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Fixing the Flawed U.N. Approach to International Environmental Policy

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The practice of addressing international environmental concerns (and, increasingly, domestic ones) through global forums is fraught with problems and contradicts conservative principles of free markets, property rights, individual liberty, and devolution of decision-making to the most local level possible. By agreeing to address environmental problems through global negotiations, the United States frequently places its negotiators in a position of weakness as merely one of numerous "equal" participants, the goal of many of whom is to ensure that the U.S. assumes disproportionate obligations. Another systematic problem is that U.S. participants often misapprehend that the object of the negotiation is the achievement of an agreement, rather than representing the best interests of the United States. The result is often an ineffective, costly exercise that fails to address key U.S. concerns or would inappropriately infringe on the economic and individual liberties of American citizens. Instead of this flawed approach, the United States should assess environmental concerns pragmatically, emphasizing that the process should be as narrowly participatory as is practical, acceptable to those states expected to bear the largest share of the costs of implementation, focused on the relevant issue(s), based on sound evidence rather than theoretical conjecture, cost effective, and respectful of the essential role played by free markets and property rights.

Is it true that "global problems require global solutions?" It has become virtually impossible to discuss any transboundary issue involving multiple states without someone trotting out the idea that the issue in question would be better addressed through global negotiations, often under the auspices of the United Nations. Indeed, self-deluded or self-interested proponents of the U.N. and global governance—individuals whose livelihoods and goals depend on the authority of international institutions—are eager to promote this position at every opportunity. The assertion that "global problems require global solutions and global resources"[1] has become so ingrained in international discourse that individuals often recite variations of this cliché as if by rote.

At first blush, this "global solutions" sentiment may seem sensible. After all, given that "global" problems are by definition widespread and pervasive, should not every nation have a say in how they are resolved? And what better place to discuss and resolve these problems than the United Nations or other international organizations where nearly every nation is represented? As U.N. Secretary-General Ban Ki-Moon repeatedly assures us, not only do "global problems demand global solutions," but "the United Nations is, truly, the world's only

1 Paul Wolfowitz, "Opening Address by the President of the World Bank Group," in International Monetary Fund, *Summary Proceedings of the Sixtieth Annual Meeting of the Board of Governors*, September 19–20, 2006, p. 22, http://www.imf.org/external/pubs/ft/summary/60/summary60.pdf (accessed April 12, 2012).

global institution."[2] However, the advocates for concerted global action through the U.N. seldom acknowledge the shortcomings of this strategy.

Foremost among these disadvantages is that negotiations in U.N.-affiliated and other forums open to a broad swath of countries operate principally on the idea of consensus as the basis for legitimate action. Achieving consensus among disparate, often strongly disagreeing parties—let alone "global" consensus—is elusive to say the least and all too often leads to lowest-common-denominator standards, clunky agreements weakened by unrelated issues, and mandates that have been included only to elicit support from reluctant nations.

Moreover, the proposed responses frequently result in uneven commitments. Often, only a relatively small number of countries have direct interests in a specific environmental concern or are in a position to contribute substantively to resolving the problem. These few countries are expected to bear the bulk of the burden, while the presence of the rest of the "globe" often serves more as a costly distraction than as a helpful addition. As a result, the inclusion of nations with little at stake or minimal ability to effect a solution to a problem can impede international action in a way that would not obstruct an effort addressed through selective participation.

The situation is further complicated by the influential role played by non-governmental organizations that advocate ideological agendas, allegedly on behalf of civil society, at the international level. As Jessica Tuchman Mathews, then vice president of the World Resources Institute and currently president of the Carnegie Endowment for International Peace, observed years ago, "The United Nations charter may still forbid outside interference in the domestic affairs of member states, but unequivocally 'domestic' concerns are becoming an endangered species."[3] These NGOs often find international negotiations more receptive to their policy preferences than domestic electorates and thus embrace such talks as a means for circumventing domestic opposition. This circumvention can elicit opposition to the point where even moderate proposals are viewed as a predicate to more radical ones.

