

STATE SOVEREIGNTY, ENVIRONMENTAL PROTECTION, AND
THE NORTH AMERICAN FREE TRADE AGREEMENT

by

RANDALL JEFFREY TUCKER

A THESIS

Presented to the Interdisciplinary Studies Program: Individualized Program
and the Graduate School of the University of Oregon
in partial fulfillment of the requirements
for the degree of
Master of Science

December 1994

"State Sovereignty, Environmental Protection, and the North American Free Trade Agreement," a thesis prepared by Randall Jeffrey Tucker in partial fulfillment of the requirements for the Master of Science degree in the Interdisciplinary Studies Program: Individualized Program. This thesis has been approved and accepted by:



Dr. Daniel Goldrich, Co-Chair



Dr. Alexander B. Murphy, Co-Chair

November 29, 1994
Date

Committee in charge: Dr. Daniel Goldrich, Co-Chair
Dr. Alexander B. Murphy, Co-Chair



Vice Provost and Dean of the Graduate School

An Abstract of the Thesis of
Randall Jeffrey Tucker for the degree of Master of Science
in the Interdisciplinary Studies Program: Individualized Program
to be taken December 1994

Title: STATE SOVEREIGNTY, ENVIRONMENTAL PROTECTION, AND THE
NORTH AMERICAN FREE TRADE AGREEMENT

Approved:


Dr. Daniel Goldrich


Dr. Alexander B. Murphy

The vigorous debate over the North American Free Trade Agreement (NAFTA) focused attention on competing views of sovereignty in the contemporary world. In particular, the environmental critique of NAFTA, and the response to that critique, reflected both the depth of current challenges to the state and the continuing power of sovereignty to influence events.

This thesis explores the debate over the inclusion of environmental measures in NAFTA and its implications for contemporary understandings of sovereignty. While trade negotiators were forced by environmentalists to address ecological concerns in NAFTA, and eventually to enact unprecedented environmental provisions that intruded on the traditional domestic authority of the state, officials invoked sovereignty claims to forestall the adoption of stronger measures. However, the state's acknowledgment of the need to

address environmental concerns in the context of trade signals a diminution of sovereignty and suggests the likelihood that state authority will continue to erode.

FOUR STAR BOND
SILKWOOL U.S.A.
25% COTTON FIBER

CURRICULUM VITA

NAME OF AUTHOR: Randall Jeffrey Tucker

PLACE OF BIRTH: Dallas, Texas

DATE OF BIRTH: May 6, 1956

GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon
Stanford University

DEGREES AWARDED:

Master of Science in Environmental Studies, 1994, University of Oregon
Bachelor of Arts in American Studies, 1980, Stanford University

AREAS OF SPECIAL INTEREST:

Relationship Between Free Trade and Sustainable Development
Political Geography of Environmental Issues

PROFESSIONAL EXPERIENCE:

Campaign Coordinator, Citizens Trade Campaign of Oregon, Portland,
1994

Co-Chair, Oregon Fair Trade Coalition, Portland, 1992-1994

Trade and Environment Researcher, National Wildlife Federation,
Washington, D.C., 1991

Graduate Teaching Fellow, Department of Geography, University of
Oregon, Eugene, 1991

Graduate Teaching Fellow, Department of Planning, Public Policy and
Management, University of Oregon, Eugene, 1990

AWARDS AND HONORS:

Scholarship, Community Strategic Training Initiative, 1993

Graduate Student Service Award, 1991

General University Scholarship, 1991-1992

William W. Stout Scholarship, 1990-1991

PUBLICATIONS:

Tucker, Randy. 1991. A preliminary investigation into the implications for sustainable development of a free trade agreement between Mexico and the United States. Minneapolis: Fair Trade Campaign.

ACKNOWLEDGEMENTS

My experience at the University of Oregon has been profoundly enriched by three outstanding people. Dan Goldrich first suggested that I investigate the implications of free trade between Mexico and the United States, and encouraged me when I expressed skepticism about both the importance of the topic and my ability to take it on. His political perceptions and his dedication to thoughtful action have inspired my own political development and my involvement with this issue, and I have benefited immeasurably from being both his student and his colleague. Alec Murphy has provided a different sort of inspiration by demonstrating how geography can inform our approach to contemporary issues, as well as by providing a model of rigorous, important, and fascinating academic work. His high standards have made me a better writer and thinker, and his optimism and insight helped me to reach the end of a process that at times seemed interminable. Al Urquhart offered good humor, righteous outrage, and moral support throughout my (overly extended) tenure in the Environmental Studies program. His courses helped me to think more deeply about my own environmental views. He also provided financial support by hiring me as a teaching assistant at a critical time.

Finally, no one should be allowed to graduate from the Environmental Studies program without thanking Yvonne Plummer for her unfailing assistance and always accurate advice. I wish her the best in her quest for sun.

DEDICATION

To Mary, for everything

NO. 1 STAR WORLD
SOUTHWORTH CO. SA
25% COTTON FIBER

TABLE OF CONTENTS

Chapter	Page
I. INTRODUCTION	1
II. SOVEREIGNTY: THE STATE OF THE STATE	8
The State and Civil Society	9
Elements of Sovereignty	11
Evolving Understandings of Sovereignty	14
Current Trends Affecting the Practice of Sovereignty	22
Blurring Boundaries	25
Internationalization of "Domestic" Issues	27
The Power of Sovereignty	32
The Future of the State	34
III. FREE TRADE AND THE ENVIRONMENT	36
Direct Environmental Effects of Increased Trade	37
The Process of Trade Negotiations	41
How Trade Agreements Undermine Environmental Protection	44
A Race to the Bottom	48
The Uses of Sovereignty	52
IV. NAFTA AND THE ENVIRONMENT: FORCING THE ISSUE	54
Mexico's Environmental Shortcomings	57
The Growth of the Environmental Response	62
The NAFTA Negotiations	67
NAFTA's Environmental Provisions	73
V. FIXING NAFTA: THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION	77
The Clinton Administration and the Supplemental Negotiations	77
Balancing Sovereignty and Environmental Responsibility	82
Contents of the Agreement on Environmental Cooperation	86

	Page
Sovereignty and Accountability	96
VI. SUMMARY AND CONCLUSIONS	98
Reconstituting Sovereignty	102
Trade, Sovereignty, Environment	105
REFERENCES	107

CHAPTER I

INTRODUCTION

Over the last few years we have witnessed what can only be described as a headlong rush to liberalize trading regimes worldwide. The most prominent of these efforts include the economic integration of Europe, the North American Free Trade Agreement (NAFTA), and the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), though several lesser initiatives have arisen as well. This trend has led one observer to call free trade "the religion of our age, less an economic strategy than a moral dogma" (Morris 1990, 190). While international trade has become a contentious political issue in the postwar United States only recently, the current free trade stampede formalizes a broader process of global economic integration which has arguably been under way for a century or more and which has greatly intensified in the past twenty-five years.

The last quarter-century has also witnessed the development of an entirely new historical phenomenon: the rise of an international movement based on the conviction that human activity has reached a scale and intensity that the earth cannot sustain. As industrial production has become increasingly global in nature, its impacts on the environment have begun to be felt in even the least developed areas of the world. Environmental stress caused by population growth and by social and political upheaval has compounded the effects of global production on the earth's natural systems, and scientific advances have made it possible to better understand and measure the mounting

ecological damage. As a result, environmentalism has become a powerful force not only in the advanced Western states, but in less developed countries as well.¹

Closely related to these global developments, but less prominent in mainstream consciousness, a third trend with profound implications has become impossible to ignore. While this trend is harder to define, it can be characterized as an increasing challenge to the power, authority, and autonomy of the territorial state as the primary sovereign actor in the global political system. Technological change, the rise of competing transnational actors, the geographic fluidity of economic activity, and the planetary threat of ecological breakdown have combined to raise fundamental questions about the nature of sovereignty and the future role of the sovereign state. Attempts to regulate transboundary economic activity, and to deal with its social and environmental impacts, are often stymied by the fragmentation which characterizes the existing state-based political order and the unwillingness of states to sacrifice what they view as their sovereign prerogatives. Because ecological problems also transcend state borders, questions related to environmental quality and the legal structures that exist to protect ecological values have also become highly problematic in the international arena.

These three trends center on three competing values characterized by fundamentally different ways of conceptualizing the relationship between

¹In this paper, the term "state" generally refers to sovereign states, the basic units of the global political system, rather than to subdivisions of those units like the fifty "states" of the United States. Since this paper does not deal with questions of nationhood in the strict sense as distinct from statehood (except briefly in Chapter II), the term "nation" also refers to sovereign states as it does in normal U.S. usage, and terms like "international" and "transnational" likewise refer to relationships between states. "Country" will be used interchangeably with both "state" and "nation."

territory and authority. Though it may be theoretically possible to reconcile free trade, environmental protection, and state sovereignty, in practice these mutually conflicting ideals tend to run into multiple contradictions. The tension between them was abundantly apparent in the recent debate over the North American Free Trade Agreement. The convergence in this debate of competing political, economic, and environmental values offers a fascinating opportunity to examine the interplay between them and to consider the implications for future directions in the understanding of state sovereignty.

The negotiations between the United States, Mexico, and Canada marked the first time environmental concerns were seriously considered from the outset in the context of a free trade agreement, and NAFTA was touted by its proponents as the "greenest trade agreement ever" (Snape and Bourne 1992/1993, 13). However, this landmark, such as it is, was not achieved without controversy. Environmental advocates only succeeded in forcing their issues onto the table over the objections of government trade officials by creating international coalitions to exert political pressure. Having accomplished this initial objective, however, they were dissatisfied with the way their concerns were accommodated in the original negotiations. The prospect that environmental opposition might help defeat the pact in Congress led to the negotiation of a supplemental environmental agreement between the three countries. Even with the addition of this unprecedented accord, the environmental significance of the provisions included in the final package remains questionable, and the environmental community ultimately split over whether to support NAFTA.

The environmental side agreement includes provisions that directly

contradict one of sovereignty's cardinal tenets: the principle that the state should exercise exclusive control over internal affairs. In placing an affirmative obligation upon each signatory state to enforce its own domestic environmental laws and backing up this requirement with the threat of trade sanctions, the side agreement poses a new type of affront to state sovereignty.

However, prevailing views of state sovereignty played a significant role in the unfolding of the process of negotiating NAFTA and especially in shaping the content of the supplemental accord. While the side agreement on "environmental cooperation" does contain some innovations related to domestic enforcement of environmental law, it is filled with loopholes and omissions and its sanctions are much more difficult to invoke than the penalties for other violations of the NAFTA. Strenuous objections based on sovereignty claims played a major role in preventing the inclusion of stiffer measures.

According to Krasner (1993, 238), "[s]overeignty has always been contested both with respect to the scope of authority exercised by states and by institutional arrangements that do not conform with exclusive territorial control." Indeed, the concept of sovereignty and the state itself have faced constant challenge since they first developed in response to profound changes in the material basis of medieval life that severely undermined the viability of existing social and political structures (Krasner 1993; Ruggie 1993, 154). These challenges have accelerated in recent years as technological change and economic globalization have stimulated dramatic increases in both the volume and the rapidity of transboundary flows of people, goods, money, ideas, and pollution. Recent developments have tested the ability of states to control their territory and enmeshed them in webs of interdependence that have limited their

autonomy (Zacher 1992). These trends have prompted speculation about new political arrangements that might transcend or undercut the territorial state, or at least topple it from its position as the preeminent container of political authority.

However, most observers agree that for now, at least, the sovereign state as we know it is unlikely to wither away. Rather, it will continue to be tested and to adapt to changing historical trends. As Walker (1990, 167) writes, "the most interesting accounts of the internationalization of production and patterns of interdependence speak not of the erasure of the state but of its transformation under specific historical conditions."

Murphy (1994, 10) has written that despite the magnitude of the challenges currently facing the state, "the extraordinary power of the dissemination and widespread acceptance of sovereignty as a political-territorial ideal" cannot be ignored. The history of sovereignty, he continues, demonstrates that political ideas are not merely "derivative of circumstance," but also "shapers of circumstance." In other words, even as notions of sovereignty have evolved in response to changing historical conditions, the development and prevalence of the concept of sovereignty and the sovereign state have themselves influenced those conditions and defined the range of possibilities in individual cases. Sovereignty affects events, and is affected by events.

The outcome of the debate over the inclusion of environmental measures in NAFTA offers a current illustration of this principle. The sequence of events which resulted in these measures being first brought to the table, and then incorporated into the accord, demonstrated the inability of states to monopolize a policy area—international trade—that previously had not been the subject of wide debate, and to prevent newly powerful nonstate actors from influencing

the policy agenda. The unprecedented provisions which would penalize states for failing to enforce their own domestic environmental laws establish a new obligation completely at odds with the traditional view of sovereignty and of the distinction between internal and external affairs.

On the other hand, the effectiveness of those environmental protections remains in doubt. Their weakness results in large part from the insistent protests of Mexico and Canada that strong environmental requirements backed up by sanctions would constitute a violation of their sovereignty. Whether or not sovereignty was the real issue, the use of these arguments and their success in weakening the side agreement suggest that prevailing conceptions of the role and prerogatives of the state continue to hold considerable power, even in a world where political arrangements are in a state of constant flux.

The goal of this thesis is to examine how competing views of sovereignty came together in the NAFTA debate, and to assess the implications of this convergence for the future of the state. To this end, current trends in the theory and practice of sovereignty are explored in Chapter II, including the blurring of the distinction between domestic and international affairs and the challenges to the state posed by nonstate political actors promoting principled beliefs regarding legitimate state behavior. The chapter then examines how sovereignty affects people's ways of thinking about their world and thus ultimately influences the outcome of historical events. Chapter III outlines the nature of the conflict between free trade and environmental protection. Chapters IV and V offer a case study of NAFTA, beginning with the announcement of the impending negotiations and ending with the completion of the environmental side agreement, which is reviewed and analyzed. A

summary of findings and some conclusions are provided in Chapter VI.

FOUR STAR BOND
SOUTHWORTH CO. U.S.A.
25% COTTON FIBER

CHAPTER II

SOVEREIGNTY: THE STATE OF THE STATE

The sovereign state has come under increasing assault in the late twentieth century from a wide variety of new or vastly intensified processes, including economic integration and global environmental change, as well as resurgent forces such as ethnic nationalism. At the same time, paradoxically, the hold of the territorial state on our political and geographic imaginations remains firm, and the inability of most political actors to think in other than state terms circumscribes the array of options considered for dealing with these challenges.

To understand how these opposing trends affecting the practice of sovereignty played out in the rancorous debate over the North American Free Trade Agreement, it is important to consider the nature and function of sovereignty itself. Such an investigation makes it possible to establish a context in which recent events can be placed. Accordingly, this chapter seeks to situate the state within the body politic and lay out the elements of sovereignty, with special attention to its historically contingent, and thus changeable, character.

The focus then shifts to the forces that have combined in recent years to undermine the conventional view of the state as the ultimate resolution of the relationship between territory and authority. The fluidity and mobility of these contemporary forces have blurred the distinction between domestic and international affairs, calling into question the state's continued ability to exercise effective jurisdiction and address unprecedented global developments. The

emergence of principled beliefs that transcend particular state interests, like environmentalism and human rights, has also contributed to a weakening of sovereignty as states assume new obligations in order to maintain their legitimacy.

However, the global extension of the sovereign state system remains a powerful determinant of political possibility. Despite the mounting challenges to the state, no viable alternative mode of allocating political authority has yet arisen to compete with it. On the contrary, other types of political institutions have been "extrud[ed] out" of the system by the rise of the state (Krasner 1993, 235). The specific territorial settlements that characterize the political map direct development to particular regions, and these patterns of development have feedback effects that themselves drive historical changes. In addition, the conceptual dominance of the state has taken on a self-fulfilling character as people's inability to think about issues in other than state terms affects the way problems are addressed and reinforces resistance to new approaches. In these ways, sovereignty influences the outcome of events.

The State and Civil Society

An awareness of the distinction between the state and civil society is essential to understanding the dynamics of the debate over free trade that led up to the enactment of NAFTA. The question that must be addressed, as Walker (1990, 173-174) explains, is

whether sovereignty lies with the center [i.e., the governing authority] or with the inhabitants of the territory. . . . For, although the formal principle of state sovereignty provides a constitutional account of the state as somehow (abstractly) synonymous with society, there remains the rather serious difficulty of specifying precisely how the relationship between state and civil society is to be understood or achieved in practice.

A definition of the state that conflates civil society and its governing authority discounts the natural tension between the government and the governed, ignoring the relevance of the internal dimension of sovereignty and thus the possibility of challenge to the policies of a state from inside its borders. In today's highly fluid and contentious political climate, such a definition is a meaningless abstraction, notwithstanding the claims of state authorities to speak for their entire political societies. In particular, nonstate actors like public interest organizations and economic entities operate as free agents in the political arena, often challenging the state from below or reaching across boundaries to thwart state objectives. Camilleri suggests that the current climate reflects "a growing disjunction between the state and civil society" (1990, 29) and notes that in light of the complexity of modern political and economic processes, "the state's traditional claim to represent a single national will or collective interest is increasingly divorced from reality" (1990, 37). In fact, he continues, in many cases the state apparatus is dominated by particular political, economic, military, and ideological interests whose survival in power can be directly antithetical to the interests of civil society, "of which the state is theoretically the political expression."

The question of who the state represents if not its citizens, of course, is a loaded one and for the most part beyond the scope of this paper. However, Marx addressed this question in a way that sheds some light on the reluctance of state authorities to admit the relevance of environmental issues to NAFTA. According to Camilleri (1990, 19), Marx "was intent on contrasting the sovereignty of the state (understood as the expression and instrument of the dominant social order) with the sovereignty of the people." An understanding

of the state as the representative of specific entrenched interests rather than the general will of the people at large is critical in helping to explain the opposition of sovereign authorities to demands for changes in the use of state power, especially when the status quo benefits powerful economic elites. The push for free trade, of course, favored these interests, and the state's resistance to opening up the trade agenda offers a prime illustration of Marx's point.

It thus makes more sense for present purposes to define the state as the apparatus of government which exercises ruling authority, whether on behalf of or in spite of the views of its citizens. Such a view more clearly distinguishes the state, which possesses the essential attribute of supreme coercive authority within a given territory, from nonstate actors on the domestic and international political stages. The importance of such a distinction for this inquiry has to do with the possibility that sovereignty can be challenged from below by ordinary citizens when it fails to address issues that those citizens find critical or to otherwise act on their behalf. This possibility can only be considered if a conceptual distinction exists between state and society.

Elements of Sovereignty

Definitions of sovereignty abound, but among them several common elements recur. According to Krasner (1993, 235), "the basic organizing principle of sovereignty" consists of "exclusive control over a given territory." Ruggie (1993, 151) offers a slight variation on this definition when he describes today's familiar "modern system of rule"—that is, the sovereign state system—as being characterized by "territorially defined, fixed, and mutually exclusive enclaves of legitimate domination." Both of these formulations include three basic elements

of sovereignty: exclusivity and authority, tied to a specific piece of territory.

Domestically, sovereignty consists of the possession of the supreme coercive authority—i.e., control of the state. Sovereign authority is frequently characterized as a monopoly on the legitimate use of force. The key element from an internal viewpoint is exclusivity: “the notion that in any community of people there should be only one source of authority” (Cornelia Navari, quoted in Herzog 1990, 19). Most other definitions echo this emphasis on exclusivity, though, like Krasner, they generally situate sovereignty within a “given territory” rather than in a “community of people” (see, however, Barkin and Cronin 1994). Exclusivity is also important externally, as the sovereign authority possesses the sole ability to speak for the state in international relations.

The territorial aspect of sovereignty is critical as well, serving to differentiate the sovereign state both from systems of authority that predate it and from nascent shifting, issue-based, or otherwise non-territorial political arrangements that some observers believe presage its demise. The state system, Ruggie explains, depends upon a “fundamental spatial [demarcation] . . . between internal and external realms” (1993, 151). It is this distinction that defines citizenship and determines legal jurisdiction. The parcelization of the earth’s surface into sovereign states creates the political map which dominates our geographic imagination and makes it difficult to conceive of a world where territory and authority are not inextricably intertwined (Murphy 1994).

However, while territoriality, authority, and exclusivity are all necessary components of sovereignty, they are not sufficient to define it. For “sovereignty is not a fact. It is a concept which men in certain circumstances have applied—a quality they have attributed or a claim they have counterposed—to the political

power which they or other men were exercising" (Hinsley 1986, 1). In other words, sovereignty does not consist simply of power and authority themselves, but rather involves claims of power and authority, and requires that these claims, in turn, be recognized by others. Sikkink (1993a, 412) emphasizes this requirement when she defines sovereignty as "a series of claims about the nature and scope of state authority," and notes that these claims are forceful to the extent that they "represent shared understandings and expectations that are constantly reinforced both through the practices of states and the practices of nonstate actors."

