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Bradley M. Bernau

*Indiana University School of Law*

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# Help for Hotspots: NGO Participation in the Preservation of Worldwide Biodiversity

BRADLEY M. BERNAU\*

## ABSTRACT

*This Note explores the role that nongovernmental organizations can and do play in the preservation of global biodiversity hotspots. The hotspot concept—developed in the late 1980s alongside the new field of conservation biology—identifies particular areas of the world that contain high levels of endemic species that are highly threatened or endangered. Some experts have argued that by focusing species conservation efforts on these areas, a maximum amount of species can be protected and preserved using a minimum amount of time, money, and effort, allowing the remaining, scarce funds and resources to be directed toward species conservation efforts elsewhere.*

*Without commenting on the propriety or the effectiveness of utilizing the hotspot concept itself as a way to focus biodiversity conservation efforts, this Note examines several methods that nongovernmental organizations can use to assist in the protection of such hotspots. The first category of such methods includes direct funding efforts or the making of unencumbered contributions by nongovernmental organizations to other organizations in a position to affect preservation efforts in a particular hotspot. The second category includes all types of nongovernmental organization involvement in debt-for-nature swaps. The third category includes a broad array of opportunities for nongovernmental organization involvement in the international arena, including involvement with both public and private or semi-private international organizations. In an ever-more globalized and interconnected world, the actions of such organizations increasingly affect hotspot preservation. The effectiveness of each of these three categories of potential and current involvement will be analyzed and opportunities for future expansion of protection efforts will be presented.*

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## INTRODUCTION

After a lifelong career studying the natural world, British scientist J.B.S. Haldane was asked by an interviewer what his study of the natural world had taught him about the mind of the Creator.<sup>1</sup> He replied that the Creator has “an inordinate fondness for beetles.”<sup>2</sup> Apocryphal or not, the comment accurately conveys two truths about the current state of human knowledge regarding biodiversity. First, in terms of species known to science, beetles predominate. Second, and more profound, is that in terms of exploring and uncovering the true immensity of life’s various forms, science has very far to go indeed. In 1992, species of Coleoptera (beetles) represented approximately 290,000 of the 1,032,000 animal species known to science.<sup>3</sup> This may seem like a large number, but it pales in comparison to the potential numbers of species that await discovery. Estimates of the total number of species that may exist on earth range between 10 and 100 million,<sup>4</sup> while the U.N.’s estimate of the number of species “described” by scientists to date is 1.75 million.<sup>5</sup> The logical assumption flowing from the disparity between the numbers of *known* species and *actual* species is that many species go extinct without our knowledge, without ever having been catalogued or described by science.

When most people hear the terms “biodiversity” or “endangered species,” no doubt their thoughts turn to species such as gray wolves, bald eagles, or grizzly bears—what biologists have termed “charismatic megafauna.”<sup>6</sup> These precon-

1. ARTHUR V. EVANS & CHARLES L. BELLAMY, AN INORDINATE FONDNESS FOR BEETLES 9 (1996). Haldane was a geneticist who conducted much of his research in India after moving there following service in World War I. See generally Krishna R. Dronamraju, *On Some Aspects of the Life and Work of John Burdon Sanderson Haldane, F.R.S., in India*, 41 NOTES & RECS. ROYAL SOC’Y LONDON 211 (1987).

2. EVANS & BELLAMY, *supra* note 1, at 9. Some believe this story to be apocryphal, but the statement is a fairly accurate summary of the current state of knowledge regarding world biodiversity. *Id.*

3. EDWARD O. WILSON, THE DIVERSITY OF LIFE 136 (New ed. 1999).

4. *Id.* at 346.

5. See V.H. HEYWOOD & I. BASTE, GLOBAL BIODIVERSITY ASSESSMENT: SUMMARY FOR POLICY MAKERS 25 (1995). A “comprehensive catalogue of these 1.75 million known species” does not exist. *Id.*

6. Paul Boudreaux, *Understanding “Take” in the Endangered Species Act*, 34 ARIZ. ST. L.J. 733, 773 (2002). Charismatic megafauna are large, mammalian species or the “famous species of the western wilderness.” *Id.* Their endangerment is often thought to have been “foremost in the[m] minds” of those who drafted the Endangered Species Act. See, e.g., *id.*

ceived notions of what biodiversity means are highly misleading. Yes, wolves and eagles and bears are endangered, but the vast majority of endangered species are the small, the microscopic, the unseen, the unnoticed and the unheralded. Biologists have only scratched the proverbial surface. They have much work to do to discover the true diversity of life forms on the planet, endangered or prolific. As tropical forests are slashed and burned throughout the world, most of the diversity of life that is lost forever comes in the form of insects, plants, fungi, protozoa (single-celled eukaryotes), monera (bacteria or prokaryotes), and other smaller, less imposing life forms, many of which certainly have yet to be discovered and described.

A large percentage of the world's biodiversity is contained within a relatively small percentage of the world's land area, spread throughout the globe in patches that have come to be called biodiversity hotspots.<sup>7</sup> As discussed *infra*, protecting these areas will allow humanity to preserve the largest amount of biodiversity with the least expenditure of time, money, and effort. While many governments, institutions, and organizations are currently striving to protect biodiversity hotspots, this Note will discuss current hotspot preservation activities and the future protection potential of nongovernmental organizations (NGOs).

Part I of this Note will define biodiversity hotspots, the threats they face, and their importance. Part II will then undertake an in-depth examination of the several different methods that NGOs can utilize in order to become more involved in biodiversity protection. The first of these methods, the utilization of direct funding or unencumbered contributions, involves NGOs utilizing targeted donations to organizations whose work will benefit a hotspot in one manner or another. The second method, debt-for-nature swaps, concerns NGO involvement in forgiving the debt of poorer nations where hotspots exist. Finally, the third method is NGO involvement with international financiers, organizations, and conventions whose activities affect biodiversity hotspots and the peoples and cultures that surround and depend upon them for survival. This method touches upon an increasingly wide array of possibilities for NGOs to become involved in hotspot preservation on the international stage.

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7. See WILSON, *supra* note 3, at 261.

I. FRAMING THE PROBLEM:  
DEFINING HOTSPOTS AND THE BIODIVERSITY CRISIS

Biodiversity refers to “the variability among living organisms from all sources and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.”<sup>8</sup> Diversity does not just exist amongst individual species or organisms, but includes ecosystem and genetic diversity as well.<sup>9</sup>

Most people have a general sense that humanity should endeavor to preserve the earth’s biodiversity in some manner. However, determining what type of value to ascribe to biodiversity and, furthermore, quantifying such value, can be a highly complex, bewildering, and oftentimes futile exercise. Two general groups of people, ecologists and economists, often attempt to determine the value or worth of biodiversity writ large. Despite the similarity in origin of their respective disciplines,<sup>10</sup> ecologists and economists approach the valuation problem from very different perspectives.<sup>11</sup> Economists approach the valuation of biodiversity from a perspective traditional within their discipline, viewing the problem as one of market imperfection, which can be solved by utilizing sophisticated mathematical techniques such as contingent valuation or hedonic pricing.<sup>12</sup> Ecologists also ap-

8. HEYWOOD & BASTE, *supra* note 5, at 27. See also Convention on Biological Diversity art. 2, June 5, 1992, 1760 U.N.T.S. 142, 146 (1992), available at <http://www.biodiv.org/convention/articles.asp>. (expanding on this definition to define biodiversity as “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”). The United States is a signatory to the Convention, but it is not a party because the U.S. Senate has not yet ratified it. See Parties to the Convention on Biological Diversity, <http://www.biodiv.org/world/map.asp?lg=0&ctr=us>.

9. See HEYWOOD & BASTE, *supra* note 5, at 27.

10. The root of the prefix of both disciplines, “eco,” derives from the Greek “oikos” meaning “house” or “household.” See R. David Simpson, *Economic Analysis and Ecosystems: Some Concepts and Issues*, 8 *ECOLOGICAL APPLICATIONS* 342, 342 (1998) (noting that “economics means the management of the household, and ecology means that study of its function”); see also Eugene P. Odum, *The Emergence of Ecology as a New Integrative Discipline*, 195 *SCIENCE* 1289, 1292 (1977) (remarking that “[i]f subjects were organized according to the literal derivations of their names, then ecology and economics would be companion disciplines since the words are derived from the same Greek root”).

