



Reclaiming Global Environmental Leadership:

Why the United States Should Ratify Ten Pending Environmental Treaties

**by CPR Member Scholars
Mary Jane Angelo, Rebecca Bratspies, David Hunter,
John H. Knox, Noah Sachs, and Sandra Zellmer**



About the Center for Progressive Reform

Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation, and improved public access to information. CPR is grateful to the Deer Creek Foundation for funding this white paper.

This white paper is a collaborative effort of the following individuals: CPR Member Scholars **Mary Jane Angelo, Rebecca Bratspies, David Hunter, John H. Knox, Noah Sachs,** and **Sandra Zellmer**. CPR Policy Analyst **Yee Huang** also assisted with the project.

For more information about the authors, see page 40.

www.progressivereform.org

For media inquiries, contact Matthew Freeman at mfreeman@progressivereform.org
or Ben Somberg at bsomberg@progressivereform.org.

For general information, email info@progressivereform.org.

© 2012 Center for Progressive Reform.

Acknowledgments

**The Center for
Progressive Reform
is grateful to
the Deer Creek
Foundation for its
generous support of
CPR's work.**

Table of Contents

Executive Summary	2
I. Agreement on Albatrosses and Petrels	6
II. Antarctic Liability Annex	9
III. Basel Convention	12
IV. Biodiversity Convention.....	16
V. London Dumping Convention, 1996 Protocol.....	22
VI. Plant Genetic Resources Treaty	25
VII. Rotterdam and Stockholm Conventions and the POPs Protocol to the LRTAP Convention	28
VIII. UN Convention on the Law of the Sea	36
IX. About the Authors	40

Executive Summary

For more than a century, the United States has taken the lead in organizing international responses to international environmental problems. The long list of environmental agreements spearheaded by the United States extends from early treaties with Canada and Mexico on boundary waters and migratory birds to global agreements restricting trade in endangered species and protecting against ozone depletion.

In the last two decades, however, U.S. environmental leadership has faltered. The best-known example is the lack of an effective response to climate change, underscored by the U.S. decision not to join the Kyoto Protocol. But that is not the only shortfall. The United States has also failed to join a large and growing number of treaties directed at other environmental threats, including marine pollution, the loss of biological diversity, persistent organic pollutants, and trade in toxic substances.

In this paper, we urge the U.S. government to ratify ten of these treaties. We focus on these agreements not only because they address important environmental problems, but also because they do not cause the fierce partisan debate that has unfortunately hampered U.S. policy toward climate change. **All ten of these agreements enjoy bipartisan support. All ten have been signed by the United States: five by Republican administrations and five by Democratic administrations.**

Signatures alone do not make these treaties binding. The treaties must also be ratified, which generally requires that the Senate provide its advice and consent by a two-thirds vote. In some cases, implementing legislation must be enacted by both houses of Congress. It is here that the process has broken down. The Executive Branch has sent each of these agreements to the Senate, albeit sometimes after a lengthy delay.¹ But the Senate has given its advice and consent to only one, which nevertheless still awaits the necessary implementing legislation.

Both the Executive Branch and Congress have contributed to this problem. In some cases, presidential administrations have failed to urge prompt approval of an agreement or to propose implementing legislation. In others, the Senate or Congress as a whole has failed to act despite encouragement from the Executive Branch. Although the reasons for the delays vary from treaty to treaty, the delays are alike in their unconscionable length. As Table 1 shows, the United States signed eight of the treaties more than a decade ago. A ninth treaty has been waiting nine years. The average time since signature is 13 years, and the average time for those pending Senate approval is more than eight years.

The failure of the United States to join these treaties undermines global environmental protection. The treaties set out standards and create institutions designed to find and implement solutions to problems of critical importance. They have attracted support from other countries, including our closest allies. Indeed, several are among the most widely ratified treaties in history. In every case, the regimes these treaties have established are less successful without U.S. membership than they could be with the full engagement of the country with the largest economy and the largest environmental impact.

The failure to ratify the agreements also harms specific U.S. interests. The treaties reflect U.S. proposals and positions. By failing to join them, the United States is not taking advantage of the benefits for which it negotiated, including being able to make claims to the resource-rich continental shelf off the U.S. coast, reducing marine pollution affecting U.S. waters, ensuring U.S. access to foreign plant gene banks, and receiving reimbursement for the costs of responding to environmental emergencies in Antarctica. The failure to join the agreements also prevents the United States from fully participating in their ongoing interpretation and implementation, which often involve issues that directly affect the United States. More generally, the failure to follow signature with ratification undermines the ability of the United States to influence future negotiations by tarnishing its reputation as a country that delivers on its promises.

If ratifying these treaties would be onerous or expensive, then the delays might be more understandable. But that is not the case. In some instances, no implementing legislation is needed. In others, only minor legislative changes are necessary. None of the agreements would require major changes to U.S. law. And none would erode U.S. sovereignty.

For all of these reasons, the Obama Administration and Congress should work expeditiously to clear the backlog of treaties in ratification limbo and restore the United States' leadership in international efforts to protect the global environment.

Convention or Treaty	Benefits of Ratification	Bipartisan Support
Agreement on Albatrosses and Petrels	<ul style="list-style-type: none"> Enhances U.S. efforts and leadership to promote international cooperation to conserve these iconic seabirds Enables the United States to safeguard albatross and petrel populations that rest, nest, and feed in U.S. territories and in waters beyond U.S. jurisdiction 	The George W. Bush Administration signed the Agreement and submitted it to the Senate for advice and consent; the Obama Administration also submitted it to the Senate, shortly after taking office.
Antarctic Liability Annex	<ul style="list-style-type: none"> Provides for liability of parties responsible for causing environmental emergencies in Antarctica Provides for payment to party that responds to environmental emergencies caused by other countries 	The Clinton Administration began negotiation of the Liability Annex, the Bush Administration completed the negotiation, and the Obama Administration submitted it to the Senate.
Basel Convention	<ul style="list-style-type: none"> Ensures environmentally sound management of wastes through final disposal Allows the United States to participate in waste transfers to Basel Parties without separate bilateral or multilateral agreements Enables the United States to participate fully in key Basel decisions 	The Senate gave its consent to ratification in 1992, and every president since George H.W. Bush has supported joining the treaty.
Biodiversity Convention	<ul style="list-style-type: none"> Strengthens U.S. position to help bio-diverse regions conserve their natural resources Builds closer ties with other Parties to achieve a range of biodiversity conservation goals 	In 1994, the Senate Foreign Relations Committee recommended by a bipartisan vote of 16-3 that the Senate approve ratification. Industry representatives such as the American Seed Trade Association submitted letters in support of ratification.
London Dumping Convention, 1996 Protocol	<ul style="list-style-type: none"> Enhances protection of the marine environment Provides a framework for technical assistance to aid marine environmental protection Enables participation in forums to address scientific issues related to ocean dumping and to settle disputes arising from ocean-dumping activities 	The George W. Bush Administration strongly supported ratification, and in July 2008 the Senate Foreign Relations Committee approved ratification of the Protocol on a voice vote without objection.
Treaty on Plant Genetic Resources	<ul style="list-style-type: none"> Enables participation in the interpretation and implementation of Treaty Establishes a firm legal basis for international access to plant genetic materials 	The George W. Bush Administration signed the treaty and submitted it to the Senate, and the Obama Administration has urged the Senate to approve it, as have major U.S. stakeholders such as the American Seed Trade Association, the National Farmers Union, and the Intellectual Property Owners of America.
1998 POPs Protocol to LRTAP	<ul style="list-style-type: none"> Reduces exposure of U.S. citizens to toxic chemicals Allows the U.S. to influence the future of the global chemicals regime 	The Clinton, George W. Bush, and Obama Administrations have all supported these agreements. They have also received extensive support from industry organizations such as the American Chemistry Council and non-governmental organizations.
Rotterdam Convention on PIC		
Stockholm Convention on POPs		
U.N. Convention on the Law of the Sea	<ul style="list-style-type: none"> Protects U.S. security interests on the high seas as the world's largest maritime power Protects U.S. interests in vital economic and environmental interests, such as migratory fish stocks and ocean pollution Allows U.S. to participate in key decisions about the Convention relating to, for example, the freedom of navigation, marine environmental protection, natural resources extraction, and scientific marine research Allows U.S. to participate in process for territorial claims over marine resources, including claims over the continental shelf beyond the exclusive economic zone 	The Convention has received strong support from the Clinton, George W. Bush, and Obama Administrations. The Senate Foreign Relations Committee has twice reported it favorably by overwhelming bipartisan majorities. The U.S. security leadership has unequivocally voiced support for the convention, as have ocean policy experts, the oil and gas industry, and environmental groups.

Table 1. Summary of Pending International Environmental Treaties.

Actions Needed	Status			
	Date Signed	Date Sent to Senate	Years Since Signature	Years Pending in Senate
The Senate needs to provide its consent to ratification, and Congress needs to enact implementing legislation.	06/19/2001	09/26/2008	10	3
The Obama Administration needs to develop, and Congress should enact, the necessary implementing legislation, and the Senate needs to approve ratification.	06/14/2005	04/02/2009	6	2
The Obama Administration should develop, and Congress should enact, implementing legislation that amends the Resource Conservation and Recovery Act to prohibit shipments of waste that will not be handled in an environmentally sound manner and to authorize the re-import of waste found to be illegally transported.	03/22/1990	Approved 08/11/1992	21	-
The Senate needs to approve ratification. No implementing legislation is necessary.	06/04/1993	11/20/1993	18	18
The Senate should give its consent to ratification, and Congress should enact implementing legislation, such as the proposed changes to the Marine Protection, Research and Sanctuaries Act that were submitted by the George W. Bush Administration.	03/31/1998	09/04/2007	13	4
The Senate needs to give its approval to ratification. No implementing legislation is necessary.	11/03/2002	07/07/2008	9	3
The Senate needs to approve the Rotterdam and Stockholm Conventions, and Congress needs to amend the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act to implement the agreements.	06/24/1998	-	13	-
	09/11/1998	02/09/2000	13	11
	05/23/2001	05/06/2002	10	9
The Senate needs to approve ratification.	07/29/1994	10/07/1994	17	17

I. Agreement on Albatrosses and Petrels

AGREEMENT ON THE CONSERVATION OF ALBATROSSES AND PETRELS

Adopted and Opened for Signature on June 19, 2001

Entered into Force on February 1, 2004

Number of Parties: 13

Signed by the United States, June 19, 2001

Sent to the Senate, September 26, 2008, and January 16, 2009

What Is the Environmental Problem?

Albatrosses and petrels are oceanic birds with a unique natural history that makes them particularly vulnerable to changes in the marine environment. The species covered by the Agreement typically breed on remote, barren islands and spend most of their time flying long distances over the ocean. Some species may not return to land for many years after their birth, and then only to reproduce.

Many species of albatrosses and petrels are now threatened or endangered because of significant changes in their environment. For some, the major threats come from industrial fishing practices that can decimate sea bird populations. An estimated 300,000 seabirds are killed each year as by-catch in the long-line fishing industry.² Marine pollution, particularly plastics that can be ingested by sea birds, is also reducing populations. Albatrosses and petrels are magnificent fliers but are awkward and vulnerable on land. Loss of nesting habitat, introduction of non-native invasive predators, hunting and egg harvesting, and contamination by lead and other toxins have reduced breeding success on many key nesting grounds.³

Effective conservation of albatrosses and petrels requires international cooperation. Their highly migratory natural history means that they spend little time in any single country's territory, apart from the breeding season. Many of the threats to their survival take place in international waters (for example, due to off-shore fishing operations) and require international standards for their protection. International cooperation is also necessary for generating the political will, public awareness, and financial resources necessary for the protection of vulnerable island and coastal breeding areas.

How Does the Agreement Address This Problem?

The Agreement on the Conservation of Albatrosses and Petrels aims to enhance international cooperation for these vulnerable species. The Agreement's objective is to achieve and maintain a "favourable conservation status for albatrosses and petrels."⁴ The Agreement currently covers all 22 of the world's species of albatrosses and seven species of petrels. The Agreement enumerates a wide range of conservation measures in the body of the Agreement and in an Action Plan included as Annex 2. Parties commit to take measures, among others, to:

- conserve and restore habitat;
- eliminate or control non-native species;
- prohibit the deliberate taking of, or harmful interference with, the birds, their eggs, or their breeding sites;
- prohibit the use of, or trade in, albatrosses and petrels; and
- reduce or prevent incidental mortality from commercial fishing operations.

The Agreement also calls for increased capacity building, exchange of scientific information, and efforts to increase public awareness of the threats to albatrosses and petrels. The Agreement establishes a separate Secretariat and a periodic meeting of the Parties.



What Is the History and Status of the Agreement?

The United States initially indicated that it would not be party to the Agreement and pressured the Parties to exclude the three species of albatrosses that most commonly occur in U.S. territory from the original Agreement. In 2009, the Agreement was extended to these albatross species, apparently reflecting a change in the George W. Bush Administration's opposition to the Agreement. Subsequently, both the George W. Bush and Obama Administrations have submitted the Agreement to the Senate for its advice and consent to ratification.

