# THE GREENING OF FOREIGN POLICY

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"Not so long ago,
many believed that the pursuit of
clean air, clean water, and healthy forests was
a worthy goal, but not part of our national security.
Today environmental issues are part of the
mainstream of American foreign policy."
—*Madeleine Albright*
U.S. Secretary of State

## Introduction

Environmental concerns have not only moved onto the radar screen in the international policy sphere but have become a dominant force. This became evident in 1999 when a group of environmental activists joined with union activists and self-styled anarchists to disrupt the Seattle meeting of the World Trade Organization (WTO), an international body that promotes free trade by settling trade disputes between countries.

The activists objected to decisions by the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT),

that treated environmental regulations as trade barriers. Under GATT and the WTO, governments are not allowed to ban imports simply because they dislike the means of production and processing. So, for example, GATT panels ruled that U.S. regulations barring imports of tuna not caught in a dolphin-safe manner were protectionist. After the initial ruling in 1991, environmentalists circulated posters in Paris, Tokyo, and Washington showing the monster "Gattzilla" smashing the U.S. Capitol, while it spilled DDT from one hand and squeezed a dolphin to death in the other (Dunne 1992).

The rioting in Seattle was one of the latest efforts by members of the environmental community to shape international debate and to bend the rules of international law to their liking. The changes they have brought about—and continue to promote—are the subject of this essay.

These efforts have serious impacts. First, there is less trade, which raises international tension. Second, economic growth suffers as a result and, in turn, harms the ability to protect and restore long-term environmental health. Third, nations' sovereignty and the accountability it provides are compromised. Finally, regulations become more centralized, creating a nightmare of monitoring and enforcement problems when they are applied to diverse regions and peoples.

Fortunately, there is an option to this "greening" of foreign policy, an option called free market environmentalism.[1] Those adopting this approach to environmental issues recognize that the best way to improve the international environment is to act out the adage, "think globally, act locally." Because different parts of the world require different solutions to environmental problems, decentralized policies that acknowledge national sovereignty are preferable to multinational "one size doesn't fit anyone" solutions. Under free market environmentalism, only problems that cross the borders of countries become international issues.

This *PERC Policy Series* paper, based largely on *The Greening of U.S. Foreign Policy*, a new book published by the Hoover Institution Press (Anderson and Miller 2000), will examine how foreign policy involving trade, defense, diplomacy, and interna-

tional law is being "greened" at home and abroad. It identifies the problems that arise from these revisions and explains how free market environmentalism offers a sound alternative that will lead to better environmental protection through freer trade, increased prosperity, and decentralization.

## How "Greening" Occurs

Environmental groups are increasingly pressuring domestic and international agencies to give environmental concerns greater weight.

- In the United States, both the State Department and the Department of Defense have changed their operations and revised their budgets to give politically favored environmental issues higher priority.

- The president's authority to speed trade agreements and the mission of the U.S. Agency for International Development have both been redirected in the name of the environment.

- The International Criminal Court, the World Bank, and the International Monetary Fund now boast environmental goals, and efforts to modify trade agreements to protect nature are increasing.

- Almost every agency of the United Nations (U.N.) touts the ways it is advancing its supposed environmental agenda.

- The U.N. is responsible for managing a host of multilateral environmental conventions and protocols.

All these changes represent a fundamental shift in U.S. foreign policy and international relations.

## NEW PRIORITIES AT DEFENSE AND STATE

In 1997, the Department of Defense (DOD) held a conference entitled "Environmental Change and Regional Security." In his keynote address, Gary Vest, Principal Deputy Under Secretary of Defense, quoted a statement by Secretary of Defense William Cohen that "environmental protection is critical to the Defense Department's mission, and environmental considerations shall be integrated into all defense activities" (Center for Strategic Leadership 1997, II-9). The executive summary of the conference report concluded that "the number of environmental issues that could influence [Asia-Pacific] regional security was extensive" (x–xi). The list included climate change, deforestation, nonsustainable development practices, pollution, population growth, and resource security.

This shift in emphasis has led the Department of Defense to divert some of its budget from defending the country to defending nature. Between 1984 and 1994, the department's spending on environmental programs such as the conservation of resources on military bases and environmental research jumped from $250 million to $5 billion. That twentyfold increase accounted for nearly two percent of the department's annual budget (Schaefer 2000, 61).

While the DOD should pay for environmental harm that it causes, repairing such damage is not the primary place it is spending these funds. In 1999, the military devoted only $51 million of the Pentagon's several-billion-dollar environmental budget to cleaning up training ranges. The Defense Science Board, a Pentagon advisory group, estimated that it would cost $15 billion to decontaminate just five percent of the millions of U.S. acres that have been used as bombing and target ranges (Armstrong 1999). Meanwhile, the department has been required to spend money changing military operations and procedures on much of the 25 million acres under its control in order to protect endangered species (Schaefer 2000, 61).

As the idea of a "greener" DOD began to germinate in the early 90s, the department created a new position, the Deputy As-

sistant Secretary of Defense, which deals solely with environmental issues. At President Clinton's order in 1993, the position was elevated to the status of a Deputy Under Secretary of Defense. Clinton further modified the department's mission when his preface to the 1997 National Security Strategy listed countering environmental damage among the "core national security objectives" (Schaefer 2000, 62).