11. See Simpson, *supra* note 10, at 342. (commenting that “part of the friction between economists and ecologists may stem from what seems a very basic difference in perspectives”).

12. See John M. Gowdy, *The Value of Biodiversity: Markets, Society, and Ecosystems*, 73 *LAND ECON.* 25, 26 (1997).

proach the problem from their own discipline-specific and traditional, yet very different, perspective.<sup>13</sup> Of course, no one has yet devised an agreed-upon scheme for attributing a particular value to the whole of biological diversity on earth.

Methods do exist for arriving at specific economic valuations for biodiversity. These include enumerating the commercial value of all biological resources as raw materials, valuating profits from the ecotourism industry, or valuating profits from the ranching or farming of wild species.<sup>14</sup> Some scientists have attempted to place an exact dollar figure on the value of all ecosystem services provided to humanity, free of charge, by the biological diversity of the planet. One group placed the worldwide value of the services provided to humans by the earth's biodiversity at \$2.928 trillion, a "conservative" estimate by its reckoning.<sup>15</sup> If economic valuation methods were the only metric used to measure the value of biodiversity, the value would be very great indeed.

However, many ecologists and more than a few economists now believe that the economic valuation of biodiversity, or its replacement cost, should not be the sole factor in determining the value of biodiversity. Of course, "[m]any issues in environmental economics are ethical by nature," and "[s]uch decision making

13. See Marino Gatto & Giulio A. de Leo, *Pricing Biodiversity and Ecosystem Services: The Never-Ending Story*, 50 *BIOSCIENCE* 347, 355 (2000) (distinguishing between the approaches taken by economists and ecologists in valuing biodiversity by stating, in summary, that "economists should recognize that cost-benefit analysis is only part of the decision-making process . . . . Ecologists should accept that monetary valuation of biodiversity and ecosystem services is possible (and even helpful) for part of its value."). Some economists believe that theirs is a discipline ill-equipped to measure the true value of ecological goods and services. See, e.g., Simpson, *supra* note 10, at 348 (stating that "economists cannot make any very precise statements about the values of most ecological goods and services" for two reasons: (1) the inability to quantify enough variables leads to "paralysis by analysis," and (2) "market failures" are inevitable when dealing with environmental resources where the costs of preserving them are not borne by those who benefit from their preservation).

14. See Gowdy, *supra* note 12, at 28–30. Gowdy points out that the first measure, the commercial value of biological resources as raw materials, includes the burgeoning biotech industry as well as the massively profitable biomedical industry. See *id.* at 28–29. He quotes a letter from the journal *Science* written by a large group of biomedical researchers that says that "the progress of biomedical research and disease treatment depends on the maintenance of the greatest possible diversity in nature." *Id.* at 29.

15. See David Pimentel et al., *Economic and Environmental Benefits of Biodiversity*, 47 *BIOSCIENCE* 747, 754 (1997). Pimentel and coauthors compiled their data by valuing various ecosystem services, or "the vital services that are provided by all biota (biodiversity), including their genes and biomass, to humans and to the environment." *Id.* at 747. The services they considered in their valuation included the following: "organic waste disposal, soil formation, biological nitrogen fixation, crop and livestock genetics, biological pest control, plant pollination, and pharmaceuticals." *Id.*

requires moral discourse.”<sup>16</sup> Biodiversity represents a special case because here “we are clearly confronted with absolute scarcity and irrevocable loss; a loss which may affect the long-run survival of our species.”<sup>17</sup> Although economists modify, restructure, and thereby complicate their models in an “attempt to capture non-market values,”<sup>18</sup> no method exists to fully account for the values inherent in a discussion of world biodiversity loss, “the psychological well-being of humans,”<sup>19</sup> our duties to future generations, and the very survival of our own species. Such considerations do not easily lend themselves to quantifiable valuation. If some still determine that they must seek a sum total valuation of worth, then the following may provide them with the most comprehensive answer possible to their question:

The value of biodiversity is the value of everything there is. It is the summed value of all the GNPs [gross national product] of all countries from now until the end of the world. We know that, because our very lives and our economies are dependent upon biodiversity. If biodiversity is reduced sufficiently, and we do not know the disaster point, there will no longer be any conscious beings. With them will go all value—economic and otherwise.<sup>20</sup>

Whether one will only accept a bare economic analysis of biodiversity’s worth, or whether one allows for the addition to that value of worth derived from moral, ethical, and even religious considerations, one thing is most assuredly clear: Loss of the earth’s biological diversity would be disastrous for all.

In the face of rapid disappearance and destruction of natural habitats around the globe, scientists and policymakers are uncertain as to what strategy to take in order to protect the maximum amount of species with the least amount of effort. With such a dire crisis at hand, and so little time to address it, prioritization is key. Conservationists essentially need to get “the most bang for their buck” if they hope to preserve as many species (and their respective habi-

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16. Erwin Bulte & G. C. van Kooten, *Economic Science, Endangered Species, and Biodiversity Loss*, 14 CONSERVATION BIOLOGY 113, 118 (2000).

17. Gowdy, *supra* note 12, at 31–32.

18. *Id.* at 32.

19. *Id.* at 34.

20. *Id.* at 36 (quoting Bryan Norton, *Commodity, Amenity, and Morality: The Limits of Quantification in Valuing Biodiversity*, in BIODIVERSITY 200, 205 (E.O. Wilson ed. 1988)).

tats) as possible. Most biologists agree that *ex situ* conservation will not suffice except for a few large mammalian or plant species.<sup>21</sup> Even then, it will only provide benefits in the short term. Instead, the solution lies in protecting the natural ecosystems upon which endangered species so crucially depend. The eminent Harvard biologist E. O. Wilson has stated that “the light and the way for the world’s biodiversity is the preservation of natural ecosystems,”<sup>22</sup> not preservation of species in zoos, seed banks, or cryogenic storage. The situation becomes more problematic because not all of the world’s ecosystems can receive the same amount of protection when one takes into account the limited resources that are available for biodiversity preservation.

As of 2004, approximately 6.1 percent of the world’s land area was subject to some form of legal protection, whether designated a national park or a scientific research reserve.<sup>23</sup> To be sure, some of this land is protected in name only, and its designation as protected land in actuality does little to diminish the threats it faces from developers and poachers.<sup>24</sup> Considering that world resources available for preserving natural habitats are limited and that a significant percentage of the world’s natural habitat has already been altered heavily by human activities, biologists and policymakers realize the need to prioritize their efforts. In 1988, Dr. Norman Myers proposed that time, money, and resources be focused on conserving biodiversity hotspots.<sup>25</sup> Myers developed a two-pronged test for identifying potential hotspots: they would be areas (1) “featuring exceptional concentrations of endemic species” and (2) “experiencing exceptional loss of

21. *Ex situ* conservation refers to preservation of species off site, or outside of their natural habitats in places such as zoos or seed banks. Contrast this with *in situ* preservation, or preservation of species within their natural habitats.

22. WILSON, *supra* note 3, at 333. Wilson is the Pellegrino University Research Professor and Honorary Curator in Entomology at Harvard University.

23. World Resources Institute, *see* [http://earthtrends.wri.org/searchable\\_db/index.php?theme=7&variable\\_ID=918&action=select\\_countries](http://earthtrends.wri.org/searchable_db/index.php?theme=7&variable_ID=918&action=select_countries). This statistic measures percentage of total world land area with protection levels designated by The World Conservation Union as between IUCN Category I through V. The World Conservation Union Home Page, <http://iucn.org>.

24. *See* John Charles Kunich, *Fiddling Around While the Hotspots Burn Out*, 14 GEO. INT’L ENVTL. L. REV. 179, 185 (2001); *see also* RUSSELL A. MITTERMEIER ET. AL., HOTSPOTS: EARTH’S BIOLOGICALLY RICHEST AND MOST ENDANGERED TERRESTRIAL ECOREGIONS 54 (1999) (posing the question “are these areas well protected, or are they just so-called ‘paper parks’?”).

