

The Diplomats' Malaise

David G. Victor¹

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At the dawn of the 21st century the vessels of international economic and environmental diplomacy appear to be running aground. Nations agreed in Doha last November to launch an ambitious new round of trade negotiations. Yet even as diplomats were promising to liberalize trade in agricultural products and other goods, the U.S. and E.U. were edging to the brink of a trade war about access to the EU market for agricultural products of the genetically engineered variety. These same two trading blocs were also scheming to implement ever-larger and more complex schemes of trade-distorting agricultural subsidies and market barriers—policies that seem certain to derail the Doha agenda.

Storm clouds have also descended upon efforts by nations to cooperate in solving environmental problems. Neither of the two main international environmental treaties agreed in the last decade—the 1992 Convention on Biological Diversity and the 1992 Framework Convention on Climate Change—has yet to deliver much progress toward their environmental aims despite input of inordinate diplomatic energy. The United States has administered a mortal blow to the last decade's crowning achievement in environmental

¹ Director, Program on Energy and Sustainable Development, Encina Hall E416, Stanford University, Stanford, CA 94305, tel: +1-650-724-1712; fax: +1-650-724-1717; dgvictor@stanford.edu

diplomacy, the 1997 Kyoto Protocol. The Protocol remains alive only through a steady drip of accounting tricks and shell games that make it possible for other countries to meet the Kyoto goals even as they behave little differently from what they would have done otherwise. In August 2002 the world community of economic and environmental diplomats will gather in Johannesburg at the World Summit on Sustainable Development (WSSD) to take stock of the last decade's achievements. Yet today, barely four months before the Summit, preparations are in disarray. No accomplishments await the diplomats and political leaders and corporate chieftains when they arrive in Johannesburg—whereas past environmental summits in 1972 and 1992 were both marked by prominent achievements in the form of detailed action plans, laboriously crafted principles for action, and new treaties. In advance of Johannesburg diplomats can't even agree on broad goals and priorities nor even how to express that efforts of the last decade have fallen short. Luckily, the Millennium Summit of 2000 yielded a useful set of goals—and those have been dusted off and put as the crowning achievement of the Johannesburg event, although nations still have no plan for how to achieve those goals.

What is going on? This essay examines three rival answers to this question. One theory blames the troubles on the United States, the world's leading economy and also a leading cause of environmental stress. If the U.S. were a better leader—a better “hegemon”—then international cooperation would be more effective. A second theory blames the difficulties on the vagaries of the international agenda. Most economic and environmental issues, according to this theory, are ephemeral—they arrive on the international agenda often quickly, as global warming did in 1988, and then are elbowed aside just as easily when more pressing priorities such as terrorism appear. With such an erratic agenda it is hard to make sustained progress.

I argue that each of these two theories explain some of the observed difficulties with international economic and environmental diplomacy, but they largely fail to explain today's apparent predicament. Rather, a third theory is a more powerful explanator: the troubles with economic and environmental diplomacy stem from the fact that the frontier of law-making is closing. Prior to the 1980s, new topics for international cooperation arose on the agenda and diplomats encountered virgin territory when they crafted international rules on the issue. Opportunities for easy progress across relatively flat terrain were obvious and the number of international agreements rose rapidly to occupy the open space. Now, the frontier of easily accessible flat terrain is closing and diplomats find themselves struggling in the foothills and steeper slopes. With different terrain, new policy instruments are needed to make progress, but most of the conventional wisdom in the field of economic and environmental diplomacy has been honed on the open flatlands.

1. Failed Leadership?

The explanation cited most frequently as the source of the diplomats' malaise is that the U.S. has taken the mantel of dominant world power without also assuming the responsibility of leadership. Indeed, in most diplomatic corners the U.S. seems to be the constant target of accusations that it is impeding progress. On the international ban on landmines, the International Criminal Court (ICC), the racism summit in Durban, and the Kyoto Protocol—among many others—the U.S. sits outside regimes and processes while the rest of the world toils within.

What is curious is not why the U.S. fails to lead but why the rest of the world does not line up according to U.S. interests. The theory that a hegemon makes the world in its interest does not assert that the hegemon will lead in a particular direction. In most of the cases the critics assert as evidence of failed U.S. leadership the complaint is not actually that the U.S. is not leading but, rather, that it has not led them where they want to go. Why does the flock appeal to a shepherd ambling the opposite direction?

