

FROM RIO TO KYOTO: A STUDY OF THE INVOLVEMENT OF NON- GOVERNMENTAL ORGANIZATIONS IN THE NEGOTIATIONS ON CLIMATE CHANGE

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INTRODUCTION

Non-governmental organizations (NGOs) have acquired an increasingly relevant status in the international policy arena. This prominence can be seen in the expanded role of NGOs in preparing and executing development projects,¹ and in negotiating international legal agreements. NGOs also command influence at most levels of the international legal system, participate in the implementation and monitoring of international conventions, and serve as experts in governmental delegations.²

This Article analyzes the influence of non-governmental actors on the negotiations of the Framework Convention on Cli-

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¹ About 41% of the projects approved by the World Bank in Fiscal Year 1995 (FY 95) included provisions on NGOs (between 1973 and 1988 the average was six percent), and the Bank is committed to increasing communication and cooperation with NGOs. Priorities include consultation on policy issues and improvement in document dissemination, as well as new findings to strengthen NGO sectors in borrowing countries. See WORLD BANK, *NGOs AND THE BANK: INCORPORATING FY95 PROGRESS REPORT ON COOPERATION BETWEEN THE WORLD BANK AND NGOs* at i (1996).

² For example, in the discussion of the establishment of an International Criminal Court, the presence of human rights NGOs has been constant and valued. See Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 266 (1997).

mate Change (FCCC or the Convention).³ In particular, it evaluates the methods employed by NGOs in furthering their substantive agendas, the interaction among various non-governmental actors, and the results of their efforts.

This Article considers two kinds of NGOs: business and environmental. Environmental NGOs (ENGOS) are the self-defined representatives of environmental interests. They campaign for the strict reduction of all gases that induce climate change. On the other side, business NGOs (BNGOs) typically represent the interests of those industries that are involved in the industrial cycles that damage the atmosphere. The analysis of the different approaches and actions of these groups during the negotiations is particularly interesting and relevant. Given the conflicting missions of these two groups, one might believe that ENGOS and BNGOs operate without regard to one another. In reality, business and environmental NGOs are not always completely separate entities. As this Article demonstrates, ENGOS and BNGOs extensively scrutinize one another and frequently engage in official negotiations and discussions on various policy options.

I

THE RESPONSE OF THE INTERNATIONAL COMMUNITY TO THE THREAT OF CLIMATE CHANGE

The issue of climate change is a relatively recent development in the long history of international environmental negotiations. Between the 1950s and 1980s, awareness of the threats and dangers of climate change began to emerge in the scientific community. It was only in the latter half of the 1980s, however, that public and political interest in the dangers of climate change arose.⁴ In the 1990s, the threat of climate change became one of the most discussed global environmental concerns.⁵

³ United Nations Conference on Environment and Development: Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 [hereinafter FCCC].

⁴ See Daniel Bodansky, *Prologue to the Climate Change Convention*, in *NEGOTIATING CLIMATE CHANGE* 45, 45-46 (Irving M. Mintzer & J. Amber Leonard eds., 1994).

⁵ Climate change is the consequence of increased concentration of carbon dioxide (CO₂) and other greenhouse gases (GHGs) in the atmosphere. In addition to CO₂, the most important GHGs are methane (CH₄), chlorofluorocarbons (CFCs), ozone (O₃), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF₆). GHGs trap the sun's heat and keep it from escaping beyond the atmosphere of the Earth. CO₂ and other carbon-based sub-

In 1995, the Intergovernmental Panel on Climate Change (IPCC), a group of approximately 1000 scientists working under the aegis of the United Nations Environmental Programme (UNEP) and the World Health Organization (WHO), concluded in their Second Assessment Report (SAR)⁶ that “the balance of evidence suggests a discernible human influence on global climate.”⁷ The SAR also concluded that in the last century the mean temperature of the Earth rose by between 0.3 and 0.6 degrees Celsius and that the global sea level rose between ten and twenty centimeters.⁸ For the end of the twenty-first century, the SAR forecasted a sea level rise of between fifteen and ninety-five centimeters and an average temperature increase of two degrees Celsius.⁹

The Second Assessment Report also addressed the consequences of climate change. The report concluded that the projected increase in mean temperatures would have a significant impact on physical and ecological systems, human health, and socio-economic sectors. It projected that the change in temperature will occur at such a rapid rate that many ecosystems may not

stances are continuously exchanged between the atmosphere, the oceans, and the biosphere. Carbon is crucial in the living environment, and it is fundamental for the vital cycle of animals, plants, and soil. Within this natural cycle, exchanges of CO₂ are many times greater than anthropogenic emissions of CO₂. Yet, these natural exchanges are almost completely balanced. However, since the beginning of this century and the onset of the industrial revolution, CO₂ levels have been rising at the rate of four percent per decade. Many scientists think that this increase is largely due to human activities, as it coincides with the beginning of consistent and considerable CO₂ emissions from human-controlled sources. Six-to-eight billion tons of carbon are produced annually by human activities and deforestation. However, only about 3.4 billion additional tons accumulate in the atmosphere each year. Scientists believe that the other three-to-four billion tons of carbon (“the missing carbon”) are absorbed by the oceans and land biosphere. Scientists need to address both the issue of the missing carbon and the role of the oceans, together with a more thorough understanding of climatic patterns. See generally DAVID D. KEMP, *GLOBAL ENVIRONMENTAL ISSUES* 144-45 (2d ed. 1994); R. KERRY TURNER ET AL., *ENVIRONMENTAL ECONOMICS* 268 (1993).

⁶ See Intergovernmental Panel on Climate Change, *Second Assessment Report* (visited Feb. 16, 1999) <<http://www.usgcrp.gov/ipcc/html/SARwgii.html>> [hereinafter *SAR*].

⁷ Intergovernmental Panel on Climate Change, *Summary for Policymakers: The Science of Climate Change—IPCC Working Group I* § 4 (visited Feb. 16, 1999) <<http://www.ipcc.ch/cc95/wg1.htm>>.

⁸ See *id.* § 3.

⁹ See *id.* § 5.

have time to adapt.¹⁰ Rising temperatures will also lead to a rise in mortality and illness due to the increased number and intensity of heat waves and the increased potential for the transmission of tropical diseases.¹¹

To control the consequences of climate change, the climate system requires the adoption of long-term solutions. Many believe that, in conformity with the precautionary principle,¹² actions should be taken to prevent the hazardous effects of climate

¹⁰ See Intergovernmental Panel on Climate Change, *Summary for Policy-makers: Scientific-Technical Analyses of Impacts, Adaptations and Mitigation of Climate Change—IPCC Working Group II § 4* (visited Feb. 16, 1999) <<http://www.ipcc.ch/cc95/wg2.htm>>. Because of temperature increases, forests would need to migrate to find a climate with characteristics that are similar to the ones that are necessary for their survival, but forests can only migrate at a range of about 4 to 200 kilometers per century. *See id.* The 1 to 3.5 degree Celsius projected temperature increase would require forests to move 150 to 550 kilometers per century, which is well beyond their capacity. *See id.* Changes in temperature will also bring negative consequences to other ecosystems. Deserts are likely to become hotter but not wetter, and up to one half of existing mountain glacier mass could disappear. *See id.* Consequences to coastal systems could include: erosion of shores and associated habitat, increased salinity of estuaries, altered tidal ranges in rivers and bays, and increased coastal flooding. *See id.* The temperatures of oceans will increase, and this could alter ocean circulation and reduce sea-ice cover. *See id.* Climate change will also have an impact on regional freshwater resources and fisheries. Agriculture productivity will increase in some areas and decrease in others, like the tropics and subtropics, even though global production probably could be maintained. Finally, climate change will affect human activities and settlements. Since a large part of the population lives in coastal regions, a sea level increase of 50 centimeters would put 92 million people at risk of flooding due to storm surges; a one-meter sea level rise would affect 118 million people. *See id.* Land loss will be another consequence of sea level rise, with estimates ranging from 0.05% for Uruguay, 1% for Egypt, and 17.5% for Bangladesh to about 80% for the Marshall Islands. *See id.*

¹¹ *See id.*

¹² The precautionary principle is a principle of international law that implies that states can decide to take action to protect the environment and prevent environmental hazards despite the lack of full scientific certainty. Such actions and measures would have a preventive and precautionary effect that would prevent serious or irreversible damage. The precautionary principle is founded on the degree of scientific certainty necessary for action to be taken by the international community. *See* 1 PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 208-13 (1995). Principle 15 of the Rio Declaration states that “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” United Nations Conference on Environment and Development: The Rio Declaration on Environment and Development, June 13, 1992, princ. 15, 31 I.L.M. 874, 879 [hereinafter Rio Declaration].

change. Preventive measures should not be postponed because there is a lack of full scientific evidence.¹³

II THE FRAMEWORK CONVENTION ON CLIMATE CHANGE

Two international conventions were opened for signature at the second United Nations Conference on Environment and Development (UNCED) held in Rio in 1992: the FCCC¹⁴ and the Convention on Biological Diversity.¹⁵ UNCED was a fundamental step toward the recognition of environmental concerns in national and international political arenas, and significantly increased public concern and awareness of environmental issues. UNCED represented the final phase of long and successful diplomatic negotiations on environmental issues. In Rio, the international community agreed on several important legal measures to protect the environment, including the Rio Declaration (a general statement of principles that takes into account the rights and obligations of countries to the global environment),¹⁶ Agenda 21 (an action plan for sustainable development),¹⁷ and a Statement of Principles on Forests.¹⁸

At UNCED, nearly 1500 NGOs were accredited to attend formal and some informal meetings. This gave NGOs the opportunity to lobby governmental representatives, present documents, and meet and form coalitions among themselves.¹⁹ Agenda 21 underlined the importance of the involvement of non-governmental organizations during UNCED. For example, it states that “[r]elevant non-governmental organizations . . .

¹³ See SANDS, *supra* note 12, at 208-13.

¹⁴ FCCC, *supra* note 3.

¹⁵ United Nations Conference on Environment and Development: Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818.

¹⁶ Rio Declaration, *supra* note 12.

¹⁷ *Report of the United Nations Conference on Environment and Development*, U.N. GAOR, 47th Sess., Annex II, Agenda Item 21, at 12, U.N. Doc. A/CONF.151/26 (1992) [hereinafter Agenda Item 21].

¹⁸ United Nations Conference on Environment and Development: Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, June 13, 1992, 31 I.L.M. 881 [hereinafter UNCED].

¹⁹ See Ann Doherty, *The Role of Nongovernmental Organizations in UNCED*, in *NEGOTIATING INTERNATIONAL REGIMES* 199, 203-07 (Bertram Spector et al. eds., 1994) (explaining the role of NGOs and reporting how NGOs judged the entire process).

should be given opportunities to make their contributions and establish appropriate relationships with the United Nations system.”²⁰ The U.N. system, with consultation from NGOs, should take measures to design a system of effective NGO participation, take into account the findings of review systems and evaluation processes of NGOs, and establish procedures for an expanded role of NGOs in the implementation of Agenda 21.²¹

The adoption of the FCCC was the first step taken by the international community to address the issue of global climate change. The objective of the FCCC is to stabilize “greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”²² As a minimum, the FCCC provides that all countries should report a national inventory of “anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol.”²³ There are further commitments for a party, depending upon the annex into which it is classified.²⁴ An Annex I nation must take “measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs” with the goal of returning “by the end of the present decade to earlier levels of anthropogenic emissions” of greenhouse gases (GHGs).²⁵ In addition, Annex II parties are to “take all practical steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other parties, particularly developing country parties, to enable them to implement

²⁰ Agenda Item 21, *supra* note 17, para. 38.42, at 467.

²¹ *See id.* para. 38.43, at 467.

²² FCCC, *supra* note 3, art. 2, 31 I.L.M. at 854.

²³ *Id.* art. 4.1(a), 31 I.L.M. at 855; *see also* Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550 (entered into force Jan. 1, 1989) [hereinafter Montreal Protocol] (regulating the emissions of CFCs).

²⁴ Annex I (all countries listed) and Annex II (* only) Parties are the following: Australia*, Austria*, Belarus, Belgium, Bulgaria, Canada*, Czechoslovakia, Denmark*, European Community*, Estonia, Finland*, France*, Germany*, Greece*, Hungary, Iceland*, Ireland*, Italy*, Japan*, Latvia, Lithuania, Luxembourg*, the Netherlands*, Poland, Portugal*, Romania, Russian Federation, Spain*, Sweden*, Switzerland*, Turkey, the United Kingdom*, and the United States*. Note that both the European Union and all its members are Parties of the Convention. *See* FCCC, *supra* note 3, Annex I-II, 31 I.L.M. at 872-73.