25. Norman Myers, *Threatened Biotas: “Hot Spots” in Tropical Forests*, 8 ENVIRONMENTALIST 187 (1988). Dr. Myers, now a fellow at Green College, Oxford University, is credited with inventing and developing the hotspot concept.



habitat.”<sup>26</sup> To qualify for the first prong, an “area must contain at least 0.5% or 1,500 of the world’s 300,000 plant species as endemics.”<sup>27</sup> To qualify under the second prong, an area must have lost 70 percent or more of its primary vegetation, because primary vegetation is the type of habitat that usually supports the most endemics.<sup>28</sup>

Myers first popularized the notion of a hotspot in 1988, originally identifying ten hotspots.<sup>29</sup> In 1990, he added eight more.<sup>30</sup> Today, both Myers and the NGO Conservation International (CI),<sup>31</sup> have identified a total of twenty-five hotspots.<sup>32</sup> All told, these twenty-five hotspots constitute just 1.4 percent of the earth’s land surface but contain 44 percent of all known plant species and 35 per-

26. See generally Norman Myers et al., *Biodiversity Hotspots for Conservation Priorities*, 403 NATURE 853, 853 (2000). Endemic species are those that “have very restricted distributions and may be found only on a single island or mountaintop, in a single river or lake . . . [and] are unique to a specific region.” See Conservation International, *Hotspots Defined*, [http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots\\_defined.xml](http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots_defined.xml).

27. See Myers, *supra* note 25, at 854. Myers’ analysis also included examining the prevalence of four vertebrate groups as well: mammals, birds, reptiles, and amphibians. *Id.* These species are not necessary for an area to qualify as a hotspot. The plant endemism criterion is enough. Invertebrates, “which are largely undocumented but probably make up at least 95% of all species, the bulk of them insects,” are omitted from the analysis because of lack of data on them. *Id.*

28. *Id.* at 855.

29. See Myers, *supra* note 25.

30. Norman Myers, *The Biodiversity Challenge: Expanded Hot-Spots Analysis*, 10 ENVIRONMENTALIST 243 (1990).

31. Conservation International (CI) is “the leading international nongovernmental environmental organization in the realm of hotspots preservation.” John Charles Kunich, *World Heritage in Danger in the Hotspots*, 78 IND. L.J. 619, 620 (2003). See also Conservation International, *Biodiversity Hotspots*, <http://www.biodiversityhotspots.org/xp/Hotspots/>.

32. Myers, *supra* note 26, at 854. See also Conservation International, *Hotspots Defined*, [http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots\\_defined.xml](http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots_defined.xml). The 25 current hotspots include the Tropical Andes, Mesoamerica, the Caribbean, Brazil’s Atlantic Forest, Choco/Darien/W. Ecuador, Brazil’s Cerrado, Central Chile, California Floristic Province, Madagascar, Eastern Arc and Coastal Forests of Tanzania/Kenya, Western African forests, Cape Floristic Province (South Africa), Succulent Karoo (South Africa), Mediterranean Basin, the Caucasus, Sundaland, Wallacea, Philippines, Indo-Burma, South Central China, Western Ghats/Sri Lanka, SW Australia, New Caledonia, New Zealand, and Polynesia/Micronesia. Myers, *supra* note 26, at 855. In early February 2005, CI identified nine new hotspots that met the criteria developed by Myers. The new number of hotspots recognized by CI is now 34. See Conservation International, *Hotspots Revisited*, [http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots\\_revisited.xml](http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots_revisited.xml). Since this development is so recent, I shall still discuss hotspots in terms of the 25 already established and well-studied hotspots.

cent of all known terrestrial vertebrate species.<sup>33</sup> Therefore, these designated hotspots satisfy the first prong of Myers' definition, because they contain high levels of endemism. Myers' second prong is satisfied also because, in the aggregate, these twenty-five hotspots have lost 88 percent of their historic primary vegetation. Each is at a high risk of losing "much if not most of its primary vegetation" in the near future.<sup>34</sup> If maximizing the amount of biodiversity protected is the goal of any particular legislator or conservationist, then focusing protection efforts on this relatively small 1.4 percent of the earth's land area allows officials to maximize the number of species protected at the least cost in terms of time, money, and effort. Assuming that the world summons the political will to fully protect all twenty-five hotspots, this protection will allow more conservation resources to be expended in other areas, protecting species not fortunate enough to reside in a hotspot.<sup>35</sup>

Having demonstrated the logic behind the approach of focusing biodiversity preservation efforts on protecting hotspots, the question remaining is how best to protect these special and vital places. A quick look at a map of the hotspots will show that most are located in underdeveloped nations, places where poverty and famine predominate and environmental preservation ranks low on the agenda, if at all. Of the twenty-five hotspots, sixteen are located in "developing countries where threats are greatest and conservation resources are scarcest."<sup>36</sup>

NGOs can occupy a unique position as intermediaries between the developed and developing world and can thereby take a leading role in the preservation of hotspots. Developed nations without hotspots within their territories

33. Myers, *supra* note 26, at 855. See also Conservation International, *Hotspots Defined*, [http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots\\_defined.xml](http://www.biodiversityhotspots.org/xp/Hotspots/hotspotsScience/hotspots_defined.xml).

34. See Myers, *supra* note 26, at 855.

35. In no way do I advocate abandoning conservation efforts for other species in favor of an approach centered solely upon hotspot preservation. Focusing on hotspots must only be one part of a multipronged strategy for species preservation. Several commentators have noted the dangers of focusing too heavily on a hotspots strategy, and rightly so. See, e.g., Paul Jepson & Susan Canney, *Biodiversity Hotspots: Hot for What?*, 10 *GLOBAL ECOLOGY & BIOGEOGRAPHY* 225, 225 (2001) (questioning whether ensuring the survival of the greatest number of species is the "single objective of (nature) biodiversity conservation"). Jepson and Canney concluded that the hotspots approach provided only a "partial response" to what they identified as the four value-based reasons for conserving species, namely (1) aesthetic and intellectual curiosity, (2) lack of the human right to cause an extinction, (3) economic and social development, and (4) maintenance of earth's genetic library. *Id.* at 225–26.

36. Myers, *supra* note 26, at 855.

cannot preserve hotspots directly through national legislative or administrative action. Also, international cooperation between nations often does not have the full force of law and can be complicated by a multitude of other factors present in foreign affairs. NGOs have access to vast financial resources from their members, donors, and contributors in developed nations. They also have several institutional advantages over governmental institutions that allow them to be more successful in preserving hotspots as well as developing institutions and social conditions that would perpetuate hotspot protection in developing nations. One commentator describes the situation this way:

One advantage of NGOs is that they are often free of direct governmental control and may be less encrusted with the bureaucratic barnacles that plague governmental entities. NGOs are usually populated with people committed to a cause and inspired by a vision, and thus may be capable of generating significant energy and money. As private-sector actors, NGOs can be more efficient, and more flexible, and may be a useful supplement to more official agents of change. They can direct funds and workers where they see the greatest possible cost-benefit return on investment, relatively free from the ancillary political concerns that can hamstring governments.<sup>37</sup>

While NGOs face the same problems as any institution, as well as some unique to their type of organization,<sup>38</sup> they occupy a distinctive position from which they can make a positive contribution to the protection of biodiversity hotspots at a point in history when time is running very short. Wilson notes that “[t]he rescue of biological diversity can only be achieved by a skillful blend of science, capital investment, and government: science to blaze the path by research and development; capital investment to create sustainable markets; and government to promote the marriage of economic growth and conservation.”<sup>39</sup> This Note focuses on the second prong of Wilson’s prescription for averting the demise of the earth’s biological diversity. More specifically, the discussion here focuses on the ways in which NGOs can and do invest in the protection of biodiversity hotspots.

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37. Kunich, *supra* note 24, at 252.

38. See *id.* at 253 (noting that NGOs must be careful not to be “too dogmatic and fanatical” in their pursuit of their goals, as this may lead to the loss of the public’s confidence in them or to the pursuit of a goal that contradicts the purpose of a domestic or international law or agenda).

39. WILSON, *supra* note 3, at 336.

## II. NGOS TO THE RESCUE: HOW NGOS CAN HELP PRESERVE HOTSPOTS

Several avenues of action exist for the NGO wishing to involve itself in the protection of biodiversity hotspots. These include direct assistance and financial aid (what Wilson calls “unencumbered contributions”),<sup>40</sup> debt-for-nature swaps, and active involvement in international conventions and accords. The following sections will describe and evaluate each of these three major methods of potential NGO involvement, offering and elaborating upon recommendations for the future direction of their efforts.