Such is the paradox: Insisting on global solutions to global problems all too often weakens efforts to resolve them, dilutes focus and diverts resources away from the central issue, and eschews the process critical for attaining broad-based support in democratic societies.

Increasingly, however, more issues, particularly environmental ones, are being framed as global issues that require global action. Further, issues routinely become transmuted into "problems" with a breathlessness dictated by the "urgency" of the action they are said to require. The result is that the U.S. is pressured to engage in a flawed negotiating process and to support undesirable, unworkable outcomes. The process takes on a life of its own, and reaching an agreement becomes the goal, even if common sense and practical experience indicate that an alternative approach—possibly any other approach—would be preferable.

Evolution of Global Environmental Policy

Environmental policy is a recent focus in international affairs. Because a society must attain a particular level of wealth before placing a high value on environmental protection in the prevailing sense of the term, the current enthusiasm for international environmental agreements and regulation has coincided with the spread of wealth creation around the world, most particularly in the past 50 years.[4] The use of widely participatory multilateral treaties to address shared environmental concerns among nations coincided with the emergence of a central role for the U.N. in facilitating and promoting global efforts to address environmental issues.

2 UN News Centre, "UN Best-Placed to Tackle Global Problems in Today's World—Ban Ki-moon," July 26, 2007, at http://www.un.org/apps/news/story.asp?NewsID=23345 (accessed April 12, 2012).

3 Jessica Tuchman Mathews, "Chantilly Crossroads," *The Washington Post*, February 10, 1991, p. C7.

4 See Iain Murray, *The Really Inconvenient Truths: Seven Environmental Catastrophes Liberals Don't Want You to Know About—Because They Helped Caused Them* (Washington, D.C.: Regnery Publishing, 2008), esp. pp. 216–224.

The U.N.-sponsored 1972 Conference on the Human Environment in Stockholm, the first major international conference on environmental issues, is generally considered to have been the launch point for this trend. The 1972 conference was established to forge a common outlook and common principles to "inspire and guide the peoples of the world in the preservation and enhancement of the human environment."[5] The 1972 Declaration codified the environmental vision for the United Nations and, increasingly, multilateral efforts to address environmental issues generally:

> *In our time, man's capability to transform his surroundings, if used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment. ...*
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> *A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. ... To defend and improve the human environment for present and future generations has become an imperative goal for mankind. ...*[6]

At the core of most of these modern environmental treaties, conferences, regulatory instruments, and bodies is the notion that human activity is harmful because of its consumption of scarce natural resources and destabilization of an inherently fragile global environment. Therefore, human activity and population growth must be governed, regulated, and otherwise forced onto a "sustainable" path. The preferred process for advancing this agenda is through treaties, regulations, and "voluntary" guidelines promulgated through international conferences and organizations.

In other words, the international strategy for addressing environmental issues inspired by the 1972 conference is the very antithesis of a conservative approach to environmental protection as described in Principles II and III. Specifically, the international approach is premised on the belief that natural resources are not resilient and dynamic, but delicate and limited; that free markets and property rights represent a threat to the environment rather than creating incentives for prudent stewardship; and that government must therefore intervene to cordon off resources from the predations of human consumption. This approach to environmental protection—alarmist, intrusive, and anti-market—remains the bedrock upon which current international environmental protection efforts are founded.

The 1972 conference was followed by the U.N. Conferences on Environment and Development (UNCED) in Rio de Janeiro (1992) and Johannesburg (2002); several U.N. Conferences on Human Settlements/Habitat; the U.N. Conference on Population and Development in Cairo; 17 meetings of the parties to the U.N. Framework Convention on Climate Change; and a multitude of other meetings and conferences on various international environmental issues.

The Stockholm Conference also paved the way for the creation of several new U.N. agencies focused on environmental issues, including the U.N. Environment Programme (UNEP) in 1972 and the Global

5 U.N. Environment Programme, "Declaration of the United Nations Conference on the Human Environment," June 16, 1972, http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503&l=en (accessed April 12, 2012).

