INTERNATIONAL AGREEMENTS TO PROTECT THE ENVIRONMENT AND WILDLIFE

Report to the Committee on Finance,
United States Senate, on
Investigation No. 332–287
Under Section 332 of the
Tariff Act of 1930

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PREFACE

The U.S. International Trade Commission (Commission) instituted the present investigation, International Agreements to Protect the Environment and Wildlife, Investigation No. 332-287, on January 19, 1990, following receipt of a letter from the Senate Committee on Finance (reproduced in appendix A). In the letter, the chairman of the committee requested that the Commission institute a study, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), to identify agreements to protect the environment that are made effective through trade restrictions,[1] their signatories and significant nonsignatories, dispute settlement and enforcement mechanisms, and procedures for the exchange of information. In particular, the Commission was asked to discuss the actions taken by the United States and other major signatories to implement these agreements, and to identify the Government agencies responsible for such implementation. Finally, the Commission was asked to suggest a method for conducting a periodic evaluation of these and future treaties.

Copies of the notice of institution of the investigation were posted at the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* of January 31, 1990 (55 F.R. 3283, reproduced in appendix B). The information contained in this report was obtained from extensive fieldwork and library research by the Commission's staff, from the Commission's files, from questionnaire responses from various Government agencies, from written submissions of interested parties, and from other sources.

[1] A preliminary review of agreements revealed relatively few that rely on trade sanctions for enforcement. In her response to the Senate Finance Committee (see app. B), the Chairman of the Commission indicated that the staff would also examine significant agreements that do not employ trade sanctions for enforcement.

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EXECUTIVE SUMMARY

The Commission identified 170 multilateral (global and regional) and bilateral agreements that are of significance to U.S. interests. About two-thirds of these agreements have been signed since 1972, the year in which the Conference on the Human Environment was held in Stockholm, Sweden. The conference marked the first time that high-level officials of a large number of nations had gathered for the purpose of fostering world-wide cooperation on matters relating to the environment.

Most international organizations that address environment and wildlife issues were established during the past 20 years. Probably the best known and most influential of these organizations is the United Nations Environmental Program (UNEP), headquartered in Nairobi, Kenya. There are several other U.N. organizations active in environmental and wildlife matters.

The present U.S. environmental program and organization dates back to the National Environmental Policy Act of 1969 (NEPA), which established the President's Council on Environmental Quality. The Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) were established in 1970. Currently there are at least a dozen Federal agencies with environment or wildlife programs designed to meet the requirements of U.S. environmental law.

The General Agreement on Tariffs and Trade (GATT), which was drafted long before worldwide attention was focused on environment and wildlife issues, only indirectly provides for such issues. Several GATT articles can be considered relevant to environmental measures adopted at the national level. For example, article XX of the GATT allows a member country to take certain measures "necessary to protect human, animal or plant life" and measures "relating to the conservation of exhaustible natural resources," provided that they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries. Several GATT dispute panels have addressed country measures related to environmental and wildlife protection matters. In addition, the GATT Standards Code, negotiated in 1979, makes reference to measures taken to protect the environment and wildlife.

In response to the Senate Finance Committee's request that the Commission suggest a method for the U.S. Government to periodically evaluate present and future agreements, the Commission suggests the establishment of an "environmental practices report." Such report would be compiled by a single designated Federal agency, with information collected on individual agreements from the various agencies responsible for implementing and monitoring their provisions in the United States. A base report, in loose-leaf form, would contain (1) basic information on each agreement's objectives and mechanisms for information exchange, enforcement, and dispute settlement; (2) summary of or reference to scientific and statistical reports published by recognized environmental experts; (3) a statement of the agreement's effectiveness, in terms of participation, compliance, disputes, and important issues; and (4) when it is considered necessary, individual country assessments. The basic report could be supplemented and updated on annual basis.

The Commission solicited public comment in connection with this study. Oral hearing testimony and written submissions by the Competitive Enterprise Institute (CEI) and the American Association of Exporters and Importers (AAEI) argue that the United States should not unilaterally attempt to encourage other countries, by threatened or actual trade sanctions, to cooperate in international environment and wildlife agreements. CEI claims that U.S. environmental policies do not export well to third-world nations; that "globalized" environmental policies would be unsuccessful in practice; that trade policy with trade sanctions would be subject to distortion by special interest groups; and that environmental priorities would conflict with other political pressures. AAEI opines that unilateral trade sanctions would harm U.S. trade interests far more than they would contribute to environmental protection. Instead, AAEI advocates multinational discussions in the GATT, Organization for Economic Cooperation and Development (OECD), or other appropriate organizations to establish international environmental standards.

The 170 agreements identified by Commission staff as being of significance to U.S. interests have been categorized into eight separate, but necessarily overlapping, groups, as follows:

Marine fishing and whaling

Land animals (including birds) and plant species

Marine pollution

Pollution of air, land, and inland waters

Boundary waters between the United States and the countries of Mexico and Canada

Archaeological, cultural, historical, or natural heritage

Maritime and coastal waters matters

Nuclear pollution

Other general agreements

Nineteen agreements were identified as employing trade restrictions, which are designed to protect natural resources, wildlife, and cultural/historical property. Summary information on all these agreements (when available) includes objectives and obligations, dates signed, literature citations, enforcement and dispute-settlement provisions, information-exchange provisions, current issues, and a listing of parties. When applicable, there are discussions of significant nonsignatory countries (including the United States) and reasons for their unwillingness to become party to a given agreement.

Chapter 1
Introduction

International Concerns

To say that the protection of the Earth's biosphere[1] has become an important concern of the international community in the 1990s would be to understate and oversimplify. The possibly deleterious effects of human activity on the environment have been cause for concern ever since the beginning of the industrial revolution almost two centuries ago. The exponential growth of the world's population (5.3 billion in 1990, projected to double early in the 21st century) and the ever-increasing demand to transport people and their goods farther and farther afield have accelerated the transformation of energy and raw material resources into products for human consumption. Individual governments have exhibited differing levels of concern over the real or potential environmental problems arising from this scenario. Within days of his inauguration in January 1989, President Bush said that—

> We face the prospect of being trapped on a boat that we have irreparably damaged—not by the cataclysm of war, but the slow neglect of a vessel we believed to be impervious to our abuse.[2]

This is not to say that international concern for environmental issues has been lacking. Numerous international environmental and wildlife agreements were signed between the early 1800s and 1970, though they were generally limited to protection of migratory fish and game or prevention of ocean pollution. However, about two-thirds of the agreements currently in force were signed after 1970.

> As East-West relations enter a new phase, countries are focusing less on overt military threats than on less obvious, less politically motivated threats to global security. Foremost among these threats for the time being is transboundary pollution.[3]

Nuclear fallout from Chernobyl, acid rain in Northern Europe and Canada, toxic chemicals in the Rhine River, seasonal depletion of the ozone layer, the "greenhouse effect" and apparent global warming, deforestation in the Amazon Basin, the foundering of the **Torrey Canyon**, the **Amoco Cadiz**, and the **Exxon Valdez** are all events may rouse global interest, but some scientists believe that the problems may be even more penetrating than what appear on the nightly news.

> It is perhaps not too surprising to find the record of our increasing use of toxic metals such as lead, mercury and cadmium recorded in the bottom sediments of lakes and bogs throughout the United States and in the snowfields of the Sierra Nevada mountains in California. However, this same record is echoed in the far distant glaciers of Greenland and Antarctica, where these materials were never used until recently. The same kind of evidence exists for pesticides such as DDT which also appears in remote ice core samples and in the fat of penguins, seals and people who live many thousands of miles from where the pesticides were released.[4]

In light of these and other problems, global agreement on concerted action may be the best available option.

Various environmental issues were discussed in international forums prior to 1970, but the first truly high-level intergovernmental meeting to address the wider range of environmental problems threatening the planet was the U.N. Conference on the Human Environment, held in Stockholm, Sweden, in 1972. Since the Stockholm Conference it has become more evident that solutions to environmental problems cannot be considered without taking other factors into account. According to one expert on global climate change, such problems are—

> not only a problem in need of abatement actions, but also a symptom of an economic development approach in need of broad economic and social adjustments. Environmental issues cannot be addressed in isolation from problems of population and economic development.[5]

The U.N. sponsored at least 11 major specialized environmental conferences between 1974 and 1989, dealing with world population, environmental education, water, desertification, depletion of the ozone layer, environmental law, renewable energy sources, the threat of climate changes, and transboundary movement of hazardous wastes. It is expected that all the principal international efforts made in the past 20 years with regard to protecting the environment will be reviewed at the U.N. Conference on Environment and Development, to be held in Brazil in 1992.

In July 1989, the leaders of the seven major industrial nations (the "G-7") and the President of the Commission of the European Communities met in Paris to discuss international economic problems. However, much attention was directed to environmental issues, which account for about one-third of the summit's final declaration. Issues included were global climate change, stratospheric ozone depletion, acid rain, transboundary movement of

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[1] ". . .that thin shell at the interface of the atmosphere, hydrosphere and lithosphere where life and its products exist." United Nations Educational, Scientific, and Cultural Organization, *Final Report of the Intergovernmental Conference of Experts on the Scientific Basis for the Rational Use and Conservation of the Resources of the Biosphere*, Paris, Sept. 3-14, 1968, p. 38.

[2] The Council on Environmental Quality, *Twentieth Annual Report to the President*, 1990, p. 258.

[3] Mostafa K. Tolba, "Heeding Nature's Tug: An Environmental Agenda for International Relations," *The Fletcher Forum of World Affairs*, summer 1990.

[4] William R. Moomaw, "Scientific and International Policy Responses to Global Climate Change," *The Fletcher Forum of World Affairs*, summer 1990.

[5] Ibid., p. 261.

hazardous wastes, marine pollution, tropical deforestation, loss of biological diversity, environmentally "sustainable growth," and preservation of the Antarctic ecosystem.

International Organizations

Prior to the Stockholm Conference, the Organization for Economic Cooperation and Development (OECD) and the European Community each had created separate components specifically charged to address environmental issues. In addition, numerous other international organizations, which had been created for other purposes, were already involved in environmental activities; many of those groups are still important players in today's international environment arena. They include, among others, the following:

United Nations Educational, Scientific, and Cultural Organization (Unesco)
International Maritime Organization (IMO)
International Labor Organization (ILO)
Food and Agriculture Organization (FAO)
World Bank Group
World Meteorological Organization (WMO)
World Health Organization (WHO)
NATO Committee on Challenges of Modern Society
Organization of American States (OAS)
Organization of African Unity (OAU)
World Wildlife Fund
International Council of Scientific Unions (ICSU)
International Union for Conservation of Nature and Natural Resources

Following the Stockholm Conference, the U.N. Assembly established the United Nations Environmental Programme (UNEP), headquartered in Nairobi, Kenya. Today, UNEP is a major international advocate for environmental management, coordinating environmental activities both within the U.N. system of organizations and among other international groups. UNEP has been instrumental in various regional and global agreements, including the 1985 Convention for Protection of the Ozone Layer[6] and its 1987 Montreal Protocol. In 1989 UNEP organized the negotiations for the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Currently, UNEP is working closely with the World Meteorological Organization (WMO) to develop a treaty to prevent climate change (i.e., global warming), which some argue could have catastrophic consequences before the middle of the 21st century.

Various other U.N. groups actively pursue environmental programs. The World Commission on Environment and Development (WCED) was established in 1983 to advance the concept of "sustainable development," by which development "meets the needs of the present without compromising the ability of future generations to meet their own needs."[7]

Five U.N. regional Economic Commissions (for Europe (ECE), Africa (ECA), Asia and the Pacific (ESCAP), Latin America and the Caribbean (ECLAC), and Western Asia (ESCWA)) all include environmental considerations in their efforts to promote economic cooperation among members. Of the five commissions, the one with the most advanced environmental policies is the ECE, because it comprises mainly industrialized nations, such as the United States, Canada, the U.S.S.R, and countries of Western and Eastern Europe. ECE has 30 years' experience in dealing with air and water pollution and urban environment issues. Its studies on long-range transport of air pollutants led to the 1979 Convention on Long-Range Transboundary Air Pollution and subsequent protocols.

The U.N.'s Intergovernmental Panel on Climate Change (IPCC) was created in 1987 at the urging of UNEP, the WMO, and the International Council of Scientific Unions to address the science of climate change, particularly the "greenhouse effect" of carbon dioxide, methane, and nitrogen oxides emissions in bringing about global warming. A major goal of the IPCC's Second World Climate Conference, scheduled for October-November 1990 in Geneva, is to develop a framework convention to provide a means for governments to limit carbon dioxide and other emissions.

As already mentioned, the OECD, whose membership includes most of the industrialized countries, including the United States, formed its Environment Committee in 1970 to aid in developing policies for promoting environmental quality, incorporating the concepts of "polluter pays" and "prevention is better than repair." The OECD's actions have addressed a wide variety of areas, including economic/environment issues, resource management, transfrontier pollution, noise, radioactive waste, and a major program on handling, storage, and transport of industrial chemicals.

The European Community (EC, not to be confused with the U.N.'s ECE, or Economic Commission for Europe), established its Directorate for Environment, Consumer Protection, and Nuclear Safety in 1972. The EC can enact regulations and issue directives that become binding on member states, as well as offer recommendations, resolutions, and opinions. From 1970 to 1986, the EC issued at least 36 directives concerning the environment. Several more have been issued in the past 4 years. As the representative of many of Western Europe's regional interests, the EC is also party to a number of international environmental agreements.

[6] For discussion of this and other international agreements to protect the environment and wildlife, see section on International Agreements, below.

[7] WCED, *Our Common Future*, Oxford University Press, New York, 1987, pp. 356-357.

U.S. Environmental Policy

Existing Legislation

The evolution of U.S. laws to protect the environment and wildlife does not appear to have resulted directly from the Government's participation in international agreements. Although some U.S. legislation was introduced and passed expressly to implement international agreements, most was enacted in response to national concerns. Conversely, U.S. legislation was not generally the catalyst for negotiating with foreign countries on environmental matters. Nevertheless, national and international activities dealing with the environment and wildlife moved on parallel and contemporaneous tracks.

Prior to the passage of the National Environmental Policy Act of 1969 (NEPA),[8] the practice of the Congress was to pass environmental legislation in response to specific instances of environmental degradation. Two examples of such legislation were the Federal Water Pollution Control Act of 1948[9] and the Air Pollution Control Act of 1955.[10]

> The single-solution approach typified in those statutes was unworkable, and environmental laws in general were 'floundering due to inadequate information, and misinterpretation of existing facts.' Many in Congress began to see the need for a comprehensive approach. . .capable of anticipating environmentally disruptive activities and avoiding them, rather than just reacting to episodes of pollution with abatement laws.[11]

NEPA was the linchpin legislation that set the stage for subsequent environmental and wildlife laws. NEPA's broadly stated purpose is "to declare a national policy which will encourage productive and enjoyable harmony between man and his environment." The Council on Environmental Quality (CEQ) was given the role of ensuring that any agency of the Federal Government planning any significant action consider the possible adverse effects of such action on the environment. More specifically, Federal agencies were required to first determine whether an action was really needed, and then to seek alternatives that would not harm the environment. Section 102(2)(C) of NEPA required that agencies submit an environmental impact statement (EIS), which anticipates possible ecological consequences and delineates choices to decisionmakers and the public. NEPA eventually spawned, through guidelines, and later through regulations[12] issued by the CEQ, an organized analytical approach to environmental assessment that served as a model for the programs of State, local, and foreign governments, and of international organizations.

The following chronological listing briefly summarizes the major U.S. laws, and amendments thereto, that govern U.S. environmental policy today. The listing is not comprehensive.

Refuse Act of 1899 (33 U.S.C. 407)—bans disposal of any hazardous substances into navigable waters, tributaries, and shorelines within 3 miles of the U.S. coast.

Migratory Bird Treaty Act—July 3, 1918, 40 Stat. 755, 16 U.S.C.A. 703-708, 709a-711 (1974)). 1974 amendment, Public Law 93-300, 88 Stat. 190.

Migratory Bird Conservation Act—February 18, 1929, 45 Stat. 1222, 16 U.S.C.A. 715.

River and Harbor Act—original act signed July 3, 1930. Subsequent acts of same name passed in 1945, 1948, 1950, 1954, 1958, 1960, 1962, 1965, 1966, 1968, and 1970.

Historic Sites, Buildings and Antiquities Act of 1935—August 21, 1935, 49 Stat. 666 (Title 16).

Federal Food, Drug, and Cosmetic Act and amendments—original act signed June 25, 1938 (52 Stat. 1040). As amended, empowers EPA to set maximum legal limits for pesticide residues on food and feed grains. Agriculture Department enforces limits on meat and poultry, and FDA, limits on all other food products in interstate commerce.

Atomic Energy Acts of 1946 and 1954 and their amendments—original acts signed August 1, 1946 (60 Stat. 755) and August 30, 1954 (68 Stat. 919), respectively. Empowers EPA to set radiation emission standards and designates Nuclear Regulatory Commission as enforcement agency. Provides for civil and criminal penalties.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and amendments—original act signed June 25, 1947 (61 Stat. 163). Completely rewritten in 1972 (Public Law 92-516). Empowers EPA to register and classify pesticides, certify applicator training, and delegate enforcement to individual States through EPA-approved programs. Provides for penalties.

Whaling Convention Act of 1949 (16 U.S.C.A. secs. 916-916(l))—implements International Convention for the Regulation of Whaling. Prohibits whaling by persons subject to U.S. jurisdiction without appropriate license or scientific permit from Secretary of Commerce.

Tuna Conventions Act of 1950—September 7, 1950, 64 Stat. 777 (Title 16).

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[8] 42 U.S.C. 4321.
[9] 62 Stat. 1155 (1948), 33 U.S.C. 1251 et seq.
[10] 69 Stat. 322 (1955), 42 U.S.C. 7401 et seq.
[11] Council on Environmental Quality, *Twentieth Annual Report*, 1990, p. 18.
[12] Executive Order No. 11991 (May 24, 1977), 40 CFR pt. 1500, subsequently amended in 1986, 40 CFR 1502.22, 51 F.R. 15625.

Federal Water Pollution Control Act (Clean Water Act) and amendments—original act signed July 17, 1952 (66 Stat. 755). Amended by Public Laws 95-217, 97-117, and 100-4. Empowers EPA to set national water standards and to delegate enforcement to individual States through EPA-approved programs. Provides for EPA and Army Corps of Engineers enforcement of wetlands regulations. Provides for Coast Guard enforcement of oil-spill provisions. Provides for civil and criminal penalties.

Clean Air Act (CAA) and amendments—original act signed July 14, 1955 (69 Stat. 322). **Clean Air Act Amendments of 1977** (Public Law 95-95). Empowers EPA to set national air quality standards and to delegate enforcement to individual States through EPA-approved programs. Provides for penalties and civil suits.

Wilderness Act—Public Law 88-577, September 3, 1964, 78 Stat. 890.

Solid Waste Disposal Act—Public Law 89-272 (Title II), October 20, 1965, 79 Stat. 997 (Title 42).

National Historic Preservation Act of 1966—Public Law 89-665, October 15, 1966, 80 Stat. 915-919. Amended December 12, 1980 (Public Law 96-515, 94 Stat. 2987).

Fur Seal Act of 1966 (Public Law 89-702, 80 Stat. 1091)—signed November 2, 1966. Empowers the President to appoint the U.S. Commissioner on the North Pacific Fur Seal Commission, which was established by the 1957 Interim Convention on Conservation of North Pacific Fur Seals (Sealing Convention).

Fishermen's Protective Act of 1967—originally passed August 27, 1954, 68 Stat. 883.

National Environmental Policy Act (NEPA)—signed January 1, 1970. See discussion above.

Occupational Safety and Health Act and amendments—original act signed December 29, 1970 (84 Stat. 1590). Created Occupational Safety and Health Administration (OSHA) in Department of Labor. OSHA sets and enforces environmental standards in the work place. Provides for civil and criminal penalties and for civil suits.

Marine Mammal Protection Act (MMPA) and amendments—original act signed October 21, 1972 (Public Law 92-522, 86 Stat. 1027). Empowers Fish and Wildlife Service (FWS) and National Oceanographic and Atmospheric Administration (NOAA) to enforce ban on taking of marine mammals on the high seas. NOAA enforces ban for whales, porpoises, seals and sea lions. FWS protects walrus, polar bear, manatees, and sea otters. Limits incidental taking of porpoises by commercial fishermen. State Department handles international violations. Provides for civil and criminal penalties.

Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972 and amendments—original act signed October 23, 1972 (Public Law 92-532, 86 Stat. 1052). Empowers NOAA (with assistance from EPA, Army Corps of Engineers, and Coast Guard) to enforce regulation of ocean dumping. Designates Department of State to handle international violations. Amended by Ocean Dumping Ban Act (1988), which bans ocean dumping of sludge and infectious medical wastes. Provides for civil and criminal penalties and for civil suits.

Noise Pollution and Abatement Act of 1970—signed December 31, 1970. Amended and replaced by the Noise Control Act of 1972, signed October 27, 1972 (86 Stat. 1234). Empowers EPA to set standards and to delegate enforcement to individual States through EPA-approved programs. OSHA enforces the law in the work place. Provides for civil and criminal penalties.

Pelly Amendment to the Fisherman's Protective Act of 1967—enacted in 1971 (Public Law 92-219, 22 U.S.C. 1978). Allows the President, upon appropriate advice from the Commerce Department, to ban imports of fish products from countries that diminish the effectiveness of any international fisheries conservation program.

Marine Protection, Research, and Sanctuaries Act of 1972 (Ocean Dumping Act)—Public Law 92-532, 33 U.S.C. 1401-1444.

Endangered Species Act of 1973 and amendments—original act signed December 28, 1973 (87 Stat. 884). Reauthorized in 1988. FWS, NOAA/NMFS, Coast Guard, Department of Agriculture, and Department of Treasury all enforce provisions of this law, which forbids importation of endangered animal and plant species. Provides for civil and criminal penalties.

Safe Drinking Water Act (SDWA) and amendments—original act signed December 16, 1974 (88 Stat. 1660). Substantially amended by Public Law 99-339 (June 1986). Empowers EPA to set national drinking water standards and delegate enforcement to individual States through EPA-approved programs. Provides for civil and criminal penalties and for civil suits.

Hazardous Materials Transportation Act (HMTA) and amendments—original act signed January 3, 1975 (88 Stat. 2156). Designates Customs and Department of Transportation to enforce regulations for packaging and transporting

hazardous materials on land, sea, and air carriers. Provides for civil and criminal penalties.

Toxic Substances Control Act (TSCA) and amendments—original act signed October 11, 1976 (Public Law 94-469, 90 Stat. 2003). Empowers EPA to test new chemicals and ban those that pose unreasonable risk to public health or the environment. Provides for civil and criminal penalties and for civil suits.

Whale Conservation and Protection Study Act—Public Law 94-532, October 17, 1976, 90 Stat. 2491.

National Forest Management Act of 1976—Public Law 94-588, October 22, 1976, 90 Stat. 2949.

Magnuson Fishery Conservation and Management Act (MFCMA) and amendments—original act signed 1976. Replace June 1, 1982 (Public Law 97-191, 96 Stat. 107). Empowers NOAA/NMFS to enforce fisheries regulations in a U.S. Exclusive Economic Zone within 200 nautical miles of the United States. Provides for civil forfeiture and penalties and for criminal penalties.

Resource Conservation and Recovery Act of 1976 (RCRA)—signed October 21, 1976 (90 Stat. 2795). Designates EPA to track movement of hazardous wastes and to delegate enforcement to individual States through EPA-approved programs. Provides for penalties and civil suits.

Surface Mining Control and Reclamation Act of 1977 (SMCRA) and amendments—original act signed August 3, 1977 (91 Stat. 445). Designates Office of Surface Mining Reclamation and Enforcement (Department of the Interior) to enforce regulations for cleanup of surface mining sites. Provides for criminal penalties.

Antarctic Conservation Act of 1978—Public Law 95-541, October 28, 1978 (92 Stat. 2048, 16 U.S.C.A. sec. 2401 et seq.).

Uranium Mill Tailings Radiation Control Act of 1978—Public Law 95-604, November 8, 1978, 92 Stat. 3021. Amended the Atomic Energy Act (q.v., above).

Packwood-Magnuson Amendment to the Fishery Conservation and Management Act of 1976—enacted in 1979 (Public Law 96-61, 16 U.S.C. 1821). Allows the State Department to limit commercial fishing in the 200-mile Exclusive Economic Zone (EEZ) of the United States, if the Commerce Department certifies that foreign nationals are diminishing the effectiveness of the International Convention for the Regulation of Whaling.

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, or Superfund Act) and amendments—original act signed December 11, 1980 (85 Stat. 431-461). Empowers EPA to enforce regulations requiring responsible parties to clean up hazardous waste sites or to cover costs of government cleanups funded by Superfund set up by the Congress for emergency use. Army Corps of Engineers and some States work with EPA on removal and remedial actions. Under the Superfund Amendments and Reauthorization Act (SARA) of 1986, and the Emergency Planning and Community Right-to-Know Act of 1986, EPA is authorized to require all manufacturers, importers, processors, and users of more than 300 hazardous chemicals to report annually on releases to the environment. Provides for criminal penalties.

Act to Prevent Pollution from Ships—signed in 1980 (33 U.S.C. 1901 et seq.)

Lacey Act Amendments of 1981—signed November 16, 1981 (95 Stat. 1073). Amends Lacey Act (Game) of 1900 (May 25, 1900, 31 Stat. 187). Designates FWS and NOAA/NMFS to enforce ban of importation, possession, or interstate transport of wild plant and animal species taken in violation of State, Federal, Indian, or foreign law. Provides for civil and criminal penalties and for forfeiture of vessels, vehicles, or aircraft used in transporting plants and animals covered by this law.

Northern Pacific Halibut Act of 1982—Public Law 97-176, May 17, 1982 (96 Stat. 78).

Nuclear Waste Policy Act of 1982 (NWPA) and amendments—original act signed January 7, 1983 (Public Law 97-425, 96 Stat. 2201). Empowers NRC to enforce regulations on storage and disposal of radioactive wastes and spent nuclear fuel. EPA sets standards for radiation in surface and drinking water, air, precipitation, and milk.

Hazardous and Solid Waste Amendments of 1984—signed November 8, 1984 (Public Law 98-616, 98 Stat. 3221). Amends Resource Conservation and Recovery Act of 1976 (see above).

Asbestos Hazard Emergency Response Act (AHERA)—signed October 22, 1986 (Public Law 99-519, 100 Stat. 2970). Amends Toxic Substances Control Act (see above) to authorize EPA to set asbestos standards and certify training of inspectors and workers. Provides for civil penalties.

Superfund Amendments and Reauthorization Act of 1986—Public Law 99-499. Authorizes fivefold increase in Superfund, to $8.5 billion. Sets strict cleanup standards.

Water Quality Act of 1987—signed 1987 (Public Law 100-4).

Global Climate Protection Act—signed 1988 (Public Law 100-204). Requires development of coordinated U.S. policy on global climate protection.

Marine Plastic Pollution Control Act of 1987—signed 1978 (Public Law 100-220, Title II). Bans disposal of plastics by any nation within the waters of the U.S. 200-mile Exclusive Economic Zone. Provides for coastal waste reception areas, ship inspections, enforcement, and civil penalties.

Driftnet Impact Monitoring, Assessment and Control Act of 1987 (Public Law 100-220, Title IV)—Directs NOAA, Interior Department, and State Department to negotiate with driftnet-using countries to establish monitoring and assessment of marine resources adversely affected by use of such nets. Provides basis for net marking, registry, and identification systems.

Indoor Radon Abatement Act—signed October 28, 1988 (Public Law 100-551, 15 U.S.C. 2661 et seq.). Adds new Title III to TSCA, to provide grants and technical assistance to States for radon control.

Medical Waste Tracking Act—signed 1988 (Public Law 100-582). Amends Resource Conservation and Recovery Act of 1976 (see above). Establishes a 2-year program (June 2, 1989, through June 21, 1991) for tracking medical wastes in New York, New Jersey, Connecticut, Rhode Island, Louisiana, Puerto Rico, and the District of Columbia.

Shore Protection Act—signed 1988 (Public Law 100-688, Title II). Designates Coast Guard to enforce regulations regarding pollution of beaches and coastlines. Bans all ocean dumping of sewage sludge. Provides for civil and criminal penalties.

Foreign Operations, Export Financing and Related Programs Appropriations Act, 1990—passed late 1989 (Public Law 101-167). Contains several provisions on tropical forests. Sustainable management of natural resources must be integral part of U.S. economic growth policies. Encourages debt-for-nature swaps. Focuses on aid to middle- and low-income countries that contribute large amounts of greenhouse gases by destruction of tropical forests.

International Development and Finance Act of 1989—Public Law 101-240. Requires that support for sustainable development and conservation projects be included in negotiations for exchanges of foreign countries' debt ("debt-for-nature" swaps).

Legislation Introduced in the 101st Congress

The legislative bills introduced during the 101st Congress (1989-90) included more than 80 that addressed environmental and wildlife issues. These bills can be divided into two broad categories: (1) those encouraging positive domestic (including Government and industry) efforts, both nationally and internationally, to meet the requirements of international agreements concerning the environment and wildlife and (2) those seeking impose trade sanctions against countries that do not take adequate measures to meet U.S. or international environmental standards or conduct. The following listings and their accompanying discussions are not intended to be comprehensive, but are representative of Congressional activity in this area.

Domestic Legislation

Of the following 48 bills and resolutions, more than one-third (17) addressed the issue of global warming, particularly with respect to chlorofluorocarbons (CFCs). The amount of legislation devoted to this issue should not be surprising, since the Montreal Protocol on Substances that Deplete the Ozone Layer[13] is at the forefront of international attention in environmental circles. Other areas receiving special attention include tropical and other forests, endangered species of fauna and flora, Antarctica, and the proposal to promote the U.S. Environmental Protection Agency to the cabinet department level. These bills, along with brief descriptions, are listed in chronological order of introduction, first by the House and then by the Senate, as follows:

H.R. 89 (Bennett): To amend several existing laws to increase maximum fine for speeding violations in national forests, wildlife refuges, and national parks, inhabited by endangered species.

H.R. 288 (McMillen): To establish a medical wastes regulation program for the Chesapeake Bay area.

H.R. 296: To make EPA a cabinet-level department.

H.R. 312 (Quillen): To authorize sale of 7,430 river otter pelts for which FWS permit was issued in 1978. Subsequent sale and other activities not to be considered violation of Endangered Species Act.

H.R. 353 (Roe): To establish an infectious-waste research program at EPA.

[13] See ch. 5, "Agreements Concerning Pollution of Air, Land, and Inland Waters," for a complete discussion of the Montreal Protocol.

H.R. 500 (Hockbrueckner): To require Secretary of Health and Human Services to examine feasibility of using degradable materials in medical supplies and equipment.

H.R. 503 (Stark): To provide for labeling of all products containing, produced from, or produced with chlorofluorocarbons (CFCs).

H.R. 534: To make EPA a cabinet-level department.

H.R. 765 (Dingell): To establish panel to assess waste management problems at Department of Energy facilities and develop a cleanup program.

H.R. 1056 (Eckart): To clarify that Federal agencies are subject to all Federal, State, local, and interstate solid and hazardous waste requirements. To authorize EPA to take actions against other agencies.

H.R. 1078 (Schneider) (Global Warming Protection Act): To establish national policies to support and encourage international agreements that implement energy and natural resource conservation strategies appropriate to preventing the overheating of the earth's atmosphere. Includes a Federal research and development program proposal to develop substitutes for CFCs.

H.R. 1112 (Stark): To amend the IRS Code of 1986 to impose a manufacturer's excise tax on sale of chemicals that deplete the ozone layer and on products containing such chemicals.

H.R. 1268 (Scheuer): To provide for conservation of biological diversity as a national priority.

H.R. 1645 (R. F. Smith): To permit timber sales and related activities on National Forest System lands during 5-year study of Northern Spotted Owl.

H.R. 1704 (Porter): To encourage debt-for-nature swaps (for protection of forests).

H.R. 1725 (Waxman)/S. 722 (Kennedy): To revise authority for assessing allowable risks from pesticide residues in food.

H.R. 2061 (Studds): To ban large-scale, high-seas driftnet fishing.

H.R. 2984 (Roe) (Global Change Research Act of 1989): To establish a National Global Change Research Program aimed at understanding and responding to global change, including cumulative effects of human activity on the environment. Requires initiation of discussions toward international protocols in global change research and assessment.

H.R. 3030/S. 1490 (administration): Comprehensive amendments to the Clean Air Act. (Enacted November 1990).

H.R. 3153 (Brown): To amend FIFRA to shorten time it takes EPA to reduce or eliminate the use of problem pesticides.

H.R. 3292 (de la Garza): To streamline FIFRA restrictions process and to amend Federal Food, Drug, and Cosmetic Act.

H.R. 3332 (W. Jones): To provide for development of national global change research plan to coordinate oceanographic, atmospheric, terrestrial, and polar research programs. Directs the CEQ to advise the President on policies related to global environmental change.

H.R. 3362 (Scheuer): To establish global forest protection and restoration as a national U.S. priority.

H.R. 3847: To make EPA a cabinet-level department.

H. Cong. Res. 44 (Bates): To encourage lenders to reduce debt of nations that agree to protect their rain forests.

H. Cong. Res. 88 (Clinger): To urge the President to sign the Basel Convention (on transboundary movement of hazardous wastes) and submit it to the Senate for ratification.

H. Cong. Res. 287 (Yatron): To extend for 10 years the moratorium on the commercial killing of whales.

H. Joint Res. 415 (Neal): To protect Antarctica.

H. Joint Res. 418 (Owens): To protect Antarctica.

S. 55 (Wilson): To provide for taxes on products containing or made with CFCs.

S. 201 (Gore)/H.R. 2699 (Bates): To reverse trends presently altering or destroying vast portions of biosphere, and to ensure that U.S. policies provide for protection of world environment from future degradation.

S. 276: To make EPA a cabinet-level department.

S. 324 (Wirth)/H.R. 3143 (AuCoin) (National Energy Policy Act of 1989): To establish national energy policy that would reduce generation of carbon dioxide and trace gases in order to reduce risks associated with atmospheric warming and global climate change.

S. 333 (Leahy): To seek to limit production and use of "greenhouse" gases and ozone-depleting chemicals.

S. 491 (Chafee) (Stratospheric Ozone and Climate Protection Act of 1989): To reduce atmospheric pollution to protect stratosphere from ozone depletion and climate change. To accelerate phaseout of specified CFCs. Attached to omnibus bill S. 1630, below.

S. 503 (Baucus): To propose fee on specified CFCs, with revenues going to fund to support research and development on alternative chemicals and use technologies.

S. 644 (McCain): To provide for research activities to develop product and process alternatives to CFCs.

S. 676 (Baucus): [Similar to S. 201, above].

S. 686/H.R. 1465: To establish oil pollution liability standards, a compensatory fund, improved tanker operations, and contingency planning.

S. 870, S. 871, S. 872 (Gore): To require CFC recapture and recycling, a manufacturer's excise tax on certain CFCs, and a phasing out of total ozone-depleting potential and accelerated phaseout of CFCs.

S. 1610 (Leahy) (Global Climate Change Prevention Act of 1989): To develop program to determine potential impacts of climate on agriculture and forestry and to establish policies for addressing issues of potential climate change and for developing capacities to adapt to and ameliorate climate change.

S. 1611 (Leahy) (International Climate Change Prevention Act of 1989): To strengthen U.S. foreign assistance activities in tropical forestry and energy efficiency and to focus these activities on developing countries that could have substantial impact on reducing greenhouse gas emissions. (Enacted as part of Public Law 101-167, Title V (November 21, 1989.)

S. 1630 (Baucus): To amend Clean Air Act. S. 491 attached to this omnibus bill. (Enacted in November 1990.)

S. 2006 (Glenn) (Department of the Environment Act of 1990): To establish the Department of the Environment and provide for a global environmental policy of the United States.

S. Joint Res. 101 (Chafee): To support efforts of Brazil to protect the Amazon.

S. Joint Res. 125 (Reid)/H.J. Res. 271 (Schneider): To support assistance to tropical forest protection in developing countries, including an agreement with Brazil.

S. Res. 186 (Helms): To protect Antarctica.

S. Joint Res. 206 (Gore): To protect Antarctica.

Legislation Affecting Trade Policy

Commission staff identified at least 33 environmental bills introduced in the 101st Congress that would restrict international trade or affect international trade policy. Nearly half of them dealt with protection of wildlife, especially elephants, dolphins, whales, and sea turtles. Most of these bills were not enacted, either because other actions obviated them (e.g., the President's ban on U.S. imports of ivory), or because voluntary efforts were being attempted (e.g., phasing out commercial use of CFC's). Other important issues addressed included regulation of CFCs, solid waste disposal, and U.S. exportation of certain pesticides and certain unprocessed old-growth logs.

In all these cases, traditional trade measures, such as import or export restrictions, were sought to achieve environmental (and, in some cases, economic) goals. However, at least two Senate bills (S. 261 and S. 2887) were introduced (by Senators Moynihan and Lautenberg, respectively) that sought to incorporate environmental considerations in the administration of U.S. trade laws.

Senate bill 261, introduced by Senator Moynihan, sought to authorize the President to take unilateral action under section 301 of the Trade Act of 1974 against countries that fail to protect endangered species. Section 301 grants to the United States Trade Representative (USTR) discretionary authority to take action against "unreasonable" acts by a foreign country, when such acts are deemed to burden or restrict U.S. commerce. The bill would treat acts and practices of foreign countries that diminish the effectiveness of international agreements protecting endangered species as unreasonable for purposes of section 301. Senate bill 2887 sought to amend not only section 301, but also title V of the 1974 Trade Act (the Generalized System of Preferences (GSP)) and the Caribbean Basin Economic Recovery Act to require foreign countries to maintain certain environmental protection standards.

Finally, two resolutions were introduced to seek consideration of environmental issues in the Uruguay Round of the GATT Multilateral Trade Negotiations. House Resolution 371 stated that—

> . . .it should be the policy of the United States to seek in trade negotiations the adoption and enforcement of effective and equivalent environmental standards and controls among the trading nations of the world.[14]

It further resolved that the President should seek agreement on mechanisms under which the United States and its trading partners can eliminate or reduce competitive disadvantages resulting from differing national environmental standards. Similarly, House

[14] See U.S. House *Congressional Record*, Mar. 29, 1990.

Concurrent Resolution 336 urged that legislation to implement the Uruguay Round agreements should not be enacted—

- until an environmental impact analysis is made;
- if the agreements would undermine existing environmental standards of any GATT contracting party or reduce any party's authority to set more stringent standards;
- unless the GATT Agreement is amended to provide that nothing shall prevent a contracting party from adopting or enforcing measures to protect the environment;
- if the agreements prevent the U.S. from adopting higher environmental standards or seeking higher standards internationally; and
- unless the USTR can secure agreement among the contracting parties to discuss environmental issues by April 1, 1991.

The environmental bills incorporating trade measures are listed chronologically by house, as follows:

H.R. 132 (Young): To amend the Fishermen's Protective Act of 1967 to authorize the President to prohibit the importation of any products from a nation whose nationals are conducting fishing operations in a manner that diminishes the effectiveness of any international fishery conservation program.

H.R. 2172 (Donnelly and others): To require the President to revoke most-favored-nation treatment for all products from countries that do not prohibit international trade in ivory and ivory products; to ban imports and exports of raw or worked ivory; and to deny the benefits of the foreign tax credit for taxes paid on ivory-related income.

H.R. 2384 (Conte): To ban imports of ivory products by treating the African elephant as an endangered species.

H.R. 2415 (Fields and others): To ban imports of raw or worked African elephant ivory from certain countries.

H.R. 2519 (Kasich and others): To require the President to revoke most-favored-nation treatment for all products from countries that do not adequately enforce elephant protection sanctions; to ban imports or exports of raw or worked ivory; and to express the sense of the Congress that the United States should seek an agreement regarding permissible sanctions that may be imposed under GATT to assist in reducing or eliminating international trade in products consisting in whole or in part of fauna or flora that is treated under an international convention as being either endangered or threatened.

H.R. 2525 (Synar and others): To ensure that solid waste exports from the United States are managed in a manner that is protective of human health and the environment, and that is no less strict than in the United States.

H.R. 2578 (Matsui): To ban imports of Burmese fish, teak, or products thereof. (Adopted in modified form in the Customs and Trade Act of 1990.)

H.R. 2620 (Smith): To ban imports of shrimp from any country that does not require the use of turtle excluder devices (TEDs) in their nets.

H.R. 2782 (Stark and others): To amend the Trade Act of 1974 to require the President to suspend the duty-free GSP treatment for any wood article imported from a designated beneficiary country that does not have an appropriate reforestation program; and to provide that USTR should seek international arrangements in the Uruguay Round negotiations to promote the replenishment of forest resources that are used in developing countries for wood and wood product exports.

H.R. 3442 (Hayes and others): To ban imports of shrimp or shrimp products from countries that do not require the use of TEDs, that allow the taking of sea turtle eggs, or that engage in other activities that adversely affect endangered or threatened sea turtles.

H.R. 3496 (DeFazio and others): To ban imports of fish and marine animal products from Japan, Korea or Taiwan unless and until such countries prohibit driftnet fishing.

H.R. 3605 (Unsoeld and others): To ban the export of certain unprocessed old-growth logs harvested from public land.

H.R. 3736 (Luken and others): To ensure that solid waste exports from the United States, and the subsequent disposal thereof, are conducted in a manner that is in accordance with an international agreement and strict domestic legislation, that is protective of human health and the environment, and that is no less strict than in the United States.

H.R. 3827 (DeFazio and others): To grant each State the authority to prohibit or restrict exports of any unprocessed timber harvested on State land.

H.R. 3828 (DeFazio and others): To restrict exports of unprocessed timber from certain Federal lands.

H.R. 4219 (Synar and others): To prohibit exports of pesticides that are not registered with the EPA and to prohibit exports of pesticides for use in agricultural food production unless they are registered for such food use.

H.R. 4289 (Owens and others): To ban imports of fish and wildlife products from countries that violate international fish or wildlife conservation agreements.

H.R. 4563 (Fields and others): To require the President to ban imports of fish products and wildlife products from the People's Republic of China if that country does not withdraw its reservation regarding listing the African elephant as an endangered species under appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

H. Res. 158 (Beilenson and others): To ask the President to support international efforts to stop trade in ivory and to encourage the conservation of the African elephant.

H. Res. 371 (Swift): To resolve that it should be the policy of the United States to seek in trade negotiations the adoption and enforcement of effective and equivalent environmental standards and controls among the trading nations of the world; that the President should seek, through the Uruguay Round and the next GATT round, agreement on mechanisms under which the United States and its trading partners can eliminate or reduce competitive disadvantages resulting from differing national environmental standards and controls; and that such agreement should not impair the implementation of the Clean Air Act or any other U.S. environmental protection laws.

H. Con. Res. 329 (Yatron and others): To resolve that the President should order an embargo on a significant quantity of fishery products entering the United States from nations found to be diminishing the effectiveness of the International Whaling Convention.

H. Con. Res. 336 (Scheuer and others): To resolve that legislation to implement the GATT Uruguay Round agreements should not be enacted if the agreement prohibits the United States from seeking more stringent environmental standards domestically or through international agreement.

S. 261 (Moynihan): To treat acts and practices of foreign countries that diminish the effectiveness of any international agreement that protects endangered or threatened species as unreasonable for purposes of section 301 of the Trade Act of 1974.

S. 822 (Moynihan): To ban imports of Burmese fish, teak, or products thereof. (Adopted in modified form in the Customs and Trade Act of 1990.)

S. 1035 (Jeffords and others): To ban sales or exports of any motor vehicle with a model year of 1993 or later if such vehicle contains an air conditioner that uses CFCs as the coolant.

S. 1052 (Kerry and others): To phase in a ban on the sale or export of automobiles that contain air conditioners that use CFCs.

S. 1113 (Baucus and others): To prohibit the exportation of solid waste unless it is undertaken pursuant to an international agreement; and to authorize the EPA to prohibit the exportation of any solid waste whenever there is reason to believe that the transportation, treatment, storage, disposal, or recycling of such waste may threaten human health or the environment.

S. 1680 (Mitchell and others): To prohibit the sale or transport of lobsters, including imported lobsters, that are smaller than the U.S. minimum size.

S. 2227 (Leahy and others): To prohibit exports of pesticides that are not registered with the EPA and to prohibit exports of pesticides for use in agricultural food production unless they are registered for such food use.

S. 2285 (Murkowski and others): To encourage nations to implement measures to prohibit international trade in certain fish unless such fish are accompanied by a valid certificate of legal origin.

S. 2490 (Lugar): To authorize the EPA to prohibit the export of any pesticide if the Government of the importing country has requested such a prohibition and if the importing country prohibits the production, importation, and use of the pesticide; and to require pesticide exporters to comply with pesticide export and control provisions that are developed internationally.

S. 2553 (Lautenberg and others): To amend the Caribbean Basin Economic Recovery Act, the Generalized System of Preferences, and section 301 of the Trade Act of 1974 to require countries to maintain certain environmental standards.

S. 2887 (Lautenberg and others): To amend the Caribbean Basin Economic Recovery Act, the Generalized System of Preferences, and section 301 of the Trade Act of 1974 to require countries to maintain certain environmental standards.

Enforcement Responsibilities

According to one Congressional staff report,[15] Federal environmental responsibilities in the 1960s were divided among 15 to 20 departments and agencies receiving direction and funding from two dozen different Congressional committees. There was no central coordinating body at the time, and Government reorganization was not considered desirable. The most popular alternative was to establish an independent advisory council, located within the Executive Office of the President, "which can provide a consistent and expert source of review of national policies, environmental problems and trends, both long-term and short-term."[16] With the signing by President Nixon of NEPA in January 1970, the three-member Council on Environmental Quality was created. Before the end of 1970, the Environmental Protection Agency and the Department of Commerce's National Oceanic and Atmospheric Administration came into existence to complete what was described by one periodical as the "environmental troika—CEQ, EPA, and NOAA."[17]

By 1989, at least a dozen Federal agencies were actively enforcing environmental laws. In addition to CEQ, EPA, and NOAA (including the National Marine Fisheries Service) are the following agencies:

U.S. Department of Agriculture: Forest Service

U.S. Department of Defense: Army Corps of Engineers

U.S. Department of Health and Human Services: Food and Drug Administration (FDA)

U.S. Department of the Interior:
- Fish and Wildlife Service (FWS)
- Office of Surface Mining Reclamation and Enforcement
- National Park Service
- Bureau of Land Management

U.S. Department of Justice:
- Land and Natural Resources Division:
  - Environmental Defense Section
  - Environmental Enforcement Section
  - Environmental Crime Section
  - Wildlife and Marine Resources Section

U.S. Department of Labor: Occupational Safety and Health Administration (OSHA)

U.S. Department of State

U.S. Department of Transportation: U.S. Coast Guard

U.S. Department of the Treasury: U.S. Customs Service

Nuclear Regulatory Commission (NRC).

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[15] Staff of Subcommittee on Science, Research, and Development of the House Committee on Science and Astronautics, 89th Cong., 2d. Sess., *Report on Environmental Pollution* (Committee Print 1966).

[16] U.S. House Rep. John Dingell, Remarks, *Cong. Rec.*, vol. 115 (1969), p. 26572.

[17] G. Fishbein, "Uncle Sam's Environmental Troika: CEQ, EPA, and NOAA," *Nation's Business*, April 1971, pp. 34-36.

Chapter 2
GATT Provisions Concerning the Environment and Wildlife

Legal Framework

The General Agreement on Tariffs and Trade (GATT) is the principal international regime to promote trade in goods and to prevent discriminatory treatment in international trade. In effect, it operates both as a treaty, functioning through its contracting parties, and as an organization (in part through its Secretariat and the delegations maintaining a presence at the headquarters site, Geneva). Thus, it serves multiple functions, including collecting, analyzing, and publishing meaningful data on world trade in goods; carrying out economic and legal studies; developing draft texts of measures to be considered by the contracting parties; and providing a forum for its members to express and achieve shared objectives, to regulate conduct, and to resolve disputes.

Although both the production of goods and the protection of the environment are commonly held goals of many nations, such goals may be conflicting. At present, the GATT deals only indirectly with the latter goal of environmental protection. The preamble to the GATT does recognize (for different reasons) two of the commonly stated purposes of many environmental agreements—"raising standards of living" and "developing the full use of the resources of the world." To help attain these goals, the GATT communicates and cooperates with international organizations involved in environmental regulation and protection. In addition, the GATT's establishment of bodies to address and report on issues related to environmental matters, sometimes with findings or recommendations, indicates that the contracting parties are aware of the importance of such issues and their relationship to international trade.

Obligations and Exceptions

Several articles of the GATT agreement are relevant to environmental measures adopted at the national level. First, article III:4 obliges signatories to provide non-discriminatory legal and regulatory treatment to imported products, stating in part that—

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

The effect of national measures can be taken into account when determining whether discrimination against imported goods exists in the importing party, but the provision does not appear to have any effect as to production or related activities in the exporting country. When an importing country's standards discriminate in favor of domestic-origin products, the exporter can invoke article III:4 in support of a claim that a concession has been nullified or impaired.[1]

Second, although the GATT's overall intent is to facilitate trade by removing or restricting tariff and nontariff barriers, the general exceptions enumerated in article XX include several clauses intended to recognize the continuing right of nations to act in areas critical to their security or well-being. Among the enumerated exceptions (any of which might be invoked to justify a national measure), the article states that—

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
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> (b) necessary to protect human, animal or plant life or health;
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> * * * * * * *
>
> (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to... the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;
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> * * * * * * *
>
> (f) imposed for the protection of national treasures of artistic, historic or archaeological value;
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> * * * * * * *
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> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption[.]

The first of these four exceptions would appear to cover both national phytosanitary standards and their enforcement and broader environmental regulations to ensure public health.[2] Related to some extent to the

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[1] For example, one of the countries whose tuna shipments to the United States are to be barred because its fishing operations result in excess dolphin deaths (compared to the U.S. kill rate) may assert that an agreed concession (continued access to the U.S. market for its exports at a particular rate of duty) is thereby abridged.

[2] Little documentary evidence exists to reflect the views or intentions of the negotiators concerning art. XX. According to Prof. John Jackson, in ch. 28 of his book *World Trade and the Law of GATT*, U.S. proposals for the original text relied on traditional broad exceptions written into bilateral treaties, with

health clause, the second exception might be used in situations when systems of prior approval and registration of potentially hazardous substances are utilized by exporting countries or when information requirements (such as consumer warning labels) apply to hazardous substances or goods. The third would seem principally aimed at permitting import bans relating to goods deemed by the country of export to be of national cultural significance, such as art or artifacts of ancient civilizations. The last appears directed at allowing limitations on imports of goods, such as fisheries products, for which the exploitation of domestic stocks is also regulated, [3] or export restrictions to preserve natural resources such as forests.

All measures for which an article XX exception is invoked must still fulfill the overriding obligations of providing nondiscriminatory treatment on a most-favored-nation basis. However, because article XX contains no express requirement for notification, an enacting country that deems a measure to be covered by one or more exceptions need not notify the GATT of the enactment or disseminate it widely. Nor is the enacting country obliged to ensure an explicit and transparent linkage between domestic and international provisions, by formally including its claim to the exception in the domestic measure or otherwise recognizing that the measure may appear contrary to international obligations.[4]

Other provisions of the GATT may be relevant to environmental issues, such as article X:1 (publication of trade regulations), provisions of part IV (trade and development), article V (freedom of transit), and article VIII (fees and formalities, including licensing requirements).[5]

The Standards Code

Among the so-called framework agreements negotiated during the Tokyo Round of Multilateral Trade Negotiations, the Agreement on Technical Barriers to Trade (known as the Standards Code) sets forth in its nonbinding preamble the general aim of ensuring that standards and technical regulations "do not create unnecessary obstacles to international trade." The balancing of national rights, however, is recognized in the immediately succeeding paragraph, which restates GATT language:

> *Recognizing* that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade[.]

In addition, the preamble acknowledges that developing countries may face difficulties in drafting and implementing technical standards and may need international help in doing so. The code reiterates the obligations of its signatories to ensure nondiscriminatory treatment applied on a most-favored-nation basis but goes beyond the GATT by directing the parties to work through international standards-setting bodies and, to the extent possible, to adopt complementary national criteria where international standards exist. Unless "urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, " the enacting country is required under article 2.6 of the code to notify all other parties and supply them with copies of standards developed by central government bodies. Parties are also directed by articles 3 and 4 to take available, reasonable measures to ensure compliance by local government bodies and by nongovernmental bodies. Detailed criteria for the parties' decisions on the conformity of goods with technical standards are provided, and certification systems are likewise regulated. Last, the code obliges parties to publish technical standards and regulations and requires enacting governments to provide information and technical assistance.

Application Of GATT Provisions

The provisions of the GATT and the Standards Code cannot be understood fully from a simple reading of the text but must instead be examined in the context of actual work, claims, or disputes involving them. Because of the volume of relevant materials and the Standards Code's narrower group of signatories, the focus here is on recent dispute settlement activities of the GATT and, to a lesser extent, on other GATT activities in the environmental protection field. A detailed analysis of phytosanitary standards is outside the scope of this study, because the standards are so numerous and the disputes often focus on the effect of a particular technical or labeling requirement on trade in a category of goods.[6]

During the last 20 years, several dispute settlement activities have cited the provisions quoted above, either in support of claims or as defenses thereto. One of

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[2]—*Continued*
some agreed narrowing of the scope of the draft language as a result of the potential for abuse. (U.S. Proposals, Dept. of State Pub. No. 2411 (1945), p. 18; U.N. Doc. EPCT/C.11/50 (1946), p. 7) Professor Jackson indicates that the delegates to the drafting sessions apparently felt that the dangers of extreme national measures would be further limited by art. XXIII, on the nullification or impairment of concessions.

[3] The text was drawn from art. 45 of the Havana Charter, which excepted measures "taken in pursuance of any intergovernmental agreement which relates solely to the conservation of fisheries resources, migratory birds or wild animals, " along with public health measures, from its general commercial policy provisions.

[4] See Jackson, *World Trade and the Law of GATT*, p. 744.

[5] See the Agreement on Import Licensing Procedures negotiated in the Tokyo Round of Multilateral Trade Negotiations.

[6] For an overview, see discussions of the Standards Code in various annual Commission reports in the series entitled *Operation of the Trade Agreements Program*, beginning in 1948.

these[7] involved a Canadian challenge to the 1979 U.S. ban on imports of tuna and tuna products from Canada. The ban was imposed after Canada seized 19 U.S. vessels and arrested their crews for taking albacore tuna within 200 miles of western Canada. At the time, the 200-mile limit claimed by Canada was not yet recognized by the United States. Relying upon GATT article XXIII, Canada alleged the U.S. action nullified or impaired benefits accorded under the GATT. In response, the United States asserted the exception provided in article XX(g) (discussed above) and alleged that Canada had not cooperated with efforts toward tuna conservation under international treaties (notably the Inter-American Tropical Tuna Convention). Canada argued that economic interests, not conservation, prompted the U.S. action, and that U.S. law was being used in an effort to compel other countries to act in a manner contrary to their own laws. A GATT panel concluded that the United States could not invoke the article XX(g) exception, because there was no evidence of U.S. measures regulating domestic production or consumption, as required by the provision. Thus, the panel found that the import ban constituted a quantitative restriction in violation of article XI, which prohibits the institution or maintenance of such measures other than in limited circumstances not present here.

Another dispute between the United States and Canada, this time initiated by the United States,[8] focused on the same two articles of the GATT. The United States contended that a Canadian prohibition on exports of unprocessed salmon and herring violated article XI and did not fall under any article XX exception. Canada replied that, under article XI:2(b), domestic restrictions "necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade"—the so-called "quality" exception—were exempted from the general bar to quantitative restraints. Canada also cited article XX(g) as allowing such an export ban. The GATT panel found the restrictive measure unjustifiable under the provisions asserted by Canada; i.e., while Canada could bar the export of fish not meeting its quality standards (under art. XI:2(b)), it could not simply ban all exports of a particular type of fish when some shipments would comply with the standards.

[7] "United States—Prohibition of Imports of Tuna and Tuna Products from Canada" (L/5198), *Basic Instruments and Selected Documents* [hereafter *BISD*] 29th Supp. 1981-82 (Geneva, 1983), p. 91.

[8] Panel report entitled "Canada—Measures on Exports of Unprocessed Herring and Salmon" (March 1987), summarized in *GATT Activities 1988*, pp. 63-65.

A third United States-Canadian dispute, brought by Canada with support from the European Community and other contracting parties,[9] dealt with the U.S. Superfund for environmental cleanups, funded by taxes that were higher on imported goods than on domestic products. Canada argued that the higher import taxes constituted a prima facie case of nullification and impairment under article XXIII. The U.S. justified the higher tax as an adjustment allowed by GATT articles II:2(a)[10] and III:2,[11] stating that the amount of the tax being imposed was equal to the tax that would apply to the chemicals used in producing the imported products if they had been made in the United States, rather than to the tax applicable to the end product. The EC countered that these GATT articles were not relevant to this dispute because they applied only to sales and excise taxes. The GATT panel found the tax to be inconsistent with article III:2.

In addition to dispute-settlement activities, the GATT has created various working groups and other bodies to address environmental concerns. In 1972 the contracting parties set up a Group on Environmental Measures and International Trade "to examine, upon request, any specific matters relevant to the trade policy aspects of measures to control pollution and protect human environment, especially with regard to the application of the provisions of the General Agreement, taking into account the particular problems of developing countries."[12] More recently, the Working Group on Domestically Prohibited Goods and Other Hazardous Substances has played an active role, along with several other entities, in preparing draft texts to be used as the basis of international negotiations and decisions on particular measures or kinds of measures already in place. These bodies have worked closely with the World Health Organization, United Nations Environmental Programme, the Organization for Economic Cooperation and Development, the Food and Agriculture Organization, the International Atomic Energy Agency, the International Labor Organization, and the U.N. Center on Transnational Corporations, among others, to achieve a coordinated global approach to environmental protection.

[9] See "United States—Taxes on Petroleum and Certain Imported Substances" (L/6175), panel report of June 17, 1987, *BISD* 34th Supp. 1986-87 (Geneva, 1988), p. 136.

[10] Art. II:2(a) allows for the imposition on imports of "a charge equivalent to an internal tax imposed. . .in respect of the like domestic product. . . ."

[11] Art. III:2 provides, in part, for nondiscriminatory treatment of domestic and imported goods "in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase. transportation, distribution or use."

[12] L/3622/Rev.1 and C/M/74. In its first 15 years of existence, the group never met, according to the cited documents.

Chapter 3
Suggested Method for Periodic U.S. Review of Agreements

The Senate Finance Committee requested that the Commission conduct this study, partly because "[t]here is. . .no comprehensive and systematic source of information identifying these international agreements, or explaining their implementation mechanisms." In its request letter, the committee also requested that the Commission suggest a method for conducting a periodic evaluation of the treaties that are the subject of this study and of future environmental treaties.

The Value of an Environmental Practices Report

A report on environmental treaties, which would be updated at regular intervals, could provide a comprehensive and systematic source of information on the scope, effectiveness, and implementation of environmental agreements. Such a report could serve as a basis for indicating the following:

(a) the existing international agreements that address particular global or regional environmental concerns, including the protection of human, animal, or plant health or safety, and the safeguarding of air, water, or land;

(b) the degree to which a global consensus has developed with regard to a particular environmental issue;

(c) the effectiveness of existing environmental agreements in achieving their respective objectives;

(d) the extent to which environmental agreements rely on trade-related measures;

(e) the national legislative and regulatory actions taken to implement such agreements and to further their objectives; and

(f) the extent to which individual countries participate in international agreements, in terms of cooperation, compliance, and enforcement.

Such a report would be of value to both the Government and the private sector. Currently, no single source of information provides interested parties with information on the coverage of international agreements affecting the environment or on the extent of their effectiveness. A comprehensive, albeit general, report on these matters could serve to facilitate congressional oversight activities and to indicate the need for appropriate domestic or international initiatives.

A Method for Periodic Evaluation

The two major aspects involved in devising an appropriate method for conducting a periodic evaluation concern the substantive scope of the report and the means by which it will be prepared. A discussion of each aspect follows.

Content of an Environmental Practices Report

It is recommended that the report be divided into two major parts. First, a base report, in loose-leaf form, would provide background information on each agreement's scope and objectives, mechanisms for exchange of information, and provisions for enforcement and dispute settlement, similar in content to the discussions of individual agreements in chapter 5 of this report. In addition, the report could summarize or reference relevant scientific and statistical reports published by recognized environmental experts. Finally, a statement of effectiveness could be included that would address the following topics:

- Extent of adherence—
  - Contracting parties that have ratified the agreement
  - Significant nonsignatories and the basis for their nonacceptance, when available
  - Evidence of successes, when available
  - Incidence of noncompliance or violations
  - Nature and extent of outstanding disputes and other current issues
- Recent international actions taken to improve effectiveness of the agreement (including development of protocols or amendments, dispute-settlement actions, or application of sanctions)
- Related substantive areas not covered by the agreement, when relevant

Periodic updates could then be issued to supplement the base report. Assessing the effectiveness of an agreement would require a combination of substantive, objective criteria and reasonable, subjective judgments in order to evaluate the nature and extent of any positive impact an agreement may have on the environment and wildlife. Such assessment would probably require reconciliation with published scientific and other studies.

The second part of the report would provide a country-by-country assessment of the agreements covered. This part would be derived from the first part of the report and would provide a useful record for each significant trading partner. It may include the following information:

- Agreements accepted
- Agreements not accepted and the reasons therefor

- Record of enforcement, including incidents of noncompliance
- Record of cooperation

Preparation of the Report

Because of the bifurcated nature of the report and the proliferation of responsibility among numerous Federal agencies, a two-step approach is recommended for preparing the base report. First, the Federal agency responsible for monitoring or implementing an agreement would gather the needed information and prepare the base report for that agreement. Information could be sought from national (U.S. and foreign) government officials and State and local governments, as well as from Congressional studies, private research, press reports, and nongovernment organizations concerned with the environment. Second, a single designated Government agency would compile and organize all such base reports into a central looseleaf file, prepare individual country assessments, and coordinate the periodic update of the file. The update process should probably occur no less than once a year.

Chapter 4
Views of Interested Parties

The Commission held its public hearing on investigation No. 332-287 on August 15, 1990. Mr. Fred L. Smith, Jr., founder and president of the Competitive Enterprise Institute (CEI), was the sole witness to give oral testimony. CEI is located at 233 Pennsylvania Ave., SE., Washington, D.C. 20003. In addition to the written submission provided by Mr. Smith prior to the hearing, the Commission received a statement from the American Association of Exporters and Importers (AAEI), headquartered at 11 West 42d Street, New York, NY 10036. Copies of the written submissions of CEI and AAEI are included in appendixes D and E, respectively.

Comments by CEI

In his oral testimony, Mr. Smith described CEI as "a pro-market, pro-consumer, public interest group," which depends on voluntary contributions from individuals, foundations, and corporations.[1] He further stated that CEI represents "a point of view, classical liberalism, the idea that individuals are the best stewards of their own welfare and, in a system of law, are best able to advance the public welfare."[2] Applying this philosophy, CEI maintains that "economic and environmental policies are best advanced by extending private property rights to those environmental resources now at risk and by enforcing these rights by strict adherence to the polluter-pays principle."[3]

While CEI recognizes that a global approach to environmental policy is widely popular, it argues that there are several major risks in linking trade sanctions to such environmental policies. First, U.S. environmental policies (or those of other industrialized nations) do not export well to third-world countries, which generally do not have the wealth, technology, bureaucratic integrity, or aggressive public interest sector to adopt such policies.[4]

Second, current environmental policy has a strong anti-market bias.[5] Environmental regulation is imposed on economic activities by the Government to compensate for the failure of the market to consider environmental impact. However, since all economic activity has economic consequences, the entire economy must be regulated. Economic central planning and control has been proven to be a failure throughout the world, and "globalized" environmental policies cannot be expected to fare any better.

Third, an environmental policy with trade sanctions is subject to distortion by special interest groups.[6] For example, protectionist tariffs on U.S. imports of orange juice from Brazil are already being defended as necessary to protect tropical rain forests.

Finally, CEI argues that it is difficult to separate environmental priorities from political pressures.

> The sensational rather than the serious dominate policy. Consider the environmental fears of the last few years: the Alar incident [in which the market for apples was disrupted by fears of the pesticide Alar, the use of which was already being phased out], the Chilean grapes, the flurry of concern over [chemical] residues in imported meat, the risks of asbestos. EPA itself in an internal study, *Unfinished Business*, found that its priorities were widely askew from those that would be dictated by environmental concerns.[7]

The problem of misplaced environmental priorities, it is argued, will be far worse if trade sanctions are applied to environmental policies.

In both his hearing testimony and his written submission, Mr. Smith addressed the highly publicized dilemma of the African elephant and compared the results of two very different approaches to solving the problem.[8] On one hand, the population of elephants in Kenya, which had a total ban on the killing of elephants, fell from 65,000 to 19,000 during the 1980s. On the other hand, the elephant population of Zimbabwe, which employed a "conservation-through-use" strategy, increased from 30,000 to 43,000 during the same time period. Other countries using this latter approach also reported increases of about 5 percent in elephant populations. Mr. Smith explained the difference in the following manner:

> [Zimbabwe and other countries] had a conservation-through-use program, a program that essentially empowered the local citizenry to benefit from the controlled harvesting of elephants for ivory, for meat and for hides and also for trophy elephants, the very expensive kinds of safari hunts that are very lucrative to third world countries. . .in allowing controlled trade in an endangered species, we made that species less endangered.[9]

Mr. Smith further pointed out that similar conservation-through-use policies that might have been used to bring sea turtles back from the brink of extinction have been thwarted by the Convention on International Trade in Endangered Species (CITES), which imposes a trade ban on endangered turtles.[10]

During questioning by the Commissioners and staff, Mr. Smith reiterated the concept that an open international market, which would be enhanced, for example, by a free-trade agreement with Mexico, would be more effective than international

[1] Hearing transcript, pp. 14-15.
[2] Ibid., p. 15.
[3] CEI written submission, p. 1.
[4] Ibid., p. 2.
[5] Ibid.
[6] Ibid, p. 3.
[7] Ibid.
[8] Ibid., p. 4.
[9] Hearing transcript, p. 11.
[10] Ibid., pp. 11-12.

environment agreements in protecting the environment and wildlife. He suggested further that the extension of commercial liability laws to environmental problems might also be effective.[11] From a competitiveness point of view, Mr. Smith opined that U.S. industry is disadvantaged by environmental laws that tend to suppress development of new technologies that might make it cheaper to clean up the environment.[12] Finally, the idea of exchanging third-world debt for better environmental protection is "potentially attractive," but "if a country doesn't have property rights. . .or has a tradition of expropriating property. . .drawing green lines on maps doesn't seem to do very much."[13]

Comments by AAEI

AAEI is an association of more than 1,100 U.S. exporters, importers, and other companies providing services essential to international trade. The association urges caution in considering the use of trade sanctions to enforce international agreements to protect the environment and wildlife.[14]

AAEI cites the Montreal Protocol as an inappropriate use of trade sanctions, because it bans all imports of controlled CFCs from nonsignatories but allows limited trade in CFCs among signatories; consequently, the trade restrictions serve more to coerce nonsignatories into signing the Montreal Protocol than to protect the environment.[15] AAEI sees this phenomena being extended to U.S. legislation:

> The precedent set by the Montreal Protocol of using trade sanctions to coerce environmental protection subsequently caught the attention of the U.S. Congress, which has since proposed a number of environmental protection measures with trade sanctions enforcement provisions.[16]

AAEI cites three legislative bills (considered by the 101st Congress) that seek to impose U.S. environmental standards on other countries through the use of trade sanctions.[17] Senate bill S. 1630 ("Clean Air Act") would prohibit U.S. imports of products containing or manufactured with CFCs unless both the manufacturing country and the exporting country (if different) are signatories of the Montreal Protocol. After the year 1999, the import ban would be extended to any country with less stringent CFC regulations than those adopted unilaterally by the United States. House bill H.R. 132 would allow the president to ban imports of any products from countries failing to uphold an international fisheries agreement. Finally, Senate bill S. 2887 ("Global Environmental Protection and Trade Equity Act") would allow for denial of preferential tariff treatment under the Caribbean Basin Economic Recovery Act on the basis of environmental policy sufficiency. It would further make the failure to adopt adequate environmental standards an unfair trade practice under section 301 of the Trade and Tariff Act of 1930, thereby opening the door for U.S. trade retaliation. AAEI sums up its opposition as follows:

> Trade sanctions by themselves are a less than effective means of enforcing environmental agreements because they eschew cooperation and coordination for unilateral fiat. . .In a world of sovereign states, such action cannot be coerced.[18]

Instead, the association advocates a multilateral approach to environmental protection:

> [B]ecause any given environmental threat may be susceptible to more than one possible solution, cooperation between governments to ensure that different approaches are at least consistent with each other will vastly increase the success of national efforts.[19]

AAEI illustrates this point by comparing the U.S. practice of breaking down old bottles and reprocessing the glass into new bottles with the European practice of reusing old bottles several times over before breaking them down for recycling.

AAEI opines that unilateral trade sanctions would harm U.S. trade interests far more than they would contribute to environmental protection.[20] Trade sanctions, they argue, threaten to undermine long-term U.S. efforts in the GATT to promote free multilateral trade. Such harm, AAEI argues, occurs for three reasons.[21] First, trade sanctions may come back to haunt U.S. interests in the future. Under the GATT, trade sanctions are allowable when necessary to maintain national health and safety, but traditionally there must be a close tie between the imported product and any potential harm. If that tie is loosened or broken—"even for such a meritorious goal as environmental protection"—the precedent set could threaten the viability of the multilateral trading system. Second, U.S. credibility as an advocate of liberalized multilateral trade would be weakened, especially in light of the ongoing Uruguay Round of Multilateral Trade Negotiations. Third, unilateral trade sanctions would invite retaliation by our trading partners.

AAEI believes a more appropriate approach would be to seek new international rules governing the use of trade restrictions to enforce environmental standards.[22] The association advocates discussions under the GATT, the OECD, and other appropriate international organizations, to develop a consensus on permissible limits in linking trade to environmental issues.