²⁵ *Id.* art. 4.2(a), 31 I.L.M. at 856.

the provisions of the Convention.”²⁶ Annex II parties should also assist developing countries, parties that are particularly vulnerable to climate change, in “meeting costs of adaptation.”²⁷ Further, these parties should provide “new and additional financial resources to meet the agreed full costs incurred by developing country Parties” in complying with the obligation of providing national inventories.²⁸ Finally, the FCCC introduces a controversial policy measure, Joint Implementation (JI), that would allow parties to the Convention to reduce GHG emissions by financing or investing in reduction processes, such as cleaner technologies, in another party.²⁹

A. COP1: Berlin, March 1995

The first Conference of the Parties after Rio (COP1) was held in Berlin in 1995 (one year after the Convention took effect) as prescribed by FCCC Article 7.4.³⁰

During COP1, there were two important developments. The first was the establishment of the Berlin Mandate³¹ to negotiate commitments on emissions after the year 2000. The Berlin Mandate recognizes that the commitments of the FCCC are not adequate and calls for the beginning of a process to strengthen the commitments of Articles 4.2(a) and 4.2(b) with the aim of “elaborat[ing] policies and measures” and setting “quantified limitation and reduction objectives within specified time-frames,

²⁶ *Id.* art. 4.5, 31 I.L.M. at 858.

²⁷ *Id.* art. 4.4, 31 I.L.M. at 858.

²⁸ *Id.* art. 4.3, 31 I.L.M. at 858; see also generally Daniel Bodansky, *The United Nations Framework Convention on Climate Change: A Commentary*, 18 YALE J. INT’L L. 451 (1993) (summarizing and analyzing the Convention and the negotiating process that led to the Convention).

²⁹ See FCCC, *supra* note 3, art. 3.3, 31 I.L.M. at 854 (allowing parties to address climate change with cooperative efforts). The definition of JI is controversial and the Convention does not provide for a single interpretation. The parties discussed and defined JI further during the Conferences of the Parties as provided by FCCC Article 7.2, which states that the Conference of the Parties shall make the necessary decisions to promote the effective implementations of the Convention to facilitate “the coordination of measures adopted by them to address climate change,” *id.* art. 7.2, 31 I.L.M. at 860-61, and by Article 4.2(d), which indicates that “the Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation.” *Id.* art. 4.2(d), 31 I.L.M. at 857.

³⁰ See *id.* art. 7.4, 31 I.L.M. at 862.

³¹ See United Nations Framework Convention on Climate Change Conference of the Parties: Decisions Adopted by the First Session (Berlin), Mar. 28-Apr. 7, 1995, 34 I.L.M. 1671 [hereinafter Berlin Mandate].

such as 2005, 2010 and 2020.”³² The negotiations were to “begin without delay” and to “be conducted as a matter of urgency.”³³ The second development at COP1 was the parties’ further debate on Joint Implementation and introduction of a JI Pilot Phase, which included Activities Implemented Jointly (AIJ).³⁴ The Pilot Phase will last until the year 2000. AIJ will be implemented among those Annex I parties and non-Annex parties that request it.³⁵

The Berlin Mandate is generally considered a mixed success. The parties did not agree on a protocol as some had hoped. The Mandate did, however, bring new developments and provided needed vigor to the FCCC by proposing the discussion of a protocol with specific time frames to further develop the commitments of the Convention. The Mandate resulted in new, stronger alliances among parties and a more decisive position of developing and developed countries in favor of or against commitments.³⁶ The ‘G77’ alliance, a coalition of less-developed nations, split into two groups. On one side was a new alliance called ‘G72,’ which represented developing countries that favor action to reduce emissions and legal commitments for developed countries.³⁷ The other side contained OPEC countries isolated in their effort to block negotiations.³⁸ There was a similar split among developed countries, with the ‘green’ countries of Northern Europe supporting new stringent commitments, while the

³² *Id.* Decision 1/CP.1, sec. 2, 34 I.L.M. at 1677; *see also id.* at 1676; THE EMERGING INTERNATIONAL REGIME FOR CLIMATE CHANGE 3 (Michael Grubb & Dean Anderson eds., 1995).

³³ Berlin Mandate, *supra* note 31, Decision 1/CP.1, sec. 6, 31 I.L.M. at 1678.

³⁴ *See id.* Decision 5/CP.1, 34 I.L.M. at 1685-87.

³⁵ The main conclusions of Decision 5/CP.1 (on “Activities Implemented Jointly Under the Pilot Phase”) are: (a) AIJ between Annex I and non-Annex I Parties will not be considered a fulfillment of current commitments; (b) no credits shall accrue to any Party; (c) AIJ is supplemental and does not modify the commitments of each Party under the Convention; (d) AIJ should be compatible with and supportive of national environment and development priorities and require prior acceptance by the governments of the parties participating in these activities; (e) financing shall be additional to the financial obligations of parties included in Annex II as well as to current Official Development Assistance flows. *See id.*, 34 I.L.M. at 1685-86.

³⁶ *See* Sebastian Obertür & Herman Ott, *UN/Convention on Climate Change: The First Conference of the Parties*, 25 ENVTL. POL’Y & L. 144, 145 (1995).

³⁷ *See id.*

³⁸ *See id.*

'JUSCANZ' countries (Japan, the United States, Canada, Australia, and New Zealand) were more cautious.³⁹

B. COP2: Geneva, August 1996

The second Conference of the Parties (COP2) was held in Geneva in August 1996. Just before COP2, two important reports were published. The first was the much-awaited IPCC Second Assessment Report, which confirmed, for the first time, that anthropogenic GHG emissions were part of the cause of climate change.⁴⁰ The SAR also analyzed scientific evidence concerning the rise of sea levels and the increase in the average global temperature over the last 100 years. As the IPCC warned, "future climate change will be dominated by human influences unless and until the composition of the atmosphere is stabilized."⁴¹ The second report, published in concomitance with COP2, was a study by the WHO on the consequences of climate change on human health.⁴² The report forecasted an increase in malaria and other tropical diseases together with a rise in malnutrition and cardiovascular and respiratory diseases.⁴³ The publication of these two reports brought further confirmation that global warming was an important environmental issue. The reports also created momentum for negotiators to reach an understanding on new measures to be adopted.

Another important event that helped shape COP2 was the U.S. delegation's announcement that it had shifted positions and that it now supported legally binding commitments.⁴⁴ The United States produces over twenty percent of the world's energy related CO₂.⁴⁵ Thus, its new position had an important impact on the likelihood of success of a legally binding agreement to actually reduce GHG emissions.

³⁹ See *id.*

⁴⁰ See *supra* text accompanying notes 6-11.

⁴¹ FRED PEARCE, EXPLAINING CLIMATE CHANGE: A WWF OVERVIEW OF THE NEW SCIENCE 1 (1996) (quoting the IPCC).

⁴² See World Health Organization, *Climate Change and Human Health* (July 9, 1996) <<http://www.who.org/press/1996/pr96-48.html>>.

⁴³ See *id.*

⁴⁴ See William F. O'Keefe, In Defense of Skepticism, Address at the Economic Club of Detroit (Nov. 18, 1996) [hereinafter O'Keefe Address] (commenting on President Clinton's support of legally binding commitments) (transcript available at <<http://www.api.org/globalclimate/1detroit.htm>>).

⁴⁵ See Rudy Perkins, Note, *Electricity Deregulation, Environmental Externalities and the Limitations of Price*, 39 B.C. L. REV. 903, 1016 (1998).

These diverse events created a particularly fruitful situation for those parties that supported more stringent commitments. At COP2, the parties, for the first time, were ready to discuss more stringent commitments. At the end of COP2, the parties “took note” of the Geneva Ministerial Declaration (Geneva Declaration), although they did not formally “adopt” the Declaration.⁴⁶ The Geneva Declaration states that the parties intend to negotiate a legally-binding protocol or other legal instrument to be approved at the third Conference of the Parties (COP3).⁴⁷ This Declaration reaffirmed the parties’ commitment to the FCCC.

The Geneva Declaration endorses and recognizes the SAR as “the most comprehensive and authoritative assessment of the science of climate change, its impact and response options now available.”⁴⁸ The Declaration states that the SAR should provide the “scientific basis for urgently strengthening action at the global, regional and national levels . . . [to] reduce emissions of greenhouse gases.”⁴⁹ After Geneva, the hope was that COP3 would result in “policies and measures . . . [and] quantified legally-binding objectives for emissions limitations and significant overall reductions within specified time-frames.”⁵⁰

C. COP3: Kyoto, December 1997

COP3 took place in December 1997 in Kyoto, Japan. The negotiations at COP3 proved to be quite difficult and conflicts among different parties arose.⁵¹ The Conference did, however, result in a protocol with legally binding commitments to reduce GHGs within a specific time-frame. Nevertheless, many parties were dissatisfied with the final outcome.⁵²

Between COP2 and COP3, the Ad-Hoc Group on the Berlin Mandate (AGBM) met three times to agree on the most impor-

⁴⁶ See MICHAEL Z. CUTAJAR, *Geneva Declaration Affirms Scientific Basis for Action*, CLIMATE CHANGE BULL., 3d Quarter 1996, at 1, 1; see also *Report of the Conference of the Parties on its Second Session*, 2d Sess., Annex, at 71, U.N. Doc. FCCC/CP/1996/15/Add.1 (1996).

⁴⁷ See *Report of the Conference of the Parties on its Second Session*, *supra* note 46, at ¶ 8.

⁴⁸ *Id.* at ¶ 2.

⁴⁹ *Id.*

⁵⁰ *Id.* at ¶ 8.

⁵¹ See Brendan P. McGivern, *Introductory Note to Conference of the Parties to the Framework Convention on Climate Change: Kyoto Protocol*, Dec. 10, 1997, 37 I.L.M. 22, 29.

⁵² See *id.* at 22.

tant points of the protocol.⁵³ Parties wishing to submit a proposed protocol or other legal instruments to the Secretariat had to do so by January 15, 1997. Proposals called for different timing and quantity of reductions, as well as varying measures to implement reductions in GHGs.⁵⁴ A particularly contentious issue was the role developing countries should play in the effort to curb GHG emissions.⁵⁵

The Kyoto Protocol,⁵⁶ the end result of COP3, provides for a total reduction of GHG emissions of five percent below 1990 emissions for industrialized countries.⁵⁷ This reduction is averaged over the years 2008-12.⁵⁸ The Protocol specifies different reduction limits for the various parties involved. The European Union agreed to reduce its emissions by eight percent, the United States by seven percent, and Japan by six percent.⁵⁹ Other parties have only stabilization goals, while three parties (Australia, Iceland, and Norway) are allowed to increase their emissions.⁶⁰ Policies by which such reductions will be obtained were not fully discussed. Further meetings are to address these important issues.

The Protocol left people on both the environmental and business sides unsatisfied. Many business representatives complained that these reductions were not economically feasible.⁶¹ Some environmentalists argued that the Protocol would be insufficient to protect the earth's climate.⁶² Although it needs further refining, the results are important and the Protocol sends a clear

⁵³ See John Lanchbery, *What to Expect from Kyoto*, ENVIRONMENT, NOV. 1, 1997, at 4.

⁵⁴ See *Framework Convention on Climate Change (FCCC)—Meetings Report—Ad Hoc Group on the Berlin Mandate: Sixth Session & the FCCC Subsidiary Bodies* (last modified Dec. 1, 1997) <<http://www.erin.gov.au/portfolio/esd/climate/international/agbm6.html>>.

⁵⁵ See McGivern, *supra* note 51, 37 I.L.M. at 26.

⁵⁶ Conference of the Parties to the Framework Convention on Climate Change: Kyoto Protocol, Dec. 10, 1997, 37 I.L.M. 22 [hereinafter Kyoto Protocol].

⁵⁷ See *id.* art. 3(1), 37 I.L.M. at 33.

⁵⁸ See *id.*

⁵⁹ See McGivern, *supra* note 51, 37 I.L.M. at 24.

⁶⁰ See *id.*

⁶¹ See, e.g., Global Climate Coalition, *Final Agreement: More Than 3 Million Lost Jobs, Higher Costs for Food, Housing, Transportation*, 5 CLIMATE WATCH BRIEF 1 (Dec. 10, 1997) <<http://www.globalclimate.org/watch/dec10-97.htm>>.

⁶² See, e.g., Greenpeace, *Climate Agreement Endangers the Climate* (Dec. 11, 1997) <<http://www.greenpeace.org/~climate/kdates/december11.html>>.

sign that nations are able to agree on certain reductions of GHGs.⁶³

III

NON-GOVERNMENTAL ACTORS IN THE FRAMEWORK CONVENTION ON CLIMATE CHANGE

The climate change negotiations established a precedent for the involvement of non-governmental actors in the negotiation of international treaties. Non-governmental groups participated in various degrees throughout the entire process of the climate change meetings.⁶⁴ The input and scientific contributions of NGOs were important to the development of the FCCC.

Articles 4.1(i), 7.2(l), and 7.6 of the FCCC address the role of non-governmental organizations. Article 7.6 establishes the rule for admission to proceedings, stating:

[A]ny body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object.⁶⁵

Article 4.1(i) recognizes that NGOs are important to stimulating and increasing public awareness on climate change.⁶⁶ It states that all parties shall “promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations.”⁶⁷ Article 7.2(l) addresses the issue of supervision of the implementation of the Convention by the Conference of the Parties, stating that the COP shall “seek and utilize, where appropriate, the service and co-operation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies.”⁶⁸

NGOs were involved in the negotiations of the Convention from a very early stage and provided a different perspective from government actors. During the negotiations, NGOs were al-

⁶³ See McGivern, *supra* note 51, 37 I.L.M. at 29 (scheduling further discussions for late 1998 in Buenos Aires, Argentina).

