

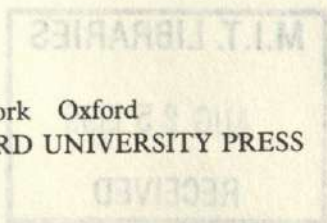
Environmental Diplomacy

*Negotiating More Effective
Global Agreements*

Lawrence E. Susskind

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What Is This Book About?

Suppose you were asked to serve on your nation's delegation to an international conference charged with negotiating a global environmental treaty. There is an ever-increasing number of such negotiations on topics ranging from ozone depletion to ocean pollution, from preserving tropical forests to global warming. And, there are literally billions of stakeholders, including representatives of business and industry, environmental activist groups, and scientific organizations, all of whom insist on being consulted, if not actually included, in such negotiations. Hence, being invited to serve on such a delegation is not an outlandish premise. What problems would you face and how would you handle them?

To participate, you would have to digest a great many technical and scientific reports. Much of this material, you would find, is speculative; that is, it talks about what might happen but acknowledges that much is uncertain. Our collective wisdom about global environmental ecosystems and how they are likely to react to various human interventions is still quite skimpy. Nevertheless, because the risks associated with severe damage to the biosphere are so frightening, your delegation (as well as the teams from other countries) has no choice but to take some kind of action at the international conference.

You would quickly find yourself facing pressure from numerous interest groups, each eager to influence your thinking about how to define the risks and what ought to be done about them. Some groups will not be represented directly on the negotiating committee, so they will have no choice but to rely on you and other delegates to express their concerns. In addition, your delegation will face strong external demands from other national delegations with different needs and priorities. Longtime allies may turn out to be adversaries on certain environmental matters.

The greater the number of countries involved, the more difficult it will be to generate global agreement, yet that is what is required. Global

environmental threats are of growing concern to a broad cross-section of groups within each country as well as to a growing number of countries. Transboundary environmental problems like climate change, the preservation of biodiversity, protection of the oceans, decisions about how best to manage shared resources like Antarctica, or the difficult task of promoting sustainable development go well beyond anything one country or even a group of countries can accomplish on its own.

Ultimately, your negotiating committee will be expected to advocate your country's national interests and to speak with a single voice. Yet, the more diverse the membership of your committee, the more difficult it will be to achieve internal consensus. It was disconcerting, for example, to the president of the United States to learn that members of the U.S. Negotiating Committee at the 1992 "Earth Summit" in Brazil disagreed publicly with his stated position on the Biodiversity Convention (which he refused to sign). If your own team is pulling in different directions, it is all but impossible to be effective in a multilateral negotiation.

Negotiating committees usually receive explicit instructions from the most senior levels of their governments, including—in the case of the United States—the White House, the State Department, and a variety of federal agencies, including the Environmental Protection Agency. Indeed, it is not unusual to have technical specialists from these agencies assigned to work with a negotiating committee or even to be members of it.

Unfortunately, individual federal agencies frequently have different priorities and agendas. The State Department, for example, will not want the negotiating committee to take a position on an environmental issue that might damage ongoing relationships with allies, or undermine bilateral discussions concerning collective security or economic aid. The Environmental Protection Agency will want to be certain that all positions taken by the negotiating committee are consistent with prevailing environmental laws and regulations within the United States, so that its domestic enforcement efforts will not be undercut. Key congressional representatives will want to be heard, and some may even demand to be included on the negotiating committee (in part, to be certain that the views of the party out of power are not ignored). Many of these representatives will be primarily interested in promoting regional concerns. For example, they could well oppose a treaty that might hurt their section of the country, even if it helped the rest of the country or, indeed, the rest of the world.

In addition to a whirlpool of conflicting pressures from various governmental representatives, the negotiating committee will also face demands from two other sources, neither of which speaks with anything approaching a single voice: grass-roots environmental groups and such private-sector interests as transportation, energy, and agriculture. Some

corporate leaders, concerned that new regulations might increase operating costs, inhibit expansion, or undermine the value of their investments, will launch major lobbying efforts in opposition.

The nongovernmental grass-roots groups, though they rarely speak with one voice, remain a potent political force. Environmental groups range from out-and-out conservationists who oppose any further development in sensitive areas to "free marketeers" who believe that only pricing strategies and financial incentives, not regulations, will be effective in achieving greater environmental protection. Other nongovernmental interests, whether represented on the negotiating committee or not, will work to push the committee in still other directions: consumer advocates will fight to ensure that environmental regulations do not increase the burdens on the poor and the disadvantaged; real estate developers worry that local investment options could be limited by new environmental restrictions contained in international treaties; bankers are wary of the impact that new environmental regulations might have on economic growth; and spokespeople for various scientific groups want to ensure that all policy decisions take account of the "best" technical research available—especially the work that they have done.

Assuming that a negotiating committee can reconcile all these competing internal interests (which is no easy task), it then must deal with the demands of delegations from more than 175 countries—each with its own delicately balanced political agenda, each also dealing with the same kind of multifaceted internal pressures your delegation faces. Included among these countries are democracies as well as dictatorships; nations struggling with the incredible burdens of poverty, famine, and rapid population growth as well as those with substantial gross national products per capita; newly industrializing or reindustrializing countries with little, if any, environmental enforcement; and highly developed countries with elaborate environmental management systems.

This book explores how best to structure global environmental negotiations so that the internal and external pressures on national negotiating committees can be addressed effectively. Obviously, such negotiations must take account of each country's desire (and right!) to pursue its national interests while recognizing the absolute necessity of promoting effective cooperation if we are going to preserve and protect the biosphere. This, then, is why global environmental negotiations are so difficult. We must find a way to do better.

Consider, for example, the much-ballyhooed Earth Summit in Rio de Janeiro. Preparations for this mega-event, attended by 4,000 official and 30,000 unofficial negotiators, took many years. It culminated in a mere two weeks of face-to-face interaction, during which the negotiators tried to

work out the details of several incredibly complex agreements. In the fall of 1989, when the United Nations General Assembly called for the Conference on Environment and Development (as it was officially titled), there was some hope that treaties dealing with climate change, transboundary air pollution, deforestation, soil loss, desert expansion and drought, conservation of biological diversity, protection of the oceans and seas, protection of freshwater resources, and strategies for financing all these improvements could be signed in Rio.

In the end, the conferees managed to sign only two treaties: a convention on climate change and a convention on biological diversity. These documents must still be ratified by at least 60 of the legislative branches of the 150-plus governments that signed. The leaders present in Rio also initialed a general declaration of concern about the environment, called the Rio Declaration, supported a long list of "action projects" called Agenda 21, and drafted statements of principles to guide future treaty making on forest protection and desert expansion. They were unable, however, to muster a commitment for even a small portion of the estimated \$125 billion in annual contributions needed to implement such a package.

The fact that the Rio de Janeiro delegates succeeded in reaching any agreement at all is a testament to growing worldwide concern about the environmental threats facing the planet. Leaders from all parts of the world were under tremendous pressure to show progress of some sort. Yet, the two treaties that did emerge are, for the most part, only very general statements of concern, or what are called "framework conventions." The Climate Change Convention includes neither timetables nor targets for reducing the emission of the so-called greenhouse gases that are blamed for global warming trends. The Biodiversity Convention was unacceptable to the United States, which charged that it did not adequately protect intellectual property rights and would discourage technological innovation.

The task of generating international agreement on *anything* is extremely difficult. And environmental issues, which combine scientific uncertainty with politics, citizen and industry activism with economics, are probably the most complicated and difficult of all to resolve. Unfortunately, the procedures we currently use to formulate global agreements were not designed to handle the unique demands of environmental problem solving. Moreover, they fail to take account of what we have learned about the dynamics of multi-issue, multiparty negotiation. These procedures accept as given the structure of the United Nations and its sister institutions, even though these organizations were not designed to handle global resource management questions. Indeed, they have been relatively

ineffective in promoting the kind of worldwide collaboration required to handle these problems.

Too few people realize that the processes we use to negotiate global agreements are as important as the technical capabilities and the scientific understanding that the negotiators bring to the bargaining table. In fact, good technical solutions are often unattainable because the negotiators are not able to overcome the cultural, ideological, and political differences that divide them. A new consensus-building process is required, and the institutional arrangements on which we have relied must be changed. We also need to rebuild productive working relationships between the developed nations of the North and the developing nations of the South, which have deteriorated markedly in recent years. The current schism between the North and the South makes progress on environmental issues almost impossible.