6 Ibid.

Environment Facility (GEF) in 1991.[7] However, the impact of the environmentalist agenda in the U.N. is by no means limited to these agencies. Indeed, the environmental agenda has permeated the U.N. system to the point that nearly every U.N. agency and program emphasizes that its actions benefit the environment.

The purpose of these U.N. conferences and organizations is to codify and advance what is described (using, at best, non-rigorous definitions) as "sustainable" management of resources and the safeguarding of such resources for the benefit of present and future generations. International law expressed and codified through conventions and treaties negotiated at these forums remains the primary means for advancing this goal.

In general, these conferences and organizations reaffirm the sentiments of the 1972 conference. However, their demands upon participating governments, particularly those of developed countries like the U.S., have become increasingly strident and onerous. Until quite recently, multilateral environmental treaties were relatively issue-specific, limited in scope, and evenly applicable to treaty parties. For instance, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) focused on a discrete issue—the prohibition of trade in endangered species or related goods—and applied treaty requirements equally to state parties. Similarly, the 1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter governs deliberate dumping of waste at sea from planes and aircraft.

As implied by Tuchman Mathews' comment, quoted above, more recent environmental agreements are, however, typically broader in scope and intrude into areas previously considered the province of domestic policy or internal affairs. Notable environmental treaties drafted in the 1990s include the Convention on Biological Diversity, the International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the U.N. Framework Convention on Climate Change (UNFCCC), and the Kyoto Protocol.[8]

These efforts are unidirectional—creating more restrictions and more regulations in a growing number of areas that are set and codified by a central negotiating forum that is dismissive of alternative approaches. The ultimate endpoint of this process is predictable: the criminalization of damage to the environment, as defined by radical environmentalists. Such criminalization has been articulated in a concept called "ecocide," which is defined as the "extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished."[9]

In other words, the intent is to make environmental damage an international crime prosecutable by an international judicial body. If this initiative succeeds—and it is clear that a sizeable constituency in the U.N. and NGO community is favorably inclined toward such a policy—it is certain to be tested on a range of environmentalists' signature issues, especially climate change.

The Kyoto Experience

Of the major multilateral environmental agreements, none better exemplify the flaws and perils of the global solutions effort than the negotiations and agreements to address global warming.

In the 1980s, the environmental movement increasingly asserted

7 The Club of Rome guided U.N. involvement in environmental issues and in the modern environmental movement. Indeed, the agendas of these U.N. organizations were driven by some of that group's stars, such as Maurice Strong. A longtime U.N. Undersecretary-General, Strong was chief organizer and secretary-general of both the 1972 Stockholm Conference and the 1992 U.N. Conference on Environment and Development (the first "Earth Summit") in Rio de Janeiro. He also served as UNEP's founding executive director.

8 See Terry L. Anderson and Henry I. Miller, eds., *The Greening of U.S. Foreign Policy* (Stanford, CA: Hoover Institution Press, 2001).

9 The Scientific Alliance, "Planetary Rights," http://www.scientific-alliance.org/scientific-alliance-newsletter/planetary-rights (accessed April 12, 2012).

that greenhouse gases (GHGs), emitted through human activity (including the use of fossil fuels such as hydrocarbon energy sources), contributed to increased global temperatures.[10] Governments convinced of the seriousness of this argument supported the creation of the Intergovernmental Panel on Climate Change (IPCC) in 1988. The first IPCC report was released in 1990 and, unsurprisingly, confirmed the global warming theory and laid the foundation for an international agreement to address the issue. The 1992 Rio Earth Summit produced the U.N. Framework Convention on Climate Change, wherein countries pledged to consider actions to limit global temperature increases and cope with the resulting impact of climate change.