Much of DOD's budgetary shift away from defense and toward environmental protection can be attributed to the relaxed atmosphere at the end of the Cold War (Schaefer 2000, 61–62). Though it makes sense to decrease expenditures on defense in light of a reduced threat, it does not necessarily follow that more should be spent on environmental protection or that the Department of Defense should be doing it.

In fact, Congress tried to temper the shift in DOD objectives. In a roll call vote in the House on May 20, 1998, the House passed by 420–0 an amendment to the Fiscal 1999 Defense Authorization stating that "no provision of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, or any regulation issued pursuant to such protocol, shall restrict the procurement, training, or operation and maintenance of the United States Armed Forces" (U.S. House 1998). Short of a serious new security threat, however, it seems unlikely that environmentalists will lose their foothold at the Defense Department.

The Department of State is also focusing more on environmental issues at the expense of traditional diplomatic functions. On Earth Day 1997, the State Department released its initial report on the environment and foreign policy called *Environmental Diplomacy: The Environment and U.S. Foreign Policy, Challenges for the Planet* (Schaefer 2000, 47–48). This report provides the strategy for advancing global environmental protection through diplomatic efforts, international organizations, and multilateral treaties.

Numerous official State Department pronouncements have featured environmental goals. In a State Department document entitled *United States Strategic Plan for International Affairs*, "global issues" are listed alongside national security as primary goals. Two of President Clinton's three global issues are a sustainable en-

vironment and a stabilized world population (Schaefer 2000, 47).[2]

John Cohrssen (2000, 119) lists environmental diplomacy changes proposed by Secretary of State Madeleine Albright. These include "appointment of an Under Secretary for Global Affairs; requests to embassies and bureaus to develop regional environmental activities; 'new' regional environmental hubs at five embassies, making environmental cooperation with other countries important; the pursuit of environmental priorities for climate change, toxic chemicals, species extinction, deforestation, and marine degradation; and advances in several treaty areas."

Schaefer (2000, 79) concludes that the State Department "has morphed from a representative of U.S. foreign policy priorities in international treaty negotiations to an advocate of international environmental treaties." To the extent that environmental issues threaten national security, this new emphasis may be justified; but to the extent that it simply puts pressure on other countries to comply with U.S. environmental goals, it is a questionable use of State Department authority.

## AID AND TRADE POLICIES SHIFT

The State and Defense Departments are not the only government bodies shifting their emphasis toward the environment. The United States Agency for International Development (USAID) was founded to help developing countries grow economically and to prevent the expansion of communism. Its goals have become increasingly environmental. According to Cohrssen (2000, 120), USAID projects have been rhetorically repackaged with sustainable development terminology. USAID now works to eliminate "environmentally unsound" energy production and use. It also plans to lobby foreign governments to embrace environmental regulation and efforts to combat global warming and protect biological diversity (Schaefer 2000, 49).

The Clinton administration's emphasis on environmental issues has caused a confrontation with Congress over the president's fast-track authority on trade issues. The purpose of "fast track" is

to streamline the progress of free trade agreements through Congress once they have been reached between countries. With fast track in place, Congress must vote within sixty days on trade legislation submitted by the president without adding any amendments. Congressional members cannot tinker with the agreements to favor special interests, and the partner countries learn quickly whether the agreement has final approval. Congress has granted fast-track authority to every president since 1974.

Since 1994, however, Congress has refused to grant fast-track authority. One of the reasons was President Clinton's insistence on including supposed protections for the environment and labor in the authority. The stalemate brought U.S. trade negotiations to a virtual standstill in the latter half of the 1990s.

Over the long run, delays in trade liberalization hurt environmental quality. As mounting evidence cited below indicates, economic growth leads to environmental protection after a certain level of income is reached. Slowing trade causes economic stagnation in the Third World, keeping the standard of living low and retarding environmental improvement.

## International Agencies Go "Green"

The United Nations boasts a longer history of involvement in global environmental issues than does any other international organization. The first major international conference on environmental issues was sponsored by the U.N. in 1972 in Stockholm, Sweden.[3] This conference covered all of the major environmental concerns at the time and helped generate several new U.N. agencies.[4]

The United Nations has influenced numerous multilateral environmental agreements, including the Biological Diversity Treaty and the two global warming treaties—the United Nations Framework Convention on Climate Change and the Kyoto Protocol to that convention. According to Schaefer (2000, 65), "The environmental agenda has so permeated the United Nations that it is difficult to find an agency or program within the U.N. system that does not highlight its actions in support of the environment."

Environmental issues are shaping international trade agreements. The General Agreement on Tariffs and Trade, which was signed in 1948, did not mention the environment, but the WTO, which was created out of the Uruguay meetings of the GATT in 1994, includes references to both sustainable development and the need to protect and preserve the environment (Schaefer 2000, 56). Yet for those who proclaim dedication to the environment, the WTO does not go far enough. They want it disbanded or changed so that environmental regulations are never treated as trade barriers.[5]

The North American Free Trade Agreement (NAFTA) is another trade agreement that incorporates environmentally popular causes. Initially aimed at reducing protectionist trade policies between the United States, Canada, and Mexico, NAFTA incorporated such provisions as requiring the signatory countries to meet certain automobile emissions standards. These provisions essentially exported U.S. environmental standards to Mexico.

In addition, under Article 104 of the NAFTA, multilateral environmental agreements signed by both parties supersede any conflicts those agreements might have with NAFTA (Schaefer 2000, 54). Assume, for example, that the United States and Mexico sign an environmental agreement that makes economic sanctions a penalty for failing to cut back on carbon dioxide emissions. Such an agreement would trump tariff elimination under NAFTA.

