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## Building a Latin American Coalition on Forests: Negotiation Barriers and Opportunities

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## Building a Latin American Coalition on Forests: Negotiation Barriers and Opportunities

*Maria Banda*  
*John Oppermann\**

### ABSTRACT

*Reducing emissions from deforestation and forest degradation (REDD) is one of the most important and most contentious issues in global climate talks. Deforestation talks have been fraught with many of the problems that plague international negotiations involving complex geopolitical and scientific components. In these situations, small developing countries experience particular difficulties preparing and organizing to best pursue their interests and ensure a*

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\* Our analysis has benefited from interviews with key stakeholders, including Latin American REDD negotiators, regional and international civil society organizations, environmental experts, and UN officials with the UN Environment Programme (UNEP) and the UNFCCC. We are grateful to them for their insights and thoughts. We thank, in particular, members of the UNEP Regional Office for Latin America and the Caribbean and Professor Robert Bordone, Director of the Harvard Law School Negotiation & Mediation Clinical Program, for his support and advice. We also thank Kate Dooley, Gabriel Labbate, Jan Kappen, Robin Rix, Andrea Sabelli, Solstad Gry Asp, and other anonymous reviewers for their insightful comments on our Article and the editors of *Vanderbilt Journal of Transnational Law* for their editorial support. We are also grateful to Harvard Law School's International Legal Studies Department for its funding. This Article has received the 2010 Student Paper Award from the International Institute for Conflict Prevention and Resolution. Any errors are our own.

*sustainable outcome. The fact that many Latin American countries find themselves in this position should concern all parties involved, because the region is home to more than 20 percent of the world's forests and has the world's highest rate of deforestation.*

*This Article looks at how these difficulties might be remedied to allow Latin America to lead the world to a robust anti-deforestation agreement. Part I provides a concise background on the REDD talks at the 2009 Copenhagen Climate Conference, which serves as a useful illustration of the substantive and procedural challenges in the ongoing deforestation negotiations. It identifies the main stakeholders at the climate talks and the camps in which national delegations organized themselves at Copenhagen. It then reviews the major substantive roadblocks in the REDD negotiations and identifies a series of analytical, ideological, and structural barriers that impeded significant progress on forests at Copenhagen. We suggest that these barriers necessitate the formation of an active and forward-looking Latin American coalition on forests. Part II discusses the reasons why forming a coalition is in Latin American countries' interest. Beyond the general advantages obtained by pooling resources and negotiating strength, Part II explores the regional ecology, global politics, potential first-mover advantage, and the possibility of capacity building within the region. We conclude that the establishment of an authoritative regional coalition would ensure that, when the REDD framework is decided, Latin America is present at the table and able to maximize the benefits that the region receives. Part III suggests a two-pronged approach, including a specialized, high-level facilitator to aid Latin American countries in forming a coalition and a three-step model of coalition building. For the coalition-building model, we argue that Latin American countries should form a regional "Core Group" dedicated to forest protection, manage any potential obstructionists or spoilers, and deepen the Core Group's commitment through relationship-building and knowledge-transfer measures. The Article concludes with a discussion of the payoffs for the region and the global climate talks.*

#### TABLE OF CONTENTS

I.	INTRODUCTION .....	529
II.	FORESTS AND THE COPENHAGEN PROCESS: PLAYERS, ISSUES, AND BARRIERS .....	535
A.	<i>Main Players</i> .....	535

B.	<i>REDD Issues</i> .....	539
1.	Reference Levels and Monitoring, Reporting, and Verification.....	540
2.	Financing Methods .....	542
3.	Indigenous Peoples' Interests and Rights .....	544
4.	Ecological Integrity.....	545
5.	Impact of a Wider Climate Change Agreement .....	546
C.	<i>Process Barriers to Negotiation</i> .....	547
1.	Unmanageable Number of Parties at the Table.....	549
2.	Lack of Resources and Expertise .....	550
3.	Opponents of Forest Talks or "Spoilers" .	552
4.	Lack of Clarity .....	553
5.	Time Constraints .....	555
III.	THE CASE FOR LATIN AMERICA'S EARLY COORDINATION: LONG-TERM INTERESTS AND NEGOTIATING ADVANTAGE .....	556
A.	<i>Ecology</i> .....	557
B.	<i>Global Politics</i> .....	559
C.	<i>First-Mover Advantage</i> .....	560
D.	<i>Regional Capacity Building</i> .....	562
IV.	BUILDING THE FOREST COALITION IN LATIN AMERICA: BARRIERS AND SOLUTIONS.....	562
A.	<i>The Facilitator</i> .....	564
B.	<i>Coalition-Building Strategies</i> .....	570
	Step 1: Assembling the Core Group .....	571
	Step 2: Managing the Spoilers.....	573
	Step 3: Maintaining and Deepening the Core Group's Commitment .....	575
C.	<i>Knowledge Transfers and Capacity Building</i> ...	576
D.	<i>Civil Society Participation</i> .....	579
E.	<i>Avoidance of Positional Negotiation and Defection</i> .....	581
F.	<i>Interaction Between Regional Coalition Building and Global REDD+ Negotiations</i> .....	584
V.	CONCLUSION.....	585

## I. INTRODUCTION

*If a post-Kyoto climate agreement fails to act on avoiding tropical deforestation, the achievement of overall climate change goals will become virtually impossible. The lives and livelihoods of millions of people will be put at risk, and the*

*eventual economic cost of combating climate change will be far higher than it needs to be.*

—H.E. Bharrat Jagdeo, President of Guyana<sup>1</sup>

President Jagdeo's statement reflects a key realization of our time: slowing deforestation is essential not only in its own right, but also as a way to mitigate climate change. Natural forests act as "carbon sinks," trapping dangerous greenhouse gases (GHG) that contribute to catastrophic climate change.<sup>2</sup> Deforestation and degradation, on the other hand, have the contrary effect of aggravating climate change. According to estimates, tropical deforestation accounts for some 20 percent of emissions worldwide,<sup>3</sup> although its share may decrease as other factors that induce climate change continue to rise. Although the global rates of deforestation have slowed after 2000, they remain alarmingly high.<sup>4</sup> The trends vary across the world and across different types of forests. Europe, for instance, has recorded a minor net gain as its forests have expanded in the last ten years; so has Asia, thanks to large reforestation campaigns.<sup>5</sup> Yet Latin America, a region that holds one of the world's most bio-diverse forests and 44 percent of all tropical forests on earth,<sup>6</sup> is still experiencing one of the highest net losses of forest cover in the world.<sup>7</sup> Every year, 13 million hectares of the world's tropical forests are lost, representing an average rate of deforestation of 0.9 percent per year.<sup>8</sup> The reforestation trends in other parts of the world might thus conceal the reality that tropical forests are increasingly under threat of extinction.<sup>9</sup>

Although preventing further deforestation is an issue of global concern, this Article focuses on Latin America. In particular, it analyzes how Latin American countries—given their shared interest

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1. Bharrat Jagdeo, *Foreword to CHARLIE PARKER ET AL., THE LITTLE REDD+ BOOK 4* (2008).

2. See David Biello, *Old-Growth Forests Help Combat Climate Change*, SCI. AM., Sept. 11, 2008, <http://www.scientificamerican.com/article.cfm?id=old-growth-forests-help-combat-climate-change> (explaining research that suggests old-growth forests accumulate carbon and noting that more research may be necessary).

3. *Tropical Deforestation and Global Warming*, UNION OF CONCERNED SCIENTISTS (May 15, 2007), [http://www.ucsusa.org/global\\_warming/science\\_and\\_impacts/impacts/tropical-deforestation-and.html](http://www.ucsusa.org/global_warming/science_and_impacts/impacts/tropical-deforestation-and.html).

4. U.N. FOOD & AGRIC. ORG. [FAO], *GLOBAL FOREST ASSESSMENT: KEY FINDINGS 3* (2010), [http://www.pefc.org/images/stories/documents/external/KeyFinding\\_s-en.pdf](http://www.pefc.org/images/stories/documents/external/KeyFinding_s-en.pdf) (finding that the net forest loss each year from 2000 to 2010 amounts to an area the size of Costa Rica; the absolute loss of primary forests, however, is more than double that—13 million hectares).

5. *Id.* at 4.

6. MARIANO COLINI CENAMO ET AL., *CASEBOOK OF REDD PROJECTS IN LATIN AMERICA 10* (2009).

7. FAO, *supra* note 4, at 4.

8. CENAMO ET AL., *supra* note 6, at 10.

9. *See id.* (asserting that forests are increasingly threatened).

in avoiding the effects of climate change and conserving their remaining forests—should work together to develop a joint position on forest protection and financing, which they could then advance at the global level. The issue of reducing emissions from REDD is one of the most important, and most contentious, topics on the international climate agenda.<sup>10</sup> This makes it crucial for all countries—especially those that, like Latin American countries, have a high stake in the outcome of the REDD talks—to articulate a compelling vision of a future REDD framework.

It took years for forests to be added to the international climate change agenda. At the seventh Conference of the Parties to the UN Framework Convention on Climate Change in Marrakesh, Morocco, in 2001, for instance, the topic was excluded from the debate because it was deemed too controversial and intractable.<sup>11</sup> However, since it was first proposed at the UN climate talks in Montreal in 2005,<sup>12</sup> REDD has featured prominently at all rounds of UN climate talks—Nairobi in 2006, Bali in 2007, Poznan in 2008,<sup>13</sup> and, finally, Copenhagen from December 7 to 19, 2009.<sup>14</sup> The fifteenth Conference of the Parties to the UN Framework Convention on Climate Change (Copenhagen Climate Conference) represented the culmination of a two-year negotiating process that began with the “Bali Roadmap,” launched at the December 2007 Bali climate talks to enhance international cooperation on climate change.<sup>15</sup> One hundred fifteen world leaders attended the high-level segment of the Copenhagen Climate Conference, and the conference as a whole received unprecedented public attention and press coverage and drew more than 40,000 participant applications from governments, nongovernmental organizations (NGOs), intergovernmental organizations, and the media.<sup>16</sup> The last-minute decisions of many heads of state and government to attend led to a resurgence of expectations; there were high hopes that the Copenhagen Climate

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10. Chukwumerije Okereke & Kate Dooley, *Principles of Justice in Proposals and Policy Approaches to Avoided Deforestation: Towards a Post-Kyoto Climate Agreement*, GLOBAL ENVTL. CHANGE, Feb. 2010, at 82, 82 (2009).

11. CENAMO ET AL., *supra* note 6, at 12 (noting justifications such as uncertainties and methodological difficulties, national sovereignty of tropical forests nations, and the latter’s right to develop).

12. The forests were returned to the negotiating agenda thanks to a joint official proposal by Papua New Guinea and Costa Rica, which was supported by Bolivia, the Central Africa Republic, Chile, the Republic of the Congo, Democratic Republic of the Congo, the Dominican Republic, and Nicaragua (the so-called Coalition of Tropical Forest Countries). *Id.*

13. Okereke & Dooley, *supra* note 10, at 82.

14. *Summary of the Copenhagen Climate Change Conference: Dec. 7–19*, EARTH NEGOTIATION BULL. (Int’l Inst. for Sustainable Dev., New York, N.Y.), Dec. 22, 2009, at 1 [hereinafter IISD].

15. *Id.* at 1.

16. *Id.*

Conference would “seal the deal” and produce a “fair, ambitious and equitable agreement, setting the world towards a path to avoid dangerous climate change.”<sup>17</sup> However, the final conference text, the “Copenhagen Accord” (the Accord), disappointed these expectations: not only is the Accord seen as a “weak agreement,” but the fact that it was not formally adopted as the outcome of the Copenhagen negotiations raises considerable doubts about its practical relevance.<sup>18</sup>

Against this background, the negotiations on deforestation were one of Copenhagen’s few highlights. The Accord specifically recognized the role of deforestation in climate change<sup>19</sup> and held out the prospect of actual progress and funding for REDD in the future, once the many institutional questions about implementation have been resolved at subsequent meetings.<sup>20</sup> Of the four new bodies established by the Accord, one is focused on reducing deforestation and forest degradation in developing countries, plus conservation

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17. *Id.*; Confidential Interviews with Country Delegates.

18. IISD, *supra* note 14, at 2. Since the Copenhagen Conference, 141 countries (representing 87.24 percent of global emissions) are likely to engage or have engaged with the Accord. Eight countries (representing 2.09 percent of global emissions) have rejected the Accord; these countries include Bolivia, Cuba, Ecuador, and Venezuela. A number of other Latin American countries have yet to state their position. *Who’s on Board with the Copenhagen Accord?*, U.S. CLIMATE ACTION NETWORK, <http://www.usclimatenetwork.org/policy/copenhagen-accord-commitments> (last visited Mar. 22, 2011).

19. U.N. Framework Convention on Climate Change [UNFCCC], Conference of the Parties, 5th Sess., Dec. 7–18, 2009, *Proposal by the President: Copenhagen Accord*, ¶ 6, U.N. Doc. FCCC/CP/2009/L.7 (Dec. 16, 2009).

We recognize the crucial role of reducing emission from deforestation and forest degradation and the need to enhance removals of greenhouse gas emission by forests and agree on the need to provide positive incentives to such actions through the immediate establishment of a mechanism including REDD-plus, to enable the mobilization of financial resources from developed countries.

*Id.*

20. IISD, *supra* note 14, at 7; *see also* Rep. of the Subsidiary Body for Scientific and Technological Advice on Reducing Emissions from Deforestation in Developing Countries: Approaches to Stimulate Action, 31st Sess., Dec. 8–12, 2009, U.N. Doc. FCCC/SBSTA/2009/L.19/Add.1 (Dec. 11, 2009), <http://unfccc.int/resource/docs/2009/sbstata/eng/l19a01.pdf> [hereinafter Reducing Emissions Report]. The Subsidiary Body for Scientific and Technological Advice of the UNFCCC (SBSTA) adopted a decision on REDD on December 18, 2009, as annexed to the SBSTA conclusions, *inter alia*, requesting developing countries to identify drivers of deforestation and forest degradation, use the most recent Intergovernmental Panel on Climate Change (IPCC) guidance to estimate emissions, and establish national forest monitoring systems; encouraging all able parties to support capacity building in developing countries; encouraging development of guidance for indigenous peoples and local community engagement; recognizing that forest reference emission levels should take into account historic data, and adjust for national circumstances; and urging coordination of efforts. IISD, *supra* note 14, at 7.

(REDD+).<sup>21</sup> The Accord also included tangible pledges of funding: six countries jointly committed \$3.5 billion for the next three years to get REDD+ activities off the ground.<sup>22</sup>

In fact, the International Institute for Sustainable Development described progress on REDD+ throughout the year preceding Copenhagen as “positive,”<sup>23</sup> suggesting that REDD would feature prominently at the conference. In the five rounds of international negotiations within the subgroups of the UN Framework Convention on Climate Change (UNFCCC) during 2009, REDD was the most debated subject.<sup>24</sup> The UNFCCC’s Executive Secretary, Yvo de Boer, felt that the forest provisions of a future climate pact were “oven ready” and would be easily implemented during 2010.<sup>25</sup> Going into the Copenhagen Conference, many REDD negotiators felt confident that they would reach a strong deal.<sup>26</sup> Their failure to reach this goal raises interesting questions about the negotiation dynamics at Copenhagen, as well as how the REDD talks related to the broader climate negotiations.

To many commentators, this outcome was hardly a surprise: as Chukwumerije Okereke and Kate Dooley observed, “the sensitive and intractable nature of the issues involved [in REDD] suggest[ed] that negotiations [would] probably drag and remain clumsy until the last days of agreeing [to] a post-2012 climate change arrangement.”<sup>27</sup> Despite the progress made on forests at the 2010 UN Climate Change Conference in Cancun,<sup>28</sup> a year after Copenhagen, Okereke and

21. IISD, *supra* note 14, at 27, 29. REDD+ encompasses “positive incentives for the conservation of forests, sustainable forest management, and the enhancement of forest carbon stocks in developing countries.” UNFCCC, Conference of the Parties, 13th Sess., Dec. 3–15, 2007, *Decisions Adopted by the Conference*, Add., U.N. Doc. FCCC/CP/2007/6/Add.1\* (Mar. 14, 2008), <http://www.unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf> (“Policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries.”); *see also* FRIENDS OF THE EARTH INT’L, REDD: THE REALITIES IN BLACK AND WHITE (2010) (offering a critical view).

22. Antonio G.M. La Viña, *The Future of REDD-Plus: Pathways of Convergence for the UNFCCC Negotiations and the Partnership 9* (Found. for Int’l Env’tl. Law & Dev., 2010). The United States, the United Kingdom, Australia, Norway, Japan, and France reaffirmed their pledges at a meeting in Paris in March 2010, and pledged another \$1 billion. *Id.*

23. IISD, *supra* note 14, at 27.

24. CENAMO ET AL., *supra* note 6, at 13.

25. Juliet Eilperin, *Hope and Funding for Saving Forests Around the World*, WASH. POST, Dec. 20, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/19/AR2009121902262.html>.

26. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

27. Okereke & Dooley, *supra* note 10, at 82.

28. *See* UNFCCC, Conference of the Parties, 16th Sess., Nov. 29–Dec. 10, 2010, *Outcome of the Work of the Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention*, U.N. Doc. UNFCCC/AWGLCA/2010/L.7 (Dec. 10, 2010),



Dooley's observation holds true. Parties remain deeply divided over the most contentious issues in the deforestation talks, and those issues on which some progress was made in Cancun will come up for reconsideration again as a wider climate change agreement is negotiated and solidified in the coming years, because the issue of deforestation is firmly linked to the other issues being debated in the broader climate change negotiations.<sup>29</sup>

Given that REDD+ will take shape over the coming months and years, this is the right moment for Latin American nations to put forward their vision of a global framework for forest conservation. This Article proposes a two-pronged approach that Latin American countries could apply to build a regional forest coalition. In addition, it argues that a regional coalition is both feasible and necessary if Latin America is to have any say in the final shape of the REDD agreement—and if that framework is to be environmentally optimal.