Together with the Agreement, the Bush Administration submitted the Albatross and Petrel Conservation Act, which was intended to implement the Agreement and mirrors much of its language.⁵ The Act would provide the Departments of Interior and Commerce the authority to adopt and implement conservation and management measures for protecting albatross and petrel species. The Act would prohibit the deliberate taking of albatrosses and petrels and protect their breeding habitat.⁶ While killing albatrosses and petrels as the result of by-catch from otherwise legal fishing activities is explicitly not prohibited, the Act aims to minimize such by-catch.⁷

The Agreement is the latest in a long line of treaties aimed at the conservation of marine species that require international cooperation for their survival.

Why Should the United States Ratify the Agreement?

Ratifying the treaty would enhance U.S. efforts to promote international cooperation in conserving these iconic seabirds. Some of the target species breed in U.S. territory but forage throughout the world, well beyond U.S. jurisdiction or control, and effective conservation is impossible without the cooperation of other fishing and coastal states. Ratification, coupled with enacting implementing legislation, would allow the United States to safeguard albatross and petrel populations that rest, nest, and feed in the United States and its territories and in waters over which the United States has no jurisdiction.⁸ As a Party, the United States could take a greater leadership role in encouraging, facilitating, and pressuring other Parties to conserve seabirds outside U.S. territories.

Ratification of the Agreement would require minimal substantive changes to U.S. law. At the federal level, albatrosses and petrels are already protected by the Endangered Species Act,⁹ the Migratory Bird Treaty Act,¹⁰ and the Magnuson-Stevens Fishery Conservation and Management Act.¹¹ Together, these existing statutes already reflect most of the obligations included in the Agreement. The Agreement and implementing Act would help to consolidate and highlight the protections currently afforded by U.S. law but would add few substantive requirements.¹² In particular, no new restrictions would be placed on otherwise legal fishing activities. As a result, little political opposition exists to the Agreement's ratification.

Commercial fishermen, the most likely opponents of ratification, may actually benefit from its ratification. The Agreement furthers international standards on the bycatch of seabirds from fishing operations that could help to level the playing field for U.S. fishermen.¹³ Under existing domestic law, they are already subject to most of the restrictions required under the Agreement, but they are at a competitive disadvantage compared to fishermen from countries with weaker seabird conservation laws. Participation in the Agreement would help the United States support the development and implementation of stronger conservation measures in other fishing fleets. Endorsing the Agreement would also better position the United States as a leader in the global policy dialogue on sustainable fishing practices, both with respect to the conservation of seabirds and more generally.

What Actions Should the United States Take?

The Agreement is the latest in a long line of treaties aimed at the conservation of marine species that require international cooperation for their survival. Whales,¹⁴ fur seals,¹⁵ tuna,¹⁶ migratory fish stocks,¹⁷ and sea turtles¹⁸ all enjoy the protection of international agreements. The United States is a party to all of these agreements, and we should continue our leadership for the conservation of marine wildlife by swiftly ratifying the Agreement for the Conservation of Albatrosses and Petrels.

II. Antarctic Liability Annex

**ANNEX VI ON LIABILITY ARISING FROM ENVIRONMENTAL EMERGENCIES
TO THE PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY**

Adopted and Opened for Signature on June 14, 2005

Entry into Force Pending

Signed by the United States on June 14, 2005

Sent to the Senate on April 2, 2009

What Is the Environmental Problem?

The Antarctic environment is unique in many ways. Antarctica is the coldest, driest, highest, most pristine, and least inhabited continent. Together with the Southern Ocean that surrounds it, Antarctica has the largest contained ecosystem on the planet. Home to whales, seals, penguins, petrels, and many animals and plants found nowhere else on earth, Antarctica also plays an integral role in regulating global environmental processes. Its vast ice fields cool the entire planet by acting as a giant reflector of the sun's rays.

Although the Antarctic environment is isolated from most human contact, it is still vulnerable to degradation from human activities. Some sources of harm are far from Antarctica, such as emissions of greenhouse gases that are rapidly warming the polar regions and emissions of chemicals that have caused a "hole" in the ozone layer over the southern pole. But many threats to the Antarctic environment arise locally from scientific and commercial activities there.

The United States and other countries have long recognized that Antarctica provides unmatched opportunities for scientific research into issues of global importance. For example, by studying the record of changing climatic conditions preserved in ice layers, scientists work to determine the magnitude of modern global warming. Of the 40 scientific stations on the continent, the United States operates three, including one at the South Pole. The population at the bases fluctuates between about 1,000 in the austral winter and 4,500 in the summer. More than a quarter of these hardy souls are at U.S. stations.

Commercially, the most important activities are fishing and tourism. Fishing vessels continue to come to the Southern Ocean as they have for many decades, and tourism is the fastest-growing industry in Antarctica. The first tours to Antarctica in the 1970s brought only a few hundred visitors annually. Today, the number has risen to nearly 50,000 visitors every year.¹⁹ Although most tour operators comply with international guidelines designed to prevent environmental harm, the growing number of tourists increases the likelihood of accidents. In recent years, several ships have run aground, leaking fuel oil into the ocean. In 2007, a cruise ship flying a Liberian flag of convenience was punctured by ice and sank. Although its passengers and crew were evacuated unharmed, its fuel and other debris were

released into the environment. Fortunately, these recent incidents have been relatively minor, but larger accidents have occurred in the past. In 1989, an Argentinean ship ran aground near a U.S. station, spilling 250,000 gallons of fuel oil.

How Does the Annex Address the Problem?

Protection of the Antarctic environment is complicated not only by its isolation and extreme weather conditions but also by the absence of a single government with jurisdiction over the entire continent. Seven countries have made territorial claims to parts of Antarctica, but the United States and most other countries do not recognize their claims. Despite disagreements over jurisdiction, the United States and other nations with scientific interests in Antarctica have worked together to establish rules governing conduct on the continent. In the 1959 Antarctic Treaty, the Parties agreed on basic principles, including freedom of scientific inquiry and a prohibition on military activity,²⁰ and in subsequent agreements they set out rules for environmental protection.

The most important of these agreements is the Madrid Protocol on Environmental Protection to the Antarctic Treaty, which entered into force in 1998.²¹ The Protocol and its five annexes prohibit mining and establish detailed requirements concerning environmental impact assessment, protection of native plants and animals, disposal of waste, and prevention of marine pollution. The Protocol recognizes that accidents may occur despite these protections, and it requires the Parties to provide for “prompt and effective response action” to any environmental emergencies.²² However, it does not allocate liability for environmental harm. Instead, the Protocol commits the Parties to negotiate rules governing such liability.²³

To that end, in 2005 the Parties agreed on the Liability Annex to the Protocol.²⁴ Under the Annex, if the operator of an activity in Antarctica fails to take prompt and effective response action to an environmental emergency,²⁵ it will be liable to pay the costs of the response action taken or authorized by the state Parties. If no response action is taken at all, then the operator must pay the costs of the action that should have been taken.²⁶ To ensure that payment can be made, the Annex requires that operators take out the necessary level of insurance on their actions. Payment is made into an international fund that is administered by the Parties, from which reimbursement may be made for response actions taken by Parties that did not cause the emergency.²⁷

What Is the History and Status of the Annex?

There is a long history of bipartisanship on Antarctica, particularly with respect to liability for environmental harm. The Madrid Protocol was negotiated, signed, and submitted to the Senate by the George H.W. Bush Administration. The Clinton Administration worked with Congress to draft implementing legislation for the Madrid Protocol and began the negotiation of the Liability Annex. The George W. Bush Administration completed the negotiation of the Annex in 2005, and the Obama Administration sent the Annex to the Senate for its advice and consent in 2009.

Why Should the United States Ratify the Annex?

The Liability Annex directly furthers U.S. interests in Antarctica. With the largest scientific presence in Antarctica, as well as the greatest number of tourists who travel there to view its pristine beauty, the United States has strong interests in preserving the Antarctic environment. The United States greatly influenced the negotiation of the Annex, convincing other countries to focus on environmental emergencies, which give rise to the most urgent need for response. By requiring operators to pay the costs of response actions, the Liability Annex will provide them with strong incentives to take care to avoid environmental harm and will reimburse innocent Parties that respond to emergencies caused by others.

The United States is much more likely to receive compensation under this system than to make a payment. Although the United States has a large presence in Antarctica, its tourists and scientists are fewer than those from other countries combined. Moreover, the U.S. government already carefully regulates activities within its bases and on ships under its jurisdiction. Because it cannot control all activities that might affect its bases and ships, however, the United States may be put in the position of having to respond to environmental emergencies caused by activities under the nominal jurisdiction of other countries. Without a system of compensation in place, the U.S. government would have to take such actions without any certainty that its expenses would be reimbursed by the responsible Parties. The legislation necessary to implement U.S. obligations under the Annex with respect to activities under its jurisdiction would involve no major changes to U.S. law and would not raise partisan issues.

What Actions Should the United States Take?

The Liability Annex will not enter into force until all of the 28 consultative Parties to the Antarctic Treaty ratify it. Ratification by the United States will enable it to urge other countries to ratify as well, allowing the treaty to take effect as soon as possible. The Senate should act quickly to provide its advice and consent, and the Obama Administration and Congress should develop and enact the necessary implementing legislation.



III. Basel Convention

**BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENT
OF HAZARDOUS WASTES AND THEIR DISPOSAL**

Adopted and Opened for Signature on March 22, 1989

Entered into Force on May 5, 1992

Number of Parties: 178

Signed by the United States, March 22, 1990

Sent to the Senate, May 17, 1991

Approved by the Senate, August 11, 1992

What Is the Environmental Problem?

Today, the transboundary waste trade is global in scope and a multi-billion dollar industry. It includes trade among wealthy countries in the Organization for Economic Cooperation and Development (OECD) and trade between other rich and poor countries around the world. The trade includes cargo destined for final disposal, as well as a wide variety of recycling and resource recovery operations. The waste trade involves highly toxic materials, such as pesticide residues, used solvents, and process wastes from manufacturing. The fastest growing part of the trade is electronic waste (such as laptops, cellphones, and televisions), which contain lead, mercury, and other toxic components.

In the 1970s and 1980s, wealthy nations including the United States began to tighten their hazardous waste disposal regulations, increasing the incentive for waste generators to find low-cost disposal options abroad. The 1980s saw several waste dumping incidents that were heavily covered in the media, such as the infamous voyage of the *Khian Sea*. Before being detected by Haitian authorities, the *Khian Sea* fraudulently dumped 4,000 tons of incinerator ash in Haiti that had been generated in Philadelphia. The *Khian Sea* then wandered the high seas for 18 months seeking a place to dispose of the remainder of its toxic cargo and is widely believed to have dumped it at sea.²⁸

How Does the Convention Address This Problem?

The transboundary waste trade is primarily conducted by private firms, and the 1989 Basel Convention was designed to add a layer of international control to these private, and often secretive, transactions. The Convention was a response to international outrage over the cross-boundary trade of hazardous waste, particularly export of waste from rich, developed nations to poor, developing nations.

The Basel Convention does not ban the waste trade. Instead, it attempts to manage the trade through a system of prior informed consent. The exporting state must obtain the consent of the importing state for the waste shipment, and it must comply with procedures designed to ensure safe transport and environmentally sound management in the location of final disposal.²⁹ The Convention also mandates that the exporting nation re-import hazardous waste where it becomes clear that final disposal cannot be completed in accordance with the disposal contract.³⁰ The Convention criminalizes illegal transportation of hazardous wastes, and each party is responsible for enacting national legislation to prevent and punish illegal traffic in hazardous waste.³¹

What Is the History and Status of the Convention?

The United States was actively involved in the negotiation of the Convention and signed the treaty in 1990. The U.S. Senate gave its consent to ratification in 1992, and every U.S. President since George H.W. Bush has supported joining the treaty. Today, 178 countries are Parties to the Convention, making it one of the most widely ratified treaties in the world. Afghanistan, Haiti, and the United States are the only countries that have signed but have not ratified the Convention.

Although the U.S. Senate approved ratification nearly 20 years ago, the State Department cannot officially deposit the U.S. instrument of ratification until Congress passes implementing legislation. In particular, Congress must enact legislation restricting the import and export of hazardous waste as set forth by the Basel Convention, through amendments to the Resource Conservation and Recovery Act of 1976 (“RCRA”), discussed below.

Why Should the United States Ratify the Convention?

The Basel Convention is clearly in the interests of the United States. It is appropriate for U.S. waste exporters to obtain the consent of the receiving country for a broader range of wastes than only the hazardous wastes currently regulated under RCRA. Moreover, the Convention’s requirement to ensure environmentally sound management of wastes through final disposal is a helpful counterbalance to the see-no-evil standard of current law, under which waste generators have no continuing responsibility once waste leaves U.S. shores.

