Saving the Seas

VALUES, SCIENTISTS, AND INTERNATIONAL GOVERNANCE

Edited by L. Anathea Brooks and Stacy D. VanDeveer

A Maryland Sea Grant Book
College Park, Maryland
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The views expressed in this volume are those of the authors, and do not necessarily represent the views or opinions of the Maryland Sea Grant College, the Center for Environmental and Estuarine Studies, the University of Maryland System, the International EMECS Center, or any of the supporting agencies or organizations involved in the production of this book.
Environmental activists, and indeed many environmental policymakers, tend to demonize business as the prime enemy of Mother Nature, and try to force it to "behave" through coercive regulation. At the same time, environmentalists today call for extensive investment and technology transfer for sustainable development projects. Given economic recession and popular resentment against high taxes in many of the wealthiest countries, it seems unlikely that the large sums of money needed for these projects will be forthcoming from government budgets. "Deep pockets" can be found only in the corporate community. This poses a difficult problem for environmental policymakers: how can corporate assets be mobilized towards environmentally benign ends?

Many people fear a rush by multinational corporations toward the least environmentally regulated markets, since today's increasingly deregulated financial markets and open borders make the decision to move investment dollars relatively easy. In response, government leaders may perceive a need to weaken existing regulations in order to compete with other countries to attract and retain...
corporate investment, leading to a process of downward global regulatory arbitrage. Ultimately, under this scenario, states will lose or voluntarily relinquish their autonomy to pursue socially desirable policies such as sustainable development when these conflict with the pursuit of economic competitiveness. This dilemma seems particularly acute for the less developed nations, which generally find it difficult to attract capital, but we can also see this concern in the recent heated debate in the U.S. over the potential for Mexico to become a "pollution haven" under the North American Free Trade Agreement (NAFTA).

One can construct a more optimistic scenario, however, based on the evidence that certain major corporations today invest millions of dollars in new environmental products and processes. These firms see sound environmental management as a way to cut costs and meet the demands of an evolving global market for ecological goods. The Japanese government recently identified so-called "green markets" as the cutting edge of competitiveness, and therefore a priority for Japanese corporations to pursue. Some business managers and policymakers believe the economic goals of corporate profit and national economic development are compatible with environmental protection. Therefore, the fear that corporations will not invest in countries with tough environmental regulations may be an over-reaction, especially if investors can be convinced of the profitability of sustainable products and processes. The question, then, is how to institutionalize and expand environmental consciousness in the business community, in order to avoid the potential for regulatory arbitrage and increase the opportunities for sustainable development.

In this chapter, I argue that international organizations may provide services which can support the goal of sustainable development, but they need to be designed in ways that minimize the obstructionist impulses of major corporations (and international development organizations) and reinforce an emerging consensus on environmental efficiency. The argument proceeds in three sections. First, I argue that we are witnessing profound changes in business norms and practices, particularly among the most globally com-
petitive industries. Second, these changes can and should be reinforced and expanded through the activities of international environmental regimes. Third, the international and national organizations that make up environmental regimes can implement policies which provide incentives for changing corporate behavior, such as monitoring and information, harmonization, and risk reduction. Ultimately, the goal of environmentally sustainable development can be reached successfully only through transforming the management perspectives of business leaders.2

GLOBAL CAPITAL AND SUSTAINABLE MANAGEMENT
What do we mean by “sustainable development,” “sustainable practices,” or “sustainable management”? The Brundtland Commission Report defined sustainable development as development that “meets the needs of the present without compromising the ability of future generations to meet their own needs.”3 Sustainable practices or processes minimize their impact on the depletion or degradation of natural resources. In the case of coastal seas, sustainability requires practices which reverse ecosystem degradation and loss, and maintain the amenity value (or “place”) of the area for future purposes we may not anticipate today.4 The leaders of the 1992 United Nations Conference on Environment and Development (UNCED) accepted and publicized the proposition that sustainable development and economic growth can be pursued simultaneously.