Based on a close look at fifteen major environmental treaty-making efforts, including those culminating at the Rio Earth Summit, I have identified four procedural shortcomings that account for most of the failures of global environmental negotiation:

- representation and voting procedures do not guarantee that all countries and interests are treated fairly;
- scientific and political considerations are not balanced in ways that ensure that the wisest possible agreements will emerge;
- linkages among environmental concerns and other policy issues are rarely explored or crafted adequately; and
- effective monitoring and enforcement arrangements are not implemented.

These shortcomings are evident to some extent in other kinds of multilateral negotiations, especially those involving international security and trade. They are more pronounced, however, in global environmental treaty negotiations and must be handled differently. While there are surely things to learn from these other types of treaty negotiations, the differences are not insignificant. The importance of scientific considerations, the need to involve large numbers of nongovernmental groups, and the overwhelming uncertainty surrounding both the scope and dynamics of ecological change, require a unique approach to environmental diplomacy. Thus, I have focused almost exclusively on the ways in which these shortcomings present themselves in the environmental treaty-making arena.

Until ways of overcoming these shortcomings are found, global environmental negotiations are not likely to produce adequate results, regardless of how well prepared the individual negotiators are. Although addi-

tional global treaties may be signed, they are not likely to accomplish their intended objectives. And, in some instances, years of debate may well end with no agreement at all.

This book provides what I hope will be viewed as a framework for understanding the current way we negotiate global environmental treaties and a guide that offers practical advice on how we can do better. I have concentrated on global, not regional agreements. Regional negotiations among large numbers of countries, especially sets of countries facing markedly different ecological, economic, and cultural circumstances provide important clues as to how we might handle global environmental treaty negotiations more effectively. Bilateral treaty negotiations, however, or those involving small clusters of countries facing mostly similar conditions are less relevant even though they concern the management of natural resources or responses to environmental threats of various kinds.

In Chapter 2, I describe the steps typically involved in formulating conventions and protocols, the two types of global environmental agreements that nations have signed in recent years. I review the inadequacies of high-sounding statements that fail to mandate specific action. I also point out the weaknesses of regulations that are drawn too narrowly to do any good. I explain why most environmental treaty-drafting efforts have fallen victim to the demand that national sovereignty not be abridged, the inherent weaknesses of our international legal system, and the mishandling of scientific uncertainty. In addition, I examine the growing hostility between North and South that threatens to derail most global treaty-making efforts.

In Chapter 3, I look more closely at the first procedural problem—representation and voting—and consider why countries are or are not inclined to participate in global environmental negotiations and the sources of bargaining power that each can tap. Relatively few countries have signed all the global environmental treaties ratified over the past twenty years; many have signed only a few. It is my contention that this is because a few powerful nations play an unnecessarily dominant role in most treaty negotiations, forcing other countries and nongovernmental interests to accept secondary roles or to sit on the sidelines.

Chapter 4, focuses on the dangers of "advocacy science": the misuse of technical information by countries seeking to advance their short-term national interests. I also look at the prospects for formulating "self-correcting" treaties that can incorporate new scientific knowledge about environmental impacts and global change as it emerges.

Chapter 5 delves into the concept of linkage. In my view, unless the participants in global environmental treaty-making negotiations broaden their scope to encompass population growth and the need for more

sustainable patterns of development, unconstrained development trends will negate any environmental improvements that future treaties might achieve. Furthermore, unless we find ways of encouraging wealthier countries to help struggling nations meet tougher environmental standards, there will be no hope of bridging the growing chasm between North and South.

Chapter 6 deals with the difficulties of ensuring compliance with global environmental treaties, especially in the face of continued demands that national sovereignty not be compromised. I do not believe it is necessary to trade sovereignty to achieve compliance. I believe we can move toward nearly self-enforcing agreements that ensure compliance while guaranteeing sovereignty. The key is to encourage individual nations and groups of countries to make continuous adjustments in their policies and programs in light of what is learned about the true benefits and costs of environmental protection.

Finally, in Chapter 7, I try to pull together a range of recommendations aimed at overcoming the weaknesses of our environmental treaty-making institutions. These reforms do not require radical transformation of existing multilateral arrangements, nor do they depend on changes in leadership in countries that have been reluctant thus far to take part in global environmental negotiations.

I am especially enthusiastic about a new system of *sequenced negotiation* that will move us away from the convention-protocol approach and toward a multistep process that synchronizes worldwide expectations and moves systematically—following a prescribed schedule—from Level I treaties (that spell out principles, definitions, timetables, contingent targets, and responsibilities) to Level II treaties (that require commitments to minimal levels of performance in exchange for explicit sets of benefits), then to Level III treaties (that offer maximum benefits for maximum effort and are based on what can be learned from shared efforts to monitor performance and compliance).

The analyses and proposals presented in this book have evolved over the past several years through continuous interactions with a great many scholars, diplomats, activists, and negotiation practitioners. In late 1989 the Dana Greeley Foundation for Peace and Justice provided funds to convene a multinational group of twenty-five diplomats and scholars who drafted what has come to be called the "Salzburg Initiative"—a series of reforms endorsed by environmental, industry, media and political leaders from more than fifty countries. As a member of this group, I have drawn heavily on the ideas contained in the Salzburg Initiative. In addition, the Salzburg Seminar, a not-for-profit educational center in Austria, hosted seminars in 1990 and 1991 on international environmental negotiation.

These sessions brought together more than one hundred leaders from fifty countries to discuss and debate the merits of possible reforms in the traditional approach to global environmental treaty making. The Salzburg Seminar provides a most extraordinary setting for cross-cultural learning.

My colleagues at the Program on Negotiation at Harvard Law School have, for more than a decade, helped to shape my thinking about the best ways of dealing with differences of all kinds. I have tried to apply their ideas to the unique demands of environmental diplomacy. Bill Breslin offered valuable editorial assistance for which I am very grateful. My students, particularly those enrolled in the MIT International Environmental Negotiation Seminar in 1990, 1991, and 1992 prepared detailed case studies of past environmental treaty-making efforts that have helped me link theory and practice in ways that I could not possibly have achieved on my own.

I believe that no nation should be forced to accept a global agreement that hurts its people more than it helps them, nor to settle for agreements that are painless but fail to reverse past patterns of environmental deterioration. Ultimately, we must slow the rate of environmental change to a pace the biosphere can tolerate. This is the special challenge of environmental diplomacy. I am confident we can do this by improving the processes and strengthening the institutions used to build global consensus. Along the way, we must never lose sight of the fundamental rule of negotiation, even as we focus on the science and the politics of each new environmental threat that emerges: cooperation is possible only when parties with competing interests have an opportunity to generate options for mutual gain.

Reforming the System: The Salzburg Initiative and Other Proposals for Change

In the fall of 1989, with support from the Massachusetts-based Dana Greeley Foundation for Peace and Justice, a small group of scholars, diplomats, and environmental activists met at the Program on Negotiation at Harvard Law School. Their goal was to explore possible institutional reforms that might encourage more effective global environmental treaty making in the face of growing mistrust among nations, continued governmental unwillingness to acknowledge mounting evidence of new environmental threats, and the unremitting desire on the part of most nations to protect their sovereignty. The group identified several factors that seemed to account for past collective action on the environment: the existence of the scientific equivalent of a "smoking gun" (for example, a hole in the ozone layer), strong worldwide pressure from activists and the news media acknowledging a threat, and the emergence of a simply stated action that might address the problem or reduce the risk (for example, phase out the production of CFCs).

The team translated its findings into a set of propositions and presented them to Maurice Strong, secretary-general for the UN Conference on Environment and Development. When he urged the team to continue its explorations, it created a secretariat at the MIT-Harvard Public Disputes Program at Harvard Law School.

In mid-1990, with the help of Bradford Morse, then president of the Salzburg Seminar (in Salzburg, Austria), the team convened a much larger international assembly of diplomats, scientists, negotiation experts, international relations theorists, development specialists, and environmental activists. The discussions at the Salzburg meeting were characterized by

energetic exchanges among attendees from the North and South (as well as those from East and West). As the talks progressed and the focus shifted from an analysis of specific global environmental threats to an examination of the larger treaty-making system, there was clear agreement: the treaty-making system could indeed be strengthened. The outcome of these deliberations took the form of the Salzburg Initiative, a ten-point agenda for reforming the global environmental treaty-making process.¹

The group put this package of reforms before as many world leaders as possible, and urged the UNCED secretariat to make reform of the treaty-making system a major focus at the planned Rio de Janeiro Earth Summit of June 1992. With assistance from the Interaction Council (an informal organization of former heads of state), the Salzburg Initiative was, in fact, presented directly to a number of world leaders and distributed to several thousand activists and policymakers. The UNCED secretariat, however, was unable to push the institutional reform issue very high up the agenda at the PrepCom sessions in advance of the Rio meeting.