**Today,
178 countries
are Parties to
the Convention,
making it one
of the most
widely ratified
treaties
in the world.**

In the 1990s, both the George H.W. Bush Administration and the Clinton Administration strongly supported accession to the Basel Convention. When President George H.W. Bush transmitted the Convention to the Senate for its advice and consent to ratification in 1991 he noted that ratification had received the unanimous recommendation of interested agencies, including the Environmental Protection Agency, the Department of Commerce, the U.S. Trade Representative, the Department of Defense, and the Department of the Interior. “The notice-and-consent regime it establishes advances environmental goals that the United States has long held,” President Bush wrote. “We were one of the first nations to enact legislation prohibiting exports of hazardous wastes without the consent of the importing country.”³² In addition, an accompanying memo from Deputy Secretary of State Lawrence Eagleburger explained that:

[E]xpeditious ratification is in the interest of the United States. Once the Convention enters into force, the United States, if not yet a party, will be barred from exporting wastes to or importing wastes from Parties, unless it has a bilateral or regional agreement meeting the standards of Article 11 with a party. Delays in ratification could therefore disrupt U.S. trade in the materials covered by the Convention, a possibility of special concern to processors and consumers of recyclable materials. In addition, ratification is the only way to ensure that the United States may participate fully in the conference of the Parties, which will decide issues of importance to the United States, such as financial obligations, state responsibility and liability, and the definition of environmentally sound management.³³

Opposition came from some industry groups, such as the Business Recycling Coalition, which were concerned about how hazardous wastes were defined under the Convention and about how U.S. implementing legislation would distinguish between waste and reusable materials.³⁴ Some environmental groups also opposed the Convention because they viewed it as legitimizing the hazardous waste trade. From their perspective, the United States should only accede to the Convention if it also ratifies a subsequent 1995 amendment to the Convention, commonly known as the Basel Ban Amendment.³⁵ This Amendment implements a total ban on waste shipments from wealthy countries³⁶ to developing countries in an effort to counteract corruption and lax oversight in this field. However, the Basel Ban Amendment is a fundamentally distinct ratification issue from the underlying Basel Convention, and the United States could choose to be party to the Basel Convention without choosing to be party to the Basel Ban Amendment. Moreover, the Basel Ban Amendment has not yet entered into force and should not prevent consideration of the underlying treaty.

The failure to ratify the Basel Convention prevents the United States from participating in waste transfers with Basel Parties unless it enters into separate bilateral or multilateral agreements with them. Over the past three decades, the United States has cobbled together several such agreements, allowing for imports and exports of hazardous waste with Canada and Mexico, exchanges of wastes only for recycling with OECD countries, and imports of waste from Costa Rica, Malaysia, and the Philippines. However, negotiating these ad hoc bilateral agreements is a cumbersome process, and the United States remains isolated from decision-making under the Convention.

As discussed above, Congress would also have to amend RCRA in order for the Convention to take effect. The needed changes include creating authority to prohibit shipments when the United States has reason to believe that the wastes will not be handled in an environmentally sound manner, as well as the authority to take charge of wastes found to be illegally transported (the Convention's re-import requirement). Under current law, RCRA requires consent of the receiving country for exports of hazardous waste, but the statute does not require assurances of environmentally sound disposal. In addition, while current law controls exports of RCRA-regulated hazardous wastes, the Basel Convention is broader in that it also governs movements of household wastes, ash from garbage incinerators, and wastes defined as hazardous under the Convention but not under U.S. law.³⁷

What Actions Should the United States Take?

By not joining the Convention, the United States has missed opportunities to participate fully in key Basel decisions such as the Basel Ban Amendment, control of electronic wastes, and liability rules for environmental damage from hazardous waste. Moreover, U.S. firms that operate in countries that are Parties to the Basel Convention are already subject to Basel Convention rules. Because the United States is a non-Party, these firms are also highly restricted in sending wastes back to the United States, even to their own parent or sister companies and even for recycling. The barriers to joining the treaty are minimal and surmountable, and the Obama Administration and Congress should move quickly to draft and pass the necessary amendments to RCRA.



IV. Biodiversity Convention

CONVENTION ON BIOLOGICAL DIVERSITY

Adopted and Opened for Signature on June 5, 1992

Entered into Force on December 29, 1993

Number of Parties: 193

Signed by the United States on June 4, 1993

Sent to the Senate on November 20, 1993

Reported favorably by the Senate Foreign Relations Committee
on June 29, 1994

What Is the Environmental Problem?

Biological diversity (or biodiversity) is “the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part: this includes diversity within species, between species and ecosystems.”³⁸ Biodiversity sustains all life processes on the planet—the “evolutionary variation of life, built up over the several billion years of the planet’s existence—at the genetic, species, and ecosystem levels.”³⁹ Biodiversity has intrinsic as well as aesthetic, cultural, and spiritual values.⁴⁰ The economic benefits of biodiversity are significant as well. Economists estimate that humans derive trillions of dollars’ worth of ecosystem services from viable populations of plant and animal species, clean water and air, productive soils, functioning wetlands, and recreational opportunities.⁴¹

The loss of biodiversity has disastrous consequences. Famine is one of the most immediate: farmers lose their pastures and croplands to invasive plant species; fruit and nut orchards lose their harvests due to a lack of wild pollinators; and game species and fisheries collapse from overharvesting or pollution. Famine not only leads to death and disease, it also contributes to unrest and political instability. According to U.S. military experts, “Anthropogenically generated changes to the Earth’s climate and natural environment pose a ‘serious threat to America’s national security.’”⁴²

Existing biodiversity conservation strategies are becoming less effective under the mounting pressure of climate change. The Intergovernmental Panel on Climate Change (IPCC) found that, in the foreseeable future, many types of ecosystems are likely to be significantly altered or destroyed by the combination of global warming and conventional threats such as habitat destruction and pollution.⁴³ In the past 50 years, humans have altered ecosystems more quickly and more extensively than in any comparable period in history.⁴⁴ These physical changes have dire consequences for plant and animal species. According to the Millennium Ecosystem Assessment, “we are losing wild species . . . faster than in any geologic period since the dinosaur die-off 65 million years ago.”⁴⁵

Absent dramatic steps to mitigate climate change, one-third of the world's plants and animals could be committed to extinction by 2050.⁴⁶ Species at grave risk include the polar bear, arctic fox, pika, checkerspot butterfly, and many types of corals.⁴⁷ Cold water fish species, amphibians, and certain kinds of birds are also highly vulnerable. According to the International Union for the Conservation of Nature's "Red List," the most comprehensive, objective assessment of the status of species worldwide, one in eight bird species is trending toward extinction.⁴⁸ Changing climate can cause birds to mistime their migrations, putting them at higher risk from heat, cold, storms, and droughts and putting them out of sync with the flowers, seeds, and insects they rely upon.⁴⁹ As for non-migratory wildlife and plant species, their ranges can be expected to move poleward or upward in elevation, even though the conditions in the new location may not be suitable for the species' survival.⁵⁰ A 2011 study published in *Science* found that species are moving in response to global warming up to three times faster than anticipated.⁵¹



With the loss of species comes the loss of ecosystem services. At present, 60 percent of ecosystem services are being degraded or over-exploited, and the situation "could grow significantly worse during the first half of this century."⁵² To combat the loss of biodiversity and ecosystem services, the comprehensive Millennium Ecosystem Assessment recommended "significant changes in policies, institutions, and practices."⁵³ It is no longer enough to adopt and implement conservation strategies at the local or domestic level. International partnerships are essential.

How Does the Convention Address This Problem?

The United States has demonstrated its commitment to global biodiversity conservation for nearly a century. The 1916 Convention for the Protection of Migratory Birds, one of the earliest international agreements for the conservation of species, was spearheaded by the United States to protect birds migrating between the United States and Canada.⁵⁴ By the mid-1980s, the need for broad international cooperation to safeguard the biodiversity of all animal and plant species and their habitats had become apparent. The United States led the effort to get the Convention on Biological Diversity (CBD) off the ground and into the diplomatic arena. For nearly a decade, the United States continued to work in support of the CBD through several different administrations of both political Parties.⁵⁵

As the CBD developed, three primary objectives emerged:

1. the conservation of biodiversity (reflected in Articles 6-9, 11, and 14);
2. the sustainable use of biodiversity (reflected in Articles 6, 10, and 14), defined in Article 2 as “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations”; and
3. the fair and equitable sharing of the benefits arising from the use of biological and genetic resources (reflected in Articles 14, 15, 16, and 19-21).⁵⁶

The CBD strives to meet these goals by having Parties integrate conservation and sustainable use into their decision-making processes to avoid or at least minimize adverse impacts to biodiversity. Parties retain discretion in determining how to do this, and the CBD explicitly provides that they should use “customary and local efforts as appropriate.”⁵⁷

What Is the History and Status of the Convention?

The CBD was opened for signature at the 1992 Conference on Environment and Development, in Rio de Janeiro. The United States signed the treaty in June 1993, and it was sent to the Senate for its advice and consent in November 1993. Although the Senate Foreign Relations Committee recommended Senate approval of ratification by a bipartisan vote of 16-3, the full Senate never acted on the CBD.⁵⁸



Why Should the United States Ratify the Convention?

Today, the CBD has over 190 members, including almost every country in the world. The United States is one of only three countries that does not belong,⁵⁹ and the only one to sign the treaty but not ratify it. The Secretary General of the United Nations identified the CBD as one of 25 core treaties “most central to the spirit and goals of the Charter of the United Nations.”⁶⁰ The United States belongs to about half of the core treaties, most of which relate to warfare and human rights, but it has ratified only one that addresses environmental degradation: the Convention to Combat Desertification.⁶¹

The reasons why the United States chose to ratify the Desertification Convention apply equally well to the CBD. Similar to the CBD, the Desertification Convention requires no new laws to be enacted and imposes no new land use restrictions in the United States.⁶² According to the Congressional Research Service, the substantive benefits of a successful international effort to reduce desertification include reducing “the levels of emergency relief, civil conflicts, and migration of refugees.”⁶³ The same can be said of the CBD.⁶⁴

The procedural benefits of ratifying the Desertification Convention are also quite similar to those that would be seen if the United States were to ratify the CBD:

[A] demonstrated U.S. commitment to ending desertification [and, in the case of the CBD, protecting biodiversity], strengthened partnerships with affected countries, and enhanced participation of others. Because the United States would be accorded full powers at COP sessions, it might have more influence on policy development. . . . [R]atification could stimulate cooperation on technical issues, create opportunities abroad for U.S. experts and industries involved in dryland [and, in the case of the CBD, biodiversity] issues, and allow U.S. experts to participate in the work of the COP.⁶⁵

Importantly, for U.S. ratification purposes, the CBD's legal power is inherently limited. First, because the CBD is a "framework" convention, all decisions are made by consensus. As a result, Parties are not required to agree to anything they believe would be detrimental to national interests. In addition, Article 3 of the CBD explicitly recognizes state sovereignty over domestic biological resources:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own natural resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.⁶⁶

Similarly, Article 15.1 guarantees the authority of each Party over their genetic resources: "Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments."⁶⁷

If the United States were to ratify the CBD, it would be much more likely to enjoy substantial benefits than to suffer any disadvantages. Ratification would provide the impetus for the United States to better organize its biodiversity-related programs, yet it would require no new federal laws.⁶⁸ The United States would also be in a better position to help strengthen the laws and policies of biodiverse regions outside the United States, many of which are situated in strategically important locations. The United States would also have a seat at the table for negotiations at upcoming Conferences of the Parties. Another benefit would be closer ties to other Parties for engagement in biodiversity-related research, as well as protection of the marine environment and Arctic and Antarctic ecosystems, controlling invasive species, mitigating and adapting to climate change, and coordinating enforcement efforts against biopiracy, poaching, and illegal habitat destruction.

In the past, opponents to U.S. membership have expressed four concerns, all of which are easily addressed. First, they have argued that ratification will result in "locking up" land from economic development. But the CBD has no such provisions. Land use would continue to be governed by domestic law, including private contracts and local and state land use provisions.⁶⁹ There would be no changes to private property rights as a result of CBD ratification.⁷⁰

As Pulitzer Prize-winning biologist E.O. Wilson said, “Useful products cannot be harvested from extinct species.”