Some people consider sustainable development to be a contradiction in terms, and others consider it more a hope than a practical ambition. That sustainable development is impossible implies only two kinds of policy choices: reversion to a pre-industrial politico-economic system, or total inaction. Even those who agree that sustainable development is possible may not believe the current system can be transformed quickly enough to prevent disaster. This possibility, however, does not excuse society from the moral obligation to at least attempt the pursuit of a more sustainable future. Regardless of one’s beliefs, clearly the feasibility of pursuing even minimal steps towards sustainability within the current polit-
ical-economic system hinges upon our ability to develop new technologies, products, and manufacturing processes which have the least negative repercussions on our resource base. We can imagine an authentically post-industrial society which would apply technology towards low-intensity resource use in production, and probably would require a complete retooling of the economy at every step from the design and development of a product or service, to its manufacture and marketing.

The financial costs of such change could be enormous. For this reason, the less industrialized nations demanded monetary compensation as part of their agreement to the Montreal Protocol on Ozone Depletion, and negotiated the establishment of a Global Environmental Facility as one outcome of the UNCED. However, the financial resources of the industrialized nations which contribute to such global funds are limited, particularly by domestic political resistance to increases in foreign aid expenditures. Even in those countries with strong environmental movements, the public believes the costs of government environmental policies are almost unbearably high.

The public money available for environmental funds is literally a drop in the bucket compared to the resources available to major corporations and institutional investors. For example, the core of the Global Environmental Facility totals approximately US$825 million over three years to fund investment projects, technical assistance, and research in the developing countries. By comparison, daily turnover in exchange markets around the world is approximately US$650 billion, and one estimate indicates that the recessionary 1980s witnessed more than US$3.5 trillion in global foreign direct investment. Therefore, multinational corporations and institutional investors must become major participants in sustainable development efforts.

Environmental associations are extremely reluctant to tackle this issue. For example, a recent World Wildlife Fund position paper argued for more investment from governments and international development banks in natural resource sectors for sustainable development. The policy section did not mention business
contributions, and the body of the paper contained only one sentence on the need to mobilize the business sector, with no details on how to do so. However, some have recognized the necessity to connect private sector actors to the sustainable development discourse. UNCED Chairman Maurice Strong, when accused of being a supporter of business interests, reportedly replied: "How can we achieve [sustainable development] without the participation of business?"

Economic downturn in the industrialized nations, increasing competition from newly industrializing countries, and the existence of burdensome debt in developing states has put extreme pressure on government policymakers to consider every possible means of attracting investment capital to stimulate economic growth. Business interests have often pointed to strict environmental regulations as a negative element which affects their decisions on where to invest. Concern over whether investment capital will move to the least regulated market is not a new phenomenon, but has been heightened by the revolutionary deregulation of national financial markets and the loosening of capital controls that occurred in the 1980s. Thus, government leaders may picture themselves in a terrible bind: to attract capital, even for sustainable development projects, may require them to weaken environmental regulations.

The following sections of this chapter detail two points. First, the fears about investment bypassing the environmentally most regulated locations may be overstated, especially considering recent trends in corporate culture. The most progressive corporations and investors might be labelled "green leaders." They tend to be in industries which are close to the customer and therefore susceptible to consumer demand for ecological products. A recent EPA analysis of three forward-looking companies indicated a shared commitment to environmental goals beyond simply complying with regulations, essentially making environmental performance one of the firm's products. Second, the incentives to pursue individual policies potentially leading to a downward spiral of regulation may be mitigated through inter-state cooperation in
global resource management regimes. These are likely to be found in industries where savings can be obtained from energy- and resource-efficient practices, but where lack of information, competing regulatory environments, and a perception of high risk discourage change. There is, of course, a third category of incorrigibles which require strict governmental regulation to enforce sustainable development goals.

**Changing Business Norms and Practices**

The popular environmental view of business is that it is a monolithic community intractably opposed to change. For instance, one analysis of the Earth Summit argues that the multinational corporations should have been confronted, and not included in the negotiations. It identified the many points of contact between UNCED leaders and leaders of the business community, assuming that such interaction was bad for the negotiations, and it notes approvingly that the non-governmental organizations (NGO) dismissed one NGO leader who wanted to pursue business consciousness-raising, preferring confrontation and regulation instead. This narrow view of business ignores the wide variety of interests and approaches among different firms and industrial sectors. Furthermore, it glosses over evolutionary changes in the norms and practices of corporate leaders. Two notable trends in behavior may indicate that popular concern over attracting investment by weakening environmental protection may be misplaced. First, not all corporations immediately flee strict regulatory environments, and in some cases the business community has been directly involved in the development of government policies. Second, a significant number of business leaders are beginning to view sustainable practices as a contribution to bottom-line profits, instead of an extra cost. These indicate that there is much more room for shaping the direction of investment in environmentally favorable ways than is popularly supposed.