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[11] Transcript, p. 18.
[12] Ibid., p. 22.
[13] Ibid., p. 36.
[14] AAEI submission, p. 1.
[15] Ibid., p. 2.
[16] Ibid.
[17] Ibid., pp. 3-4.
[18] Ibid., p. 4.
[19] Ibid., p. 5.
[20] Ibid., p. 6.
[21] Ibid., pp. 7-9.
[22] Ibid., p. 10.

Chapter 5
International Agreements

Introduction

International environment and wildlife agreements vary widely in their complexity and format. They may be bilateral, regional, or global in scope. They most often take the form of conventions, treaties, or agreements, but they sometimes are concluded as memorandums of understanding, arrangements, agreed measures, exchanges of letters, resolutions, or minutes. Amendments or extensions of such agreements are usually named that way. A subsequent or subsidiary agreement that stems from an existing agreement, but which itself is of substantial importance, is often referred to as a protocol (e.g., the 1987 Montreal Protocol to the 1985 Vienna Convention for Protection of the Ozone Layer).[1]

The agreements selected for discussion in this report are those to which the United States is a party or in which the United States has a substantial interest because of environmental concerns, economic effects, or political considerations. A chronological index of these agreements appears in appendix F. Appendix G indexes the agreements by the categories listed below.

All the agreements selected have direct consequences on the environment or wildlife; numerous agreements limited to scientific research or education only are not included. For purposes of discussion, agreements covering similar subject matter were grouped into one of nine categories. The wide-ranging nature of pollution and the migratory nature of living beings is such that it was impossible to make the categories mutually exclusive; overlap necessarily exists. The categories are as follows:

Marine fishing and whaling—covering the harvesting of all fish (including shellfish), whales, porpoises, and other mammals that live exclusively in the water;

Wildlife, except marine fishing and whaling—covering marine animals (e.g., seals, polar bears) that spend part of their lives on land, and all other animal and plant wildlife not covered by marine fishing and whaling;

Marine pollution—covering pollution by oil or any other source, except nuclear wastes or fallout;

Pollution of air, land, and inland waters—except by nuclear waste or fallout;

Boundary waters—covers rivers, lakes, and areas of ocean between the United States and Canada, and between the United States and Mexico;

Archeological, cultural, historical, or natural heritage;

Maritime matters and coastal waters—except United States-Canadian and United States-Mexican boundary waters; and

Nuclear pollution—chiefly cooperative agreements in the field of nuclear waste management.

General agreements—covering agreements that cross various disciplines (e.g., Law of the Sea or Antarctic Treaty) and are therefore more difficult to place in any of the preceding categories.

The title block for each agreement gives one or more literature citations of where the text of the agreement can be found. The abbreviations used and their full titles are as follows:

Bevans—Treaties and Other International Agreements of the United States of America 1776-1949
EAS—Executive Agreement Series
ILM—International Legal Materials
LNTS—League of Nations Treaty Series
Miller—Treaties and Other International Acts of the United States of America
Stat.—United States Statutes at Large
TIAS—United States Treaties and Other International Acts Series
UNTS—United Nations Treaty Series
UST—United States Treaties and Other International Agreements

In cases where an agreement is not yet in force or has not appeared in the literature, the citation is given as "none."

The request letter from the Senate Committee on Finance sought the identification of environmental and wildlife agreements that are made effective through trade restrictions. A preliminary review revealed relatively few agreements that rely on trade sanctions for enforcement, so the scope of the study was expanded to include all other agreements of significance to U.S. interests. Of the 170 agreements discussed in this section of the report, Commission staff did identify 19 agreements that employ trade restrictions, which are designed to protect natural resources, wildlife, and cultural/historical property. These particular agreements are not given special treatment in the report (by virtue of their enforcement provisions) but are listed here for the reader's information:

Agreements concerning wildlife other than fish and whales:

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere

[1] A more thorough discussion of international agreements and their various forms can be found in the *Digest of International Law*, vol. 14, ed. by Marjorie Whiteman.

African Convention on the Conservation of Nature and Natural Resources
Convention Between U.S. and Great Britain (for Dominion of Canada) for the Protection of Migratory Birds in the United States nd Canada
Convention Between the United States of America and the United Mexican States for the Protection of Migratory Birds and Game Mammals
Convention Between United States and Japan for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment
Convention Between the United States of America and the U.S.S.R. Concerning the Conservation of Migratory Birds and Their Environment
International Convention for the Protection of Birds
Agreement on the Conservation of Polar Bears
Arrangement Between the United States of America and Canada on Raccoon Dog Importation
International and Regional Plant Protection Agreements (five are mentioned in the report)

Agreements concerning archaeological, cultural, historical, or natural heritage:

Treaty of Cooperation Between the United States and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical, and Cultural Properties
Agreement Between the United States and the Republic of Peru for the Recovery of Stolen Archaeological, Historical and Cultural Properties
Agreement Between the United States and the Guatemala for the Recovery of Stolen Archaeological, Historical and Cultural Properties
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

In addition, it is worth noting that the Treaty Between the United States and Canada on Pacific Albacore Tuna Vessels and Port Privileges specifically precludes the use of import bans as a dispute-settlement mechanism. Individual discussions of these agreements are included below, under the general headings given above.

Agreements Concerning Marine Fishing And Whaling

Introduction

Basic Principles

The international legal regime for fisheries management during this century has relied on two concepts. First, ocean areas and the right to exploit fish stocks (including highly migratory species) therein have been allocated, and this apportionment may be accepted as fact or recognized in formal agreements. For example, coastal states claim territorial waters adjacent to their shores and assert control over resources in areas abutting their territorial waters and in other waters where such states demonstrate historical fishing activities. Second, the total allowable catch (TAC) by species in an area is determined, along with the disposition of any surplus that a state lacks capacity to take.

The success of this system is dependent to a high degree on scientific studies of fisheries resources, the stock levels required to maintain basic populations, and the effects of fishing, pollution, climate, and other factors on fish stocks. Coastal states wish to maintain profitable fishing industries and to obtain fees and tax revenues from them; however, continued economic benefits depend on managing available resources to prevent overexploitation. Beginning with technological improvements in the 1950s, and accelerating in the early 1970s, annual catch sizes of many species almost consistently increased and fish stocks decreased, to an extent that alarmed both scientists and governments. Some areas were already depleted of all or most fish before controlling governments could implement conservation plans, and some migratory species (such as tuna) must be managed under international arrangements as more countries have established wide-ranging fishing industries.

With more countries claiming rights over waters extending 200 miles from their coasts, and with the adoption of the U.N. Convention on the Law of the Sea,[2] greater control of catch size and annual increases has been apparent. The alternative concepts of maximum sustainable yield, maximum economic yield, and optimum yield of an area are also more commonly taken into account. Still, the TAC is not an easily ascertained or well-defined quantity, but depends on complex considerations of fisheries management and human needs (both nutritional and economic). In the face of growing world populations and food requirements, overexploitation remains a constant risk.

[2] For a discussion of the Convention on the Law of the Sea, see "Agreements on Maritime and Coastal Waters Matters," below.

In addition, claims of or agreements with native peoples play a significant role in governmental efforts to regulate exploitation of fish resources, such as the U.S. treaties with various Indian tribes.[3] The latter have generally granted the right to take fish at customary fishing grounds, sometimes with time-of-year limitations and at times with rights of access for nonnative persons to Indian fishing grounds. Because of the tribes' unequal bargaining position, their negotiated agreements have been construed in their favor by U.S. courts, overriding conflicting state regulatory schemes and fees.[4] In the United States, such agreements have been viewed as an express recognition by the Government of a durable, continuing, even aboriginal right to take fish. In other common-law countries, such as Canada and New Zealand, the legal recognition of native fishing rights has been slower to develop, although in recent years this development has accelerated (chiefly because of the 1982 Constitution Act in Canada and judicial decisions in New Zealand).[5] By contrast, Australia has adopted the very different view that no aboriginal rights still exist there.

U.S. Statutes

The overall policy of the United States regarding fisheries is to provide for the exploration, identification, development, and maintenance of fisheries resources and high seas fishing, as well as to attain the optimum sustainable yield from a particular habitat.[6] These principles are the basis of the many acts related to fishing and fisheries conservation. In several of these statutes, Congress has enacted provisions making it illegal to take, import, export, ship, possess, sell, and receive fish taken in violation of U.S. law and international agreements.[7]

The United States has regularly concluded agreements concerning access by its vessels to foreign fisheries and by foreign-flag vessels to areas under U.S. control, which for many years included the 3-nautical-mile[8] territorial sea comprising the continental shelf adjacent to U.S. shores and certain other waters (such as estuarine areas and bays). These agreements not only attempted to set appropriate limitations on catch size, but also dealt with the movements of and claims relating to vessels of the parties.

However, as more nations began to fish U.S. coastal areas—while at the same time claiming the resources of their own 200-nautical-mile exclusive economic zones for their own vessels—the competition facing U.S. fishing vessels and the depletion of U.S. fisheries resources intensified. In 1976 the Magnuson Fishery Conservation and Management Act (the Magnuson Act) provided the basis for U.S. regulation of domestic and foreign fishing vessels in the exclusive economic zone proclaimed by the President in 1983.[9] The Act set up eight regional fishery management councils to develop and administer management plans for particular areas, taking into account biological, economic, social and other factors and public views.[10]

Under the Magnuson Act, a foreign vessel is allowed access only under the terms of bilateral governing international fishery agreements (GIFAs) between its government and the United States.[11] In a GIFA, the other party acknowledges that the United States has sovereign rights to explore, exploit, conserve, and manage the fisheries resources within the exclusive economic zone under the terms of the Magnuson Act and that the United States can impose penalties for violations. The statute also provides for the extension and modification of GIFAs.[12] Absent a GIFA, imports of fish from other countries are banned; vessels and activities in contravention of international obligations likewise result in import bans.[13] Moreover, the act prohibits wrongful taking of fish, fishing in places not allowed under laws or GIFAs, resisting the intervention of observers or officials, and similar offenses and prescribes civil penalties (up to $25,000 per violation), criminal penalties (up to $50,000 fine or 6 months incarceration), and seizure and forfeitures.[14]

Other significant measures include the Fish and Wildlife Act of 1956,[15] the Atlantic Salmon Convention Act of 1982,[16] the Fish and Game Sanctuary Act,[17] the National Aquaculture Act of

[3] See, for example, "Treaty with the Umatilla Tribe," June 9, 1855 (12 Stat. 945).

[4] For a detailed discussion, see Michael C. Blumm, "Native Fishing Rights and Environmental Protection in North America and New Zealand: A Comparative Analysis of Profits a Prendre and Habitat Servitudes," Wisconsin International Law Journal, vol. 8 (1989), pp. 1-50.

[5] According to the Blumm article cited above, the Royal Proclamation of 1763—source of Indian law in Canada—was not interpreted by the courts for the purpose of ascertaining native fishing rights until the 1960s. It was not until 1973 that a ruling of the Canadian Supreme Court indicated that aboriginal title did not depend on the 1763 proclamation, and only in the mid-1980s did courts of British Columbia recognize aboriginal claims. In New Zealand, a treaty with Maori chiefs in 1840, interpreted in both subsequent legislation and court rulings, was given real effect in a 1975 act and a 1987 settlement of claims.

[6] 16 U.S.C. 758, 1361.

[7] See, for example, specific provisions of the South Pacific Tuna Act of 1988 (16 U.S.C. 973c and 973f), the Northern Pacific Fisheries Act (16 U.S.C. 1029), the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371), the Eastern Pacific Ocean Tuna Fishing Licensing Act of 1984 (16 U.S.C. 972f), the Northern Pacific Halibut Act of 1937 (16 U.S.C. 772b), and various other acts.

[8] Presidential Proclamation 5928, dated Dec. 27, 1988, extended the territorial sea of the United States to 12 nautical miles, "in accordance with international law."

[9] The act (16 U.S.C. 1801 et seq.) created a fishery conservation zone extending 200 miles from the baseline (the traditional 3-mile continental shelf area claimed by the United States as its territorial waters prior to the 1983 proclamation). It also included continental shelf areas extending beyond the 200-mile zone.

[10] See Organization for Economic Cooperation and Development, *Fisheries Issues: Trade and Access to Resources* (Paris 1989), p. 207 (hereinafter "*Fisheries Issues*").

[11] 16 U.S.C. 1821.

[12] Sec. 202(a), 16 U.S.C. 1822(a).

[13] 16 U.S.C. 1825.

[14] 16 U.S.C. 1857 1860.

[15] 15 U.S.C. 713c-3, 16 U.S.C. 742a et seq.

[16] 16 U.S.C. 3601 et seq.

[17] 16 U.S.C. 694.

1980,[18] the Whaling Convention Act,[19] the Sockeye Salmon or Pink Salmon Fishing Act of 1947,[20] and measures relating to the protection of endangered species and the regulation of coastal development and pollution. Several agencies of the U.S. executive branch are responsible for broad regulatory and enforcement activities and the protection of habitats and waters, among them the National Marine Fisheries Service and the National Ocean Service (under the National Oceanic and Atmospheric Administration of the Department of Commerce), the U.S. Fish and Wildlife Service (Department of the Interior), the Coast Guard (Department of Transportation), the Bureau of Reclamation (Department of the Interior), the Forest Service (Department of Agriculture), the Bureau of Oceans and International Environmental and Scientific Affairs (Department of State), and the Farm Credit Administration. In addition, the Pelly Amendment to the Fishermen's Protective Act of 1967[21] provides that—

> When the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce shall certify such fact to the President.

The President may direct the Secretary of the Treasury to bar the importation of fish products from the violating country for as long as the President deems appropriate and to the extent allowed by the GATT. If the President exercises this discretionary authority, periodic reviews are required to see if the offending country's fish products should again be allowed importation.

Other U.S. laws regulating fisheries include the Nicholson Act, which prohibits foreign-flag fishing vessels from landing their catches at U.S. ports, and the Jones Act, which limits the coastwise trade to vessels built, documented, owned and documented in the United States. In addition, the Marine Mammal Protection Act (MMPA) prohibits nearly all trade in seals, whales, and other protected marine mammal products. Finally, the United States maintains extensive phytosanitary regulations and packaging and labeling requirements under the Federal Food, Drug, and Cosmetic Act, as amended. These measures cover adulteration, misbranding, labeling, standards of identity, limits on pesticides and poisonous substances, additives, good manufacturing practices, defects, and so on.

Several provisions of the customs laws (in addition to the tariff schedule, imposing duty rates ranging from free to 35 percent ad valorem) also affect the fisheries industry. Drawback of customs duties is available to imported fish that are subsequently reexported, whether in the same form or processed into other products, under section 313 of the Tariff Act of 1930, as amended.[22] The U.S. tariff-rate quota on tuna, which is based upon domestic production in the preceding calendar year and results in higher duties for many imports, may affect not only import levels but also domestic prices, consumption, and the location of canning facilities. The antidumping and countervailing-duty laws have likewise resulted in additional duties on imports of specified products from particular countries.

Other National Legal Regimes

In addition to widely varying duty rate schemes, which frequently subject processed products to higher duties than basic ones, other countries utilize differing legal and regulatory provisions concerning fisheries. The percentage of tariff bindings on fisheries products likewise varies, as does the share of trade entering under bound tariff lines. Many of our trading partners, including the EC, Canada, Australia, and the Nordic states, maintain regional or bilateral arrangements affording tariff or access preferences. Global import quotas,[23] surcharges,[24] and licensing[25] and sanitary requirements have also been adopted in many countries. Landing, country-of-origin marking, labeling, and marketing criteria are also imposed. Other fishing countries, such as Japan, Korea, and Taiwan, impose requirements as to driftnet fishing (including standards as to net mesh size), landing requirements, vessel markings and position reporting, incidental catches, record keeping, eligible processing vessels, radio transmitters, and times and places of fishing.[26] None of these legal measures, however, may resolve difficulties or disputes concerning fishing on the high seas, such as the appropriateness of particular methods or catch size or the management of migratory species, even when observer schemes are employed.

The following summary indicates some major features of the legal and regulatory schemes of a few trading partners:[27]

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[18] 16 U.S.C. 2801 et seq.
[19] 16 U.S.C. 916 et seq.
[20] 16 U.S.C. 776 et seq.
[21] 22 U.S.C. 1971, 1978.

[22] 19 U.S.C. 1313.
[23] Among the major importers, Japan and Finland have employed global quotas, and France, Norway, Sweden, Portugal, and Spain have imposed quotas on particular species or products. OECD, *Fisheries Issues*, pp. 32-33.
[24] Utilized by Sweden, the United Kingdom, and Canada, and (if merchandise processing fees and antidumping and countervailing duties are included) the United States. Ibid., p. 34.
[25] Employed by Norway, Sweden, France, Finland, Portugal, Spain, Japan, and Canada, some of which use licenses to implement import quotas. Ibid., pp. 33-34.
[26] Kouji Imamura, Councillor, Fisheries Agency, Japan, letter to Ambassador Edward E. Wolfe, Dep. Asst. Sec. for Oceans and Fisheries Aff., U.S. Dept. of State, April 12, 1990 (with attachments); Hee Soo Lee, Deputy Administrator, National Fisheries Administration, Republic of Korea, letter to Ambassador Edward E. Wolfe, Sept. 8, 1990 (with attachments); Mou-Shih Ding, Representative, Coordination Council for North American Affairs, Taiwan, letter to Mr. David N. Laux, Chairman, American Institute in Taiwan, Aug. 24, 1989 (with attachments).
[27] See OECD, *Fisheries Issues* for country notes, pp. 49-130.

Australia: Requires catch be landed elsewhere than Australia; imposes inspection requirements, no quotas, duties imports at 2 percent ad valorem (except canned tuna, at 15 percent ad valorem), no licensing or other charges, prohibits taking or landing of certain protected or endangered species without permits.

Canada: Inspection requirements (any product failing to meet Canadian regulations faces mandatory inspections until four consecutive shipments comply; cost of inspections Can$15 per shipment), import licenses required for fish for human consumption (annual fee Can$100), health and sanitary requirements, specified processing rules for certain exports.

EC: Tariff-rate quotas on many imports, import certificates (Spain and Portugal only for limited period), differing sanitary rules among member states, reference prices for particular fish products are fixed (adjustment charges on imports or end of autonomous tariff suspension possible), subsidies to the harvesting and processing sectors as well as to aquaculture, price stabilization system (products can be withdrawn from market if prices fall below fixed Community levels).

Iceland: Live freshwater fish and any catches of foreign vessels cannot be landed directly, equalization charges on certain imports, products of Eastern Europe must be certified as free of radioactivity.

Japan: Quotas on some species, licenses required, sanitary requirements.

Norway: Quotas on mackerel (import licenses are used when domestic catch does not meet needs), sanitary and labeling rules, export-credit guaranteed for certain fish; subsidies and worker income support for some domestic fishing interests.

Sweden: Quotas on some categories, licensing system used, import fees and price regulation fees on particular species, income supports and subsidies to domestic interests.

Some restrictions, such as Australia's advance permit rules on specified species, are intended to give effect to treaty obligations. However, many of the above-mentioned requirements are intended to assist domestic interests or to stabilize prices, as was the case with some of the U.S. rules noted above.

Current Issues

International trade in fishing developed in a largely unorganized fashion (except insofar as bilateral working arrangements were concerned) before broader treaties could be adopted, with their goals of attaining maximum use of resources and ensuring continuing availability. Localized fishing areas were more or less divided among adjacent countries, but the catch could be taken to the market having the highest prices. Many fishing states maintained reciprocal access arrangements or sold rights to coastal fisheries; others tried to intercept ships from all countries except those covered by "neighboring state" or preferential agreements.

However, since the mid-1800s the advent of the global fishing fleet, new fishing techniques, and factory ships has greatly increased competition and tensions in many fisheries and necessitated new methods of regulating operations and ending disputes. The effort to deal with high-seas fisheries and those coastal areas with plentiful resources was complicated by preexisting bilateral arrangements attempting to cover overlapping or identical geographic areas. Some countries, such as Canada, have had difficulties reaching agreements with those states that helped settle them and/or formerly controlled all or part of them as colonies. As a result, the development of domestic legal regimes in such countries was influenced both by perceived domestic needs and by the desire to constrain states claiming fishing rights on the basis of past relationships. Coastal states have often tried to utilize bilateral arrangements to maintain domestic control over traditional fisheries, whereas many nations (often because of their growing dependence on long-distance fishing fleets) favor multilateral agreements. As northern waters have been exploited, southern coastal states with small or underdeveloped fishing industries have faced the difficult choice of negotiating and enforcing bilateral agreements or joining multilateral ones.

Different countries have chosen varied methods of ensuring fisheries control:

Australia: Allows four countries access to coastal waters under bilaterals, regulated by fees and quotas and covered by compensation formulas.

Canada: Bilateral agreements with the EC (France in particular, following longstanding disputes over rights of French nationals to fisheries off St. Pierre and Miquelon and along coasts of Newfoundland and Nova Scotia) and 12 foreign states allocate foreign fishing access for compensation and under quotas.

EC: Many bilaterals (some reciprocal, some "access-to-resources for access-to- markets," some with compensation for access to resources or to markets); agreements with Canada and Sweden contain

	trade-related provisions covering allocation of surplus; separate agreement with United States on surplus.
Finland:	Agreement with Sweden as neighboring state, reciprocal agreements with EC and U.S.S.R., four bilaterals.
Japan:	Fifteen bilaterals, three reciprocal arrangements (U.S.S.R., China, and Korea); agreements with United States and Canada include compensation.
New Zealand:	Four bilaterals give access to exclusive economic zone.
Norway:	Thirteen bilaterals (four reciprocal, three nonreciprocal, two neighboring state, two transitional), framework arrangement with several countries allocating quotas in Jan Mayen fishery zone.
Sweden:	Six bilaterals (four reciprocal).

Some longstanding disputes (which often date back to or even precede colonial relationships), such as those between Iceland and the United Kingdom, Norway and the United Kingdom, and others, have been the subject of international arbitration and adjudication and, at times, of confrontation. Many such disputes have been resolved under the auspices of bilateral or multilateral agreements. The International Court of Justice has issued several opinions on fisheries issues. Emotional and nationalistic feelings, however, complicate the achievement of continuing cooperation.

Given differences in fisheries resources, the degree of regulation and frequency of disputes has varied widely. A considerable number of disputes have arisen from the very complex U.S. regulatory scheme for the Pacific coast and Alaskan waters, with their numerous runs of varying species, environmental problems, issues relating to Indian fishing rights, differing gear used by fishing states, and other problems. Foreign allocations (no more than 50 percent of which are awarded at the beginning of each year) are based upon several factors set by the Magnuson Act:

(1) each foreign nation's tariff and nontariff barriers on each product;

(2) cooperation with the United States in developing U.S. export opportunities and trade in general in each product;

(3) cooperation in U.S. enforcement of its fishing regulations;

(4) each nation's need for each fish product in its domestic consumption;

(5) each nation's cooperation with U.S. fishermen (avoiding fouling of gear, sharing technology, etc.);

(6) whether the nation has traditionally fished for a product or in an area;

(7) each nation's participation in fisheries research and identification of resources; and

(8) other matters raised by the Secretaries of State and of Commerce.

Because of the number and varying scope of these criteria, the growth of the domestic catch, the effects of international regulations, and United States-Canadian disputes, fisheries issues are continually being raised.

Multilateral Agreements Concerning Marine Fishing

AGREEMENT ESTABLISHING THE SOUTH PACIFIC COMMISSION. date signed: 2/6/47; **entry into force:** 7/29/48 (U.S. instrument of accession deposited 2/16/48); **citations:** 2 UST 1787, TIAS 2317, 97 UNTS 227; **amendments:** 11/7/51 (3 UST 2851, TIAS 2458, 124 UNTS 320); 4/5/54 (5 UST 639, TIAS 2952, 201 UNTS 374); 10/6/64 (16 UST 1055, TIAS 5845, 542 UNTS 350); 10/2/74 (26 UST 1606, TIAS 8120); 10/20/76 (33 UST 585, TIAS 10051); 10/7/78-10/12/78 (33 UST 590, TIAS 10052); **depositary:** Government of Australia.

Objectives and Obligations

The objectives of the agreement were "to encourage and strengthen international co-operation in promoting the economic and social welfare and advancement of the peoples of the non-self-governing territories in the South Pacific region administered by them." To implement these broad goals, a 12-member South Pacific Commission was created, with 2 representatives from each of the 6 parties then administering such territories.[28]

Article IV describes the Commission as a "consultative and advisory body" dealing with the territories' social and economic development. It is charged with conducting and coordinating studies in a range of areas,[29] preparing recommendations, assisting in research and in local projects, promoting cooperation with nonparty governments and nongovernmental organizations, providing technological assistance, submitting inquiries to the parties, and handling other agreed responsibilities. Its procedures are set forth in article V.

[28] Arts. I through III.

[29] Included are fisheries, agriculture, transport, forestry, communications, industry, health, education, labor, marketing, housing, production, trade and finance, social welfare, technical and scientific cooperation, and public works.

Articles VI through VIII cover the Research Council, the Commission's advisory entity. Among its functions is the appointment of technical research committees to deal with problems in particular fields. Articles IX through XII establish the South Pacific Conference as an advisory body auxiliary to the Commission. This entity would be composed of delegates representing the territories administered by the parties and would discuss matters of common interest with a view toward making recommendations to the Commission. Article XIII provides for a Secretariat to serve these bodies, and article XIV, for the budget for all entities created by the treaty.

Article XV directs all of these bodies to cooperate fully with the U.N. and its organs, and article XVI sets the headquarters for the Commission. Other articles deal with amendments of and withdrawals from the agreement; article XVII is a general savings clause of indefinite duration. An accompanying resolution detailed the initial projects to be undertaken.

The 1951 amendment extended coverage under the agreement to Guam and the Trust Territory of the Pacific Islands. The 1954 amendment altered the provisions concerning the frequency of sessions of the Commission. Subsequent amendments dealt with territorial scope, the role of the Commission, voting rights of the parties (as that group began to grow), and the Commission's expenses. A 1974 memorandum of understanding focused on the growing role of the Conference, its standing committees and larger membership, and its work program.

Dispute-settlement Mechanisms

No provisions for dispute resolution are included, in part because no entity created under the agreement has a regulatory role and in part because the agreement does not impose restrictive obligations. The various bodies operate democratically and provide a forum for review and compromise.

Enforcement Mechanisms

No such mechanisms are established, for the reasons noted in the preceding paragraph.

Provisions for Exchange of Information

A constant exchange of information within and among the bodies created by the agreement, and with governments and organizations, is implicit in the terms of the agreement. In addition, the Secretariat serves as an additional means of organizing and transmitting information to appropriate recipients.

Parties

Australia
Cook Islands
Fiji
France
Nauru
New Zealand
Niue
Papua New Guinea
Solomon Islands
Tuvalu
United Kingdom
United States
Western Samoa

CONVENTION FOR THE ESTABLISHMENT OF AN INTER-AMERICAN TROPICAL TUNA COMMISSION (IATTC): date signed: 5/31/49; entry into force: 3/3/50; citations: TIAS 2044, 1 UST 230, 80 UNTS 3.

Objectives and Obligations

This convention originally concluded between the United States and the Republic of Costa Rica[30] established in article I(1) the Inter-American Tropical Tuna Commission (IATTC) to maintain the populations of yellowfin and skipjack tuna and other kinds of fish taken by tuna fishing vessels in the eastern Pacific Ocean. The IATTC is charged with gathering information on the abundance, biology, biometry, and ecology of certain tuna. Under article II, the IATTC also may issue directives for the publication of information relating to current and past conditions and trends of the populations of fishes covered by this convention.

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Enforcement Mechanisms

Article III provides that parties agree to enact such legislation as may be necessary to carry out the purposes of the convention.

Provisions for Exchange of Information

The IATTC is to meet at least once each year, and at such other times as requested by a party. Article I(6)(12) states that the Commission may hold public hearings and each national section may hold public hearings within its own country.

Implementation

The convention was implemented in the United States by enactment of the Tuna Conventions Act of 1950[31], as amended.[32] The Commission headquarters may be contacted through Scripps Institute of Oceanography, La Jolla, CA 92037, Director of Investigations: Dr. James Joseph, telephone (619)453-6100 (FTS 893-6100). The national IATTC operating agency is the U.S. State Department—Brian Hallman, OES/OFA, DOS, Washington, DC 20520,

[30] Costa Rica withdrew in 1979 and rejoined effective May 9, 1989.
[31] 64 Stat. 777.
[32] 16 U.S.C. 951-961.

telephone (202)647-2335; and NOAA/National Marine Fisheries Service—Becky Rootes, F/IA1, Room 7306, 1335 East-West Highway, Silver Spring, MD 20910, telephone (301)427-2276.

The convention limits U.S. representation to not more than four commissioners. Currently, they are as follows:

Henry R. Beasley
Director, Office of International Affairs
NOAA/NMFS
1335 East-West Hwy.
Silver Spring, MD 20910

Robert Chapman MacDonald
410 Jerome Avenue
Astoria, OR 97103

Jack Gorby
525 North Bellagio Terrace
Los Angeles, CA 90049

Mary L. Walker
86 Melville Avenue
San Anselmo, CA 94960

Current Issues[33]

The IATTC's recommended regulations so far apply only to yellowfin tuna. Since 1979 no conservation program has been in effect for the Commission Yellowfin Regulatory Area, largely because of U.S. reluctance to agree on implementation of a catch quota level, which would not apply to major participants in the fishery. The Commission did not recommend an international yellowfin tuna catch quota for 1987, because the yellowfin tuna resources in the eastern tropical Pacific were found to be at their highest level of abundance in recent years. At its 1988 annual meeting, the IATTC recommended an initial catch quota for 1988 of 190,000 tons. The member countries currently are not in a position to implement IATTC quotas, because there is no assurance that they would be honored by nonmember countries, such as Mexico, which harvest large amounts of eastern Pacific tuna. Nevertheless, the IATTC recommendation provides a basis for all participants in these fisheries to evaluate conservation needs of the resource.

The 1989 IATTC meeting set the 1989 overall catch quota of yellowfin tuna at 220,000 tons. This was made contingent on the existence of the necessary political conditions for implementation. At the 1989 meeting, considerable time was spent discussing recent U.S. legal changes that require countries fishing in the region to document that they have porpoise-protection programs and porpoise kill rates comparable with those in U.S. programs before they can export tuna to the United States.

[33] NOAA, National Marine Fisheries Service, *International Fishery Agreements Memorandum*, Jan. 11, 1990.

Efforts to renegotiate the convention establishing IATTC were initiated by Mexico and Costa Rica in 1977 but delayed in 1980. Since then, the United States has focused on the development of a regional licensing agreement—the Eastern Pacific Ocean Tuna Fishing Agreement—which was signed on March 15, 1983, by the United States, Costa Rica, and Panama. Although subsequently signed by Guatemala and Honduras, this agreement has not received the necessary ratification to bring it into force. Mexico has been working through the Organizacion Latinoamericana del Desarrollo Pesquero to negotiate a tuna management convention that would emphasize coastal state authority. An agreement was finalized and signed by Mexico and four other countries in July 1989, although it is uncertain when it will enter into force. Currently, IATTC continues to provide an internationally recognized focal point for both tuna and porpoise assessment and monitoring in the eastern tropical Pacific.

Parties[34]

Costa Rica
France
Japan
Nicaragua
Panama
United States

AGREEMENT FOR THE ESTABLISHMENT OF A GENERAL FISHERIES COUNCIL FOR THE MEDITERRANEAN: date signed: 9/24/49; entry into force: 2/20/52; citations: 126 UNTS 237; depositary: Food and Agriculture Organization; amendments: 12/3/63, 12/9/76.

Objectives and Obligations

This agreement, drafted under the aegis of the U.N. Food and Agriculture Organization (FAO), created a council to promote and coordinate research on fishing and fishermen in the Mediterranean. The principal objective is to further the development and appropriate use of Mediterranean resources and those of contiguous waters by means of international cooperation. The council, under article IV of the agreement (as amended in 1963, originally article III), is charged with undertaking such research and recommending projects to member governments, disseminating information among the parties and the fishing industry, working to standardize pertinent scientific equipment and techniques, studying existing provisions of and recommending amendments to the parties' fisheries legislation to achieve greater coordination, dealing with questions of scientific interest or technical problems, and reporting to the FAO and the U.N. on matters within the council's competence. Article III empowers the council to set up committees and working parties and to recruit and appoint specialists to deal with

[34] Ecuador withdrew effective Aug. 21, 1968. Mexico and Canada withdrew effective Nov. 8, 1978, and May 17, 1984, respectively. Costa Rica withdrew in 1979 and resumed its participation effective May 29, 1989.

specific technical problems relating to Mediterranean fisheries (including occupational diseases and hygiene of fishermen). Article V allows the council to carry out studies outside the Mediterranean with the consent of appropriate governments and organizations, and article VI mandates close cooperation with other international organizations.

Dispute-settlement Mechanisms

Article XIII of the agreement provides that any disputes as to its application or interpretation, if not resolved by the Council, are to be referred to three-member committees. The latter, each comprising a member chosen by each party to the dispute and an independent chairman, submit nonbinding recommendations to serve the parties as a means of resolving disputed issues. Absent a resolution by a committee, disputes are to be submitted to an "International Council of Justice," unless otherwise agreed by the parties to the dispute.

Enforcement Mechanisms

Because the agreement is not essentially regulatory in character and speaks in terms of recommendations rather than mandatory actions by the council or its committees, no means of "enforcement" are provided. Effective implementation of the agreement—namely, of the work of the council and the results of any dispute settlement—depends on the efforts and goodwill of the parties, except to the extent that the FAO or the U.N. may deem it appropriate to attempt to achieve a higher degree of cooperation by any of the parties.

Provisions for Exchange of Information

As noted above, the council has wide responsibilities for disseminating information concerning both the agreement and ongoing studies and problems of a scientific or technical nature relating to these fisheries (not just those conducted by the council). The parties, which send representatives to the biennial and special meetings of the council and participate in its work, are not separately required to provide information.

Implementation

No information is presently available regarding the parties' efforts to implement the terms and goals of the agreement. No U.S. legislative or regulatory action regarding the agreement is appropriate or has occurred, because the United States is not a party.

Current Issues

No significant issues have been brought to the Commission's attention.

Parties

Algeria
Bulgaria
Cyprus
Egypt
France
Greece
Israel
Italy
Lebanon
Libyan Arab Republic
Malta
Monaco
Morocco
Romania
Spain
Syrian Arab Republic
Tunisia
Turkey
Yugoslavia

INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN (with annex and protocol). date signed: 5/9/52; entry into force: 6/12/53; citations: 4 UST 380, TIAS 2786, 205 UNTS 65; 4/25/78 (30 UST 1095, TIAS 9242); 4/9/86 (no citation); memorandum of understanding [with Japan] relating to the protocol of 4/25/78, amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, as amended, signed 6/8/87, entered into force 6/8/87.

MEMORANDA OF UNDERSTANDING CONCERNING SALMONID RESEARCH AND ENFORCEMENT OF THE INTERNATIONAL CONVENTION FOR THE HIGH SEAS FISHERIES OF THE NORTH PACIFIC OCEAN. date signed: 4/9/86; entry into force: 4/9/86; citations: none.

Objectives and Obligations

The parties entered into this agreement to "ensure the maximum sustained productivity of the fishery resources" in the northern Pacific Ocean. In addition, they desired to reflect their "obligation, on a free and equal footing, to encourage the conservation of such resources" and to advance the scientific studies and measures needed to achieve this conservation.

The convention sets the scope of its coverage (geographically and in terms of vessels) as the North Pacific and adjacent waters but not including any territorial waters. No party shall be adversely affected as to the limits claimed for its territorial waters or as to jurisdiction of a coastal state over its fisheries. Article II creates a Commission and provides for its membership and procedures. The Commission's functions, as set out in article III, include studying any stock of fish enumerated in the annex[35] and making recommendations as to its conservation under criteria of article IV. The Commission can also recommend penalties for violations of the agreement and is required to report annually to each party. The parties may jointly or separately undertake to control or avoid taking any stock of fish, subject to the Commission's

[35] Halibut, herring, and salmon.

supervision. When any party expresses the view that operations of nonparty countries are impeding the Commission or the goals of the agreement, the Commission may confer with the other parties to try to eliminate the adverse effects of these operations.

Article IX sets forth three basic obligations for each party: (1) whenever it undertakes to protect a stock of fish, to prohibit its own nationals and vessels from taking, loading, processing, having on board, or shipping such fish; (2) when it has adopted conservation measures as to a stock of fish, to ensure that its own nationals and vessels abide thereby; and (3) to adopt and enforce necessary laws and regulations (with penalties) to achieve these ends.

The Commission, which comprises "national interest sections" from each party, carries out its work by relying on those interest sections that take or regulate each stock of fish. Thus, if a party does not exploit a particular stock, that party does not participate in settling claims or even conducting regulatory activities relating to the stock or species. In a protocol to the convention, the Commission is explicitly directed to study salmon to determine the geographic range of each species; failing agreement in a reasonable time, a special committee of scientists would be set up to determine the matter. Each party can utilize technical advisory committees, and research and data collection are to be conducted to evaluate fish stocks. Finally, in separate memorandums of understanding, the parties agreed to study a particular salmon species, help the Commission in its work, organize and report data on salmon fisheries, regulate gill net size, and protect porpoises that may be accidentally caught.

Dispute-Settlement Mechanisms

In addition to its function as a joint forum for study and analysis, the Commission serves as a forum for the parties to air problems in carrying out the terms of the agreement. However, the Commission has the power only to make recommendations, leaving any actions to be taken to the discretion of each party. No specific dispute-resolution provisions are included.

Enforcement Mechanisms

Article X provides specific means of carrying out the convention. When a party's fishing vessel is found in waters where that party has agreed to avoid exploiting a stock of fish, appropriate officials of any party can board the vessel and inspect books, equipment, persons, and other articles on board. With actual observation of violations or probable cause to believe that a violation has occurred, these officials may arrest crew members or seize the vessel, with notification to the party concerned. The crew or vessel is to be delivered to the party of nationality or flag for appropriate action. If immediate delivery is not possible, the seizing party can keep the person or vessel under surveillance in its own territory until arrangements can be made. Only the party of nationality or flag, having jurisdiction over the person(s) or vessels, is empowered to try the offense. The parties agree to enforce jointly all conservation measures, review their effectiveness, and make recommendations. As noted above, article VI provides a means of eliminating or obviating adverse effects of exploitation by nonparty violators.

Provisions for Exchange of Information

The parties agree to keep required records and to furnish them to the Commission on demand and in aggregate form (i.e., no information on individuals will be released). The Commission disseminates its own study results, proposals by any party, recommended decisions and other actions, and any other data or reports, and may also hold public hearings to carry out its functions.

Parties

Canada
Japan
United States

CONVENTION ON FISHING AND CONSERVATION OF LIVING RESOURCES OF THE HIGH SEAS. date signed: 4/29/58; entry into force: 3/20/66; citations: 17 UST 138, TIAS 5969, 559 UNTS 285; depositary: U.N.

Objectives and Obligations

The object of the convention is to promote international cooperation in resolving problems relating to the conservation of high seas living resources, in light of new techniques allowing some of these resources to be overexploited. An initial article expresses the right of all states to have their nationals fish on the high seas under the terms of this agreement and their other treaty obligations. Article 1 also states that all states have a duty to put in place, and cooperate with other states to achieve, necessary conservation measures relating to their nationals. Under article 2, these measures are to achieve the maximum supply of food for human consumption and, as an ancillary matter, to do so on a sustainable basis.

Conservation measures are likewise to be developed and applied by a state in high-seas areas fished only by that state's nationals (art. 3), and may be unilaterally adopted in areas contiguous to territorial seas where conservation is necessary (arts. 6 and 7). Moreover, catches in an area fished by nationals of more than one state can be the subject of negotiated conservation measures (art. 4) or of dispute settlement (arts. 9 and 11). Measures adopted by a state must be based upon urgent need and scientific findings and cannot discriminate as to foreign fishermen in form or in fact (arts. 6 and 7). States whose nationals are not fishing a high-seas area can ask states involved therein to adopt conservation measures and can initiate dispute settlement if no agreed action is taken. Any state adopting measures applying to nationals of other states must also, within 7 months, apply the same measures to its own nationals (art. 5).

Article 13 regulates fisheries conducted by means of equipment fixed on the sea floor in areas adjacent to territorial waters of states whose nationals have long been engaged in such fishing. Article 14 defines "nationals" according to the nationality of the boat or other craft, in a manner unrelated to the nationality of the crew members.

Finally, several articles deal with amendments to and the administration of the agreement. Reservations to enumerated articles are precluded, and any changes in the agreement are to be deliberated and adopted by the U.N. General Assembly.

Dispute-settlement Mechanisms

A dispute under articles 4 through 8 of the convention is first intended to be resolved by the interested parties. Failing resolution within 12 months, it can be submitted, at a party's request, to a five-member special Commission for resolution or handled under provisions of the U.N. Charter. The Commission decisions are binding on the states concerned, under article 11, and any accompanying recommendations are to be afforded the greatest consideration. Article 12 provides for the further negotiation and modification of these decisions if circumstances change.

Enforcement Mechanisms

The obligations of the agreement are enforced by means of the supervision and action of the states concerned, through the dispute-settlement mechanism outlined above and through the provisions of the U.N. Charter. The measures adopted by a state continue to have the obligatory status intended by that state during the course of dispute settlement. In addition, if decisions resulting from dispute settlement are not implemented within 2 years of issuance, dispute settlement can be initiated again on the issues involved and changes of circumstances.

Provisions for Exchange of Information

The Secretary General of the U.N. is directed to inform all states of signatures/accessions, reservations, requested revisions, and other matters.

Parties

Australia
Belgium
Burkina Faso
Cambodia
Colombia
Denmark
Dominican Republic
Fiji
Finland
France
Haiti
Jamaica
Kenya
Lesotho
Madagascar
Malawi
Malaysia
Mauritius
Mexico
Netherlands
Nigeria
Portugal
Sierra Leone
Solomon Islands
South Africa
Spain
Switzerland
Thailand
Tonga
Trinidad & Tobago
Uganda
United Kingdom
United States
Venezuela
Yugoslavia

AMENDED AGREEMENT FOR THE ESTABLISHMENT OF THE INDO-PACIFIC FISHERIES COMMISSION [FAO agreement]. date signed: 11/23/61; entry into force: 11/23/61; citations: 13 UST 2511, TIAS 5218, 418 UNTS 348

Objectives and Obligations

The agreement, under the auspices of the UN's Food and Agriculture Organization, is intended to protect the development and ensure the proper utilization of living aquatic resources in the subject waters. A council open to all FAO members is set up by article I, and is empowered to set up committees and working parties to carry out its functions. These functions, under article IV, include promoting and conducting scientific research, publishing and disseminating information, coordinating research, recommending member action on cooperative research and development or conducting such studies, reporting to the FAO and to the members as to agreement activities and effects, proposing standards for scientific equipment and studies, and similar activities.

Enforcement Mechanisms

None are provided by the agreement, which is not regulatory in function.

Dispute-settlement Mechanisms

Any disputes are to be referred to a committee, when the agreement's council cannot settle them, for nonbinding recommendations. Absent agreement, disputes are submitted to the International Court of Justice.

Provisions For Exchange Of Information

The agreement's bodies and parties are all directed to share information to the maximum possible extent to achieve the goals adopted thereby.

Parties

Australia
Bangladesh
Burma
Cambodia
France
Hong Kong
India
Indonesia
Japan
Korea
Malaysia
Nepal
New Zealand
Pakistan
Philippines
Sri Lanka
Thailand
United Kingdom
United States
Vietnam, Socialist Republic

INTERNATIONAL CONVENTION FOR THE CONSERVATION OF ATLANTIC TUNAS (ICCAT). date signed: 5/14/66; entry into force: 3/21/69; citations: TIAS 6767, 20 UST 2887, 673 UNTS 63.

Objectives and Obligations

The primary objective of the convention is to maintain the populations of tuna and tunalike fishes found in the Atlantic Ocean, including the adjacent seas, at levels that will permit the maximum sustainable catch for food and other purposes. In addition, governments party to the convention are required to uphold the conservation of the resources of tuna and tunalike fishes of the Atlantic Ocean. The convention establishes the International Commission for the Conservation of Atlantic Tunas (ICCAT) to carry out its objectives. As stated in articles III and IV, the Commission will study the abundance, biometry, and ecology of the fishes; the oceanography of their environment; and the effects of natural and human factors on their abundance.

Enforcement Mechanisms

Article IX stipulates that contracting parties agree to take all action necessary to ensure the enforcement of this treaty by setting up a system of international enforcement to be applied to the convention area.

Dispute-Settlement Mechanisms

Article VIII outlines measures that can be taken by any party objecting to a recommendation submitted by the Commission.

Provisions for Exchange of Information

The ICCAT is to hold a public meeting once every 2 years and submit a report to the parties on its work and findings, and also to inform any party on any matter relating to the objectives of the convention. A special meeting may be called at any time at the request of a majority of the parties. Article XI stipulates that there will be a working relationship between the Commission and the FAO, as well as other international fisheries commissions and scientific organizations.

Implementation

The convention was implemented by the United States under the Atlantic Tunas Convention Act of 1975.[36] The U.S. Department of State and NOAA's National Marine Fisheries Service are the agencies responsible for monitoring the agreement. Staff contacts are as follows:

Brian Hallman
OES/OFA
U.S. Department of State
Washington, DC 20520
telephone (202)647-2334;

Becky Rootes
NOAA/NMFS
F/IA1, Room 7306
1335 East-West Highway
Silver Spring, MD 20910
telephone (301)427-2276;

Richard Stone
NOAA/NMFS
F/CM3, Room 8210
1335 East-West Highway
Silver Spring, MD 20910
telephone (301)427-2347.

The ICCAT headquarters are located at Principe de Vergara 17, Madrid 1, Spain, and the Executive Secretary is Dr. Olegario Rodriguez-Martin, telephone 275-85-24. Current U.S. representatives are as follows:

Carmen J. Blondin
Deputy Assistant Secretary for International Interests
DOC/NOAA
Washington, DC 20230

Leon J. Weddig
National Fisheries Institute
Suite 580
2000 M Street, NW.
Washington, DC 20036

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[36] 16 U.S.C. 971.

Current Issues

In response to U.S. proposals, the ICCAT approved funding to begin pilot studies in 1987 for an intensified billfish research program. At the 1989 Commission meeting, the Standing Committees on Research and Statistics recommended that, at the least, the fishing effort on North Atlantic swordfish should be frozen at the current level. Despite this recommendation, the United States and other concerned member nations were unsuccessful in securing a recommendation from the Commission concerning swordfish harvest levels.

Parties

Angola
Benin
Brazil
Canada
Cape Verde
Cote d'Ivoire
Cuba
Equatorial Guinea
France
Gabon
Ghana
Japan
Korea
Morocco
Portugal
Sao Tome and Principe
Senegal
South Africa
Spain
U.S.S.R.
United States
Uruguay
Venezuela

CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES (CCAMLR). date signed: 5/20/80; entry into force: 4/7/82; citations: 33 UST 3476, TIAS 10240.

Objectives and Obligations

The origins of this convention can be traced back to the Antarctic Treaty,[37] which was signed in 1959 and entered into force in 1961. This convention evidences the developing views on conservation of that period, especially concerning a more ecological approach to management, although the politics of Antarctica played a dominating role in confining its membership.[38] The objective of most international fisheries agreements is to achieve the maximum sustainable yield of the stock being fished. Under article II(3), CCAMLR requires not only that harvesting be regulated so as to prevent populations of target species from decreasing below their level of maximum sustainable yield, but also that equal consideration be given to the likely effects of proposed harvest levels on nontarget species and on the marine ecosystem as a whole.

Article I(2) of the convention defines the species inhabiting Antarctic waters as the populations of fin fish, mollusks, crustaceans and all other species of living organisms, including birds. However, the agreement is primarily concerned with krill, a protein-rich shrimplike crustacean, which is the central link in the Antarctic marine food chain. Krill is the principal food supply of numerous species of birds, seals, squid, fish, and whales. Under article I(2), the CCAMLR applies to the Antarctic marine living resources of the area south of latitude 60_S. and to those between that latitude and the Antarctic Convergence that form part of the Antarctic marine ecosystem.

Article VII stipulates that the CCAMLR establish a commission, the functions of which include research, compilation, and analysis of data on Antarctic marine living resources and the ecosystem. Article IX provides for the implementation of a system of observation and inspection and the formulation of conservation measures on the basis of the best scientific evidence available.

Under article XIV(1), a scientific committee was established as an advisory body to the Commission. Made up of representatives from member states, the committee acts as a forum for the collection and study of information on matters concerning the agreement. Article XXIII(3) stipulates that the committee seek to develop cooperative working relationships with a number of organizations including the Scientific Committee on Oceanic Research and the International Whaling Commission. Article XV(2) provides for the committee to assess the status and trends of populations of Antarctic marine living resources, to analyze data concerning the direct and indirect effects of harvesting on these populations, and to make recommendations to the Commission with respect to conservation measures and research necessary to implement the objectives of the convention.

Dispute-Settlement Mechanisms

Article XXV(1) states that the parties may resolve disputes through negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, or other peaceful means of their own choice. If such a dispute cannot be resolved by those means, article XXV(2) indicates that the dispute is to be referred for settlement to the International Court of Justice or to arbitration.

Enforcement Mechanisms[39]

Enforcement is left to national means, together with an understanding that parties will be "consistent with the U.N. Charter" in trying to prevent nonmembers' contravening the convention's

[37] The Antarctic Treaty and related agreements are discussed in "Other General Agreements," below.

[38] S. Lyster, "The Convention of the Conservation of Antarctic Marine Living Resources," *International Wildlife Law* (1985), p. 174.

[39] Provided for in arts. XXI(1), XXII(1), XXIV(2), and X(1).

objectives. CCAMLR provides for an elaborate system of observation and inspection, requiring the publication of violations in certain circumstances and establishing a number of other reporting requirements, all of which are designed to increase the convention's prospects of enforcement. The Commission may inform parties of any activity, whether perpetrated by a contracting party or not, that adversely affects implementation of the objectives of the convention.

Provisions for Exchange of Information

The convention, as specified in articles IX(3)(b) and IX(3)(c), requires the Commission to publish and maintain a record of all conservation measures in force and to notify all members of those measures. The Commission is required under article XIII(2) to hold a regular annual meeting and may hold other meetings at the request of one-third of its members. The Scientific Committee provides a forum for consultation and cooperation concerning the collection, study, and exchange of information with respect to the marine living resources covered in the convention.

Implementation

U.S. implementation

The Secretary of State, with the concurrence of the Secretary of Commerce and the Director of the National Science Foundation, appoints an officer or employee of the U.S. Government as delegate to the Commission. The acting U.S. representative is R. Tucker Scully, Director, Office of Oceans Affairs, OES/OA, DOS - Room 5801, Washington, DC 20520, telephone (202) 647-3262.

The Secretary of Commerce and the Director of the National Science Foundation, with the concurrence of the Secretary of State, designate the U.S. representative to the Scientific Committee. The U.S. representative to the Scientific Committee is Izadore Barrett, Regional Science and Research Director, NOAA/NMFS F/SWC, P.O. Box 271, La Jolla, CA 92038, telephone (619) 546-7067, FTS 893-7067.

The U.S. representative to the Scientific Committee is responsible for providing scientific advice to the Commissioner on the operation of the U.S. Antarctic Marine Living Resources (AMLR) directed research program; on the status of krill, finfish, squid, marine mammal, and bird populations; on data requirements; on the long-term work program of the Scientific Committee; and on recommendations for conservation and management measures.

Article VI provides that nothing in the convention will detract from the rights and obligations of the parties under the International Convention for the Regulation of Whaling,[40] which regulates whaling throughout Antarctica, or under the Convention for the Conservation of Antarctic Seals,[41] which regulates sealing south of latitude 60_S., at sea but not on land. Parties to CCAMLR are also bound by the Agreed Measures for the Conservation of Antarctic Fauna and Flora,[42] which came into effect pursuant to the Antarctic Treaty in 1964. The Agreed Measures prohibit the killing, capturing or molesting of any native mammal or bird south of latitude 60_S. on land.

Implementation by others

Canada, Finland, Greece, Italy, Peru, and Uruguay are parties to the CCAMLR but are not members of the Commission.

Current Issues

The CCAMLR adopted its first conservation measures in 1984, when it closed the waters within 12 nautical miles of south Georgia to fishing for other than scientific purposes. This measure lapsed on January 1, 1990, effective with the extension of the territorial sea around south Georgia by the United Kingdom to 12 nautical miles. Other measures adopted by the CCAMLR set catch limits or prohibited taking of certain species of fish. Commission programs have also prohibited the use of certain pelagic and bottom trawls, and they have also set requirements on net mesh sizes. In 1989, a commission resolution urged all parties conducting longline fishing in the convention area to investigate and introduce, as soon as possible, methods to minimize incidental mortality to seabirds arising from the use of longline fishing techniques.

Parties

The CCAMLR, which required ratification by eight countries to enter into force, is open for signature only by states party to the Antarctic Treaty and states engaged in harvesting resources or in scientific research in the area. It is not open to the international community at large.

Argentina[43]
Australia
Belgium
Brazil
Canada
Chile
European Economic Community
France
Germany[44]
Greece
India
Japan
Korea
New Zealand
Norway
Poland
South Africa
Spain
Sweden
Union of Soviet Socialist Reps.

[40] Discussed in "Agreements Concerning Whaling," below.
[41] Discussed in "Agreements Concerning Wildlife Other Than Fish and Whales," below.
[42] Discussed in "Other General Agreements," below.
[43] With declaration.
[44] Applicable to West Berlin.

United Kingdom
United States
Uruguay

CONVENTION FOR THE CONSERVATION OF SALMON IN THE NORTH ATLANTIC. date signed: 3/2/82; entry into force: 10/1/83; citations: TIAS 10789; depositary: Council of the European Communities.

Objectives and Obligations

This convention is intended to achieve the conservation, restoration, enhancement, and rational management of migratory salmon in a specified part of the North Atlantic. Without any prejudice to a party's legal positions, including those on the law of the sea, the first two articles of the convention forbids salmon fishing outside the parties' 12-mile jurisdictional limits and attempts to achieve the above goals as to salmon within the rivers and coastal waters of the parties. A North Atlantic Salmon Conservation Organization, comprising a council, three regional commissions, and a secretary, are established by article 3 to promote agreement objectives. Under article 4, the organization is to serve as a forum for discussion and the exchange of information, to coordinate the efforts of the subordinate bodies and the parties, to promote scientific research, to serve as an international liaison, and to make recommendations to apply to the high seas. The three regional commissions are the North American, comprising the United States and Canada and set up in article 7; the West Greenland, comprising the EC, Canada, and the United States; and the North Atlantic, comprising Denmark (for the Faroe Islands), the EC, Iceland, Norway, and Sweden. The latter two commissions were set up in article 8. The three commissions handle similar functions as to the waters of the respective members, though any party may observe at any commission. Article 13 states that the commissions, by way of notification from the secretary, may make proposals to their respective members that become binding absent an objection within 60 days. If all objections are withdrawn, the proposal becomes binding 30 days thereafter. Any such measure may be denounced after being in force for a year, effective after a 60-day period. Amendments are by unanimous vote, under article 19.

Enforcement Mechanisms

Measures to ensure the application of measures or programs adopted by the organization or its bodies must be adopted and enforced by the parties under national law, as must any penalties to be applied. The agreement's entities may be used to coordinate enforcement efforts and disseminate information.

Dispute-settlement Mechanisms

Any issues under the convention are intended to be resolved by the parties, the membership of each commission, or the council, in order of handling. No other mechanisms are supplied, although consultations are not precluded.

Provisions for Exchange of Information

The parties must advise the convention's entities of any offending vessels, so that the other parties may be aware of them. In addition, provisions for notifications from these entities (through the secretary) and from the parties are specified, including a mandatory annual report from each party (art. 14). The various bodies are principally intended to further the gathering and sharing of information, along with their resource management efforts.

Parties

Canada
Denmark (for the Faroe Islands)
European Communities
Finland
Iceland
Norway
Sweden
Union of Soviet Socialist Reps.
United States

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLANDS AND THE GOVERNMENT OF THE UNITED STATES. date signed: 4/2/87; entry into force: 4/2/87; citation: 26 ILM 1048; depositary: Papua New Guinea.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE SOUTH PACIFIC FORUM FISHERIES AGENCY. date signed: 4/2/87; entry into force: 4/2/87; citations: 26 ILM 1091.

EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND AUSTRALIA CONCERNING FISHING BY UNITED STATES VESSELS IN WATERS SURROUNDING CHRISTMAS ISLAND AND COCOS/KEELING ISLANDS [Pursuant to the Treaty on Fisheries Between the United States and Certain Pacific Island States]. date signed [exchange of notes]: 4/2/87; entry into force: 4/2/87; citations: 26 ILM 1094.

EXCHANGE OF NOTES BETWEEN PAPUA NEW GUINEA AND UNITED STATES CONCERNING CERTAIN REQUIREMENTS WITH ARCHIPELAGIC WATERS [Pursuant to the Treaty on Fisheries Between the United States and Certain Pacific Island States]. date signed: 3/4/87, 3/5/87, 3/25/87; entry into force: 3/25/87; citations: 26 ILM 1091.

Objectives and Obligations

The Treaty on Fisheries was negotiated in order to end a longstanding dispute and conflicting legal situation regarding jurisdiction over highly migratory tuna. The United States claimed and recognized

jurisdiction over tuna only to the 12-mile limit, not the 200-mile limit used by other countries. Under the treaty, in order to gain secure access for U.S. fishermen and protection from seizure, regional tuna licenses are issued to U.S. fishermen after payment of a $50,000 base price for each one, plus supplemental payments by the tuna industry for 35 more licenses. The industry also pledged technical and scientific assistance to help in efforts to conserve and manage tuna stocks. The treaty's provisions specify the terms and conditions of access to covered areas.

The actual rules and procedures designed to control activities by the parties' nationals and officials are detailed in annexes and schedules. Each vessel's operator is made directly responsible for his vessel's and crew's compliance, including the requirement that only purse seine nets be used and that all concerned cooperate when any signatory government issues directions or attempts to board and inspect. Observers from the signatory island states are allowed to board any vessel following notice from such a signatory to the U.S. Government.[45] Applicable national laws of the parties are enumerated in schedule 1 to annex 1. Schedule 2 covers areas closed to fishing and schedule 3 lists limited fishing areas. Annex 2 deals with the licensing system.

The associated agreement with the South Pacific Forum Fisheries Agency recognizes its status as agent for the signatory island countries and provides initial technical assistance from the United States of $10 million annually for 5 years (payable before tuna licenses are issued). The agency is to manage a fund under which the signatory island countries can finance relevant conservation and research activities.

The supplemental exchange of notes with Papua New Guinea details U.S. commitments as to vessels operating in the former's waters, including fishing, port calls, financial responsibility, research regulation, taking of other mammals, vessel resupply, and other matters. The exchange of notes with Australia was intended to deal with the initial closure to fishing of most waters off Christmas Island and Cocos/Keeling Islands.

Dispute-Settlement Mechanisms

Article 6 enumerates procedures for consultation and dispute settlement. Consultations must be held within 60 days of a request by any party to another, and all other parties must be notified and allowed to participate. If not resolved, these issues can be submitted to binding arbitration by any of the signatory island states.

[45] An additional document done on the same date was entitled the Agreed Statement on Observer Programme. The U.S. Government agrees to provide any needed assistance in placing and aiding observers, including ensuring that visas are made available.

Enforcement Mechanisms

Article 4 states that "The Government of the United States shall enforce the provisions of this Treaty and licences [sic] issued thereunder." The Government is made responsible for the activities of its nationals and vessels, for vessel insurance coverage, claims resolution, preventing breaches of license terms, investigating claims by the other signatories or by any other source that the treaty or licenses have been violated, bringing violators to justice (including judicial or other process of the other signatories), and all other necessary activities and functions.

Article 5 sets forth compliance powers given to all the signatories, including the right of the other signatories to seize U.S. vessels, terminate licenses, bring legal proceedings (when none are pending in the United States), and demand payments or fines from violators or the United States.

Provisions for Exchange of Information

Many provisions call for notifications and reports among the parties; these may occur directly or by way of the South Pacific Forum Fisheries Agency. In addition, article 6 expressly provides for consultations between parties on matters of concern or interest. Last, the observer program provides the signatory countries with current information on treaty-related activities. Most actions authorized by the treaty can legitimately be taken only after proper notification—usually by an island country to the U.S. Government. At times, because some of the islands concerned are not independent countries, notifications must be transmitted to and/or through administering states.

Implementation

The agreement was negotiated and is implemented by various provisions of the Magnuson Act; in addition, funding to carry out U.S. obligations has been made available by the Congress.

Current Issues

No significant issues were brought to the Commission's attention regarding the agreement; however, the effort of the United States in particular to prevent the taking of dolphins by tuna fishermen may refocus the parties' attitudes regarding agreement obligations. It is known that, in some Pacific waters, dolphins do not follow or mingle with schools of tuna, so movement of tuna fleets in those waters is facilitated and encouraged—in part because of the large size of the U.S. market—to the potential detriment of other nations managing fisheries zones there.

Parties

Treaty on Fisheries between the Governments of Certain Pacific Islands and the Government of the United States:

- Australia
- Cook Islands
- Fiji

Kiribati
Marshall Islands
Micronesia
Nauru
New Zealand (applicable to Tokelau)
Niue
Palau
Papua New Guinea
Solomon Islands
Tuvalu
United States
Western Samoa

Bilateral Agreements Concerning Marine Fishing

CONVENTION REGARDING NAVIGATION, FISHING, AND TRADING ON THE PACIFIC OCEAN AND ALONG THE NORTHWEST COAST OF AMERICA. date signed: 4/17/1824; entry into force: 2/11/1825; citations: 8 Stat. 302, TS 298, 11 Bevans 1205.[46]

Objectives and Obligations

This agreement was intended to establish an amicable and secure relationship between the United States and the Russian empire (now the U.S.S.R.). Drafted in six articles (the third of which became obsolete by an 1867 agreement and the fourth of which expired), it deals with navigation, fishing, and commercial rights. Article 1 provides that citizens and subjects of the two states "shall be neither disturbed nor restrained either in navigation, or in fishing, or in the power of resorting to the coasts upon points which may not already have been occupied, for the purpose of trading with the Natives" except as otherwise agreed.

Article 5 prohibits trade in "spirituous liquors, fire-arms, other arms, powder and munitions of every kind" by private citizens and bans sales of such goods to "the Natives." Moreover, the article bans searches and detention of vessels, seizures of goods, and all other constraints on commerce, reserving to each government the right to deal with its own citizens.

Dispute-Settlement Mechanisms

The convention does not provide for dispute settlement.

Enforcement Mechanisms

The convention does not provide for enforcement mechanisms.

Provisions for Exchange of Information

The convention does not provide for exchange of information.

[46] Art. 3 is obsolete by virtue of Alaska cession treaty (15 Stat. 539, TS 301); art. 4 expired Apr. 17, 1834.

CONVENTION FOR THE ESTABLISHMENT OF AN INTERNATIONAL COMMISSION FOR THE SCIENTIFIC INVESTIGATION OF TUNA. date signed: 1/25/49; entry into force: 7/11/50; citations: TIAS 2094, 1 UST 525, 99 UNTS 3.

Objectives and Obligations

This convention between the United States and Mexico established the above-named Commission to maintain the populations of certain tuna and tunalike fishes in the Pacific Ocean off the coasts of both countries. The preamble to the convention denotes that the Commission is to gather or interpret information on conditions and trends of the populations and on methods and procedures for maintaining the populations at a level that will permit maximum utilization without depletion year after year.

The convention under articles I and II provides for establishment of the Commission and its rules of operation, functions, and duties. Article II(1) stipulates that the Commission conducts investigations on the abundance, biology, biometry, and ecology of the tuna fishes and of the kinds of fishes used as bait in tuna fishing. It is also required to examine the effects of natural factors and human activities on the tuna and tunalike fishes.

Enforcement Mechanisms

The convention does not provide for enforcement mechanisms.

Dispute-Settlement Mechanisms

The convention does not provide for dispute settlement.

Provisions for Exchange of Information

The Commission is to meet at least twice each year, and at other times requested by either party. The Commission must submit to the respective governments an annual report on its findings with recommendations.

CONVENTION BETWEEN THE UNITED STATES AND CANADA FOR THE PRESERVATION OF THE HALIBUT FISHERY OF THE NORTH PACIFIC OCEAN AND THE BERING SEA. date signed: 3/2/53; entry into force: 10/28/53; citations: 5 UST 5, TIAS 2900, 222 UNTS 77; protocol of amendment: 3/29/79[47] (32 UST 2483, TIAS 9855).

CONVENTION FOR THE EXTENSION TO HALIBUT FISHING VESSELS OF PORT PRIVILEGES ON THE PACIFIC COASTS OF THE UNITED STATES OF AMERICA AND CANADA.; date signed: 3/24/50; entry into force: 7/13/50; citations: 1 UST 536, TIAS 2096, 200 UNTS 211.

[47] Preservation of Halibut Fishery of Northern Pacific Ocean and Bering Sea and Fishing Off West Coast of Canada.

Objectives and Obligations

The 1953 convention was intended to more effectively preserve the halibut fisheries in the specified waters. According to article I, the convention was intended to promote the adoption of national regulations "designed to develop the stocks of halibut in the Convention waters to those levels that will permit the maximum sustainable yield and to maintain those stocks at those levels. . . ." In the 1979 protocol, the underlying goals of the agreement were unchanged, but catch levels and other provisions were modified to reflect differing circumstances and overall fisheries policies.

Thus, while the 1953 agreement covered nationals of both parties, the protocol prohibits halibut fishing by nationals and inhabitants of the United States, except as allowed under the terms of the protocol and its annex. The waters off the west coast of Canada, including the areas over which Canada exercises exclusive fisheries jurisdiction, are regulated under the protocol. Incidental catches of certain species—particularly perch and rockfish—are limited, and catches of others are counted in determining the point during any year that Canada may exercise its right to halt or suspend fishing. Each party is responsible for observing and carrying out the agreement's terms, and each agrees to bar fishing by vessels of third countries in the waters covered by the protocol.

The protocol directs the establishment of an ad hoc group "to consult on the implementation of the provisions of the Convention and of this agreement and on other matters of mutual interest. . . ." Article III of the 1953 convention renamed the International Fisheries Commission, established in 1923,[48] as the International Pacific Halibut Commission and assigned it the role of studying and encouraging the development of halibut stocks. Based on its recommendations following investigation, with agreement of the parties' representatives, the subject waters could be divided, fishing seasons established, allowable quantity and size of fish to be taken specified, vessel departures regulated, permitted fishing devices specified, licensing and vessel departure regulations provided, and "nursery waters" for immature young fish specified. Under the protocol, nearly all authority to determine these matters is given to Canada.

The 1979 protocol was necessary to recognize the adoption of the 200-nautical-mile exclusive economic zone by the parties and to give further encouragement to scientific efforts to increase halibut stocks. In article I, as amended, the parties are authorized to adopt more restrictive regulations on halibut fishing by their own nationals and vessels than those provided for in the original agreement. In recognizing the U.S. Fishery Conservation and Management Act of 1976[49] and the Canadian Coastal Fisheries Protection Act, the amended convention provides that those acts' licensing and permit requirements shall not apply to halibut, including as to sport fishing.

The amended article II provides that parties can enforce the convention's terms as to third parties, and that vessels may be boarded and inspected to ensure compliance. Article III is continued with little change; the Commission is directed to publish periodic reports on its activities and investigations. A new article V incorporates an added annex, specifying allowable catches for particular time periods in individual areas covered by the agreement and providing in detail for permits to be required for any halibut fishing in convention waters.

Dispute-Settlement Mechanisms

No provisions on dispute settlement are included in the original text, but the Commission provides a forum for addressing problems under the agreement. As amended, it would appear that the International Pacific Halibut Commission is to play a larger role both in regulation and in interpretation and conciliation.

Enforcement Mechanisms

The exchange of notes effecting the protocol states that enforcement is to be left to the flag nation of the vessel concerned. The agreement provided that enforcement is to be achieved through the adoption and application of national legislation and by means of vessel seizures. Thus, the Commission is not afforded authority to ensure that enforcement occurs. Under the protocol, the parties are to adopt effective enforcement legislation and to ensure that the Commission and the designated national officials responsible for implementation receive cooperation.

Provisions for Exchange of Information

Though no explicit procedures for exchange of information are set forth in this convention, the international Commission clearly allows and encourages the parties to do so on a structured and regular basis.

Implementation

Provisions of the Magnuson Act give domestic legal effect to treaty provisions.

Current Issues

No significant issues have been brought to the Commission's attention.

CONVENTION ON THE GREAT LAKES FISHERIES. date signed: 9/10/54; entry into force: 10/11/55; citations: 6 UST 2836, TIAS 3326, 238 UNTS 97; amendment: 5/19/67 (18 UST 1402, TIAS 6297);[50] depositary: U.N. (amendment effected by exchange of notes).

[48] Created in the Convention for the Preservation of the Halibut Fishery, signed Mar. 2, 1923 (TS 701, 43 Stat. 1841), as continued by conventions of May 9, 1930 (TS 837, 47 Stat. 1872) and Jan. 29, 1937.

[49] 16 U.S.C. 1801, 90 Stat. 331.

[50] Amendment changed only the number of members each party could name to the commission administering the original agreement.

Objectives and Obligations

This agreement was reached in light of the parties' (United States and Canada) shared interest in fisheries conservation and research, as well as control of parasitic or other harmful species, in the Great Lakes and in joint management efforts to improve productivity. Article I established the coverage area as the entire Great Lakes and a portion of the St. Lawrence River, as well as tributaries and connecting waters of the foregoing.

Several of the succeeding articles deal with the Great Lakes Fishery Commission, created in article II. Under article IV the Commission's functions include formulating and coordinating research, recommending measures to parties, proposing and implementing a program to reduce or eradicate the sea lamprey from these waters, publishing related scientific and technical information, and carrying out investigations for any of these purposes. Parties agree to supply information to the Commission upon the latter's request, and the Commission must produce annual reports as well as any appropriate reports or recommendations it deems necessary.