The "greening" of NAFTA and the WTO was just the beginning. In November 1999, President Clinton's Executive Order 13141 directed the government to come up with guidelines that would subject future trade agreements to much stricter environmental reviews. The guidelines were published in the *Federal Register* for public comment (Clinton 1999).

The International Criminal Court was created with the purpose of investigating, trying, and punishing those guilty of aggression, crimes against humanity, war crimes, and genocide. It, too, has taken up the "green" cause by recognizing environmental destruction as a war crime. According to the Rome Statute of the International Criminal Court, "intentionally launching an attack in the knowledge that such attack will cause . . . widespread, long-term and severe damage to the natural environment which would

be clearly excessive in relation to the concrete and direct overall military advantage anticipated" is considered a war crime (quoted in Schaefer 2000, 73).

War's destructive nature makes environmental damage a given. The court will be left to determine whether such actions are "excessive" or not. If damage from a U.S. offensive was considered excessive by the court, every U.S. official involved—including the president of the United States—could be charged, tried, convicted and sentenced for his or her efforts in protecting U.S. interests.

Like USAID, both the World Bank and the International Monetary Fund have economic growth in poor countries as one of their major missions. They, too, have changed their focus to include sustainable development. To be sure, the World Bank has been guilty of subsidizing environmental destruction in the name of development through destructive dam projects, deforestation, and expanding mining operations. Now the World Bank has recognized the folly of its ways and promised to do better. For instance, in May 2000, the World Bank approved a $38.2 million loan and a $5.4 million grant to Poland to encourage the use of cleaner energy in the form of natural gas and geothermal power (*Capital Press* 2000). Yet the World Bank's history of poor results despite good intentions does not bode well for this new round of apparent environmental consciousness.

As for the International Monetary Fund (IMF), members of Congress, responding to pressure by activists, are trying to move the organization in an environmental direction. Congress has attempted to make new rounds of funding contingent upon the inclusion of a plethora of environmental considerations. Schaefer (2000, 76–77) writes:

> Moreover, amendments abound to further increase environmental restrictions on the IMF. For instance, Representative George Miller (D-CA) has offered an amendment to the IMF funding that would require the fund to analyze the environmental effect of its policies on recipient countries and the global environment before distributing assistance; create a new accounting system to incorporate depletion of natural

resources into national accounting; and support any environmental law in force in recipient countries.

Representative Miller's proposal that the IMF analyze the environmental effects of its upcoming projects makes sense. However, the creation of a system of "green accounting," in which depletion of natural resources is included in national ledgers, is a questionable idea. While some economists are exploring ways of including these figures, the numbers assigned to the depletion of natural resources are necessarily arbitrary. The late Julian Simon (1980) long argued that use of natural resources results in greater wealth not less, as evidenced by the falling prices over time of virtually all nonrenewable resources. Indeed, the cost of depletion is already included in the initial price so long as there are secure property rights in the resources.

## THE CHANGING INTERNATIONAL LAW

International law is also changing along environmental lines. Traditionally, international law dealt with interactions between the governments of nation-states. But with the 1948 Universal Declaration of Human Rights, international law began to address individual rights and obligations, areas previously left to the nation-state itself. As a result, the role of national governments is slowly being eroded as the representation of individuals moves to the international sphere. Environmental groups have been working to take advantage of these changes.

International law generally forms via one of two routes, either treaties or custom. Treaties are formal agreements by the governments of nations. Today, customary international law (CIL) is established when international courts decide that certain rules or norms are widely enough shared that they reflect "custom."[6] In the strictest sense, traditional customary law can be seen as similar to the common law and, in fact, is often the basis for the common law (Kelly 2000, 461 n48). Customary international law initially arose in a way similar to common law, reflecting what were assumed to

be customary laws of private society. Hence, CIL evolved from a bottom-up, grassroots sense of custom.[7]

A new interpretation of CIL has started to arise, though. Several law theorists are concluding that the unanimous or near-unanimous passage of resolutions and declarations by an international organization such as the United Nations General Assembly constitutes a basis for customary international law. Kelly (476 n115) notes that in the case of *Nicaragua v. U.S.*,[8] the International Court of Justice used the countries' consent to nonbinding U.N. resolutions as the basis for part of its decision and termed the decision in accordance with customary international law. This is a top-down approach, unlike the traditional evolution of customary law.

Indeed, Fernand Keuleneer (2000, 33–34) states that international courts base many of their decisions on the conclusions of U.N. agencies. These decisions or resolutions are not international law *per se*; but they are used as evidence of emerging custom. Thus, CIL can be indirectly created by agencies that have no legislative power and, while ostensibly answering to the national powers that appoint them, are unchecked by any particular body of citizens. Kelly (2000, 485) writes "This 'new CIL' approach is the preferred methodology of human rights activists and environmental advocates. . . ."

Under customary law, human rights have obtained the status of an international legal norm, largely based on those parts of the Universal Declaration of Human Rights that the United States has decided to accept. International law could wield a hefty sword because it potentially enables domestic courts to invoke a fundamental international right without any laws being passed by the nation's representatives. Kelly (492) finds that "'new CIL' theorists are attempting to create a new process of lawmaking rather than utilizing the methodology of customary law." In the case of *Filartiga v. Pena-Irala*, for example, the Second Circuit of the U.S. Court of Appeals held that international customary law or the law of nations has always been part of the United States federal common law and recognized human rights as part of that body of law.[9] Recognizing this, the United States Senate has included numerous reservations, declarations, and understandings in human rights trea-

ties in an attempt to keep the treaties from becoming a self-executing part of U.S. law (Kelly 466 n77).