One reason that the theory of hegemonic leadership falls short is that hegemony is not all its cracked up to be. The hegemon is able to lead when other countries happen to share its interests. For example, the U.S. has played a central (although not the only) role in crafting an international treaty to phase out persistent organic pollutants (POPs); so far, it is the only new international environmental treaty that the Bush administration has embraced. But leadership on POPs was fairly easy to muster because most nations have already eliminated most of the twelve POPs that are targeted in the treaty; many developing countries still deploy some of these POPs, notably DDT, and the treaty contains explicit exceptions so that such uses need not stop. Such cases of international diplomacy are not irrelevant—indeed, treaty registers are bursting with agreements that engender high levels of compliance even though they have little impact on behavior. This simple fact explains much of the observation from scholars of international law that most nations comply with most of their obligations most of the time. But such cases are of little help in discerning when hegemons are able to lead countries to alter their destiny.

Hegemons are also able to lead when they can alter the interests of followers. Indeed, over history hegemons have been able to lead with a mixture of coercion and carrots because they, more than the sheep, have a great capacity to alter the payoffs of others. However,

compared with earlier hegemonies, the American hegemony since World War II is different for at least two reasons, and both those reasons make it difficult for the world's leading state to exert leverage over potential followers.

First, the American hegemony is not colonial. It is true that earlier, colonial hegemons had far from complete authority over their satellites. It is also true that the U.S. has been far from timid in pursuing its interests during the American century. Nonetheless, relative to earlier hegemons—notably the British in the 19th century—the fact that the U.S. is not a direct, colonial authority gives the U.S. relatively diminished power. During the cold war, the U.S. could play a hegemonic role in the Western world, despite this lack of a colonial relationship, because satellites framed their interests in American terms. The surrounding communist threat kept minds, especially in Europe and Japan, singularly focused on securing American (and thus Western) dominance. And the U.S. government itself played colonial roles in Latin America, Asia and Africa—assassinating unfortunate dissenters, displacing unfavorable governments, and tuning “internal” politics abroad to U.S. interests.

Second, the American hegemony, especially since 1990, operates in a world characterized by market-based exchanges between countries that operate largely according to democratic principles. In this world, it is hard for leaders to make crisp, unified determination of their interests and to send unambiguous, strategic signals to other countries. Yet hegemons are expected to do exactly that. Economically, the policies that are most advantageous for a hegemon depend on the dominate technologies in the economy, and those change in unpredictable ways—some scholars suggest that the pace and direction of such change is becoming rapid and unpredictable as the economy moves away from slumbering, material-intensive firms (such as steel) and toward a networked, knowledge-based economy.

This unpredictability is precisely why market-based economies are able to sustain superior performance over time and why they have swept the world—unable to predict, government serves best by leaving a Darwinian invisible hand of the market to make choices. Yet for that same reason, governments in a market-based world economy will find it difficult to lead, except insofar as they lead generally toward market-based principles for economic organization.

Governing by democratic rule makes leadership additionally difficult because the domestic sources of power are often volatile and rarely line up behind a single policy. For example, in launching the Doha “Development Round” of trade talks the U.S. exerted strong leadership and had a greater impact on ensuring the successful outcome than any other nation. Still, other governments in Doha rightly wondered whether the U.S. government—which consists of the Congress, the courts, and an executive branch splintered by many different interests, as well as the talented Mr. Zoellick—can actually deliver the promises that cemented the deal in Doha. The same queries have been raised about the ability of most other democratic governments to deliver on their Doha pledges. Similarly, in Kyoto, no major country except for Russia could be sure that it could meet the targets under discussion. All would need to get legislative approval, and all were pledging to regulate an output of their market-based economies (i.e., emissions of greenhouse gases) that none of them could actually predict because no government of a market-based economy is able to estimate the level of economic activity or the type of technological change that would occur over the time horizons envisioned in Kyoto. (Russia and lesser “reforming” countries such as Ukraine are exceptions to this statement—not because they are undemocratic but because the “commitments” they made in Kyoto do not require any change in their behavior to assure compliance.)

Today, much of the world is frustrated by the U.S. Congress, which seems prone to pursue policies that play well at home—their electors—at the expense of interests abroad. This American single-mindedness is often branded “American exceptionalism,” but here I would like to stress that the root cause of such behavior is probably less the “exceptional” nature of American behavior and interests and more the intrinsic byproduct of democratic rule. It is more noticeable in the case of American behavior because American decisions usually have greater import than those of other nations—and thus the world is more attuned to the normal flakiness of democratic decision-making. (Divided government, a hallmark of the American system, also plays a role. In contrast with Parliamentary systems that tend to assign leadership in executive and legislative activities to the same party, the American public tends to vote in ways that split authority between the policy-making branches of government.)

