

## **STRENGTHENING THE GLOBAL TREATY-MAKING SYSTEM**

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### **Summary**

In an increasingly interdependent world that recognizes the transboundary nature of environmental problems, most countries have acknowledged that international cooperation is required to protect the global environment and promote sustainable development. Currently, global cooperation leads to international treaties negotiated under the auspices of the United Nations. A close examination of past environmental treaty negotiations suggests several important weaknesses of the existing treaty-making system. Among these weaknesses are the tensions of North–South conflict, strict adherence to sovereignty by nations, disincentives to negotiate given the unique nature of environmental problems, and the inadequacy of the (international) legal structure and convention -protocol framework to encourage formulation of environmental treaties that translate into improved environmental quality. Recommendations to strengthen the global treaty-making system are offered. Specifically, the ten reforms that comprise the Salzburg Initiative include building decentralized alliances, providing prenegotiation

assistance to individual countries, adopting new approaches to treaty drafting, expanding the roles for non-governmental interests, recategorizing countries for the purpose of prescribing action, reinforcing a better balance between science and politics, encouraging issue linkage, removing penalties for constructive unilateral action, and encouraging the media to educate the public. Another recommendation to strengthen the global treaty-making system is to modify the convention-protocol framework and synchronize global environmental treaty negotiations.

## **1. Global Sustainable Development Responsibilities**

As the world's population grows, the task of feeding, clothing, sheltering and finding productive work for billions of people becomes increasingly difficult. Many nations do not have adequate resources to meet even the most basic needs of their citizens, let alone the resources required to feed millions of additional mouths. In the meantime, some of the wealthier nations have taken their resource endowments for granted—wasting energy, allowing land to become unproductive, polluting water supplies, and poisoning the air—all in the name of economic growth.

Environmental activists and advocates of sustainable development have pressed for changes in the domestic policies of both developing and developed nations. In Europe, the United States, and several other places, substantial progress has been made: conservation efforts are under way and pollution levels have stopped climbing. In some of these countries most resource management decisions are now made with much greater attention to minimizing environmental impacts and achieving sustainability. In a good portion of the developing world, there is a grudging acceptance that economic growth and wise resource management need not be traded off against each other. The rapid rise of non-governmental groups devoted to this proposition, even in some of the poorest nations of the world, suggests that the prospects for the future are improving.

There are several indicators of progress toward environment protection and sustainable development. *Agenda 21*, a global plan for sustainable development, was adopted by 108 heads of State at the UN Conference on Environment and Development held in Rio de Janeiro in 1992. *Agenda 21* has since become the basis for many national plans. More than 1800 cities and towns worldwide have created their own *Agenda 21* Action Plans. Also, more than 150 countries have set up national advisory councils to promote dialogue among government officials, businesspeople, environmentalists and others on national environmental policies or nature conservation plans.

However, just as environmental progress is being achieved at the domestic level, in at least some parts of the world, the environmental agenda is shifting. Now, the most pressing environmental problems are global in nature, including ozone depletion, pollution of the oceans, loss of biodiversity, and potentially devastating climate changes. The resources that need protecting are common resources—fisheries, endangered species, rivers, oceans, forests, and the like—that transcend national boundaries. Even countries that have learned how to formulate environmental regulations and control development will, unfortunately, not be able to solve these global problems on their own. And countries still struggling with the burdens of poverty, famine, and war do not see themselves in much of a position to help.

The level of global cooperation required to tackle this new generation of environmental threats is high and the institutional resources available are limited to the United Nations and a handful of multilateral organizations. Although there are a great many individuals and non-governmental groups throughout the world eager to assist in addressing our global sustainable development problems, coordinating and developing a global response, especially in the face of differing views and active resistance in some quarters, will be extremely difficult.

We must find ways of bolstering the level of collective action required to address this next generation of global environmental threats. To do this, the art and science of global environmental diplomacy must be enhanced. Diplomats, politicians, environmental action groups, scientists, business leaders, journalists, and many others need to find new ways of working together. They need to draw on the knowledge and skills from many fields including international relations, environmental science, negotiation, law, economics, and engineering to build the necessary institutional capacity. This is one instance in which it will not help to break the larger problem into smaller, more manageable, pieces. Only a comprehensive approach to managing environmental resources and coordinating sustainable development at the global scale will work.