This Article is divided into four parts. Part I provides a concise background on the REDD+ talks at the 2009 Copenhagen Conference. It identifies the main stakeholders at the climate talks and the camps into which national delegations organized themselves at Copenhagen. It then reviews the major substantive sticking points, or “bottlenecks,”<sup>30</sup> in the REDD+ negotiations and identifies a series of analytical, ideological, and structural barriers that impeded significant progress on forests at Copenhagen. We suggest that these barriers necessitate the formation of an active and forward-looking Latin American coalition on forests. Part II discusses the reasons why forming a coalition is in Latin American countries' interest. Beyond the general advantages obtained by pooling resources and negotiating strength, Part II discusses the regional ecology, global politics, potential first-mover advantage, and the possibility of capacity building within the region. We conclude that the establishment of an authoritative regional coalition would ensure that, when the REDD+ framework is decided, Latin America is present at the table and able to maximize the benefits that the region receives. Part III elaborates on our suggested two-pronged approach, requiring a specialized, high-level facilitator to aid Latin American countries in forming a coalition and a three-step model of coalition building. For the coalition-building model, we argue that Latin American countries should form a regional “Core Group” dedicated to forest protection, manage any potential obstructionists or spoilers,

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[http://unfccc.int/files/meetings/cop\\_16/application/pdf/cop16\\_lca.pdf](http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf) (noting the progress of the conference); see also Kemen Austin et al., *The REDD+ Decision in Cancun*, WORLD RES. INST. (Dec. 20, 2010), <http://www.wri.org/stories/2010/12/redd-decision-cancun> (describing examples of issues that remain unresolved by the Cancun text).

29. See *infra* Part I.

30. CENAMO ET AL., *supra* note 6, at 14.

and deepen the Core Group's commitment through relationship-building and knowledge-transfer measures.

## II. FORESTS AND THE COPENHAGEN PROCESS: PLAYERS, ISSUES, AND BARRIERS

The complexity of the issues involved in REDD+ has generated considerable controversy over different substantive proposals and shifted coalitions and power alignments at the Copenhagen Conference and in the REDD+ negotiation rooms. Drawing on the insights obtained from confidential interviews with REDD+ negotiators, civil society observers, UN officials, and Latin American government officials, this Part discusses the major players, the key REDD+ issues, and the main procedural barriers to optimal negotiation.

### A. Main Players

The countries most actively involved in UN deforestation talks range from the wealthiest to the poorest countries in the world and represent a wide array of interests. Some have significant deforestation rates, and some have only loose and indirect connections to the problem. Because it is common for countries to have a complicated set of interests with regard to deforestation, a variety of coalitions, with differing levels of cohesiveness, formed over the course of negotiations. Particular domestic deforestation realities, political ideologies, national incomes, and technical capacities mean that coalitions might often overlap at different times or that a given country might opt out of many positions taken by the coalition of which it is a part.

Brazil is a major player in the larger climate change talks, partly due to its dominant role in the deforestation area. With 12 percent of the world's forests and its 24 percent share of global deforestation between 2000 and 2005,<sup>31</sup> Brazil will necessarily play a critical role in any final deal on deforestation. Among Latin American countries, Brazil has developed perhaps the most nuanced and concrete deforestation position.<sup>32</sup> In addition to announcing ambitious

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31. FAO, GLOBAL FOREST RESOURCES ASSESSMENT 2005, at 15–16, 19 (2005).

32. See, e.g., Johannes Stahl & Tim Christophersen, *Forests to the Fore: The Convention on Biological Diversity and Its Forest Agenda*, IITTO TROPICAL FOREST UPDATE (Int'l Tropical Timber Org., Yokohama, Japan), 2010, at 3, 4 (discussing efforts to reduce deforestation rates and noting Brazil's successes); Daniel Nepstad et al., *The End of Deforestation in the Brazilian Amazon*, SCIENCE, Dec. 3, 2009, at 1350, 1350 (noting that the Brazilian government committed to reducing deforestation by 20 percent from the 1996 to 2005 annual average of 19,500 square-kilometers by 2020).

emission-reduction goals that focus heavily on reducing deforestation, Brazil also proposed the creation of a donation-based Amazon Fund at the 2007 Bali Conference.<sup>33</sup>

The Bolivarian Alliance for the Americas (ALBA) is a group of eight Latin American and Caribbean countries: Antigua and Barbuda, Bolivia, Cuba, the Dominican Republic, Ecuador, Nicaragua, Saint Vincent and the Grenadines, and Venezuela.<sup>34</sup> The group has been called a “socialist alternative” to aligning with the U.S. free-trade agenda.<sup>35</sup> Though its influence is relatively limited due to the small size of its membership, ALBA was one of the few groups that managed to substantially coordinate efforts and positions of Latin American countries in deforestation talks, in part because ALBA countries share a particular worldview from which they can formulate a common position.

Central American countries have coordinated, to a limited extent, via the Central American Integration System (SICA), an intergovernmental organization.<sup>36</sup> Member states—which include Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama—participated in coordination and knowledge-building workshops in preparation for the Copenhagen Conference.<sup>37</sup> Their efforts to develop a unified negotiating position at Copenhagen, however, were limited.<sup>38</sup>

Most Latin American countries could probably be described as “unaligned” as far as the REDD+ talks are concerned, and coalitions tend to be loose and short-term. Brazil, Colombia, Argentina, Chile, and Mexico are active in the REDD+ negotiations despite not belonging to any fixed, long-term coalition.<sup>39</sup> It is typical for most

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33. Tom Phillips, *Brazil Pledges Deep Emission Cuts in 'Political Gesture' to Rich Nations*, GUARDIAN (London), Nov. 10, 2009, <http://www.guardian.co.uk/environment/2009/nov/10/brazil-emissions>; see also Joshua Goodman, *Brazil Creates \$21 Billion Fund to Slow Deforestation*, BLOOMBERG, Aug. 1, 2008, [http://www.bloomberg.com/apps/news?pid=20601086&sid=ahDbiZfuCxZI&refer=latin\\_america](http://www.bloomberg.com/apps/news?pid=20601086&sid=ahDbiZfuCxZI&refer=latin_america) (noting the Brazilian President signed a decree creating a fund in 2008).

34. *El Parlamento de Honduras Ratifica su Salida de la Alba*, ELTIEMPO.COM, Jan. 13, 2010, [http://www.eltiempo.com/mundo/latinoamerica/honduras-sale-de-la-alba\\_6939247-1](http://www.eltiempo.com/mundo/latinoamerica/honduras-sale-de-la-alba_6939247-1).

35. *Leftist Trio Seals Americas Pact*, BBC NEWS, Apr. 29, 2006, <http://news.bbc.co.uk/2/hi/americas/4959008.stm>.

36. For more information, see CENT. AM. INTEGRATION SYS., [http://www.sica.int/index\\_en.aspx](http://www.sica.int/index_en.aspx) (last visited Mar. 22, 2011).

37. *Making Central America's Voice Heard in Copenhagen*, INT'L UNION FOR CONSERVATION OF NATURE (Nov. 30, 2009), <http://www.iucn.org/unfccc/events/copenhagen/resources/field/?4258/Making-Central-Americas-voice-heard-in-Copenhagen>.

38. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

39. See PARKER ET AL., *supra* note 1, 38–49 (describing Brazil, Colombia, Chile, and Mexico's efforts to institute the REDD framework); FOREST CARBON P'SHIP FACILITY, FCPF READINESS PROGRESS DASHBOARD 2 (2010), <http://www.forestcarbonpartnership.org/fcp/sites/forestcarbonpartnership.org/files/Documents/PDF/Nov2010/F>

countries to periodically align with others both within and outside the region on individual issues of joint interest.

One of the best-known coalitions in deforestation talks is the Coalition for Rainforest Nations (CfRN), which often includes many Latin American countries.<sup>40</sup> The CfRN is an intergovernmental organization that attempts to bring together rainforest nations and to develop consensus on various forest-related issues.<sup>41</sup> Individuals working for the CfRN often serve as delegates for participating countries in climate change talks.<sup>42</sup> The CfRN is a loose coalition in which countries join submissions and proposals on an ad hoc basis, and its solidarity and coordination vary from session to session.<sup>43</sup> It is not entirely clear which countries the CfRN is speaking for, and the very countries that the CfRN claims to represent sometimes dispute that representation.<sup>44</sup>

Beyond Latin America, several powerful states and coalitions played substantial roles both in the deforestation talks and the larger climate change talks in Copenhagen. This participation might be viewed as expected and perhaps even essential, considering that most believe that a wider climate change deal is necessary to achieve a robust deal on forests, and vice versa.<sup>45</sup> China, which overtook the United States as the world's biggest emitter of greenhouse gases in 2006,<sup>46</sup> is one of the leading spokespersons for the developing world and an important player in the climate talks. In fact, China is probably one of two key countries (along with the United States) in reaching a larger climate change agreement.<sup>47</sup> Therefore, China

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CPF%20Readiness%20Progress%20MASTER\_103110.pdf (noting Argentina's status as a REDD Observer).

40. *About the Coalition for Rainforest Nations*, COALITION FOR RAINFOREST NATIONS, <http://www.rainforestcoalition.org/AboutTheCoalition.aspx> (last visited Mar. 22, 2011).

41. *Id.*

42. See UNFCCC, Conference of the Parties, 15th Sess., Dec. 7–18, 2009, *Provisional List of Participants*, at 131–32, U.N. Doc. FCCC/CP/2009/MISC.1 (Dec. 8, 2009), <http://unfccc.int/resource/docs/2009/cop15/eng/misc01p01.pdf>. Papua New Guinea's delegation included several representatives from the Coalition for Rainforest Nations.

43. See *About the Coalition for Rainforest Nations*, *supra* note 40 (“Countries participate on a voluntary basis primarily through a series of workshops and collaborative programs. Participation does not imply that countries adhere to any specific domestic policies or negotiating positions within the international context.”).

44. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

45. *Id.*

46. Elisabeth Rosenthal, *Booming China Leads the World in Emissions of Carbon Dioxide, a Study Finds*, N.Y. TIMES, June 14, 2008, at A5; *China Overtakes U.S. as Top CO<sub>2</sub> Emitter: Dutch Agency*, REUTERS, June 20, 2007, <http://www.reuters.com/article/idUSL2080219120070620>.

47. Neil MacFarquhar, *Proposals Lag Behind Promises on Climate*, N.Y. TIMES, Sept. 22, 2009, at A5.

likely would need to accept any deforestation agreement if it is to be incorporated into a larger climate change deal—a prospect made more difficult by China's complicated domestic deforestation situation.<sup>48</sup>

The European Union and the United States, as the two main representatives of the advanced industrial economies, are both important actors in deforestation talks. Under most proposals, the developed world is expected to provide the necessary funding for efforts to reduce deforestation.<sup>49</sup> Whether through a market-oriented mechanism or a fund-based approach,<sup>50</sup> corporations or governments from wealthy nations will, in most scenarios, have to float the bill for reducing deforestation.<sup>51</sup>

Other active players include countries or civil society organizations with niche interests in deforestation. Norway, for instance, is one of the most active players in deforestation talks, as reflected in its political support for reducing deforestation and the funding it has provided to support REDD+ initiatives in developing countries. Under "The Government of Norway's International Climate and Forest Initiative," the government is willing to spend up to 3 billion Norwegian kroner (roughly \$500 million) annually on eligible emissions reductions in developing countries.<sup>52</sup> Norway has also pledged more than \$80 million to the UN-REDD Programme Fund and \$1 billion to Brazil's Amazon Fund through 2015.<sup>53</sup> As a result, Norway has played an active role in deforestation negotiations through both bilateral talks and the multilateral UNFCCC talks, and it has provided relatively detailed proposals in advance of major negotiations.<sup>54</sup>

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48. See Jonathan Watts, *China's Loggers Down Chainsaws in Attempt to Regrow Forests*, GUARDIAN, Mar. 11, 2009, <http://www.guardian.co.uk/environment/2009/mar/11/china-forests-deforestation> (explaining that China's situation includes ambitious afforestation efforts, as well as ongoing deforestation and environmental degradation, which sometimes occurs as a direct result of afforestation).

49. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

50. See discussion *infra* Part I.B.2.

51. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

52. *Norway and the Amazon Fund*, NORWEGIAN MINISTRY OF THE ENV'T, <http://www.regjeringen.no/en/dep/md/Selected-topics/climate/the-government-of-norways-international-/norway-amazon-fund.html?id=593978> (last visited Mar. 22, 2011).

53. *Contributor/Partner Factsheet: Norway*, UN DEV. GRP.: MULTI-DONOR TRUST FUND OFFICE, <http://mdtf.undp.org/factsheet/donor/00187> (last visited Mar. 22, 2011); *Norway Pledges \$1 Billion to Brazil Amazon Fund*, REUTERS, Sept. 17, 2008, <http://uk.reuters.com/article/idUKN1649421720080916>.

54. See UNFCCC, Ad Hoc Working Grp. on Long-Term Cooperative Action Under the Convention, 6th Sess., June 1–12, 2009, *Ideas and Proposals on the Elements Contained in Paragraph 1 of the Bali Action Plan: Submissions from Parties*, at 16–24, U.N. Doc. FCCC/AWGLCA/2009/MISC.4/Add.2 (May 31, 2009), <http://unfccc.int/resource/docs/2009/awgla6/eng/misc04a02.pdf> (outlining two Norwegian proposals).

Through lobbying efforts and close work with national delegates during the formation of national interests and positions, civil society organizations have substantially influenced many country delegations at the UNFCCC and REDD+ negotiations.<sup>55</sup> Civil society groups are diverse, representing the views and interests of numerous constituencies. NGOs can sometimes be divided along North–South geographical lines, but a variety of other fault lines could separate, for instance, large U.S.-based environmental NGOs versus NGOs advocating for indigenous peoples from other countries.<sup>56</sup> Although NGOs often work closely with the countries in which they are based, they frequently provide assistance to small, developing countries that may lack the resources to fully prepare for negotiations and are therefore dependent on the expertise of civil society groups in negotiations that are typically highly technical.<sup>57</sup>

Other active countries and coalitions include the Group of 77 (G-77), an intergovernmental organization of developing states that often caucuses at UN talks and is usually noted as the “G-77 and China”<sup>58</sup>; African countries with significant deforestation rates; and the Alliance of Small Island States (AOSIS),<sup>59</sup> which generally plays an active and vocal role in the wider climate change negotiations as well.<sup>60</sup> In REDD+ negotiations, however, the G-77 has been unable to present a joint position, largely due to an unresolved internal disagreement on the role of REDD+ in the international carbon market.<sup>61</sup>

### B. REDD Issues

The Copenhagen Climate Conference included as many as six parallel negotiation tracks created under the UNFCCC and its related instruments: the fifteenth Conference of the Parties (COP15) to the UNFCCC; the fifth Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP 5); the thirty-first session of the Subsidiary Body for Scientific and Technological Advice (SBSTA 31) and the Subsidiary Body for Implementation (SBI

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55. Civil society organizations are allowed to attend plenary and contact group meetings in UNFCCC and REDD negotiations; they are excluded from meetings of informal groups. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

56. *Id.*

57. *Id.*

58. See THE GROUP OF 77, <http://www.g77.org> (last visited Mar. 22, 2011) (frequently referencing “the Group of 77 and China”).

59. See ALLIANCE OF SMALL ISLAND STATES, <http://www.sidsnet.org/aosis> (last visited Mar. 22, 2011).

60. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

61. Confidential Interviews with COP15 Country Delegates.

31); the tenth session of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP 10); and the eighth session of the Ad Hoc Working Group on Long-term Cooperative Action under the UNFCCC (AWG-LCA 8).<sup>62</sup> At the opening plenary, many delegations cautioned conference participants not to mix technical discussions under the SBSTA with policy-related discussions under the AWG-LCA; others called for specific substantive commitments, such as the participation of indigenous peoples.<sup>63</sup> The SBSTA was the first body to consider REDD<sup>64</sup> (on December 8), which it referred to a Contact Group co-chaired by Paraguay and Norway.<sup>65</sup> After much controversy and delay, the SBSTA adopted its conclusions and agreed to forward the text to the COP on December 12.<sup>66</sup> There were five key points of division with respect to REDD, most of which await resolution at the next round of climate talks.<sup>67</sup>

### 1. Reference Levels and Monitoring, Reporting, and Verification

One of the most contentious questions in the Copenhagen REDD+ talks proved to be whether the reference levels and monitoring, reporting, and verification (MRV) should occur at a national or subnational level.<sup>68</sup> While these issues were being discussed in the SBSTA, a technical body, parties consistently highlighted that national and subnational reference levels and MRV “were political in nature and the details of these issues should therefore be discussed under the AWG-LCA,” a more political forum.<sup>69</sup>

Under a subnational approach, REDD+ credits would be earned based on the degree to which deforestation is avoided within a

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62. IISD, *supra* note 14, at 1.

63. *Id.* at 22.

64. For COP15’s agenda items on SBSTA, see Rep. of the Subsidiary Body for Scientific and Technological Advice, 30th Sess., June 1–10, 2009, Annex I, U.N. Doc. FCCC/SBSTA/2009/3 (Aug. 5, 2009), <http://unfccc.int/resource/docs/2009/sbsta/eng/03.pdf> (containing the draft text for a decision on methodological guidance for activities relating to REDD).

65. IISD, *supra* note 14, at 22.

66. *Id.*; see also Reducing Emissions Report, *supra* note 20, at 9 (taking “note of the oral report by its Chair on ways of facilitating the coordination of the activities relating to decision 2/CP.13,” i.e., a draft COP decision, and to forward that draft decision to the COP). For draft decision, see UNFCCC, *supra* note 21.

67. For a detailed analysis of the REDD negotiations in Copenhagen from the perspective of the co-facilitator, see La Viña, *supra* note 22.

68. IISD, *supra* note 14, at 22.

69. *Id.*

particular area within a country.<sup>70</sup> Individuals, NGOs, corporations, or governments (at the local, regional, or national level) may administer projects.<sup>71</sup> This was the preferred approach of Colombia and the United States.<sup>72</sup> In contrast, a national approach would consider the overall deforestation occurring in a country, and credits would be earned on that basis.<sup>73</sup> Brazil, the European Union, and some of the CfrN countries were committed to this model.<sup>74</sup> On both sides of the divide, individual parties were driven by differing underlying motivations and thus did not necessarily share a common rationale for either approach.<sup>75</sup> Colombia, for instance, opted for the subnational approach due to domestic constitutional concerns, while the U.S. position reflected draft federal legislation (the Waxman-Markey bill) that endorsed subnational projects.<sup>76</sup> A third approach, which blends the two former systems, is called the “nested approach.”<sup>77</sup> The nested approach started as a Latin American idea, first proposed by Paraguay on behalf of Argentina, Honduras, Mexico, Panama, and Peru.<sup>78</sup> It would allow countries to earn credits at both the subnational and national levels by beginning with a subnational approach and moving to the national level once the countries build up their capacity to operate nationally.<sup>79</sup> Provided that trustworthy accounting exists to avoid double counting for the transactions at the subnational level,<sup>80</sup> the nested approach promises to mitigate some of the concerns about the practicality and effectiveness of the subnational and national approaches.