Article X allows the States and Provinces bordering the subject waters to make and enforce any laws or regulations that do not preclude the Commission from carrying out its duties. Other provisions encourage the parties to review and update the convention after 7 years and thereafter as needed. The 1967 amendment changed the number of Commission representatives from each country from three to four.

Dispute-Settlement Mechanisms

The parties utilize the Commission, which operates as two sections (one for each party) with equal numbers of representatives, to vote on or otherwise address any matters arising under the convention.

Enforcement Mechanisms

The parties agree to "enact such legislation as may be necessary to give effect to the provisions of this Convention." Because the work is largely scientific and technical, and the Commission can only recommend changes; no additional enforcement mechanisms were provided for. However, numerous laws and regulations in both countries cover the subject waters, and the procedures provided for therein (as well as judicial action) may be used.

Provisions for Exchange of Information

The convention contemplates a full and free exchange of information among officials of the parties, the scientific community, technical experts, and the Commission. As noted above, the parties and the Commission are required to share information in a responsive manner upon request.

Implementation

While legislative action may at times be contemplated or taken in response to Commission recommendations, the agreement required little by way of implementation other than funding and provisions for the choosing of representatives to sit on the Commission.

Current Issues

Joint efforts to eradicate other pestilential species from the Great Lakes are under way, but no problems arising under the agreement are known.

AGREEMENT RELATING TO THE CONSIDERATION OF CLAIMS RESULTING FROM DAMAGE TO FISHING VESSELS OR GEAR AND MEASURES TO PREVENT FISHING CONFLICTS (with annex and protocol). date signed: 2/21/73; entry into force: 2/21/73; citations: 24 UST 669, TIAS 7575; amendment: 2/26/75 (26 UST 167, TIAS 8022).

PROTOCOL TO THE AGREEMENT OF FEBRUARY 21, 1973, RELATING TO THE CONSIDERATION OF CLAIMS RESULTING FROM DAMAGE TO FISHING VESSELS OR GEAR AND MEASURES TO PREVENT FISHING CONFLICTS (with annex). date signed: 6/21/73; entry into force: 6/21/73; citations: 24 UST 1588, TIAS 7663.

Objectives and Obligations

These documents are intended to facilitate handling and settling claims of the nationals of either party (i.e., the United States or the U.S.S.R.) against those of the other, given the lack of complete access to judicial process and past difficulties between the two governments. In addition, they aim to "prevent fishing conflicts between fishing vessels of both countries carrying out fishing operations in the same areas."

Article I set up two four-member claims boards in the two capitals, each having equal representation for the parties. The boards can employ nonvoting technical experts and advisors in handling claims presented to them by persons (natural or juridical) in the parties. The boards hear claims for financial loss (specifically, damage to or loss of the petitioner's fishing vessel or gear, when such claims are filed not more than 1 year from the incident). Counterclaims may be filed, and the boards conduct complete inquiries on each matter. Both the parties and the two Governments may be asked to supply more information; hearings can be conducted and testimony taken, although with no compulsion to make statements.

Under article IV, a board must report its findings and opinions within 60 days of collecting needed evidence. When unanimity does not exist, or when one of the parties to the proceeding—described as a conciliation—refuses to settle or drops out of the process, the boards are directed to encourage the

parties to utilize arbitration. Under article V, the boards can conduct arbitration if the nationals concerned sign a written agreement to submit their case. All matters handled by the boards must be reported to the two Governments.

Annexes to the agreement contain basic rules for use by the Governments, boards, and nationals in implementing its provisions. Each Government is afforded the right to set special rules, to apply in addition to treaty annex rules, for areas under its exclusive fisheries jurisdiction. The boards are also directed to apply general and particular international conventions, customs, and practices. A single claim is allowed to be the subject of only one conciliation or arbitration at any one time.

Annex II of the 1973 protocol set out "measures to prevent fishing conflict in the western areas of the Atlantic off the coast of North America." This protocol was rewritten in a 1975 exchange of notes to cover the terms of vessel identification and marking, compliance with the International Regulations for Prevention of Collisions at Sea, control and use of gear, procedures for avoiding harm to others' gear, radar and other surveillance equipment, message/reporting rules, and related matters.

Dispute-Settlement Mechanisms

The agreement is intended to provide recourse for private individuals, not for governments; as such, no provisions for inter-governmental dispute settlement were made. However, the parties sit on the boards and, through discussion, effectively reach these decisions. The parties are directed to cooperate, supply information, and otherwise help the boards carry out their functions, and they retain the right to terminate or modify the agreement.

Enforcement Mechanisms

No provisions for mandatory enforcement are included, because use of the board procedure is voluntary and is based on acquiescence by the persons involved.

Provisions for Exchange of Information

Information may be sent directly, between the parties to the agreement, or may be supplied to the boards for their use and sharing.

TREATY BETWEEN THE UNITED STATES AND CANADA ON PACIFIC ALBACORE TUNA VESSELS AND PORT PRIVILEGES. date signed: 2/26/81; entry into force: 6/29/81; citations: TIAS 10057.

Objectives and Obligations

Under article I, U.S. and Canadian albacore tuna vessels are allowed to operate only in accord with the treaty terms; if in compliance, the vessels of either party can fish in the exclusive economic zone (the 12- to 200-mile zone) of the other party upon 24-hour advance notification. Articles II and III allow the vessels of the United States and Canada, respectively, to land in the ports of the other, sell their catch, obtain supplies and repairs, and similar activities. Article IV states that no import ban may be imposed by one party on the albacore tuna of the other "as a consequence of a dispute arising in other fisheries." Other provisions for administration of the agreement and annexes specifying vessel standards are also included.

Enforcement Mechanisms

Under article V, vessels in violation are subject to enforcement actions, including boarding and seizure, although the ships and crews must be returned (although the illegal catch is retained). No imprisonment of crew members is permitted. Prompt notification to the other party is required of the enforcing party.

Dispute-Settlement Mechanisms

Article VI provides that consultations on disputes, as well as on ordinary questions as to the interpretation and application of the treaty, are to be undertaken.

Provisions for Exchange of Information

The two Governments are directed generally to share information, both through diplomatic channels and through contacts by officials concerned with enforcement, on an ongoing basis.

RECIPROCAL FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND THE UNITED KINGDOM.[51] date signed: 12/16/81; entry into force: 3/10/83; citations: TIAS 10545, S. Ex. L. 96th Cong., 2d sess. (1980), pp. v-vi, S. Ex Rept. 97-37, 97th Cong., 1st sess. (1981), 1977 *Digest*, pp. 567-569, *Cong. Rec.*, vol. 127, No. 188, p. S15533.

Objectives and Obligations

The purpose of this agreement is to prevent any disruption in the small-scale fisheries that have historically operated in the waters off the U.S. Virgin Islands (U.S.V.I.) and the British Virgin Islands (B.V.I.). The entry into force of the Magnuson Act and of similar British legislation establishing 200-nautical-mile fishery zones in the Virgin Islands had the effect of forbidding such traditional fishing. The agreement provides that commercial fishing by U.S. vessels may continue in the exclusive fishery zone of the B.V.I. in accordance with existing levels and patterns, as may commercial fishing vessels of the B.V.I. in the waters of the Fishery Conservation Zone (FCZ) of the United States. The Agreed Minute defines the existing patterns and levels of fishing

[51] This treaty replaces the Reciprocal Fisheries Agreement Between the United States and the United Kingdom, with its Agreed Minute, which was signed on June 24, 1977, entered into force on Nov. 7, 1978, and expired on Dec. 31, 1978.

55 feet in length permitted to operate in the exclusive fishery zone of the B.V.I., and a maximum of 2 B.V.I. vessels no more than 40 feet in length permitted to operate in the U.S. FCZ. The agreement also describes specifically the areas and seasons in which such fishing operations are authorized.

Enforcement Mechanisms

The agreement gives the United States exclusive authority to enforce the provisions of the agreement and applicable national fishery regulations within the FCZ with respect to fishing by B.V.I. vessels. Likewise, the United Kingdom has exclusive authority within its exclusive fishery zone with respect to fishing by U.S. vessels.

Dispute-settlement Mechanisms

The agreement does not provide for dispute settlement.

Provisions For Exchange Of Information

The agreement does not provide for exchange of information.

AGREEMENT ON CERTAIN FISHING RIGHTS IN IMPLEMENTATION OF THE TREATY AND EXCHANGE OF NOTES OF SEPTEMBER 8, 1972 (TIAS 10120). date signed [exchange of notes]: 10/24/83, 12/6/83; entry into force: 12/6/83, eff. 3/1/84; citations: TIAS 10842.[52]

Objectives and Obligations

The scope of the agreement is essentially limited to the regulation of U.S.-registered vessels that fish or desire to fish in Colombian coastal waters. It provides that the United States will send an annual list of its registered vessels that intend to fish in these waters during the year, with additions to the list permitted (subject to a 10-day delay as to the start of a vessel's fishing privileges). Reporting and recordkeeping requirements and other regulatory provisions are included, and Colombian authorities are authorized to board vessels claiming to be under U.S. flag to inspect and verify that appropriate Colombian certificates are on board. If not, no fishing is permitted; if the vessel also lacks U.S. documentation, it must leave Colombian waters for at least 15 days (and be notified by the U.S. Government before fishing can be undertaken). No reciprocal provisions as to U.S. waters were included.

Enforcement Mechanisms

As noted above, Colombian Government officials can board vessels to ensure that they carry approval documents; U.S. authorities are responsible for verifying that challenged vessels have U.S. registry.

[52] Reference is to Treaty Between United States and Colombia Concerning the Status of Quita, Sueno, Roncador and Serrana of Aug. 8, 1972 (33 UST 1405, TIAS 10120).

Dispute-Settlement Mechanisms

No such mechanisms are specified, but consultations as to any matters under the agreement are not precluded.

Provisions for Exchange of Information

The parties agree to communicate as to the agreement's functioning and to share documents as requested.

AGREEMENT BETWEEN THE UNITED STATES AND DENMARK CONCERNING FAROESE FISHING IN FISHERIES OFF THE COASTS OF THE UNITED STATES. date signed: 6/11/84; entry into force: 10/20/84; citations:[53]

Objectives And Obligations

This agreement provides that the Faroe Islands, a self-governing community of Denmark, can apply for allocations of that portion of the allowable catch of fishery resources in the U.S. fishery conservation zone that U.S. vessels would not harvest. In addition, the agreement sets forth the principles governing such fishing.

Enforcement Mechanisms

Under article X the Faroe Islands agree to take all appropriate measures to assist the United States in the enforcement of its laws pertaining to fishing in the U.S. conservation zone. Furthermore, each vessel of the Faroe Islands may be boarded and inspected by any authorized enforcement officer of the United States and must cooperate in any enforcement action pursuant to the laws of the United States. Article XI provides for the U.S. Government to impose appropriate penalties, in accordance with the laws of the United States, on vessels of the Faroe Islands or their owners, operators, or crews that violate the requirement of the agreement.

Dispute-settlement Mechanisms

Article XVI(6) of this agreement specifies that in the event that the Faroe Islands notifies the United States of its objections to specific conditions or restrictions, the two sides can consult with one another. Procedures may be amended by agreement through an exchange of notes between the two parties (art. XVI(7)).

Provisions For Exchange Of Information

Article XII provides that the operating agencies of the two Governments will cooperate in scientific research of managing and conserving living resources in the United States, including the collection of the best available information for management and

[53] This agreement precedes the agreement between the United States and Denmark and the Faroe Islands Concerning Fisheries off the Coasts of the United States, with Agreed Minute, which was submitted to the Congress in accordance with the provisions of sec. 203 of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1823, and entered into force on Jan. 18, 1980. See TIAS 9649 and 31 UST 4859.

conservation of fishing stocks of mutual interest through meetings and correspondence. Research plans are to include the exchange of information and scientists and regularly scheduled meetings between scientists to prepare plans and review progress. The two Governments are to have regular bilateral consultations regarding the implementation of the agreement and to develop relations with multilateral organizations for the collection and analysis of scientific data.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES. date signed: 8/1/85; entry into force: 1/1/86; citations: none.

Objectives and Obligations

This agreement is intended to achieve "rational management, conservation and achievement of optimum yield of fish stocks off the coasts of the United States," to regulate the status and treatment of Polish fishing vessels off U.S. coasts, to improve cooperation on fishing issues, and to recognize the United States' right to control fish and other living resources on the continental shelf and within its exclusive economic zone.[54] As one of the agreements negotiated pursuant to the Magnuson Act, it is also aimed at facilitating development of the U.S. fishing industry, given the fact that this industry fishes in the same coastal waters as foreign vessels do.

Article II defines terms crucial to the agreement, and in so doing formulates the scope of coverage (in terms of fish and other living resources) of the agreement. Article III specifies the grant of access for fishing vessels of Poland. It also states that the U.S. Government will determine each year (subject to adjustment), for purposes of both U.S. law and U.S. agreements, the total allowable catch (TAC) in each fishery, the harvesting capacity of U.S. vessels, the portion of the TAC allocated to foreign vessels, and the allocation of that portion assigned to Poland. The U.S. Government also reserved its power, subject to proper notification to Poland, to designate individual areas as open to fishing only under specified conditions; to limit the size of the fish that may be taken, the number of days in a fishery's season, and the number of vessels per day that can fish therein; and to require particular types of equipment and devices on board each vessel. Article IV enumerates the factors to be considered in determining Poland's allocation of the TAC portion given to foreign vessels.

In article V, Poland agreed in return to help the U.S. fishing industry develop, in part by increasing U.S. fishery exports and facilitating their sale in Poland. The two countries also agreed to share technical and scientific information relating to fisheries and fishing technology. Poland further agreed, in article VI, to control its nationals and vessels under terms of the agreement, including the obtaining of permits (under arts. VII and IX). Article VIII states that Poland will ensure that its nationals and vessels refrain from killing, harassing, hunting, etc., any marine mammal in the United States' exclusive economic zone.

The United States used article XI to reiterate that penalties may be imposed on owners, operators, and crews of vessels that might violate the agreement. Article XII provides for the conduct of cooperative scientific research. Other provisions allow Polish vessels to enter into designated U.S. ports under terms set forth in an annex to the agreement, and regulate the granting of compensation to either party for equipment, fish, and vessels damaged by a vessel of the other.

Annex I to the agreement details the application for and issuance of annual permits to Polish vessels, and annex II, the procedures relating to calls in U.S. ports by such vessels. Annex III, creating the United States-Polish Fisheries Board, is discussed below.

Dispute-Settlement Mechanisms

The only such mechanism specified in the body of the agreement, under article XIII, is "periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern." However, this article, like most of the agreement, is generally phrased in terms of cooperation rather than dispute.

Elaborate procedures are in fact provided in annex III on the Fisheries Board, as mentioned above. The Board has four members, two appointed by each Government; at least one from each country is required to know general principles of international law. Each country may also appoint a nonvoting technical advisor in any matter before the Board. All Board actions are to be taken unanimously, with at least one member appointed by each party present.

The Board is chiefly intended to perform conciliation functions on claims by nationals of either state directed at nationals of the other, when such claims are made within 1 year of the occurrence (absent unanimous Board approval for late filings). Formal inquiries relying on sworn statements and evidence are made, with related claims being joinable and counterclaims allowed. Each claim will be the subject of a report of Board findings. The two Governments agree to encourage their nationals to utilize the Board to settle their claims in accordance with the Board's findings and recommendations. When settlements cannot be agreed, the Board is directed to "encourage the parties to submit their dispute to binding arbitration." However, in spite of the agreement, the nationals of the two countries retain all of their alternative means of redress and are in no way required to file any claim with the Board or be prejudiced by Board action.

[54] Established by Presidential Proclamation on Mar. 10, 1983.

Enforcement Mechanisms

The United States maintains its rights under U.S. law to take action pursuant to statutes and international law and agreements for the control of marine resources on the continental shelf and within the exclusive economic zone. Thus, the United States can refuse to award or rescind vessel permits, can impose penalties on vessels and foreign nationals, and can seize and arrest foreign vessels deemed to be violating the agreements or U.S. law. Also, through the diplomatic process and the communications provided under the agreement, each party can express its views to and consult with the other as to problems arising under the agreements. The agreement provides for regular notifications and bilateral consultations to ensure its intent is achieved.

Provisions for Exchange of Information

As noted above, information and notifications are to be regularly exchanged between the two Governments, both directly and by means of the Fisheries Board. In addition, the agreement's emphasis on cooperation and the sharing of technical information would seem to encourage direct contacts between nationals of the two countries. The parties can conduct joint research and are directed to share data that would be useful in fisheries conservation and development.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAPAN CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES OF AMERICA (with agreed minutes); **date signed: 9/10/82; entry into force: 1/1/83; citation: TIAS 10480.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES (with annexes and agreed minutes). **date signed: 7/23/85; entry into force: 11/19/85; citations: none.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES (with annexes and agreed minute). **date signed: 4/13/83; entry into force: 7/20/83; citations: TIAS 10687; amendment and extension: 1/14/88, 4/12/88.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES (with annexes and agreed minutes). **date signed: 7/26/82; entry into force: 4/28/83; citations: TIAS 10571; amendment and extension: 5/11/87, 5/20/87.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE EUROPEAN ECONOMIC COMMUNITY CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES (with annex and agreed minute). **date signed: 10/1/84; entry into force: 11/14/84; citations: none.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF ICELAND CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES (with annex and agreed minute). **date signed: 9/21/84; entry into force: 11/16/84; citations: none.**

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES (with annexes). **date signed: 9/22/83; entry into force: 4/12/84; citations: TIAS 10816.**

Objectives and Obligations

In their preambles, these agreements express the parties' "common concern for the rational management, conservation and achievement of optimum yield of fish stocks off the coasts of the United States" and their desire to set "reasonable terms and conditions pertaining to fisheries of mutual concern" under the sovereign control of the United States. They were negotiated pursuant to the Magnuson Act and included the goal of rapid and full development of the U.S. fishing industry.

Following a broad pattern for agreements under the Magnuson Act, article II in these agreements defines terms of importance, including the protected fish and other living resources involved. As in the bilateral agreement with Poland, discussed above, subsequent articles of each agreement set forth the provisions under which the United States grants access to the vessels of the other party, provide for the allocation of any surplus from the total allowable catch, and require the other party to cooperate in the development of the U.S. fishing industry. Other articles establish a permit system for the vessels of the other party, enunciate the U.S. right to control all activities as to the fisheries and marine mammals within the exclusive economic zone, and set forth the U.S. right to deal with violations by penalties or other legal measures against vessels or nationals of the other party. Of particular interest are provisions granting the United States reciprocal access to the fisheries zones of the other parties on terms no more restrictive than are provided under these agreements. Annexes detailing permit and port call

procedures follow the texts of the agreements,[55] as do agreed minutes explaining particular points of interest to the parties.

These agreements were negotiated to cover specified time periods; Japan's initial agreement, entering into force in 1977, was the first and was followed by others in the 1980s. They have been extended by means of exchanges of letters with minor amendments, changes that are generally common to all these general fishing agreements.

Dispute-Settlement Mechanisms

These agreements contain no formal procedures for undertaking dispute settlement but recognize the rights of the nationals of the other parties to have full and equal access to the U.S. judicial system. Claims for compensation by those nationals who have suffered adverse effects from action taken by the United States under the agreement can be pressed by their respective Governments; however, if payment is not agreed by the U.S. Government, the only recourse is through the courts.

Enforcement Mechanisms

The United States maintains its rights under U.S. law to take action pursuant to statutes and international law and agreements for the control of marine resources on the continental shelf and within the exclusive economic zone. Thus, the United States can refuse to award or rescind vessel permits, can impose penalties on foreign nationals and vessels, and can seize and arrest foreign vessels deemed to be violating the agreements or U.S. law. Also, through the diplomatic process and the communications provided under the agreement, each party can express its views to and consult with the other as to problems arising under the agreements.

Provisions for Exchange of Information

The agreements create no formal mechanisms for exchanging information; contact between the governments and nationals of the parties is to occur on an "as appropriate" basis except when one government notifies the other of an action, change in law, etc.

TREATY BETWEEN THE UNITED STATES AND CANADA CONCERNING PACIFIC SALMON.

date signed: 1/28/85; **entry into force:** 3/18/85; **citations:** none; **amendments:** 5/5/86; 8/13/86; 6/5/87; 8/5/87; 3/29/88; 5/10/88; 3/20/89; 4/19/89.

Objectives and Obligations

The principal objective of the agreement is to achieve bilateral cooperation in the conservation, management, research, and enhancement[56] of Pacific salmon stocks. Article II of the agreement established a Pacific Salmon Commission to carry out these goals, with one vote given to each party and unanimity required for action. The Commission operates various committees and panels for specific projects or functions, especially for research.

Under article II, the parties agreed to conduct both their fisheries and their salmon-enhancement measures so as to prevent overfishing, promote optimum production, and ensure that each party receives benefits equivalent to the quantity of salmon produced in its waters. The parties agreed to avoid taking fish that originate in waters of the other, disrupting existing fisheries, and upsetting annual variations in stock levels. Each party is required annually to provide detailed information on its activities, programs, and projected catches to the Salmon Commission and to enforce the regulations adopted by the parties to regulate the subject fisheries.

Annexes and agreed statements of understanding accompany the agreement. Where updated, chiefly by means of amendments to annex chapters dealing with particular rivers or areas, these documents provide additional information concerning the intentions of the parties and the activities and powers of the Salmon Commission and its bodies.

Dispute-Settlement Mechanisms

Under article XII, disputes may be submitted to the Salmon Commission for appropriate action, which may include referral to a binding tribunal called the Technical Dispute Settlement Board. That body (which may be one of several in existence) is empowered to issue final and nonappealable rulings, which must be accepted as "the best scientific information available," unless the Chairman of the Salmon Commission agrees to accept a request for reconsideration or to submit a claim to a new board.

Enforcement Mechanisms

The parties to the agreement have explicitly agreed to apply its terms and to carry out decisions of the Salmon Commission or technical dispute-settlement boards. In addition, they have agreed to adopt and enforce internal legislation (and if necessary, agreements) to implement the treaty and the decisions of the Salmon Commission, both internally and abroad. The parties have granted a measure of their sovereign authority to the Salmon Commission and its related panels and bodies.

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[55] The agreement with the EEC does not contain the detailed port call procedures annex but instead relies on other provisions of U.S. law and agreements on such calls. Longstanding friendship, commerce, and navigation agreements have permitted relatively easy access for vessels of the United States and the EEC in each other's ports; and security concerns have not required special provisions for fishing and research vessels.

The agreement with Japan contains a short annex on management and conservation measures, specifying the U.S. limitations agreed to by Japan, and a second annex on permit procedures.

Some of the governing international fishing agreements (GIFAs) or their documents of extension, such as that with Japan, are accompanied by statements explaining the basis for, effects of, and authority for the agreements as understood by the parties.

[56] "Enhancement" for purposes of this agreement is defined in art. I:1 as "man-made improvements to natural habitats or

Provisions for Exchanges Of Information

Both directly and by means of the Salmon Commission and related bodies, the parties to the agreement are encouraged—and in some areas mandated—to share information, cooperate in technical research, and help in other respects to carry out the goals of the agreement.

AGREEMENT REGARDING THE COLLECTION AND EXCHANGE OF DATA ON FISHERIES HARVESTS IN THE INTERNATIONAL WATERS OF THE BERING SEA. date signed [exchange of notes]: 4/25/88 and 7/14/88; entry into force: 7/14/88; citations: none.

[No copy of the agreement is currently available.]

AGREEMENT ON MUTUAL FISHERIES RELATIONS. date signed: 5/31/88; entry into force: 10/28/88; citations: none.

[No copy of the agreement is currently available.]

Agreements Concerning Whaling

Introduction

The first international treaty on whaling, the International Agreement for the Regulation of Whaling,[57] was concluded at Geneva, September 24, 1931. Whaling declined during World War II but increased again following the war. Concern over this renewed activity led to the signing of the International Convention for the Regulation of Whaling in 1946 in Washington. Currently, parties to the Convention include most significant whaling countries, which totals 36 countries, including the United States, the Soviet Union, and Japan.

INTERNATIONAL CONVENTION FOR THE REGULATION OF WHALING (ICRW) (the "Whaling Convention".) date signed: 12/02/46; entry into force: 11/10/48; citations: 62 STAT 1716, TIAS 1849, 4 Bevans 248, 161 UNTS 72; Protocol amending the 1946 Convention (TIAS 4228); depositary: United States.[58]

Objectives and Obligations

The objective of the Whaling Convention stated in the preamble is to protect whales from overexploitation, to provide for the proper conservation of whale stocks, and thus to make possible the orderly development of the whaling industry. As indicated in articles I and II, the convention applies to factory ships, land stations (factories on the land at which whales are processed), and whale catchers (vessels used for hunting, taking, or scouting for whales) under the jurisdiction of contracting governments, and to all waters in which whaling is pursued by such vessels.

Article III(i) of the convention established the International Whaling Commission (IWC), which is composed of one member from each contracting government. The primary objective of the IWC is to provide for a continuing review of the condition of whale stocks. However, the objectives have gradually shifted from regulating whale harvests to conserving whale populations. The IWC has accomplished degrees of conservation through seeking quotas and generating stringent whaling regulations.

Enforcement Mechanisms

The convention left enforcement entirely to national means. It did not provide for international inspection or observation, and self-regulation was a principal element of the convention. Therefore, infractions in practice proved difficult to verify. The IWC over the years has remedied many of the convention's weaknesses in enforcement by its practice and resolutions. The incorporation of a schedule[59] of amendable regulations into the convention was one of the major advances made by the convention. A three-fourths majority (each member government has one vote) of members voting is required for actions to amend the provisions of the schedule. The IWC may amend[60] the schedule—

> by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species of whales; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; (d) size limits for each species; (e) time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); (f) types and specifications of gear and apparatus and appliances which may be used; (g) methods of measurement; and (h) catch returns and other statistical and biological records.

The IWC cannot, however, prescribe "restrictions" on the number or nationality of factory ships or land stations. It cannot allocate specific quotas to any factory ship or land station or to any groups of factory ships of land stations. The IWC must take into consideration, in amending the schedule, the interests of the consumers of whale products and of the whaling industry. As stated in article V, an amendment does not bind any government that has objected to it. Any nation filing a formal objection to an IWC regulatory action within 90 days of notification of an amendment

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56—*Continued*
application of artificial fish culture technology that will lead to the increase of salmon stocks."

57 Entered into force on Jan. 16, 1935, 49 STAT 3079, TS 880, 3 BEVANS 26, 155 LNTS 349.

58 Art. X(1).

59 Art. 1 provides for the incorporation of the schedule as in integral part of the convention. For a list of amendments to the schedule, see U.S. Department of State, *Treaties in Force*, 1989, p. 385.

60 Art. V(2)(b) requires that schedule amendments be based on "scientific findings."

is exempt from compliance with it until such date as the objection is withdrawn. The IWC's effectiveness depends primarily on voluntary international cooperation.

Dispute-Settlement Mechanisms

The convention does not specifically address dispute-settlement mechanisms. The IWC has in practice either settled its disputes internally—usually by achieving compromise or through negotiation outside the Commission. The IWC occasionally has sought legal advice on disputes concerning interpretation of the convention, including its schedule and the rules of procedure.

Provisions for Exchange of Information

The IWC normally meets once a year to review the condition of whale stocks and to modify conservation measures as suitable. Under article III(4), the IWC may set up any committees, from among its own members and experts or advisors, that it considers necessary to perform its duties. The IWC, either in collaboration with, or through independent agencies of, the contracting party governments or other public or private agencies, establishments, or organizations, is authorized to encourage, recommend, or organize studies and investigations relating to whales and whaling. The Commission is to collect and analyze statistical information concerning the current condition and trend of the whale stocks and the effects of whaling activities. The IWC is to study, appraise, and disperse information concerning methods of maintaining and increasing the population of whale stocks. In addition, the Commission arranges for the publication of reports of its activities. It reports on such matters as statistical, scientific, and other pertinent information relating to whales and whaling (independently or in collaboration with the International Bureau for Whaling Statistics at Sandefjord in Norway and with other organizations and agencies).

The convention provides for a Scientific, a Technical, and a Finance and Administration Committee. The Scientific and Technical Committees are open to all contracting parties who want to be represented. The Scientific Committee has recently adopted the practice of calling on the services of outside experts from relevant scientific international organizations, who can be appointed as advisors to the committee. The Scientific Committee's advice is, in effect, the basis of all IWC regulation, as all schedule amendments are to be based on "scientific findings."

Implementation

The U.S. Congress enacted the Whaling Convention Act of 1949[61] to implement the treaty domestically. U.S. representation in the IWC has no legal enforcement authority, but the IWC Commissioner does consult with the IWC Interagency Committee, which includes representatives of the U.S. Department of State, the Marine Mammal Commission, other U.S. Federal agencies, conservation organizations, and other interested parties. The U.S. Commissioner is William E. Evans, Dean, Texas Maritime College, Texas A&M University, P.O. Box 1675, Galveston, TX 77553-1675. The Deputy Commissioner is Norman C. Roberts, 2810 Hidden Valley Road, La Jolla, CA 92037. Staff contacts are as follows:

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Because the IWC has no enforcement powers, the U.S. Government relies on domestic laws to help conserve whales and enforce IWC quotas, guidelines, and regulations, through the 1971 Pelly amendment to the Fishermen's Protective Act[62] and the 1979 Packwood-Magnuson Amendment to the Magnuson Fishery Conservation and Management Act.[63] These amendments establish a process known as certification, which occurs when the Secretary of Commerce determines that "nationals of a foreign country are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program."[64] Once a country has been certified, certain sanctions are possible. Under the Pelly Amendment, the sanctions reside solely on the discretion of the President. Following the certification, the President has 60 days to decide whether to instruct the Secretary of the Treasury to ban the importation of fish products of the offending country. The Packwood-Magnuson amendment gives the Secretary of State the power to limit commercial fishing by foreign nationals in the 200-mile Exclusive Economic Zone (EEZ) of the United States if the Secretary of Commerce certifies that activities of foreign nationals are diminishing the effectiveness of the convention. The Secretary of State then reduces that nation's fishing-rights allocations in the U.S. EEZ, by not less than 50 percent. As of May 4, 1990, two certifications remain active. Norway was certified under the Pelly amendment on June 9, 1986, because of its commercial whaling in the North Atlantic. Norway is no longer engaged in the whaling that led to the certification. Nevertheless, the preconditions

[61] 64 Stat. 421, 16 U.S.C. 916-9161.

[62] Pub. L. 92-219, 22 U.S.C. 1978.
[63] Pub. L. 96-61, 16 U.S.C. 1821.
[64] 22 U.S.C. 1978(a)(1).

prescribed by the President for the termination of the certification have not yet been met, and as a technical matter Norway remains certified. Japan was certified on February 9, 1988, under the Pelly and Packwood-Magnuson amendments, because of its whaling for scientific purposes in the Southern Hemisphere. On April 6, 1988, the President suspended all Japanese fishing privileges within U.S. waters. However, Japanese whaling activities have continued, as have bilateral consultations to resolve the matter.

In 1976, the United States adopted the Whale Conservation and Protection Study Act,[65] which reaffirms U.S. interest in the conservation and protection of whales. That act notes that "the United States has extended its authority and responsibility to conserve and protect all marine mammals, including whales out to a two hundred nautical mile limit by enactment of the Fishery Conservation and Management Act of 1976."[66] Whales also enjoy the protection of the Marine Mammal Protection Act (MMPA) of 1972, as amended.[67] The MMPA placed a moratorium on the importation of products containing marine mammal products. The passage of the MMPA restricted market opportunities for whale products for non-food use (e.g., fuel, chemicals, and ivory), but it did not limit the use of whales for food. Eight of the nine species of great whales are listed as endangered under the U.S. Endangered Species Act.[68] They include the blue, bowhead, fin, gray, humpback, right, sei, and sperm whales. For most marine species, this law is enforced by the NOAA's National Marine Fisheries Service.

Internationally, the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[69] regulates trade of listed species. The United States is one of 107 nations currently abiding by the CITES treaty, which is administered domestically by the U.S. Department of the Interior.[70] The 1982 Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR), discussed in this section, above, was established for the purpose of protecting and conserving the marine living resources found in the waters surrounding Antarctica.

Current Issues

The IWC has used various means of regulating commercial whaling and has also maintained an international observer program that places observers from other countries on board whaling vessels and at land whaling stations to monitor commercial whaling operations. Recent actions by the IWC include the establishment of a whale sanctuary in the Indian Ocean area, prohibition on the use of cold grenade (nonexploding) harpoons to kill whales for commercial purposes, a moratorium on all commercial whaling, and the adoption of a separate and distinct management scheme for aboriginal subsistence whaling.

In 1986, criteria for evaluating research involving the killing of whales under special permits were established because of concerns that some countries would use special permits for scientific research as a means of circumventing the zero catch limits for commercial whaling. The IWC has adopted resolutions recommending that four governments—Iceland, Japan, Korea, and Norway—abstain from issuing or revoking scientific permits either currently in force or proposed. At the 1989 annual IWC meeting, quotas were established or continued for aboriginal/subsistence whaling for bowhead whales taken by U.S. natives; gray whales taken by Soviet and U.S. natives; minke and fin whales taken by Greenland natives; and humpback whales taken by St. Vincent and the Grenadines natives. Other contemporary issues include the comprehensive assessment of whale stocks that, under the terms of the moratorium, must be undertaken by 1990, and the assessment of Japan's proposal calling for the approval of small-scale coastal whaling. In this year's comprehensive assessment, the Scientific Committee concluded that there were approximately 21,000 gray whales and that the population is increasing at about 3.2 percent per year. The committee also estimated that there are 760,000 minke whales in the Southern Ocean, but it was unable to calculate a growth rate. The Committee concluded that there were between 74,700 and 145,200 minke whales in the North Atlantic. Assessments of North Atlantic fin whales, Sea of Okhitsk minke whales, and bowhead whales will be covered at the 1991 meeting.

In 1982 the IWC established a moratorium on all commercial whaling. The moratorium states that "catch limits for the killing for commercial purposes of whales from all stock for the 1986 coastal and the 1985/86 pelagic seasons and thereafter shall be zero. . . ."[71] Brazil, Iceland, Japan, Norway, Peru, South Korea, and the U.S.S.R. voted against the moratorium. Subsequently, Japan, Norway, Peru, and the U.S.S.R. filed formal objections to the moratorium. Peru withdrew its objection in 1983, but the other three objecting countries continued commercial whaling after the 1985/86 season. The U.S.S.R. reduced its whaling activities, and on April 22, 1988, the U.S. Secretary of Commerce terminated sanctions against that country.

Estimates published recently by the Environmental Investigation Agency (EIA), a London-based conservation group, indicate that "tens of thousands of dolphins, porpoises and small whales were killed

[65] 16 U.S.C.A. 917-917d.
[66] 16 U.S.C.A. 917(3).
[67] 16 U.S.C.A. 1361.
[68] U.S. Endangered Species Act, 16 U.S.C. 1531-1543 (1973).
[69] TIAS 8249.
[70] For a discussion of CITES, see Agreements Concerning Wildlife Other Than Fish and Whales, below.
[71] U.S. Marine Mammal Commission, *Annual Report of the Marine Mammal Commission*, Calendar Year 1982; a Report to Congress (Washington, 1983), p. 24.

unnecessarily by U.S. fishermen in 1989."[72] The report indicated that the number, however, was only a fraction of the half million slaughtered worldwide. The EIA data, published on a country-by-country basis, were presented to the IWC at its 1990 annual meeting. According to the report, the tuna industry has been the biggest offender, killing hundreds of thousands of the small cetaceans, which get caught in seine nets used by tuna fishermen. The trapped mammals, which must surface to breathe, drown if entangled in the purse seine or in other nets. EIA is asking the United States, the United Kingdom, Australia, and other members of the IWC to support the implementation of regulations on killing small cetaceans. Reportedly, Mexico, which accounted for an estimated 40,000 dolphins killed last year, and other countries such as Japan are expected to oppose such regulations. Taiwan and Peru, which are not members of the IWC,[73] would not be subject to regulations.

Parties[74]

Antigua and Barbuda
Argentina[75]
Austria
Brazil
Chile[76]
China[77]
Costa Rica
Denmark
Egypt[78]
Finland
France
Germany[79]
Iceland
India
Ireland
Japan
Kenya
Korea
Mexico
Monaco
Netherlands[80]
New Zealand
Norway
Oman
Peru
St. Lucia
St. Vincent and the Grenadines
Senegal
Seychelles
Solomon Is.
South Africa
Spain
Sweden
Switzerland
Union of Soviet Socialist Reps.
United Kingdom
United States
Uruguay

[72] "Killings Tallied of Dolphins, Small Whales. . . Conservation Group Appeals for Action," *Washington Post*, July 15, 1990.

[73] Although Peru is a signatory to the Whaling Convention, it is not a member of the IWC.

[74] Protocol to the International Convention for the Regulation of Whaling, done at Washington Nov. 19, 1956; entered into force May 4, 1959; 10 UST 952; TIAS 4228; 338 UNTS 366.

[75] With reservation.

[76] Not a party to the protocol.

[77] With statement.

[78] Notification of withdrawal given by Egypt Nov. 29, 1988; effective June 30, 1989.

[79] Applicable to West Berlin.

[80] Applicable to the Netherlands Antilles and Aruba.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND JAPAN CONCERNING AN INTERNATIONAL OBSERVER SCHEME FOR WHALING OPERATIONS FROM LAND STATIONS IN THE NORTH PACIFIC OCEAN. date signed: 5/2/75; entry into force: 5/2/75; citations: 26 UST 1009; TIAS 8088.

Objectives and Obligations

The objective of this agreement, as expressed in articles 1 and 2, is to maintain surveillance of whaling from land stations in the North Pacific Ocean whenever whales are being delivered to the land stations or are being processed at the stations. The surveillance is carried out by observers, whose duties are outlined in article 3. The parties are required to give the observers, who are accountable to the IWC, the freedom to observe all operations, including all record- and data-keeping, and the facilities to ascertain the species, size, sex, and number of whales taken.

The United States and Japan, both of which are parties to the International Convention for the Regulation of Whaling,[81] agreed on a scheme for observers to insure the conservation of whale stocks in the North Pacific Ocean, the maintenance of the proper productivity of whaling from land stations, and the sensible conduct of whaling operations.

Enforcement Mechanisms

Observers are required to report in writing a party's infractions of the provisions of the agreement to both the manager of the land station and to the senior national inspector. This report must then be sent to the Secretary to the IWC.

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Provisions for Exchange of Information

Observers are required to submit a report of their observations to the manager of the land station and to the senior national inspector. Managers' andinspectors' explanations must be transmitted with the report, along with any additional comments, to the Secretary to the IWC.

[81] TIAS 1849, 4228; 62 Stat. 1716; 10 UST 952.

Agreements Concerning Wildlife Other Than Fish and Whales

Introduction

Wildlife was once considered largely a national or even local asset but is now recognized by an increasing number of countries as an international resource to be conserved for the benefit of everyone. Numerous bilateral and multilateral agreements address the protection of wildlife, including both fauna and flora. The Convention on International Trade in Endangered Species of Wild Fauna and Flora is probably the single most important agreement now in existence in this area. It is the primary agreement that monitors and controls international trade to protect the extinction of fauna and flora. Over 20,000 species of plants and over 500 animal species are specifically protected by CITES, either by an outright ban on trade or through controlled trade.[82] Currently, 107 countries are party to CITES, giving it the largest participation of all wildlife treaties.

A number of regional agreements also protect wildlife through a variety of measures. Some of these agreements have trade provisions, in addition to measures to protect species habitat and the environment in general. Furthermore, there are agreements to protect specific classes of animals, such as birds, polar bears, and seals. These agreements generally address habitat, migration, and other issues between two or more countries, such as the Convention Between the United States and the U.S.S.R. Concerning the Conservation of Migratory Birds and Their Environment. Other agreements that specifically protect animals are the Convention on Wetlands of International Importance, Especially as a Waterfowl Habitat and the Convention on the Conservation of Migratory Species of Wild Animals. Both agreements give special importance to the protection of wildlife habitat.

Most agreements that specifically consider plant protection are focused on the prevention of the spread of disease through domestic and international trade in plant products. These agreements do not address such issues as the overall protection of endangered or threatened species through prohibition against destruction or the taking of plants. The International Plant Protection Agreement and the North American Plant Protection Agreement both endeavor to prevent the spread of plant and animal diseases through trade. The International Tropical Timber Agreement established the International Tropical Timber Organization (ITTO), which monitors, but does not control, international trade in tropical timber. The ITTO provides a forum for discussion between producing and consuming countries and conducts research projects on tropical timber.

[82] Council on Environmental Quality, *Environmental Quality*, 1990, p. 297.

Cites

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES). date signed: 3/3/73; entry into force: 1/7/75; amended: 6/22/79, and 4/13/87; citations: 27 UST 1087, TIAS 8249, 993 UNTS 243; 1979 amendment: 96th Congress, 2d Session, Ex. "C"; 1987 amendment (not yet in force): Senate Treaty Doc. 98-10; depositary: Switzerland.

Objectives and Obligations

CITES is a multilateral convention to protect certain species of plants and animals from overexploitation through international trade. CITES regulates international trade in species that are either threatened with extinction or may become endangered if their trade is not regulated. Species to be regulated are divided into three categories: (1) those threatened with extinction (trade in these species is authorized only under exceptional circumstances); (2) those that may become endangered unless trade is regulated; and (3) those that a party identifies as being subject to regulation within its own jurisdiction and as requiring international cooperation to control trade.[83]

In general, trade in species that are, or could become, threatened with extinction is regulated through a system of export and import permits, as defined in articles III-V. A party state is authorized to issue export and import permits only if "a Scientific Authority of the State" has determined that the export or import of a specimen "will not be detrimental to the survival of that species." For export permits, a "Management Authority of the State" must be satisfied (1) that the specimens would be transported in such a way as to "minimize risk of injury, damage to health or cruel treatment;" (2) that the export of the specimen is legal under that country's laws, and for species threatened with extinction; (3) that an import permit has been granted by the country of destination. Before issuing an import permit, a country must determine that the specimen will not be used for commercial purposes and that the proposed recipient of a living specimen has a suitable environment for housing that specimen. Article VII provides specific exemptions from the system of export and import permits, such as cases in which the specimen was acquired before the provisions of CITES were applicable to that particular species. In addition, article XXIII permits a party to exempt itself from the requirements of the convention with regard to a specific species.

The 1979 amendment provided a legal basis for parties to provide funding for the administrative operations of CITES, upon phaseout of financial support by the United Nations Environmental Programme (UNEP). The 1987 amendment (not yet in force) would provide the legal authority for the accession of regional economic integration

[83] These species are listed in apps. I, II, and III, respectively, of the convention.

organizations. Such organizations would assume the same rights and obligations of the individual party states. Indeed, the primary purpose of the amendment is to allow for accession by the European Community.

Enforcement Mechanisms

Enforcement mechanisms are provided for under article VIII of the convention. In particular, the convention states that "the parties must take appropriate measures to enforce the provisions. . .and to prohibit trade in specimens in violation thereof." Further, under article VIII(1) parties are obliged "(a) to penalize trade in, or possession of, such specimens, or both, and (b) to provide for the confiscation or return to the State of export of such specimens."

Article XIII states that the Secretariat will inform a party if that party is not effectively implementing one or more provisions of the convention. The party is then required to "inform the Secretariat of any relevant facts insofar as its laws permit and. . .propose remedial action." The Conference of Parties will then review the information provided by the party at the next meeting and "make whatever recommendations it deems appropriate."

Dispute-Settlement Mechanisms

Article XVIII provides that disputes between two or more parties of the agreement are to be negotiated between the respective parties. If a resolution cannot be reached, then the parties may take their disagreement to binding arbitration at the Permanent Court of Arbitration at the Hague.

Provisions for Exchange of Information

Article VII states that the exchange of information is accomplished through the Secretariat. Among its duties, the Secretariat is responsible for distributing current editions of the convention's appendixes and for preparing annual reports on the implementation of the convention.

Article VIII(6) requires parties to maintain specific records on trade in endangered species. Parties must submit an annual report to the Secretariat on the trade in such species, and must report biennially on measures they are taking to enforce the provisions of the convention under article VIII(7).

Parties may propose amendments to appendixes I and II by writing to the Secretariat, which is then responsible for disseminating the proposed amendment, along with any recommendations, to all parties of the convention, according to article XV. Article XVI allows parties to submit to the Secretariat a list of species that are subject to national regulations. The Secretariat is responsible for sending any such lists, or changes to the lists, to all parties.

Implementation

U.S. implementation

The Endangered Species Act of 1973[84] implemented U.S. obligations under CITES.[85] Prior to the 1973 act, U.S. conservation policy had been implemented under the Endangered Species Preservation Act of 1966[86] and the Endangered Species Conservation Act of 1969.[87] The Fish and Wildlife Service (FWS), under the Interior Department, is responsible for implementing U.S. obligations under CITES. The FWS has issued regulations outlining the procedures to import or export specimens of species that are listed in the appendixes to species.[88]

The U.S. Department of Interior works with the U.S. Departments of State, Agriculture, Treasury (U.S. Customs Service), and Commerce (National Marine Fisheries Service) to implement the agreement. Implementation measures include the granting or denial of applications to trade-controlled species with other countries, enforcement activities related to such trade, and production of an annual report on trade under CITES. The Department of Interior, in cooperation with other agencies, also prepares U.S. positions for international meetings concerning CITES.

The Office responsible for handling CITES in the Department of the Interior is the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone (703) 358-2095.

Implementation by others[89]

The management authorities for selected parties to the convention are presented in figure 5-1, on the following page.[90]

CURRENT ISSUES

According to the U.S. Fish and Wildlife Service, there are several problems related to the implementation of CITES.

> "Millions of specimens of wildlife and plants are exported and imported each year. Very few of the Parties to this Convention can be satisfied with their implementation. Mechanisms within the international framework of CITES to encourage or persuade Parties to higher levels of performance have not been used to full

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[84] Pub. L. 93-205; 87 Stat. 884; 16 U.S.C. 1531-1543.

[85] For further discussion of the Endangered Species Act of 1973, see Frank P. Grad, *Treatise on Environmental Law*, pp. 13-97 to 13-101.

[86] Pub. L. 89-669; 87 Stat. 884; 16 U.S.C. 1531-1543.

[87] Pub. L. 91-135; 83 Stat. 275; 16 U.S.C. 668. This act was repealed with the enactment of the Endangered Species Act.

[88] 50 C.F.R., ch. 1, pt. 23.

[89] For discussion on the implementation of CITES, see World Resource Institute, *The World Resources 1990-91*, 1990, pp. 299-359; "Wildlife Trade Law Implementation in Developing Countries: The Experience of Latin America," *Boston University International Law Journal*, Fall 1987, vol. 5, No. 2, pp. 289-310; and "Asian Compliance with CITES," Ibid., pp. 311-326.

[90] 50 C.F.R. 23.2.

Figure 5-1
List of management authorities for selected parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Bureau of Customs, Department of Business and Consumer Affairs, Canberra, Act 2600 Australia;

Instituto Braseleiron de Desencolcoimento Florestal (IBDF) do Ministerio da Agricultura, Palacio do Desencolcoimento, Setor Bancario Norte, 13 degrees andar, 70000 Brazilia-DF Brazil;

The Administrator, Convention on International Trade in Endangered Species, Canadian Wildlife Service, Department of the Environment, Ottawa, Ontario, K1A OH3, Canada;

Servicio Agricola y Ganadero y Vida Silvestre, Ministerio de Agricultura y Ganaderia, San Jose, Costa Rica;

Ministry of Agriculture and Natural Resources, Nicosia, Cyprus;

Ministerio de Agricultura y Ganaderia, Quito, Ecuador;

Bundesminister fur Ernahrung Landwirtsschaft und Forsten, Rochusstrasse 1, 5300 Bonn-Duisdorf, Germany;

Maa-ja Metsatalousministerio, Ministry of Agriculture and Forestry, Bureau of Natural Resources, Hallituskatu 3 A, 00170 Helsinki 3 A, Finland;

Ministerium fur Land, Forst und Nahrungsguterwirtschaft, der Deutschen Demokratischen Republik, DDR-1157 Berlin, Germany;

Department of Game and Wildlife, P.O. Box M 239, Accra, Ghana;

The Director of Wildlife Preservation, Government of India, Ministry of Agriculture and Irrigation, Department of Agriculture, Krishi Bhaven, New Delhi-110001, India;

Department of the Environment, P.O. Box 1430, Tehran, Iran;

Direction des Eaux et Forets et de la Conservation des Sols, B.P. 243, Tananarive (Malagasy Republic);

The Conservator of Forests, Forest Service, Curepipe, Mauritius;

Comite National de l'Environment, Direction de l'Environment, Ministere de l'Urbanisme de Habitat du Tourisme et de l'Environment, Rabat, Morocco;

Ministere de l'Economie rurale et du Climat, Niamey, Niger;

The Royal Ministry of Environment, Myntgaten 2, P.O. Box 8012 Oslo-Dep., N-Oslo 1, Norway;

Mr. A.M. Khattak, Inspector General of Forests/Member Secretary, Government of Pakistan, Ministry of Food, Agriculture, Cooperatives, Under-Developed Areas and Land Reforms (Food and Agriculture Division) National Council for Conservation of Wildlife, Bungalow No.: 4-G, St. No.: 51, F.6/Islamabad, Pakistan;

The Conservator of Fauna, Department of Natural Resources, P.O. Box 2585, Konedobu, Papua, New Guinea;

Direction General Forestal y de Fauna, Natalio Sanchez 220, 3er. piso, Jesus Maria, Lima, Peru;

The Secretary, Department of Planning and the Environment, Private Bag X 213, Pretoria 0001, South Africa;

Lantbruksstyrelsen, Vallgatan 6, S-551 83 Jonkoping, Sweden;

Office veterinaire federal, Thunstrasse 17, 3005 Berne 6, Switzerland;

Direction des Forets, 36, rue Alain Savary, Tunis, Tunisia;

Department of the Environment, 17/19 Rochester Row, London SW1P 1LN, England;

Presidente del Instituto Nacional para la Preservacion del Medio Ambiente, Ministerio de Education y Cultura, Sarandi 444, Montevideo, Uruguay;

Le Commissaire d'Etat a l'Environment, Conservation de la Nature et Tourisme Boite Postale 12348, Kinshasa/Gombe, Zaire.

Source: Compiled by staff of the U.S. International Trade Commission.

potential. The Secretary of the Interior has been asked by several non-governmental organizations to certify under the Pelly Amendment to the Fisherman's Protective Act that nationals of Mexico and Japan (for trade in sea turtles) and of Zimbabwe, China and the United Kingdom (Hong Kong) (for trade in African elephant ivory) have taken actions that diminish the effectiveness of the Convention. The Fish and Wildlife Service is investigating the allegations contained in these requests. Recent information indicates that Mexico has banned the taking of all sea turtles."[91]

"The Convention requires export permits to be granted only if there is assurance that export will not be detrimental to the survival of the species. There [are] at least 80 species in trade for which there is no sufficient biological information to know whether export would be detrimental. Substantial amounts of money and expertise for studies in range states [are] essential if trade is to continue."[92]

"Containerized cargo is of such volume into the United States that only a very small percentage of containers entering the United States is inspected for violations. We suspect large amounts of illegal trade goes undetected."[93]

"Funds, legal framework, [and] administrative and enforcement personnel are often insufficient in the range countries to keep illegal trade at reasonable levels."[94]

"Article VII, paragraph 3, of the Convention provides an exemption from permit requirements for personal and household affects. Many countries disallow this exemption in whole or [in] part making it a minefield for tourists to know whether their souvenirs will be confiscated as they cross borders. The exemption should be allowed or disallowed by *all* countries. [To make t]his [change] would require an amendment to the Convention."[95]

One of the most salient issues concerning CITES recently has been over trade in ivory from the tusks of African elephants. International trade in African elephant ivory was officially banned under CITES in October 1989, when the African elephant was moved from appendix II to the more restrictive appendix I.[96] The ban, which came into force in January 1990, reportedly has significantly reduced the slaughter of African elephants. Five African countries—Botswana, Burundi, Malawi, Mozambique, and Zimbabwe—announced at the time the ban was instituted that they would leave the convention and continue trading in ivory. CITES permits countries to exempt themselves from abiding by CITES requirements on specific species. Some analysts claim that any success achieved in preserving the African elephant will not only be attributable to the ban on trade in ivory, but also to a publicity campaign that has attached a negative stigma to the use of ivory.

In testimony before the Commission, Mr. Fred L. Smith, Jr., President, Competitive Enterprise Institute (CEI), expressed his opposition to mixing trade and environmental policies.[97] He used the CITES ban on trade in African elephant ivory as an example of the ineffectiveness of trying to manage wildlife protection through bans on trade. He said that, in Kenya, which had prohibited the export of African elephant ivory, "the population of the elephants had diminished from some 60,000 plus in the 1970's, to some 14-15,000 plus by the late 80's." Mr. Smith attributed the decline in the elephant population to poaching. Zimbabwe permitted the local citizens "to benefit from controlled harvesting of the elephants," he said. According to Mr. Smith, the elephant population in Zimbabwe had increased from 30,000 to 40,000 during the same time period. Mr. Smith said that the ban on African elephant ivory is suppressing the legal price, but "that doesn't mean the street price of ivory has, in fact, dropped." He also said that Zimbabwe is now experiencing an increase in poaching.

The following countries are significant nonsignatories to CITES: Angola; Myanmar (Burma); Democratic Kampuchea; Cote d'Ivoire; Equatorial Guinea; Guinea-Bissau; Haiti; Jamaica; Lao People's Democratic Republic; Libya; Mali; Mexico; Mongolia; Saudi Arabia; Sierra Leone; South Korea; Togo; Turkey; Uganda; and Yemen.

Mexican officials have indicated that they will sign the convention later this year.[98] U.S. Government officials are currently assisting the Mexican Government in formulating the necessary controls to implement CITES. The absence of South Korea from CITES has worried some environmentalists, who think that South Korea could provide a ready market for ivory products that are banned from previously large markets, particularly Japan.

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[91] Office of Management Authority, letter to the U.S. International Trade Commission, July 25, 1990. For more information on sea turtles, see the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, in this section, below.

[92] Office of Management Authority, letter to the U.S. International Trade Commission, July 25, 1990.

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] For more background on the decision to ban trade in ivory, see David Harland, "Jumping on the 'Ban' Wagon: Efforts to Save the African Elephant," *The Fletcher Forum of World Affairs*, vol. 14, No. 2, Summer 1990, pp. 284-300.

[97] Testimony presented to the Commission on Aug. 15, 1990. For more information on this testimony, see ch., "Views of Interested Parties."

[98] See "Current Issues" under the "Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere," for a discussion of the protection of the marine turtle in Mexico. The marine turtle is listed as endangered under CITES.

Parties

Afghanistan
Algeria
Argentina
Australia
Austria
Bahamas
Bangladesh
Belgium
Belize
Benin
Bolivia
Botswana
Brazil
Burkina Faso
Burundi
Cameroon
Canada
Central African Republic
Chad
Chile
China
Colombia
Congo
Costa Rica
Cuba
Cyprus
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Ethiopia
Finland
France
Gabon
Gambia
Germany
Ghana
Guatemala
Guinea
Guyana
Honduras
Hungary
India
Indonesia
Iran
Israel
Italy
Japan
Jordan
Kenya
Liberia
Liechtenstein
Luxembourg
Madagascar
Malawi
Malaysia
Malta
Mauritius
Monaco
Morocco
Mozambique
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Rwanda
St. Lucia
St. Vincent & the Grenadines
Senegal
Seychelles
Singapore
Somalia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad & Tobago
Tunisia
U.S.S.R.
United Arab Emirates
United Kingdom
United States
Uruguay
Vanuatu
Venezuela
Zaire
Zambia
Zimbabwe

General Regional Agreements Concerning Fauna and Flora

Protection of endangered fauna and flora through means other than monitoring or controlling international trade has generally taken the form of regional agreements. These agreements vary in scope, but almost all of them provide for the protection of species and generally require parties to establish protected areas for wildlife. Some agreements, particularly the newer agreements, are broader in scope. A few address specific issues, such as water and air pollution or soil erosion. The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere and the African Convention on the Conservation of Nature and Natural Resources also

have provisions for the control of international trade that were precursors to those in CITES. These trade provisions are largely superseded by CITES, except for those countries that are not party to CITES.

CONVENTION ON NATURE PROTECTION AND WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE (the "Western Hemisphere Convention"). date signed: 10/12/40; entry into force: 4/30/42; citations: TS 981, Bevans 630, UNTS 193; depositary: Organization of American States (OAS).

AGREEMENT PURSUANT TO ARTICLE VI OF THE CONVENTION ON NATURE PROTECTION AND WILDLIFE PRESERVATION IN THE WESTERN HEMISPHERE (the "Panama Agreement"). date signed: 9/7/77; entry into force: 10/1/79; citation: TIAS 10035, depositary: OAS.

Objectives and Obligations

Western Hemisphere Convention

According to the preamble, the primary objectives of the convention are to protect fauna, including migratory birds, and flora in their natural habitat, to prevent them from becoming extinct, and to preserve areas considered to be of "extraordinary beauty [or] unusual and striking geological formations," or to have "aesthetic, historic or scientific value."

Parties are required to establish in their territories national parks, national reserves, nature monuments, and strict wilderness reserves in "all cases where such establishment is feasible," according to article II, and to inform the Organization of American States[99] of the establishment of such parks and reserves, citing the implementing legislation and regulations. Article III requires parties to "prohibit hunting, killing and capturing" of fauna and the destruction or collection of flora in the national parks, except under special circumstances. Article IV states that parties must not use resources of the national parks for commercial profit; instead they must "maintain the strict wilderness reserves inviolate, as far as practicable" except for scientific investigation, government inspection, or other special circumstances.

Parties are required by articles V, VII, and IX to adopt or propose the adoption of laws and regulations to protect (1) fauna and flora that are not in national parks or reserves and to protect "natural scenery, striking geological formations, regions and natural objects of aesthetic interest or historic or scientific value;" (2) migratory birds of aesthetic or economic value, and (3) other species.

Panama Agreement

This agreement was made in connection with the Panama Canal Treaty. The purpose of the agreement is to designate an area known as "Barro Colorado Island" as a nature monument. Upon termination of the Panama Canal Treaty, additional areas would be designated, as provided for in article I. Article V states that use of the areas provided for in this agreement for the operation of the Panama Canal "will not be considered to derogate from protected status of Nature Monument."

Dispute-Settlement Mechanisms

Neither of these agreements provides for dispute settlement.

Enforcement Mechanisms

Western Hemisphere Convention

Article IX of the agreement provides for the regulation of trade in protected fauna and flora through the issuance of export permits for protected species.

Panama Agreement

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

Western Hemisphere Convention

Article II(3) requires each party to notify the OAS of measures taken to comply with the treaty, including the establishment of any national parks, national reserves, nature monuments, or strict wilderness reserves.

Panama Agreement

The agreement does not provide for the exchange of information.

Implementation

Western Hemisphere Convention

U.S. implementation

The Western Hemisphere Convention was implemented by the United States through the Endangered Species Act of 1973.[100] The President designated the Secretary of the Interior, in consultation with the Secretary of State, to act on behalf of the United States to implement the convention.[101] The Endangered Species Act set up the framework by which the U.S. Government could protect species that they determined to be "threatened"[102] or "endangered".[103] The Fish and Wildlife Service—in

[99] Formerly, the Pan American Union.

[100] Pub. L. 93-205; 16 U.S.C. 1531-1543. This act was preceded by the Endangered Species Acts of 1966 and 1969.

[101] Executive Order 11911.

[102] "Threatened" is defined in 16 U.S.C.A. 1532(20) as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range."

[103] "Endangered" is defined in 16 U.S.C.A. 1532(6) as any species which is in danger of extinction throughout all or a significant portion of its range other than. . . a pest whose protection. . . would present an overwhelming and overriding risk to man."

cooperation with NOAA's National Marine Fisheries Service—is responsible for administering the provisions of the Endangered Species Act.[104] The Secretary of the Interior is required to publish in the *Federal Register* any findings and justifications as to whether a species is determined to be threatened or endangered.[105]

Though many aspects of the Western Hemisphere Convention were implemented indirectly through the Endangered Species Act, the amendments of 1982[106] to the act provided the first direct funding to facilitate the implementation of the convention.[107] The amendments directed the Secretary of the Interior to take the following steps:

(1) [develop] personnel resources and programs to facilitate implementation of the Convention;

(2) [identify] species of birds that migrate between the United States and other Western Hemisphere nations, identifying the habitats of these species, and implementing cooperative measures to ensure that these species do not become endangered or threatened; and

(3) [identify] measures to address the protection of wild plants.[108]

The office responsible for the Western Hemisphere Convention is the Office of International Affairs, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, telephone (703) 358-1767.

Implementation by others

The United States is facilitating the implementation of the Western Hemisphere Convention through joint programs with Latin American and Caribbean countries. Some of the projects that have been implemented include a graduate program in wildlife management at the National University of Costa Rica; an international training center for reserve managers in Mexico; and a graduate program in ecology, conservation, and wildlife management at the Federal University of Minas Gerais, Brazil.[109]

[104] See 50 C.F.R. pt. 17 for the FWS regulations implementing the Endangered Species Act.

[105] 16 U.S.C. 1533.

[106] Pub. L. 97-304.

[107] See FWS report, *Faunal and Floral Conservation in Latin America & the Caribbean, A Report to Congress on Implementation of the Western Hemisphere Convention*, September 1985, for more information about funding for the implementation of Western Hemisphere Convention.

[108] Ibid., p. 1.

[109] FWS, *Report on the U.S. Fish and Wildlife Service Western Hemisphere Program in Latin America and the Caribbean*, FY 1989.

Current Issues

On June 22, 1990, the U.S. Department of Interior identified the northern spotted owl as a threatened species under the Endangered Species Act. A U.S. Forest Service proposal to protect the owl would set aside large areas of the "old growth" forests in the Pacific Northwest for the owl. U.S. timber interests oppose setting aside the old growth areas, saying that to do so would result in an estimated loss of 28,000 jobs. An interagency task force was scheduled to report to the President by September 1, 1990, on an alternative method of saving the owl that would result in the loss of fewer timber jobs. The administration also announced that it might seek an amendment to the Endangered Species Act to allow for economic factors to be taken into consideration when making decisions about saving threatened species.

Mexico recently announced a ban on the hunting of marine turtles. Previously Mexico had an official quota for the hunting of one of the most threatened species of marine turtles, the Pacific Ridley, but this quota was reportedly grossly exceeded. The marine turtles are coveted for their skin, and some, for their eggs and shell. The skin from the Pacific Ridley was particularly valued in Japan for shoes. Japan had reserved the right to import this turtle skin, even though its trade was officially banned under CITES.

Another current issue concerns the inadvertent killing of marine turtles by shrimp harvesters. The turtles get caught and drown in the nets and other mechanisms used to harvest shrimp. The National Marine Fisheries Service now requires shrimpers to modify their nets by adding turtle excluder devices (TEDs) to help turtles escape from the nets. Shrimpers are opposed to the regulations, saying that the TEDs increase costs and result in lower harvest yields. As of May 1, 1991, the United States will prohibit imports of shrimp from countries that do not have similar conservation measures for turtles.[110]

PARTIES

Western Hemisphere Convention
Argentina *
Brazil *
Chile *
Costa Rica *
Dominican Republic *
Ecuador *
El Salvador *
Guatemala *
Haiti
Mexico
Nicaragua *
Panama *
Paraguay *
Peru *
Suriname *
Trinidad and Tobago *

[110] Pub. L. 101-162.

United States *
Uruguay *
Venezuela *

Note: Parties marked with an asterisk are also parties to CITES.

AFRICAN CONVENTION ON THE CONSERVATION OF NATURE AND NATURAL RESOURCES (the "African Convention").[111] **date signed:** 9/15/68; **entry into force:** 6/16/69; **citations:** 1001 UNTS 3; **depositary:** Organization of African Unity (OAU).

Objectives and Obligations

The stated purpose of the African Convention is "to ensure conservation, utilization and development of soil, water, flora and fauna resources in accordance with scientific principles and. . .in the best interests of the people."[112] Articles IV and V delineate measures that the parties are required to take with regard to soil and water conservation. Article VI requires parties to "take all necessary measures for the protection of flora," including the establishment of forest reserves and botanical gardens. Article VII states that parties are to manage faunal resources wisely "within the framework of land-use planning and. . .economic and social development." Article VIII also requires parties to take measures to protect species according to the degree of their endangerment and to maintain conservation areas to ensure the protection of all species. Article IX requires parties to regulate transit and trade in certain species and to prevent trade in specimens that were illegally captured, killed, or obtained. Certain exceptions in complying with the terms of the convention are provided for in article XVII.

Dispute-Settlement Mechanisms

According to article XVIII, disputes that cannot be settled through negotiation, "shall, at the request of any party, be submitted to the Commission of Mediation, Conciliation and Arbitration of the Organization of African Unity." The convention does not state whether or not the arbitration is binding.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

Article XVI requires that contracting parties supply the OAU with the "text of all laws, decrees, regulations and instructions. . .which are intended to ensure the implementation of this Convention." The convention does not require the OAU to disseminate this information to the contracting parties.

Implementation

The United States cannot be a party to this regional agreement.

Parties

Parties marked with an asterisk are also parties to CITES.

Algeria *
Burkina Faso *
Cameroon *
Central African Republic *
Congo *
Djibouti
Egypt *
Ghana *
Ivory Coast
Kenya *
Liberia *
Madagascar *
Malawi *
Mali
Morocco *
Mozambique *
Niger *
Nigeria *
Rwanda *
Senegal *
Seychelles *
Sudan *
Swaziland
Tanzania
Togo *
Tunisia *
Uganda
Zaire *
Zambia *

CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS ("European Convention"). **date signed:** 9/19/79; **entry into force:** 6/1/82; **citations:** 23 Ruster 40; ETS 104; **depositary:** Council of Europe.

Objectives and Obligations

The purpose of the convention is to promote the conservation of fauna and flora, including migratory species, in their natural habitat. Parties are required to take legislative and administrative measures, as defined in articles IV-VIII and article X, to protect fauna and flora, particularly those species listed in the appendixes to the convention. Parties are required to identify and protect important breeding and resting sites of animals that are listed in appendix II (strictly protected animals). Article IX provides certain exemptions from the provisions in articles IV-VIII.

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111 The African Convention was preceded by the Convention Relative to the Preservation of Fauna and Flora in their Natural State, Nov. 8, 1933, 172 LNTS 241, and the Convention for the Preservation of Wild Animals, Birds, and Fish in Africa, May 19, 1900, 94 BFSP 715.

112 Art. II.

Dispute-Settlement Mechanisms

Article XVIII states that dispute settlement should be attempted first through the Standing Committee[113] or direct negotiation between the involved parties. If these means fail, the dispute may be settled through binding arbitration.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

Article XXIV states that the Secretary General of the Council of Europe is responsible for notifying parties of any action or information reported by member states as required by the convention.

Implementation

The United States cannot be a party to this regional agreement.

Parties

Parties marked with an asterisk are also parties to CITES.

Austria *
Denmark *
Finland *
Greece
Ireland
Italy *
Liechtenstein *
Luxembourg *
Netherlands *
Norway *
Portugal *
Spain *
Sweden *
Switzerland *
Turkey
United Kingdom
European Economic Community

MEMORANDUM OF UNDERSTANDING BETWEEN NATIONAL PARK SERVICE OF THE DEPARTMENT OF INTERIOR OF THE UNITED STATES OF AMERICA AND SECRETARIAT OF URBAN DEVELOPMENT AND ECOLOGY OF THE UNITED MEXICAN STATES ON COOPERATION IN MANAGEMENT AND PROTECTION OF NATIONAL PARKS AND OTHER PROTECTED NATURAL AND CULTURAL SITES. date signed: 11/30/88 and 1/24/89; entry into force: 1/24/89; citation: (Copy obtained from the U.S. Department of State); depositary: not stated.

[113] The Standing Committee is made up of delegations from the parties to the convention. See arts. XIII-XV for more information about the Standing Committee.

Objectives and Obligations

The preamble states that the purpose of this memorandum of understanding is to establish a framework for cooperation between the U.S. National Park Service and the Mexican Secretariat of Urban Development and Ecology on the management and protection of national parks and other protected natural and historical sites. The parties agreed to set up a committee to engage in a variety of projects, including the management of protected natural areas; development of educational and public informational exchanges; technical cooperation to conserve and maintain fauna and flora within shared ecosystems; and establishment of natural and cultural heritage areas.[114]

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

According to article 2, the parties are to meet on an annual basis to review proposed and ongoing projects, and to exchange information regarding projects 2 months prior to annual meetings. The annex provides for the exchange of information at other times, as needed, by the coordinators of projects.

Implementation

The National Park Service had authority to enter this agreement under Public Law 96-515 and 36 C.F.R. 73.10.

Other Regional Agreements

The Convention on Nature in the South Pacific,[115] which was adopted June 6, 1976, provides for the establishment of protected areas, such as national parks and reserves, to safeguard national representative samples of the natural ecosystems. The convention also provides special protection to fauna and flora that are threatened with extinction.

The purpose of the Treaty for Amazonian Cooperation[116] is to promote the harmonious development of the Amazon region, to permit the equitable distribution of resources, and to provide for the "rational exploitation of the region's natural resources."[117] The agreement requires parties to coordinate their activities on variety of objectives, including (1) the exchange of information on each

[114] Arts. 1, 2, and 3.

[115] Not in force. Signatories are France, Papua New Guinea, and Samoa.

[116] Entered into force Aug. 2, 1980. Parties to the agreement are Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela.

[117] Art. 1

state's protective measures taken to preserve the environmental balance of the region; (2) the facilitation of the flow of tourists to the region without detriment to local Indian populations; and (3) the management of natural resources.

The Agreement on the Conservation of Nature and Natural Resources[118] would regulate trade and the possession of species recognized as endangered by the parties. The parties would agree to take individual and joint action for the conservation of natural resources in the Association of South East Asian Nations (ASEAN) region, including soil and water conservation and pollution control; the establishment of national parks and reserves; and land-use planning.