Second, opponents have expressed concerns that ratification would place the United States at a financial disadvantage. But ratification is far more likely to produce the opposite effect. While Article 20(2) of the CBD provides for “new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them,” U.S. participation in the Global Environment Facility limits potential costs to the United States. As the Senate Foreign Relations Committee noted in recommending ratification, “The United States will meet its financial obligation under the [CBD] through voluntary contribution to the Global Environment Facility. The amount of the contribution will be determined through negotiations *in which the United States has an effective veto over funding levels that it deems excessive.*”⁷¹

Third, opponents have worried that the CBD would fail to protect intellectual property rights. In reality, the CBD would further U.S. interests in intellectual property rights and, more generally, sustainable economic development. Article 16 of the CBD specifies that technology transfer shall be provided only as consistent with the intellectual property rights of developed countries.⁷² In its 1994 letter to the Senate Committee, the American Seed Trade Association, which bills itself as having over a century of experience “in all matters concerning the development, marketing and movement of seed, associated products and services throughout the world,” expressed its “fundamental support for ratification of this important intellectual property rights document.”⁷³ To avoid any possible confusion, the Senate Foreign Relations Committee stated that the Senate should give its advice and consent subject to formal understandings that the treaty’s provision on transfer of technology refers only to *voluntary* transfer, and that the Parties must ensure that any such transfer “recognizes and is consistent with the adequate and effective protection of intellectual property rights.”⁷⁴ Other countries, including those in the European Union, agree that the CBD does not abrogate intellectual property rights.

Fourth, opponents have suggested that research and development opportunities in other countries could be inhibited. Here, too, the critics are mistaken. Since its creation, ensuring access and benefit sharing (ABS) for biodiversity research and development has been one of the primary goals of the CBD. As it does on other issues, the agreement respects the sovereignty of its members. Article 15(1) recognizes “the sovereign rights of States over their natural resources,” and provides that “the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.” While each Party is required to “endeavor to create conditions to facilitate access to genetic resources for environmentally sound uses by other” Parties, where granted access “shall be on mutually agreed terms” and subject to the prior informed consent of the Party providing the resources.⁷⁵ The CBD encourages the benefits from use of genetic resources to be shared in a “fair and equitable way,” but again it leaves the terms to be worked out voluntarily between the companies and countries directly involved.

With the largest global presence in biotechnology research, the United States has a tremendous interest in the CBD's encouragement of access to and development of biodiversity resources. In its 1994 letter supporting ratification, pharmaceutical giant Merck reminded the Senate that "[p]lants, insects, microorganisms, and marine organisms have yielded some of the greatest pharmaceutical breakthroughs of this century," and warned that "the loss of biodiversity could literally mean lost opportunities for researching the mechanisms of disease and discovering some important new medicines."⁷⁶ Since the early 1990s, biotechnology has become integral to many other industries beyond medicine, including industrial products, toxic clean-up, and consumer goods, and there are thousands of businesses whose work concerns biotechnology.⁷⁷

In 2010, the CBD Parties adopted a protocol that addresses ABS in more detail.⁷⁸ Among other provisions, the protocol requires countries that provide access to their biodiversity to adopt transparent, fair, and non-arbitrary procedures, thereby providing a reliable framework to facilitate entry by private sector enterprises bio-prospecting for new food supplies and pharmaceutical, medicinal, and biochemical resources.⁷⁹ The Protocol's clarification of the rules applying to access to genetic resources would greatly benefit U.S. companies, but participation in the Protocol is limited to the Parties to the CBD.



All of the concerns expressed in the mid-1990s about U.S. participation in the CBD have long since been disproved by the experience of other countries. If the CBD really infringed on sovereign land-use decisions, imposed financial burdens, required the violation of intellectual property rights, and inhibited access to and development of biotechnology, then the many other countries in the world that have similar interests to the United States would not continue to participate in the convention. That the membership of the CBD has grown to include virtually every country in the world, including all of the closest U.S. allies, demonstrates that the fears that have blocked U.S. ratification are unfounded.

What Actions Should the United States Take?

In the end, one of the most powerful arguments for embracing both the conservation and the ABS objectives of the CBD was stated succinctly by Pulitzer Prize-winning biologist E.O. Wilson, "Useful products cannot be harvested from extinct species."⁸⁰ The Obama Administration should prioritize the CBD as a key treaty requiring immediate ratification. In turn, the Senate should act quickly to provide its consent.

V. London Dumping Convention, 1996 Protocol

1996 PROTOCOL TO THE LONDON CONVENTION ON PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER

Adopted by the Parties to the London Convention (including the United States) and
Opened for Signature on November 7, 1996

Entered into Force on March 24, 2006

Number of Parties: 41

Signed by the United States on March 31, 1998

Sent to the Senate on September 4, 2007

Reported favorably by the Senate Foreign Relations Committee
on July 29, 2008

What Is the Environmental Problem?

For decades, nations have found a solution to ever-escalating waste volumes by dumping chemical wastes, incinerated debris, sewage sludge, municipal wastes, and wastes from ships in the oceans. Until the early 1970s, ocean dumping of high-level radioactive waste was legal, and dumping of low-level radioactive waste continued well into the 1980s. In the United States, the most common material dumped at sea is wastes from harbor and river dredging,⁸¹ which may contain toxic sediments. On a global scale, ocean dumping pollutes the commons, threatens coral reefs and other marine life, and can harm humans through contamination of seafood. Pollution from ships accounts for 70 to 90 percent of all marine pollution.

How Does the Protocol Address This Problem?

To address the problem of ocean dumping, the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter limited intentional dumping and incineration of waste at sea and the resulting damage to marine resources. Nearly two and a half decades later, the United States and the other Parties to the London Convention agreed to a protocol that makes fundamental changes to the Convention, based on the widespread belief that the original 1972 Convention was not strict enough.

Upon its entry into force in 2006, the 1996 Protocol replaced the earlier treaty entirely as between the Parties to the Protocol. The Protocol increases global protections for the marine environment. For example, whereas the original 1972 treaty limits incineration of waste at sea, the 1996 Protocol bans incineration at sea outright.⁸² The 1996 Protocol also ensures stricter regulation of marine dumping through its “reverse list.” Rather than preventing the dumping of specific listed substances, as the 1972 Convention does, the Protocol prohibits

its Parties from dumping any substance other than those specifically listed in Annex 1.⁸³ The 1996 Protocol also establishes a permit process for the legal dumping of Annex 1 substances.⁸⁴ The Protocol has sensible exceptions, including for emergency situations and *force majeure*, and it does not affect oil and gas drilling operations or scientific exploration.

The 1996 Protocol reflects both a precautionary approach and the “polluter pays” principle. It requires those seeking ocean-dumping permits for legal substances to consider the potential effects of their dumping, alternative disposal methods, potential waste prevention strategies at the source, and dump site selection.⁸⁵

What Is the History and Status of the Protocol?

The Protocol entered into force on March 24, 2006, upon ratification by the requisite 26 nations. The United States signed the Protocol on March 31, 1998, but has not yet ratified it. The George W. Bush Administration strongly supported ratification. David A. Balton, Deputy Assistant Secretary of State for Oceans and Fisheries, explained in a statement to the Senate Foreign Relations Committee in September 2008 that the United States “supported the updating and improvements of the Convention that the Protocol reflects.”⁸⁶ He also stressed the importance of the United States’ maintaining a leadership role in preventing marine pollution and pointed out that, as a full participant in the Protocol, the United States would be able to influence which new substances are added to the list of prohibited substances, as well as help to develop other policies and procedures in the implementation of the Protocol.

In 2008, the Bush Administration submitted draft legislation to implement the Protocol through modifications to the Marine Protection, Research and Sanctuaries Act (“MPRSA”).⁸⁷ The legislative changes needed to ratify the Protocol are quite minor. For example, the MPRSA would need to explicitly prohibit incineration at sea and dumping of low-level radioactive waste, but these prohibitions have been followed in practice in the United States since the 1970s. In fact, the Bush Administration concluded that “[t]here will not be any substantive changes to existing practices in the United States, and no economic impact is expected from implementation of the Protocol.”⁸⁸

Why Should the United States Ratify the Protocol?

The Protocol enjoys widespread support from key industry players. For example, the American Association of Ports and Harbors and the Dredging Contractors of America participated in the negotiations and support the Protocol and its objectives (the Protocol does not ban disposal of dredged spoil). One of the chief benefits to industry of U.S. ratification is that the Protocol establishes uniform international regulatory standards.⁸⁹ As the International Maritime Organization has explained, the benefits of becoming a contracting Party to the 1996 Protocol include enhanced protection of a Party’s marine environment, access to technical assistance to aid marine environmental protection, and participation in

forums to address scientific issues related to ocean dumping and to settle disputes among Parties arising out of ocean dumping activities.

In July 2008, on a voice vote without objection, the Senate Foreign Relations Committee approved ratification of the Protocol, subject to a declaration that modified some disputed resolution and arbitration provisions but *not* the underlying substantive environmental objectives of the Protocol.⁹⁰ In its report, the Committee stated that:

The Protocol would serve to protect the U.S. marine environment more effectively from the harmful effects of wastes and other matter disposed of or incinerated at sea. Moreover, the international regime for addressing ocean dumping and the incineration of wastes and other matter at sea established by the Protocol is beginning to replace the framework established by the London Convention as more and more countries ratify the Protocol. As a result, it is increasingly important that the United States be able to fully participate in the development and implementation of the Protocol in international fora, so that the United States is able to advance and protect key U.S. interests in the protection of the marine environment.⁹¹

The full Senate has not taken up the treaty, however, perhaps reflecting a reluctance to reopen the MPRSA, which has not been amended since 1988.



What Actions Should the United States Take?

The Obama Administration and the Senate should move expeditiously to ratify the Protocol. It is the most effective treaty ever drafted to protect the marine environment, including U.S. coastlines and fisheries, from the harmful effects of marine pollution. Moreover, joining the Protocol will advance and safeguard key U.S. interests in the protection of the marine environment in the twenty-first century, such as participation in the drafting of rules that could govern carbon sequestration under the seabed. The international regime for addressing ocean dumping embodied in the Protocol has now wholly replaced the 1972 London Convention. It makes little sense for the United States to continue to adhere to an obsolete treaty while other countries join the 1996 Protocol.

VI. Plant Genetic Resources Treaty

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Adopted by the Food and Agriculture Organization on November 3, 2001

Entered into Force on June 29, 2004

Number of Parties: 127

Signed by the United States on November 3, 2002

Sent to the Senate on July 7, 2008

Reported favorably by the Senate Foreign Relations Committee
on December 14, 2010

What Is the Environmental Problem?

As the world's population continues to grow, global production of food must grow with it. In the words of the Senate Foreign Relations Committee:

The development of sustainable, higher-yielding crop supplies is an integral part of ensuring global food security. By 2050, the world's population is estimated to reach 9.1 billion, 34 percent higher than today. The United Nations Food and Agriculture Organization (FAO) predicts that farmers will have to increase production by at least 70 percent by 2050 to satisfy the demand for food due to the world's growing population, urbanization, and rising incomes. Global agriculture has addressed challenges of growth on a similar scale in recent decades largely as a result of advances in plant genetics.⁹²

To meet the demands for increased production, as well as to respond to the constant threats of loss from disease, pests, and drought, new crops must continually be developed. The food security of the United States, as well as the world as a whole, depends in large part on the ability of researchers to continue to develop crops with new traits.⁹³ Thus, plant researchers must have access to the genetic material of plants that may have resistance to these threats.

Plant breeders and farmers rely on the genetic resources of plants as the raw material used to create new crop varieties. These resources are viewed by many as the foundation for modern agriculture and as essential for achieving global food security.⁹⁴ Because this material is found in many different countries, all countries effectively depend on access to the genetic banks of others. For many years, the rules regulating this international access were unclear, making it more difficult for U.S. and foreign researchers to obtain plant genetic materials from banks in other countries.

In particular, it has been difficult to resolve the tension between the *desire* to ensure that the raw genetic materials necessary for research and development remain in the public domain and the *belief* that, as a matter of fairness and to provide adequate incentives for such

research, it is necessary to recognize intellectual property rights in the worked (and, perhaps, even the raw) genetic material.⁹⁵

How Does the Treaty Address This Problem?

After years of negotiation under the auspices of the Food and Agriculture Organization (FAO), the international community negotiated a treaty that comprehensively addresses these issues. The International Treaty on Plant Genetic Resources for Food and Agriculture requires each Party to take specified steps to protect its plant genetic resources and promote their sustainable use.⁹⁶ It also encourages, but does not require, each Party to protect and promote the rights of farmers and indigenous communities, such as:

- the protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and
- the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.⁹⁷

Most importantly, the Treaty establishes a Multilateral System to facilitate access to plant genetic resources and share the benefits arising from their use. The Multilateral System applies to the plant genetic resources of 64 listed food crops and forages, including wheat, corn, rice, barley, oats, potatoes, peas, apples, and citrus “that are under the management and control of the Contracting Parties and in the public domain.”⁹⁸ The treaty provides that, with respect to those plant genetic resources, each Party must allow access to other Parties and to the legal and natural persons within those Parties’ jurisdiction.⁹⁹ But the access is not unlimited. It is provided only under certain conditions, including that:

- the access is accorded only for research for food and agriculture, not for chemical, pharmaceutical, or other non-food purposes;
- recipients may not claim intellectual property rights that limit access to the plant genetic resources in the form received from the multilateral system; and
- the access is provided through a standard “material transfer agreement,” as adopted by the governing body of the Treaty.¹⁰⁰

The Treaty also provides that if a recipient of plant genetic resources from the Multilateral System commercializes a product incorporating such material, the recipient shall pay “an equitable share of the benefits arising from the commercialization of that product” to a Trust Fund created by the Parties to the Treaty.¹⁰¹ The current royalty rate is 0.77 percent of gross sales, which the Senate Foreign Relations Committee has noted is “consistent with existing practice with respect to current industry royalty rates.”¹⁰² According to the Treaty, benefits from the Trust Fund “should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.”¹⁰³

What Is the History and Status of the Treaty?