⁶⁴ See Doherty, *supra* note 19, at 199.

⁶⁵ FCCC, *supra* note 3, art. 7.6, 31 I.L.M. at 862.

⁶⁶ See *id.* art. 4.1(i), 31 I.L.M. at 856.

⁶⁷ *Id.*

⁶⁸ *Id.* art. 7.2(l), 31 I.L.M. at 861.

lowed to participate in formal meetings as observers and could, during plenary conferences, intervene from the floor for an allotted amount of time.⁶⁹ Non-governmental organizations also made fruitful use of their scientific expertise in climate change and utilized the mass media skillfully.⁷⁰ At COP2, the Subsidiary Body for Scientific and Technological Advice (SBSTA) adopted a resolution that requested the Secretariat to study a more efficient mechanism to allow NGOs increased access to the Convention.⁷¹

A. *Environmental Non-governmental Organizations in the Climate Change Debate*

Environmental NGOs began to participate in the negotiations of the Climate Change Convention at a very early stage and continued to play a major role throughout the COPs.⁷² Approximately 100 representatives of thirty ENGOs attended the Conferences of the Parties. At the intermediate meetings, fewer ENGO delegates tended to participate; their attendance often depended upon the types of issues to be discussed at a meeting.⁷³ The most influential and active ENGOs were advocacy groups representing both 'mainstream' (World Wide Fund for Nature (WWF) and Environmental Defense Fund (EDF)) and 'deep ecologist' (Greenpeace and Sierra Club) ideologies, from both international (Greenpeace) and national (Ozone Action and EDF) perspectives. Certain groups, such as the EDF, came to

⁶⁹ See *Report of the Conference of the Parties on its First Session*, U.N. FCCC, 1st Sess., Provisional Agenda Item 4(b), at 2 n.1, U.N. Doc. FCCC/CP/1995/2 (1995); see also *id.* Provisional Agenda Item 4(e), at 1, U.N. Doc. FCCC/CP/1995/3 (1995); Doherty, *supra* note 19, at 207.

⁷⁰ See Doherty, *supra* note 19, at 201.

⁷¹ In the following meeting in March 1997 in Bonn, however, the study for an NGO consultative mechanism was postponed to the next session. See *Report of the Subsidiary Body for Scientific and Technological Advice on the Work of Its Second Session*, U.N. FCCC, 2d Sess., Provisional Agenda Item 7, at 11, U.N. Doc. FCCC/SBSTA/1996/4 (1996).

⁷² See generally GARETH PORTER & JANET WELSH BROWN, *GLOBAL ENVIRONMENTAL POLITICS* (1995) (defining ENGOs and offering an analysis of their history and development); see also Dan Tarlock, *The Role of Non-governmental Organizations in the Development of International Environmental Law*, 68 CHI-KENT L. REV. 61 (1992) (explaining how NGOs have expanded their influence in the international environmental sphere).

⁷³ For example, only 34 representatives participated in AGBM3, while about 90 went to ABGM6 in Bonn in March 1997. See *Non-Governmental Organizations* (visited Feb. 16, 1999) <<http://www.unfccc.de/fccc/events/sbfeb97/ngo.htm>>.

the negotiations with significant expertise in litigation and international treaty drafting. Many research institutes and project-focused NGOs were also present.

NGOs that played an important role in the evolution of the negotiations include:

Climate Action Network (CAN): a coalition of ENGOs involved in the negotiations of the Climate Change Convention. CAN is divided into regional groups, including Africa, Europe, Asia, Latin America, and the United States. As an umbrella organization, CAN coordinates the positions of NGOs during negotiations and expresses the views of its members.⁷⁴

Environmental Defense Fund (EDF): a mainstream ENGO based in the United States that deals mostly with policy and legal issues. EDF was an important player in the negotiations because, contrary to most other ENGOs, it supported market-based economic measures.⁷⁵

Greenpeace: an international advocacy ENGO with a deep ecologist ideology. Greenpeace is well known for its spectacular actions and outspoken methods.⁷⁶

Ozone Action: a small, deep ecologist ENGO based in the United States with its headquarters in Washington, D.C. It is the only ENGO discussed in this Article that is not a member of CAN.⁷⁷

Sierra Club: a deep ecologist, North American ENGO.

Worldwatch Institute (WWI): a research institute ENGO, heavily involved in the negotiations on climate change. It is an environmental advisor to the Business Council for Sustainable Energy (BCSE), an industry group formed by representatives of renewable energy sources and natural gas.⁷⁸

⁷⁴ See Climate Action Network, *About CAN* (visited Feb. 16, 1999) <[http://www.climatenetwork.org/#About CAN](http://www.climatenetwork.org/#About%20CAN)>.

⁷⁵ See Environmental Defense Fund, *About EDF: EDF at a Glance* (visited Feb. 16, 1999) <http://www.EDF.org/AboutEDF/b_atglance.html>.

⁷⁶ See PORTER & BROWN, *supra* note 72, at 51.

⁷⁷ See Ozone Action, *Background and Publications, Staff and Board of Directors: 1996, 1997, and 1998 Funders* (visited Feb. 16, 1999) <<http://www.ozone.org/back//.html>>.

⁷⁸ See Worldwatch Institute, *Worldwatch Mission* (visited Feb. 16, 1999) <<http://worldwatch.org/wi/index.html>>; see also The Business Council for Sustainable Energy, *Council's Environmental Advisory Committee* (visited Feb. 16, 1999) <<http://www.bcse.org/enviro.html>>.

World Wide Fund for Nature (WWF): an apolitical, mainstream NGO based in Switzerland but active worldwide.⁷⁹

Other ENGOS, such as Friends of the Earth and the Natural Resources Defense Council (NRDC), also participated in the negotiations to varying degrees. ENGOS unanimously support the view that global warming is a reality caused mostly by human activities, such as industrial emissions, agricultural practices, and deforestation. ENGOS support the conclusions of the IPCC contained in the SAR⁸⁰ and have sponsored alternative studies that promote early action to avoid serious consequences to people and nature in the near future.⁸¹ ENGOS assert that the threats the Earth is facing are serious and that irreversible damages will result from inaction. For example, Greenpeace's Report on Global Warming states that "the prospects of the future environmental security being compromised by global warming are now so real as to make adoption of a precautionary response imperative . . . [P]olicy-makers should be clearly aware that waiting in perpetuity for better scientific data entails the real risk of waiting until is too late."⁸² Bill Hare of Greenpeace International declared at COP1 that "[t]he industrialized world must agree to serious reduction in CO₂ to avoid the financial and human costs of increased flooding."⁸³ Similarly, the Sierra Club Board of Directors adopted a policy statement that concluded that "[t]he danger posed to the environment by the current and projected release of pollutants that are affecting the thermal balance of the atmosphere . . . is so great that mitigation measures must be taken now."⁸⁴ Similar positions are held by mainstream ENGOS. The WWF stated, for example, that "[c]limate change will have wide-

⁷⁹ See World Wide Fund for Nature, *WWF* (visited Feb. 16, 1999) <http://www.Panda.org/resources/factsheets/general/fct_wwf2.htm>.

⁸⁰ See *supra* text accompanying notes 6-11.

⁸¹ Greenpeace International, for example, cited a study by Professor Pier Vellinga of Amsterdam Free University that warned against the serious risks of floods due to global warming effects. See *Frequently Asked Questions About Global Warming, Climate Change and the Greenhouse Effect* § 10 (visited Feb. 16, 1999) <<http://rtk.net/E10101T659>> (concluding that increases in rain and river flow, consistent with global warming, have already occurred).

⁸² GLOBAL WARMING: THE GREENPEACE REPORT 460 (Jeremy Leggett ed., 1990).

⁸³ *German Utility RWE Sues Greenpeace Amid New Signs of Climate Change* (Mar. 30, 1995) <<http://www.greenpeace.org/~climate/berlin1995/index.html#report4>>.

⁸⁴ Sierra Club, *Protect America's Environment: For Our Families, For Our Future* (visited Feb. 16, 1999) <<http://www.sierraclub.org/policy/ozone.html>>.

ranging and mostly damaging impacts on human health. . . . We cannot afford to continue 'business-as-usual.' Changing course will not be easy, but is necessary."⁸⁵

In general, ENGOs tend to focus on sector-specific measures and they only partially support market-based approaches. Most ENGOs support specific carbon-free fuels and legislative tools. For example, the Sierra Club supports an increase in the current Corporate Average Fuel Economy (CAFE) standard, more energy efficient heating, cooling and lighting systems, increased performance from home appliances and industrial machinery, and better insulated buildings.⁸⁶ Sierra Club also campaigns for the removal of subsidies for fossil fuels and nuclear power, and the increased use of safe alternative technologies, such as wind and solar power.⁸⁷ Similarly, Greenpeace "is working to shift global energy dependence from environmentally dangerous sources of energy, such as fossil fuels and nuclear energy, to ecologically sustainable solar energy. Greenpeace wants industrialized countries to convert their current energy generating systems to renewable technologies at a minimum of 3% per year."⁸⁸ It strongly supports the use of solar power but opposes the further use of natural gas and nuclear power.⁸⁹

Other ENGOs support more general approaches. The NRDC recommends incentives for alternative energy, especially fuels for transportation, and an increase in fuel efficiency.⁹⁰ The EDF does not support particular measures, but instead emphasizes the need to achieve the goal of cutting emissions instead of focusing on the path chosen to get there.⁹¹ Both the EDF and the NRDC support the use of natural gas as a substitute for more carbon intensive fuels.⁹² The WWF sponsored a study on meas-

⁸⁵ World Wide Fund for Nature, *Conclusions* (visited Feb. 19, 1999) <http://www.panda.org/resources/publications/climate/Health_Issue/page9.htm>.

⁸⁶ See Patricia Glick, *Global Warming: The High Costs of Inaction* (visited Feb. 16, 1999) <<http://tamalpais.sierraclub.org/global%2dwarming/inaction.html>>.

⁸⁷ See *id.*

⁸⁸ *The Greenpeace International Climate Campaign* (visited Feb. 16, 1999) <<http://www.greenpeace.org/~climate/climatesum.html>>.

⁸⁹ See *id.*

⁹⁰ See Daniel A. Lashof, *Cool Solutions for Global Warming* (on file with author).

⁹¹ See *Environmental Defense Fund Strategic Plan* (visited Feb. 16, 1999) <<http://www.edf.org/pubs/strategicplan/>>.

⁹² See Robert E. Tuhnke, *Kicking America's Oil Habit* (visited Feb. 16, 1999) <<http://www.edf.org/pubs/edf2Dletter/1991/1%5Fhabitat.html>>.

ures that the European Union could adopt to reduce emissions to the level proposed by the Alliance of Small Island States (AOSIS). Its approach uses a variety of measures including increasing efficiency standards and the use of renewable energy sources.⁹³

Environmental NGOs disagree, to a certain extent, as to the kinds of action that should be taken to address the issue of climate change. These differences are most visible in their choices of timetables, targets, policies, and measures. Some ENGOs support decisive actions and drastic cuts in fossil fuels, while others support market-based approaches and more varied actions. For example, CAN-U.S. supported the proposal of the AOSIS to reduce 1990 emissions by twenty percent by the year 2005.⁹⁴ The EDF agreed to a maximum temperature increase of one degree Celsius per century and maximum GHG concentration of 450 parts per million.⁹⁵ However, differences did exist within the U.S. coalition. The Sierra Club, for example, asked for more stringent commitments from the United States and proposed a twenty-five percent reduction target by the year 2005.⁹⁶ Other ENGOs considered the AOSIS target unrealistic because of the short time left to the year 2005, but they still politically supported it.⁹⁷

⁹³ See World Wide Fund for Nature Climate Change Campaign, *Climate Solutions: Growth with Less Energy* (visited Feb. 16, 1999) <<http://www.panda.org/climate/solutions>>. Ozone Action published short position papers in support of the IPCC cost-benefit analysis and urged actions to implement measures to cut emissions. See Ozone Action, *Ozone Action: Global Warming Page* (visited Feb. 16, 1999) <<http://www.ozone.org/page20.html>>. Some ENGOs, however, do not agree on cost-benefit analysis. Sierra Club criticizes the cost-benefit approach because it puts a price on goods that cannot be priced (like the loss of human life, social distress caused by severe weather, and the loss of biodiversity). Sierra Club also criticizes the use of discounting and aggregation, and claims that discounting undervalues the costs of global warming on future generations and that aggregating results undermines the fact that the effects of global warming vary considerably in every region. See Glick, *supra* note 86, <<http://tamalpais.sierraclub.org/global%2dwarming/inaction.html#True>>.

⁹⁴ See Carol Werner & Jennifer Morgan, *Cities Endorse AOSIS Protocol*, ECO, Mar. 30, 1995, at 1.