## **2. Transnational Concerns About Global Sustainable Development**

As a modicum of environmental progress has been attained at the domestic level, several countries have shifted their efforts to promote sustainable development to their borders where they must work with neighboring countries to address environmental degradation. For example, the United States is working with Mexico to ensure that differing domestic environmental standards do not create obstacles to managing shared natural resources, such as the Rio Grande River. The two countries signed an agreement to address environmental concerns as part of the North American Free Trade Agreement (NAFTA).

Other countries are mobilizing to address environmental issues at a regional level as well. Individual European countries realized that some of the pollution they experienced was the result of industrial activity in the larger European Union (EU). Their efforts focused first on the problem of acid rain. The EU countries have formed an alliance that will approach certain environmental problems on a regional, rather than domestic, basis. Another example of a successful effort to address transboundary environmental concerns is the Mediterranean Action Plan (MAP) adopted by fifteen Mediterranean countries and the EU to manage the Mediterranean Sea, a natural resource upon which their economic activity relies.

Cooperation at the borders and the regional scale in response to transboundary problems expanded to the global level as preparation for the 1992 United Nations Conference on Environment and Development, underscoring the fact that certain resources are shared by all nations. Among the threatened global resources are the atmosphere, the oceans, biological diversity, and the geographic areas of Antarctica and the Arctic Circle. New levels of regional and global cooperation will be required to protect these shared resources and to achieve global sustainable development.

### **3. Global Treaty-Making as a Method of Addressing Global-Sustainable Development**

Increasingly, global cooperation leads to international treaties. International gatherings of various kinds are used to promote global environmental treaty-making on topics ranging from ozone depletion to ocean pollution, from preserving tropical forests to addressing global warming. By 1992, according to one informed source, more than 120 international environmental accords and legal instruments had been signed.

In negotiations over such treaties, national delegations are charged with pursuing their country's interests, although this often requires representing numerous countervailing interests, such as business and industry, environmental activists, and scientific organizations. To participate effectively in such delegations and international negotiations, a great deal of knowledge, acquired through technical and scientific reports is required. Each delegation, though, must act and negotiate treaties in spite of substantial scientific uncertainty surrounding many of these global issues and systems. Action is required because the risks associated with doing nothing about possible damage to the biosphere are so frightening.

Each national delegation, with representatives from several interest groups, is lobbied domestically, regionally, and even globally by groups such as grassroots environmental organizations and private-sector interests not necessarily represented on their delegations. Delegations also receive instructions from various agencies of their governments. Unfortunately, each agency has different domestic priorities to which it must attend. This adds to the pressures facing each delegate and delegation. In spite of the competing pressures it faces, each national delegation, using all the information at its disposal, must formulate its priorities and articulate a position on each environmental problem as well as various proposed solutions.

Each delegation is likely to attend numerous meetings over several years to negotiate a draft environmental treaty. At these meetings there may be delegations from more than 180 countries—each with their own delicately balanced political agendas, each also dealing with the same kind of multifaceted internal pressures. The greater the number of countries with an interest in an issue, the more difficult it is to generate global agreement, yet that is what is required. The task of achieving global sustainable development goes well beyond anything one country or even a group of countries can accomplish alone.

Each treaty negotiation is conducted largely in isolation from negotiations on other treaties or issues such as debt, trade, or security. Most recent international environmental negotiations have followed a two-step approach. An initial series of meetings, coordinated by a United Nations agency (such as UNEP) or the United Nations General Assembly, is held to review scientific evidence and draft a framework convention. Then, subsequent meetings of the signatories focus on the preparation of detailed protocols to implement the general purposes of the framework Convention.

The convention-protocol approach allows countries to “sign-on” at the outset even if there is no agreement on the specific actions that must be taken. The signing of the

convention sometimes encourages a commitment to further scientific inquiry and to the establishment of specific timetables and targets. National decisions to apply the Convention domestically provide benchmarks for the subsequent negotiations of protocols. Those countries that have taken action may have the upper hand in negotiations over follow-up protocols because they can declare that the standards they have already adopted should become the norm.