Agreements Concerning Birds and Other Animals

Introduction

The need to protect wild animals has been recognized for many years. However, the reasons for protecting various species have changed significantly. For example, birds were valued originally as a source of food and controller of insects, and early agreements, such as the 1916 bilateral agreement between the United States and Great Britain (for the Dominion of Canada), were designed to protect animals useful to agriculture and forestry. Later agreements protected birds because of their aesthetic and cultural value, in addition to other attributes. In recent years, treaties cover a variety of threats and concentrate on habitat protection. Protection of birds is also covered in CITES, the Western Hemisphere Convention, and other regional agreements, discussed above.

The United States is party to four bilateral conventions that protect migratory birds through international cooperation. In addition to protecting birds, the Wetlands Convention protects other wildlife and their habitats. Polar bears, Antarctic seals, and porcupine caribou are among the other species that are specifically protected by international agreements.

CONVENTION BETWEEN THE UNITED STATES AND GREAT BRITAIN (FOR DOMINION OF CANADA) FOR THE PROTECTION OF MIGRATORY BIRDS IN THE UNITED STATES AND CANADA (the "1916 convention"). Protocol 1/30/79. **date signed:** 8/16/16; **entry into force:** 12/7/16; **citations:** 39 Stat. 1702, TS 628, 12 Bevans 375; **depositary:** not available.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES FOR THE PROTECTION OF MIGRATORY BIRDS AND GAME MAMMALS (the "1936 convention"). **date signed:** 2/7/36; **entry into force:** 3/15/37; **citations:** 50 Stat. 1311, TS 912, 9 Bevans 1017, 178 LNTS 309; **depositary:** not available.

SUPPLEMENT TO AGREEMENT OF FEBRUARY 7, 1936, PROTECTION OF MIGRATORY BIRDS. date signed: 3/10/72; **entry into force:** 3/10/72; **citations:** TIAS 7302, 23 UST 260; **depositary:** not available.

CONVENTION BETWEEN UNITED STATES AND JAPAN FOR THE PROTECTION OF MIGRATORY BIRDS AND BIRDS IN DANGER OF EXTINCTION, AND THEIR ENVIRONMENT (the "1972 convention"). **date signed:** 3/4/72; **entry into force:** 12/19/74; **citations:** TIAS 7990, 25 UST 3329; **depositary:** not available.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE U.S.S.R. CONCERNING THE CONSERVATION OF MIGRATORY BIRDS AND THEIR ENVIRONMENT (the "1976 convention"). **date signed:** 11/19/76; **entry into force:** 10/13/78; **citations:** TIAS 9073, 29 USTS 4647; **depositary:** not available.

Objectives and Obligations

These conventions are designed to protect species of migratory birds that cross international borders. The preamble of the 1916 convention with Canada sought to ensure the preservation of birds that are ". . .of great value as a source of food or in destroying insects which are injurious to forests and forage plants. . .as well as to agricultural crops." The objective of the 1936 convention with Mexico, as stated in the preamble, was to provide for the "national utilization of migratory birds for the purpose of sport as well as for food, commerce and industry." The purpose of the 1972 convention with Japan, according to the preamble, is to take "measures for the management, protection and prevention of the extinction of certain birds." Finally, the preamble of the 1976 convention with the U.S.S.R. sought cooperation "in implementing measures for the conservation of migrating birds and their environment and other birds of mutual interest."

All but one of these conventions list the species that they cover; the 1916 convention lists broad groups of birds rather than individual species.[119] All except the 1916 convention contain the procedure for amending their lists.[120]

The four conventions restrict the instances in which migratory birds may be traded or taken. Article II of the 1916 convention prohibits inter-State or international trade in birds (or their eggs) covered by

[118] Not yet in force. Signatories are Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, and Thailand.

[119] Protected species are covered in the following agreements and articles: the 1936 Convention (art. IV) and the Agreement of 1972 Supplementing the 1936 Agreement, the 1972 Convention (annex), and the 1976 Convention (appendix).

[120] Procedures for amending the lists are in the following articles: the 1936 Convention (art. IV), the 1972 Convention (art. II), and the 1976 Convention (art. I, item 3(b)).

the convention only during the closed season. The other remaining conventions prohibit trade in specimens of the covered species (and parts and products of specimens and their eggs) throughout the year.[121] In addition, article II of the 1976 convention prohibits trade in nests of the covered species.[122]

All four agreements provide for several exceptions regarding the taking of birds. The taking of birds for subsistence, the most important exception, is addressed in three of the four conventions.[123] Each convention allows for the taking of birds for scientific or similar purposes (such as education) or to promote the propagation of a species.[124]

Other noteworthy provisions in these conventions include article IV of the 1976 convention, which requires parties to "identify areas of breeding, wintering, feeding and moulting which are of special importance to the conservation of migratory birds." Article IV of the 1916 convention recommends establishing refuges for certain ducks as part of the "special protection" for certain species, and article II(b) of the 1936 convention requires the establishment of refuges where the taking of migratory birds is prohibited.

Several additional issues, such as protection of the environment against pollution and the introduction of exotic species, were addressed in the 1972 and 1976 conventions.[125] These conventions require parties to control the introduction of species that might disturb the ecological balance of natural environments and to control the importation of animals and plants that might be detrimental to the preservation of migratory birds.[126]

The 1916 and 1936 conventions do not address the issue of joint research programs. However, the 1972 convention provides for joint research programs in article V, and the 1976 convention, in article IV.

Dispute-Settlement Mechanisms

None of these agreements provide for dispute settlement.

Enforcement Mechanisms

None of these agreements provide specifically for enforcement mechanisms. However, the 1936 convention stipulates in article III that the "transportation over the American-Mexican border of migratory birds, dead or alive, their parts or products without a permit of authorization" shall be "considered as contraband and treated accordingly."

Provisions for Exchange of Information

The 1972 and 1976 conventions require that parties cooperate in research programs in articles V and VI, and exchange information obtained from bird banding programs. Article VIII of the 1972 convention provides for consultations between the two Governments at the request of either Government.

Implementation

The 1916 convention between the United States and Canada was implemented by the United States under the Migratory Bird Treaty Act of July 3, 1918.[127] This act has been amended over the years to carry out obligations under the 1916 Convention, as well as those under the 1936 and 1972 conventions. The Migratory Bird Conservation Act of February 18, 1929,[128] provides for the acquisition of land, water, or both for use as migratory bird reservations, in accordance with treaty obligations in the 1916 and 1936 conventions. The 1936 convention requires that each party enact laws regarding the hunting of birds from aircraft. This provision is implemented by a 1971 amendment to the Fish and Wildlife Act of 1956.[129] The Office primarily responsible for monitoring the agreements is the Office of International Affairs, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC. The contact person is Mr. Thomas Dwyer (telephone (703) 358-1714 [Arlington, VA]).

INTERNATIONAL CONVENTION FOR THE PROTECTION OF BIRDS (the "1950 Convention"). date signed: 10/18/50; entry into force: 1/17/63; citations: 638 UNTS 185, depositary: France.

Objectives and Obligations

The objective of the convention is to protect birds in the wild, especially endangered and migratory species. Parties to the treaty are required by article II to protect all birds during their breeding season, migrants during their return flight to breeding grounds, and endangered species or those of scientific interest throughout the year. Article III of the agreement prohibits the import, export, transport, or sale of any live or dead birds killed or captured during the protected season. Article IV prohibits the removal or destruction of nests or the taking or damaging, trade, or other commerce in eggs or their shells or broods of young birds during the protected season. Article V also prohibits methods of hunting birds that cause them unnecessary suffering (e.g., snares, nets, poisoned bait, blinded decoy birds, and motor boats). Parties

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[121] Trade is covered in the following agreements and articles: the 1936 Convention (arts. II and III), the 1972 Convention (art. III), and the 1976 Convention (art. II).

[122] The international trade of many of the birds is also regulated by CITES.

[123] In the 1916 Convention, arts. II(1) and II(3), in the 1972 Convention, art. III(1)(e), and in the 1976 Convention, art. II(1)(c).

[124] The taking of birds is provided for in the following agreements and articles: the 1916 Convention (art. V), the 1936 Convention (art. II(A)), the 1972 Convention (art. III), and the 1976 Convention (art. II(A)).

[125] Art. VI of the 1972 Convention and arts. IV and VII of the 1976 Convention.

[126] Art. V of the 1976 convention.

[127] 16 U.S.C.A. 703-708, 709a-711 (1974). 1974 amendment, Pub. L. 93 300, sec. 1, 88 Stat. 190.

[128] 16 U.S.C.A. sec. 715.

[129] 16 U.S.C.A. sec. 742j-1(a)(1974).

must consider and adopt measures to prevent the destruction of birds by water pollution, lighthouses, electric cables, insecticides, or poisons; they must educate children and the public on the need to preserve and protect birds; and they must establish water or land reserves where birds can nest and where migratory birds can rest or find food.[130] Articles 6 and 7 provide exceptions for protection, including any species found to be a pest in a region and any species that would be used in the interests of science and education. According to article VIII, each party draws up a list of birds that may be lawfully taken or killed in compliance with this convention.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Provisions for Exchange of Information

The convention does not require regular meetings of the parties, nor does it require the parties to submit reports on what they have done to implement the agreement.

Implementation

There is no implementing legislation, since the United States is not a party to this convention.

Parties

Belgium
Iceland
Italy
Luxembourg
Netherlands
Spain
Sweden
Switzerland
Turkey
Yugoslavia

CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE ESPECIALLY AS WATERFOWL HABITAT. date signed: 2/2/71; entry into force: 12/21/75; citations: 996 UNTS 245; 111 ILM 963; depositary: Unesco.

PROTOCOL TO AMEND THE CONVENTION ON WETLANDS OF INTERNATIONAL IMPORTANCE ESPECIALLY AS WATERFOWL HABITAT. date signed: 12/3/82; entry into force: 10/10/86; citations: none; depositary: Unesco.

[130] Arts. 10 and 11.

Objectives and Obligations

The objective of this convention is to promote the conservation of wetlands[131] and their flora and fauna, especially waterfowl, through national policies and coordinated international programs. The treaty seeks to stem the progressive encroachment on and loss of wetlands, a resource of economic value, as stated in the preamble. Waterfowl are considered an international resource because their seasonal migrations cause them to cross international borders. Parties must designate territories for inclusion in a List of Wetlands of International Importance, (as provided for in article 2,) which is maintained by the International Union for the Conservation of Nature and Natural Resources.[132] Parties are required by article 3 to plan and promote wetlands and to conserve wetlands and waterfowl by establishing nature reserves on wetlands, according to article IV. Parties must also consult with each other regarding obligations under the treaty where wetlands extend over the borders of more than one party or where water systems are shared by parties as stated in article V. The International Union, according to article VIII, oversees the operations of the convention until such time as another organization or government is appointed by a two-thirds majority of the parties.[133]

The convention, which in its original form did not contain a provision for amendments, was amended by the 1982 protocol to provide for an amendment procedure. The protocol also amended the convention by making the French, German, and Russian texts "equally authentic" with the English text, so as to facilitate wider participation in the convention.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Provisions for Exchange of Information

Article 3 provides that any party should be informed if the ecological character of any wetland in its territory included in the List of Wetlands of International Importance is changing or is likely to change as a result of technological developments or pollution.

Implementation

This convention is self-implementing, meaning that existing domestic laws obviate the need for new implementing legislation. Several Federal agencies,

[131] For the purposes of this convention, wetlands are defined in art. 1 as "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters."
[132] Art. 8.
[133] Art. 8.

including the Department of the Interior, the Army Corps of Engineers, the EPA, and the Department of Agriculture act together to strengthen and maintain existing programs involving wetlands. Section 404 of the Clean Water Act, which is jointly administered by the EPA and the Army Corps of Engineers, provides the structure for the permit process regarding the discharge of dredged or fill material into U.S. waters. The key contact for the Wetlands Convention is Mr. Larry Mason, Office of International Affairs, Fish and Wildlife Service, Department of the Interior, telephone (703) 358-1763 (Arlington, VA).

Current Issues

There are numerous current issues since the conservation of wetlands involves coordination and cooperation with Federal, State, and local agencies as well as public and private organizations. Wetlands are an issue in the 1990 farm bill, which includes provisions regarding wetland easements and penalties for draining wetlands. Another issue among environmentalists involves moving enforcement responsibilities from the Agriculture Department (Soil Conservation Service) to the Department of the Interior (U.S. Fish and Wildlife Service).

Parties

Algeria
Australia
Austria
Belgium
Bulgaria
Canada
Chile
Denmark
Egypt
Finland
France
Gabon
Germany
Greece
Hungary
Iceland
India
Iran
Ireland
Italy
Japan
Jordan
Mali
Malta
Mauritania
Mexico
Morocco
Netherlands
New Zealand
Niger
Norway
Pakistan
Poland
Portugal
Senegal
South Africa
Spain
Suriname
Sweden
Switzerland
Tunisia
U.S.S.R.
United Kingdom
United States
Uruguay
Venezuela
Vietnam
Yugoslavia

AGREEMENT ON THE CONSERVATION OF POLAR BEARS. date signed: 11/15/73; entry into force: 5/26/76; citations: 27 UST 3918, TIAS 8409; depositary: Norway.

Objectives and Obligations

The two main objectives of the convention as stated in articles I and II are to prohibit the killing and capturing of polar bears, and to protect the ecosystems of which the bears are a part. Also prohibited is the exportation or importation of polar bears or any part or product thereof taken in violation of this agreement.[134]

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Enforcement Mechanisms

The agreement does not provide enforcement mechanisms.

Provisions for Exchange of Information

Article VII of the agreement requires parties to coordinate their research programs and to exchange information on research results.

Implementation

The convention was implemented primarily by the Marine Mammal Protection Act,[135] which has applied to polar bears since its enactment in 1972. The Office primarily responsible for implementation is the U.S. Fish and Wildlife Service, Office of International Affairs, U.S. Department of the Interior, Washington, DC 20240. The contact person is Mr. Larry Mason, telephone (703) 358-1714 (Arlington, VA).

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[134] Arts. III and V. Polar bears are listed in app. II of CITES, which means that export of bears or their parts and products must be limited to a level that is not detrimental to the survival of the species.

[135] 16 U.S.C.A . sec. 1361, Pub. L. 92-522 sec. 2 (Oct. 21, 1972); 86 Stat. 1027; Pub. L. 97-58, sec. 1(b)(1) (Oct. 9, 1981); 95 Stat. 979.

Current Issues

The increasing exploration for oil and minerals in the Arctic has raised some concern among environmentalists about the impact of pollution and disturbances in and around polar bear habitats.

Parties

Canada
Denmark
Norway
Union of Soviet Socialist Republics
United States

CONVENTION FOR THE CONSERVATION OF ANTARCTIC SEALS ("1978 convention"). date signed: 6/28/72; entry into force: 3/11/78; citations: 29 UST 441, TIAS 8826; depositary: United Kingdom of Great Britain and Northern Ireland.

Objectives and Obligations

The Antarctic Seal Convention, closely related to the system established by the Antarctic Treaty,[136] seeks "to promote and achieve the objectives of protection, scientific study and rational use of Antarctic seals, and to maintain a satisfactory balance within the ecological system."[137] The annex, an integral part of the convention, forbids the killing or capture of Ross seals, southern elephant seals, southern fur seals, or any Weddell seal, 1 year old or older, between September 1 and January 31.[138] Section 1 of the annex sets limits for taking of crabeater, leopard, or Weddell seals. Sections 3 through 5 of the annex establish closed seasons, sealing zones, and seal reserves where seals are not to be captured. Article 4 of the convention provides for the issuance of special permits to allow for "limited quantities" of any species to be used for "indispensable food for men or dogs or to provide for scientific research or to provide specimens for museums and educational or cultural institutions."

Enforcement Mechanisms

The convention does not provide for enforcement mechanisms.

Dispute-Settlement Mechanisms

The agreement does not provide for dispute settlement.

Provision for Exchange of Information

By October 31 of each year, parties must (1) report to the Scientific Committee on Antarctic Research (SCAR) of the International Council of Scientific Unions the number of seals killed or captured in the area covered by the convention during the preceding July 1-June 30;[139] and (2) notify other parties and SCAR of any steps taken to implement the convention during the preceding July 1-June 30.[140] If a party has nothing to report, it must indicate so by the October 31 deadline.

Implementation

The 1978 Convention was implemented by the Antarctic Conservation Act of 1978,[141] which authorizes the Director of the National Science Foundation to implement the conservation provisions through a permit system.[142]

Parties

Argentina
Australia
Belgium
Chile
France
Germany
Japan
Norway
Poland
South Africa
Soviet Union
United Kingdom
United States

CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS. date signed: 07/29/79; entry into force: 01/11/83; citation: 19 ILM 15; depositary: Government of Germany.

Objectives and Obligations

The purpose of this convention is to prevent migratory species from becoming endangered. Article II states that the parties agree to "promote. . .research relating to migratory species;" "to provide immediate protection for migratory species included in Appendix I [to the convention];" and "to conclude AGREEMENTS covering the conservation and management of. . .species listed in Appendix II." Species are listed in appendix I as being endangered, as defined by article III, and those in appendix II, as those "which have an unfavourable conservation status which would significantly benefit. . .from international cooperation," as defined in article IV. Article III prohibits parties from taking species listed in appendix I.

Dispute-Settlement Mechanisms

Article VIII provides that disputes should be settled by negotiation between the affected parties. If

[136] Discussed in "Other General Agreements," below.
[137] Preamble.
[138] Annex, sec. 2(a)(b).
[139] Annex, sec. 6(a).
[140] Art. 5(2).
[141] Pub. L. 95-541, 92 Stat. 2048 (1978), 16 U.S.C.A. 2401 et seq.
[142] 16 U.S.C.A. sec. 2403 and 2404.

negotiation fails, the parties may take the dispute to binding arbitration at the Permanent Court of Arbitration, at The Hague.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

Articles IV and VI require the parties to inform the Secretariat (provided by UNEP) of any new agreements concerning species for which they consider themselves range states and of measures they are taking to implement the convention for these species. The Secretariat is responsible for maintaining and making available to the parties information regarding the convention, according to article IX.

Implementation

There is no U.S. implementation, since the United States is not a party to the agreement.

Current Issues

The United States is a significant nonsignatory to this convention. At the time the treaty was negotiated, the United States was concerned that the convention could conflict with U.S. positions on the Law of the Sea,[143] particularly over the definition of boundaries, and with existing treaties applicable to marine mammals and fish.[144] In addition, there was some question as to whether this agreement could be used by the Federal Government to infringe on U.S. States' rights to manage wildlife.[145] Other countries that participated in the negotiation of the treaty but are significant nonsignatories to this convention are Canada, Australia, Argentina, New Zealand, Japan, and the U.S.S.R. These countries had objections similar to those of the United States.[146]

Parties

Benin
Cameroon
Chile
Denmark
Egypt
European Economic Community
Finland
Germany
Ghana
Hungary
India
Ireland
Israel
Italy
Netherlands
Luxembourg
Mali
Niger
Nigeria
Norway
Pakistan
Portugal
Somalia
Spain
Suriname
Sweden
Tunisia
United Kingdom

[143] Discussed in "Agreements Concerning Maritime and Coastal Waters Matters," below.
[144] Nash, *Digest of United States Practice in International Law 1979*, pp. 1620-1621.
[145] Ibid.
[146] Ibid., pp. 1623-1624.

ARRANGEMENT BETWEEN THE UNITED STATES OF AMERICA AND CANADA ON RACCOON DOG IMPORTATION. date signed: 9/4/81; entry into force: 9/4/81; citations: 33 UST 364, TIAS 10259; depositary: not available.

Objectives and Obligations

The objective of this agreement is to prohibit the importation of raccoon dogs into Canada or into the United States. These dogs, which are not indigenous to North America, threaten wildlife species indigenous to Canada and the United States.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Dispute Mechanisms

The agreement does not provide for dispute settlement.

Implementation

This arrangement is an executive agreement between the United States and Canada, and therefore does not require any implementing legislation. The Office primarily responsible for implementing this arrangement is the Fish and Wildlife Service, Department of the Interior. The contact person is Mr. Larry Mason, telephone (703) 358-1763 (Arlington, VA).

Current Issues

There are no known current issues involving this agreement.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND CANADA ON THE CONSERVATION OF THE PORCUPINE CARIBOU HERD. date signed: 7/17/87; entry into force: 7/17/87; citations: none; depositary: not available.

Objectives and Obligations

The objective of this agreement, as stated in article II, is to conserve the porcupine caribou herd and its

habitat and to ensure opportunities for customary and traditional uses of the herd by rural Alaska residents and specified users in the Yukon and the Northwest Territories. Conservation includes measures that ensure the long-term productivity and usefulness of the herd, such as "research, law enforcement, census taking, habitat maintenance, monitoring and public information and education."[147] The agreement prohibits the commercial sale of meat from the porcupine caribou herd.[148] The agreement also provides for the establishment of the International Porcupine Caribou Board.[149]

Enforcement Mechanisms

The Porcupine Caribou Board is responsible for making nonbinding recommendations to the parties concerning the management of porcupine caribou herd. The parties are required by articles III and IV to support and participate in the operation of the board.

Dispute-settlement Mechanisms

Under article 7 "[a]ll questions related to the interpretation of application of the Agreement will be settled by consultation between the Parties." The agreement also provides for mitigation in the event that "activities requiring a Party's approval [have] a potential significant impact on the conservation or use of the Porcupine Caribou Herd or its habitat."[150]

Provision for Exchange of Information

The parties are required by article IV to share information with the Advisory Board, which is responsible for sharing information regarding the Porcupine Caribou Herd at the international level.[151]

Implementation

This is an executive agreement between the United States and Canada, and does not require implementing legislation. Executive agreements relating to environmental issues generally provide for coordinated research, management, and conservation. The Office primarily responsible for implementing this agreement is the Fish and Wildlife Service, Department of the Interior. The contact person is Mr. John P. Rogers, Assistant Regional Director in Anchorage, AK, telephone (907) 786-3542.

Current Issues

There are no important outstanding issues pertaining to this agreement.

147 Art. 1(b).
148 Sec. 3(h).
149 Sec. 4(a).
150 Art. 3(e).
151 Art. 4(d).

Agreements Concerning Flora

INTERNATIONAL TROPICAL TIMBER AGREEMENT (ITTA). date signed: 11/18/83; entry into force: 04/01/85; citations: none; depositary: U.N.

Objectives and Obligations

The ITTA is unique among these agreements in that it was not originally negotiated as an environmental agreement, but as a commodity agreement that recognized the importance of effective development and protection of tropical timber forests. Its environmental aspect has come more and more into play in recent years, because of increased world attention to the problems surrounding tropical deforestation. The purpose of the agreement is, among other things, "to provide an effective framework for co-operation and consultation between tropical timber producing and consuming members with regard to. . .the tropical timber economy." Parties are to "promote the expansion and diversification of international trade in tropical timber. . .improve market intelligence. . .to ensure greater market transparency, promote and support research and development" to improve forest management and wood utilization; to "encourage increased and further processing of tropical timber in producing member countries. . .encourage members to support and develop industrial tropical timber reforestation; improve marketing and distribution of tropical timber exports;. . .and encourage the development of national policies aimed at sustainable utilization and conservation of tropical forests."[152]

The agreement established the International Tropical Timber Organization (ITTO), and its subsidiary body, the International Tropical Timber Council (ITTC),[153] through which the organization will function.[154] Article 23 provides the conditions under which the Council may approve projects proposed by members or committees established under its direction. The Committee on Reforestation and Forest Management, the Committee on Forest Industry, and the Committee on Economic Information and Market Intelligence work under the general direction of the organization's objectives.[155]

Dispute-Settlement Mechanisms

Disputes or complaints "that any member has failed to fulfil its obligations. . .are referred to the International Tropical Timber Council for decision." Council decisions are final and binding.[156] Article 30 states that members have a general obligation to "use their best endeavors and co-operate to promote" the attainment of objectives of the agreement, to avoid any action contrary thereto, and to accept as binding the Council's decisions.

152 Art. 1.
153 The Council is made up of all members of the Tropical Timber Organization.
154 Art. 3.
155 Arts. 24 and 25.
156 Art. 29.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

The Committee on Market Intelligence and Economic Information, established under article 24(1), is responsible for reviewing the availability and quality of statistics. . .required by the organization and for analyzing data from member countries on production, trade, obstacles to trade, and market indicators for tropical timber with a view to promoting greater market transparency.[157] Article 27 provides the authority for the Council to collect information from members regarding the tropical timber industry. The ITTC is directed under article 28 to publish an annual report on its activities and the world tropical timber situation. Article 9 provides that the Council "shall hold at least one session a year."

Implementation

The United States became a signatory to the ITTA on April 26, 1985, as an executive agreement under article II, section I of the ITTA constitution. The United States participated fully as a provisional member until the Congress approved definitive membership in 1990.[158] The United States is currently in arrears for more than $220,000 of its dues to the organization for the years prior to 1990, because of U.S. budget constraints. The lead agency for U.S. involvement in the ITTO is the Office of the United States Trade Representative (USTR), 600 17th Street, NW., Washington, DC 20506, telephone (202) 395-5123.

Current Issues

At the May 1990 Council session, the ITTO adopted action plans for two of its three committees; the Committee on Forest Industry and the Committee for Market Intelligence and Economic Information. The action plan for the Forest Industry Committee includes the objective that total exports of tropical timber should come from "sustainably managed resources by the year 2000." The United States was alone in questioning the advisability of adopting specific targets without a thorough understanding of the technical feasibility and economic implications, but it did not block consensus, because producers, who are ultimately responsible, supported it. At its next session the Council is slated to consider adopting an integrated action plan for the organization that will consolidate the two recently completed committee action plans, as well as earlier decisions taken regarding action priorities for the Committee on Reforestation and Forest Management.

The U.S. administration takes the view that one of the most important contributions that the ITTO can make is as a project coordinating/funding institution in support of sustainable management of timber production forests. To date, project approval procedures have suffered from the absence of rigorous standards of comparison. With the increasing attention paid to tropical deforestation, it is expected that contributions to the special project account of the ITTO will increase—$21 million in voluntary contributions were pledged at the May session alone—therefore, the United States is attempting to focus other governments' attention on increasing the influence of technical merit in the project evaluation and approval process and on the importance of monitoring and quality control in the implementation of funded projects.

Parties

Austria
Australia
Belgium/Luxembourg
Bolivia
Brazil
Cameroon
Canada
China, People's Republic of
Congo
Cote d'Ivoire
Denmark
Ecuador
Egypt
Finland
France
Germany
Gabon
Ghana
Greece
Honduras
India
Indonesia
Ireland
Italy
Japan
Korea, Republic of
Liberia
Malaysia
Netherlands
Norway
Panama
Papua New Guinea
Peru
Philippines
Portugal
Spain
Sweden
Switzerland
Thailand
Togo
Trinidad and Tobago
United Kingdom
U.S.S.R.
United States

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[157] The functions of the committee are outlined in art. 25(1). Authority for the collection of the data is given in art. 27, and the types of data to be collected and analyzed appear in annex C.

[158] Definitive U.S. membership was authorized by Pub. L. 101-246.

International Plant-Protection Agreements

The International Plant Protection Agreement[159] provides measures for countries to take to prevent the spread of pests and diseases of plants and plant products. Parties are required to regulate the import and export of plants and plant products and, if necessary, to detain, treat, or destroy particular contaminated shipments, as provided in article VI. Parties also agree to establish a plant-protection organization that would inspect plants intended for international trade. Article IV requires these organizations to inspect the area of cultivation for pests and diseases, and to issue certificates regarding the phytosanitary condition and origin of the plants or plant products. Supplemental agreements addressing particular pests or regions may be made in conjunction with the FAO. Numerous regional and special agreements have been made, including the North American Plant Protection Agreement; the Plant Protection Agreement for the South East Asia and Pacific Region; the Convention for the Establishment of the European and Mediterranean Plant Protection Organization; and the Phyto-Sanitary Convention for Africa.

Agreements Concerning Marine Pollution

Introduction

Pollution of the marine environment has been defined in the U.N. Convention on the Law of the Sea as follows:

> . . .the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.[160]

There are three major sources of marine pollution: discharges or spills of petroleum by oceangoing vessels, which historically have been the most highly publicized; dumping of toxic or hazardous wastes, such as medical wastes, garbage, and radioactive materials; and land-based discharge of hazardous or toxic substances, sewage, and heated water from industrial and utility plants.[161]

The International Maritime Organization (IMO) is the principal international agency concerned with the sponsorship, development, and management of international and regional marine pollution agreements. The IMO was founded as a result of the 1948 U.N. Maritime Conference, which adopted the Convention on the Intergovernmental Maritime Consultative Organization (IMCO).[162] The IMO has established the Marine Environmental Protection Committee to regulate marine pollution under the terms of various IMO conventions.

The first attempts to establish international controls on marine pollution focused on oil pollution from ships:

> As early as 1926 the first, although unsuccessful, attempt was made to combat this hazard when the United States hosted an international conference to develop an appropriate global convention. However, it was not until 1954, on British initiative, that a convention was concluded to regulate vessel-source pollution.[163]

In response to such disasters as the grounding off the southern coast of Great Britain and subsequent oil spill from the tanker Torrey Canyon in 1967[164] and the wreck in the English Channel of the tanker Amoco Cadiz with its oil pollution of the French coast in 1978, several new international conventions regarding marine pollution were developed and adopted during the decade from 1969 to 1979. Although control of oil pollution was the primary concern, particularly with respect to accidental discharges and spills, the new conventions also dealt with intervention on the high seas by coastal states, liability and compensation for oil pollution damage, and pollution from ocean dumping of wastes and spills of harmful substances.

During 1969-87, regional agreements,[165] regulating various aspects and sources of marine pollution, were adopted covering the North Sea; the Baltic Sea; the North-East Atlantic; the Mediterranean Sea; the Gulf of Arabia; the West, Central, and East

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[159] TIAS 7465.

[160] See pt. I, art. 1(1)(a)(4), United Nations Convention on the Law of the Sea, 22 ILM 1271 (1982). For a review of the Law of the Sea Convention, see "Agreements Concerning Maritime and Coastal Waters Matters," in this report.

[161] For an overview of marine pollutants and sources, see Schachter and Serwer, "Marine Pollution Problems and Remedies," *Am. J. Int'l L.*, vol. 65 (1971), p. 84.

[162] See "Agreements Concerning Maritime and Coastal Waters Matters," later in this report for a review of the IMCO convention. In 1982, the convention was amended and the Intergovernmental Maritime Consultive Organization was renamed the International Maritime Organization (hereafter IMO). For a review of the IMO with respect to marine pollution, see Greenberg, "IMCO: An Environmentalist's Perspective," *Case Western Reserve Journal of Int'l Law.*, vol 8 (1976), p. 131, and Dempsey, *Compliance and Enforcement in International Law-Oil Pollution of the Marine Environment by Ocean Vessels*, Northwestern Journal of Int'l Law and Bus., vol 6 (1984), p. 475.

[163] Boczek, "Global and Regional Approaches to the Protection and Preservation of the Marine Environment," Case Western Reserve Journal of Int'l Law, vol. 16, (1984), p. 47 (1984).

[164] Healy, "International Uniformity in Maritime Law: The Goal and the Obstacles," *California Western Int'l. Law Journal*, vol. 9 (1979), p. 497. See also Wittig, "Tanker Fleets and Flags of Convenience: Advantages, Problems, and Dangers," Texas Int'l Law Journal, vol. 14 (1979), p. 115.

[165] For a general review and discussion of marine regions, see Alexander, *Regional Arrangements in the Oceans*, 71 Am. J. Int'l L. 84 (1977); also see Boczek, *Global and Regional Approaches to the Protection and Preservation of the Marine Environment*, Case Western Reserve Journal of Int'l Law, vol. 16 (1981), p. 54.

African regions; the South-East Pacific; the Red Sea; the Caribbean region; and the South Pacific region. Locally, the United States and Mexico signed in 1980 a bilateral agreement of cooperation regarding marine pollution.

International Agreements Concerning Marine Pollution from Vessels

INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION OF THE SEA BY OIL, 1954 ("1954 Oil Pollution Convention"). **date signed:** 5/12/54; **entry into force:** 7/26/58; **amended:** 4/11/62, 10/21/69, 10/12/71 (Reef amendment), 10/15/71 (Tank amendment); **citations:** 1954 Convention: 327 UNTS 3, 12 UST 2989, TIAS 4900, Convention as amended through 1969: 9 ILM 1 (1970); 1962 amendment: 600 UNTS 32, 17 UST 1523, TIAS 6109; 1969 amendment: 28 UST 1205, TIAS 8505; 1971 Reef amendment: not available; 1971 Tank amendment: 11 ILM 267 (1972); **depositary:** IMO.

INTERNATIONAL CONVENTION RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF OIL POLLUTION CASUALTIES ("1969 Intervention Convention"). **date signed:** 11/29/69; **entry into force:** 5/6/75; **citations:** 26 UST 765, TIAS 8068, 9 ILM 25 (1970); **depositary:** IMO.

PROTOCOL RELATING TO INTERVENTION ON THE HIGH SEAS IN CASES OF POLLUTION BY SUBSTANCES OTHER THAN OIL ("1973 Intervention Protocol"). **date signed:** 11/2/73; **entry into force:** 3/30/83; **citations:** TIAS 10561, 13 ILM 605; **depositary:** IMO.

INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973 (with Annexes I, II, III (optional), IV (optional), and V (optional) and Protocols I and II) ("1973/1978 Ship Pollution Convention"). **date signed:** 11/2/73; **entry into force:** the 1973 Convention is not intended to enter into force (it has been incorporated into and superseded by the 1978 Protocol); Annex II was suspended by the 1978 Protocol; Optional Annexes III and IV are not in force, Optional Annex V entered into force 12/31/88; **citation:** 12 ILM 1319; **depositary:** IMO.

PROTOCOL OF 1978 RELATING TO THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF POLLUTION FROM SHIPS, 1973. date signed: 2/17/78; **entry into force:** 10/2/83; **amended:** 3/15/85; **citation:** 1978 Protocol: 17 ILM 546 (1978); 1985 Amendment: none; **depositary:** IMO.

Objectives and Obligations

1954 Oil Pollution Convention[166]

The purpose of the 1954 Oil Pollution Convention is to prevent pollution of the sea by oil, including oily mixtures, by generally prohibiting the intentional discharge of oil from ships.[167] The convention applies to ships[168] registered in any of the territories of a contracting party and to unregistered ships having the nationality of a contracting party.

Article III of the convention establishes the conditions under which the discharge of oil or oily mixtures is prohibited, with separate criteria for tankers and other ships. Article VII generally requires ships to be fitted to prevent the escape of oil into bilges and to avoid carrying water ballast in oil fuel tanks. Finally, article VIII requires parties to take "appropriate steps" to provide ports and oil-loading terminals with facilities to accommodate residues and oily mixtures from ships and tankers.

1969 Intervention Convention and 1973 Intervention Protocol

The 1969 Intervention Convention was touted as "the international solution of the problem of a coastal State's lack of authority to act in a timely fashion to prevent major oil pollution damage to the navigable waters or adjoining shoreline as an outgrowth of a marine disaster, such as collision, grounding, or foundering of a vessel on the high seas."[169] Article I(1) of the convention permits parties to "take such measures as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil, following upon a maritime casualty or acts related to such a casualty, which may reasonably be expected to result in major harmful consequences." A maritime casualty is described in article II(1) as a collision of ships, stranding, or other incident that may

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[166] The 1954 Oil Pollution Convention was effectively superseded by the 1973/1978 Ship Pollution Convention but remains in force for those parties who have not joined the 1973/1978 Ship Pollution Convention or for parties to both conventions.

[167] Under art. I(1) of the 1954 Oil Pollution Convention, "oil" is defined as "crude oil, fuel oil, heavy diesel oil and lubricating oil"; an "oily mixture" means "a mixture with any oil content"; "'discharge'. . . means any discharge or escape howsoever caused"; "ship" means "any sea-going vessel of any type whatsoever, including floating craft, whether self-propelled or towed by another vessel, making a sea voyage"; and "tanker" means "a ship in which the greater part of the cargo space is constructed or adapted for the carriage of liquid cargoes in bulk and which is not. . . carrying a cargo other than oil in that part of its cargo space".

[168] Art. II(1) of the 1954 Oil Pollution Convention, as amended, excepts (a) tankers under 150 tons gross tonnage and other ships of under 500 tons gross tonnage, provided that each contracting government will take the necessary steps, so far as is reasonable and practicable, to apply the requirements of the convention to such ships; (b) ships actually employed on whaling operations; (c) ships navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of St. Lambert Lock at Montreal; and (d) naval ships and ships being used as naval auxiliaries.

[169] See Nash, *Digest of United States Practice in International Law 1978*, p. 1077.

result in material damage or imminent threat of damage to a ship or cargo. Article I(2) exempts warships and most other ships used for governmental noncommercial service.

The 1973 Intervention Protocol extended the principles of the 1969 Intervention Convention to cover substances other than oil.[170]

1973/1978 Ship Pollution Convention

The intention of the 1973/1978 Ship Pollution Convention[171] is to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances[172] and the minimization of accidental discharges[173] of such substances from ships. The convention applies to all vessels—including hydrofoil boats, hovercraft, submersibles, floating craft, and fixed or floating platforms but excludes warships and ships used for Governmental noncommercial service[174]—that are operated as flag vessels of a party or under the authority of a party.[175] Article 5 provides parties with the right to inspect oil tankers and may deny entry to its ports, if a ship does not comply with the convention.

Enforcement Mechanisms

1954 Oil Pollution Convention

Under article IX, each ship covered by the convention is required to maintain an oil record book, which must detail the circumstances and reasons for any of several named oil or oily mixtures discharges. Competent authorities of a party may inspect the oil record book of any ship to which the convention applies while the ship is in port within the territory of that party.

Enforcement of violations of the convention are the responsibility of that party that has jurisdiction over the ship causing the incident. Parties alleging contravention of the convention by a ship may furnish the party under which the ship is registered with written evidence of the violation. The party so informed shall investigate the matter, and if satisfied that sufficient evidence is available, shall begin proceedings against the owner or master of the ship. Article X requires that party to inform the other party and the IMO of the result of the proceedings.

Under article II(1) violations of the convention are punishable under the law of the relevant territory of a party under which the ship has been registered or has the nationality of a party. Article VI requires that penalties imposed by a party shall be adequate to discourage such unlawful discharge and shall not be less than those that may be imposed for the same violation within the territorial sea.

1969 Intervention Convention and 1973 Intervention Protocol

The 1969 Intervention Convention does not establish any independent enforcement or regulatory authority; instead, parties are permitted under article I(1) to take whatever action is necessary "to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests[176] from pollution or threat of pollution of the sea." Article V provides that actions taken by a coastal state under the convention are limited only to the extent that they are required to be "proportionate to the damage, actual or threatened to it" and do not "go beyond what is reasonably necessary to achieve the end mentioned in Article I."[177] Under article VI any party that takes measures in contravention of the provisions of the convention is obliged to pay compensation to the extent of the damage caused by measures that exceeded those reasonably necessary to deal with the pollution situation.

1973/1978 Ship Pollution Convention

Article 6 of the 1973/1978 Ship Pollution Convention requires parties to cooperate in detecting

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[170] Art. I(2) of the 1973 Intervention Protocol defines covered substances to be (a) those substances enumerated in a list which shall be established by an appropriate body designated by the Organization [IMO] and which shall be annexed to the present Protocol, and (b) those other substances which are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

[171] For an overview of the 1973 Ship Pollution Convention, see "No Dumping in This Ocean: Nearing the End of Ship-Generated Pollution," Int'l Law and Politics, vol. 7 (1974), p. 545.

[172] Under art. 2(2) of the 1973/1978 Ship Pollution Convention, harmful substance means any substance that, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities, or to interfere with other legitimate uses of the sea.

[173] Under art. 2(3) of the 1973/1978 Ship Pollution Convention:

(a) "Discharge", in relation to harmful substances or effluents containing such substances, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying.

(b) "Discharge" does not include:

(i) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter done at London on 13 November 1972; or

(ii) release of harmful substances directly arising from the exploration, exploitation and associated off-shore processing of sea-bed mineral resources; or

(iii) release of harmful substances for purposes of legitimate scientific research into pollution abatement or control.

[174] However, art. 3(3) requires that parties ensure that, by the adoption of appropriate measures not impairing the operation or operational capabilities of warships owned or operated by it, such ships act, so far as is reasonable and practicable, in a manner consistent with the convention.

[175] See Arts. 2(4) and 2(5) of the 1973/1978 Ship Pollution Convention.

[176] Art. II(4) of the 1969 Intervention Convention includes coastal activities, fisheries, tourist attractions, conservation of marine resources and wildlife, and the health of coastal populations among related interests.

[177] Additionally, under art. I(3) of the 1973 Protocol, "Whenever an intervening Party takes action with regard to a substance referred to in paragraph 2(b) [of art. I] above, that Party shall have the burden of establishing that the substance, under the circumstances present at the time of the intervention, could reasonably pose a grave and imminent danger analogous to that posed by any of the substances enumerated in the list referred to in paragraph 2(a) above."

violations and the enforcement of the provisions of the convention. The convention sets out comprehensive mandatory regulations controlling pollution from oil[178] and from noxious liquid substances in bulk,[179] as well as optional regulations covering pollution from harmful substances in packages, tanks, or similar containers,[180] from sewage,[181] and from garbage.[182]

Any ship covered by the convention is subject to inspection in order to ascertain whether it has discharged any harmful substance in violation of the regulations. A report of any violation and evidence supporting the allegation shall be furnished to the government under whose authority the ship is operating and, if practicable, to the master of the ship. The administering government shall investigate the matter and may request additional information or evidence from the other party.

If the administering government is satisfied that sufficient evidence is available to enable proceedings, it shall undertake those proceedings in accordance with its laws.[183] The administering government shall inform the other party and the IMO of its actions.

Under article 4(2) any violation of the convention within the jurisdiction of any party is prohibited and the party is required to establish sanctions under the law of that party. Article 4(4) requires that the penalties specified under the law of a party shall be severe enough to discourage violations and shall be equally severe irrespective of where the violations occur.

Provision for Exchange of Information

1954 Oil Pollution Convention

Article XII requires each party to submit to the IMO and to the U.N. copies of laws, decrees, orders, and regulations in force that give effect to the convention, as well as all official reports that show the results of the application of the convention.

[178] Annex I to the 1973/1978 Ship Pollution Convention, as amended by the 1978 Protocol, "Regulations for the Prevention of Pollution by Oil." Annex I is in force for the United States.

[179] Annex II to the 1973/1978 Ship Pollution Convention, "Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk." Annex II is in force for the United States.

[180] Annex III to the 1973/1978 Ship Pollution Convention, "Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Forms, or in Freight Containers, Portable Tanks or Road and Rail Tank Wagons." Annex III is not in force.

[181] Annex IV to the 1973/1978 Ship Pollution Convention, "Regulations for the Prevention of Pollution by Sewage from Ships." Annex IV is not in force.

[182] Annex V to the 1973/1978 Ship Pollution Convention, "Regulations for the Prevention of Pollution by Garbage from Ships." Annex V entered into force on Dec. 31, 1988, and is in force for the United States.

[183] Art. 4(1) of the 1973/1978 Ship Pollution Convention provides in part that "Any violation of the requirements of the present Convention shall be prohibited and sanctions shall be established therefor under the law of the Administration of the ship concerned wherever the violation occurs."

1969 Intervention Convention and 1973 Intervention Protocol

Before a coastal state can exercise its right to take measures to deal with a marine casualty covered by the convention or the protocol, article III requires that the coastal state consult with other affected states, particularly the flag state, and to notify any persons (including corporations)—who can reasonably be expected to be affected—of those measures. In cases of extreme urgency, the measures may be taken without prior notification or consultation; however, notice must be provided without delay to the parties and to the IMO.

1973/1978 Ship Pollution Convention

Article 8 establishes a specific requirement that parties report an incident covered by the convention without delay and to the fullest extent possible. Each party is required to arrange for an appropriate officer or agency to receive and process all reports of incidents and notify the IMO of the details of those arrangements. Protocol I to the 1973 Convention (not to be confused with the 1978 Protocol) provides comprehensive guidance regarding all aspects of such reports.[184]

Dispute-Settlement Mechanisms

1954 Oil Pollution Convention

Disputes between parties that relate to the interpretation or application of the convention are expected to be settled by negotiation. Article XIII provides that those that cannot be settled by negotiation should be referred at the request of either party to the International Court of Justice, unless the parties agree to submit it to arbitration.

1969 Intervention Convention and 1973 Intervention Protocol

Controversies between parties as to measures taken to deal with a marine casualty under the convention or the protocol are to be settled by negotiation if possible. If the parties cannot agree, then they may request that it be submitted to conciliation or ultimately to arbitration.[185]

1973/1978 Ship Pollution Convention

Disputes between two or more parties concerning the application of the convention should be settled by negotiation. If a negotiated settlement is not possible, any of the parties may request that the dispute be submitted to arbitration in accordance with Protocol II to the 1973 Convention.[186]

[184] Protocol I to the 1973/1978 Ship Pollution Convention is in force for the United States.

[185] Art. VIII of the 1969 Intervention Convention. Art. VIII(1) as published at 26 UST 722 refers to "arbitration, as set out in the Annex to the present Convention;" however, no such annex is attached to that document. In a version published by BNA (21:1301 BNA 25 (1988)), art. VIII(1) simply refers to "arbitration" without reference to an annex.

[186] Protocol II to the 1973/1978 Ship Pollution Convention is in force for the United States.

Under Protocol II, any party to the dispute may request the establishment of an arbitration tribunal. That party must inform IMO of its request and provide specified information. The tribunal consists of three members: an arbitrator nominated by each party to the dispute, and a third arbitrator nominated by agreement of the other two members. The decisions of the tribunal must be taken by majority vote, and a final decision is expected to be issued within 5 months.

Implementation

1954 Oil Pollution Convention

Each party is required by article II(2) to adopt appropriate measures ensuring that requirements equivalent to those present in the convention are, so far as is reasonable and practicable, applied to the ships covered by the convention.

U.S. implementation

Prior to joining the 1954 Oil Pollution Convention, U.S. response to and jurisdiction over oil pollution of territorial waters and other maritime areas was based on domestic law.[187] The 1954 Convention was implemented by the Oil Pollution Act, 1961.[188] The U.S. implementation and regulatory regime for the Oil Pollution Convention has been superseded and replaced by that adopted for the 1973 Ship Pollution Convention.

Implementation by others

The 1954 Oil Pollution Convention was implemented for the United Kingdom by the British Oil in Navigable Waters Act, 1955.[189]

1969 Intervention Convention and 1973 Intervention Protocol

The 1969 Intervention Convention was implemented by the Intervention on the High Seas Act, 1974.[190] The 1973 Intervention Protocol was implemented by the Act to Amend the Intervention on the High Seas Act, 1974.[191] The 1973 Intervention Protocol became effective for the United States on March 30, 1983.

Administration of the act, as amended, is vested in the Secretary of the department in which the Coast Guard is operating,[192] currently the Department of Transportation. Before taking any measures under these laws, the Secretary is required to consult, through the Secretary of State, with other countries affected by the marine casualty[193] and to notify the Administrator of the Environmental Protection Agency.[194]

1973/1978 Ship Pollution Convention

The United States is not a signatory to the 1973 Ship Pollution Convention, but is a signatory to the 1978 Protocol, which incorporates and implements the 1973 Ship Pollution Convention. The 1978 Protocol was implemented in part by the Port and Tanker Safety Act of 1978[195] and also by the Act to Prevent Pollution From Ships, 1980, as amended.[196]

Administration of the act is vested in the Secretary of the department in which the Coast Guard is operating,[197] currently the Department of Transportation. Day-to-day regulation and enforcement is delegated to and performed by the U.S. Coast Guard.[198]

Parties

See table 5-1, on the following page.

International Agreements Concerning Civil Liability and Compensation for Damage Resulting from Marine Pollution by Oil

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 ("1969 Civil Liability Convention"). **date signed:** 11/29/69; **entry into force:** 6/19/75; **citations:** 973 UNTS 3, IMO Publication 410.77.16, 9 ILM 45 (1970); **depositary:** IMO.

PROTOCOL TO INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1969 ("1976 Civil Liability Protocol"). **date signed:** 11/19/76; **entry into force:** 3/8/81; **citation:** 16 ILM 617 (1977); **depositary:** IMO.

INTERNATIONAL CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE, 1984 ("1984 Civil Liability Convention," also known as the Protocol to the International Convention on

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[187] For a concise history of U.S. maritime pollution law prior to 1960, see Secretary of State Christian Herter, letter to President Dwight Eisenhower (Feb. 2, 1960), reprinted in part in Whitehead, *Digest of International Law*, vol. 4 (1986), pp. 696-700.

[188] Pub. L. 87-167 (Aug. 30, 1961); 75 Stat. 402-407; 33 U.S.C. 1001-1016. 33 U.S.C. 1001-1016, as amended, were repealed effective Oct. 2, 1983, by sec. 12 of Pub. L. 96-478 (Oct. 21, 1980), 94 Stat. 2303, and the subject matter was superseded by 25 U.S.C. 1221 et seq. and 33 U.S.C. 1901 et seq.

[189] For a section-by-section analysis of this act, see Whitehead, *Digest of International Law*, vol. 4 (1965), pp. 703-706.

[190] Pub. L. 93-248 (Feb. 5, 1974); 88 Stat. 8; 33 U.S.C. 1471-1487. Amended by Pub. L. 95-302 (June 26, 1978); 92 Stat. 344.

[191] Pub. L. 95-302 (June 26, 1978); 92 Stat. 344; 33 U.S.C. 1471 et al.

[192] 33 U.S.C. 1471(4).

[193] 33 U.S.C. 1475.

[194] Ibid.

[195] Pub. L. 95-474 (Oct. 17, 1978); 92 Stat. 1471; 33 U.S.C. 1221 et seq.

[196] Pub. L. 96-478 (Oct. 21, 1980); 94 Stat. 2297; 33 U.S.C. 1901 et seq. Annex V was implemented by the Marine Plastic Pollution Research and Control Act of 1987 as title II of the United States-Japan Fishery Agreement Approval Act of 1987, Pub. L. 100-220 (Dec. 29, 1987); 101 Stat. 1460.

[197] 33 U.S.C. 1901 and 1903.

[198] Coast Guard regulations implementing the 1973 Ship Pollution Convention are found at 33 C.F.R. pts. 151, 155, and 158.

Table 5-1
Parties to certain international agreements concerning marine pollution from vessels

Party	1954 Oil Pollution Convention	1969 Inter-vention Convention	1973 Inter-vention Protocol	1973 Ship Pollution Convention	1973 Ship Pollution Annex V	1978 Ship Pollution Protocol
Algeria	x					
Antigua and Barbuda				x	x	x
Argentina	x	x				
Australia		x	x		x	
Austria	x				x	x
Bahamas, The	x	x	x		x	
Bahrain	x					
Bangladesh	x	x				
Belgium	x	x	x	x	x	x
Benin		x		x		
Brazil						x
Brunei Darussalam				x		x
Bulgaria		x		x		x
Cameroon		x				
Canada	x					
Chile	x					
China					x	x
Colombia				x	x	x
Congo	x					
Côte d'Ivoire	x	x			x	x
Cuba		x				
Cyprus	x					
Czechoslovakia					x	x
Denmark	x	x	x		x	x
Djibouti	x					
Dominican Republic		x				
Ecuador		x				
Egypt	x				x	x
Fiji	x	x				
Finland	x	x	x		x	x
France	x	x	x		x	x
Gabon		x			x	x
Germany	x	x	x	x	x	x
Ghana	x	x				
Greece	x				x	x
Guinea	x					
Hungary				x		x
Iceland	x	x			x	
India	x				x	
Indonesia					x	
Ireland	x	x				
Israel	x					x
Italy	x	x	x	x	x	x
Japan	x	x			x	x
Jordan	x			x		
Kenya	x			x		
Korea, Democratic Peoples' Republic					x	
Korea, Republic of	x			x		x
Kuwait	x	x				
Lebanon	x	x			x	x
Liberia	x	x	x			x
Libyan Arab Jamahiriya	x					
Madagascar	x					
Maldives	x					
Malta	x					
Marshall Islands					x	x
Mexico	x	x	x			
Monaco	x	x				
Morocco	x	x				
Netherlands		x	x		x	x
New Zealand	x	x				
Nigeria	x					
Norway	x	x	x	x	x	x
Oman		x	x		x	x
Panama	x	x			x	x

Table 5-1—*Continued*
Parties to certain international agreements concerning marine pollution from vessels

Party	*1954 Oil Pollution Convention*	*1969 Inter-vention Convention*	*1973 Inter-vention Protocol*	*1973 Ship Pollution Convention*	*1973 Ship Pollution Annex V*	*1978 Ship Pollution Protocol*
Papua New Guinea	x	x				
Peru				x		x
Philippines	x					
Poland	x	x	x		x	x
Portugal	x	x	x		x	x
Qatar	x	x				
Saint Vincent and the Grenadines					x	x
Saudi Arabia	x					
Senegal	x	x				
Solomon Islands						x
South Africa		x				x
Spain	x	x				x
Sri Lanka	x	x				
Suriname	x	x			x	
Sweden	x	x	x		x	x
Switzerland	x	x	x			x
Syrian Arab Republic	x	x				
Tunisia	x	x	x	x	x	x
Tuvalu					x	x
U.S.S.R	x	x	x		x	x
United Kingdom	x	x	x	x	x	x
United States	x	x	x		x	x
Uruguay	x			x	x	x
Vanuatu	x					
Venezuela	x					
Yemen	x	x	x			
Yemen, Democratic	x					
Yugoslavia	x	x	x	x	x	x

Source: Compiled by staff of the U.S. International Trade Commission

Civil Liability for Oil Pollution Damage, 1969).[199] **date signed: 5/25/84; entry into force: not yet in force; citation: 23 ILM 177 (1984); depositary: IMO.**

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1971 ("1971 Compensation Fund Convention"). date signed: 12/18/71; entry into force: 10/16/78; citation: 11 ILM 284 (1972); depositary: IMO.

PROTOCOL TO THE 1971 CONVENTION ON THE ESTABLISHMENT OF AN INTER- NATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE ("1976 Compensation Fund Protocol"). date adopted: 11/19/76; entry into force: not yet in force; citation(s): 16 ILM 621 (1977); BNA 21:1721 (1989); depositary: IMO.

INTERNATIONAL CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR COMPENSATION FOR OIL POLLUTION DAMAGE, 1984 ("1984 Compensation Fund Convention," also known as the Protocol to Amend the Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971).[200] date adopted: 5/25/84; entry into force: not yet in force; citations: 23 ILM 195 (1984), BNA 21:1731 (1989); depositary: IMO.

Objectives and Obligations

1969 Civil Liability Convention[201]

The stated purpose of the 1969 Civil Liability Convention is to ensure the availability of adequate compensation to persons who suffer damage caused by pollution resulting from the escape or discharge of oil[202] from ships. It further establishes uniform

[199] After amending the 1969 Liability Convention, as amended by the 1976 Liability Protocol, art. 11(2) of the 1984 Protocol retitles itself the International Convention on Civil Liability for Oil Pollution Damage, 1984.

[200] Art. 27(2) of the 1984 Protocol retitles itself the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

[201] Discussion of the 1969 Civil Liability Convention includes the 1984 Civil Liability Convention, which is not yet in force and which essentially amends, rather than replaces, the 1969 Civil Liability Convention.

[202] In May 1984 the IMO convened a conference to create a new convention to cover ocean pollution incidents involving hazardous and noxious substances other than oil. The conference failed to develop such a convention; see "Dead in the Water: International Law, Diplomacy, and Compensation for Chemical Pollution at Sea," Virginia Journal of Int'l Law, vol. 26 (1986), p. 485.

international rules and procedures for determining questions of liability, particularly with respect to shipowners, and for providing adequate compensation in such cases.

The convention applies to pollution damage[203] from seagoing vessels and craft actually carrying oil in bulk as cargo[204] and sets out the circumstances under which a shipowner is liable for damages caused by an oil pollution incident;[205] limits claims against the shipowner or the servants or agents of the owner to those permitted by the convention;[206] establishes the maximum financial liability of a shipowner (unless the incident is the fault of the shipowner);[207] and requires the shipowners to establish a compensation fund equal the maximum amount of liability[208] and, in specified cases, to obtain insurance or other guarantee in an amount equal to that maximum liability.[209]

[203] Art. I(6) of the 1969 Civil Liability Convention defines pollution damage as "loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures."

Art. 2(3) of the 1984 Civil Liability Convention (not in force) redefines pollution damage as "(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;" and "(b) the costs of preventive measures and further loss or damage caused by preventive measures."

[204] Art. I(1) of the 1969 Civil Liability Convention. Art. 2(1) of the 1984 Civil Liability Convention would amend art. I(1) to cover ships during voyages after carrying bulk oil, unless it is proved that they have no residues from the carriage of bulk oil on board.

[205] Art. III(1) of the 1969 Civil Liability Convention makes the shipowner liable for pollution damage caused by the escape or discharge of oil in the incident, except in the situations described in art. III (2) and III(3) of the convention. Art. 4(1) of the 1984 Civil Liability Convention would amend art. III(1) to extend liability to *any* pollution damage caused by the ship. Art. III(2) of the 1969 convention absolves the shipowner of liability in cases of war or extraordinary natural phenomena, whereas art. III(3) partially or completely absolves the shipowner of liability upon proof that the damage resulted from a deliberate act or omission of the party suffering the damage.

[206] Art. III(4) of the 1969 Civil Liability Convention. Art. 4(2) of the 1984 Civil Liability Convention would amend art. III(4) by enumerating the persons other than the owner who are not subject to claims other than those permitted by the convention.

[207] Art. V(1), as amended by art. II(1) of the 1976 Civil Liability Protocol, limits liability either to 133 units of account per ton of ship's tonnage, not to exceed 14 million units of account if the party is a member of the International Monetary Fund or, if not an IMF member, to 2,000 monetary units per ton of ship's tonnage, not to exceed 210 million monetary units. Art. V (9)(a) defines "units of account" as the Special Drawing Right as defined by the IMF and converted into national currency on the basis of the value of that currency by reference to the Special Drawing Right at the time of the conversion. Art. V(9)(b) defines a "monetary unit" as 65.5 milligrams of gold of millesimal fineness 900 and converted into national currency in accordance with the law of the state concerned.

Art. 6 of the 1984 Civil Liability Convention would amend art. V(9) by revising the amounts of liability and the methodology used to calculate the value of that liability.

[208] Art. V(3) of the 1969 Civil Liability Convention.

[209] Art. VII of the 1969 Civil Liability Convention.

1971 Compensation Fund Convention[210]

The 1971 Compensation Fund Convention was established to supplement the 1969 Civil Liability Convention, which imposed a financial burden on offending shipowners, but did not afford full compensation for the victims of oil pollution damage. The 1971 convention extends financial liability to oil cargo interests, and relieves shipowners of some of their liability. Article 2 establishes a fund to provide compensation for pollution damage to the extent that the protection afforded by the 1969 Civil Liability Convention is inadequate.

With regard to compensation, article 3(1) applies exclusively to pollution damage caused on the territory of a contracting party and to measures taken to prevent or minimize such damage. With regard to indemnification of shipowners, article 3(2) applies exclusively to pollution damage caused on the territory of a party to the 1969 convention by a ship registered or flying the flag of a contracting state.

Articles 10 through 15 provide that the fund and its cost of administration are maintained through contributions of the contracting states. The fund, under specified conditions and up to specified limits, will pay compensation to any person suffering pollution damage, if such person has been unable to obtain full and adequate compensation for the damage under the terms of the 1969 Civil Liability Convention.[211]

Dispute-Settlement Mechanisms

1969 Civil Liability Convention

This convention does not provide for settlement of disputes among the parties to the convention.

1971 Compensation Fund Convention

This convention does not provide for settlement of disputes among the parties to the convention.

Enforcement Mechanisms

1969 Civil Liability Convention

This convention does not provide for enforcement mechanisms, since its only function is to establish financial liability of a shipowner in the event of an oil pollution incident. Under article IX, claims for compensation must be pursued within the courts of the state whose jurisdiction covers the ship. Parties to the

[210] Discussion of the 1971 Compensation Fund Convention includes the 1976 Compensation Fund Protocol and the 1984 Compensation Fund Convention, since neither of the latter are in force and both amend the 1971 Compensation Fund Convention. For a discussion of the connection between the 1969 Civil Liability Convention and the 1971 Compensation Fund Convention, see "Dead in the Water: International Law, Diplomacy, and Compensation for Chemical Pollution at Sea," pp. 487-493.

[211] Art. 4 of the 1971 Compensation Fund Convention. The 1976 Compensation Fund Protocol would increase the monetary value of available compensation. The 1984 Compensation Fund Convention would further revise compensation amounts and amend several rules of fund administration.

convention are required to ensure that its courts have the necessary jurisdiction to entertain claims for compensation. Under article X, court judgments are enforceable in the state of origin and, when no longer subject to ordinary forms of review, shall be recognized by the other parties to the convention.

1971 Compensation Fund Convention

This convention does not provide for enforcement mechanisms, since its only function is to establish the compensation fund and scope of compensation.

Provision for Exchange of Information

1969 Civil Liability Convention

This convention does not provide for exchange of information among the parties to the convention.

1971 Compensation Fund Convention

This convention does not provide for exchange of information among the parties to the convention.

Implementation

1969 Civil Liability Convention

The United States is not a party to this agreement.[212] However, the convention and associated protocols are under consideration by a joint conference of the U.S. Congress and if ratified are likely to be administered by the U.S. Coast Guard.[213]

1971 Compensation Fund Convention

The United States is not a party to this agreement.[214] However, the convention and associated protocols are under consideration by a joint conference of the U.S. Congress and if ratified are likely to be administered by the U.S. Coast Guard.[215]

Parties

See table 5-2, on the following page.

International Agreements Concerning Marine Pollution by Dumping

CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY DUMPING OF WASTES AND OTHER MATTER ("1972 Ocean Dumping Convention"). **date signed:** 12/29/72; **entry into force:** 8/30/75; **amended:** 10/12/78 (not yet in force), 9/24/80 (not yet in force); **citations:** Convention: 26 UST 2403, TIAS 8165, 1046 UNTS 120, 11 ILM 293 (1972); 1978 amendment: none; 1980 amendment: none; **depositaries:** Convention: Mexico, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America; 1978 amendment: IMO; 1980 amendment: IMO.

Objectives And Obligations

The purpose of the 1972 Ocean Dumping Convention[216] as set forth in article I is to take "all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea." As provided in article III(1) (a), the convention covers "any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures at sea." While the convention covers all deliberate dumping, it does not necessarily prohibit or ban all such dumping.[217] Article IV prohibits the dumping of wastes listed in annex I to the convention[218] and requires a prior special permit for the dumping of matter listed in annex II[219] and a prior general permit for the dumping of any other matter. Annex III lists factors to be considered in issuing permits, including the character and composition of the material, characteristics of the dumping site, the method of deposit, and other related criteria.

Each party to the convention is required by article VI to designate an authority to issue the special or general dumping permits allowed under annex II or III, to keep records of all matter permitted to be dumped, and to monitor the condition of the seas for the purposes of the convention.

Enforcement Mechanisms

Article VII of the convention requires each party to take, in its territory, appropriate measures to prevent

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212 On July 9, 1975, President Ford proposed the "Comprehensive Oil Pollution Liability and Compensation Act of 1975" (H.R. 9294; 94th. Cong., 1st. sess.) which, among other things, would have implemented both the 1969 Civil Liability Convention and the 1971 Compensation Fund Convention.

213 R. M. Larrabee, Captain, U.S. Coast Guard, Chief, Marine Environmental Response Division, letter dated May 25, 1990, submitted to the Commission.

214 Ibid.

215 Ibid.

216 The 1972 Ocean Dumping Convention was patterned after the regional dumping convention adopted in Oslo in February 1972. See the discussion of the 1972 Oslo Dumping Convention, below.

217 For example, art. III(1)(c) permits the disposal at sea of wastes or other matter directly arising from, or related to, the exploration, exploitation, and associated offshore processing of seabed mineral resources. Art. V permits, among other things, dumping of any substance, if necessary to secure the safety of human life at sea.

218 Annex I includes organohalogen compounds, mercury and its compounds, cadmium and its compounds, persistent plastics and other persistent synthetic materials, petroleum oils and hydraulic fluids, high-level radioactive wastes, and biological and chemical weapons. Such substances that are rapidly rendered harmless by physical, chemical, or biological processes or materials containing such substances only as trace contaminants are exempted.

219 Annex II includes wastes containing significant amounts of arsenic, lead, copper, zinc, or their compounds, organosilicon compounds, cyanides, fluorides, or pesticides, not covered in Annex I; large quantities of acids or alkalis, with special consideration given to the presence of beryllium, chromium, nickel or vanadium, and their compounds; containers, scrap metal, or other bulky wastes that may seriously threaten fishing or navigation; and radioactive wastes or matter not included in Annex I.

Table 5-2
Parties to certain international agreements concerning civil liability and compensation for damage resulting from marine pollution by oil

Party	1969 Civil Liability Convention	1971 Compensation Fund Convention[1]	1971 Compensation Fund Protocol	1984 Compensation Fund Convention	1984 Civil Liability Convention[2]
Algeria	x	x			
Australia	x				x
Bahamas, The	x	x			
Belgium	x				
Belize		x			
Benin	x	x			
Brazil	x				
Cameroon	x	x			
Chile	x				
China	x				
Côte d'Ivoire	x	x			
Denmark	x	x			
Dominican Republic	x				
Ecuador	x				
Fiji	x	x			
Finland	x	x			
France	x	x			
Gabon	x	x			
Germany	x	x			x
Ghana	x	x			
Greece	x				
Guatemala	x				
Iceland	x	x			
India	x				
Indonesia	x	x			
Ireland	x				
Italy	x	x			
Japan	x	x			
Kiribati		x			
Korea, Republic of	x				
Kuwait	x	x			
Lebanon	x				
Liberia	x	x			
Maldives	x	x			
Liberia	x	x			
Maldives	x	x			
Monaco	x	x			
Morocco	x				
Netherlands	x	x			
New Zealand	x				
Nigeria	x	x			
Norway	x	x			
Oman	x	x			
Panama	x				
Papua New Guinea	x	x			
Peru	x				
Poland	x	x			
Portugal	x	x			
Qatar	x	x			
Saint Vincent and the Grenadines	x				x
Senegal	x				
Seychelles	x	x			
Singapore	x				
Solomon Islands		x			
South Africa	x				
Spain	x	x			
Sri Lanka	x	x			
Sweden	x	x			
Switzerland	x				
Syrian Arab Republic	x	x			
Tunisia	x	x			

See footnotes at end of table.

Table 5-2
Parties to certain international agreements concerning civil liability and compensation for damage resulting from marine pollution by oil

Party	1969 Civil Liability Convention	1971 Compensation Fund Convention[1]	1971 Compensation Fund Protocol	1984 Compensation Fund Convention	1984 Civil Liability Convention[2]
Tuvalu	x	x			
U.S.S.R	x	x			
United Arab Emirates	x	x			
United Kingdom	x	x			
Vanuatu	x				
Yemen	x				
Yugoslavia	x		x		

[1] The 1971 Compensation Fund Convention is open only to states that are parties to the 1969 Liability Convention.

[2] The 1984 Civil Liability Convention is open to all states, but states not party to the 1969 Civil Liability Convention are bound to the provisions of that convention to the extent that they apply to other parties to the 1984 Civil Liability Convention.

Source: Compiled by staff of the U.S. International Trade Commission.

and punish conduct in contravention to the provisions of the convention. These measures are to apply to all vessels and aircraft registered or flying the flag of the party, and to vessels and aircraft loading in its territory matter to be dumped or engaging in dumping.[220] Under article VI(5), parties are not precluded from adopting other measures to prevent dumping at sea.

Dispute-Settlement Mechanisms

The convention does not provide for dispute-settlement mechanisms, but articles X and XI do direct the parties to develop procedures for dispute settlement at a later date.

Provision for Exchange of Information

Parties are required to report to the IMO—and to other parties when appropriate—information regarding dumping permits and ocean monitoring collected under article VI.

Implementation

The 1972 Dumping Convention was implemented in 1974 by amendment of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA).[221] MPRSA was a unilateral action by the United States to deal with ocean dumping in its territorial waters and contiguous sea.[222] Responsibility for administering MPRSA was given to the Administrator of the Environmental Protection Agency.[223]

Parties

Afghanistan
Argentina
Australia
Belgium
Belize
Brazil
Byelorussian Soviet Socialist Republic
Cameroon
Canada
Cape Verde
Chile
China
Costa Rica
Côte d'Ivoire
Cuba
Denmark
Dominican Republic
Finland
France
Gabon
Germany
Greece
Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Italy
Japan
Jordan

[220] The convention and its enforcement measures do not apply to vessels and aircraft entitled to sovereign immunity under international law.

[221] Pub. L. 92-532 (Oct. 23, 1972, 86 Stat. 1052, 33 U.S.C. 1401 et seq.), was amended by Pub. L. 93-254 (Mar. 22, 1974, 88 Stat. 50, 33 U.S.C. 1401 et al.), Pub. L. 94-326 (June 30, 1976, 90 Stat. 725, 33 U.S.C 1421); Pub. L. 96-470 (Oct. 19, 1980, 94 Stat. 2245, 33 U.S.C. 1421), Pub. L. 96-572 (Dec. 22, 1980, 94 Stat. 3345, 33 U.S.C 1412 et al.); Pub. L. 97-424 (Jan. 6, 1983, 96 Stat. 2165, 33 U.S.C. 1414), and Pub. L. 100-688, Ocean Ban Act of 1988 (Nov. 18, 1988), 102 Stat. 4139; 33 U.S.C. 1401 et al.

[222] See "Agreements Concerning Maritime and Coastal Waters Matters" in this chapter, below, for a discussion of the Convention on the Territorial Sea and the Contiguous Zone.

[223] The Administrator of the EPA, the Secretary of the Army, and the Secretary of the department in which the Coast Guard is operating are required to provide the Congress with an annual report on the administration of this law (33 U.S.C. 1421). In addition, the Administrator of the EPA is required to provide annual progress reports on the phaseout of ocean dumping of sewage sludge and industrial waste (33 U.S.C. 1414b).

