



GLOBAL HEALTH CENTRE POLICY BRIEF | 2021

EXPERIENCES FROM ENVIRONMENTAL TREATY NEGOTIATIONS

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This publication was developed as part of the Policy Briefs series under the project on a pandemic treaty at the Global Health Centre, Graduate Institute of International and Development Studies, Geneva. The research project is supported by the *Pax sapiens* Foundation.

More information: www.governingpandemics.org

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INTRODUCTION

This paper provides an overview of experiences from treaty negotiations in the field of environmental protection that might be of interest in the context of the elaboration of a treaty on the management of pandemics. It covers the decision to initiate treaty negotiations, the negotiation process leading to the adoption of the treaty, and factors of success and obstacles. The level of detail on each negotiation process varies in accordance with the information available to the author, which includes experience gained through participation in the processes in different professional capacities as well as relevant web sites and literature. Sources of literature are listed at the end of the document.

AREAS OF ENVIRONMENTAL PROTECTION AND RELEVANT TREATIES

While not purporting to provide a comprehensive overview and analysis, the paper considers the key global treaties in the main areas of international environmental law as listed below. The year of adoption of each treaty as well as widely used acronyms (where applicable) appear in brackets.

Nature protection / biological diversity

- Convention on Biological Diversity (CBD, 1992)
 - Cartagena Protocol on Biosafety (2000)
 - Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (2010)

Desertification

- UN Convention to Combat Desertification (UNCCD, 1994)

Protection of wildlife / species

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1973)
- Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS, 1979)
- Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1971)

Climate change

- UN Framework Convention on Climate Change (UNFCCC, 1992)
 - Kyoto Protocol (1997)
 - Paris Agreement (2015)

Protection of the ozone layer

- Vienna Convention for the Protection of the Ozone Layer (1985)
 - Montreal Protocol on Substances that Deplete the Ozone Layer (1987)

Management of hazardous chemicals and wastes

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (1989)
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)
- Stockholm Convention on Persistent Organic Pollutants (2001)
- Minamata Convention on Mercury (2013)
- Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (2009)

Marine pollution

- London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972)
 - Protocol to the London Convention (1996)
- International Convention for the Prevention of Pollution from Ships (MARPOL, 1973)
 - Protocols to the MARPOL Convention (1978 and 1997)

It should be noted that the majority of the existing global treaties on environmental protection was negotiated and adopted before the turn of the millennium, in some cases as early as the 1970s. Accordingly, the modalities and political framework may differ significantly from those found today. Only two treaties, the Minamata Convention and the Paris Agreement, were adopted in the last 10 years.

The Vienna Convention and its Montreal Protocol, adopted in the 1980s, have been hailed as the most successful global treaties of all times. The first in UN history to achieve universal ratification (in 2009), they are considered to have resolved the problem they address, with the stratospheric ozone layer expected to return to 1980 levels between 2050 and 2070. Studies have shown that the ozone layer would have been totally depleted by 2050 without the Montreal Protocol.

TRIGGERS (1): WHAT PROMPTED THE DECISION TO NEGOTIATE A TREATY?

A number of different factors may lead to the decision to negotiate a treaty. In the area of environmental protection, the following can be identified (in some cases, more than one factor prompted the negotiations):

Menace of a catastrophic event or damage

To date, the only global menaces affecting all spheres of the environment that might be considered comparable in magnitude to the COVID pandemic are climate change and the depletion of the stratospheric ozone layer. Unlike the pandemic, these threats did not materialize suddenly but progressively over many years, and were not widely recognized for several decades. There have however been potentially disastrous environmental effects on particular spheres of the environment, or affecting specific parts of the earth, that triggered the decision to negotiate a treaty. Examples are

- The devastating effects of methyl mercury on brain development in humans and animals , which prompted the negotiation of the Minamata Convention
- Malformations caused by the chemicals known as persistent organic pollutants (POPs), as well as the extended lifetime of these substances and their ability to bioaccumulate

and spread over extremely long distances, which prompted the negotiation of the Stockholm Convention

- Pollution of the oceans by the widespread practice of discharging chemicals and wastes from ships until the 1970s, which prompted the negotiation of the London and MARPOL Conventions

Internationally publicized scandals

In some cases, incidents causing environmental damage attracted broad attention from the media and environmental pressure groups, which in turn prompted the initiation of treaty negotiations. Examples are

- The Basel Convention, negotiated in response to widely publicized media reports on dumping of toxic wastes from the industrialized world in developing countries in the mid-1980s. Environmental pressure groups and the media coined terms such as “waste colonialism”, “toxic terrorism” and “Not In My Backyard!” (NIMBY), accusing industrialized nations of using poor countries as a cheap dumping ground.
- The 1983 MARPOL Protocol, the negotiations of which were prompted by a series of tanker accidents in the years following the adoption of the MARPOL Convention and prior to its entry into force.