The Salzburg Initiative was further debated and refined at two sessions of the Salzburg Seminar, in June of 1990 and June of 1991. More than 120 governmental, nongovernmental, and corporate representatives from thirty-two countries participated in those two-week seminars chaired by an eminent team of seasoned diplomats and scholars (including the head of the Intergovernmental Panel on Climate Change, senior UNCED staff, the director-general for environment of the European Commission, senior staff from the World Wildlife Fund, the secretary-general for the Montreal Protocol negotiation, and some of the most respected international law experts in the world).

The contributors to the Salzburg Initiative agreed on several things: first, that a one-world government is neither likely nor desirable; second, that economic growth and social justice are not necessarily incompatible with sustainable development and environmental protection; third, that states are likely to retain their sovereign powers and will remain the center of global decision making; fourth, that nongovernmental interests will increasingly be called upon to play stimulative and facilitative roles that states themselves cannot perform; and, finally, that the basic structure of the United Nations will remain intact for the foreseeable future.

The Salzburg Initiative

A great many proposals to reform the UN-sponsored system of environmental treaty making have been advanced from time to time, ranging from the creation of a worldwide environmental enforcement agency with the power to supersede national authority to more modest realignments of

UNEP, UNDP, and other multilateral agencies. The reforms outlined in the Salzburg Initiative are both different and, in many ways, more far-reaching. These proposals are convincing because they build on practice and on what we know about multiparty, multi-issue negotiation, and they do not confuse what might be desirable with what works. For example, although some experienced commentators still look at environmental treaty making as a scientifically circumscribed process aimed at solving technical problems, the authors of the Salzburg Initiative view environmental treaty making as a bargaining process focused on resolving political conflict. The issue is not what the correct technical solution is (particularly since characterization of environmental risks is based so heavily on subjective perceptions) but, rather, whether the nations of the world will work together, and if so, how.

The Salzburg Initiative contains ten recommendations:

Recommendation 1: Build decentralized alliances

Clusters of countries with shared environmental interests should always be encouraged to caucus well ahead of formal treaty-making negotiations in order to explore common interests, share technical information, and analyze strategic alternatives together. Such clusters need to be assisted and encouraged by neutral conveners. For the most part, the clusters should be organized on a (bio)regional basis; that is, nations that share borders or rely on common resources should meet regularly. On other occasions, countries with common interests but without shared borders should also be encouraged to meet to exchange information and discuss the possibilities of working together to manage a resource or to respond to a threat. The point of such meetings is to build coalitions, including alliances that cut across typical North-South lines.

Coalition building of this sort should involve nongovernmental interests as well as official representatives. (N.B. This point is elaborated under Recommendation 4.) Small clusters of countries should be combined to form the core of increasingly larger coalitions that ultimately will have to bargain with other large coalitions to resolve differences.

It would be desirable to designate or create permanent (bio)regional mediation offices to serve as conveners for these coalition-building efforts. The objective of this first recommendation would be undermined, though, if identification of acceptable conveners or venues for meetings became a source of disagreement. So, to avoid the need to reinvent or debate such selections repeatedly, forums and ground rules should be set through negotiations for an extended period before any caucusing is undertaken.

Negotiations over ground rules should be managed by the UN secretary-general and the new UN Commission on Sustainable Development.

Once procedural ground rules are set, regional offices would broker the selection of individual facilitators and technical advisers for each meeting (in much the same way that federal agencies in the United States currently work from a preapproved roster of professional mediators whenever they are about to convene a regulatory negotiation).² Thus, the regional offices would serve a convening function, and facilitators for each session would be chosen by the parties from a preapproved roster of professional neutrals. All participating countries would have to sign off, each time, on the selection of a team of neutrals from the roster.

The United Nations (particularly UNDP) has field offices scattered throughout the world. In some regions, these offices might serve as conveners. In other instances, regional economic institutions (like the European Commission) might be selected. The choice needs to be handled differently in each part of the world. Whatever organization is selected, though, must be acceptable to the cluster of countries involved. When temporary or new clusters of noncontiguous countries are formed, the United Nations itself (that is, UNEP, UNDP, or the Commission on Sustainable Development) could serve as the convener because such clusters might only meet a few times.

This recommendation rests on the assumption that effective environmental treaty making depends on the implementation of a predictable "bottom-up" approach to aggregating increasingly larger clusters of countries and nongovernmental interests into coalitions of like-minded stakeholders. Furthermore, it presumes that treaty making does not depend primarily on convincing technical experts of the scientific merit of a particular approach to a global environmental threat. Scientific consensus building is important, but it merely informs the key exchanges among political actors who must bargain over sensitive trade-offs between short-term and long-term economic, social, and political costs and benefits. Such bargaining is particularly difficult, as is the case with global environmental treaty making, when overarching philosophical or ideological principles (like "the polluter pays") are at stake.

Building decentralized alliances on a worldwide basis is a difficult task, complicated by the desire of existing regional forums to maintain or expand their mandates. Many organizations that have been successful in bringing together groups of countries for other purposes will not be successful conveners for environmental treaty making because they have taken positions in the past that now compromise their claim to neutrality. In some regions, working relationships are in place among the countries that ought to caucus together, but nongovernmental interests still need to

be blended in. And in other situations, hostile relations will no doubt make it difficult to move ahead. However, we do have the encouraging example of the Mediterranean Action Plan, which brought together (under UNEP auspices) countries that had never worked together and, indeed, between whom diplomatic relations did not exist. Because past and future relationships must be handled with great care, it matters a great deal who the conveners and facilitators are.

The costs of building new decentralized alliances should be borne by UNEP, UNDP, and the GEF, even if UN agencies are not the ones selected to play convening or facilitating roles. Although it may increase the cost, it makes sense to support as many regional and issue-oriented clusters as possible. It is perfectly acceptable for governmental and non-governmental actors to be part of more than one convening effort. Indeed, overlap may be the key to building ever-larger coalitions, so that the smallest number of big coalitions with consistent interests can be identified. Through this process, internal differences within coalitions can be minimized, and the difficult task of generating a final agreement can be undertaken without the problems that internal conflicts within coalitions would otherwise cause.

Recommendation 2:

Provide prenegotiation assistance to individual countries

Only a few countries have the resources needed to develop technically and politically informed perspectives on every global issue that arises. Unfortunately, regular informational briefings are not generally available to countries that need them, nor is the strategic advice they require generally available. These could be provided by international scientific associations, transnational business organizations, leagues of nongovernmental organizations, or various branches of the United Nations. What is critical is that each country have easy access to the intelligence it needs to understand emerging problems, to assess the likely effectiveness of alternative approaches to them, and to interpret the advantages and disadvantages of alternative responses, given its political, economic, social, and ecological interests. For all the talk of capacity building, especially in the Earth Summit's Agenda 21, there is, as yet, no plan to provide this kind of support to countries that need it.

Countries with marginal legal and scientific resources need expert advice to help them prepare for both caucuses and full-fledged global negotiations. International scientific bodies (such as the Intergovernmental Panel on Climate Change, IPCC) do provide technical analysis, but they are not in a position to help individual countries interpret the strate-

gic implications of their findings. Indeed, when the IPCC sought to summarize the implications of its research on global warming, it was accused of politicizing the issue. All efforts to make the "normative leap" from analysis to prescription are open to political challenge.

The most effective way to handle the intelligence-sharing problem would be by building on the process of regional caucusing described in the first recommendation. Joint fact-finding by mutually agreed upon advisers can help groups of countries that have shared interests but are not equipped on their own to undertake the questioning and reflection that should precede global negotiations. However, because strategic considerations preclude such openness in all situations, individual countries—even in meetings of like-minded countries and organizations—will always need confidential strategic advisers they can trust. Some national leaders are likely to oppose the presence of nongovernmental representatives at either regional caucuses or national briefing sessions. They are likely to be suspicious of all advisers who are not part of their governmental staffs. This is a shortsighted and self-defeating position (but, unfortunately, not an uncommon one). For one thing, consultants currently doing preparatory fact-finding or background research for governmental staff are often outsiders. Why, then, is it acceptable for these individuals to be involved behind the scenes, but not for other "unofficials" to attend prenegotiation briefings?

One potential solution to this problem is to require all who participate to sign a pledge of confidentiality. Persons who will not sign should not be involved. Those who violate their pledge should be excluded in the future (and so, too, should their organizations). Obviously, for countries with no tradition of democratic decision making or public access, these arguments will fall on deaf ears. However, a great many democratic nations (and those aspiring to greater openness) have not done all they can to involve nongovernmental interests during the prenegotiation phase of global environmental treaty making, either as advisers or as participants on national negotiating teams.