The key element here is recognition. In the international arena, sovereignty can be claimed by a given state only insofar as other states are willing to accept this claim. As Zacher (1992, 59) writes, "States' mutual respect for each other's sovereignty is generally regarded as the constitutive principle of the system"; similarly, Ruggie (1993, 162) refers to "[r]eciprocal sovereignty," and Sikkink (1993a, 441) discusses the "intersubjective" nature of sovereignty claims.

The question of recognition is bound together with issues of legitimacy, responsibility, and what might be called the moral dimension of sovereignty. The degree to which a state is perceived as acting responsibly, both toward its own citizens and toward the international community, influences the granting of recognition, and thus respect for that state's sovereignty. Kratochwil proposes an analogy between sovereignty and property in that both feature an element of exclusive ownership, but both also entail obligations as well as rights. The U.N. Charter reflects the notion that the sovereignty of member states does not guarantee them unlimited freedom, but rather binds them to certain obligations

and norms of behavior. The obligations inherent in sovereignty, Kratochwil notes, evolve in accordance with the values of society (cited in Lyons and Mastanduno, 521).

Similarly, the success of sovereignty claims often hinges on the perceived legitimacy of the claimants. Legitimacy, in this sense, refers both to the extent to which these claimants are viewed as truly representing the citizens of their state and to the conviction that state power is being appropriately exercised. While understandings of legitimacy vary through time, legitimacy clearly plays a part in the intersubjective process by which sovereignty is defined and exercised. For example, "the maintenance of legitimacy requires that states conform with the international community's conception of justice" (Barkin and Cronin 1994, 113). Like legitimacy itself, this conception of justice changes, but its usefulness as a basis for legitimacy, and thus for sovereignty, endures. Environmental practices have only recently entered the equation and become important factors in the determination of legitimacy (see Keck and Sikkink 1992).

Evolving Understandings of Sovereignty

The intersubjective nature of sovereignty presupposes that sovereignty can exist to a greater or lesser degree and vary according to global trends and particular circumstances. However, some observers take a more rigid approach to defining sovereignty. Because this study rests upon the premise that certain trends may be altering conceptions of sovereignty, it is necessary to step back and establish that sovereignty can, in fact, evolve. In other words, sovereignty must be understood not as a static characteristic or condition, but rather as a dynamic principle subject to the influence of historical circumstances and trends

and a changing material, technological, and political environment. While a complete history of the principle of sovereignty is beyond the scope of this paper, a basic familiarity with its origins and development can help to illustrate its historically contingent, and thus changeable, character.

The modern state system, and the concept of state sovereignty, developed in the social, political, and economic environment of late-medieval Europe. The system of states that came into full existence by the early 19th century—sometimes called the Westphalian state system after the 1648 Peace of Westphalia, which first formalized certain principles of modern sovereignty—“radically altered peoples’ understandings of space and place. It shaped peoples’ thinking about their own and other territories, about the significance of political territories in relation to other phenomena, about the nature of frontiers and boundaries, and about the organization of society itself” (Murphy 1993, 2).

Ruggie (1993, 150) describes medieval political arrangements strikingly unlike today’s familiar system of discrete sovereign entities. The medieval system of rule, he writes, was “structured by a nonexclusive form of territoriality, in which authority was both personalized and parcelized within and across territorial formations.” Instead of firm boundaries, there were only frontiers, or broad transition zones. The state system constituted a significant departure from this earlier tradition of rule. It arose in part because of profound changes in the material basis of life that strained existing social relations to the point of collapse (Ruggie 1993, 154).

Similarly, the challenges to the state in the late twentieth century reflect sweeping changes, largely technologically or materially driven, in virtually every area of human activity. Camilleri (1990, 13) notes that “[t]he impact of social and

economic conditions on the concept and practice of state sovereignty cannot be overstated"; changes in the political, military, and environmental realms as well have contributed to shifts in the foundation and scope of state authority.

Of course, the state system as it exists today could have developed in a different way or not at all, and tomorrow's system will certainly be different as well. That is, the current situation was not inevitable, nor is it here to stay.

Though he writes in an entirely different context, Stephen Jay Gould (1989, 284-285) nevertheless suggests that we should revel in the contingent nature of current realities:

Historical explanations are endlessly fascinating in themselves, in many ways more intriguing to the human psyche than the inexorable consequences of nature's laws. We are especially moved by events that did not have to be, but that occurred for identifiable reasons subject to endless mulling and stewing. When we realize that the actual outcome did not have to be, that any alteration in any step along the way would have unleashed a cascade down a different channel, we grasp the causal power of individual events. We can argue, lament, or exult over each detail—because each holds the power of transformation. Contingency is the affirmation of control by immediate events over destiny, the kingdom lost for want of a horseshoe nail. . . . Contingency is a license to participate in history, and our psyche responds.

Foremost among those who take a contrary approach to the notion of sovereignty as contingent and flexible is F. H. Hinsley. While Hinsley recognizes the state as an institution characteristic of a particular stage in the development of a political community (1986, 3), he nevertheless also sees this evolution as peculiarly deterministic: "All evolution from primitive pre-state methods," he writes, "has been inexorably towards the establishment and the consolidation of the state" (1986, 219). To be sure, the durability of the essential features of the modern system has led some to view that system as preferable, in a normative sense, to systems of the past and, presumably, to unknown future

arrangements, or even as the culmination of a process of historical development at its logical ending point. However, this view is far from universal, especially in light of the vast challenges facing the modern state. As Krasner has noted, it is "no longer obvious that the state system is the optimal way to organize political life" (quoted in Murphy 1994, 41).²

Hinsley rejects the notion that historical changes in prevailing conditions which infringe upon state powers imply the erosion of sovereignty itself:

[I]t is wrong to conclude that because the state has experienced a decline in its international freedom of action, sovereignty is no longer compatible with the state's international position.

To argue in this way is to associate the attribute of sovereignty with the possession by the state of freedom to act as it chooses instead of with the absence over and above the state of a superior authority. (1986, 226)

This statement betrays a black-and-white approach to sovereignty which ignores the historically specific nature of the state itself. Hinsley thus falls victim to the tendency described by Walker (1990, 166) as "the fixing of historically specific categories as if they are eternal"—or at least immutable.

A different view depicts the system of states as socially constructed, and state sovereignty as merely the current historical settlement of certain questions about how people relate to territory (Walker 1990, 169). Like all social institutions, the state is subject to changing interpretations. As these

²Just as the state system itself reflects a historically contingent outcome of particular forces and events, so too today's particular territorial arrangements. Lichtenburg (1981, 90-91) comments that one must consider, "as one is about to invoke the sacrosanctness of the nation, how contingent its identity is, and that the boundary that defines it is just one boundary, and by no means the only morally significant one." Recent upheavals have reinforced this view and shattered the complacency with which we have tended to regard the political map for most of the post-World War II era.

interpretations evolve, they “alter the environment in which states relate to each other. These changes in turn affect the ways in which states are constrained and enabled to act in their international relations” (Barkin and Cronin 1994, 128).

But do such constraints constitute infringements or diminutions of sovereignty? Hinsley denies this by differentiating sovereignty from a state’s “international freedom of action”—that is, autonomy. However, this distinction between sovereignty and autonomy is itself problematic and requires attention because it, in turn, has implications for the question of whether sovereignty is a contingent and malleable principle or an absolute, unchanging characteristic.

Held and McGrew (1993, 265) address the distinction between sovereignty and autonomy when they declare that

sovereignty is only eroded when it is displaced by forms of ‘higher’ and/or independent authority which curtail the rightful basis of decision-making within a national polity. For sovereignty is understood here to mean the political authority within a given community which has the undisputed right to determine the framework of rules, regulations and policies within a given territory and to govern accordingly. Sovereignty should be distinguished from state autonomy, or the state’s capacity to act independently, within circumscribed parameters, in the articulation and pursuit of domestic and international policy objectives.

Held and McGrew echo and expand upon Hinsley’s legalistic view that the difference between autonomy and sovereignty has to do with whether some formalized or institutionalized authority supersedes that of the state. More generalized trends like economic globalization, the increased influence of non-state political actors, the revolution in information technology, and the growth of international environmental concern are thus discounted as affecting autonomy but not sovereignty.

This rigid view of the distinction between formal and informal authority, however, is increasingly untenable in today’s world. A legalistic view of

sovereignty which posits unimpeded state power in internal matters and a world stage on which sovereign entities interact as theoretical equals fails to acknowledge the many ways in which sovereignty is effectively circumscribed by emerging global forces and the realities of political capability. The growth and increasing integration of the global economy, for example, has enmeshed states in "a network of interdependencies and regulatory/collaborative arrangements from which exit is generally not a feasible option" (Zacher 1992, 60). While economic integration does not necessarily entail an infringement of legal sovereignty, the constraints placed upon states by their participation in an interdependent world economy mean that their "ability . . . to formulate and execute policies (their effective authority, not their jurisdictional authority) has therefore been reduced or even undermined" (Biersteker 1981, 147).

Following this line of thinking, current challenges to the traditional theory and practice of sovereign statehood, and distinctions between formal and informal authority in contemporary international relations, reflect in certain ways the development of the concept of sovereignty itself. Krasner (1993) helps us to see this parallel by demonstrating the inaccuracy of the overly simplistic notion that the principle of sovereignty sprang full-blown from the treaties of Osnabrück and Münster, now collectively known as the Peace of Westphalia. Instead of representing a "decisive break with the past," Krasner argues, the Peace itself merely "codified existing practices" (1993, 246); rather than making possible "alternatives that did not previously exist," the ratification of the treaties simply "legitimated political practices that were already facts on the ground" (1993, 238). In other words, the practice of sovereignty preceded the signing of the treaties, though the principle had yet to be formally described, legally

enacted, and officially invoked.

What seems to be happening right now neatly mirrors the process described by Krasner. Informal forces in the global economy which for years have restricted states' autonomy—that is, their “international freedom of action” (Hinsley 1986, 226) and “capacity to act independently . . . in the articulation and pursuit of domestic and international policy objectives” (Held and McGrew 1993, 265)—in an ad hoc and incremental fashion are increasingly becoming formalized through free trade agreements. These agreements do represent a significant qualitative change in that they now constitute “forms of higher and/or independent authority which curtail the rightful basis of decision-making within a national polity” (Held and McGrew 265)—that is, direct and formal challenges to sovereignty. However, the institutional structures that result from these agreements are merely more advanced and routinized manifestations of the same international trends and forces that have heretofore operated in a less organized and coordinated fashion. It is hardly necessary to identify explicitly a “superior authority” in order to conclude that the ongoing erosion of state authority by global economic changes has undermined the practice of sovereignty.

Thus the distinction between sovereignty and autonomy, if it ever existed in this sense, may be breaking down to the point where, with respect to particular issues, at least, it has lost most of its meaning. Most observers would agree that it is indeed possible to equate sovereignty precisely with what Hinsley (1986, 226) calls the state's “freedom to act as it chooses” and to see sovereignty as diminished when this freedom is substantially impaired. It matters little whether this freedom of action is formally restricted by, for example,

international sanctions, or circumscribed instead by broader technological and societal developments. For example, the view that sovereignty rests on a foundation of intersubjective understandings of power and authority supports the notion that changes in these understandings, and in the practices that flow from them, are sufficient to signify a change in the nature and scope of sovereignty.

Not only can sovereignty be undermined or eroded with respect to particular states in particular circumstances, but the very concept of sovereignty also evolves in conjunction with large-scale historical changes. For example, Barkin and Cronin (1994) identify a tension between "state sovereignty" and "national sovereignty"—that is, between a concept of sovereignty which stresses the link between political authority and a defined territory and one which emphasizes the connection between sovereign authority and a particular population. In their view, while either a state-centric or a nation-based notion of sovereignty dominates at any given moment, the two views [are] fundamentally [in] conflict; "it is impossible to completely satisfy the statist and nationalist principles simultaneously" (1994, 108). The inability to resolve this contradiction results in oscillation over time between the two concepts, with shifts occurring after "major systemic crises" like wars.

For instance, according to Barkin and Cronin, the Peace of Versailles presaged a period of ascendancy for a notion of sovereignty based on "national self-determination." However, reaction against the peculiarly destructive nationalism of the Nazis, as well as the geopolitical jockeying that characterized the Cold War, caused the post-World War II period to be dominated by a conception of sovereignty rigidly tied to existing state borders, even when those

borders reflected arbitrary colonial demarcations (see also Murphy 1994, 30-31). With the end of the Cold War, the difficulties associated with the reification of the state irrespective of its internal legitimacy have become increasingly problematic, and the pendulum may have begun to swing back toward a notion of sovereignty tied more closely to a particular population. Barkin and Cronin (1994, 126) note that "[t]he increasing degree to which some Western countries, such as Belgium, Canada, and Spain, feel that they must make concessions to domestic ethnic minorities . . . reinforces the contention that the understanding of the legitimate basis of the state is changing." Certainly the recent experience of Mexico, where the rebellion of an oppressed minority has shaken the sovereign authority in particularly dramatic fashion, supports this view that sovereignty implies a certain degree of legitimacy beyond the mere control over territory.

Current Trends Affecting the Practice of Sovereignty

As the twenty-first century approaches, the sovereign state faces unprecedented challenges. The most obvious stem from the explosive growth in transboundary flows of people, goods, money, and ideas. Advances in technology have stimulated the creation of transnationally integrated production systems; global financial webs; and increasingly dense satellite, phone, fax, and computer communication networks. However, these phenomena have been accompanied by the development of weapons capable of destroying human life, environmental damage on a global scale, waves of refugees, and international terrorism and crime.

Amid these global trends, states have found it increasingly difficult to

maintain their territorial integrity and control their individual destinies. In particular, the increasing integration of the global economy poses a challenge to states by virtue of their fixed location in space in light of the extraordinary mobility of economic factors. Twenty years ago, Richard Barnet and Ronald Müller wrote in Global Reach: The Power of the Multinational Corporations: "The executives who run the global corporations have persuaded themselves that they are far ahead of politicians in global planning because political managers are prisoners of geography" (1974, 20-21). In the ensuing two decades, the rapid consolidation of the global economy has only deepened this imbalance:

The post-war internationalization of production, finance and exchange has not been matched by a corresponding internationalization of political authority, especially with regard to economic matters. Indeed, it could be argued that a central contradiction in the development in the post-war global political economy lies in the territorialization of political authority and identity, usually identified with the nation-state, and the universalization of economic forces. (Gill 1992, 269)

The disjunction between economic space and political space allows mobile and resourceful transnational economic actors to avoid or neutralize much state regulation, undermining the ability of states to effectively control both economic activity and its subsidiary effects like unemployment and pollution (Barnet and Cavanagh 1994). Indeed, far from being subject to state control, the global financial markets themselves pass judgement on the economic policies of individual states, exerting tremendous pressure on states that enact "imprudent" policies (Wriston 1988, 71; see also Barnet and Cavanagh 1994, 408).

Free trade agreements like NAFTA and GATT further shield economic activity from political control or "interference" by explicitly limiting the tools states can bring to their efforts to address the needs of their citizens. Measures

that impede the freest possible movement of goods, services, and investment across state boundaries violate both the spirit and the letter of free trade. In agreeing to relinquish their power to place restrictions on trade, states deny their natural sovereign reflex to prevent or at least control transboundary flows.

States also face challenges from citizens and especially from non-governmental organizations (NGOs) that have become increasingly skilled at mobilizing domestic and international public opinion in order to pressure state officials on behalf of their goals. The number of NGOs has increased exponentially during the twentieth century (Zacher 1992, 65). These organizations enhance their effectiveness on international issues by participating in what Sikkink (1993a, 415) calls "international issue-networks": informal, nonhierarchical networks of organizations drawn together by shared values and connected across borders by dense exchanges of information and services. As has been mentioned, the practices of nonstate actors, in Sikkink's view, play a significant role alongside the practices of states themselves in determining how we judge the validity of sovereignty claims (Sikkink 1993a, 412). The proliferation of NGOs and their enhanced power have contributed to "an increasingly complex political division of labor that cuts across national boundaries and blurs the dividing line between foreign and domestic politics" (Camilleri 1990, 28).

The transboundary nature of these combined challenges has caused states to become enmeshed in a variety of formal and informal networks and interdependencies which limit their freedom of action. While it may be technically possible for states to extricate themselves from these relationships, in most cases withdrawal is not a realistic option, especially with respect to

participation in the global economy. Developing countries are especially powerless to follow an independent path; those who fail to throw in their lot with the international economy risk marginalization from it (Biersteker 1992, 112). According to Zacher (1992, 60), the limits on state autonomy mean that "[i]t is . . . no longer valid to describe the international system in terms of billiard balls colliding unless one envisages the billiard balls as being attached by strings of resin that constrain their movement in any direction. The system, like the process of historical change, might be viewed as 'sticky.'"

Blurring Boundaries

Walker (1990, 160) has noted that "[t]he boundaries drawn on maps, and guarded by soldiers and customs officials, . . . suggest distinctions that are too sharp, too insensitive to the complex flows of international interaction." Indeed, the increasing permeability of borders and escalating levels of interdependence make it increasingly difficult to locate the dividing line between domestic and international affairs.

This distinction between internal and external realms is a critical element in discussions of sovereignty: as we have seen, most definitions of sovereignty include, at a minimum, exclusive authority in internal affairs. Despite the diversity of views about what constitutes an affront to sovereignty, few would disagree that infringements of this domestic authority qualify. However, it has become increasingly difficult to isolate particular issue areas in either the internal or the external realm. Rosenau (1990, 127), addressing what he calls the "increasing obscurity" of this distinction, observes that "domestic problems now have an inescapable international component, with the result that long-

established norms, habits, and practices of political management are less sufficient as a basis on which governments can resolve such problems on their own." This blurring of the distinction between domestic and international issues, according to Camilleri (1990, 22), has made it "progressively more difficult to demonstrate the primacy of domestic law, which is arguably one of the cardinal premises of state sovereignty."

Among the major factors hastening the erosion in the ability of boundaries to divide, of course, are trade liberalization and the resulting explosion in global economic transactions. In its purest form, the ideology of free trade contemplates a world without barriers to commerce where distinctions between states have lost most of their meaning—a "nonterritorial global economic 'region' . . . a decentered yet integrated space-of-flows, operating in real time, which exists alongside the spaces-of-places that we call national economies," in which "any given state is but one constraint in corporate global strategic calculations" (Ruggie 1993, 172). This virtually undifferentiated planetary economic terrain would fulfill "the ancient capitalist dream of One Great Market" (Barnet and Müller 1974, 58), leading to what one corporate economist has celebrated as "the end of geography" (quoted in Barnet and Cavanagh 1994, 396).

Even short of this millennial vision, however, trade has contributed to the ambiguity regarding the power of borders to differentiate the internal from the external. Trade itself, of course, is explicitly an international activity, involving the transfer of goods, services, or money across state boundaries. However, matters that may in other contexts be considered purely internal can have significant impacts upon international trade, especially when traditional barriers

to products and investment fall. For example, labor standards, including wage levels, working conditions, and labor rights, affect the profitability, and thus the international competitiveness, of domestic producers. These factors also contribute heavily to industrial location decisions made by transnational corporations, thus affecting relative levels of investment worldwide.

Ecological problems, of course, often transcend state boundaries, resulting in "international physical externalities" (Zacher 1992, 76). One of the most common forms of this sort of damage occurs when economic activity releases pollutants which contaminate shared airsheds or watersheds. The difficulty of dealing with this sort of problem is increasingly recognized as a serious challenge to state sovereignty (see, e.g., Mische 1989). Even when the direct environmental effects of production and the regulations which address those effects can be considered purely domestic, however, they nevertheless affect the cost of doing business and thus, indirectly, international competitive advantage as well.³

Internationalization of "Domestic" Issues

One consequence of the smudging of ostensibly crisp categories, then, is

³It is worth noting that both the European Union and the NAFTA signatories have begun to take steps to address issues such as these. The EU has established programs to offer subsidies and infrastructure development funds to less developed areas in its member states (Conroy and Glasmeier 1992/1993). NAFTA adopts both a carrot and a stick: the agreement calls for the establishment of a new North American Development Bank to provide funding for environmental infrastructure, and provisions in the environmental side agreement specify punishments for lax enforcement of standards (see Chapter V). The effectiveness of these aspects of the NAFTA package remains untested, however.

that issues previously considered exclusively internal and thus subject to the sole authority of individual states are recognized as having real international ramifications. In other cases, however, domestic issues have become internationalized through political action, often based less on causal factors or utilitarian concerns than on principled beliefs—that is, normative views having to do with questions of right and wrong, justice and injustice (Goldstein and Keohane 1993, 9). As issues shift from the domestic to the international arena, states incur new obligations to abide by international conceptions of responsible behavior. Failure to fulfill these often unwelcome obligations increasingly leads to some form of intervention intended to ensure compliance with international norms (Lyons and Mastanduno 1993).