Environmental groups are lobbying to get certain environmental considerations treated as human rights and ultimately considered as part of CIL. In 1994, a formal campaign to create a document known as the Earth Charter was begun by Maurice F. Strong, chairman of the Earth Council; Mikhail Gorbachev; and Green Cross International. The campaign received support from the government of the Netherlands. The Earth Charter's Web site clarifies the goal of the project: "The Earth Charter will be designed as a soft law document. It is, however, important to remember that some documents like the Universal Declaration of Human Rights are initially accepted as soft law instruments but over the years acquire increasing binding force among those who have endorsed them" (quoted in Keuleneer 2000, 36).

The environmental rights that are included in the Earth Charter seem purposely vague: "All human beings, including future generations, have a right to an environment adequate for their health, well-being, and dignity, and the responsibility to protect the environment" (quoted in Keuleneer 2000, 37). Deciding on the standards adequate to maintain one's environmental dignity and the responsibilities to protect the environment would likely be left up to international bureaucrats and the nongovernmental organizations (NGOs) advising them.

These suggested additions to the definition of human rights could give unprecedented power to environmental interests, especially since, under the evolving system of international law, NGOs are finding themselves on the same ground as states and governments. To quote Fernand Keuleneer (2000, 32), environmentalism is "a powerful tool" for achieving a shift in global power. He observes that "law is increasingly replaced by rights, States by networks, and elected officials by judges and appointed NGO-experts, often operating in a system of auto-reference."

In the introduction to his book *Global Greens*, Sheehan (2000, np) also noted the shift to increasing NGO power, writing, "A new and unprecedented force has been created in world politics—the nongovernmental organization. NGOs have joined nation-states,

central banks and international agencies as institutions authorized to define the world's problems and propose policy fixes." The rise of NGOs represents a fundamental shift in power because the groups are accountable to no one but their own members. Many of these NGOs are lobbying U.N. agencies for the inclusion of environmental rights as human rights and ultimately as a part of customary international law.

## Problems with "Greening"

In carrying out foreign policy, officials are learning what Kermit the Frog has known all along: "It ain't easy being green." Numerous problems are emerging as this new agenda takes center stage. Increased environmental regulation on an international level changes many of the rules of the game. As discussed below, it threatens sovereignty, reduces the accountability that comes from a country's internal system of checks and balances, increases international tension while reducing international trade, hurts long-run environmental health, creates more opportunities for unintended consequences from regulation, and leads to monitoring and enforcement problems. Finally, international policy setting suffers from a lack of the information and accountability that are available with devolution and decentralization.

***Greater international environmental regulation weakens national sovereignty in favor of increased international authority; in the United States it bypasses the checks and balances of our federalist system and Constitution.*** Under the traditional system of international law, disputes settled outside of war—including environmental ones—were dealt with under a system of national sovereignty. Disagreeing countries handled matters through bilateral contractual agreements or arbitration.

The new regime evolving under international environmental regulation seeks international cooperation, which means trying to secure nearly universal participation. No longer are only a few countries involved in a dispute; rather, the dispute becomes global.

As Jeremy Rabkin (2000, 8) writes, "the homeowner who pushes up his thermostat in Minneapolis has now become the concern of people in Belgium and in Australia."

International agencies act as ongoing authorities for implementing and directing the details of a global plan, whether it be the Kyoto Protocol, the Montreal Protocol, or the Convention on Biological Diversity. The power of sovereign governments is forfeited to these organizations, as a one-world banner challenges the traditional view of the sovereign state embodied in international law. Accountability is weakened as the unelected end up in charge.

While some claim that the World Trade Organization curbs sovereignty, this is an exaggeration because each national government can ultimately decide whether to abide by the ruling or not. If one country refuses to accept it, the petitioning country may impose sanctions, something that could be done with or without the WTO. Furthermore, the rulings apply to just one area—international trade—and in that area only to regulations that restrict trade. Thus it is somewhat like the U.S. Constitution's commerce clause, which spurred free trade among individual states.[10] The WTO enables national governments to give up regulations that favor special interests. Even if one argues that the WTO curbs sovereignty, those curbs may be beneficial since they reduce barriers rather than build them. If the WTO erected barriers by legitimizing trade-restricting environmental or labor standards, then the possible loss of sovereignty would become more threatening.

In contrast, several international agreements represent genuine threats to sovereignty. For example, there is talk of an international regulatory agency for the 1997 Kyoto Protocol, an agreement to reduce carbon dioxide emissions. One option is to trade permits for emitting carbon dioxide. Discussing these permits, John Prescott, Deputy Prime Minister of the United Kingdom, said that he wanted to see "the equivalent of Interpol to allow police, customs and enforcement agencies to combat global illegal trade" (quoted in Miller 2000, 230).

Similarly, the U.S. State Department's environmental initiative promotes the United Nations as a police force for the world that will patrol regulations affecting the emerging science of biotechnol-

ogy (Miller 2000, 229). The U.N. Industrial Development Organization proposes that the U.N. and its agencies advise nations as they create authorities in each country to monitor genetically modified organisms and their development (Miller 2000, 231–32).