The presence of nongovernmental representatives can legitimize the posture a country ultimately adopts on an issue, although this is not true if the concerns of nongovernmental interests are invited but ignored. In addition, the presence of nongovernmental interests augments the spectrum of views considered when national interests are clarified and strategies are formulated. This can help even the most powerful leader anticipate national and international reactions and gauge the acceptability of various negotiating postures more effectively before public pronouncements are made. Although opening up prenegotiation sessions to nongovernmental interests can create tensions of various kinds, skilled facilita-

tors (who may well be required to be nationals of the country in which meetings are being held) can help to manage them.

National leaders often have the same adverse reaction to involving nongovernmental interests as they do to using neutrals to facilitate pre-negotiation working sessions (fearing, above all else, that they will look weak if they relinquish control to outsiders), but savvy leaders are growing increasingly aware that "strong leadership" is not defined as an unwillingness to heed good counsel or to take advantage of the assistance of others.

Recommendation 3:

Adopt new approaches to treaty drafting

At present, most countries come to international conferences with their positions on all the issues completely worked out. Indeed, if they did not, they would feel and probably be viewed by their counterparts as unprepared. Moreover, because heads of state cannot always attend, envoys or delegates must be coached to represent them, which means that national positions must be clarified beforehand. Envoys are warned not to improvise; they are supposed to stick to the text prepared and approved ahead of time. Domestic leaders who have gone to great lengths to forge internal agreements before sending someone to represent them at a global conference worry about their delegates' free-lancing. What all this means, of course, is that there is not much room for improvisation. Officials and their representatives must remain faithful to the domestic promises they made, or they will lose the support of the constituencies that elected them and help keep them in power.

Thus, there is a tension between adherence to previously worked out positions and the need to be flexible and responsive when creative offers are put forward by others during negotiations. One way of reconciling that tension is to make clear that certain meetings are, in fact, only brainstorming sessions at which commitments will be neither sought nor accepted. Such gatherings should focus on the preparation of multiple drafts of potential treaties rather than just single drafts with bracketed disagreements. Possible trade-offs should be floated for discussion, but nothing should be finalized.

Much of this kind of interaction can involve "shadow" bargaining, in which a real willingness to accept certain gains or losses is masked, but skilled facilitators should be able to clarify overlapping and conflicting interests, even when the parties are not prepared to be completely candid with each other. Differences can be mapped to the point where it should be relatively easy for individual actors or groups of countries to follow up with bilateral conversations, leading to the preparation of single negotiat-

ing texts that have solid regional support and that highlight (through the use of contingent proposals) the critical disagreements that the largest coalitions will have to resolve.

It may be surprising that starting with multiple versions of a treaty can make it easier to reach consensus, but this is the case. When early multiple drafts of a treaty are prepared in a way that encourages the exploration of underlying interests as well as the formulation of creative options and trade-offs, increased opportunities for maximizing joint gains will emerge that would not otherwise materialize. The next step is for a team of neutrals to gather reactions to the multiple drafts generated at the brainstorming sessions. By "riding the circuit" and meeting privately with leaders or regional caucuses, professional neutrals should be able to synthesize a single text (and contingent proposals) to take into the final stage of negotiations. This also minimizes the need to gather large numbers of formal delegations repeatedly.

Accomplished mediators know how to build consensus among coalitions of countries that daily grow in size and diversity. At some point, though, when conflicting interests within a coalition cannot usefully be bridged, a professional neutral knows that it is time to stop. The larger coalitions that have been formed must then meet face to face, usually designating representatives for a final negotiation. This would be the most efficient and effective process of treaty drafting.

The UN system, unfortunately, has not operated in this fashion. Until recently, very small numbers of powerful nations have designated experts to prepare initial drafts. Most nations remain on the sidelines while the political giants battle it out, as they did in the Montreal Protocol negotiations. When they are finished, the others have a formal opportunity to say yes or no. The most powerful nations, however, do not speak for coalitions that have worked out internal agreements; rather, they represent their own national interests.

This dynamic changed somewhat during the series of preparation sessions that led up to the Earth Summit, and perhaps it has shifted permanently. During the PrepCom process, every country demanded a right to be present at every session, and the nongovernmental interests insisted on the right to be heard as well. The PrepComs were really committees of the whole. Very little got done, though, at most of these sessions because of the difficulty of managing 170-plus official delegations. Moreover, efforts to keep the unofficial groups on the sidelines did not work. The Earth Summit itself—with four thousand official and tens of thousands of unofficial participants—symbolizes the current negotiating situation better than anything else. This was not an efficient consensus-building model.

We seem to have moved from one extreme to the other, from a few

nations or scientific organizations calling all the shots to absolutely everyone wanting a voice in all decisions. It would make more sense to move toward a decentralized, but predictable, regional system in which countries receive the support they need to prepare adequately, and the treaty-drafting process moves step by step, from multiple drafts to a single text, taking account of the need to build larger and larger coalitions.

Recommendation 4:

Expand the roles for nongovernmental interests

Nongovernmental interests (NGIs) have played an increasingly important part in environmental treaty making over the past twenty years. Their contributions still need to be acknowledged and formally affirmed by the United Nations. Ways of ensuring the broadest possible involvement of nongovernmental interests also need to be codified.

During the early stages of treaty negotiations, NGIs broaden the range of views expressed during the analysis of scientific, technical, and legal evidence used to diagnose the seriousness of environmental threats. They broaden the scope of the peer-review process in making sense of conflicting scientific evidence. During negotiations, sometimes without being invited, NGIs offer proposals, craft possible bargains, or work behind the scenes to "sell" a particular package. Merely by their presence, they add a degree of legitimacy to the treaties that finally emerge. In the aftermath of treaty negotiations, they can bolster the monitoring efforts of international governmental bodies by pressuring offending nations in ways that official international bodies cannot.

I do not believe that nongovernmental interests should have voting power in formal treaty making. Because few votes are ever taken in such forums, and consensus is necessary to ensure meaningful commitments on the part of signatory countries anyway, this is not a great sacrifice. In fact, voting by official delegates should be avoided, too, because it is inconsistent with the task of consensus-building.

That nongovernmental interests have the right to sit at the negotiating table is a far more significant influence on the process than granting them official voting rights. They should be active participants in treaty making for at least three reasons. First, they can—by influencing public opinion—force national leaders involved in global treaty making to take account of domestic views on an issue. Why not, therefore, bring NGIs to the table in an orderly way? When they are excluded, they are often driven to take extreme positions and to engage in harsh confrontations in order to be heard. Why not avoid this by inviting them to participate as part of national delegations at international conferences?

Second, given the importance of guaranteeing that the consensus rep-

resented by a country's signature reflects a commitment on the part of all its citizens, corporations, and organizations to change their behavior in ways consistent with new agreements, it makes sense to involve as many representatives of these groups as possible in working out the terms of a treaty. Indeed, if new accords are not responsive to the full array of concerns expressed by such groups, implementation will be thwarted or at best, difficult.

Third, nongovernmental interests can hold countries accountable for the promises they make in a treaty, but to do this successfully, they need access to monitoring data and national reports on compliance. In addition, if they are to assist in monitoring and the enforcement of a treaty, it makes sense for them to participate in setting the terms of the treaties they will be helping to enforce. This will increase their understanding of what is actually expected of them, what needs to be measured, and how monitoring results are likely to be interpreted by the other signatories.

The role of nongovernment interests in environmental treaty making should be formalized. Currently, we have a makeshift situation in which the parties to a treaty negotiate the terms of involvement for NGIs each time a new treaty-making effort is begun. We also have the continuing use of parallel "unofficial" conferences, such as the Citizens' Forum held miles apart from the formal meetings in Rio, at which counter or separate versions of each framework convention and declaration were developed. These are not productive; they undermine public confidence in the final treaties, weaken NGI support for the treaties that must be implemented, and reduce the chances that the best thinking of the NGIs will influence the final negotiations.

Full-fledged advisory and monitoring roles for nongovernmental interests would not violate the operating rules of the United Nations. Indeed, Agenda 21 calls on the secretary general of the United Nations to undertake by 1995 a complete review of the ways in which NGIs might be formally included in the environmental-treaty-making process. Although important questions remain about how specific organizations and their representatives should be selected (in response to questions about accountability), these should not be used as an excuse to keep unofficials on the sidelines any longer.

Recommendation 5:

Recategorize countries for the purpose of prescribing action

To avoid lowest-common-denominator responses to environmental threats, countries should be categorized by the extent to which they have caused environmental difficulties for others or by the ability and resources they

have to respond. Different standards of responsibility or performance should be specified for different categories of countries in all environmental treaties.