Results of scientific research

Initiation of treaty negotiation in response to scientific research on an environmental problem and the human activity causing it has been a common trigger of environmental negotiations. In some cases, it took many years for the research to yield results recognized by the scientific community, and yet more time for acceptance by the policy world. Increasing scientific certainty in some cases prompted acceleration of the negotiations. Examples are

- The climate treaties: Climate change attracted scientific interest from the late 1960s and early 1970s onwards. The 1st World Climate Conference in 1979, a scientific gathering, explored how climate change may affect human activities, and issued a declaration calling on the world’s governments to foresee and prevent it. This was followed by a series of intergovernmental conferences dedicated to the issue in the 1980s and early 1990s. The first Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in 1990, which confirmed the scientific evidence for climate change, provided the basis for inception of the negotiations on the UNFCCC in 1991. Scientific certainty regarding climate change, including its causes and effects, increased over the following decades and was confirmed in the successive reports of the IPCC. At the time of the negotiation of the Paris Agreement, general recognition of the seriousness of the problem and the urgency of action allowed agreement on commitments by all countries, which had been elusive in the negotiation of the Kyoto Protocol in the 1990s.
- The ozone treaties: Depletion of the stratospheric ozone layer was subject to scientific research from the early 1970s. The ozone hole (depletion of the ozone layer above the Arctic by 40%) was discovered in the 1980s, and scientific reports also showed that ozone depletion increases the incidence of skin cancer. Negotiations were initiated by the Governing Council of UNEP based on these scientific findings, while initially acknowledging remaining scientific uncertainties. With the evolution of science, successive amendments to the Montreal Protocol provided for ever more stringent measures to reduce and subsequently eliminate ozone-depleting substances (ODS).
- The Minamata Convention: Scientific research from the 1950s onwards revealed the devastating effects of methyl mercury on brain development in humans and animals, and

the risks posed by long-range transport and bioaccumulation. The Governing Council of UNEP in 2001 mandated a global assessment of mercury, which eventually led to the decision by the Governing Council to commence negotiations in 2010.

By contrast, the Cartagena Protocol is an example of a treaty negotiated despite the absence of scientific evidence of damage caused by genetically modified organisms (GMOs). The decision to negotiate the treaty was triggered by concerns regarding damage (as yet unknown) that might be caused by GMOs, in accordance with the precautionary principle.

TRIGGERS (2): WHO INITIATED THE NEGOTIATIONS?

Initiative by individual countries

Negotiation of some environmental treaties was initiated through a proposal submitted to the competent intergovernmental body by one or several of its member countries especially committed to the issue, based on domestic priorities and/or due to being particularly affected by a given environmental problem. In some cases, the country in question also provided considerable financial support to the negotiation process. The initiating country sometimes sought co-sponsorship from other countries from different UN regions in order to broaden political support. Convening and funding of informal discussions and/or side events at international conferences were used by the initiating countries and others to promote and advance the elaboration of the treaty. Such initiative was often due to particularly active and committed representatives of the country in question. Examples are

- The Basel Convention: Following highly publicized incidents of hazardous waste shipments, and specifically a scandal involving toxic wastes exported from a Swiss-based company to Italy in 1986, Switzerland proposed the initiation of negotiations at the UNEP Governing Council meeting the following year, jointly with Hungary and Senegal. Switzerland provided funding for the negotiation process, including the diplomatic conference to adopt the treaty.
- The Nagoya Protocol: Brazil called for the launch of negotiations on access to genetic resources and sharing of benefits derived from these, supported by an alliance of developing countries not satisfied with the non-binding guidelines previously adopted by the UNEP Governing Council.
- The Bonn Convention (CMS): The negotiation of a treaty on the protection of migratory species was initiated by the Federal Republic of Germany. Following support by the 1972 Stockholm Conference on the Human Environment, Germany was mandated by the newly founded UNEP to prepare a draft text. With the support of the International Union for Conservation of Nature (IUCN), Germany organized a single meeting of an expert group for this purpose.
- The Cartagena Protocol: In the framework of the CBD, the African Group under the leadership of Ethiopia called for initiation of negotiations on the management of GMOs. Ethiopia subsequently also led the push for the inclusion of liability provisions and the refusal to adopt a protocol not featuring such provisions (ultimately unsuccessful).
- The Minamata Convention: Norway and Switzerland first proposed the elaboration of a treaty at the Governing Council of UNEP in 2003. During the subsequent consultations over several years, Switzerland and Japan organized informal meetings. Switzerland's second proposal for treaty negotiations in 2007 was co-sponsored by The Gambia, Iceland, and Senegal.

Initiative by a dedicated global non-UN organization

IUCN, a unique international organization composed of governmental and non-governmental actors, with universally recognized expertise in nature protection, played an important role in the negotiation of the early global treaties in this field. The IUCN Assembly in the early 1960s adopted a resolution calling for an international treaty on trade in endangered species and products thereof, eventually resulting in the negotiation and adoption of CITES. In the 1980s, the IUCN Commission on Environmental Law and the IUCN Environmental Law Centre recommended negotiation of a treaty to protect biological diversity, which provided a basis for the later decision by the UNEP Governing Council to initiate the negotiation of the CBD.

Initiative by dedicated individuals

The discussions that led to the adoption of the Ramsar Convention were initiated in the 1960s by a number of committed individuals in leadership positions of competent NGOs, obtaining the support of their organizations for commencing treaty negotiations. The persons concerned had high standing in the international nature protection community as well as recognized expertise in the subject matter. One such leadership figure was Luc Hoffmann, co-founder of the World Wildlife Fund (1961) and founder of the wetlands research station La Tour du Valat in Southern France (1954). Hoffmann committed much of his considerable fortune to the cause of wetland protection. As Vice President of IUCN (1960-1969), was he spearheaded the discussions that ultimately led to the development of the Ramsar Convention, together with the equally committed leaders of the International Wildfowl Research Bureau (IWRB).