The 1992 Convention on Biological Diversity, a product of the U.N.'s Conference on Environment and Development held in Rio, also has the potential to create sovereignty problems. It is unclear whether the treaty's signatories will be forced to adopt a biosafety protocol, that is, regulations on biotechnology to carry out the goals of the treaty. As Schaefer (2000, 71) writes, "The treaty also establishes an international regulatory framework to examine, regulate, and, in some cases, prevent development of biotechnology." If nations adopt such a protocol, who will ensure that proper regulations have been implemented? The answer is likely to be international agencies.

In addition to diminishing sovereignty explicitly, agreements can penalize a country's ability to defend itself militarily. To see how, consider the Kyoto Protocol. The Kyoto agreement sets greenhouse gas emissions goals for each country. Because the military is a large producer of greenhouse gases, it would play a key role as United States officials figure out how to meet emissions reductions if the U.S. Congress ratifies the agreement.[11] Aware of this, the Defense Department sought broad exemptions from the protocol, and it believes that the administration obtained those exemptions.

But Jeffrey Salmon (2000, 179–86) casts doubt on the effectiveness of these exemptions. For example, while the military obtained exemptions for *multilateral operations* (where the United States acts in concert with one or more other countries), *unilateral operations* (where the United States acts alone) and domestic training may not be exempted. Whether unilateral operations are covered by the exemption is decided by the definition of multilateral that applies to the treaty. The administration and the Pentagon use a nontraditional definition under which an operation is multilateral as long as it is "undertaken by U.S. forces with *any* support from another country (including, for example, the permission of a country to pass through its airspace or to use U.S. forces based in its territory)" (quoted in Salmon 2000, 185). This makes practically

every possible military operation multilateral and therefore exempt.

The problem, according to Salmon (185), is that the administration's definition of the term has not been formally accepted anywhere. If the other signatories to the Kyoto agreement adopt a more traditional definition, there will be a conflict and someone will have to bend.

It is true that even if the definition of multilateral that U.S. officials use is not accepted by the protocol, the United States would be free to carry out a unilateral action. However, the emissions from such an action would be counted against the nation's allowable greenhouse total. By agreeing to Kyoto with all its vagaries (especially the multilateral definition), the United States is signing up to play a game before the rules have been agreed upon. Salmon argues that numerous problems could arise. Legal suits could be brought against the U.S. military by international organizations, and unreasonable monitoring requirements and unreasonable emissions standards could be instituted. Basically, says Salmon (188–90), the United States could be punished for being a major military power. In addition, the actual reporting of emissions by the U.S. military could entail a risk to national security, as emissions could be used as an indicator of military strength.

The real importance of sovereignty is the accountability it levies upon those making the rules. International agencies have almost no accountability compared to U.S. domestic agencies, where top officials at least must be confirmed by the Senate or where funding must be apportioned by the House.

In fact, international regulation inherently changes the U.S. Constitution by weakening the accountability provided by its checks and balances. Agreements such as the Biodiversity Convention no longer deal solely with conflicts between nations (true international issues), but now also deal with problems within specific countries (intranational issues). Encouraging a country to set aside reserve areas to keep species from becoming extinct is entering into matters of internal domestic policy.

This has additional ramifications, one of which is to discourage federalism. If the United States or any other nation is to comply with directives from outside its borders, the national govern-

ment will have to crack down on various competing state policies so that the one-size-fits-all international policy can be implemented. This increased federal power will trump the current federalist revival that has reinforced the system of balance between state and federal government (see Anderson and Hill 1997; Haddock 1997).

Another impact is on the checks and balances between the executive and legislative branches. Changes in the Organization for Economic Development and Cooperation (OECD) illustrate how this can occur. The OECD was created by a 1961 treaty, ratified by the U.S. Senate, to help achieve economic growth. In April 1998, a ministerial meeting reinterpreted the treaty, adding social and environmental considerations to the economic ones. The United States executive branch agreed to the changes, but the Senate had no opportunity to debate this treaty, even though it was significantly different from the 1961 treaty. The executive branch had essentially negotiated a new deal without Senate approval (Cohrssen 2000, 127–29).

***Greater international environmental regulation can increase international tension.*** Foreign policy is a bag of goods that includes issues from free trade to arms trading to human rights. Each new issue in the bag weighs it down, lessening the focus on other issues and even creating conflicts between issues.

Increased environmental regulations could cause countries to lessen their focus on international threats of violence such as the sale of ballistic missiles or border conflicts between nations. As countries must watch over more and more issues arising in the international policy arena, they will stretch the resources necessary to deal with traditional international issues. As Schaefer (2000, 46) writes, "Because diplomatic currency is finite . . . it is critically important that the United States focus its diplomatic efforts on issues of paramount importance to the nation. Traditionally, these priorities have been opposing hostile domination of key geographic regions, supporting our allies, securing vital resources, and ensuring access to foreign economies."

There may indeed be environmental problems that threaten national security. But the issues currently being given parity with

threats of violence, such as sustainable development and population control, are not comparable to threats of violence. Population appears ready to level off by mid-century. Max Singer (1999, 22) writes, "The evidence now indicates that within fifty years or so world population will peak at about eight billion before starting a fairly rapid decline." Sustainable development is an ambiguous term and, in its strictest sense, is impossible to achieve. Jerry Taylor (1997) of the Cato Institute points out that under a "hard" definition of sustainable development, no generation would ever be permitted to use nonrenewable natural resources at all, because later generations would, by definition, have less of these resources. It is also questionable whether sustainable development should be a consideration of international policy at all, since it is not really a transboundary problem, but rather one that can be handled internally in a nation.