I. William Zartman has pointed out that exceptions are currently used to get reluctant countries to accept the basic terms of new treaties. This obviously creates some unfairness because all countries in the same category are not necessarily granted the same privileges. The Montreal Protocol is often cited as the best example of categorizing countries for purposes of holding them to different standards. The protocol initially gave developing countries a ten-year "grace" period to comply with the deadline for phasing out CFCs. The grace period has been interpreted by some as a way of serving Northern industrial interests (that would have been allowed to supply the developing world with CFCs during the ten-year period), but it did differentiate among countries effectively.

We also have the precedent of groups of countries setting higher than required thresholds or earlier deadlines for the cutback of regulated substances. The group of African countries, for example, that signed the Bamako Convention wanted to restrict the transshipment of hazardous wastes beyond the requirements of the Basel Convention because they were not satisfied with that convention. These actions are not quite the same as categorizing countries for purposes of assigning responsibility or allocating resources within the terms of a treaty. The differentiation of obligations (such as the designation of countries as members of the 30-percent-sulphur-dioxide-reduction "club" established under the 1979 Long-Range Transboundary Air Pollution Convention) is closer to the kind of categorization that is most desirable.

Each treaty-making effort ought to explore a range of country categorizations, especially when multiple treaty drafts are developed during pre-negotiations. The key objective is to ensure that as many countries as possible believe that they are being treated fairly.

Recommendation 6:

Reinforce a better balance between science and politics

The integrity of scientific and technical analysis is undermined when it is used to justify politically expedient views. Although the interpretation of data almost always requires the application of nonobjective judgments, forecasts and models must nonetheless be credible in the eyes of those who need to take such evidence into account in making decisions. A fair sampling of scientific opinion is necessary to establish credibility. The United States, for instance, has very little impact on the thinking of other countries when it presents the views of only those scientists who remain skeptical about the problem of global warming.

All nations should help to strengthen collaborative international scientific institutions because these are more likely than national institutes to generate forecasts and analyses that will be viewed as credible by a cross-section of countries. Even here, though, there are dangers. For example, several of the IPCC working groups were sharply criticized by nongovernmental organizations when disparities in their scientific findings appeared. This may well have been caused by the fact that many IPCC delegates were government officials instructed by their ministries to ensure that certain findings did or did not emerge.

World policy-making bodies should not look to transnational scientific groups for policy recommendations or even definitive interpretations of scientific findings. These groups best serve global needs when they present the full range of scientific research, underscoring—but not attempting to resolve—the disagreements among technical experts.

Economic and ecological systems are too complex and our knowledge too primitive to permit us to predict the future with confidence. Therefore, agreements and alternative courses of action should anticipate various "futures." Treaty tightening, in this case, does not mean avoiding all prescription until irrefutable evidence is in (or a "smoking gun" is in hand); rather, it suggests that contingent strategies contained in multiple protocols should be prepared simultaneously. Stakeholders should commit to future behaviors and responsibilities that will be triggered only if certain milestones are passed. For example, the next round of climate-change protocols might require different sets of countries to cut back their emissions of certain greenhouse gases by preset amounts if, and only if, monitoring results show that quantified thresholds (measured in agreed-upon ways) have been passed. A contingency approach to handling uncertainty can yield agreements among countries and nongovernmental interests that disagree violently on how the future is likely to unfold. They do not need to agree on a forecast; they need to agree only on the responses that will be appropriate if certain events come about.

Recommendation 7: Encourage issue linkage

Although there initially may be daunting institutional difficulties to overcome, the advantages of finding creative linkages across previously independent policy arenas are enormous. Linkage can generate incentives (especially economic incentives) that can change a country's calculation about whether it should come to the bargaining table or whether it should sign a particular treaty. This means that several treaties should always be negotiated simultaneously. It also means that financial arrangements indicating who will contribute to the GEF (or its successor) and who will receive

assistance should always be on the table. Potential linkages between the substance of proposed environmental management treaties and various kinds of compensation may be the key to getting developing countries to accepting new regimes that they would otherwise find objectionable.

The creation of the GEF was a very important first step in this effort. The greater its scope of operations and funding, the easier it will be to use financial linkage to overcome resistance to the policy content of new treaties. Obviously, the governance of the GEF needs to be modified still further to ensure that the nations of the developing world are confident that the administrative entity in charge will be responsive to their interests. Moreover, financial compensation, while enormously helpful, is not sufficient.

The current round of negotiations over the General Agreement on Tariffs and Trade barely addressed environmental regulations, and when it did, it was only to ensure that nations did not set their environmental regulations in a way that is out of line with their trading partners. Just how this will play out, however, is not clear. Moreover, additional opportunities to make progress on environmental treaties by tying agreement to possible benefits under GATT were missed. The North American Free Trade Agreement (NAFTA) between the United States, Mexico, and Canada provides still another example of the need to link environmental protection and trade agreements. The linkage was made in the NAFTA negotiations, but the focus was primarily on "harmonizing" environmental regulations rather than on providing economic benefits in exchange for more vigorous efforts to ensure environmental quality.

If future efforts to implement climate-change protocols reach a deadlock over the imposition of a carbon tax on the use of all fossil fuels, will it be possible to make explicit adjustments in the terms of GATT to compensate countries on whom such a tax falls most heavily? Theoretically, there is nothing to prohibit this kind of linkage; indeed, trades of this sort might hold the key to breaking an impasse. The more there is to trade, the greater the chances of closing a gap between disputants.

The arguments against linkage are primarily logistical; that is, given the complexity of global negotiations it seems counterproductive to create still further complication by treating two or more separate negotiations as if they were interlocked. Orchestrating such linked negotiations implies that multiple sets of relationships can be integrated. Furthermore, once linkage is encouraged, where will it end? One of the oft-noted complaints about the General Assembly of the United Nations is that small countries regularly insist that their demands on completely unrelated matters be addressed when important international debates on other subjects are under way.

The diplomatic complexity is not likely to be as significant as it may seem at first. Moreover, the same countries will be involved in parallel negotiations whether they are officially linked or not. Indeed, because representatives from the same countries are likely to see each other repeatedly, linkages are bound to evolve. Formalizing these interconnections ought to be the task of the UN Commission on Sustainable Development. Opportunities for linkage will present themselves to the parties and succeed or not. In either case it is probably not going to be possible to write formal rules governing acceptable and unacceptable linkage. Ethical considerations (that is, demands for linkage bordering on blackmail) will be seen for what they are and brushed aside by the majority of the countries involved. Acceptable linkages are those achieved by mutual consent.

Recommendation 8:

Remove penalties for constructive unilateral action

Some nations fear that if they act unilaterally to tighten environmental regulations at home, they will find themselves at a competitive disadvantage when international agreements are finally signed. Indeed, some leaders have argued that their countries should wait until international accords that specify the minimum actions required are signed before they enact domestic legislation. It will be easier for them to go from having no regulation to the level required by a new treaty than it would be to ratchet up from their first level of regulation to still higher levels. The cost to a country of a first round of regulation is usually less than the cost of later efforts to reach higher levels of environmental quality.³

To encourage rather than discourage countries from taking positive legislative steps domestically, thresholds for gauging progress should be retroactive. That is, baselines used to assess progress should always be set several years prior to the year in which treaties are drafted so that countries that took constructive action on their own will be able to count the improvements they made toward the new treaty requirements.

In addition, regional clusters of countries should be encouraged to make informal alliances with each other, through which they can commit themselves to the proposition that actions they take after a certain date (but prior to formal global action) must be counted as progress toward any new worldwide standard. If a large enough set of countries agrees not to support any treaty that does not honor such an agreement, it can block global action. The goal, of course, is not to make it more difficult to generate agreement on new treaties but, rather, to create ongoing incentives for countries to take constructive unilateral action. Because the goal of treaty making is to push countries in this direction, such incentives would not be inappropriate.

Recommendation 9:

Encourage the media to play a more educative role

The mass media have a dual role to play: reporting events and educating the public. Given the increasingly important part that environmental diplomacy plays in international relations, the media must provide additional space and time for environmental news, both in anticipating coming events and in covering ongoing negotiations. The worldwide coverage of the Earth Summit was impressive, but since the end of the Rio meeting there has been little or no discussion of the serious problems that the signatories will face as they seek to implement the terms of the vague treaties that were signed.