⁹⁵ See Interview with Karan Capoor, Policy Analyst, Environmental Defense Fund, in Washington, D.C. (Jan. 23, 1997).

⁹⁶ See Sierra Club, *We Must Act Now to Curb Global Warming* (visited Feb. 16, 1999) <<http://www.sierraclub.org/news/global-warming/0005.html>>.

⁹⁷ See Interview with Christopher Flavin, Senior Vice President, Worldwatch Institute, in Washington, D.C. (Jan. 21, 1997).

The flexible targets and multi-annual emissions budgets proposed by the U.S. delegation were very controversial among environmental NGOs. The majority of ENGOs supported stringent measures and fixed targets and timetables, while others supported the U.S. proposal of a multi-annual emissions budget.⁹⁸ The U.S. proposal for Kyoto provided for ten-year budgets for CO₂ that each Annex I country would achieve individually.⁹⁹ In doing so, each country would be able to borrow (with a penalty) from subsequent years if it needed to reach its commitment. The proposal allows trading of CO₂ emissions permits if a country has a surplus of them after meeting its own commitments.¹⁰⁰ The EDF especially supports this proposal and helped to define it.¹⁰¹

Most ENGOs also agree that developed countries should be more responsible for cutting GHG emissions. Kirsky Hamilton of Greenpeace International suggested that “[i]t is up to the developed world, which produces 75% of the world’s man-made CO₂ emissions, to make these cuts, and help developing countries make the switch to renewable forms of energy, such as solar energy.”¹⁰² Peter Otinda of Climate Network Africa noted that “negotiations on the problems of global change must take cognizance of its socio-economic causes [A]ny approach that ignores this issue of equity is bound to fail.”¹⁰³ Recent developments, however, show that some ENGOs agree that developing countries should be included in some form of stabilization agreement.¹⁰⁴

⁹⁸ See Interview with Kelly Sims, Science Policy Director, Ozone Action, in Washington, D.C. (Jan. 21, 1997) (stating that EDF supports the U.S. proposal).

⁹⁹ See *id.*

¹⁰⁰ See Obertür & Ott, *supra* note 36, at 147.

¹⁰¹ See Interview with Cliff Wood, Climate Action Network, in Washington, D.C. (Jan. 21, 1997).

¹⁰² Greenpeace International, *Greenpeace Climbers Still on Smokestack: Industrialised Nations Are Climate Killers* (Mar. 28, 1995) <<http://www.greenpeace.org/~climate/berlin1995/index.html#report2>>.

¹⁰³ Peter Otinda, *Negotiate But . . . No Solution Without Equity Consideration*, ECO, July 8, 1996, at 3, 3.

¹⁰⁴ See, e.g., Environmental Defense Fund, *Global Warming: Dispatches from the Climate Summit at Kyoto* (visited Feb. 16, 1999) <<http://www.edf.org/issues/Kyoto.html>> (stating that one of the six critical elements indicated by EDF for environmental success includes “a path leading toward participation by developing nations”).

B. *Intra-group Relations Among ENGOS*

The ENGOS that were more active in the climate change negotiations were mostly advocacy ENGOS, although some groups belonging to other categories (such as operational and research institutes) were active as well. ENGOS were generally united on issues and shared the same position on a relatively substantial number of issues. At the negotiations, they also shared facilities and collaborated in the publication of *ECO*, a pro-environmental newsletter. Most of the ENGOS that participated in the climate change discussions were members of CAN and worked in a coalition for the negotiations of the Convention. Scientific papers were reviewed by CAN and a common position was elaborated by the group.¹⁰⁵

Although advocacy ENGOS shared most of their characteristics and positions, some tensions did exist among them. Environmental NGOs can be divided into 'mainstream' groups and 'deep ecologists,'¹⁰⁶ and the tensions that surfaced were generally attributable to this ideological difference. Disagreements among mainstream and deep ecologists have persisted for a long time and are not confined to the climate change issue. Some mainstream groups are criticized for their past efforts to cooperate with governments and business groups. The EDF, for example, was admonished for trying to cut special deals on the 1990 amendments to the U.S. Clean Air Act without consulting other ENGOS.¹⁰⁷ Sometimes, for negotiating purposes, ENGOS pretend to be in more disagreement than they really are. For example, Greenpeace can play "good cop/bad cop" with the EDF in order to obtain a more favorable outcome at negotiations.¹⁰⁸

Because of these ideological differences, members of CAN at the FCCC reached conclusions only on limited issues and not on the complete spectrum of issues related to the Convention. While member-NGOs could agree on a final target and timetable for reduction, as well as the decision to support the AOSIS proposal, they could not reach agreement on the measures and policies by which parties would achieve this goal. The EDF, a

¹⁰⁵ See Interview with Cliff Wood, *supra* note 101.

¹⁰⁶ See WALTER A. ROSENBAUM, ENVIRONMENTAL POLITICS AND POLICY 28-32 (1995).

¹⁰⁷ See Interview with Kelly Sims, *supra* note 98; see also Interview with Kallee Kreider, Program Director of Climate/Energy Campaign, Greenpeace, in Washington, D.C. (Jan. 22, 1997).

¹⁰⁸ See Interview with Kallee Kreider, *supra* note 107.

mainstream ENGO, supported market-based mechanisms.¹⁰⁹ Deep ecologist ENGOs, like Greenpeace and the Sierra Club, disagreed. Greenpeace favored the use of renewable energies, especially solar,¹¹⁰ while the Sierra Club pushed for an increase in CAFE standards.¹¹¹ Similarly, ENGOs did not have a uniform position on joint implementation. EDF favored joint implementation among Annex I parties,¹¹² while the Sierra Club did not accept it under any circumstances.¹¹³

C. *Business Non-governmental Organizations in the Climate Change Debate*

Business NGOs are interest groups that unite several companies to campaign for a specific point of view. Many BNGOs were involved in the negotiations of the Climate Change Convention and their presence in the debate increased as the creation of binding commitments became more real. Eric Holdsworth from the Global Climate Coalition noticed that “sometime after COP1, industry representatives became more numerous than environmental NGOs representatives.”¹¹⁴ Since then, the gap has only widened. At some more recent negotiations, there were twice as many industrial representatives as there were ENGO representatives.¹¹⁵ At the Sixth Session of the Ad Hoc Group on the Berlin Mandate (AGBM6) in Bonn in March 1997, there were more than 150 representatives from about thirty-five different industry groups in attendance, as com-

¹⁰⁹ See *Global Warming Treaty: Testimony Before the Senate Comm. on Agric., Forestry and Nutrition*, 105th Cong. (Mar. 5, 1998) (statement of Fred Krupp, Executive Director, Environmental Defense Fund), available in 1998 WL 8992982.

¹¹⁰ See *The Greenpeace International Climate Campaign* (visited Feb. 16, 1999) <<http://www.greenpeace.org/climate/climatesum.html>>.

¹¹¹ See *Global Climate Negotiations: Hearing Before the House Comm. on Int'l Relations*, 105th Cong. 49, 50 (1997) (statement of Daniel Becker, Director, Sierra Club Global Warming and Energy Program) (explaining the Sierra Club's support of CAFE standards).

¹¹² See Environmental Defense Fund, *Global Warming: Dispatches from the Climate Summit at Kyoto* (visited Feb. 16, 1999) <<http://www.edf.org/issues/Kyoto.html>>.

¹¹³ See *Risky Business: Trading Away Our Responsibilities* (visited April 11, 1999) <<http://tamalpais.sierraclub.org/global%2d warming/riskybusiness.html>>.

¹¹⁴ Interview with Eric Holdsworth, Deputy Executive Director, Global Climate Coalition, in Washington, D.C. (Jan. 23, 1997).

¹¹⁵ See *id.*

pared to only ninety representatives from about twenty-five ENGOs.

In the debate on climate change, some BNGOs represent specific industry sectors with similar interests in the outcome of the negotiations,¹¹⁶ while others represent industrial interests in general, such as the International Chamber of Commerce (ICC) and the World Business Council for Sustainable Development (WBCSD). Since COP2, BNGOs have endorsed two separate statements: one from mainstream industry groups and one from industry groups representing renewable energies, cogeneration, natural gas, and energy efficient technologies.¹¹⁷

The most important economic sectors and the BNGOs that represent them are the following:

Coal and oil companies and the *energy intensive industries*¹¹⁸ are represented by many relatively conservative BNGOs.¹¹⁹ The most conservative group is the Climate Council.¹²⁰ Another conservative group is the Global Climate Coalition (GCC),¹²¹ based in Washington, D.C., which has financed numerous economic

¹¹⁶ The Global Climate Coalition (GCC) represented oil companies and heavy energy users, and the European Business Council for a Sustainable Future represented European renewables.

¹¹⁷ See Workshop on Consultative Mechanisms for Non-Governmental Organization Inputs to the United Nations Framework Convention on Climate Change (visited Nov. 7, 1998) <<http://www.unfccc.de/fccc/docs/1996/sbsta/misc02.htm>>.

¹¹⁸ These include aluminum producers, the iron and steel industry, paper companies, and plastics producers.

¹¹⁹ In many cases, companies are members of more than one group representing diverse views. There are at least two reasons that explain this phenomenon. First, multinational companies can have more than one interest (e.g., a company can produce fuels from oil, gas, and coal while simultaneously seeking to expand its chemicals business); thus, they may need to be present on more than one sector-specific BNGO. Second, their position may vary from country to country, and sister companies of the same multinational groups can choose, as they are normally free to do, to be members of differentially conservative or open business NGOs.

¹²⁰ Dan Pearlman, an attorney who represented the group at the negotiations, tried to prevent any kind of agreement and helped OPEC representatives in writing interventions and in suggesting ways to block and delay decisions. See Fred Pearce, *Playing Dirty in Kyoto*, NEW SCIENTIST, Jan. 17, 1998, at 48.

¹²¹ The GCC has 42 board members and 17 general members. The board members include Air Transport Association, Aluminum Association, Inc., Atlantic Richfield Coal Company, Chemical Manufacturers Association, Chevron, Exxon, Ford, General Motors, Texaco, and others. The general members, who pay \$2500 rather than \$20,000, include Amoco, BHP Minerals, Dow Chemicals, Goodyear Tire & Rubber Company, and Shell Oil Company. The GCC was named by the Climate Action Network as one of the "dirty dozen" companies

studies on the potential impacts and costs resulting from GHG reductions. The American Petroleum Institute (API) represents the positions of American oil companies on many issues.¹²² API actively participated in the negotiations and financed a study to analyze the costs of implementing reduction targets.¹²³ Less conservative BNGOs representing mostly fossil fuel, transportation, and energy intensive sectors include the ICC, the WBCSD, and the U.S. Council for International Business (USCIB).¹²⁴

The *chemical sector*¹²⁵ is represented by the International Climate Change Partnership (ICCP),¹²⁶ a group based in Virginia which supports long-term comprehensive goals and market-based solutions to climate change.¹²⁷

who have "played an obstructive role in the climate change negotiations." *Who Is the Worst of the Worst of the 'Dirty Dozen'?*, ECO, Dec. 4, 1997, at 4, 4.

¹²² The Executive Vice President of API, William O'Keefe, gave a speech before the Economic Club of Detroit in which he strongly attacked President Clinton's commitments to legally binding emission reductions and recommended taking a skeptical view of the science of climate change and the costs on the economy. See O'Keefe Address, *supra* note 44.

¹²³ See Interview with Russell O. Jones, Senior Economist, American Petroleum Institute, in Washington, D.C. (Mar. 12, 1997).

¹²⁴ It is sometimes difficult to differentiate among the BNGOs and their positions since some BNGOs are members of other BNGOs. The GCC, for example, is a member of the U.S. Council for International Business, and API is a member of GCC. These groups sometimes share part of their top managers. O'Keefe, for example, is Executive Vice-President of API and Chairman of the GCC.

¹²⁵ The chemical sector became involved in the climate change debate at an early stage, as chlorofluorocarbons (CFCs) and their substitutes were named as gases that have an ozone-depleting effect. CFCs contribute significantly to GHG warming and their influence is studied carefully by the scientific community. The Montreal Protocol, which since 1987 has been ratified by more than 150 countries, provides for a complete phase-out of CFCs. See Montreal Protocol, *supra* note 23, art. 2, 26 I.L.M. at 1552; see also INTERNATIONAL ENVIRONMENTAL LAW 492 (Michael R. Molitor et al. eds., 1991). Scientists have demonstrated, however, that substitutes developed by industry to replace CFCs have warming potential as well. See Hilary F. French, *Learning from the Ozone Experience*, in STATE OF THE WORLD 151 (Lester R. Brown et al. eds., 1997).

¹²⁶ The ICCP, like the Climate Council, is based in a law firm. Members of the ICCP include 3M Company, Air Conditioning and Refrigeration Institute, AT&T, BP America, Dow, Dupont, Elf Atochem, European Fluorocarbon Technical Committee, and General Electric. More conservative chemicals industries such as Dow Chemical are also members of the GCC.

¹²⁷ See *International Industry Coalition Urges Governments and Industry to Join to Create Effective Global Climate Change Process*, PR NEWSWIRE, Mar. 6, 1996, available in WL, ALLNEWSPLUS Database.