A multitude of factors affects corporate decisions regarding where to locate new production facilities and in what businesses to invest. These include, among others, local labor skills, tax codes,
resource costs, diversification, size of the local market, and political stability. In other words, modifying environmental regulations probably will not attract foreign investment if other factors are unfavorable. Charles Pearson's research indicates there is no significant relationship between trends in environmental regulation and trends in investment relocation. Note that the majority of investment today occurs in OECD member countries, which have some of the highest regulatory standards in the world.

Recently, a spate of popular books has reflected the development of new ideas and new perceptions in the business community. The most prominent of these has been Changing Course: A Global Business Perspective on Development and the Environment. The authors of this and other books present evidence and persuasive claims that business profits can be enhanced by the search for sustainable products and processes. The World Resources Institute recently published a book designed to highlight and directly encourage what its editor views as a "sea change" in corporate environmental understanding and response by presenting information on a number of company environmental programs.

This change in attitude can be attributed in part to the increasing demand by consumers for ecologically acceptable products. Evidence suggests that consumers today are less likely than previously to trade off environmental values for other values. Being able to anticipate this type of changing global demand can contribute to competitive advantage. For instance, the contemporary clothing retailer Esprit is launching a "green" product line, which will be marketed as fashionable, environmentally friendly, and cutting-edge in the use of new technologies. Large numbers of businesses are jumping on the green bandwagon, although sometimes in the most superficial ways.

Evidence from the past few years indicates a surprising increase in the pace of change in corporate culture. For example, the chemical industry eventually participated in developing strict international notification procedures for toxic exports, a significant break from their earlier unyielding negotiating position. In agriculture,
some major growers formerly wedded to chemical-intensive farming practices are beginning to implement organic farming. For instance, some California grape growers originally pursued organic farming only to appeal to customers concerned about toxins in the food supply. They discovered, after initial investments and a move up the learning curve, that organic methods are both productive and cost-effective. Various world industry associations now recommend that their members use environmental technologies and develop procedures for ecological audits and life cycle analysis.

A recent United Nations Centre for Transnational Corporations survey indicated that many businesses have established corporate environmental policies that actually exceed national standards. Regulation can in fact be a driving force behind changing relative competitiveness in global markets. But some corporations have rectified their practices prior to any government regulation or environmentalist pressure. For instance, Northern Telecom of Canada completely eliminated CFCs in its facilities long before the target dates set by the Montreal Protocol on Ozone Depletion. More importantly, the process of change convinced upper management that this policy had economic benefits, since they eliminated $50 million in costs along with the CFCs. Traditionally, efficiency meant the maximum consumption of the least costly factor in the production process, which generally is resource commodities. However, true efficiency entails the minimum consumption of all factors per unit of output. The businesses most aggressively pursuing environmental practices have discovered this truth.

INTERNATIONAL REGIMES AND CORPORATE COOPERATION

Originally, the literature on international regimes focused only on sovereign states as legitimate participants, and not corporations. Regimes are defined in terms of the norms, principles, rules, and practices which help member-states agree on what to expect from each other in dealing with a particular policy issue. They provide services which might be called "collective goods" to their participants by reducing transaction costs, increasing available informa-
tion, and decreasing uncertainty about the operation of the system. 29 Through repeated interaction among participants in a regime, common concerns and obligations can be elucidated. Most importantly, once a regime is negotiated it encourages further bargaining over a range of issues, thus expanding the potential for cooperation.