There is disagreement over which approach would be most effective and practical for achieving large reductions in deforestation. The main criticism of the subnational approach is the risk of substantial domestic “leakage”: deforestation that is avoided within a given project’s boundaries would just be exported to an unprotected area of the country.<sup>81</sup> Another critique is that the subnational approach would not encourage the broader reforms necessary to deal

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70. Arild Angelsen et al., *What Is the Right Scale for REDD? The Implications of National, Subnational and Nested Approaches*, INFO. BRIEF (Ctr. for Int’l Forestry Research, Bogor, Indon.), Nov. 2008, at 1, 2–3.

71. *Id.*

72. Confidential Interviews with COP15 Country Delegates.

73. Angelsen et al., *supra* note 70, at 3.

74. Confidential Interviews with COP15 Country Delegates.

75. *Id.*

76. *Id.*

77. Angelsen et al., *supra* note 70, at 1.

78. Okereke & Dooley, *supra* note 10, at 87.

79. *Id.* at 88.

80. CENAMO ET AL., *supra* note 6, at 15.

81. Angelsen et al., *supra* note 70, at 1, 4; *see also* CENAMO ET AL., *supra* note 6, at 14 (defining leakage as “the net change of anthropogenic emissions by sources of greenhouse gases which occurs outside the project boundary, and which is measurable and attributable to the project activity”).



with the more fundamental forces driving deforestation, such as lack of land tenure reforms and poor governance.<sup>82</sup>

Although a national approach is inherently better suited to deal with each of these issues,<sup>83</sup> it is nonetheless open to criticism. For example, leakage may occur at the international level as deforestation is exported across borders. Another problem with the national approach is its alleged impracticality. Many developing countries lack the capacity to implement sufficient MRV systems on a national level, either because of an overall lack of resources or, in some cases, because of a lack of physical control over portions of their territory (e.g., Colombia).<sup>84</sup> Additionally, international parties may be reluctant to finance emissions reductions that seem less tangible and riskier when carried out on a national rather than a subnational, project-based level.<sup>85</sup>

A related debate in the deforestation talks concerns whether the MRV process should be handled internationally or domestically. At Copenhagen, many parties wanted language on independent review for establishing monitoring systems, others argued that only activities that are supported financially should be open to review, and still others discussed a proposed text on capacity building to enhance coordination on REDD.<sup>86</sup> A major obstacle is that the majority of non-Annex I countries (developing countries) have a limited ability to provide comprehensive and accurate estimates of emissions and forest loss.<sup>87</sup> Whether countries will open themselves to international MRV or trust each other to handle domestic MRV in good faith is yet to be resolved. The debate is strongly influenced by arguments about environmental effectiveness, national sovereignty, and the relative technical capacities of national governments versus international organizations.<sup>88</sup>

## 2. Financing Methods

The two main methods proposed for financing forest preservation are market-based mechanisms and funds. Under the market approach, projects or countries (depending on whether the national, subnational, or nested approach to MRV is adopted) would earn credits that could be sold on carbon markets to purchasers who are

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82. Angelsen et al., *supra* note 70, at 4.

83. *Id.*

84. *Id.*; Confidential Interviews with NGO Representatives and Country Delegates.

85. Angelsen et al., *supra* note 70, at 4.

86. IISD, *supra* note 14, at 22.

87. See MARTIN HEROLD, GOF-C-GOLD LAND COVER PROJECT OFFICE, AN ASSESSMENT OF NATIONAL FOREST MONITORING CAPABILITIES IN TROPICAL NON-ANNEX I COUNTRIES: RECOMMENDATIONS FOR CAPACITY BUILDING (2009).

88. Confidential Interviews with NGO Representatives and Country Delegates.

seeking to voluntarily offset their own emissions or are required to do so by a regional or global climate agreement.<sup>89</sup> If forest conservation is easier, cheaper, or otherwise more desirable than emission reduction, the market approach would, in most cases, allow companies or countries to pay for conservation in lieu of further reducing their own emissions. Some countries (such as Brazil and Venezuela) and NGOs object to market-based approaches as mechanisms that would enable polluting rich countries to avoid reducing their fair share of emissions.<sup>90</sup> Another key concern with market-based approaches to REDD+ is the problem of accurately accounting for reduced emissions and the possibility of increasing overall emissions levels by error or corruption.<sup>91</sup> Moreover, even if properly implemented, markets alone could prove to be an insufficient source of funding for reducing deforestation rates. According to one estimate, markets could supply only \$7 billion annually by 2020, while the cost of halving emissions from forestry by 2030 is \$17–\$33 billion annually.<sup>92</sup> The deficit would have to be met with other private and public funding, which still falls short of the required amount.<sup>93</sup> Even pro-market delegations at Copenhagen seemed to accept the reality that some public sector financing would be necessary for capacity-building and REDD-readiness activities.<sup>94</sup>

The primary alternative to market approaches is the establishment of funds, such as the Amazon Fund that Brazil created in 2008.<sup>95</sup> Under fund-based approaches, companies or countries would contribute to a fund voluntarily or through obligations undertaken in a wider climate change agreement.<sup>96</sup> Brazil's broader approach reflects a belief that the focus should remain on industrialization as the driver of emissions and that developed countries should not be allowed, through REDD+ or other emissions-trading mechanisms, to escape their obligation to cut their emissions.<sup>97</sup> Bolivia and some other countries support the idea of a

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89. CENAMO ET AL., *supra* note 6, at 14.

90. Related to this objection is the idea of "historical debt"—espoused most prominently by Bolivia, a former member of the CfrN, and several other developing countries—which holds that wealthy countries should take responsibility for their historical emissions and development and assist their poorer peers. IISD, *supra* note 14, at 17.

91. Okereke & Dooley, *supra* note 10, at 90 (discussing problems with "additionality" accounting).

92. JOHAN ELIASCH, CLIMATE CHANGE: FINANCING GLOBAL FORESTS, at xvi, xix (2008).

93. La Viña, *supra* note 22, at 9.

94. Confidential Interviews with COP15 Country Delegates.

95. For official information on the Amazon Fund, see *Amazon Fund*, FED. REPUBLIC OF BRAZ., <http://www.amazonfund.gov.br> (last visited Mar. 22, 2011).

96. See *id.* (explaining that donations are voluntary, non-reimbursable, and form the basis of the fund's investments).

97. Okereke & Dooley, *supra* note 10, at 89–90.

REDD fund, based on developed countries' "historic responsibilities" to finance the full incremental costs of mitigation in developing countries.<sup>98</sup> The advantages of this approach, according to Bolivia, include distributive justice, environmental integrity, and protection of the rights of indigenous peoples.<sup>99</sup> The concern with either method, however, is that some developing countries lack the absorptive capacity to obtain and use those funds effectively, which could compromise REDD+ projects.<sup>100</sup>

### 3. Indigenous Peoples' Interests and Rights

In constructing a regime for preserving the world's forests, the impact on indigenous peoples' lives and livelihoods is a major concern. Under the Bali Roadmap, states are expected to guarantee the rights of forest peoples when implementing any REDD initiatives.<sup>101</sup> Many observers, however, fear that REDD+ projects could harm forest communities, expel them from their ancestral lands, and undermine their central role in forest conservation.<sup>102</sup> Observers generally believe that REDD-related activities must, at a minimum, respect the forest dwellers' customary land use and access rights.<sup>103</sup>

The difficulty, however, is that many indigenous communities do not have formal legal rights to the land they inhabit, causing uncertainty as to whether compensation from preservation credits will be equitably shared under mechanisms that allow national governments to determine the beneficiaries. Indigenous peoples' groups, climate justice NGOs, and some governments thus advocate formal recognition of indigenous peoples' rights or other guarantees in the REDD agreement.<sup>104</sup> No delegation specifically opposed including safeguards for indigenous peoples; the challenge was to find wording that would avoid conflict with national legislation.<sup>105</sup> However, the recognition of the indigenous peoples' rights under the UN Declaration on the Rights of Indigenous Peoples, such as the principle of "prior and informed consent," has received little support from various national delegations.<sup>106</sup> Moreover, despite Bolivia's efforts, ALBA did not form a common position on this issue in the REDD context at Copenhagen.<sup>107</sup>

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98. *Id.* at 88.

99. *Id.*

100. REDD-NET PROGRAM, FINANCING REDD+: ISSUES WITH ABSORPTIVE CAPACITY 1 (2010).

101. CENAMO ET AL., *supra* note 6, at 17.

102. *Id.* at 17–18; FRIENDS OF THE EARTH INT'L, *supra* note 21, at 16–19.

103. CENAMO ET AL., *supra* note 6, at 17–18.

104. Confidential Interviews with COP15 Country Delegates.

105. *Id.*

106. *Id.*

107. *Id.*

#### 4. Ecological Integrity

Conservation of biodiversity is one of the key measures of ecological integrity.<sup>108</sup> The Convention on Biodiversity focused on forests, which provide a home to two-thirds of all terrestrial species; tropical forests represent some of the earth's most biologically diverse ecosystems.<sup>109</sup> Creating an agreement that provides the proper set of incentives for preserving forests—such that they will actually capture and store carbon—is a major concern in the drafting process. For instance, there are grave concerns that the Indonesian government's reforestation program will focus on commercial timber and oil palm, leading to the burning of less commercially profitable natural forests.<sup>110</sup>

At Copenhagen, as in previous REDD meetings, parties struggled to agree on the definitions of forest types, largely out of concern that the wording might not fit with their domestic conditions or definitions. At different points during the REDD negotiations, some national delegations, echoing the priorities of their economic and industrial lobbies, proposed language that might allow industrial-scale, monoculture tree plantations (like the oil-palm plantations noted above) to claim REDD credits as "forest" preservation.<sup>111</sup> These plantations and other less-than-complete "forests" would not only undermine the overall effort to reverse climate change, but would also imperil local ecological integrity.<sup>112</sup> To prevent this scenario, most other delegates and all environmental NGOs argued for the inclusion of safeguards for old-growth forests and preservation of forest biodiversity, which would best be accomplished if, under the agreement's language, REDD-eligibility requires preservation of forests in their natural states.

The most recent UNFCCC draft dealing with this issue states that REDD+ activities should be "consistent with the conservation of natural forests and biological diversity, ensuring that actions . . . are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and

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108. Celia A. Harvey & Barney Dickson, *Greening REDD+: Tools and Measures for Ensuring REDD+ Provides Biodiversity Benefits*, ITTO TROPICAL FOREST UPDATE (Int'l Tropical Timber Org., Yokohama, Japan), 2010, at 1, 1; Stahl & Christophersen, *supra* note 32, at 3.

109. Stahl & Christophersen, *supra* note 32, at 3.

110. La Viña, *supra* note 22, at 11.

111. Confidential Interviews with COP15 Country Delegates.

112. *Reforestation Projects Capture More Carbon than Industrial Plantations, New Research Reveals*, SCI. DAILY (July 31, 2010), <http://www.sciencedaily.com/releases/2010/07/100730074354.htm>.

environmental benefits.”<sup>113</sup> This provision, assuming proper monitoring and enforcement can be assured, would be an “important step for biodiversity conservation” and the ecological integrity of the entire agreement.<sup>114</sup> As discussed in greater detail below, however, many negotiators lack a common understanding of fundamental terms and provisions in REDD, and this disagreement obstructs the formation of an environmentally optimal agreement.

## 5. Impact of a Wider Climate Change Agreement

The lack of a wider climate change agreement significantly complicates the REDD negotiations because many of the proposals for forest-preserving mechanisms link credits earned for forest preservation to the wider climate change mitigation regime (e.g., by linking up to a global emissions-trading market).<sup>115</sup> Many observers would assert that a wider climate change agreement is essential to provide the necessary financing for forest preservation, whether through market mechanisms or financial commitments, and that, at the very least, a symbolic commitment by the rest of the world to take steps to mitigate climate change is necessary to convince countries with high rates of deforestation to preserve their forests.

For example, the Philippine’s lead negotiator in Copenhagen, Antonio La Viña, who served as co-facilitator of the REDD+ negotiations, argued in the aftermath of the conference that an agreement on REDD+ “is not possible unless the broader issues involving institutional arrangements, financing, mitigation targets and legal nature are resolved in the overall process.”<sup>116</sup> According to La Viña, a deal on REDD+ “was within reach until the dynamics of the parallel negotiations around the Copenhagen Accord intervened and unfortunately sidelined our final efforts to reach agreement.”<sup>117</sup> Indeed, it is hard to imagine that developing countries with significant deforestation rates would commit to reduce those rates with little or no commitment from developed countries to reduce their own emissions or to pay for a substantial portion or all of those reductions. At the same time, it is difficult to imagine that developed countries would commit to pay for those reductions without knowing what commitments they might later have to assume under a wider climate change agreement.

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113. UNFCCC, Ad Hoc Working Grp. on Long-Term Cooperative Action Under the Convention, 10th Sess., June 1–11, 2010, *Text to Facilitate Negotiations Among Parties*, ¶ 2, U.N. Doc. FCCC/AWGLCA/2010/6 (May 17, 2010), [www.unfccc.int/resource/docs/2010/awglca10/eng/06.pdf](http://www.unfccc.int/resource/docs/2010/awglca10/eng/06.pdf).

114. Harvey & Dickson, *supra* note 108, at 14.

115. La Viña, *supra* note 22, at 4.

116. *Id.* at 2.

117. *Id.*

### C. Process Barriers to Negotiation

The deforestation talks within the UNFCCC process have suffered from problems that affect nearly all multiparty negotiations, including increased complexity, hold-outs, and coalitional complications.<sup>118</sup> In *Barriers to Conflict Resolution*, Kenneth Arrow et al. describe a series of obstacles that negotiators face in multiparty settings.<sup>119</sup> These obstacles include tactical and strategic barriers; social and psychological barriers; informational and analytical barriers; and institutional, organizational, or structural barriers.<sup>120</sup> Tactical and strategic barriers include the misguided use of negotiating strategies and tactics that preclude efficient outcomes, causing the negotiator to compromise his or her ability to obtain the largest possible slice of the pie—or even to shrink the size of the pie altogether.<sup>121</sup> Hardball tactics and intransigence fall into this category.<sup>122</sup>

The second broad type of barriers includes psychological barriers, or processes that render parties unable to recognize as advantageous settlement terms that seemingly meet their rational self-interest.<sup>123</sup> For instance, negotiators frequently misdiagnose the sources of deadlock. They may have unconscious or implicit biases that cause them to make unwarranted inferences that distort their perception of the relationships across the table.<sup>124</sup> In addition, parties instinctively seek equity or justice; therefore, they may reject a change in the status quo—even one that indisputably stands to benefit them—if it violates “one . . . or both parties’ senses of fairness or equity.”<sup>125</sup> References to equity and international distributive justice often surface in climate negotiations.<sup>126</sup>

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118. ROY J. LEWICKI ET AL., *ESSENTIALS OF NEGOTIATION* 168–69 (1997) (characterizing multiparty negotiations as being plagued by “informational and computational complexity,” “social complexity,” “procedural complexity,” and “strategic complexity”); ROBERT H. MNOOKIN ET AL., *BEYOND WINNING* 303 (2000) (pointing out that most multiparty negotiations involve two complications that are not present in bilateral negotiations: coalitions and holdouts).

119. See generally *BARRIERS TO CONFLICT RESOLUTION* (Kenneth Arrow et al. eds., 1995).

120. *Id.*

121. *Id.* at 7–8.

122. *Id.* at 9–10 (“Those subjected to [hardball tactics] often respond in kind, and the net result typically is at best additional cost of the dispute resolution process . . . and at worst the failure to consummate a mutually beneficial agreement.”).

123. *Id.* at 10.

124. *Id.* at 10–11.

125. *Id.* at 11.

126. See discussion *supra* Part I.B.2 (Bolivia has cited “distributive justice” as a justification for its advocacy of a fund-based approach to address climate change); see also IISD, *supra* note 14, at 1 (several developing nations that otherwise agreed with the proposed Copenhagen Accord nonetheless withheld support over the Accord’s “untransparent” and “undemocratic” negotiating process).

Arrow et al. describe the group of negotiation obstacles most relevant to this Article as institutional, organizational, or structural barriers.<sup>127</sup> This diverse grouping includes, for instance, restricted or nonexistent channels of information and communication, which may be a function of divided responsibilities or areas of expertise (e.g., technical experts, decision-makers, advisory boards).<sup>128</sup> This grouping may also include problems of representation in multiparty negotiation scenarios—for instance, situations in which the people affected cannot be or are not “represented at the bargaining table.”<sup>129</sup> In some cases, their absence may increase the odds of reaching an agreement, but the agreement reached is likely to be suboptimal, as in the case of environmental problems where the diffuse and less well-organized beneficiaries are not represented.<sup>130</sup>

Although institutional, organizational, and structural barriers are most closely related to the process-related problems observed in the UNFCCC deforestation talks, we do not suggest that other obstacles, psychological or tactical, were not present. Indeed, our confidential interviews imply that many of the problems identified by Arrow et al. may have been at play in Copenhagen. However, this Article focuses on process-related barriers for two reasons. First, these objective obstacles at UNFCCC negotiations are most readily observed, identified, and, therefore, remedied. Second, although these barriers are fixable, given sufficient political will, they currently constitute a formidable source of delay and prevarication on the urgent problem of climate change.

It is precisely the nature of these obstacles—their solvability and their implications—that motivates our proposal for a regional Latin American coalition on forest conservation. Barriers, such as technical incapacity, an unwieldy number of players, and opposition to an agreement, would all be partially ameliorated by increasing interaction and communication between participants at some stages, consolidating participation and expenses at others, and generally adjusting the levels of engagement of the parties on the regional and global stages. In this sense, these process barriers are related, and our proposal for a Latin American coalition may substantially mitigate some or all of them in the long run.<sup>131</sup> This Part briefly reviews five process barriers: unmanageable number of parties at the table, lack of resources and expertise, opponents of forest talks (or “spoilers”), lack of clarity, and time constraints.