Insurance and re-insurance companies,¹²⁸ also present at the negotiations, are interesting examples of companies that would suffer the consequences of the projected global warming.¹²⁹ However, the insurance and re-insurance sectors do not share a common position on the issue of climate change. American companies are not involved in the negotiations. European insurance and re-insurance companies, on the other hand, are interested in the negotiations and in the issue of climate change. In 1990, declarations from the European insurance and re-insurance companies already linked financial losses from bad weather conditions to the change in climate patterns.¹³⁰ European companies, however, are “active observers” rather than fully participating lobbyists. They do not lobby strongly for particular positions and have not distinguished themselves from the positions of other industries present at the negotiations.¹³¹

¹²⁸ In the last decade, insurance and re-insurance industries experienced unprecedented losses due to weather disasters, although the IPCC could not confirm that anthropogenic climate change had a role in these disasters. See *SAR*, *supra* note 6, § 17. In the future, climate change has the potential to destabilize the insurance market if the patterns of climatic change are not understood and the risks are misinterpreted or underestimated.

¹²⁹ There are more than \$2 trillion of insured assets in the U.S. coastlines alone. See Mark Hertsgaard, *Insurance Firms, Banks Battle Big Oil*, SACRAMENTO BEE, Feb. 4, 1996, at Forum 1.

¹³⁰ H.R. Kaufman, General Manager of Swiss Re, declared in 1990 that “[t]here is a significant body of scientific evidence indicating that last year’s record insured losses from natural catastrophes was not a random occurrence. Instead it may be the result of climatic changes that will enormously expand the liability of the property-casualty industry.” JEREMY LEGGETT, GREENPEACE INTERNATIONAL, CLIMATE CHANGE AND THE INSURANCE INDUSTRY: SOLIDARITY AMONG THE RISK COMMUNITY? 27 (ca. 1993) (on file with author); see also Munich Re, *1996 Another Year of Natural Catastrophes* (visited Feb. 16, 1999) <http://www.munichre.com/press/press/961223_eng.htm> (containing a Dec. 23, 1996 press release from Munich Re, the largest re-insurance company in the world, concerning losses from natural catastrophes).

¹³¹ Both Swiss Re and Munich Re, the world’s two biggest reinsurance companies, planned to send observers to COP1. See *US Insurers Meet with Vice President on Climate Change*, GLOBAL ENVTL. CHANGE REP., Feb. 24, 1995, available in 1995 WL 8443827. Similarly, Carlos Joly, of UNI Storoerbrand, Norway’s largest insurer, declared that “[g]lobal warming to many of us in the industry is not a question of if it will happen, but what is happening now.” *Global Warming Spurs New Developments in Insurance, Banking*, GLOBAL WARMING NETWORK ONLINE, July 18, 1995, available in 1995 WL 2265919.

The *renewable energy sector*¹³² benefits the most from a policy of reduced global dependence on fossil fuels.¹³³ The renewable sector is represented by the United States Business Council for Sustainable Energy (USBCSE). This group was formed in 1992 with the help of some ENGOs, particularly the World Watch Institute. In Europe, the European Business Council for a Sustainable Energy Future (e5), created in 1996, represents energy efficiency, cogeneration, and renewable energy companies. Renewables are still a relatively small industry, but their presence at the negotiations was important to demonstrate that the industry was not completely united and that more than one point of view needed to be considered for business.

Before the publication of the Second Assessment Report in 1995, BNGOs often contested the scientific findings with respect to climate change. BNGOs questioned the validity of the findings, the proceedings, and the integrity of the IPCC in an attempt to discredit the scientific conclusions.¹³⁴

¹³² The renewable sector includes solar and wind energy producers, cogeneration, energy efficiency, and natural gas companies. See NANCY K. KUBASEK & GARY S. SILVERMAN, ENVIRONMENTAL LAW 238 (1994).

¹³³ The renewable sector began to get involved in the negotiations rather recently, and their presence among other industry groups is acquiring importance. At COP2, the renewable industry for the first time presented a separate intervention from the floor at the Plenary session. Similarly, at AGBM6—the following meeting—industry groups representing renewables and natural gas presented a separate statement. At AGBM6, the BCSE stressed its link to other BNGOs and declared that its members “agree with much of the business community in many issues, but not always on climate change and energy policy,” so as to remind the others that it was a member of the industry despite its lobbying for emissions reductions. Paul E. Metz, *Statement Before AGBM6, the Ad Hoc Group on the Berlin Mandate, Sixth Session, Bonn, March 5, 1997, on Behalf of the United States Business Council for Sustainable Energy and the European Business Council for a Sustainable Energy Future—e-to-the-power-of-5* (visited Feb. 16, 1999) <<http://www.e5.org/pages/st-01e.htm>> [hereinafter *Statement Before AGBM6*].

¹³⁴ Professor Patrick Michaels of the University of Virginia declared that scientists supporting the issue of global warming resisted critical examination of the subject, and George Laver of the Atlantic Richfield Company said that the U.N. had deleted passages of skeptical scientists in their reports. See Alan Kovski, *Battle Against Global Warming Moves to Geneva This Week*, OIL DAILY, Mar. 5, 1996, at 4. Similarly, Frederick Seitz, President Emeritus of Rockefeller University and Chairman of the George C. Marshall Institute, claimed that he had “never witnessed a more disturbing corruption of the peer-review process than the events that led to this IPCC report.” Frederick Seitz, Editorial, *A Major Deception on ‘Global Warming’*, WALL ST. J., June 12, 1996, at A16. ENGOs harshly criticized these attempts to discredit the science behind global warming. See, e.g., Kelly Sims, *Gone Completely Crazy*, ECO, July 8, 1996, at 1.

The publication of the SAR, with its first-time recognition that human behavior has an impact on global warming and the endorsement of its conclusions by the international community, shifted the focus in the debate over science. Even though some groups still criticized parts of the science of climate change, the existence of climate change was acknowledged by many of the BNGOs as well as by the international community.¹³⁵ Questions remained on the extent of climate change, on the validity of future projections, and on the weight and importance of those uncertainties that still surrounded the issue. There was, therefore, a need for further scientific research. The GCC, for example, agreed after the IPCC that the SAR was the most comprehensive report on climate change, but still emphasized the need to conduct further research before the parties took any action to combat climate change. It stated that “[e]xisting scientific evidence does not support actions aimed solely at reducing or stabilizing greenhouse gas emissions.”¹³⁶ According to the GCC, any action to prevent or reduce GHG emissions would have such a major impact on the U.S. carbon-based economy that a greater understanding of the climate system was necessary before the parties embarked on any reduction.¹³⁷ Similarly, the USCIB, a member of the ICC, said that more time was needed to understand the issue.¹³⁸ These groups supported more scientific research on issues like carbon captured by oceans and a more detailed quantification of temperature variation and sea level rise.¹³⁹ These

ECO also reported that “[a]ttempts by groups such as the Global Climate Coalition, representing the interests of coal, oil and automobile companies working in concert with Saudi Arabia and Kuwait, to discredit the IPCC report are bluntly self-serving. The attack on the IPCC and its Lead Authors are just plain lies.” *No Discernible Impact on Emissions*, ECO, July 8, 1996, at 1, 2. ENGOs also stated that “the IPCC has provided more information about human induced climate change than has been known about any previous global threat” and that “the GCC’s misinformation campaign is unrelenting.” Sims, *supra*, at 1.

¹³⁵ For example, William O’Keefe, Chairman of the GCC, acknowledged that the “scientific theory is valid” and that “the potential for enhanced global climate change is real,” but he added that “the degree of likely change and the best responses are profoundly uncertain subjects.” Kovski, *supra* note 134, at 4.

¹³⁶ Global Climate Coalition, *GCC’s Position on the Climate Issue* (visited Feb. 19, 1999) <<http://www.globalclimate.org/mission.htm>>.

¹³⁷ *See id.*

¹³⁸ *See* Interview with Norine Kennedy, Vice President of Environmental Affairs, United States Council for International Business, in New York, N.Y. (Jan. 16, 1997).

¹³⁹ *See id.*

BNGOs suggest that waiting before acting will not result in damages to the environment or the population because uncertainties still exist and technical developments will make emissions easier to control. For example, William O'Keefe declared that "[w]e could wait 20 to 25 years to take action until scientific uncertainty is lessened."¹⁴⁰

Other BNGOs have argued that, while more research would be useful, some immediate action is necessary. Kevin Fay, Executive Director of the ICCP, shared some doubts concerning the "relationship between the emissions of these [greenhouse] gases, their retention in the atmosphere, and the potential effects on the planet's climate."¹⁴¹ However, he called for an active role of industry, science, and policy makers to formulate "a successful solution to managing the risk associated with global climate change."¹⁴² The WBCSD Annual Review of Activities stated that although the scientific debate about the effect of the 'greenhouse gases' on global warming will continue, "it is prudent for business to play its part by looking for ways to reduce emissions of those gases."¹⁴³ Furthermore, one of the seven principles for which the e5 decided to lobby at the negotiations was that "[s]cientific results of international climate and research such as the Intergovernmental Panel on Climate Change (IPCC) should be the basis of rational climate policies."¹⁴⁴

Similarly, some European insurance and re-insurance companies shared the position of ENGOs on the scientific evidence of climate change and on the need for timely action to reduce emissions. These companies agreed that climate change represents a major threat to the environment.¹⁴⁵ Since 1989, in fact, the insurance sector has experienced a major increase in expenditures due to natural catastrophes.¹⁴⁶ Following COP1 in Berlin, the position of some of the biggest European insurers and re-insurers (like Munich Re and Swiss Re) has moved to favor

¹⁴⁰ Sims, *supra* note 134, at 1.

¹⁴¹ *International Industry Coalition Urges Governments and Industry to Join to Create Effective Global Climate Change Process*, *supra* note 127.

¹⁴² *Id.*

¹⁴³ World Business Council for Sustainable Development, *Climate and Energy* (visited Feb. 16, 1999) <<http://www.wbcd.ch/climate1.htm>>.

¹⁴⁴ *Energy: Business Forms Sustainable Energy Council*, EUR. ENV'T, Feb. 20, 1996, at 1, 2-3.

¹⁴⁵ See *Global Warming Spurs New Developments in Insurance, Banking*, *supra* note 131.

¹⁴⁶ See *Insurers Call for Action*, ECO, July 10, 1996, at 3.

measures reducing emissions.¹⁴⁷ The collection of evidence and the involvement of insurers in the debate have also been influenced by the heavy lobbying of Greenpeace, which sponsored effective conferences for insurers prior to the Berlin conference. In a report issued by British insurers for the British government, published concurrently with COP2, insurers declared that they were “at risk of a major increase in claims over the next 50 years as a result of global warming.”¹⁴⁸ Swiss insurance executive H.R. Kaufman declared that a “[f]ailure to act would leave the insurance industry and its policyholders vulnerable to truly disastrous consequences.”¹⁴⁹ At COP2, during a workshop organized by the United Nations Environmental Programme (UNEP), fifty-eight representatives from insurance and re-insurance companies from all over the world issued a position paper calling for “early substantial reductions in greenhouse gas emissions.”¹⁵⁰

European and U.S. insurance and re-insurance companies, however, approach the issue of climate change in significantly different ways.¹⁵¹ Companies in the United States are addressing the problem of losses first by trying to understand climatic cycles better through an analysis of the risks involved in climatic events and then by adjusting the prices of insurance to cover those risks.¹⁵² In contrast, the European insurance and re-insurance industry is researching the causes of global warming and becoming involved in the process that is leading to more stringent timetables and targets on GHG emissions.

Most of the BNGOs support the application of binding commitments to developing countries.¹⁵³ In contrast, the priority of ENGOs is to agree on effective commitments for the developed world, and only at a second stage do they introduce commit-

¹⁴⁷ See *id.*

¹⁴⁸ Edwin Unsworth, *Exposure Heats Up: Climate Change to Raise Claims—Study*, Bus. Ins., July 15, 1996, at 17. The report, entitled “Review of the Potential Effects of Climate Change to the U.K.,” forecasts a potential six-percent increase in mean winter wind speeds in southern Britain by 2050. See *id.*

¹⁴⁹ Christopher Flavin, *Storm Warnings*, WORLD WATCH, Nov.-Dec. 1994, at 10, 11.

¹⁵⁰ *Insurers Call for Action*, *supra* note 146, at 3 (commenting on the “notable exception of the U.S.”).

¹⁵¹ See Interview with Frank Nutter, Re-insurance Association of America, in Washington, D.C. (Mar. 12, 1997).