The world will soon learn that the U.S. Congress is not the only source of home-play, democratic rule that complicates the tasks of international cooperation. The European Parliament is emerging as another epicenter of erraticism—its influence on EU policy is growing as part of the European program to make EU institutions more democratic. Its formal powers have been expanded, and over time it is slowly finding ways to exert its authority. Unlike the national parliamentary systems that exist in all EU members, the European Parliament is elected directly; Parliamentarians are typically not selected by the dominant national party nor do they select members of the European Union’s executive branch or administrative bureaucracy (the European Council and European Commission). Thus the European Parliament, like the U.S. Congress, is much more prone to yielding divided government than are traditional parliamentary systems. Moreover, to date the

European Parliament has tended to be a holding pen for protest votes—dissatisfied with rulers at home, a vote for the opposition (including fringe splinter groups) in European Parliamentary elections has often been seen by European citizens as a safe protest. One of the first areas where the growing power of the European Parliament has been felt is in food safety policy, where the Parliament is a leading force in favor of import restrictions and labelling policies that stigmatize and undercut the development of genetically modified (GM) food. Many of the GM foods policies that are most favored by the European Parliament have the least basis in science, are highly likely to trigger a destructive trade war with the U.S., probably violate WTO trade rules, and are actively harmful to developing countries that are trying to use GM food technology to do a better job in feeding their population. Yet these policies—such as labeling requirements for meat produced using GM soybeans and a permanent ban on registering new varieties of GM foods—will do nothing to advance food safety. The European Parliament is advancing these goals even as the leadership of the European Commission has uniformly declared the need to reverse the EU's temporary ban on registering new varieties of GM crops. That noisy debate will become a lot more common as the European Parliament exercises its power more fully and reveals the general tendency for highly democratic, fragmented and multi-level governance systems to speak with a single voice. In those circumstances, it is hard for the government to lead; it is also hard for others (e.g., the U.S.) to lead because followers could not follow even if some factions would like to do so.

The problem of leadership is eased greatly when interests are strong and unambiguous. The anti-communist coalition held together with that glue—as well as cash and arms compensation from the U.S. to help defray some costs of readiness in states on the front lines. The coalition assembled quickly in the wake of 9/11 benefited from interests

strongly articulated by the United States—not sympathy as often claimed, but a combination of common interest with the U.S. on combating terrorism as well as the clear understanding that the U.S. would pursue al Qaeda through every last cave whether or not the flock joined in the fray. The common problem for democratic governments trying to assemble a coalition—uncertainty about the government’s true intentions, staying power, and capacity to deliver on promises and threats—did not exist. Such cases are probably rare, however. The Gulf War is often cited as another recent example—even at the time when George H.W. Bush declared a “new world order.” The reality is easily forgotten. It was difficult for the U.S. to assemble an anti-Saddam coalition and has been even more difficult to sustain the collective response after the war slid to a close. Even within the U.S. there was a significant anti-war contingent—one of the great congressional debates of the century centered on whether (and under what conditions) to support the war. It is hard for democracies—whose essential principle is open debate, which modern technology transmits instantly worldwide to equivocal allies and enemies alike—to be stealthy and strategic when crafting and portraying their interests.

Hegemons are not alone in getting their way when they have strong interests—as a general matter in world politics, diplomatic processes tend to reward countries with strong interests that are well articulated and backed by meaningful threats or rewards. In the Kyoto Protocol, Australia and Iceland were able to get specific language inserted into the treaty because they had specific, strong and clearly articulated interests and could credibly threaten to exit the arrangement if they did not get their way. All other western states had so visibly committed themselves to success at Kyoto that potential spoilers had them over a barrel. The singular accomplishment of the U.S. is that it managed to put *itself* over a barrel. The Clinton administration had committed visibly to the success of Kyoto while also allowing the

negotiations to become focused on a range of options that the U.S. could not possibly achieve. I will return to America's predicament with the Kyoto treaty later.