*A. Direct Aid or Unencumbered Contributions*

The most effective type of assistance that NGOs can provide to communities located near hotspots is direct aid or unencumbered contributions. NGOs can channel, carefully target, and logistically support such unencumbered contributions from more prosperous nations. This has been described as one of the most “potent” methods of preserving hotspots.<sup>41</sup> Shortly after Myers<sup>42</sup> published his first paper introducing the hotspot concept, two NGOs, CI and the John D. and Catherine T. MacArthur Foundation, adopted the hotspot concept as the guiding principle of their conservation investment efforts.<sup>43</sup> These two NGOs, in conjunction with the Global Environment Facility (GEF),<sup>44</sup> the government of Japan,<sup>45</sup> and the World Bank,<sup>46</sup> established the Critical Ecosystem Partnership Fund (CEPF) in 2000 to directly fund projects that would contribute to the preservation of hotspots.<sup>47</sup> Originally set at \$150 million, these groups designed the CEPF to provide grants in order to “advance the global conservation

40. *Id.* at 338.

41. *Id.*

42. Myers, *supra* note 25.

43. Russell A. Mittermeier et al., *Biodiversity Hotspots and Major Tropical Wilderness Areas: Approaches to Setting Conservation Priorities*, 12 CONSERVATION BIOLOGY 516, 516 (1998).

44. See generally Global Environment Facility, <http://www.gefweb.org> (last visited June 11, 2006).

45. See generally The Prime Minister of Japan and His Cabinet, <http://www.kantei.go.jp/foreign/index-e.html> (last visited June 11, 2006).

46. See generally The World Bank, <http://www.worldbank.org> (last visited June 11, 2006).

47. Press Release, Conservation Int'l, Critical Ecosystem Partnership Launches \$150 Million Fund to Better Protect Biodiversity Hotspots (Aug. 22, 2000), [http://www.conservation.org/xp/news/press\\_releases/2000/082200.xml](http://www.conservation.org/xp/news/press_releases/2000/082200.xml).

agenda . . . resulting in improved management of protected areas and coordination in biodiversity corridors.”<sup>48</sup> Specifically, the fund “support[s] projects such as training, transnational planning, local dialogue with extractive industries, conflict resolution, priority setting and consensus building, strengthening indigenous organizations, and facilitation of partnerships between the private sector and protected areas.”<sup>49</sup> Since 2000, the fund has established grant-making programs in 16 hotspots located in 34 nations and has provided more than \$68 million in grants to local NGOs and other community groups in those imperiled areas.<sup>50</sup>

Direct funding initiatives such as CEPF provide valuable resources to businesses, local NGOs, municipalities, and other groups that are in a position to directly affect the preservation of a particular hotspot due to their geographic proximity to and familiarity with the hotspot. Unencumbered contributions from NGOs such as these, it has been argued, help to alleviate some of the “negative spillovers” of globalization, which leave many local peoples impoverished and powerless to adapt to rapidly changing world markets and conditions.<sup>51</sup> “[H]igh-level, multi-party initiatives” such as CEPF and Verde Ventures<sup>52</sup> legitimize globalization and the worldwide changes it brings by “plac[ing] social and environmental costs firmly on the agenda and recogniz[ing] the primacy of human rights and stakeholder autonomy.”<sup>53</sup>

Poverty and rampant habitat destruction characterize many of the communities surrounding hotspots despite their location in areas so rich in biodiversity

48. *Id.*

49. *Id.*

50. MICHAEL P. WELLS ET AL., REPORT OF THE INDEPENDENT EVALUATION OF THE CRITICAL ECOSYSTEM PARTNERSHIP FUND i (2006), [http://www.cepf.net/ImageCache/cepf/content/pdfs/cepfevaluationreport\\_5fundmanagementresponse\\_2epdf/v1/cepfevaluationreport\\_5fundmanagementresponse.pdf](http://www.cepf.net/ImageCache/cepf/content/pdfs/cepfevaluationreport_5fundmanagementresponse_2epdf/v1/cepfevaluationreport_5fundmanagementresponse.pdf).

51. Roda Mushkat, *Globalization and the International Environmental Legal Response: The Asian Context*, 4 ASIAN-PAC. L. & POL'Y J. 50, 51 (2003). Mushkat defines these “negative spillovers” or externalities to include “the effects on the provision of public goods, such as social services, a healthy environment, and pluralistic cultural expression.” *Id.*

52. See *Verde Ventures at Conservation International*, <http://www.conservation.org/xp/verdeventures>. Verde Ventures “uses debt and equity financing to support conservation-oriented [small] businesses in CI priority areas [read “biodiversity hotspots”].” *Id.*

53. *Id.*

and natural resources.<sup>54</sup> This seems counterintuitive considering the rich bounty of natural resources that bless these areas.<sup>55</sup> Because poverty only exacerbates the rampant destruction of the natural areas that constitute hotspots, alleviating such crushing poverty must also be part of the solution. Such poverty forces local peoples to resort to desperate measures just to survive, measures which often involve highly unsustainable practices.<sup>56</sup> The international community has long recognized the link between economic health and ecological health, and that poverty reduces the capacity to utilize resources sustainably.<sup>57</sup> NGOs can address threats to hotspots by addressing the poverty which threatens them. For example, in April 2005, two NGOs, CI and The Nature Conservancy (TNC), together with the United Nations Development Programme's Equator Initiative and other organizations, formed a new partnership named Equator Ventures.<sup>58</sup> This new initiative "will support small- and medium-sized sustainable enterprises that try to reverse th[e] trend . . . [of] ongoing massive biodiversity loss and ecosystem degradation [which] have deepened poverty and insecurity."<sup>59</sup> In

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54. See Franz Xaver Perrez, *The Efficiency of Cooperation: A Functional Analysis of Sovereignty*, 15 ARIZ. J. INT'L & COMP. LAW 515, 537 (1998). Perrez notes that "[p]overty leads to an overuse and destruction of natural resources," and that there is "therefore, a linkage between poverty and environmental degradation, and poverty is thus implicated not only by social, but also by environmental concerns." *Id.*

55. See Paul Rich, *NAFTA and Chiapas*, ANNALS AM. ACAD. POL. & SOC. SCI., Mar. 1997, at 72, 78 (commenting on the contrast between Chiapas's and Mexico's poverty and the immense natural resources of the area).

56. See, e.g., Amanda Lewis, *Land and Resource Management: The Tropical Forest Conservation Act*, 1998 COLO. J. INT'L ENVTL. L. Y.B. 89, 90. Lewis writes that "'poverty and economic pressures' have resulted in the conversion of forest to unsustainable agriculture." *Id.* (internal citations omitted).

57. See Gro Harlem Brundtland, *Our Common Future: The World Commission on Environment and Development*, at 13–14, 49, delivered to the General Assembly, U.N. Doc. A/42/427 (Aug. 4, 1987). But see Balakrishnan Rajagopal, *From Resistance to Renewal: The Third World, Social Movements, and the Expansion of International Institutions*, 41 HARV. INT'L L.J. 529, 560 (2000) (noting that the focus of the international community on the effects of poverty on the environment may have been an effort to "shift[] the visibility and blame away from the large industrial polluters in both the West and the Third World, as well as from the exploitative and predatory aspects of developmentalist ideology").

58. See Equator Ventures, *New Support for Green Entrepreneurs*, <http://www.conservation.org/xp/CIWEB/partners/alliances/ev.xml> (last visited June 11, 2006). The Equator Initiative, U.N. Dev. Programme, <http://www.undp.org/equatorinitiative/index.htm> (last visited June 11, 2006).

