

Prioritizing Regional Wildlife Conservation by Rejuvenating the Western Hemisphere Convention on Nature Protection

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Recommended Citation

Shade Streeter, David Hunter, and William Snape III (2023) "Prioritizing Regional Wildlife Conservation by Rejuvenating the Western Hemisphere Convention on Nature Protection," *Sustainable Development Law & Policy*. Vol. 23: Iss. 2, Article 5.

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PRIORITIZING REGIONAL WILDLIFE CONSERVATION BY REJUVENATING THE WESTERN HEMISPHERE CONVENTION ON NATURE PROTECTION

By: *Shade Streeter, David Hunter, and William Snape, III**

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I. INTRODUCTION

Last year, parties to the Convention on Biological Diversity (“CBD”), representing nearly every nation, signed a milestone agreement committing, among other things, to conserve thirty percent of Earth’s lands and oceans to stave off the rapid diminution of the planet’s biodiversity.¹ Implementing these global commitments will require not only strong domestic measures, but also enhanced regional cooperation targeting the conservation of the region’s migratory wildlife and shared resources. Although the United States is the sole major holdout from the CBD, it can still reassert its leadership in regional wildlife conservation by rejuvenating the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (“Western Hemisphere Convention”).²

Much of the attention on wildlife conservation focuses on global treaties, such as the CBD, Convention on the Conservation of Migratory Species of Wild Animals (“CMS”) and the Convention on International Trade in Endangered Species (“CITES”).³ These global initiatives are important, but they are insufficient to achieve sustainable conservation goals, in part because the United States, a major global player and landholder, has failed to ratify both the CBD and CMS.⁴ Additionally, international conservation efforts have not been tailored to the scale of conservation priorities.⁵ Moreover, the rights of indigenous peoples have frequently been ignored or trampled upon in the past, due in no small part to a lack of international interest in their protection.⁶ In the Western Hemisphere, the confluence of widespread wildlife migrations and movements, shared seas, lakes and rivers, and shared economic and social backgrounds make regional cooperation vital for effective conservation. Fortunately, the United States, decades ago, led the Western Hemisphere’s efforts to adopt a legal framework for effective regional conservation through the Western Hemisphere Convention.⁷ Finalized in Washington, D.C. on October 12, 1940, the Western Hemisphere Convention was signed by nineteen nation-states, including the United States, that pledged their respective republics to jointly conserve the common heritage of the Western Hemisphere—its shared and abundant biodiversity—for future generations.⁸

Despite the turmoil of the Second World War, the Western Hemisphere Convention established a robust and flexible framework for the protection of wildlife in the hemisphere in the first few years after its ratification.⁹ Between the 1940s and 60s, a few Latin and South American nations used the articles of the convention to establish protected spaces throughout the hemisphere;¹⁰ however, with the end of U.S. State Department funding and the Technical Advisory Committee to the Western Hemisphere Convention in 1948 the Western Hemisphere Convention fell into disuse.¹¹ Today, twenty-two parties have joined the Convention.¹² From the Aleutian Islands to Cape Horn, a majority of the Western Hemisphere is now covered by the Western Hemisphere Convention.¹³

While the global community has begun the long journey toward creating a shared system of global responsibility for the

preservation of the Earth’s biodiversity through various international agreements such as CBD, CMS, and CITES, the United States has left a noticeable absence in many of these efforts.¹⁴ The revitalization of the Western Hemisphere Convention through an allocation of funding and a meeting of the parties offers the United States a means to fill the gaps left by its absence in the international regimes.¹⁵ It also would allow for a structure in conservation policy to respond to the increasing calls throughout the Western Hemisphere to reflect indigenous knowledge and new understanding of migratory connectivity.¹⁶ The United States and its partners in North and South America can use the path it has already carved through the Western Hemisphere Convention to implement global goals at the regional level.

This article argues that the Western Hemisphere Convention is a critical link to find common ground across borders in the fight against the loss of nature and environmental degradation and has the potential to fill the same role as the CBD in the Western Hemisphere. In Part II we discuss the Western Hemisphere Convention, its articles and objective. In Part III we analyze the global framework of international agreements that exists today and how it regulates conservation in the Western Hemisphere. In Part IV we examine how a revitalized Western Hemisphere Convention would fit into this framework, and the benefits it would bring. Finally in Part V we conclude by reinforcing why the United States should revitalize the Western Hemisphere Convention and how revitalization could occur.

