62. Sands, *supra* note 16, at n.98.

63. *Id.*; see also *Saarland v. Ministry of Industry*, 1 COMMON MKT. L. REV. 529 (1989).

64. *Protocol to Protect Antarctica Signed By 31 Nations At Meeting*, 14 Int'l Env'tl. Rep. (BNA) 540 (1991).

65. See, e.g., *The Conquest of Nature, 1492-1992*, 25 REPORT ON THE AMERICAS No. 2 (Sept. 1991) (collection of essays on environmental effect of colonialism); Charles Krauthammer, *Hail Columbus, Dead White Male*, TIME, May 27, 1991, at 74.

right to develop will be amplified with the attention paid to the Columbus anniversary.

The year 1992 may also see the unification of the EC market. Never have countries agreed to cede so much autonomy, so much sovereignty, to others. But the European Community may become obsolete just as it materializes. Countries from the European Free Trade Alliance (EFTA)⁶⁶ and from Central and Eastern Europe want to be full members of Europe—economically, politically, and culturally. Environmental problems, in particular, will not honor the border between the EC and Central Europe any more than they honor the borders between France and Germany. We can expect both political pressures from the non-EC countries and environmental realities to result in more pan-European institutions. Either the EC will be flexible enough to incorporate this pan-European trend, or it will risk becoming irrelevant. Whatever pan-European structures are ultimately created, citizens must have significant individual rights. Recognizing this, the European Environmental Bureau has declared that increasing the role of NGOs and citizens is one of its major lobbying priorities for the coming year.⁶⁷

Certainly, the most important event of 1992 is the United Nations Conference on Environment and Development (UNCED) to be held in June 1992 in Rio de Janeiro. UNCED has been heralded as the last great chance for Planet Earth. It may be the largest gathering of heads of state ever.

UNCED's agenda includes efforts to reach agreements on: 1) an Earth Charter that will embody basic principles for environmental behavior; 2) "Agenda 21," a blueprint for all major environmental-development issues; 3) framework conventions on climate change, biological diversity, and forestry; and 4) agreement on financial mechanisms for implementing new initiatives and agreement on reforms for strengthening international institutions.⁶⁸ Currently, it seems the best we can hope for is the Earth Charter

66. The EFTA countries include Norway, Finland, Sweden, Iceland, Austria, and Switzerland.

67. See *European Environmental Bureau Outlines Priorities to Dutch EC Presidency*, 14 Int'l Env'tl. Rep. (BNA) 416, 416 (listing right of non-governmental organizations to bring actions before European Court of Justice among EEB's major priorities).

68. See generally Peter H. Sand, *International Law on the Agenda of the United Nations Conference on Environment and Development: Towards Global Environmental Security?*, 60 NORDIC J. OF INT'L L. 5, 6 (1991); SUSAN R. FLETCHER, UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (UNCED): BRAZIL 1992 (Oct. 2, 1991) (Congressional Research Service Rep. 91-363).

and Agenda 21, and perhaps a general framework convention on global warming. Biodiversity and forestry conventions now seem unlikely.⁶⁹

Will UNCED save the Earth or be a colossal waste of time? The answer may lie primarily in what is happening below the international level. UNCED has led developing countries to focus on environmental matters. Every country will present a report on the state of its environment.⁷⁰ The results may not be readily apparent at UNCED, but the increased attention countries throughout the world are paying to environmental problems should lead to stronger environmental policies.

The role of the 20,000 citizen activists who will converge on Rio for the conference cannot be understated. These activists will demand greater responsibility and power in international environmental decision-making. They will also organize movements throughout the world to ensure that the politicians keep the promises they make at UNCED. For example, the Center for International Environmental Law-U.S. (CIEL-US) is launching an annual post-UNCED report that will track the implementation of promises made at UNCED. These reports will allow environmentalists in every country to retain the momentum of UNCED. The success of these programs will be measured by the extent to which citizens are allowed to participate in new international institutions and the extent to which UNCED promises become post-UNCED realities.

Perhaps even more important will be the sense gained by each environmentalist that he or she is part of a global environmental movement that can demand certain global rights. But with these rights also comes global responsibility. Each of us must become good global citizens. Lawyers bear an even more important responsibility. We are society's problem-solvers and reach the peak of our

69. *Question of Funding Blocks Progress of UNCED Negotiations*, U.S. EPA Official Says, 14 INT'L ENVTL. REP. (BNA) 647 (1991); *Little Progress Seen In Talks On Biological Diversity Convention*, Int'l Env'tl. Rep. (BNA) No. 20, at 547 (Oct. 9, 1991); *International Group Said Needed To Enforce Environmental Treaties*, 14 INT'L ENVTL. REP. (BNA) No.22, at 596-97 (Nov. 6, 1991) (quoting Peter Sand as saying that there was "reasonable hope" for biodiversity convention, but that any forestry convention would probably be a set of non-binding principles).

70. A draft of the U.S. report, entitled U.S. National Report Prepared for Submission to the United Nations Conference on Environment and Development, is available from the U.S. Council on Environmental Quality.

profession when working on the most difficult problems. Increasingly, those are environmental problems.

Certainly, the world needs better international laws and institutions, but it also needs better citizens and lawyers. Law is only as good as the people who use it. International law will never protect the global environment if lawyers don't lead the movement for increased citizen participation and environmental awareness within international society.