BASIS FOR THE DECISION TO INITIATE TREATY NEGOTIATIONS

In many cases, the decision to initiate environmental treaty negotiations was preceded by some form of international recognition of a given environmental problem and the need for action, which subsequently informed the formal decisions to initiate negotiations. The need for a treaty was often not immediately recognized by all states, and different types of mechanisms or consultations to analyse and discuss the problems accordingly preceded the negotiations.

Overarching key conferences on environment and development

The important global conferences that promoted overarching principles of environmental protection and management of natural resources, and advocating national and international action, helped shape most of the environmental treaties in operation today. The principles set out in the outcomes of these conferences influenced the subsequent treaty negotiations in all areas of environmental protection. The conferences in addition expressed support for action in specific areas. Following is a brief overview of the most significant conferences.

- The UN Conference on the Human Environment (Stockholm 1972) was the first global conference on environmental protection. It adopted a set of fundamental principles that provided the basis for the subsequent development of international treaties. In addition, it called for elaboration of treaties in specific fields, e.g. the protection of migratory species of wildlife (ultimately leading to the negotiation of the Bonn Convention) and limitation of dumping of wastes at sea (ultimately leading to the negotiation of the London Convention).

- The UN Conference on Environment and Development (UNCED, Rio de Janeiro 1992, also termed “Earth Summit”) is the largest and most important global conference dedicated to sustainable development to date. Its main outcomes are the Rio Declaration and Agenda 21, an action plan for the 21st century. The Declaration set out key principles related to sustainable development, while Agenda 21 generally endorsed the development of new treaties and the implementation of existing ones. The UNFCCC and the CBD were opened for signature at UNCED and thus became known as the Rio Conventions. UNCED called upon the UN General Assembly to establish an Intergovernmental Negotiating Committee (INC) on desertification (leading to the adoption of the UNCCD), and advocated binding international instruments in other fields, for example biosafety and access-benefit sharing of genetic resources (providing a basis for the subsequent decisions to negotiate the Cartagena and Nagoya Protocols) and environmentally sound management of chemicals (providing a basis for the subsequent decisions to negotiate the Rotterdam and Stockholm Conventions). It also provided support and guidance for treaties already adopted (e.g. the Vienna Convention, the Montreal Protocol, and the Basel Convention).
- The World Summit on Sustainable Development (Johannesburg, 2002, “Rio+10,”) adopted the Plan of Implementation for Agenda 21, setting targets for action in all fields of environment and development, including calls for concrete action in specific fields (for example initiation of negotiations on a global treaty on access-benefit sharing, the future Nagoya Protocol).

Assessment by a specialist international body

Where parts of the international community considered the available scientific evidence insufficient to justify a global treaty, assessments by specialist organizations were in some cases mandated by the competent UN body. Examples include the following:

- On the initiative of the United States, the Governing Council of UNEP in 2001 mandated the UNEP Secretariat to undertake a study on mercury. The resulting Global Mercury Assessment concluded that international action was necessary. On the basis of the Assessment, and as a compromise between countries advocating a global treaty and those opposing it, the Governing Council of UNEP launched a programme to provide technical assistance and support at country level, and to compile views of countries on the way forward. This process eventually led to the negotiation of the Minamata Convention.
- Upon request of the Governing Council of UNEP, the Intergovernmental Forum on Chemical Safety in 1996 conducted an assessment of 12 POPs, concluding that the available information on their adverse effects was sufficient to justify international action, possibly including a treaty. This ultimately led to the negotiation of the Stockholm Convention.

International programme or action plan

International programmes or action plans adopted by competent organizations set out principles and recommendations regarding national and international action on a given issue that later informed treaty negotiations. Examples include the following:

- The UNEP Montevideo Programme on Environmental Law in 1981 identified three priority areas for action by UNEP: Marine pollution from land-based sources; protection of the stratospheric ozone layer; and transport, handling, and disposal of toxic and dangerous

wastes. In the two latter areas, international treaties were subsequently negotiated under the auspices of UNEP.

- The 1977 UN Conference on Desertification, convened pursuant to a mandate by the UN General Assembly, adopted a Plan of Action to Combat Desertification. Despite this effort, UNEP concluded in 1991 that the problem of land degradation had intensified. Accordingly, the Rio Conference launched the negotiation of the UNCCD.
- The World Plan of Action on the Ozone Layer was agreed by a meeting of experts convened by UNEP in 1977. As part of the Plan of Action, UNEP established a Coordinating Committee for the Ozone Layer, in which interested countries shared the results of their scientific studies. The work of this body subsequently informed the negotiation of the ozone treaties.