So, the theory that world powers must lead, will lead and can lead holds little water. The real source of frustration with the U.S. is not that it has failed in some automatic or moral obligation to lead in a particular direction; rather, the frustration stems from the fact that the U.S. is pursuing interests that are different from the accumulated agenda of the rest of the world. This frustration is not surprising as it is likely that the professed interests of major powers will be different from most other countries, for at least two reasons. First, peripheral sheep are prone to adopt positions on safe issues that are visibly different from that of the shepherd, especially when the flock is hyper-democratic. Rarely does a politician on the periphery suffer in the polls by opposing the hegemon—except in moments of singular interest, as during the aftermath of 9/11. The dominant state invites the greatest (and most articulate) opposition because its policy proposals are usually the best known and most relevant, which make for the easiest and politically most valuable target for opponents. Small countries can afford to have strong views and perhaps to support even unachievable goals because their failures are less likely to spur broad international scrutiny.

Second, structurally the hegemon is likely to have different interests from the rest. Hegemons, almost by definition, favor the status quo—the hegemon's dominance *is* the status quo. Thus the U.S. has supported strongly rules for strict protection of intellectual property rights—even at the risk of a new trade round—because a sizeable fraction of the U.S. business model is based on innovation in knowledge-intensive industries. But the U.S. has also been advocate for other paragons of the status quo—anti-dumping rules of dubious economic merit, the multi-fibre agreement that protects a crucible of American textile

workers at the expense of many multiples of eager sewers overseas. Hegemons are hardly alone in focusing on the past—on workers (also known as voters) who toil in declining industries, as revealed by the penchant for subsidies to farmers and coal miners in so many other industrialized countries as well.

Both these tendencies—the automatic appearance of opposition to the dominant state’s policy, and the tendency for dominant states to favor the status quo—are evident in two of the hottest international issues of the last few years: the International Criminal Court (ICC) and the international treaty to ban landmines. On both, it has been relatively easy for most nations (and politicians) to follow the herd and to favor establishment of an ICC and to ban landmines because few states confront the circumstances that dominate how the U.S. weighs its options. For example, landmines have caused enormous harm to the world population, measured as farmers killed when they plow mined fields, hundreds of thousands of people maimed, and vast areas of land unusable after conflict until after costly and painstaking mine clearing operations have taken place. Emotionally, the appeal of a simple ban on landmines is understandable. But for a country that incurs large defense obligations overseas and is built on a strategy of replacing soldiers with technology, landmines are an invaluable tool; “smart” landmines that defuse themselves after a period of time (or when the “all clear” is sounded) offer a way to achieve the military benefits of halting intruders (e.g., on the Korean DMZ) while reducing or eliminating the humanitarian cost. For a country that is skeptical that other combatants would adhere to a landmine ban even if it were part of international law, the calculation in favor of preserving landmines—despite the fact that it makes for bad symbolic politics and is hard to defend in front of your children over dinner—is pretty straightforward.

A similar logic (though less compelling, in my view) explains the U.S. opposition to the ICC: most countries that favor establishment of the ICC do not face the requirements for posting of troops overseas in that weigh heavily on the U.S. calculation, and the need for a permanent court is diminished by the encouraging record in establishing international courts on an *ad hoc* basis, such as the Yugoslavia war crimes tribunal and the Lockerbie bombing tribunal. It is understandable why the U.S., due to its position as hegemon rather than as a state that is genetically prone to “exceptionalism,” adopts its position. Even those who accept U.S. arguments against the ICC and against the landmine treaty still often argue that the U.S. should join these treaties because it is easier to “reform from within.” That is a pretty weak argument considering that in so many other areas of international lawmaking the U.S. has been able to exert equal or greater leverage from outside, without incurring the difficulties that it would face if it found life “inside” so intolerable that it would be forced to exit the treaty. In the Convention on Biological Diversity, for example, the U.S. has exerted more influence over the shape of the protocol on biosafety than any other country, despite the fact that the U.S. is not a member of the Convention and sits in the back of the room with all the other observers.

Thus it is not surprising that a disturbingly large number of potential international agreements seem to contravene directly the interests of the dominant state. This is evidence not of a failure by the hegemon to lead. Rather, it is a byproduct of the system of international governance in which it is relatively easy to put issues on the international “agenda” and where democratic populism tends to advance symbolic goals that are actively harmful to the interests of the dominant country. The system, by design, produces thorns that periodically grow and sick in the hegemon’s side yet are tolerated because they would be

costly to remove. The structure of international politics and law produces the gap between the interests of the leading state and other nations, not some fundamental failure to lead.

