

*A Framework of China-U.S. Partnership  
to Address Global Warming*

Mary Christina Wood  
Philip H. Knight Professor  
University of Oregon School of Law\*

*Abstract*

In this essay, Professor Wood describes the catastrophic threat to the world's climate. She emphasizes the narrow window of time to cap global emissions of carbon before our planet passes the "tipping point," whereby atmospheric buildup of carbon will trigger dangerous feedback loops capable of unraveling the planet's climate system -- despite any subsequent carbon reductions achieved by Humanity. Many climate scientists now warn that continued use of coal will destroy the very conditions that have supported human civilization for the last 10,000 years.

Professor Wood presents a framework for international policy based upon "public trust obligation," a deeply rooted principle that is manifest in most countries of the world. Under this doctrine, the atmosphere is a natural asset that all nations share as common property. All nations are "trustees" with a duty to protect our atmosphere for the survival and welfare of present citizens and future generations. The United Nations Framework Convention on Climate Change (UNFCCC) embraces this principle, calling upon nations to "protect the climate system for the benefit of present and future generations of humankind."

In presenting a framework of international obligation, the UNFCCC recognizes the "common but differentiated responsibilities" of developed nations and developing nations. The common obligation of all nations is to prevent damage to and "waste" of our atmospheric asset. In view of the scientific warnings that continued coal burning will send our planet into catastrophic heating, the no-waste principle requires rapid action to end the use of coal as an energy source throughout the world, absent a fail-safe method of controlling carbon emissions.

The "differentiated" status of nations arises from the fact that the developed world has, in effect, "spent" the Earth's carbon allowance and has received tremendous economic benefit in the process. The developing nations naturally seek a higher standard

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\*The author is the Philip H. Knight Professor of Law, Morse Center Resident Scholar, Luvaas Faculty Fellow, and Founding Director of the Environmental and Natural Resources Law Program at the University of Oregon School of Law. For references to the broad concepts in this paper, see Mary Christina Wood, see *Nature's Trust: A Legal, Political and Moral Frame for Global Warming*, 34:3 *Boston College Environmental Affairs Law Review* (May 2007), available at <http://www.law.uoregon.edu/faculty/mwood/docs/legal.pdf>. The paper accompanying this abstract will be posted November 30, 2007 at <http://www.law.uoregon.edu/faculty/mwood/publications.php>. The full paper will appear in 3 *China Environmental and Resource Law Review* (Renmin Press, forthcoming 2007).

of living and have placed reliance on coal for future economic growth. While the UNFCCC recognizes the right to “sustainable development,” coal is no longer a “sustainable” engine for economic growth. Absent an equitable remedial framework, the developing world would bear an unfair conservation burden for protecting our shared atmosphere.

United States property law recognizes the fundamental principle that property owners must not be forced to bear a disproportionate conservation burden to protect public assets. This principle provides the compelling justification for the developed nations to compensate the developing nations for shouldering a disproportionate burden for atmospheric protection. A corollary principle of public trust law provides a source of financing for such compensation. Sovereign trustees have a right, and indeed the duty, to recover natural resource damages against polluters that have profited from destroying the trust asset. Large corporations based in the United States, for example, are regularly subject to natural resource damages for past pollution they have caused to ecological assets owned by the public. Similarly, large carbon emitters must be held accountable in damages for pollution to the atmosphere.

Professor Wood urges a bold partnership between China and the United States in which the two nations join as sovereign trustees of the atmosphere to lead the world in an urgent energy transformation on the scale of the Industrial Revolution. She proposes that the two countries initiate a world-wide moratorium against coal development. She further suggests that nations pursue natural resource damages from private corporations that have polluted the atmosphere with greenhouse gases. Such damages should be used for immediate investment into alternative energy systems and technology for the developing nations as partial compensation for their disproportionate conservation burden. Under this construct, the developing world will access financing to pursue a higher standard of living in a manner that protects, rather than destroys, the planetary conditions essential to survival. The corporations that profited from polluting the global public asset will, justifiably, subsidize a large part of this energy transition.

This China-United States partnership will be a crucial step in forging a necessary planetary alliance among all nation-trustees of the world to secure the systems of life on Earth for generations to come.