Non-binding guidelines

Where agreement on the need for a treaty was lacking, the adoption of non-binding guidelines has been used as an alternative, or as a first step, to address a given environmental problem. Such guidelines usually set out recommendations for national action. Their use by countries in some cases led to later agreement to casting the principles they contain into a legally binding form. Examples include the following:

- The FAO Code of Conduct on the Distribution and Use of Pesticides (1985) and the UNEP London Guidelines for the Exchange of Information on Chemicals in International Trade (1987) provided the basis for the later negotiation of the Rotterdam Convention, although not initially intended as basis for a future convention but to assist countries in the management of the substances in question. The guidelines were administered by the voluntary joint mechanism of UNEP and FAO, which had been operating successfully for 10 years at the time of the initiation of the treaty negotiations.
- The Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes were adopted by the Governing Council of UNEP in 1987 at the same time as the establishment of the working group to negotiate the Basel Convention. The Guidelines set out some of the fundamental principles subsequently incorporated in the Convention.
- The UNEP International Technical Guidelines for Safety in Biotechnology (1995) preceded the Cartagena Protocol. Treaty negotiations were launched at the request of developing countries considering the guidelines insufficient.
- The Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization (2002) preceded the negotiation of the Nagoya Protocol, negotiated at the request of developing countries considering the guidelines insufficient.
- The Guidelines on Ship Recycling were developed by the Marine Environment Protection Committee (MEPC) of IMO and adopted by a resolution of the IMO Assembly in 2003. On the recommendation of the MEPC, the IMO Assembly in 2005 agreed to initiate the negotiations on the Hong Kong Convention.

DRAFTING OF INITIAL NEGOTIATING TEXT

Different approaches have been taken to drafting initial text, or textual elements, to be used as a basis for treaty negotiations. Such initial text was prepared by

- The secretariat of the UN organization under the auspices of which the negotiation proceeded: The Executive Director of UNEP presented initial text in the negotiations on most of the UNEP-sponsored treaties. The text was prepared by the UNEP Secretariat drawing on existing legal instruments. In the case of the Basel Convention, the Secretariat text took into account existing draft legislation of the OECD and the EU. The initial draft text for the Rotterdam Convention negotiations was prepared jointly by the Secretariats of UNEP and FAO as part of their joint programme on Prior Informed Consent, based on the respective non-binding guidelines.
- A non-UN international organization: An example of this is CITES, the initial draft of which was prepared by the IUCN Secretariat. The initial draft of the Bonn Convention (CMS) was prepared by the IUCN Environmental Law Centre at the request and with the support of Germany, which had been tasked by UNEP with organizing the negotiations.
- Interested individuals/NGOs/countries: In the case of the Ramsar Convention, initial text was developed by interested individuals and NGOs with expertise in the area of wetland protection. Individual governments then prepared and circulated draft texts of the future convention (the Netherlands in 1967 and the Soviet Union in 1969).
- An initial working group established to develop elements of a future treaty: In more recent negotiations such as those leading to the Nagoya and Cartagena Protocols, text was derived from the various intergovernmental discussions in competent fora; this text was then submitted to the body established to undertake the negotiations.

CONDUCT OF THE NEGOTIATING PROCESS

Negotiation under the auspices of a UN organization

Nearly all existing environmental treaties were negotiated under the auspices of a UN organization based on a decision by its governing body, in most cases the Governing Council of UNEP. The Rotterdam Convention was negotiated under the joint auspices of FAO and UNEP, the London, MARPOL, and Hong Kong Conventions under the auspices of IMO, and the negotiation of the UNFCCC and the UNCCD was mandated by the UN General Assembly (as reflected in the names of the treaties).

Negotiation process managed by a country under the mandate of a UN organization

The negotiation of the Bonn Convention (CMS), one of the oldest environmental treaties, was managed by the Federal Republic of Germany under a mandate from UNEP and with support from the IUCN Environmental Law Centre, and included all states with which Germany maintained diplomatic relations. A sole expert group meeting was convened by Germany to elaborate the text based on a draft by the IUCN Secretariat. This text was further developed by Germany and IUCN. It was submitted to a conference of plenipotentiaries hosted by Germany, and adopted by vote.

Negotiation process managed by a non-governmental organization

The Ramsar Convention, equally one of the early environmental treaties, was developed between the 1960s and 1971 in a series of meetings organized by specialist international NGOs active in wetland conservation, namely the International Wildfowl Research Bureau (IWRB) and IUCN, on the initiative of committed individuals.

NEGOTIATING BODIES

A single negotiating body

For a number of environmental conventions, a single negotiating body was established and mandated to conduct the negotiations. In most negotiations initiated in the 1980s, the relevant bodies were termed “ad hoc open-ended working group of legal and technical experts” to highlight the fact that they were not intended as permanent bodies of the sponsoring organization, and were open to all governments. From the 1990s onward, the term “intergovernmental negotiating committee (INC)” was predominantly used. Single negotiating bodies were established to develop the Vienna, Basel, Rotterdam and Stockholm Conventions as well as the UNCCD, the UNFCCC, and the Kyoto Protocol.

Several successive bodies with different mandates

In other negotiating processes, several bodies were established, the first with the mandate of analysing the issue as well as the need for, and potential modalities of, a treaty, the second to negotiate the treaty based on the findings of the first. This approach was commonly used where there was considerable initial opposition to the negotiation of a treaty. Examples are

- The CBD: In 1988, the Governing Council of UNEP established a first group to explore the need for an internationally binding instrument, followed by a second group in 1989 to negotiate the treaty. This second group was initially known as the Ad Hoc Working Group of Experts on Biological Diversity, and renamed the INC on Biological Diversity by the Governing Council of UNEP in 1991.
- The Cartagena Protocol: A panel of experts to consider the need for and modalities of a protocol on the management of GMOs was convened by UNEP in 1993, followed by a consultation of biosafety experts to develop elements of a protocol in 1995, and finally the Biosafety Working Group to negotiate the Protocol, established by the Conference of the Parties (COP) to the CBD in 1996.
- The Nagoya Protocol: The COP to the CBD in 1998 established a panel of experts to clarify principles and concepts related to access-benefit sharing in 1998, followed by the establishment by the COP of an ad hoc working group to develop guidelines in 2000, and a further ad hoc working group to negotiate the Protocol in 2005.
- The Minamata Convention: The Governing Council of UNEP initially established an ad hoc open-ended working group of governments, regional economic integration organizations and stakeholder representatives to assess options for enhanced voluntary measures and new or existing international legal instruments, followed by the establishment of an INC to negotiate a treaty.
- The Paris Agreement: Several successive bodies were established by the COP to the UNFCCC to discuss and subsequently negotiate a successor agreement to the Kyoto Protocol, following the failure of negotiations to further extend the Protocol.