As mentioned above, there have been numerous international conventions signed, adopted and ratified. How one measure the successes of such conventions is not obvious. Some people, pragmatists, view just the mere step of convening so many parties as an indicator of success. A conference is an important step in the right direction and detailed agreements may well follow. Pragmatists argue that even purely symbolic statements by a few countries are valuable because they put pressure on reluctant leaders who may be hesitant to make even the most modest commitments to environmental protection.

All global efforts to deal with environmental problems ultimately hinge on the willingness of agencies, organizations, and individuals to follow certain rules and to change their behavior. Therefore, it is common to evaluate environmental treaties in terms of the obligations that the signatories promise to impose on their industry, citizens, and governments. Pragmatists argue that even modest agreements provide support for insurgent environmental protection efforts inside each country. Indeed, it is usually grassroots groups that shape public perceptions and impose pressure on government leaders to change their policies. The adoption of a framework convention can legitimize their efforts.

Others, idealists, worry that treaties acceptable to many countries but that actually yield few tangible improvements in environmental quality are worse than no treaties at all. The idealists view success as nothing less than full-fledged, enforceable promises to regulate environmentally destructive behavior. Idealists worry that symbolic statements underscoring the need for action (without requiring any) may undermine environmental protection efforts by allowing officials within a country to claim that problems have been solved, when actually they have not.

There are several reasons that signed international agreements often produce little if any real improvement. First, it often takes so long to secure international cooperation that environmental protection strategies that made sense when they were first proposed do not address a problem that has changed and might actually have taken on a new and different form in just a few years. Second, if too few countries ratify an agreement, the cumulative efforts of those living up to their promises may be insufficient to reverse the problem.

Other reasons that agreements produce little real improvement are that the actual expense of implementing treaties is prohibitive for many countries and they cannot comply, or the language of a treaty is so elaborate (to accommodate many conflicting views) that disagreements arise over what was intended and what was guaranteed. In the face of such disagreements, countries sometimes opt not to deal with the problem at all.

#### **4. Weaknesses of the Current Global Treaty-Making System**

Regardless of whether one thinks the convention-protocol system is a success or not, there are several reasons to be pessimistic about the prospects for achieving the level of cooperation required to manage shared resources such as the oceans, outer space, or the atmosphere. The reasons for pessimism are the worsening split between the developed nations of the North and the developing nations of the South; the stubborn persistence of national sovereignty as an overriding goal; and an apparent lack of incentives sufficient to bring certain nations to the bargaining table for serious discussions about global environmental threats and the challenges of sustainable development. There are also problems with the legal structure of international environmental treaty-making.

##### **4.1. North–South Conflict**

The North–South divide is often portrayed as a battle over money and technology, but it actually involves more fundamental issues. Ever since the 1972 Stockholm Conference on the Human Environment—when a new set of principles challenging the prevailing approach to economic development and environmental protection were generated—the North–South debate has intensified. Often the disagreement revolves around whether funds for the implementation of environmental protection agreements will be added to the development assistance that is already provided to the South and what strings, if any, the North will attach to the funds.

Underlying the development assistance and technology transfer debates is the perceived injustice of cultural hegemony—the overwhelming impact of Western culture and the forces of modernization and globalization on economically dependent nations. The South wants the North to acknowledge the unfairness of this indirect form of domination. Debates over money and technology mask the real source of conflict, which is a fundamental difference in how the nations of the North and South think about progress. The actual disagreement is over the meaning and direction of economic development. Most of the developing world would prefer not to emulate contemporary Western development patterns. That is, they would like many of the benefits without most of the costs. These developing nations do not equate development with economic growth, economic growth with expansion of the market economy, modernity with consumerism, and nonmarket economics with backwardness.

The Brundtland Report, which popularized the idea of sustainable development and postulated the need to link economic development and environmental protection, assumes that effective responses to global environmental threats can be found within the framework of the current pattern of economic development, if only the key actors would accept the importance of sustainability. The Report, named after the Norwegian prime minister who chaired the UN World Commission on Environment and Development, is the generally held view of the North. The South, however, views its current array of problems (such as population growth, food shortages, deforestation, impacts of industrialization, and the burdens of massive urbanization) as by-products of the dominant economic development pattern. The South wants the North to accept responsibility for causing these problems by its pursuit of a form of economic growth that is fundamentally at odds with sustainability.