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127. See Robert H. Mnookin & Lee Ross, *Introduction* to BARRIERS TO CONFLICT RESOLUTION, *supra* note 119, 19–22.

128. *Id.* at 19–20.

129. *Id.* at 20.

130. *Id.*

131. See *infra* Part III.

## 1. Unmanageable Number of Parties at the Table

As in the wider climate change negotiations, an overabundance of players at the table hindered progress in the deforestation talks. The UNFCCC's negotiation structure allows any country to participate in the deforestation talks for any reason, even if the country lacks an obvious interest in the issue (e.g., a country that is likely to neither receive nor contribute significant amounts of money under an anti-deforestation regime).<sup>132</sup> The universality of the UN process, allowing each country a vote and a say in every matter,<sup>133</sup> makes it impossible to exclude any party. As a result, the unmanageable number of players in the room may obstruct attempts to reach consensus, or even merely to develop a common understanding of the underlying issues.

Parties at the UNFCCC conferences (COPs) may break off into informal smaller groups to discuss particular issues or generate proposals; they often do so through working groups or contact groups. The UNFCCC itself, however, provides no legitimate method for downsizing the overall number of players that may participate in the talks.<sup>134</sup> For instance, the attempt of a small group of countries (comprised of both major economies and smaller but prominent players like the Maldives) to write the Copenhagen Accord for the entire conference met with fierce opposition from some developing countries.<sup>135</sup> These countries rejected the Accord, at least partially, as a result of its "untransparent" and "undemocratic" negotiating process, even though they may have agreed with the Accord's substantive provisions.<sup>136</sup> UN Secretary General Ban Ki-Moon facilitated these informal negotiations (outside of the UNFCCC's mainstream multi-track process) during the night and early morning of the last day of the conference.<sup>137</sup> For some of the countries that were shut out of the talks, the perceived illegitimacy of the separate track negated the value of more efficient negotiation and substantive progress.<sup>138</sup> The tension between the values of efficiency and inclusiveness is best summarized by La Viña, who observed the process from the co-facilitator's chair:

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132. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

133. U.N. Charter art. 18, para. 1 ("Each member of the General Assembly shall have one vote.").

134. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

135. IISD, *supra* note 14, at 1.

136. *Id.*

137. *Id.*

138. In the end, the opposed delegations acquiesced to having the COP adopt a decision whereby the COP "takes note" of the Copenhagen Accord, which was appended as an unofficial document. *Id.*



There is a cost in efficiency in keeping the negotiating processes transparent and participatory. But as the debate on the Copenhagen Accord illustrate[s], this is demanded by many . . . stakeholders. The irony about the Accord and the discord it created is that whatever agreement we will finally get . . . is likely to approximate . . . the Accord *but getting there properly is just as important* . . . . Because there is no way around this demand for transparency and universal participation, extra effort must be made to put into place mechanisms that reduce inefficiency while keeping the process universally open and consultative.<sup>139</sup>

## 2. Lack of Resources and Expertise

Many countries with significant deforestation problems lack the resources and expertise to formulate a well-developed understanding of their interests. The economic and scientific complexity of climate change presents a challenge for representatives struggling to understand this issue and their own national interests in it. Small, developing countries, however, face especially steep obstacles. At COPs generally, the G-77 members have been “constrained by human, economic and temporal resources, which make it difficult to develop an internal understanding of the issues before engaging in high profile international negotiations.”<sup>140</sup>

Lack of capacity has been a barrier to effective negotiation both in the UNFCCC deforestation talks and in attempted bilateral talks on deforestation issues.<sup>141</sup> In many cases, countries with significant rates of deforestation lack the financial capability, or political will, to make forest conservation a high priority, because they often perceive other short-term issues to be more pressing.<sup>142</sup> These issues include widespread poverty, development concerns, civil unrest, political instability, and even other environmental problems, such as pollution.<sup>143</sup> Because these other issues feature more prominently in the minds of the decision-makers and their constituents (e.g., voters, NGOs, and industry), governments often channel their finite amount of time, money, and energy away from the deforestation problem.

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139. La Viña, *supra* note 22, at 16 (emphasis added). For more detail, see ANTONIO G. M. LA VIÑA, FOUND. FOR INT’L ENVTL. L. & DEV., *WAYS FORWARD AFTER COPENHAGEN: REFLECTIONS ON THE CLIMATE CHANGE NEGOTIATING PROCESSES BY THE REDD-PLUS FACILITATOR 2* (2010) (“The legal form of the outcome of our negotiations must be decided as early as possible. We have to accept that there is a price in efficiency if we are to keep the negotiating processes transparent and participatory. But there are mechanisms that could be used to limit inefficiency.”).

140. Janet Martinez & Lawrence Susskind, *Parallel Informal Negotiation: An Alternative to Second Track Diplomacy*, 5 INT’L. NEGOTIATION 569, 580 (2000).

141. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

142. *Id.*

143. *Id.*

Thus, as might be expected, representatives of some Latin American countries, as well as other developing countries, are often less prepared and less knowledgeable than their counterparts from wealthier nations with regard to the complex science and economics of deforestation and the proposed legal solutions. For instance, by mid-2010, only fifteen countries had developed final or draft Readiness Preparation Proposals for the World Bank's Forest Carbon Partnership Facility; of these fifteen countries, only five were in Latin America.<sup>144</sup> Recognizing the detrimental effect of under-preparedness on these delegations' negotiation abilities, intergovernmental and nongovernmental organizations have sought to reduce that under-preparedness in a number of different ways. For instance, the UNFCCC Secretariat, in advance of international negotiations, sometimes brings together representatives from developing nations to educate them on the technical issues.<sup>145</sup> Similarly, environmental NGOs often draft briefing papers on proposed agreements or even draft potential agreement language, which developing country representatives may rely on before and during the deforestation talks.<sup>146</sup>

Despite these efforts, many developing countries that will be significantly affected by an international anti-deforestation agreement arrive at negotiations under-prepared and lacking a good understanding of their own national interests.<sup>147</sup> Consequently, they are unable to effectively advocate for their own interests, they risk making agreements that are objectively not in their interests, and they generally lose out by assuming a lesser role at the negotiating table than they otherwise would have.<sup>148</sup> Their under-preparedness, however, could also have negative consequences for the overall negotiations and for the other parties at the table—for instance, if the legal regime that is ultimately adopted proves to be unworkable because it failed to accurately take into account the interests and capabilities of many of its members, if the final agreement lacks legitimacy because many members were effectively left out of the

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144. REDD-NET PROGRAM, CATALYSING REDD+ AT THE NATIONAL LEVEL: SUMMARY OF EXPERIENCE SO FAR (2010). Thirty-seven REDD countries (fourteen in Africa, fifteen in Latin America and the Caribbean, and eight in Asia and the Pacific) have been selected in the partnership. Thirteen of these countries (Argentina, Costa Rica, the Democratic Republic of Congo, Ghana, Guyana, Indonesia, Kenya, Lao PDR, Mexico, Nepal, Panama, the Republic of Congo, and Tanzania) have so far submitted Readiness Preparation Proposals; many other Latin American countries are working toward submitting their proposals. See FOREST CARBON P'SHIP FACILITY, *supra* note 39 (tracking countries' participation and progress).

145. Confidential Interviews with Intergovernmental Organization Representatives.

146. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

147. *Id.*

148. *Id.*

decision-making process, or if confusion and delays diminish the efficiency of the negotiations.

For example, during the latest UNFCCC Conference many developing countries brought only a small delegation to Copenhagen.<sup>149</sup> Given the number of negotiation processes, multiplied by the number of sub-issues and working groups, both formal and informal, these countries did not have enough delegates to send to all of the sessions relevant to them.<sup>150</sup> They often had a single negotiator running from meeting to meeting, or they relied on other delegations or civil society representatives to furnish them with information on what occurred in another room.<sup>151</sup> The complexity of REDD aggravates these problems. Unsurprisingly, many developing countries were still determining their position on REDD *after* the Copenhagen Conference had closed.<sup>152</sup> Others were debating whether or not to sign the Copenhagen Accord.<sup>153</sup> This indecision largely results from a lack of understanding of the Accord's broader implications, both for their domestic well-being and their international obligations. Given these ongoing problems and uncertainties, it is hard to imagine that these small, developing countries derived the maximum benefit from the Copenhagen talks.

### 3. Opponents of Forest Talks or "Spoilers"

Spoilers have been able to block progress at several stages of the deforestation talks. They may choose to block progress for a variety of reasons in any multiparty setting. For instance, spoilers may decide to hold out in order to achieve greater gains for themselves; alternatively, they might not want the parties to reach any agreement at all.<sup>154</sup> Stephen Stedman provides a useful typology of spoilers based on their ultimate objectives.<sup>155</sup> "Total spoilers" adopt a zero-sum worldview, reject compromise, and use all means at their disposal to further their ends, even at the price of failed negotiations.<sup>156</sup> "Limited spoilers" have limited goals, such as resolving a grievance or obtaining recognition.<sup>157</sup> Between those two extremes, "greedy spoilers" base their ambitions on calculations of

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149. *Id.*

150. *Id.*

151. *Id.*

152. Confidential Interviews with Intergovernmental Organization Representatives.

153. *Id.*

154. Robert C. Bordone, *Dealing with a Spoiler? Negotiate Around the Problem*, 10 NEGOTIATION 4, 5 (2007).

155. Stephen John Stedman, *Spoiler Problems in Peace Processes*, 22 INT'L. SEC. 5 (1977). For commentary, see Bordone, *supra* note 154, at 4–5.

156. Stedman, *supra* note 155, at 10.

157. *Id.*

risk and opportunity and insist on minor concessions, even at the cost of harming relationships.<sup>158</sup>

Two factors make the REDD+ talks particularly vulnerable to spoiler tactics: the ability of any party to take part in the UNFCCC deforestation talks (as discussed above) and the close relationship between the deforestation talks and the broader climate change talks. Linkage and spillover from other items on the agenda make the parties' positions on the REDD text invariably contingent on the developments in the AWG-LCA and Kyoto talks.<sup>159</sup> Together, these two factors have allowed national delegates who were unsatisfied with the progress in other areas of the UNFCCC talks to block progress on the deforestation talks, thereby redirecting attention to their preferred issue.<sup>160</sup> Countries might engage in such tactics because they feel that the deforestation talks are taking precious time and attention away from the issues on which they would like to see progress. Alternatively, they might use this as a hostage-taking tactic by either implicitly or explicitly asserting that they will not let the deforestation talks move forward unless they get what they want on another substantive issue.

The Saudi Arabian delegation, for instance, used this tactic on a number of occasions to block REDD+ in exchange for concessions in its other areas of interest to it, such as carbon capture and sequestration.<sup>161</sup> The delegation apparently blocked REDD+ "randomly" to ensure that it did not move forward faster than the remainder of the talks.<sup>162</sup> Tuvalu also purportedly used spoiler tactics in order to secure a more climate-friendly deal on behalf of the ultra-vulnerable Alliance of Small Island States.<sup>163</sup> Regardless of the countries' underlying motivations, the universality of the UNFCCC talks makes this tactic possible and widely used. The current UNFCCC framework does not provide any means of sanctioning delegations that hinder joint agreement for the sake of narrow self-interest; in fact, horse trading, hard bargaining, and hostage taking are fully permissible, albeit criticized, tactics in multiparty environmental negotiations.

#### 4. Lack of Clarity

Partly as a result of several of the process barriers discussed above, UNFCCC participants generally do not have a good

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158. *Id.* at 11.

159. Confidential Interviews with COP15 Country Delegates.

160. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

161. *Id.*

162. *Id.*

163. *Id.*

understanding of their counterparts' views on any given issue. For more than two years prior to Copenhagen, the REDD negotiations allotted insufficient time to discuss individual positions on REDD+ policy and appropriate mechanisms, and this lack of discussion caused misunderstandings and suspicions.<sup>164</sup> The issue of REDD+ reference points (national v. subnational), for instance, caused considerable friction as delegations on both sides of the debate engaged in positional bargaining.<sup>165</sup> For many of them, the choice of scale for accounting and monitoring seemed to go to the heart of the REDD+ regime and thus seemed nonnegotiable.<sup>166</sup> In reality, the issue was not nearly as clear-cut. For example, a Latin American delegation described by many of its counterparts as a self-interested, entrenched spoiler turned out to be willing to compromise.<sup>167</sup> Neither side communicated its definitions of "national" and "subnational" to the other until the final hours of the conference.<sup>168</sup> The problem of definitional ambiguity is pervasive in the REDD discussions, where the very definitions of "forest" and "deforestation" are subjects of dispute.<sup>169</sup>

To make matters worse, due to a lack of resources and expertise, national delegates may not even have a clear idea of their own governments' views on a given issue.<sup>170</sup> During the rounds of negotiations leading up to the Copenhagen Conference, several countries underwent a change of government, which resulted in changed perspectives on REDD+ and UNFCCC and created additional uncertainty for both the new representatives and their counterparts.<sup>171</sup> Beyond this uncertainty, coalitions in the UNFCCC talks tend to be flexible and shifting. Delegates often do not know which countries are aligned together in a coalition or whether a particular coalition spans many different issues or is limited to particular issues.<sup>172</sup> Thus, the time spent on clarifying national delegations' positions on the myriad issues discussed at the UNFCCC takes away from the time that delegations should, ideally, spend on bridging differences over substantive issues by exploring the actual underlying interests of the various players.

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164. Confidential Interviews with COP15 Country Delegates.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Disagreement over What Constitutes a Forest May Be Achilles Heel of REDD Plan*, SCI. DAILY (Dec. 10, 2009), <http://www.sciencedaily.com/releases/2009/12/091210111146.htm>.

170. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

171. *Id.*

172. *Id.*

## 5. Time Constraints

With a limited number of meetings per year and a finite amount of time available at each meeting, countries must deal with considerable time restraints as they attempt to learn more about each other's views and work to reach an agreement on the variety of issues on the table. It is remarkable that they accomplish anything at all given the number of players, the number of issues to be resolved, and the complexity of those issues. Such a situation demands efficiency during the negotiations and a good deal of pre-negotiation preparation on the part of the players involved, both of which are often in short supply in the UNFCCC process. A number of delegates and participants cited time constraints as a problem in specific UNFCCC subcommittees, although time constraints were not cited as the main reason for the failure of the overall talks.<sup>173</sup> As some participants observed, the parties could have made more substantive progress if they had debated their positions and views instead of merely "collected" the views.<sup>174</sup> The presence of ministers and political staff also changed the dynamics, as REDD+ ("technical") negotiators had less time to arrange bilateral meetings with their counterparts.<sup>175</sup>

Not only do time constraints impede the negotiators from developing a holistic understanding of the issues and of their counterparts' positions, they can also empower spoilers to slow progress on certain issues or to extract concessions from others by using various delay tactics. In the AWG-KP sessions, for instance, a group of countries aligned with the G-77 and China requested further time to resolve outstanding technical issues in the AWG-KP's text. Other delegations, led by the European Union, perceived this request as a delay tactic, because they felt that the text was sufficiently "well developed" and . . . political choices must now be made."<sup>176</sup> These time constraints and delay tactics are arguably a function of several factors, including the UNFCCC's universality, which, as discussed above, increases the spoilers' power at the table.

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173. Confidential Interviews with COP15 Country Delegates; *see also* IISD, *supra* note 14, at 4 (noting that multiple participants at Copenhagen emphasized the need to use time effectively).

174. Confidential Interviews with COP15 Country Delegates.

175. *Id.*

176. IISD, *supra* note 14, at 10–11.

### III. THE CASE FOR LATIN AMERICA'S EARLY COORDINATION: LONG-TERM INTERESTS AND NEGOTIATING ADVANTAGE

As our discussion of the substantive disputes and negotiation barriers at the 2009 Copenhagen Climate Conference illustrates, a small national delegation will find itself outnumbered and outgunned in multilateral environmental talks, as even relatively large and influential players find it difficult to effectively maneuver within the dauntingly complex negotiation apparatus of the UNFCCC climate talks. Although this disadvantage affects delegations from any region, this Article specifically analyzes the ability of Latin American nations to obtain the strongest possible negotiating position on the deforestation issue. As noted above, Latin American forests are in jeopardy, and endangered forests mean an endangered global climate. It is therefore imperative for Latin America to find its collective ecological voice and take the lead in global deforestation talks.

This Part outlines the principal reasons why it is both feasible and in Latin America's interest to engage in early coordination within the region and to bring a sophisticated, science-backed coalitional perspective to the next round of global talks. We start with the assumption that the international community will eventually reach a climate change agreement that will include a commitment to significantly reduce rates of global deforestation. The history of climate change debates and negotiations may not inspire much confidence, but this assumption is still reasonable for a number of reasons.

The magnitude of the deforestation problem, coupled with the steadily increasing awareness of the problem, makes it inevitable that the world's leading economic and political powers eventually will have to take coordinated action to reduce and reverse the rates of deforestation. In addition, the evidence that climate change is occurring and that it will likely have catastrophic global consequences has grown steadily over the past few decades.<sup>177</sup> Changes in public opinion have paralleled the development of scientific consensus, and increasing percentages of people consider climate change to be a problem that warrants serious mitigation

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177. LENNY BERNSTEIN ET AL., INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2007: SYNTHESIS REPORT 39 (2007), [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf).

Most of the observed increase in global average temperatures since the mid-20th century is *very likely* due to the observed increase in anthropogenic GHG concentrations. This is an advance since the TAR's [Third Annual Report] conclusion that "most of the observed warming over the last 50 years is *likely* to have been due to the increase in GHG concentrations."

*Id.*

efforts.<sup>178</sup> As the effects of climate change become increasingly salient, public concern and political pressure on governments to act can reasonably be expected to increase. Among the various issues being considered for inclusion in a potential climate change agreement, deforestation is widely seen as the area of greatest potential for near-term progress.<sup>179</sup> REDD+ talks and projects made considerable strides during 2010. It is thus conceivable, and perhaps even probable, that an ambitious anti-deforestation regime will enter into force in advance of a robust climate change agreement.

If we assume that an anti-deforestation regime is inevitable, then each country should assess what actions will best prepare it to shape that regime to its benefit. Despite significant obstacles to coalition building and intra-regional differences which we discuss further below, we argue that Latin American countries would benefit from becoming early movers on the deforestation issue, working together in advance of wider deforestation talks, and laying the groundwork for a global anti-deforestation agreement. A number of Latin American countries, individually, are already ahead of the REDD+ curve in terms of development of readiness plans and financing initiatives. However, because the countries in the region share many common ecological, political, and economic interests, and because they are, *as a group*, particularly plagued by some of the challenges discussed above, it would benefit the Latin American countries to coordinate their actions and to become a coalition of early movers on the deforestation issue rather than forging ahead in isolation. This Part highlights four main reasons why such a coalition is sensible: the common ecology, the state of global politics, the first-mover advantage, and the potential to increase regional capacity.