2. Distractions and Discontents

A second theory that might explain the diplomat’s malaise is that the issues which have proved most troubling—such as trade and environmental problems—are easily eclipsed by more pressing matters. Thus countries are unable to sustain progress on such “low politics” problems because they periodically are called away by “high politics.” Moreover, pressing “high politics” priorities eclipse the subtle interactions that tend to characterize complex economic and environmental diplomacy. The U.S. and other important states, it has been feared, will become so busy with anti-terrorism that they will forget other worldly matters. (And the U.S. will become immune to criticism about its behavior for fear of breaking ranks with the leader in time of crisis.) This theory—in essence, that governments are unable to walk and chew gum at the same time—has little merit, but I include it because it has commanded such anxiety in the wake of 9/11.

There is no reason to believe that intense distractions have systematically advanced or undermined the flock’s agenda on economic and environmental issues. Crises such as 9/11 have probably improved the prospects for some forms of international cooperation, but this effect is probably quite limited in depth and duration. In the aftermath of 9/11, the U.S. has advanced international cooperation on several fronts—most notably in two areas. One is trade, with launch of the Doha round. The other is George Bush’s three-pronged pledge in Monterrey in March, 2002: 1) to increase dramatically U.S. foreign aid over the next four

years, 2) to pressure the multilateral development banks to reorient aid away from loans and toward conditional grants, and 3) to support the implementation of the U.N.'s Millennium Development Goals.

One interpretation of the Bush announcement is that it is a broad-based effort to advance international cooperation by a country that needs more cooperation in order to succeed in the war on terrorism. A different interpretation is that it largely reflects a change in how the U.S. calculates its interests. The first pledge in Monterrey—new money—has attracted the most attention but is the most tenuous of these promises as it will require legislative approval and none of the political groundwork has been done to invigorate the U.S. Congress for the mission of spending more money overseas. That pledge is not vacuous and it is new, but it must be viewed in the context of the other two pledges. The second pledge—a shift to grants and conditionality (especially the latter)—reflects a growing trend in thinking about the effectiveness of aid. That new thinking maintains that aid money is most effective when spent in countries that have the “right” policy environment, such as low corruption and open economies. For a U.S. government facing a potentially large number of new overseas obligations associated with policing terrorism in failed states there is an urgent need to implement a plan that will reduce the number of failed states and provide a conveyor belt that can carry failed (or failing) states from poverty and terrorism to normalcy. The long history of difficulties with development assistance, especially in Africa, reveals just how difficult it will be to build the conveyor. But in the post 9/11 world the need for such a conveyor is inescapable. Finally, the Millennium Development Goals (MDGs) are, perhaps, the most interesting of the Bush pledges. With the upcoming WSSD unlikely to achieve much, clear adoption of the MDGs (along with specific targets and indicators that put more detail on broad goals) could help to focus international programs for the decade to come. The

Agenda 21 adopted in 1992 never had that broader impact because it was so hard to measure and focus progress. I will return to these goals later.

On balance, 9/11 has probably advanced international cooperation, but only in ways that are consistent with the interests of leading states—it has not resulted in a nebulous, across-the-board advance in cooperation for the sake of cooperation. In some ways, however, 9/11 (like other shocks to the international system) will undermine international cooperation and even undermine established international norms. The human rights community will be wishing for the good old days of September 10th as America’s new allies—like Russia and the former Soviet Islamic states that border Russia on the south—are less likely to be held accountable for internal abuses now that they are lending bases, overflight rights, and otherwise not stirring dissent.

3. A Closing Frontier

A third theory, I argue, is more powerful in explaining the diplomat’s malaise. This theory is less well-articulated than the others, so I take some time to outline the logic as well as applying it to today’s predicament.

The troubles today come at the end of a long period of international lawmaking that have bequeathed a false sense of progress to the current generation of diplomats who work on economic and environmental issues. That long period—what I will call the “frontier period” in international economic and environmental law—has achieved much and also bequeathed standard models and lessons to the current generation. But the conventional wisdom gleaned

from this experience is not relevant to the current era where the frontier of international law is closing—an era marked by efforts to extend, adjust and coordinate laws and procedures that are already established, rather than to draw up new laws to regulate virgin territory. In working over legal territory that is already occupied, conflicts between laws and institutions occur both internationally and domestically; the work of diplomacy is, increasingly, not the work of setting and codifying norms but in focusing learning processes through which a far-flung set of actors learn how to adjust their behavior and norms. Increasingly in this world, international cooperation is a property that emerges from the bottom up rather than imposed (or codified) through top-down international diplomatic processes. I illustrate the argument and its implications for current policy with examples from international trade, protection of biological diversity, and global warming.