II. THE SPIRIT AND PURPOSE OF THE WESTERN HEMISPHERE CONVENTION IN PROTECTING THE COMMON HERITAGE OF THE WESTERN HEMISPHERE IS STILL HIGHLY RELEVANT TODAY

A. PRESERVING SPECIES AND HABITATS

While the Western Hemisphere Convention was built on the backs of other, smaller international agreements—the United States–Mexico Migratory Bird Treaty for example—its revolutionary vision of a protected Pan-American wilderness landscape was sweeping and profound at its inception.¹⁷ The articles of the Western Hemisphere Convention require parties to designate areas of land within their borders as protected zones in the form of national parks, national reserves, nature monuments, and strict wilderness reserves “[i]n all cases where such establishment is feasible.”¹⁸ Within the boundaries of these designated refuges, “hunting, killing[,] and capturing of members of the fauna and destruction or collection of representatives of the flora” is prohibited absent the respective legislative authority of the contracting government.¹⁹ In addition, the Western Hemisphere Convention asks each party to submit a list of protected fauna, which would bind the signatories to safeguarding “as completely as possible” multi-national, cross border species.²⁰ Only under “special circumstances,” such as for scientific purposes, would the taking of any listed species be acceptable; and only then, with the “permission of the appropriate government authorities in the country.”²¹ The impact and success of these lists under the Annex to the Western Hemisphere Convention cannot be

overstated. Approximately ninety-eight percent of the hundreds of species listed by the various nations have continued into the present day.²² Of the species listed by the United States, for example, only one—the Ivory-Billed Woodpecker also known euphemistically as the ‘Lord God Bird’—has been declared extinct, and even this declaration has recently come under intense scrutiny.²³

B. CROSS-REGIONAL COOPERATION

Beyond the protection of species and the establishment of protected wilderness, the Western Hemisphere Convention calls upon the signatories to “lend proper assistance” to scientific research and to “make available to all the American Republics equally through publication or otherwise the scientific knowledge resulting from such cooperative effort.”²⁴ Thus, the Western Hemisphere Convention goes steps beyond the preservation of the status quo, and calls upon its members to actively participate in the expansion of biodiversity, protected spaces, and proliferation of scientific knowledge.²⁵ This vision of shared responsibilities and benefits is the very heart of the Convention: the preamble to the articles describes the governing mission of the signatories, “wishing to protect and preserve in their natural habitat representatives of all species and genera of their native flora and fauna.”²⁶ Just as the migratory birds listed in the Convention do not recognize international borders, the Convention seeks to do away with rigid national distinctions when it comes to preserving the “extraordinary beauty, . . . and natural objects of aesthetic, historic, or scientific value” which encompass the shared heritage of every member to the Western Hemisphere Convention.²⁷

III. THE INTERNATIONAL CONSERVATION LEGAL FRAMEWORK FOR THE AMERICAS

Around the world, nations and regional treaties have begun stitching together an important network of international environmental cooperation to combat global warming and deteriorating biological diversity. The Western Hemisphere Convention is a critical link to find common ground across borders in the fight against the loss of nature and environmental degradation and has the potential to bootstrap the efforts of these international treaties where United States absence has left implementation gaps.

A. THE CONVENTION ON BIOLOGICAL DIVERSITY

The CBD is the global community’s most comprehensive response to species extinction and ecosystem degradation caused by human impact.²⁸ The CBD has established programs—like the Programme of Work on Protected Areas²⁹—and seeks international cooperation to protect biodiversity at the ecosystem, species, and genetic level while also providing a platform for multinational scientific discourse.³⁰ The objectives of the CBD are the “conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits.”³¹ The Convention is explicitly “[c]onscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational,

cultural, recreational and aesthetic values of biological diversity and its components.”³²