### A. Ecology

Latin America's ecology suggests that countries in the region have a natural, mutual interest in what happens to the region's forests. The region's forests are, in a sense, one large forest. The Amazon region alone contains 1.4 billion acres of forest and spans

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178. See Barry G. Rabe & Christopher P. Borick, *The Climate of Belief: American Public Opinion on Climate Change*, ISSUES IN GOVERNANCE STUD. (Brookings Inst., Washington, D.C.), Jan. 2010, at 1, 2 (“[P]revious surveys have found that significant majorities of Americans believe that average global temperatures have been increasing in recent decades and that the significant majority of those who believe that this is occurring deem a combination of human and natural factors as causative.”). *But see id.* at 3–7 (noting that public opinion on the harmful effects of climate change declined from 2008 to 2009).

179. Bryan Walsh, *On the Copenhagen Agenda, Saving Forests May Still Work*, TIME, Nov. 15, 2009, [http://www.time.com/time/specials/packages/article/0,28804,1929071\\_1929070\\_1939675,00.html](http://www.time.com/time/specials/packages/article/0,28804,1929071_1929070_1939675,00.html).



nine Latin American countries—Bolivia, Brazil, Colombia, Ecuador, French Guiana, Guyana, Peru, Suriname, and Venezuela.<sup>180</sup> The Amazon Cooperation Treaty, signed in 1978 by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela, recognizes the Amazon region's interconnectedness.<sup>181</sup> The treaty represented the countries'

[c]ommon aim of pooling the efforts being made, both within their respective territories as well as among themselves, to promote the harmonious development of the Amazon region, to permit an equitable distribution of the benefits of said development among the Contracting Parties so as to raise the standard of living of their peoples and so as to achieve total incorporation of their Amazonian territories into their respective national economies . . . .<sup>182</sup>

In terms of existing forests and rates of deforestation, the larger Latin American region makes up perhaps the most important geographic block of countries. In 2005, statistics provided by the UN Food and Agriculture Organization on the world's forests showed that the forests of South and Central America constituted 21.6 percent of the world's total forests (853.951 million hectares out of roughly 3.95 billion total hectares).<sup>183</sup> Asia accounted for 14.5 percent, Africa for 16.1 percent, North America and the Caribbean for 17.3 percent, and Europe for 25.3 percent.<sup>184</sup> Although Europe has a higher percentage of the world's forests than South and Central America, its annual change in forest area between 2000 and 2005 was positive, while South and Central America showed the highest negative rate of any region in the world.<sup>185</sup> Between 2000 and 2005, annual deforestation in South and Central America amounted to 4.536 million hectares, while Europe's forest area increased by 661,000 hectares.<sup>186</sup> The only other region with a similar rate of deforestation was Africa, which lost 4.04 million hectares annually.<sup>187</sup> Regional deforestation dynamics in Latin America, even apart from the effects of climate change, might trigger a large-scale ecosystem collapse if allowed to continue unabated.<sup>188</sup>

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180. *Amazon Rainforest*, REDORBIT, [http://www.redorbit.com/education/referen ce\\_library/geography/amazon\\_rainforest/4361/index.html](http://www.redorbit.com/education/referen ce_library/geography/amazon_rainforest/4361/index.html) (last visited Mar. 22, 2011).

181. See *Amazon Cooperation Treaty*, AMAZON COOPERATION TREATY ORG., <http://www.otca.org.br/en/institucional/index.php?id=29> (last visited Mar. 22, 2011) (emphasizing common efforts of each country to benefit the region as a whole).

182. *Id.*

183. FAO, *supra* note 31, at 16.

184. *Id.*

185. *Id.* at 16, 20.

186. *Id.* at 20.

187. *Id.*

188. Stephan Schwartzman & Paul Moutinho, *Compensated Reductions: Regarding Developing Countries for Protecting Forest Carbon*, in CLIMATE CHANGE AND FORESTS: EMERGING POLICY AND MARKET OPPORTUNITIES 227, 227 (Charlotte Streck et al. eds., 2008).

As the world's most rapidly deforesting region and the home of the world's second largest forest area, the South and Central America region is arguably the most important player in the global effort to reduce deforestation. The Amazonas, moreover, are one of the most vulnerable forest ecosystems.<sup>189</sup> Beyond the impact of settlements, construction, dam-building, and agriculture—all drivers of deforestation—climate change will hit the area particularly hard.<sup>190</sup> According to a revised Intergovernmental Panel on Climate Change scenario from 2007, the effect will be far worse than originally anticipated: “[T]he Amazon is the region where the highest increases in temperature may occur.”<sup>191</sup> The expectantly harsh ecological and economic impact of climate change in the region gives Latin American countries a strong mutual interest in working together to protect the region's forests and to seek a global agreement to avert a catastrophic temperature rise.

### B. Global Politics

As climate change and REDD+ negotiators grow increasingly frustrated with the previously identified process barriers,<sup>192</sup> the likelihood increases that a final agreement will be reached by a process other than that provided by the UNFCCC forum. Many REDD+ and UNFCCC experts and commentators, including UN officials, believe that it is inevitable or necessary for the talks to move to a smaller, more limited forum—such as the Group of Eight (G-8), the Group of Twenty (G-20), or some other assortment of major economies—or, alternatively, to focus on bilateral agreements between the major players, such as the United States and China.<sup>193</sup> This trend was already becoming apparent in both the buildup to the Copenhagen climate talks and the actual negotiations, during which a relatively small group of countries negotiated the Copenhagen

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189. See CENAMO ET AL., *supra* note 6, at 10.

The Amazon suffers (and will suffer even more) the negative impacts of climate change. In 2005, the region experienced a drought that had a tremendous impact on the people residing in the region bringing . . . environmental losses. Moreover, in the beginning of 2009, the largest regional flood on record was registered in the State of Amazonas, Brazil. With climate change, droughts are predicted to happen more frequently, occurring at intervals of 3-6 years . . .

*Id.*

190. See *id.* (“[A]n increase of 4 to 6°C is predicted in the next hundred years for mean surface temperatures and the Amazon is the region where the highest increases in temperature may occur.”).

191. *Id.*

192. See *supra* Part I.C.

193. Confidential Interviews with Government, NGO, and Intergovernmental Organization Representatives.

Accord outside of the wider UNFCCC membership and then presented the agreement to the other Copenhagen participants.<sup>194</sup> With the exception of Brazil,<sup>195</sup> the vast majority of Latin American countries were excluded from these talks.<sup>196</sup> A similar exclusion of Latin American countries, save Brazil, would likely occur if climate talks (and thus deforestation talks) were to move to a forum to which a limited number of countries were invited. Indeed, many countries are already working parallel to the UN processes through various World Bank climate programs and bilateral activities.<sup>197</sup>

If Latin American countries come together to form a common understanding of the issues and to identify common interests before a global anti-deforestation regime is adopted, they could partially counteract their relative powerlessness when negotiating in their capacity as individual countries. By forming a coalition, they could effectively wield the power of their collective importance in later UNFCCC deforestation talks or, if talks are downscaled in the future, through a representative. There is some evidence of prior “on the side” meetings in which Latin American countries sought support for their position, usually aiming for a strong decision on REDD.<sup>198</sup> More recently, they have channeled their efforts through the CfRN.<sup>199</sup> However, individually and collectively, they have had only limited success, because their coordination was limited to meeting between negotiations rather than acting as a negotiating bloc.<sup>200</sup>

### C. First-Mover Advantage

In multiparty negotiations, as Roy Lewicki et al. point out, “the possibility of coalitions increases the likelihood that decisions will not be made by a comprehensive negotiated consensus, but by some

194. See generally David Adam et al., *Countdown to Copenhagen: No Deal, We're Out of Time, Obama Warns*, GUARDIAN, Nov. 16, 2009, at 1 (“Denmark’s prime minister, Lars Løkke Rasmussen, the host and chairman of the climate talks, flew overnight to Singapore to pitch the deferral plan to 19 leaders, including Obama and China’s president, Hu Jintao, at an unscheduled event during the Asia-Pacific Economic Cooperation summit.”); see also John M. Broder, *5 Nations Forge Pact on Climate; Goals Go Unmet*, N.Y. TIMES, Dec. 18, 2009, at A1 (“The three-page accord that Mr. Obama negotiated with the leaders of China, India, Brazil and South Africa and then presented to the conference . . .”).

195. *Id.*

196. *Id.*

197. See, e.g., Florence Daviet, *From Copenhagen to Cancun: Forests and REDD*, WORLD RES. INST. (May 17, 2010), <http://www.wri.org/stories/2010/05/copenhagen-cancun-forests-and-redd> (“Many of these discussions and activities on REDD+, however, are happening in parallel to the UN process in programs like the World Bank’s Forest Carbon Partnership Facility and Forest Investment Program, as well as other bilateral activities around the world.”).

198. Confidential Interviews with COP15 Country Delegates.

199. *Id.*

200. *Id.*

subgroup that can dominate the discussion and decision-making process.”<sup>201</sup> By becoming early movers, Latin American countries would be able to shape the debate to their advantage, because their actions will commit a large number of players to particular points within the broad range of possible agreements.<sup>202</sup> The stickiness of a proposal, especially one that is endorsed by a large number of important players, could make it difficult to subsequently alter the original proposal. This gives every potentially affected country an incentive to become the first mover, allowing that country to push the discussion in a preferred direction, but there is an even greater incentive for Latin American countries, given their likely marginalization in the talks. Other major players, such as the United States and China, already hold large bargaining power and thus will inherently have some ability to shape a proposed regime. Latin American countries, however, must maximize their leverage and move early—and together—if they are to achieve the greatest payoff.

Beyond assuring that its position is represented at the bargaining table, Latin America could also benefit substantively from being an early mover. The Latin American region would be primarily on the receiving end of funds flowing internationally under the eventual anti-deforestation regime. Today, there are an equal number of REDD projects in Asia, Africa, and Latin America; Asia, however, boasts the largest project size and the biggest number of demonstration projects, especially in Indonesia.<sup>203</sup> This means that Latin America, relative to its enormous potential for REDD development,<sup>204</sup> is trailing behind in terms of financial investment in its forests. Establishing itself as an early mover could benefit the region in a potential race to the top, because governments, corporations, and NGOs from the developed world would be more willing to contribute resources to countries that have demonstrated a dedication to effectively carrying out anti-deforestation efforts, along

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201. LEWICKI ET AL., *supra* note 118, at 340.

202. See, e.g., David A. Lax & James K. Sebenius, *Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing*, in NEGOTIATION ANALYSIS 153, 183 (1992).

Coalitions may take form or take actions to commit to points within the perceived bargaining range. . . . a visible, binding, irrevocable, and credible commitment within the zone of possible agreement effectively presents others with the equivalent of a take-it-or-leave-it offer. If the process has been such that the commitment does not generate hostility or spite, or engender a conflict spiral, the other sides will have to choose between the agreement to which the first coalition has committed and less attractive alternatives to agreement.

*Id.*

203. La Viña, *supra* note 22, at 12.

204. *Id.*

with all of the monitoring, reporting, and verification that will necessarily accompany those efforts.<sup>205</sup>

#### D. Regional Capacity Building

Regional cooperation geared toward developing a common understanding of the economic and scientific issues involved also would help to build up Latin American countries' expertise on those issues. Through dialoguing and developing a joint proposal among themselves, these countries would attain knowledge and experience that would help them as they move toward negotiating an agreement on the world stage. They also could go a step further and make agreements to pool their resources, information, and expertise so as to maximize their effectiveness and efficiency in the global talks. By doing so, they might be able to rival the capabilities of the large-country delegations, which already have vast resources and expertise.

By working as a region rather than as part of a larger coalition of countries like the Coalition for Rainforest Nations,<sup>206</sup> Latin American countries also would preserve a degree of regional ownership. Not only would they be doing everything possible to ensure that their interests are represented, but they would also retain control over the process and the substance of the organization rather than relinquishing it to players outside the region. This would ensure that the expertise and resources remain within the region rather than exporting or deferring to the knowledge of outside players. There are obvious advantages to coordinating with and sharing knowledge with countries outside the region as well; however, building up Latin American countries' own internal expertise would help the region both in the short-term (i.e., in the climate change and deforestation talks) and in the long-term (i.e., implementing REDD after a climate change or deforestation agreement has been adopted).

#### IV. BUILDING THE FOREST COALITION IN LATIN AMERICA: BARRIERS AND SOLUTIONS

Once Latin American countries recognize the compelling reasons to develop a joint negotiating position at the global climate talks,<sup>207</sup> the difficult task—building a regional coalition—begins. This Part discusses some of the key barriers to Latin American coalition

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205. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

206. See *supra* Part I.A (“The CfrN is an intergovernmental organization that attempts to bring together rainforest nations and to develop consensus on various forest-related issues.”).

207. See *supra* Part II.

building and proposes a facilitator-led approach, as well as a coalition-building model comprised of three related steps: assembling the coalition's Core Group, managing detractors, and strengthening the coalition.

Negotiations involving multiple interest groups create difficult structural problems and barriers for every participant.<sup>208</sup> This is particularly true of international environmental negotiations. Treaties on climate change and biodiversity, for instance, rank among the "most complex agreements ever negotiated, involving science-intensive policy questions" and implicating a range of public and private stakeholders.<sup>209</sup> Negotiation scholars describe different approaches for overcoming such "barriers in high stakes, high profile, multi-party negotiations."<sup>210</sup> One method, proposed by Janet Martinez and Lawrence Susskind, is to foster a collaborative problem-solving process outside of the formal negotiations process—a "parallel informal negotiations" process.<sup>211</sup> James Sebenius, in his famous 1991 article on climate change negotiations, outlined a process based on the formation of a "winning coalition."<sup>212</sup> He argued that international efforts to address climate change are unlikely to succeed "unless the negotiation process is designed . . . to craft and sustain a meaningful 'winning' coalition of countries backing such a regime."<sup>213</sup> Sebenius added two necessary, although not sufficient, conditions for this strategy: each coalition member must "see enough gain in the regime, relative to the alternatives, to adhere," while the potential and actual "blocking" interests must "be prevented from forming, acceptably accommodated, or otherwise neutralized."<sup>214</sup> In *Two Paths to Peace*, Daniel Curran, Sebenius, and Michael Watkins set out a third approach in the context of peace talks: mediation.<sup>215</sup> We take those three approaches to be complementary, and this Part analyzes how each process element might contribute to the emergence of a sustainable, sophisticated Latin American position on forests.

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208. Mnookin & Ross, *supra* note 127, at 2, 20.

209. Martinez & Susskind, *supra* note 140, at 569.

210. *Id.*

211. *Id.*

212. James K. Sebenius, *Designing Negotiations Toward a New Regime: The Case of Global Warming*, 15 INT'L. SEC. 110, 112 (1991).

213. *Id.* at 12, 112 (defining "winning coalitions" as consisting of "sufficient numbers of adherents to render the policy effective" and defining "blocking" coalitions as "those opposing interests that could prevent a winning coalition from coming into existence or being sustained").

214. *Id.*

215. Daniel Curran et al., *Two Paths to Peace: Contrasting George Mitchell in Northern Ireland with Richard Holbrooke in Bosnia-Herzegovina*, 20 NEGOTIATION J. 513, 513 (2004).

### A. The Facilitator

The first approach to enable participants to overcome entrenched barriers and move negotiations forward is to find a mediator,<sup>216</sup> or for the purposes of this Article, a "high-level facilitator." Latin American countries, in consultation with civil society and with the aim of aiding in the creation of a robust regional anti-deforestation approach, should select a high-level facilitator to help build confidence and mutual understanding among the various stakeholders.

In *Two Paths to Peace*, Curran, Sebenius, and Watkins lay out a three-step decision-making framework for those individuals who are asked to take on a third-party role in a multiparty negotiation:

First, they have to determine their basic objectives. At first blush, seeking to foster an agreement among the . . . parties might appear to be the obvious basic objective, but more subtle goals are possible: transforming relationships, modeling a more constructive process, delaying the conflict, and others. Second, they have to choose their fundamental role (e.g., neutral, advocate for one party or outside player, etc.). Third, they have to consider their best means of influence on the situation (e.g., forceful, persuasive, facilitative, and so forth).<sup>217</sup>

This framework provides a good starting point for our analysis.

As the first step, rather than adopting a position of neutrality, this Article proposes that the high-level facilitator should be an expert on, and even an advocate for, the environment. This is essential to ensure that the agreement achieved will be environmentally optimal. In contrast, Martinez and Susskind, who see an important role for mediation or facilitation in their parallel informal negotiations process, argue that it should be neutrally facilitated: the facilitator should not only chair or manage the discussions, but should also have professional credibility, technical expertise, and management capability.<sup>218</sup> Although the facilitator should have both an environmental background and diplomatic savvy, we disagree with their conception of neutrality. Instead, where the mediator's task is primarily one of reframing and persuasion, as in the context of deforestation negotiations, this objective is best achieved, as William Zartman and Saadia Touval find, not by an unbiased or impartial mediator, but by a mediator who possesses resources that either or both parties value.<sup>219</sup>

In deforestation negotiations, every national delegation necessarily will seek to further its own objectives, which, in some cases, will be inconsistent with the goal of sustainable development

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216. Mnookin & Ross, *supra* note 127, at 22.

217. Curran et al., *supra* note 215, at 516.

218. Martinez & Susskind, *supra* note 140, at 574.

219. SAADIA TOUVAL & WILLIAM ZARTMAN, INTERNATIONAL MEDIATION IN THEORY AND PRACTICE (1985).

(even if the country is committed to ratifying the eventual climate change agreement). The problem, as Sebenius predicted in 1991, is that “powerful economic and political actors facing potential restrictions will seek to delay, avoid, and shift [compliance] costs.”<sup>220</sup> The internal balance of power is likewise skewed against the environment, because environmental ministries are notoriously weak when compared to other national agencies and agendas, like development and industry.<sup>221</sup> Given that national delegations are more likely to be willing to sacrifice environmental goals in order to secure a better short-term economic outcome (e.g., clear-cut a forest to make space for cattle ranches or soybean plantations), the facilitator is the only actor with the ability, and the credibility, to represent the environment.