There are several reasons that global environmental issues go unreported in many parts of the world. First, many media outlets do not have the capacity to report on such events. Few journalists have been schooled sufficiently to make these complex issues understandable. Second, the media often view their mission quite narrowly. They accept responsibility for reporting on events but not for public education. Of course, if the public is not aware of how important global environmental threats and negotiations are, they will not create a demand for such coverage. In the absence of such a demand, the media assert that the public is not interested. Ultimately, this becomes a self-fulfilling prophecy.

A worldwide network of scientific organizations and academic institutions ought to take responsibility for building an environmental data bank that the media can tap into electronically from anywhere in the world. Short midcareer training programs for potential environmental reporters ought to be available in every region. Excellence in environmental journalism, particularly for efforts to increase public awareness, ought to receive lavish praise and awards from UNEP and other international organizations.

There were thousands of credentialed members of the journalistic fraternity present at the Earth Summit, but the coverage was depressingly thin. In country after country, basic introductions to the underlying environmental risks, summaries of relevant scientific findings, and the background on the overall process of global treaty making were missing from the daily coverage of events. For the cognoscenti, there were inside reports on who said what, and who did what to whom, but for the lay public the issues were not well presented. In newspapers from ten major capitals that I reviewed during the two weeks of the Earth Summit, I was unable to find even one clearly written, informative overview of the work of the IPCC or a good explanation of the sources of scientific disagreement on the risks associated with global warming. Conversations with colleagues in a num-

ber of countries indicate that television coverage was even less impressive. We must do more to encourage the media to take its public education responsibilities seriously.

Recommendation 10:

No changes in the structure of the United Nations are required

The recommendations of the Salzburg Initiative can be implemented without amending the UN Charter. Although efforts to push for major realignments of the elements of the UN system may, in fact, be under way, the recommendations enumerated in the Salzburg Initiative do not require such structural change.

An independent group of current and past heads of state, including Jimmy Carter, Vaclav Havel, and Julius Nyerere has recommended that a world summit on global governance be held in 1995—the fiftieth anniversary of the founding of the United Nations—to “reexamine the organization’s structure and operating procedures in light of altered world priorities and conditions since 1945.” Such a reexamination might consider some of the more ambitious reforms that have been suggested by governmental and nongovernmental groups over the past few years, including a change in the composition and voting requirements of the Security Council, creation of a Red Cross–like emergency response unit (for example, a “Green Cross”) with authority to intervene anywhere in response to environmental emergencies; creation of a world environmental authority to oversee and integrate international environmental and development efforts; establishment of a special environment tribunal with branches in various parts of the world; and establishment of an international environmental ombudsman, with the power to request advisory opinions from the International Court of Justice and to bring disputes before a new environmental chamber of the World Court.

Such reforms did not receive support at Rio, but there was agreement on the need to create a sustainable development commission to monitor progress on implementation of Agenda 21. The 7 June 1992 issue of the *New York Times* (p. 18) reported that this would be a “high-level watchdog group to insure that governments respect the pledges” they made at the Earth Summit and that this new international body would “rely heavily on evidence gathered by private environmental groups.” The actual language of the agreement reached at the Earth Summit was somewhat more modest. Chapter 38 of Agenda 21 envisions more of a coordinating unit to pool relevant information from all parts of the United Nations. The new council would “consider information provided by governments, review pro-

gress in implementing the Agenda 21, receive and analyze relevant input from nongovernmental institutions, enhance dialogue within the UN and with outside organizations, provide appropriate recommendations to the General Assembly through the U.N.'s Economic and Social Council, and encourage capacity building."

The *Times* report implied that the new commission would operate along the lines of the UN Human Rights Commission, but this is not an explicit part of the Earth Summit agreement. Moreover, this is not the direction the new commission has chosen for itself. The report indicated that if countries do not provide the information requested, private environmental organizations like the Friends of the Earth and the World Wildlife Fund will presumably "be quick to report delinquencies, just as Amnesty International and other private human rights watchdog groups file complaints with the Human Rights Commission." It is true that the experience of the Human Rights Commission suggests that governments tend to be sensitive to public criticism, and can sometimes be made to change their policies as a result. Still, it is important to look carefully at the Human Rights Commission parallel. Will it be possible for nongovernmental organizations to monitor environmental treaty violations in the same way that Amnesty International monitors human rights abuses? Will there be clear-cut guidelines for determining whether countries are in compliance with environmental treaty requirements? Will countries that are alleged not to have met their environmental treaty obligations be shamed into compliance in the same way that countries have sometimes been when charged with human rights abuses? The answers to these questions depend less on whether the General Assembly decides to give the Commission on Sustainable Development additional powers and more on the creation of an international league of nongovernmental environmental monitoring groups modeled on Amnesty International. What is needed is a strong organizational effort to channel the energy and talent that exist now in the thousands of citizens' groups around the world into a group as influential as Amnesty International.

The General Assembly must also insist on greater coordination within the UN system. Indeed, Agenda 21 calls for an administrative committee on coordination headed by the secretary-general to provide "a vital link between the multilateral financial institutions and the other United Nations bodies at the highest administrative level." All heads of agencies must be called upon to cooperate fully with the secretary-general in order to make such a committee effective. What is most interesting about the section of Agenda 21 dealing with international institutional arrangements (Chapter 38) is that the Earth Summit participants stayed entirely within the boundaries of the existing UN structure. They devoted great care to

showing how the Commission on Sustainable Development is a natural outgrowth of the Economic and Social Council's current assignments, and how the council had already been charged by the General Assembly with assisting in efforts to implement the results of the UN Conference on Environment and Development.

There is very little attention given in Agenda 21 to the steps that might be taken to give the International Court of Justice a larger role in resolving disputes surrounding the enforcement of global environmental treaties. Both the Climate Change Convention and the Biodiversity Convention assume that the World Court can and will play a dispute-resolution role, but neither convention talks about augmenting the court's capacity to do this. Establishing a special environmental chamber of the International Court of Justice might be helpful (just to handle the increased caseload resulting from the signing of new treaties), but this is not a prerequisite for effective dispute resolution. Increasing the World Court's mediating role would not require formal action of any kind. The court could make its good offices available for mediation any time it chose to do so.

Whether it is the United Nations (through UNITAR, the UN university, or some other program) or an ad hoc consortium of universities around the world that takes the lead, it is important that an academy for environmental diplomacy be created. Such a body should serve as a training locale for national and nongovernmental representatives to build their environmental negotiation skills. It might also serve as a clearinghouse for relevant scholarly work.

Synchronizing Worldwide Expectations

During the months preceding the Earth Summit, the negotiations over the Climate Change Convention snagged several times, usually as the result of the efforts of some countries to get others to back down or accept less. Part of the problem, though, was also the result of a serious mismatch in expectations. For some leaders, the Earth Summit was a once-in-a-lifetime opportunity to shatter the prevailing logic of Western-style economic growth, and to force the North to accept limitations on its use of world resources. For them, the negotiations over individual treaties provided an occasion to raise much larger concerns. Other leaders were more interested in consolidating support for emerging general principles—like sustainability and the “polluter pays”—so that these would become a starting point in all future environmental treaty negotiations. Still others were primarily concerned with the issue of global warming; they wanted to extract commitments that would slow the rate of global warming, or even reverse it. In sum, there were not just the usual national interests in

conflict; rather, there were marked differences in expectations regarding what could and should be accomplished at the Earth Summit, or indeed in all global environmental negotiations.

In the context of the climate change and biodiversity negotiations, the Group of Seventy-seven insisted that the obligations of the developing nations should be discussed only if the developed countries agreed to provide new and additional financial resources, and to cut their emissions of greenhouse gases. The developed nations argued that they would provide new and additional financial resources only if the developing world would agree to adopt and implement national policies aimed at reducing emissions of greenhouse gases in the South, and would accept reporting provisions that allowed national claims to be monitored by outsiders. Among the industrialized countries there were differences between those favoring targets and timetables and those opposed. There was also disagreement about how much money to provide, and whether additional aid should have strings attached. Within the South, there were disagreements, too. The most significant focused on the degree to which developing countries should be required to cut emission levels and on the extent to which monitoring arrangements infringing on sovereignty should be permitted.

One hundred fifty-plus nations agreed on a formula in which the North agreed to give more money (with a bit more Southern control over its allocation) in exchange for the South's accepting a share of the responsibility for emission reductions, as well as greater accountability for the accuracy of its monitoring reports. In the end, the unwillingness of the United States to accept specific emission targets and timetables (but its willingness to add money to the Global Environmental Facility) made it easy for the South to agree to the basic trade. The Europeans, who had adopted timetables and targets for the reduction of greenhouse gas emissions before Rio, had no choice but to go along. They needed the United States and Japan to add money to the GEF, and some kind of climate convention was required to justify all the attention they had devoted to the subject, as well as the considerable costs they have taken on by adopting unilateral emission cutbacks.