¹⁵² See *id.*

¹⁵³ See, e.g., Global Climate Coalition, *GCC's Position on the Climate Issue* (visited Feb. 20, 1999) <<http://www.globalclimate.org/mission.htm>> (expressing GCC's support for active participation by developing countries).

ments for the developing world.¹⁵⁴ BNGOs that have an interest in stringent environmental regulations (like the BCSE) also support a stricter approach regarding developing countries' commitments, even while they agree that Annex I parties should be the first to engage in emissions reduction.¹⁵⁵ To explain their positions publicly, some BNGOs use projected emissions of CO₂ by developing countries. Conservative BNGOs have sometimes stressed the issue of American economic well-being. For example, after the Kyoto agreement, William O'Keefe, Chairman of the GCC, stated that "[o]ur folly will bestow enormous economic advantages on our international competitors at the expense of American business, workers, farmers and consumers. For the first time in history, the United States would allow a foreign body dominated by developing countries to restrict and control the economy of the United States."¹⁵⁶ Other BNGOs emphasize differentiated targets and timetables. According to the ICCP, for example, the negotiation process should include "commitments, possibly differentiated, for developed and developing countries."¹⁵⁷ The e5 stresses the need for "more technology transfer" and that "North-South transfer is essential" to the success of any reductions in developing countries.¹⁵⁸ Similarly, David Mills, Vice-President of the International Solar Energy Society, has proposed a plan of action to introduce renewable energy technology to developed countries and on a voluntary basis to developing countries.¹⁵⁹

The industry sectors that are likely to suffer the biggest share of economic loss are industries that produce or release the highest share of CO₂. Such industries include coal and oil companies, energy companies, transportation, vehicles manufactur-

¹⁵⁴ See, e.g., *Risky Business: Trading Away Our Responsibilities* (visited April 11, 1999) <<http://tamalpais.sierraclub.org/global%2dwarming/riskybusiness.html>> (explaining the Sierra Club's preference for preliminary emissions reduction in industrialized countries).

¹⁵⁵ See Interview with Kirk Brown, Policy Director, Business Council for Sustainable Energy, in Washington, D.C. (Jan. 21, 1997).

¹⁵⁶ Global Climate Coalition, *Industry, Labor Congressional Leaders Express Outrage as U.S. Negotiators Fail to Defend U.S. Interests*, 5 CLIMATE WATCH BRIEF 1, ¶¶ 6-7 (Dec. 11, 1997) <<http://www.globalclimate.org/watch/dec11-97.htm>>. The article also states that three million jobs could potentially be lost in the U.S. if the Kyoto Protocol is ratified. See *id.*

¹⁵⁷ *International Industry Coalition Urges Governments and Industry to Join to Create Effective Global Climate Change Process*, *supra* note 127.

¹⁵⁸ *Energy: Business Forms Sustainable Energy Council*, *supra* note 144, at 3.

¹⁵⁹ See David Mills, *Kick Starting Green Energy*, ECO, Apr. 3, 1995, at 3.

ers, and energy intensive industries (e.g., producers of heavy metals and chemicals). Industry groups that represent these sectors have produced careful studies on the costs of GHG reductions. The GCC financed a study of the economic consequences to industry of a reduction of CO₂ by twenty percent by 2005 (the AOSIS proposal).¹⁶⁰ The study concludes that reducing CO₂ by twenty percent by 2010 would reduce the GDP of the United States by between 1.5 and 3.5 percent.¹⁶¹ This situation is financially equivalent to a tax of \$200-\$300 (in 1990 U.S. dollars) per ton of CO₂ emitted.¹⁶² Such an impact would obviously have negative consequences for the U.S. economy. In addition to the GCC, the American Petroleum Institute and the International Chamber of Commerce (along with its American affiliate, USCIB) emphasize the costs of CO₂ reductions and suggest that more studies should be carried out on both science and economics before engaging in legally binding commitments.¹⁶³

Other BNGOs take different positions on the issue of cost, interpreting the results of the IPCC in a more urgent fashion. Among the few sectors that have produced cost-benefit analyses of the impact of climate change on their business, the most important one is the insurance and re-insurance industry. European insurance and re-insurance companies are beginning to use cost-benefit analysis as an element to explore the possibility of their participation in the negotiations. In fact, some European members of the industry have recognized that climate change is having a major impact on the industry and claim that reducing GHG emissions will be beneficial to the economy.¹⁶⁴ The e5 also shared the view that the costs of reducing CO₂ will eventually be less than the costs of climate change itself.¹⁶⁵ This position is partially explained by the interests of the companies that are members of e5. Most of them are involved in technologies related to renewable energies, cogeneration, and natural gas. Thus, they would benefit substantially from both a reduction of CO₂ emis-

¹⁶⁰ See WHARTON ECONOMETRIC FORECASTING ASSOC. GROUP & H. ZINDER & ASSOCS., A REVIEW OF THE ECONOMIC IMPACTS OF AOSIS-TYPE PROPOSALS TO LIMIT CARBON DIOXIDE EMISSIONS (1996) (study prepared for the Global Climate Coalition).

¹⁶¹ See *id.* at 26.

¹⁶² See *id.*

¹⁶³ See O'Keefe Address, *supra* note 44 (arguing that more studies should be done before entering legally binding commitments).

¹⁶⁴ See Unsworth, *supra* note 148, at 17.

¹⁶⁵ See Statement Before AGBM6, *supra* note 133.

sions and the consequent increased use of fewer carbon intensive sources of energy. The e5 quoted studies of the International Network for Environmental Management and concluded that “[o]verall saving energy is several times more labour intensive and less capital intensive than providing energy supply. . . . [It] would free up investment for more productive purposes” and thus would be beneficial for the economy.¹⁶⁶

Business NGOs have diverse views on the issue of timetables and targets. Their positions can generally be divided into three groups. The first group supports only voluntary actions, and does not support any form of fixed target or timetable for reduction. GCC’s John Schlaes, for instance, thinks that “‘targets and timetables’ is the wrong approach.”¹⁶⁷ The GCC declared that it was “extremely disappointed” that the United States would support quantified legally binding objectives,¹⁶⁸ and is pushing instead for flexible incentive-based rules.¹⁶⁹ Many industries prefer flexible timetables and voluntary actions, and some have already begun to implement such programs as an example of good will.¹⁷⁰ Most industry groups fear that fixed targets will result in strict policies by national governments that will require substantial financial sacrifice and will ultimately result in economic loss.¹⁷¹ The GCC sponsored a study on the appropriate timing of reductions in GHG emissions that concluded that “focusing on mandatory near-term reductions may not be

¹⁶⁶ *Energy: Business Forms Sustainable Energy Council*, *supra* note 144, at 3.

¹⁶⁷ William Miller, *Heating Up*, *INDUS. WEEK*, July 1, 1996, at 55, 56.

¹⁶⁸ See Lira Behrens, *U.S. Agrees to Legally Binding Targets for Greenhouse Gas Emissions*, *INSIDE ENERGY/WITH FED. LANDS*, July 22, 1996, at 6, available in 1996 WL 8697142.

¹⁶⁹ See Miller, *supra* note 167, at 56.

¹⁷⁰ Such voluntary programs exist in the U.S., Canada, and Australia. See William L. Fang, *The U.S. Climate Change Program: Voluntary Government-Utility Partnerships to Mitigate Greenhouse Emissions* (last modified June 4, 1998) <<http://www.ji.org/iuep/icabonn.shtml>> (describing the U.S. program and naming the participating companies).

¹⁷¹ On this issue, ENGOs conclude that “[w]ithout a legally binding target, countries will not only miss the stabilization aim, but will be unable to stabilize GHG concentrations at a safe level for humankind and the environment.” Delia Villagrasa & Jennifer Morgan, *Targets Not Aims*, *ECO*, July 17, 1996, at 4, 4. Considering how little the developed countries actually achieved in trying to implement the non-legally binding agreement reached in Rio, this conclusion makes a strong point. See, e.g., Robert Hornung, *Voluntary Failures*, *ECO*, July 12, 1996, at 2 (reporting on the insufficiencies of the Canadian Voluntary Challenge and Registry Program).

cost-effective in light of the specific characteristics of global climate change.”¹⁷²

The second group emphasizes the need to get involved in the development of the Kyoto Protocol and agrees to support some kind of target and timetable. Industry groups such as the ICC, the USCIB, and the API have similar positions and stress voluntary actions.¹⁷³ Recently, there has been a shift by industry towards this position as more evidence of the effects of climate change emerges and as industry seeks an economically sensible position.

The third group agrees with ENGOs and supports fixed timetables and targets. These industry groups generally represent renewable energy and natural gas companies.¹⁷⁴ Both the BCSE and e5 support the AOSIS proposal.

The coal and oil industries especially fear that tight regulations will increase industry costs too much. Irl Engelhart, Chairman, President, and Chief Executive of Peabody Holding Co., declared that “if global climate change restrictions are imposed, the coal industry will not have the opportunity to adjust.”¹⁷⁵ One commentator has suggested that many U.S. industry groups find the measures supported by ENGOs, such as “manufacturing-efficiency standards, carbon tax on fuel use and fuel-efficiency standards for vehicles,” to be “anathema” and instead favor voluntary agreements like joint implementation.¹⁷⁶ The GCC proposal, for example, concentrated on improving energy efficiency in developing countries.¹⁷⁷ The priorities indicated by the WBCSD in implementing the FCCC are cost-effective actions

¹⁷² DAVID HARRISON, JR. & ALBERT L. NICHOLS, RECENT EVIDENCE ON THE APPROPRIATE TIMING OF REDUCTIONS IN GREENHOUSE GAS EMISSIONS at E-1 (1996) (study prepared for the Global Climate Coalition by National Economic Research Associates (NERA)).

¹⁷³ See American Petroleum Institute, *Recommended Actions to Address Greenhouse Gas Emissions* (last modified Dec. 18, 1998) <<http://www.api.org/globalclimate/page3recommendlink.htm>>; *The Business Recipe for Combating Climate Change*, BUS. WORLD (Dec. 4, 1997) <http://www.iccwbo.org/Business_World/1997/The_Business_recipe_for.htm>.

¹⁷⁴ See *Green Plan Boost for U.S. Gas Use*, INT’L GAS REP., Oct. 29, 1993, at 7.

¹⁷⁵ *U.S. Coal Chief Concedes Gas Edge*, INT’L GAS REP., May 13, 1994, at 2, 2 (stating that Peabody Holding Co. controls 10% of U.S. coal production and is the largest U.S. coal producer).

¹⁷⁶ Miller, *supra* note 167, at 56.

¹⁷⁷ See Global Climate Coalition, *GCC’s Position on the Climate Issue* (visited Feb. 20, 1999) <<http://www.globalclimate.org/mission.htm>>.

(including energy efficiency and joint implementation) and a focus on the development, implementation, and dissemination of new technologies.¹⁷⁸ Similarly, the ICCP supported “market-based” measures that would ensure that “no individual industries” are “discriminated against.”¹⁷⁹ ICCP called for policies “that encourage the innovative use of existing technologies that can minimize greenhouse gas emissions, and the development of even better new technologies.”¹⁸⁰ The BCSE recommended that “policies should be market-based.”¹⁸¹ Some industries consider joint implementation a cost-efficient way to reduce emissions at the global level.¹⁸²

D. *Intra-group Relations Among BNGOs*

The relationship between BNGOs differs from the intra-group relations of ENGOs in two aspects. First, the discussion on climate change is dominated by one section of BNGOs (formed mostly by fossil fuels, the energy sector, and chemical groups) that has a substantial interest in lobbying the negotiations. The other sectors are active listeners that usually do not engage substantially in the negotiations. Second, there is one minority group that supports views very different from the majority of industries, and these views are having a substantial impact on the negotiations. This minority is composed of renewable, energy efficiency, cogeneration, and natural gas companies that support near-term targets.¹⁸³

BNGOs share common positions on some of the elements of the FCCC. All BNGOs, for example, support market-based in-

¹⁷⁸ See *International Business Action in Climate Change Executive Summary* (visited Feb. 16, 1999) <<http://194.209.71.99/printpdf/report%20to%20cop2%20June%2020%20ibacc.doc>>.

¹⁷⁹ *International Industry Coalition Urges Governments and Industry to Join to Create Effective Global Climate Change Process*, *supra* note 127. The ICCP, whose majority of members have negotiated the Montreal Protocol on Substances that Deplete the Ozone Layer and have acquired experience on environmental treaty negotiations, also stressed the importance that no industry is “singled-out.” See *id.*

¹⁸⁰ *Id.*

¹⁸¹ John G. Hemphill, *Six Principles for a Sustainable Energy Future*, *CLIMATE CHANGE BULL.*, 3d Quarter at 7, 7 (recommending the recognition of clean energy alternatives).

¹⁸² The WBCSD, ICC, GCC, USCIB, and ICCP all support JI in all FCCC parties. The BCSE is the only BNGO that prefers the implementation of JI only within Annex 1 parties. See Interview with Kirk Brown, *supra* note 155.

¹⁸³ See Statement Before AGBM6, *supra* note 133.

struments rather than command-and-control measures.¹⁸⁴ Positions on this and similar issues are also linked to the characteristics of industry groups as representative of economic actors.