59. Equator Ventures, *New Support for Green Entrepreneurs*, <http://www.conservation.org/xp/CIWEB/partners/alliances/ev.xml> (last visited June 11, 2006).

short, NGOs here use unencumbered contributions to support local businesses which operate in a sustainable manner, thereby protecting the hotspot and natural surroundings of the area.<sup>60</sup>

CI's use of unencumbered contributions to protect hotspots provides a model for many NGOs to follow. It has created four separate initiatives designed to provide funding to protect hotspots, each focusing on a different strategy. The CEPF, as we have already seen, provides funding to "engage civil society in safeguarding biodiversity hotspots."<sup>61</sup> Verde Ventures focuses instead on investing in local businesses that are strategically crucial to protection of the hotspot at issue.<sup>62</sup> Equator Ventures helps alleviate poverty by funding locally sustainable businesses, thereby reducing unsustainable consumption of resources and destruction of habitat.<sup>63</sup> Finally, the Global Conservation Fund protects hotspots directly by financing the creation, expansion, and management of nature preserves in hotspot areas.<sup>64</sup> All four of these CI initiatives work in a complementary manner, thereby leveraging each initiative's investments "to achieve maximum conservation outcomes per dollar spent."<sup>65</sup> CI also successfully and effectively cooperates with a diverse array of organizations, including other NGOs, national governments and governmental agencies, and international organizations, both public and private. Today, "CI fills a unique niche as a conservation catalyst among the world's conservation organizations, acting as strategist, financier, institution builder, and provider of technical support to

60. Notice that applicants for an Equator Venture loan must meet a geographic requirement for eligibility, thereby limiting eligible applicants to those from areas where hotspots predominate. See The Equator Initiative, U.N. Dev. Programme, [http://www.undp.org/equatorinitiative/secondary/equatorventures/EquatorVentures\\_Map.htm](http://www.undp.org/equatorinitiative/secondary/equatorventures/EquatorVentures_Map.htm). Some warn, though, that NGO participation in this process is mere "ecocolonialism" or "ecological colonialism" which "amounts to a form of neo-colonialism," and is, therefore, another way to impose an outsider's (i.e. the NGO's) wishes upon a local population. Thomas R. DeGregori, *NGOs, Transgenic Food, Globalization, and Conservation*, 13 *COLO. J. INT'L ENVTL. L. & POL'Y* 115, 121–22 (2002).

61. Conservation International, Conservation Funding Div., Investing in a Future for Life (2005), available at [http://www.conservation.org/ImageCache/CIWEB/content/downloads/conservationfundingdivision\\_2ebrochure\\_5fmay05\\_2epdf/v1/conservationfundingdivision.brochure\\_5fmay05.pdf](http://www.conservation.org/ImageCache/CIWEB/content/downloads/conservationfundingdivision_2ebrochure_5fmay05_2epdf/v1/conservationfundingdivision.brochure_5fmay05.pdf) [hereinafter CI Funding Brochure].

62. *Id.*

63. See Equator Ventures, *supra* note 58.

64. See Global Conservation Fund, Conservation International, <http://www.conservation.org/xp/gcf>.

65. *Id.*

achieve large-scale conservation goals with partners.”<sup>66</sup> While many NGOs work cooperatively with CI in its efforts, most notably the World Wildlife Fund (WWF) and TNC, CI certainly provides the model to follow in constructing a portfolio of direct-aid initiatives with the goal of protecting and preserving hotspots.

Despite the enormous success produced by unencumbered contributions in protecting hotspots, this method is not without difficulty or conflict. Wilson notes that even though the GEF, a member of the CEPF, has contributed over \$450 million to “set up national parks, promote sustainable forestry, and establish conservation trust funds in developing countries,”<sup>67</sup> often the money given is not utilized to its fullest potential because of two difficulties. First, recipient nations often have limits upon how much aid they can absorb.<sup>68</sup> This often occurs due to limited qualified personnel and a lack of ecological expertise concerning the conservation of the hotspot in question, making it difficult for national and political leaders of the recipient nations to initiate conservation programs in the first instance.<sup>69</sup> Second, since the funds given usually decrease dramatically after a short initiation period, “proper management and protection of reserves when the money runs out” becomes extremely difficult to sustain.<sup>70</sup> A potential solution to these problems exists in the creation of conservation trust funds, which “produc[e] income that can be fed into the conservation programs gradually and over a period of many years.”<sup>71</sup> NGOs can and should endeavor to structure their direct aid endeavors in a manner that will ensure a steady flow of funds and in a manner that will maximize results from hotspot-protection personnel and contribution recipients.<sup>72</sup>

### *B. Debt-for-Nature Swaps*

Another area of current and potential NGO participation in hotspot preservation is utilizing debt-for-nature swaps. These types of swaps between the de-

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66. CI Funding Brochure, *supra* note 61, [http://www.conservation.org/ImageCache/CIWEB/content/downloads/conservationfundingdivision\\_2ebrochure\\_5fmay05\\_2epdf/v1/conservationfundingdivision.brochure\\_5fmay05.pdf](http://www.conservation.org/ImageCache/CIWEB/content/downloads/conservationfundingdivision_2ebrochure_5fmay05_2epdf/v1/conservationfundingdivision.brochure_5fmay05.pdf).

67. WILSON, *supra* note 3, at 338.

68. *See id.*

69. *See id.*

70. *Id.*

71. *Id.* at 339.

72. For a much more in-depth discussion of conservation trust funds, see generally the article by the executive director of CI's Global Conservation Fund. Marianne Guerin-McManus, *Conservation Trust Funds*, 20 UCLA J. ENVTL. L. & POL'Y 1 (2001).



veloped and developing world are “[o]ne of the more promising means to attain th[e] goal” of expanding the current percentage of the earth’s land surface that is legally protected in some manner.<sup>73</sup> The role for NGOs in such swaps is one of facilitation and fundraising. The typical NGO role in such a transaction, stripped to its most basic elements, looks somewhat like the following example: an NGO such as CI, TNC, or the WWF, all of which are active in this area, will “raise funds to purchase a portion of a country’s commercial debt at a discount, or [alternatively,] they persuade creditor banks to donate some of it.”<sup>74</sup> The paid debt is then exchanged for local currency or bonds at rates favorable enough to gain enough equity to be used to purchase hotspot land for conservation, to promote environmental education, or to improve land-management practices in hotspot areas.<sup>75</sup> Only approximately 1/10,000 of the developing world’s debt has been reduced in this manner; thus, huge opportunities for expansion and utilization of this technique remain.<sup>76</sup>

Two different types of swaps exist presently: public and private debt-for-nature swaps. A public swap occurs when one nation, usually a developed nation such as the United States, Canada, Japan, or a European nation, simply forgives the debt of another country, usually that of a developing nation.<sup>77</sup> In other words, the swap involves a debt-forgiveness transaction between sovereign nations.<sup>78</sup> In contrast, a private swap occurs when a private, nongovernmental entity, such as an NGO, acts as the purchaser of the foreign nation’s commercial debt. As shall be demonstrated, NGOs play a much more active role in the area of private swaps. However, they do have potential roles to play in encouraging and publicizing public swaps.

The U.S. Congress has, on three separate occasions, passed legislation allowing some type of debt-for-nature swapping with developing nations that possessed significant natural resources, usually tropical forests. The first bill, the Global Environmental Protection Assistance Act of 1989,<sup>79</sup> authorized the U.S. Agency for International Development (USAID) to make grants to NGOs to

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73. WILSON, *supra* note 3, at 337.

74. *Id.* at 337–38.

75. *Id.* at 338.

76. *Id.*

77. See Lewis, *supra* note 56, at 91–92.

78. See Michael S. Sher, *Can Lawyers Save the Rain Forest? Enforcing the Second Generation of Debt-for-Nature Swaps*, 17 HARV. ENVTL. L. REV. 151, 151 n.2 (1993).

79. 22 U.S.C. § 2283 (2000).

allow them to make private debt-for-nature swaps. This program led to the leveraging of \$95 million in USAID funds in order to obtain \$146 million for environmental endowments through debt-for-nature swaps by 1998.<sup>80</sup> Congress enacted the second swap legislation, the Enterprise for the Americas Initiative (EAI), in 1991.<sup>81</sup> EAI differs from the USAID program in that the former consists mainly of a public debt-for-nature swapping mechanism, forgiving over \$875 million in foreign debt at a cost to the United States of only \$90 million.<sup>82</sup> While NGOs obviously played less of a role in this more public-swap program than they do in private swaps, some NGOs do take an active role both in promoting and publicizing public-swap programs and also in providing logistical and technical support throughout the process.<sup>83</sup> Both of these statutes have been extremely successful at providing a means of establishing institutions and mechanisms for protecting hotspots, especially since most hotspots are found in nations that are extremely poor and which have elevated foreign debt levels.