These CBD objectives are the essential root of the Western Hemisphere Convention as well.³³ In December of 2022, the parties to the CBD met in Montreal, Canada to set “the framework for resource mobilization” and “[highlight] the contribution of nature to climate change mitigation”³⁴ Unlike the Western Hemisphere Convention, the United States is not a member of the CBD, and absent unlikely ratification by the U.S. Senate, will remain a mere signatory to the CBD.³⁵ However, if the Biden Administration were to revitalize the Western Hemisphere Convention, it could augment the objectives of the CBD by providing a platform for the U.S. and other parties³⁶ to begin integrating United States resources, expertise, and ideals into the conjoined efforts of the international community already in place under the CBD.³⁷

The global targets set forth in the CBD agreement reached in Montreal emphasize the importance of ecological integrity not only for the preservation of wildlife, but also for the significant role intact ecosystems play in reducing the globe’s rising temperature.³⁸ A growing recognition of the linkage between biodiversity and climate change helped spur the international community to adopt these ambitious targets for 2030 and provides the impetus to revisit the Western Hemisphere Convention.³⁹

The nexus between the twin crises of biodiversity and climate change is land use.⁴⁰ As humans destroy habitats and biodiversity is lost, carbon sinks are also eliminated; as ecosystems are protected for the life they harbor, so too is carbon kept sealed on the planet’s surface.⁴¹ Protected areas are increasingly surrounded by human activity, disconnecting them from the rest of the natural environment and slowly or rapidly snuffing them out.⁴² The global biodiversity framework adopted in Montreal under the CBD seeks to reverse this trend in the world’s threatened areas and the Western Hemisphere Convention—which asks parties to “explore at once the possibility of establishing in their territories” protected spaces “[i]n all cases where such establishment is feasible”—is perfectly poised to aid in that goal.⁴³ The Americas contain the world’s most biodiverse terrestrial regions, and some of the most threatened; the articles of the Convention call on the parties to conserve large tracts of land for the benefit of the wildlife and the human communities that rely on them.⁴⁴ And while the CBD has not been granted the much-needed support of the United States, the Western Hemisphere Convention passed that hurdle decades ago when the United States ratified it in 1941.⁴⁵ Revitalizing the Western Hemisphere Convention—reemphasizing preserving landscapes and wild places, harmonizing it with the CBD, and calling on party nations to conserve habitats within their borders—would bring the U.S. back into its global leadership role. This would greatly enhance the effectiveness of the 2030 CBD global biodiversity framework.⁴⁶

B. THE CONVENTION FOR THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS

The primary goal of the CMS is to protect and maintain populations of migratory species as well as their ranges and habitats.⁴⁷ Under Appendix I of the CMS, parties list species that are endangered based upon “reliable evidence, including the best scientific evidence available, [which] indicates that the species is endangered.”⁴⁸ Once a species is listed under Appendix I, as agreed upon by the parties to CMS, the parties which are “Range States” of that species “shall endeavor to conserve and, where feasible and appropriate restore those habits of the species which are of importance in removing the species from danger of extinction.”⁴⁹ Further, parties which are Range States of a species listed under Appendix I “shall prohibit the taking of animals belong to such species.”⁵⁰ The CMS achieves these objectives primarily by serving as an umbrella for “separate, international legally-binding instruments and other agreements among range states of single migratory species or . . . groups of species.”⁵¹ The CMS “family” of instruments is comprised of agreements made between parties which have been narrowly tailored to fit the conservation needs of a region, species, or groups of species.⁵² The flexible approach to protecting cross border species espoused by the CMS mirrors the regional approach taken by the framers of the Western Hemisphere Convention.⁵³ It is an approach which respects each nation’s sovereignty over its territory yet recognizes that species cannot and will not adhere to national boundaries and thus must be protected through joint effort.⁵⁴

Revitalization of the Western Hemisphere Convention would bolster the international conservation efforts put in place by the CMS.⁵⁵ The United States, while not a party to the CMS, could join that effort through its revitalization of the Western Hemisphere Convention. The Western Hemisphere Convention, and its regional approach to biological conservation, could operate as a platform for dialogue between its signatories and the parties to the CMS to advance CMS priorities. The CMS also provides an example for potential agreements under the Western Hemisphere Convention, agreements made between the parties that target an individual species or specific regions within the hemisphere that require narrowly tailored conservation strategies.⁵⁶