The Treaty has quickly attracted more than 125 Parties, including Canada, France, Germany, and the United Kingdom. In the United States, the Treaty has received consistent bipartisan support. It was negotiated initially by the Clinton Administration and was finalized, signed, and submitted to the Senate by the George W. Bush Administration. The Obama Administration has urged the Senate to give its advice and consent.¹⁰⁴ Ratification would require no changes in U.S. law. The Executive Branch informed the Senate that it already has all the necessary authority to implement the Treaty and is seeking no new legislation.¹⁰⁵ Indeed, the United States has for many years freely distributed the information covered by the Treaty through the National Plant Germplasm System within the USDA Agricultural Research Service.¹⁰⁶

Why Should the United States Ratify the Treaty?

By establishing a firm legal basis for international access to plant genetic materials, the Treaty helps to ensure the continued development of food and agricultural resources on which the world's population depends. In addition to the general benefits accruing to the United States as well as other countries from promoting global food security, the establishment of "a stable, legal framework for international germplasm exchanges . . . benefits both research and commercial interests in the United States."¹⁰⁷

Joining the Treaty would enable the United States to participate fully with the other Parties in its interpretation and implementation. For example, the Parties have control over the terms of the standard material transfer agreement and the Trust Fund that receives and disburses payments from recipients of plant genetic resources from the Multilateral System. In particular, as a Party the United States would be able to veto changes to the list of plant genetic resources covered by the Multilateral System, which may be amended only by a consensus decision of the Parties, and to veto any efforts to increase royalty rates.

The Treaty has received support from major U.S. stakeholders, including the American Seed Trade Association (ASTA), which has stated that "ASTA and many in agriculture believe it essential that the U.S. Government be fully engaged as a Party to the international treaty so that the issues of importance to the seed industry, and thus American agriculture, are effectively addressed." Other industry supporters include the National Farmers Union, the American Soybean Association, the National Association of Wheat Growers, the National Corn Growers Association, the Biotechnology Industry Organization, and the Intellectual Property Owners of America.¹⁰⁸

What Actions Should the United States Take?

In short, there is no reason not to ratify the Plant Genetic Resources Treaty, and many good reasons to ratify it. The Senate should give its advice and consent without delay.

The Treaty helps to ensure the continued development of food and agricultural resources on which the world's population depends.

VII. Rotterdam and Stockholm Conventions and the POPs Protocol to the LRTAP Convention

What Is the Environmental Problem?

The movement of toxic substances around the world, whether intentionally through trade, or unintentionally as pollutants carried via wind or water, is a continuing environmental and health concern. Persistent Organic Pollutants (POPs) are of particular international concern not only because they are toxic to humans and the environment, but also because they can persist in the environment for extremely long periods of time, travel long distances via the wind and water, and bioaccumulate in the food chain. Many POPs are also believed to be endocrine disruptors in both humans and other species. Many of what are referred to as the “dirty dozen” POPs are pesticides, such as DDT, which were used extensively and released into the environment in enormous quantities for decades after World War II, when industry was undergoing a technological boom and the green revolution in agriculture was beginning to take off. POPs have been found virtually everywhere on earth, including thousands of miles away from any place they have been used, such as pristine areas of the Arctic.

The Conventions

The Rotterdam Convention, the Stockholm Convention, and the POPs Protocol to the Convention on Long Range Transboundary Air Pollution each address aspects of the international movement of toxic substances. Each of these agreements has been signed by the United States, but the United States has not yet enacted legislation necessary to implement the three agreements. Due to the parallels among these agreements, implementing legislation can be designed that would allow ratification of all three agreements. A description of each agreement and its status is provided below. A discussion of the necessary implementing legislation for ratification of all three agreements follows.

THE ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE
Adopted and Opened for Signature on September 10, 1998

Entered into Force on February 24, 2004
Number of Parties: 144

Signed by the United States on September 11, 1998
Sent to the Senate on February 9, 2000

How Does the Rotterdam Convention Address the Problem?

The Rotterdam Convention is a multilateral treaty that seeks to promote shared responsibilities regarding the importation of hazardous chemicals, including pesticides, and to promote the open exchange of information. The Convention encourages exporters of

hazardous chemicals to use proper labeling, to include directions on safe handling, and to inform purchasers of any known restrictions or bans. Parties to the Convention are free to make their own decisions whether to allow or ban the importation of chemicals listed in the treaty. Exporting countries are required to ensure that producers within their jurisdiction comply with treaty requirements.

One of the most significant features of the Rotterdam Convention is that it requires the implementation of a mandatory “prior informed consent” (PIC) procedure.¹⁰⁹ The PIC process set out in the Rotterdam Convention requires exporters of chemicals that have been banned or severely restricted for health or environmental reasons in the exporting country to obtain the prior informed consent of an importing country before exporting to that country. Chemicals subject to the PIC Procedure are listed in Annex III of the Convention. Currently, Annex III includes 40 chemicals, 29 of which are pesticides, and recommendations for several other additional chemicals.

Once a chemical is included in Annex III, a “decision guidance document” (DGD) containing information concerning the chemical and the regulatory decisions is circulated to all Parties. Parties then have nine months to prepare a response concerning the future import of the chemical. The response can consist of either a final decision (to allow import of the chemical, not to allow import, or to allow import subject to specified conditions) or an interim response. Decisions by an importing country must be trade neutral (i.e., apply equally to domestic production for domestic use as well as to imports from any source). The PIC Secretariat circulates the import decisions to all Parties.

The Rotterdam Convention requires a Party to take appropriate measures to ensure that an exporter within its jurisdiction complies with the import decision for a chemical or pesticide listed in Annex III. However, the mere inclusion of a substance in Annex III does not amount to a global ban on it. Instead, the PIC provisions allow an importing Party to make an informed decision about whether or not to import a substance that has been listed as banned or severely restricted by the Convention.

In addition to the PIC Procedure, the Convention also includes a number of requirements related to exports of chemicals. A Party that plans to export a chemical that is banned or severely restricted for use within its territory is required to inform the importing Party that such export will take place, before the first shipment and annually thereafter. In addition, when exporting chemicals that are to be used for occupational purposes, the exporting Party must ensure that an up-to-date safety data sheet is provided to the importer.

What Is the History and Status of the Convention?

The Rotterdam Convention was adopted on September 10, 1998, and President Bill Clinton signed the Convention the next day. The Convention entered into force on February 24, 2004, after 50 countries had ratified it. There are now more than 140 Parties to the Convention. To date, the United States is a signatory to the Convention, but not a Party. For the United States to become a Party, the Convention must receive advice and

consent from the Senate and implementing legislation must be passed. As described in more detail below, implementing legislation is needed because existing U.S. statutes on the export of pesticides and other hazardous substances do not comply with the mandatory PIC procedures in the Convention.

THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Opened for signature, May 22, 2001

Entered into Force on May 17, 2004

Number of Parties: 176

Signed by the United States, May 23, 2001

Sent to the Senate on May 6, 2002

How Does the Stockholm Convention Address the Problem?

The Stockholm Convention on Persistent Organic Pollutants is a multilateral environmental treaty that aims to eliminate or restrict the production and use of certain POPs. Pursuant to the terms of the Treaty, Parties agree to reduce or eliminate the production, use, and/or release of specified POPs. The Convention targets pesticides, industrial chemicals, and unintentionally produced POPs. The 12 substances that were the initial focus, which are commonly referred to as the “dirty dozen,” include the pesticides aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, and toxaphene and the nonpesticidal PCBs, dioxins, and furans. The Convention establishes a scientific review process to add other POPs of global concern to the list of 21 covered substances.

The goal of the Stockholm Convention is to phase out or, at a minimum, reduce the production, use, and release into the environment of the listed POPs. Stockpiles of wastes containing POPs must be managed in a safe, efficient, and environmentally sound manner, taking into account international rules, standards, and guidelines. Parties are required to submit National Implementation Plans (NIPs) within two years after joining the Convention. The Convention also establishes a system to provide technical and financial assistance to developing countries to help them to meet their obligations under the agreement.

What Is the History and Status of the Convention?

The Stockholm Convention was adopted on May 22, 2001, and President George W. Bush signed it the next day. The Convention entered into force on May 17, 2004, after the fiftieth Party ratified it. Currently, there are more than 170 Parties to the Convention. For the United States to become a party to the Convention, the Senate must provide its advice and consent and implementing legislation must be passed. As described below, implementing legislation is needed because U.S. statutes that address POPs use a regulatory standard that is less stringent than the standard in the Stockholm Convention. They also do not include

a mechanism to trigger regulatory action when new substances are added to the list of POPs identified for elimination or reduction.

THE PROTOCOL TO THE 1979 CONVENTION ON LONG RANGE TRANSBOUNDARY AIR POLLUTION ON PERSISTENT ORGANIC POLLUTANTS (LRTAP POPs PROTOCOL)
Adopted and Opened for Signature on June 24, 1998

Entered into Force on October 23, 2003

Number of Parties: 31

Signed by the United States on June 24, 1998

How Does the Protocol Address the Problem?

The Protocol on Persistent Organic Pollutants (or POPs) is one of eight protocols to the 1979 Convention on Long Range Transboundary Air Pollution, or LRTAP. The LRTAP Convention was negotiated under the auspices of the United Nations Economic Commission for Europe (UNECE), a regional organization that includes the United States and Canada as well as European countries. The POPs Protocol requires Parties to take certain steps to eliminate the production and use of certain POPs in the UNECE region. The Protocol initially applied to the 12 POPs originally listed in the Stockholm Convention. Four additional chemicals have since been added. Parties must ensure that the listed POPs are destroyed and disposed of in an environmentally sound manner, preferably domestically rather than by export. The Protocol also requires Parties to ensure that any transboundary movement of listed POPs takes place in an environmentally sound manner. The Protocol also requires the Parties to restrict the uses of certain other POPs and to reduce the annual emissions of yet others.

What Is the History and Status of the Protocol?

The LRTAP Convention was adopted in 1979, went into effect in 1983, and currently has 51 Parties, including the United States. President Bill Clinton signed the POPs Protocol to LRTAP on June 24, 1998. The Protocol entered into force on October 23, 2003, and currently has 31 Parties. The Executive Branch has taken the position that because the United States is a Party to LRTAP, Senate advice and consent is not necessary for ratification. Instead, the Protocol can be entered into as an executive agreement. Nevertheless, legislative amendments are necessary to implement the Protocol.

Why Should the United States Ratify these Agreements?

Ratification of these three agreements has extensive support from industry, NGOs, and numerous foreign governments. The American Chemistry Council believes that they “establish a harmonized approach for action on listed chemicals, and should produce meaningful improvements in public health and environmental protection.” The Council has stated that “the United States must become a Party to the agreements as soon as

possible.”¹¹⁰ The leaders of approximately 30 U.S. NGOs explained in a letter to Congress in support of the Stockholm Convention’s ratification that the United States loses its ability to shape the success of the Convention and damages its reputation as an international leader in the global management of toxic POPs by remaining outside the agreement.¹¹¹ The majority of countries in the world have ratified the Rotterdam and Stockholm agreements, including most trading partners of the United States in the Pacific, Asia, Africa, Latin America, and Europe.

U.S. interests will not be compromised by ratification of the agreements. Decisions regarding the addition of chemicals to the Stockholm Convention, for example, must be based on science and must include a careful examination of all aspects of the chemical, including the consequences of prohibiting its use. In addition, the prohibition of the chemical has to be adopted by a three-quarters majority of the Convention. Even then, the United States retains the ability to opt out of any listing. Moreover, the United States could take the position that it will opt out of any listing unless it decides to opt in at the U.S. government’s discretion.¹¹²

While the United States may have issues with the potential addition of certain chemicals to the Stockholm Convention, it cannot significantly influence whether these chemicals are added without becoming a full participant through congressional ratification of the agreement.¹¹³ Ratifying the Convention would give the United States and the EPA the authority needed to effectively negotiate with other countries regarding the elimination or reduction of POPs. More importantly, it would give the United States the ability to pressure other Parties to the Convention to more intensely regulate chemicals that threaten the health of Americans.¹¹⁴

For the United States to be able to ratify these three international agreements, Congress will have to amend the U.S. statutes that regulate pesticides and toxic substances.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA)

The principal U.S. statute regulating pesticides is the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). FIFRA requires an upfront evaluation of pesticides before they can enter the U.S. market, and imported pesticides must meet the same requirements as domestically produced pesticides: to obtain a FIFRA registration, an applicant must show that the pesticides do not cause unreasonable adverse effects on the environment. This standard has been interpreted as a cost-benefit balancing standard.