These efforts were presented as a voluntary process, but from the advocates' perspective, such actions were necessary, and the "voluntary" aspect was acceptable only if nations met their promises. The climate convention was important "because it is so potentially invasive of domestic sovereignty," observed Tuchman Mathews, noting that it has the potential of "forcing governments to change domestic policies to a much greater degree than any other international treaty ... with the possible exception of the Helsinki Accords as they affected Eastern Europe, which led quite unexpectedly to the collapse of the Warsaw Pact."[11]

Indeed, when the "voluntary" measure failed to elicit sufficient policy changes in the eyes of the IPCC, UNFCCC, and other advocates, these organizations pressed for a treaty imposing binding emissions targets on a select few countries. The resulting 1997 Kyoto Protocol set binding GHG emissions levels for 37 industrialized countries, including principally the European Community, by an average of 5 percent against 1990 levels over the five-year period 2008–2012.

The pact was, under any modeled scenario, climatically meaningless,[12] weakened not just by the enormity of such a task, but by its focus on forcing only select countries to, in effect, limit economic activity or else pay tribute to avoid such limits. Similarly, enormous loopholes crafted through the consensus process were designed to allow countries to avoid the economic consequences of actual emissions reductions while attaining the political benefit of claiming them:

- More than 150 countries had no reduction requirement, including China, which has since become the world's largest GHG emitter. Excluding China and other growing GHG emitters like India, Mexico, South Korea, and Indonesia from the agreement's restrictions renders the Kyoto Protocol ineffective. These developing countries represent almost the entirety of global GHG emission growth. The reality is that Kyoto covers only developed countries in which emissions have essentially leveled off—which is not to say that actual reductions are easy, given that in fact none managed it after Kyoto was agreed, prior to the current economic downturn.

- During the negotiations on the Kyoto Protocol, the European Union insisted on calculating emissions reductions using 1990 as the base year—an unusual choice for a 1997 agreement that would not take effect until 2008—and pooling GHG emissions across the EU-15 (the "Old Europe" bloc). Under these two provisions, nearly all EU-15 members were allowed to increase GHG emissions after Kyoto was agreed. The shift of the United Kingdom from coal to natural gas and the shuttering of East Germany's dirty industrial capacity after reunification provided a cushion of reductions from

10 Greenhouse gases (GHGs) are atmospheric gases that are widely assumed to absorb radiation, principally water vapor, carbon dioxide, nitrous oxides, and methane. GHGs are necessary for life on Earth and are produced largely through natural processes in enormous, albeit varying, quantities from year to year. Combustion of fossil fuels, agriculture (livestock and soil tilling), and other activities produce relatively small quantities of GHGs.

11 Jessica Tuchman Mathews, speech to the Atlantic Forum, May 18, 1992.

12 It is projected that, if the Kyoto Protocol was implemented perfectly, it would delay projected warming by an undetectable 0.07 degrees Celsius for just six years. This also assumes a CO_2 forcing effect, which has largely been disproved over the past decade, when global warming halted despite ongoing increases in GHG emissions. T. M. L. Wigley, "The Kyoto Protocol: CO_2, CH_4 and Climate Implications," *Geophysical Research Letters*, Vol. 25, No. 13 (1998), at pp. 2285–2288.

prior, unrelated political decisions for all other EU parties to ride, covering for their own often appreciable emission increases.[13]

- Countries could avoid reducing their emissions through direct wealth transfers to and/or foreign direct investment in other nations.

Choosing to negotiate the Kyoto Protocol through a global effort proved fatal. It encouraged countries to make unrealistic demands, link tangential agendas to the negotiations, and game the system to minimize their own responsibilities. Even accepting all IPCC model assumptions, the net result of these loopholes is that the Kyoto Protocol would do virtually nothing to reduce emissions in covered countries, would do nothing at all to reduce them globally, and would have no detectable impact on climate change. But, by assuming that the climate was significantly more sensitive to increases in CO_2 concentrations than appears warranted, the assumptions also seem to have been overly pessimistic.