C. THE REGIONAL CONSERVATION FRAMEWORK

Beyond the CMS and CBD, a patchwork of multinational, regional environmental treaties has sprung up across the Western Hemisphere, seeking to protect one or a handful of species. Treaties like the 2001 Inter-American Convention for the Protection and Conservation of Sea Turtles (“Sea Turtles Convention”), or the North American Monarch Conservation Plan (“NAMCP”), have made great strides in ensuring the survival of their focus species, but it is only through regular gatherings under a single roof that the spirit and substance of these treaties can be fully realized.⁵⁷ A revitalized Western Hemisphere Convention meeting annually or biannually could be utilized to fill implementation gaps left

by these disparate treaties and bring a holistic approach to the region’s efforts to stem the loss of biodiversity. Meetings of the Western Hemisphere Convention could serve as the roof under which the regional actors gather to share scientific data, cooperate on the development of management plans, compare effective conservation strategies, discuss resource allocation and species prioritization, and develop new strategies to help their focus species—and by extension, all species.

While working apart these treaties may do a great deal of good for the globe and its inhabitants; however, if they were to work in tandem, under a Western Hemisphere Convention framework, this would begin centralizing the disparate international treaties covering the natural world, thus creating a new, potent, and powerful system of international regional cooperation.

D. FUTURE AGREEMENT AND INCORPORATION OF INDIGENOUS KNOWLEDGE SYSTEMS

Not only would revitalization of the Western Hemisphere Convention serve to support and uphold various other international agreements, but it would also serve as an essential platform for the United States—as the nation which began the Western Hemisphere Convention and could infuse its rejuvenation with must needed resources—and its partners to formalize protocols and rules for multilateral governance. When the Western Hemisphere Convention was drafted and signed the modern modes of international diplomacy had not been solidified into the state they are in today.⁵⁸ Principles such as prior-informed consent and the precautionary principle were largely unknown at the time of the Western Hemisphere Convention’s signing; however, revitalizing the Western Hemisphere Convention, today, would inject these issues into the forum such revitalization would provide.⁵⁹

Prior-informed consent is essential to building the sustainable future the Biden Administration envisions. It stands for the principle that all nations are sovereign in their own right, and that none can make changes or developments in another without first seeking the permission and authorization of the home government.⁶⁰ This principle is now well established and particularly vital for the indigenous communities of the Western Hemisphere who have felt the heavy burden of environmental change for centuries and will likely be the communities most impacted by the warming climate.⁶¹ Thus, revitalization is also essential to affirm a new modus operandi of international relations and create a workable negotiation framework for a diverse community of nations.⁶²

Indigenous communities and knowledge played a crucial role in catalyzing the agreements now in place amongst CBD parties.⁶³ These voices, which have been largely ignored or actively suppressed by the governing bodies in the Americas for generations, have come into the fore and are lighting the path to a sustainable future.⁶⁴ Having lived in some of the most threatened and fragile ecosystems on the planet, indigenous peoples hold knowledge and tools to preserve, restore, and sustain those ecosystems.⁶⁵ Moreover, these communities are utilizing outside

technology to innovate their own knowledge systems, creating a robust and highly effective mode of ecological interaction.⁶⁶

The Western Hemisphere Convention's emphasis on knowledge-sharing could serve as a mandate for bringing these indigenous knowledge systems into the forefront of international environmental policy and cooperation.⁶⁷ By harmonizing modern governance approaches with traditional sovereignty and other associated legal rights of indigenous communities, a revitalization of the Western Hemisphere Convention would enhance the endeavors of indigenous American peoples and bring their voices to the forefront of the international environmental movement. By providing resources to these often ignored and underfunded systems of knowledge and supplementing modern dialogue frameworks, a reinvigorated Western Hemisphere Convention could ensure the inclusion of traditionally excluded communities and the more equitable and efficient protection of natural spaces.⁶⁸