Kenya
Kiribati
Libyan Arab Jamahiriya
Mexico
Monaco
Morocco
Nauru
Netherlands
New Zealand
Nigeria
Norway
Oman
Panama
Papua New Guinea
Philippines
Poland
Portugal
Saint Lucia
San Marino
Seychelles
Solomon Islands
South Africa
Spain
Suriname
Sweden
Switzerland
Tunisia
Tuvalu
Ukrainian Soviet Socialist Republic
U.S.S.R.
United Arab Emirates
United Kingdom
United States
Yugoslavia
Zaire

Regional Marine Pollution Agreements—Northern European Waters

CONVENTION ON CIVIL LIABILITY FOR OIL POLLUTION DAMAGE RESULTING FROM EXPLORATION FOR AND EXPLOITATION OF SEABED MINERAL RESOURCES, 1977 ("1977 Seabed Liability Convention"), date signed: 5/1/77; entry into force: not yet in force; citations: 16 ILM 1451, International Environment Report, vol. 35 (1989), p. 605; depositary: United Kingdom of Great Britain and Northern Ireland.

Objectives and Obligations

Membership in the 1977 Seabed Liability Convention is limited to those states participating in the intergovernmental conference on the convention held in London in 1975 and 1976.[224] Other states having coastlines on the North Sea, the Baltic Sea, or the North Atlantic Ocean may also be invited to accede to the convention. The convention applies exclusively to pollution damage resulting from an incident that occurs beyond the coastal low-water line at an installation[225] under the jurisdiction of the controlling state with the damage occurring in the territory of a party or in areas where the party has sovereign rights.

The convention is intended to ensure the availability of adequate compensation and to provide uniform rules for determining liability in cases of oil pollution damage resulting from the exploration for and exploitation of certain seabed mineral resources. The convention establishes a compensation fund and makes the operator of an installation at the time of an incident liable for any pollution damage, except in cases of war or force majeure. The amount of liability is specifically limited by article 6 of the convention. In addition, an operator is required by article 8 to obtain a specified minimum amount of liability insurance.

Enforcement Mechanisms

The convention does not provide for any enforcement mechanisms.

Dispute-Settlement Mechanisms

Under articles 11 through 13, actions for compensation under the convention are brought in the courts of the party in whose territory the pollution damage occurred.

Provision for Exchange of Information

The convention does not provide for any exchange of information.

Implementation

This convention is not yet in force. The United States is not eligible to become a party to the convention.

Parties

Germany
Ireland
Netherlands
Norway
Sweden
United Kingdom of Great Britain and Northern Ireland

Regional Marine Pollution Agreements—Northeast Atlantic and Arctic Oceans

CONVENTION FOR THE PREVENTION OF MARINE POLLUTION BY DUMPING FROM SHIPS AND AIRCRAFT ("1972 Oslo Dumping

[224] Countries represented were Belgium, Denmark, France, the Federal Republic of Germany, Ireland, the Netherlands, Norway, Sweden, and the United Kingdom of Great Britain and Northern Ireland.

[225] An "installation" includes any well or other facility used for exploring, producing, storing or transmitting crude oil, natural gas and gas liquids, or any other mineral resources from the seabed or its subsoil. See art. 1(2) of the 1977 Seabed Liability Convention.

Convention"). **date signed:** 2/15/72; **entry into force:** 4/7/74; **amended:** 6/12/81; **citations:** 932 UNTS 3, 11 ILM 262 (1972), BNA 35:0101 (1989); **depositary:** Norway

CONVENTION ON THE PREVENTION OF MARINE POLLUTION FROM LAND-BASED SOURCES.[226] **date signed:** 6/4/74; **entry into force:** 5/6/78; Protocol adopted 3/26/86; **citations:** Convention: 13 ILM 352; BNA, *International Environment Reporter,* vol. 35 (1989), p. 201; 1986 Protocol: 27 ILM 625 (1988); **depositary:** France.

Objectives and Obligations

1972 Oslo Dumping Convention

The 1972 Oslo Dumping Convention is intended to prevent the pollution of the sea by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea. The convention generally applies to dumping from ships and aircraft. The geographic coverage of the convention is limited to the high seas and the territorial sea generally within the North East Atlantic and Arctic Oceans.[227]

Except in cases of force majeure or life-threatening emergencies, the convention prohibits the dumping of substances listed in annex I to the convention,[228] and requires special permits for the dumping of other substances listed in annex II.[229] Substances permitted to be dumped are required to be deposited in deep water.[230]

1974 Land-Based Sources Convention

The 1974 Land-Based Sources Convention is an extension of and complement to the 1972 Oslo Dumping Convention. The convention is open to the parties of the Oslo Dumping Convention and to states of one or more parties and reaching the geographic area covered by the convention.[231] In addition, article 24 specifically allows the European Economic Community to accede to the convention.[232]

Parties to the convention are required to adopt measures to combat marine pollution from land-based sources[233] and to harmonize their policies regarding such pollution. Parties agree to reduce existing pollution from land-based sources and to forestall any new pollution from land-based sources, including that which derives from new substances.

The goal of the convention is to eliminate pollution by certain substances and to limit strictly the amount of pollution by other substances.[234] Parties are required to adopt specific regulations governing the quality of the environment, discharges into the maritime area, and the composition and use of substances and products. Parties are also required to establish time limits for completion of pollution-control programs.

Enforcement Mechanisms

1972 Oslo Dumping Convention

Article 15 of the convention requires each party to ensure compliance by ships and aircraft that are registered in its territory, that load the substances to be dumped in its territory, or that are believed to be engaged in dumping within its territorial sea. Each party must take appropriate measures to prevent and punish conduct in contravention to the provisions of the convention.

1974 Land-Based Sources Convention

Article 12 of the convention requires each party to ensure compliance with the provisions of the convention and take appropriate measures to prevent and punish conduct in contravention of the convention.

Dispute-Settlement Mechanisms

1972 Oslo Dumping Convention

The convention does not specifically provide for dispute settlement.

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[226] This convention is also referred to as the Paris Convention.

[227] The Baltic Sea and Belts and the Mediterranean Sea are specifically excluded from the scope of the convention. See art. 2(a) of the 1972 Oslo Dumping Convention.

[228] Annex I includes organohalogen compounds and compounds which may form such substances in the marine environment, organosilicon compounds and compounds which may form such substances in the marine environment, substances which have been agreed as likely to be carcinogenic under the conditions of disposal, mercury and its compounds, cadmium and its compounds, and persistent plastics and other synthetic materials which may float or remain in suspension in the sea and interfere with fishing, navigation, or other activities.

[229] Annex II includes arsenic, lead, copper, zinc and their compounds, cyanides, fluorides, and pesticides and their byproducts; containers, scrap metal, tarlike substances liable to sink to the sea bottom and present an obstacle to fishing or navigation; and substances that, although of a nontoxic nature, may become harmful because of the quantity dumped.

[230] Deep water must have a depth of at least 2,000 meters and must be at least 150 nautical miles from the nearest land. See annex II(2).

[231] As with the 1972 Oslo Dumping Convention, the geographic area covered by the 1974 Land-Based Sources Convention does not include the Baltic Sea and Belts or the Mediterranean Sea. See art. 2 of the 1974 Land-Based Sources Convention.

[232] Art. 19 provides for specific voting rights for the EEC.

[233] Under art. 3(c), "pollution from land-based sources" includes that introduced through underwater or other pipelines, from manmade structures placed by a party within the area covered by the convention, and by emissions into the atmosphere from land or manmade structures.

[234] Substances intended to be eliminated are listed in pt. I of annex A to the convention and include organohalogen compounds and substances, mercury and its compounds, cadmium and its compounds, persistent synthetic materials, and persistent oils and hydrocarbons of petroleum origin. Substances permitted only under strict controls are listed in pt. II of annex A, and include organic compounds of phosphorus, silicon, and tin; elemental phosphorus, nonpersistent oils and hydrocarbons of petroleum origin, arsenic, chromium, copper, lead, nickel, zinc, and their compounds; and substances agreed as having a deleterious effect on the taste and/or smell of products derived from the maritime environment for human consumption.

1974 Land-Based Sources Convention

Disputes between parties relating to interpretation or application of the convention are to be settled between themselves, if possible. If negotiation fails, any one party can request submission of the dispute to arbitration, in accordance with the procedures specified in annex B to the convention.

Provision for Exchange of Information

1972 Oslo Dumping Convention

Parties are obligated under article 15(4) to assist one another as appropriate in dealing with pollution incidents involving dumping at sea and to exchange information on methods of dealing with such incidents. In addition, article 11 requires parties to keep and transmit records of the nature and the quantities of the substances and materials dumped under permits or approvals issued by that contracting party, and of the dates, places, and methods of dumping.

1974 Land-Based Sources Convention

Each party is required under article 17 to transmit to the commission established under the convention the results of its permanent marine pollution monitoring system, detailed information on the substances listed in the annexes, and measures taken to implement the convention.

Implementation

1972 Oslo Dumping Convention

The United States is not eligible to become a party to the convention.

1974 Land-Based Sources Convention:

The United States is not eligible to become a party to the convention.

Parties

See table 5-3.

Table 5-3
Parties to regional marine pollution agreements concerning the northeast Atlantic and Arctic Oceans

Party	*1972 Oslo Dumping Convention*	*1974 Land-based Sources Convention*
Belgium	x	x
Denmark	x	x
European Economic Community[1]	x	
Finland	x	
France	x	x
German	x	x
Iceland	x	x
Ireland	x	x
Netherlands	x	x
Norway	x	x
Portugal	x	x
Spain	x	x
Sweden	x	x
United Kingdom of Great Britain and Northern Ireland	x	x

[1] For additional information, see Cremona, "The Role of the EEC in the Control of Oil Pollution," *Common Market Law Review*, vol. 17 (1980), pp. 171-189.

Source: Compiled by staff of the U.S. International Trade Commission.

Regional Marine Pollution Agreements—North Sea Area

AGREEMENT FOR COOPERATION IN DEALING WITH POLLUTION OF THE NORTH SEA BY OIL ("1969 North Sea Oil Pollution Agreement," also referred to as the Bonn Agreement). **date signed: 6/6/69; entry into force: 8/9/69; citations:** 704 UNTS 3, 9 ILM 359 (1970); **depositary:** Government of Germany

AGREEMENT FOR COOPERATION IN DEALING WITH POLLUTION OF THE NORTH SEA BY OIL AND OTHER HARMFUL SUBSTANCES ("1983 North Sea Cooperation Agreement"). **date signed: 9/13/83; entry into force:** not yet in force; **citation:** 35 BNA 0701 (1989); **depositary:** Government of Germany.

Objectives and Obligations

1969 North Sea Oil Pollution Agreement

The agreement establishes a basis for regional cooperation in dealing with discharges of oil or other noxious or hazardous substances in the North Sea area. Contracting parties to the agreement are limited to certain countries bordering the North Sea. The agreement applies whenever the presence or the prospective presence of oil polluting the sea within the North Sea area presents a grave and imminent danger to the coast or related interests of one or more of the contracting parties.

The agreement divides the specified North Sea area into zones, which are assigned either individually or

jointly to a party or parties. When an oil pollution situation occurs within a zone, the responsible party is obliged to notify all the other parties of its assessment of and any action taken to deal with the oil pollution. In addition, all parties must endeavor to provide assistance to other parties in dealing with an oil pollution emergency.

1983 North Sea Cooperation Agreement

The 1983 North Sea Cooperation Agreement closely parallels the 1969 North Sea Oil Pollution Agreement. The 1983 agreement extends the 1969 agreement to cover harmful substances other than oil,[235] adds requirements that parties establish guidelines for joint action and provide for notification of major pollution incidents, and adds a mechanism for adjusting geographic zones of responsibility. As in the 1969 agreement, accession is limited to certain states bordering the North Sea and the EEC.

Enforcement Mechanisms

Neither the 1969 agreement nor the 1983 agreement provides for enforcement mechanisms.

Dispute-Settlement Mechanisms

Neither the 1969 agreement nor the 1983 agreement provides for dispute settlement.

Provision for Exchange of Information

Under both the 1969 agreement and the 1983 agreement, parties are obligated to inform each other of their national organization for dealing with oil pollution, the competent authority responsible for receiving reports of oil pollution and for dealing with requests for mutual assistance, and new ways in which oil pollution may be avoided or managed. Parties are also required to inform each other of a casualty or the presence of an oil slick in the North Sea area. In addition, parties are required to report actions taken to assist other parties with respect to an oil pollution situation.

Implementation

1969 North Sea Oil Pollution Agreement

The United States is not eligible to become a party to the agreement.

1983 North Sea Cooperation Agreement

This agreement is not yet in force.

Parties

See table 5-4.

[235] Art. 1 of the 1983 North Sea Cooperation Agreement. The expression "other harmful substances" is not defined in the convention.

Table 5-4
Parties to regional marine pollution agreements concerning the North Sea area

Party	*1969 Oil Pollution Agreement*	*1983 Cooperation Agreement*
Belgium	x	x
Denmark	x	x
European Economic Community	x	
France	x	x
Germany	x	x
Netherlands	x	x
Norway	x	x
Sweden	x	x
United Kingdom	x	x

Regional Marine Pollution Agreements—Baltic Sea Area

CONVENTION ON THE PROTECTION OF THE MARINE ENVIRONMENT OF THE BALTIC SEA AREA ("1974 Baltic Sea Convention," also referred to as the Helsinki Convention). **date signed:** 3/22/74; **entry into force:** 5/3/80; **amended:** 5/8/80, 2/18/81, 2/1/83, 3/15/84, and 3/15/85; **citations:** Convention as amended through April 1987: 13 ILM 546 (1974), BNA, *International Environment Reporter*, vol. 35 (1989), p. 401; **depositary:** Finland.

Objectives and Obligations

The 1974 Baltic Sea Convention was developed in response to increased levels of pollution in the Baltic Sea area resulting from increased growth and development.[236] Under article 3(1), parties to the convention are required to "take all appropriate legislative, administrative or other relevant measures in order to prevent and abate pollution and to protect and enhance the marine environment." The convention is comprehensive in scope and addresses introduction of hazardous substances[237] into the area, pollution from land-based sources, pollution from ships, pollution from pleasure craft, dumping,[238] and pollution from exploration or exploitation of the seabed.[239]

The convention also establishes the Baltic Marine Environment Protection Commission to oversee the convention and its implementation and to facilitate exchange of information and technical cooperation.

Enforcement Mechanisms

The parties are required by article 17 to jointly develop and accept rules concerning responsibility for

[236] For a discussion of the sources and impact of pollution on the Baltic Sea area, see Boczek, "International Protection of the Baltic Sea Environment Against Pollution: A Study in Marine Regionalism," American Journal of Int'l Law, vol. 72 (1978), p. 782.

[237] Hazardous substances listed in Annex I to the convention are DDT and its derivatives and PCBs.

[238] Art. 9.

[239] Art. 10.

damage resulting from acts or omissions in contravention to the convention.

Dispute-Settlement Mechanisms

Article 18 specifically provides for several levels of dispute settlement, including bilateral negotiation, mediation by another party to the convention or by an international organization, arbitration, or submission to the International Court of Justice.

Provision for Exchange of Information

Parties have a responsibility to cooperate in the exchange of scientific or technical information regarding any of the pollutants or sources of pollution covered by the convention. Annex VI to the convention sets out numerous requirements for reporting pollution incidents or situations.

Implementation

The United States is not eligible to be a party to the agreement.

PARTIES
Denmark
Finland
Germany
Poland
Sweden
Union of Soviet Socialist Republics

Regional Marine Pollution Agreements—Mediterranean Region

CONVENTION FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION, WITH PROTOCOL FOR THE PREVENTION OF POLLUTION OF THE MEDITERRANEAN SEA BY DUMPING FROM SHIPS AND AIRCRAFT (Dumping Protocol) and PROTOCOL CONCERNING COOPERATION IN COMBATING POLLUTION OF THE MEDITERRANEAN SEA BY OIL AND OTHER HARMFUL SUBSTANCES IN CASES OF EMERGENCY (Cooperation Protocol).[240] date signed: 2/16/76; entry into force: 2/12/78; citation: Convention: 15 ILM 290; Dumping Protocol: 15 ILM 300; Cooperation Protocol: 15 ILM 306; depositary: Spain.

PROTOCOL FOR THE PROTECTION OF THE MEDITERRANEAN SEA AGAINST POLLUTION FROM LAND-BASED SOURCES (Land-Based Sources Protocol).[241] date signed: 5/17/80; entry into force: 6/17/83; citation: 19 ILM 869; depositary: Spain.

PROTOCOL CONCERNING MEDITERRANEAN SPECIALLY PROTECTED AREAS (Protected Areas Protocol).[242] date signed: 4/3/82; entry into force: 3/23/86; citation: none; depositary: Spain.

Objectives and Obligations

The 1976 Mediterranean Sea Convention is intended to provide a "comprehensive and coordinated regional approach for the protection and enhancement of the marine environment in the Mediterranean Sea."[243] The area included under the convention stretches from Gibraltar to the Dardanelles.

Under article 4 of the convention, parties are obligated to take all appropriate measures to prevent, abate, and combat pollution[244] and enhance the marine environment of the Mediterranean Sea. The convention and its protocols specifically address pollution caused by dumping from ships and aircraft, pollution from ships, pollution from exploration or exploitation of the seabed, and pollution from land-based sources.[245] In addition, parties are required to cooperate in dealing with pollution emergencies, in monitoring activities, and in scientific and technological studies.

Article 23 specifically establishes a relationship between the convention and its protocols. Parties to the convention must also join at least one of the protocols. Protocols are only binding on the parties to that protocol and decisions based on a protocol may only be made by the parties to that protocol.

Article 13 designates the United Nations Environment Program (UNEP) to act as Secretariat for administration of the convention.

Enforcement Mechanisms

The convention does not provide specific enforcement mechanisms, but article 21 does require parties "to cooperate in the development of procedures enabling them to control the application of" the convention and its protocols.

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[240] Hereafter the convention and its subsequent protocols will be discussed together and referred to as the 1976 Mediterranean Sea Convention. The convention is also referred to as the Barcelona Convention.

[241] Ibid.

[242] Ibid.

[243] From the preamble to the 1976 Mediterranean Sea Convention.

[244] Under art. 2(a) of the 1976 Mediterranean Sea Convention, "pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water, and reduction of amenities.

[245] For a discussion of the 1976 Mediterranean Sea Convention and the Land-Based Sources Protocol, see "Mediterranean Protocol on Land-Based Sources: Regional Response To a Pressing Transnational Problem," *Cornell Int'l Law Journal*, vol. 13 (1980), p. 329. The technical provisions of the various protocols parallel those of agreements covering the North Sea and Baltic Sea areas. One exception is the 1982 Protocol Concerning Mediterranean Specially Protected Areas. This protocol extends the convention beyond the marine environment to the protection of flora and fauna, their ecosystems, and the archeological heritage of the designated areas.

Dispute-Settlement Mechanisms

Article 22 of the convention permits dispute settlement through negotiation, or if that course is unsuccessful, provides for arbitration under the procedures provided for in Annex A to the convention.

Provision for Exchange of Information

Article 20 of the convention establishes a specific reporting requirement under which the parties are to transmit reports on the measures adopted to implement the convention and its protocols.

Implementation

The United States is not eligible to become a party to these agreements.

Parties[246]

See table 5-5, below.

Regional Marine Pollution Agreements—Caribbean Area

AGREEMENT OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES REGARDING POLLUTION OF THE MARINE ENVIRONMENT BY DISCHARGES OF HYDROCARBONS AND OTHER HAZARDOUS SUBSTANCES ("United States-Mexico Marine Hydrocarbon Agreement"). **date signed: 7/24/80; entry into force: 3/30/81; citations:** 32 UST 5899, TIAS No. 10021, 20 ILM 696 (1981).

CONVENTION FOR THE PROTECTION AND DEVELOPMENT OF THE MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION AND PROTOCOL ("Caribbean Region Convention," also known as the Cartagena Convention). **date signed:** 3/24/83; **entry into force:** 10/11/86; **citations:** 22 ILM 227 (1983); **depositary:** Colombia.

Objectives and Obligations

The United States-Mexico Marine Hydrocarbon Agreement

According to article 1, the purpose of this agreement is to establish a joint contingency plan to deal with and respond to incidents of pollution of the marine environment[247] by discharges of hydrocarbons and other hazardous substances.[248] The response plan is basically contained in the six annexes to the agreement. They require the designation in advance of an on-scene coordinator and establishment of a joint response team and joint response center; further, they set out operational, communication, and coordinating functions and responsibilities.

[246] The U.S.S.R., the United Kingdom, and the United States were observers to the 1975 conference, which drafted the 1976 Mediterranean Convention.

[247] Under art. VII, the marine environment of each party is the area of the sea, including the adjoining shoreline, on its side of the maritime boundaries established with the other party and other states and within 200 nautical miles of the base lines from which the breadth of its territorial sea is measured.

[248] Under art. II, "hydrocarbons" include petroleum in all forms, including crude oil, fuel oil, sludge, wastes, and refined products. "Hazardous substances" include elements and compounds that, when discharged into the marine environment, present an imminent and substantial danger to the public health or welfare, or that may affect natural resources, including, among others, fish, shellfish, wildlife, shorelines, and beaches.

Table 5-5
Parties to regional marine pollution agreements concerning the Mediterranean Region

Party	*1976 Mediterranean Pollution Convention*	*1976 Ship Dumping Protocol*	*1976 Oil Pollution Cooperation Protocol*	*1980 Land-based Sources Protocol*	*1982 Protected Areas Protocol*
Algeria	x	x	x	x	x
Cyprus	x	x	x	x	x
European Economic Community	x	x	x	x	x
Egypt	x	x	x	x	x
France	x	x	x	x	x
Greece	x	x	x	x	x
Israel	x	x	x		x
Italy	x	x	x	x	x
Lebanon	x	x	x		
Libyan Arab Jamahiriya	x	x	x		
Malta	x	x	x		x
Monaco	x	x	x	x	
Morocco	x	x	x	x	
Spain	x	x	x	x	x
Syrian Arab Republic	x	x	x		
Tunisia	x	x	x	x	x
Turkey	x	x	x	x	x
Yugoslavia	x	x	x		x

Source: Compiled by staff of the U.S. International Trade Commission.

Caribbean Region Convention

The objectives of the Caribbean Region Convention[249] are set forth in article 4 of the convention, which provides in part that the parties shall "take all appropriate measures" to "prevent, reduce and control pollution of the convention area[250] and to ensure sound environmental management." Like other regional agreements sponsored by UNEP,[251] this convention specifically addresses pollution from ships, pollution caused by dumping, pollution from land-based sources, pollution from seabed activities, airborne pollution, and specially protected areas.

Under the convention, parties are required to cooperate in cases of emergency, in development of environmental-impact assessment procedures, in scientific and technological matters, and in liability and compensation issues. In addition, the parties adopted a subsequent protocol concerning cooperation in combating oil spills in the area.

Enforcement Mechanisms

United States-Mexico Marine Hydrocarbon Agreement

The agreement does not provide for enforcement mechanisms.

Caribbean Region Convention

The convention does not provide for enforcement mechanisms, other than the general obligations for each party to implement the convention and to cooperate in matters covered by the convention.

Dispute-Settlement Mechanisms

United States-Mexico Marine Hydrocarbon Agreement

The agreement does not provide for dispute settlement.

1983 Caribbean Region Convention

Article 23 of the convention provides that parties are to seek settlement of disputes through negotiation. If that fails, the dispute may be submitted to arbitration under the terms and procedures set out in the annex to the convention.

[249] For a brief background and review of the 1983 Caribbean Region Convention see "Transfrontier Pollution-Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region-Agreement Involv ing Collective Response to Marine Pollution Incidents and Long Range Environment Planning," Georgia Journal of Int'l & Comp. Law, vol. 14 (1984), p. 201.

[250] The convention area is defined in art. 2(1) to include the marine environment of the Gulf of Mexico, the Caribbean Sea, and the adjacent areas of the Atlantic Ocean.

[251] Art. 15 of the 1983 Caribbean Region Convention designates UNEP to carry out various Secretariat functions under the convention.

Provision for Exchange of Information

United States-Mexico Marine Hydrocarbon Agreement

Annex V of the agreement provides a comprehensive reporting procedure with respect to pollution incidents covered by the agreement. Annex VI to the agreement designates the particular coordinating and auxiliary agencies responsible for the reports required under annex V.[252]

Caribbean Region Convention

The parties are required to transmit to UNEP information on the measures adopted in implementation of the convention. In addition, articles 4 and 5 of the protocol to the convention require exchange of information and communication about oil spill incidents.

Implementation

United States-Mexico Marine Hydrocarbon Agreement

U.S. implementation

This agreement was effective for the United States upon signature. The U.S. Coast Guard is responsible for implementing and monitoring the Joint Contingency Plans for Marine Pollution established under the agreement.[253]

Implementation by Mexico

This agreement was effective for Mexico upon signature. In addition, Mexico indicated in 1989 that it will support the designation of the Gulf of Mexico as a special area[254] within the framework of the 1973/1978 Ship Pollution Convention.[255]

Caribbean Region Convention

The U.S. Coast Guard is responsible for implementing a response action under the Convention.[256]

Parties

Caribbean Region Convention:
Antigua and Barbuda

[252] For the United States, annex VI lists the following: Department of Transportation, U.S. Coast Guard; Department of Interior; Department of Commerce; Department of Defense; Environmental Protection Agency; Department of Agriculture; Department of Health and Human Services; Department of Justice; Department of State; Department of Energy; Department of Labor; and the Federal Emergency Management Agency.

[253] See 22 U.S.C. 2656 and 33 U.S.C. 1321(c)(2).

[254] "Special area" means a sea area where, for recognized technical reasons, in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil is required. See annex I, ch. I, reg. 1(10) to the 1973 Ship Pollution Convention, reprinted at 12 ILM 1337.

[255] Joint Communique issued by the United States and Mexico on Aug. 7, 1989, reprinted at 29 ILM 19.

[256] See 22 U.S.C. 2656 and 33 U.S.C. 1321 (c)(2).

Barbados
Colombia
Cuba
France
Grenada
Jamaica
Mexico
Netherlands (applicable to Aruba and Netherlands Antilles)
Panama
St. Lucia[257]
Trinidad and Tobago
United Kingdom (applicable to British Virgin Islands, Cayman Islands, and Turks and Caicos Islands)
United States
Venezuela

Regional Marine Pollution Agreements—Other Areas

These regional conventions are merely listed here to indicate the widespread adoption of regional marine pollution measures. They were developed with the assistance of, or under the direction of, UNEP and are generally patterned after the 1976 Mediterranean Sea Convention, with similar purposes, obligations, and procedures.[258]

KUWAIT REGIONAL CONVENTION FOR COOPERATION ON THE PROTECTION OF THE MARINE ENVIRONMENT FROM POLLUTION AND PROTOCOL CONCERNING REGIONAL COOPERATION IN COMBATING POLLUTION BY OIL AND OTHER HARMFUL SUBSTANCES IN CASES OF EMERGENCY. date signed: 4/24/78; entry into force: 6/30/79; citation: 17 ILM 511 (1978); depositary: Kuwait.

CONVENTION FOR COOPERATION IN THE PROTECTION AND DEVELOPMENT OF THE MARINE AND COASTAL ENVIRONMENT OF THE WEST AND CENTRAL AFRICAN REGION AND PROTOCOL. date signed: 4/23/81; entry into force: 8/5/84; citation: 20 ILM 729 (1981); depositary: Ivory Coast.

CONVENTION FOR THE PROTECTION OF THE MARINE ENVIRONMENT AND COASTAL AREA OF THE SOUTH-EAST PACIFIC AND AGREEMENT ON REGIONAL COOPERATION IN COMBATING POLLUTION OF THE SOUTH-EAST PACIFIC BY OIL AND OTHER HARMFUL SUBSTANCES IN CASES OF EMERGENCY. date signed: 11/12/81; entry into force: 5/19/86 (Convention), 7/14/86 (Agreement); citations: none; depositary: Permanent Commission for the South Pacific.

SUPPLEMENTARY PROTOCOL TO THE AGREEMENT ON REGIONAL COOPERATION IN COMBATING POLLUTION OF THE SOUTH-EAST PACIFIC BY OIL AND OTHER HARMFUL SUBSTANCES IN CASES OF EMERGENCY AND PROTOCOL FOR THE PROTECTION OF THE SOUTH-EAST PACIFIC AGAINST POLLUTION FROM LAND-BASED SOURCES. date signed: 7/22/83 (Supplementary Protocol), 7/23/83 (Protocol); entry into force: 5/20/87 (Supplementary Protocol), 9/23/86 (Protocol); citations: none; depositary: Permanent Commission for the South Pacific.

REGIONAL CONVENTION FOR THE CONSERVATION OF THE RED SEA AND GULF OF ADEN ENVIRONMENT AND PROTOCOL. date signed: 2/14/82; entry into force: 8/20/85; citations: none; depositary: Saudi Arabia.

CONVENTION ON THE PROTECTION, MANAGEMENT AND DEVELOPMENT OF THE MARINE AND COASTAL ENVIRONMENT OF THE EAST AFRICAN REGION AND PROTOCOLS. date signed: 6/21/85; entry into force: not yet in force; citations: none; depositary: Kenya.

Parties

1978 Kuwait Convention:
Bahrain
Iran
Iraq
Kuwait
Oman
Qatar
Saudi Arabia
United Arab Emirates

1981 West and Central Africa Convention:
Cameroon
Gambia
Ivory Coast
Nigeria
Senegal
Togo

1981 South-East Pacific Convention and its Related Agreement and Protocols:
Chile
Colombia
Ecuador
Panama
Peru

1982 Red Sea Convention:
Palestine, represented by the Palestine Liberation Organization
Saudi Arabia
Sudan
Yemen

[257] Not a party to the protocol.
[258] The Caribbean Region Convention is illustrative of the terms and conditions of these conventions.

1985 East Africa Convention (not yet in force):
European Economic Community
France
Madagascar
Seychelles
Somalia

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS CONCERNING COOPERATION IN COMBATING POLLUTION IN THE BERING AND CHUKCHI SEAS IN EMERGENCY SITUATIONS. date signed: 5/11/89; entry into force: not available; citations: TIAS.[259]

[published information not yet available]

AGREEMENTS CONCERNING POLLUTION OF AIR, LAND, AND INLAND WATERS

Agreements Concerning Transboundary Movement of Hazardous Wastes

Introduction

The agreements covered in this section are concerned with the international movement of hazardous materials. Although no universally accepted definition of hazardous wastes exists, two materials—radioactive waste and waste from the normal operation of a ship—are not included in these agreements, since they are subject to other international regulations. Most countries, including the United States, Canada, and Mexico, have their own statutory definitions of hazardous material.[260] In fact, a major problem in drafting the Basel Agreement (discussed below) was agreeing on a definition of "hazardous material."

The main incentive for transboundary shipment of hazardous waste is the increasing cost of their domestic disposal, especially in industrialized countries. Industry analysts recently estimated the cost of disposing of European hazardous waste domestically at $75 to $1,500 per ton, depending on the material involved. In the United States, the cost is estimated to be as high as $2,500 per ton.[261] Alternatively, waste disposal in some developing countries ranges from $40 to as low as $2.50 per ton. Even at these lower disposal costs, there is a strong incentive for a cash-poor developing country to import hazardous waste.[262] Other incentives exist. For example, multinational companies collecting wastes dispose of them in a central location, requiring transnational shipping. In other cases, the closest disposal site may require transboundary shipment. In New England it can be more economical to export waste to a Canadian disposal site than to a domestic site.

The majority of wastes are traded between industrialized countries. The United Kingdom, the largest importer of such wastes, received approximately $1.2 billion in revenues in 1987 for processing foreign wastes.[263] In 1988 the United States exported between 100,000 and 120,000 tons of waste, which accounted for less than 1 percent of the waste generated domestically. Eighty-five percent of this waste went to Canada, 8 percent went to Mexico, and the rest, to Western Europe, Japan, and Brazil.[264] The two other important hazardous waste recipients are Eastern Europe and the third world. A particularly large disposal area is located in what was, until recently, East Germany. As the two Germanys united, West Germany, one of the most environment-conscious countries in Europe, was struggling to develop legislation and procedures to clean up East Germany, then one of the most environmentally hazardous countries in Europe.[265]

Exporting hazardous waste to the third world has received the most attention recently. For example, in 1986 the ship, the *Khian Sea,* left Philadelphia with nearly 14,000 tons of toxic incinerator waste. After unsuccessful attempts to unload the material at a number of ports in the Caribbean and along the coast of Africa, the ship arrived off the coast of Singapore with a new name, now the *Pelicano,* and an empty hold. Although the captain denied dumping the ash at sea, most assumed that the cargo was dumped illegally somewhere in the Indian Ocean.[266]

UNEP was the first international agency to focus worldwide attention on global transboundary pollution. In 1987, UNEP's Governing Council established Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes (Cairo Guidelines). Although these guidelines were more comprehensive than those issued by the 1972 Stockholm Conference, they did not offer specific binding rules to govern transboundary hazardous waste shipment. When the Governing Council approved the Cairo Guidelines, it authorized the establishment of a technical and legal working group to prepare a more comprehensive agreement to regulate transboundary hazardous waste movement. The final convention, known as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, was signed by delegates from 116 nations on March 22, 1989. The Basel Convention, "operating through a 'notice and informed consent'

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[259] The U.S. Coast Guard provided the Commission with a slip copy of the agreement and the associated Joint Contingency Plan, which was signed on Oct. 11, 1989.

[260] U.S. hazardous waste definitions are presented in 40 C.F.R. 261.

[261] Shabocoff, "Irate and Afraid, Poor Nations Fight Efforts to Use Them as Toxic Dumps," *New York Times,* July 5, 1989, p. C4, col. 4.

[262] Mark Montgomery, "Traveling Toxic Trash: An Analysis of the 1989 Basel Convention," *The Fletcher Forum of World Affairs,* 1990.

[263] *The Economist,* Sept. 3, 1988, p. 1.

[264] EPA, Office of International Affairs, Interoffice memorandum, November 1989.

[265] Emma Chynoweth, "Greens Slam German Environment Plan," *Chemical Week,* June 13, 1990, p. 24.

[266] Montgomery, "Traveling Toxic Trash," p. 315.

system, was to ensure that states importing hazardous waste would understand the risks involved and would have the required disposal capacity."[267]

Prior to the Basel Convention, a number of countries in Europe, individually and through international organizations, promulgated regulations to control transboundary shipments of hazardous materials within the EC. Two recent directives from the European Community (EC) attempt to control the export of hazardous material. Although they do not prohibit exporting hazardous material, they do impose report-and-consent requirements on prospective exporters.[268] During 1982-89, the Organization for Economic Cooperation and Development (OECD) Waste Management Policy Group devoted considerable time and effort to develop appropriate measures to control transfrontier movements of hazardous waste. Their work resulted in a number of decisions and OECD Council acts,[269] and contributed significantly to the preparation of the UNEP global convention adopted in 1989. After joining UNEP's effort to draft a global convention, OECD ceased its own efforts, "probably because UNEP's convention would have wider public acceptance."[270]

The United States, a major producer of hazardous material, has over a number of years developed an elaborate legal structure, implemented by the EPA, to govern the disposal and shipment (domestic and international) of hazardous material.[271] Some of this legislation is listed in the introduction of this report (see chapter 1).

AGREEMENT OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES REGARDING THE TRANSBOUNDARY SHIPMENTS OF HAZARDOUS WASTES AND HAZARDOUS SUBSTANCES. date signed: 11/12/86; **entry into force:** 11/12/86; **citations:** file copy, EPA, Office of International Affairs; **depositary:** U.S. Department of State.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA CONCERNING THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE. date signed: 10/28/86; **entry into force:** 11/8/86; **citations:** file copy, EPA, Office of International Affairs; **depositary:** U.S. Department of State.

BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL. date signed: 3/22/89; **entry into force:** not yet in force; **citations:** UNEP Doc. IG 80/3, 28 ILM 657; **depositary:** Secretary-General of the U.N.

Objectives and Obligations

Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances

This agreement is the third annex to the 1983 Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment. Each party is obliged to enforce domestic laws and regulations concerning transboundary shipments of hazardous waste and to cooperate in monitoring transboundary shipments of hazardous waste. The exporting country must send to a designated authority in the receiving country, within 45 days, information concerning the nature and quantity of the shipment, the names and addresses of exporter and the consignee, the point of entry, the means of transportation, and a description of how the shipment will be treated or stored in the receiving country (art. 3).

Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste

Parties agree to notify each other, in writing, of any proposed transboundary shipment of hazardous wastes. The notice includes information concerning the description of the material, an estimate of the total quantity to be shipped, the name and address of the shipper, and the manner in which the material is to be disposed (art. 2(b)). The receiving country has 30 days from the date of receipt of such notice to consent (conditional or not) or object to the proposed shipment (art. 2(c)).

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

The objectives of the convention are to limit transboundary movement of waste among party countries, to set up notice and consent procedures, to define the scope of the agreement, and to define what constitutes illegal traffic and the responsibilities of the parties (art. 4). The agreement established three rules. First, "one or more competent authorities" will make

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[267] Barbara D. Huntoon, "Emerging Controls on Transfers of Hazardous Waste to Developing Countries," *Law and Policy in International Business*, vol. 21 (1989), pp. 247-271.

[268] *Council Directive Amending Directive 84/631/EEC* on the supervision and control within the European Community of the transfrontier shipment of hazardous waste, *Official Journal of the European Community*, No. L 181 (1986); and *Council Directive on the Supervision and Control Within the European Community of the Transfrontier Shipment of Hazardous Waste, OJ*, No. L 326 (1984).

[269] See, for example, *OECD Council Decision-Recommendation on Exports of Hazardous Wastes from the OECD Area*, 25 ILM 1010; *OECD Decision and Recommendation of Transfrontier Movement of Hazardous Waste*, 23 ILM 214; and *OECD Council Decision on Transfrontier Movements of Hazardous Wastes*, 28 ILM 257.

[270] Huntoon, "Emerging Controls on Transfers of Hazardous Waste," p. 255.

[271] Federal regulations governing hazardous material are given in 40 C.F.R. 260-78. These regulations are part of subch. I, covering solid waste.

waste management decisions and exchange with the U.N. Secretariat information concerning transboundary shipments (art. 5). Second, a procedure for written prior informed consent must be followed (art. 6, par. 1-4). Third, the exporting country must reimport the hazardous waste, if the importing country cannot handle the material in an "environmentally sound manner" (art. 8).

An important issue was the development of an appropriate definition of hazardous waste. The types and characteristics of waste to be covered are set out in annexes I through III of the agreement. In general, the materials are classified according to their origin (medical wastes, manufacturing byproducts); their chemical components (heavy metals, dioxin, asbestos); or their possession of certain dangerous characteristics, such as a tendency to explode. Appropriate disposal procedures are provided for in annex IV, and the information to be provided prior to transboundary shipment, in annex V.

Dispute-Settlement Mechanisms

Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances

The agreement does not provide for dispute settlement.

Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste

The agreement does not provide for dispute settlement.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

Annex VI provides for arbitration to settle disputes. The claimant notifies the Secretariat that the parties are submitting the dispute to arbitration. An arbitral tribunal renders a decision in accordance with international law and the terms of the agreement. The award, accompanied by a statement of reason, must usually be rendered within 5 months after its establishment, and not later than 10 months after. The award is considered final and binding.

Enforcement Mechanisms

Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances

The importing country may require the hazardous material to be shipped under bond or covered by insurance. If it is determined that the shipment violates provisions of the agreement, the appropriate authority in the exporting country is expected to "carry out all pertinent legal actions" so that the receiving party may return the material or the injured party can receive compensation for any damage (art. 14).

Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste

Parties must ensure "that all transboundary shipments of hazardous waste comply with the manifest requirements of both countries." Furthermore, parties must ensure that "to the extent possible, within their respective jurisdictions, their domestic laws and regulations are enforced with respect to the transportation, storage, and disposal of transboundary shipments of hazardous wastes" (art. 7).

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

The agreement does not provide for enforcement mechanisms.

Provision For Exchange Of Information

Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances

The parties are to exchange, to the extent practicable, information and assistance to help enforce the agreement. The exchange includes pertinent documents, records, and reports, emergency notification of hazardous situations, and facilitation of onsite inspection of treatment, disposal, or storage facilities (art. 12). When a party has banned or restricted a chemical, the designated authority in that country must, as soon as practicable, notify the designated authority in the other country of the nature of the regulatory action.

Agreement Between the Government of the United States of America and the Government of Canada Concerning the Transboundary Movement of Hazardous Waste

Information concerning transboundary shipment of hazardous waste is exchanged by formal notice through the designated authority of each country. If the receiving country does not respond within 30 days, it is assumed that the country is willing to accept the material.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

The parties are expected to inform one another, in writing through the U.N. Secretariat, of changes in national definitions of hazardous material and of decisions concerning the import, export, or ban of specified hazardous materials. In case of an accident

during a transboundary shipment, parties agree to notify other states that are likely to be at risk. Each party must present to the Secretariat an annual report including information on the transboundary movement of hazardous material; qualified statistical data on the effects of such movement on human health and the environment; information on any accidents resulting from the shipments of hazardous material; information on new technologies to reduce or eliminate the production of hazardous material; and information concerning new bilateral, multilateral, and regional agreements entered into (art. 13).

Implementation

U.S. implementation

The Resource Conservation and Recovery Act (RCRA)[272] of 1976, amended in 1984 by the Hazardous and Solid Waste Amendments,[273] is the implementing legislation controlling both solid waste and hazardous waste. This legislation is codified in 40 C.F.R. 260-274. EPA's Office of Solid Waste has the lead role in U.S. implementation of this agreement; the Waste Characterization and Assessment Division within the Office is responsible for implementing hazardous waste exports. EPA's Office of International Affairs participates in international negotiations pursuant to this and other treaties. International notification begins when the EPA, through the State Department and embassies, cables a variety of information characterizing a proposed waste shipment to the proposed receiving country. The national government of the proposed recipient country is asked to consent. If consent is given, a cable sent to EPA by the U.S. Embassy in the receiving country acknowledging consent and setting forth any conditions serves as the EPA acknowledgement of consent. EPA then sends this acknowledgement to the exporter, who must attach a copy of it to each export shipment. If the foreign nation objects to receiving hazardous waste or withdraws prior consent, EPA notifies the exporter in writing.[274]

Regulations governing the exports of hazardous waste were promulgated, pursuant to 42 U.S.C. 6938, on August 8, 1986 (effective November 8, 1986), and are found in 40 C.F.R. part 262 subpart E. Under these Amendments, two provisions of this act, 42 U.S.C. 6928 (d) (6) and (e), set forth criminal sanctions of violating the statutory framework for exports of hazardous waste. Any person who knowingly exports hazardous waste without the consent of the receiving country or without regard to and existing prior consent procedure "shall, upon conviction, be subject to a fine of not more than $50,000 for each day of violation, or imprisonment not to exceed two years. . . ."[275]

Furthermore, any person who knowingly exports a hazardous material that places another in imminent danger of death or serious bodily harm "shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment for not more than fifteen years, or both. . . ."[276]

Implementation by Canada

The Department of the Environment is the designated authority in Canada. Regulatory compliance is implemented by the Environmental Enforcement Act, sections 111-133.

Implementation by Mexico

The Department of the Environment is the designated authority in Mexico.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal

U.S. implementation

As of June 1, 1989, the United States had not ratified the agreement (see "Current Issues," below).

Implementation by others

As of June 15, 1990, only three countries had ratified the agreement. Twenty countries must ratify the convention before it can enter into force.

Current Issues

As of July 1, 1990, the United States had not yet ratified the Basel Convention. It is believed by some that the Government has not established sufficient regulatory authority to implement all aspects of the convention. In addition, U.S. definitions of hazardous waste may not be in agreement with the definitions provided in the annexes to the agreement. Once a foreign country has agreed to accept hazardous material from a private U.S. exporter, U.S. regulations have no control over how the material is handled. Under current regulations, small-quantity generators of hazardous waste are conditionally exempt from RCRA regulations. These exemptions may not be acceptable under the Basel Convention. U.S. authority has no control over hazardous material passing through thirdparty countries. EPA and the Department of State have recently developed implementing legislation, currently undergoing interagency review, to expand regulatory authority.

Certain members of the Congress have expressed concern over U.S. exports of hazardous wastes. Although two bills[277] were introduced in 1988 to strengthen the powers of EPA, neither was enacted. One of these bills, H.R. 5018, would have prohibited all exports of hazardous waste, including currently

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[272] Pub. L. 94-580.
[273] Pub. L. 98-616.
[274] EPA, International Enforcement Workshop: Proceedings, "The Import/Export of Hazardous Waste and Toxic Substances: The United States Enforcement Experience," Paul R. Thompson, Jr., p. 192.
[275] 42 U.S.C. 6928(d)(6).
[276] 42 U.S.C. 6928(e).
[277] H.R. 5018, 100th Cong., 2d sess. and S. 2598, 100th Cong., 2d sess.

unregulated material such as incinerator ash, sewage, and common garbage. In 1989, another bill, designed to coincide with the new RCRA authorization, was introduced to strengthen EPA's powers to control U.S. exports of hazardous waste.[278] One element of the bill was to prohibit hazardous waste exports to countries where environmental regulations are less strict than those of RCRA.

Poorer developing countries are perhaps the most concerned about hazardous waste shipments. Since the third world has only limited technical capabilities for disposing of waste, and since some industrialized exporters have exploited their position (e.g., by mislabeling the exported material) in the past, hazardous waste exports to the third world have received considerable attention more recently. The receiving countries, mostly in Africa and the Caribbean, have taken steps to control the export of hazardous waste to their country. For example, on May 25, 1987, the Organization of African Unity passed a resolution stating that dumping wastes illegally into Africa was "a crime against Africa and African People."[279] On July 4, 1988, the Non-aligned Movement similarly noted that the practice of shipping hazardous waste from industrialized to developing countries is "a most callous one, in that it takes advantage of the poor economic conditions in Africa's states."[280] Finally, in 1988, Guinea officials arrested several people after toxic incinerator ash was shipped from Philadelphia and dumped in Guinea.[281]

Parties

Twenty countries must ratify the Basel Convention before it enters into force. As of July 1, 1990, only three countries—Jordan, Saudi Arabia, and Switzerland—had ratified the agreement.

Multinational Agreements Concerning Transboundary Air Pollution

Introduction

The agreements covered in this section are divided into two categories—those dealing with international transfer of acid rain and those dealing with protecting the ozone layer. The primary agreement concerned with acid rain is the 1979 Convention on Long-Range Transboundary Air Pollution. The remaining agreements on this subject are protocols to the 1979 convention. The most significant agreement dealing with protecting the ozone layer is the Montreal Protocol to the 1985 Vienna Convention for the Protection of the Ozone Layer. The Montreal Protocol, which was signed in 1987, is significant in that it introduces international trade sanctions to enforce its goals.

At the conclusion of the 1972 Stockholm Conference on the Human Environment, the delegates presented a 26-point declaration (The Stockholm Declaration on the Human Environment) plus 109 recommendations containing "common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment."[282]

Article 6 (principle 6) of the Stockholm Declaration summarizes the urgency of the problems of pollution, as follows:

> [t]he discharge of toxic substance or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that various or irreversible damage is not inflicted upon ecosystems.

Articles 21 and 22 of the Stockholm Declaration attempt to develop principles of international legal responsibility to control transboundary pollution. Together, they advance the following responsibilities:

> States have in accordance with the Charter of the United Nations and the principle of international law, the sovereign right to exploit their own 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 of areas beyond the limits of national jurisdiction. (principle 21)

> States shall co-operate to develop further the international law regarding liability and compensation for victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction. (principle 22)

Although the declaration was nonbinding, it was considered to be the first effort to bring the issue of acid rain to the world's attention. Soon thereafter, a number of international agreements were implemented to deal with various forms of transboundary air pollution.[283] Scandinavia, being a recipient of European sulfur dioxide pollution, initiated the first regional agreement.[284] Canada and the United States soon followed with bilateral agreements and, eventually, multinational agreements were negotiated.

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[278] H.R. 2525, 101st Cong., 2d sess., was modified and incorporated into H.R. 3736.

[279] 28 ILM 567.

[280] Greenpeace International, "International Trade in Toxic Wastes: Policy and Data Analysis by Greenpeace International," (2d. ed., 1988), p. 4.

[281] Ibid., p. 7.

[282] Sohn, "The Stockholm Declaration on the Human Environment," Harvard International Law Journal, vol. 14 (1973), p. 243. This article presents a comprehensive review of the convention and the negotiations for each of the 26 articles.

[283] For a discussion of the legal basis of the declaration and other international agreements, see Steiner, "The North American Acid Rain Problem: Applying International Legal Principles Economically, Without Burdening Bilateral Relations," *Suffolk Transnational Law Journal*, vol. 12, No. 1 (1988).

[284] The Nordic Environmental Protection Convention, signed in Stockholm on Feb. 19, 1974.

The 1972 Stockholm Conference produced another important environmental initiative dealing with air pollution (i.e., UNEP), which has since become the lead international agency in negotiating agreements to protect, among other aspects of the environment, the atmospheric ozone layer. In his June 1973 address to the first session of UNEP's Governing Council, the Executive Director "cited damage to the ozone layer as a possible 'outer limit' which humanity would be wise to respect; pollution that breached the limit, it added, 'may endanger the continuance of human life on this planet'".[285]

Early work dealing with atmospheric ozone focused on how supersonic flights, future space shuttle missions, and nitrous oxide released from fertilizer affect the ozone layer. However, by the mid-1970s, the consensus was that there was no conclusive evidence that these activities were harmful to the atmosphere. In the autumn of 1973, scientists at the University of California at Berkeley began to study the effects of chlorofluorocarbons (CFCs) on the atmosphere.[286] Initially their controversial hypotheses were challenged by industry, but by the mid-1970s their work had gained public acceptance. In 1977, the United States announced it would phase out the use of CFCs, except in certain medical applications. Canada, Norway, and Sweden soon initiated similar bans. In 1980, the EEC announced it would not increase capacity to produce CFC-11 and CFC-12 and also called for a 30-percent reduction in the use of spray cans by 1982. Nevertheless, the use of CFCs increased worldwide. UNEP convened a number of conferences to limit the use of CFCs. The most far reaching of their efforts to date is the Montreal Protocol.

CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION. date signed: 11/17/79; entry into force: 3/16/83; citations: TIAS 10541, 18 ILM 1442; depositary: Secretary-General of the U.N.

PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION, ON LONG-TERM FINANCING OF THE CO-OPERATIVE PROGRAM FOR MONITORING AND EVALUATION OF THE LONG-RANGE TRANSMISSION OF AIR POLLUTANTS IN EUROPE (EMEP). date signed: 9/28/84; entry into force: 01/28/88; citation: 27 ILM 701; depositary: Secretary-General of the U.N.

PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION ON THE REDUCTION OF SULPHUR EMISSIONS OR THEIR TRANSBOUNDARY FLUXES BY AT LEAST 30 PER CENT. date signed: 7/9/85; entry into force: 10/02/87; citation: 27 ILM 707; depositary: Secretary-General of the U.N.

1988 PROTOCOL TO THE 1979 CONVENTION ON LONG-RANGE TRANSBOUNDARY AIR POLLUTION CONCERNING THE CONTROL OF EMISSIONS OF NITROGEN OXIDES OR THEIR TRANSBOUNDARY FLUXES (THE SOPHIA PROTOCOL). date signed: 10/31/88; entry into force: not yet in force; citation: 28 ILM 212; depositary: Secretary General of the U.N.

VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER. date signed: 3/22/85; entry into force: 9/22/88; citation: 26 ILM 1516; depositary: Secretary-General of the U.N.

MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER. date signed: 9/16/87; entry into force: 1/1/89; citation: 26 ILM 1541; depositary: Secretary-General of the U.N.

Objectives and Obligations

Convention on Long-Range Transboundary Air Pollution

The parties agree to prevent and gradually reduce air pollution, including long-range transboundary air pollution (art. 2). To that end, the parties will develop policies and strategies to combat the discharge of air pollutants. The policies and strategies include exchanging scientific and monitoring information concerning air pollution, with particular emphasis on new and rebuilt installations; developing a consultation mechanism between originators and recipients of transboundary air pollution; developing air quality management systems, including control measures compatible with balanced development; and cooperating in research on and development of new and more cost effective methods of controlling air pollution. An Executive Body (EB) of the Contracting Parties meets annually to review national progress in implementing the convention and to plan for the next year's activities.

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, On Long-Term Financing of the Co-operative Program For Monitoring and Evaluation of the Long-Range Transmission of Air Pollution in Europe

The main objective of this protocol is to provide a continuing method of financing the Cooperative Program for Monitoring and Evaluation of the Long-Range Transmission of Air Pollution in Europe

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285 UNEP, *Action on Ozone*, 1989, p. 6.

286 For a review of the nature of stratospheric ozone and the detrimental effects of CFCs on the ozone layer, see UNEP, *Action on Ozone*, 1989, pp. 2-5; and UNEP & World Meteorological Organization, *Scientific Assessment of Stratospheric Ozone: 1989*, July 14, 1989.

For a bibliography of recent Congressional hearings, journal articles, and Congressional activities dealing with ozone depletion, see Karen L. Alderson, Congressional Research Service, Library of Congress, "The Unpredictable Atmosphere: Selected References" (CRS Report for Congress), January 1990.

(arts. 2 and 3). The EMEP network consists of 92 monitoring stations in 24 countries. It generates data on sulfur and nitrogen emissions and the formation of tropospheric ozone and assists nations of the U.N.'s Economic Commission for Europe (ECE) to improve their understanding of atmospheric transformation, transport, and deposition.[287] It was originally funded by UNEP. Mandatory contributions are made by all parties within the geographical scope of EMEP. For these countries, a schedule presenting the proportion of payment is presented in the annex to the protocol. Voluntary payments may be made by other signatories, even if they are located outside the geographical scope of EMEP. All contributions are deposited in the General Trust Fund (art. 3).

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30 Percent

The primary objective of the protocol is to widen the scope of the 1979 Convention on Long-Range Transboundary Pollution. Specifically, parties to the protocol are to reduce the annual sulfur emissions of transboundary fluxes by at least 30 percent as soon as possible, but no later than 1993, using 1980 levels as the basis for calculations.

1988 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides of Their Transboundary Fluxes.

This protocol further widens the 1979 Convention on Long-Range Transboundary Air Pollution. Its primary objective is to reduce annual nitrogen oxide emissions so that, by December 31, 1994, they do not exceed such emissions for calendar year 1987 (art. 2). In addition, parties agree to apply national emission standards to both new stationary and new mobile sources within 2 years of the date of entry into force and, within 6 months to begin negotiations to further reduce emissions of nitrogen oxides or transboundary fluxes. Parties agree to make unleaded fuel sufficiently available along major transit routes to facilitate the circulation of vehicles equipped with catalytic converters as soon as possible and no later than 2 years after the date of entry into force. A technical annex provides "guidance for the Parties in identifying economically feasible technologies for giving effect to the obligations of the Protocol."[288]

Vienna Convention for the Protection of the Ozone Layer

The agreement requires parties to develop appropriate measures to protect human health and the environment against adverse effects resulting from human activities that modify the ozone layer (art. 2). Parties are to cooperate in systematic research and information exchange, to adopt appropriate administrative and legislative policies to limit human activity harmful to the ozone layer, and to cooperate with competent international bodies to implement the convention and any protocols that might be negotiated. A Secretariat was established to implement the treaty at the international level. Its responsibilities include arranging meetings and preparing and transmitting reports based on information received from parties.

Montreal Protocol on Substances That Deplete the Ozone Layer

The primary objective of the protocol is to limit and reduce the use of specific chlorofluorocarbons. The CFCs involved ("controlled substances") are listed in appendix A to the protocol, each with a scientifically determined "ozone depletion level." The depletion level is used in determining a control level, from which future reductions in use of the chemical are calculated (art. 2). Reductions in CFC consumption are based on 1986 levels.[289]

The most controversial aspect of the protocol was developing control measures.

> Generally, the debate focused on: (1) the scope of the control measures (which chemicals to control); (2) the stringency and timing of controls (how far and how to reduce them); and (3) the formula used to achieve the needed emissions reductions.[290]

The original control list included only eight CFCs. Potentially dangerous products that were omitted from the list were considered for inclusion in the protocol at a later date.[291]

One year after the protocol entered into force, each party was to stop importing controlled CFCs from nonsignatory countries. The parties agreed that, as of January 1, 1993, they would not export a controlled substance to countries not party to the protocol (art. 4).

To ensure worldwide acceptance of the protocol, delayed compliance was allowed for certain developing countries that had not received the advantages of the controlled chemicals (art. 5). Consequently, developing countries with less than 0.3 kg per capita consumption were allowed a 10-year grace period before having to comply with article 2 (art. 5).

Finally, beginning in 1990, and then every 4 years thereafter, the control measures are to be reviewed in light of current scientific, environmental, and economic information (art. 6).

[287] EPA, Office of International Affairs, internal brief.
[288] Technical Annex, par. 2.

[289] For a detailed discussion of these issues, see Koehler and Hajost, "The Montreal Protocol: A Dynamic Agreement for Protecting the Ozone Layer," *AMBIO*, vol. 19, No. 2 (April 1990).
[290] Koehler and Hajost, "The Montreal Protocol: A Dynamic Agreement for Protecting the Ozone Layer," p. 83-4.
[291] Although negotiators were aware of the urgency of the problem, they realized the potential for economic disruption if the products were removed too quickly from the market. Some analysts estimated that substitute products were 10 to 15 years away from commercial viability.

Dispute-Settlement Mechanisms

Convention on Long-Range Transboundary Air Pollution and its protocols

When a dispute arises between two or more parties, they are expected to seek a solution by negotiation or other dispute mechanisms acceptable to the parties involved.

Vienna Convention For The Protection of the Ozone Layer

Disagreements concerning the interpretation of the agreement should be resolved by negotiation (art. 11). Alternatively, if disputing parties agree, mediation by a third party can be sought. Finally, arbitration or settlement by the International Court of Justice is possible, if the parties involved accepted these mechanisms when they signed the agreement.

Montreal Protocol on Substances That Deplete the Ozone Layer

The agreement does not provide for dispute settlements.

Enforcement Mechanisms

Among the agreements covered by this section, only the Montreal Protocol provides for enforcement mechanisms. Under that protocol, parties are to develop mechanisms for determining noncompliance and for treatment of parties in noncompliance (art. 8). In addition,

> article 4 requires Parties to, inter alia, ban the import of controlled chemicals from non-Parties within one year after EIF; discourage the export to non-Parties of technologies for producing or using controlled chemicals; and refrain from providing non-Parties with subsidies, aid, credits, guarantees or insurance programs for exporting products, equipment, plants or technologies for producing controlled chemicals.[292]

Provisions For Exchange Of Information

Convention on Long-Range Transboundary Air Pollution

Article 8 provides the framework for the exchange of information. The information can be transferred either bilaterally between any two parties or multilaterally through the Executive Body. In addition, article 7 requires the contracting parties to cooperate in the conduct of research, education, and training related to environmental aspects of air pollution.

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, On Long-Term Financing of the Co-operative Program for Monitoring and Evaluation of the Long-Range Transmission of Air Pollution in Europe

The agreement does not provide for exchange of information.

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30 Percent

Exchange of information is coordinated by the Executive Body. Each party reports to the Executive Body its annual sulfur emissions and the method by which such emissions were calculated. EMEP calculates the annual deposition of sulfur and sulfur fluxes within its regional boundary for the previous year and then presents the information to the Executive Body.

1988 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides of Their Transboundary Fluxes

The parties exchange information by notifying the Executive Body of all national programs, policies, and strategies that they developed to control the emission of nitrogen oxides (art. 8). The parties also agree to exchange technical information consistent with national laws (art. 3).

Vienna Convention for the Protection of the Ozone Layer

The parties agree to exchange (directly or through competent international bodies) technical, socioeconomic, legal, and scientific information and technologies important to understanding the ozone layer and the effects of human activity on it (arts. 3 and 4). Parties must submit (through the Secretariat) all national measures adopted in implementing the treaty or subsequent protocols (art. 5).

Montreal Protocol on Substances That Deplete the Ozone Layer

Parties are required to submit to the Secretariat, within 3 months of signing, statistical data on production, imports, and exports of the controlled substances for the year 1986 and each year after (art. 7). In addition, parties are to cooperate, within the limits of their national laws, in promoting research, development, and information exchange on the best technologies for controlling ozone depletion, possible alternatives to controlled substances, and costs and benefits of control mechanisms (art. 9).

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[292] Koehler and Hajost, "The Montreal Protocol: A Dynamic Agreement for Protecting the Ozone Layer," p. 85.

Implementation

Convention on Long-Range Transboundary Air Pollution

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, On Long-Term Financing of the Co-operative Program For Monitoring and Evaluation of the Long-Range Transmission of Air Pollution in Europe

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30 Percent

1988 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides of Their Transboundary Fluxes.

LRTAP and its related protocols are created and implemented by the United Nations. The United States has implementing authority by virtue of its membership in the United Nations. Regulatory implementation is carried out by the Office of International Affairs at the EPA and the Bureau of Oceans and International Environmental and Scientific Affairs at the U.S. State Department.

Vienna Convention for the Protection of the Ozone Layer

Implementing legislation for U.S. participation in the convention is found in the Clean Air Act Amendments of 1977.[293] Regulatory authority for participation by EPA is found in 40 C.F.R. part 82, Protection of Stratospheric Ozone.

Montreal Protocol on Substances That Deplete the Ozone Layer

Implementing legislation for U.S. participation in the protocol is found in the Clean Air Act Amendments of 1977.[294] Regulatory authority for participation by EPA is found in 40 C.F.R. part 82, Protection of Stratospheric Ozone.

Current Issues

Convention on Long-Range Transboundary Air Pollution

A primary objective of LRTAP is to oversee the specific activities of the related protocols, and the Executive Body for the convention coordinates many of the protocols' activities. The seventh session of the Executive Body met in Geneva from November 21-24, 1989; the eighth session was held during November 19-22, 1990, in Geneva. During the seventh session, the Executive Body reviewed the activities and reports of a number of working groups, particularly the Working Group on Abatement Strategies and the Working Group on Volatile Organic Compounds. The Executive Body also reviewed the progress in selected areas of cooperation within the membership of the convention. In particular the Executive Body reviewed and accepted the thirteenth report of the EMEP Steering Body, the report on the effects of major air pollutants on human health and the environment, a report on the technologies for emission control, and a report on the economic aspects of emission control.[295]

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, on Long-Term Financing of the Co-operative Program for Monitoring and Evaluation of the Long-Range Transmission of Air Pollution in Europe

Although the United States is a party to the protocol, it is not within the geographical scope of EMEP, and therefore is not obligated to contribute to financing the program. The United States has, however, been contributing $10,000 annually.

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30 Percent

This protocol commits the signatories to reduce sulfur dioxide emissions by at least 30 percent by 1993, using 1985 as a base year. The United States played an active role in negotiating the protocol, but because the protocol did not credit the substantial progress the United States had already made in controlling sulfur dioxide emissions (reducing emissions by 24 percent since 1970), the United States elected not to participate.[296]

1988 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides of Their Transboundary Fluxes.

As with the sulfur dioxide protocol, credit for prior action was again a major issue in negotiating this protocol. The United States insisted on and finally achieved some credit for its progress in controlling nitrogen oxide emissions prior to the 1987 base year. Under carefully defined conditions, nations are allowed to choose a different base year. The United States elected to choose 1978, the year when U.S. nitrogen oxide emissions peaked, as its base year. In July 1989, the United States was the third signatory, after Byelorussia and Bulgaria, to ratify this protocol.

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[293] Pub. L. 95-95, title I, pt. B, sec. 156 (42 U.S.C.S. 7456, International Cooperation, p. 387, 1989).

[294] Ibid.

[295] For a full report of the seventh session, see Economic and Social Council of the United Nations, ECE/EB.AIR/20, Economic Commission for Europe, "Report of the Seventh Session of the Executive Body," pp. 1-26 (GE.89-41157/1418B).

[296] EPA, Office of International Affairs, interoffice memorandum.

Vienna Convention for the Protection of the Ozone Layer

The Vienna Convention is the superstructure that oversees the Montreal Protocol (and any other U.N. ozone protocols that might develop in the future). Since the protocol is so specifically related to ozone depletion, most of the substantive issues are developed within the context of the Montreal Protocol.

Montreal Protocol on Substances That Deplete the Ozone Layer

In May 1989, the first meeting of the parties to the Montreal Protocol convened in Helsinki, Finland. At its conclusion, the members agreed to formally ban the production of the listed CFCs by the year 2000, to commit themselves, in proportion to their means, to develop environmentally safe substitute chemicals and technologies, and to encourage states that have not yet done so to join the convention.

During June 20-29, 1990, the second meeting of the parties to the Montreal Protocol took place in London, England. Of the 93 countries attending, 59 were parties to the protocol. Those in attendance voted to adjust the original control requirements and to introduce a number of amendments including the following:

(1) establishing a financial mechanism to assist developing countries, with an interim mechanism to operate during 1991-94;

(2) establishing an executive committee to oversee and monitor implementation of the fund, which will be a key element of the financial mechanism;

(3) establishing a procedure to finance the fund by non-article-5 countries;

(4) adding language to the preamble of the protocol acknowledging the special needs of the developing countries; and

(5) inserting an article on technology transfer, calling on parties to take steps to ensure that the best available substitutes for the controlled products are transferred to article 5 countries.[297]

[297] Richard Smith, Acting Dep. Asst. Sec., Environment, Health, and Natural Resources, Department of State, testimony before the House Subcommittee on International Scientific Cooperation and the House Subcommittee on Natural Resources, Agriculture Research, and Environment, July 11, 1990.

Parties

Convention on Long-Range Transboundary Air Pollution (LRTAP)

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution, On Long-Term Financing of the Co-operative Program For Monitoring and Evaluation of the Long-Range Transmission of Air Pollution in Europe (EMEP)

Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on the Reduction of Sulphur Emissions or Their Transboundary Fluxes by at Least 30 Percent (SO_2)

1988 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution Concerning the Control of Emissions of Nitrogen Oxides of Their Transboundary Fluxes (NO_x).

See table 5-6, on the following page.

Vienna Convention for the Protection of the Ozone Layer and Montreal Protocol on Substances That Deplete the Ozone Layer

Australia
Austria
Bahrain
Belgium
Brazil
Burkina Faso
Byelorussia
Cameroon
Canada
Chile
Denmark
Ecuador
Egypt
European Community
Fiji
Finland
France
Germany
Ghana
Greece
Guatemala
Hungary
Iceland
Ireland
Japan
Jordan
Kenya
Liechtenstein
Luxembourg
Malaysia
Maldives
Malta
Mexico
Netherlands
New Zealand
Nigeria

Table 5-6
Parties to the Convention on Long-Range Transboundary Air Pollution and its protocols

Party	LRTAP Convention	EMEP Protocol	SO_2 Protocol	NO_x Protocol
Austria	x	x	x	x
Belgium	x	x	x	
Bulgaria	x	x	x	x
Byelorussian SSR	x	x	x	x
Canada	x	x	x	
Czechoslovakia	x	x	x	
Denmark	x	x	x	
European Community	x	x		
Finland	x	x	x	x
France	x	x	x	x
Germany	x	x	x	x
Greece	x	x		x
Hungary	x	x	x	
Iceland	x			
Ireland	x	x		
Italy	x	x	x	
Liechtenstein	x	x	x	
Luxembourg	x	x	x	
Netherlands	x	x	x	x
Norway	x	x	x	x
Poland	x	x		
Portugal	x	x		
Spain	x	x		
Sweden	x	x	x	
Switzerland	x	x	x	
Turkey	x	x		
Ukrainian SSR	x	x	x	x
U.S.S.R	x	x	x	x
United Kingdom	x	x		
United States	x	x		x
Yugoslavia	x	x		

Source: Compiled by staff of the U.S. International Trade Commission.

Norway
Panama
Portugal
Singapore
South Africa
Spain
Sri Lanka
Sweden
Switzerland
Syria
Thailand
Trinidad and Tobago
Tunisia
Uganda
U.S.S.R.
United Kingdom
United States
Venezuela
Zambia

Agreements Between The United States and Canada Concerning Air and Water Pollution

Introduction

The agreements in this section are bilateral executive agreements, protocols, and memorandums of understanding between the Government of the United States and the Government of Canada dealing with air and water pollution. United States-Canadian bilateral agreements concerned with the movement of hazardous waste are discussed under "Agreements Concerning Transboundary Movement of Hazardous Waste," below. In some agreements in this section, U.S. border States and Canadian border Provinces are also signatories. Official recognition of the need for bilateral cooperation on pollution issues originated with the Boundary Waters Treaty, ratified in 1909, which established the International Joint Commission (IJC).[298] The treaty is significant in that it—

> . . .allows the Governments of the United States and Canada to use the Commission as an independent, fact-finding mechanism to carry out studies on questions or matters of difference involving the rights of either country along their common frontier. The guiding principle of those who negotiated the Boundary Waters Treaty was that solutions to certain problems should be sought, not just in the normal bilateral negotiations of diplomacy, but in the deliberations of a permanent, unitary institution composed

[298] For a discussion of the Boundary Waters Treaty, see "Agreements With Mexico and Canada Concerning Boundary Waters," below.

equally of members from the United States and Canada.[299]

Although the treaty was created to protect the boundary waters common to Canada and the United States, it became a precedent for cooperative solutions to other transboundary pollution problems. No formal treaties involving transboundary pollution between the two countries have been ratified since 1909, but the IJC has been a focal point in assisting each country's implementation of numerous agreements.

Bilateral efforts to control transboundary air pollution originated with the IJC's 1945 decision in the *Trial Smelter* case. In that case, the State of Washington complained of sulfur dioxide emissions coming from a smelter in Trial, British Columbia. Unable to resolve the problem, the countries submitted it to the IJC. Article IX of the Boundary Water Treaty gave the IJC authority for such an action by providing that—

> . . .any other questions or matters of difference arising between [Canada and the United States] involving rights, obligations, or interests of either in relation to the other or to the inhabitants of the other, along the common frontier between the U.S. and the Dominion of Canada, shall be referred from time to time to the IJC for examination and report.