In the end, the treaty became less about reducing global GHG emissions than about advancing parochial political, social, and economic interests. Former French President Jacques Chirac hailed it as "the first component of an authentic global governance."[14] Former European Union Environment Commissioner Margot Wallström called it an effort to "level the playing field" economically.[15] Numerous leaders from exempt, less-developed countries have made it clear that they view the agreement as something of a restitution pact and a new source of foreign aid.[16]

Unsurprisingly, and to its credit, the United States (the world's largest GHG emitter at the time of the Kyoto negotiations) never became a party to the treaty because it recognized that Kyoto would impose an unequal, onerous economic burden on American citizens while doing nothing to address the purported crisis of global warming.

The Kyoto Protocol expires at the end of 2012, and efforts to extend and, ultimately, to replace it are underway. These successor agreements continue to be the focus of multiple international conferences and meetings. Indeed, the Durban Climate Change Conference, the 17th meeting of the Conference of Parties to the UNFCCC, was held in November/December 2011 to "advance, in a balanced fashion, the implementation of the Convention and the Kyoto Protocol, as well as the Bali Action Plan, agreed at COP 13 in 2007, and the Cancun Agreements, reached at COP 16 last December."[17]

Little was expected to result from the conference, and those low expectations were realized; the Durban Climate Change Conference's grand achievement was a nonbinding commitment by attending nations to reduce greenhouse gas emissions under the Durban Platform for Enhanced Action. In essence, the attending nations agreed to continue the process without making any firm commitments to actually do anything. But the U.N., environmental NGOs, and many countries have too much

13 For a more technical discussion of these pollution reductions, see Mark Winskel, "When Systems Are Overthrown: The 'Dash for Gas' in the British Electricity Supply Industry," *Social Studies of Science,* Vol. 32, No. 4 (August 2002), pp. 563–598, and P. Klingenberger, "The Electricity Supply Industry in Germany After Unification," IEE Colloquium on Electricity Supply Utilities—Experience Under Privatisation, February 18, 1992.

14 Jacques Chirac, plenary address at the Sixth Conference of the Parties to the U.N. Framework Convention on Climate Change, The Hague, November 20, 2000.

15 Stephen Castle, "EU Sends Strong Warning to Bush Over Greenhouse Gas Emissions," *The Independent,* March 19, 2001, p. 14.

16 For example, one Chinese diplomat said, "Negotiations on a new treaty to fight global warming will fail if rich nations are not treated as 'culprits' and developing countries as 'victims.'" Associated Press, "China: Rich 'Culprits' on Climate Change," February 16, 2008. Brazilian President Luiz Inacio Lula da Silva weighed in, calling the Third World "victims of deforestation" and "victims of the global warming." "Although Lula admitted the importance of preserving the environment, he said it was necessary to take into consideration the social and economic needs of local populations." Xinhua News, "Brazilian President Says Rich Countries Do Not Follow Kyoto Protocol," *People's Daily* (Beijing), February 22, 2008, http://english.people.com.cn/90001/90777/90852/6358958.html (accessed April 12, 2012). Lula also complained that "rich countries consume 80 percent of the natural resources of the planet. They have to pay a trade-off to poor countries for them to conserve the environment." Reuters, "Brazil Urges Rich to Fund Environment Reform," February 22, 2008, http://www.uk.reuters.com/article/oilRpt/idUKN2145533820080222 (accessed April 13, 2012).

17 United Nations, "Durban Climate Change Conference—November/December 2011," 2012, http://unfccc.int/meetings/durban_nov_2011/meeting/6245.php (accessed April 12, 2012).

invested in global environmental regulation to abandon the effort, and they succeeded in getting a commitment to negotiate "a protocol, another legal instrument or an agreed outcome with legal force" by 2015 with the intention of having it enter into force by 2020.

The Kyoto experience is a cautionary tale. Engaging in extended global negotiations on environmental agreements can lend legitimacy to a counterproductive approach for addressing international environmental issues.