Of course, the facilitator’s “environment-centric”<sup>222</sup> approach should not ignore the complex interconnection between forest conservation on the one hand and economic and social development on the other. Forest conservation, like climate change more generally, will entail “significant costs and benefits, and redistributions of these among stakeholders, within and across generations.”<sup>223</sup> Just as “distributing GHG emission reduction targets is akin to distributing current and future wealth,”<sup>224</sup> limiting and distributing access to forest resources will affect the lives and livelihoods of many. Setting aside huge swaths of land for forest conservation and limiting access to logging companies, agro-business, infrastructure development, or preventing further expansion of human settlement will impose significant economic costs on those activities. As the cost of mitigation increases, the likelihood and strength of opposition to mitigation also will increase.<sup>225</sup>

A successful facilitator will be mindful of development issues<sup>226</sup> that are tied in with forest conservation and should be able to identify

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220. Sebenius, *supra* note 212, at 122 (likening the size of the problem to international trade or arms control talks).

221. Lynn M. Wagner, *North-South Divisions in Multilateral Environmental Agreements: Negotiating the Private Sector’s Role in Three Rio Agreements*, 12 INT’L NEGOTIATION 83, 98 (2007).

222. Kirsten Halsnæs & Priyadarshi Shukla, *Sustainable Development as a Framework for Developing Country Participation in International Climate Change Policies*, 13 MITIGATION & ADAPTATION STRATEGIES FOR GLOBAL CHANGE 105, 107 (2008).

223. *Id.*

224. *Id.*

225. Sebenius, *supra* note 212, at 132 (“Costs of the vastly greater magnitude required to mitigate global warming would provoke correspondingly stronger opposing interests . . .”); Soares-Filho et al., *Role of Brazilian Amazon Protected Areas in Climate Change Mitigation*, PROC. NAT’L ACAD. SCI., Jun. 15, 2010, at 10,821, 10,824 (discussing costs of protecting areas of the Amazon).

226. As important, the facilitator must understand the delicacy of the issues involved (human livelihoods and the environment).



specific areas of net social benefit arising from forest conservation activities and mitigation of climate change. As Kirsten Halsnæs and Priyadarshi Shukla note:

[O]pportunities for linking mitigation and adaptation exist in afforestation and reforestation projects like commercial bio-energy, agro-forestry, forest protection and forest conservation through sustainable management of native forests . . . . Projects that help contain deforestation and reduce frontier expansion can deliver mitigation benefits. In addition, they accrue developmental and adaptation benefits, such as from decreasing migration of young rural population to cities, protection of biodiversity and watershed and soil conservation.<sup>227</sup>

Thus, although forest conservation will certainly impose higher costs on some economic sectors and countries than others, it also holds out the prospect of significant long-term benefits—something that a skillful facilitator will be able to emphasize to consolidate a consensus in favor of a robust and effective agreement.<sup>228</sup>

Because negotiators often conceive of their interests too narrowly,<sup>229</sup> a good facilitator can help them expand the perception of their interests and outline the nature of trade-offs involved in particular choices. A facilitator who can assist negotiating parties in understanding their interests and in exploring opportunities for mutual gain could help to overcome one of the principal problems facing the deforestation talks: the lack of expertise, resources, and knowledge of the subject among many Latin American countries. As Sebenius and David Lax observe, the difference between specific *positions* (e.g., opposition to or support for a dam) is distinct from the relevant underlying *interests* (e.g., economic returns, irrigated crops, or species preservation), and excessive focus on the former can obscure the zone of possible agreement on the latter.<sup>230</sup>

However, Roger Fisher and Bill Ury's advice—"focus on interests, not positions"<sup>231</sup>—often is not feasible absent a facilitator who can objectively and transparently identify those underlying

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227. Halsnæs & Shukla, *supra* note 222, at 115 (internal quotation marks omitted); Martinelli et al., *Agriculture in Brazil: Impacts, Costs, and Opportunities for a Sustainable Future*, CURRENT OPINION IN ENVTL. SUSTAINABILITY, Dec. 2010, at 431, 437 (outlining possible ways to reconcile commercial agriculture with environmental protections).

228. Stickler et al., *The Potential Ecological Costs and Cobenefits of REDD: A Critical Review and Case Study from the Amazon Region*, 15 GLOBAL CHANGE BIOLOGY 2,803, 2,815 (2009) (arguing that REDD funding to maintain carbon in forests could lead to a cascade of otherwise unaffordable ecosystem services to local stakeholders).

229. James K. Sebenius & David Lax, *Interests: The Measure of Negotiation*, 2 NEGOTIATION J. 73, 73 (1986).

230. *Id.* at 76 ("Many negotiators retard creativity by failing to distinguish the issues under discussion from their underlying interests.").

231. ROGER FISHER & BILL URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN 11 (1981).

interests. Moreover, in the presence of entrenched, ideological divisions, Sebenius and Lax argue that it is more productive to tackle functional issues, without kindling the underlying flames.<sup>232</sup> These are delicate, context-dependent questions that the facilitator should attempt to determine through careful stakeholder consultations. To the extent that intraregional divisions or misunderstandings run deep, the facilitator must be capable of bridging the informational or ideological divide. In this task, the facilitator should have the support of a team of scientists, ecologists, and regional experts. Although the facilitator need not necessarily come from the region, he or she ought to have a deep understanding of both the region's ecology and its political dynamics.

Beyond being an advocate for the region's environment (as a substantive commitment), the facilitator also must support the type of process that will be conducive to the attainment of that substantive interest. The facilitator's objective should be to support a process that achieves "relatively expeditious results that can be sustained over time and modified as appropriate."<sup>233</sup> More specifically, as Curran, Sebenius, and Watkins describe in *Two Paths to Peace*, the facilitator "must, at least implicitly, formulate a strategy to form a 'winning coalition' on behalf of the chosen objective."<sup>234</sup> This "coalition strategy," in turn, comprises issues-strategy, process-strategy, and timing-strategy, all of which are context-dependent factors that require a high degree of stakeholder consultation and participation.<sup>235</sup>

*Two Paths to Peace* provides several relevant insights for our purposes. The first relates to the approach that a facilitator should adopt toward the parties. The peace talks in both Northern Ireland and Bosnia involved high-profile U.S. emissaries: George Mitchell in Northern Ireland and Richard Holbrooke in Bosnia.<sup>236</sup> Whereas Mitchell focused on process, relationships, joint gains, and future interactions and "used process to build perceptions of fairness, respect, dedication, and credibility,"<sup>237</sup> Holbrooke adopted a more

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232. Sebenius & Lax, *supra* note 229, at 76.

Focus the negotiation on interests to enhance creativity and break impasses by reformulating issues to align better with underlying interests. Focus the negotiation on positions, issues, or a narrower set of interests when underlying conflicts of ideology make agreement difficult or when a restricted focus is more advantageous for claiming value.

*Id.* at 91.

233. Sebenius, *supra* note 212, at 122.

234. Curran et al., *supra* note 215, at 516.

235. *Id.*

236. *Id.* at 514.

237. *Id.* at 517, 523, 526 (describing Mitchell's fundamental objectives as "process-oriented," "relationship," and "transformational," noting his "fundamental

coercive approach that allowed him to do “whatever it [took] to force a deal.”<sup>238</sup> In forest conservation negotiations, the facilitator must reframe the issue and convince the Latin American countries that they all stand to gain from a robust forest regime if they work together at the regional and global level. Therefore, a more collaborative and process-oriented approach, with some adjustments, offers the most promising model for a Latin American high-level anti-deforestation facilitator. The facilitator will need to build inter-party relationships that focus on the possible benefits of an anti-deforestation agreement, and the facilitator will need to develop strategies to carry those interests to the global deforestation talks.

One additional advantage of Mitchell’s collaborative, participatory approach over Holbrooke’s heavy-handed, top-down strategy is that Mitchell’s approach gives all of the parties a sense of ownership in the project’s success: if this is something they believe in, they will be willing to fight for it at the global UNFCCC/REDD talks.<sup>239</sup> Thus, although the facilitator would have a substantive commitment or a prior mission (preserving the region’s forests), the facilitator should develop this objective in conjunction with the parties. Ultimately, a strategy that is acceptable to the Core Group has the greatest chance of getting implemented.

Still, the facilitator should also be “deal-oriented” and “substantive”—two objectives attributed to Holbrooke<sup>240</sup>—given the particularities of the deforestation problem in Latin America and the urgency of delivering a substantive agreement on forests. A more active mediator/advocate role, with a focus on getting the deal done and ensuring that its substance has environmental integrity, would help overcome the various obstacles<sup>241</sup> that obstruct Latin America’s progress toward a robust anti-deforestation agreement.

In order to better illustrate the cooperative advocacy that a facilitator would have to employ in this situation, it is useful to

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interest/role” as “[m]ediator/neutral,” and characterizing his “fundamental influence strategy” as “[j]oint gains-focused” and “[m]odel-future dealings”).

238. *Id.* at 518, 527 (“In Bosnia, Holbrooke arguably adopted an approach of ‘whatever it takes to force a deal.’ . . . Holbrooke turned to coercive means to forge a peace . . .”).

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By contrast with Holbrooke, Mitchell’s approach had the apparent objective of helping the political leadership of the warring factions of Northern Ireland for the future. From the start of the all-party talks, he took almost two years in a highly process-oriented, relationship-focused effort at transforming the working and political relationships among key players.

*Id.* at 517.

240. *Id.* at 516, 526.

241. These obstacles include the low priority assigned to stopping deforestation in the region, as well as the region’s lack of the expertise and resources necessary to tackle this issue.

contrast it with the more forceful approach taken by Holbrooke in the Bosnia talks. Like Holbrooke, a facilitator could focus uncooperative parties on their “best alternative to a negotiated agreement” (BATNA) and thus attempt to lower the value of no-agreement alternatives and impose increasingly higher costs on them.<sup>242</sup> In effect, the mediator would inform the parties that they are either “in” or “out,” but, given their BATNAs, their best option would be to participate. As Lax and Sebenius caution, however, “[t]ake-it-or-leave-it’ offers, forced linkages, commitment moves, threats, and preemptive actions all have potential to elicit strong negative reactions that may overwhelm the original issues at stake.”<sup>243</sup> Hardball tactics and intransigence may, in themselves, constitute a barrier to negotiation that decreases the likelihood of agreement and shrinks the welfare gains for all involved.<sup>244</sup>

In addition, this approach requires that the facilitator possess enough power outside the negotiating room to influence the parties’ BATNAs.<sup>245</sup> As of yet, however, no influential global player (such as the United States or the European Union) has championed a specific anti-deforestation regime or been willing or able to apply coercive pressure to ensure progress in the forest negotiations.<sup>246</sup> For these reasons, we do not advocate this strategy for the Core Group of countries<sup>247</sup> and would reserve it for the spoilers: if spoilers are unwilling to participate in a constructive manner, the Core Group should leave them out and forge ahead with the rest of the joiners.<sup>248</sup>

Another difficulty is that Latin American states do not rate deforestation as one of the most pressing issues on their domestic political agendas,<sup>249</sup> which, in itself, is enough to make successful negotiations less likely.<sup>250</sup> Thus, one key challenge for a facilitator will be to establish the urgency and magnitude of the deforestation problem by correcting informational barriers, raising awareness, and emphasizing each stakeholder’s interest in implementing a strong agreement. A high-profile facilitator also will have the option of directly engaging in public outreach, which, in turn, might help raise

242. Curran et al., *supra* note 215, at 518–19.

243. Sebenius & Lax, *supra* note 229, at 89.

244. See *supra* Part I.C (outlining various process barriers to negotiation).

245. See, e.g., Curran et al., *supra* note 215, at 517–19 (discussing the relative power of Holbrooke and Mitchell in their respective efforts—as they assumed their fundamental roles and exercised their means of influence).

246. See *supra* Part I.A.

247. See *infra* Part III.B (describing coalition-building strategies).

248. Curran et al., *supra* note 215, at 520 (describing Mitchell’s carefully-built, “outwardly rippling, relatively inclusive, coalition of the center against the extremes”).

249. See *infra* Part III.B (discussing ways to move forest conservation up the domestic agenda by providing Latin American countries with resources and expertise to unite in a coalition, obtain a deeper understanding of the issues, and adopt a regional outlook on REDD).

250. *Id.*

the salience of deforestation with each country's home constituents and, by extension, the politicians.

Several categories of individuals or organizations could play the role of facilitator. The position could be filled by a high-level diplomat from a country outside the region, an environmental NGO, or a coalition of environmental NGOs. If the facilitator role is to be filled by a diplomat from a country outside the region, a Norwegian candidate might be a good choice given Norway's in-depth involvement with the REDD program thus far, its general advocacy efforts aimed at tackling the deforestation issue, and the knowledge and expertise its diplomats have gained through those efforts.<sup>251</sup> A representative of an environmental NGO or a coalition of environmental NGOs also could be well suited to play this role, given the general advantages of involving civil society organizations in the climate and REDD negotiations process (e.g., transparency, expertise, and substantive commitment to forest conservation).<sup>252</sup> Regardless of the candidate's background, the facilitator would need to have sufficient credibility and authority to engage with and persuade national delegates, UN agencies, industry representatives, and civil society organizations from the region. And the region would have to have a sense of "ownership" over the negotiations if it is to accept and implement the outcomes down the line.

While the facilitator could assist the process of trust building and information sharing—a necessary ingredient in a successful coalition strategy—coalition members also could pursue the process on their own if there is a core group of states and stakeholders willing to take leadership and reach out to other potential partners. Given the overlap between facilitator-led and coalition-led strategies, the next subpart does not specifically discuss the actor(s) involved.

### B. Coalition-Building Strategies

Following Sebenius's formula for building a "winning coalition," the forest coalition in Latin America should begin by assembling a "Core Group" while preventing the obstructionists from blocking the potential agreement.<sup>253</sup> We define "Core Group" as a group of countries that share a joint vision of working at the global level, whether through the UNFCCC process or another forum, to come to an agreement that will end and reverse deforestation, reduce greenhouse gas emissions, and promote sustainable forms of economic development through long-term cooperation, planning, and

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251. See *supra* Part I.A (discussing main players and Norway's prior involvement).

252. See *supra* text accompanying notes 55–57.

253. See Sebenius, *supra* note 212, at 112.

implementation strategies. Although civil society may share in these goals, we deal with those actors separately.<sup>254</sup> We define “obstructionists” as those actors whose entrenched or ideological positions do not allow for the kind of negotiated agreement on deforestation that would serve the long-term interests of sustainable development. This subpart describes a three-step process of coalition building, which consists of assembling the Core Group, managing the spoilers, and maintaining and deepening the Core Group’s commitment, plus additional subelements and strategies employed at each step.

### Step 1: Assembling the Core Group

The first question is how many countries should be represented at the table. Ideally, every Latin American government would participate and support the substantive goals of forest conservation outlined by the facilitator or the convening parties. Starting the regional coalition-building process by reaching out to every Latin American country, however, would likely be counterproductive, given that some countries may adopt positional bargaining or seek to undermine the agreement altogether (a “blocking coalition”). The facilitator or the conveners could avoid this problem by adopting a decision-making process that would not allow a handful of countries to derail the entire enterprise. In practice, this would rule out the UNFCCC’s consensus-based system, where “[o]bstructionists merely need to object rather than convince other parties to vote with them to block proposals, which conveys greater power to these actors to block the negotiations.”<sup>255</sup> Because the “drive for consensus leads to lowest-common-denominator outcomes,”<sup>256</sup> the regional coalition-building process should adopt simple majority voting as a procedural mechanism to get around the blocking coalition.

An additional difficulty with aiming for universality at the outset is that this process may “threaten endless delay or impasse.”<sup>257</sup> As Sebenius described in the context of the Law of the Sea (LOS) negotiations, a “universally inclusive process with respect to both issues and participants, together with the requirements of consensus on an overall package deal, would be very time-consuming—holding the ultimate results hostage to the most reluctant party on the most difficult issue.”<sup>258</sup> Given this experience with the LOS treaty and the urgency of negotiating a treaty on global warming, Sebenius proposed “creating a supportive coalition of countries that see enough joint

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254. See *infra* Part III.B.1 (describing the first step of assembling a core group).

255. Wagner, *supra* note 221, at 97.

256. *Id.*

257. Sebenius, *supra* note 212, at 144.

258. *Id.* at 123 (describing slow progress).

gains in the new regime that it can be sustained over time.”<sup>259</sup> Fen Osler Hampson and Michael Hart also warned that in a multilateral negotiation involving many parties, “signals can become confused or mixed, generating mistrust or leading to misinterpretation.”<sup>260</sup> This Article also has noted the difficulty caused by a mix of process barriers relating to universality and spoiler tactics at Copenhagen.<sup>261</sup>

Similarly, in the context of REDD+, launching the coalition-building process by assembling the Core Group—what Sebenius calls a “small-scale, expanding agreement”<sup>262</sup>—provides a better alternative than wrestling with detractors from the beginning. As Curran, Sebenius, and Watkins explain, this would mean the “narrow participation of the minimum necessary number of parties.”<sup>263</sup> The necessary minimum configuration would need to include a sufficiently representative sample of Latin American countries, with different natural resource endowments and different levels of development in order to have a legitimate claim to speak on behalf of the interests of the entire region.

From there, the Core Group of committed governments could expand outward to bring in those states that initially might have stayed on the margins because they mistrusted or underestimated the project but became willing to join the regional alignment once the Core Group developed a sufficiently coherent and unified perspective on forest conservation. Some of these governments, for instance, might have feared that the regional process would supplant the United Nations. To avoid that perception, the Core Group should emphasize that the regional process is not an alternative to the global process, but a complement to it.<sup>264</sup> Lastly, the coalition could reach out to those states that originally sought to undermine the agreement but either no longer can do so (because they would be outvoted) or no longer want to do so (because their BATNA is suboptimal).<sup>265</sup> “[A]s the coalition builds and strengthens,” Lewicki et al. observe, “other prospective partners will have more interest in joining on their own, and the founder’s power position shifts from weakness (having to give away a lot to gain supporters) to strength (being able to dictate what new members must give in order to join the coalition).”<sup>266</sup>

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259. *Id.* at 126–27.

260. Wagner, *supra* note 221, at 100 (citing Hampson and Hart’s 1999 discussion of multilateral negotiations involving arms control, trade, and the environment).