While some differences existed on the appropriateness of measures and timetables, they did not develop into tensions among the groups; the majority were united in the negotiations. The situation might change for future COPs if other groups become involved more visibly in the negotiations. For example, should European insurers decide to lobby for commitments, the balance of positions would shift substantially. Environmental NGOs claimed that industry was showing signs of increased division at AGBM6.¹⁸⁵ Business NGO representatives contested this claim and commented that industry was not as divided as environmental NGOs portrayed them.¹⁸⁶

Some tensions on the substance of the negotiations existed only within a defined minority that did not support most of the views of other industry groups. Since COP2, this minority has produced separated position statements at plenary meetings. This is a significant development for the negotiations, but this sector is small compared to the majority group. Additionally, the minority group has declared that “they agree with much of the business community on many issues.”¹⁸⁷

E. *Inter-group Relations: Existing Collaborations and Cooperation Between Environmental and Business NGOs*

ENGOS and industry groups are not monoliths. They are formed from diverse organizations and express a variety of views. Relations among members of industry groups and ENGOS can

¹⁸⁴ A command-and-control (CAC) regulatory approach is based on an environmental standard set by the government and enforced by legislation. CAC is typically set for similar categories of polluting sources. The efficacy of CAC has been questioned since it does not differentiate among emissions-reduction costs that various polluters encounter and since it imposes the same standards to all polluters. The market-based approach used economic instruments, like emissions permits, to reduce emissions. See Bruce A. Ackerman & Richard B. Stewart, *Reforming Environmental Law*, in FOUNDATIONS OF ENVIRONMENTAL LAW AND POLICY 133 (Richard L. Revesz ed., 1997).

¹⁸⁵ The dynamic among industry lobbyists was compared to the “last days of the Roman Empire.” *Industry Splits*, ECO, Mar. 7, 1997, at 3, 3.

¹⁸⁶ See Statement Before AGBM6, *supra* note 133.

¹⁸⁷ *Id.*

be characterized in different ways. Because climate change is still a political issue, relations are tense, although some cooperation between ENGOs and specific companies or groups is developing.¹⁸⁸ At the COPs, groups mostly lobbied and developed their own positions. There was a notable shift in position by industry to a more environmentally sensitive approach to the climate problem, especially as the scientific aspects became more certain. This shift will probably become more noticeable as the discussion moves toward policies to be adopted to implement Kyoto reductions. In the past, most of these attempts were initiated by ENGOs, with support from some BNGOs.

This section will first analyze the attempts to increase cooperation and dialogue made by research institutes and conflict-resolution NGOs. Second, it will examine the efforts of the WWF and Greenpeace to involve industrial sectors in the negotiations.

Some ENGOs and BNGOs do not see the necessity for cooperation at this stage, while a few are united and cooperate in many ways. Some advocacy ENGOs do not want to have contact with industry groups, particularly with those representing fossil fuel producers.¹⁸⁹ These ENGOs think that their positions are so far apart that discussion is not possible. Also, some ENGOs consider talking with fossil fuel representatives a compromise that they do not want to make. This was especially true for deep ecologist ENGOs like Greenpeace and Ozone Action.¹⁹⁰ Some ENGOs have tried to have discussions in the past, but have failed; thus, they feel disillusioned by the prospect of future talks. The Sierra Club, for example, participated in discussion groups on transportation issues with car manufacturers and concluded that there were no issues on which the groups could agree.¹⁹¹ While no industry groups have declared that dialogue is useless, some ENGOs have openly taken this view.¹⁹² Nonetheless, attempts at

¹⁸⁸ For example, “[w]ith EDF, BP will develop a pilot program, setting performance targets in 10 of its operating units, and, within two years, set a voluntary company-wide emissions limit, years ahead of treaty requirements.” *British Petroleum and EDF Efforts Boost Climate Talks*, 28 EDF LETTER 1, ¶ 1 (Nov. 1997) <http://www.edf.org/pubs/EDF-Letter/1997/Nov/b_BP.html>.

¹⁸⁹ See Interview with Kelly Sims, *supra* note 98.

¹⁹⁰ See Interview with Kalee Kreider, *supra* note 107.

¹⁹¹ See Interview with Ann Mesnikoff, Associate Representative, Sierra Club, in Washington, D.C. (Jan. 22, 1997).

¹⁹² See Interview with Michael Toman, Senior Fellow and Director, Resources for the Future, in Washington, D.C. (Mar. 11, 1997).

dialogue and cooperation have come almost exclusively from the ENGO community.

On the opposite side of the spectrum, some companies are so close to ENGOs that members of ENGOs sit on their Boards of Directors.¹⁹³ This is the case for industry groups that represent renewable energies, cogeneration, energy efficiency, and natural gas. In fact, ENGOs also helped form some of these groups. The WWI and the EDF, for example, were instrumental in the creation of the BCSE.¹⁹⁴ During the negotiations, few attempts were made to reach out to members of the opposite side. Business and environmental NGOs did participate together in conferences and roundtables on a few occasions, but these ostensibly collaborative efforts were generally used by each group to reiterate their own positions. More concrete attempts to enhance dialogue, cooperation, and relations were addressed by some research institutes and conflict resolution NGOs. The EDF is an interesting example because its policy statements reflect its concerns for environmental goals and economic flexibility. The EDF tries to “make people want to walk into the system” of GHG restrictions and believes that it should attempt dialogues with industry groups.¹⁹⁵ Tradable permits and joint implementation could represent a starting point for dialogue between industry groups and some mainstream ENGOs. There were also attempts, exclusively from ENGOs, to involve new BNGOs in the COP negotiations. These efforts were directed to sectors that were not principal stakeholders at the negotiations and had the goal of engaging these sectors in pro-environment lobbying. Greenpeace addressed the European insurance and re-insurance sectors.¹⁹⁶ The WWF approached the building, transportation, and heavy industry sectors.¹⁹⁷ Ozone Action contacted the tourist industry.¹⁹⁸

Some differences among the business and environmental groups are embedded within the characteristics of the groups.

¹⁹³ See Interview with Christopher Flavin, *supra* note 97.

¹⁹⁴ See *id.*; Interview with Kirk Brown, *supra* note 155.

¹⁹⁵ Interview with Karan Kapoor, *supra* note 95.

¹⁹⁶ See THE EMERGING INTERNATIONAL REGIME FOR CLIMATE CHANGE, *supra* note 32, at 83.

¹⁹⁷ See Interview with Peter DeBrine, Program Officer at the Climate Energy Program, World Wide Fund for Nature (U.S.), in Washington, D.C. (Jan. 23, 1997).

¹⁹⁸ See *id.*; see also Interview with Kelly Sims, *supra* note 98.

NGOs claim to support moral positions and are therefore considered to be thinking about the long-term.¹⁹⁹ NGOs also feel that they represent both the environment and the public at the negotiations.²⁰⁰ On the other side, BNGOs feel they are allowing the economy to grow and are providing wealth essential to world development. These positions are difficult to compromise and should be kept in mind when trying to negotiate. Also, some differences are the results of factors that are independent from the positions on the negotiations on climate change, such as the negotiating position of a national government or variances in cultural attitudes.

The conflict-resolution NGOs were the most active among the environmental groups in trying to find common ground for collaboration. Some are characterized by neutrality and belong to the project-oriented category (such as the Keystone Center), while others try to facilitate dialogue but have a defined position on the issue (such as the Center for Clean Air Policy). The Keystone Center is a skilled group that has mediated contentious environmental issues over the years. The Keystone Center “enables decision makers from government, the environmental community, industry, and citizen organizations to come together to clarify issues in disputes” by facilitating mutual understanding at the local, national, and international level.²⁰¹ The Center is becoming more involved in the negotiations of the Convention and will possibly address the issue of national commitments among diverse stakeholders in the future.²⁰²

The Center for Clean Air Policy was also involved in discussions with energy companies and tried to develop common policies with them.²⁰³ Research institutes, like Resources for the Future and the World Resource Institute, took part in studies on scientific and economic issues linked to climate change and disseminated their findings to industry groups.²⁰⁴ While it is too early to judge the effectiveness of such actions, they are interest-

¹⁹⁹ See Interview with Kelly Sims, *supra* note 98.

²⁰⁰ See *id.*

²⁰¹ THE KEYSTONE CENTER, ANNUAL REPORT 6 (1994-1995).

²⁰² See Interview with Tim Flaherty, Senior Policy Analyst, The Keystone Center, in Washington, D.C. (Mar. 12, 1997).

²⁰³ See *Combating Climate Change Proves Profitable for Cities*, NATIONS CITIES WKLY., Sep. 29, 1997, at 13.

²⁰⁴ See *Worldview Climate Change: Most Believe in Warming Threat—Poll*, GREENWIRE, Aug. 4, 1998, available in WL, ALLNEWSPLUS Database.

ing examples of collaboration that may become fruitful. The process should be monitored closely to follow its development.

Another kind of relationship among representatives of different groups was developed by three ENGOs: Greenpeace, the WWF, and Ozone Action. The three groups contacted representatives from different industry sectors to explain the dangers and possible solutions brought by the Convention. Greenpeace addressed the European insurance and re-insurance industries,²⁰⁵ which has been receptive to their advice.²⁰⁶ Greenpeace organized numerous conferences to address the issue with the risk sector, published numerous papers, and researched the issue extensively.²⁰⁷ European insurance and re-insurance companies are not fully involved in the negotiations, but should they decide to do so, they will change the equilibrium of industry groups considerably. American insurance companies are not involved in the issue, though some attempts have been made to involve them.

The WWF organized roundtables involving different industry sectors to create a critical mass of support for measures to curb climate change. The first roundtable took place in Copenhagen on January 20, 1997. Government officials, experts, and industry representatives participated. The roundtable concluded that there was a “sufficient[ly] firm basis of scientific knowledge about climate change to justify policymakers and economic interests devising strategies and programmes to reduce emissions of greenhouse gases.”²⁰⁸ It also concluded that measures to combat climate change “could convey economic advantages in view of the considerable potential for reducing greenhouse gas emissions at low cost, or at a profit” and offer “advantages to first-movers.”²⁰⁹ Other sectors identified for participation are transportation and heavy industry (e.g., chemical and energy intensive industries).²¹⁰

Similarly, Ozone Action involved the tourist sector in the dialogue on climate change. The first meeting with members of this group was held February 10-14, 1997. The “David and Goli-

²⁰⁵ See Interview with Kalee Kreider, *supra* note 107.

²⁰⁶ See Hertsgaard, *supra* note 129.

²⁰⁷ See, e.g., LEGGETT, *supra* note 130.

²⁰⁸ Claude Martin, WWF Round-Table on Climate Change 2 (Jan. 20, 1997) (unpublished summary of a roundtable on climate change) (on file with author).

²⁰⁹ *Id.*

²¹⁰ See *id.*

ath campaign” was carried out on the East Coast of the United States with the purpose of highlighting “the impacts of global climate change on the communities in the United States and to make connection between local sea-level rise and the current international negotiations on climate change.”²¹¹ Participants included several university professors, two ambassadors of AOSIS states, and members of Ozone Action.²¹²

IV

METHODS OF ACTION

While their interests differ, environmental and business NGOs have used similar methods to influence the outcome of climate change negotiations. First, many lobbied and pressured governments and international organizations to adopt a position in line with their interests.²¹³ Second, NGOs influenced the agenda by defining or redefining issues in ways that reflected their point of view.²¹⁴ Third, groups submitted sections or entire drafts of conventions to the Conferences of the Parties.²¹⁵ Both environmental and business NGOs predominantly used the first and second methods outlined above. The third approach was utilized less extensively at the negotiations, and when it was, it was usually used only by ENGOs.²¹⁶

A. Lobbying

Environmental and business NGOs were active lobbyists in Berlin, Geneva, and Kyoto, just as they previously had been in Rio. For example, approximately 1000 representatives of NGOs and other private interests groups were accredited as observers at Berlin.²¹⁷

²¹¹ John Passacantando, *Summary, in* FROM SEA TO SHINING SEA: THE IMPACTS OF CLIMATE CHANGE SEA-LEVEL RISE ON THE EAST COAST 2 (Ozone Action ed., 1997).

²¹² *See id.*

²¹³ *See infra* Part IV.A.

²¹⁴ *See infra* Part IV.B.

²¹⁵ *See* PORTER & BROWN, *supra* note 72, at 50-66 (giving examples of behavior of industry groups and NGOs during other international environmental negotiations).

²¹⁶ *See id.* at 54 (arguing that a method solely characteristic of ENGOs is to “monitor the implementation of conventions and report to the secretariat and / or the parties”).

²¹⁷ The exact number of groups admitted as observers to COP1 was 165, resulting in a total of 979 NGO representatives. This number is even more im-

The groups lobbied in rather distinct ways. ENGOs were very outspoken and highly visible. They communicated their positions through daily publications, innovative forms of protests, and criticisms of the positions with which they did not agree. The ENGO lobbying effort had two main objectives: to educate the public about the dangers of climate change and to persuade government representatives to take decisive action on the issue.

