

Winter 2025

ESM 283

## **Environmental Negotiation: Creating Sustainable Agreements**

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### **COURSE SYLLABUS**

#### **Overview**

We negotiate almost daily, and for many different reasons: to acquire something we value; to minimize risks of undesirable outcomes; and to resolve differences among numerous parties.

In the 21<sup>st</sup> century, environmental and social challenges have become central societal concerns. Domestically, communities and regulators are seeking a better balance of development, equitable economic participation, and resource conservation. Globally, institutions increasingly frame objectives in terms of interconnections between humans' well-being and ecosystem stress. These interlinked relationships are embedded in the United Nation's 17 Sustainable Development Goals (SDGs), formulated in 2015.

Negotiations among varied stakeholders have become a central tool for solving these environmental challenges. By studying negotiation theory and applying it in simulations and real-world negotiations, students of environmental policy, regulatory practice, environmental and social research and advocacy, and corporate management better prepare for professional careers.

Environmental negotiations carry several distinctive attributes: 1) significant scientific uncertainty, requiring assessment across time periods that are longer than most policymakers' and corporate strategists' horizons; 2) diverse stakeholders, including some that are not well-equipped to advocate for their interests; and 3) cross-border governance, in which coordination among many nations is required. Solutions may be at variance with principles of sovereignty and national development goals and priorities. Global environmental negotiations increasingly involve tactical alliances, as BRICS nations seek technical and financial support for ecosystem protection.

Negotiation skills are essential elements of an environmental professional's experience and training. Professionals in environmental fields may not anticipate engaging in complex negotiations, but it is almost certain they will do so during their careers. This course seeks to immerse Bren students in the art of negotiation and help them apply negotiation skills to substantive environmental and sustainability issues arising in the US and international arenas.

By representing varied stakeholders in negotiations (corporate leaders, non-profit experts, regulators, community representatives, unions), students learn to identify opportunities for mutual gain rather than zero-sum outcomes. They assess tradeoffs and compromises, while gaining a better sense of their strengths and weaknesses in negotiation arenas.

## Course Structure

There will be three phases to the course experience:

- 1) Exposure to core elements of negotiation theory; defining different types of negotiations; breaking a negotiation down into discrete components; defining BATNA; analyzing techniques employed in negotiations and dealing with counterparties that fail to operate on terms consistent with principled negotiation
- 2) Participation in US local and national case study negotiations, in which topics, stakeholders, and negotiating norms are relatively well-defined
- 3) Engagement in multilateral, multi-party stakeholder case study negotiations, involving significant cross-border interactions and meaningful areas of disagreement. Some of the exercises and examples we use relate to current international environmental and sustainability debates

Final phases of the course focus particular attention on global environmental negotiations in which issues are complex, stakeholders are numerous, and enforcement of agreements is especially challenging. **PLEASE NOTE: DUE TO MONDAY HOLIDAYS (WEEKS 3 and 7), WE WILL SCHEDULE ONE MAKE-UP SESSION OF 2.5 HOURS ON FRIDAY JANUARY 31.**

## What insights will we seek to achieve?

--Leadership is essential in environmental negotiations, as differences among parties are growing and creative solutions may be required

--Leadership can mean serving as a "prophet" or as a "manager" to resolve challenging issues; due to data gaps and scientific uncertainty, negotiators frequently adopt the "precautionary principle": they engage in cooperative efforts when they no longer can accept the risk of irreversible damage to critical ecosystem services

--Successfully defining the agenda is often key to generating opportunities for "winning space"; the broader is the scope of a negotiation, the greater is the chance of independent, uncoordinated outcomes

--Even where negotiations achieve agreement, producing a desired outcome is a function of the accountability that parties to the agreement must bear

## Teaching and Learning Objectives for the Course

**--The central aim is to help students in environmental policy and management to become competent and confident negotiators;** additional objectives:

--Embrace the organizational priorities provided to the negotiator; how much freedom does the negotiator have and what is the organization's outcome if no agreement is reached?