Modalities of the negotiations

Although the applicable rules of procedure provided for voting, the negotiation and adoption of international environmental treaties is in practice consensus based (the Bonn Convention being a notable exception). This gives groups of countries (in some cases small minorities), and even individual countries that are powerful enough, the possibility to block the outcome. This option is used frequently in practice, mostly by the United States, but also by others (for example the OPEC states in the climate negotiations).

In some negotiations, the governing body of the hosting organization when establishing the negotiating body determined a deadline for conclusion of the negotiations. Such deadlines tend to be much shorter in older than in more recent negotiations. Examples of treaty negotiations for which a deadline was set include the UNFCCC, the UNCCD, and the Basel, Rotterdam and Minamata Conventions. Except in the case of the Rotterdam Convention, the deadlines were adhered to.

The secretariat of the sponsoring organization generally serviced the negotiation process. For those treaties negotiated under the auspices of the UN General Assembly, a special ad hoc secretariat was established (by the INC in the case of the UNFCCC and by the UN General Assembly in the case of the UNCCD).

A STEP-WISE APPROACH

In some areas, a generally worded framework treaty was initially adopted, followed by one or more protocols featuring more substantive or stronger provisions. This is an approach taken where agreement on concrete measures was initially lacking but later solidified with increasing scientific evidence. The decision to negotiate a protocol was taken by the COP to the parent treaty, in some cases based on a treaty provision providing for this option and/or drawing on the outcomes of intergovernmental consultations. Examples are

- Protection of the ozone layer: The Vienna Convention, establishing a framework for cooperation but featuring no concrete measures, was followed by the Montreal Protocol, subsequently amended at regular intervals to include ever more stringent provisions.
- Climate change: The UNFCCC, likewise establishing a framework for cooperation, was followed by the Kyoto Protocol and subsequently the Paris Agreement.
- Marine pollution: The London and MARPOL Conventions were each subsequently replaced with protocols featuring more concrete provisions. These protocols were then regularly amended and strengthened.

POWER CONSTELLATIONS AND POSITIONING IN TREATY NEGOTIATIONS

Interest groups and coalitions

The general positioning of countries in environmental treaty negotiations has mostly followed the same pattern since the 1970s, the major interest groups being the Group of 77 (G77) and China (representing the developing countries); the EU member states; and the group of industrialized countries not members of the EU, long known as JUSSCANNZ (Japan, US, Switzerland, Canada, Australia, Norway, and New Zealand), more recently as the Umbrella Group. The group of Eastern European States had limited practical significance. Other than

the EU, the groups vary in composition from one negotiation process to another, with each process forming its own coalitions. For example, in the climate negotiations, the more progressively minded members of the JUSSCANNZ left that group to form the Environmental Integrity Group. In some negotiations (particularly on climate change), the Association of Small Island States (AOSIS) constitutes a group separate from the G77. Regional groups (Africa, Latin America and Caribbean, Asia and Pacific) sometimes act as coalitions and adopt common positions. Accordingly, in any given negotiation process, some countries are members of several coalitions. Where the final informal negotiations are conducted by the major coalitions, countries not part of these are effectively excluded, as happened in the early climate negotiations. The very large and diverse group of the G77 is often dominated by a small number of particularly powerful countries, or those represented by particularly active individuals.

Substantive positions

In terms of substantive positioning, developing countries generally support measures to prevent environmental damage, considering the industrialized countries as perpetrators and themselves as victims of such damage. Accordingly, they push for stronger (or exclusive) obligations to industrialized countries and for financing of any measures by these countries, on the basis that they are chiefly responsible for the problem. Developing countries, in particular powerful and rapidly industrializing countries such as Brazil and India, as well as China, have also advocated national sovereignty and the right to economic development. The industrialized countries constituting JUSSCANNZ often opposed stringent measures, highlighting the costs (which they would be expected to bear), the economic impact, and the impact on international trade. The United States has traditionally been opposed to treaty negotiations in the environmental field, preferring voluntary action and international partnerships. In numerous negotiations, the US has used its power position to achieve weakening of the treaty provisions, and subsequently never became a party to the treaty.

Reversal of the general positions

Where the interests differ from the general perception of industrialized countries as perpetrators and developing countries as victims of environmental damage, the constellation described above may be reversed, with developed countries advocating restrictions and developing countries opposing them. Examples are

- The Stockholm Convention: Damage by POPs is caused predominantly in the Arctic, which is under the jurisdiction of industrialized countries, while developing countries have an interest in the continued use of certain POPs, notably DDT for the fight against malaria.
- The ozone treaties: In the early negotiations, developed countries advocated restrictions on the use of ODS, albeit to different degrees, while developing countries were opposed, advocating their right to economic development.
- The Minamata Convention: Japan, particularly affected by mercury poisoning, supported the negotiation of the Minamata Convention, and played a leading role in bringing it forward. China and India initially opposed the initiation of the negotiations, maintaining that a treaty would infringe their right to economic development.