Until the 1970s, international trade diplomacy was focused on tariffs. Governments freed trade through periodic "rounds" of negotiations in which they assembled large numbers of tariff cuts into omnibus package deals. Diplomatically, the "round" approach was feasible because governments, more or less, had direct control over border measures such as tariffs and thus could make commitments to limit tariff levels. Politically, the "round" approach was essential because it allowed governments to link tariff reductions that hurt powerful special interests with other beneficial cuts in tariffs. Since 1947, cutting and counter-cutting have driven tariffs lower than at any other time in world history. Today the average tariff on industrial goods is only 1.5 percent, and a growing fraction of world trade travels tariff-free. Tariffs are higher in the few cases where powerful governments have encountered extremely strong opposition, such as in textiles where the advanced industrialized countries have resisted reductions in tariffs that would hurt a shrinking minority of textile workers—even

though those same workers already find their production un-competitive and such policies are harmful to consumers as well as workers overseas.

The success in lowering tariffs has exposed the next frontier for trade diplomacy.

Protectionism thrives in "nontariff" policies that affect trade, such as food safety laws, pollution standards, labeling mandates and subsidies. Unlike tariffs, most nontariff policies serve quite legitimate purposes, such as protecting consumers from dangerous food.

Technically it is possible to devise a scheme that can sift through a nation's laws and separate protectionist nontariff barriers from legitimate measures. Indeed, the most recent trade round, which ended in 1994 with the creation of the WTO, included the first serious attempt to tame nontariff barriers. So far, however, these WTO rules have had minimal effect because governments have been loath to cede authority over internal policy matters such as food safety standards. In only a few blatant cases has the WTO actually declared a nontariff barrier illegal. Even then, delinquent nations have not readily complied. Europe has not complied with clear WTO judgments against its policies on meat hormones and the U.S. resisted complying with a ruling to alter its regime for punishing countries that engaged in shrimp practices that killed turtles. Unlike the old frontier of trade politics, these issues are much more complex than before. Almost any conceivable progress in lowering trade barriers will draw the WTO into national policy matters in ways that are much more intrusive than the simple coordination of border tariffs. For this reason, efforts to apply the old technique of linking all issues together into omnibus trade negotiations have become counter-productive because they link together not only the many elements that make for a winning package deal but they also make the entire deal vulnerable to the discontent that occurs when international trade rules step on internal policies. For example, one of the key problems in trade diplomacy has been to get European and American governments to limit and redirect agriculture subsidies and food safety laws that distort trade; with tariffs already so low, there

are few easy concessions to trade against these requests for change in policy, and pressure from the WTO to alter policies such as food safety laws often backfires. Countries under pressure to change national rules that are popular with democratic electors (even if illegal under international trade law) usually result in politicians digging in their heals rather than finding new dimensions for dismantling cherished policies. Progress is coming as Europeans embrace the need for policy reform (which is already evident as the costs of dysfunctional agriculture policy mount) not by linking agriculture subsidies to telecommunications, banking, e-commerce, forestry and other unrelated issues.

Similarly, the evolution of international law on biological diversity reveals a pattern of rapid progress when governments have focused on border measures but stalemate as they have addressed policies behind the border that have been more intrusive into national policies and have affected areas of behavior where there is already a high density of legal norms. In the 1960s, conservation organizations knew that the decline in biological diversity stemmed, fundamentally, from the loss of habitat. They pushed governments—which at the time were awakening to the need for environmental protection at home and globally—to act. But as in the early days of efforts to liberalize trade, governments responded with rules that mirrored their points of leverage. They negotiated the Convention on International Trade in Endangered Species (CITES), which sought to address the decline in biodiversity. They approached the problem not through an across-the-board system of habitat protections but by defining the biodiversity problem in terms of the species of greatest political interest—the “charismatic megafauna” that are the subject of international trade—and by focusing on trade controls that governments themselves could enact because governments already controlled the flow of goods across their borders. They did not ignore the loss in habitat, but their efforts to stem decline in habitat areas were mostly symbolic and designed to minimize intervention in national politics. The 1971 Ramsar Convention on wetlands, for example, set

obligations that required countries only to nominate a single wetland site and allowed countries nearly free rein in setting their own standards for acceptable wetland protection. An international convention on migratory species adopted in the 1970s followed the same pattern.