The IJC determined that Canada was responsible and set damages at $350,000. The IJC decision, based on territorial sovereignty and external responsibility, supports the notion of a country's international responsibility. It stated in part—

> [No] state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of a serious consequence and the injury is established by clear and convincing evidence.[300]

Since that time, neither the United States nor Canada has been willing to submit its differences to binding arbitration by the IJC. However, the two countries continue to work closely in understanding and reducing transboundary air pollution. Acid rain became an issue in the 1950s when local pollution problems like those in the Trial Smelter case developed. The initial solution, followed by both countries, was to build "tall smoke stacks" assuming that the stacks would disperse emissions sufficiently to allow the environment to cleanse itself. Twenty years later, however, studies showed that dispersing the pollution further only increased the area suffering from pollution. In 1977 the Congress amended section 123 of The Clean Air Act to limit the use of tall stacks. In 1978 the Congress passed a formal resolution calling upon the President to negotiate an agreement with Canada to preserve the airshed common to the United States and Canada. In 1977 the two Governments issued a joint statement on transboundary air pollution, recognizing the importance and urgency of the problem. In 1980, in a Memorandum of Intent, the two Governments recognized the seriousness of acid rain and committed themselves to obtain an air quality agreement as soon as possible. On March 17, 1985, special envoys were appointed to "assess the international environmental problems associated with transboundary air pollution and recommend actions that would help solve them." Their report[301] was printed in 1986.

Progress in reducing United States-Canadian transboundary air and water pollution (as well as hazardous waste) has been as much a consequence of mutual understanding and close cooperation as that of binding international treaties with strict enforcement measures. Two comments specifically related to Great Lakes water pollution are relevant to all the United States-Canadian bilateral agreements. One analyst noted "that the Great Lakes Water Quality Agreements are not necessarily and have not necessarily been, in and of themselves, enforceable."[302] Another stated that—

> a number of components must be present to undertake a comprehensive approach to tackling the Great Lakes pollution problems. The legislation must be in place, but more importantly the laws must be enforced; international agreements must be strengthened; and there must be the political will and commitment of both the Canadian and U.S. governments to protect this most important natural resource.[303]

AGREEMENT BETWEEN THE UNITED STATES AND CANADA ON GREAT LAKES WATER QUALITY (Great Lakes Water Quality Agreements). date signed: 11/22/78; entry into force: 11/22/78; citation: TIAS 9257; depositary: U.S. Department of State.

MEMORANDUM OF UNDERSTANDING BETWEEN U.S. ENVIRONMENTAL PROTECTION AGENCY AND THE DEPARTMENT OF THE ENVIRONMENT OF THE GOVERNMENT OF CANADA REGARDING ACCIDENTAL AND UNAUTHORIZED DISCHARGES OF POLLUTANTS ALONG THE INLAND BOUNDARY. date signed: 10/17/85; entry into

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[299] IJC, *International Joint Commission Activities*, 1987-1988, p. 4.

[300] Trial Smelter Arbitration (United States v. Canada), Report of International Arbitration Awards, vol 3 (1941), p. 1905.

[301] Lewis, Drew, and Davis, *Joint Report of the Special Envoys on Acid Rain, 1986*, p. 5.

[302] Robert J. Sugarman, former chairman of IJC, "Controlling Toxics on the Great Lakes: United States-Canadian Toxic Problems Control Program," Syracuse Journal of International Law & Commerce, vol. 12, p. 306.

[303] Toby Vigod, "Global Environmental Problems: A Legal Perspective on Great Lakes Toxic Pollution," *U.S.-Canadian Strategies for a Solution*, vol. 12(2), p. 324.

force: 10/17/85; citation: file copy, EPA, Office of International Affairs; depositary: U.S. Department of State. MEMORANDUM OF INTENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA CONCERNING TRANSBOUNDARY AIR POLLUTION. date signed: 8/5/80; entry into force: 8/5/80; citation: TIAS 9856; depositary: U.S. Department of State.

NEW YORK-QUEBEC AGREEMENT ON ACID POLLUTION. date signed: 7/26/82; entry into force: 07/26/82; citation: ILM xxi:4, pp. 721-725; depositary: New York State Department of Environmental Conservation.

CANADA-UNITED STATES: AGREEMENT TO TRACK AIR POLLUTION ACROSS EASTERN NORTH AMERICA (ACID RAIN RESEARCH). IN PARTICULAR A MEMORANDUM OF UNDERSTANDING ON THE CROSS APPALACHIAN TRACER EXPERIMENT. date signed: 8/23/83; entry into force: 8/23/83; citation: 21 ILM 1017; depositary: U.S. Department of State.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA AND THE DEPARTMENT OF THE ENVIRONMENT OF THE GOVERNMENT OF CANADA CONCERNING RESEARCH AND DEVELOPMENT CO-OPERATION IN SCIENCE AND TECHNOLOGY. date signed: 10/17/85; entry into force: 8/17/85; citation: file copy, EPA, Office of International Affairs; depositary: U.S. Department of State.

Objectives and Obligations

Agreement Between the United States and Canada on Great Lakes Water Quality

This treaty supersedes the Great Lakes Water Quality Agreement of April 15, 1972. The 1978 agreement was amended with the Phosphorous Load Reduction Supplement (signed Oct. 16, 1983) and further amended on November 18, 1987. The 1987 initiatives (memoranda of intent) are discussed further in "Current Issues," below. The purpose of the agreement is to "restore and maintain the chemical, physical, and biological integrity of the Great Lakes Basin Ecosystem" (art. 2). The general objective outlined in article 3 is to ensure that the waters of the Great Lakes System be free from a variety of substances (set forth in apps. 1 and 2) that are toxic or harmful to human, animal, or aquatic life (art. 3). The agreement sets minimum acceptable ambient levels for these products. In cases where present treatment is inadequate to meet the objectives of this agreement, additional programs and measures are to be implemented as necessary to address pollution from municipal and industrial sources, agriculture, shipping, dredging, airborne substances, and persistent toxic substances. The 1987 protocol did not change the purpose of the original agreement but rather "the amendments reflect advances in technology and aim to strengthen the programs and practices laid out in the 1978 Agreement, and to increase accountability for their implementation."[304]

The IJC assists governments with coordinating the implementation of this agreement. The IJC's duties include analyzing and disseminating data concerning the general and specific objectives of the agreement, and advising the State and Provincial governments on matters related to the quality of the boundary waters. The IJC is assisted by two boards—the Great Lakes Water Quality Board (Water Quality Board) and the Great Lakes Science Advisory Board (Science Advisory Board)—which provide advice and research.

Memorandum of Understanding Between U.S. Environmental Protection Agency and the Department of the Environment of the Government of Canada Regarding Accidental and Unauthorized Discharges of Pollutants Along the Inland Boundary

The introduction of the memorandum of understanding (MOU) "outlines a plan of cooperative measures for dealing with accidental and unauthorized releases of pollutants that cause or may cause damage to the environment along the shared inland boundary and that may constitute a threat to the public health, property or welfare." The MOU establishes a Joint Response Team (JRT) that will design and implement the "Canada-United States Joint Pollution Contingency Plan" to alert appropriate Federal and local authorities of the existence or threat of a polluting incident (arts. 2 and 3).

Memorandum of Intent Between the Government of the United States and the Government of Canada Concerning Transboundary Air Pollution

The memorandum begins by noting both countries' participation in and obligations to earlier environmental treaties, including the 1972 Stockholm Declaration on the Human Environment and the 1979 ECE Convention on Long-Range Transboundary Air Pollution. Noting their mutual concern with transboundary air pollution, the parties state in the memorandum their intention to increase bilateral cooperative action to deal effectively with transboundary air pollution. To that end, the memorandum established a United States-Canada Coordinating Committee that began formal discussions and garnered funds necessary for its operation, i.e., to establish technical and scientific work groups to assist in negotiations on transboundary air pollution.

New York-Quebec Agreement on Acid Precipitation

The purpose of this agreement is to improve understanding of acidification of the environment (e.g.,

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[304] IJC, *International Joint Commission Activities*, p. 19.

acid fallout, principally of nitrogen and sulfur compounds). The parties agree to standardize the existing New York and Quebec data collection networks; to exchange the results of studies already in existence; to publish an annual report on the amount of acid deposition in New York and Quebec; to determine which joint studies should be carried out in the next 5 years; and to prepare a course of action to influence national decisions that favor reductions of acid-causing pollutants. The agreement was amended in 1984 and again in 1986. One of the major provisions of the 1986 agreement required each government to provide prior notification and to consult when a pending major action or industrial project could present a significant risk of transboundary pollution. (Amendments to the original agreement are found in the appendixes of the post-1986 annual reports.)

Canada-United States: Agreement To Track Air Pollution Across Eastern North America (Acid Rain Research). A Memorandum of Understanding on the Cross Appalachian Tracer Experiment.

The objective is to provide a framework for the design and conduct of a series of joint experiments to verify theoretical computer codes developed to monitor the long-range movement of meteorological airborne pollutants. The experiment is called the "Cross Appalachian Tracer Experiment" (CAPTEX). Specifically, a perfluorinated hydrocarbon tracer will be released into the atmosphere from several locations in the United States and Canada. The dispersion will be monitored and recorded, and the results analyzed to validate various theoretical estimates.

Memorandum of Understanding Between the Environmental Protection Agency United States of America and the Department of the Environment of the Government of Canada Concerning Research and Development Co-operation in Science and Technology

The overall objective of the MOU is to undertake a program of cooperation in pollution measurements and control, and in research and development. The aim of such cooperation is to improve technology and systems for pollution control by pursuing related scientific and technological research and by avoiding unnecessary duplication of effort (art. 1). Three areas of initial interest were (1) field tests of pollution control and monitoring equipment, (2) developing pollution control and monitoring equipment for incinerating hazardous waste, and (3) developing a large-scale tank test of response equipment for oil and hazardous materials spills (art. 5). As these issues are resolved, other projects will be developed (art. 6).

Dispute-Settlement Mechanisms

None of these agreements provide for dispute-settlement mechanisms.

Enforcement Mechanisms

None of these agreements provide for enforcement mechanisms.

Provisions for Exchange of Information

Agreement Between the United States and Canada on Great Lakes Water Quality

The IJC expects to receive all requested data and information relating to water quality in the Great Lakes Region. The IJC, in turn, makes available to the State and Provincial governments all information it has collected, except that identified as proprietary under the laws of the region where such information was acquired. The IJC also makes biennial reports to the parties concerning progress toward reaching the goals of the agreement.

Memorandum of Understanding Between U.S. Environmental Protection Agency and the Department of the Environment of the Government of Canada Regarding Accidental and Unauthorized Discharges of Pollutants Along the Inland Boundary

The agreement does not specifically provide for exchange of information. However, a primary function of the Joint Response Team is to report to the public all incidents of polluting and the status of efforts to remedy them.

Memorandum of Intent Between the Government of the United States and the Government of Canada Concerning Transboundary Air Pollution

The agreement provides for advanced notification of proposed actions involving a significant risk of causing transboundary air pollution, as well as exchange of information gathered in research and monitoring.

New York-Quebec Agreement on Acid Precipitation

The agreement stipulates that the parties facilitate the exchange of scientific information gathered at universities, government agencies, and other interested groups (arts. 2 and 3). The agreement also provides that parties jointly establish a documentation center to develop library collections and produce written and audiovisual material to promote the public's understanding of acid causing pollutants (arts. 2 and 4).

Canada-United States: Agreement To Track Air Pollution Across Eastern North America (Acid Rain Research). A Memorandum of Understanding on the Cross Appalachian Tracer Experiment.

Information collected (as well as inventions and discoveries) under this agreement will be exchanged in a timely manner among the parties. Nonproprietary information will also be made available to other interested scientific groups.

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Department of the Environment of the Government of Canada Concerning Research and Development Co-operation in Science and Technology

Although no formal mechanism for information exchange is developed in the MOU, the two countries are to exchange experts and information and to intensify cooperation between technical experts and provide additional opportunities for them to exchange ideas, skills, and techniques (art. 2).

Implementation

Agreement Between the United States and Canada on Great Lakes Water Quality

IJC implementation

The agreement is implemented jointly by both Governments in cooperation with the IJC. The IJC is composed of six members, three from the United States and three from Canada. The U.S. sector of the IJC is located in Washington, DC. The IJC is assisted by the Water Quality Board and the Science Advisory Board. The staff of the Water Quality Board is composed of an equal number of members from the United States and Canada. Staff of the Science Advisory Board consists of managers of Great Lakes research programs and recognized experts on the Great Lakes and related fields. Members of the two boards are selected by the IJC, after consultation with the appropriate Government. The Great Lakes Regional Office, also under the jurisdiction of the IJC, provides administrative support and information to the public concerning the IJC's activities and conducts public hearings. The IJC submits an annual budget to both countries' Governments, each of which in turn is expected to pay for half of the expenses.

U.S. implementation

Primary implementing legislation is found in the Clean Water Act, as amended by the Water Quality Act of 1987 and other statutes administered by the EPA.[305] Legislative provisions with respect to U.S. enforcement are found in the Toxic Substances Control Act (TSCA)[306] and Resources Conservation and Recovery Act.[307] EPA's Office of International Affairs and the EPA Great Lakes National Program Office have primary responsibility for coordinating the U.S. implementation of the agreement with Canada and the IJC. Other agencies participating in the agreement are the Departments of State, Interior (Fish and Wildlife Service), Commerce (NOAA), Transportation (Coast Guard and Army Corps of Engineers), Agriculture and the eight Great Lakes States.

Canadian implementation

The Environmental Contaminants Act (ECA)[308] is the chief legislation dealing with toxic substances. The agreement is implemented by Environment Canada and the various Provincial governments, which have much autonomous authority in controlling local pollution problems. In Ontario, for example, the major piece of legislation pertaining to waste management is the Environmental Protection Act.[309]

Memorandum of Understanding Between U.S. Environmental Protection Agency and the Department of Environment of Canada Regarding Accidental and Unauthorized Discharges of Pollutants Along the Inland Boundary

A specific implementation plan for joint response team created by the MOU is not yet in force (see "Current Issues," below).

Memorandum of Intent Between the Government of the United States and the Government of Canada Concerning Transboundary Air Pollution

Implementing legislation for U.S. participation in this agreement is found in the Foreign Relations Authorization Act, Fiscal Year 1979.[310]

New York-Quebec Agreement on Acid Precipitation

The agreement is administered by a joint committee, having equal representation from the Governments of Quebec Province and New York State. The committee, which meets twice a year, alternating between Quebec and New York, is composed of three representatives of the Canadian Ministry of the Environment, an additional member to be appointed from Quebec, three members of the New York Department of Environmental Conservation, and an additional member to be appointed from New York State.

Canada-United States: Agreement to Track Air Pollution Across Eastern North America (Acid Rain Research). A Memorandum of Understanding on the Cross Appalachian Tracer Experiment

Each party designates a coordinator to plan and conduct experiments under this MOU. In the United States, the U.S. Department of Energy (DOE), NOAA, and EPA will participate in the experiments. Canada will be represented by the Atmospheric Environment Service of Environment Canada (AES).

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[305] Pub. L. 100-4, sec. 118, Great Lakes.
[306] 15 U.S.C. 2601-26 (1982).
[307] 16 U.S.C. 3401-73 (1982).
[308] Can. Stat. 1427(19) (amended 1979).
[309] Ont. Rev. Stat., ch 141 (1980), amended (1981).
[310] Pub. L. 95-426, title VI, sec. 612, U.S.-Canadian Negotiations on Air Quality, 92 Stat. 990. See also 42 U.S.C.S. 7415 (1989), p. 337.

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Department of the Environment of the Government of Canada Concerning Research and Development Co-operation in Science and Technology

The program coordinator for the EPA is the Assistant Administrator, Office of International Affairs, and the program coordinator for the Canadian Department of the Environment is the Assistant Deputy Minister, Environmental Protection Service. The coordinators are authorized to conclude project arrangements, to designate project officers for each area of mutual interest, and to arrange regular reviews of the status of each program established by the MOU.

Current Issues

Agreement Between the United States and Canada on Great Lakes Water Quality

Under the umbrella of the formal agreement, EPA cooperates with Canadian Federal, U.S. State, and Canadian Provincial agencies on a wide range of less formal activities. In 1987, EPA, along with Environment Canada, the Ontario Provincial Ministry of Environment, and the New York Department of Environmental Conservation, began developing a Niagara River Toxics Management Plan and a Lake Ontario Toxics Management Plan. These two initiatives, which were established specifically to augment the Great Lakes Water Quality Agreement, address some of the most polluted parts of the Great Lakes ecosystem, and have included substantial public involvement. The EPA provides and supports experts to the IJC Water Quality and Science Advisory Boards. For example, EPA is providing experts for IJC border projects on environmental monitoring and protecting the St. Croix River, the Rainy River, and the Red River. The Governments are currently developing specifics such as a definite pollutants list, agreed-on reduction goals, and a reduction timetable to implement these efforts.

Memorandum of Understanding Between U.S. Environmental Protection Agency and the Department of Environment of Canada Regarding Accidental and Unauthorized Discharges of Pollutants Along the Inland Boundary

Although specific plans for the Joint response team are still in the draft stage, EPA and Environment Canada are cooperating on the MOU objectives. The primary U.S. responsibility for controlling unauthorized discharges in Federal navigable waters is with the Coast Guard, which is complementary to the MOU. The EPA regions 1, 2, 3, 5, 8, and 10, as part of U.S. emergency preparedness, also have border response/contingency plans for their parts of the agreement. The plan is still in draft primarily because Canada has proposed to add a section on liability for the cost of cleanup; in EPA's view, this section would change the original intent of the plan.[311]

Memorandum of Intent Between the Government of the United States and the Government of Canada Concerning Transboundary Air Pollution

Beginning in 1989, EPA has contributed to three United States-Canadian consultations (July and October 1989 and January 1990) to fulfill the original intent of this 1980 agreement and the 1987 recommendation of the United States-Canadian joint envoys to develop a consultative United States-Canadian air-quality accord with emphasis on acid rain. This consultative activity, which started in 1989 in Canada, fulfills President Bush's informal agreement with Prime Minister Mulroney in early 1989 to prepare for and negotiate an air quality accord with Canada after the administration and the Congress established new Clean Air Act amendments. Prior to a first negotiating session with Canada, the United States has agreed to convene a bilateral technical meeting on specific parts of the proposed accord, such as research, monitoring, and modeling.

During the 1989 consultations, EPA Administrator Reilly and Canadian Environment Minister Bouchard established an informal agreement to have high-level EPA/Environment Canada consultations about every 6 months on priority global and United States-Canadian environmental protection issues. These senior-level meetings also include consultations between the U.S. Deputy Administrator and Canadian Deputy Environment Minister. One of the initiatives of these senior-level meetings is the development of an EPA/Environment Canada environments awards program for youth in the United States and Canada. The United States and Canada started negotiations in 1990 to replace this memorandum with a bilateral agreement.

The IJC has an International Air Quality Advisory Board working on United States-Canadian border air pollution issues that include acid rain, tropospheric ozone pollution, effects of air pollution in the border region on health, and a provision for periodic technical reports to the IJC Commissioners on global ozone layer and global climate change. EPA supports these activities and provides experts to implement joint initiatives.

Another example of the joint effort to understand and control pollution is the 1985 Memorandum of Understanding Concerning Research and Development in Science and Technology, in which the two countries agree to—

> Intensify co-operation between technical experts and provide additional opportunities for them to exchange ideas, skills and techniques; to work together and to utilize special facilities; to attack problems of mutual

311 EPA, Office of International Affairs, internal memorandum.

interest; and to develop joint arrangements related to pollution control and monitoring projects and programs.[312]

This agreement is a framework for a wide range of bilateral cooperative efforts dealing with air, water, land, and other pollution. The MOU is to be amended and reauthorized in 1990. During the negotiations, the EPA plans to consider issues such as pollution prevention, minimizing and recycling waste, and arctic pollution monitoring.[313]

New York-Quebec Agreement on Acid Precipitation

A primary objective of the agreement is to increase cooperation in analyzing and understanding acid rain and its effects on the New York-Quebec environment. To that end the two governments created the first international bilingual computerized reference data base on acid rain (ACIDOC), which now contains more 12,000 references published since 1975. The data base and documentation on its access are accessible in both Canada and the United States. In 1988, the data base was made available in Europe, and efforts were intensified to ensure better coverage of the European publications.

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Department of the Environment of the Government of Canada Concerning Research and Development Co-operation in Science and Technology

- EPA will renew and implement, beginning in 1990, the 1985 EPA-Environment Canada MOU on science and technology cooperation.
- EPA, in conjunction with Congressional Liaison and State Department, will follow the 1990 Clean Air Act Amendments, particularly how they might impact forthcoming United States-Canadian programs.
- EPA will participate actively in drafting and negotiating an air-quality agreement with Canada that will replace the current MOU.

Other United States-Canadian Cooperative Activities[314]

EPA coordinates with Canada under a substantial number of Government-to-Government agreements and EPA-Environment Canada agreements, and a wide range of less formal activities with Canadian Federal and Provincial agencies. The highlights of these EPA activities with Canada are presented below.

- Under the United States-Canada Free Trade Agreement, signed in 1989, EPA serves as advisor on pesticide issues in relation to trade in agricultural activities.
- EPA is involved in a number of information sharing and protecting activities concerning the Georges Bank, the St. Lawrence river, the Waterton-Glacier International Peace Park, hazardous waste in the Pacific Northwest region, and the Beaufort Sea.
- In 1990, the EPA, in cooperation with Environment Canada, Northeast Canadian Provinces, and several Northeast U.S. State agencies, has been involved in developing the Gulf of Maine Action Plan. This comprehensive plan is intended to protect and improve the environmental health of the Gulf ecosystem and to minimize risks to public health from gulf waters and resources.
- EPA will develop a response plan to the zebra mussel infestation problem in the Great Lakes.
- EPA will monitor and facilitate the development and adoption of a Binational Pollution Prevention Action Plan for the Great Lakes.
- Reopen United States-Canadian consultations to complete joint inland pollution contingency plans to fulfill intent of 1985 EPA-Environment Canada MOU on inland hazardous materials emergencies.

Agreements With Canada and Mexico Concerning Boundary Waters

Introduction

These agreements establish a framework for handling environmental issues that involve boundary waters along the U.S. borders with Mexico and Canada. The United States-Mexican framework is established by four agreements. The 1889 Convention Between the United States and Mexico to Facilitate the Carrying Out of the Principles Contained in the Treaty of November 12, 1884, created an International Boundary Commission—now called the International Boundary and Water Commission (IBWC)—that has jurisdiction over all questions arising from changes or alterations in the Rio Grande or the Colorado River. The IBWC's jurisdiction was increased by the Treaty Between the United States and Mexico on the Utilization of the Waters of the Colorado and Tijuana Rivers and of the Rio Grande. The Convention Between the United States and Mexico Providing for

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312 Art. II.B.

313 Peter Christich, EPA, *Office of International Affairs Update: Bilateral Programs (Canada)*, Apr. 6, 1990.

314 U.S. EPA, Office of International Affairs Issue Update, "Bilateral Programs (Canada)," 1990.

the Equitable Distribution of the Water of the Rio Grande for Irrigation Purposes provided for the delivery of irrigation water to Mexico from the United States. The 1973 agreement embodied an IBWC ruling addressing the issue of the high salinity of the water delivered to Mexico.

The United States-Canadian framework was established with the Treaty Between the United States and Great Britain Relating to Boundary Waters and Questions Arising along the Boundary Between the United States and Canada. This treaty created the International Joint Commission (IJC), which has jurisdiction over all cases involving the use, obstruction, or diversion of the boundary waters between the two countries. The IJC also has jurisdiction over the implementation of the Treaty Between the United States and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin. The objectives of the Columbia River Basin treaty are to improve utilization of the river's flow by constructing dams, reservoirs, and hydroelectric facilities and to provide for the equitable distribution of the resulting electric power. The 1818 Convention Respecting Fisheries, Boundary, and the Restoration of Slaves describes the United States-Canadian border west of the Point of Woods, and the Agreement Between the United States and Canada on Contingency Plans for Spill of Oil and Other Noxious Substances provides for a coordinated response to significant spills in waters of mutual interest.

Agreements With Mexico

1889 CONVENTION BETWEEN THE UNITED STATES AND MEXICO TO FACILITATE CARRYING OUT OF THE PRINCIPLES CONTAINED IN THE TREATY OF NOVEMBER 12, 1884, date signed: 3/1/1889; entry into force: 12/24/1890; citations: 26 Stat. 1512, TS 232, 9 Bevans 877; depositary: U.S. Department of State.

CONVENTION PROVIDING FOR THE EQUITABLE DISTRIBUTION OF THE WATERS OF THE RIO GRANDE FOR IRRIGATION PURPOSES. date signed: 5/21/06; entry into force: 1/16/07; citations: 34 Stat. 2953, TS 455, 9 Bevans 924; depositary: U.S. Department of State.

TREATY BETWEEN THE UNITED STATES AND MEXICO ON THE UTILIZATION OF WATERS OF THE COLORADO AND THE TIJUANA RIVERS AND OF THE RIO GRANDE. date signed: 2/3/44; entry into force: 11/8/45, protocol 11/8/45; citations: 59 Stat. 1219, TS 994, 9 Bevans 1166, 3 UNTS 313; depositary: U.S. Department of State.

PROTOCOL RELATING TO THE TREATY BETWEEN THE UNITED STATES AND MEXICO ON THE UTILIZATION OF WATERS OF THE COLORADO AND THE TIJUANA RIVERS AND OF THE RIO GRANDE. date signed: 11/14/44; entry into force: 11/8/45; citations: 59 Stat. 1219, TS 994, 9 Bevans 1166, 3 UNTS 313; depositary: U.S. Department of State.

AGREEMENT BETWEEN THE UNITED STATES AND MEXICO ON A PERMANENT AND DEFINITIVE SOLUTION TO THE INTERNATIONAL PROBLEM OF SALINITY OF THE COLORADO RIVER (Minute 242 of the International Boundary and Water Commission).[315] date signed: 9/30/73; entry into force: 9/30/73; citations: 24 UST 1968, TIAS 7708, 401 UNTS 137; depositary: International Boundary and Water Commission.

Objectives and Obligations

1889 Convention Between the United States and Mexico To Facilitate Carrying Out the Principles Contained in the Treaty of November 12, 1884

The objective of this convention was to create a commission to settle all boundary disputes that arise between the United States and Mexico because of changes in the beds of the Rio Grande or the Colorado River. The convention instituted the International Boundary Commission, which had exclusive jurisdiction over all questions that arise from any changes or alterations (natural or manmade) in the bed of the Rio Grande or the Colorado River where these rivers form the boundary between the two countries.[316]

If the changes in the river beds are from natural causes, the Commissioners note such changes on the surveys of the boundary lines. If the changes in the river beds are the result of human interference (e.g., construction projects), which may be prohibited by either article III of the convention of November 12, 1884, or by article VII of the Convention of Guadalupe Hidalgo of February 2, 1848, then the Commission must decide whether or not such project is permitted. The Commission has the power to call for any persons, papers, or information relating to any boundary question in which it may have jurisdiction.[317]

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[315] A "minute" is a decision or recommendation of the IBWC. Other minutes passed by the IBWC concerning the environment are as follows: Minute 261—recommendations on sanitation problems on United States-Mexican border. (31 UST 5099; TIAS 9658); Minute 264—recommendations on border sanitation on the New River at Calexico, CA, and Mexicali, Baja California Norte. (32 UST 3764; TIAS 9918); Minute 270—recommendations on border sanitation problems at San Diego, CA and Tijuana, Baja California; Minute 273—recommendations on border sanitation problems at Naco, AZ and Naco, Sonora; Minute 274—provides for a joint project to improve the water quality of the New River at Calexico, CA and Mexicali, Baja California; Minute 276—concerning treatment of sewage from Nogales, AZ and Nogales, Sonora; Minute 279—provides joint funding of construction of sewage treatment facilities in Nuevo Laredo; Minute 283—provides for joint funding of sewage treatment facilities in southern San Diego.

[316] Art. VII.

[317] Art. VII.

Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes

The United States is obliged to deliver 60,000 acre-feet of water annually to Mexico—from a storage dam near Engle, NM, to the head works of the Acequia Madre, above the city of Juarez, Mexico.[318] The delivery is distributed throughout the year in the same proportions as the water supplied by this irrigation system to lands in the vicinity of El Paso, TX. In case of an extraordinary drought or serious accident to the irrigation system in the United States, the amount of water delivered to the Mexican Canal is diminished in the same proportion as the water delivered to the United States by such irrigation system.[319] The delivery is made without cost to Mexico. The United States assumes no obligation beyond the delivery of the water[320] and does not recognize any claim on the part of Mexico to the waters. In return, Mexico waives any and all claims to the waters in question and to any damages sustained by the owners of land in Mexico by reason of the diversion of the water.[321]

Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The objective of the treaty was to establish the rights of the United States and Mexico with respect to (1) the waters of the Colorado River, the Tijuana River, and the Rio Grande from Fort Quitman, TX, to the Gulf of Mexico; and (2) questions that arise as a result of the common boundary.[322] The parties agreed to extend indefinitely the mandate of the International Boundary Commission and to change its name to the International Boundary and Water Commission. The jurisdiction of the IBWC was expanded to include all questions arising with respect to the boundary between the two countries.[323] The IBWC was directed to investigate and develop plans for the conservation, storage, and regulation of the waters along their borders;[324] to construct, operate, or maintain such approved works;[325] and to follow an order of preference for the use of international waters.[326] The treaty also provides specific criteria for the allotment of water between the two countries, preparation of plans for flow-control works and the generation of hydro-electric energy, and construction of dams required for the conservation, storage, and regulation of the annual flow.[327]

[318] Art. I.
[319] Art. II.
[320] Art. III.
[321] Art. IV.
[322] Introduction to the treaty.
[323] Art. 2.
[324] Art. 24.
[325] Ibid.
[326] Art. 3 lists preference as (1) domestic and municipal uses, (2) agriculture and stock-raising, (3) electric power, (4) other industrial uses, (5) navigation, (6) fishing and hunting, and (7) any other beneficial uses that may be determined by the IJC.
[327] Arts. 4-16.

The Protocol Relating to the Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

This protocol addresses the construction or use of works for storage or conveyance of water, flood control, stream gauging, or for any other purpose. It stipulates that such construction situated within the territory of the country and to be used only partly for the performance of treaty provision is performed by the Federal agencies of that country.

Agreement Between the United States and Mexico on a Permanent and Definitive Solution to the International Problem of Salinity of the Colorado River

The objectives of the agreement were to ensure that the water delivered by the United States to Mexico from the Colorado River is not of above-average salinity, to limit the pumping of groundwater, and to address the salinity and drainage problems of the Mexicali Valley.[328] The United States agreed to deliver from the Colorado River to Mexico 1,500,000 acre-feet of water of average salinity.[329] Brine from the desalinization operations would be drained into Mexico's Santa Clara Slough.[330] Each country would limit its pumping of ground water near the Arizona-Sonora boundary near San Luis to 160,000 acre-feet annually.

Dispute-Settlement Mechanisms

1889 Convention Between the United States and Mexico to Facilitate Carrying Out the Principles Contained in the Treaty of November 12, 1884

If the Commissioners fail to agree on whether or not a construction project on the Rio Grande or the Colorado River is permitted, then the works may be suspended at the insistence of either Government.[331] A decision of the IBWC is binding upon both Governments, unless one of them disapproves it within 1 month. In case of disagreement, "both Governments shall take cognizance of the matter, and shall decide it amicably, bearing constantly in mind the stipulation of Article XXI of the Treaty of Guadalupe Hidalgo of February 2, 1848."[332]

Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes

The treaty does not provide for dispute settlement.

[328] Points 5 and 7.
[329] Points 1(a) and 1(b).
[330] Point 4.
[331] Art. V.
[332] Art. VIII.

Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

When the IBWC does not reach an agreement, the Commissioners inform their respective Governments, reporting their respective opinions and the grounds therefor. Diplomatic channels resolve the differences.[333]

The Protocol Relating to the Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The protocol does not provide for dispute settlement.

Agreement Between the United States and Mexico on a Permanent and Definitive Solution to the International Problem of Salinity of the Colorado River

Dispute mechanisms are the responsibility of the International Boundary and Water Commission.

Enforcement Mechanisms

1889 Convention Between the United States and Mexico to Facilitate Carrying Out the Principles Contained in the Treaty of November 12, 1884

The agreement does not provide for enforcement mechanisms.

Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes

The treaty does not provide for enforcement mechanisms.

Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The authorities of each country aid and support the exercise and discharge of the IBWC's powers and duties, and each Commissioner will invoke, when necessary, the jurisdiction of the courts or other appropriate agencies of that Commissioner's country to aid in the execution and enforcement of these powers and duties.[334]

The Protocol Relating to the Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The protocol does not provide for enforcement mechanisms.

Agreement Between the United States and Mexico on a Permanent and Definitive Solution to the International Problem of Salinity of the Colorado River

Enforcement mechanisms are under the jurisdiction of the International Boundary and Water Commission.

Provisions for Exchange of Information

1889 Convention Between the United States and Mexico to Facilitate Carrying Out the Principles Contained in the Treaty of November 12, 1884

The IBC is composed of two Commissioners, one appointed by the President of the United States, the other by the President of the United Mexican States. Each section provides information to the other.

Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes

The convention does not provide for exchange of information.

Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The IBWC submits annually a joint report to the two Governments on the matters in its charge. The IBWC also submits joint reports on such matters at other times, as considered necessary or requested by the two Governments.[335]

The Protocol Relating to the Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The protocol does not provide for the exchange of information.

Agreement Between the United States and Mexico on a Permanent and Definitive Solution to the International Problem of Salinity of the Colorado River

The exchange of information is provided by the IBWC.

IMPLEMENTATION

1889 Convention Between the United States and Mexico to Facilitate Carrying Out the Principles Contained in the Treaty of November 12, 1884

The agreement entered into force when signed by both parties.

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[333] Art. 24.
[334] Ibid.
[335] Ibid.

Convention Providing for the Equitable Distribution of the Waters of the Rio Grande for Irrigation Purposes

This agreement entered into force when signed by both parties.

Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The legislative authorization for the IBWC is provided for under 22 U.S.C. 277 et seq. The IBWC is authorized under article 25 of the treaty to issue its decisions on border questions in the form of "minutes." A memorandum of understanding among the Department of State, the IBWC, and EPA established that the work of the IBWC would be coordinated with the initiatives to reduce water pollution along the border provided under the Border Environmental Cooperation Agreement of 1983.

The Protocol Relating to the Treaty Between the United States and Mexico on the Utilization of Waters of the Colorado and the Tijuana Rivers and of the Rio Grande

The protocol entered into force when signed by both parties.

Agreement Between the United States and Mexico on a Permanent and Definitive Solution to the International Problem of Salinity of the Colorado River

The agreement went into force when signed by both parties.

Agreements With Canada

CONVENTION RESPECTING FISHERIES, BOUNDARY, AND RESTORATION OF SLAVES. date signed: 10/20/1818; entry into force: 1/30/1818; citations: 8 Stat. 248, TS 112, 12 Bevans 57; depositary: U.S. Department of State.

TREATY RELATING TO BOUNDARY WATERS, AND QUESTIONS ARISING ALONG THE BOUNDARY BETWEEN THE UNITED STATES AND CANADA. date signed: 1/11/09; entry into force: 5/5/10; citations: 36 Stat. 2448, TS 548, 12 Bevans 319; depositary: U.S. Department of State.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND CANADA RELATING TO COOPERATIVE DEVELOPMENT OF THE WATER RESOURCES OF THE COLUMBIA RIVER BASIN. date signed: 1/17/61; entry into force: 9/16/64; citations: 15 UST 1555, TIAS 5638, 542 UNTS 244; depositary: U.S. Department of State. Protocol 1/22/64; Note from Department of External Affairs, Canada, 9/16/64; Canadian Entitlement Purchase Agreement, 8/13/64.

AGREEMENT BETWEEN THE UNITED STATES AND CANADA ON CONTINGENCY PLANS FOR SPILL OF OIL AND OTHER NOXIOUS SUBSTANCES. date signed: 6/19/74; entry into force: 6/19/74; citations: TIAS 8069, 25 UST 1280; depositary: U.S. Department of State.

Objectives and Obligations

1818 Convention Respecting Fisheries, Boundary, and Restoration of Slaves

The objectives of the convention were to settle questions on U.S. fishing rights in Canada, to establish a line of demarcation between the United States and Canada, and to make provision for the return of property taken during the War of 1812. Parties agreed that the United States would have the right to fish along the coast of Newfoundland and the southern coast of Labrador,[336] that U.S. fishermen could dry and cure such fish in the unsettled bays, harbors, and creeks of the coast of Labrador and the southern part of the coast of Newfoundland; that the United States could not take, dry, or cure fish on or within 3 marine miles of Canada except within the above-mentioned limits; and that U.S. fishermen could enter any area for the purpose of shelter, repair, wood, or water.[337]

The line of demarcation between the United States and Canada, between the Lake of Woods and the Stoney Mountains, was established as the 49th parallel.[338] Territory claimed by either party on the northwest coast of North America, west of the Stoney Mountains, was to be free and open pending settlement of the border between the two countries.[339] All territory, place, and possessions taken by either party from the other during the War of 1812 was to be restored.[340]

1909 Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada

The objective of this treaty was to establish a framework to settle all questions arising between the United States and Canada as a result of their common border and to establish guidelines regarding the use of boundary waters.[341] Parties agreed to institute an

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[336] Art. 1 describes the area as "the Southern Coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the Western and Northern Coast of Newfoundland, from said Cape Ray to the Quirpon Islands on the Shores of the Magdalen Islands, and also on the Coasts, Bays, Harbors, and Creeks from Mount Joly on the Southern Coast of Labrador, to and through the Streights of Belleisle and thence Northwardly indefinitely along the coast."

[337] Art. I.

[338] Art. II.

[339] Art. III.

[340] Art. V.

[341] The preliminary article defines boundary waters as "the waters from main shore to main shore of the lakes and rivers and connecting waterways, or the portion thereof, along which the international boundary between the United States and Canada passes, including all bays, arms, and inlets thereof, but not including tributary waters which in their natural channels would flow into such lakes, rivers, and waterways, or waters flowing from such lakes, rivers, and waterways, or the waters of rivers flowing across the boundary."

International Joint Commission, from which approval must be obtained for any diversion of boundary waters, water flowing from boundary waters, waters flowing across the boundary in rivers, or waters from the Niagara.[342]

Parties also agreed, subject to existing law or treaty provision, that—

(1) all navigable boundary waters, the waters of Lake Michigan, and all canals connecting boundary waters are equally open to the parties for the purposes of commerce;[343]

(2) each party reserves the right to exclusive jurisdiction and control over the use and diversion of all waters on its own side of the line that in their natural flow would cross the boundary or flow into boundary waters; that persons injured by the diversion of such waters are entitled to legal remedies;[344]

(3) boundary waters and water flowing across the boundary will not be polluted on either side to the injury of the health or property of the other;[345] and

(4) the St. Mary and Milk Rivers and their tributaries (in the State of Montana and the Provinces of Alberta and Saskatchewan) are to be treated as one stream for the purposes of irrigation and power, and the water thereof will be apportioned between the two countries.[346]

Treaty Between the United States and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin

The objective of the treaty is to improve the flow of the Columbia River by constructing dams, reservoirs, and hydroelectric facilities, and to provide for the equitable distribution of the resulting hydroelectrical power. Parties agree that Canada will provide storage for 15,500,000 acre-feet of water;[347] that the United States will construct, maintain, and operate its water resource facilities in a manner that makes the most effective use of the hydroelectrical potential of the improvement in streamflow resulting from the operation of the Canadian storage;[348] that neither the United States nor Canada will, without the consent of the other, divert for any use, other than a consumptive use, any water from its natural channel in a way that alters the flow of any water as it crosses the United States-Canadian boundary with the Columbia River;[349] and that a Permanent Engineer Board will report on operational matters.[350] In addition, the treaty sets out, for both countries, entitlement to downstream power benefits, flood control operation plans, payment for flood control, Kootenai River development, water diversions, restoration of pretreaty legal status, and liability.

Agreement Between the United States and Canada on Contingency Plans for Spills of Oil and Other Noxious Substances

The objective of the treaty is to provide for a coordinated response to significant pollution threats to waters of mutual interest. To achieve these objectives, the parties agreed to develop a joint Marine Contingency Plan for spills of oil and other noxious substances.[351]

Dispute-Settlement Mechanisms

1818 Convention Respecting Fisheries, Boundary, and Restoration of Slaves

The convention does not provide for dispute mechanisms.

1909 Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada

Any question or matter of difference arising between parties involving the rights, obligations, or interests of a party may be referred for decision to the IJC by the consent of the two parties;[352] decisions are rendered by a majority of the commissioners. If the IJC is evenly divided on a question, a separate report is made by the commissioner on each side to his own Government. The Governments will then endeavor to agree upon an adjustment of the question and, if an agreement is reached, it will be communicated to the IJC, which will take such further proceeding as may be necessary to carry out such agreement.[353]

Treaty Between the United States and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin

Differences may be referred by either party to the IJC. If the IJC does not render a decision, either country may submit the difference to binding arbitration. Arbitration will be by a tribunal appointed by both countries.[354]

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[342] Arts. III, IV, and V.
[343] Art. I.
[344] Art. II.
[345] Art. IV.
[346] Art. VI.
[347] Art. II.
[348] Art. III.
[349] Art. XIII.
[350] Art. XV.
[351] Art. 1.
[352] Art. X.
[353] Art. VIII.
[354] Art. XVI.

Agreement Between the United States and Canada on Contingency Plans for Spills of Oil and Other Noxious Substances

The agreement does not provide for dispute-settlement mechanisms.

Enforcement Mechanisms

1818 Convention Respecting Fisheries, Boundary, and Restoration of Slaves

The convention does not provide for enforcement mechanisms.

1909 Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada

The IJC has jurisdiction over and passes judgment upon all cases involving the use or obstruction or diversion of the boundary waters.[355]

Treaty Between the United States and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin

The agreement does not provide for enforcement mechanisms.

Agreement Between the United States and Canada on Contingency Plans for Spills of Oil and Other Noxious Substances

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

1818 Convention Respecting Fisheries, Boundary, and Restoration of Slaves

The convention does not provide for the exchange of information.

1909 Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada

A duplicate original of all decisions rendered and joint reports made by the IJC are transmitted to and filed with the Secretary of State of the United States and the Governor General of Canada.

Treaty Between the United States and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin

The agreement does not provide for the exchange of information.

Agreement Between the United States and Canada on Contingency Plan for Spills of Oil and Other Noxious Substances

The agreement does not provide for the exchange of information.

Implementation

1818 Convention Respecting Fisheries, Boundary, and Restoration of Slaves

The agreement entered into force when signed by both parties.

1909 Treaty Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada

The legislative authorization for the IJC is provided for under 22 U.S.C.S. 267(b). The IJC has implemented international point commission boards to decide cases involving the use, obstruction, or diversion of waters on either side of the boundary between the United States and Canada. The IJC's Activities Report for 1987-88 lists the following international boards:

International Advisory Board on Pollution Control, St Croix River;
International Lake Champlain Board of Control;
International St. Lawrence River Board of Control;
International Niagara Board of Control;
International Lake Superior Board of Control;
Great Lakes Water Quality Board;
Great Lakes Science Advisory Board;
International Great Lakes Advisory Board;
International Great Lakes Levels Project Management Team;
International Technical Information Network Board;
International Rainy Lake Board of Control;
International Rainy River Water Pollution Boards;
International Lake of the Woods Board of Control;
International Red River Pollution Board;
International Souris River Board of Control;
International Souris-Red Rivers Engineering Board;
Accredited Officer for the St. Mary and Milk Rivers;
Flathead River International Study Board;
International Kootenai Lake Board of Control;
International Columbia River Board of Control; and
International Osoyoos Lake Board of Control.

[355] Art. VIII.

Treaty Between the United States and Canada Relating to Cooperative Development of the Water Resources of the Columbia River Basin

The United States designates the Administrator of the Bonneville Power Administration, Department of the Interior, and the Division Engineer, North Pacific Division of the Army Corps of Engineers, to formulate and carry out the operating arrangement necessary to implement the treaty. Canada designates the British Columbia Hydro and Power Authority as its representative.[356] The Water Resources Council[357] acts in conjunction[358] with such organizations.[359]

Current Issues

Two boundary water issues that international law and dispute settlement have not decided concern the limits to a nation's right to divert surface water within its own territory and the equitable distribution of international ground water. These issues may affect the future role of the IBWC and the IJC, because interregional commissions have proven to be effective in settling comparable environmental disputes. The use and diversion of surface water affects river flows and consequently, pollution concentration, portability, and salinity. The enumerated powers of the IBWC do not include the resolution of environmental pollution problems. The 1909 Treaty Between the United States and Great Britain Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada gives the IJC specific enforcement powers in the area of the "uses, obstruction, or diversion of boundary waters" but not in the area of water quality or pollution of boundary waters.

A decision on the limit of a nation's right to divert surface water within its own territory is important to the United States because of the wide discrepancy between the water resources of the southwestern United States and the Great Lakes region. One possible solution is to divert fresh surface waters from the water-abundant Great Lakes region—which contains 95 percent of the surface fresh water of the United States—to the water-scarce region of the Southwest. Article II of the 1909 Treaty Between the United States and Great Britain Relating to Boundary Waters and Questions Arising Along the Boundary Between the United States and Canada states that no legal limit can be imposed on a nation's right to divert water within its own territory. However, this article has never been used in the settlement of boundary water disputes between Canada and the United States.[360] Emerging principles on international water law state that successful resolution of water-diversion disputes should include (1) consulting coriparian nations before beginning water projects or diversion that will affect them, (2) planning the development of drainage basins through an international or joint commission instead of nations acting individually, and (3) dividing available water for use among nations according to the principle of equitable apportionment.[361]

The lack of a legal and institutional framework for the regulation of ground water, coupled with the increased demand for water due to population growth, economic development, and irrigation, has resulted in the rapid depletion of this resource. This problem is acute in the border area of the Southwest. In such an environment, scarcity triggers overdrawing rather than conservation because neither side has an assurance of receiving its fair share. A proposed solution is that (1) ground water rights, conservation, and regulation be resolved by mutual agreement between parties and (2) oversight and implementation be a joint responsibility.

Current issues for the 1818 Convention Respecting Fisheries, Boundary, and Restoration of Slaves are discussed above in "Agreements Concerning Marine Fishing and Whaling."

Agreements Concerning Archeological, Cultural, Historical, or Natural Heritage

Introduction

This group of agreements includes those concerning the protection of existing cultural treasures and the recovery and return of stolen archeological, historical, and cultural properties.[362] These agreements are designed to (1) protect archeological sites from illicit excavation; (2) discourage—through education, information, and international cooperation—the trade of stolen cultural properties; and (3) initiate programs to educate the public about the irreplaceable nature of their cultural heritage.

Parties to the European Convention on the Protection of the Archeological Heritage and to the U.S. bilateral agreements with Mexico, Peru, and Guatemala agree to return articles of cultural heritage that have been removed illicitly. Requests for the return of cultural property must be made through

[356] Art. XIV of the treaty and Note from Department of External Affairs, Canada, Sept. 16, 1964.

[357] The Council is composed of the Secretaries of Interior, Agriculture, the Army, Commerce, Housing and Urban Development, and Transportation; the Administrator of EPA; and Chairman of the Federal Energy Regulatory Commission.

[358] The Council continually studies and prepares a biennial assessment of the water supplies necessary to meet the requirements in each water resource region in the United States. It also compares regional or river basin plans and programs to the requirements of larger regions, evaluates the adequacy of administrative and statutory coordination of Federal water and land resource policies, and makes recommendations to the President.

[359] Water Resource Planning, 42 U.S.C.S. 1962.

[360] The water disputes between Canada and the United States involved (1) Point of Woods, where U.S. land was flooded when a dam was built by Canada at the outlet of the Lake of Woods, and (2) the Columbia River Basin, where the United States developed the river system without sharing the hydroelectric benefits with Canada. Neither dispute was resolved by the IJC.

[361] Tim A. Kalavrouziotis, "U.S.-Canadian Relations Regarding Diversion From an International Basin: An Analysis of Article II of the Boundary Waters Treaty," *Fordham International Law Journal*, vol. 12, p. 671).

[362] See individual treaties for their respective definitions of archeological, historical, and cultural properties.

diplomatic channels, and all expenses must be paid by the requesting party. The requesting party cannot claim compensation from the returning party for damage or loss of property in connection with the performance of the latter's obligations under a treaty.

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property and the Convention on the Protection of the Archeological, Historical and Artistic Heritage of the American Nations offer the highest levels of protection for cultural property. These conventions require that parties pass laws prohibiting the trade of illicitly obtained cultural properties, that they initiate stringent export procedures, that they maintain a national inventory of cultural properties, and that they outline acquisition procedures designed to prevent museums and dealers from purchasing illicitly obtained cultural properties.

The Convention on the World Heritage sets up a framework for the protection of cultural heritage. This framework consists of (1) a World Heritage Committee with Unesco, (2) a World Heritage List of cultural property, (3) a List of World Heritage in Danger, and (4) a World Heritage Fund for the protection of the world's cultural heritage.

Agreements

TREATY OF COOPERATION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES PROVIDING FOR THE RECOVERY AND RETURN OF STOLEN ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES. date signed: 07/17/70; entry into force: 03/24/71; citations: 22 UST 494; TIAS 7088; 791 UNTS 313; depositary: U.S. Department of State.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PERU FOR THE RECOVERY AND RETURN OF STOLEN ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES. date signed: 9/15/81; entry into force: 9/15/81; citations: 33 UST 1607; TIAS 10136; depositary: U.S. Department of State.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND GUATEMALA FOR THE RECOVERY AND RETURN OF STOLEN ARCHAEOLOGICAL, HISTORICAL AND CULTURAL PROPERTIES. date signed: 5/21/84; entry into force: 8/22/84; citations: ; depositary: U.S. Department of State.

EUROPEAN CONVENTION ON THE PROTECTION OF THE ARCHAEOLOGICAL HERITAGE. date signed: 05/06/69; entry into force: 11/20/70; citations: UNEP/GC.15/Inf.2/page 77; depositary: Council of Europe.

CONVENTION ON THE PROTECTION OF THE ARCHAEOLOGICAL, HISTORICAL, AND ARTISTIC HERITAGE OF THE AMERICAN NATIONS. date signed: 6/16/76; entry into force: 6/30/78; citations: UNEP/GC.15/Inf.2/page 150; depositary: Organization of American States.

CONVENTION FOR THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE. date signed: 11/23/73; entry into force: 12/17/75; citations: TIAS 8226, 27 UST 37; depositary: Unesco.

CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT, AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY. date signed: 11/14/70; entry into force: 12/2/83; citations: 823 UNTS 231, 10 ILM 289; depositary: Unesco.

Objectives and Obligations

Treaty of Cooperation Between the United States and the United Mexican States

The objectives of this agreement are to encourage the discovery, excavation, preservation, and study of archeological sites and materials by qualified scientists and scholars of both the United States and Mexico; to deter illicit excavations of archeological sites and the theft of archeological, historical, or cultural properties;[363] to encourage the circulation and exhibition in both countries of archeological, historical, and cultural properties in order to enhance the mutual understanding and appreciation of the artistic and cultural heritage of the two countries; and to permit legitimate international commerce in archeological, historical, and cultural properties. Each party is obliged, at the request of the other, to return any archeological, historical, or cultural properties that were removed after the date of entry into force of the treaty, and to furnish, at its own expense, documentation and other evidence necessary to establish its claim to such property.[364]

Agreement Between the United States and the Republic of Peru

The objectives of the agreement are to encourage the circulation and exhibition of archeological, historical, and cultural properties; to deter illicit excavation of archeological sites and the theft of such properties; and to stimulate the discovery, excavation, preservation, and study of archeological sites and materials by qualified scientists and

[363] Defined by art. 1 as "properties of federal, state, or municipal governments or their instrumentalities which are (1) art objects and artifacts of the pre Columbian culture or colonial period, of outstanding national importance; and (2) documents from official archives for the period up to 1920 that are of outstanding historical importance."

[364] Art. 3.

scholars.[365] The agreement provides for the recovery by one party of any stolen archeological, historical, or cultural properties that are likely to be introduced into international trade.[366]

Agreement Between the United States and Guatemala

The agreement with Guatemala is similar in content and structure to that with Peru (see above).

European Convention on the Protection of the Archaeological Heritage

The objectives of this convention are as follows:

- to protect current and future sites of archeological interest; prohibit the illicit excavations of archeological objects;[367] and
- to prevent the trade of archeological objects obtained from illicit excavations; and encourage the education of the public with respect to its archeological heritage.[368]

Parties are obliged—

- to establish a national inventory and catalog of publicly owned and, when possible, privately owned archeological objects;[369]
- to encourage the exchange of information among scientific institutions, museums, and national departments on authorized and illicit excavations of archeological objects;[370]
- to inform states of origin, contracting parties, and museums of the offer of archeological articles that have been excavated unlawfully;[371]
- to take measures necessary to avoid the acquisitions of archeological articles that have been excavated unlawfully;[372]
- to give consideration to any question raised by a contracting party on the identification and authenticity of an archeological article;[373] and
- to educate the public to the value of, and threats to, archeological heritage.

Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations

The objective of this convention is to prevent the illegal trade of articles that are part of the cultural heritage of the American nations and to promote cooperation among the American states for the appreciation of their cultural property.[374] Parties agree to establish a registry for cultural property; to pass laws prohibiting the unauthorized trade of cultural property;[375] to take the necessary measures to protect cultural property from deterioration and destruction; to establish technical institutions to encourage and protect archeological sites;[376] and, if petitioned, to employ all lawful means to locate, recover, and return all cultural property claimed to have been illegally removed from its country of origin.[377]

Convention for the Protection of the World Cultural[378] and National Heritage[379]

The objective of this convention is to ensure the identification, protection, conservation, presentation, and transmission to future generations of the world's

[365] Art. I defines archeological, historical, and cultural properties as "properties of the federal, state, or municipal governments or their instrumentalities, or of religious organizations on whose behalf such government or instrumentalities may act which are (1) art objects and artifacts of the pre-Columbian cultures of the two countries, including architectural features, sculptures, pottery pieces, metalwork, textiles and other vestiges of human activity, or fragments thereof; (2) art objects and religious artifacts of the colonial periods, or fragments thereof; and (3) documents from official archives for the period prior to 1920."

[366] Art. II.

[367] Defined by art. 1 to include "all remains, objects, or any other traces of human existence that are the main source or one of the main sources of scientific information of an epoch or civilization."

[368] Art. 3.

[369] Art. 4.

[370] Art. 4.

[371] Art. 5.

[372] Art. 6.

[373] Art. 7.

[374] Defined by art. 2 as "(a) monuments, objects, fragments of ruined buildings, and archeological materials belonging to American cultures existing prior to contact with European culture, as well as remains of human beings, fauna, and flora related to such cultures; (b) monuments, buildings, objects of artistic, utilitarian, and ethnological nature, whole or in fragments, from the colonial era and the nineteenth century; (c) libraries and archives, incunabula and manuscripts, books and other publications, ichnographies, maps, and documents published before 1850; (d) all objects originating after 1850 that the parties have recorded as cultural property, provided that they have given notice of such registration to the other parties to the treaty; (e) all cultural property that any of the parties specifically declared to be included within the scope of the treaty."

[375] Art. 7.

[376] Art. 8.

[377] Art. 11.

[378] Defined by art. 1 to include "monuments, groups of buildings, or sites. Monuments include architectural works, sculpture and painting, archeological elements or structures, inscriptions, and cave dwellings which are of outstanding universal value from the point of view of history, art, or science. Groups of buildings are separate or connected buildings which, because of their architecture, their homogeneity, or their place in the landscape, are of outstanding universal value from the point of view of history, art, or science. Sites are works of man or the combined works of nature and of man, and areas including archeological sites of outstanding universal value from the historical, aesthetic, ethnological, or anthropological points of view."

[379] Defined by art. 2 to include "(1) natural features consisting of physical and biological formations or groups of such formations; (2) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants; and (3) natural sites or precisely delineated natural areas. These elements must be of outstanding universal value from an aesthetic, scientific, conservation, or natural beauty perspective."

cultural and natural heritage. Parties are to establish a World Heritage Committee within Unesco,[380] a World Heritage List,[381] a List of World Heritage in Danger,[382] and a World Heritage Fund.[383] The World Heritage Committee comprises 15 members elected from the parties to the convention. Representatives of other organizations with similar objectives may be added at the request of the parties. The World Heritage List is an inventory of the properties considered to be part of the world cultural and natural heritage. The List of World Heritage in Danger includes those properties appearing in the World Heritage List for which major conservation operations are necessary and for which assistance has been requested under the convention.

The World Heritage Fund is for the protection of world cultural and national heritage. The chief resources of the fund are compulsory and voluntary contributions made by the parties; contributions, gifts, or bequests from other states, international organizations, or private parties; interest accrued on the resources of the fund; and receipts from organized events. Contributions to the fund may be used only for such purposes as the World Heritage Committee determines and are not subject to political conditions.[384]

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

The objective of this convention is to protect the world's cultural property[385] against illicit import, export, and transfer of ownership. The convention considers as illegal the export and transfer of ownership of cultural property under compulsion arising from the occupation of a country by a foreign power.[386] Parties are obliged—

- to formulate laws and regulations designed to secure the protection of cultural heritage;
- to maintain an inventory of national cultural property; to establish for the benefit of those concerned (e.g., curators, collectors, and antique dealers) ethical rules for purchasing of cultural property;
- to require commercial dealers to keep an inventory of their sales of cultural property;
- to require that exports of cultural property be accompanied by a certificate of authorization;
- to initiate legal procedures to recover and return any illegally exported cultural property;
- to impose penalties or administrative sanctions on any person responsible for infringing the prohibition on the illicit import, export, or change of ownership of cultural property; and

to provide technical institutions to ensure the preservation and presentation of cultural property, to supervise the excavation of archeological sites, and to educate the public to the value of cultural property.[387]

Dispute-Settlement Mechanisms

Treaty of Cooperation Between the United States and United Mexican States

Whether or not an article is of archeological, historical, or cultural significance is determined by agreement of the two Governments, or failing agreement, by a panel of qualified experts whose appointments and procedures are prescribed by the two Governments. The determinations are final.[388]

Agreement Between the United States and the Republic of Peru

The agreement does not provide for dispute settlement.

Agreement Between the United States and Guatemala

The agreement does not provide for dispute settlement.

European Convention on the Protection of the Archaeological Heritage

The convention does not provide for dispute settlement.

Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations

Disagreements between parties regarding application of the definitions and categories of article 2 to specific property are resolved definitively by the Inter-American Council for Education, Science, and Culture (CIECC), following an opinion by the Inter-American Committee on Culture.[389]

Convention for the Protection of the World Cultural and National Heritage

The agreement does not provide for dispute settlement.

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[380] Art. 8.
[381] Art. 11.
[382] Art. 11.
[383] Art. 15.
[384] Art. 15.
[385] Defined by the Convention as "property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, literature, art, or science."
[386] Art. 11.
[387] Art. 5.
[388] Art. I(2).
[389] Art. 4.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

At the request of at least two parties engaged in a dispute, Unesco may extend its good offices to reach a settlement between them.[390]

Enforcement Mechanisms

Treaty of Cooperation Between the United States and the United Mexican States

If the requested party cannot otherwise effect the recovery and return of a stolen archeological, historical, or cultural property located in its territory, the attorney general of the requested party begins judicial proceedings in its district courts.[391]

Agreement Between the United States and the Republic of Peru

The agreement does not provide for enforcement mechanisms.

Agreement Between the United States and Guatemala

The agreement does not provide for enforcement mechanisms.

European Convention on the Protection of the Archaeological Heritage

The convention does not provide for enforcement mechanisms.

Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations

The petitioning state has the right to begin appropriate judicial action in the state petitioned in order to bring about the recovery of cultural property.[392] Those responsible for the illegal trade of cultural property are subject to extradition treaty provisions, when appropriate.[393]

Convention for the Protection of the World Cultural and National Heritage

The agreement does not provide for enforcement mechanisms.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

Agreement Between the United States and the United Mexican States

Parties undertake to facilitate the circulation and exhibition of archeological, historical, and cultural properties in order to enhance mutual understanding and appreciation of the cultural heritage of the two countries.[394] Representatives of the two countries, including qualified scientists and scholars, are to meet from time to time to consider matters relating to the implementation of this agreement.[395]

Agreement Between the United States and the Republic of Peru

Parties undertake to facilitate the circulation and exhibition of archeological, historical, and cultural properties in order to enhance mutual understanding and appreciation of the cultural heritage of the two countries.[396]

Agreement Between the United States and Guatemala

The provisions for the exchange of information are nearly identical to those provided in the agreement with Peru.

European Convention of the Protection of the Archaeological Heritage

The Secretary General of the Council of Europe notifies the member states of the Council and any state that has acceded to this convention of any signature; any deposit of an instrument of ratification, acceptance, or accession; or any extension or denunciation of the convention by a territory of a particular state.[397]

Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations

Parties agree to encourage the circulation, exchange, and exhibition of cultural property and the results of archeological excavations and discoveries.[398]

Convention for the Protection of the World Cultural and National Heritage

Parties submit reports to the General Conference of Unesco giving information on the legislative and administrative provisions that they have adopted and other actions they have taken for the application of the convention. These reports are brought to the attention of the World Heritage Committee, which submits a report on its activities at each of the ordinary sessions of the General Conference.

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390 Art. 17(5).
391 Art. III.
392 Art. 11.
393 Art. 14.
394 Art. II(1)(2).
395 Art. II(2).
396 Art. I.
397 Art. 14.
398 Art. 15.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

Parties give information in their periodic reports submitted to the General Conference of Unesco on the legislative and administrative provisions they have adopted and other actions they have taken in the application of the convention.[399]

Implementation

Bilateral Agreements between the United States and Latin American Countries

U.S. implementation

The United States enacted the Importation of Pre-Columbian Monuments or Architectural Sculpture or Murals Act in 1972. The legislation placed import restrictions on stone carvings or murals of a Pre-Columbian culture.[400]

Implementation by others

Mexico has enacted the following laws for the protection of its cultural heritage: Archeological Monuments (May 11, 1897); Protection and Conservation of Monuments and Natural Beauty (1930); Protection and Preservation of Archeological and Historic Monuments, Typical Towns and Places of Scenic Beauty (1934); Cultural Patrimony of the Nation (1970); and Archeological, Artistic and Historic Monuments and Zones (May 6, 1972). Guatemala nationalized all its archeological monuments and relics through its constitution. Information on Peruvian implementation is not available.

European Convention on the Protection of the Archaeological Heritage

The United States cannot be a party to the convention, which is open only to members of the Council of Europe.

Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations

U.S. implementation

The United States is not a party to this agreement.

Implementation by others

The General Secretariat of the Organization of American States is charged with (1) ensuring the enforcement and effectiveness of the convention; (2) establishing an Inter-American Registry of cultural property; (3) promoting coordination of national legislation and technical cooperation, and (4) encouraging the exhibition and exchange of cultural property.[401]

Convention for the Protection of the World Cultural and National Heritage

U.S. implementation

The diplomatic implementation of the treaty is provided by the State Department's Office of International Organizations. The oversight of cultural property is provided by the National Park Service's Office of International Programs and by the Federal Interagency Committee. The Advisory Council on Historic Preservation also assists in the preservation, restoration, and maintenance of the historic and cultural environment of the United States.[402]

Implementation by others

Unesco provides the organizational framework for international implementation. The International Center for the Study of the Preservation and Restoration of Cultural Property, the International Council of Monuments and Sites, and the International Union for Conservation of Nature and Natural Resources also cooperate in the implementation of the convention.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

U.S. implementation

The diplomatic implementation of the treaty also is provided by the State Department's Office of International Organizations, and oversight, provided by the National Park Service. The Advisory Council on Historic Preservation also assists in the preservation, restoration, and maintenance of the historic and cultural environment of the United States.[403]

The implementation of import restrictions to prevent the illicit trade of cultural property is assigned to the United States Information Agency, the Secretary of State, and the Secretary of the Treasury, acting in consultation with each other.[404]

Implementation by others

Unesco provides the organizational framework for international implementation.

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[399] Art. 16.

[400] 19 U.S.C. 2091-2095 (1982).

[401] Art. 17.

[402] National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321 et seq.); National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470 et seq.); Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461 et seq.); Executive Order 11593, May 13, 1971 "Protection and Enhancement of the Cultural Environment."

[403] Ibid.

[404] Convention on Cultural Property (19 U.S.C. 2601 et seq.), Pub. L. 97 446, Jan. 12, 1983; Ex. Ord. No. 12555, Protection of Cultural Property, Mar. 10, 1986, 51 F.R. 8475; U.S. Customs Service, Seizure and Detention of Pre Columbian Artifacts, Policies and Procedures Manual Supp. No. 3280-01 (Oct. 5, 1982).

Current Issues

The conflict of interest between the archeologically rich nations and the archeologically poor nations is an issue that affects the protection of cultural property. Art-rich nations are usually underdeveloped but have a significant amount of discovered or undiscovered cultural property. Art-poor nations have few archeological resources but have significant amounts of capital to purchase works of art for display, study, preservation, profit, or status. The strong demand for artifacts often causes the looting and pillaging of archeological sites and the destruction of cultural property owing to the hurried nature of its removal.

There is some ambiguity in the implementation by art-poor nations of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. In particular, there is a problem in the interpretation of "world cultural property" versus "national cultural property." Artifacts that are considered to be a part of the world's heritage must be administered for the good and benefit of mankind and protected and preserved for the benefit of everyone.[405] As a result, the repatriation of world cultural property is far more difficult than that of national cultural property. There is no agreement among those recognizing the importance of national cultural heritage as to the criteria to be employed in evaluation of the importance of world cultural or national cultural heritage. An example of this issue is the removal of Trojan relics from Turkey by Heinrich Schliemann in the late 1800s. The question is whether removal of the relics was the only way to preserve and protect artifacts, in which case it is argued that they should not be returned, or whether the artifacts should be considered part of Turkey's national heritage in any case and therefore be repatriated.

The amount of legal and administrative documentation required for the repatriation of cultural property has also been a subject of dispute. Under the agreement, articles cannot be returned unless they have been previously inventoried. Requests for repatriation must be made through diplomatic channels and may have to be pursued in the courts. Less developed countries usually do not have the resources to adequately meet these demands because artifacts are often located in remote regions and because administrative and legal personnel are focused on other issues.

Parties

European Convention of the Protection of the Archaeological Heritage

Austria
Belgium
Cyprus
Denmark
France
Germany
Greece
Italy
Liechtenstein
Luxembourg
Malta
Portugal
Spain
Sweden
Switzerland
United Kingdom
Vatican

Convention on the Protection of the Archaeological, Historical, and Artistic Heritage of the American Nations

Costa Rica
Ecuador
El Salvador
Guatemala
Haiti
Honduras
Nicaragua
Panama
Peru

Convention for the Protection of the World Cultural and National Heritage

Afghanistan
Algeria
Antigua and Barbuda
Argentina
Australia
Bangladesh
Benin
Bulgaria
Bolivia
Brazil
Burundi
Cameroon
Canada
Cape Verde
Central African Republic
Chile
China
Colombia
Congo
Costa Rica
Cuba
Cyprus
Denmark
Dominican Republic
Ecuador
Egypt
Ethiopia
Finland
France
Gabon
Germany
Ghana
Greece

[405] "The Recovery of Cultural Artifacts: the Legacy of Our Archaeological Heritage," *Case Western Reserve Journal of International Law*, vol. 11, p. 165.

Guatemala
Guinea
Guyana
Haiti
Honduras
Hungary
India
Iran (Islamic Republic of)
Iraq
Italy
Ivory Coast
Jamaica
Jordan
Lebanon
Libyan Arab Jamahiriya
Luxembourg
Madagascar
Malawi
Maldives
Mali
Malta
Mauritania
Mexico
Monaco
Morocco
Mozambique
Nepal
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Peru
Philippines
Poland
Portugal
Qatar
St. Christopher and Nevis
Saudi Arabia
Senegal
Seychelles
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syrian Arab Republic
Tanzania
Thailand
Tunisia
Turkey
Uganda
United Kingdom
United States
Vatican
Vietnam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

Algeria
Argentina
Australia
Bangladesh
Belize
Bolivia
Brazil
Bulgaria
Burkina Faso
Byelorussian Soviet Socialist Republic
Cameroon
Canada
Central African Republic
China
Colombia
Cuba
Cyprus
Czechoslovakia
Democratic Kampuchea
Democratic People's Republic of Korea
Dominican Republic
Ecuador
Egypt
El Salvador
Germany
Greece
Guatemala
Guinea
Honduras
Hungary
India
Iran (Islamic Republic of)
Iraq
Italy
Jordan
Korea, Republic of
Kuwait
Libya
Madagascar
Mali
Mauritania
Mauritius
Mexico
Nepal
Nicaragua
Niger
Nigeria
Oman
Pakistan
Panama
Peru
Poland
Portugal
Qatar
Saudi Arabia
Senegal

Spain
Sri Lanka
Syrian Arab Republic
Tunisia
Turkey
Ukrainian Soviet Socialist Republic
United Republic of Tanzania
U.S.S.R.
United States
Uruguay
Yugoslavia
Zaire
Zambia

Agreements Concerning Maritime and Coastal Waters Matters

Introduction

Since the end of World War II, substantial international attention has been focused on the need for a legal regime to govern the exploration of the world's oceans and the exploitation of ocean resources. As part of this regime, nations have been encouraged to protect the marine environment. This commitment is summarized in article 194 of the 1982 U.N. Convention on the Law of the Sea:

> States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment.

In 1948 the U.N. established the Intergovernmental Maritime Consultative Organization—now called the International Maritime Organization (IMO)[406]—to provide a framework within which international agreements to protect the marine environment could be negotiated. Within this multilateral setting, several conventions regulating marine pollution entered into force.[407] By the late 1950s, growing interest in a codification of oceans law led to a special U.N. Conference on the Law of the Sea, convened in Geneva in February 1958. After the adoption of three conventions in Geneva, negotiations continued for several years, culminating in the signing of the U.N. Convention on the Law of the Sea in December 1982. The United States is not a party to this convention.

Finally, multilateral agreements to promote ocean exploration and scientific research have been a continuing source of interest in the postwar era. Most recently, the United States and the Soviet Union signed a bilateral ocean studies agreement on June 1, 1990, to encourage cooperation between the two countries in carrying out scientific exploration of the world's oceans.