In contrast, pesticides exported from the United States to other countries do not require an EPA approval and are subject only to very limited regulation under FIFRA. FIFRA does not provide EPA with the authority to require exporters to obtain the prior informed consent of importing countries in either situation where the pesticide has not been approved for use in the United States or in situations where the EPA has banned a pesticide because it poses an unreasonable adverse effect on the environment. For example, pesticides that are

not registered for use in the United States may be manufactured here and exported abroad as long as “the foreign purchaser has signed a statement acknowledging that the purchaser understands that such pesticide is not registered for use in the United States.”¹¹⁵ Pesticides with cancelled or suspended registrations—for example, EPA has determined that they pose an unreasonable adverse effect on the environment—may still be exported to other countries as long as EPA provides a one-time notification of its decision to foreign governments and international agencies.¹¹⁶ In other words, FIFRA does not provide the authority to satisfy the Rotterdam Convention’s PIC process.

The primary federal statute that applies to non-pesticidal, non-drug substances in the United States is the Toxic Substances Control Act (TSCA). Unlike FIFRA, TSCA does not require that chemicals obtain a registration or demonstrate compliance with any environmental or health standards prior to being sold, distributed, or used. TSCA does not prohibit or restrict export of any substance, regardless of any U.S. regulatory action on that substance, provided that minimal labeling requirements are met.

Changes to FIFRA and TSCA

To comport with the Rotterdam Convention, Congress would need to amend FIFRA and TSCA to authorize EPA (or another government entity) to comply with the Convention’s PIC procedure. Specifically, for chemicals that the United States bans or severely restricts, U.S. law would need to mandate that PIC from the importing country be obtained and would need to prohibit export to countries that have determined not to allow import of those substances. As described above, existing U.S. law merely requires information on banned chemicals to be provided to other countries but does not authorize the United States to prohibit export of these substances or require that PIC be obtained from importing countries.

Efforts by the Environmental Protection Agency

Although the United States has not yet ratified the Rotterdam Convention, EPA has stated that it is placing the highest priority on timely notification of exports of two categories of pesticides that EPA believes may be of the greatest concern to other countries: (1) substances listed under Rotterdam, most of which the United States has also banned or severely restricted; and (2) substances not on the list that are nevertheless banned or severely restricted by the United States. EPA has also declared its intention to try to make the U.S. export notification program compatible with the international one, while meeting domestic legislative requirements.¹¹⁷ However, without legislative modifications, it is not clear that EPA has the authority to fully comply with the Rotterdam Convention.



Amendments to Restrict the POPs

It will also be necessary to amend FIFRA and TSCA in order to fully implement the Stockholm Convention and the POPs Protocol to LRTAP. Indeed, when President George W. Bush signed the Stockholm Convention, he noted that legislative changes would be necessary to authorize the United States to fully implement its obligations under the Convention. Although President Bush called for “speedy” ratification of the Convention, the legislative changes necessary for ratification have not been made.

The United States has already taken regulatory action to ban or severely restrict the original dirty dozen POPs. EPA has cancelled the FIFRA registrations for all of the pesticides on the dirty dozen list and thus none of these pesticides can be sold or distributed in the United States. Moreover, in 1978 Congress imposed significant restrictions on the existing stocks of PCBs and prohibited future manufacture of these substances. EPA has also taken regulatory action to reduce environmental releases of dioxins and furans by more than 85 percent.

However, U.S. law currently does not have a process to address chemicals added to the Stockholm or LRTAP POPs lists. As described above, the Stockholm Convention and the POPs Protocol to the LRTAP Convention set forth specific procedures that allow the Parties to add chemicals to the lists of POPs that should be reduced or eliminated. To comply with these agreements, U.S. law must require decisions to be made as chemicals are added to the list. Specifically, legislation should require EPA to take action when a chemical is added to the list. Such a provision should not bind the United States by requiring that it ban chemicals added to the list, but rather should require EPA to take action to determine the appropriate regulatory action for the chemical.

Amendment to Implement a Health-Based Standard

Another legislative change necessary to implement the Stockholm Convention is to amend FIFRA and TSCA to replace the existing cost-benefit balancing standard of FIFRA and “unreasonable risk” standard of TSCA with the “health-based” standard of the Convention for POPs chemicals. The legislative changes needed to implement the POPs Protocol to the LRTAP Convention are very similar to those necessary to implement the Stockholm Convention.

Between 2002 and 2006, Congress considered a number of proposals that would have provided the implementing legislation necessary to ratify the three international agreements. In 2003, the Senate Environment and Public Works Committee unanimously approved a bill that would amend TSCA, and in February 2004, the George W. Bush Administration developed a draft bill that would amend FIFRA. This bill came under fire from environmental and health experts and was ultimately rejected by Democrats. Subsequently, a series of bills were introduced which would not only amend FIFRA and TSCA to implement the Stockholm Convention, but would also implement the Rotterdam Convention and the POPs Protocol to the Long Range Transboundary Air Pollution Convention. None of these bills were enacted.

The Safe Chemicals Act of 2011

More recently, members of Congress have shown a renewed interest in enacting the legislation necessary to implement Rotterdam, Stockholm, and the POPs Protocol. On April 14, 2011, Senator Frank Lautenberg (D.-N.J.) introduced the “Safe Chemicals Act of 2011” (S. 847). The bill explicitly states that it provides the necessary legislative changes to permit the United States to ratify the three agreements. In fact, the bill expressly states that “no person may manufacture, process, distribute in commerce, use, dispose of, or take any other action with respect to a POPs chemical, LRTAP POPs chemical, or PIC chemical in a manner inconsistent with applicable obligations for that chemical under the Stockholm Convention, LRTAP POPs Protocol, or Rotterdam Convention.” If enacted, the bill would eliminate the current exemptions for substances produced in the United States but intended only for export. The bill would reject the cost-benefit balancing standard of FIFRA and TSCA in favor of a “health-based” standard. It would also authorize EPA to prohibit the production, use, import, or export of the POPs on the Stockholm Convention list, and would provide a public notice and comment process for chemicals proposed to be added to the list in the future. In November 2011, the bill was referred to the Senate Committee on Environment and Public Works.

What Actions Should the United States Take?

Enacting the Safe Chemicals Act and ratifying these three treaties is necessary to restore U.S. leadership in global efforts to protect human health and the environment. Moreover, ratifying the treaties is in the specific interest of the United States, since an effective international regime governing toxic chemicals will reduce the exposure of U.S. nationals to these highly dangerous substances.¹¹⁸ Here, as with the other treaties described in this report, the United States needs a seat at the table in order to influence the future of the global chemicals regime.¹¹⁹ In particular, the United States cannot influence which chemicals are added to the PIC and POPs lists as long as it remains an observer rather than a full Party.

Despite the apparent widespread support in the United States for the three agreements, ratification is far from certain. Industry groups may support ratification in theory, but may be dissatisfied with the legislative changes needed to comply with the Treaties. For example, while industry groups may favor the United States becoming a voting Party to be able to exert influence over which chemicals are added to the PIC and POPs lists, they may not be as supportive to implementing legislation that replaces FIFRA’s or TSCA’s cost/benefit balancing standard with the Stockholm Convention’s more stringent health-based standard. The Safe Chemicals Act of 2011, which would provide the legislative changes needed for ratification of all three agreements, contains broader regulatory reforms that may not be viewed favorably by certain industry groups or Republicans that seek less government regulation.

VIII. UN Convention on the Law of the Sea

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA (UNCLOS) AND AGREEMENT RELATING TO THE IMPLEMENTATION OF PART XI OF THE CONVENTION

Adopted and Opened for Signature on December 10, 1982

Agreement on Part XI Adopted on July 28, 1994

Entered into Force on November 16, 1994 (UNCLOS)

and July 28, 1996 (Part XI)

Number of Parties: 162 (UNCLOS) and 141 (Part XI)

Signed by the United States on July 29, 1994

Sent to the Senate on October 7, 1994

Reported favorably by the Senate Foreign Relations Committee on February 25, 2004, and October 31, 2007

What Is the Environmental Problem?

The world's oceans cover roughly 70 percent of the planet and contain a variety of natural resources vital to nearly every nation. Historically, individual countries had jurisdiction over a narrow strip of water adjacent to their coastlines. The remainder was considered "the high seas," the paradigmatic global commons that was free and open to all while belonging to no one. As new technologies made it possible to reach farther and deeper into the ocean to catch fish and to extract other underwater resources, and as pollution of the oceans increased, countries had a clear impetus to establish a legal framework to govern activities in the high seas.

How Does the Convention Address This Problem?

The United Nations Convention on the Law of the Sea (LOS Convention) establishes a comprehensive framework for the world's oceans. It has become the bedrock legal instrument governing a wide array of ocean issues ranging from navigation to fishing to environmental protection to mining. The Convention is one of the most important treaties in the history of international relations, addressing almost every aspect of the law of the sea. Its provisions on environmental protection make up only one part of the Convention, but even by themselves they would constitute a critically important environmental treaty. They require states to take steps against a variety of threats to the marine environment, including pollution from vessels, dumping of waste, and over-fishing, and they set out rules of jurisdiction that clarify where and how states may enforce domestic and international environmental standards.

What Is the History and Status of the Convention?

Although the United States took the lead in negotiating the LOS Convention, disagreement with one portion of the Convention (Part XI, addressing deep seabed mining) prevented the United States from ratifying the Convention. Nevertheless, in 1983, President Ronald Reagan announced that the United States would abide by most of the provisions of the Convention, treating them as customary international law.¹²⁰ In 1994, the United Nations completed negotiation of an additional agreement governing deep seabed mining.¹²¹ The new agreement, drafted with significant U.S. involvement, allayed the concerns that had prevented the United States and other developed nations from joining the LOS Convention. As a result, President Bill Clinton signed the LOS Convention and, together with the additional agreement, submitted it to the Senate in 1994.

The Convention has received strong bipartisan support ever since. President George W. Bush declared that joining the Convention would serve U.S. national interests ranging from security to environmental protection, and urged the Senate to approve it “as a matter of national security, economic self-interest, and international leadership.”¹²² During his Administration, the Senate Foreign Relations Committee twice recommended Senate approval by overwhelming bipartisan majorities (by a 17-3 vote in 2004, and unanimously in 2007). In a 2010 executive order, President Barack Obama similarly committed his administration to pursuing U.S. ratification of the Convention.¹²³ Nevertheless, the Convention has never come up for a vote before the full Senate.

Today, the Convention is one of the most widely ratified treaties in the world, with more than 160 Parties. For the most part, non-Parties are developing countries that have no maritime interests. The United States is the only developed coastal state, the only large economy, and the only naval power that does not belong to the Convention.

Why Should the United States Ratify the Convention?

Because joining the Convention would protect and advance a wide array of U.S. security, economic and environmental interests, it has the broadest range of support of any of the treaties covered in this report. The nation’s security leadership, including the Navy and the Coast Guard, has unequivocally supported ratification of the Convention under both Republican and Democratic administrations. The U.S. Chamber of Commerce has urged the Senate to approve the Convention,¹²⁴ as have ocean policy experts,¹²⁵ the oil and gas industry, and environmental groups.¹²⁶ All emphasize the importance of ensuring that the United States has a seat at the table when the Convention Parties make crucial decisions affecting U.S. national interests.

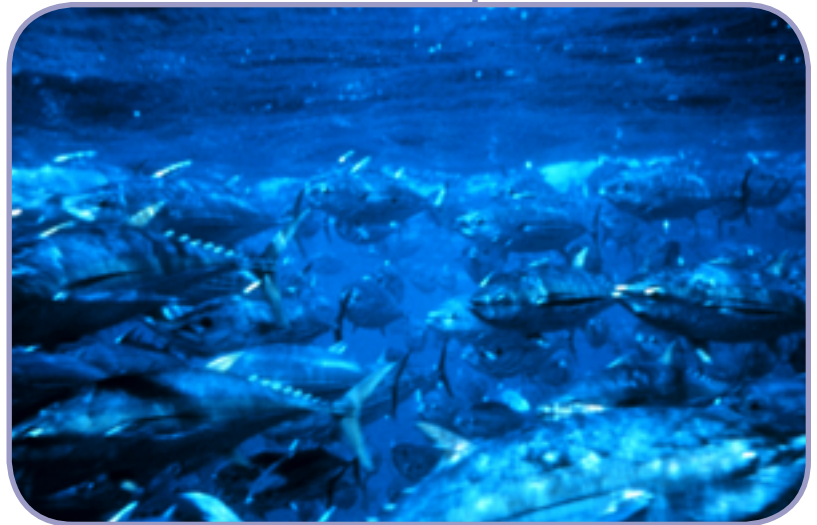
**Failure to join
the Convention
directly
jeopardizes
many
significant
U.S. interests.**

Ratifying the LOS Convention would require no changes to U.S. law. Indeed, the United States already considers itself bound by the Convention's substantive provisions.¹²⁷ By failing to ratify the convention, the United States diminishes its influence in global ocean governance and loses the opportunity to influence the direction of the law. As the world's largest maritime power, the United States has the most at stake from developments in the law of the sea. Yet it continues to sit on the sidelines, thereby forfeiting the opportunity to participate in the governance of virtually every major ocean interest, including: freedom of navigation; marine environmental protection; natural resource management; oil, gas and mineral extraction; marine scientific research; and the peaceful resolution of ocean-related disputes. Failure to join the Convention not only prevents the United States from participating in the future development of international law on these points, but it also directly jeopardizes many significant U.S. interests.