Another way to conceptualize the role of principled ideas in determining the limits to sovereignty is to counterpose the claims of the individual state against some putative universal interest or value espoused by the international community. This tension between the particular and the universal, of course, merely sounds a variation on the theme of the distinction between internal and external political realms. Walker (1990, 164) explains that this dichotomy has roots in the transition from the feudal world, in which political actors invoked “universalist claims about the community of humankind,” to the modern era of sovereign states, in which the particular claims of particular communities became relatively more forceful. In its simplest form, he notes, this debate comes down to a tension between the claims of “people as people” and the concerns of citizens of particular states (Walker 1990, 165). Similarly, Lyons and Mastanduno (1993, 522) note that numerous recent instances of international intervention raise the issue of “the tension between the ‘community of states’ and the

'community of humankind.'"

Whether a given situation becomes internationalized or remains within the competence of an individual state may turn on the degree of consensus that prevails in the international community toward the basic universal values in question. Human rights offers a classic example of an issue associated with principled beliefs that historically has been considered a purely internal matter but has been increasingly internationalized as attitudes have evolved. A useful analogy can be made to the way environmental issues have become critical concerns in international politics in general, and trade politics in particular.

The central struggle for both environmentalists and human rights activists has been to establish their issues as legitimate and important items on the public policy agenda. In the area of human rights, this has been achieved by bringing international pressure to bear on offending governments, who have generally responded by invoking the principle of sovereignty that prohibits intervention into the internal affairs of states. This presumption in favor of domestic authority remained effective until World War II, when outrage over Nazi atrocities stimulated members of the international community to rethink the relationship between sovereignty and human rights.

International law now recognizes the right of each state to exercise its domestic jurisdiction in internal matters without interference—"provided only that its activities do not interfere with the rights of other states or otherwise violate its international obligations" (Buerghenthal 1979, 113). However, since most states have signed the Universal Declaration on Human Rights and other international accords, it can generally be established that they have assumed international obligations in the human rights area. Moreover, the argument that

certain matters like human rights are by their nature purely internal and thus not subject to internationalization "finds no support in contemporary international law" (Buerghenthal 1979, 113).

In recent decades, of course, states have voluntarily taken on multiple environmental obligations; over 100 international environmental agreements have been completed since the 1972 U.N Conference on the Human Environment was held in Stockholm (French 1992a, 6). This process culminated with the 1992 U.N. Conference on Environment and Development in Rio de Janeiro, at which most countries signed conventions on biodiversity and global warming as well as an ambitious sustainable development action plan known as Agenda 21.

Furthermore, with regard to ecological issues, it can be argued that states wishing to avoid international interference with their environmental practices face the added difficulty of establishing that their activities do not affect the interests or rights of other states. The long physical and economic reach of environmental problems increasingly undermines this claim, as do conceptions of national interests that are expanding to encompass issues of global concern (Lyons and Mastanduno 1993, 525; Sikkink 1993b, 140, 142).

Sikkink has written persuasively of the contribution of human rights policies and practices to changes in sovereignty in the contemporary world, and especially about the critical role played by transnational nonstate actors, primarily NGOs, in forcing human rights onto the policy agenda. She writes:

In the give-and-take of exposing violations, demanding explanations, providing justifications, and changing practices, states and NGOs [have] gradually questioned traditional understandings of sovereignty and [begun] constructing the elements of a modified sovereignty. When a state recognizes the legitimacy of international interventions on the topic of human rights and changes its domestic human rights practices in

response to these international pressures, it reconstitutes the relationship between the state, its citizens, and international actors. (1993a, 414-415)

Sikkink postulates a continuum from "denial" to "lip service" to "reconstituted sovereignty" along which states travel as they are progressively forced or persuaded to recognize the legitimacy of human rights concerns and change their practices in concrete ways. Her analysis suggests that "understandings of sovereignty are modified in relation to specific issues that are deemed of sufficient importance to the international community to limit the scope of sovereign authority" (1993a, 415).

Thus evolving conceptions of justice and of the relationship between universal values and state prerogatives have made human rights practices a significant determinant of legitimacy (Forsythe 1991, 46). So, too, have environmental concerns become increasingly important in erecting a normative framework—albeit a rickety one—within which states must function if they wish to be considered responsible members of the international community. To the extent that ecological processes—and hence environmental concerns—transcend the borders that to a significant degree constitute the system of sovereign states, this normative framework clashes with prevailing views of sovereignty. Ruggie (1993, 173) suggests some possible directions for the relationship between environmentalism and the state:

The human environment is of central importance for future planetary politics from many perspectives. Central among them is its potential to comprise a new and very different social episteme—a new set of spatial, metaphysical, and doctrinal constructs through which the visualization of collective existence on the planet is shaped. This episteme would differ in form from modern territoriality and its accoutrements insofar as the underlying structural premise of ecology is holism and mutual dependence of parts. The difficulty is in tapping this social epistemological dimension empirically. Nonetheless, it may be possible to infer from state behavior whether and to what extent it is coming to express new and

different principles of international legitimacy, for example. The concept of international custodianship is an obvious candidate for closer scrutiny. Under it, no other agency competes with or attempts to substitute for the state, but the state itself acts in a manner that expresses not merely its own interests and preferences but also its role as the embodiment and enforcer of community norms—a multiperspectival role, in short, somewhat in the manner of medieval rulers vis-à-vis cosmopolitan bodies of religion and law.

It remains to be seen whether the state is capable of submerging or recasting its own interests in this manner.

The Power of Sovereignty

Indeed, despite the myriad challenges to the authority and competence of the state outlined above, the sovereign ideal retains a powerful hold on both state and nonstate political actors. To be sure, sovereignty has always been a problematic concept. Its organizing principle of exclusive control over a given territory, the scope of authority this principle implies, and the merits of specific sovereignty claims have always been contested (Krasner 1993, 235, 236; Murphy 1994, 3). Yet in spite of these past challenges, the sovereign state system has survived; indeed, it has thrived to the point that it virtually monopolizes the political world.

Not only does the state appear likely to survive its immediate challenges, but state sovereignty remains a potent political idea. One reason the state resists marginalization or replacement is that no viable alternative models of political authority currently exist. Through time, sovereignty has “crowd[ed] out competing conceptions of how power might be organized to the point where the sovereign territorial ideal [has become] the only imaginable spatial framework for political life” (Murphy 1994, 15). Regimes embodying nonexclusive territoriality, like the Law of the Sea treaty and the international arrangements

for the governance of Antarctica, hardly constitute significant threats to sovereignty at this time; even the far-reaching developments in the European Union have generally taken place within a state-centric paradigm (Murphy 1994, 37-38).

The universal spread of sovereignty has effects beyond merely providing a rationale for claims of state authority, however. Murphy (1994) notes that the parcelization of the globe into discrete sovereign units profoundly affects people's ways of thinking about their world, and thus ultimately influences the outcome of historical events. The fundamental political fact of most people's lives is their citizenship in a given state. The taken-for-granted nature of states as the indivisible building blocks of the international system causes conceptual, as well as political, difficulties in dealing with problems whose geographic extension does not correspond to state boundaries. The fragmentation of territory makes it difficult or impossible for issues to be addressed "at a variety of scales and in regional contexts that make sense in terms of the geographical character of the issues themselves" (Murphy 1994, 38). Since the state is also "the privileged unit for analyzing most phenomena" (Murphy 1994, 32), it is often difficult to obtain data describing effects that cross territorial lines. Even challenges to state authority in a given area generally fail to question the roots of that authority, the system itself that vests decisionmaking power almost entirely in those who control pieces of territory. By limiting the terms of discourse in particular circumstances within the bounds of accepted notions of political authority, the concept of sovereignty shapes the outcome of events.

Furthermore, the reification of sovereignty in the geographic structure of states affects patterns of development, which in turn influence events as well.

The U.S.-Mexico border region offers a case in point. The rapid industrial growth on the Mexican side of the border owes its existence entirely to the fact of the border itself. Trade arrangements designed to exploit the border region's proximity to the U.S. market directly led to the rampant and uncontrolled development of assembly plants. The resulting human and environmental devastation, in turn, played a critical role in motivating opposition to the North American Free Trade Agreement (see Chapter IV).

The Future of the State

Few observers expect the state as an institution to disappear or the notion of sovereignty to become entirely passé. Neither would many deny that the unprecedented pace and intensity of current social, political, economic, technological, and environmental changes have undermined the traditional domestic authority of the state and prompted a reconsideration of the very nature of sovereignty. The practice of sovereignty reflects these trends as states experience a decline in their freedom of action; it affects them as well through the dominance of state-centric modes of thought. As Camilleri (1990, 29) notes, "the state remains a critical element in the political equation—but more in the form of a variable than a constant." While the challenges to sovereignty are not likely to diminish over the short term, the resilience of the state and the lack of competing political models indicate that its immediate fate likely will be adaptation rather than extinction, and that prevailing views of sovereignty will continue to affect the range of solutions proposed for future dilemmas.

Ruggie (1993, 165) suggests that a possible future direction for sovereignty might involve an "unbundling" of its various elements as a "means

of situating and dealing with those dimensions of collective existence that territorial rulers recognize to be irreducibly transterritorial in character." Similarly, Murphy (1994, 5) proposes that we "consider ways of opening up possibilities for a multi-layered approach to governance in which the territorial structure of decision making will more closely reflect the different spatial structures and scales at which issues and problems are manifest." In practice, of course, these ideas would require a relaxation of the state's grip on certain areas of jurisdiction.

As we have seen, the environment is one such area where the customary state-based approach to escalating challenges has become increasingly problematic. The quandaries posed by transboundary ecological issues are further complicated when free trade agreements obstruct efforts to defend environmental quality. The next chapter examines the conflict between free trade and the environment to in order to illuminate the issues that came to the fore in the NAFTA debate.

CHAPTER III

FREE TRADE AND THE ENVIRONMENT

The late 1980s and early 1990s have witnessed a flurry of efforts aimed at liberalizing global trade. Prior to the passage of NAFTA in 1993, the United States entered into free trade agreements with Israel in 1985 and with Canada in 1988. The Bush administration also initiated a hemispheric program it called "Enterprise for the Americas," which it hoped would create a free trade zone extending "from the North Pole to Tierra del Fuego" (Krauss 1990). Several other Latin American trade agreements were proposed or completed, including one between Mexico, Chile, Columbia, and Venezuela, and another which would link Brazil, Uruguay, Paraguay, and Argentina in a common market (Kamm 1990; Kamm 1992).

In November 1994, the newly prominent Asian Pacific Economic Cooperation group (APEC), which includes most of the dynamic economies on the Pacific Rim, agreed to pursue the creation of a free trade area by the year 2020. Meanwhile, the most recent—and most ambitious—round of negotiations aimed at revising and broadening worldwide trade liberalization rules in the General Agreement on Tariffs and Trade (GATT) has recently been completed and awaits ratification by the U.S. Congress and other national governments.

Though public pronouncements regarding international trade have traditionally concentrated on the economic growth that liberalization is assumed to generate, the question of sustainability—that is, whether freer trade will

contribute to equitable, environmentally sound development—has rarely arisen in mainstream discourse until recently. It has been said that “[f]ree trade and environmental protection are like motherhood and apple pie; it is hard to be against either of them” (French 1992c, 9). However, these two popular values are not always mutually compatible. The potential for discord between them was realized during the NAFTA negotiations in a spirited confrontation between economic interests, as represented by the state, and environmentalists.

In order to understand the terms of this debate, it is necessary to examine the general relationship between free trade, the environment, and sustainable development. Such an inquiry reveals disturbing trends and prospects which, in the absence of affirmative measures to address trade’s impacts, threaten the ability of communities and nations to protect the health of their natural systems and the quality of life of their citizens. In turn, these prospects raise questions related to the role of sovereignty in either facilitating or obstructing the search for ways of reconciling trade and the environment.

Direct Environmental Effects of Increased Trade

Despite the traditional view of trade and the environment as distinct and unrelated, free trade has serious ecological implications that cannot be safely ignored. The most direct environmental effects of trade between nations have to do with the transport of materials and products over long distances to their consumers. Obviously, the longer the distance between origin and destination, the greater the amount of energy expended in transport. A task force set up by the European Community to examine the environmental impacts of European integration projected a 30-50% increase in cross-border truck traffic by the year

2010, and even larger increases in air traffic (French 1991, 29). U.S. and Mexican authorities also anticipated large increases in cross-border traffic after the passage of NAFTA and began planning to upgrade crossing stations.

More importantly, the distance between points of production (or extraction) and consumption also creates a greater risk that environmental costs will be ignored or treated as externalities rather than incorporated into economic accounting systems. "By spatially separating the costs and benefits of environmental exploitation, international trade makes them harder to compare" (Daly 1993, 57; see also Ekins 1989, 188; Murphy [forthcoming], 5). Consumers unaware of the impacts of distant production cannot factor those impacts into their product choices; the link of accountability between producers and consumers is severed.

Trade agreements also explicitly deal with such environmentally sensitive sectors of the economy as energy, agriculture, and natural resources, as well as other goods whose production is resource- or pollution-intensive. The rules governing trade in these sectors may have impacts which extend far beyond the countries involved in particular transactions, for, as Ellen Semple observed in 1911, "[n]ature abhors fixed boundaries" (quoted in Herzog 1990, 15). Our growing understanding of environmental problems related to the global commons, such as ozone depletion and global warming, makes Semple's maxim seem, in retrospect, especially prophetic.

Furthermore, the central goal of international trade—economic growth—has itself aroused suspicion in environmental circles at least since E. F. Schumacher (1973, 23, 26) wrote in Small is Beautiful:

[E]conomic growth, which[,] viewed from the point of view of economics, physics, chemistry, and technology, has no discernable limit, must

necessarily run into decisive bottlenecks when viewed from the point of view of the environmental sciences. . . . Nothing makes economic sense unless its continuance for a long time can be projected without running into absurdities. There can be "growth" towards a limited objective, but there cannot be unlimited, generalised growth.

As long as the expansion of economic production requires continually increasing amounts of energy and materials, the goal of open-ended economic growth will remain at odds with a sustainable future. As Herman Daly (1991, 39) observes, "[p]olitically, it is very difficult to admit that growth, with its almost religious connotations of ultimate goodness, must be limited. But it is precisely the nonsustainability of growth that gives urgency to the concept of sustainable development."

The abovementioned European Community task force recently confirmed that the economic growth expected as a result of the elimination of internal trade barriers in Europe will indeed cause more pollution unless measures are taken specifically to prevent it (French 1991, 28-29), and similar growth-related problems can reasonably be expected to accompany the relaxation of trade controls in other cases. With regard to NAFTA, for instance, environmentalists warned as soon as they gained access to drafts of the agreement that the parties apparently intended to "place economic growth above all other environmental, social, and cultural considerations" (Audley 1992, i).

Proponents of free trade justify the elimination of trade barriers partly on the grounds that allowing each state to specialize in areas in which it has a competitive advantage will lead to greater overall efficiency. Because the opening of borders effectively enlarges the market, international trade is an enterprise in which economies of scale are essential for the maintenance of a

strong competitive position. But efficiency does not always coincide with environmental sustainability. Small farmers or family businesses often operate in a more environmentally friendly manner than larger entities, but few are positioned to take advantage of the opportunities offered by trade liberalization.

Murphy has emphasized this point in an investigation of the environmental implications of European integration, observing that "the promotion of economic integration can work to the detriment of small-scale, environmentally sustainable interests" ([forthcoming], 5). Concentrating on the agricultural sector, Murphy suggests that "small and medium-sized farmers may find it difficult to survive the intensified competition accompanying economic integration. As a result, Europe is likely to experience a continuation of the post-World War II trend in the direction of agricultural concentration, intensification, and specialization" ([forthcoming], 8). In addition to the social effects of marginalizing a class of farmers, of course, the disturbing environmental implications of the intensification of agriculture have been widely documented. To date, European countries have countered global competition's effects on their farm sector through high agricultural subsidies. These subsidies constituted the primary impediment to the completion of the recent round of GATT negotiations, but they are slated to decline under the Uruguay Round agreement.

Under the *ejido* system of collectively owned farms that was established following the Mexican Revolution, Mexican corn farmers—who, with their families, represent a quarter of the country's population—have also benefited from high subsidies. Since most Mexican farmers have traditionally worked very small, rain-fed plots unsuited to industrial agricultural methods, these

subsidies have been necessary in order to keep people on the land; they have also provided the subsidiary benefit of limiting migration to Mexico's overcrowded and polluted cities. However, NAFTA eliminates corn subsidies, undermining the ability of these farmers to compete with highly "efficient" U.S. corn producers (DePalma 1993). In the first year of the accord, corn imports from the United States are running at three times the pre-NAFTA rate (Gerstenzang 1994, A16). The NAFTA negotiations also stimulated the Mexican government to open up the *ejido* system to privatization, allowing farmers to sell their land. Combined with the loss of subsidies, this will undoubtedly lead to increased concentration of land ownership and the expansion of large-scale industrial agriculture at the expense of more sustainable small farms.

The Process of Trade Negotiations

The conditions under which trade agreements are written directly influence the content of those agreements. The process of negotiating trade accords has historically excluded consideration of their potential environmental effects. For example, despite last-ditch U.S. efforts to inject environmental concerns into the discussion, the recently concluded Uruguay Round of the GATT negotiations virtually ignored the profound effects of free trade on environmental quality. This hardly seems surprising, however, given the institutional framework in which these negotiations have historically occurred. As Shrybman (1990, 30-31) noted earlier during the Uruguay Round:

The governmental institutions that have responsibility for trade negotiations have no mandate to address environmental issues, nor the expertise to do so. Environmental organizations are neither being consulted nor being given an opportunity to comment on the various proposals that are being advanced by their respective governments. Instead, participation is limited to large corporations and trade

associations which pursue an agenda of economic growth, profit maximization, and deregulation.

By ignoring environmental concerns, trade officials violate one of the central principles of sustainable development: the stipulation that "economics and ecology must be completely integrated in decision-making and lawmaking processes not just to protect the environment, but also to promote development" (World Commission on Environment and Development 1987, 43).

One result of the failure to consider environmental concerns in trade negotiations is that government efforts to address environmental quality with respect to various international and domestic issues are sometimes frustrated by trade accords which "institutionalize principles that are at odds with, and at times antithetical to, the objectives" of such efforts. Ironically, by ignoring the necessity to safeguard natural resources and processes, "trade agreements will actually undermine the very economic activity they are meant to inspire" (Shrybman 1989, 6).

Another procedural aspect of the implementation of trade agreements that threatens environmental protection concerns the secrecy and lack of accountability characteristic of the negotiating process. During the NAFTA negotiations, for instance, environmentalists and others complained repeatedly about the secrecy of the talks. Activists were only able to obtain detailed information about the progress of the discussions when drafts were leaked by participants. The international nature of trade negotiations also makes them less accessible to citizens and NGOs through the standard domestic public policy process of each nation. This inaccessibility allows negotiators to circumvent

the democratic and consultative processes that have grown up to allow full and public debate about important policy issues. The failure to identify the environmental significance of trade matters obviously serves

the interests of those who would rather pursue their agendas without having to account for their environmental consequences. Thus objectives can be successfully pursued within the context of trade negotiations that could not be advanced in more public fora. (Shrybman 1989, 20)

Not only do trade negotiations provide a setting in which environmental questions are easily ignored, but trade institutions offer a refuge for those who would dilute or avoid regulation after an agreement has been implemented. When domestic environmental regulations are challenged as non-tariff trade barriers under GATT, for example, dispute resolution proceedings are conducted in closed sessions before panels of arbitrators who are completely unaccountable to the public. "The result," notes Shrybman (1989, 16), "is a de facto deregulation of process"—a removal of environmental questions from the normal reach of democratic politics.

This distancing of trade policy from the reach of citizens and NGOs reflects a view that trade is a technical issue, and as such should be removed from the unpredictable influence of mere politics. In that sense trade resembles monetary policy and science policy, where officials tend to characterize their expertise as beyond the grasp of the public. As in those issue areas, however, a wall of technical wizardry in trade policy is erected in order to mystify decisions that are overwhelmingly based not in science, but in ideology. In the case of trade, the dominant paradigm is one which privileges free market solutions over government activism and postulates that even non-economic problems can best be solved simply by encouraging economic growth. The results of most trade negotiations and the decisions passed down by trade dispute resolution panels have, to this point, reflected just such a view.

In a study of the role of international issue-networks working to protect the environment and human rights, Keck and Sikkink pinpoint this problem as a

key strategic concern of NGOs and citizen activists:

An important part of the political struggle over the kinds of issues we are dealing with here is precisely the degree to which they are defined primarily as technical questions, subject to consideration by a relatively narrow range of "qualified" experts, or as questions that are properly the concern of a much broader global constituency. (1992, 8)

The increasing success of environmentalists in redefining trade issues in order to force their consideration in a more public setting reflects a shift in the balance of power from the "experts" in government trade agencies toward groups working on behalf of broader interests.