Evolution of positions throughout the negotiation process

Changing positions of countries and coalitions in the course of a negotiation process are common in environmental treaty negotiations. This may be the result of increased scientific

knowledge, evolution of commercial interests, or adoption of national legislation on the issues under discussion. Examples are

- The Cartagena Protocol: The push for treaty negotiations came from a group of developing countries, based on opposition to becoming a testing ground for potentially unsafe technology. The negotiations initially followed the classical North-South divide, later replaced by a divide between countries using and developing biotechnology (including a few Latin American countries) and those opposed to it. The latter group included the African Group and most of the G77, joined by the EU and its member states following the EU moratorium on GMOs in 1998. In the last stages of the negotiations, the following groups unique to this particular process were formed and eventually conducted the informal negotiations to finalize the text: the Like-Minded Group, opposed to biotechnology (African and most other developing countries, and China); the Miami Group, supporting biotechnology and concerned about trade implications of the future treaty provisions (Argentina, Australia Canada, Chile, Uruguay, US); the EU and its member states; and the Compromise Group (Japan, Korea, Mexico, Norway, Switzerland, Singapore, and New Zealand), created spontaneously by the representative of Switzerland in the course of an intervention in plenary, based on concerns that those seeking a middle ground might be excluded from informal discussions, as had happened in the climate negotiations.
- The Bonn Convention (CMS): While Germany as the initiating country was originally the most active, the lead was subsequently taken by a coalition of African countries when the negotiations faced failure at the plenipotentiary conference over controversies on the scope of the future treaty. The coalition issued a joint proclamation, declaring that “wildlife as a whole, and migratory species in particular, are a common heritage of mankind to be conserved and managed in the common interest and by the common consent of all peoples”. This proclamation was supported by a large majority of countries and regions. In the vote on the adoption of the convention that followed, the US and Argentina initially voted against but subsequently changed their vote to abstention, allowing adoption of the text.
- The climate treaties: Until 1990, the governments interested in the issue were mostly those of industrialized states, which had access to the results of scientific research. In the following years, a split occurred in this group of countries: the European countries and to some extent Canada, Australia and New Zealand supported international measures, while the US, Japan, and the Soviet Union opposed them. From the early 1990s, developing countries became interested in the issue and pushed for viewing it also as a development issue, and seeking financial assistance and technology transfer. Developing countries were instrumental in placing the negotiations under the auspices of the UN General Assembly rather than the IPCC, UNEP or WMO, as favoured by industrialized countries. At the 2nd World Climate Conference in 1990, a range of differing developing country positions evolved: The members of AOSIS, especially vulnerable to sea level rise, pushing for CO₂ emission reductions; the OPEC states, fearing negative effects on the oil trade, questioning the science and generally opposing a treaty; and large industrializing countries such as Brazil, India, and China, also opposing a treaty based on claims of national sovereignty and the right to development, and maintaining that industrialized countries were responsible for the problem and should therefore also be responsible for solving it.
- The Basel Convention: During the negotiations, the member states of the (then) Organization of African Unity and NGOs led the push by developing countries for a total ban of transboundary movements of hazardous wastes, opposed by the OECD member states (including the EU members) that wished to continue such movements amongst

themselves. Following the entry into force of the Convention, the four Nordic states (three of which are EU members) took the lead on the issue by proposing an amendment incorporating a total ban, against the will of the EU Commission. After the EU adopted legislation banning the export of hazardous wastes, the Commission and member states supported the Ban Amendment.

The role of environmental pressure groups and industry

Formally, non-governmental organizations representing both environmental and industry actors are admitted as observers in international treaty negotiations, with limited possibilities of intervention. In practice, such groups can however play a crucial role in the negotiations. Large NGOs with negotiators more experienced than those of most country delegations have often been the masterminds behind developing country positions and initiatives. Examples include the following:

- At a point where the negotiations on the Basel Convention faced failure, Greenpeace International proposed a last-minute compromise that permitted the adoption of the treaty. Over the following years, Greenpeace and its specially created successor organization, the Basel Action Network (BAN), were instrumental in the adoption of the Ban Amendment.
- Greenpeace International and the Third World Network played a key role in promoting the initiation of the negotiation of the Cartagena Protocol, supporting and managing the initiative by African countries.
- In the early climate negotiations, the Foundation for International Environmental Law and Development (FIELD) helped organize AOSIS and actively advised and supported its member countries in the negotiations.
- In the negotiations on the ozone treaties, industry groups representing producers of ODS (and subsequently their substitutes) played an active role, which included negotiating positions and textual proposals.

MECHANISMS TO SUPPORT TREATY NEGOTIATION AND IMPLEMENTATION

Formal expression of support or guidance by an international organization

Support and guidance regarding the negotiation and/or subsequent implementation of environmental treaties has in some cases been provided by organizations other than the one in charge of the negotiation process. Examples include the following:

- The Commission on Sustainable Development (CSD) was established by the UN General Assembly to ensure follow-up to the Rio Conference, and regularly issued recommendations on ongoing treaty negotiations until its dissolution by the Rio+20 Conference in 2012. It was however widely considered ineffective.
- The World Health Assembly in 2014 adopted Resolution 67.11, entitled “Public health impacts of exposure to mercury and mercury compounds: the role of WHO and ministries of public health in the implementation of the Minamata Convention on Mercury”.