Aside from the diplomatic and political advances possible under a revitalized Western Hemisphere Convention, scientific advances would be well heralded in a meeting of the parties. As previously stated, one of the main purposes behind the original drafting and ratification of the Western Hemisphere Convention was to provide a framework for biologists, ecologists, and other scientists from each of the party nations to share their data and conclusions.⁶⁹ Notably, the potential for gathering and sharing scientific information is far greater today than it was in 1940s.⁷⁰ Today, scientific advances allow for precise and holistic study of the migratory species of the Western Hemisphere.⁷¹ Where before flocks of migrating birds had to be tallied by hand, resulting in an incomplete picture of a species journey from one border to another, science now gives people the tools to precisely measure the exact route of even migratory insects.⁷² Despite these advances in technology and understanding, scientists and environmentalists across the Western Hemisphere are struggling to coordinate their efforts and gather the information necessary to establish working strategies for cross-border conservation.⁷³ The Western Hemisphere Convention, with its system for scientific knowledge-sharing baked into its articles, provides a ready remedy to this lingering obstacle and should be utilized to establish a broader framework for the coordination of other international agreements which call for scientific knowledge-sharing.⁷⁴ Under a Western Hemisphere Convention framework, modern technology can and should be used to fulfill the prescient vision of an international scientific community dedicated to the preservation of the hemisphere's biological diversity.

IV. THE CONVENTION FOR WESTERN HEMISPHERE NATURE PROTECTION IS NEEDED IN THE 21ST CENTURY

A. MODERN LOSSES IN BIODIVERSITY AND MODERN STRATEGIES TO COPE

The Western Hemisphere is home to the most biodiverse regions on Earth and to approximately sixty percent of the world's species.⁷⁵ The Amazon basin, alone, accounts for ten

percent of the planet's biodiversity.⁷⁶ Within the hemisphere, Latin American and Caribbean nations alone have seen over a ninety percent reduction in species populations between 1970 and 2016.⁷⁷ In just the year 2020, "President Jair Bolsonaro's war on trees cost 4,280 square miles of the Amazon . . . a twelve-year high," while in Argentina, "the country's own environmental minister described 'ecocide'" when ranchers ignited fires which burned hundreds of square miles of forest.⁷⁸

The damage wrought in Brazil is not for Brazil alone to deal with. Like all environmental catastrophes, the effects of the fires in the Amazon are hemispheric and global.⁷⁹ As "Father of the National Parks" John Muir wrote over a century ago, "[w]hen we try to pick out anything by itself, we find it hitched to everything else in the Universe."⁸⁰ Some migratory species covered by the Western Hemisphere Convention, for example, are in special need of protection due to the nature of their disparate and disconnected habitats.⁸¹ They of course do not recognize international borders and without concerted efforts on either side of our borders, these species face a dire position. Migratory species also include some of the largest and most predominant groups of species, from hundreds of species of birds to the monarch butterflies—essential pollinators who carry modern agriculture on their lilliputian shoulders.⁸² Since the signing of the Western Hemisphere Convention, science has devised new and effective means of tracking and monitoring migratory species.⁸³ These new technologies may serve as a guide for reshaping the Convention's mandate to match a modern understanding of the Western Hemisphere.⁸⁴

B. IMPACT ON THE PEOPLES OF THE AMERICAS AND NEW EFFORTS UNDER THE CONVENTION

It is not the flora and fauna, alone, who will benefit from a revised Western Hemisphere Convention mandate. The peoples of the Americas will benefit. Their lives, their health, and their countries' economies will be greatly enhanced under a vigorous system of international environmental protections.⁸⁵ Many South and Central American nations have begun emphasizing 'ecotourism,' which affords major monetary benefits from the influx of foreign and domestic tourists drawn to see wilderness and wild species in unique local habitats.⁸⁶ In the United States approximately \$40 billion are spent annually by bird watchers alone as they travel around the country seeking rare birds.⁸⁷ This form of economic impact would only be expanded as the articles of the Western Hemisphere Convention are invoked, creating new wilderness areas for international travel and conserving species that bring in flocks of tourists, and their wallets.