[406] The name of the organization was officially changed to the International Maritime Organization (IMO) effective May 22, 1982.

[407] For a discussion of these conventions, see "Agreements Concerning Marine Pollution," above.

Agreements

CONVENTION ON THE INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (hereafter referred to as the International Maritime Organization (IMO) Convention). **date signed:** 3/6/48; **entry into force:** 03/17/58; **citations:** TIAS 4044, 9 UST 621, 289 UNTS 48; Amendment of 9/15/64: TIAS 6285, 18 UST 1299, 607 UNTS 276; Amendment of 9/28/65: TIAS 6490, 19 UST 4855, 649 UNTS 334; Amendment of 10/17/74: TIAS 8606, 28 UST 4607; Amendment of 11/14/75: TIAS 10374; Amendment of 11/17/77: none; Amendment of 11/15/79: none; **depositary:** U.N.

Objectives and Obligations

According to article 1 of the convention, the principal objective of the International Maritime Organization is to provide a forum within which governments can cooperate in harmonizing regulations and practices that affect shipping involved in international trade. The IMO is assigned the task of promoting "the general adoption of the highest practicable standards in matters concerning maritime safety and the efficiency of navigation."[408]

The convention also seeks to discourage governments from taking measures that might restrict free navigation and the availability of shipping services vital to the smooth conduct of international commerce. Policies that favor national shipping interests are not specifically prohibited; however, article 1 states that measures limiting free navigation shall be regarded as discriminatory.

No specific reference is made to marine pollution in the treaty text; nonetheless, the IMO has been given certain responsibilities in this area by other international conventions regulating pollution at sea. These conventions include the 1954 Oil Pollution Convention, the 1969 Intervention Convention, the 1969 Civil Liability Convention, the 1971 Compensation Fund Protocol, the 1973/1978 Ship Pollution Convention, and the 1974 International Convention for the Safety of Life at Sea.[409] By virtue of its role as the U.N.'s specialized maritime agency, the activities of the IMO have been extended far beyond the objectives laid out in article 1 of the 1948 convention.[410]

[408] Art. 1(a).

[409] For a discussion of these agreements, see "Agreements Concerning Marine Pollution," above.

[410] For a detailed discussion of the IMO and the objectives of the IMO Convention, see Eldon V.C. Greenberg, "IMCO: An Environmentalist's Perspective," *Case Western Reserve Journal of International Law*, vol. 8, No. 1, Winter 1976. Art. 3(b) of the convention calls on the organization "to provide for the drafting of conventions, agreements, or other suitable instruments, and to recommend these to Governments and to intergovernmental organizations, and to convene such conferences as may be necessary."

Dispute-Settlement Mechanisms

The convention provides for consideration by the IMO of disputes between member governments if other methods have proven unsuccessful. Article 4 allows the organization to consider disputes concerning "unfair restrictive practices," if direct negotiations between shipping interests, as well as the interested member governments, fail to produce a settlement.

With regard to disagreements over the interpretation of the convention, article 55 provides for the referral of disputes to the IMO Assembly or for settlement "in such other manner as the parties to the dispute agree." According to article 56, disputes that cannot be settled in this manner may be directed to the International Court of Justice for an advisory opinion.

Enforcement Mechanisms

No enforcement mechanisms are identified in the convention. The primary goal of the organization has been the creation of a forum for the exchange of information between member governments. Accordingly, the IMO has relied upon international agreements and nonbinding measures in carrying out its mandate.

Provisions for Exchange of Information

The Secretary General of the IMO is given responsibility in article 36 of the convention for keeping members informed regarding the organization's activities. In addition, articles 46, 47, and 48 provide for the exchange of information on maritime matters with the Specialized Agencies of the U.N., intergovernmental organizations not attached to the U.N., and nongovernmental agencies with related interests.

Implementation

The IMO has historically carried out its mandate through other international agreements negotiated under the organization's auspices. For details concerning implementation of marine pollution agreements reached within the IMO framework, see the section entitled "Agreements Concerning Marine Pollution" in this report.

The State Department has designated the U.S. Coast Guard as the lead agency in representing the United States before the IMO. The Coast Guard assumes this responsibility in accordance with an act of Congress passed on August 4, 1949.[411] The Coast Guard represents the United States in close cooperation with the State Department, EPA, and NOAA. (Contact: Lt. Cmdr. Galan McEachin, U.S. Coast Guard, (202) 267-0422)

[411] 14 U.S.C. 2 and 14 U.S.C. 89, Pub. L. 81-207, 63 Stat. 496 (Aug. 4, 1949). Administrative duties of the Coast Guard are detailed in 46 C.F.R., pts. 1-199.

Current Issues

Since the 1989 Group of Seven economic summit in Paris, considerable attention has been focused on the need for a new international agreement on the prevention of oil pollution. A major issue has been the need for quick deployment of oil spill cleanup equipment, particularly in the aftermath of the Exxon Valdez spill in March 1989. The topic was scheduled to be discussed at a November 1990 conference of the IMO Marine Environment Protection Committee.

The principal concern of the organization today is to ensure that conventions, codes, and other international instruments previously adopted are effectively implemented and enforced. In accordance with this strategy, the IMO has made clear its desire to consider proposals for new conventions only if a "clear and well-documented demonstration of compelling need" exists.[412]

Parties

Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Benin
Bolivia
Brazil
Brunei
Bulgaria
Burma
Cambodia
Cameroon
Canada
Cape Verde
Chile
China
Colombia
Congo
Costa Rica
Cote d'Ivoire
Cuba
Cyprus
Czechoslovakia
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Ethiopia

[412] *IMO: What It Is, What It Does, How It Works*, International Maritime Organization, London, 1986, p. 32.

Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kenya
Korea, Democratic People's Republic of
Korea, Republic of
Liberia
Libya
Madagascar
Malawi
Malaysia
Maldives
Malta
Mauritania
Mauritius
Mexico
Morocco
Mozambique
Nepal
Netherlands
New Zealand
Nicaragua
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Portugal
Qatar
Romania
St. Lucia
St. Vincent & the Grenadines
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
Somalia
Spain
Sri Lanka
Sudan
Suriname
Sweden
Switzerland
Syria
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Turkey
U.S.S.R.
United Arab Emirates
United Kingdom
United States
Uruguay
Vanuatu
Venezuela
Vietnam
Yemen
Yugoslavia
Zaire

U.N. Conference on the Law of the Sea: 1958 Conventions:

CONVENTION ON THE HIGH SEAS. date signed: 04/29/58; **entry into force:** 09/30/62; **citations:** 13 UST 2312, TIAS 5200, 450 UNTS 82; **depositary:** U.N.

CONVENTION ON THE CONTINENTAL SHELF. date signed: 04/29/58; **entry into force:** 06/10/64; **citations:** 15 UST 471, TIAS 5578, 499 UNTS 311; **depositary:** U.N.

CONVENTION ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE. date signed: 04/29/58; **entry into force:** 09/10/64; **citations:** 15 UST 1606, TIAS 5639, 516 UNTS 205; **depositary:** U.N.

Objectives and Obligations

Convention on the High Seas

The aim of the agreement, expressed in the preamble, is "to codify the rules of international law relating to the high seas" as set forth at the U.N. Conference on the Law of the Sea, held at Geneva from February 24 to April 27, 1958. As defined here, the term "high seas" refers to "all parts of the sea that are not included in the territorial sea or in the internal waters of a State."[413]

[413] Art. 1. See the 1958 Convention on the Territorial Sea and the Contiguous Zone for a more precise definition of "territorial sea."

Article 2 of the convention asserts the right of all states to exercise freedom of navigation, freedom of fishing, freedom to lay submarine cables, and freedom to fly over the high seas. However, article 2 also provides that "no State may validly purport to subject any part of [the high seas] to its sovereignty." Coastal states are obliged to provide free transit through their territory to noncoastal states. Ships flying the flag of a noncoastal state are also guaranteed equal access under article 3 to the high seas and coastal ports.

Each party is required under article 5 to "fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag." In accordance with article 8, states are forbidden from exercising jurisdiction over warships from other countries on the high seas. Similarly, article 9 states that ships "used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag State."

Parties are required under article 10 to "take such measures for ships under its flag as are necessary to ensure safety at sea" with respect to communications, the manning and construction of ships, and the prevention of collisions. With regard to disciplinary action taken against operators of vessels, only the "judicial or administrative authorities of the flag State or the State of which [the master or any other person in the service of the ship] is a national" may be utilized.[414] States are also bound by article 12 of the convention to "require the master of a ship sailing under its flag" to offer assistance to persons in danger of being lost at sea, and "to proceed with all possible speed to the rescue of persons in distress." Article 12 also requires ships flying the state's flag to help in the event of a collision at sea. Finally, article 12 calls on coastal states to maintain "an adequate and effective search and rescue service."

Parties are required to prevent and punish the transport of slaves in any of its flag ships, and to engage in the "repression of piracy on the high seas or in any other place outside the jurisdiction of any State."[415]

Every signatory state is obliged under article 24 to "draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation and exploration of the seabed and its subsoil, taking account of existing treaty provisions on the subject." Moreover, article 25 requires states to take action to prevent pollution caused by the dumping of radioactive waste at sea.

Finally, articles 27 and 28 call on states to take the necessary legislative action to ensure that any willful or negligent breaking or damaging of submarine cables or pipelines under the high seas shall be a punishable offense.

[414] Art. 11.

[415] Art. 13 refers to the transport of slaves, and art. 14 addresses piracy. Rules governing the prevention of piracy are spelled out in arts. 15-21.

Convention on the Continental Shelf

The purpose of the convention is to codify the rules of international law that relate to the continental shelf—defined in this context as (a) "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas," or (b) "the seabed and subsoil of similar submarine areas adjacent to the coasts of islands."[416]

Article 2 of the convention confers upon the coastal state sovereign rights over the continental shelf "for the purpose of exploring it and exploiting its natural resources." Any effort on the part of another state to explore the continental shelf or exploit its resources without the consent of the coastal state is forbidden in accordance with article 2. In carrying out exploration, the coastal state "may not impede the laying of submarine cables or pipelines on the continental shelf."[417] Nor may it interfere "with navigation, fishing or the conservation of living resources of the sea." Further, according to article 5, the state may not undertake any action that might jeopardize "fundamental oceanographic or other scientific research carried out with the intention of open publication."

States are required under article 5 to provide notice of intent to build any installations on the continental shelf designed to aid in the exploration and exploitation of natural resources. Although these installations are permitted under article 5, they do not possess the legal status of islands. In operating an installation of this kind, the coastal state is obliged to take "all appropriate measures for the protection of the living resources of the sea from harmful agents."[418]

Convention on the Territorial Sea and Contiguous Zone

The basic objective of the convention, as outlined in article 1, is to lay down rules governing the exercise of sovereignty by coastal states over "a belt of sea adjacent to its coast, described as the territorial sea." A precise definition of the term "territorial sea," including the method to be used in determining its limits, is offered in articles 3-13. States are required under article 14 to respect the right of ships to enjoy innocent passage through the territorial sea. Furthermore, coastal states are obliged by article 15 to publicize any known dangers to navigation. Finally, parties to the convention are bound to observe stringent rules governing the arrest of people on board ships traveling through territorial waters.[419]

[416] Art. 1.

[417] Art. 4.

[418] Art. 5.

[419] Art. 19 spells out the precise conditions under which arrests and investigations may be made.

Dispute-Settlement Mechanisms

Although no reference is made to dispute settlement in the conventions themselves, an optional protocol concerning compulsory settlement was also signed on April 29, 1958. The protocol calls for settlement in the International Court of Justice, unless some other form of settlement has been agreed upon by the parties to the dispute.[420]

Enforcement Mechanisms

Convention on the High Seas

Articles 24 and 25 of the convention call on member states to draw up regulations aimed at preventing oil pollution at sea and the dumping of radioactive waste. Each state is obliged to "cooperate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above resulting from any activities with radioactive materials or other harmful agents."[421] Article 27 calls on member states to enact legislation providing for the punishment of ships that willfully or negligently break or injure submarine pipelines or cables.

Convention on the Continental Shelf

The convention does not provide for enforcement mechanisms.

Convention on the Territorial Sea and Contiguous Zone

The convention does not provide for enforcement mechanisms.

Provisions for Exchange of Information

All three of the conventions provide that the U.N. Secretary General shall be the principal conduit of information related to the agreements.[422]

Implementation

Responsibility for enforcement of Federal maritime law is assigned to the U.S. Coast Guard under Title 14 of the U.S. Code.[423] For each of the three 1958 conventions, the Coast Guard takes the leading role in ensuring U.S. compliance with international legal principles.[424] Additional legislation passed by the U.S. Congress is outlined below. (Contact: Fred Presley, U.S. Coast Guard, (202) 267-1527)

Convention on the Continental Shelf

U.S. implementation

The principal pieces of U.S. legislation in the area of continental shelf environmental protection are the Outer Continental Shelf Lands Act of 1978[425] and the Marine Protection, Research and Sanctuaries Act of 1972.[426] Administration of the Outer Continental Shelf Lands Act is the responsibility of the Secretary of the Interior. The Secretary grants authority for administration of certain aspects of outer continental shelf law to the Bureau of Land Management and the U.S. Geological Survey—divisions of the Department of the Interior.[427] In addition, the 1972 Marine Protection and Sanctuaries Act authorizes the Secretary of Commerce to designate certain parts of the continental shelf as sanctuaries.[428] Authority in this area has come to include the prohibition of all activities within a designated area—including oil drilling.

Convention on the Territorial Sea and Contiguous Zone

U.S. implementation

The major law covering activities in the territorial waters of the United States is the Coastal Zone Management Act of 1972.[429] Under this act, NOAA is given responsibility for administration of coastal zone development programs and allocation of funds to the states for coastal zone management.[430]

Convention on the High Seas

U.S. implementation

In accordance with the requirement for states to enact legislation aimed at the prevention of oil pollution and radioactive waste dumping on the high seas, the U.S. Congress has acted to restrict such activities. Detailed information concerning implementation can be found in the section on "Agreements Concerning Marine Pollution," above.

Current Issues

Most issues related to the law of the sea are currently being discussed in reference to the 1982 Law of the Sea Convention, negotiated during the Third U.N. Conference on the Law of the Sea. For a summary of current issues, see "U.N. Convention on the Law of the Sea" in this section, below.

Parties

See table 5-7, on following page.

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[420] Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, done at Geneva, Apr. 29, 1958; 450 UNTS 170.

[421] Art. 25(2).

[422] Art. 36 of the High Seas Convention, art. 14 of the Continental Shelf Convention, and art. 31 of the Territorial Seas Convention.

[423] 14 U.S.C. 2 and 14 U.S.C. 89, 63 Stat. 496, Pub. L. 81-207 (Aug. 4, 1949).

[424] Federal regulations related to Coast Guard activities are detailed in 46 C.F.R., pts. 1-199.

[425] 43 U.S.C. 1331 et. seq., Pub. L. 95-372, 92 Stat. 629 (Sept. 18, 1978).

[426] 33 U.S.C. 1401 1444, Pub. L. 92-532 (1972).

[427] The original 1953 version of the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et. seq, 67 Stat. 462, Aug. 7, 1953.) designated the Secretary of the Interior as administrator. See title 33 of the C.F.R., subch. N.

[428] 33 U.S.C. 1401 et seq.

[429] 16 U.S.C. 1451, Pub. L. 89-454 (June 17, 1966), as amended by Pub. L. 92-583, 86 Stat. 1280 (Oct. 27, 1972) and Pub. L. 96-464, 94 Stat. 2060 (Oct. 17, 1980).

[430] 15 C.F.R., pt. 926.

Table 5-7
Parties to the 1958 conventions of the U.N. Conference on the Law of the Sea

Party	High Seas	Continental Shelf	Territorial Sea
Afghanistan	x		
Albania	x	x	
Australia	x	x	x
Austria	x		
Belgium	x		x
Bulgaria	x	x	x
Burkina Faso	x		
Byelorussian Soviet Socialist Republic	x	x	x
Cambodia	x	x	x
Canada		x	
China (Taiwan)			x
Central African Republic	x		
Colombia		x	
Costa Rica	x	x	
Cyprus	x	x	
Czechoslovakia	x	x	x
Denmark	x	x	x
Dominican Republic	x	x	x
Fiji	x	x	x
Finland	x	x	x
France		x	
Germany	x	x	x
Greece		x	
Guatemala	x	x	
Haiti	x	x	x
Hungary	x		x
Indonesia	x		
Israel	x	x	x
Italy	x		x
Jamaica	x	x	x
Japan	x		x
Kenya	x	x	x
Lesotho	x	x	x
Madagascar	x	x	x
Malawi	x	x	x
Malaysia	x	x	x
Malta		x	x
Mauritius	x	x	x
Mexico	x	x	x
Mongolia	x		
Nepal	x		
Netherlands	x	x	x
New Zealand		x	
Nigeria	x	x	x
Norway		x	
Poland	x	x	
Portugal	x	x	x
Romania	x	x	x
Senegal	x		
Sierra Leone	x	x	x
Solomon Islands	x	x	x
South Africa	x	x	x
Spain	x	x	x
Swaziland	x	x	x
Sweden		x	
Switzerland	x	x	x
Thailand	x	x	x
Tonga	x	x	x
Trinidad and Tobago	x	x	x
Uganda	x	x	x
Ukrainian Soviet Socialist Republic	x	x	x
U.S.S.R	x	x	x
United Kingdom	x	x	x
United States	x	x	x
Venezuela	x	x	x
Yugoslavia	x	x	x

Note: Among the countries that failed to sign any of the three conventions are the Peoples' Republic of China, Argentina, and Brazil.
Source: Compiled by staff of the International Trade Commission.

CONVENTION FOR THE INTERNATIONAL COUNCIL FOR THE EXPLORATION OF THE SEA. date signed: 9/12/64; entry into force: 7/22/68;6 citations: TIAS 7628, 24 UST 1080, 652 UNTS 237; Protocol of 8/3/70: TIAS 8238, 27 UST 1020; depositary: Denmark.[431]

Objectives and Obligations

The objective of the treaty is to create a constitution for the International Council for the Exploration of the Sea, originally established at Copenhagen in 1902. The primary mission of the Council, as specified in article 1, is "to promote and encourage research and investigations for the study of the sea, particularly those related to the living resources thereof." Moreover, the Council is given the task of devising research programs and circulating results of investigations among the member governments. Article 2 of the convention restricts activities to the Atlantic Ocean and adjacent seas.

Parties are called upon in article 5 to "furnish to the Council information which will contribute to the purposes of this Convention. . .and, wherever possible, to assist in carrying out the programs of research coordinated by the Council." Member states are asked under article 6 to appoint not more than two delegates to the Council and to choose experts to "assist in the work of the Council." Parties are also expected to pay the expenses of all delegates, experts, and advisers.[432]

Dispute-Settlement Mechanisms

The only institutions that may exercise authority in the settlement of disputes are the Council itself, meeting in annual session with each member state casting a single vote, and the Consultative Committee.[433] The duties of the Consultative Committee are to be assigned in the Council's Rules of Procedures, in accordance with article 12. Contracting parties are obliged under article 14 to contribute funds to the Council "in accordance with a scheme prepared by the Council and accepted by all the Contracting Parties."

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange Of Information

Annual meetings of the Council are to be held in Copenhagen to consider proposals for ocean exploration programs. No other mechanisms for the exchange of information are provided for in the convention.

[431] The convention entered into force for the United States on Apr. 18, 1973.

[432] Art. 14.

[433] For a description of the Council's operating procedures, see arts. 7-11 of the convention. The Consultative Committee is described in art. 12.

Implementation

U.S. implementation

Although the convention does not call on parties to take specific legislative or regulatory steps, the U.S. Congress did act to encourage marine exploration soon after the agreement was signed. The most critical piece of legislation was the Marine Resources and Engineering Act of 1966.[434] In addition to promoting scientific exploration of the oceans, this act reorganized much of the national ocean program. The bill established the Council of Marine Resources and Engineering to assist the President in carrying out ocean policy.

Current Issues

Agreement on most major questions relating to the need for marine exploration and research has kept tensions within the Council to a minimum. Few controversial issues have been raised in recent years.

Parties

Belgium
Canada
Denmark
Finland
France
Germany
Iceland
Ireland
Netherlands
Norway
Poland
Portugal
Spain
Sweden
U.S.S.R.
United Kingdom
United States

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA. date signed: 12/10/82; entry into force: Not in force; citations: 21 ILM 1245 (1982); depositary: U.N.

Objectives and Obligations

The protection and preservation of the marine environment is addressed in part XII of the convention. While emphasizing environmental protection, article 193 of the convention also recognizes the sovereign right of signatories to exploit their own natural resources in an environmentally responsible way.

Article 194 requires parties to take all actions necessary to "prevent, reduce and control pollution of the marine environment from any source." Included are toxic substances released by land-based sources

[434] 33 U.S.C. 1101 et seq.; Pub. L. No. 89-454; 80 Stat. 203 (June 17, 1966), as amended by Pub. L. 89-688; 80 Stat. 1001 (Oct. 15, 1966).

[435] Art. 194(5).

and maritime vessels. States are also asked to consider measures designed to protect "rare and fragile ecosystems."[435] Any application of new technologies or introduction of life forms that contribute to the pollution of the marine environment are specifically prohibited in article 196.

With respect to global and regional cooperation, parties are called on in article 197 to work together—through interested international organizations as appropriate—to formulate and elaborate "international rules, standards and recommended practices and procedures. . .for the protection and preservation of the marine environment, taking into account characteristic regional features." Parties are required under articles 198 and 199 to notify other states when they become aware of cases of marine pollution, working quickly to limit its effects. Finally, states are encouraged to promote scientific research and the exchange of information related to the marine environment.[436] Under article 202, parties are obliged to provide technical assistance to developing countries in order to help them take appropriate measures to protect the ocean environment.

Dispute-Settlement Mechanisms

Article 279 requires parties to settle disputes concerning interpretation or application of the convention peacefully, in accordance with article 2 of the U.N. Charter. When a dispute occurs, parties are urged to "proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means."[437] Parties are invited under article 284 to submit disputes for conciliation if initial talks fail.

If the disputing parties prefer a compulsory settlement procedure, one or more of the following bodies can be chosen to decide the case in accordance with article 287: the International Tribunal for the Law of the Sea,[438] the International Court of Justice, or an arbitral tribunal constituted in accordance with annex VII of the convention. Any court or tribunal chosen under article 287 will have jurisdiction over the dispute.[439]

Enforcement Mechanisms

In addition to calls for the general protection and preservation of the marine environment, parties are required to take the necessary legislative and regulatory steps to achieve these objectives. A series of amendments calls on signatory states "to adopt laws and regulations to prevent, reduce and control pollution of the marine environment" from rivers, estuaries, pipelines, deep seabed operations, dumping at sea, vessel-source pollution, and pollution from or through the atmosphere.[440]

The duties of parties with respect to the aforementioned pollution sources are spelled out in articles 213, 214, and 216. Parties are asked to adopt and enforce appropriate laws and regulations "to implement applicable international rules and standards."[441] Article 217 specifically calls on states to "ensure compliance by vessels flying their flag or that of their registry" with international standards. Coastal states are authorized under articles 218 and 220 to "undertake investigations and, where the evidence so warrants, institute proceedings" against a vessel in port that is suspected of violating "laws and regulations in accordance with this Convention." The measures apply both to violations taking place within and outside the territorial waters of the coastal state.[442]

Parties are authorized under article 221 to take the actions necessary outside the territorial sea to prevent damage caused by maritime casualties such as collisions.

Finally, article 235 notes that states "shall be liable under international law" and "shall ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation or other relief in respect of damage caused to the marine environment by natural or juridical persons under their jurisdiction."

Provisions for Exchange of Information

According to article 200 of the convention, parties "shall cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired about pollution of the marine environment." Article 223 requires states to "take measures to facilitate the hearing of witnesses and the admission of evidence by authorities of another State, or by the competent international organization" regarding proceedings related to enforcement of the convention's provisions. Parties undertaking proceedings against foreign vessels shall also notify the flag state of the action and provide all official reports related to the case, in keeping with article 231.

Implementation

Parties are obliged to adopt laws and regulations "to prevent, reduce and control pollution of the marine environment."[443] Although the United States is not a party to the convention, the U.S. Congress has taken

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[436] Art. 200 addresses the issue of technical support, and art. 204 encourages the monitoring of the marine environment through "recognized scientific methods."

[437] Art. 283.

[438] This tribunal was established pursuant to annex VI of the convention.

[439] Art. 288.

[440] Arts. 207-212.

[441] Art. 213 covers pollution from land based sources, art. 214 addresses seabed activities, and art. 216 covers enforcement mechanisms for dumping.

[442] Art. 218 applies to port states investigating cases of discharge outside the territorial waters. Art. 220 outlines actions that can be taken when violations occur in territorial waters or in the exclusive economic zone of the state.

[443] Arts. 213, 214, and 216.

steps to ensure that international legal principles are observed in U.S. waters. The lead agency in carrying out this task is the Coast Guard, empowered under title 14 of the U.S. Code to enforce the law on the high seas and in U.S. territorial waters.[444] (Contact: Fred Presley, U.S. Coast Guard, (202) 267-1527).

Current Issues

The principal reason for the United States' failing to sign the convention was the establishment of an international regime to regulate mining of polymetallic nodules on the deep seabed. Whereas industrialized nations—led by the United States, Germany, and the United Kingdom—resisted the notion of international control over seabed minerals, developing countries asserted that the seabed, as "the common heritage of mankind," could not be exploited economically by a handful of nations possessing the technology to extract ocean minerals. In the wake of the convention's signing in 1982, the industrialized countries—led by the United States—negotiated a series of multilateral agreements to establish an alternative regime for seabed mining (see "Agreements Concerning Deep Seabed Mining" in this section, below).

Questions have arisen in recent years regarding the limits of national sovereignty on the world's oceans. On December 27, 1988, President Reagan proclaimed the extension of the territorial seas of the United States to 12 nautical miles from U.S. shores. The proclamation emphasized the desire of the United States to abide by the provisions of the Law of the Sea Convention, with ships of all countries retaining the right to innocent passage through U.S. territorial seas.

Parties

Afghanistan
Algeria
Angola
Antigua and Barbuda
Argentina
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bhutan
Bolivia
Botswana
Brazil
Brunei
Bulgaria
Burkina Faso
Burma
Burundi
Byelorussian Soviet Socialist Republic
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
China
Colombia
Comoros
Congo
Cook Islands
Costa Rica
Cuba
Cyprus
Czechoslovakia
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Ethiopia
Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Italy
Ivory Coast
Jamaica
Japan
Kenya
Kiribati
Korea, Democratic People's Republic of
Korea, Republic of
Kuwait
Laos
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Luxembourg
Madagascar

[444] 14 U.S.C. 2.

Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Monaco
Mongolia
Morocco
Mozambique
Namibia
Nauru
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Niue
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Philippines
Portugal
Qatar
Romania
Rwanda
St. Christopher and Nevis
St. Lucia
St. Vincent and the Grenadines
Samoa
Sao Tome and Principe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Solomon Islands
Somalia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad and Tobago
Tunisia
Tuvalu
Uganda
Ukrainian Soviet Socialist Republic
U.S.S.R.
United Arab Emirates
Uruguay
Vanuatu
Vietnam
Yemen
Yugoslavia
Zaire
Zambia
Zimbabwe

Among the significant nonsignatories are the United States, the United Kingdom, Germany, Peru, and Venezuela.

AGREEMENTS CONCERNING DEEP SEABED MINING:

AGREEMENT CONCERNING INTERIM ARRANGEMENTS RELATING TO POLYMETALLIC NODULES OF THE DEEP SEA BED. date signed: 9/2/82; entry into force: 9/2/82; citations: TIAS 10562; **depositary:** United States.

PROVISIONAL UNDERSTANDING REGARDING DEEP SEA BED MATTERS, WITH MEMORANDUM OF IMPLEMENTATION. (Joint Record and Related exchanges of notes). **date signed:** 8/3/84; **entry into force:** 9/2/84; **citations:** none.

AGREEMENT ON THE RESOLUTION OF PRACTICAL PROBLEMS WITH RESPECT TO DEEP SEABED MINING AREAS, AND EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND THE PARTIES TO THE AGREEMENT. date signed: 8/14/87; **entry into force:** 8/14/87; **citations:** 26 ILM 1502.

Objectives and Obligations

Agreement Concerning Interim Arrangements

The purpose of this agreement is to clarify the status of claims made to the polymetallic nodules of the deep sea bed by investors and explorers prior to the adoption of the Convention on the Law of the Sea by the Third U.N. Conference on the Law of the Sea (see Convention on the Law of the Sea in this section, above). The aim of the agreement, as specified in paragraph 1, is "to facilitate the identification and resolution of conflicts which may arise from the filing and processing of applications for authorizations made by Pre-Enactment Explorers (PEEs) on or before March 12, 1982 under legislation in respect of deep sea bed operations enacted by any of the Parties."

Parties are obliged in paragraph 3 to follow the procedures for considering applications by Pre-Enactment Explorers outlined in part I of the schedule attached to the agreement. Good offices of the parties are to be used to encourage settlement of disputes between explorers by voluntary measures. The parties are also bound under paragraph 4 to consult with one another in coordinating the implementation of the agreement and in evaluating the merits of any other bilateral or multilateral arrangement designed to

regulate deep sea bed operations. Paragraph 9 forbids the parties from entering "into any supplementary international agreement inconsistent with this Agreement."

Provisional Understanding Regarding Deep Sea Bed Matters

The objective of this agreement is to establish rules governing application for, and settlement of, disputes related to deep seabed mining rights. Parties are prevented from authorizing seabed exploration in areas of the oceans covered by earlier agreements (insofar as they are consistent with national law and the two voluntary conflict-resolution agreements signed in 1983).[445] Parties are also required under paragraph 1 to "issue an authorization or seek registration" before deep seabed operations are conducted.

Each party is required, according to paragraph 3, to process applications quickly and to notify other parties immediately after it has taken action with regard to any application. The parties are also required under paragraph 5 to consult with each other before issuing authorization for exploration of the deep seabed, before engaging in any deep seabed operations on their own, and before reaching agreements with any other states designed to regulate access to the seabed. Paragraph 7 allows for the transfer of seabed rights and the recognition of the transferee's rights by the parties to the agreement. Finally, the parties are directed in paragraph 8 to remain consistent in "their application requirements and operating standards."

Agreement on the Resolution of Practical Problems

This agreement is the third in a series aimed at avoiding the problem of overlap in the allocation of seabed mining sites, particularly in the contested Clarion-Clipperton Zone of the northeastern Pacific Ocean. Through this note, the United States, the United Kingdom, and Germany assume all obligations under the agreement.[446]

The immediate purpose of the agreement, outlined in the preamble and article 1, is to settle the boundary dispute concerning mining rights in a long-contested area of the Pacific and, at the same time, to remove "impediments to the universal adherence to the U.N. Convention on the Law of the Sea of 1982." Under article 3, parties are discouraged from acting "in a manner that could prevent registration of an application" for access to the contested areas of the seabed by any party to the United Nations Law of the Sea Preparatory Commission (see "Law of the Sea Convention" in this section, above). In addition, article 4 directs parties to avoid engaging in any action that "could lead to the creation of any additional practical problems with respect to the deep seabed mining areas referred to in the Annexes to this Agreement."

Dispute-Settlement Mechanisms

Agreement Concerning Interim Arrangements

In accordance with paragraph 7, disputes over the interpretation or application of the agreement shall be settled "by appropriate means." If initial efforts fail, the parties are asked to consider the use of binding arbitration.

Provisional Understanding Regarding Deep Sea Bed Matters

As in the 1982 agreement, parties are encouraged in paragraph 10 to settle disputes "by appropriate means." If a successful outcome is not reached, the disputants "shall consider the possibility of recourse to binding arbitration and, if they agree, shall have recourse to it."[447]

Agreement on the Resolution of Practical Problems

The agreement does not provide for dispute-settlement mechanisms.

Enforcement Mechanisms

None of these agreements provide for enforcement mechanisms.

Provisions for Exchange of Information

Agreement Concerning Interim Arrangements

Paragraph 4 calls on parties to consult with one another but offers no mechanism for the exchange of information.

Provisional Understanding Regarding Deep Sea Bed Matters

Paragraph 3 and appendix II to the agreement call on states to exchange information regarding authorization to explore the deep seabed; however, no formal institutional mechanism for the exchange of information is identified.

Agreement on the Resolution of Practical Problems

The only reference to the exchange of information is made in article 6, in which the parties are asked to consult when necessary on matters concerning the implementation of the agreement.

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[445] Par. 1 of the Provisional Understanding.

[446] For a more thorough history of the 1987 agreement, see *International Legal Materials*, vol. 26 (1987), pp. 1502-1504.

[447] Par. 10.

Implementation

Agreement Concerning Interim Arrangements

The major piece of U.S. legislation regarding deep seabed mining is the Deep Seabed Hard Mineral Resources Act of 1980.[448] Administration of deep seabed mining law is assigned to NOAA.[449]

Provisional Understanding Regarding Deep Sea Bed Matters

The Deep Seabed Hard Mineral Resources Act of 1980 is the most important piece of U.S. legislation.

Agreement on the Resolution of Practical Problems

The United States is not a party to this agreement.

Parties

See table 5-8, below. Although the United States is not a party to the Agreement on the Resolution of Practical Problems, it did exchange notes with the Soviet Union, expressing its interest in the effort to reconcile the seabed mining regimes in the 1982 Convention on the Law of the Sea and the multilateral agreements signed in 1982 and 1984 (see entries above).

Agreements Concerning Nuclear Pollution

TREATY BANNING NUCLEAR WEAPON TESTS IN THE ATMOSPHERE, IN OUTER SPACE AND UNDER WATER. date signed: 8/5/63; entry into force (with proclamation by the U.S. President): 10/10/63; citations: TIAS 5433, 14 UST 1313, 480 UNTS 43, 21 ILM 883; depositary: not available.

Objectives and Obligations

The purposes of the treaty are to curb nuclear proliferation and to provide for protection of the environment from nuclear pollution. The parties agree not to carry out any nuclear weapons tests in the atmosphere, in outer space, underwater, or in any other environment where radioactive debris would be left outside the territorial limits of the country conducting the explosion.

Dispute-settlement Mechanisms

The agreement does not provide for dispute settlement.

Enforcement Mechanisms

The agreement does not provide for enforcement mechanisms.

Provisions for Exchange of Information

The agreement does not provide for exchange of information.

Implementation

The U.S. Department of Defense is responsible for compliance with this agreement.

Current Issues

Given that this agreement provides for neither enforcement nor exchange of information, there is uncertainty concerning assurances that the contracting parties are in compliance. The United States and the U.S.S.R. have mutually agreed upon test area sites, so the degree of uncertainty in that regard is less. Nevertheless, for the most part, a contracting state's noncompliance could only become known after the fact of an explosion that leaves nuclear debris outside that state's territory.

[448] 30 U.S.C. 1401-1473; Pub. L. No. 96-283, 94 Stat. 553 (June 28, 1980). The bill was reauthorized by the Deep Seabed Hard Mineral Resources Reauthorization Act of 1986; Pub. L. 99-507, 100 Stat. 1847 (Oct. 21, 1986).

[449] See 15 C.F.R. 970, 971.

Table 5-8
Parties to international agreements concerning deep seabed mining

Party	*Interim Arrangements Concerning Polymetallic Nodules*	*Provisional Understanding*	*Resolution of Practical Problems*
Belgium		x	x
Canada			x
France	x	x	
Germany	x	x	
Italy		x	x
Japan		x	
Netherlands		x	x
U.S.S.R			x
United Kingdom	x	x	
United States	x	x	

Source: Compiled by staff of the U.S. International Trade Commission.

Parties

Afghanistan
Antigua and Barbuda
Argentina
Australia
Austria
the Bahamas
Bangladesh
Belgium
Benin
Bhutan
Bolivia
Botswana
Brazil
Bulgaria
Burma
Byelorussia
Canada
Cape Verde
Central African Republic
Chad
Chile
China (Taiwan)
Colombia
Costa Rica
Cote d'Ivoire
Cyprus
Czechoslovakia
Denmark
Dominican Republic
Ecuador
Egypt
El Salvador
Fiji
Finland
Gabon
The Gambia
Germany
Ghana
Greece
Guatemala
Honduras
Hungary
Iceland
India
Indonesia
Iran
Iraq
Ireland
Israel
Italy
Japan
Jordan
Kenya
Korea
Kuwait
Laos
Lebanon
Liberia
Libya
Luxembourg
Madagascar
Malawi
Malaysia
Malta
Mauritania
Mauritius
Mexico
Mongolia
Morocco
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
Panama
Papua New Guinea
Peru
Philippines
Poland
Romania
Rwanda
San Marino
Senegal
Seychelles
Sierra Leone
Singapore
South Africa
Spain
Sri Lanka
Sudan
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Tanzania
Thailand
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
U.S.S.R.
United Kingdom
United States
Uruguay
Venezuela
Western Samoa
Yemen
Yugoslavia
Zaire
Zambia

CONVENTION ON EARLY NOTIFICATION OF A NUCLEAR ACCIDENT. date signed: 9/26/86; entry into force: internationally, 10/27/86; for the United States, 10/20/88; citation: 25 ILM 1370; depositary: not available.

CONVENTION ON ASSISTANCE IN THE CASE OF A NUCLEAR ACCIDENT OR RADIOLOGICAL EMERGENCY. date signed: 9/26/86; entry into force: internationally, 2/26/87; for the United States, 10/20/88; citation: 25 ILM 1377; depositary: not available.

Objectives and Obligations

The purpose of the Early Notification agreement is to provide for the dissemination of prompt and accurate information, through the International Atomic Energy Administration (IAEA), regarding an accident at a nuclear facility located in a party state. The information should contain the date, time, place, and nature of the occurrence, as well as results of environmental monitoring. The latter agreement provides a means for parties to call for assistance needed as the result of a nuclear accident or radiological emergency, whether or not the accident or emergency originates within that party's territory. The request for assistance can be made directly to another country or through the IAEA. The agreement does not specifically require a state to provide assistance when so requested, but does provide for that state to notify the requesting state or the IAEA whether it is in a position to provide assistance.

Dispute-Settlement Mechanisms

The notification convention does not provide for dispute settlement. The assistance convention provides initially for negotiation or other "peaceful means of settling disputes." If the parties cannot settle the dispute within 1 year from one party's request for consultation, either party may then request that the matter be submitted for arbitration or referred to the International Court of Justice. Many parties, including the United States, have declared that they are not bound by the dispute-settlement provisions.

Enforcement Mechanisms

These agreements do not contain specific enforcement mechanisms, nor are there enforcement mechanisms known to be used outside the context of the agreements.

Provisions for Exchange of Information

The dissemination of information is the essence of the notification convention. The information is disseminated either directly to other parties or through the International Atomic Energy Agency.

Implementation

The U.S. agencies responsible for monitoring these agreements are the Department of Energy and the Nuclear Regulatory Commission.

Current Issues

In the aftermath of Chernobyl, there has been increasing recognition of the need for prompt notification of a nuclear incident and continuing dissemination of information regarding the incident. These agreements reflect that concern. Hundreds of incidents have been reported to the IAEA, but none were of consequential magnitude. There is concern that some parties, particularly those in Eastern Europe, will be less diligent in reporting incidents. There is also concern about the safety of Eastern European facilities. For example, with the unification of Germany, a number of East German nuclear plants will have to be shut down, because they do not meet European Community standards.

Parties

See table 5-9, below.

Table 5-9
Parties to the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency

Party	Early Notification	Assistance
Australia	x	x
Bangladesh	x	
Bulgaria	x	x
Byelorussia	x	x
China	x	x
Czechoslovakia	x	x
Denmark	x	x
Egypt	x	
Finland	x	
Germany	x	
Guatemala	x	x
Hungary	x	x
India	x	x
Iraq	x	x
Japan	x	x
Jordan	x	x
Malaysia	x	x
Mexico	x	x
Mongolia	x	x
New Zealand	x	x
Norway	x	x
Poland	x	x
South Africa	x	x
Sweden	x	x
Switzerland	x	
Turkey	x	x
Ukraine	x	x
U.S.S.R	x	x
United Arab Emirates	x	x
United States	x	x
Vietnam	x	x
World Health Organization	x	x

Source: Compiled by staff of the U.S. International Trade Commission.

CONVENTION ON THIRD PARTY LIABILITY IN THE FIELD OF NUCLEAR ENERGY (Paris Convention). date signed: 7/29/60; entry into force: not available; citation: 956 UNTS; depositary: not available.

VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE (Vienna Convention). **date signed:** 5/21/63; **entry into force:** not available; **citation:** 596 UNTS 187; **depositary:** not available.

INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION: CONVENTION RELATING TO CIVIL LIABILITY IN THE FIELD OF MARITIME CARRIAGE OF NUCLEAR MATERIAL. date signed: 12/17/71; **entry into force:** not available; **citation:** 1972 ILM vol. XI, No. 2; **depositary:** not available.

JOINT PROTOCOL RELATING TO THE APPLICATION OF THE VIENNA CONVENTION ON CIVIL LIABILITY AND THE PARIS CONVENTION ON THIRD PARTY LIABILITY. date signed: 9/21/88; **entry into force:** not available; **citations:** none; **depositary:** not available.

Objectives and Obligations

These agreements discuss the rules of liability that will be applied in the case of damage caused by nuclear accidents. The Paris Convention is basically an agreement among members of the European Economic Community, with the addition of Austria, Norway, Sweden, Switzerland, and Turkey. The Vienna Convention is open to all members of the U.N. and of the International Atomic Energy Agency.

The Paris Convention and the Vienna Convention establish the principle that, in the event of a nuclear incident in the territory of a contracting state, the operator of the nuclear installation will be liable for personal or property damage caused by the incident. The "operator" is defined in the Paris Convention as "the person designated or recognized by the competent public authority as the operator of that installation." Note that in most countries, the "operator" would be, at least in part, a public entity. The agreements set minimum and maximum liability amounts that the contracting parties may establish by national legislation.

The 1972 maritime agreement established liability rules for damage caused by nuclear incidents occurring in the course of maritime carriage of nuclear material. Under this agreement, the "operator pays" principle (from the Paris and Vienna Conventions) takes precedence over other agreements and will exonerate others who otherwise could be liable. However, the operator of a ship *producing* nuclear fuel or radioactive products or waste will be liable for damage.

Dispute-Settlement Mechanisms

The Vienna Convention contains an optional protocol for dispute settlement. Under the protocol, the parties to a dispute will have 2 months (after one party has notified the other of the dispute) to agree to arbitrate the dispute or to adopt a conciliation procedure. Alternatively, if a conciliation procedure fails, either party may bring the dispute before the International Court of Justice.

The Paris Convention provides for examination of disputes by the Steering Committee of the European Nuclear Agency, followed, if necessary, by submittal to the European Nuclear Tribunal, established by a 1957 agreement.

Enforcement Mechanisms

These agreements do not provide for enforcement mechanisms.

Provisions for Exchange of Information

The U.N. Secretary General acts as the conduit for information exchange under the Paris Convention and the Maritime Convention. The Director General of the International Atomic Energy Agency acts as the conduit for information exchange under the Vienna Convention.

Implementation

The United States is not party to these agreements. The agreements do not specify steps needed as prerequisites to carry out the agreement's provisions. The agreements do, however, set parameters for national legislation on the pertinent subject matter.

Current Issues

These agreements do not directly affect the United States, because the United States is not a party to them. One agreement—the Paris Convention—specifically states that it does not apply to nuclear incidents occurring in the territory of noncontracting states. If at an installation within a contracting state a nuclear accident occurs, that causes damage in the United States, the United States would not be bound by the agreement to hold the operator of the installation solely liable. Nor would the United States be bound by any agreement that the operator of a U.S. installation was strictly liable for damage caused by an incident at that installation.

Nevertheless, these agreements have an indirect importance for the United States, because they reflect worldwide thinking on issues of increasing importance. The Organization for Economic Cooperation and Development (OECD) Nuclear Energy Agency is working towards harmonizing efforts taken in response to nuclear accidents. The United States is heavily involved in the OECD in issues involving nuclear safety and protection, public health, and radioactive waste management.

Parties

See table 5-10, on the following page. Information on parties to the Joint Protocol Relating to the Application on Civil Liability and the Paris Convention on Third Party Liability is not available.

Table 5-10
Parties to certain international agreements concerning liability in cases of damage caused by nuclear accidents

Party	Paris Convention	Vienna Convention	Maritime Carriage of Nuclear Material
Austria	x	x	
Belgium	x	x	
Denmark	x	x	
France	x	x	x
Greece	x		
Ireland	x	x	
Italy	x	x	x
Luxembourg	x	x	
Netherlands	x	x	
Norway	x	x	
Portugal	x	x	x
Spain	x	x	
Sweden	x	x	x
Switzerland	x	x	
Turkey	x		
United Kingdom	x	x	x
Yugoslavia	x		

Source: Compiled by staff of the U.S. International Trade Commission.

TECHNICAL EXCHANGE AND COOPERATIVE AGREEMENT BETWEEN THE UNITED STATES ATOMIC ENERGY COMMISSION AND THE FEDERAL MINISTRY FOR RESEARCH AND TECHNOLOGY OF THE FEDERAL REPUBLIC OF GERMANY IN THE FIELD OF MANAGEMENT OF RADIOACTIVE WASTES. date signed: 12/20/74; entry into force: 12/20/74; citations: TIAS 9067, 29 UST 4544; depositary: not available.

AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY AND THE BELGIAN CENTRE D'ETUDE DE L'ENERGIE NUCLEAIRE IN THE FIELD OF RADIOACTIVE WASTE MANAGEMENT. date signed: 1/7/81, 1/19/81; entry into force: 1/19/81; citations: TIAS 9970, 32 UST 4569; depositary: not available.

AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY AND THE FRENCH COMMISSARIAT A L'ENERGIE ATOMIQUE IN THE FIELD OF RADIOACTIVE WASTE MANAGEMENT. date signed: 7/26/83; entry into force: 7/26/83; citations: TIAS 10753; depositary: not available.

AGREEMENT BETWEEN THE DEPARTMENT OF ENERGY OF THE UNITED STATES OF AMERICA AND ATOMIC ENERGY OF CANADA LIMITED RESPECTING COOPERATION IN RADIOACTIVE WASTE MANAGEMENT. date signed: 8/25/82; entry into force: 8/25/82; citations: TIAS 10456; depositary: not available.

AGREEMENT BETWEEN THE UNITED STATES AND SWEDEN CONCERNING A COOPERATIVE PROGRAM IN MANAGEMENT OF RADIOACTIVE WASTES. date signed: 9/9/80; entry into force: not available; citations: none; depositary: not available.

AGREEMENT BETWEEN THE UNITED STATES NUCLEAR REGULATORY COMMISSION AND THE NATIONAL COOPERATIVE FOR THE STORAGE OF RADIOACTIVE WASTE IN SWITZERLAND ON COOPERATION IN RADIOACTIVE WASTE MANAGEMENT SAFETY RESEARCH. date signed: 9/26/86; entry into force: not available; citations: none; depositary: not available.

AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY AND THE UNITED KINGDOM ATOMIC ENERGY AUTHORITY IN THE FIELD OF RADIOACTIVE WASTE MANAGEMENT TECHNOLOGY. date signed: 10/30/86; entry into force: not available; citations: none; depositary: not available.

AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF ENERGY AND THE POWER REACTOR AND NUCLEAR FUEL DEVELOPMENT CORPORATION OF JAPAN IN THE FIELD OF RADIOACTIVE WASTE MANAGEMENT. date signed: 12/3/86; entry into force: not available; citations: none; depositary: not available.

Objectives and Obligations

As their titles all imply, these agreements are aimed at cooperation and the exchange of information in the field of radioactive waste management. Those agreements with Germany, France, and Canada limit

the objectives to the scientific and technical aspects of radioactive waste management. The agreement with Belgium also mentions "non-proliferation objectives" but is similar in content to the other agreements.

The most comprehensive agreement is the one with Canada. That agreement lists nine fields of cooperation: preparation and packaging of radioactive wastes, decontamination and decommissioning, surface and subsurface storage, characterization of geologic formations, disposal in geologic formations, transportation requirements, operational considerations, environmental and safety considerations, and public acceptance issues. The forms of cooperation include exchange of scientific and technical information, organization of joint seminars and meetings, exchange of materials for testing, exchange of professional staff, and joint projects.

Each of the agreements also contains provisions for the protection of intellectual property rights.

Dispute-Settlement and Enforcement Mechanisms

These cooperative agreements do not provide for dispute settlement or enforcement mechanisms.

Provisions for Exchange of Information

The exchange of information is a main focus of each of these agreements. The agreement with Germany states that the information exchange will be "reciprocal (balanced)." The agreements with Belgium, France, and Canada all provide that "[t]he Parties support the widest possible dissemination of information provided or exchanged under this Agreement, subject to the need to protect proprietary information. . . ." These three agreements contain further provisions for the protection of proprietary information.

Implementation

The U.S. Department of Energy is responsible for U.S. participation in projects and information exchange under these agreements.

Current Issues

As demonstrated by the relatively recent negotiation (in 1986) of three of these cooperation agreements, there is a recognized usefulness to these types of agreements. With the worldwide movement toward use of nuclear energy and the awareness of the need for safety, these types of agreements are likely to become more prevalent. The provisions for the protection of intellectual property will undoubtedly receive increasing attention in the negotiation of such agreements.

Other General Agreements

The Antarctic Treaty System[450]

THE ANTARCTIC TREATY. date signed: 12/1/59; **entry into force:** 6/23/61; **citations:** 12 UST 794, TIAS 4780, 402 UNTS 71, *Handbook of the Antarctic Treaty System*;[451] **depositary:** United States.

AGREED MEASURES FOR THE CONSERVATION OF ANTARCTIC FAUNA AND FLORA. date signed: 6/13/64; **entry into force:** 9/1/76; **citations:** 17 UST 991, TIAS 6058, *Handbook of the Antarctic Treaty System*;[452] **depositary:** United States.

ANTARCTICA: MEASURES IN FURTHERANCE OF PRINCIPLES AND OBJECTIVES OF THE ANTARCTIC TREATY (Recommendations adopted at the Seventh Antarctic Treaty Consultative Meeting (Seventh ATCM)).[453] **date signed:** 11/10/72; **entry into force:** not available; **citations:** TIAS 8500,[454] *Handbook of the Antarctic Treaty System*,[455] **depositary:** United States.

THE ANTARCTIC TREATY, RECOMMENDATIONS RELATING TO (Recommendations adopted at the Twelfth Antarctic Treaty Consultative Meeting (Twelfth ATCM)). **date signed:** 9/27/83; **entry into force:** not available; **citation:** *Handbook of the Antarctic Treaty System*;[456] **depositary:** United States.

CONVENTION ON THE REGULATION OF ANTARCTIC MINERAL RESOURCE ACTIVITIES (CRAMRA). date signed: 6/2/88; **entry into force:** not yet in force;[457] **citation:** 27 ILM 868 (1988); **depositary:** New Zealand.

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450 The 1972 Convention for the Conservation of Antarctic Seals is discussed in "Agreements Concerning Wildlife other than Fish and Whales," above. The 1980 Convention on the Conservation of Antarctic Marine Living Resources is discussed in "Multilateral Agreements Concerning Marine Fishing," above.

451 *Handbook of the Antarctic Treaty System*, Polar Publications, 5th ed. (Cambridge, United Kingdom: Scott Polar Research Institute, 1987), pp. ix-xvi.

452 *Handbook*, pp. 2103-2208.

453 To date, there have been 16 Antarctic Treaty Consultative Meetings (ATCMs), held about every 2 years, and a Special Antarctic Treaty. The 7th, 12th, 15th, and 16th ATCMs are discussed in detail in this report. A more detailed discussion of the first 13 ATCMs is published in the *Handbook of the Antarctic Treaty System*. Additional information on the later ATCMs may be obtained from the U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Oceans and Fisheries Affairs, Washington, DC (telephone (202) 647-2396).

454 The text printed at TIAS 8500 is an extract from the Report of the Seventh Antarctic Treaty Consultative Meeting.

455 *Handbook*, p. 1103.

456 *Handbook*, p. 6106.

457 The Governments of Australia (May 1989) and France (June 1989) announced that they would not sign the convention. In February 1990, New Zealand announced that it was setting aside ratification for future consideration. Under convention terms (art. 62), if either Australia, France, or New Zealand fails to ratify, the convention is blocked from going into force.

Objectives and Obligations

The Antarctic Treaty

In 1959, the Antarctic Treaty was adopted by 12 nations that were involved in scientific research projects in Antarctica during the International Geophysical Year of 1957-58.[458] The original 12 nations included Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, Union of Soviet Socialist Republics, United Kingdom, and the United States.[459] The treaty covers the area south of latitude 60° S. (art. VI).

The primary objective of the Antarctic Treaty is to ensure that Antarctica be used for peaceful purposes only[460] and that it not become the scene or object of international discord.[461] Article I of the treaty prohibits "any measures of a military nature," although it does allow "the use of military personnel or equipment for scientific research or any other peaceful purpose."

Article II provides a foundation for scientific research in Antarctica with international cooperation. Specifically, it calls for freedom of scientific investigation; requires, to the extent possible, an exchange of scientific research plans, personnel, and resulting information; and encourages cooperative working relations with international organizations that have a scientific or technical interest in Antarctica.[462] To ensure the observance of these provisions, the treaty gives consultative party[463] representatives complete freedom to observe and/or inspect all activities in Antarctica at any time.[464]

The Antarctic Treaty is the fundamental agreement by which consultative parties deal with Antarctic matters of common interest. In further developing the treaty's principles and objectives, a series of recommendations has been adopted through consultative meetings conducted under article IX of the treaty.

Agreed Measures for the Conservation of Antarctic Fauna and Flora

The Agreed Measures were adopted at the Third Consultative Meeting, held June 2-13, 1964. The primary purpose of the Agreed Measures is to maintain the natural ecological systems in the Antarctic region. The measures provide specific criteria under which the "killing, wounding, capturing, or molesting of any native mammal or native bird" would be permitted (art. VI). These criteria include the taking of specimens for scientific purposes, for museums, zoos or educational purposes, and to provide "indispensable food for men or dogs." "Specifically protected species" and "specifically protected areas," listed in annexes A and B are granted even greater protection under articles 6 and 8. The measures also require governments to take "appropriate measures to minimize harmful interference within the Treaty Area."[465] Exemptions from the agreements provisions are permitted "in cases of extreme emergency involving possible loss of human life or involving the safety of ships or aircraft."[466] Article IX provides terms under which a party may bring into the treaty area animal or plant species that are not indigenous to the area.

Antarctica: Measures in Furtherance of Principles and Objectives of the Antarctic Treaty, Seventh ATCM

This document is an extract from the Report of the Seventh ATCM, held at Wellington, New Zealand, from October 30 to November 10, 1972.[467] Nine recommendations, designated as Recommendation VII-1 through VII-9 in the report, respectively, were adopted, as follows:

1. "Man's Impact on the Antarctic Environment" and the need to adopt expedition guidelines proposed by the Scientific Committee on Antarctic Research (SCAR);

2. "Review of Specially Protected Areas" and a request for SCAR's recommendations concerning this matter;

3. "Sites of Special Scientific Interest" and a request for SCAR's recommendations for designating sites along with a proposed management plan for each site;

4. "Effects of Tourists and Non-Governmental Expeditions in the Antarctic Treaty Area" and the need to establish guidelines and regulations for visitors in the area;

5. "Importation of Laboratory Animals and Plants" and the need to limit this activity to specified groups;

6. "Antarctic Resources—Effects of Mineral Exploration" and the need to study this issue and to include it in the agenda for the Eighth Consultative Meeting;

7. "Antarctic Telecommunications" and the need to improve this system;

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[458] *Handbook*, p. vi.
[459] Preamble to the treaty.
[460] Art. I(1).
[461] Preamble.
[462] Arts. II and III.
[463] Consultative parties are contracting parties to the treaty entitled to appoint representatives to participate in the (ATCMs) under art. IX. Consultative parties include the original 12 signatories as well as countries that became party to the treaty as members of the U.N. or by invitation and that conducted substantial scientific research in the Antarctic region (arts. IX and XIII).
[464] Art. VII.
[465] Art. VII.
[466] Art. V.
[467] Extract from the Report of the Seventh Antarctic Treaty Consultative Meeting, Introductory Note.

8. "Co-operation in transport" and the desirability to encourage this effort; and

9. "Historic Monuments" and a request for approval of a list of 43 identified historic sites.

The Antarctic Treaty, Recommendations Relating to, Twelfth ATCM

This document is an extract from the Report of the Twelfth ATCM held at Canberra, Australia, during September 13-27, 1983.[468] Recommendations dealing with eight specific issues (designated as XII-1 through XII-8 in the report) were adopted, as follows:

1. "Collection and Distribution of Antarctic Meteorological Data" and the need to work with the World Meteorological Organization to improve this activity;

2. "Antarctic Telecommunications" and the need to effectively use the system in place as well as seek improvements by working with SCAR;

3. "Man's Impact on the Antarctic Environment" and the need to assess the environmental impact of scientific activities during the planning stage and make necessary changes to minimize damage;

4. "Man's Impact on the Antarctic Environment: Code of Conduct for Antarctic Expeditions and Station Activities" and the need to determine problems experienced in implementing the code and any appropriate revisions;

5. "Sites of Special Scientific Interest" and a request to extend the expiration dates of specified sites.

6. "Operation of the Antarctic Treaty System" and requests to broaden the distribution of information documents of the consultative meetings;

7. "Historic Sites and Monuments", a request for approval of the 44th monument site; and

8. "SCAR Assistance to Consultative Parties" and a request for funding to meet SCAR's operating costs in supporting Treaty Parties.

Antarctic Treaty—15th ATCM and Special ATCM

At the 15th ATCM, held in Paris in October 1989, the consultative parties undertook "as a priority objective the further elaboration, maintenance and effective implementation of a comprehensive system for the protection of the Antarctic environment and its dependent and associated ecosystems" (recommendation XV-1). To this end, a Special ATCM was held in 1990 to explore and discuss all proposals relating to the comprehensive protection of the Antarctic environment. Since the Antarctic Treaty does not even contain the word "environment" in its language, several countries—including France, Australia, Chile, New Zealand, Sweden, and the United States—submitted proposals for a "comprehensive regime" to preserve the Antarctic environment, in an attempt to to give effect in treaty language to the commitment of parties to environmental protection.

Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA)

The question of mineral exploration and exploitation was originally raised during the Antarctic Treaty negotiations in 1959, but it was excluded because it was not yet a relevant issue. In response to some prospecting inquiries, the issue emerged again in 1970 at the Sixth ATCM, and subsequently the Seventh through Tenth ATCMs. At the Eleventh ATCM, consultative parties recommended convening a Special Consultative Meeting to negotiate a mineral resource development agreement.[469] This would be the fourth Special Consultative Meeting conducted under the Antarctic Treaty. The meeting had its first session June 14-25, 1982; included nine subsequent sessions; and ended on June 1, 1988, with the adoption of CRAMRA.[470]

In order to further the primary objective of the Antarctic Treaty—i.e., limiting use of Antarctica to peaceful purposes and preventing its becoming the center of international discord—CRAMRA was negotiated to protect the area's environment, ecosystems, and regional and global climate patterns from any adverse effects of mineral resource activities. To this end, CRAMRA requires that all mineral resource activities be conducted within its scope and in accordance with an approved management scheme;[471] provides criteria for determining the acceptability of an activity, for responding to any resulting damage, and for determining liability for such damages;[472] and provides rules for exploring, developing, and working a mine.[473] To ensure observance of these provisions, CRAMRA establishes the Antarctic Mineral Resources Commission; the Scientific, Technical and Environmental Advisory Committee; and the Antarctic Mineral Resources Regulatory Committees.[474]

[468] *Handbook*, p. xxi.

[469] *Handbook*, p. 1601.
[470] 27 ILM 859 (1988).
[471] Ch. I, art. 7.
[472] Ch. I, arts. 4 and 8.
[473] Chs. III, IV, and V.
[474] CRAMRA, ch. II, arts. 18, 23, and 29.

Dispute-Settlement Mechanisms

The Antarctic Treaty

Parties involved in a dispute are responsible for seeking a peaceful resolution by negotiation, inquiry, mediation, conciliation, arbitration, or judicial settlement. If all disputing parties agree, the matter may be brought before the International Court of Justice. Under article XI, if agreement is not reached within the International Court of Justice, it is the responsibility of the disputing parties to continue to seek a peaceful resolution.

Agreed Measures for the Conservation of Antarctic Fauna and Flora

Dispute mechanisms adopted by the Antarctic Treaty apply.

ATCM Recommendations

Dispute mechanisms adopted by the Antarctic Treaty apply.

Convention on the Regulation of Antarctic Mineral Resource Activities

The basic dispute procedures adopted by the Antarctic Treaty apply. CRAMRA further encourages settlement through a provision to refer disputes to the Arbitral Tribunal when requested by any party to the dispute, if a settlement has not been reached within 12 months (art. 57).

Enforcement Mechanisms

Under CRAMRA, each party shall take appropriate measures to ensure compliance with this convention and report such measures to the Executive Secretary of the Antarctic Mineral Resources Commission. Although there are no enforcement provisions, in that the Antarctic Treaty provisions apply, the Commission will draw attention to noncompliance (art. 7). The other agreements in this group do not provide for enforcement mechanisms.

Provisions for Exchange of Information

The Antarctic Treaty

Article IX stipulates that meetings shall be held at suitable intervals and places for the purpose of consulting on matters pertaining to Antarctica and drafting recommendations for furthering the principles and objectives of the agreement. Accordingly, the kinds of meetings covered under the treaty scope are (ATCMs), Special Consultative Meetings, and Meetings of Experts.[475]

ATCMs are conducted by consultative parties' representatives for the purpose of discussing and adopting recommendations to matters of common interest. Under article IX, each recommendation adopted at an ATCM becomes effective only after it has been approved by all consultative party governments. The host government of each ATCM is responsible for sending meeting documents and certified copies of the ATCM report to each consultative party and invited nonconsultative parties. As soon as possible after each meeting, the host country will also update the *Handbook of the Antarctic Treaty* with respect to recommendations and actions taken.[476] Since 1961, there have been 15 ATCMs, held at 2-year intervals.[477]

Special Consultative Meetings are convened as appropriate by consultative party representatives to take action on issues without waiting for government approval of a recommendation. There have been five such meetings, three dealing with applications for consultative party status and two with convention negotiations (the Convention on the Conservation of Antarctic Marine Living Resources and Convention on the Regulation of Antarctic Mineral Resource Activities).[478]

Meetings of Experts allow the invitation of experts from countries other than consultative parties for in-depth study of issues and preparation of reports for consideration at ATCMs.[479] Host governments are required to circulate a report concerning the meeting to all contracting parties.[480]

In addition to meeting reports, contracting parties are required to submit an annual report (in standard format) pertaining to their activities or planned activities in Antarctica.[481] This information is to be distributed through diplomatic channels to national Antarctic operating agencies.[482]

Agreed Measures for the Conservation of Antarctic Fauna and Flora

The Agreed Measures require parties to submit an annual report (in standard format) recording the species and number of native mammals and birds its operations killed or captured in the treaty area.[483] In addition to the required annual report, the measures provide for the collection of information, as necessary, on the status of native mammals and birds in the treaty area, identifying those species that need protection from extinction and those that should be harvested.[484] By November 30 of each year, each participating government submits its documentation to each of the other parties and to the Scientific Committee on

[475] *Handbook*, p. 6101.

[476] *Handbook*, p. 6107.

[477] *Handbook*, pp. xvii-xxii. See also Lee A. Kimball, *Report on Antarctica*, (Washington, DC, World Resources Institute, November 1989), p. 1.

[478] *Handbook*, p. 6102.

[479] Ibid.

[480] *Handbook*, p. 6301.

[481] *Handbook*, p. 5102.

[482] *Handbook*, p. 5106.

[483] Art. XII. See also *Handbook*, pp. 2202-2203.

[484] Art. XII(1)(a and b).

Antarctic Research for tabulation, publication, and preparation of special reports on the status of species.[485]

ATCM Recommendations

ATCMs are part of the Antarctic Treaty System's provision for exchange of information. Provisions relevant to ATCMs are discussed under the Antarctic Treaty, above.

Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA)

The convention provides for Antarctic Mineral Resources Commission meetings; Scientific, Technical and Environmental Advisory Committee (STEAC) meetings; and Special Meetings of Parties. The Antarctic Mineral Resources Commission has the function of encouraging the exchange and collection of information needed to predict, detect, and assess environmental impact of mineral resource activities. Under article 21, the Commission is also charged with taking measures to protect Antarctica from adverse environmental impact resulting from such activities. Commission meetings are currently scheduled to be held within 2 months of a request by at least six members of the Commission, a request to identify an area for mineral resource activity submitted by any party to the Antarctic Treaty, or a request by the CRAMRA Regulatory Committee (art. 19).

Under article 26, the STEAC is charged with advising the Antarctic Mineral Resources Commission and the Regulatory Committee on the scientific, technical, and environmental aspects of mineral resource activities. This advice will be issued in the form of a report.[486] Membership is open to all parties to the Antarctic Treaty (art. 23). Committee meetings are scheduled to convene as needed to fulfill its functions and when a meeting is requested by at least six members of the Antarctic Mineral Resources Commission (art. 24).

CRAMRA may convene a Special Meeting of Parties to consider whether or not an area identified by the Antarctic Mineral Resources Commission for mineral resource activity is consistent with CRAMRA. Its determination is reported to the Commission (art. 40). Participation in a Special Meeting of Parties is open to all parties to CRAMRA. Observer status will be available to any contracting party to the Antarctic Treaty.[487] Meetings are scheduled no later than 2 months after STEAC issues its report to the Antarctic Mineral Resources Commission and to the Regulatory Committee (art. 40).

[485] *Handbook*, pp. 2204-2206.
[486] Art. 27.
[487] Art. 28.

Implementation

The Antarctic Treaty

According to article XIII(2), "Ratification of or accession to the present Treaty shall be effected by each State in accordance with its constitutional process." For the United States, the operating agency is the U.S. Department of State, Bureau of Oceans and Inter national Environmental and Scientific Affairs, Oceans and Fisheries Affairs, Washington, DC (telephone (202) 647-2396).

Antarctica: Measures in Furtherance of Principles and Objectives of the Antarctic Treaty, Seventh ATCM

Each measure or recommendation provided in this document becomes effective if approved by all consultative party governments.[488] The United States has approved all measures, but the United Kingdom and Germany did not approve measure No. 5, dealing with the extension of expiration dates of specified sites.[489]

ATCM Recommendations

As provided under article IX of the treaty, each recommendation becomes effective if approved by all consultative party governments. None of the measures have received unanimous approval.[490]

Convention on the Regulation of Antarctic Mineral Resource Activities

According to article 62, this convention shall enter into force following ratification, acceptance, approval, or accession by 16 Antarctic Treaty Consultative Parties that participated in the final session of the Fourth Special ATCM. Each of the seven nations claiming sovereignty over territory in Antarctica (Argentina, Australia, Chile, France, New Zealand, Norway, and the United Kingdom) must be included among the 16 or CRAMRA is blocked from entry into force.[491]

U.S. implementation

As of March 7, 1990, the Subcommittee on Oversight and Investigations, U.S. House of Representatives Committee on Merchant Marine and Fisheries, was evaluating the implications of CRAMRA for the United States.[492]

[488] Antarctic Treaty, art. IX(4).
[489] *Handbook*, p. A1.
[490] *Handbook*, p. A2.
[491] Thomas M. Foglietta, Chairman, Subcommittee on Oversight and Investigations, U.S. House of Representatives Committee on Merchant Marine and Fisheries, Background Memorandum concerning "Review and Status of Implementation of the Convention on the Regulation of Antarctic Mineral Resource Activities and Alternative Proposals," Mar. 7, 1990, pp. 2-3.
[492] Ibid., p. 1.

Implementation by others

The Government of Australia (May 1989) and the Government of France (June 1989) announced that they will not sign CRAMRA. In February, New Zealand announced it will postpone consideration of CRAMRA for ratification.[493] As noted above, all three countries claim sovereignty over territory in Antarctica and CRAMRA's entry into force is predicated on their approval.

Current Issues

The most important issue for the Antarctic Treaty System is whether or not CRAMRA will enter into force. After 6 years of negotiations, participating Antarctic Treaty Consultative Parties (ATCPs)[494] unanimously adopted the Convention at the Fourth Special ATCM, held in New Zealand on June 2, 1988. It was then opened for signature on November 25, 1988.[495]

Although there are no known mineral deposits of commercial interest, ongoing scientific research in Antarctica has provided a growing awareness of the region's geological development and potential mineral resources. In an effort to conclude an environmentally responsible agreement before there was a major minerals discovery, the ATCPs negotiated CRAMRA. To accommodate the varied interests of countries active in Antarctica, the end result was a compromise to allow the possibility of mineral resource activities but under regulated environmental conditions. Specifically, CRAMRA is a framework by which ATCPs would determine what mineral resource activities are acceptable and would regulate any activities determined to be acceptable.

In terms of the environment, the protective strength of CRAMRA is that an area in Antarctica cannot be opened to mineral exploration and development without the approved consensus of the ATCPs. Article 22 of the convention defines consensus as the absence of a formal objection. Reaching such a consensus is likely to be very difficult, particularly when some ATCPs have expressed opposition to the possibility of minerals development activities in Antarctica.

In accordance with CRAMRA's basic principles, no activity may take place unless the parties agree that scientific information is adequate to make informed judgments, proposed activities will not result in any significant environmental impacts, technology and procedures are available for safe operations and for compliance with environmental regulations, and the capacity exists to respond effectively to accidents. CRAMRA further provides for compliance and enforcement regulations as well as binding dispute settlements not found in other agreements of the Antarctic Treaty System.

A potentially strong environmental framework, CRAMRA does have some problems that would need to be addressed by the institutions the convention establishes. These include the use of vague, undefined terms like "significant" and "adequate" as environmental measurements for making mineral activity determinations. Also, it is not known how effective the compliance and enforcement provisions will be in practice, since the right to regulate minerals development is a fundamental right of sovereignty and issues affecting territorial claimants and nonclaimants in Antarctica have always been sensitive.[496]

In order to enter into force, CRAMRA must be ratified by the Governments of 16 of the participating ATCPs in accordance with two specific criteria. First, ratifying parties must include the United States, Soviet Union, and each of the seven countries that claim sovereignty over territory in Antarctica (Argentina, Australia, Chile, France, New Zealand, Norway, and Great Britain). Second, the ratifying parties must also include 5 developing and 11 developed countries.