Intergovernmental expert bodies established by a UN organization

Intergovernmental expert bodies can have an important role not only in launching negotiations but also in providing subsequent scientific and technical advice. Examples are

- The climate treaties: The IPCC was established in 1988 by WMO and UNEP and subsequently endorsed by the UN General Assembly. Its mandate is to provide objective scientific information relevant to understanding human-induced climate change, its natural, political, and economic impacts and risks, and possible response options. The IPCC's work had very significant influence on the negotiation of the UNFCCC, the Kyoto Protocol and subsequently the Paris Agreement, and continues to serve as the key international scientific body on climate change.
- The UNCCD: The UN General Assembly, when establishing the INC to negotiate the treaty, also established a multidisciplinary panel of experts to provide the required scientific, technical, legal and other expertise.
- The ozone treaties: The UNEP Coordinating Committee for the Ozone Layer was established by the Governing Council of UNEP in 1977 with the purpose of sharing scientific findings on ozone depletion. Composed of representatives of countries with major scientific programmes that participated in the Ozone Action Plan as well as representatives of WMO, WHO and competent NGOs, the committee rapidly became the focal point for international action, meeting regularly until the mid-1980s.
- The London Convention: The Joint Group of Experts on Scientific Aspects of Marine Pollution (GESAMP), composed of experts nominated by IMO, FAO, UNESCO, IOC, WMO, WHO, IAEA, and UNEP, was established in 1967. It continues to provide advice to the Consultative Meeting of the Contracting Parties to the London Convention. In 1993, the mandate of GESAMP was extended to cover all scientific aspects of protection of the marine environment.

Adoption of a non-binding policy framework in addition to, and supportive of, an international treaty

Non-binding policy frameworks may be elaborated to enhance and support international treaties. An example is the Strategic Approach to International Chemicals Management (SAICM), adopted by the Governing Council of UNEP in 2006. Its negotiation through a multi-stakeholder process was launched by the Governing Council in 2002, following the adoption of the Rotterdam and Stockholm Conventions, with the objective of achieving the chemicals-related targets of the Johannesburg Plan of Implementation and enhancing the capacity for chemicals management in developing and transition countries. It provides an overarching policy framework to the two Conventions and to relevant regional agreements.

Partnerships to support negotiation and subsequent ratification and implementation of a treaty

Global partnerships have regularly been used in international environmental policy, both as an alternative and as a complement to an international treaty. An example is the Global Mercury Partnership, established by the Governing Council of UNEP in 2005 to support the negotiations on the Minamata Convention and to subsequently assist countries in its ratification and implementation.

ADOPTION OF THE TREATY

Adoption by a diplomatic conference

Most environmental treaties were adopted by a diplomatic conference convened for this purpose by the governing body of the organization conducting the negotiations. Such

conferences were often hosted by a country that had played an important role in initiating the negotiations and/or had been particularly active in the negotiations. The treaty was then named for the host city. This was the approach taken for most UNEP treaties, including the Vienna Convention, the Montreal Protocol, and the Basel, Rotterdam, and Minamata Conventions, and also for the London and Hong Kong Conventions, negotiated under the auspices of IMO. The Convention on Biological Diversity was adopted by a conference of plenipotentiaries held at the seat of the UNEP Secretariat in Nairobi. Uniquely, the Ramsar Convention was adopted by a conference convened by the government of Iran without a UN mandate. The diplomatic conferences also adopted resolutions regarding implementation of the respective treaties, including calls for cooperation with competent UN bodies to assist with implementation (e.g. IMO in the case of the Basel Convention, and WHO in the case of the Minamata Convention).

Adoption by the Intergovernmental Negotiating Committee

The two environmental treaties negotiated by an INC established by the UN General Assembly, the UNFCCC and the UNCCD, were adopted by that committee and subsequently “welcomed” by the UN General Assembly.

OPENING FOR SIGNATURE

Most environmental treaties, including those not negotiated under the auspices of the UN General Assembly, were opened for signature at UN Headquarters in New York. Examples include the Paris Agreement (negotiated under the auspices of the COP to the UNFCCC), the Cartagena Protocol (negotiated under the auspices of the COP to the CBD) and the Basel Convention, the Vienna Convention, and the Montreal Protocol (negotiated under UNEP auspices).

The UNFCCC and the CBD were opened for signature at the Rio Conference in 1992 and thus became known as the Rio Conventions.