I. William Zartman has suggested that all international negotiations are a matter of "the parties separately preparing and jointly identifying a formula that defines the problem in a resolvable way, and then translating the principles of the formula into specific details for implementation." The chances of arriving at a formula are limited only by each side's belief that its "minimum requirements" on priority issues must be met, and that the "maximum acceptable levels" it can offer others on the issues of greatest importance to them must not be exceeded. The search for a formula

was certainly at issue in the climate-change negotiations, but the fundamental mismatch between the North and the South's expectations was not addressed. Although they found a formula, again, on a treaty-by-treaty basis, this approach may have outlived its usefulness.

Zartman suggests that the Vienna Convention on the Ozone Layer was built around a formula that offered "a loose framework agreement in exchange for research and a commitment to a workshop and future conference." In other words, proponents of stricter regulation accepted less than they wanted in exchange for a chance to get evidence that could subsequently be used to tighten the treaty. The Montreal Protocol, Zartman asserts, embodied still another formula: "variable production and consumption cutbacks in exchange for individual exceptions." Finally, the London Amendments to the Montreal Protocol offered "obligatory phaseouts in exchange for financial incentives." Zartman believes that all successful formulas offer a compromise between hard and soft camps and produce partial results that "fall forward" toward tougher binding obligations as new evidence is gathered.

From one perspective, Zartman may be right: the initial negotiations over a number of framework conventions, including the Climate Change Convention, laid out basic formulas that did not require one side to drop below its minimum or offer more than its maximum. Negotiations moved, as Zartman suggests, from "whether" to do a certain thing, in the main round, to "when, what, and how" in subsequent rounds. As this becomes a common pattern, though, some countries may find the results less and less satisfactory, especially if they are interested in moving toward a new, larger North-South bargain. If the South does not see movement toward a new global bargain, it may well refuse to accept increments in compensation in exchange for its support of additional treaties.

Expectations are now sufficiently scrambled that it is likely to become increasingly difficult to find simple formulas to overcome North-South conflicts on a treaty-by-treaty basis. At the very least, we will probably need to synchronize expectations more carefully.

A New Three-Stage Process

I recommend that the UN General Assembly adopt a new approach to environmental treaty making that will systematize environmental treaty negotiations and synchronize global expectations.⁴ More specifically, all countries should be able to rely on the fact that global environmental treaty making will move through a predictable three-stage process with explicit time limits and voting requirements. (See Table 4).

Stage I should focus primarily on scoping the threat and defining the

Table 4 A New Three-Stage Global Environmental Treaty-Making Process

<i>Stage/Purpose</i>	<i>Time Allotted</i>	<i>Vote Required</i>	<i>Product</i>
I. Scoping the threat and defining the key principles that will be applied in formulating a global response.	Six months from the time that 50% of the General Assembly (GA) agrees to begin.	50% of the General Assembly to begin; 50% of the GA must agree to go on to Stage II.	Report of scientific findings; statement of principles; signed agreement (no need to ratify).
II. Agreeing on general commitments, specific commitments, financial arrangements, institutional arrangements, reporting and monitoring requirements. Formulating multiple protocols with clear triggers.	Twelve months to start after Stage I is completed; twenty-four months to finish once negotiations begin; stop for twenty-four months if unsuccessful.	50% of those who begin Stage II must ratify for it to come into force; if negotiations stop, 50% of all GA members must vote to resume.	Signed convention and multiple protocols (must be ratified).
III. Reviewing the results of the Stage II treaty and tightening all elements of the treaty and the protocols.	Stage III would run for three years after signing; parties would then meet again to tighten all elements and provisions of relevant protocols; continued review and further amendment always possible.	66% of those who ratified Stage II treaty must agree to tightening amendments; delay for twenty-four months if unsuccessful; 50% of all signatories must agree to restart Stage III tightening effort.	Amended convention and amended protocols (no need to ratify).

key principles (for example, the precautionary principle, the "polluter-pays" principle, the principle of sustainability, the principle of additionality in the allocation of aid) that will be applied in formulating a worldwide response to a specific problem. Each time fifty percent of the United Nations member countries agree that a risk or a threat needs to be addressed, a Stage I treaty-making process should be initiated by the UN Administrative Committee on Coordination. Stage I should be limited to six months (that is, from the time that 50 percent of the members indicate a willingness to go ahead). The goal should be a written document that summarizes the scientific basis for regarding the risk as serious and enumerates that principles that will guide the global search for an appropriate response.

Assuming Stage I is successful, Stage II should begin within one year of the time Stage I was initiated. Stage II should focus on the *general commitments* that signatories will be expected to make (such as a promise to change certain domestic policies or participate in collaborative research efforts); *specific commitments* that will apply to various categories of countries (that is, timetables, targets, and so on); *financial arrangements* that indicate who will contribute and who will receive how much money (or technology); *institutional arrangements*, including the designation of a secretariat, aimed at ensuring effective implementation; and *reporting or monitoring requirements* by which signatories will be expected to abide. All other aspects of the treaty (described in Table 2) such as the timing and mechanisms for ratification, dispute resolution techniques, and reconvening procedures should be standardized. The goal, again, should be a written document that goes beyond most framework conventions in specificity.

Negotiation for a Stage II treaty should have a twenty-four-month time limit. If fifty percent of the UN General Assembly members who begin the Stage II negotiations do not accept the result of a two-year effort, treaty making on that subject should be curtailed for at least two years. At that time, an effort could be made to start, again, if enough countries concur. The point is to cut off unproductive negotiations. Although this might appear to undercut environmental protection objectives, I think it will create tremendous pressure on the treaty advocates to work as hard as possible to meet the legitimate concerns of those who have doubts about the need for or the efficacy of a proposed new treaty. Explicit timetables and voting requirements will clarify exactly where negotiations stand at every point. The fifty percent voting required will ensure the credibility and legitimacy of the agreements that do emerge.

Assuming there is support to move forward, UN members agreeing to the Stage II treaty draft would negotiate and ratify multiple protocols, as well as describe various actions that would be taken in the future if the

threat or problem disappeared or worsened. Ratification of the Stage II treaty draft plus the protocols would trigger the beginning of Stage III.

Stage III would last three years and focus on annual reviews of the reporting and monitoring results of the first several years of implementation. This would lead to recalibration of all six elements addressed in Stages I and II. A Stage III three-year learning effort would lead to treaty tightening. Stage III should run for thirty-six months after the signing of a Stage II treaty. It should occur only if two-thirds of the Stage II signatories vote to initiate a Stage III effort. If two-thirds of the countries involved at that point cannot agree, Stage III should be curtailed for at least twenty-four months, and reinstated only if at least fifty percent of all UN members agree to restart the process. Again, this will pressure those who want to move ahead to search for an acceptable formula. The product of Stage III would be a tightened treaty with a revised set of protocols to guide implementation.

Stage III treaties should contain multiple protocols (that is, contingent sets of requirements) with clear "triggers." These requirements would be revised after several years of monitoring the results of Stage III and thus would be easier to support than hypothetical requirements contained in current framework conventions. Stage III treaties would also include provisions for continued review and amendment, but these would be more likely to produce real results more of the time than the products of the existing convention-protocol system.

Such a three-stage system would have to be carefully managed, perhaps by an adequately staffed Commission on Sustainable Development, or perhaps by UNEP. It would require the full support of the UN secretary general and the General Assembly. It would allow appropriately linked treaties to be taken up simultaneously, and require capable secretariats to handle all aspects of Stage III treaty-tightening negotiations, including mediation if necessary.

A synchronized, coordinated system of this sort would allow countries and nongovernmental interests to marshal their resources so that they could participate in those aspects of specific treaty making most important to them. It would avoid the confusion and confrontation that surrounded the Climate Change, Biodiversity, and Forest negotiations during the Earth Summit. Prior to the Rio meeting, some countries (especially in Europe) were holding out for the equivalent of a Stage III climate-change treaty—including the broadest possible set of principles; requiring rigorous general and specific obligations; seeking full funding for a set of elaborate financial arrangements; creating a new institutional framework for implementation; and calling for elaborate reporting and monitoring requirements. The United States and several other countries were more

interested in something closer to a Stage I treaty, with no specific obligations, no new financial requirements, and no new institutional arrangements.

Right up until the Earth Summit, the Europeans declared that they would accept nothing less than what I am calling a Stage III treaty. Indeed, a number of European leaders indicated that they would prefer to have no treaty at all rather than let the United States have the watered-down version (that is, a Stage I-type treaty with no targets or timetables) for which it was pushing. The United States insisted on the equivalent of a Stage I treaty or nothing, and without the financial commitment of the United States, a basic bargain was out of reach.