One oddball in this general pattern is the International Whaling Convention, which actually imposes obligations that its members occasionally find inconvenient because the IWC includes standards for acceptable whaling activities and allows members to vote with a $\frac{3}{4}$ majority to adjust whaling rules and quotas. This peculiar rule—which seems to suggest that governments have been able to adopt meaningful wildlife protection—dates to the 1940s when the architects of the IWC, all drawn from major whaling states, never envisioned that in 1982 the IWC would become dominated by countries hostile to whaling (even countries that had no coastline nor any history of whaling). Even so, whaling states found ways to alter the rules so as to keep the IWC’s standards from much crimping their style. Norway imposed a temporary moratorium on whaling but has since gone back to the harpoon—a decision made by Gro Brundtland herself after a careful survey of the whale population.) Norway’s total catch is small—in part because of world opinion and more because the taste for whale meat is being lost as older generations of whale eaters pass on. Japan has found ways around the IWC’s zero quota on commercial whaling through its elaborate “scientific” whaling program. Iceland has stopped whaling altogether—less because the IWC imposed a zero quota on commercial whaling and more because the U.S. threatened to ban Iceland’s fish exports. (The U.S. threat of a ban was issued under a U.S. law that allowed retaliation against countries that “undermine the effectiveness” of international efforts to protect wildlife, whether or not the offending behavior actually violated the letter of international law.

Iceland's small, fish-dependent population did not want to take a chance and voted by narrow referendum to back down and put its whaling ships in dry dock.)

After two decades of international agreements tailored carefully to promote compliance and to concentrate commitments on activities that governments control directly, the failings of this approach could not be ignored. Loss of habitat—notably tropical forests, constantly in the green press in the 1980s—continued at an alarming pace, and the lack of a holistic integrated framework raise alarms that environmentally harmful behavior was slipping through. The result was the comprehensive Convention on Biological Diversity (CBD), signed in 1992 and now in force.

The problems with a comprehensive agenda are amply revealed by the CBD ordeal ever since. A comprehensive agenda is easily hijacked by special interests because every prong of the approach is open for discussion. Thus most of the discussion in the CBD over the last decade has focused on the issue of biosafety and sharing of the benefits from genetic resources. Biosafety has become a major issue because it conveniently advances the interests of pressure groups that want to curtail genetically modified food; yet the U.N.'s comprehensive assessment of biological diversity conducted in the early 1990s found no relationship between GM foods and loss of biodiversity. Other issues, such as exotic species, were much more important yet pushed down on the CBD agenda because the pressure groups for those problems were not as strong. Moreover, as with the efforts to launch a new WTO round, the entire effort risks sinking when one aspect tramples on national sentiments—in this case, the U.S. has remained outside the CBD because of fears, amplified out of

proportion by pharmaceutical companies, that the CBD could become a regulatory monster for redistributing property rights.

Finally, the issue of climate change reveals the new challenges that diplomats will face as they negotiate treaties that have real impacts inside national borders. The story of the evolution of the Framework Convention on Climate Change and the Kyoto Protocol has been told many times, and I do not recount it here. Kyoto's troubles have been blamed on the U.S., and indeed the U.S. government deserves some significant criticism—first for making wild promises in Kyoto that could never be met and then for withdrawing from Kyoto without making any serious attempt at building a constructive alternative U.S. policy. But the real issue is cost: Kyoto exposed some economies to potentially large (but uncertain) costs, making it easy for opponents to magnify the potential costs and making risk-averse legislatures wary of signing on. Those dynamics have played out strongly in the U.S., where the public is not much concerned about global warming and is particularly wary of costly endeavors with low expected benefit; similar concerns are now being raised in Australia and Canada. These problems were not nearly so serious for the Montreal Protocol on substances that deplete the ozone layer—a leading model for the Kyoto architects—because the total cost of controlling ozone depleting substances was much lower, the pervasiveness of those substances in modern economies was much less, and the Protocol included an escape clause that would prevent costs from skyrocketing out of control. The lesson from this experience is that in this new era of international economic and environmental law, where international norms potentially intrude far inside nations and imply substantial changes in behavior, diplomats must pay much closer attention to ensuring that the commitments they negotiate mirror each country's willingness to pay.