C. DESPITE BEING UNFUNDED, THE WESTERN HEMISPHERE CONVENTION IS BEING USED TODAY BY SOME PARTY MEMBERS

More nations have joined the effort since the Western Hemisphere Convention's formation in 1940 by ratifying the treaty in their territories.⁸⁸ Today, only thirteen American nation-states within the Western Hemisphere remain non-parties to the Western Hemisphere Convention.⁸⁹ Several nations that joined

the Western Hemisphere Convention at its inception, as well as other nations who have since ratified it in subsequent decades, have shown a renewed spark of interest in the robust ideals and directives found in the agreement.

Argentina has recently adopted a national regime for the identification and establishment of “areas of the territory of the republic that due to their extraordinary beauty or richness in native flora or fauna may be declared national reserves or national monuments to be protected and conserved for scientific research, education and enjoyment of present and future generations.”⁹⁰ This language and intent bears a striking resemblance to its inspiration, the Western Hemisphere Convention, which Argentina joined at its inception.⁹¹ The Secretary of the Environment of Paraguay, pursuant to Article II, Section III of the Western Hemisphere Convention, notified the Pan-American Union in 2018 that Paraguay had declared the Yetyty Estuary a protected wildlife area.⁹² Furthermore, in January of 2022, Costa Rica invoked the Western Hemisphere Convention’s mandate for States to maintain effective protected areas as a prime justification in issuing a decree that significantly expanded the boundaries of the Cocos Island National Park.⁹³ These examples do not stand alone. There is a palpable appetite around the hemisphere for the regime of international cooperation provided for by the Convention.⁹⁴

No event illustrates more profoundly both the international need for the revitalization of the Convention than the most recent Summit of the Americas in June 2022.⁹⁵ At the Summit, the Organization of American States approved five multinational commitments, one of which was a declaration in support of “Our Sustainable Green Future.”⁹⁶ This declaration commits the party governments to “[a]dopt, as appropriate, national initiatives to halt and reverse forest loss and land degradation, which includes the protection of biodiversity and ecosystems, implementing more ambitious actions in keeping with science” and to “[e]nhance environmental education, through research and active and inclusive participation from all stakeholders.”⁹⁷ These commitments resonate strongly with the commitments made by many of these same nations eight decades ago when they signed the commitments made at the Western Hemisphere Convention.⁹⁸

The only striking difference between the two sets of commitments is the Summit of the Americas emphasis on climate change.⁹⁹ Though anthropic climate change was unknown to the drafters and signers of the Convention, its language needs few adjustments to match the climate-focused language found throughout the recent declaration by the Organization of American States.¹⁰⁰ While the goal of the Western Hemisphere Convention was not to prevent or reduce humanity’s impact on the global climate, its goal of preserving persevering forever the biodiversity and ecosystems of the Western Hemisphere is nevertheless essential to dampening the ravages of a warmer planet.


V. THE UNITED STATES SHOULD LEAD AN EFFORT TO CALL A MEETING OF THE WESTERN HEMISPHERE CONVENTION PARTIES

The potential for hemispheric cooperation is already embedded in the Western Hemisphere Convention, and a renewed commitment to that principle would have profound benefits for the Western Hemisphere and every nation-state within.¹⁰¹ An expanded and enforced list of protected species would slow the precipitous decline in the biodiversity of the hemisphere. Adherence to the Western Hemisphere Convention’s emphasis on scientific research and knowledge-sharing would present solutions to those nations battling the worst impacts of a warming climate and connect the American nations at an intimate, human level. The articles of the Western Hemisphere Convention outlining when, where, and why nations should designate protected spaces could be expounded upon by including a habitat’s use as a carbon sink as a criterion for protection, leading to the preservation of vast acreages of wilderness essential to soaking up excess carbon and slowing the rate of global warming.¹⁰² Green corridors could be created, linking not only the protected flora and fauna of the various nation-states, but also the nations themselves.¹⁰³ The decades which followed the signing of the Convention demonstrate, on a grand scale, the beneficial impacts of international cooperation.¹⁰⁴ The United States and the nations of the Western Hemisphere should use those past decades of successful experience and implementation in international diplomacy and conservation as a model for the decades to come.