Although issues of technology sharing and development aid are far from unimportant, they are secondary to the question of whether the North–South relationship can be shifted from one of dependence and confrontation to one of fruitful interdependence. The North doling out additional money, or making new technologies available on favorable terms will not resolve south conflict. The South expects the North to accept a greater share of responsibility for the difficulties that developing nations face. The South is also waiting for the North to acknowledge that there must be a change in Northern lifestyles if greater fairness in the allocation of the world’s resources is to be achieved. From the North’s viewpoint, neither demand is reasonable. Thus, the deadlock continues, especially because the nations of the South, also called the Group of Seventy-seven (even though there are more than 130 nations in the group), have found their voice and mobilized more effectively in recent years.

#### **4.2. Sovereignty**

From time to time, proposals such as the one in The Hague in March 1989 to establish a global environmental legislative body with the power to impose new environmental regulations and binding legal sanctions on any country that fails to carry them out are made. Such proposals to create supranational bodies are not likely to succeed because countries fight desperately to maintain their sovereignty—their individual rights and privileges.

Most global environmental agreements worked out through ad hoc negotiations include only weak monitoring and enforcement provisions. This, too, is a function of countries trying to maintain control over all decisions within their geopolitical borders and autonomy over actions that affect common areas and resources. Monitoring and enforcement powers are not granted to global entities because they appear to conflict with the prerogatives of national sovereignty. Yet without effective monitoring and enforcement implementation of treaties is difficult. Often when countries blatantly disregard rules and deadlines set by existing international agreements, they use sovereignty as an excuse, alleging that their sovereignty is being undercut by other nations (seeking compliance with global treaties).

International relations theorists argue that international institutions are irrelevant because nations will never be persuaded to pursue a course of action inconsistent with their own self-interests. In fact, another school of thought believes that we do not even need multilateral institutions because self-interested nations in a competitive setting will always work to achieve mutually beneficial exchanges without any prodding from international bodies. Actually, though, sovereign states seeking to pursue their self-interest often realize that their ability to build and maintain cooperative relationships depends on their capacity to sustain appropriate institutional oversight and assistance. In the same way communities of people form governments (and in the process give up some autonomy in exchange for security), the nations of the world must surrender some degree of sovereignty (indeed, they already have) to work out ways of handling global problems. The important point is that they do so by choice and have the option to do so in one policy arena while deciding not to do so in others.

Many nations long ago accepted practical limitations on their sovereignty in order to partake of the advantages of international communications and trade. Although notions of national sovereignty over the management of natural resources (both within a country's national borders and in common areas) are evolving in response to technological and economic change, they still pose a substantial obstacle to effective environmental treaty making.

#### **4.5. Disincentives to Negotiate**

Aside from the sovereignty issue, there are several aspects of international environmental treaties and the treaty-making process that creates disincentives to negotiate. Many fear that nations will refuse to join in global environmental negotiations because they fail to see what they have to gain. These countries are “free-riders” or parties that will benefit from the actions of others without sharing any of the responsibility or cost. They assume that others will make enough of an effort so that they will benefit from an improved environment without shouldering any of the burdens or responsibilities.

Many of the costs for an improved environment must be paid now while the benefits generated by efforts to combat pollution and the like will not be realized until well into the future. This causes problems for politicians with short time horizons. A politician's time horizon runs only until the next election.

They do not want to be associated with rising costs but only with the benefits realized from money well spent. Many environmental treaty negotiations focus only on the immediate and future allocation of costs (including constraints on development). They devote almost no attention to the tangible benefits that will be generated in the long-term or how they will be shared.

The impacts of environmental problems and the costs of combating them will not be distributed equally. Unlike other international negotiations in which the losers are compensated with benefits of other kinds, countries likely to lose have good reason to remain on the sidelines or even to sabotage international environmental treaty-making efforts. Although linking treaty-making efforts together could change these calculations it is seldom done. Environmental negotiations have been conducted largely in isolation from negotiations on other international issues such as debt forgiveness, trade, or security. Such linkages might provide incentives for certain countries to negotiate and accept environmental treaties.

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