261. *See supra* Part I.C (discussing process barriers).

262. Sebenius, *supra* note 212, at 144.

263. Curran et al., *supra* note 215, at 520.

264. *See* Sebenius, *supra* note 212, at 145 (explaining that the smaller agreement “should be cast not as an alternative to the global process over protocols, but as a complement to it”).

265. *See generally* Sebenius & Lax, *supra* note 229, at 91.

266. LEWICKI ET AL., *supra* note 118, at 325.

To strengthen the Core and overcome barriers to negotiations, the facilitator or the conveners should use a variety of process tools, such as pre-negotiation informal meetings, workshops, and information-sharing channels. Before we discuss these methods in greater detail,<sup>267</sup> the next subpart outlines several ways to deal with detractors or spoilers.

## Step 2: Managing the Spoilers

When designing an effective climate change negotiating process, Sebenius argues that the second necessary step in building a winning coalition requires taking into account the power of potential “blocking coalitions” to “prevent agreement on or implementation of an otherwise desirable treaty”<sup>268</sup> for “reasons of science, interest, ideology, or opportunism.”<sup>269</sup> Sebenius suggests that the danger of a blocking coalition is extremely high in climate change discussions, because a potential climate agreement would place limitations on energy use, industrial processes, and agricultural or forestry practices—key interests for many politically powerful groups.<sup>270</sup> Sebenius’s theory, which is based on evidence from three different environmental negotiations on the oceans (LOS), the ozone layer (the Montreal Protocol), and climate change, suggests that “[t]o someone seeking to forge a multiparty negotiated agreement, those who are opposed may constitute a primary barrier.”<sup>271</sup> If those opponents are numerous or strong enough, they might organize into a blocking coalition, which, in turn, could defeat or “thwart the creation of a sustainable ‘winning coalition.’”<sup>272</sup>

Latin American discussions on forests face similarly high risks. In the politically and economically diverse context of Latin America, it is likely that not all actors will accede to a continental forest conservation strategy for a variety of reasons. For instance, if the Core Group were to endorse a market-based approach for forest conservation (some version of REDD or emissions trading), it almost certainly would alienate members of the ALBA grouping and potentially Brazil, which, for the time being, also supports the fund-based approach.<sup>273</sup> The underlying reasons for this opposition to

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267. See *infra* Part III.B (describing coalition-building strategies).

268. Sebenius, *supra* note 212, at 127.

269. *Id.* at 113; see also James K. Sebenius, *Dealing with Blocking Coalitions and Related Barriers to Agreement: Lessons from Negotiations on the Oceans, the Ozone, and the Climate*, in *BARRIERS TO CONFLICT RESOLUTION*, *supra* note 119, 151–52.

270. Sebenius, *supra* note 212, at 127, 132.

271. Sebenius, *supra* note 269, at 151.

272. *Id.*

273. Phillips, *supra* note 33 (describing Brazil’s non-market-based approach to the deforestation problem).



market-based financing are a mix of ideological and economic motives.<sup>274</sup> Similarly, if the Core Group were to adopt a national-level scale for REDD+ accounting and monitoring, it would run a high risk of losing Colombia and possibly Peru and others from its camp.<sup>275</sup> The reasons for these countries' opposition are partly legal (constitutional provisions guaranteeing indigenous peoples' autonomy),<sup>276</sup> partly pragmatic (the slow-moving provinces could hold up the nation-wide process),<sup>277</sup> and partly self-interested (incapacity to monitor lawless regions).<sup>278</sup> The same is true of some of the other substantive disagreements over REDD+. <sup>279</sup>

The other possible opposition might come from national governments that are more vulnerable to pressure from interest groups. If an environmental agreement were to place the immediate costs of compliance on specific groups (e.g., oil companies, coal mining interests, automobile manufacturing firms, agricultural industries), while providing diffuse future benefits for everyone, those affected groups can be expected to mobilize to block action.<sup>280</sup> In addition, if the range of antagonized players is considerable, the agreement will "take a very long time to negotiate and might never surmount the solid wall of opposition it could raise."<sup>281</sup> As Sebenius notes, "in choosing one's issues, one chooses one's opponents."<sup>282</sup> Moreover, it cannot be ruled out that, if the issue is sufficiently important, some actors might seek to undermine the regional agreement altogether out of their actual or perceived self-interest.

Since the shape of specific opposition will depend on the actual approach adopted by the Core Group, this Article does not attempt to identify the particular Latin American countries or private interests that might seek to prevent the emergence of some form of forest conservation and sustainable forest practices. Instead, assuming that the forest coalition must face spoilers, the Article outlines several approaches to keep potential detractors from weakening or derailing the regional coalition-building talks.

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274. See, e.g., *id.* (discussing how recent political activity in Brazil has brought environmental agendas to the fore).

275. Confidential Interviews with COP15 Country Delegates and NGO Representatives.

276. *Id.*

277. *Id.*

278. *Id.*

279. See *supra* Part I.B (highlighting these substantive disagreements).

280. See Sebenius, *supra* note 212, at 133 ("[T]hose concerned with organizing effective international action to combat global warming should carefully anticipate, prevent, and prepare to deal with the potential blocking coalitions that may arise. Such coalitions will likely be composed not only of traditional nation-states but also of domestic interest groups and transnational alliances.")

281. *Id.* at 134.

282. Sebenius, *supra* note 269, at 162 (emphasis omitted).

The Core Group will have several options at its disposal. Sebenius argues that the blocking coalition must “be prevented from forming, acceptably accommodated, or otherwise neutralized.”<sup>283</sup> Similarly, using Stedman’s model of the three types of spoilers (total, greedy, and limited),<sup>284</sup> Robert Bordone suggests the following strategies: inducing cooperation through concessions (for limited spoilers), building coalitions to exploit patterns of deference (for greedy spoilers),<sup>285</sup> or deploying the departing-train strategy (for total spoilers).<sup>286</sup>

The choice of strategy should depend on the kind of spoilers that the facilitator or Core Group faces. In *Two Paths to Peace*, Curran, Sebenius, and Watkins suggest letting spoilers simply leave the talks.<sup>287</sup> We agree with Bordone that this should be the option of last resort.<sup>288</sup> Although this strategy may be common in international multiparty negotiations, “where extremists are invited to the table but warned that their nonparticipation will not block agreement,” it is risky, because the spoiler might accuse the group of plotting behind its back.<sup>289</sup> Because the success of transboundary environmental protection depends critically on multilateral cooperation and enforcement, a better approach would be to use transparency, participation, and consultation to *persuade* the spoilers to join. If these efforts fail, however, then “the best way to deal with obstinate negotiators is to bypass them completely.”<sup>290</sup> Regardless of the approach chosen, the Core Group must prevent a “blocking coalition” from forming or, if one does form, from impeding the Core Group’s ability to forge ahead with an agreement.

### Step 3: Maintaining and Deepening the Core Group’s Commitment

Stable coalitions generally consist of “natural groups of cooperators”—actors who recognize that they would be worse off if

283. Sebenius, *supra* note 212, at 112.

284. See generally Bordone, *supra* note 154, at 5; Stedman, *supra* note 155 (describing total, greedy, and limited spoilers).

285. Bordone, *supra* note 154, at 5; see also DAVID A. LAX & JAMES K. SEBENIUS, 3-D NEGOTIATION: POWERFUL TOOLS TO CHANGE THE GAME IN YOUR MOST IMPORTANT DEALS (2006); James K. Sebenius, *Mapping Backward: Negotiating in the Right Sequence*, 7 NEGOTIATION 3, 4 (2004) (describing patterns of deference as the tendency of negotiators to mimic the behavior of, or defer to, those parties they perceive as influential).

286. Bordone, *supra* note 154, at 6.

287. See Curran et al., *supra* note 215, at 521 (describing Mitchell’s approach to dealing with extremists).

288. See Bordone, *supra* note 154, at 6 (labeling this strategy of last resort the “departing-train strategy”).

289. *Id.* (citing other effective strategies to deal with spoilers).

290. *Id.* at 4.

their coalition were to disintegrate.<sup>291</sup> Such natural alignments mean that the coalition is more likely to persist over time once established.<sup>292</sup> We have already discussed the strong rational calculus that should motivate individual Latin American countries to join the coalition.<sup>293</sup> In addition, Latin American countries are “natural” cooperators because of their history of cooperation on issues of high-politics through the Organization of American States and other regional institutions.<sup>294</sup> Given these pre-established channels of communication, trust building, and collective action, we expect that a Latin American forest coalition has a good chance of enduring.

Even so, the coalition momentum must be deepened and sustained over time if it is to make a difference at the global level. This Article proposes a three-pronged approach, requiring knowledge transfers and capacity building, civil society participation, and avoidance of positional negotiation and defection. Each of these methods represents an important element of the strategy to build lasting foundations for a Latin American regional partnership on forests. These elements, moreover, seek to address directly some of the process barriers identified at the REDD talks at Copenhagen.<sup>295</sup>

### C. Knowledge Transfers and Capacity Building

First, the coalition must develop methods for acquiring and transferring knowledge and building capacity among its members. Global forest negotiations are extremely technical, and a superficial or inaccurate understanding of these issues risks weakening the coalition and disabling it from speaking authoritatively on the global level.

International environmental negotiations tend to expose developing countries’ lack of capacity to cope with complex scientific issues requiring a high degree of technical expertise. This is a particularly acute problem for the deforestation talks.<sup>296</sup> Given the pervasive information- and knowledge-barriers in environmental negotiations, Martinez and Susskind argue that an informal, parallel process at international and regional levels would help achieve a global deal on climate change.<sup>297</sup>

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291. Edward A. Parson & Richard J. Zeckhauser, *Cooperation in the Unbalanced Commons*, in BARRIERS TO CONFLICT RESOLUTION, *supra* note 119, at 224.

292. *Id.*

293. *See supra* Part II (making the case for Latin America’s early coordination).

294. *See supra* Part I.A (explaining why Latin American countries should be main players).

295. *See supra* Part I.C (describing process barriers to negotiation).

296. *Id.*

297. *See* Martinez & Susskind, *supra* note 140, at 580–82 (describing this informal parallel process of the Buenos Aires Pre-COP Informal Workshop on Climate Change). In addition, the Consensus Building Institute has sought to overcome

The parallel informal negotiations approach endorsed by Martinez and Susskind presupposes that the informal consultations would run parallel to and reinforce the formal negotiations.<sup>298</sup> Instead, this Article proposes a regional process that would help Latin American countries build a coalitional perspective and strengthen their bargaining potential at the international level. Coalition building will be most effective if it happens before and not in parallel with the UNFCCC round. To that end, the facilitator, the Core Group conveners, or both should organize a series of informal dialogues or problem-solving workshops.

Informal workshops are broadly endorsed in both negotiation literature and practice. In the climate change area, for instance, Sebenius advocates “well-publicized regional workshops in advance of the negotiations, presented by regional scientists and policy figures, and . . . focused on possible local impacts” to “help spread the conviction that this is a common threat from a shared problem.”<sup>299</sup> The signing of the Montreal Protocol on the ozone-layer process, for instance, was aided by a series of informal, off-the-record workshops among diplomats and other participants; these meetings “greatly increased mutual understanding, improved relationships, and contributed to a successful treaty.”<sup>300</sup> Martinez and Susskind agree that informal problem-solving sessions in international environmental negotiations helped to improve relationships among delegates, clarify “misunderstandings that . . . were difficult to recognize and resolve” in a formal setting, brainstorm innovative solutions, and identify strategies and options to resolve disagreements.<sup>301</sup>

Similarly, on the example of technology transfers in the UNFCCC, Wagner observes that informal workshops allow delegates to work out differences, discuss controversial issues more openly, remove misunderstandings, and devise innovative solutions to seemingly intractable problems.<sup>302</sup> In this sense, informal

barriers in environmental negotiations by engaging senior delegates (government and NGO representatives) “in a neutrally facilitated, informal problem-solving policy dialogue outside the confines of formal diplomatic negotiations,” and their main objective is to build relationships and find common ground on specific problems or policy questions. *Id.* at 570 (emphasis omitted).

298. *Id.* at 580–82.

299. Sebenius, *supra* note 212, at 141 (urging countries to engage in joint research and study projects).

300. *Id.* at 142.

301. Martinez & Susskind, *supra* note 140, at 578.

302. Wagner, *supra* note 221, at 94 (discussing processes that led to innovative ways to finance the development and transfer of technologies); see also *id.* at 104 (noting that “[a]s in track two diplomacy, these informal exchanges may contribute to the regime goals by building trust and understanding among the actors” by encouraging the “free flow of ideas,” building new relationships and networks, and helping parties get away from their scripts).

workshops, especially in the UNFCCC context, serve as a beneficial alternative to the “greater rigidity and politicization of almost every dimension of the work of the Convention bodies.”<sup>303</sup> Informal dialogues preceding formal negotiations present one way of removing analytical barriers by supplying information about uncertainties of the negotiations.<sup>304</sup> The resulting confidence building and trust building increase the likelihood of agreement by removing typical obstacles to progress.

Informal meetings held within Latin America for the purpose of forming a coalition for the global REDD+ talks would have similar benefits of building trust, brainstorming, and improving relationships. These exploratory sessions held in advance of formal negotiations could also prevent the formation of traditional blocking coalitions.<sup>305</sup> Informal workshops should emphasize scientific knowledge and expertise. Even though Latin American countries do not rely extensively on external technical expertise, many still lack sufficient legal and scientific resources to ensure that their delegates are adequately briefed, especially on complex scientific and technical matters involved in REDD+ and climate change negotiations.<sup>306</sup> Therefore, they stand to benefit tremendously from informal briefings by expert advisors.<sup>307</sup> Furthermore, incomplete understanding of the technical issues involved in REDD+ might be one cause of disagreement in the region.

If the coalition is to succeed, the development of a shared vision of the continent’s sustainable development is vitally important. Brainstorming in the context of forest preservation “is not aimed at resolving specific disputes or brokering a single text agreement, but rather at deepening understanding and discovering which views diverge and why.”<sup>308</sup> Scientific experts and ecologists, for instance, could help alter the countries’ cost–benefit calculations by conveying to them the changes in the economic valuation of environmental systems<sup>309</sup> and thereby incentivizing early action on forest protection. Ultimately, negotiated agreement is easier to achieve for those actors that have agreed on the end objective (forest conservation) and that have a stake or ownership in seeing that project materialize. Therefore, it is critical that the common regional position be built on

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303. *Id.* at 94 (internal quotation marks omitted).

304. Howard Raiffa, *Analytical Barriers*, in *BARRIERS TO CONFLICT RESOLUTION*, *supra* note 119, at 137.

305. Lawrence Susskind, *Barriers to Effective Environmental Treaty-Making*, in *BARRIERS TO CONFLICT RESOLUTION*, *supra* note 119, at 301 (noting workshops’ primary objective of encouraging a clearer understanding of all sides’ interests before countries announce their formal positions).

306. *Id.* at 302.

307. *Id.*

308. Martinez & Susskind, *supra* note 140, at 570.

309. Wagner, *supra* note 221, at 103.

shared and full understanding of the science of climate change and deforestation, as well as understanding of the technical aspects of REDD's operation. If the Core Group countries hold joint briefings, they will each reduce the expense of acquiring knowledge individually. The facilitator, or the Core Group, could also request additional technical assistance from the regional UN Environment Programme (UNEP) office.<sup>310</sup>

#### D. Civil Society Participation

The Core Group should welcome an NGO presence at its informal and formal sessions. Where process rules allow for NGO participation, civil society has played a key role as a provider of knowledge and expertise in environmental negotiations.<sup>311</sup> At the UN Convention to Combat Desertification (CCD) negotiations, for instance, NGOs were able to influence considerably the conduct of state delegations by transmitting information, framing the issues, and providing specific advice.<sup>312</sup> Although some countries were wary of NGOs' presence, others included them on their official delegations "to widen the base of decision-making and provide a channel for the[ir] expertise and know-how."<sup>313</sup> This is especially true of small countries, which lack a team of technical experts and negotiators dedicated to forest issues and depend critically on civil society's help in the REDD arena.<sup>314</sup> For these countries, resource incapacity is a key source of negotiating weakness in the UNFCCC process.<sup>315</sup> Knowledge sharing within the Core Group will alleviate this concern to some extent, but civil society participation in the regional coalition-building talks would provide an additional source of knowledge and support; make the region's position more accountable, representative, and coherent; and create linkages for continued interaction at the global talks.

Civil society's participation from the outset, moreover, would help to deepen the coalition's commitment by providing a link to the public at large and pressuring the coalition member states to carry

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310. The UN REDD program is currently run as a joint partnership between the FAO, the United Nations Development Program (UNDP), and UNEP, "which support countries' [sic] to develop their capacities to reduce emissions from deforestation and forest degradation and implement a future REDD mechanism for the post-2012 climate regime." CENAMO ET AL., *supra* note 6, at 66-67.

311. See Elisabeth Corell, *Non-State Actor Influence in the Negotiations of the Convention to Combat Desertification*, 4 INT'L. NEGOTIATION 197, 198 (1999); Susskind, *supra* note 305, at 296.

312. Corell, *supra* note 311, at 198-99 (noting that NGOs coordinated activities, lobbied delegates, prepared statements, and held seminars at the conference).

313. *Id.* at 213

314. Confidential Interviews with State Officials and Civil Society Members.

315. See *supra* Part I.C.

out their commitments to forest conservation. NGOs could also push forest protection higher up the domestic agenda and ensure favorable conditions for the creation of a Latin American forest coalition.<sup>316</sup> In *Two Paths to Peace*, for instance, the peace envoys used publicity to garner public support and lock in the gains when progress was made.<sup>317</sup> The facilitator or the conveners could also play this role, but civil society organizations have a comparative advantage in public outreach.<sup>318</sup> To the extent that civil society can prod governments into placing greater priority on these issues and integrating sustainable development into national policies, Latin American countries will be more likely to reach an environmentally optimal regional compact on forest conservation.<sup>319</sup>

There is good reason to believe that civil society would be welcomed into the Core Group. Latin American countries have become increasingly open to NGO influence over the last two decades.<sup>320</sup> As Elisabeth Corell notes with respect to the CCD:

The change of attitude [in favor of NGO involvement in anti-desertification activities] was particularly noticeable in Latin America, where some NGOs had not even been able to meet with government representatives in their own country and had to perform their national lobbying at the international meetings. A few years later, however, the same NGOs were invited to government meetings that were specifically intended for communication and collaboration with the NGO community.<sup>321</sup>

At major UNFCCC talks, like the 2009 Copenhagen Climate Conference, NGOs not only advocated specific policies in the hallways, but also provided a useful service by supplying background information to countries lacking expertise and resources and thereby influenced discussions behind closed doors.<sup>322</sup> Moreover, the lobbying efforts of civil society and NGOs with respect to indigenous issues have significantly impacted Latin American countries' negotiating positions over the course of REDD negotiations, most clearly at COP14 in Poznan.<sup>323</sup>

Civil society's voice on behalf of the environment and the public good is also needed to offset the disproportionate influence that organized corporate interests might exert on Latin American governments. At the 1992 Rio Summit negotiations, some 50 transnational corporations formed the Business Council for

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316. Susskind, *supra* note 305, at 302.