If the common heritage of the Western Hemisphere is to be preserved, dramatic steps must be taken in record time.¹⁰⁵ Revitalization of the prescient Western Hemisphere Convention provides a clear opportunity to bypass the tedious and improbable prospect of Senate ratification of another environmentally focused international agreement.¹⁰⁶ The parties to the Western Hemisphere Convention should immediately move forward under the Convention, organize a meeting of the parties, and pursue the adoption of a well-funded secretariat who could facilitate regular meetings of the parties; support, maintain, and distribute information from the Parties; create a science-policy interface; and establish a framework for broader, more inclusive dialogue on regional conservation issues. Funding a secretariat would cost the governments of the Western Hemisphere a microscopic amount, especially in comparison to the billions required by the environmental destruction that such a secretariat could ameliorate.¹⁰⁷ The nations of the Western Hemisphere who are not yet party to the Western Hemisphere Convention, such as Canada and Jamaica, should be invited to this meeting and asked to join this hemispheric effort.¹⁰⁸

It is only through working in tandem, as a united hemisphere, that the objectives and spirit of the Western Hemisphere Convention can fully be achieved. A revitalized Western Hemisphere Convention could ensure that: vast landscapes are conserved on either side of international borders; migratory species are protected at their origin and destination; critical

indigenous knowledge systems are expanded and utilized; indigenous communities are respected and their consent obtained; wide spread sharing of scientific tools and information is achieved; and robust economies are centered on the recreational and aesthetic enjoyment of the Western Hemisphere's shared ecological heritage. There is a deluge of worsening threats stemming from climate change bearing down upon the entirety of the Western Hemisphere, and the decades-old Western Hemisphere Convention is a metaphorical dam waiting in the wings.

As partners in the Western Hemisphere seek to strengthen their economic and trade ties, there must be a concomitant effort to expand our ecological connections and cooperation as well. The United States, as a country of vast economic wealth and international repute—as well as the nation which led the effort to ratify the Western Hemisphere Convention nearly a century ago—should lead the effort to revitalize this essential treaty. The nations of the Western Hemisphere, led once again by the United States, should not hesitate to use this invaluable tool.¹⁰⁹ 

ENDNOTES

¹ *COP15: Nations Adopt Four Goals, 23 Targets for 2023 in Landmark U.N. Biodiversity Agreement*, U.N. CONVENTION ON BIOLOGICAL DIVERSITY (Dec. 19, 2022) [hereinafter *COP15*], <https://www.cbd.int/article/cop15-cbd-press-release-final-19dec2022>.

² See CONVENTION ON NATURE PROTECTION AND WILD LIFE PRESERVATION IN THE WESTERN HEMISPHERE, art. 1-12, 1940, T.S. 981 [hereinafter WESTERN HEMISPHERE CONVENTION].

³ See generally THE CONVENTION ON BIOLOGICAL DIVERSITY, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD]; CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS, Nov. 6, 1979, 1651 U.N.T.S. 333 [hereinafter (“CMS”)]; CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, Jan. 13, 1976, 993 U.N.T.S. 243. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) is an international agreement signed in Washington D.C. which is designed to regulate the international trade of wildlife products and prevent such trade from driving species to extinction.

⁴ See *Parties and Range States*, CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS <https://www.cms.int/en/parties-range-states> (last visited Mar. 7, 2023); *List of Parties*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/information/parties.shtml> (last visited Mar. 7, 2023) (displaying a list of nations party to the treaties that does not include the United States).

⁵ See, e.g., UNITED NATIONS ENVIRONMENT PROGRAMS, TOO LITTLE, TOO SLOW CLIMATE ADAPTATION FAILURE PUTS WORLD AT RISK: ADAPTATION GAP REPORT 2022 4–5, 10 (describing the progress being made globally to combat climate change, while acknowledging that the devastating trends of anthropogenic climate change have already begun globally).

⁶ See generally James Anaya, U.N. Special Rapporteur, Address to U.N. Permanent Forum on Indigenous Issues in New York (April 22, 2010) (stating indigenous peoples often hold the solutions to sustainability challenges yet bear the brunt of the impact for governments failures to implement any solutions).

⁷ See *Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280150233&clang=_en (last visited Apr. 19, 2023) (showing that the treaty was concluded in the U.S. and the U.S. was the first to ratify the treaty).