The three-stage approach I am recommending would avoid this kind of confrontation, and permit step-by-step movement on a predictable schedule toward the best possible treaty or package of treaties. As it stands now, we have no idea when or whether there will be follow-up protocols to the Climate Change Convention. Although the agreements signed in Rio call for a follow-up conference of the signatories by 1999 (to review national reports on what countries are doing to reduce the emission of greenhouse gases), there is no guarantee that fifty nations will actually ratify the treaty or that when they do meet, there will be scientific evidence that allows them to "fall forward" to a binding set of emission targets and timetables. For all we know, the Earth Summit might mark the last worldwide effort to push for sustainable development. A more predictable schedule and voting system would guard against this possibility.

The most important differences between the traditional convention-protocol approach as it has evolved over the past decade and the three-stage process I am proposing have to do with predictability. The three-stage process would operate on a schedule that everyone would know ahead of time. The votes required to move through the process would be clear (and decisions would not require unanimity). The elements included in each treaty would not vary, nor would the criteria for measuring adequate progress (or for halting the treaty-making process). Greater predictability would allow the United Nations, all of its members, and non-governmental groups interested in participating in treaty making to target their resources, organize their preparatory and coalition-building efforts, and anticipate potential linkages among treaty-making efforts scheduled during the same window in time.

Let me anticipate several challenges to my three-stage process. First, some participants will argue that the schedule I propose is artificial, and that the current open-ended process provides helpful flexibility. They prefer to let each treaty-making effort run its course. My view is that we pay too high a price for such flexibility. Prior to the Earth Summit, the

complaint was that treaty making took too long—often a decade or more from the point at which scientific meetings started until the first round of treaty tightening produced a meaningful protocol. Preparations for the Earth Summit went too fast, allowing too little time for consensus building on a range of meaningful commitments (for example, timetables, targets, and financial arrangements). The schedule I describe, or something like it, offers a reasonable middle ground.

Some nongovernmental organizations will suggest that the voting thresholds I am suggesting may bring a halt to all environmental treaty making. They are willing to continue the current practice of having only small groups of countries work on and sign certain conventions so that there is at least some action in the face of significant threats. I am more concerned than they are about the implementability and effectiveness of treaties that do not represent genuine commitments by large segments of the world's population.

Finally, there are likely to be critics of the three-stage process who will argue that what I am proposing is not that different from the current treaty-making system. It still presupposes national sovereignty and a continuation of the one-country, one-vote system in the United Nations. It offers no guarantee of collective action in the face of serious threats. It still presumes five to eight years will be required to build support for the equivalent of tightened protocols. These criticisms are correct, but they underestimate the significance of the key differences.

The synchronization of worldwide expectations and adoption of the three-stage approach would accomplish three important goals. First, the all-or-nothing quality of the Rio debates would be avoided. Because the steps in the process would be clear (and the later phases and voting rules inevitable), countries would not have to be so demanding in the early stages of treaty negotiations. The Climate Change Convention was almost scuttled because too many battles were being fought by countries that thought they had to win all their key points in this one negotiation (for fear there might not be subsequent negotiations on global warming). Second, the three-stage approach facilitates issue linkage and encourages adoption of contingent protocols. Without a clear picture and overall management of the broader treaty-making agenda, effective linkage and contingent protocols are much harder to achieve. Finally, the three-stage process creates an explicit collaborative learning process. The primary function of monitoring is for treaty adjustment and improvement rather than ensuring compliance. This creates a more constructive environment and ought to improve working relationships.

The three-stage process addresses the North-South split by making an overarching global bargaining effort possible. A more predictable and or-

ganized treaty-making system will make this metalevel of negotiation more explicit. The three-stage approach addresses the sovereignty issue by making it easier for nongovernmental organizations to participate effectively in treaty making. Moreover, many smaller countries should be less defensive because the voting thresholds guarantee that a few large countries will not be able to bully them or go ahead without them. The three-stage process increases the incentives to bargain, in part, because the risk of being co-opted is less when the steps and voting thresholds are explicit. In part, participating in Stage I negotiations requires no prior commitment to join Stage II. More countries will have a chance to learn about possible environmental threats and address larger questions of principle without having to make any commitments or implied commitments to take action.

A move to the three-stage process will do two other things. It will strengthen the hand of secretariats by giving them a clear mandate and making it clear that consensus-building is the goal. It will also make it easier for the UN secretary-general to maintain a five-year management perspective on negotiations concerning global environmental treaties. Now, because of the haphazard nature of the treaty-making process, scheduling and budgeting are next to impossible.

What We Need from the United Nations

Over the next few years, as the fiftieth anniversary of the United Nations approaches, there is likely to be a great deal of attention focused on the need to reform the array of multilateral institutions that has emerged willy-nilly. The Stockholm Initiative, by Jimmy Carter and other world leaders, calling for a world summit on global governance, may help to crystallize the reform agenda. My guess is, though, that environmental issues will not drive these discussions; instead, the operations of world economic institutions and the need to redefine the peacemaking and peacekeeping roles of the United Nations are more likely to receive the greatest attention.

If these debates bog down, as I believe they will, in a battle between those who favor a tilt toward world governance and those who are as committed as ever to national sovereignty, it should not affect the chances of moving forward with the reforms contained in the Salzburg Initiative or the adoption of new UN bylaws embodying the three-stage process for global environmental treaty-making. Nor should such a debate affect the work of the Commission of Sustainable Development, the strengthening of UNEP, or a push for greater coordination among UN agencies involved in sustainable development efforts.

The Commission on Sustainable Development is a natural outgrowth of the Brundtland Commission's efforts and is legitimized by the accords

signed at the Earth Summit. The Rio Declaration fell far short of the Earth Charter originally envisioned by the UNCED secretary-general, but the General Assembly may still decide to use it as the basis for an environmental declaration on a par with the Universal Declaration of Human Rights. And, even if it does not rewrite international law (the way the Brundtland Commission recommended), it may still be a very important piece of the new machinery that the Commission on Sustainable Development creates to implement Agenda 21.

The creation of the new commission in no way minimizes the need to expand the operations of UNEP, which must have additional resources and an expanded mandate so it can operate as more of an executive agency. There is an enormous amount of substantive (as opposed to administrative) work that needs to be done on global environmental management, and UNEP is the agency with the experience to do it. I am thinking particularly of the basic ecological research that must be encouraged and coordinated so that future environmental treaty making rests on a more solid scientific foundation.

Greater coordination among UN agencies involved in sustainable development activities also can move ahead through informal interagency agreements that require no change in the UN Charter. The changing role of the World Bank and UNDP, represented by their collaboration in the GEF, needs to be codified. The long-term financing of the GEF, unresolved at the Earth Summit, must be revisited. Whether it is the 0.7 percent of GNP target or some other method of collecting ODA, the GEF must be put on a permanent and automatic financial footing. The UN agencies should probably create jointly run technical assistance centers in each region of the world. UNEP, UNDP, GEF, the World Bank, and other agencies could operate out of these shared field offices. This can be done in conjunction with nongovernmental organizations or regional economic institutions as appropriate.

The General Assembly will need to clarify the role it envisions for nongovernmental organizations in global environmental treaty making. As Marc Levy, Robert Keohane, and Peter Haas have written in their extensive study of international environmental institutions, nongovernmental organizations have key roles to play in "increasing nongovernmental concern, enhancing the contractual environment, and increasing national capacity."⁵ NGOs can be called upon to disseminate scientific knowledge, increase public awareness of environmental threats, provide bargaining forums, help with monitoring, increase national and international accountability, and help to transfer management and technical expertise. To accomplish these tasks, they must maintain their independence, although

this does not mean that they cannot play a role on national delegations or sit at the table in international negotiations.

One of the most radical reforms of the United Nations I have heard of thus far would involve the creation of a bicameral decision-making system for world governance—a lower house of regional representatives elected or selected by constituencies of all kinds and an upper house of national representatives. Just how these two houses would operate in relation to each other is not clear, nor has anyone suggested a mechanism for choosing a manageable number of delegates to the lower house. Yet, the intention is clear. What is surprising, I think, is that the advantages of such a bicameral system for global decision making over the reforms I have suggested are not immediately apparent. There is a great deal that can be done to increase the effectiveness and responsiveness of the UN system that does not require radical reform.

Most of the important environmental management issues over the next century are likely to be global rather than regional or local. To address these effectively, new ways of enabling international cooperation will be required. To the extent that national sovereignty remains in place, the reforms outlined above offer both a rationale and the means needed to ensure more effective global environmental treaty making.