Beyond Kyoto

Kyoto is not the only example of multilateral environmental agreements that should raise concerns. Other agreements could be used in unanticipated ways to influence policy in the U.S. and, once established, are difficult to reverse.

One example is the Stockholm Convention on Persistent Organic Pollutants (POPs), which seeks to ban certain chemicals that are purported to damage the environment. The United States signed the treaty in 2001 but has not ratified it. The treaty was relatively uncontroversial at first, banning or restricting use of 12 chemicals, most of which the United States had already prohibited or regulated. Another nine chemicals have since been added. Once chemicals are listed by POPs, the action is very difficult to reverse. For example, DDT continues to be a restricted substance under POPs, and parties are "required to notify the Secretariat of the production or use of DDT or the intention to use DDT,"[18] even though assertions about its destructive environmental effects have been disproved or found to be grossly exaggerated and despite its effectiveness in combating malaria.[19]

Moreover, even though the U.S. has yet to ratify the treaty, it has provided a pathway for pressuring the United States to expand America's list of banned substances. One target is to ban industrial uses of chlorine, a building block of modern chemistry. Such a ban was floated in the United States early in the Clinton Administration but was rejected by Congress. Those seeking restrictions on chlorine use have sought to use the POPs treaty to circumvent congressional opposition by citing the authority of an international treaty.

Another example is the Convention on Biological Diversity. This convention cites three main goals: promoting conservation of biodiversity, sustainable use of its components, and fair and equitable sharing of benefits from using genetic resources "by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding."[20] The peril lies in the interpretation of "appropriate," because the CBD also instructs parties to act according to the precautionary principle.

The precautionary principle requires that a good, substance, or activity be presumed harmful unless its proponents demonstrate that it will cause no harm. This perniciously shifts the burden of proof and imposes a nearly impossible standard of proving "safety." For example, the 2000 Cartagena Protocol on Biosafety, which was produced under the auspices of the CBD, requires member nations to enact regulatory policies that are based on the precautionary principle and that are specific to the products of the newest, most precise, and predictable products of biotechnology.[21] Consequently, countries establishing such regulatory policies rarely approve these products because "precautionary" policies provide regulators easy justifications to block approval—objections based on wholly conjectural concerns from anti-growth, anti-population, and anti-technology interest groups in the environmentalist movement. These unsupportable, anti-innovation policies have led to trade disputes and delays in regulatory approval of agricultural and industrial

18 Stockholm Convention, "Overview: Dichlorodiphenyl-trichloroethane (DDT)," http://chm.pops.int/Implementation/DDT/Overview/tabid/378/Default.aspx (accessed April 12, 2012).

19 Richard Tren and Roger Bate, *Malaria and the DDT Story* (London: Institute of Economic Affairs, 2001), http://www.fightingmalaria.org/pdfs/malaria_and_DDT_story_IEA.pdf (accessed April 12, 2012).

20 Convention on Biological Diversity, at www.cbd.int/convention/convention.shtml (accessed April 12, 2012).

21 Henry I. Miller and Greg Conko, "The Protocol's Illusionary Principle," *Nature Biotechnology*, Vol. 18, No. 4 (April 2000), p. 360.

products and provide a real-world example of the negative consequences of violating Principle IV, which argues that the well-being of real people must be given greater weight than the well-being of theoretical ones and that theorized threats must not be granted equivalent stature with established ones.[22]

Inherent Flaws

Beyond the weaknesses inherent in consensus-based global negotiations, the international organizations often charged with enforcing and overseeing the agreements are themselves flawed in ways that impede effective actions to address international problems.

First, the mechanisms established through international agreements or the international organizations charged with overseeing those agreements typically operate in a non-competitive, unaccountable manner. In key ways, U.N. organizations operate as a monopoly. Inefficiency and incompetence are not punished by "consumers" of their products or services spurning the U.N. and patronizing a more competent competitor. The organization, as the designated or recognized authority, is often singularly empowered to regulate the product or service in question.