Environmental regulation at the international level is divisive. Countries that are expected to make a greater sacrifice can resent countries they perceive as free riders. For instance, the United States has expressed concern that India and China are not joining the Kyoto agreement and thus not contributing to the reduction in output of greenhouse gases. The United States Senate even passed a resolution making approval of the Kyoto treaty contingent upon full participation by the developing world (Salmon 2000, 173). In response, China and India point out that they are now entering their industrial revolutions and should be allowed to enjoy the same prosperity that countries such as the United States already enjoy.

Finally, expanding the foreign policy agenda weakens the enforcement of violations of international agreements. If we punish India for not complying with the Kyoto Protocol, what punishment is left if India threatens Pakistan or tests nuclear weapons on the high seas?

***Greater international environmental regulation can reduce free trade***. The unintended consequences of punishment for violating environmental agreements must also be considered. Traditional forms of punishment applied to environmental issues could worsen problems in the long run.

Trade offers the most likely route for acceptable punishments.

Yet invoking sanctions, tariffs, and other economic penalties to ensure compliance with international environmental agreements could rebuild the wall against free trade that the United States and other countries have worked so hard to tear down during the twentieth century. And once the wall is up, the wealth and prosperity that have accrued under free trade will be hindered, as will the potential for environmental progress.

In addition, the effort to subject future trade agreements to more stringent environmental review risks slowing and even halting future trade agreements altogether, with enormous impacts on trade and world prosperity. The long-term effects of stifling wealth creation will harm environmental quality, as developing countries and former Communist countries take longer to grow wealthy enough to afford ecological protection. Subjecting free trade to often subjective environmental review is shortsighted and misses the bigger picture of long-run environmental consequences.

***Greater international environmental regulation suffers from numerous monitoring, and therefore enforcement, problems.*** If regulations are to have any real effect, they must be enforced with some sort of penalty for noncompliance—whether that be loss of economic, military, or diplomatic power and/or wealth. For penalties to be implemented, violations must be assessed, and assessment requires monitoring to detect noncompliance.

The problems of enforcement become crystal clear if we ask what would happen if Al Gore's (1992, 269) declaration in *Earth in the Balance* that we "make the rescue of the environment the central organizing principle for civilization" were taken seriously. Henry Miller (2000, 226) succinctly sums up the farcical nature of this principle by asking, "[H]ow would Americans (to say nothing of citizens of other countries) react to Washington launching cruise missiles at China's Three Rivers Dam because it has negative environmental consequences?"

Catching noncompliant countries will be costly if not impossible. This is evident from the problems individual countries have faced trying to make their own citizens comply with international agreements such as the Convention on International Trade in En-

dangered Species (CITES) ban on ivory trading.[12] Detecting whether a country is cheating on something like emission rights will surely be as difficult, unless an international police force can monitor within countries, something most countries are not likely to condone.

Even if there were an international environmental police force, the data required to detect noncompliance may not be accurate. Monitoring technology may be poor, or those keeping the records may have an incentive to cheat. Kal Raustiala and David Victor (1998, 680) conclude from their sampling of international agreements that "national data often are not comparable, and their accuracy is often low or unknown."

***Ultimately, greater international environmental regulation suffers from a lack of local information, lack of competing institutions, and lack of local accountability***. The benefits of federalism and devolving government to the lowest level possible were pointed out by Terry L. Anderson and Peter J. Hill (1996). First, there is better information at the local level, so specific circumstances are not ignored by "one size fits no one" policies. The CITES ban on trade in ivory, for example, ignores the circumstances of local people in Africa and their potential to manage wildlife sustainably. An example of top-down regulation failing to take advantage of time- and place-specific knowledge, it is typical of centralized environmental management. Second, the more policy decisions devolve to the local level, the more experiments there are in developing effective institutions. These experiments compete with one another and lead to better solutions. Finally, accountability at the local level means that policy makers are more likely to face the consequences of their actions.

International agreements generally fly counter to all these benefits. In fact, the harms of moving policy making and responsibility from smaller to larger communities may be greater when moving from national to international control than when moving from state or local control to national. This is because international regulation involves even more heterogenous populations and environments.

## International Free Market Environmentalism

Free market environmentalism offers an alternative to the problems that come with the current greening of foreign policy. A full description of free market environmentalism and the reasoning underlying it would require too much space for this paper.[13] Key insights from this approach to environmental protection, however, make clear that the greening of foreign policy, if it is allowed to continue, will have harmful effects for the environment. These two insights are: 1) wealthier is healthier and 2) incentives matter.