First and foremost, global freedom of navigation is essential for the exercise of U.S. military power. By failing to join the Convention, the United States compromises its ability to assert navigational rights and freedoms essential to our armed forces. As a non-Party and yet the world's greatest maritime power, the United States is in a far weaker position than it should be. The many examples include the right of innocent passage through other countries' territorial waters and the authority of warships to board stateless vessels on the high seas, both of which are critically important for U.S. maritime security and for the success of ongoing operations to prevent proliferation of weapons of mass destruction, as well as drug interdiction activities. Rather than being able to claim these rights as mutual commitments, the United States is forced to rely on the assertion that they have become customary international law and must therefore be extended to non-Parties. The United States has thus placed itself in the weaker position of depending on the forbearance of the Convention's Parties.

Second, the United States has an enormous stake in the health of the world's oceans and the living resources they contain. The LOS Convention delimits state obligations to manage these resources sustainably. Indeed, the United States has already ratified the addendum to the LOS Convention, which addresses both highly migratory fish stocks that cross national boundaries and the high seas, such as tuna, and straddling stocks that move between the territorial seas and exclusive economic zones of more than one country.¹²⁸ There are a host of other vital U.S. economic and environmental interests at stake in how the sea's living resources are managed and marine pollution is regulated. Were the United States a Party to the LOS Convention, it would be in a stronger position to advocate for effective protection of the world's oceans. By failing to ratify the Convention, the United States continues to sacrifice its leadership role in global ocean affairs.

Third, the Convention sets the rules for further territorial claims over marine resources. For example, it authorizes states to assert claims over the continental shelf beyond their 200-mile exclusive economic zone.¹²⁹ As recent Russian expeditions to the Arctic have shown, other states are vigorously pursuing claims to the resource-rich extended continental shelf. The international commission created by the Convention to review such claims has already received nine submissions from other states, and has made recommendations on two. As a non-Party, the United States cannot assert its own claim. Were the United States a Party, it could also participate in appointing the commissioners¹³⁰ and a U.S. national would likely be included on this influential body that will undoubtedly impact the future outer limits of the U.S. shelf. As a non-Party, the United States can only try to influence these critical decisions from the sidelines. As a result, it is entirely possible, even likely, that overlapping claims made by other States will be resolved contrary to the United States' interests.



What Actions Should the United States Take?

For all of these reasons, the Senate should act quickly to provide its advice and consent.

IV. About the Authors



Mary Jane Angelo is a Professor of Law and Director of the Environmental and Land Use Law Program at the University of Florida Levin College of Law. She teaches and writes about environmental, agricultural, water, wildlife, and pesticides law.



Rebecca Bratspies is a Professor of Law at CUNY School of Law. She has published widely on the topics of environmental liability, regulatory uncertainty, regulation of international fisheries, and regulation of genetically modified food crops.



David Hunter is Professor of Law and Director of the International Legal Studies Program and the Program on International and Comparative Environmental Law at the American University Washington College of Law and a member of the Board of Directors of CPR. He specializes in international environmental law.



John H. Knox is a Professor of Law at Wake Forest University School of Law. He teaches and writes about environmental protection and international law.



Noah Sachs is an Associate Professor of Law and Director of the Robert R. Merhige, Jr., Center for Environmental Studies at the University of Richmond School of Law. He specializes in environmental law, climate change, hazardous waste regulation, and tort law.



Sandra B. Zellmer is the Alumni Professor of Natural Resources Law at the University of Nebraska College of Law. She teaches and writes about natural resources and public lands, water and environmental law, and environmental ethics.

Endnotes

- ¹ As explained below, the one exception is the POPs Protocol to the Convention on Long Range Transboundary Air Pollution, which the Executive Branch believes does not require Senate approval. In addition, in 2008 the Senate did approve, and the Bush Administration ratified, two other environmental agreements: (1) the Protocol Concerning Pollution from Land-Based Sources and Activities to the Cartagena Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region and (2) the International Convention on the Control of Harmful Anti-Fouling Systems on Ships.
- ² *Long Line Fisheries Continue to Drive Albatross Declines*, Birdlife International (June 8, 2011), available at <http://www.birdlife.org/community/2011/06/longline-fisheries-continue-to-drive-albatross-declines>.
- ³ DANIEL J. LEBBIN, MICHAEL J. PARR, AND GEORGE H. FENWICK, *THE AMERICAN BIRD CONSERVANCY GUIDE TO BIRD CONSERVATION* 31-51 (2010) (describing threats to albatrosses and petrels as well as other North American oceanic birds)
- ⁴ Agreement on the Conservation of Albatrosses and Petrels, art. II, *as amended* April 27- May 1, 2009.
- ⁵ Albatross and Petrel Conservation Act of 2009, available at http://www.gc.noaa.gov/documents/seabires_omb_acap_bill_011609.pdf.
- ⁶ *Id.* at Sec. 301.
- ⁷ *Id.* at Sec. 303(b).
- ⁸ Letter from Assistant Secretary for Fish and Wildlife Parks, Department of the Interior, to Senator Barbara Boxer, Chair, Committee on Environment and Public Works (May 17, 2010), available at <http://www.ogc.doc.gov/ogc/legreg/letters/111/ACAPMay172010.pdf>.
- ⁹ Endangered Species Act, 16 U.S.C. §§ 1531-1599.
- ¹⁰ Migratory Bird Treaty Act of 1918, 16 U.S.C. §§ 703-712.
- ¹¹ Magnuson-Stevens Fishery Conservation and Management Act, §§ 16 U.S.C. 1801-1882.
- ¹² Letter of Submittal of Agreement on the Conservation of Albatrosses and Petrels, from Secretary of State Condoleeza Rice to President George W. Bush, Washington (August 22, 2008), available at <http://www.gpo.gov/fdsys/pkg/CDOC-110tdoc22/html/CDOC-110tdoc22.htm>. Magnuson-Stevens Fishery <http://www.gpo.gov/fdsys/pkg/CDOC-110tdoc22/pdf/CDOC-110tdoc22.pdf>.
- ¹³ American Bird Conservancy, “ACAP- Agreement on the Conservation of Albatrosses and Petrels.” <http://www.abcbirds.org/abcprograms/policy/fisheries/acap.html>, accessed June 17, 2011.
- ¹⁴ International Convention on the Regulation of Whaling, 161 U.N.T.S. 72 (1946).
- ¹⁵ Convention Respecting Measures for the Preservation and Protection of the Fur Seals in the North Pacific Ocean, available at [http://iea.uoregon.edu/pages/view_treaty.php?t=1911-FurSeals.EN.txt&par=view_treaty_html\(1911\)](http://iea.uoregon.edu/pages/view_treaty.php?t=1911-FurSeals.EN.txt&par=view_treaty_html(1911)).
- ¹⁶ International Convention for the Conservation of Atlantic Tunas (1965), available at <http://www.fao.org/Legal/treaties/014t-e.htm>.
- ¹⁷ United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 2167 U.N.T.S. 88, reprinted in 34 ILM 1542 (1995).
- ¹⁸ Inter-American Convention for the Protection and Conservation of Sea Turtles, reprinted at <http://www.iacseaturtle.org/>.
- ¹⁹ Statistics on tourism are available at the website of the International Association of Antarctica Tour Operators, at http://iaato.org/tourism_overview.html.
- ²⁰ Antarctic Treaty, Dec. 1, 1959, 12 U.S.T. 794.
- ²¹ Protocol on Environmental Protection to the Antarctic Treaty, Oct. 4, 1991, 30 I.L.M. 1455.
- ²² *Id.* art. 15.
- ²³ *Id.* art. 16.
- ²⁴ Annex VI to the Protocol on Environmental Protection to the Antarctic Treaty, Liability Arising from Environmental Emergencies (hereafter “Liability Annex”), June 17, 2005, 45 I.L.M. 1.
- ²⁵ “Environmental emergency” is defined as an accidental event that results in, or imminently threatens, any significant and harmful effect on the Antarctic environment. *Id.* art. 2(b).
- ²⁶ *Id.* art. 6.
- ²⁷ *Id.* art. 12.
- ²⁸ James Ridgeway & Gaelle Drevet, *Dumping on Haiti: How Thousands of Tons of Philadelphia’s Toxic Waste Ended up on a Haitian Beach and What the City of New York is Doing About it*, Action Network Press Release (January 13, 1998), available at http://www.ban.org/ban_news/dumping_on_Haiti.html.
- ²⁹ Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, art. 4, 28 I.L.M. 649 (1989).
- ³⁰ *Id.* art. 8.
- ³¹ *Id.* art. 9.
- ³² George H.W. Bush, *Message to the Senate Transmitting the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal* (May 17, 1991), available at <http://www.presidency.ucsb.edu/ws/?pid=19596#axzz1eMnLqw34>.
- ³³ Marian Nash Leich, *U.S. Practice*, 85 Am. J. Int’l L. 668, 674 (1991).

- ³⁴ Charles W. Schmidt, *Trading Trash: Why the U.S. Won't Sign On to the Basel Convention*, 107 *Env. Health Perspectives* 411 (1999).
- ³⁵ COP-3, Decision III/1 (1995).
- ³⁶ Defined as OECD countries, the European Union, and Lichtenstein.
- ³⁷ *Id.* art. 1.
- ³⁸ Convention on Biological Diversity, art 2, Jun. 5, 1992, 1760 U.N.T.S. 79, 31 I.L.M. 818 [hereinafter CBD]. The Convention was transmitted to the Senate Nov. 20, 1993 and entered into force Dec. 29, 1993.
- ³⁹ William J. Snape, III, *Joining the Convention on Biological Diversity: A Legal and Scientific Overview of Why the United States Must Wake Up*, 10 *SUSTAINABLE DEV. L. & POL'Y* 6, 7-8 (2010).
- ⁴⁰ Jean Christophe Vie, et al., eds., *WILDLIFE IN A CHANGING WORLD* ix (2009), available at <http://data.iucn.org/dbtw-wpd/edocs/RL-2009-001.pdf>.
- ⁴¹ Robert Costanza et al., *The Value of the World's Ecosystem Services and Natural Capital*, *NATURE*, May 15, 1997, at 253-260. See also *The Economics of Ecosystems and Biodiversity (TEEB)*, *Mainstreaming the Economics of Nature* (2010), available at <http://www.teebweb.org/LinkClick.aspx?fileticket=bYhDohL-TuM%3d&tabid=1278&mid=2357>.
- ⁴² John T. Ackerman, *Climate Change, National Security, and the Quadrennial Defense Review: Avoiding the Perfect Storm*, *STRATEGIC STUDIES Q.* 56 (2008), available at <http://dodreports.com/pdf/ada508421.pdf> (quoting Center for Naval Analysis Corporation, *National Security and the Threat of Climate Change* 6 (2007)).
- ⁴³ BERNSTEIN ET AL., *CLIMATE CHANGE 2007: SYNTHESIS REPORT* 72-73 (2007).
- ⁴⁴ Millennium Ecosystem Assessment, Findings (2005), available at www.millenniumassessment.org/documents/document.359.aspx.ppt.
- ⁴⁵ *Id.* See Carl Zimmer, *Multitude of Species Face Climate Threat*, *N.Y. TIMES*, Apr. 4, 2011.
- ⁴⁶ Chris D. Thomas et al., *Extinction Risks from Climate Change*, *NATURE* 145-48 (Jan. 8, 2004).
- ⁴⁷ *Id.* See RICHARD PEARSON, *DRIVEN TO EXTINCTION: THE IMPACT OF CLIMATE CHANGE ON BIODIVERSITY* (2011).
- ⁴⁸ Jean Christophe Vie, et al., eds., *Wildlife in a Changing World* vii, 18 (2009), available at <http://data.iucn.org/dbtw-wpd/edocs/RL-2009-001.pdf>.
- ⁴⁹ Janice Wormworth and Karl Mallon, *Bird Species and Climate Change: The Global Status Report* 17-24 (2006), available at <http://assets.panda.org/downloads/birdsclimatereportfinal.pdf>.
- ⁵⁰ Camille Parmesan & Gary Yohe, *A Globally Coherent Fingerprint of Climate Change Impacts across Natural Systems*, *NATURE* 37-42 (Jan. 2, 2003).
- ⁵¹ I-Ching Chen et al., *Rapid Range Shifts of Species Associated with High Levels of Climate Warming*, 333 *SCIENCE* 1024-26 (Aug. 19, 2011).
- ⁵² Millennium Ecosystem Assessment, Findings, *supra* note 44.
- ⁵³ *Id.*
- ⁵⁴ 39 Stat. 1702, T.S. 628 (Aug. 16, 1916).
- ⁵⁵ For detailed discussion of the history, objectives, and benefits of the CBD, see Snape, *supra* note 39, at 10-11.
- ⁵⁶ CBD, *supra* note 38. There are three additional protocols to the CBD: the Cartagena Protocol on Biosafety, Jan. 29, 2000; the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, Oct. 15, 2010; and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, Oct. 29, 2010. A U.S. decision to ratify the CBD would not require it to join the Protocols, which raise separate issues.
- ⁵⁷ CBD, *supra* note 38, art. 10. For additional provisions retaining state sovereignty, see CBD, *supra* note 38, arts. 3 and 15.1.
- ⁵⁸ Snape, *supra* note 39, at 15; S. Ex. Rep. No. 103-30, at 4, 23 (July 11, 1994).
- ⁵⁹ Other non-Parties include Andorra and the Vatican.
- ⁶⁰ Letter from Secretary-General to Heads of State and Government (May 15, 2000), reprinted in United Nations, *Millennium Summit Multilateral Treaty Framework: An Invitation to Universal Participation* vii (2000).
- ⁶¹ Oct. 14, 1994, 1954 U.N.T.S. 3 (approved by Senate on Oct. 18, 2000).
- ⁶² Carol Hardy Vincent, *Desertification Treaty: Evolution, Status, and Key Issues*, CRS Report for Congress, No. ENR 98-576 (June 23, 1998), available at <http://cnie.org/NLE/CRSreports/international/inter-50.cfm>.
- ⁶³ *Id.*
- ⁶⁴ See note 42, *supra*.
- ⁶⁵ Vincent, *supra* note 62.
- ⁶⁶ CBD, *supra* note 38, art. 3.
- ⁶⁷ *Id.* art. 15.1.
- ⁶⁸ President's Message to the U.S. Senate Transmitting the Convention on Biological Diversity, *WEEKLY COMP. PRES. DOC.* 2029 (Nov. 19, 1993), available at <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=tBETc9/0/2/0&WAIAction=retrieve> (stating that existing authorities are sufficient). The federal Migratory Bird Treaty Act, the Endangered Species Act, the Marine Mammal Protection Act, and the various habitat- and species-related provisions of the federal public lands laws satisfy the conservation provisions of the CBD.
- ⁶⁹ See *id.* 2029 ("the existing balance of Federal and State authorities" will not be disturbed by the CBD). See also CBD, *supra* note 38, art. 10 (Parties should utilize "customary and local efforts" for conservation).
- ⁷⁰ Snape, *supra* note 39, at 20.
- ⁷¹ S. Exec. Rep. No. 103-30, *supra* note 58, at 21-22.