How Trade Agreements Undermine Environmental Protection

The content of accords designed to liberalize trade rules can directly work to undermine environmental protection in several ways. Trade restrictions offer one of the few methods of achieving certain environmental goals, especially those that seek to protect the global commons or to enforce environmental agreements in the international arena. As Keck and Sikkink (1992, 34) explain, issues based on principled beliefs like environmental concerns "often become negotiable only because of issue linkage involving money or goods." Nevertheless, measures that explicitly impose limitations or conditions on the movement of goods and services are manifestly inconsistent with pure free trade. State laws and regulations which have the effect of restricting trade, either directly or indirectly, can be challenged under agreements like GATT and NAFTA as unfair "non-tariff barriers" to trade.

Most obviously, trade agreements can undermine environmental protection by limiting or prohibiting the use of tariffs and subsidies as means of controlling imports. This is significant because tariffs and subsidies offer means

by which a state can maintain environmental regulations without jeopardizing the ability of its domestic businesses to compete internationally. As Shrybman (1990, 31) explains, a country may wish to "(a) Establish import tariffs to offset pollution control costs so that domestic producers will not be at a disadvantage when competing with imports from jurisdictions without similar environmental regulation, or; (b) Subsidize the cost of environmental protection with general revenues by underwriting pollution control costs."⁴ Clearly, both of these strategies directly conflict with the GATT and with the general agenda of trade liberalization.

In addition, the GATT prohibits the institution of any quantitative controls over exports, such as quotas or export licenses. The Uruguay Round affirmed its adherence to this policy with respect to environmental matters by stating its intent to ensure the "fullest liberalization of trade in natural resource-based products" (quoted in Shrybman 1989, 8). NAFTA also includes a ban on export controls (Article 309), based on language in the GATT.

Export controls offer one strategy by which countries have attempted to protect their resources and enhance their own economic development. For example, Indonesia in 1985 enacted a ban, which it justified on environmental grounds, on the export of raw logs and rattan. This ban was opposed by the industrialized countries as a protectionist measure and eventually abandoned after the European Community initiated consultations under GATT. The

⁴Sen. David Boren of Oklahoma introduced a bill on 25 April 1991 that would have subjected goods produced under environmental standards less stringent than those of the United States to a countervailing duty equal to the savings realized by foreign producers because of their lower environmental requirements. Funds collected under the bill would have been used for pollution control research and the export of pollution control equipment (see U.S. Senate 1991).

evidence suggests that the lifting of the ban led to increases in logging, especially illegal logging (Bown 1990, 20; Arden-Clarke 1994, 9). Similarly, log export bans such as the one overwhelmingly supported by Oregon voters are opposed by free trade advocates because, by artificially increasing domestic supply, they lower the price of logs to domestic producers, giving those producers an unfair advantage (see Greenpeace n.d.).⁵ By making it illegal to restrict exports, trade agreements prevent countries from effectively implementing conservation measures designed to protect their natural resources.

Import controls used to further environmental goals can also run afoul of free trade rules. For example, the U.S. Marine Mammal Protection Act prohibits the import of tuna from countries whose fishing fleets have not taken adequate steps to reduce the incidental slaughter of dolphins. This prohibition is an example of a "process standard:" that is, an import ban based not on the nature or quality of the product being imported, but rather on the method by which that product was produced (or, in this case, "harvested"). Other process standards include rules barring the import of products made using ozone-depleting chemicals or other substances that threaten human or environmental health. Process standards continue to be considered violations of free trade; environmentalists' calls for the consideration of this issue within NAFTA and GATT have so far not succeeded in bringing it onto the table.

Even environmental laws and regulations that do not explicitly use trade measures to achieve their objectives can be attacked as non-tariff barriers by the

⁵Interestingly, the United States, even while banning the export of logs from its own federal lands, brought a challenge under the U.S.-Canada Free Trade Agreement against a similar ban imposed by Canada (see Ryan 1993; Greenpeace n.d.).

bodies that govern international trade. The fact that such regulations may apply equally to domestic as well as foreign producers under the free trade principle of "national treatment" does not in itself suffice to shield them from challenge if they can be characterized as trade protectionism disguised as environmental protection. Some examples of "facially nondiscriminatory" measures that might face challenges on these grounds are labeling requirements, packaging regulations designed to promote waste reduction, prohibitions on food irradiation and other food safety measures, and government loans to industry for the purchase of pollution-control equipment.

It would be possible to avoid some disputes of this sort through the "harmonization" of regulations between parties to a specific trade accord. Harmonization is indeed a goal of NAFTA's section on technical standards, which states that "the Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures" (Article 906[2]) and "conformity assessment procedures" (Article 908[1]).

However, harmonization in practice tends to result in the watering down of regulations to the least common denominator. For example, a recent dispute over the export to Europe from the United States of hormone-fed beef led the U.S. to propose in the GATT negotiations the global harmonization of health and safety standards (Stokes 1992). The United States in this case clearly hoped to prevent the exclusion of U.S. products by countries with more stringent health regulations, and thus to use the mechanisms of free trade to effectively lower environmental health standards outside its own borders.

Pesticide regulation under the terms of the free trade accord between the U.S. and Canada offers another illustration of the results that can be expected

from the harmonization of health, safety, and environmental standards. The U.S.-Canada Free Trade Agreement directed the two countries to “work toward equivalent guidelines, technical regulations, standards and test methods” (quoted in Shrybman n.d., 16) for the regulation of pesticides. Specifically, Canada agreed to abandon the provision of its own pesticide regulations which mandated testing based solely on the safety of a product, and instead accepted the more lax U.S. method of evaluation which requires balancing the risks and the benefits of a pesticide. Shrybman (n.d., 16) attributes the fact that there were 20% more active pesticide ingredients registered in the United States, and seven times as many pesticide products, to the difference in these approaches. The effect of watering down Canada’s standards, he notes, was to “‘trade’ adverse environmental and public health impact in Canada for greater profits to the trans-national chemical industry.” Elsewhere, he points out that “there are several reasons to suspect that the agenda of ‘free trade’ is to lower environmental standards” (1990, 33), and the efforts at harmonization support this viewpoint.

A Race to the Bottom

Some of the approaches to environmental protection described above clearly contradict the goal of free trade; in other cases, the conflict between trade and the environment is not self-evident. However, most of these measures share a common objective that can be simply described as attempting to ensure that environmental costs are internalized (i.e., borne by the producer and calculated into the cost of production for the purpose of determining prices). But under prevailing notions of free trade, countries that most effectively ensure that

environmental costs are fully accounted for can be penalized in several ways. For example, as we have seen, their standards can be challenged under free trade agreements as unfair trade barriers.

Even setting aside the threat of trade litigation, however, the economic logic of free trade militates against the desire to establish a high level of environmental protection. States with more stringent controls may cause their producers to become less internationally competitive, and higher standards may also serve as a disincentive to domestic investment, stimulating the flight of capital to less regulated locations. No less than direct challenges to domestic laws, these effects undermine the ability of a state to maintain the level of environmental protection it has chosen to provide.

According to Herman Daly (1993, 52),

Economists rightly urge nations to follow a domestic program of internalizing costs into prices. They also wrongly urge nations to trade freely with other countries that do not internalize their costs (and consequently have lower prices). If a nation tries to follow both those policies, the conflict is clear: free competition between different cost-internalizing regimes is utterly unfair.

International trade increases competition, and competition reduces costs. But competition can reduce costs in two ways: by increasing efficiency or by lowering standards. . . . Profit-maximizing firms in competition always have an incentive to externalize their costs to the degree that they can get away with it.

This, Daly continues, is the reason nations maintain elaborate legal structures to enforce environmental standards. But because national laws differ widely, "free international trade encourages industries to shift their production activities to the countries that have the lowest standards of cost internalization—hardly a move toward global efficiency."

One aim of U.S. negotiators in the NAFTA talks, for instance, was to eliminate restrictions on foreign investment in Mexico which had until recently

limited U.S. investors to 49% ownership of Mexican businesses in most cases (Tucker 1991, 3). In the absence of much stronger environmental regulation and enforcement in Mexico, NAFTA's elimination of investment restrictions will almost certainly lead to relocation of some U.S. industries seeking a haven from strict environmental laws. Even before NAFTA took effect, for example, dozens of furniture manufacturers fleeing Los Angeles' tough new air pollution controls relocated to Mexico, where no standards had been established for the chemicals they used (Marshall 1991).

Naturally, under a "free" trading system, less developed countries desperate for the foreign exchange to be derived from trade and investment will have the greatest reason to avoid regulation, subsidies, and tariffs. Even in the industrialized nations, however, businesses are able to use the threat of plant closures to thwart proposed environmental regulation. The freer the trade regime, the greater the chance that such scare tactics will succeed; there is little to discourage disinvestment if goods produced in a deregulated and thus less costly setting can be easily imported back to the original host country for sale. Thus free trade works to undermine the effective ability of states to enact appropriate environmental protections by pitting all against all in what many environmentalists describe as "a race to the bottom."

Ironically, then, supporting or requiring responsible environmental practices can both weaken a country's competitiveness and expose it to trade actions charging that it violates the imperatives of free trade. While environmentalists have suggested countermeasures to eliminate some of the perverse incentives that discourage strong environmental standards, the trade establishment has succeeded in fending off most of these efforts with the charge

that they constitute a covert form of "green protectionism."⁶

Meanwhile, the failure to implement pollution control regulations—which allows industry to externalize environmental costs, thereby giving domestic producers a competitive advantage with an "environmental subsidy"—has historically not been considered an unfair trade practice (Shrybman 1990, 31). In this way the rules of free trade have rewarded so-called "ecological dumping" (French 1992b, 168), encouraged the lowering of environmental standards, and penalized governmental efforts to institutionalize ecological responsibility. This downward pressure on standards is consistent with the larger goal of free trade agreements: general deregulation, or the overall diminution of the role of the state in economic decisionmaking. One supporter of free trade acknowledges this underlying reason for the conflict between trade and the environment when he writes that "[t]rade . . . suggests abstention from governmental intervention, whereas environmentalism suggests its necessity" (Bhagwati 1993, 42). Daly proposes that we reframe the terms of the debate over free trade accordingly. He writes, "the real debate is over what kinds of regulations are to be instituted and what goals are legitimate. . . . A more accurate name than the persuasive label 'free trade'—because who can be opposed to freedom?—is 'deregulated international commerce'" (1993, 50).

⁶In an effort to blunt this sort of criticism, the World Wide Fund for Nature (WWF) has suggested a typology that differentiates between laws and regulations that legitimately seek to protect environmental values; "green protectionist" measures which use environmentalism as a cover for protectionist goals but do not achieve any real environmental benefit; and "Trade Related Environmental Measures" (TREMs), which protect the environment while having an effect on trade. WWF's goal is to reform GATT rules on environmental issues and to provide guidelines for designing TREMs, especially in multilateral agreements (see Arden-Clarke 1994).

Clearly, the currently accepted definition of "free trade" encompasses much more than merely the elimination of tariffs, subsidies, and other allegedly discriminatory measures which control the trading of actual products. Rather, the free trade agenda, as embodied in NAFTA and GATT, envisions a more generalized deregulation of all cross-border economic activity as part of an overall economic program that "promotes the 'free market' as the epitome of the concept of 'freedom' in general" (Gregory 1992, 118).

The Uses of Sovereignty

In Chapter II, it was suggested that the goal of free trade, considered in the abstract, is the elimination of barriers which impede the free movement of goods, services, and capital between states, and that this goal poses a challenge to traditional notions of sovereignty. The elimination of these obstructions leads in the direction of an undifferentiated economic landscape, or at least one in which the "mountains" of regulations, subsidies, and tariffs have been substantially leveled. Some of the measures mentioned in this chapter represent concrete means by which free trade agreements seek to achieve this outcome.

For example, national treatment—the bedrock principle of free trade which stipulates that products and investment originating in any signatory state are treated the same as their domestic counterparts—eradicates distinctions between the internal and external realms. Likewise, harmonization of regulations offers another means of wiping out regulatory differences that cause inconvenience for traders. The elimination of inconsistencies in standards supposedly increases overall economic efficiency; however, as we have seen with respect to pesticide regulation, harmonization in practice tends to push

environmental standards toward the lowest common denominator. Most importantly, the possibility that strict environmental rules can be challenged as non-tariff barriers and ultimately overturned both directly reduces levels of environmental protection and creates a chilling effect to suppress the inclination of states to enact tough new standards on their own.

This possibility—that national laws might be declared “trade illegal” by unaccountable supranational dispute resolution panels—has arguably been the most controversial aspect of both NAFTA and GATT from an environmental perspective. Environmental advocates strenuously argued that provisions allowing this sort of challenge constituted a threat to sovereignty. While this paper deals primarily with different challenges to the state, most of which support the objectives of environmental advocates, it must be emphasized that environmentalists were among those most insistently defending sovereignty during the NAFTA debate itself.

Rabkin (1994, 41) highlights the irony of this situation when he notes that environmentalists “have insisted in other contexts that environmental concerns know no boundaries and have championed a range of international conventions on environmental matters.” Rabkin’s observation illustrates how the various political actors in the NAFTA debate invoked arguments based on sovereignty when these arguments served their central goals, whether those goals were to protect the environment or to block consideration of ecological issues. While this tendency will be explored in the next two chapters, the very fact that people on all sides of the trade issue have resorted to sovereignty claims illustrates the power of sovereignty to shape events.

CHAPTER IV

NAFTA AND THE ENVIRONMENT:

FORCING THE ISSUE

Given the many ways free trade can weaken or nullify measures intended to protect the health of the environment, it is hardly surprising that environmentalists rose to challenge the prospect of a continental free trade zone in North America. Yet it is worthwhile to remember that the insertion of environmental concerns into the debate over NAFTA represented a distinct departure from the established view of environmental and trade issues as separate and unrelated. In fact, the relevance and proper relationship of environmental concerns to trade remains hotly contested to this day.⁷

The content of this conflict has much to do with the nature of sovereignty

⁷During the fall of 1994, a provision extending the president's so-called "fast track" negotiating authority was deleted from the implementing legislation for the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) because Congress could not agree about the role of labor and environmental issues in trade agreements. While some members of Congress sought to require the inclusion of labor and environmental concerns in all future trade talks, others attempted to specifically prohibit those concerns from being addressed in the context of trade negotiations. When this impasse seemed to threaten the passage of the trade agreement itself, the congressional leadership and the Clinton administration agreed to postpone consideration of fast track until 1995.

"Fast track" refers to rules under which Congress grants the president the authority to negotiate trade agreements. These rules call for trade agreements to be approved, with no amendments allowed, by a majority vote of both houses of Congress. The prohibition on amendments is considered essential to facilitate negotiations with representatives of other countries, but critics decry the undemocratic nature of such a restriction, and a variety of modifications to this rule have been proposed.

and the responsibilities of states to address issues of environmental quality in the context of economic interdependence. International trade has traditionally been viewed as an economic concern largely detached from the environmental realm, especially by government officials who have uncritically accepted the desirability of increased trade and economic growth as articles of faith. These same officials have consistently opposed the efforts of actors from outside the trade policy establishment to place new and inconvenient issues on the table.

Marx's view of the sovereignty of the state as the "expression and instrument of the dominant social order" (Camilleri 1990, 19) can help to explain the desire of trade officials to avoid discussion of environmental issues in the context of trade. Certainly, the chief executives of the three NAFTA signatories could be characterized as representing their respective countries' corporate establishments; a typical mention of U.S. president George Bush in a mainstream magazine, for example, called him the "current spokesman" for "the American business elite" (Mead 1992, 41). Free trade ranked high among the priorities of multinational corporations, and business spent tremendous amounts of money lobbying on behalf of NAFTA (Lewis and Ebrahim 1993; Anderson, Cavanagh, and Gross 1993). It is not unreasonable to attribute much of the official resistance to the inclusion in NAFTA of troublesome issues such as the environment to the fact that these issues, though politically popular, impeded the agenda of the corporations that stood to benefit from trade liberalization.

The traditional disinclination to address environmental issues as part of the trade agenda, and the role of this resistance in shaping the outcome of trade debates, illustrates the way prevailing views of the power of the state to set policy without interference from internal or external critics have directly

influenced the course of events. At the same time, Sikkink's (1993a) model—which suggests that states travel along a continuum from denial of the validity of an issue toward a condition of “reconstituted sovereignty,” in which they recognize and accept new constraints on their autonomy—offers a useful conceptual framework within which the success of environmental advocates in shaping the trade agenda can be evaluated. Trade is just the latest issue area in which the internationalization of environmental protection has defied the accustomed view of the scope of sovereignty. Though environmentalists have so far enjoyed only limited success in forcing trade negotiators to accommodate their concerns, their efforts have undoubtedly shifted the terms of reference for future trade discussions.

Despite growing awareness of the environmental impacts of economic activity, the notion that ecological concerns should be considered in the context of free trade agreements was routinely dismissed by trade officials until the 1990s. During the debate over ratification of the U.S.-Canada Free Trade Agreement (FTA), for example, Canada's Minister for International Trade declared that the accord “is not an environmental agreement. The environment was not, therefore, a subject for negotiations[,] nor are environmental matters included in the text of the agreement” (quoted in Shrybman 1991, 1).

However, during the intense debate that occurred in Canada over the U.S.-Canada FTA, Canadian critics of the pact contended that, in fact, it would significantly affect the environment; accordingly, they raised numerous objections to free trade on environmental grounds. In the face of government denials, Canadian environmentalists detailed the accord's likely impacts on atmospheric pollution (especially in relation to acid rain), water, energy, forests,

agriculture, pesticide use, waste creation and disposal, and environmental regulation (see Shrybman n.d.).

At the same time as Canadian activists were developing their environmental critique of free trade, the negotiations in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) were in their early stages. The goals of the Uruguay Round included extending the principles of free trade beyond the mere reduction of tariffs, to the elimination of non-tariff barriers to trade. Environmentalists began to express alarm over the possibility that important environmental laws and regulations might be weakened under GATT through harmonization or challenged as unfair trading practices (see Ritchie 1990; Shrybman 1990). These fears were generally couched at least partially in terms of the way such outcomes undermined democratic processes and intruded into the domestic affairs of sovereign states.

Thus when The Wall Street Journal reported on 25 March 1990 that "U.S. and Mexican leaders have agreed to negotiate a free-trade agreement between the two nations" (Truell 1990), work establishing the relationship between free trade and environmental protection was well under way, and environmentalists, along with activists representing a variety of other economic and social justice concerns, began mobilizing to influence the negotiating agenda.

Mexico's Environmental Shortcomings

In addition to concerns about free trade's general environmental implications, the prospect of entering into an agreement with Mexico—a country with a highly troubling environmental record—raised additional alarm. Despite the passage in 1988 of a General Law on Ecological Equilibrium and

Environmental Protection ("General Ecology Law") modeled in part on the U.S. National Environmental Policy Act (NEPA) and other U.S. laws, Mexico's environmental problems remain severe and widespread.⁸

During the NAFTA debate, attention focused on the deplorable environmental conditions along the 2000-mile U.S.-Mexico border. While Mexico has serious environmental problems away from the border as well—including extreme air pollution in Mexico City and rapid deforestation and biodiversity loss in southern Mexico's Lacondon forest—the border became a symbol of NAFTA's environmental threats for several reasons. First, problems along the border had direct implications for the United States that could easily be illustrated to, and understood by, U.S. citizens. Second, as one of the world's few zones of direct contact between the "first world" and the "third world," it symbolized the dramatic nature of the challenges posed by continental economic integration. Third, most of the environmental degradation along the border could be attributed, either directly or indirectly, to foreign-owned, export-oriented manufacturing and assembly facilities known as *maquiladoras*. These plants—established in Mexico under an initiative known as the Border Industrialization Program, which created a "free trade zone" along the border—offered a vivid illustration of the dire results that could be expected on a wider scale if trade and investment limitations were lifted without strengthening environmental controls.

⁸A recent newspaper article described the persistence of extreme pollution problems in post-NAFTA Mexico and pointed to government neglect and corruption as contributing factors. "Mexican authorities said last year that the free-trade agreement would help save the environment. . . . But after the trade agreement went into effect in January, the environment suddenly dropped off Mexico's political radar screen" (Eaton 1994, A14).

In brief, the Border Industrialization Program offered investors an exception to Mexican rules restricting foreign ownership of manufacturing plants, as well as virtually duty-free access to the United States, if they located their facilities within 20 kilometers of the U.S. border and all finished products were exported (South 1990, 551). The opportunity to take advantage of Mexico's cheap labor and proximity to the U.S. market led foreign corporations, mostly from the United States, to establish approximately 2,000 *maquiladora* plants. The growth of the *maquiladora* sector accelerated in the 1980s, when Mexico's debt problems led to an economic crisis that resulted in some of the lowest wages in the world (Rothstein 1993, 74-75).

The rapid development along the border and the resulting urban growth were not accompanied by the development of industrial and municipal infrastructure or enforcement procedures sufficient to address their environmental consequences. The failure to establish an adequate regulatory framework for border economic development led to "extensive air quality degradation, improper hazardous waste disposal, and contamination and depletion of water supplies" (Ward and Prickett 1992, 2). The horrible conditions prompted the American Medical Association to describe the border region as "a virtual cesspool and breeding ground for infectious disease" (quoted in Gregory 1992, 112). Stories about babies born without brains, people using containers from toxic chemicals to collect drinking water, and rivers of sewage and industrial waste flowing through impoverished residential areas attracted wide attention.