Environmental issues have brought non-governmental organizations to the fore as important participants in regime dynamics. For example, the UNCED process deliberately reached out to the environmental community, giving it standing in international negotiations. Environmental associations provided original, empirical research to guide the deliberations of the Rio Conference, and helped establish norms and principles upon which inter-state negotiations proceeded. The business community also plays a role in generating behavioral rules and preferences within regimes, but its role in inter-state negotiations has been somewhat obscured. For example, national delegations to European Union negotiations over environmental rule-making explicitly include business representatives although technically the Union has only states as members.

There are three main ways in which corporations interact with regimes. First, they may simply be the target of regulation by international agreements, which is the traditional model of regime-corporate interaction. The national government is expected to implement international agreements by regulating corporate behavior. 30 It implies that governments must continuously monitor and enforce the rules in order to establish compliance with their environmental goals. It should be noted, however, that the literature on regimes focuses on monitoring and enforcement with respect to state behavior, and not corporate behavior directly. In fact, the ultimate target of international environmental regulation is usually corporate behavior, with the national government as cop.

The other two types of relationships between corporations and regimes are more relevant to this discussion. Corporations may be independent of any international regime, and may in fact develop their own conventions with regard to a particular issue area. For
instance, in the 1960s private shipping interests developed commonly accepted behavior with regard to oil pollution of the oceans. Usually, such industry norms are most likely to develop in the absence of strong government preferences. Finally, the relationship between a regime and non-state actors may be instrumental in nature. The goals of the regime may be carried out by non-governmental organizations and/or corporations. For instance, the international regime for family planning, centered on the United Nations Fund for Population Activities, implements many of its objectives through non-governmental organizations such as the International Planned Parenthood Federation. These two types of regime/corporate interaction may provide access for international organizations to influence the ways in which the private sector defines its interests.

CARROTS INSTEAD OF STICKS IN ALTERING CORPORATE BEHAVIOR

International regimes can act as catalysts for a genuine development of sustainable practices. Agreements reached at the global level can be designed to ensure that “policies are mutually reinforcing and no country is penalized for unilateral efforts to move towards sustainable development.” These agreements should provide incentives for changes in corporate behavior, directly or indirectly via home government policies. There are three main ways in which international regimes can influence the business community: through provision of information, harmonization of national regulatory practices, and mitigation of risk.

Provide Information

One of the most important barriers to change is the lack of usable information. Many international organizations produce reams of research and analysis, but this is usually tailored to governance problems. Three kinds of information can be provided by international organizations that would be relevant to corporations: information about current technologies, products and processes; information about regulations and patterns of compliance; and, most
interestingly, a process of information gathering and debate among participants that could lead to the generation of new norms of business behavior.

An important responsibility of international organizations should be to persuade business managers that environmental policies do not necessarily increase costs, reduce or eliminate markets, or decrease corporate autonomy. They can provide empirical evidence that anticipating problems and building environmental practices such as waste reduction into the production process can be extremely efficient. For example, the petroleum and shipping industries eventually supported strict international standards in order to decrease the costs of accidental oil loss and to obtain better insurance ratings and thus lower premiums, contributing both to their profitability and to collective anti-pollution goals. While a pollution-free environment is a public good, the benefits of corporate policies of reduction or elimination of pollutants can be captured privately. Such practices can also save a company from national and international regulatory enforcement agencies, thereby avoiding fines and forced re-tooling. An appropriate model might be a global version of the U.S. Environmental Protection Agency Pollution Prevention Information Clearinghouse.

International regimes can also provide information on the best available environmental practices and technologies. One of the main purposes of the Global Environmental Facility is to encourage technology transfer, but the focus remains on inter-governmental transfers and not on contributions from business. During the Montreal Negotiations over ozone depletion, the technical negotiating panel included industry representatives who were recognized as contributing to generating new knowledge and commercial opportunities in CFC reduction. This international forum provided an arena for identifying possibilities in technology development without necessarily infringing on proprietary rights. The World Environment Center, sponsored by USAID and industry groups, provides U.S. private sector technical skills to governments and industries in the developing world.