- ⁷² CBD, *supra* note 38, art. 16.
- ⁷³ S. Exec. Rep. No. 103-30, *supra* note 58, at 28-29.
- ⁷⁴ *Id.* at 24.
- ⁷⁵ CBD, *supra* note 38, arts. 15(2), 15(4), 15(5).
- ⁷⁶ The American Seed Association, "About Us," <http://www.amseed.com/about.asp> (last visited Sept. 12, 2011); S. Rep. No. 103-30, at 35.
- ⁷⁷ Snape, *supra* note 39, at 12.
- ⁷⁸ The Nagoya Protocol on Access and Benefit-Sharing, 10th COP to the Convention on Biological Diversity (Oct. 29, 2010).
- ⁷⁹ *Id.* art. 6(3)(b).
- ⁸⁰ EDWARD O. WILSON, *THE BIODIVERSITY OF LIFE* 282 (1992).
- ⁸¹ U.S. EPA Region 4, "Ocean Dumping in the Southeast," <http://www.epa.gov/region4/water/oceans/> (last visited Dec. 6, 2011).
- ⁸² 1996 Protocol to the London Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matter, art. 5, Nov. 7, 1996, 36 I.L.M. 1.
- ⁸³ *Id.* art. 4.
- ⁸⁴ *Id.* art. 9.
- ⁸⁵ *Id.* Annex II.
- ⁸⁶ S. Exec. Rep. No. 110-15, at 94 (Sept. 11, 2008), available at <http://www.gpo.gov/fdsys/pkg/CRPT-110erpt15/html/CRPT-110erpt15.htm>.
- ⁸⁷ Some of the required changes include changes to the definition of "dumping" under MPRSA, stronger restrictions on ocean dumping through adoption of the "reverse list," and increased restrictions on incineration at sea.
- ⁸⁸ President's Letter of Transmittal, Treaty Doc. 110-5 at III, in S. Exec. Rep. No. 110-21, at 6 (Sept. 11, 2008), available at <http://www.gpo.gov/fdsys/pkg/CRPT-110erpt21/html/CRPT-110erpt21.htm>.
- ⁸⁹ S. Exec. Rep. No. 110-15, *supra* note 86, at 124.
- ⁹⁰ S. Exec. Rep. No. 110-21, *supra* note 88, at 9.
- ⁹¹ *Id.*
- ⁹² S. Exec. Rep. 111-7, at 2 (Dec. 15, 2010), available at <http://www.gpo.gov/fdsys/pkg/CRPT-111erpt7/html/CRPT-111erpt7.pdf>.
- ⁹³ See S. Exec. Rep. 111-3, at 123 (statement of Kerri-Ann Jones, Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, to the Senate Foreign Relations Committee, (Nov. 10, 2009)) (June 30, 2010), available at <http://www.gpo.gov/fdsys/pkg/CRPT-111erpt3/pdf/CRPT-111erpt3.pdf>.
- ⁹⁴ Melissa D. Ho, *International Treaty on Plant Genetic Resources for Food and Agriculture*, Congressional Research Service (March 1, 2010) at i.
- ⁹⁵ See Laurence R. Helfer, *Intellectual Property Rights and the International Treaty on Plant Genetic Resources for Food and Agriculture*, 97 AM. SOC'Y INT'L L. PROC. 33 (2003).
- ⁹⁶ International Treaty on Plant Genetic Resources for Food and Agriculture, arts. 5, 6, Nov. 3, 2001 [hereinafter PGR Treaty]. The Executive Branch has indicated that the listed activities "are consistent with current U.S. practice and would be implemented using existing USDA authorities." S. Exec. Rep. 111-7, at 4 (Dec. 15, 2010).
- ⁹⁷ PGR Treaty, *supra* note 97, art. 9.
- ⁹⁸ *Id.* art. 11.2.
- ⁹⁹ *Id.* art. 12.2.
- ¹⁰⁰ *Id.* arts. 12.3, 12.4.
- ¹⁰¹ *Id.* art. 13.2(d). If the product is made "available without restriction to others for further research and breeding," the recipient who commercializes it is only "encouraged" to make such a payment. *Id.*
- ¹⁰² S. Exec. Rep. 111-7, at 7 (Dec. 15, 2010).
- ¹⁰³ PGR Treaty, *supra* note 96, art. 13.3.
- ¹⁰⁴ See Statement of Kerri-Ann Jones, *supra* note 93.
- ¹⁰⁵ S. Exec. Rep. 111-7, *supra* note 92, at 4 & 8.
- ¹⁰⁶ *Id.* at 3 & 6.
- ¹⁰⁷ Statement of Kerri-Ann Jones, *supra* note 93, at 124.
- ¹⁰⁸ S. Exec. Rep. 111-7, *supra* note 92, at 9.
- ¹⁰⁹ The procedure has its roots in a 1985 Food and Agriculture Organization (FAO) International Code of Conduct on the Distribution and Use of Pesticides, which provided voluntary pesticide management guidelines for public and private entities engaged in or associated with the use and distribution of pesticides. In 1989, FAO joined with UNEP, which in 1987 had established the London Guidelines for the Exchange of Information on Chemicals, to develop a unified PIC procedure. Agenda 21, adopted at the 1992 Rio Summit, encouraged adoption of a legally binding PIC procedure, which used the voluntary PIC procedures in the FAO Code as a model.
- ¹¹⁰ *Legislation to Implement the POPS, PIC, and LRTAP POPS Agreements Before the House Committee on Energy and Commerce*, 109th Cong. 67 (2006) (prepared statement of Michael P. Walls, Managing Director, Regulatory and Technical Affairs Department, American Chemistry Council), available at <http://www.access.gpo.gov/congress/house/pdf/109hrg/27145.pdf>.
- ¹¹¹ Letter from approximately 30 NGOs to Representatives Pelosi and Hastert and Senators Frist and Reid regarding Essential Elements of U.S. Leadership in Ratifying the Stockholm Convention on Persistent Organic Pollutants (POPs) (September 7, 2005), available at http://www.ciel.org/Publications/POPs_Leadership_7Sep05.pdf.

- ¹¹² *Legislation to Implement the POPS, PIC, and LRTAP POPS Agreements Before the House Committee on Energy and Commerce*, 109th Cong. 54 (2006) (prepared statement of Brooks B. Yeager, Visiting Fellow, The John Heinz II Center for Science, Economics, and the Environment).
- ¹¹³ Elana Schor, *Obama Admin Steps Up Pressure to Ratify Treaties on Toxics*, N.Y. TIMES (September 24, 2010).
- ¹¹⁴ Daryl Ditz, Baskut Tuncak, and Glen Wiser, *U.S. Law and the Stockholm POPs Convention: Analysis of Treaty-Implementing Provisions in Pending Legislation 4*, Center for International Environmental Law (CIEL) (June 24, 2011), available at http://www.ciel.org/Publications/US_Law_and_Stockholm_POps.pdf.
- ¹¹⁵ 7 U.S.C. § 1360(a) (2011).
- ¹¹⁶ *Id.* § 1360(b) (2011).
- ¹¹⁷ U.S. EPA, “International Agreements and Treaties,” <http://www.epa.gov/oppfead1/international/trade/index.html> (last visited Dec. 7, 2011).
- ¹¹⁸ Ditz et. al, *supra* note 114, at 9.
- ¹¹⁹ Elana Schor, *Obama Admin Steps Up Pressure to Ratify Treaties on Toxics*, N.Y. TIMES, September 24, 2010.
- ¹²⁰ President Ronald Reagan, Statement on United States Ocean Policy (March 10, 1983) <http://www.reagan.utexas.edu/archives/speeches/1983/31083c.htm>.
- ¹²¹ Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, G.A. Res. 48/263, U.N. Doc. A/48/263 (Aug. 17, 1994).
- ¹²² See President’s Statement on Advancing US Interests in the World’s Oceans (May 15, 2007), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070515-2.html>; *U.S. Ocean Action Plan: The George W. Bush Administration’s Response to the U.S. Commission on Ocean Policy 5 and 35* (October 28, 2005) available at http://www.cmts.gov/downloads/US_ocean_action_plan.pdf.
- ¹²³ In a recent executive order, President Obama committed his administration to pursuing United States accession to the LOS Convention. See Exec. Order No. 13,547, *Stewardship of the Ocean, our Coasts, and the Great Lakes* (July 19, 2010), available at <http://www.whitehouse.gov/files/documents/2010stewardship-ee.pdf>.
- ¹²⁴ See Letter from the United States Chamber of Commerce to the Members of the United States Senate (Dec. 3, 2007), available at <http://www.oceanlaw.org/downloads/references/industry/ChamberOfCommerce3Dec07.pdf>.
- ¹²⁵ In its Final Recommendations, the Task Force unanimously concluded that joining the LOS Convention was in United States’ national security, environmental, economic and diplomatic interests. See Final Recommendations of the Interagency Ocean Policy Task Force (July 19, 2010), http://www.whitehouse.gov/files/documents/OPTF_FinalRecs.pdf.
- ¹²⁶ Letters of support from these and other organizations are included in the *Law of the Sea Briefing Book*, Citizens for Global Solutions, available at http://archive2.globalsolutions.org/files/general/Law_of_the_Sea_Briefing_Book.pdf.
- ¹²⁷ Press Release, The White House, President’s Statement on Advancing U.S. Interests in the World’s Oceans (May 17, 2007), available at <http://georgewbush-whitehouse.archives.gov/news/releases/2007/05/20070515-2.html>.
- ¹²⁸ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, A/CONF.164/37 (Sept. 8, 1995) (entered into force on December 11, 2001). There are now 78 Parties to the UN Fish Stocks Agreement.
- ¹²⁹ United Nations Convention on the Law of the Sea, art. 76, and Annex II, art. 4, Dec. 10, 1982, 1833 U.N.T.S. 397.
- ¹³⁰ *Id.* at Annex II, art.3.

To see more of CPR's work or to contribute,
visit CPR's website at www.progressivereform.org.

455 Massachusetts Avenue, NW

150-513

Washington, DC 20001

202-747-0698 (phone/fax)



RETURN UNDELIVERABLES TO:

Center for Progressive Reform

455 Massachusetts Avenue, NW

150-513

Washington, DC 20001