### *Wealthier is Healthier*

The first tenet of free market environmentalism is derived from economic research linking wealth and well-being. "A growing body of empirical evidence shows a positive correlation among property rights, economic growth, and environmental quality," notes Anderson (2000, 258). For example, he cites work by Don Coursey (1992) showing that environmental quality has an income elasticity of demand of approximately 2.5. That is, above a threshold level, a 10 percent increase in income results in a 25 percent increase in the demand for environmental amenities. In addition, two economists examined air pollutants such as sulfur dioxide emissions and found a "J-curve" relationship between environmental quality and gross domestic product (Grossman and Krueger 1995). Their research showed that although pollution levels may increase as incomes begin to rise from very low levels, they ultimately decline after annual income levels reach about $9,000 (in 1998 dollars).[14]

In other words, as people become richer, they begin to improve their surroundings and ultimately seek environmental amenities. Any foreign policy striving to improve environmental quality should promote economic growth because only then can environmental progress be made. Efforts to hamper free trade in the name of environmental protection are counterproductive. As WTO Director-General Mike Moore said, "Our goal is very clear; it's better living standards for all our people. Because it is through higher

living standards that we achieve better health care, superior education systems, and a safer, better environment" (World Trade Organization 1999).

### *Incentives Matter*

The second tenet of free market environmentalism, incentives matter, recognizes the fact that people pursue the goals that directly and significantly affect them. In governments and international organizations, there is frequently a difference between individuals' personal interests and the goals that they support rhetorically or the goals of the organizations of which they are a part. Perverse incentives can result. A large body of literature has documented the destruction of the environment that occurs from perverse incentives under the rubric of government-subsidized activities (Stroup and Shaw 1993; Anderson and Leal 2000).

Anderson (2000, 256–57) notes that well-intended development projects subsidized by the World Bank ended up leading to deforestation and disease. The World Bank has tried to stimulate economic growth, but by subsidizing otherwise inefficient resource use it failed to encourage growth and contributed to environmental degradation. Matthew Brown (2000) discusses environmental hazards related to the $450 million loan provided by the World Bank to India for the Sardar Sarovar dam project. In 1997, an agreement was reached between the World Bank and Coal India to lend India $530 million to start, expand, or modernize two dozen open-pit coal mines (Phillips 2000). While many environmentalists might support modernizing coal mines, few would like to see the World Bank paying to start new ones.

The best way to get the incentives right is to provide institutional arrangements with well-defined and enforceable property rights. In his empirical work, economist Seth Norton (1998, 51) found that "environmental quality and economic growth rates are greater in regimes where property rights are well defined than in regimes where property rights are poorly defined" (see also De Soto 2000).

When property rights are well defined, defended, and tradeable, people have an incentive to act in ways that are socially ben-

eficial, including ways that preserve the environment. The most effective property rights are those held by private entities, whether they be individuals, businesses, or nonprofit organizations, because these entities bear both the costs and benefits of their actions. In areas where individuals cannot be decision makers, decisions should be at the local level where possible and then at the state level before reaching national and international levels.

If delegation of authority must go to the international level, only nations with a direct interest should be involved in the policy making. This is because the more parties there are signing on to a convention or treaty, the less chance there is for a cooperative outcome (Barrett 1994, 1997). After serving on the Permanent Court of International Justice, Chief Justice Charles Evans Hughes remarked in 1929, "[T]he treaty-making power is intended for the purpose of having treaties made relating to foreign affairs and not to make laws for the people of the United States in their internal concerns" (quoted in Rabkin 2000, 15).

There are a number of international treaties that involve only those with a direct interest. The North Pacific Fur Seal Treaty is an example (Morris 2000, 274–75). This environmental treaty was signed in 1911 (before anyone would have called it an environmental treaty). In order to protect the fur seal population from overharvest, the four nations involved in the fur seal harvest (the United States, Canada, Russia, and Japan) all signed an agreement setting quotas for each country. Breach of the contract was punishable by dissolution of the treaty. Because dissolution would lead to a return to overharvesting and thereby eventually destroy the value of the resource, the countries had an incentive to play by the rules. All the benefits of future seal harvests were owned by them. Other countries were discouraged from entry into the fur seal market by credible threats of trade sanctions.

Another example stems from arbitration involving two countries (Morris 2000, 271–72). In the 1941 *Trail Smelter* arbitration, fumes from a smelter operated by Cominco Ltd. in British Columbia, Canada, were harming cattle ranchers in the United States.[15] The ranchers petitioned the U.S. government for help, since suing a foreign company directly did not give the ranchers much chance of

winning an injunction. The case was taken to arbitration and settled. No other country had a direct interest in the case, and so no other country was involved. As a result of the arbitration, the ranchers were granted an injunction and awarded damages from Cominco.

In contrast, open-door participation of the kind that is expanding in today's international arena leads to (among other things) making science subservient to politics. Writing in the *Atlantic Monthly*, Aron, Burke, and Freeman (1999) discussed policies set by the International Whaling Commission (IWC). William Aron, a former United States Whaling Commissioner, and his coauthors note that: "any nation can accept the 1946 convention and become an equal voting member of the IWC" (24). Even landlocked countries can join the commission. This means that countries not directly affected by whales or whaling can vote on whaling policies with the same degree of power as countries that are directly affected.

Some environmental organizations have taken advantage of the situation. According to some observers, Greenpeace worked to pack the IWC against whaling and may even have paid membership fees for a few new member countries (Andresen 1998, 439–40). Open participation undoubtedly contributes to the continuing moratorium on whaling for certain species of whale that scientific data indicate are no longer endangered.[16]

In the light of these examples, Morris (2000, 293–94) offers ways for international agreements to encourage property rights solutions to global environmental problems. Such agreements should flow logically from a body of evolved private law and should protect property rights. If a resource has become the subject of national or local regulation, but the resource crosses boundaries, interjurisdictional rules governing the ownership and use of that resource may be appropriate. Only those nations that have direct economic interests in the resources under threat should have signatory status, however. If those interests cease, the nation's involvement in the agreement should cease.