A typical account described the case of Alco Pacifico, an L.A.-based company that operated a Tijuana plant which extracted lead from used car

batteries brought in from the United States. When Mexican environmental inspectors showed up at the plant for the first time in March 1992, they found

80,000 tons of toxic lead sulfate, a byproduct of the reclamation process, spread out in huge mounds over several acres. Toxic and explosive chemicals were being stored in open drums. Battery acid, which had been dumped on the ground for more than a decade, fueled a continuously burning underground fire; a permanent cloud of white smoke hung over the site (Simon 1992, 664).

Aside from its role as symbol of the environmental impact of free trade, the *maquiladora* zone also demonstrated the way the sovereign state system, rather than merely serving as a political and geographic setting for events, directly influences patterns of development.⁹ The Border Industrialization Program, which originally required plants to locate near the border in order to receive trade concessions, would not have existed at all were it not for the existence of a distinct boundary separating two countries of vastly different economic circumstances. The economic logic of directing export-oriented development to the border is obvious; the resulting environmental nightmare, however, dramatically embodied the fears of environmentalists regarding the dangers of free trade and thus played a major role in changing the political environment in which NAFTA was negotiated.

While environmental protection in Mexico has never equalled that of Canada and the U.S., the tremendous burdens of foreign debt repayment during the 1980s, when up to half of Mexico's government budget went to interest payments, further limited its ability to allocate resources to environmental

⁹Murphy (1991) has illustrated the effect of borders on economic development in a different context, noting that the fall of the Iron Curtain is likely to have dramatic implications for regions along the formerly impermeable boundary between what were East and West Germany, potentially transforming those regions from stagnant backwaters into dynamic zones of interaction.

protection and enforcement. The debt continues to consume an excessive share of government funds. As Rothstein (1993, 81) notes, "Mexico cannot be expected to increase its environmental enforcement budget and infrastructure investments at the same time that the U.S. Treasury, the IMF, and the World Bank are enforcing debt repayment schemes that require Mexico to deregulate its economy, reduce its public sector, and devote whatever resources are available to debt service."

As of 1991, SEDUE, the Mexican agency charged with environmental protection, had a total annual budget for pollution control of just \$3.1 million, as compared to the state of Texas' annual budget of almost \$50 million for water pollution and hazardous wastes alone (Kelly 1991, 7). SEDUE's technical staff, charged with enforcing environmental laws throughout Mexico, consisted until early 1991 of only 109 inspectors (U.S. Environmental Protection Agency 1991, 2). While the Mexican government increased the environmental protection budget and began a high-profile campaign of closing down polluting factories, these moves did little to alleviate Mexico's deeply rooted environmental problems and were dismissed by many in Mexico and elsewhere as political moves aimed primarily at improving NAFTA's prospects (Darling 1991).

Aside from the human and ecological consequences, NAFTA's critics pointed to the implications of Mexico's inability to protect its environment for trade policy. Weak, nonexistent, or unenforced environmental standards, they pointed out, offer a perverse attraction to investment and an unfair competitive advantage to producers, who profit while externalizing environmental costs at the expense of the public. The inclusion of a country without adequate environmental protections in a free trade agreement, they noted, would not only

harm businesses operating under stricter regulation, but would also have the inevitable effect of eroding environmental protection in countries with higher standards.

Environmentalists proposed various measures to address this disparity. These included funding mechanisms tied to NAFTA that would capture some of the benefits of free trade and allocate them to environmental protection (see Tucker 1991a); laws requiring companies to abide by environmental regulations of their home country if those regulations were higher than those of the host country (see Neff 1990); sanctions for failure to enforce environmental laws; and upward harmonization of standards to provide a minimum level of protection in all NAFTA countries (see, e.g., MODTLE n.d.).

The Growth of the Environmental Response

Despite Mexico's dramatic environmental shortcomings, Thorup (1991, 16) notes that efforts to influence the free trade negotiations grew slowly at first. She cites several factors to explain this. Announcement of the talks took many people by surprise. Many of the non-governmental organizations that ultimately became involved were not well-versed in either trade politics or U.S.-Mexican relations. Information on the potential effects of the agreement on the environment or on particular regions or economic sectors was hard to come by and usually highly speculative, especially since the terms of reference for the negotiations themselves had not yet been developed. Moreover, just a couple of months after the negotiations were officially announced in June 1990, Iraq invaded Kuwait. The resulting crisis captured the attention and dominated the efforts of many of the same people and organizations that would later play

significant roles in the debate over NAFTA.

As of October 1990, U.S. and Mexican trade officials continued to maintain that environmental issues were not appropriate subjects for free trade agreements and therefore would not be addressed in the upcoming negotiations. Mexico's chief trade negotiator, Herminio Blanco, declared that the negotiations would be limited to "goods and services" and emphasized that "[t]his will be an agreement on trade issues," while Robert Fisher, director of Mexican affairs at the U.S. trade representative's office, suggested that the inclusion of such matters as labor and environmental safeguards might ultimately cause the defeat of the resulting agreement and was thus unacceptable (Lawrence 1990, 10A).

If we refer again to Sikkink's (1993a) model describing how states move from "denial," through "lip service," and toward "reconstituted sovereignty," the resistance of the trade policy establishment to the intrusion of environmental concerns indicates that at the dawn of the NAFTA process the state actors had yet to acknowledge—much less sincerely accept—the linkage of trade and environment and their responsibility to address that linkage. Thus at this early point, trade officials remained firmly entrenched in traditional views of the scope of sovereignty, and believed that they would be able to ward off, rather than honestly take up, environmental demands.

Meanwhile, certain U.S. environmental groups, notably Friends of the Earth (FOE) and the National Wildlife Federation (NWF), began to devote some resources to an effort to influence the agenda for the upcoming negotiations. Another organization which played a significant role in facilitating the creation of a coalition to oppose fast track and influence the trade agenda was the Minneapolis-based Institute for Agriculture and Trade Policy (IATP). In addition

to these U.S.-based efforts, Canadian opponents of free trade began meeting with Mexican activists to share their experiences with the U.S.-Canada FTA in an effort to spur opposition to a U.S.-Mexico agreement (Thorup 1991, 17).

Eventually, a web of organizations that transcended issue areas as well as national borders began to work cooperatively to ensure that environmental and social justice concerns would be accommodated in the negotiations.

By 15 January 1991, a loose coalition of twenty farm, labor, environmental, consumer, development, human rights, and religious organizations had coalesced sufficiently to sponsor a forum on Capitol Hill entitled "U.S.-Mexico Free Trade—Opening Up the Debate: Agricultural, Environmental and Labor Dimensions of North American Integration."

According to the flyer announcing the forum, its purpose was "to stimulate and broaden debate around some environmental and social impacts of a free trade agreement prior to Congressional approval for negotiations to proceed" (U.S.-Mexico Free Trade, 1991). Representatives from Mexico, Canada, and the United States participated in each panel presentation. This forum, which drew an audience of over 400, including several members of Congress and congressional staff, "served as a critical catalyst for opposition to the fast track authority for FTA negotiations" (Thorup 1991, 18). It also sent a wake-up call to trade officials from the U.S. and Mexico who had not bargained on the development of this type of organized opposition to approval of a free trade agreement.

By 7 March 1991, the efforts of this ad hoc coalition had had sufficient impact in Congress that Sen. Lloyd Bentsen, chairman of the Senate Finance Committee, and Rep. Dan Rostenkowski, chairman of the House Ways and Means Committee, wrote a letter to President Bush warning that Congressional

approval of his authority to negotiate a U.S.-Mexico agreement under fast track rules was imperiled. Specifically, they wrote, members of Congress were concerned about

the disparity between [the United States and Mexico] in the adequacy and enforcement of environmental standards, health and safety standards and worker rights.

While we recognize that issues such as these are not typically addressed in a trade agreement, we believe that such issues need to be addressed in this case, either within the agreement itself or through some appropriate alternative context, within the same time frame as the trade negotiations. (Bentsen and Rostenkowski 1991, 1)

They further requested that the administration submit to Congress an "action plan" by 1 May 1991 indicating how it intended to address these concerns.

At this point, the administration was forced to concede that the terrain had shifted, and that it could no longer stonewall against the inclusion of labor and environmental concerns if it wanted to win fast track negotiating authority. Accordingly, the president submitted to Congress on 1 May a document entitled "Response of the Administration to Issues Raised in Connection with the Negotiation of a North American Free Trade Agreement" (1991) (hereinafter Action Plan). Not surprisingly, however, this document represented only a modest step toward a serious acknowledgment of the importance of environmental concerns in trade. Casting Mexico's environmental programs and problems in the most favorable light, the Action Plan emphasized that the best way to improve that country's environmental performance was to stimulate economic growth through free trade in order to "generate resources to [support] an effective program of regulation, enforcement, and public support" (Action Plan 1991, Tab 4, 1). The notion that economic growth resulting from free trade would alone somehow provide adequate resources in Mexico for environmental enforcement was dismissed by environmentalists as "wishful

thinking" in light of Mexico's huge debt and daunting social needs (Texas Center for Policy Studies 1991, 9-10).

However, the 1991 Action Plan also stated, "We intend to include environmental issues related to trade in the FTA" (Tab 4, 9). In addition, the administration committed to include representatives of environmental groups on official trade policy advisory committees; prepare an integrated environmental plan for the U.S.-Mexico border; and conduct an interagency process reviewing U.S.-Mexico environmental issues, including the possible effects of a free trade agreement.

The substantive measures proposed for inclusion in NAFTA, which consisted mainly of commitments not to weaken existing laws, fell far short of those sought by many environmental groups involved in the trade debate (see, e.g., Texas Center for Policy Studies 1991). The token nature of the administration's concessions indicated continued resistance to the notion that environmental concerns had a legitimate place in trade discussions, demonstrating the residual power of sovereignty to define the bounds of political possibility. The political struggle between the state and its critics had forced trade officials to acknowledge the underlying relationship between trade and the environment, but little had been done to reconcile the conflicts inherent in that relationship.

Nevertheless, the significance of the Action Plan is clear. Barely six months after officials had ruled out the discussion of environmental concerns in the trade negotiations, the rapid and unexpected growth of opposition to fast track had forced the U.S. government to recognize the legitimacy of those concerns and to make a commitment to address them in NAFTA. The addition

of environmentalists to official trade advisory committees also signaled, albeit in token fashion, a breaking of the state's monopoly in the trade arena. While Congress ended up approving fast track in late May, thanks in part to the assurances offered in the Action Plan, the negotiating agenda had effectively been broadened through the efforts of the progressive coalition. The period leading up to the fast track vote illustrated the dialectical relationship between the state's jealous defense of its sovereign prerogatives and the growth of the forces challenging those prerogatives. In this case, notions of sovereignty influenced the state's reaction to new pressures, but those pressures nevertheless contributed to the beginning of a reconceptualization of sovereignty with respect to environmental problems.

The NAFTA Negotiations

After fast track passed, environmental issues related to NAFTA remained contentious and continued to play a prominent role in the public debate. The Bush administration moved to implement its commitments, and by October 1991 had released drafts of its "Environmental Plan for the Mexican-U.S. Border Area" and its "Review of U.S-Mexico Environmental Issues." These documents failed to satisfy environmentalists. The draft environmental review, in particular, was dismissed as "more an advocacy piece supporting NAFTA than a level-headed policy analysis" (Leonard and Christensen 1991, 2; see also Emerson, Bourbon, and Caldwell 1991; Friends of the Earth 1991; and National Wildlife Federation 1991).

Many members of Congress were also highly critical of the

administration's approach to environmental aspects of NAFTA.¹⁰ In a letter to U.S. Trade Representative Carla Hills dated 23 October 1991, House Majority Leader Richard Gephardt and four colleagues complained that the administration was selectively using rhetoric about respect for sovereignty in order to justify its unwillingness to seriously tackle environmental issues related to NAFTA:

Since the fast track vote, it is apparent that a double standard is emerging in the NAFTA negotiations. The Administration is willing to pressure Mexico to ratchet up its standards in areas like protection of investment and intellectual property, but it seems unwilling to press hard for high standards on the environment on the grounds that it would interfere with Mexican sovereignty.

For example, the centerpiece of the Administration's NAFTA-related environmental protection effort has been the Draft Border Environmental Plan . . . Congressional testimony has revealed that the Border Plan is little more than a smoke screen for the status quo. . . .

The Draft Environmental Review . . . is little more than a paper exercise, full of false assurances. It acknowledges only the most basic concerns and does not suggest how they might be addressed. It relies on specious economic reasoning and "trickle down environmentalism" to explain away more serious problems. (Gephardt et al. 1991, 4)

The unsatisfactory nature of the environmental review led three non-governmental organizations—Public Citizen, the Sierra Club, and Friends of the Earth—to sue the administration to require the preparation of a full Environmental Impact Statement (EIS) under the terms of the National Environmental Policy Act (NEPA). Several other environmental groups that did not join the suit, including some that later ended up supporting NAFTA, concurred in the view that an EIS was required (see, e.g., Prickett and Ward

¹⁰Certain members of Congress maintained frequent communications with environmental NGOs throughout the period during which NAFTA was under consideration, often working closely with NGO staff on the drafting of letters to administration officials. The author worked at the National Wildlife Federation during the summer of 1991 and participated in this process.

1991).¹¹

However, by the summer of 1991 the first cracks had already begun to appear in the unified environmental front. The president of the National Wildlife Federation, Jay D. Hair, angered members of the loose anti-fast track coalition when, ignoring the recommendation of his staff,¹² he endorsed fast track in an op-ed piece in The New York Times on 19 May 1991. Hair was later rewarded by the administration with an appointment to one of the U.S. Trade Representative's official trade policy advisory committees. Even at this early stage, the Bush administration had calculated that it was more important to appear to address the concerns of NAFTA's environmental critics, who were perceived as acting on behalf of a widely popular cause, than to appease labor, who could more easily be characterized as a "special interest."¹³

Another important development during the summer of 1991 sent shock waves through the environmental community. The August decision of a GATT dispute resolution panel in a case pitting Mexico against the United States offered

¹¹On 30 June 1993 a judge ruled in favor of the plaintiffs, but his decision was later overturned on procedural grounds (Bradsher 1993b).

¹²During the author's 1991 tenure at NWF, he learned in conversations with trade staff that they had recommended a neutral position.

¹³The Clinton administration later continued to employ this strategy of attempting to satisfy environmentalists in order to split NAFTA's opposition. Ultimately, several large environmental organizations supported NAFTA, providing political cover for members of Congress who wanted to support the pact without seeming to oppose environmental protection. Moreover, the side agreement on environmental issues offered broader protection than did the accompanying agreement on labor (Bradsher 1993a). As a result, not only was the environmental community internally divided, but the decision by several groups to support the agreement further alienated labor from environmentalists.

an important example of the way trade institutions undermine sovereignty, threatening national laws protecting the environment while remaining unaccountable to democratic processes. In this case the GATT tribunal, consisting of judges from Switzerland, Uruguay, and Hungary, emerged from behind closed doors in Geneva to declare the U.S. Marine Mammal Protection Act in violation of GATT on the grounds that it unfairly prohibited imports of Mexican tuna (Otteman 1991, French 1992c). The trade sanctions provided for in the U.S. law were specifically directed against nations whose tuna fishing fleets failed to take the measures necessary to avoid the incidental slaughter of thousands of dolphins. The decision of the GATT panel provided a timely illustration of how institutions whose sole purpose is the promotion of free trade devalue both the importance of environmental protection and the power of sovereign states to defend environmental quality. It also demonstrated how the secrecy involved in the dispute resolution process further distances trade institutions from access by concerned citizens.

One of the grounds for the GATT decision was that the United States could not apply its domestic law to activities that occurred beyond its own territorial jurisdiction. Environmentalists feared that this rationale ignored the transboundary nature of many environmental problems and would have serious implications for efforts to protect the global commons through state action (Otteman 1991). As has been noted, trade restrictions are among the few effective strategies for enforcing national laws and international agreements aimed at protecting the global environment. The GATT tribunal also drew a distinction between prohibitions on the importation of specific products and trading controls which address the process by which a product is made (or

harvested). "The ruling implied that countries cannot bar importation of a product that's been made in an environmentally harmful way, even if domestic manufacturers are held to the same high standard" (French 1992c, 34).

The so-called "tuna-dolphin" case raised the stakes once again for those who claimed that free trade threatened environmental quality. In response to the outcry over the GATT decision, Reps. Henry Waxman and Richard Gephardt introduced a resolution on 21 November 1991 declaring that Congress would not approve any trade agreement that jeopardized U.S. health, safety, labor, or environmental laws, and directing the president not to enter into any such agreement. The resolution passed unanimously on 6 August 1992 (Gregory 1992, 99).

Meanwhile, the trade negotiations themselves had begun, with Canada having officially joined the process. By mid-1992, specific negotiating positions were being reported in the media, including proposals that would allow parties to take action against other parties who rolled back or failed to enforce environmental standards in order to lure investment (Maggs 1992b).

Domestic enforcement of environmental laws was also spotlighted when Rep. Richard Gephardt accused Mexico of "dismantling and downgrading" its main environmental protection agency, thereby raising questions as to its commitment to enforcement (Maggs 1992a, 3A). Later, the U.S. General Accounting Office (GAO) issued a report detailing widespread noncompliance with a critical element of Mexico's General Ecology Law. This provision, which the Bush administration had touted in its Action Plan (1991, Tab 4, 3) as evidence of Mexico's strong environmental protection, required the submission of environmental impact appraisals before permits could be issued for the

construction and operation of new industrial plants. The GAO found that not one of the six new U.S. majority-owned maquiladoras it examined had prepared the required appraisal, and that noncompliance with the law was common and was not confined to U.S.-owned plants (General Accounting Office 1992). This finding reinforced the growing perception that domestic nonenforcement of environmental laws should be addressed in the context of free trade.

During the negotiations, environmental groups and other NGOs in all three countries, often collaborating across borders, continued to demand that their concerns be accommodated in NAFTA. Diverse coalitions formed in most U.S. states to monitor the negotiations and lobby for a more equitable and environmentally sound agreement. These state organizations were loosely coordinated and kept apprised of events at the national and international levels through mail, fax, electronic bulletin boards, and conference calls organized by the Minnesota-based Fair Trade Campaign and later by the Washington, D.C.-based Citizens Trade Campaign.

Activists "dogged the trail of top [trade] officials" at each ministerial meeting during the negotiations, holding parallel meetings and media events (Darling 1992, B5). At one of these meetings, in Zacatecas, Mexico, in October 1991, representatives from Mexican, Canadian, and U.S. national coalitions issued a joint declaration (the "Zacatecas Declaration") outlining principles that would promote a fair, democratic, and sustainable approach to continental development. Later, a consensus position outlining minimal environmental safeguards to be included in NAFTA, signed by 40 U.S., Mexican and Canadian environmental and consumer groups, was presented to the Bush administration in May 1992 (Wallach 1992). In another of many examples of cross-border

cooperation, NWF joined Canada's Pollution Probe to propose specific "green language" for inclusion in the agreement (National Wildlife Federation and Pollution Probe 1992). Local organizations situated near the U.S.-Mexico border—for example, the Texas Center for Policy Studies in Austin and the Border Ecology Project in Bisbee, Arizona—also worked closely with activists across the border in crafting environmental proposals and critiquing the negotiation process. According to the Los Angeles Times, these coalitions succeeded in shifting the political agenda of the trade talks from commerce to jobs and the environment "because they would not let the issues be ignored" (Darling 1992, B5).

NAFTA's Environmental Provisions

Finally, in August 1992, the presidents of Mexico, Canada, and the United States announced the completion of the NAFTA negotiations. The agreement met with nearly universal disapproval among environmentalists, as well as among other progressive activists. While it explicitly acknowledged the link between trade and the environment and contained a few specific provisions sought by environmental groups, most of its environmental language was hortatory rather than binding.

In claiming that they had succeeded in accommodating environmental concerns, administration officials emphasized NAFTA's preamble, which declares the promotion of sustainable development to be among the pact's overall goals. They also pointed to Article 1114, Paragraph 2 in the chapter on investment, which declares,

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly,

a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion, or retention in its territory of an investment of an investor.

One provision welcomed by environmentalists shifted the burden of proof from the defending party to the challenging party in disputes related to NAFTA's rules on technical barriers to trade (TBT) and sanitary and phytosanitary standards (SPS). In other words, certain categories of laws protecting the environment and food safety were effectively accorded a greater presumption of validity under NAFTA than under the corresponding sections of GATT.