Reputation and branding are also important elements in chang-
ing business perceptions. *Fortune* magazine recently published a “Corporate Reputations” issue which highlighted the importance of reputation to success. Some chief executives whose firms were ranked at the bottom reportedly directed their staff that they never wanted the company to be listed at the bottom again.\(^39\) Corporations which implement sustainable management practices may be rewarded by national, regional, and international agencies with public acknowledgment of their good reputations. For instance, European Union efforts to develop standards for labelling green products (“eco-labelling”) can be seen as a step towards institutionalizing a process of reputation-building on a regional basis. An international organization can monitor behavior and provide information on the comparative performance of different industries and firms.

Negotiation and coordination of activities within a regime may also provide an opportunity for governments, businesses, and the environmental community to educate each other about their preferences. The very process itself may be seen as an informational activity that can generate a consensus about appropriate policies and behaviors, and act as a consciousness raising exercise.\(^40\) Therefore, participation by all relevant groups in negotiating environmental policies can contribute directly to their success. Business is in fact a participant in regulatory development at the national and international levels although it often is viewed with suspicion. Scott Barrett points out that participation in developing regulatory standards can give a business a competitive advantage, leading to strategic competition among governments and competitors.\(^41\)

**Harmonize National Regulatory Systems**

Harmonization, or bringing different regulatory systems into approximately similar shape, is one of the most contentious issues in international environmental management. The fear is that harmonization would lead to the lowest common denominator regulatory standards, i.e. setting a ceiling rather than a floor on national environmental regulations. The debate is most fierce when put in the context of international trade negotiations. This parallels to a
degree the debate over capital mobility and the search for regulatory "havens." In this case, the perception is that environmental regulation increases costs for some producers, putting their products at a cost-disadvantage compared to products made in less regulated societies.

There is no doubt that recent international trade negotiations in the Uruguay Round of the GATT negotiations placed free trade and free flow of capital above any concern for maintaining high standards. However, the recent completion of the NAFTA accords, with their environmental side agreements, reflects an increasing sensitivity in negotiations to the impact of trade on non-economic policy goals. Furthermore, as argued above, environmental regulation is not always an onerous cost to producers. As Peter Haas has pointed out, international negotiations can be conducted as a means of ensuring that each government's industries remain competitive relative to those of other countries.

From the standpoint of multinational business interests, harmonization of regulations at whatever level would be preferable to the patchwork of systems in existence today. Unilaterally imposed domestic rules may conflict with those of another country, requiring different products and processes for different markets. The United Nations Centre on Transnational Corporations survey of corporate environmental practices found that most respondents wanted the United Nations to negotiate a reduction in differences in environmental rules and regulations. The International Standards Organization has already begun work on standardized approaches to environmental auditing and life-cycle analysis.

Paarlberg's analysis of negotiations over pesticide dumping details how international agrochemical corporations felt threatened by the spread of competing national regulatory restrictions. The relevant international institutions, the FAO and WHO, moved towards promoting international harmonization in response. Industry representatives participated as part of the national delegations sent to the Codex Alimentarius Commission on food safety standards, and industry representatives were a part of FAO institutions and weakened attempts at controlling pesticide use. However, over
time, the corporations began to shift towards a more accommodating stance, and eventually cooperated in establishing limits on pesticides. Complete harmonization ignores too many local conditions to be effective in every area. As Pearson argues, harmonization of environmental standards makes sense only for internationally traded goods and transboundary and global environmental problems. Harmonization need not equal uniformity, but an international framework for environmental regulations could provide the political predictability that makes long-term corporate planning possible.

**Mitigate Risk**

Both information and harmonization by international regimes can reduce the commercial risks inherent in corporate adoption of new "green" technologies, products, and processes. Both cost and regulatory uncertainty inhibit the development of new environmental technologies, leading to potentially significant market failures. Environmentally sustainable practices are often both complex and initially expensive to implement. Therefore, widely available information on relevant research and practice combined with a stable regulatory framework would reduce the risk of pursuing what may turn out to be a fruitless path.