--Assess the objectives of other stakeholders in the process and identify parties' sources of leverage in negotiations; "veto holders" often disproportionately drive the direction and conclusions of a negotiation

--Differentiate stakeholders' interests from their negotiating positions

-- De-construct negotiations into phases that allow parties to share knowledge comfortably; develop common data sets and build trust in other parties' capabilities and intentions

--Gain the capacity for brainstorming to identify multiple solutions, without committing to specific proposals or delivering ultimatums that restrict solutions

--Create accountability for stakeholder compliance with agreements and develop enforcement mechanisms for parties that fail to support their commitments; consider whether the financial implications of any decisions are practical and achievable

--Evaluate where adaptation may be required in agreements where new information or circumstances arise

**Ultimately the goal is for students to envision and enact sustainable and enduring agreements that provide some measure of mutual gain, relative to outcomes when no agreement is reached.**

## **Assignments**

To learn about negotiating, students participate in negotiation case studies and learn to handle the risks and opportunities that often arise in real life situations. Tasks will include:

- 1) Preparation for and participation in several negotiation sessions, in which students will be evaluated for their effectiveness in representing their stakeholder and their ability to negotiate successful and lasting agreements. Most negotiations will last one class session, with a few multi-party international topics running over two classes
- 2) Mid Term Exam: Students apply what they have learned about stakeholder negotiations to situations/ topics not previously covered during classes
- 3) Final Paper: Topics to be determined

## **Grading**

Students will be evaluated by the following components:

Negotiation sessions and 1-page reflection papers: 35%

Mid Term: 30%

Final Paper: 35%

## **Participation**

While participation is optional in some courses, it is strongly recommended for ESM 283, since negotiations typically take place during scheduled classroom sessions.

## **Use of Technology**

We all recognize the increasing use of technology for many students

For assigned books and readings, electronic versions are encouraged as alternatives to hard copies

Students will be provided electronic versions of class materials such as slide presentations

Students may use internet resources for negotiation preparation but are discouraged from using technology during in-class negotiation sessions, unless otherwise instructed

## Core Textbooks for the Course

- 1) **Getting to Yes.** Roger Fisher and William Ury. Penguin, Third Edition, 2011.
- 2) **Global Environmental Politics.** Pamela Chasek and David Downie. Routledge, 8<sup>th</sup> Edition, 2021.
- 3) **Better, Not Perfect: A Realist's Guide to Maximum Sustainable Goodness.** Max Bazerman, Harper Collins, 2020.

## Optional

- 1) **Negotiating the Environment: Civil Society, Globalization and the UN.** Lauren Eastwood. Routledge, 2019.

Selected articles will be assigned in the syllabus below, or posted to the Course Common Drive (Moodle) in the weeks prior to assignments.

Materials for negotiation exercise materials will be distributed during the week prior to implementation.

If you miss a class, look for assignments and materials on the Class Common Drive (Moodle).

## **Week 1**

### *a. Introduction to Negotiations* **MONDAY JANUARY 6**

Readings:

**Getting To Yes. Fisher and Ury.** Short book to be read prior to first class. This framework allows us to move beyond negotiation theory and into practical exercises.

#### **Key Questions for Discussion:**

Why do we negotiate?

### *b. Solar Negotiation Exercise* **WEDNESDAY JANUARY 8**

Readings:

**Chasek et al: Chapter 1**

**SOLAR CASE STUDY MATERIAL (#1)**

Assignment:

**[Negotiation over Acquisition of Solar Company A by Conglomerate B]**

*Post class, submit one page analysis (TOPIC 1) of your BATNA in Solar Case*

## **Week 2**

### *a. Key Principles in Environmental Negotiations* **MONDAY JANUARY 13**

Readings:

**Chasek et al: Chapters 2-3**

**Bazerman: Chapter 1**

#### **Key Questions for Discussion:**

Can we develop a useful classification system for the types of environmental and sustainability negotiations we encounter?

How do these authors de-construct negotiation processes? Are environmental negotiations materially different from other typical negotiations?

a. *EU Carbon Negotiation Exercise* **WEDNESDAY JANUARY 15**

Readings:

**EU CARBON CASE STUDY MATERIAL (#2)**

Assignment:

**[Negotiation among rich, middle income and poor European countries over the implementation of a carbon emissions reduction plan]**

*Post class, submit one page analysis (TOPIC 2) of dealing with data uncertainty in EU Case*

**Week 3**

a. *HOLIDAY* **MONDAY JANUARY 20**

b. *Assessing and Developing Negotiation Styles* **WEDNESDAY JANUARY 22**

Readings:

**Bazerman, Chapters 2-5**

**Key Questions for Discussion:**

What are your obligations to counterparties in “principled negotiations”?

How can you deal with parties that appear irrational; emotional; when you are convinced they are manipulating or deceptive?

**Week 4**

a. *Deconstructing a Global Environmental Negotiation* **MONDAY JANUARY 27**

Readings:

**Bazerman, Chapters 6, 10-11**

**Key Questions for Discussion:**

When multiple countries participate, how do environmental and resource negotiations change?

What is the idea behind “common but differentiated responsibilities” in carbon negotiations?

What enforcement mechanisms may be applied in cross border cases?