However, these provisions did little to satisfy environmental activists, who had been working in their own coalitions and with trade officials since the passage of fast track to encourage the inclusion of adequate environmental safeguards in NAFTA. They quickly produced critiques of the agreement that detailed the many deficiencies they had identified (see Wallach 1992; Response of Consumer and Environmental Organizations 1992). A few of their criticisms:

- (a) No provisions were included to require or provide funding for environmental enforcement, and the pact failed to recognize lax or nonexistent enforcement as an unfair trade practice.
- (b) The language discouraging the lowering of standards in order to attract investment—"should not" rather than "shall not"—was dismissed as nonbinding, unenforceable, and thus meaningless.
- (c) Despite the improvement in the SPS and TBT sections, numerous environmental laws would still be exposed to challenge as non-tariff barriers.
- (d) Dispute resolution processes continued to maintain complete secrecy and prohibit participation by subnational governments, NGOs, and members of the public. (Limited allowances were made for scientific review boards to help answer questions of fact with the consent of the disputing parties.)
- (e) The agreement prohibited parties from limiting imports of a product

based upon its method of production.

Members of Congress who had worked closely with environmental NGOs were also quick to air their dismay at NAFTA's failure to accommodate their concerns in a meaningful way. In declaring that the pact was "in trouble," Rep. Ron Wyden noted that "[e]nvironment is the flash-point in the agreement. It's the Achilles heel in the process" (Green 1992, 5A).

Thus the period between the proposal of a free trade agreement and the completion of the NAFTA negotiations witnessed the rise of a potent movement aimed at broadening the trade agenda and challenging the right of the state to exclude interested citizens from the process of formulating trade policy. State authorities responded to this movement first by denying the relevance of its concerns to trade, then by granting lip service to those concerns in order to minimize disruption to its previously determined priorities. This process illustrates both the nature of some of the challenges the state confronts in the contemporary world, and the power of sovereignty as a concept which shapes people's thinking about the role of the state and thus affects events.

It is noteworthy that even the efforts of the activists who assailed the state's claim of exclusive control over trade policy nevertheless reflected the power of sovereignty over people's intellectual structuring of the political world. For example, many of the deficiencies environmentalists identified in the accord had to do with its failure to address problems typically viewed as "transboundary" issues (see Murphy 1994, 32). The effects of industrialization along the U.S.-Mexico border, including water and air pollution that flowed into the United States from Mexico, received much more attention in this country than did the more remote but still critical environmental effects of the

agricultural upheaval likely to result from NAFTA or pollution in Mexico's interior. Thus the political geographic character of problems, rather than their environmental severity, determined to a great extent their prominence—or lack thereof—in the NAFTA debate.

Moreover, despite the significant cross-border aspect of their organizing and coalition building, the preponderance of political activity around NAFTA remained state-based. Mainstream U.S. environmental groups, especially, concentrated their efforts on traditional campaign-style activities, attempting to generate citizen pressure on political representatives.

Finally, NAFTA's critics never seriously suggested that the state might not be the proper entity to entrust with the making of policies that have transboundary implications. On the contrary, they merely sought to participate in the process as members of their own national political community. Moreover, they even invoked sovereignty themselves when to do so suited their primary objective of protecting the environment. Thus despite the challenge environmental advocates posed to the state's normal monopoly in trade policy, their own actions both implicitly and explicitly reinforced the state's accepted role.

CHAPTER V

"FIXING" THE NAFTA: THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION

The release of the NAFTA text just after Labor Day, 1992, coincided with the traditional kickoff of the fall campaign for the U.S. presidency. During the ensuing phase of the trade debate, the issue of sovereignty became, if anything, more prominent. It was during this period that the environmental critique of free trade rose to the top of the trade policy agenda, as the NAFTA parties sought to mollify enough U.S. interest groups to secure the agreement's approval in Congress. However, government efforts to placate environmentalists ran headlong into stiff resistance because of the explicit concern that strict and serious trade measures to protect the environment would violate state sovereignty.

The Clinton Administration and the Supplemental Negotiations

After the NAFTA text was released in September 1992, Democratic presidential candidate Bill Clinton was pressured by his opponent, President Bush, to take a position on the accord. According to an article in The New Republic by John Judis (1993), Clinton's thinking on NAFTA had been influenced by Richard Rothstein of the Economic Policy Institute, who proposed making Mexico's favorable access to the U.S. market contingent on the enforcement of labor and environmental standards. Clinton was also influenced by a July 1992

speech by Richard Gephardt in which Gephardt recommended that the Bush administration seek supplemental agreements requiring Mexico to enforce its standards in exchange for development aid.

"As the November election neared," Judis continues, "Clinton's advisors were divided into two camps on whether he should endorse NAFTA: 'Yes but' and 'No unless'" (1993, 26). Clinton finally chose to support NAFTA, but with caveats. In a speech on 4 October 1991, he endorsed the agreement but vowed to address its "deficiencies," without renegotiating the agreement itself, through supplemental negotiations with the governments of Mexico and Canada. The agreements resulting from these negotiations, he declared, would establish new trilateral commissions to protect workers and the environment. These commissions would "require each country to enforce its own environmental and worker standards" and to ensure that its own citizens could sue to force compliance. He also promised to provide mechanisms for public access to the dispute resolution process through which citizens could participate in defending U.S. environmental laws and challenging objectionable environmental practices by Mexico or Canada. (Clinton 1992).

After Clinton's inauguration, his administration moved to follow through on these commitments, over the objections of Canada and Mexico, who decried the reopening of negotiations after an initial agreement had been reached. Mexico's president, Carlos Salinas de Gortari, stipulated—unsuccessfully, as it turned out—that any new negotiations on labor and environmental issues would have to be accompanied by agreements on immigration and extradition (Maggs 1992c)¹⁴ A typical Canadian opinion on the side agreements was expressed by

¹⁴Many Mexicans, as well as some activists in Canada and the United

Canada's lead negotiator in the supplemental talks, John Weekes, who said, "We don't consider (the side deals) a precondition [for approval of the overall accord]. . . . We like Nafta the way it is. . . . We negotiated it, and what was good then is good now" (quoted in Maggs and Ryan 1993, 10A). Nevertheless, the political situation in the United States did not allow Clinton to back off from his commitments, and thus neither the Canadian nor the Mexican government succeeded in opting out of the supplemental negotiations, which got under way on 17 March 1993.

Before the talks began, on 4 March 1993, twenty-four environmental and animal welfare organizations wrote a letter to U.S. Trade Representative Mickey Kantor outlining their position with respect to the "NAFTA package."¹⁵ The

States, criticized how NAFTA eased barriers to the movement of goods and money but not people, and noted that this would result in workers in different countries being played off against one another. Jorge Castañeda (1993) proposed that NAFTA include a provision to allow Mexicans to migrate north as temporary domestic workers. Such a provision, he suggested, would create more jobs for Mexicans and bring more money to Mexico than NAFTA would.

Salinas' desire to negotiate an agreement on extradition derives from the outrage felt in Mexico over the case of a Mexican doctor kidnapped in Mexico by the U.S. and put on trial for the torture and murder of a U.S. narcotics agent. The U.S. Supreme Court ruled in June 1992 that the U.S.-Mexico extradition treaty did not bar the kidnapping of Mexican nationals. Mexicans charged that this decision violated their sovereignty.

However, while the Salinas administration took pains to separate the extradition issue from NAFTA, other observers noted that the overriding importance the Mexican government placed on the trade pact forced it to mute its response to the kidnapping case. "Mexico is hostage to the Free Trade Agreement," commented political scientist Sergio Aguayo. "This is one of those cases in which you can see the asymmetry of power between the two countries" (Golden 1992, A19).

¹⁵While the letter was signed by several major players in the free trade debate, including Public Citizen, the Sierra Club, and Friends of the Earth, the major environmental groups that later supported NAFTA—the National Wildlife Federation, the Audubon Society, the Natural Resources Defense Council, the Environmental Defense Fund, and the World Wildlife Fund—did not sign on.

letter, which followed a February meeting with Kantor, expressed the view of these groups that the supplemental negotiations should establish "a strong North American Commission on the Environment (NACE)" and should also address a long list of NAFTA's "omissions and ambiguities." The letter further stated that these elements should be contained in "a protocol, legally binding upon any party to NAFTA, and of equal stature to NAFTA" (Defenders of Wildlife et al. 1993, 1).

The substantive portion of the letter began with a statement of the overriding importance of environmental enforcement:

Trade should not be based on weak enforcement of established standards. Enforcement is a crucial issue. We should not subject U.S. citizens to economic, health, safety, or environmental injury as a result of weak enforcement of standards elsewhere. Nor should our NAFTA partners be harmed by a failure of U.S. enforcement. Sanctions, including both trade and non-trade measures, must be available to ensure compliance. Recognizing that sovereignty concerns exist, we propose that a trilateral mechanism, the North American Commission on the Environment (NACE), . . . be established with sufficient powers to ensure adequate enforcement of existing and future laws. (1)

The distinction between trade and non-trade sanctions would have been based upon whether the non-enforcement of environmental law resulted in a trade injury or an "environmental, conservation, health, or safety injury" (11).¹⁶ The

Those groups, along with The Nature Conservancy and Defenders of Wildlife, wrote a separate letter to Kantor on 4 May saying that they would support NAFTA if the side agreement contained certain provisions. Their proposal demanded considerably less than the March letter. This letter signaled a major split in the environmental community that became openly rancorous when the five groups listed above, along with Conservation International, later became highly visible NAFTA supporters, despite the ultimate failure of the environmental side agreement to incorporate most of their suggested measures (see Schneider 1993).

¹⁶Environmentalists differed as to whether the commission should consider cases where environmental nonenforcement had no trade effects. The

NACE envisioned in this letter would also have had the power to dismiss challenges to laws "whose sole purpose is to advance legitimate environmental, health, safety, or conservation laws" (10).

The letter further expressed concern over NAFTA's total failure to provide for public participation and transparency in the resolution of environmental disputes. The NACE proposed by the environmental groups included a powerful Public Advisory Committee with the ability to compel dispute resolution in cases brought by members of the public, even when that meant overriding the ministerial-level NACE Commissioners.

The position of these groups constituted a reconceptualization of sovereignty in two ways. First, the proposal to require enforcement of domestic laws, and to back this requirement with the threat of sanctions, overrode the traditional deference granted to states in internal affairs. Second, the demand for transparency in dispute resolution procedures challenged the right of the parties to the accord to exclude nonstate actors from participation in the settlement of conflicts between trade and the environment, just as the effort to inject environmental concerns into the negotiations in the first place had sought to break the state's monopoly in the development of trade policy.

letter of 4 March advocated going beyond trade-related environmental problems and using the NACE to deal with environmental issues unrelated to trade. Gregory and Kamp (1993) also supported this view; the commission, they argued, was an environmental body, not a trade body. This approach contemplated moving beyond addressing the ecological effects of trade by using NAFTA as a wedge to push a broader environmental agenda.

Other environmentalists attempted to maintain a tight focus on the linkage between trade and the environment and warned against giving the commission too broad a mandate for fear that its effectiveness would be diluted. Brent Blackwelder (1993, 2) of Friends of the Earth suggested that the NACE be limited to "nonenforcement that has trade effects, transboundary or global commons impacts."

Balancing Sovereignty and Environmental Responsibility

From the start of the negotiations, the issue of whether the labor and environmental commissions would have the authority to impose trade sanctions against signatory states who failed to enforce domestic laws dominated the discussion, to the exclusion of other concerns like the protection of existing environmental laws from challenge and the prevention of downward harmonization.¹⁷ The difficult negotiations revealed once again how customary understandings of the nature of sovereignty affect events when they are used to justify opposition to measures seen to conflict with state authority.

Divisions within the Clinton administration caused Kantor's position on the enforcement question to fluctuate substantially (Maggs 1993b, 3A), especially early in the process. Initially, Kantor's inclination was to "drive a hard bargain" in the negotiations (Judis 1993, 26), but shortly before the talks began he backed off, telling Congress he would seek an environmental commission empowered only to gather information and make recommendations (Maggs 1993a, 1A). However, under attack from environmentalists and their supporters in Congress following this retreat, he changed course again and sought a middle ground: a commission with what came to be referred to as "teeth"—that is, the authority to make its decisions stick—but one that nevertheless avoided offending the sovereignty concerns of Mexico and Canada.

Two forces worked in opposition to sanctions. Business interests in all three countries opposed what they described as protectionism in the name of

¹⁷In fact, most of the issues Clinton had committed to address in the supplemental negotiations never made it to the negotiating table (Tucker and Kochan 1993).

environmentalism. The vice president of the Canadian Exporters Association, for example, declared that "[f]reer trade should not be held to ransom for environmental . . . reasons" (quoted in Ryan and Maggs 1993, 2A). In the United States, Republican members of Congress echoed this view.

More importantly for present purposes, Mexican and Canadian negotiators repeatedly declared that granting the environmental commission the power to invoke sanctions would constitute an infringement of their sovereignty. Both countries, of course, have historically been sensitive to the imbalances inherent in their relationships with the United States. The Canadians, long wary of economic and cultural domination by the colossus to the south, have particularly resented the way the United States has used trade measures in recent years to challenge their practices in forestry practices and fishing regulations, as well as in other economic sectors.

As for Mexico, "there is no country in the world which is more sensitive to U.S. efforts to influence it" (Pastor and Castañeda 1989, 10). Despite the real and symbolic opening of its economy represented by NAFTA, Mexico retains a strong undercurrent of nationalism often expressed as antipathy towards its northern neighbor. However, at least one Mexican observer noted that Mexican sovereignty claims are not always consistent or sincere. During the supplemental talks, Carlos Heredia (1993) wrote:

When it finds it useful, the Salinas administration has invoked the issue of sovereignty, casting itself, for example, as Mexico's defender against the attacks of ecological imperialists. That sovereignty was sacrificed a decade ago, however, when Mexico opened its doors wide and gave what has become increasingly free rein to foreign corporations.

The issue of sovereignty is but a ruse.

Nevertheless, it is hardly surprising that the question of sovereignty in relation to domestic environmental enforcement began to reverberate even

before the supplemental negotiations began. In January 1993, barely a week after Clinton's inauguration, a Mexican official was quoted in The Wall Street Journal opposing the U.S. position that an environmental commission should be able to assess damages for enforcement failures. "We should be respectful of each country's enforcement bodies," he said. "I don't think a commission should have the function of surveillance of each other's enforcement actions" (quoted in Davis 1993, A10).

Just before the negotiations started, Canada's trade minister, Michael Wilson, echoed these views when he warned that Canada would not agree to a supplemental accord that infringed Canadian sovereignty. "We have the freedom and flexibility to set our own standards [under NAFTA]. . . . I think it would be an incursion on our sovereignty if the U.S. or Mexico told us how we should enforce those particular regulations," he said (quoted in Ryan and Maggs 1993, 3A).

Some U.S. lawmakers also expressed fears of losing sovereignty. During one hearing, Sen. Bob Packwood said, "If we want to enforce Mexican environmental laws, I'm not so sure I want someone enforcing our environmental laws" (quoted in Maggs 1993a, 3A). Sen. Jesse Helms went so far as to say that the proposed NACE would be "an international environmental gestapo" (quoted in Maggs 1993c, 3A).

Throughout the negotiations, the issue of trade sanctions to penalize nonenforcement of domestic laws remained at the forefront of news articles about the environmental side agreement.¹⁸ As late as the day before the

¹⁸Public Citizen lobbyist Lori Wallach, a leader of the anti-NAFTA forces, charged in a memorandum distributed to trade activists in June 1993 that the portrayal of the negotiations as a struggle over sanctions was nothing more than

agreement was announced, the Canadians reportedly rejected a compromise plan to allow the environmental commission to invoke sanctions only if a government first refused to pay a fine. Ultimately, negotiators arrived at an asymmetrical arrangement under which the Canadian courts, rather than the trinational environmental commission itself, would carry out any decisions of the commission's dispute resolution panel that targeted Canada (see North American Agreement on Environmental Cooperation 1993, Annex 36A).

The completed agreements were publicly interpreted very differently by the three governments, each government seeking to emphasize what it had "won" through arduous negotiation. The U.S. government touted the unprecedented provisions requiring enforcement of national laws, claiming that the commissions would have real "teeth." U.S. Trade Representative Mickey Kantor called the sanctions language "new and unique, [and] stunning in terms of trade agreements" (quoted in Barfield 1993, 24). The Canadians highlighted the fact that they had avoided surrendering their sovereignty by hanging tough against U.S. demands for sanctions until they were granted a separate enforcement mechanism to be applied by their own courts. The Mexicans, who had in fact made a significant concession in agreeing to grant the commissions the power to impose sanctions, pointed to the lengthy and complex dispute settlement process contemplated in the agreements, which they claimed would serve as a barrier to the actual imposition of penalties. Mexico's Commerce Secretary, Jaime Serra Puche, assured members of the Mexican Congress that "[t]he time frame of the process makes it very improbable that the stage of

"spin control" intended to obscure the fact that most of the issues President Clinton had originally proposed for the supplemental negotiations were being entirely ignored (Wallach 1993a, 6).

sanctions could be reached" (quoted in Negrete 1993, 3A).

Contents of the Agreement on Environmental Cooperation

The significance of the completed "North American Agreement on Environmental Cooperation" (AEC) has to do with both its content and its symbolism. Though NAFTA's U.S. supporters did tout the side agreement's specific provisions requiring each country to enforce its environmental law, their arguments in favor of the overall package tended to focus more on the general symbolic importance of having addressed environmental issues in connection with a trade agreement at all. NAFTA's opponents, on the other hand, minimized the significance of the side agreement by concentrating on its actual contents. Their criticism emphasized what they considered the weak and ineffective nature of the safeguards contained in the accord, as well as the numerous issues that were completely omitted.

An early assessment of the AEC lends credence to the views of NAFTA's critics that the side agreement represents an empty political gesture aimed at securing congressional support for NAFTA's passage, rather than a dramatic advance in environmental protection within the context of free trade. Much of the media reporting at the time the agreement was announced agreed with this assessment; even The Wall Street Journal reported that the provisions of the accord "don't press Mexico very hard on environmental issues" (Nomani and Frisby 1993). To the extent that this view proves accurate over time, the disappointing outcome can be explained largely by the resistance of negotiators to cede any of their sovereign authority over internal affairs for the purpose of environmental protection. Many environmental activists have noted a disparity

between the way state officials invoked sovereignty to prevent the enactment of strong environmental measures and their failure to resist other intrusive provisions in NAFTA that equally represent challenges to sovereignty, such as the agreement's section on intellectual property. Be that as it may, it is clear that even selectively invoked sovereignty claims continue to hold rhetorical power and to affect the outcome of events.

Scope of the Environmental Side Agreement

The side agreement's only significant and binding requirements relate to the enforcement of domestic environmental law in the signatory states. The creation of this new affirmative domestic obligation is not an insignificant development; it represents at least a symbolic infringement of state sovereignty in that it crosses the line that has traditionally prevented international bodies from intruding into internal affairs. However, the actual effectiveness of these provisions has yet to be demonstrated and remains in doubt. An examination of the details of the supplemental accord reveals not a tough new mandate, but a facade of strong principle concealing a tangle of procedures, roadblocks, loopholes, and omissions that is likely to vitiate any serious challenges to state practices.

Under the AEC, each party is required to "ensure that its laws and regulations provide for high levels of environmental protection" and to "strive to continue to improve those laws and regulations" (Article 3). The accord further declares that "each party shall effectively enforce its environmental laws and regulations through appropriate governmental action" (Article 5).

However, a giant loophole could render these obligations—the only ones

in the AEC that are enforceable through fines and sanctions—meaningless.

Article 45(1) declares that a party will not be considered to have failed to “effectively enforce its environmental law”

where the action or inaction in question by agencies or officials of that Party

- (a) reflects a reasonable exercise of their discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or
- (b) results from *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters determined to have higher priorities[.]

Of course, allowing a country to exercise its “discretion” or allocate its resources in such a manner that no enforcement occurs seriously undermines the power of the agreement’s requirements.

The AEC’s requirement that countries enforce their environmental laws and regulations also applies only to existing standards. While the investment chapter of NAFTA declares that it is “inappropriate” for a party to encourage investment by relaxing domestic environmental measures, nothing in the side agreement actually prevents standards from being lowered, and no new enforceable obligations or minimum standards are established or required (Wallach 1993b, 4).

Moreover, environmental disputes that do not arise from failures of enforcement, including challenges to existing laws as non-tariff barriers to trade, are beyond the province of the AEC. These disputes go to the NAFTA Free Trade Commission, the dispute resolution body established under the NAFTA proper. Since the threshold for bringing cases under the NAFTA Free Trade Commission is lower than that specified under the AEC (see “Structure and Process,” below), it will actually be easier to challenge environmental laws than

to bring charges of nonenforcement. Moreover, challenges to environmental measures will be heard by a dispute resolution panel with no environmental expertise or representation, before which environmentalists will be barred from testifying (see "Public Participation," below).

Many of the other obligations listed in the agreement are relatively trivial. For instance, each party is required to "prepare . . . reports on the state of the environment;" "assess, as appropriate, environmental impacts," and "promote education in environmental matters" (Article 2[1]). Still other obligations are couched in language that makes them impossible to enforce. For example, the agreement declares that "[e]ach Party shall consider prohibiting the export to the territories of the other Parties of a pesticide or toxic substance whose use is prohibited within the Party's territory" (Article 2[3], emphasis added).