Climate Action Network, the international network of ENGOs, published a daily newspaper, *ECO*, during the proceedings of all three COPs and other intermediate specialized meetings.²¹⁸ They distributed numerous copies of *ECO* at no charge to the representatives. The newspaper summarized the events of the day, criticized specific governmental and industry delegations, and suggested productive options. In Berlin, for example, *ECO* denounced an informal paper by the Organization for Economic Co-operation and Development which indicated a possible agreement between the United States and the European Union to delay agreements on legal commitments to reduce CO₂ emissions.²¹⁹ This secret agreement was contrary to the E.U. official position and ministerial mandate. *ECO*'s public denunciation of the agreement was central to its failure. In fact, after the publication of the article, the E.U. returned to its original position.²²⁰

The newspaper also suggested possible alternatives to fossil fuels and new possibilities for developing the Convention.²²¹ As *ECO* had such a wide distribution, it is highly possible that governmental representatives read it and adopted some of the viewpoints as their own. Moreover, the media that attended the events received copies of *ECO*, and it quickly became a primary source of information for press coverage of the COPs.

pressive when compared with the number of Parties present (117) and the total number of Party representatives (757). See *Directory of Participants*, U.N. FCCC, Conference of the Parties, 1st Sess., at 2, U.N. Doc. FCCC/1995/Inf.5/Rev.2 (1995).

²¹⁸ See generally Hilary F. French, *Reforming the United Nations to Ensure Environmentally Sustainable Development*, 4 *TRANSNAT'L L. & CONTEMP. PROBS.* 559, 598 (1994) (arguing that such newspapers have become "mainstays of the international negotiating process").

²¹⁹ See *EU Mandate Trashed?*, *ECO*, Mar. 30 1995, at 1.

²²⁰ See Obertür & Ott, *supra* note 36, at 145.

²²¹ See *Don't Trade Tech: Transfer for JI*, *ECO*, Mar. 29, 1995, at 3 (explaining the difference between technology transfer and joint implementation); see also *Two Transportation Options*, *ECO*, Apr. 7, 1995, at 3 (describing car sharing and automobile fuel economy standards as examples of policies to reduce CO₂ emissions).

The second way that ENGOs lobbied at the negotiations included visible and effective protests both inside and outside the conference center. Three activists from Greenpeace, for example, climbed a 190-meter tall chimney of a German coal power plant in Frimmersdorf (near Cologne) the day before COP1 began and spent twelve days on the chimney.²²² Fifty activists chained themselves to the coaches and limousines used by delegates to reach the convention center in Berlin to protest the GCC and the slow pace of the negotiations at the climate change conference.²²³

Finally, ENGOs lobbied by identifying specific positions that they considered particularly threatening and denouncing them. During COP1, for example, *ECO* published a daily short paragraph called "Weltshumerz," where the author made fun of actions by industry groups and government representatives that expressed conservative views about the development of the Convention.²²⁴ A similar *ECO* feature was developed during COP2 under the title "LJman."²²⁵ Using a similar technique, Greenpeace published a note on the Internet before the Geneva conference accusing the car industry of lying about the measures they planned to implement to protect the environment and comparing the public statements of car manufacturers with the reality of their behaviors.²²⁶

Business NGOs, on the other hand, kept a low-profile and lobbied in more traditional ways. They did not have daily publications and did not adopt innovative forms of protest. They tried to reach and influence government representatives both outside and inside negotiations. In addition to publicly stating their views, BNGOs also organized conferences and brought scientific experts to the negotiations. Business NGOs did not organize many events and protests on the outside, but they were very present inside the negotiations. They focused on lobbying a few

²²² See Greenpeace *Scales Chimney of Coal-fired CO₂ Factory* (Mar. 27, 1995) <<http://www.greenpeace.org/~climate/berlin1995/index.html#report1>>.

²²³ See Ramesh Jaura, *Environment: Protests Shake Up the U.N. Climate Meet in Berlin*, INTER PRESS SERVICE, Mar. 30, 1995, available in 1995 WL 2260055.

²²⁴ See *Weltshumerz*, *ECO*, Mar. 28, 1995, at 4.

²²⁵ See, e.g., *Léman*, *ECO*, July 8, 1998, at 4.

²²⁶ See Greenpeace, *Rhetoric Versus Reality* (visited Feb. 16, 1998) <<http://www.greenpeace.org/~climate/smile/dirty/6rhetoric.html>> (referring to Ford, Chrysler, Mercedes-Benz, and Volkswagen). Greenpeace also developed a prototype of a highly efficient car using as a model the model Twingo produced by Renault. See *id.*

specific representatives with whom they had close relationships. For example, the representative of the Climate Council, Dan Pearlman, was very friendly with the representatives of oil-producing countries, Japan, the United States, Canada, Australia, and New Zealand.²²⁷ Other industry groups, like the GCC, the ICCP, and the USCIB, adopted a wider, representative-oriented approach. They distributed position papers and research results, and organized conferences to present their different views.²²⁸ Business NGOs lobbied governmental representatives before meetings and were very active within the various meetings.

The presence of BNGOs was felt more intensively as the negotiations evolved and the FCCC began to take the shape of a legal instrument with teeth. The need of BNGOs to make their voices heard throughout the process became clearer. For example, the ICCP stated that it “recognize[d] that it is industry’s responsibility to work with policy makers in understanding the changes that are occurring and could occur” and that it “intend[ed] to proactively continue” its participation during the negotiations.²²⁹ Even industry groups that represented renewable energy, the keenest supporters of mitigation measures, did not join ENGOs in their outspoken role. At a maximum, some industry groups published articles in *ECO* describing their activities and held policy and technical conferences to present technological alternatives to coal and oil technology.²³⁰

Non-government actors also lobbied using the media, both through the Internet and through classical mass media sources, such as newspapers and television. ENGOs used the new technologies more masterfully than the BNGOs. On the Internet, for example, ENGO web pages were better presented and more accessible. Greenpeace is known to have a very specialized and modern media center where it can speedily produce high quality television reports quickly. Also, many newspapers and specialized brochures were distributed throughout the negotiations.

Through the various lobbying methodologies, it is interesting to note how the language of non-government actors differed

²²⁷ See Interview with Kelly Sims, *supra* note 98.

²²⁸ At the negotiations BNGOs and ENGOs had two different meeting rooms. These rooms were also used to organize conferences where representatives of the two groups were sometimes present. See *id.*

²²⁹ *International Industry Coalition Urges Governments and Industry to Join to Create Effective Global Climate Process*, *supra* note 127.

²³⁰ See, e.g., *The International Solar Energy Society*, *ECO*, Apr. 3, 1996, at 6.

from one another. Greenpeace, Ozone Action, and Sierra Club used provocative, aggressive, and sometimes moralistic language. On the other hand, the EDF, NRDC, WWF, and BNGOs used technical and scientific language that was generally less aggressive.

Apart from the official mechanisms set up in the negotiations, business and environmental NGOs also lobbied the conferences by providing alternative evidence to representatives. Both BNGOs and ENGOs financed their own research and substantiated their demands with their findings.²³¹ They also reviewed and criticized each other's papers.²³² Scientific and policy research papers were presented at the Conference by the specialists who conducted the research, and the scientists were then made available for question-and-answer sessions.

B. *Influencing the Agenda*

The second fashion in which business and environmental NGOs influenced the FCCC negotiations was by defining or re-defining the issues on the agenda. This activity differed from lobbying insofar as it was directed mostly to the definition and re-definition of specific issues rather than general issues of policy-making.

The principal way in which business and environmental NGOs influenced the agenda was by using their official access to the Convention to intervene at the negotiations. The Convention provided for a limited intervention capacity by non-governmental representatives.²³³ Each group could present its point of view from the floor at the plenary for an allocated amount of time. One intervention was usually made by ENGOs and one by BNGOs. At COP2 in Geneva, industry made two separate interventions: one represented the point of view of the majority of industry groups (like the GCC and ICCP), and the other was given by representatives of the renewable energy sector (including the USCSE and the e5). After the COP1 and COP2 negotiations, the GCC claimed particular success in influencing the debate, stating that it had been able to bring into the agenda

²³¹ See, e.g., WHARTON ECONOMETRIC FORECASTING ASSOC. GROUP & H. ZINDER & ASSOCS., *supra* note 160.

²³² See *id.* (comparing and contrasting existing macroeconomic modeling evaluations of the potential impact of emission reduction proposals).

²³³ See *supra* note 69 and accompanying text.

items that had previously been neglected by the parties.²³⁴ Such items included the amount of emissions of developing countries in the future and the economic costs of cutting emissions.²³⁵

C. *Presentation of Draft Protocol Provisions*

The third way NGOs influenced the international debate was to submit parts or entire drafts of a protocol to the Convention for consideration by the parties. This method was used during the FCCC negotiations in different ways. Under the FCCC, NGOs could not propose drafts or parts of drafts directly to the Secretariat during negotiations.²³⁶ However, industry groups and ENGOs could influence the proposals of parties by participating in their drafting processes, prior to their submission to the Secretariat. This was relevant at international and national levels. At the international level, the most relevant example was that of the Foundation for International and Environmental Law (FIELD), a British research and advocacy NGO that represented several small island states at the negotiation.²³⁷ At a national level, the U.S. delegation's proposal for a Kyoto Protocol was influenced by research and proposals by the EDF, especially with respect to the issues of tradable permits and tradable emission systems.²³⁸

CONCLUSION

This study has pointed out that the relationships between different NGOs are complex and varied. Relations are not limited to intra-group interactions, as might have been expected, but they include inter-group interactions as well. ENGOs are generally more interested in contacting BNGOs than vice-versa. Relationships between the business sector and ENGOs are usually left to the initiative of a single company, as the example of the collaboration between BP and EDF illustrates. Among different ENGOs, more moderate groups try to collaborate with BNGOs and specific sectors of the industry. The WWF, for example, addressed different groups and held conferences to sensitize indus-

²³⁴ See Interview with Eric Holdsworth, *supra* note 114.

²³⁵ See *id.*

²³⁶ See FCCC, *supra* note 3, art. 15, 31 I.L.M. at 868 (providing only that "Parties" may propose amendments to the Convention).

²³⁷ FIELD is a research institute linked to the School of Oriental and African Studies in London.

²³⁸ See Interview with Karan Capoor, *supra* note 95; see also Interview with Kelly Sims, *supra* note 98.

try to the problem of climate change, with the goal of finding common ground on which to collaborate. A different group of ENGOs, which included Greenpeace and Ozone Action, addressed sectors that are not yet involved in the negotiations, such as tourists and insurance industries. Their purpose was to illustrate the potential dangers of climate change for the specific sectors.

Intra-group relations are also complex, as NGOs represent different world views that negotiate from various perspectives. Not all ENGOs supported the same policy measures to reduce GHG emissions, and BNGOs defended different approaches to the issue of climate change. There was a basic common denominator, however, that allowed each NGO to function within its group.

Environmental and business NGOs behaved in significantly different ways during the negotiations at the COPs. Figure 1 summarizes the different methods adopted by BNGOs and ENGOs during the negotiations, according to the analysis presented in Part IV.

FIGURE 1
METHODS AND ACTIONS OF ENGOs AND BNGOs AT
THE NEGOTIATIONS

METHOD	ACTION	BNGOs	ENGOs
Lobbying	Contacts with representatives	Yes	Yes
	Daily publications	No	Yes
	Protests	No	Yes
	Use of mass media	Yes (but less than ENGOs)	Yes
Definition and re-definition of issues	Interventions at Plenary	Yes	Yes
Submission of drafts	Directly	No	No
	Indirectly	Yes	Yes

Business NGOs came to lobby particular representatives and used classical lobbying methods. ENGOs skillfully utilized different media and made their positions very visible.

This can be explained in different ways. First, environmental and business NGOs had different constituencies. ENGOs attempted to educate the public on the effects and threats of climate change. For BNGOs, lobbying some governmental

representatives was just as effective when applied in a soft manner. Although BNGOs needed some support of public opinion, ENGOs relied more heavily on public support for their existence. The use of mass communication to influence public opinion by industry groups was common mostly in the United States. Mobil, for example, advertised almost weekly in national newspapers such as the *New York Times* and the *Wall Street Journal* to publicize its support for a thorough cost-benefit analysis before decisions were made.²³⁹ ENGOs rarely used similar newspaper campaigns and preferred different media such as the Internet to reach what was probably a different kind of audience.

Second, a substantial part of these differences can be attributed to the intrinsically different characteristics of the actors. Industry representatives are expected to be more business-like, which means that they are not expected to engage in public protests like chaining themselves to cars. ENGOs, however, are expected to behave in more creative and progressive ways.

It is difficult to know how much reconciliation is possible among the different views endorsed by the environmental and business NGOs. Some ENGOs find their roots in moral values, and they suggest that they act from a moral point of view. BNGOs, on the other hand, feel that they help provide economic wealth to the people and that they are responsible to their individual shareholders. These differences are important to understand when analyzing the various approaches to climate change that business and environmental NGOs confront, address, and react to. Also, these differences influence the views of business and environmental NGOs on the entire issue of climate change. In the future, we can likely expect more dialogue among the groups as actions to reduce GHG emissions are taken and the negotiations on political issues are overcome.

²³⁹ See, e.g., *The Environment: It's Everyone's Business*, N.Y. TIMES, July 9, 1998, at A27 (explaining in an advertisement by Mobil that emissions need to be reduced safely and economically).