⁸ *Signatories and Ratifications*, ORG. AM. STATES, <https://www.oas.org/juridico/english/signs/c-8.html> (showing signatories that joined the Convention in 1940–41 are as follows: Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Peru, the United States, Uruguay, and Venezuela).

⁹ Keri Lewis, *Negotiating for Nature: Conservation Diplomacy and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 1929–1976* 230–32 (Spring 2008) (Ph.D. dissertation, Univ. N.H.) (on file with author).

¹⁰ *Id.* at 232–34 (providing a list of nations and their use of the Western Hemisphere Convention to establish national parks and monuments). Although the United States also created national parks and monuments between the 1940s and 60s, it did so through legislation and executive order not through the Western Hemisphere Convention.

¹¹ See *id.* at 231.

¹² See *Signatories and Ratifications*, *supra* note 8 (noting signatories that joined the Convention after 1940–41 are as follows: Panama (1965), Paraguay (1979), Suriname (1985), and Trinidad and Tobago (1969)).

¹³ See *id.* (identifying that the United States and Chile are parties; Alaska is in the United States and spans to the northwestern edge of the Western Hemisphere and on the southernmost point of the hemisphere, Cape Horn, is covered by Chile which is a party).

¹⁴ See *Parties and Range States* *supra* note 4; *List of Parties*, *supra* note 4.

¹⁵ See *Parties and Range States* *supra* note 4; *List of Parties*, *supra* note 4 (displaying a list of parties to international conservation treaties to which the United States is not a party).

¹⁶ See, e.g., *COP15*, *supra* note 1 (incorporating Goal C, the parties to the CBD established a priority that “traditional knowledge associated with genetic resources, as applicable, are shared fairly and equitably, including, as appropriate with indigenous peoples and local communities”).

¹⁷ CONVENTION FOR THE PROTECTION OF MIGRATORY BIRDS AND GAME MAMMALS, Mex.-U.S., Feb. 7, 1936, 50 Stat. 1311 (in this first of its kind agreement between the United States and Mexico the two countries declared “it is right and proper to protect the said migratory birds, whatever may be their origin, in the United States of America and the United Mexican States, in order that the species may not be exterminated”).

¹⁸ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at art. 2.

¹⁹ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at art. 3.

²⁰ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at art. 8 (declaring the special urgency of species protection).

²¹ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at art. 8.

²² WESTERN HEMISPHERE CONVENTION, *supra* note 2, at art. 8 (percentage was found by researching how many species listed under the Western Hemisphere Convention have suffered extinction).

²³ See Oliver Milman, *Back From the Dead? Elusive Ivory-Billed Woodpecker Not Extinct, Researchers Say*, THE GUARDIAN (Apr. 13, 2022), <https://www.theguardian.com/environment/2022/apr/13/ivory-bill-woodpecker-not-extinct-researchers-say> (announcing researchers’ claim that the Ivory-Billed Woodpecker is not extinct); see also Dino Grandoni, “This Bird Is Extinct, the Government Says. Not Everyone Is So Sure.,” THE WASHINGTON POST (Dec. 19, 2022), <https://www.washingtonpost.com/climate-environment/2022/12/19/ivory-billed-woodpecker-extinct/>.

²⁴ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at art. 6 (describing cooperation among treaty signatories).

²⁵ *Id.* (describing cooperation among treaty signatories).

²⁶ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at preamble (announcing the purpose of the Convention).

²⁷ WESTERN HEMISPHERE CONVENTION, *supra* note 2, at preamble.

²⁸ See, e.g., *The United Nations Convention on Biological Diversity*, FED. MINISTRY ENV’T, NATURE CONSERVATION, NUCLEAR SAFETY & CONSUMER PROT. (May 30, 2023), <https://www.bmu.de/WS4354-1> (stating “[t]he Convention on Biological Diversity (“CBD”), with currently 196 contracting parties, is the most comprehensive binding international agreement in the field of nature conservation and the sustainable use of natural resources.”).

²⁹ *Programme of Work*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/protected/pow/> (last visited Mar. 7, 2023) (stating that the program established under the treaty integrates conservation efforts over the