Moreover, the AEC specifically defines the term "environmental law" to exclude "any statute or regulation, or provision thereof, the primary purpose of which is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources (Article 45[2][b]). The result of this exclusion for forestry and fishing—areas where several significant environmental trade disputes have occurred in recent years—will be to bar trade-related natural resource policy, with its obvious environmental implications, from being addressed under the environmental side agreement. Instead, these areas will also fall under the jurisdiction of the NAFTA Free Trade Commission.

Structure and Process

In order to implement the obligations created under its terms, the AEC

establishes a "Commission for Environmental Cooperation" (CEC). The CEC consists of a Council made up of cabinet-level representatives from each signatory nation; a Secretariat of professional staff; a Joint Public Advisory Committee; and a roster of independent experts from which an arbitral panel can be convened for the settlement of enforcement-related disputes arising under the agreement.

Mary Kelly (1993) notes that Mexico's position in the negotiations called for the CEC's staff and advisory committee to consist of separate national sections. However, the U.S. position that these should be joint bodies prevailed. The significance of this development is that the commission will function as a trinational body rather than becoming a battleground between warring national sections, each defending its sovereign prerogatives.

However, Kelly also notes the narrowness of the Commission's authority when she discusses the duties of the Council, which the agreement says "may consider, and develop recommendations regarding" a wide range of environmental problems and issues (Article 10[2]). As Kelly points out, with one exception, the Council's recommendations in all of these areas are "merely advisory. There is no obligation of the governments to even consider implementing the recommendations of the Council" (1993, 2-4).

The complex process prescribed in the AEC for resolving accusations of non-enforcement, from initial complaint and consultations to the imposition of sanctions, can easily take upwards of two years. A two-thirds vote of the Council is required to convene an arbitral panel when a dispute cannot be settled through consultations or mediation—meaning, for example, that the United States would require Canada's support in order to pursue a complaint that

Mexico is failing to enforce its environmental law. Indeed, there are numerous other junctures in the process where a two-thirds vote is required before an inquiry can proceed or a finding can be made public (Wallach 1993b, 7).

Once convened, an arbitral panel is empowered to determine "whether there has been a persistent pattern of failure by [a party] to effectively enforce its environmental law," and, where it determines that such a pattern exists, to make recommendations accordingly (Article 28[3]). These recommendations usually will take the form of "an action plan sufficient to remedy the pattern of non-enforcement" (Article 31[2][c]). If a party fails to comply with such an action plan, the panel can impose a fine of up to \$20 million. In the unlikely event that a party fails to pay the fine, a complaining party "may suspend . . . the application to the Party complained against of NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment" (Article 36[1]).

Critics of the side agreement complained about the convoluted dispute settlement process, claiming that "the complex procedures it requires nearly guarantee that rulings of ineffective enforcement or other rulings adverse to a Party will, at best, seldom occur" (Gregory and Kamp 1993, 7). They also maintained that assessing fines against a signatory nation as a substitute for commercial sanctions aimed at a given industry or at specific violators drained any real deterrent value from the penalties, since \$20 million is hardly a significant amount of money to a state government.¹⁹ The \$20 million limit also

¹⁹U.S. and Mexican activists had somewhat differing views on this matter. Berta Lujan of the Mexican Action Network on Free Trade objected to the creation of an international commission to police environmental enforcement, declaring that enforcement power should remain with individual governments. While she agreed that sanctions should apply against individual polluters rather

applies without reference to the level of actual economic or environmental damage associated with enforcement failures.

The enforcement provisions of the AEC compare unfavorably with other dispute resolution processes prescribed in NAFTA itself. In addition to the NAFTA Free Trade Commission, which handles general disputes, the accord includes a special dispute process designed to protect intellectual property rights. Unlike the weak procedures outlined in the environmental side agreement, neither of these mechanisms requires a "persistent pattern" of violation in order to trigger its application, nor does either of them require a two-thirds vote for its procedures to be invoked. Thus challenges to environmental laws, which will be heard by the NAFTA Free Trade Commission, need to reach a lower threshold to be considered than do challenges based on the failure to enforce those laws. Critics pointed to the disparity in rigor between the protections offered to commercial interests and the measures defending the environment as evidence that environmental concerns were merely being given lip service in NAFTA.

The provisions exempting Canada from the direct application of sanctions by the CEC, directing the penalty phase of the process into Canadian courts instead, represent a capitulation to that country's fears about the loss of sovereignty under the side agreement. Other special provisions related to Canada further reduce the prospect that the enforcement requirements will be applied at all against any country. Under Annex 41 of the AEC, Canada is prohibited in certain cases from joining as a complaining party for the purpose of convening an arbitral panel. These complicated conditions, which need not be

than the state, the basis of this view seems to have been a concern about the violation of Mexican sovereignty (see Solis 1993).

detailed here, have to do with the distribution of authority between federal and provincial governments in Canada. Since a two-thirds vote is required for complaints of nonenforcement to proceed, these provisions can effectively invalidate the power of the Commission to apply sanctions.

Public Participation

Negotiators almost entirely ignored calls by environmental activists to allow greater openness and public participation in the process of addressing trade-related environmental problems. By effectively keeping the process closed to non-state participants, the parties to the agreement rebuffed one "challenge from below" to their sovereignty.

The agreement severely limits opportunities for participation by citizens and NGOs in the operation of the CEC and the settlement of disputes. While citizens and organizations are allowed, under certain specified conditions, to submit complaints of non-enforcement of environmental law to the Secretariat, the Secretariat may decline to pursue such a submission for a variety of reasons (Article 14).

If the Secretariat does elect to pursue a publicly submitted matter, it is limited to "developing a factual record," and a two-thirds vote of the Council is required in order to allow the Secretariat even to take this limited step. There are no timelines governing the preparation of a factual record and no penalties associated with a finding of improper behavior. In preparing such a record, the Secretariat "shall" consider information provided by the parties, but merely "may" consider "any relevant technical, scientific, or other information" provided by other interested parties, including NGOs. Another two-thirds vote

of the Council is required to make the final factual record public (Article 15).

In contrast, the penalty phase of dispute resolution under the AEC cannot be instigated by a public submission. Only governments have the authority to initiate the sanctions process—and a two-thirds vote of the Council is required to convene an arbitral panel. The side agreement contains no provisions requiring or even allowing public access to, or participation in, the dispute resolution process. On the contrary, the entire process established under the AEC, like the dispute settlement system established in NAFTA itself, is closed and secret. The arbitral panel “may seek information and technical advice” from environmental or other experts, but only “provided that the disputing Parties so agree and subject to such terms and conditions as such Parties may agree” (Article 30). Only the final decisions of the arbitral panel must be made public.

The CEC’s Joint Public Advisory Committee (JAC), which could have been structured as a mechanism for meaningful public oversight, has virtually no authority to ensure that the Commission remains responsive to public concern.

The JAC has no power to investigate, no authority to issue statements, no required functions, the Council and Secretariat are not required to accept recommendations or proposals from the JAC, let alone act on them, and the JAC is not even allowed to review factual reports unless given approval by a two-thirds vote of the Council. (Gregory and Kamp 1993, 5)

The failure to provide any significant opportunity for the public to actually affect the operation of the Commission, even through the Joint Public Advisory Committee, further illustrates the unwillingness of all three governments to surrender any of what they view as the prerogatives of the state in favor of a more open process—albeit a more unpredictable one—in which nonstate actors could participate.

Legal Status of the Side Agreement

Environmentalists' calls for the provisions of the supplemental agreement to be considered an integral part of NAFTA or attached to it as a binding protocol went unheeded. The administration downplayed the importance of the side agreements when it was politically convenient to do so. For instance, U.S. Commerce Secretary Ron Brown visited Mexico in March 1993 and suggested that his Mexican counterparts view the supplementals as additional "understandings" rather than as serious changes in the core of NAFTA (Wallach 1993a, 2).

Despite their vigorous struggle to keep sanctions out of the side agreements, the Canadians took a similarly dismissive view of their importance in connection with NAFTA itself. The Canadian Parliament ratified NAFTA in June of 1993, several weeks before the side agreements had even been completed (Farnsworth 1993, A10). While this had much to do with Canadian politics—the unpopularity of the ruling conservative party led the government to bring NAFTA to a vote before it could be turned out of office in upcoming elections—it also revealed a view that the side agreements represented something less than a critical component of the NAFTA package.

Shortly before the U.S. Congress voted on NAFTA, the Clinton administration admitted that no formal or legal link existed between the side agreements and the trade pact itself. While the administration claimed that it would expect to nullify NAFTA if another country were to withdraw from the side agreements, officials acknowledged that nothing required them to do so and that future administrations would have no legal obligation to stand behind the supplemental accords (Behr and Edsall 1993; Behr 1993). In fact, the side accords

were never even presented to Congress for approval with the rest of NAFTA (Furse and DeFazio 1993).

The legal irrelevance of the AEC offers another piece of evidence that the parties to NAFTA negotiated the supplemental agreements as a political gesture to ensure the passage of the overall accord without having to actually surrender significant levels of autonomy in their internal affairs.

Sovereignty and Accountability

The AEC's limited scope, the convoluted processes it establishes, its barriers to public participation, and its questionable legal status all combine to make it an unlikely instrument with which to address effectively the conflict between free trade and the environment and the difficulties associated with continental economic integration. Moreover, by setting up dispute resolution mechanisms that are unlikely ever to yield serious sanctions, the supplemental accord seems to pose only a theoretical threat to the sovereignty of the NAFTA signatories. Indeed, vestigial fears of the erosion of sovereignty gained forceful expression in the negotiations, and these fears contributed significantly to the failure to enact more powerful measures.

Yet in creating a new affirmative obligation for states to behave in a certain fashion within their own borders, the side agreement—at least on paper, and in the minds of many participants in the political process—has broken new ground. The traditional principle of sovereignty, which prohibits interference in the way states conduct their affairs within their own borders, has been sidestepped in favor of rules which embody the principle that states have responsibilities to the larger community of humankind, or at least to a concept of

national interest much different from that promoted by free trade dogma. This development alarmed certain conservative observers. Rabkin (1994, 43), for example, noted the irony in the fact that states negotiating a free trade agreement had to accept new rules that could potentially limit trade: "In the future, we may find that we cannot further liberalize trade without simultaneously extending regulation."

Worse than the potential effect on trade, in Rabkin's view, is the precedent established by the side agreement of setting sovereignty aside for the sake of environmental or other values that supposedly transcend state interests:

The central purpose of sovereignty is to clarify governing responsibility. The government of a sovereign nation is responsible for governing in ways that serve and satisfy that nation itself. The ultimate issue is accountability, and the gradual erosion of sovereignty entails a blurring of the lines of accountability. (Rabkin 1994, 45)

Yet this view overlooks two problems that the side agreement ostensibly addresses. First, because its sanctions can only be invoked in cases of persistent nonenforcement of domestic law, the AEC merely steps in where internal dynamics have, for whatever reason, demonstrably failed to maintain the state's accountability to its citizens. In this sense, it can be argued that, rather than undermine accountability, the side agreement theoretically reinforces it. Second, and more important, Rabkin apparently would deny the possibility that the state is accountable in any formal way to any community beyond its own citizens. This view disregards—or would seek to reverse—the related trends of escalating interdependence and increasing global respect for certain normative values, including environmental protection. It is precisely the use of sovereignty to avoid international responsibility that measures such as those in the environmental side agreement are intended to address.

CHAPTER VI

SUMMARY AND CONCLUSIONS

Incremental revolutions lead to situations not easy to summarize in their totality, given uneven and incomplete developments. (Forsythe 1991, 48)

The trilateral debate over the North American Free Trade Agreement featured a volatile mix of issues and interests, anecdotes and analyses, economics and emotions. The result was a dramatic piece of political theater, complete with verbal fireworks, political horse-trading, media grandstanding, and savage recriminations. The Vice President of the United States debated a NAFTA opponent on a television talk show. Even the funny pages ran NAFTA strips. The spectacle was all the more fascinating for being almost completely unexpected. Few could have predicted that the arid topic of international trade would suddenly become the subject of such high-profile controversy.

Yet the debate over NAFTA and its outcome were revolutionary in certain respects. The accord created the world's largest market overnight, and also represented the first time a third world nation had entered into a free trade agreement with advanced industrialized countries. Never before had countries at such disparate levels of development attempted to unite their economies to such a degree, and this divergence generated an array of unforeseen difficulties before and during the negotiations. Among these was the growth of an opposition movement based on the apprehension that free trade would lead to serious environmental harm. This movement, in turn, forced trade negotiators

to adopt unprecedented provisions to protect the environment within the context of free trade, as well as a supplemental accord that purportedly will require signatory states to enforce their own domestic environmental laws or face potential sanctions.

In other ways, however, this revolution offered less than met the eye, and the overall results—from an environmental perspective, as well as with regard to changes in the theory and practice of sovereignty—may prove to be more incremental than sweeping. Environmental concerns have not yet been fully incorporated in trade agreements in such a way as to promote truly sustainable economic practices, and the success of even those limited provisions included in NAFTA will not be known for some time. Moreover, the certain resistance of governments around the world to the inclusion of such measures in future accords—especially in developing countries, whose subordinate position in the global economy leaves them with few alternatives to a development strategy based on low wages and low environmental standards—will not be easy to overcome. Nevertheless, the outcome of the NAFTA debate with respect to environmental issues does represent a shift in understandings of both free trade and sovereignty, and we can draw some tentative conclusions from the way these factors came together in this case.

The political process that surrounded the NAFTA negotiations saw the rise of a movement that challenged the monopoly of the state in matters related to international trade policy. An informal trilateral issue-network of citizens and NGOs mobilized rapidly and brought sufficient pressure to bear on state actors that the terms of reference for the negotiations were changed, against the wishes of government trade officials from all three parties, to include

environmental issues. When the initial round of negotiations failed to satisfy environmental advocates, a second round was convened specifically to address their qualms, along with those of labor.²⁰ The ability of the environmental movement to influence the agenda represents a direct affront to the sovereignty of state governments, based upon the failure of state actors adequately to fulfill certain expectations of responsible behavior with regard to concerns that transcend narrow state interests. The success of this challenge to the power of these particular states may eventually translate into a more generalized reduction in the freedom of all states to make trade policy without interference from below.

The actual contents of the NAFTA package also reflect some success in recasting accepted views of the prerogatives of sovereign states. By institutionalizing an affirmative obligation for states to adhere to certain international principles in their domestic behavior, the side agreement pioneered a new approach to environmental protection that holds the potential to destabilize the current balance between universal and particular interests embodied in the state. The customary doctrine of sovereignty barring intervention in the internal affairs of states was effectively superseded by a requirement that states address their responsibilities to the broader international community. Though the side agreement justified this new mandate partially on utilitarian grounds, it came about in the first place as a reflection of the wide

²⁰ Among the most significant developments during the struggle against NAFTA was the forging of new links between labor and environmentalists. While the decision of some major environmental groups to support the accord angered labor, NAFTA did more than any issue in recent memory to stimulate the building of bridges between these two often mutually alienated constituencies.

currency of the principled belief in environmental protection.

Despite the inclusion of this seemingly rigorous new obligation, however, the actual overall effect of NAFTA's environmental provisions is likely to be modest. Only minimal environmental language made it into the main agreement, and the mechanics of the side agreement are so cumbersome—as a direct result of protests that serious sanctions would violate state sovereignty—that its effectiveness seems doubtful. Moreover, the states successfully parried the efforts of activists to open up to public participation both the negotiations themselves and the dispute settlement process in which significant environmental matters will be decided. This outcome reflects the continuing power of sovereignty to shape people's conceptions of the proper role of the state. Throughout the negotiations, the governments of all three NAFTA signatory nations acted predictably to rebuff what they portrayed as assaults on their sovereign authority. In some cases, they defended their sovereignty from challenges posed by nonstate actors; in other cases the attackers were their fellow signatories. For our purpose it matters little that the states invoked sovereignty in a selective and inconsistent manner—challenging efforts to require protection for the environment even while accepting without protest changes in commercial matters that also infringed their autonomy but benefited corporate interests. The successful use of sovereignty, even if only as a rhetorical device, illustrates its power to shape events.

Even the actions of NAFTA's environmental critics help to illustrate the way sovereignty pervades our view of the world. Much of the environmental critique of the accord addressed issues typically viewed as "transboundary" problems rather than the domestic environmental effects of trade. U.S.

environmentalists, for example, expressed much more concern about pollution along the Mexican border than with the environmental degradation in Mexico's interior that could result from free trade. Also, despite the valuable cross-border linkages that activists established, most of the political process took place within established national bounds as groups organized domestically to lobby their own governmental representatives. And while environmentalists challenged the state's right and ability to exclude them from participation in setting the trade agenda, they never suggested that trade and environmental matters should be removed from the competence of the state and placed in some alternative context that transcended accepted political arrangements.

Reconstituting Sovereignty

Sovereignty affects events, and is affected by events. But the components of this simple formula vary through time. As certain emerging trends challenge the state's ability to maintain exclusive sovereignty, other forces tend to bolster the status quo or even serve to expand the power of the state. Actual state practices reflect a synthesis of these contending impulses. How, then, has NAFTA changed the parameters of sovereignty? How will what happened during the free trade debate in North America affect future collisions between trade and the environment?

To review, Sikkink (1993a, 415) posits "a continuum of state actions and declarations that move from reinforcing traditional understandings of the scope of sovereignty to revealing a reconceptualized sovereignty in which a state accepts that gross violations of human rights will no longer be an issue solely within its domestic jurisdiction." As we have seen, this model can also serve as

an analytical tool for gauging the degree to which environmental issues have been internationalized. Clearly, when free trade between Mexico and the United States was proposed in 1990, the North American states remained firmly in the stage of denial regarding the validity of addressing environmental issues within the context of trade. Just as clearly, in the aftermath of the struggle over NAFTA, denial is no longer a viable stance. The NAFTA signatories have moved to the next stage along the continuum, which Sikkink (1993a, 415) calls "lip service." This is apparent in everything from the nonbinding environmental language in the preamble and the investment chapter of the agreement itself to the rhetoric which all parties felt it necessary to use in describing the success of the supplemental negotiations (see, e.g., Schneider 1993). While the determined resistance to the inclusion of forceful environmental measures, especially in the side agreement negotiations, reveals a shared view among the states that does not meet Sikkink's (1993a, 415) criterion for "reconstituted sovereignty," movement in that direction has definitely begun.

Lyons and Mastanduno (1993) propose another model with value to this inquiry: a seven-stage continuum along which they plot possible justifications for intervention into the internal affairs of a state. The two extremes of the spectrum represent (1) pure realism—where the justification for intervention is "might makes right" and states intervene to serve their own purposes (1993, 527)—and (7) pure globalism, "a world beyond the nation-state, in which the authority to intervene coercively in the affairs of component political units would be concentrated in a central international authority" (1993, 529). At the sixth stage along this scale, intervention can be justified

by an appeal to universal values or principles beyond the particular interests of states. Examples might include . . . human rights [and] sanctity

of the environment. . . . Here we may be standing between the community of states and the community of humankind, at the centre of the dilemma between the "right" of the international community to intervene in the name of universal values and the danger of weakening the principle of non-intervention. (1993, 529)

Lyons and Mastanduno suggest that intervention on behalf of universal values remains problematic, and that on environmental issues "an international consensus may be in the process of emerging but clearly has not yet reached a point where intervention can be routinely expected" (1993, 529). Among the factors that may influence developments in this area, they note, are changing perceptions of national interest that have begun to encompass environmental quality. While definitions of intervention vary, the provisions of NAFTA's environmental side agreement which call for sanctions when a party fails to enforce its environmental law could certainly be characterized, in Lyons and Mastanduno's terms, as intervention in support of a universal principle. The institutionalization of such a measure—if it is ever invoked—would seem to set a precedent for intervention of this sort and thus represent a firm step in the direction of a narrower view of sovereignty.

Taken together and applied to NAFTA, then, these two analytical devices support the conclusion that we are indeed moving, albeit fitfully, toward a reconstituted view of sovereignty—one which takes into account not only state interests but also principled ideas that prevail in the international community. Zacher (1992, 100-101) suggests that this movement can be attributed to changes in "people's cognitive map of the world as well as an accompanying ethical/mythological system" which supports "a notion of the world in which people's fates are closely linked to each other and with the natural/physical world and in which they increasingly see each other as members of humankind."

These changes have obvious implications for sovereign theory and practice in that the universal perspective they entail is fundamentally inconsistent with the fragmented nature of current political arrangements.

As these ideas take root more widely and firmly, environmental concerns should rise higher on our politically determined list of priorities. Not only might this mean a relative decline in the importance of sovereignty, but it will also necessitate greater integration of environmental policy with economic policy. Indeed, notes Zacher (1992, 99),

All indications are that international interdependencies in the economic and environmental realms will increase and that more and stronger regimes will be necessary to manage them. . . . International environmental problems require global planning, and the same is basically true of many international economic issues because of the growth of economic transactions. The patchwork pattern of regimes that is evolving does not give an appearance of well-organized governance, and it is not. But it does constrain state behavior in an increasing number of ways.