317. Curran et al., *supra* note 215, at 522.

318. See e.g., ELIASCH, *supra* note 92, at 56 (“[F]orest communities’ comparative advantage as environmental stewards and their strengthening political voice.”).

319. Wagner, *supra* note 221, at 102.

320. Corell, *supra* note 311, at 213.

321. *Id.*

322. Confidential Interviews with State Officials and Civil Society Members.

323. Confidential Interviews with COP15 Country Delegates.

Sustainable Development to lobby the Rio delegates; at the 2002 Johannesburg Summit, the ten-year follow up to Rio, 150 transnational corporations organized the Business Action for Sustainable Development for the same purpose.<sup>324</sup> The stakes are even higher today, particularly in the negotiations over REDD+ and climate change. Plantation owners, the logging and timber industry, biofuel producers, the mining and extractive industry, and the beef industry all have a significant economic interest in maintaining a lax system of forest management.<sup>325</sup> Given these groups' access to government decision-makers, it is important to ensure that the environmental constituency is represented at the table.<sup>326</sup>

In addition, many NGOs currently harbor massive misgivings about the REDD+ process—its perceived inequity, inattentiveness to human rights, and potential for corruption—yet, they also support sustainable forest management and conservation.<sup>327</sup> Their grassroots perspectives may illuminate various defects in the current institutional design and help the facilitators or the Core Group to improve the substance of their plan before Latin America takes its proposals to the global level. Finally, NGOs will be tasked with ensuring that the final agreement is enforced: as a UN staff member observed with respect to the CCD process, “at the end of the day, [NGOs] will be implementing the Convention.”<sup>328</sup> In this sense, civil society groups could play multiple roles as capacity builders, “brokers of expertise,”<sup>329</sup> public watchdogs, and environmental advocates.

#### E. Avoidance of Positional Negotiation and Defection

The risk of positional bargaining and defection admittedly exists at the regional talks, but this risk can be mitigated by the informal workshops and the collaborative problem-solving approach adopted by the facilitator or the conveners. In some ways, the regional coalition-building effort is a step-by-step process of learning the science and coming to a joint negotiating platform. The bigger danger is that once the coalition has stabilized its membership and finalized its vision of what forest conservation ought to look like, it might become too rigid and uncompromising at the global UNFCCC/REDD talks.

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324. Wagner, *supra* note 221, at 85.

325. Confidential Interviews with State Officials and Civil Society Members.

326. See Corell, *supra* note 311, at 211 (discussing business influence on environmental negotiations and noting its influence on determining final outcome).

327. Confidential Interviews with State Officials and Civil Society Members; see also FRIENDS OF THE EARTH INT'L, *supra* note 21, at 25.

328. Corell, *supra* note 311, at 209.

329. *Id.* at 215.



The loss of bargaining flexibility may reflect either domestic or coalitional dynamics. In the first case, pre-commitments to home constituencies often make flexible responses impossible at international environmental negotiations.<sup>330</sup> As Martinez and Susskind point out:

Bargaining in the international arena is intrinsically positional: negotiators . . . arrive at international meetings with carefully crafted marching orders—from which they are not supposed to deviate. Their stated “positions” are, for the most part, not open to revision without consultation with various domestic ministries . . . [allowing] precious little leeway at the negotiating table.<sup>331</sup>

Positional bargaining, in turn, stifles joint exploration of new problem-solving options.<sup>332</sup>

The larger problem for the proposed Latin American forest coalition, however, is the effect of coalitional dynamics on its flexibility at the UNFCCC/REDD+ talks. Wagner argues that the Northern and Southern blocs in climate negotiations use “fairly predictable ‘scripts’ for their statements,” which are “both a result of, and [could] further enhance, each group’s essentially stalemated positions” on a given issue.<sup>333</sup> Coalitions like the G-77 are all engaged in a two-level game: internal negotiations within the group and negotiations with other blocs.<sup>334</sup> By the time that these groups have negotiated their coalition position, they have constricted their spokespersons’ flexibility at the global talks.<sup>335</sup> Then, given the short time available for intragroup consultations, the group members will typically fall back on their pre-agreed joint position and stymie their negotiators’ abilities to “negotiate at the *actual* negotiations.”<sup>336</sup> This, coupled with risk aversion, often means that the coalition ends up applying a “brake” to other participants’ new proposals and ideas.<sup>337</sup>

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330. Martinez & Susskind, *supra* note 140, at 570; see also LAX & SEBENIUS, *supra* note 285, at 91.

Negotiation is a process of potentially opportunistic interaction in which two or more parties with some conflicting interests seek to do better by jointly decided action than they could otherwise. The alternatives to negotiated agreement or what the parties could do alone define the threshold of value that any agreement must exceed. The potential of negotiation is bounded only by the quality of agreement that can be devised.

LAX & SEBENIUS, *supra* note 285, at 91.

331. Martinez & Susskind, *supra* note 140, at 571.

332. *Id.* at 570.

333. Wagner, *supra* note 221, at 84.

334. *Id.* at 98.

335. *Id.*

336. *Id.* (emphasis added).

337. *Id.* at 99.

To avoid the risk that the Latin American forest coalition will end up engaging in positional rather than interest-based bargaining, the facilitator or the conveners should help the coalition members to specify a range of acceptable outcomes and broadly publicize their preferred alternative before arriving at the UNFCCC/REDD+ talks. Building flexibility into Latin America's approach is needed not only to deal with the evolution of negotiation once they reach the global talks, but also to deal with new facts on the ground (e.g., evidence on higher deforestation rates would require a more robust response). Other multination coalitions already have to deal with maintaining flexibility: the EU, for instance, often arrives prepared with several acceptable alternatives.<sup>338</sup>

Another danger of positional bargaining is that the members of the Latin American coalition may defect or disagree at the UNFCCC/REDD+ talks. As one example, the members of the G-77, although relatively cohesive, did not have identical interests at the Rio negotiations.<sup>339</sup> The G-77 was most effective on issues of shared concerns, such as Northern financing for Southern environmental protection.<sup>340</sup> But intragroup differences often overwhelmed that common denominator, producing "tenuous or nonexistent" group positions and statements with little substance or constructive value.<sup>341</sup> Latin American countries face a similar risk at the global talks, where more concessions are being traded across more issue areas. This might prompt some coalition members to defect as soon as one of their national interests is met—even though no public goods are produced.

The intragroup differences cannot be understated: the resource gap between Brazil and Honduras is dramatic, and attitudes among oil-producing states like Venezuela and small states like Costa Rica might be hard to reconcile.<sup>342</sup> A deep agreement on forest protection, developed ahead of the global talks, can mitigate some of these risks, but they cannot be eliminated entirely. For example, the level of intragroup agreement will be nowhere near that of the EU negotiating bloc, in which a high degree of cohesion and a centralized bureaucracy allow the European Union to adopt common positions prior to most conferences and to maintain them in actual negotiations.<sup>343</sup> Having one designated negotiator for the Latin American forest coalition, however, might help to alleviate some of

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338. *Id.* at 98 (“[T]he processes that each group must use to develop a group position and then try to interpret this position in light of other negotiators’ proposals can make it difficult for their spokespersons to go beyond positional statements.”).

339. *Id.* at 87.

340. *Id.*

341. *Id.* at 87, 95 (citing examples of divisions in 1992 and 2005).

342. *Id.* at 87.

343. *Id.* at 88.

these concerns by unifying Latin American countries in advance of global negotiations and reducing the risk that some countries within the region might make side deals that provide benefits particular to themselves.

*F. Interaction Between Regional Coalition Building and Global REDD+ Negotiations*

Although this Article focuses on the building of a “winning coalition” within Latin America and the emergence of a pan-regional position on forest conservation and reforestation, regional developments represent one part of the bigger, global anti-deforestation movement. The two processes—the regional and the global—can proceed in parallel. Once Latin America adopts a sensible, scientifically sound, and ecologically sustainable position for the region, as represented by the winning coalition, it can take its achievement to the global level—whether to the UNFCCC or some other forum. The interaction between Latin America’s regional efforts and the global talks can yield two key benefits. First, the Latin American countries’ very achievement in developing a joint forest approach outside of the UNFCCC process might serve as an impetus to advance negotiations within the UNFCCC. Second, getting the UNFCCC process moving might, in turn, benefit the Latin American coalition: as the first mover, it would have a greater say in the shape of the eventual agreement.

The first benefit draws on Susskind’s insight about structural barriers to global climate talks.<sup>344</sup> Susskind found that one reason for the difficulty in reaching agreement on transboundary environmental problems was the lack of opportunities for regional coalition building.<sup>345</sup> It is practically impossible to hold informal pre-bargaining sessions<sup>346</sup> at the global talks, to which all countries are not invited, because the UN Secretariat lacks the authority to exclude anyone from the negotiations it is tasked with facilitating.<sup>347</sup> The Earth Summit preparations were reportedly hamstrung by this requirement that everyone always be present.<sup>348</sup> Susskind argues that “bringing together nontraditional clusters of countries should not depend on the UN system for approval or support” and that informal coalition building, fact-finding, and brainstorming among countries

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344. Susskind, *supra* note 305, at 300.

345. *Id.*

346. See discussion *supra* Part I.C.

347. Susskind, *supra* note 305, at 300 (noting that without an active Secretariat to convene or moderate, informal meetings are much less likely to happen; if a nation does it, others will view it as lobbying effort).

348. *Id.*

with shared environmental interests should be encouraged.<sup>349</sup> This has been hard to achieve in practice. If Latin America were to arrive at the negotiations with a sophisticated, multidimensional position, it might spur the universal UNFCCC process to move forward. Moreover, quite apart from its strength as a regional coalition, we expect, given its abundance of tropical forests,<sup>350</sup> that Latin America will play a significant role at the talks.

In addition, the first bloc to propose a well-developed approach on REDD+ is likely to exert disproportionate influence on the substance of the final agreement.<sup>351</sup> As Lewicki et al. note, coalitions or organized sub-groups can effectively dominate the debate and decision-making process.<sup>352</sup> Arguably, there is an incentive for all countries to be early movers in order to shape the debate in ways that are advantageous to them. Being the first mover is not sufficient for success, but Latin American countries stand to benefit greatly from seizing leadership at the forest talks and cooperating with like-minded countries outside of the region, like Norway and Papua New Guinea.<sup>353</sup> Countries or coalitions that get into the “driver’s seat,” either by proposing the treaty in the first place or advocating particular outcomes, typically must remain proactive by coming up with positive options and convincing their counterparts of the value of these options.<sup>354</sup> To the extent that coalitional dynamics at the global negotiations can be expected to have a positive feedback loop for the coalition members, this represents an additional incentive for Latin American countries to join the coalition in the first place (within the region) and to push the REDD+ agenda (at the global talks).

## V. CONCLUSION

Global deforestation talks within the UNFCCC process hold considerable promise to slow down dangerous climate change by preserving the world’s forests, but they also present difficult obstacles. As our analysis of the 2009 Copenhagen Climate Conference demonstrates, although the deforestation talks have suffered from many of the same issues that can be observed in almost any multiparty negotiation, and although most of these problems hurt the interests of the entire world by delaying the necessary steps to end deforestation and tackle climate change, certain of these problems impose a disproportionate burden on Latin America. Many

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349. *Id.* at 301.

350. *See* discussion *supra* Part II.A.

351. *See* discussion *supra* Part II.

352. LEWICKI ET AL., *supra* note 118, at 340.

353. *See supra* text accompanying note 12.

354. Wagner, *supra* note 221, at 99 (discussing driving role-players).

Latin American countries are hindered not only by a lack of expertise, knowledge, and resources dedicated to learning about deforestation issues, but also by domestic power and resource dynamics that minimize Latin America's role in the REDD+ talks relative to its ecological interest in this issue.<sup>355</sup>

Because this Article assumes that it is inevitable that some kind of anti-deforestation regime will be adopted in the future (likely as part of a wider climate change agreement), it is in Latin America's enlightened self-interest to come together to form a common understanding of the issue and to develop a joint approach, which it could then carry to the global deforestation talks. Working as a coalition would benefit Latin America for a variety of reasons. From an ecological perspective, joint action makes sense because the region's forests, in addition to being among the world's vastest, most unique, and most endangered, are also interconnected and interdependent. From a global politics perspective, Latin America would benefit by pooling the power of its member states to reflect its actual significance in the REDD+ and climate talks. This is especially important considering the likelihood that the most influential developed and developing countries will soon grow frustrated with the current design, and pace, of the UNFCCC process and will increasingly try to bypass the system in drafting a climate change agreement and anti-deforestation regime, thus leaving most Latin American countries locked out of the decision-making process.

In terms of timing, Latin American countries could maximize their leverage and advantage by becoming, as a region, an early mover. By acting early, Latin America can set the tone for the agreement, thus increasing the chances that the agreement will reflect its interests. In addition, early action can position Latin America to benefit from whatever regime is ultimately put into place. Finally, for capacity building, expertise and resources could be retained and accumulated in the region as Latin American countries work together to devise a joint solution for themselves, rather than being compelled to rely on outside expertise or the efforts of similarly placed countries in other regions.

To accomplish these goals, this Article advocates a two-part approach: first, Latin American countries should create a high-level facilitator position with the authority to spearhead this regional effort among Latin American countries. Second, they should implement a three-part model of coalition building that focuses on assembling a Core Group, sidelining spoilers, and deepening and maintaining commitment within the Core Group.

To accomplish the first objective, a facilitator ideally would take on the roles of mediator and advocate, helping Latin American

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355. See discussion *supra* Part I.C.

countries to realize potential joint gains from an anti-deforestation regime. The facilitator should have a clear mandate and a pro-conservation vision and should adopt a collaborative approach in dealing with the parties. The facilitator should be process oriented, focus on relationships, and adopt a transformational outlook. Although the facilitator may not be willing or able to coerce the parties into a joint approach to deforestation, the facilitator should have a high degree of knowledge and expertise on the relevant environmental issues and regional dynamics in order to encourage the adoption of an approach that has both environmental integrity and practical feasibility. Such a facilitator role would be a valuable and practical component of a plan to bring Latin America together on the deforestation issue, but it is not necessary. If a legitimate and trusted facilitator is not found, Latin American countries could certainly move forward in forming a coalition, as laid out in the second prong of this Article's two-part approach, under the leadership of one or more countries in the region.

The first step in the coalition-building plan, assembling the Core Group, would mean eliciting the "narrow participation of the minimum necessary number of parties," which would consist of a sufficiently diverse set of countries to be able to credibly claim to represent the region's interests.<sup>356</sup> The strategy taken in the next step, dealing with spoilers, will depend on the types of spoilers that emerge, but it might include inducing cooperation through concessions; exploiting patterns of deference through coalition members; convincing spoilers that if they do not join now, then they will be left behind; or, as an option of last resort, leaving the spoilers out entirely.

As the last step, Latin American countries will have to take steps to strengthen the Core Group's commitment. They can do this partly through capacity-building activities such as workshops, information-sharing agreements, and ongoing dialogues. Civil society organizations can aid in these efforts by sharing their expertise, deepening public commitment to anti-deforestation efforts, and providing a perspective that is committed to environmental integrity. The Core Group can also strengthen its commitment by remaining flexible in its approach rather than becoming entrenched in set positions; flexibility would allow the coalition to adapt its perspective to its members' interests, as well as to changing environmental and scientific facts on the ground.

We hope that Latin American countries' efforts at developing a joint approach to the global deforestation talks will have a positive feedback-loop effect, first spurring action at the global level, which, in turn, will further incentivize Latin America to move forward with

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356. Curran et al., *supra* note 215, at 520.

regional cooperation on this issue and to exploit the first-mover advantage. We recognize, however, that such an attempt at building a Latin American coalition will require financing and support far in excess of that which is typically provided by environmental NGOs during and in advance of major climate change meetings.

It is unlikely that Latin American countries, independent of outside support, can prioritize tackling deforestation to such an extent that they can take the lead on developing a global anti-deforestation regime. Ideally, the developed world, whether governments or NGOs, will demonstrate its strong commitment to anti-deforestation efforts and, in recognition of Latin America's unique position in relation to this issue, take the initiative to provide the financial assistance necessary to bring these countries together. The estimates for the financing necessary to reduce deforestation by 50 percent by 2030 vary from an optimistic \$5–\$15 billion per year<sup>357</sup> to a more conservative \$17–\$33 billion per year.<sup>358</sup> The REDD+ financing would have to be entirely transparent and accountable to the publics of both the donor nations and the beneficiary Latin American governments in order to avoid creating any doubts about potential conflicts of interest, manipulation, or corruption.

Just as the efforts to bring Latin American countries together to become an early-mover coalition on anti-deforestation will require a willingness by the developed world to step up to the challenge of providing the requisite level of financial support, reaching a global deforestation and climate change agreement will require an even greater willingness on the part of developed countries to supply financing. Most commentators agree that the only way that the international community is going to succeed in adopting a climate agreement in time to save the world's forests is if those countries with the ability to foot the bill find the ambition to match.<sup>359</sup> It is both unrealistic and unreasonable to ask developing countries with significant deforestation problems to bear the burden entirely on their own. The rest of the world—especially those, like the United States and the European Union, with the greatest ability to do so—must step up. If the rest of the world claims any interest in the survival of Latin America's, and the planet's, last remaining forests, then it must be willing to pay its fair share of the cost of preserving them.

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357. *E.g.*, NICHOLAS STERN, STERN REVIEW: THE ECONOMICS OF CLIMATE CHANGE 411 tbl.18.2, 476 (2006).

358. *E.g.*, ELIASCH, *supra* note 92, at 80.

359. Confidential Interviews with COP15 Country Delegates and NGO Representatives.