Failure seldom reaps consequences. On the contrary, failure is often rewarded with additional resources on the basis that, if the organization is not working properly, it must be due to insufficient resources. As evidence, one has only to look at the inexorable upward expansion of U.N. budgets and staff over the past decade without a corresponding increase in effectiveness.[23]

Second, oversight, transparency, and accountability in international organizations is generally lacking and often deliberately weak. The U.N. did not have anything resembling an inspector general until 1994, when the Office of Internal Oversight Services was created after U.S. demands for such an office, backed by the threat of financial withholding. Even after this action, however, the U.N. lacks a truly independent inspector general as it is understood in the U.S., and the member states are denied full, unfettered access to internal U.N. audits and documents even though they pay for the organization and its activities.

Earlier this decade, three major scandals—the corruption in the Iraqi Oil-for-Food program, sexual abuse committed by U.N. peacekeepers, and corruption and mismanagement in U.N. procurement—spurred calls for stronger oversight and accountability. The scandals provoked a series of U.N. reports and resolutions that identified the problems and proposed solutions. Regrettably, these efforts are inadequate, and some have been reversed.[24]

Third, lines of authority and responsibility in the U.N. are generally confused, and one often sees multiple U.N. organizations and bodies claiming overlapping jurisdiction, responsibilities, and purposes. For instance, dozens of U.N. offices, commissions, funds, programs, agencies, and other bodies claim to have environmental protection and sustainable development among their key objectives. They often work jointly on projects; rarely is it evident when a particular organization, much less a particular individual, is responsible for a particular project. Even more rarely is anyone held accountable for failure, ineffectiveness, misdeeds, or malfeasance. Indeed, the U.N. is still restricting access to documents of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme in order to prevent public scrutiny.[25]

Finally, international organizations are insulated from the types of checks and balances that are common to democratic governance, particularly by the absence

22 David Adam, "UN Attempts to Boost Biosafety in Developing World," *Nature Biotechnology*, Vol. 415, No. 6870 (January 24, 2002), p. 353.

23 Brett D. Schaefer, "United Nations: Urgent Problems That Need Congressional Action," Heritage Foundation *Lecture* No. 1177, February 3, 2011, http://www.heritage.org/research/lecture/2011/02/united-nations-urgent-problems-that-need-congressional-action.

24 Ibid.

25 United Nations Secretariat, "Disposition of the Documents of the Independent Inquiry Committee into the United Nations Oil-for-Food Programme," *Secretary-General's Bulletin*, ST/SGB/2006/16/Amend.3, November 2, 2011, http://www.iic-offp.org/documents/ST-SGB-2006-16.pdf (accessed April 12, 2012).

of an electorate to change the status quo when officials act contrary to the public interest. International bureaucrats have no constituency beyond their superiors. U.N. officials are rewarded for making the bureaucratic machinery run. The tangible products of their efforts are reports, guidelines, white papers, and meetings. Production often matters more than quality, relevance, or feasibility.

A related phenomenon is what the leader of a prominent national delegation to the Codex biotech task force called "glamour fever." This refers to the participants becoming so enamored of the trappings of the meetings (the formalities, deferential treatment, travel, expensive hotels, media attention) that they wish to prolong the experience and repeat it as often as possible. Indeed, one of the most common recommendations arising from international conferences is to hold a follow-up conference. It is hardly surprising, therefore, that U.N officials, programs, and projects are characterized by egregious examples of arrogance, corruption, and incompetence.[26]

26 Schaefer, "United Nations: Urgent Problems That Need Congressional Action."

Recommendations

Quite simply, global negotiations on environmental issues often move counter to the practicalities of resolving them. The obsessive drive to address international environmental problems—real, imagined, or exaggerated—solely through the U.N. or other global forums lessens the effectiveness of proposed responses.

This is a direct assault on Principle VI, which articulates that the most effective management will be as local as possible because it will be more flexible, specialized to local concerns and circumstances, and able to secure local buy-in. It enables marginally affected parties to hold discussions and proposals hostage to tangential issues, such as wealth transfers to developing countries. It also allows some countries to game the system to avoid shouldering burdens in a way that is commensurate with their passion and rhetoric.