In 1998 Congress passed and President Clinton signed the Tropical Forest Conservation Act (TFCA),<sup>84</sup> the third legislative incarnation of a U.S. debt-for-nature swap program. TFCA is not limited to either public or private swap programs. TFCA greatly expands the reach and effectiveness of debt-for-nature transactions by authorizing two other varieties of transactions in addition to swaps.<sup>85</sup> These are debt reduction<sup>86</sup> and debt buybacks.<sup>87</sup> The third option, though, is of most interest for present purposes. The TFCA's debt swapping mechanism allows private third parties, most often NGOs, "to buy, and thereby

80. See S. REP. NO. 105-219, at 2 (1998).

81. 7 U.S.C. § 1738 (2000).

82. See Lewis, *supra* note 56, at 92.

83. See *The Tropical Forest Protection Act, 1998: Hearing on H.R. 2870 Before the H. Comm. on Int'l Rel.*, 105th Cong. 62 (1998) (statement of Tia Nelson, Senior Policy Advisor, The Nature Conservancy).

84. Tropical Forest Conservation Act of 1998 (TFCA), Pub. L. No. 105-214, § 802, 112 Stat. 885 (codified as amended at 22 U.S.C. §§ 2431–2431k (2000)).

85. See Lewis, *supra* note 56, at 94.

86. See 22 U.S.C. §§ 2431(d)–(e). The debt-reduction option allows the president of the United States simply to reduce the level of the foreign nation's debt. The nation then pays interest on the reduced debt into a fund set aside for preserving rain forests in that nation. See Lewis, *supra* note 56, at 94.

87. See 22 U.S.C. § 2431(f)(a)(2). The debt-buyback mechanism, which is more appropriate for middle-income developing countries, allows the foreign nation to buy back its debt at net present value. In exchange, it must pay a percentage into a fund dedicated to preserving rain forests. Lewis, *supra* note 56, at 94–95.

reduce, a 'lower income' country's debt to the [United States, and i]n exchange, the debtor country must put an agreed-upon amount of local currency into a fund dedicated to preserving that country's tropical rain forests."<sup>88</sup> With NGOs such as CI, TNC, and WWF initiating and controlling these transactions, NGOs have the opportunity to engineer the deal so that the land being protected in the debtor nation is within a hotspot, thereby maximizing the amount of species protected per dollar spent.

The debt-reduction option in TFCA has the potential to lead to the forgiveness of far greater amounts of foreign debt and, therefore, protect much more land than either the debt-swapping or debt-buyback options could.<sup>89</sup> This results from the fact that the U.S. government is in a position to forgive the massive amounts of debt that poorer, developing nations often owe.<sup>90</sup> However, the important contributions made by NGOs through their participation in the debt-swapping section of TFCA should not be trivialized or overlooked for several reasons. First, such swaps do not require prior appropriation in the United States' annual budget because the debt is bought at net present value.<sup>91</sup> Therefore, the transaction can be made without the added bother or expense of engaging in the lengthy, complicated, and oftentimes maddening budget process. Second and more generally, NGOs increasingly step forward to fill roles that the government used to fill in this era of deregulation, delegation, and decrease in the size, reach, and influence of government.<sup>92</sup> Further NGO involvement in debt-for-nature swap programs, whether as the purchaser of the debt or as the facilitator, negotiator, or publicist, also has the potential to increase protection of hotspots.

### *C. NGO Involvement in International Organizations, Treaties, and Conventions*

NGOs have also played an increasing role in international environmental politics during the last several decades. The development of the field of inter-

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88. Lewis, *supra* note 56, at 95 (quoting S. REP. NO. 105-219, at 3 (1998)).

89. *See id.* at 95.

90. *See Sher, supra* note 78, at 151.

91. Lewis, *supra* note 56, at 95.

92. *See* P.J. Simmons, *Learning to Live with NGOs*, 112 FOREIGN POL'Y 82, 87 (1998) (stating that "as governments downsize and new challenges crowd the international agenda, NGOs increasingly fill the breach. Willy nilly, the UN and nation-states are depending more on NGOs to get things done.").

national environmental law has paralleled an increase in the number of international treaties and conventions generally over the last several decades.<sup>93</sup> Overall, recent times have seen an increase in the number of nonstate actors, including NGOs.<sup>94</sup> Traditionally, international law recognized sovereign nation-states as the only entities able to operate and transact on the international stage.<sup>95</sup> However, nonstate actors, NGOs in particular, have begun to play a more important role in decisionmaking processes and policy debates within many large and influential international organizations.<sup>96</sup> Several international conventions currently allow different types and levels of involvement by environmental NGOs. Also, environmentally minded NGOs can become increasingly involved in the decisionmaking processes of international lending institutions, the lending decisions of which have profound effects on hotspot protection in direct and indirect ways. I shall examine possibilities for NGO involvement in both arenas.

### *1. NGO Involvement in Semi-Private and Private International Lending Institutions*

The World Bank Group, more commonly known as the World Bank, no doubt will seem, to most, a world apart from the offices of an environmental NGO such as CI. But as we have already seen, these two groups have partnered to create the Critical Ecosystem Partnership Fund (CEPF),<sup>97</sup> a \$200 million fund established to “provide timely, strategic and focused assistance to those globally vital ecosystems in Bank client countries, judged to be the most threatened in de-

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93. See David Jacobson, *New Border Customs: Migration and the Changing Role of the State*, 3 UCLA J. INT'L L. & FOREIGN AFF. 443, 451 (1998).

94. See Bruce Mazlish, *A Tour of Globalization*, 7 IND. J. GLOBAL LEGAL STUD. 5, 10 (1999). International corporations and other nonstate actors, in addition to environmental NGOs, have also increasingly sought to influence policy in the international arena.

95. See Julie Cassidy, *Sovereignty of Aboriginal Peoples*, 9 IND. INT'L & COMP. L. REV. 65, 65–66 (1998).

96. See e.g., Martin A. Ölz, *Non-Governmental Organizations in Regional Human Rights Systems*, 28 COLUM. HUM. RTS L. REV. 307, 325 (1996) (describing the “European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations,” which “is a regional effort to facilitate the work of European international NGOs by granting them some sort of international legal status”).

97. Press Release, *supra* note 46. See also World Bank, Critical Ecosystem Partnership Fund, <http://web.worldbank.org/external/projects/main?pagePK=64283627&piPK=73230&theSitePK=40941&menuPK=228424&Projectid=P073195> (last visited June 11, 2006).

veloping countries.”<sup>98</sup> Such a partnership would have been unthinkable just a decade or two ago. Until the 1980s, the World Bank and development NGOs inhabited “largely separate universes.”<sup>99</sup> Yet today, NGO cooperation with such large and influential global institutions is vitally important to the attainment of an NGO’s goals in the environmental, or any other, sphere.

Several factors contributed to the social and political changes necessary before such an unorthodox, yet cooperative, coupling could be comprehended. First, the World Bank became disappointed and disillusioned with more traditional, hard-line, and state-centered approaches to funding development projects that often leave areas in a worse condition than prior to World Bank involvement.<sup>100</sup> The World Bank also discovered that NGOs could more efficiently and more effectively deliver development services to developing nations and struggling areas than could the World Bank itself.<sup>101</sup> Also, due to increasingly negative press about the World Bank’s funding of development projects that disproportionately and negatively affected the poor and the environment,<sup>102</sup> a pairing with NGOs committed to advocating for the poor and protecting the environment seemed natural to the World Bank. NGOs themselves now help legitimize the actions of the World Bank and other international institutions.<sup>103</sup> In fact, in a coordinated campaign, the combined pressure exerted on the World Bank by over 150 NGOs forced the Bank not only to offer debt-reduction and development schemes that were less environmentally destructive, but also forced it to allow much more involvement for NGOs in its future lending decisions.<sup>104</sup> Now over half of the World Bank’s lending projects have some provision allowing for NGO participation, up from a mere 6 percent in 1988.<sup>105</sup> In

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98. World Bank, *Non-Regional (Global)-Critical Ecosystem Partnership Fund*, at 3, Report No. PID9673 (Oct. 5, 2000), [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/11/30/000094946\\_00113005453692/Rendered/PDF/multi0page.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/11/30/000094946_00113005453692/Rendered/PDF/multi0page.pdf).