Trade, Sovereignty, Environment

This paper began with the assertion that a fundamental discontinuity exists between free trade, environmental protection, and state sovereignty. The NAFTA debate featured a collision between these three mutually conflicting but deeply held values. A further inquiry into the nature of this tension may lead to a better understanding of how it might be addressed in policy. Clearly, however, the basic characteristics of these three world views make them difficult to reconcile.

State sovereignty, by definition, promotes a particularizing, fragmenting world view that differentiates the earth's surface into discrete pieces of territory, each under exclusive control. In contrast, free trade—or, more generally,

deregulated global commerce—dictates a totalizing, universalizing scheme that seeks to obliterate or transcend the inconvenient political fragmentation of the global market. Likewise, environmentalism takes a holistic approach fundamentally incompatible with the political division of territory. But while the global economy thrives on continual growth, an ecological world view demands recognition of limits; while capitalism is about competition and power, environmentalism at root should be an ethic of cooperation, coexistence, and justice.

A study of how this conflict played out over time in a particular case illustrates the way sovereignty is affected by developments in the global economy as well as by new ways of visualizing the relationship between humanity and the natural world. It also reveals the way conceptions of sovereignty themselves retain the power to influence the range of political possibilities, define the terms of discourse, and shape the outcome of events. We must continue to deepen our understanding of the complex interactions between trade, sovereignty, and the natural environment if we wish to build an economy capable of sustaining the integrity of life on earth.

REFERENCES

- Action Plan. 1991. See Response of the Administration to issues raised in connection with the negotiation of a North American Free Trade Agreement.
- Anderson, Sarah, Cavanagh, John, and Gross, Sandra. 1993. NAFTA's corporate cadre: An analysis of the USA*NAFTA state captains. Washington, D.C.: Institute for Policy Studies. Photocopy.
- Arden-Clarke, Charles. 1994. Green protectionism: Differentiating environmental protection from trade protectionism. Gland, Switzerland: World Wide Fund for Nature. Pamphlet.
- Audley, John. 1992. A critique of the February 21, 1992 draft of the North American Free Trade Agreement. Washington, D.C.: Sierra Club Center for Environmental Innovation. Photocopy.
- Barfield, Claude. 1993. The NAFTA side agreements: Bad precedent or harmless sops? Roll Call, 27 September:24.
- Barkin, J. Samuel, and Cronin, Bruce. 1994. The state and the nation: Changing norms and the rules of sovereignty in international relations. International Organization 48(1):107-130.
- Barnet, Richard J., and Cavanagh, John. 1994. Global dreams: Imperial corporations and the new world order. New York: Simon & Schuster.
- Barnet, Richard J., and Müller, Ronald E. 1974. Global reach: The power of the multinational corporations. New York: Simon and Schuster.
- Behr, Peter. 1993. U.S. tells Canada, Mexico side agreements are vital. The Washington Post, 30 October:A4.
- Behr, Peter, and Edsall, Thomas B. 1993. Clinton concedes point on NAFTA side pacts. The Washington Post, 29 October:A2.
- Bentsen, Lloyd, and Rostenkowski, Dan. 1991. Letter to George Bush, 7 March.
- Bhagwati, Jagdish. 1993. The case for free trade. Scientific American 269(5):42-49.

- Biersteker, Thomas J. 1981. The limits of state power in the contemporary world economy. In Boundaries: National autonomy and its limits, ed. Peter G. Brown and Henry Shue, pp. 147-176. Totowa, NJ: Rowman and Littlefield.
- _____. 1992. The "triumph" of neoclassical economics in the developing world: Policy convergence and bases of governance in the international economic order. In Governance without government: Order and change in world politics, ed. James N. Rosenau and Ernst-Otto Czempiel, pp. 102-131. Cambridge: Cambridge University Press.
- Blackwelder, Brent. 1993. Letter to Mickey Kantor, 20 May.
- Bown, William. 1990. Trade Deals a Blow to the Environment. New Scientist 128(1742):20-21.
- Bradsher, Keith. 1993a. NAFTA side pacts irk labor leaders. The Oregonian, 19 September:A17.
- _____. 1993b. . Court ruling lets trade agreement move to Congress. The New York Times, 25 September:1, 9.
- Buergenthal, Thomas. 1979. Domestic jurisdiction, intervention, and human rights: The international law perspective. In Human rights and U.S. foreign policy, ed. Peter G. Brown and Douglas MacLean, pp. 111-120. Lexington, MA: Lexington Books.
- Camilleri, Joseph A. 1990. Rethinking sovereignty in a shrinking, fragmented world. In Contending sovereignties: Redefining political community, ed. R. B. J. Walker and Saul H. Mendlovitz, pp. 13-44. Boulder: Lynne Rienner Publishers.
- Castañeda, Jorge. 1993. Remarks at Forum on Regional Evolution, Lewis & Clark College, Portland, OR, 12 May.
- Clinton, Bill. 1992. Remarks at North Carolina State University, Raleigh, NC, 4 October.
- Conroy, Michael E., and Glasmeier, Amy K. 1992/1993. Unprecedented disparities, unparalleled adjustment needs: Winners and losers on the NAFTA "fast track." Journal of Interamerican Studies and World Affairs 34(4):1-37.
- Daly, Herman E. 1991. Sustainable growth: A bad oxymoron. Grassroots Development 15(3):39.
- _____. 1993. The perils of free trade. Scientific American 269(5):50-57.

- Darling, Juanita. 1991. Cynics see political motivation for Mexico's move on pollution. The Los Angeles Times, 15 April:A6.
- . 1992. Environmental, labor groups make voices heard. The Los Angeles Times, Washington edition, 7 August:B5-6.
- Davis, Bob. 1993. Clash looms over scope of Nafta panel. The Wall Street Journal, January 28:A10.
- Defenders of Wildlife et al. 1993. Letter to Mickey Kantor, 4 March.
- DePalma, Anthony. 1993. Mexicans fear for corn, imperiled by free trade. The New York Times, 12 July:A3.
- Eaton, Tracey. 1994. Mexico City's eye-burning air pollution slow to improve. The Oregonian, 20 November:A14.
- Ekins, Paul. 1989. Trade and self-reliance. The Ecologist 19(5):186-190.
- Emerson, Peter M., Bourbon, Elizabeth W., and Caldwell, Jake. 1991. A critique of the administration's review of U.S.-Mexico environmental issues. Washington, D.C.: Environmental Defense Fund. Photocopy.
- Farnsworth, Clyde H. 1993. Canada's U.S. trade experience fuels opposition to new pact. The New York Times, 3 October:A1, A10.
- Forsythe, David P. 1991. The internationalization of human rights. Lexington, MA: Lexington Books.
- French, Hilary F. 1991. The EC: Environmental proving ground. World Watch 4(6):26-33.
- . 1992a. After the Earth Summit: The future of environmental governance (Worldwatch Paper #107). Washington, D.C.: Worldwatch Institute.
- . 1992b. Strengthening global environmental governance. In State of the World 1992, ed. Linda Starke, pp. 155-173. New York: W. W. Norton.
- . 1992c. The tuna test: GATT and the environment. World Watch 5(2):9, 34.
- Friends of the Earth. 1991. Comments of Friends of the Earth on the draft "Review of U.S.-Mexico environmental issues." Washington, D.C. Photocopy.

- Furse, Elizabeth, and DeFazio, Peter. 1993. Environment and labor unprotected under NAFTA. The Oregonian, 25 November:E9.
- Gephardt, Richard A., Levin, Sander M., Moody, Jim, Pease, Donald J., and Wyden, Ron. 1991. Letter to Carla Hills, October 23.
- Gerstenzang, James. 1994. Proponents of GATT point to Nafta's good first year. The Oregonian, 26 November:A1, A16.
- Gill, Stephen. 1992. Economic globalization and the internationalization of authority: Limits and contradictions. Geoforum 23(3):269-283.
- Golden, Tim. 1992. After court ruling, Mexico tells U.S. drug agents to halt activity. The New York Times, 16 June:A19.
- Goldstein, Judith, and Keohane, Robert O. 1993. Ideas in foreign policy: An analytical framework. In Ideas and foreign policy: Beliefs, institutions, and political change, ed. Judith Goldstein and Robert Keohane, pp. 235-264. Ithaca, NY: Cornell University Press.
- Gould, Stephen Jay. 1989. Wonderful life: The Burgess Shale and the nature of history. New York: W. W. Norton.
- Green, Paula L. 1992. Analysts find agreement lacking in environmental rules, funding. The Journal of Commerce and Commercial, 13 August:5A.
- Greenpeace. n.d. How a log export ban became an unfair trade practice. Washington, D.C.. Photocopy.
- Gregory, Michael. 1992. Environment, sustainable development, public participation and the NAFTA: A retrospective. Journal of Environmental Law and Litigation 7:99-173.
- Gregory, Michael, and Kamp, Dick. 1993. Letter to Bill Pistor, 31 August.
- Hair, Jay D. 1991. Nature can live with free trade. The New York Times, 19 May:E17.
- Held, David, and McGrew, Anthony. 1993. Globalization and the liberal democratic state. Government and Opposition 28(2):261-288.
- Heredia, Carlos A. 1993. Trade pact won't save Mexico's environment. The Miami Herald, 5 July.
- Herzog, Lawrence A. 1990. Where north meets south: Cities, space, and politics on the U.S.—Mexican border. Austin: Center for Mexican American Studies.

- Hinsley, F.H. 1986. Sovereignty. Cambridge: Cambridge University Press.
- Judis, John B. 1993. Rougher Trade. The New Republic, 31 May, 24-29.
- Kamm, Thomas. 1990. Latin America edges toward free trade. The Wall Street Journal, 30 November:A10.
- _____. 1992. Latin links. The Wall Street Journal, 24 September:R6.
- Keck, Margaret, and Sikkink, Kathryn. 1992. International issue networks in the environment and human rights. Paper prepared for the XVII International Congress of the Latin American Studies Association, 24-27 September, Los Angeles.
- Kelly, Mary. 1991. Mexico/ United States/Canada free trade negotiations and the environment. Remarks before the Senate Finance Committee, February 20.
- _____. 1993. NAFTA's environmental side agreement: A review and analysis. Austin: Texas Center For Policy Studies.
- Kelly, Mary, Kamp, Dick, Gregory, Michael, and Rich, Jan. 1991. U.S.-Mexico free trade negotiations and the environment: Exploring the issues. Columbia Journal of World Business, 26 (2):42-58.
- Krasner, Stephen. 1993. Westphalia and all that. In Ideas and foreign policy: Beliefs, institutions, and political change, ed. Judith Goldstein and Robert Keohane, pp. 235-264. Ithaca, NY: Cornell University Press.
- Krauss, Clifford. 1990. Bush to take off for South America. The New York Times, 2 December:A11.
- Lawrence, Richard. 1990. US, Mexico to limit trade pact coverage. The Journal of Commerce and Commercial, 26 October:10A.
- Leonard, Rodney E., and Christensen, Eric. 1991. Comments of the Community Nutrition Institute concerning the draft review of U.S.-Mexico environmental issues. Washington, D.C. Photocopy.
- Lewis, Charles, and Ebrahim, Margaret. 1993..Can Mexico and big business USA buy NAFTA? The Nation, 14 June, 826-839.
- Lichtenberg, Judith. 1981. National boundaries and moral boundaries: A cosmopolitan view. In Boundaries: National autonomy and its limits, ed. Peter G. Brown and Henry Shue, pp. 79-100. Totowa, NJ: Rowman and Littlefield.

- Lyons, Gene M., and Mastanduno, Michael. 1993. International intervention, state sovereignty and the future of international society. International Social Science Journal 45(4):517-532.
- Maggs, John. 1992a. Environment fight heats up N. America talks. The Journal of Commerce and Commercial, 5 June:3A.
- . 1992b. US, Canada crafting environment proposals. The Journal of Commerce and Commercial, 24 July:1A.
- . 1992c. Clinton faces sacrifices in bid to reopen talks. The Journal of Commerce and Commercial, 3 December:1C.
- . 1993a. Tinkering with Nafta unfeasible, Kantor says. The Journal of Commerce and Commercial, 10 March:1A, 3A.
- . 1993b. Baucus, Kantor to meet on environmental deal. The Journal of Commerce and Commercial, 26 April:3A.
- . 1993c. Helms slams Nafta deals on labor, environment. The Journal of Commerce and Commercial, 18 June:3A.
- Maggs, John, and Ryan, Leo. 1993. Nafta talks stall on side deals, negotiators say. The Journal of Commerce and Commercial, 24 May:1A, 10A.
- Marshall, Patrick. 1991. Environmental tariffs: Paying for pollution. The Oregonian, 31 May:C9.
- Mead, Walter Russell. 1992. Bushism, found: A second-term agenda hidden in trade agreements. Harper's Magazine, September, 37-45.
- Mische, Patricia M. Ecological security and the need to reconceptualize sovereignty. Alternatives 14:389-427.
- Mobilization on Development, Trade, Labor and the Environment. n.d. Development and trade strategies for North America. Washington, D.C. Photocopy.
- MODTLE. n.d. See Mobilization on Development, Trade, Labor and the Environment n.d.
- Morris, David. 1990. Free trade: The great destroyer. The Ecologist 20(5):190-195.

- Murphy, Alexander B. (Forthcoming). Federalism and the environment: Problems and prospects for European integration. In The Federal Experience and European Integration, ed. C. L. Brown-John. Lanham, Maryland: University Press of America.
- _____. 1991. The emerging Europe of the 1990s. Geographical Review 81(1):1-17.
- _____. 1993. The Westphalian state system as political-territorial ideal: Historical and contemporary considerations. Unpublished manuscript.
- _____. 1994. The sovereign state system as political-territorial ideal: Historical and contemporary considerations. Unpublished manuscript.
- National Wildlife Federation. 1991. Comments on the draft review of U.S.-Mexico environmental issues. Washington, D.C. Photocopy.
- National Wildlife Federation and Pollution Probe. 1992. Minimal environmental safeguards to be included in the North American Free Trade Agreement. Washington, D.C. Photocopy.
- Neff, Alan. 1990. Not in their backyards, either: A proposal for a Foreign Environmental Practices Act. Ecology Law Quarterly 17:477-537.
- Negrete, Ingrid. 1993. Mexico official defends Nafta dispute process. The Journal of Commerce and Commercial, 20 August:3A.
- Nomani, Asra Q., and Frisby, Michael K. 1993. Clinton opens free-trade drive, but side accords could fall short. The Wall Street Journal, 15 September:A18.
- North American Agreement on Environmental Cooperation. 1993. Final draft, September 13. Washington, D.C.: Office of the U.S. Trade Representative.
- North American Free Trade Agreement. 1992. September 6 text. Computer file.
- Ottelman, Scott. 1991. Special report: GATT tuna ruling spawns environmentalist, congressional backlash. Inside U.S. Trade, 6 September:S1-S2.
- Pastor, Robert A., and Castañeda, Jorge. 1989. Limits to friendship: The United States and Mexico. New York: Vintage.
- Prickett, Glenn T., and Ward, Justin. 1991. Letter to Charles Ries, 9 July.
- Public Citizen. 1993. Preliminary analysis of North American environmental agreement. Washington, D.C. Photocopy.

- Rabkin, Jeremy. 1994. Threats to U.S. sovereignty. Commentary 97(3):41-46.
- Response of environmental and consumer organizations to the September 6, 1992 text of the North American Free Trade Agreement. 1992. Photocopy.
- Response of the Administration to issues raised in connection with the negotiation of a North American Free Trade Agreement (Action Plan). 1991. Transmitted to Congress by the President.
- Ritchie, Mark. 1990. Trading away our environment: GATT and global "harmonization." Journal of Pesticide Reform 10(3):20-22.
- Rosenau, James N. 1990. Turbulence in world politics: A theory of change and continuity. Princeton: Princeton University Press.
- Rothstein, Richard. 1993. Continental drift: NAFTA and its aftershocks. The American Prospect (12):68-84.
- Ruggie, John Gerard. 1993. Territoriality and beyond: Problematizing modernity in international relations. International Organization 47(1):139-174.
- Ryan, Leo. 1993. Canadians issue pointed protests against US lumber import ruling. The Journal of Commerce and Commercial, 20 October:3A.
- Ryan, Leo, and Maggs, John. 1993. Canada issues strong warning on parameters of Nafta side deals. The Journal of Commerce and Commercial, 18 March:3A.
- Schneider, Keith. 1993. Environment groups are split on support for free-trade pact. The New York Times, 16 September:A1, A20.
- Schumacher, E. F. 1973. Small is Beautiful: A study of economics as if people mattered. London: Abacus.
- Shrybman, Steven. 1989. International trade and the environment: An environmental assessment of present GATT negotiations. Toronto: Canadian Environmental Law Association. Pamphlet.
- . 1990. International trade and the environment: An environmental assessment of the General Agreement on Tariffs and Trade. The Ecologist 20(1):30-34.
- . 1991. Selling the environment short: An environmental assessment of the first two years of free trade between Canada and the United States. Toronto: Canadian Environmental Law Association. Photocopy.

- _____. n.d. Selling Canada's environment short: The environmental case against the trade deal. Toronto: Canadian Environmental Law Association. Pamphlet.
- Sikkink, Kathryn. 1993a. Human rights, principled issue-networks, and sovereignty in Latin America. International Organization 47(3):411-441.
- _____. 1993b. The power of principled ideas: Human rights policies in the United States and Western Europe. In Ideas and Foreign Policy, ed. Judith Goldstein and Robert O. Keohane, pp. 139-170. Ithaca, NY: Cornell University Press.
- Simon, Joel. 1992. NAFTA—the view from Tijuana. The Nation, 30 November, 664-666.
- Snape, William J. III, and Bourne, Joel. 1992/1993. The battle over free trade. Defenders, Winter, 11-19.
- Solis, Dianne. 1993. Nafta negotiators clear a hurdle on environmental side accord. The Wall Street Journal, 12 July:A9.
- South, Robert B. 1990. Transnational "maquiladora" location. Annals of the Association of American Geographers 80(4):549-570.
- Stokes, Bruce. 1992. The road from Rio. National Journal 24(22):1286-1288.
- Texas Center for Policy Studies. 1991. A response to the Bush administration's environmental action plan for free trade negotiations with Mexico. Austin, Texas. Photocopy.
- Thorup, Cathryn L. 1991. The politics of free trade and the dynamics of cross-border coalitions in U.S.-Mexican relations. Columbia Journal of World Business, 26 (2):12-26.
- Truell, Peter. 1990. U.S. and Mexico agree to seek free-trade pact. The Wall Street Journal, 27 March:A3.
- Tucker, Randy. 1991a. Compensatory investments in environmental quality: Preliminary draft of major issues. Washington, D.C.: National Wildlife Federation. Memorandum.
- _____. 1991b. Investment criteria for environmental quality: Preliminary draft of main issues related to NAFTA. Washington, D.C.: National Wildlife Federation. Memorandum.
- Tucker, Randy, and Kochan, Leslie. 1993. Nafta side agreements fail to protect jobs, environment. The Oregonian, 17 August:B5.

- U.S. Environmental Protection Agency—Office of General Counsel, Office of Enforcement. 1991. Mexican environmental laws, regulations and standards: Preliminary report of EPA findings. Washington, D.C.
- U.S. General Accounting Office. 1992. U.S.-Mexico trade: Assessment of Mexico's environmental controls for new companies. Washington, D.C.
- U.S.-Mexico free trade—opening up the debate: Agricultural, environmental and labor dimensions of North American integration. 1991. Photocopied flyer.
- U.S. Senate. 1991. International pollution deterrence act of 1991. 102nd Cong., 1st sess., S. 984.
- Walker, R. B. J. 1990. Sovereignty, identity, community: Reflections on the horizons of contemporary political practice. In Contending sovereignties: Redefining political community, ed. R. B. J. Walker and Saul H. Mendlovitz, pp. 159-185. Boulder: Lynne Rienner Publishers.
- Wallach, Lori. 1992. The NAFTA does not measure up on the environment and consumer health and safety. Washington, D.C.: Public Citizen. Photocopy.
- _____. 1993a. Memorandum to "Citizen Trade Watchers," 24 June.
- _____. 1993b. The North American Free Trade Agreement (NAFTA): Labor and environmental "side" agreements. Testimony before the House Committee on Government Operations, Subcommittee on Employment, Housing and Aviation, 9 September.
- Ward, Justin, and Prickett, Glenn T. 1992. Prospects for a green trade agreement. Environment 34(4):2-3, 44-45.
- World Commission on Environment and Development. 1987. Our common future. Oxford: Oxford University Press.
- Wriston, Walter 1988. Technology and sovereignty. Foreign Affairs 67(2):63-75.
- Zacher, Mark W. 1992. The decaying pillars of the Westphalian temple: Implications for international order and governance. In Governance without government: Order and change in world politics, ed. James N. Rosenau and Ernst-Otto Czempiel, pp. 58-101. Cambridge: Cambridge University Press.