By agreeing to address "global" environmental problems through global negotiations, the United States frequently places its negotiators in a position of weakness. The result is often an ineffective, costly initiative that unnecessarily demands that the United States cede control over some element of its own economic and individual liberties. In order to break this cycle, the U.S. must:

Preserve and defend the treaty process. By entering into treaty commitments, the U.S. government cedes some level of sovereignty, as well as the checks and balances of the U.S. constitutional system. Thus, pursuing treaties is a serious responsibility, a fact further evidenced by the Founding Fathers' requirement that two-thirds of the Senate consent to a treaty prior to ratification.[27] Environmental advocates have long been frustrated by the inability of various international environmental agreements to pass Senate muster, so they advocate avoiding the supermajority requirement by substituting executive agreements. This ploy undermines the system of checks and balances in the U.S. government and mocks constitutional intent.

Along these same lines, the United States should end the practice of leaving signed but unratified treaties unresolved. Instead, this nation should, as a standard practice—assuming that the Senate has not given its advice and consent within a reasonable period—notify the treaty depository or other relevant authority that the United States does not intend to ratify the treaty and no longer has any legal obligations arising from its signature.[28]

Reduce U.S. involvement with U.N. environmental bodies. Some U.N. organizations serve limited and useful roles in addressing environmental issues, particularly the more technical agencies and treaty-monitoring bodies. For instance, the International Maritime Organization helps develop and monitor conventions focused on reducing marine pollution and does so in a focused and apolitical manner—for the most part. However, as discussed in the case of the UNFCCC, these bodies can fall victim to politicized agendas and other flaws that undermine their objectivity and ability to address environmental issues. The U.S. should reevaluate the costs and benefits of membership in these bodies and target its support on specific projects, ideally through voluntary—rather than assessed—contributions that are demonstrably useful or vital to U.S. interests.

Limit negotiating parties to key nations. During negotiations to address an international environmental (or any other) issue, the incentives, constituencies, and alliances that could undermine an effective negotiation increase with the number of extraneous parties participating in the talks. The U.N. is not the only venue in which to address international environmental efforts. Other multilateral options for discussion exist including established forums, like the G-20 and

27 U.S. Constitution, Art. 2, Sec. 2.
28 The Vienna Convention and customary international law state that the signatories should not undertake actions inconsistent with signed treaties, which gives such documents influence over U.S. foreign and domestic policy even though they have not been ratified.

the Organization for Economic Co-operation and Development (OECD), or *ad hoc* efforts, which can bring key parties together to agree to realistic, achievable steps. In the context of a purportedly binding agreement, the inclusion only of parties that are necessary to an agreement is the approach most likely to yield a focused, effective outcome.

Oppose the precautionary principle and other open-ended principles that lend themselves to manipulation and abuse or are otherwise flawed. The precautionary principle perniciously shifts the burden of proof for restricting a substance or activity from demonstrating that it causes harm to proving that it will cause no harm. But because it is difficult to prove a "negative," it leads countries to impede approval of products based on unsubstantiated objections from the anti-growth, anti-population, and anti-technology elements of the environmental movement. In addition, the precautionary principle and the treaties that incorporate it provide countries with an excuse to shirk their General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) obligations to base trade regulations (e.g., sanitary and phytosanitary) on demonstrated scientific concerns. The United States should challenge the validity and application of the precautionary principle and other concepts like "ecocide" that lend themselves to politicization and abuse.

If the United States is to pursue international environmental agreements that support—rather than undermine—its interests, it must reevaluate its policies through the lens of the principles articulated in this volume and apply them to international environmental issues, multilateral environmental treaties, and international environmental organizations. In some cases, environmental matters with international implications merit multilateral negotiation. In many instances, however, working outside a "global" framework may prove more effective in addressing international environmental problems, thereby benefiting both the United States and the global environment.