99. Carmen Malena, *Beneficiaries, Mercenaries, Missionaries, and Revolutionaries: ‘Unpacking’ NGO Involvement in World Bank-Financed Projects*, IDS BULLETIN, July 2000, at 19, 19.

100. *See id.*

101. *See id.*

102. *See, e.g.*, John Hendren, *D.C. Police Playing Hardball: Flush with Seattle Success, Protesters Promise Massive Demonstrations*, SEATTLE TIMES, Apr. 16, 2000, at A1 (describing the massive, 4-day long protests in Seattle where protesters decried, among other things, the deleterious effects the World Bank’s funding practices have on the natural environment, often “replacing watersheds and forests with dams and cash crops”).

103. *See Simmons, supra* note 92, at 86.

104. *See id.*

105. *Id.*

addition to an explosion in the number of NGOs generally,<sup>106</sup> certain NGOs discovered that, after years of fighting the World Bank, ground-level, cooperative operational involvement proved more successful at achieving organizations' aims than did oppositional advocacy campaigns.<sup>107</sup>

Both the World Bank and the NGOs with which it now associates bring their respective areas of expertise to the hotspot-protection effort. In the case of the CEPF, the World Bank itself has a comparative strength in "macro and sectoral strategy and policy," while CI has a comparative advantage at "more micro-oriented field-based interventions," such as working with local groups living near the hotspots being targeted for conservation.<sup>108</sup> The collaboration has been a great success. In fiscal year 2002 alone, CEPF distributed grants totaling \$7.9 million to forty-one different projects benefiting conservation programs in hotspots in West Africa, Madagascar, and the South American Andes.<sup>109</sup> As well as securing more funding from other organizations, CEPF continues to examine other potential projects involving protection for more of the world's hotspots.<sup>110</sup>

Multinational private banks have also begun to implement environmentally sound practices into their management. Twenty large banks have adopted a set of voluntary, large-project-finance guidelines called "The Equator Principles" (Principles).<sup>111</sup> Several environmental NGOs active in hotspot preservation, notably the Friends of the Earth and WWF, provided input into the drafting of the Principles, which apply to the financing of projects with total capital costs of

106. *See id.* at 83–84 (noting that in 1948, there were a mere 41 groups formally accredited to consult the UN Economic and Social Counsel, but that in 1998, there were over 1,500).

107. *See Malena, supra* note 99, at 19.

108. *See World Bank, supra* note 98, at 2.

109. World Bank, *Critical Ecosystem Partnerships Fund*, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/ENVIRONMENT/EXTBIODIVERSITY/0,,contentMDK:20473187~menuPK:1170323~pagePK:148956~piPK:216618~theSitePK:400953,00.html>.

110. *See id.*

111. *See* Frederick R. Anderson, *Private Banks as Agents of Environmental Protection: The Equator Principles*, METRO. CORP. COUNS., May 2004, at 13. The banks that have adopted the Principles include ABN AMRO Bank, N.V., Barclays plc, CIBC, Citigroup Inc., Credit Lyonnais, Credit Suisse Group, Dexia Group, Dresdner Bank, HSBC Group, HVB Group, ING Group, KBC, MCC, Mizuho Corporate Bank, Rabobank Group, Royal Bank of Canada, Standard Chartered Bank, The Royal Bank of Scotland, WestLB AG, & Westpac Banking Corporation. *Id.* at 13 n.1.

greater than \$50 million.<sup>112</sup> The Principles themselves are based on the social and environmental policies of the World Bank and the International Finance Corporation and set conditions that must be met before a project that may have deleterious environmental or social effects can be financed.<sup>113</sup> Some of these conditions include environmental assessments of a financed project's projected impacts, compliance with "safeguard policies," and an environmental-management plan including mitigation of harm, action plans, monitoring, risk management and schedules, independent expert reviews, and consultations with affected groups *including* local NGOs.<sup>114</sup>

These twenty banks, along with the World Bank itself, represent most of the top international financiers of development projects that currently threaten biodiversity hotspots. The fact that NGOs now participate in the process, instead of merely protesting it, is encouraging for those who value hotspot preservation. NGOs must continue to seek ways to become involved in projects posing such threats, especially at early planning and financing stages. NGOs now participate and contribute a voice both in the public international arena, with collaborations like the CEPF, as well as in private or substantially private international transactions, as with the development and expansion of The Equator Principles. NGOs should maintain such involvement and continue to seek new opportunities for engagement and cooperation.

However, NGO involvement can only ensure the maximization of hotspot protection with the efficient use of limited NGO funds if international participation is done intelligently and proficiently. Several useful suggestions have been given for NGOs looking for opportunities to become more involved with

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112. *Id.* However, there is some indication that these same NGOs are lately not impressed with the record of these banks in adhering to the Principles themselves. Specifically, the Friends recently criticized the rejection by the Principles' member banks of the recommendation of the Extractive Industries Review that the World Bank phase out the financing of coal-mining projects by 2008. See Demetri Sevastopulo, *Banks Contest Ban Proposed for Coal and Oil Extraction*, FIN. TIMES (London), Apr. 5, 2004, at 6. One international network of NGOs, Bank Track, of which the Friends is a member, has recently attacked the member banks claiming they have violated the Principles a mere one year after their passage. See Demetri Sevastopulo & Vanessa Houlder, *Environment Groups Hold Banks to Their Green Promises*, FIN. TIMES (London), June 4, 2004, at 9. The Friends stated, however, that "NGOs still have some hope for the Principles." *Id.*

113. See David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931, 1003 (2004). See also The "Equator Principles", <http://www.equator-principles.com/principles.shtml> (last visited June 11, 2006).

114. See Anderson, *supra* note 111.

international organizations such as the World Bank or private international financiers. They include, first, knowing what the NGO wants and what it can offer, or, in essence, clearly outlining the purpose and goals of the collaboration prior to committing time and money to it.<sup>115</sup> If the goals of both organizations are incompatible, it is better to discover this in advance before wasting time, money, and effort.<sup>116</sup> Second, NGOs must negotiate acceptable working arrangements with these international institutions.<sup>117</sup> Third, NGOs must effectively understand the inner workings and culture of the organization with which they contemplate forming a relationship. Since many private international banks may not be as transparent as the World Bank has become in recent years, independent contacts and personal relationships will be crucial.<sup>118</sup> Finally, NGOs should seek out and form relationships with other NGOs that have worked with international banks in the past or are currently doing so. Much time and effort can be saved, or instead spent on protecting hotspots, if NGOs work together to eliminate some of the initial adjustment time before beginning a new collaboration.<sup>119</sup>

## 2. *NGO Involvement in Public International Institutions*

In addition to inserting themselves into the inner workings of international organizations such as banks and businesses, NGOs also have recently been more active in international law and politics by directly participating in the activities and deliberations of international bodies and organizations established by legislation and treaty.<sup>120</sup> NGOs participate in the debate at these organizations in several ways. These include appearing before international courts and tribunals as parties, sitting as members on assemblies and tribunals, and filing amicus curiae briefs in existing cases.<sup>121</sup> It has been noted that “the debate is not whether private actors should participate in international law at all, but the extent to which

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115. See Malena, *supra* note 99, at 31.

116. *Id.*

117. See *id.*

118. *Id.* at 32.

119. *Id.*

120. See, e.g., Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 260 (1997) (describing how “the American Convention on Human Rights permitted NGOs and individuals to lodge petitions with the Inter-American Commission on Human Rights”).

121. See generally Duncan B. Hollis, *Private Actors in Public International Law: Amicus Curiae and the Case for the Retention of State Sovereignty*, 25 B.C. INT'L & COMP. L. REV. 235 (2002).



they should participate.”<sup>122</sup> In essence, the international arena is currently more amenable to NGO and private-party involvement than ever before. Taking advantage of opportunities for greater NGO involvement has the potential to set precedents for future increases in NGO participation in the development of international environmental law. This opportunity makes it even more crucial that NGOs act now to set such precedents and to make positive contributions to hotspot protection in the process.