*b. Water Buffalos, Paper Water and Wet Water: Colorado River Negotiation* **WEDNESDAY JANUARY 29**

Readings:

**Chasek et al, Chapters 4-5**

**Colorado River Articles: LCR-MSCP Case Study and Program website:**

<https://lcrmscp.gov> and case study to be downloaded to common site.

Assignment: Environmental Mediator and former Bren Lecturer John Jostes joins class to discuss negotiation dynamics regarding the Lower Colorado River Multi-Species Conservation Plan—the issues and approaches employed to manage the consensus-building process

**Key Questions for Discussion:**

What do effective negotiators do when talks break down or stall out?

What do Nevada and the Imperial Irrigation District have in common that will help them negotiate their water future in the face of climate change? Who do they need as negotiating allies?

*c. MAKE UP SESSION* **FRIDAY JANUARY 31**

Readings:

**HARBORCO CASE STUDY (#3)**

Assignment:

**[Six party negotiation over development of a new port facility]**

*Post class, submit one page analysis (TOPIC 3) of your stakeholder's leverage in Harborco Case*

**Week 5**

*a. Corporations' Roles in Environmental Negotiations* **MONDAY FEBRUARY 3**

Readings:

Common Site Articles, including Starbucks

**Assignment:**

**Key Questions for Discussion:**

Why do corporations volunteer to participate in environmental negotiations? What is “corporate capture” and how is it implemented?

*b. MIDTERM EXAM SUBMISSION DEADLINE* **WEDNESDAY FEBRUARY 5**



## **Week 6**

- a. Role of Non-Profit Organizations in Environmental Negotiations **MONDAY FEBRUARY 10**

Readings:

**Negotiating the Environment, Eastwood.**

**RAINFOREST NEGOTIATION CASE STUDY, WRI (#4)**

Assignment:

**[RNE Negotiation Exercise over Conoco operations in Ecuador]**

*Post class, submit one page paper (TOPIC 4) on methods to represent stakeholders who are not well positioned to advocate for their interests in a negotiation*

- b. **ELECTRIC VEHICLE AND IRA CASE STUDY Part 1 (#5) WEDNESDAY FEBRUARY 12**

Readings:

**Chasek et al. Chapters 6-7**

**EV Primer Package and Stakeholder Assignments**

Assignment:

How do international trade principles intersect with local and global environmental negotiations?

## **Week 7**

- a. HOLIDAY **MONDAY FEBRUARY 17**

- b. Electric Vehicle Negotiation Exercise Part 2 **WEDNESDAY FEBRUARY 19**

Readings:

Assignment:

**[EV and the IRA Negotiation Exercise]**

In Class 1, five stakeholders present their initial recommendations to the group (sessions may be taped). Between classes, stakeholders may speak to other groups and seek areas of alignment. In Class 2, revised presentations may be made if groups modify their initial positions

*Post class, students will submit one page paper (TOPIC 5) assessing stakeholders they found most effective during EV negotiation*

## Week 8

- a. Major Questions Doctrine and Public Trust Doctrine **MONDAY FEBRUARY 24**

### Readings:

“Supreme Court’s Overruling of Chevron Deference to Administrative Agencies’ Interpretations of Statutes Will Invite More Challenges to Agency Decisions.” Skadden, July 2024.

“Chevron USA Inc v. NRDC (1984).” Supreme.Justia.Com

‘The Supreme Court Ends Chevron Deference—What Now?’ NRDC, June 2024.

“What Critics get Wrong—and Right—about the Supreme Court’s new ‘major questions doctrine.’” Harvard Law Today, April 2023.

### Key Questions for Discussion:

How should stakeholders and policymakers address scientific uncertainty and areas of undefined regulatory responsibility?

How could the Major Questions Doctrine be modified to make it more effective?

- b. **MAJOR QUESTIONS DOCTRINE CASE STUDY (#6) WEDNESDAY FEBRUARY 26**

### Readings:

None

Assignment:

**Stakeholders brief Supreme Court Representative on Fisheries Management Council Programs**

## Week 9

- a. and b. **GLOBAL PLASTICS TREATY CASE STUDY (#8) MONDAY MARCH 3 and WEDNESDAY MARCH 5**

### Readings:

**Global Plastics Primer Package**

Assignment:

**India Prime Minister Briefing and Decision:** Six stakeholders advise India’s leadership on domestic plastic policies and possible participation in UN’s negotiations for a Global Plastics Treaty (GPT).

## **Week 10**

- a. Unresolved Issues in Global Environment Debates **MONDAY MARCH 10**

--Voluntary Carbon Credit Markets

--REDD+

--Ocean Fisheries and Sustainable Management

--Green Bonds and Sustainable Finance

- b. Course Wrap-up and Final Paper Preparation **WEDNESDAY MARCH 12**