I draw three implications from the hypothesis that the world is entering a new era in international economic and environmental diplomacy as the old frontier closes and diplomats are expected to negotiate agreements that are more intrusive, complex and costly than before. First, by the traditional metric—number of meaningful treaties signed and agreements forged—we should not expect rapid progress. The new diplomacy requires more time and preparation, which is hardly news for economic diplomats. Each trade round has taken longer to reach fruition and been focused on a more complex array of interlocking commitments. For the environmental community, however, the slow pace will be frustrating. Environmental diplomacy, in the past, has been laden with symbolic efforts—treaties and agreements signed just to demonstrate that governments are “doing something” about the problem at hand, with the hope that over time the commitments they reach one year will be ratcheted tighter. That ratcheting has occurred, but at the cost of an exceedingly complex and time-intensive set of meetings between parties to treaties.

Second, closer attention is needed to the ways that international law and institutions can be most effective. In the old era, new agreements had effect—at least when they did not simply mirror what countries were doing anyway—by setting goals and standards. In the new era it is likely that goals and standards will conflict because new norms are negotiated on territory that is already occupied. Where these norms are intended to be legally binding, the natural conservatism of international lawyers will dominate the negotiations, leading to a style of diplomacy that focuses on agreements that countries are sure they can meet. But in the new era where international norms are intrusive and costs are uncertain, such agreements are prone to be extremely weak and ineffective.

Among the alternative approaches is to make much greater use of “nonbinding” agreements—thus erasing the fiction that already separates “binding” international law (e.g., treaties) from agreements that are aspirational even though they may not elicit perfect compliance. Non-binding agreements have two related attributes that deserve attention. One is that they allow countries to set ambitious goals because they worry less about ensuring that goals that must be achievable under every contingency. The other is that such goals can help to focus a “bottom up” process within countries and in far-flung international institutions to coordinate activities around these norms, to identify conflicts between existing plans and emerging norms, and to focus a process of learning around the efforts to reconcile conflicts. In this sense, the Millennium Development Goals advanced in the U.N. in 2000 and slated to be endorsed prominently at the World Summit on Sustainable Development in Johannesburg are the right approach. They include meaningful targets and indicators, focus activities from the World Bank to local governments, and help to give practical meaning to the concept of sustainable development.

This new approach will require some new thinking about the role of international institutions. Not only must they serve as secretariats to international negotiations—a role that has been served with an uneven record—but they must also play important roles in helping governments to frame goals and ensure that the agreements they adopt are consistent with what is achievable. The action of governance remains a matter mainly for national and local governments, but the compass can benefit from better direction. This role contrasts sharply with the discussions about future roles for international environmental institutions, many of which center on the need for better coordination and possibly even establishing a global

environment organization to oversee the effort. Coordination is not in short supply and, in any case, can't be performed well by institutions that lack authority; content, however, could ensure that this new mode of governance does the most with the goals that it establishes.

Third, aspirational nonbinding agreements will not be enough, especially as governments address issues that require costly changes in behavior and as governments strive to ensure that their economic competitors undertake similar commitments. Binding treaties with enforcement provisions will be needed—just as the WTO evolved over five decades from the self-enforcing reciprocal agreements of the 1947 GATT to the fully institutionalized 1994 WTO that includes a strict and intrusive enforcement mechanism. In crafting these strong new agreements, diplomats must pay close attention to how they frame the commitments. Commitments should be set in terms of performance, so as to give countries maximum flexibility and to accommodate a wide range of national circumstances that will affect how countries put their obligations into effect inside their borders. And commitments must be set with sensitivity to cost and willingness to pay. In the flatlands of international diplomacy cost did not matter much because costs were low and agreements were tuned to allow high compliance with minimal change in behavior. In the new era all that has changed.

4. Reprise

I have argued that on almost every front of international economic and environmental diplomacy progress seems to have slowed. Far from a sign that something has gone awry in

the international system, this is evidence that diplomats are now working in a new era where international agreements are more intrusive than before, where costs are greater, and where cooperation is much more complex and difficult to orchestrate. This new era arises because the old frontier of international cooperation is largely closed and the “low hanging fruit” have been picked. I have also suggested some implications of this new era for the instruments and techniques of diplomacy, such as the need to make greater use of non-binding agreements as well as greater sensitivity to economic and political costs when crafting agreements. It is fashionable today to emphasize the limits to sovereignty; it is less fashionable, especially in international circles, to recognize the limits to law and institutions. But most international cooperation follows closely the interests of the cooperating parties, and recognizing its weaknesses is a critical first step to finding ways that it can have effect.