As international law develops and as the forces of globalization continue to alter the international arena, international agreements increasingly recognize the right of NGOs to file their own disputes with international tribunals set up by treaty or convention. One such treaty is the North American Agreement on Environmental Cooperation (NAAEC).<sup>123</sup> The United States, Canada, and Mexico drafted the NAAEC as a side-agreement to the North American Free Trade Agreement (NAFTA) because of concerns about the health, social, and environmental effects of a race-to-the-bottom caused by removing cross-border tariffs in North America.<sup>124</sup> The NAAEC itself does not create new international law but focuses instead on stricter enforcement of current national environmental laws.<sup>125</sup> However, it does establish a Commission for Environmental Cooperation (CEC) to which parties may submit enforcement matters before a Secretariat.<sup>126</sup>

NGOs have the opportunity to submit matters to the Secretariat just as any party to the treaty may. Article 14 of the NAAEC states that “[t]he Secretariat may consider a submission from any non-governmental organization or person asserting that a Party is failing to effectively enforce its environmental law . . . .”<sup>127</sup> The Secretariat has no enforcement mechanisms at its disposal and cannot affirmatively state that a party to the NAAEC is not fulfilling its obligations under the treaty to effectively enforce its own environmental statutes and regulations.<sup>128</sup> It can only direct the preparation of a “factual record” which will detail the state of the potential problem to the public at large.<sup>129</sup>

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122. *Id.* at 247.

123. North American Agreement on Environmental Cooperation (NAAEC), U.S.-Can.-Mex., Sept. 14, 1993, 32 I.L.M. 1480 (1993).

124. See Chris Dove, Comment, *Can Voluntary Compliance Protect the Environment?: The North American Agreement on Environmental Cooperation*, 50 U. KAN. L. REV. 867, 871 (2002).

125. *Id.* at 872.

126. *Id.* at 873.

127. NAAEC, *supra* note 124, art. 14.

128. See Dove, *supra* note 125, at 882.

129. See NAAEC, *supra* note 124, art. 15.

Despite these limitations, NGOs should not be discouraged in their efforts in this area. Presenting a case strong enough to warrant the development of a factual record may highly publicize a particular situation in which a party nation is not enforcing its preservation or endangered-species laws adequately, thereby increasing the chances that bad press may promote protective action for a particular hotspot.<sup>130</sup> NGOs should not only continue to work in this area where permitted by international agreement, but should also continue to lobby for increased representative opportunities in future international accords and agreements that have an impact on the protection of species and biodiversity hotspots.

NGOs can also become involved in public international organizations by gaining representative status as sitting members on national or international councils or assemblies with control over policy affecting hotspots. Brazil provides an example of such an arrangement. Brazil's National Environmental Council (CONAMA), an advisory body, assists the president in developing environmental policy.<sup>131</sup> CONAMA has the authority to create subcouncils consisting of a "Plenary Assembly" and "Technical Councils."<sup>132</sup> CONAMA's Plenary Assembly includes as members "two representatives from associations whose primary focus is the defense of natural resources and one representative of a legally recognized . . . non-governmental environmental organization from each region."<sup>133</sup> Whether this opportunity is limited to Brazilian NGOs or whether internationally active NGOs can also obtain a seat on the Plenary Assembly is ambiguous,<sup>134</sup> however, the opportunity for importation of this concept exists. Even though this concept of NGO involvement is currently limited to Brazil,<sup>135</sup> the expansion of involvement opportunities for NGOs suggests that in the near future more nations will allow NGOs similar prospects for taking advisory roles in national policymaking.

Finally, NGOs can involve themselves in the international politics of hotspot protection by filing amicus briefs when allowed to do so. By filing amicus briefs in current cases pending before international tribunals, NGOs can

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130. See Simmons, *supra* note 92, at 84 (noting that NGOs have become amazingly adept at "global public-relations blitzes").

131. See Kunich, *supra* note 24, at 216.

132. *Id.* at 217.

133. *Id.*

134. *Id.*

135. See *id.*

argue for the strict enforcement of international conventions that would benefit biodiversity and increase hotspot preservation. Several different international conventions allow private parties such as citizens, businesses, and NGOs to submit amicus briefs. NAFTA provides one such example. NAFTA Chapter 11 investor-state arbitral tribunals, since the case of *United Parcel Services of America, Inc. v. Canada*,<sup>136</sup> have allowed NGOs and other private parties to file amicus briefs in ongoing disputes “so long as such participation [does] not affect the rights of the disputing parties.”<sup>137</sup> Although the right now exists, no NGO has ever submitted an amicus brief in a NAFTA case.<sup>138</sup>

Similarly, the World Trade Organization (WTO) also allows NGOs to submit amicus briefs. In 1998, President Clinton suggested that the WTO “modernize” by allowing private parties to submit amicus briefs and otherwise make their views known.<sup>139</sup> In the well-known *US-Shrimp* case, several NGOs submitted amicus briefs to the WTO dispute settlement panel.<sup>140</sup> After the panel refused to accept the amicus briefs, the Appellate Body reversed,<sup>141</sup> finding that “NGOs with relevant interests may submit their viewpoints in the form of *amicus briefs* to a panel.”<sup>142</sup> The WTO itself has not looked kindly upon this development, stating that although it agreed that further NGO input should be incorporated into decisionmaking, “formal involvement of NGOs at the WTO is not appropriate.”<sup>143</sup> Whether in a formal manner or not, the WTO has signaled its willingness to incorporate more NGO viewpoints into its policymaking. NGOs seeking to protect hotspots should take advantage of these opportunities as world trade policy has an enormous influence on the preservation of species and their habitat, particularly in hotspots.

136. *United Parcel Serv. of Am. Inc. v. Canada*, NAFTA Chap. 11 Trib. (2001), available at <http://naftaclaims.com/Disputes/Canada/UPS/UPSDecisionReParticipationAmiciCuriae.pdf>.

137. Hollis, *supra* note 122, at 241.

138. *Id.* at 238 n.11.

139. See Dukgeun Ahn, Note, *Environmental Disputes in the GATT/WTO: Before and After US-Shrimp Case*, 20 MICH. J. INT'L L. 819, 839 (1999).

140. See Panel Report, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/R (May 15, 1998).

141. See *id.* at ¶ 155. See also Ahn, *supra* note 140, at 839. The actual holding of the Appellate Body stated that “the Panel erred in its legal interpretation that accepting non-requested information from non-governmental sources is incompatible with the provisions of the DSU.” Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 110, WT/DS58/AB/R (Oct. 12, 1998).

142. Ahn, *supra* note 140, at 841.

143. *Id.* at 842.

## CONCLUSION

NGOs play a crucial role in providing funding, logistical support, and other types of assistance to local peoples and groups that work to protect biodiversity hotspots. I have examined several of the different manners in which NGOs can influence hotspot policy, including various forms of direct aid and unencumbered contributions, debt-for-nature swaps, and involvement in international organizations and conventions. Governments around the world, particularly those that harbor hotspots within their borders, need to work with local citizens, local citizens' groups, and, in particular, with each other. Wildlife and ecosystems do not heed artificial boundaries imposed by humans.<sup>144</sup> Therefore, interjurisdictional cooperation will be crucial to successful hotspot preservation. NGOs could potentially explore the possibility of serving as intergovernmental liaisons, coordinating or even managing cooperative projects between governments that contain a particular hotspot within their borders. After all, "NGOs on the ground often make the impossible possible by doing what governments cannot or will not."<sup>145</sup>

While they already undertake many roles in hotspot preservation, NGOs have many opportunities for increased participation in this area. Each leaves much room for further involvement by either NGOs already established in this area or by new NGOs that have never considered working toward the preservation of hotspots. The future of hotspots—and therefore, of much of the earth's biodiversity—will depend, in part, on the ingenuity, energy, efficiency, resources, dedication, and pioneering spirit that NGOs can bring to this process.

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144. See Frances H. Irwin, *An Integrated Framework for Preventing Pollution and Protecting the Environment*, 22 ENVTL. L. 1, 41 (1992) (noting that "political jurisdictions seldom coincide with ecosystem lines").

145. Simmons, *supra* note 92, at 87.