ENDORSEMENT BY THE UN GENERAL ASSEMBLY

Some form of support by the UN General Assembly elevates a treaty to the highest level of the UN system and gives it recognition beyond its scope of application, the mandate of the organization under the auspices of which it was negotiated, and even beyond the relevant area of international law. Due to lack of universal support, wording such as “takes note of” or “welcomes” has often been used rather than the term “endorses”. The UNFCCC and the UNCCD, the two treaties negotiated under the auspices of the UN General Assembly rather than a specialist UN organization, enjoy a higher level of global recognition. This was indeed the intention of the countries advocating this option. Some of the UNEP Governing Council decisions to initiate treaty negotiations, to convene the diplomatic conference to adopt the treaty and/or the treaty itself were endorsed by the UN General Assembly (e.g. in case of the Basel Convention). Interestingly, the available sources of information on the individual environmental treaties, particularly those adopted several decades ago, do not generally refer to support by the UN General Assembly, and this is thus difficult to verify. Such support appears to have been more significant at the time of adoption than in the later life of the treaties. Climate change, and the treaties adopted to address it, does enjoy the strong

support of the UN General Assembly. Resolution 74/219 adopted in 2019, entitled “Protection of the global climate for present and future generations of humankind”, acknowledges the UNFCCC and the Paris Agreement as “the primary international, intergovernmental forums for negotiating the global response to climate change”. The Resolution reaffirms the Paris Agreement and its early entry into force. It encourages all Parties to fully implement the Agreement, and states that have not yet done so to accede to it as soon as possible.

FACTORS OF SUCCESS

The following factors have contributed to the success of environmental treaty negotiations:

A particularly committed and capable individual in a key position

In many treaty negotiations, influential and committed individuals have been instrumental in bringing the process to a successful conclusion. Examples include

- A particularly capable and dedicated chairperson, using methods such as small informal groups of “friends of the chair” and the production of “chair’s text” (e.g. Cartagena Protocol: Veit Koester of Denmark; Rotterdam Convention: Maria Celina de Azevedo Rodrigues of Brazil)
- The competent Minister of the hosting country capably chairing the adopting conference of plenipotentiaries (e.g. Paris Agreement: Laurent Fabius, Minister of Foreign Affairs of France; Cartagena Protocol: Juan Mayr, Minister of Environment of Colombia; Basel Convention: Flavio Cotti, Minister of the Interior of Switzerland)
- Active intervention by the head of the hosting organization (e.g. ozone treaties and Basel Convention: UNEP Executive Director Mostafa Tolba was the key figure in the negotiations, putting forward positions, convening informal negotiating groups, and proposing draft text; Paris Agreement: UNFCCC Executive Secretary Christiana Figueres)
- A small group of scientists with links to UNEP and WMO initially promoted the issue of climate change on the international agenda and served as knowledge brokers, including through workshops, non-scientific publications, and personal contacts with policy makers

Broad understanding of the environmental problem addressed

Where the environmental problem under discussion is easily understandable not only by specialists but also by the general public and easy to relate to emotionally, agreement on measures to address it may be more easily achieved. An example is the increased incidence of skin cancer due to ozone depletion (a 2017 National Geographic article is entitled “Without the Ozone Treaty You’d Get Sunburned in 5 Minutes”). Pressure of public opinion, alerted by environmental activist groups and the media, may also help move the issue forward. The Basel Convention and the Paris Agreement are examples of this.

Environmental problem affecting also countries usually opposed to international measures

In some cases, the relevant problem had at the time of the inception of international negotiations already been addressed by most industrialized countries, which were thus initially less supportive of international rules. This was the case, for example, in the

negotiations on the Basel and Rotterdam Conventions. On the other hand, where the environmental problem affected chiefly industrialized countries, including the most powerful among them, it was easier to move the discussion forward. A key example is the depletion of the ozone layer, where the US played an active role in the negotiations, advocated strong measures, and also subsequently became a Party to the resulting treaties.

Availability of technical solutions

Where technology was available or could be developed by industry with financial gain, agreement on relevant measures was more easily achieved. The ozone treaties are an example: Over the period of the negotiations on the successive amendments to the Montreal Protocol, substitutes for CFCs became available, and their production increased according to demand.

Favourable national legislation

Countries having adopted national legislation introducing relevant environmental measures have been known to push for the same measures to be adopted at the international level so as not to expose their industries to commercial disadvantage. Where the countries concerned were powerful enough, such efforts have been successful. For example, the US, after banning the use of CFCs in aerosols, pushed for an international regime to control ODS so as to avoid a trade disadvantage vis-à-vis countries still using them. In the negotiations on the Cartagena Protocol, the EU and its member states supported prohibition of international trade in GMOs following the ban on their use by EU legislation, and lobbied African and other developing countries accordingly. Due to opposition by countries still developing and using biotechnology, the Protocol features a control system rather than an outright ban.

Financial support to developing/transition countries through an international financial mechanism

Where a financial mechanism to support developing and transition countries in the implementation of a treaty existed or was established in the course of the negotiations, support by this group of countries was forthcoming more readily. Examples include the Multilateral Fund of the ozone treaties and the Global Environment Facility (GEF), designated as the financial mechanism to the CBD, the UNFCCC, the UNCCD, and the Stockholm and Minamata Conventions.

OBSTACLES

Conversely, opposition by a powerful coalition (such as the G77, JUSSCANNZ or OPEC); scientific uncertainty; environmental damage occurring predominantly in less powerful countries; and high costs as well as negative economic or trade impacts of potential measures may prevent or delay treaty negotiations. Where pressure from those in favour eventually prevails, a treaty may be negotiated but with weakened provisions. This has been a factor in the early negotiations of many of the existing environmental treaties. In some areas, treaty negotiations have never been initiated due to such obstacles, despite support by international bodies or gatherings (e.g. marine pollution from land-based sources, and protection and management of forests, where non-binding guidelines were instead adopted).

Many international environmental treaties at some stage faced collapse of the negotiations. Examples include the Bonn, Vienna and Basel Conventions, the Cartagena Protocol, and the Paris Agreement.

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