The use of international agencies to monitor and enforce agreements should be avoided where possible, says Morris. If that's not possible, a new nonpartisan agency is likely to be preferable to

an existing one. Finally, decision makers should be encouraged to hold a healthy skepticism about claims regarding a "scientific consensus" about forthcoming environmental apocalypses.

## Policy Recommendations

To encourage property rights solutions to environmental problems, U.S. foreign policy and international agreements must incorporate the recognition that wealth leads to environmental protection, that incentives matter, and that devolution encourages better management. Thus, the following specific policies should be adopted by makers of foreign policy, including Congress, officials at the United Nations, World Bank, IMF, WTO, nongovernmental organizations, and, finally, diplomats who negotiate international agreements.

- Policies that promote economic growth should be encouraged in order to spur wealth and thus a desire for environmental quality. Two of these policies are eliminating restrictions on trade and refraining from the casual use of economic sanctions.

- Policies that cause environmental destruction because of subsidies, including certain programs of the World Bank, the IMF, and other international aid organizations, should be eliminated.

- Conflicts should be handled at the lowest level possible, to increase information, accountability, and competitive solutions, to reduce the likelihood of policies with unintended consequences, and ultimately to improve environmental management.

- Because international environmental treaties have significant implications for the sovereignty and accountability of governments, they should be confined to issues that can-

not be solved through protection of property rights and domestic policies. If an environmental problem can be handled internally, there is no need for international regulations that encourage encroachment on sovereign powers and discourage democratic accountability.

- Policies should be determined by officials accountable to those who will be directly affected by the new rules, not by unelected nongovernmental organizations or international bureaucrats.

- Foreign policy must support sovereign states that respect and enforce property rights and the rule of law. This will increase the chances of fostering free market solutions.

In sum, the rise of international environmentalism is posing grave dangers for the conduct of foreign policy, while at the same time shortchanging long-run environmental protection in favor of currently popular "green" causes. Where conflicts over resource use do cross international borders, international procedures have a place. In these cases, the policies should be confined to the countries directly involved. Every effort should be made to avoid the International Whaling Commission approach, which allows all countries, even those not involved in the environmental conflict, a seat at the table.

The "greening" of U.S. foreign policy should be reined in. U.S. foreign policy should address real international environmental problems in those few cases where it is necessary and should not use international law simply to export U.S. environmental preferences. Nor should environmental policy be set by bureaucrats in organizations ill-equipped for it such as the Department of Defense.

Property rights and trade liberalization must be respected. International solutions where they are not needed will only give more power to a system that weakens sovereignty and political accountability at home and abroad. By improving accountability and freeing trade, the nations of the world can contribute to economic progress and to environmental protection.

## NOTES

1. Economists increasingly accept the benefits of markets in protecting the environment. In academic circles, this framework for understanding environmental problems is sometimes known as the New Resource Economics (Anderson 1982).

2. The third global issue was protecting human health and preventing the spread of infectious diseases (U.S. Department of State 1997).

3. The United Nations Conference on the Human Environment.

4. Among the agencies created were the United Nations Environment Program (UNEP), the United Nations Development Program (UNDP), and the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

5. It should be noted that in both of the controversial environmental decisions by the WTO, the final rulings did not prevent the country where the regulation originated from imposing the restrictions on its own citizens and businesses. Rather, it simply held that imposition of the regulation on the citizens of another country was a protectionist measure.

6. Kelly (2000, 468–69) argues that this has largely reflected western views of custom.

7. For a discussion of property rights evolving from bottom-up or top-down in the global commons, see Anderson and Grewell (1999).

8. 1986 I.C.J. 14 (1986).

9. *Filartiga v. Pena-Irala* 630 F.2d 876 (1980).

10. It should be noted that court interpretations of the commerce clause have greatly expanded federal power in the United States, though Supreme Court and federal appellate court decisions in the late 1990s have begun once more to narrow that power. See *United States v. Lopez*, 514 U.S. 549 (1995) and *United States v. Wilson*, 133 F.3d 251, 254 (4th Cir. 1997). For a discussion of these decisions, see Adler (1999).

11. Most of the United States' emissions come from the use of fossil fuels for energy. The federal government is the single largest

energy user in the United States, at about 2 percent of total use. Within the federal government, the Department of Defense accounts for about 70 percent of energy use (Salmon 2000, 175).

12. After the ninth CITES meeting, held in 1994, a report was released by a group of respected scientists. It found the results of the ivory ban to be mixed, with some countries reporting increased poaching and some reporting decline. The report also noted that field enforcement budgets were falling in most countries with elephants ('t Sas-Rolfes 2000, 76).

13. For an introduction to this way of analyzing environmental problems, see Anderson and Leal (2000), Hill and Meiners (1998), and other papers in this *PERC Policy Series*.

14. For additional discussion of the link between economic growth and environmental protection, see Goklany (2000).

15. *Trail Smelter Case* (U.S. v. Canada), 3 R. Int'l Arb. Awards (1941).

16. Emerging technologies may one day make the need for the IWC obsolete. Genetic tagging and satellites offer opportunities for property rights in whales. Under such a system, Greenpeace and whaling countries like Norway could settle their differences with their checkbooks instead of their law books. If Greenpeace did not want a whale killed, it could simply purchase the whale from its owner and let it roam free (see Christainsen and Gothberg 2001).

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