Businesses also face political risks because they often operate in multiple jurisdictions, confronting a changing landscape of laws, rules, and regulations. Harmonization — provided it is enforced equally among all member states — by means of international environmental rules would contribute to reducing some of the instability and uncertainty associated with global business transactions. Evidence so far indicates that international regimes are important precisely because they provide a more hospitable contractual climate for negotiation and cooperation among states. Similarly, international environmental regimes may also provide a more hospitable contractual climate for corporate investment, technology transfer, and implementation of sustainable management practices. From the standpoint of business managers, one of the most
important encouragements to investment is the establishment of stable enforceable property rights for foreign investment, most recently evidenced in the effort to negotiate protection for intellectual property rights in the Uruguay Round.47

There are also more direct means of effecting reductions in risk. For instance, most governments provide credit and investment guarantees, which could be adapted to international environmental projects. International agencies can pursue co-production agreements and joint ventures with corporations and national governments to develop new products and processes. Investment by international organizations, as envisioned under the Global Environment Facility, may also transfer some of the risk of change.

**Implications**

Inevitably, the distribution of both costs and benefits of environmentally sound practices will not be perfectly equitable, among states or among industries, potentially leading to asymmetries in power and barriers to cooperation. Successful environmental management cannot rely on self-interested cooperation alone. Corporations have been labelled the “enemy” of nature for good reason. Traditional industrial mass production wastes and destroys natural resources at a rapid rate, and historically has been hostile to many if not all environmental goals. As community concern about ecological issues has increased, business interests have often mobilized against environmental regulation and environmental activists, stopping or slowing down the development of strong and effective resource management systems. Traditional corporate culture militates against what is often perceived by businessmen as the sacrifice of profit for dubious social goals.

Clearly, international environmental regimes must provide mechanisms for both monitoring and enforcement. The argument for strengthening the capacity of international institutions to provide incentives to encourage industrial change takes the current structure of the system for granted.48 It assumes that business managers decide where most investment capital is allocated. It further assumes a somewhat benign view of the policies of international or-
ganizations. Finally, it rests on the idea that the processes of change can be managed. All of these can be (and have been) challenged.

The preliminary evidence presented here reflects a genuine shift in corporate culture, providing an avenue by which international organizations can seek to shape corporate activity through both regulation and persuasion. Government policymakers are concerned about how to increase national growth and development, but may perceive themselves as constrained by the transnationalization of production and finance. Multinational corporations are concerned about the competing regulatory frameworks under which they operate in different nations. Environmentally concerned citizens often remain confused over whether or not there are trade-offs between economic development versus environmental management, and whether sustainable development is possible.

International regimes can provide a means to negotiate among these competing views. In global environmental policy-making, international agreements and organizations mediate among states. The ultimate target of national regulation, however, is national and international business. The possibility presented here is that we can design regimes that go beyond coercive regulation of industry. Instead, they can be transformative.

NOTES


2. Peter Haas in this volume discusses "epistemic communities" as they apply to scientists and policymakers, but this approach also might be applied fruitfully to a fuller understanding of corporate norms and practices.


13. International regimes are more than international organizations, although they are generally implemented through one or more international agencies or associations. They consist of principles and norms, rules and decision-making procedures which guide the expectations and therefore the behavior of participants in a specific issue area. See Stephen Krasner (ed.). 1984. International Regimes. Cornell University Press, Ithaca.


15. Ibid.

17. The OECD sponsored research which concluded government incentives to attract foreign investment had little or no impact. See OECD. 1989. Investment Incentives and Disincentives. OECD, Paris.


30. One very interesting development is the increasing influence of non-governmental organizations in monitoring activities. Mark Sagoff has pointed to the importance of international rules in delegitimating certain behavior, which then provides activist groups with an opportunity to publicize and essentially shame the government or corporation into changing behavior. Sagoff, op. cit.
34. Thomas N. Gladwin provides a list of fourteen examples of international environmental cooperation that affect multinational cor-
Porations. For purposes of this chapter, I have condensed the relevant types into three. See Gladwin. Environment, Development, and Multinational Enterprise. In Pearson, op. cit.

35. Mitchell, op. cit.


40. Thomas N. Gladwin highlights the consciousness raising impact of world conferences on food and population. Gladwin, op. cit. See also the chapters by Peter Haas and Ronnie Lipschutz.


43. European Information Service/Multinational Service, op. cit., p. 10.

44. Paarlberg, op. cit.


46. Miller, op. cit.


48. See Ronnie Lipschutz in this volume for the argument that incentive regimes retain the status quo.