On May 22, 1989, since its participation in the development of CRAMRA, Australia announced that it would not sign the convention, setting it aside in favor of a ban on mining in Antarctica and the negotiation of a comprehensive environmental protection agreement. The next month, France also announced that it would not sign CRAMRA. On February 26, 1990, New Zealand announced that it would set aside ratification of CRAMRA to concentrate on developing solutions to the mining impasse, including a possible moratorium on mining activity in Antarctica. As claimant nations to Antarctic territory, the failure of any one of these countries to ratify CRAMRA blocks it from going into force.

Although the ATCPs agreed to a voluntary restraint of mineral activities in Antarctica pending the convention's timely entry into force, organizations involved with the Antarctic Treaty System state that there is not sufficient support among the ATCPs to achieve the necessary consensus for a permanent ban as an alternative to CRAMRA.[497] The United Kingdom

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[493] Ibid., p. 2.

[494] The ATCPs were Argentina, Australia, Belgium, Brazil, Chile, China, France, East Germany, West Germany, India, Italy, Japan, New Zealand, Norway, Poland, South Africa, U.S.S.R., United Kingdom, United States, and Uruguay.

[495] In its testimony before the Subcommittee on Oversight and Investigations Committee on Merchant Marine and Fisheries on Mar. 14, 1990, the U.S. Department of State reported that CRAMRA has been signed by Argentina, Brazil, Chile, China, Finland, East Germany, Japan, Korea, New Zealand, Norway, Poland, South Africa, Sweden, United Kingdom, U.S.S.R., United States, and Uruguay.

[496] Dr. William E. Westermeyer, Oceans and Environment Program, Office of Technology Assessment, written testimony before the Subcommittee on Oversight and Investigations of the House Committee on Merchant Marine and Fisheries on the Convention on the Regulation of Antarctic Mineral Resource Activities, Mar. 14, 1990, p. 9.

[497] Subcommittee on Oversight and Investigations of the House Committee on Merchant Marine and Fisheries on the Convention on the Regulation of Antarctic Mineral Resource Activities, Mar. 14, 1990, written testimony presented by: Lee A. Kimball, World Resources Institute, attachment letter to Captain Jacques-Yves Cousteau, dated Sept. 19, 1988, p. 2; Dr. William E. Westermeyer, Oceans and Environment Program, Office of Technology Assessment, p. 10; Edward E. Wolfe, Deputy Assistant Secretary for Oceans and Fisheries Affairs, U.S. Department of State, p. 8.

is one country that strongly opposes a permanent ban on mineral development in Antarctica, and it has the same veto power as Australia and France.[498]

The voluntary restraint agreement will probably continue to apply until progress toward ratification is no longer perceived or until a major mineral deposit discovery is made. Unless the restraint is extended or an acceptable alternative regime negotiated, countries will be free to proceed with mineral development, subject only to their national laws. As there is no deadline for ratification and more negotiating is possible, prospects for CRAMRA's entry into force are uncertain.[499]

Parties

See table 5-11, below

Bilateral Agreements With Mexico

MEMORANDUM OF UNDERSTANDING BETWEEN THE SUBSECRETARIAT FOR ENVIRONMENTAL IMPROVEMENT OF MEXICO AND THE ENVIRONMENTAL PROTECTION

[498] Susan Grossman, "Nations Debate Antarctica's Fate," *Colored Stone*, vol. 3, No. 5 (September/October 1990), p. 10.

[499] Dr. William E. Westermeyer, testimony.

Table 5-11
Parties to certain international agreements concerning the Antarctic

Party[1]	Antarctic Treaty	Agreed Measures[2]	7th ATCM[2]	12th ATCM[2]	CRAMRA[3]
Argentina	x	x	x	x	
Australia	x	x	x	x	
Austria	x				
Belgium	x	x	x		
Brazil	x				
Bulgaria	x				
Canada	x				
Chile		x	x	x	
China		x	x		
Colombia	x				
Cuba		x			
Czechoslovakia	x				
Denmark	x				
Ecuador	x				
Finland	x				
France	x	x	x		
Germany	x	x	(4)	x	
Greece	x				
Hungary	x				
India		x	x		
Italy		x	x		
Japan		x	x	x	x
Korea, People's Democ. Rep.	x				
Korea, Rep. of	x				
Netherlands	x				
New Zealand	x	x	x	x	
Norway	x	x	x	x	
Papua New Guinea	x				
Poland	x	x	x		
Romania	x				
South Africa	x	x	x		
Spain		x	x		
Sweden	x	x			
U.S.S.R.	x	x	x		
United Kingdom	x	x	$		
United States	x	x	x	x	
Uruguay	x	x			

[1] Consultative parties, as of October 1989 were Argentina, Australia, Belgium, Brazil, Chile, China, Finland, France, German Democratic Republic, Federal Republic of Germany, India, Italy, Japan, Republic of Korea, New Zealand, Norway, Peru, Poland, South Africa, Spain, Sweden, U.S.S.R., United Kingdom, United States, and Uruguay. Nonconsultative parties, as of January 1989, were Austria, Bulgaria, Canada, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Greece, Hungary, the Netherlands, People's Dem. Republic of Korea, and Romania.

[2] ATCM recommendations are approved only by those countries designated as consultative parties when the meeting is held; nonconsultative parties are obligated to honor approved recommendations.

[3] To date, no Government has approved CRAMRA.

[4] Approved all recommendations, except No. 5, extension of expiration dates of specified sites.

Source: Compiled by staff of the U.S. International Trade Commission.

AGENCY OF THE UNITED STATES FOR COOPERATION ON ENVIRONMENTAL PROGRAMS AND TRANSBOUNDARY PROBLEMS. date signed: 6/6/78; entry into force: 6/6/78; citations: ILM 1056, U.S. Environmental Protection Agency; depositary: Mexico.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT IN THE BORDER AREA. date signed: 8/14/83; entry into force: 2/16/84;[500] citations: TIAS 10827, 22 ILM 1025 (1983); depositary: Mexico.

Annex I - Agreement of Cooperation Between the United States of America and the United Mexican States for Solution of the Border Sanitation Problem at San Diego, California—Tijuana, Baja California. date signed: 7/18/85; entry into force: 7/18/85; citation: 26 ILM 18 (1987); depositary: United States.

Annex II - Agreement of Cooperation Between the United States of America and the United Mexican States Regarding Pollution of the Environment Along the Inland International Boundary by Discharge of Hazardous Substances. date signed: 7/18/85; entry into force: 11/29/85; citation: 26 ILM 19 (1987); depositary: United States.

Annex III - Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances. date signed: 11/12/86; entry into force: 1/29/87; citation: 26 ILM 25 (1987); depositary: United States.

Annex IV - Agreement of Cooperation Between the United States of America and the United Mexican States Regarding Transboundary Air Pollution Caused by Copper Smelters Along Their Common Border. date signed: 1/29/87; entry into force: 1/29/87; citation: 26 ILM 33 (1987); depositary: United States.

Annex V - Agreement of Cooperation Between the Government of the United States of America and the Government of the United Mexican States Regarding International Transport of Urban Air Pollution. date signed: 10/3/89; entry into force: not available; citation: 29 ILM 30 (1990); depositary: United States.

Objectives and Obligations

Memorandum of Understanding Between the Subsecretariat for Environmental Improvement of Mexico (SMA) and the Environmental Protection Agency (EPA) of the United States for Cooperation on Environmental Programs and Transboundary Problems

The objective of this agreement is to provide a basis on which the two neighboring countries can cooperate in working out solutions to their common environmental problems. This is a general agreement to identify and address mutual concerns including pollution abatement and control, regulations, quality assurance, research, and monitoring.[501] The Mexican Subsecretariat for Environmental Improvement and the U.S. EPA agree to exchange information and personnel and to establish parallel and joint effort projects as appropriate.[502]

Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area.

This agreement supersedes the 1978 Memorandum of Understanding and focuses on the environmental concerns of the "border area," defined as that "situated 100 kilometers on either side of the inland and maritime boundaries between Mexico and the United States."[503] The objectives of the agreement are to establish a foundation from which the two countries can work together to protect, improve, and conserve the environment; to develop measures to prevent and control pollution in the border area; and to develop a system of notification for emergencies. According to article 1, these objectives are not to prejudice any cooperative environmental activities the parties undertake outside the border area.

The parties agree to assign "National Coordinator" responsibilities to the EPA for the United States and to the Secretariat of Urban Development and Ecology for Mexico. Under article 6, the parties agree to coordinate national programs; scientific and educational exchanges; environmental monitoring; environmental-impact assessment; and exchanges of information on likely sources of pollution in their respective territories. This is a general agreement that includes a provision for annexing specific cooperative activities and operating terms for identified environmental problem areas (art. 3).

Annex I—Agreement of Cooperation Between the United States of America and the United Mexican States for Solution of the Border Sanitation Problem at San Diego, California-Tijuana, Baja California

This annex was adopted in response to special conditions and recommendations by the Inter-American Development Bank in its loan to the Banco Nacional de Obras y Servicios Publicos, S.A., for the expansion and improvement of the potable water supply and sewage systems of Tijuana.[504] Its

[500] This agreement supersedes the 1978 Memorandum of Understanding, listed immediately above.

[501] Arts. 4 and 8.
[502] Arts. 1, 2, and 8.
[503] Art. 4.
[504] Annex I, preamble.

objective is to provide a basis for the parties to work together in determining what effects and consequences the project could have on environmental conditions in the Tijuana-San Diego zone and, if necessary, to take appropriate measures to preserve the environment and ecological process.[505]

Mexico and the United States agreed to hold bilateral consultations through the International Boundary and Water Commission in order to address the concerns of both parties regarding this construction project. Mexico agreed to immediately repair any breakage to the water and sewage system, and the United States agreed to provide immediate assistance with necessary repairs, if requested by Mexico. Both Governments agreed to hold immediate consultations through their national coordinators on any matter brought to their attention as a result of joint monitoring of the construction, operation and maintenance of the disposal and treatment facilities. Both countries agreed that if sewage should spill from Tijuana into the United States, they would consider additional joint measures to remedy the situation.[506]

Annex II—Agreement of Cooperation Between the United States of America and the United Mexican States Regarding Pollution of the Environment Along the Inland International Boundary by Discharge of Hazardous Substances

The objective of this annex is to provide a base from which the two countries can develop cooperative measures to effectively deal with discharges of hazardous substances. Specifically, the parties agree to develop methods to determine the existence or imminent possibility of a hazardous discharge within their respective areas and to minimize any threat such incidents pose to the environment and to public health and welfare. The parties agree to establish the "United States-Mexico Joint Contingency Plan."[507] The national coordinators for this plan are the same as for the 1983 Agreement—EPA for the United States, and the Secretariat of Urban Development and Ecology for Mexico.[508] Under the Joint Contingency Plan, the United States and Mexico each agree to establish a national Joint Response Team[509] and to divide their border territory into areas, designating an "on-scene coordinator" and "advisory and liaison coordinators" for each area.[510]

The on-scene coordinator and the Advisory and Liaison Coordinators are responsible for monitoring their respective areas for possible discharge problems, apprising the Joint Response Team of any discharge situations, and implementing appropriate response measures for such a discharge.[511] The two Joint Response Teams are responsible for developing procedures for carrying out a joint response to a discharge incident; advising each other of any reported hazardous discharge; deciding together whether or not to recommend a joint response to their respective national coordinators; coordinating joint responses with the on-scene coordinator; and assessing the environmental impact of a polluting incident and recommending measures to mitigate adverse effects.[512]

Annex III—Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances.

The objective of this annex is to provide a basis from which Mexico and the United States can work together to protect the environment, particularly along the border area, from improperly transported hazardous materials between countries.[513] The parties agree to enforce domestic laws and regulations with respect to transboundary shipments of hazardous material;[514] to cooperate in monitoring and spot checking these shipments to ensure that they conform with established national requirements and with requirements established under this annex;[515] and to assist each other with improving law enforcement capability with regard to these shipments.[516]

Cooperative regulations for transboundary shipments of hazardous material enacted under this annex include notification of such shipments by the country of export to the country of import;[517] readmission of hazardous waste by the country of export if returned by the country of import;[518] bilateral notification of any regulatory actions pertaining to pesticides or chemicals;[519] and provision of each party's transport requirements to shipping concerns.[520]

To cooperate in the improvement of law enforcement capability, the parties agree to exchange information, documents, records, and reports; facilitate onsite visits to treatment, storage, or disposal facilities; assist in emergency notification of hazardous situations; and to offer other forms of mutually agreed assistance.[521]

Annex IV—Agreement of Cooperation Between the United States of America and the United Mexican States Regarding Transboundary Air Pollution Caused by Copper Smelters Along Their Common Border

The objective of this annex is to provide a basis from which Mexico and the United States can work together to protect the environment from air pollution

[505] Annex I, item 1.
[506] Annex I, items 2, 3, 4, and 5.
[507] Annex II, art. II.
[508] Annex II, art. IV.
[509] Annex II, app. II.
[510] Annex II, app. I.
[511] Ibid.
[512] Annex II, app. II.
[513] Annex III, preamble.
[514] Annex III, art. II(2).
[515] Annex III, art. II(3).
[516] Annex III, art. XII(1).
[517] Annex III, arts. III(1) and VI(1).
[518] Annex III, art. IX.
[519] Annex III, art. V.
[520] Annex III, art. VIII.
[521] Annex III, art. XII.

caused by copper smelters in the border area. Specifically, Mexico and the United States agreed to limit sulfur dioxide emissions from copper smelter facilities to .065 percent by volume of air tested during any 6-hour period.[522]

For the United States, this agreement took effect January 16, 1987, and pertained to the Phelps Dodge facility in Douglas, AZ, as well as to any newly established copper smelter on the U.S. side of the border. Other existing U.S. copper smelters, whether in operation or not, would continue to be subject to appropriate State and Federal environmental control measures. For Mexico, this agreement took effect June 2, 1988, and pertained to the Mexicanade Cobre la Caridad facility in Nacozari, Sonora, and to any expanded or newly established copper smelter on the Mexican side of the border.[523]

The parties stipulated emissions monitoring, recordkeeping, and reporting systems to be installed, performed, and reported by the owner or operator of the copper smelter facility. To determine compliance with the .065-percent emissions limitation, a 6-hour average sulfur dioxide concentration is to be calculated and recorded for each operating day. Facility owners or operators are required to keep all emission records for 2 years; to maintain a monthly record of smelter charge; and to prepare quarterly reports for 6-hour-average readings that exceed the .065-percent limit.[524]

Annex V - Agreement of Cooperation Between the Government of the United States of America and the Government of the United Mexican States Regarding International Transport of Urban Air Pollution.

The objective of this annex is to provide for reduction of air pollution within urban communities along the border area.[525] Mutually agreed "study areas" and "selected pollutants" are subject to the requirements of this annex.[526] Study area "A" is defined as "El Paso County, Texas; that part of the State of New Mexico that is both south of latitude 32 degrees 00 minutes North and east of longitude 106 degrees 40 minutes West; and that part of the State of Chihuahua that is both north of latitude 31 degrees 20 minutes North and east of longitude 106 degrees 40 minutes West." The selected pollutants for Study Area "A" are ozone, nitrogen oxides, nonmethane hydrocarbons, carbon monoxide, sulfur dioxide, particulate matter, and lead.[527] Other study areas and selected pollutants may be appended to this annex as agreed on.[528]

For selected pollutants, the parties agree to determine the magnitude of emissions and identify each source, to identify appropriate control requirements, and to monitor pollutants and weather to compare pollution concentrations produced by each urban area with those concentrations resulting from the interaction of urban area pollutants. Monitoring of each study area and compilation of data is to be conducted for at least 2 years in a mutually agreed manner.[529] Under article V, the parties also agree to jointly explore ways to harmonize air pollution control standards and ambient air-quality standards.

Dispute-Settlement Mechanisms

Neither the Memorandum of Understanding nor the agreement (and its annexes) provides for dispute settlement.

Enforcement Mechanisms

Neither the Memorandum of Understanding nor the agreement (and its annexes) provides for enforcement mechanisms.

Provisions for Exchange of Information

Memorandum of Understanding Between the Subsecretariat for Environmental Improvement of Mexico (SMA) and the Environmental Protection Agency (EPA) of the United States for Cooperation on Environmental Programs and Transboundary Problems

According to article 3, senior officials of SMA and EPA meet once a year to discuss overall policies and programs and to identify environmental issues of mutual concern. In addition, SMA and EPA designate experts to meet at least once a year to review technical issues, plan parallel projects, and make policy recommendations for consideration by the respective agency heads (art. 4). The agreement also includes a provision to share information derived from activities under this agreement with the general public (art. 12). To facilitate information exchange, each party appoints a coordinator responsible for organizing and establishing procedures for the aforementioned meetings; for initiating the participation of organizations other than SMA and EPA, as appropriate; and for the overall management of all programs, workshops, projects, and activities conducted under this agreement.[530]

Agreement Between the United States of America and the United Mexican States on Cooperation for the Protection and Improvement of the Environment in the Border Area

Under article 8, this agreement provides for the designation of a "national coordinator" to implement

[522] Annex IV, preamble and art. I.
[523] Annex IV, art. I.
[524] Annex V, arts. I and II.
[525] Annex V, preamble.
[526] Annex V, arts. I(1) and I(2).
[527] Annex V, appendix.
[528] Annex V, arts. I(1) and I(2).
[529] Annex V, arts. II, III, and IV.
[530] Arts. 6, 7, and 9.

and manage each country's cooperative environmental activities. The national coordinator roles are assigned to EPA for the United States and to the Secretariat of Urban Development and Ecology, through the Subsecretariat of Ecology, for Mexico. The national coordinators are responsible for conducting a series of meetings of experts on particular environmental issues to develop and draft solutions to specific problems for approval and annexing to this agreement;[531] and at least one meeting a year attended by high-level officials from each party to review the implementation of this agreement.[532] Under article 12, the national coordinators report on joint activities conducted under this agreement and on the implementation of other relevant agreements to which Mexico and the United States are parties. In addition to United States-Mexican exchange of information, there is a provision to share information derived from activities with third-party countries (art. 16).

Annex I—Agreement of Cooperation Between the United States of America and the United Mexican States for Solution of the Border Sanitation Problem at San Diego, California—Tijuana, Baja California

This annex provides for bilateral consultations, either directly or through the International Boundary and Water Commission.[533]

Annex II—Agreement of Cooperation Between the United States of America and the United Mexican States Regarding Pollution of the Environment Along the Inland International Boundary by Discharge of Hazardous Substances

The agreement generally provides for consultations and the exchange of up-to-date information, as well as for a system of communication channels. Each party designates on-scene coordinators, advisory and liaison coordinators, and Joint Response Teams responsible for their respective border territory.[534] On-scene coordinators consult with advisory and liaison coordinators, as well as with their respective Joint Response Teams.[535] The two countries' Joint Response Teams consult with each other concerning hazardous discharge incidents and inform their respective national coordinators of their recommendations, and both countries' national coordinators consult with each other.[536] Depending on the situation, consultations may be formal or informal.[537]

Annex III—Agreement of Cooperation Between the United States of America and the United Mexican States Regarding the Transboundary Shipments of Hazardous Wastes and Hazardous Substances

This annex provides for a designated authority responsible for developing, implementing, and managing cooperative activities in handling transboundary shipments of hazardous materials. According to article 8, the U.S. designated authority is the EPA, and that for Mexico is the Secretariat of Urban Development and Ecology. Between the designated authorities, there is no specific mechanism for the exchange of information other than the notification of developments and direct consultations.[538] To review the implementation of this annex, the parties agree to meet every 2 years at a mutually agreed time and place (art. XVIII).

Annex IV - Agreement of Cooperation Between the United States of America and the United Mexican States Regarding Transboundary Air Pollution Caused by Copper Smelters Along Their Common Border

Article IV of this annex assigns responsibility for coordinating the abatement of smelter pollution in the border area to the United States-Mexico Air Quality Working Group (Working Group), established by the first meeting of the national coordinators under article 11 of the 1983 agreement. The Working Group meets at least semiannually to review the abatement progress, to develop additional corrective measures for possible implementation, and to prepare a biannual report to the national coordinators.[539]

National coordinators forward Working Group reports to their respective foreign ministries—the State Department for the United States, and the Secretariat of External Affairs for Mexico. Taking into account the Working Group's reports, the national coordinators submit recommendations for furthering the objectives of this annex to the foreign ministries.[540] In order to review the implementation of this annex, the parties shall meet every 2 years at a mutually agreed time and place (art. IX).

Annex V - Agreement of Cooperation Between the Government of the United States of America and the Government of the United Mexican States Regarding International Transport of Urban Air Pollution

This annex provides for an exchange of designated observers to visit the other party's area of study and for the preparation of a joint report.[541] The joint report should be issued within 6 months of the identification and measurement of pollutant emissions, identification of appropriate control measures, and estimated

[531] Arts. 11 and 3.
[532] Art. 10.
[533] Annex I.
[534] Annex II, art. V and app. II.
[535] Annex II, app. I.
[536] Annex II, app. II.
[537] Annex II.
[538] Annex III.
[539] Annex IV, art. IV(2).
[540] Annex IV, art. IV(3).
[541] Annex V, art. III(4b).

reductions in pollutant emissions resulting from such controls.[542] In addition, each party agrees to prepare a report on the comparison of the pollution concentration in each urban area with the combined concentrations and existing meteorological conditions. This report should be issued at no longer than 1-year intervals.[543] In order to review the implementation of this annex, the national coordinators meet once a year at a mutually agreed time and place (art. XI).

Implementation

For the United States, the operating agency is the EPA's Office of International Activities, Bilateral Branch, Washington, DC (telephone (202) 475-8597).

Current Issues

Mexican environmentalists have expressed particular concern over the high level of ozone recordings, particularly in the Mexico City District, a densely populated region with an estimated 20 million people. To help curb its traffic emission problems, in November 1989 the Government implemented a "Day Without a Car" program designed to cut traffic by one-fifth during the work week. Although the program is said to have contained the region's smog problem, high levels of ozone continued to be recorded.[544]

Reportedly, in May 1990, ozone levels around Mexico City exceeded the accepted standard (0.11 parts per million for 1 hour per year) almost every day; on some days, 2 to 3 times the standard for a 4 to 9 hour period was reported. Part of the problem is that the Government's program simply slows the rate of air contamination without effecting an emissions quality-control requirement. The program could be improved by establishing an acceptable emissions limit and scheduled measurement readings with the issuance of vehicle licenses.[545]

Whereas Mexico is concerned about developing sound domestic environmental practices, it has also recognized the country's global impact; on June 5, 1990, it hosted "World Environment Day," sponsored by the United Nations to raise ecological awareness. Public schools also participated by conducting environmental workshops to make families aware of the United Nations' theme, "A Better Planet for Children."[546]

Bilateral Agreements with Other Countries

AGREEMENT BETWEEN THE UNITED STATES AND THE U.S.S.R. ON COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION. date signed: 5/23/72; entry into force: 5/23/72; citations: TIAS 7345, 23 UST 845; depositary:[547]

AGREEMENT BETWEEN THE UNITED STATES AND THE FEDERAL REPUBLIC OF GERMANY ON COOPERATION IN ENVIRONMENTAL AFFAIRS. date signed: 5/9/74; entry into force: 3/26/75; citations: TIAS 8069, 26 UST 840.

AGREEMENT BETWEEN THE UNITED STATES AND JAPAN ON COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION. date signed: 8/5/75; entry into force: 8/5/75; citation: TIAS 8172; Japan—Environmental Cooperation—August 5, 1980 (amending and extending the 1975 United States-Japan agreement). date signed: 8/5/80; entry into force: 8/5/80; citations: TIAS 9853, 32 UST 2468.

MEMORANDUM OF UNDERSTANDING ON ENVIRONMENTAL PROTECTION BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE FEDERAL MINISTRY OF HOUSING AND ENVIRONMENT OF NIGERIA. date signed: 9/22/80; entry into force: 9/22/80; citations: 32 UST 2626, TIAS 9864.

AGREEMENT EXTENDING THE MEMORANDUM OF UNDERSTANDING OF SEPTEMBER 22, 1980, ON ENVIRONMENTAL PROTECTION BETWEEN THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE FEDERAL MINISTRY OF HOUSING AND ENVIRONMENT OF NIGERIA. date signed: notes exchanged between the U.S. Embassy (10/4/85) and Nigeria's Ministry of External Affairs (4/1/86); entry into force: 4/1/86; citations: text provided by U.S. Department of State.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA AND THE OFFICE OF THE STATE SECRETARY FOR ENVIRONMENT AND THE QUALITY OF LIFE OF THE REPUBLIC OF FRANCE. date signed: 6/21/84; entry into force: 6/21/84; citation: text provided by EPA.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF HOUSING, PHYSICAL PLANNING, AND ENVIRONMENT OF THE NETHERLANDS. date signed: 6/17/85; entry into force: 6/17/85; citation: text provided by EPA.

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[542] Annex V, art. II(4).
[543] Annex V, art. II(6).
[544] William Branigin, "Mexico Adopts Campaign To Save the Environment," *Washington Post*, June 6, 1990, p. A 18.
[545] Ibid.
[546] Ibid.

[547] None of the bilateral agreements in this group has a designated depositary.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA AND THE DEPARTMENT OF THE ENVIRONMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING COOPERATION IN THE FIELD OF ENVIRONMENTAL AFFAIRS. date signed: 6/2/86; entry into force: 6/2/86; citation: text provided by EPA.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF ENVIRONMENT OF ITALY CONCERNING COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION. date signed: 3/3/87; entry into force: 3/3/87; citation: text provided by EPA.

AGREEMENT BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF ENVIRONMENTAL PROTECTION AND NATURAL RESOURCES OF THE POLISH PEOPLE'S REPUBLIC ON COOPERATION IN THE FIELD OF ENVIRONMENTAL PROTECTION. date signed: 9/10/87; entry into force: 9/10/87; citation: text provided by EPA.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY OF THE UNITED STATES OF AMERICA (EPA) AND THE MINISTRY OF URBAN DEVELOPMENT AND ENVIRONMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL (MDU) CONCERNING ENVIRONMENTAL COOPERATION. date signed: not available;[548] entry into force: not available; citation: text provided by EPA.

Objectives and Obligations

The objective of all of these agreements is to provide a foundation from which contracting parties can cooperate in working out solutions to common environmental problems.[549] Environmental topics covered under these agreements include air-, water-, and noise-pollution controls; solid-waste management and resource recovery; control and disposal of toxic substances; and biological and genetic effects of pollution.[550] To effect this cooperation, parties agree to exchange scientific and technical information; to exchange scientists, experts, and research scholars; to develop and implement joint programs and projects; and to organize bilateral conferences and meetings of experts.[551]

Dispute-settlement Mechanisms

No dispute-settlement mechanisms were provided for in any of these agreements except in those with Germany and Nigeria (discussed below).

1974 Agreement Between the United States and the Federal Republic of Germany on Cooperation in Environmental Affairs.

When differences in environmental practices result in trade distortions, this agreement includes a provision for consultations with an aim to mitigate the distortions (art. 9).

Memorandum of Understanding on Environmental Protection Between the United States Environmental Protection Agency and the Federal Ministry of Housing and Environment of Nigeria.

Article 9 of this agreement includes a provision for negotiating the settlement of all disputes.

Enforcement Mechanisms

None of the agreements provide for enforcement mechanisms.

Provisions for Exchange of Information

1972 Agreement Between the United States and the U.S.S.R. on Cooperation in the Field of Environmental Protection

This agreement provides for the establishment of a United States-U.S.S.R. Joint Committee on Cooperation in the Field of Environmental Protection for the purpose of discussing environmental policy issues, coordinating and reviewing activities under the agreement, and making recommendations to the two Governments with regard to implementing this agreement. Under article 5, the committee meets once a year, alternating between the two countries. The two countries share information derived from the cooperative activities with each other and share nonproprietary information with other countries (art. 2).

1974 Agreement Between the United States and the Federal Republic of Germany on Cooperation in Environmental Affairs

This agreement does not provide for the establishment of a joint committee, but it does provide for the designation of coordinators to attend joint

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548 Text copy provided by EPA is not signed.

549 Art. 1 of each agreement, except that with Nigeria, in which the objective is described in art. 2.

550 Environmental topics are covered in the articles indicated for the agreements between the United States and the following countries: U.S.S.R. (art. 2), West Germany (art. 2), Japan (art. 3), Nigeria (art. 4), France (art. 2), The Netherlands (art. 4), United Kingdom (arts. 3 and 4), Italy (arts. 2 and 3), Poland (art. 1, item 1), and Brazil (art. 2).

551 See the following agreements and articles: U.S.S.R. (art. 3), West Germany (art. 3), Japan (art. 1), Nigeria (art. 3), France (arts. 2 and 3), The Netherlands (arts. 2, 3, and 4), United Kingdom (art. 2), Italy (arts. 2 and 3), Poland (art. 1, item 2), and Brazil (art. 3).

meetings as needed and to be responsible for the conduct of each party's activities under the agreement. Under article 5, mutually agreed cooperative activities may be confirmed between the appropriate agencies of each country. In addition to benefiting the two parties involved, this agreement includes a provision to share nonproprietary information with the world scientific community (art. 7).

1975 Agreement Between the United States and Japan on Cooperation in the Field of Environmental Protection

This agreement provides for the establishment of a Joint Planning and Coordination Committee, which is responsible for discussing environmental policy issues, coordinating and reviewing activities under this agreement, and making recommendations to the two Governments with regard to implementing this agreement. Under article 2, the committee meets once a year, alternating between the two countries. Arrangements for implementing mutually agreed activities will be made between the appropriate agencies of the two Governments (art. 4). In addition to the contracting parties, other countries benefit, as this agreement provides for the release of nonproprietary information to the general public.[552]

Memorandum of Understanding on Environmental Protection Between the United States Environmental Protection Agency and the Federal Ministry of Housing and Environment of Nigeria

This agreement does not provide for the establishment of a joint committee but does designate the EPA and the Nigerian Federal Ministry of Housing and Environment, Environmental Planning and Protection Division, as cooperating agencies (art. 1). Through consultations, the cooperating agencies determine specific projects for environmental cooperation[553] and coordinate cooperation between the two parties' government agencies and private facilities.[554] If parties agree, experts of third countries or international organizations may also participate in activities under this agreement; appropriate information derived from these activities will be shared with the world scientific community.[555]

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Office of the State Secretary for Environment and the Quality of Life of the Republic of France

This agreement does not provide for the establishment of a joint committee but does assign responsibility for coordinating environmental cooperation to the EPA and to the State Secretary for Environment and the Quality of Life of the Republic of France (State Secretariat).[556] Identification of cooperative activities and terms of operation will be coordinated through exchange of letters between appropriate officials of the EPA and the State Secretariat.[557]

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Ministry of Housing, Physical Planning, and Environment of the Netherlands

This agreement assigns responsibility for coordinating environmental cooperation to the EPA and the Ministry of Housing, Physical Planning, and Environment of the Netherlands (the Ministry).[558] According to article 4, mutually agreed cooperative activities and terms of operation will be coordinated in writing between the appropriate officials of EPA and the Ministry.

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Department of the Environment of the United Kingdom of Great Britain and Northern Ireland Concerning Co-operation in the Field of Environmental Affairs

Article 1 of this agreement assigns responsibility for coordinating environmental cooperation to the EPA and to the Department of the Environment of the United Kingdom of Great Britain and Northern Ireland (the Department). Information concerning the identification of mutually agreed activities and terms of operation will be exchanged through letters between the appropriate officials of EPA and the Department (art. 5).

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Ministry of Environment of Italy Concerning Cooperation in the Field of Environmental Protection

This agreement assigns responsibility for coordinating environmental cooperation to the U.S. Environmental Protection Agency and to the Ministry of Environment of Italy (the Ministry).[559] Information concerning mutually agreed activities and terms of operation will be exchanged through letters between the appropriate officials of EPA and the Ministry (art. 3).

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[552] Art. 6, item 1.
[553] Art. 7.
[554] Art. 6.
[555] Arts. 6 and 8.
[556] Arts. 1 and 5.
[557] Arts. 2 and 3.
[558] Arts. 1 and 6.
[559] Arts. 1 and 4.

Agreement Between the Environmental Protection Agency of the United States of America and the Ministry of Environmental Protection and Natural Resources of the Polish People's Republic on Cooperation in the Field of Environmental Protection

Under article 1, the EPA and the Ministry of Environmental Protection and Natural Resources of the Polish People's Republic (the Ministry) agree to cooperate in environmental protection activities. Terms of operation and implementation of each cooperative activity shall be negotiated and specified in a separate agreement by "organizational units" representing each of the two parties (art. 2). Other than the drafting of an agreement for each task performed under this overall agreement with Poland, no mechanism for exchange of information has been identified.

Memorandum of Understanding Between the Environmental Protection Agency of the United States of America (EPA) and the Ministry of Urban Development and Environment of the Federative Republic of Brazil (MDU) Concerning Environmental Cooperation

Under article 1 of this agreement, EPA and MDU agree to assist their respective Governments in cooperative environmental protection activities. This is a general agreement that includes a provision for annexing specific cooperative activities and operating terms (art. 9). This agreement includes a provision to share nonproprietary information derived from joint activities with the world scientific community (art. 6). Otherwise, no specific mechanism for exchange of information has been identified.

Implementation

Except for the United States-German agreement, all these agreements entered into force when signed by both parties.[560] Implementation for the agreement with Germany is discussed below. For the United States, the operating agency for all of these agreements is the EPA's Office of International Activities, Bilateral Branch, Washington DC (telephone (202) 475-8597). The United States-German agreement provided that it would enter into force 1 month from the date that the Government of Germany notified the Government of the United States that Germany's constitutional requirements for entry into force had been fulfilled (art. 10).

[560] See the following agreements and articles: U.S.S.R., art. 7; Japan, art. 10; Nigeria, art. 11; France, art. 6; The Netherlands, art. 7; The United Kingdom, art. 10; Italy, art. 8; Poland, art. 6; and Brazil, art. 10.

The additional views of Commissioner David B. Rohr were distributed to the Commission on the day the report was due to the Senate Committee on Finance. Other Commissioners therefore had no opportunity to consider or respond to these views.

ADDITIONAL VIEWS OF COMMISSIONER DAVID B. ROHR

Concerning

Trade Related Aspects of Environmental Measures
and
The GATT

The last two decades have seen a growing awareness of the dangers that man's activities pose to the global environment. This awareness has led to the recognition that we need to address the environmental effects of man's activities. There can be little doubt that concerns about how we use or abuse the environment are going to be of increasing importance over the next decade.

These environmental concerns will, without question, have an economic component. There is a cost, a growing cost, to the actions necessary to repair the damage we have already done to the environment and to prevent further damage to the environment. In the upcoming decade, we must begin to reconcile the short-term economic cost to foregoing the immediate enjoyment of our environmental resources with the long-term cost of the depletion of such resources and of pollution generally.

The reconciliation of economic and environmental goals is an issue that will affect many different aspect of economic, social, and political policies. It will certainly have both domestic and international components. One of the most difficult arenas in which we will have to address this interaction of economic and environmental goals is in the context of the international trading regime. We can pursue one of two courses. We can address environmental interests in a manner consistent with policies to promote sustainable economic growth through free and fair trade. Alternatively, we can see environmental interests employed as a mere protectionist device that will stifle the growth of the international economic system. It is important that we begin to act now to promote the former and prevent the latter.

We should begin by recognizing that the question before us is not whether we will allow

environmental concerns to affect the international trading regime, but rather how we will address them. Already we can see a growing number of actions by individual nations to restrict international trade for alleged environmental purposes. For example, many countries have begun to ban imported products that allegedly pose environmental risks, often using sanitary and phytosanitary regulations. Export bans, such as that imposed by Indonesia on tropical timber exports, are also becoming more frequent. Under the Montreal Protocol, we have widespread agreement to restrict trade involving chloro-fluorocarbons because of the alleged damage to the Earth's ozone layer. At the Uruguay Round of multilateral trade negotiations, a proposal was made to exempt certain subsidies for environmental purposes from GATT Subsidies Code disciplines. The question which must be put before the international trading community, then, is whether we will address environmental issues directly, comprehensively, and systematically, or whether we will add yet another force to those which threaten to tear apart the fabric of the international economic system.

The key to any reconciliation between environmental and economic concerns in the international trading arena must be found in the General Agreement on Tariffs and Trade (GATT). As the Commission's report clearly points out, the GATT neither explicitly authorizes the contracting parties to take action for environmental purposes, nor does it prohibit the contracting parties from any such action, as long as the contracting party can legitimately claim some harm to its own interests in health and safety, Article XX(b), or the conservation of its natural resources, Article XX(g). While these provisions could encompass many actions a country might take for environmental purposes, they do not cover all such activities and should not be viewed as coextensive with an explicit provision relating to environmental measures.

In examining the role the GATT has to play in the reconciliation of environmental and trading interests, we should begin by considering the possible goals we might seek to achieve by raising these issues. One possible goal that should be considered is the prevention of the use of environmental measures for protectionist purposes. Another goal might be the fostering of environmental interests that are important to the development of a free and fair trading

system. To pursue such a goal, we may wish to develop both incentives to encourage positive environmental actions and sanctions to deter detrimental actions, keeping in mind that we must define what are positive or detrimental actions.

Preventing Disguised Protectionism

The GATT does not explicitly authorize a country to restrict trade for environmental purposes. However, pursuant to Article XX, the GATT does authorize measures that restrict international trade if such measures are necessary to accomplish certain specified goals that include the protection of human, animal, or plant life, Article XX(b), or which are to conserve exhaustible natural resources, Article XX(g). The GATT therefore does implicitly authorize a large number of actions that are environmental in nature. Because many environmental actions are already possible under Article XX, and because further GATT action relating to the environment could involve changes to Article XX, it is important to understand what limitations there are on a contracting party's ability to adopt measures pursuant to Article XX.

Article XX "authorizations" are subject to a number of qualifications. The qualifications limit the ways in which contracting parties may use measures to restrict international trade even for the purposes permitted under the article. First, an Article XX authorized measure cannot arbitrarily discriminate between different countries in which the same conditions apply. This does not necessarily require most favored nation and national treatment but can be interpreted to require that any divergence from such principles at least not be "arbitrary".

Second, Article XX authorized measures cannot be a "disguised restriction on international trade." Arguably, this provision could be interpreted to require some objective test that there is a legitimate policy behind an Article XX other than merely restricting trade for economic purposes. Such an interpretation, however, could easily involve the GATT in looking behind or "second guessing" the acts of a national legislature that most countries would probably find intolerable. In the past, therefore, this requirement has usually been interpreted merely to require that a country openly acknowledge that the measure does restrict

international trade.

In addition to these generally applicable qualifications, each Article XX authorization incorporates its own specific limitations. For example, a restriction on international trade imposed for health or safety reasons must be "necessary." There has never been a GATT interpretation of the term "necessary," however, so it is unclear whether there is some objective standard for the health risk involved or merely the subjective standard of what the individual country deems "necessary." Similarly, restrictions applied for conservation purposes must be "related to" domestic production restrictions. While this provision means that such restrictions need not be "necessary" or "essential" to make such domestic production restrictions effective, they must be "primarily aimed" at making such restrictions effective.

There are a variety of GATT options open to us if we wish to focus on the goal of preventing the use of environmental standards as a disguised form of protectionism. Among these options might be the explicit inclusion of environmental standards in Article XX. This would subject environmental standards to at least the same level of GATT scrutiny as health and safety and conservation measures already subject to article XX. They would be subject to the arbitrary discrimination and disguised restriction on international trade limitations applicable to all Article XX measure. They could also be made subject to any special limitations that are felt to be necessary in light of any specially perceived problems.

Another option might be to subject restriction for environmental purposes to the same kind of regime that currently applies under article XII to restrictions to safeguard balance of payments. This would require, at a minimum, that actions be taken with due regard to minimizing their adverse impact on trade, require notification to the GATT, and provide for a system of annual reviews of such measures.

If creation of full analogue to Article XII is deemed too ambitious, a mechanism to review the trade impact of environmental measures could be established by amending the terms of reference of the GATT's Committee on Environmental Measures, which was established in 1972. Its terms of reference currently provide for it to examine, upon request, the trade policy aspects of environmental measures. The terms of reference could be

amended specifically to include consideration of the potential of environmental measures to be used to discriminate against international trade. For the Committee to operate effectively, however, it will probably be necessary to require the notification to the GATT of environmental measures with significant trade impact and provide for an annual review of the trade effects of such measures. Absent such notification and review provisions, the ability of the Committee to operate effectively would be significantly limited.

Yet another option that may be considered would be to subject environmental measures that significantly impact international trade to the openness and transparency requirements from which they are currently exempt under the GATT Standards Code, either because they relate to standards for processing and production methods or pursuant to the specific exemption for environmental standards. The more open and transparent is the system for adopting environmental standards, the less likely it is that such standards can be used for illegitimate, protectionist purposes. It is important to note, however, that use of the Standards Code would require not only removal of the environmental exception but also some modification to the exemption for processing and production methods.

If we wish to go further, we can also seek to place some limitations on a contracting party's ability to burden legitimate international trade through environmental measures. This can only be accomplished by establishing some objective standard against which the adoption of environmental policies can be judged, as for example by a specific limitation in an Article XX authorization. Any such "objective standard," however, is likely to be viewed as a direct encroachment upon a country's ability to provide for the health and welfare of its citizens and therefore encounter considerable resistance. Further, any such standard requires an assessment of an "acceptable level of risk." It is difficult to believe that there could be objective scientific agreement on what constitutes an acceptable level of risk.

Fostering Environmental Goals Through Sanctions and Incentives

To promote positive environmental goals, the GATT can be formulated with both sanctions and incentives. The GATT already allows the sanction of import restrictions on

products deemed detrimental to the health and safety of an importing country. A positive step toward promoting environmental goals would be to explicitly provide for restrictions on products deemed harmful to the environment of the importing country. This could be accomplished by specifically including an Article XX authorization for measures that restrict international trade for the purpose of environmental protection.

Such an authorization could be drafted to accomplish a variety of purposes. It could be written specifically to apply to environmental measures designed to protect the environment of the country taking the action. It might be expanded to allow restrictions on products other than those directly harmful to the environment of the importing country, such as chlorofluorocarbons, trade in endangered species, or other products deemed harmful to the global environment. Such an authorization might, using Article XX (g) as a model, require that any such trade restriction be related to domestic environmental restrictions.

Another model for an Article XX environmental authorization might be seen in Article XX(h), which relates to restrictions on international trade imposed pursuant to international commodity agreements. This could be adapted to environmental purposes by providing for restrictions undertaken pursuant to obligations under certain intergovernmental environmental agreements. Such an provision would clarify the status of any actions that might be required under agreements such as the recently concluded Montreal Protocol restricting trade in chlorofluorocarbons.

It might also be possible, under the GATT, to provide international trade sanctions for environmentally harmful activities. For example, it is possible to apply countervailing duties and antidumping duties to eliminate the economic gains from environmentally harmful acts when companies benefit from such practices in international trade. To the extent that particular enterprises or industries are granted derogations from generally applicable environmental standards in their country of operations, such derogation could be viewed as a specific subsidy granted to the company by the country. Such a benefit could be deemed countervailable. A measure of the value of the derogation might be the costs would be required to comply with the environmental standards generally applicable in the particular

country.

Unfortunately, it might be difficult to apply subsidies logic in all cases of gain from environmentally damaging acts. For example, a country whose overall environmental standards are lax or even nonexistent would provide an economic advantage to its enterprises who are competing with the enterprises in another country which requires more costly compliance with tougher environmental controls. Because the less restrictive standards are generally applicable to all enterprises in the country, the countervailing duty laws would not apply, because, under most countries' laws, including those of the United States, a subsidy that is generally available is not countervailable.

To avoid this problem, one might apply the antidumping law, specifically, the principles currently in use in cost-of-production/constructed value scenarios in that law. In such scenarios, dumping authorities are faced with the difficulty of calculating costs which in certain cases may not have been incurred in a strict accounting sense. These include, for example general, selling, and administrative expenses (GS&A), and profit. On the basis of our long term experience with the law, it is possible to assume certain standard costs, such as an 8 percent GS&A expense, and standardized profits, such as an 8 percent profit, in making our calculations. Under some dumping regimes, such standards are always applicable and in other they may be subject to alteration in the event of specific proof. In the same manner, we could impute a cost not actually incurred due to looser environmental controls. This could be a per unit assessment of costs to comply with stricter environmental controls. This cost would be assessed as part of the constructed value in the dumping calculation.

In addition to assessing countervailing or antidumping duties on the economic advantages gained from loose environmental controls, the GATT could promote environmental standards by limiting the countervailability of subsidies for environmental purposes. This would provide an incentive to the adoption of such standards by removing the sanctions, in the form of countervailing duties that would otherwise be assessed.

It would be necessary to provide careful limitations on any such exception from countervailability to prevent abuse. A proposal for such an exception was proposed in the

course of the Uruguay Round of multilateral trade negotiations by the European Communities but was withdrawn after opposition from certain other countries. The proposal provided a number of limitations on the situations in which such environmental subsidies would be deemed noncountervailable.

Conclusions

The examples given of the types of actions that might be possible in the GATT to deal more explicitly with environmental concerns are merely illustrative of the many proposals that have been or might be considered in such a context. We should not be mislead into thinking that any of them would prove to be totally efficacious or easy. Further we must be cognizant of the fact that many aspects of environmental issues do not involve international trade and most international trade does not involve environmental concerns.

Neither the difficulties nor the recognition that we are dealing with only part of a larger problem should prevent us from dealing with the trade related aspects of environmental measures. We must call for the consideration of these issues in their appropriate fora, including, most especially, the GATT. If we are to take action, careful negotiation and careful drafting would be critical to ensure that the solutions are not worse than the problems. The difficulty should not prevent us from attempting the task. The longer we wait, the more difficult and costly the solution is likely to be.

APPENDIX A

REQUEST FROM THE SENATE COMMITTEE ON FINANCE

United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

November 15, 1989

The Honorable
Anne Brunsdale
Chairman
United States International
Trade Commission
Washington, D.C. 20436

Dear Madam Chairman:

A substantial number of international agreements aimed at protecting the environment have entered into force; many of these agreements make use of trade restrictions to achieve their goals. Treaties such as the Convention on International Trade in Endangered Species, the International Tropical Timber Agreement, and conventions regulating the taking of whales and the depletion of the ozone layer are examples of agreements which address the problems of conservation through trade-related provisions. Moreover, article XX of the General Agreement on Tariffs and Trade recognizes and permits national adoption and enforcement of such provisions, within specified standards. There is, however, no comprehensive and systematic source of information identifying these international agreements, or explaining their implementation mechanisms.

Therefore, the Committee on Finance requests the Commission to initiate an investigation, pursuant to section 332(g) of the Tariff Act of 1930, to identify international agreements to protect the environment that are made effective through trade restrictions. Specifically, the Commission should identify the agreements and their signatories (and significant nonsignatories), their dispute settlement and enforcement mechanisms, and procedures for the exchange of information. In particular, the Commission should discuss the actions to implement these agreements taken by the United States and other major signatories, and identify the Government agencies having responsibilities for such implementation. In addition, the Commission should suggest a methodology for conducting a periodic evaluation of these and future treaties.

The Commission is authorized to hold a hearing and to seek the views of interested parties. It is likewise requested to seek the views of the Departments of Commerce, State, and Interior, the Office of the United States Trade Representative, the Environmental Protection Agency, and other Government entities. The Commission's report should include these views along with suggestions received by the Commission as to actions or proposals the U.S. Government could initiate. The report should be submitted to the Committee no later than one year after the Commission's formal initiation of the investigation.

Sincerely,

Lloyd Bentsen

APPENDIX B

CHAIRMAN'S RESPONSE TO FINANCE COMMITTEE REQUEST

CHAIRMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

Honorable Lloyd Bentsen
Chairman, Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your letter of November 15, 1989, in which you requested that the U.S. International Trade Commission conduct an investigation under section 332 of the Tariff Act of 1930 concerning international agreements for protecting the environment and wildlife through the application of trade restrictions. As you requested, the Commission will endeavor to identify the agreements, their signatories and significant nonsignatories, dispute settlement and enforcement mechanisms, and procedures for information exchange. We shall examine implementation and enforcement activities by the U.S. Government and international organizations and identify the Federal agencies responsibile for such activities. Included in this review will be agreements that are enforced other than through trade sanctions. Finally, a recommended methodology for future periodic evaluation of U.S. Government participation in such agreements will be developed. Our report will be transmitted to you by January 21, 1991.

Enclosed for your information is a copy of the Commission's notice instituting the investigation. Please continue to call on us whenever we can be of assistance to you.

Sincerely,

Anne Brunsdale
Chairman

Enclosure
Notice

APPENDIX C

NOTICE OF INVESTIGATION NO. 332-287 IN THE *FEDERAL REGISTER*

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

(332-287)

International Agreements to Protect the Environment and Wildlife

AGENCY: United States International Trade Commission

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: January 19, 1990

FOR FURTHER INFORMATION, CONTACT: Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202-252-1592).

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted investigation No. 332-287, International Agreements to Protect the Environment and Wildlife, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), following receipt of a letter on November 15, 1989, from the Chairman of the Committee on Finance, United States Senate. As requested, the Commission will endeavor to survey international agreements, enforceable through trade sanctions, to protect the environment and wildlife, along with their signatories and significant nonsignatories, dispute settlement and enforcement mechanisms, and procedures for information exchange. In addition, the Commission will identify the administrative and enforcement mechanisms in place within the United States Government and the Government agencies responsible for such activities. Finally, a recommended methodology for future periodic evaluation of the operation of such agreements will be developed. The report will be submitted to the Committee on Finance by January 21, 1991.

PUBLIC HEARING: A public hearing in connection with this investigation will be held in the Hearing Room of the U.S. International Trade Commission, 500 E Street, SW, Washington, D.C., on August 15, 1990, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, not later than noon, August 8, 1990. Written prehearing comments (original and 14 copies) should be filed not later than noon, August 9, 1990. Post-hearing comments may be submitted by no later than August 22, 1990.

WRITTEN SUBMISSIONS: Interested parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. Such statements must be submitted by no later than August 22, 1990, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for

confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, D.C. 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202-252-1809.

By order of the Commission.

Kenneth R. Mason
Secretary

Issued January 25, 1990

APPENDIX D
WRITTEN SUBMISSION OF THE COMPETITIVE ENTERPRISE INSTITUTE

Whitfield 404

COMPETITIVE ENTERPRISE INSTITUTE

'90 AUG -8 A8:33

August 7, 1990

Kenneth R. Mason
Secretary
U.S. I.T.C.
252-1789
(Via FAX)

Dear Mr. Mason:

I respectfully request that I be granted a chance to testify at the I.T.C.'s hearing August 15th on protecting the environment. I understand that the usual time period is fifteen minutes.

I think it important that all segments of the public interest community be heard by your committee. As President of the Competitive Enterprise Institute, Washington's leading free market environmental group and a strong supporter of free trade policy, my testimony will add an interesting and informative voice to the debate.

Thank you for your consideration. Please let me know of your decision as soon as possible.

Sincerely,

Fred L. Smith, Jr.

Enclosure: Bio

cc: Kenneth Mason (by mail)
cc: Bob Parker (by mail)

COMPETITIVE ENTERPRISE INSTITUTE

STATEMENT

OF

FRED L. SMITH, JR

PRESIDENT OF THE COMPETITIVE ENTERPRISE INSTITUTE

PRESENTED TO

THE INTERNATIONAL TRADE COMMISSION

ON THE SUBJECT OF

INTERNATIONAL AGREEMENTS
TO PROTECT
THE ENVIRONMENT AND WILDLIFE

AUGUST 15

1990

233 PENNSYLVANIA AVE., S.E. • • (202) 547-1010

TESTIMONY BEFORE THE ITC ON INTERNATIONAL AGREEMENTS TO PROTECT THE ENVIRONMENT AND WILDLIFE

Fred L. Smith, Jr.

AUGUST 15, 1990

Introduction

My name is Fred Smith. I head the Competitive Enterprise Institute (CEI), a pro-market, pro-consumer public interest group based in Washington, D.C. I welcome the opportunity to comment today on the growing interrelationship of trade and environmental policies -- and the threats this trend creates for open world trade.

CEI has long been involved with both trade and environmental policy. CEI believes that economic and environmental policies are best advanced by extending private property rights to those environmental resources now at risk and by enforcing these rights by strict adherence to the polluter-pays-principle. My personal credentials in this field date to the mid-1960s (Cornell Aeronautical Lab, the University of Pennsylvania's Management and Behavioral Science Center, the U.S. Environmental Protection Agency, the Council for a Competitive Economy and now at CEI).

The ITC has been requested to examine the workings of international agreements to protect the environment and wildlife. This request stems in part from growing pressures to "globalize" environmental policy. Just as the United States federalized environmental policy in the 1970s, it is essential -- the argument goes -- that we manage environmental issues internationally. That belief has led to several treaties which already seek uniform environmental policies among nations (the Convention on Trade in Endangered Species, for example). Congress and the Administration are now considering a wide range of new initiatives of this type.

The logic of this approach is based on the belief that, just as it was inappropriate for the various states to compete among themselves on the basis of the stringency of their environmental laws, so also is it wrong to allow nation states to so compete. Such competition would endanger the global environment and would threaten the ability of American firms to compete in the world economy. Senator Lautenberg recently proposed legislation that would extend the unfair trading practice laws to this area. A nation that failed to enact our environmental laws might well find itself subject to trade sanctions. Nonetheless, efforts to "globalize" environmental protection, to advance environmental goals by retaliatory trade sanctions, remain popular. Indeed, such popularity is one factor that has led to these hearings.

My comments today suggest that there are major risks -- both economic and environmental -- in such moves; that before proceeding, we consider carefully the wisdom of imposing uniformity on the worldwide effort to resolve environmental problems; that we reconsider our own experience with federalizing environmental policy; and that we move slowly to link environmental and trade policy. This Commission is already aware that the problems of determining whether a specific trade policy will advance the economic interests of the United States is complex; to broaden this question to address also environmental issues -- particularly, whether the environmental policies of a specific trading partner are "adequate" -- would take the Commission far beyond the possible.

Having outlined my reasons for caution in this area, I then suggest some things the Commission might consider as it addresses environmental issues. In general, I argue that an open world economy and a policy of free trade is compatible, even essential, to both economic and environmental ends.

THE RISKS OF 'GLOBALIZING" ENVIRONMENTAL POLICY:

Let me now consider some of the factors arguing against linking trade to environmental policies.

* U.S. Environmental Policies Don't Export Well: American environmental policy has required the expenditure of hundreds of billions of dollars, the mobilization of armies of technicians to design and monitor anti-pollution technologies, a civil service largely immune to bribes and an independent environmental movement to monitor and police the process. The U.S. has been able to take this approach because we are rich, have an excellent professional and academic educational establishment, an honest civil service and a large and aggressive public interest sector. None of these prerequisites are present in the Third World. Yet, the presumption of global environmental policy -- specifically those policies that relate to trade -- is that other countries should adopt our policies. That is both unwise and impossible.

* Environmental Policy is Anti-Market: A second factor to avoid any close linkage of environmental and trade policies is the strong anti-market bias of current environmental policy. Conventional wisdom views pollution and other environmental problems as the inevitable consequence of "market failure." Since, pollution is "external" to the market place, the market "fails" to consider its impacts. When the market "fails," political intervention is essential. The "market failure" model thus leads to regulating all economic activities that have environmental consequences. But all economic activities have environmental consequences; thus, the current approach seeks to regulate the whole economy.

A totally regulated free economy is a contradiction in terms. Yet, that is the logic of the current approach. Economic central planning and control has proven itself a failure throughout the world. Why should we expect ecological central planning to fare any better? Before proceeding down this path, we should reconsider the wisdom of the "market failure" model. That markets are not perfect does not mean that political approaches are. In the real world, efforts to

extend property rights to resources now at risk and to develop legal mechanisms to protect vulnerable environmental resources may work far better than political controls.

• An Environmental Trade Policy Is Highly Subject to Capture: Public policies often represent the views of special minorities rather than the public interest. Few individuals have the time or inclination to spend the time required to master complex policy questions and to monitor the process by which policy is made and enforced. Only groups having a strong economic or ideological stake are likely to participate. The econoimc groups that attend public hearings are often established firms whose committment to competition is limited. Ideological environmental groups are today (in large part because of the almost universal acceptance of the "market failure" explanation of environmental problems) more likely to oppose market approaches and thus to favor trade restrictions. Less trade, the argument goes, means less economic activity and thus less stress to the world ecology.

This inability of public hearings to determine the public interest is already serious. Openning the door to environmental pleadings will only make it worse. Just as textile interests have come to champion human rights in oppressed Third World countries that happen also to be textile exporters, so also can we be sure that such protectionist arguments will now be advanced on environmental grounds. Indeed, orange juice tariffs are already defended as necessary to protect tropical rainforests.

• The Difficulty of Setting Environmental Priorities: A major problem today in the environmental field is determining priorities. Such priorities respond to political, not environmental, pressures. As a result, there is a tendency to foucs on the risks headlined in the papers rather than those found significant by environmental professionals. The sensational rather than the serious dominate policy. Consider the environmental fears of the last few years: the Alar incident, the Chilean grapes, the flurry of concern over residues in imported meat, the risks of asbestos. EPA itself in an internal study, Unfinished Business, found that its priorities were widely askew from those that would be dictated by environmental concerns.

This misprioritization problem will be far worse if we seek to link trade and environmental policies. The Third World faces serious pollution problems but those are not those of the United States. People routinely die of waters contaminated by human wastes, but American environmentalists focus on chemical and other industrial wastes. American trade policy will of course focus on the concerns of Americans and thus likely weigh more heavily the elimination of trace levels of pesticide or herbicide contaminants than the improvement of basic diets and water quality that are more likely to advance the welfare of Third World countries.

A COMMENT ON CURRENT TRADE POLICIES:

To illustrate these points, consider the way in which trade policies have become intertwined with respect to efforts to save the African elephant. One of the most discussed international environmental treaties is the Convention on International Trade in Endangered Species (CITES). In 1989, the CITES directorate voted to move the African elephant to "Appendix I" status, effectively banning all trade in elephant products. The logic of this action was straightforward: elephant ivory prices had increased and these higher prices made poaching increasingly profitable. As a result, African elephants were endangered. Since markets and trade created this threat, the solution was obviously to restrict the trade.

This act was very popular and was championed by leading environmental organizations including the World Wildlife Fund and Kenya. It was opposed by a handful of countries in Africa that had pioneered in a novel "conservation-through-use" strategy that had begun to integrate the elephant into the local economy. Zimbabwe was a leader in this effort. Since elephant herds had been plummeting in Kenya (a nation that had banned any killing of elephants) dropping from 65,000 to 19,000 over the last decade, while Zimbabwean herds (in a nation that had authorized controlled harvesting) had over the same period increased from 30,000 to near 43,000, there was clearly more to this story than appeared in the press. (Botswana, Malawi, Namibia, and South Africa -- all nations which treated the elephant as a renewable but harvestable species also recorded population increases of around five percent.)

What was the difference? These latter countries allow and encourage property rights in elephants, giving African natives an incentive to protect their now valuable elephants. In Africa, elephants compete with natives for scarce resources. If there are no gains to offset these losses, then elephants become a massive pest -- as Tom Bethel described recently, elephants become the "Giant Rat of Kenya!"

The CITES decision to ignore that very different elephant management strategy and to accept the need to de-commercialize elephants is indicative of the policies all too likely if trade and environmental policies are linked. The anti-market bias of current environmental policies means that trade restrictions will generally be seen as inherently pro-environmental. For this reason and also because trade policies reflect American perceptions rather than Zimbabwean realities, there will be little understanding or sympathy for nations that have found ways to integrate economic and environmental values. CITES thus poses an immediate and real threat to Zimbabwe's "conservation-through-use" policy and ultimately the continued existence in the wild of the African elephant.

The United States and many European nations adopted a political, not environmental, policy in 1989. U.S. environmental groups had popularized the plight of the elephant and there was little willingness on the part of our trade negotiators to challenge their theories. Their constituency after all was in America, not in Africa, and consisted of people, not elephants. The consequences of this anti-trade policy will not be obvious for some time but this policy is all too likely to be repeated in the future.

Nations face vastly different environmental problems--each country has its own geographic, economic and political problems and potentials. That variability encourages and should continue to encourage a wide range of experimentation. A non-use policy

which might well work in the United States may well fail in both ZImbabwe and Kenya. The fact that Zimbabwe's elephant population is increasing, while Kenya's is declining suggests that trade may be more pro-environment than non-trade.

CITES is no exemplar for rational environmental policy. The anti-trade bias of CITES has also blocked the evolution of turtle ranches and farms. Strong efforts were made over a decade ago to find ways to commercially farm sea turtles -- a species almost universally in danger throughout the world. That effort was blocked and eventually destroyed by the anti-trade and anti-commercial bias of environmental protection groups (the Department of Interior and a number of environmental groups). Efforts to block trade in tropical lumber are growing as are efforts to condition all agricultural trade on adherence to environmental standards. This latter trend is extremely serious when one considers the low to non-existent risks of trace contaminants in food and the very serious risks of starvation throughout the world.

RECOMMENDATIONS:

This hearing is important. The ITC has long sought to balance the interests of Americans concerned over trade policy. That task has been daunting; today, you are considering steps that might vastly complicate your deliberations and -- as I have argued -- fail to advance environmental goals. But, as noted, these calls would merely add environmental policy to the list of "unfair" trading practices used to rationalize protectionist policies. That likelihood was referenced in a recent Economist article which discussed the concerns of Prime Minister Thatcher. "Mrs. Thatcher," they noted, "is entirely right to warn [the European Community] against protectionism--even the covert protectionism that hides behind ever-higher environmental and safety standards." (The Economist 11-17 August 1990, p.14) Protectionist pressures are already strong and very costly to consumers, linking them to the greenie forces bodes badly for consumers.

What then should the Commission do? First, the Commission should review the thesis that markets are to blame for environmental problems. Empirical evidence suggests otherwise -- throughout the world, the correlation between environmental quality and markets is evident. Free markets encourage everyone to consider carefully their use of materials and energy and those incentives reduce the stress posed by economic activities to the environment. Moreover, market economies are based on secure property rights and contract rights. These institutional arrangements decentralize authority for preserving natural resources and encourage wise use. In contrast, resources owned in common and politically managed are rarely used wisely. Property rights give an owner both the incentive to manage the resource wisely and the means to protect that resource from harm. As a first approximation, good economic policy is good environmental policy. The Commission should therefore consider policies likely to encourage the evolution of market economies as pro-environmental.

As the Commission takes on the environmental issue, I recommend that you consider carefully the motivations of those parties seeking to restrict trade for an "environmental" cause. Such claims should receive at least the same scrutiny given those seeking such restrictions on economic grounds. Too often environmental policies have been designed and enacted to satisfy public perceptions than to resolve real problems.

The Commission should develop its own expertise in the trade and environment area and use, only with caution, the information supplied by the federal Environmental Protection Agency or the Department of Interior. These agencies have their own agendas and trade expansion is not a high priority.

The Commission should also recognize that the American approach to environmental policy may not apply to other conditions and other countries and be receptive to creative ways whereby the poorer countries of the world might best advance their environmental and economic welfare. Had Britain been dominated by environmentalists in our colonial times, they might have reacted with horror to the rapidity with which we cleared away the forests that blanketed North America. Yet, those early centuries of deforestation came to an end and now forests east of the Mississippi are expanding again. Are we to deny to Brazil and Indonesia this same right to transform natural resources into wealth in order that we might move toward a less material intensive economy?

CONCLUSION:

These comments are preliminary. My intent has been to caution the Commission that environmental policy is in disarray and at odds with economic goals. That tension is likely to increase in the U.S. if the projected recession materializes. That tension is far greater in the Third World with its far lower living standards. The challenge of the Commission is to look beyond simplistic solutions which see trade restrictions and sanctions as direct and effective ways of achieving environmental goals to ways whereby economic and environmental objectives might both advance. CEI expects to be heavily engaged in that work over the next decade and will keep you apprised of our work.

APPENDIX E
WRITTEN SUBMISSION OF THE AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

POWELL, GOLDSTEIN, FRAZER & MURPHY
ATTORNEYS AT LAW
SIXTH FLOOR
1001 PENNSYLVANIA AVENUE N W
WASHINGTON, D.C. 20004
202 347-0066
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TELECOPIER 202 624-7222

SUITE 800
999 CIRCLE 75 PARKWAY
ATLANTA GEORGIA 30339
404 [illegible] 0000

SUITE 1000
600 PEACHTREE CENTER TERRACE
ATLANTA GEORGIA 30348
404 [illegible] 0000

ELEVENTH FLOOR
THE CITIZENS & SOUTHERN NATIONAL BANK BUILDING
35 BROAD STREET N W
ATLANTA GEORGIA 30335
404 [illegible] 0000

August 22, 1990

Kenneth R. Mason
Secretary
United States International
Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Mr. Secretary:

In response to the request for the views of interested parties contained in your notice (55 Fed. Reg. 3283) instituting an investigation of International Agreements to Protect the Environment and Wildlife under section 332(g) of the Tariff Act of 1930, the American Association of Exporters and Importers hereby submits a written statement for the record. The Association has also submitted this statement to Senator Bentsen in connection with the hearing held in the Senate Finance Committee on July 30, 1990 on Trade and the Environment and the Global Environmental Protection and Trade Equity Act.

Please do not hesitate to call upon us if you have any questions concerning the position of the AAEI on this matter.

Sincerely,

Peter O. Suchman

American Association of
Exporters and
Importers
11 West 42nd Street, New York, NY 10036 (212) 944-2230
(FAX) 212-382-2606

STATEMENT ON BEHALF OF THE
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

ON THE IMPACT OF ENVIRONMENTAL CONCERNS
ON INTERNATIONAL TRADE

The American Association of Exporters and Importers (AAEI) is an association of over 1100 U.S. exporters, importers and other companies that provide a spectrum of services essential to international trade. The AAEI is vitally interested in the administration of U.S. laws regulating this country's international commerce, as well as agreements with trading partners affecting international commerce. It also has considerable interest in the topic of this investigation -- international environmental agreements enforceable through trade sanctions. On behalf of its membership, the AAEI urges cautious and careful consideration of the serious implications of such enforcement mechanisms for the international trading system which the United States has so actively helped to build.

The AAEI agrees wholeheartedly that the United States should work to promote cooperative, international efforts to protect the environment. However, the increasing trend towards enforcing both international agreements and domestic environmental legislation through the imposition of unilateral trade restrictions is ill-advised. Unilateral redress is not only less effective than a cooperative approach, it also severely undermines long-standing American efforts to build and promote an international trading

system based upon multilateral agreements. If trade sanctions are ultimately deemed to be an effective way to promote protection of the environment, they should only be applied within the context of a multilateral regime.

I. Background: A Growing Number of International and Domestic Environmental Protection Proposals Seek to Enforce Their Standards Through the Imposition of Unilateral Trade Embargoes.

To date, 59 countries have ratified the "Montreal Protocol," a treaty with the laudable goal of limiting the use of chlorofluorocarbons ("CFCs") which contribute to the depletion of the Earth's ozone layer. However, to enforce these nations' views on protecting the atmosphere, the treaty requires signatories to ban all imports of CFCs and products containing CFCs from non-signatory countries, even though trade of controlled amounts of CFCs among signatories is permitted for the next several years. In other words, although participating countries have determined that use of a limited amount of CFCs is environmentally tolerable, they have nevertheless banned imports of CFCs even within that tolerable range solely as a means of coercing non-signatory countries to sign up. The trade restriction is thus not directly tied to environmental protection imperatives, but rather is designed as a stick to impose unilateral goals.

The precedent set by the Montreal Protocol of using trade sanctions to coerce environmental protection subsequently caught the attention of the U.S. Congress, which has since proposed a number of environmental protection measures with trade sanctions enforcement provisions. For example, the Senate-passed Clean Air Act contains an import ban to encourage foreign governments to adopt CFC regulations similar to those of the United States. S. 1630 would prohibit imports of products containing or manufactured

with CFCs unless both the manufacturing country and the exporting country are signatories of and in compliance with the Montreal Protocol. Beginning in the year 2000, the Senate bill would extend the CFC import ban to all countries with less stringent CFC regulations than those adopted unilaterally by the United States. Although the Clean Air Act passed by the House does not contain a trade sanctions provision, an unsuccessful but seriously considered amendment introduced by Rep. Bates included an even harsher import ban. It remains to be seen what will come out of conference.

Similarly, the House Committee on Merchant Marine and Fisheries reported out a bill earlier this year that attempts to promote compliance with international fisheries conventions through draconian trade sanctions. H.R. 132 would give the President the authority to ban imports of any product -- not just fish products -- from countries found to "diminish the effectiveness" of an international fisheries agreement. There need be no relationship between the products banned and the offense committed. The bill thus completely uncouples the trade regulation from environmental protection standards and uses it purely as punishment.

A final example of this disturbing trend is a bill introduced by Senator Lautenberg, known as the "Global Environmental Protection and Trade Equity Act," S. 2887. This legislation would deny benefits under the Caribbean basin Initiative ("CBI") and the General System of Preferences ("GSP") to any country that "does not have effective natural resource protection and effective pollution abatement and control standards" or if such standards are not observed. Moreover, the bill would make the failure to adopt such standards an unfair trade practice under section 301 of the trade laws, thereby paving the way for presidential

retaliation. Like the others, this proposal reflects a unilateral approach to environmental protection, in which the United States becomes the sole arbiter of the level of protection necessary and the sole monitor of compliance.

II. The Need for a Multilateral Approach.

It is encouraging to witness the growing global concern for the preservation of our shared environment. The AAEI certainly supports international efforts to devise new and innovative approaches to protect our natural resources. Yet, it is equally important to consider carefully the costs associated with these new approaches, and to weigh alternative, less damaging means of achieving the same goals.

Trade sanctions, at first blush, appear to be an innovative use of U.S. economic power as leverage to gain important environmental concessions. Upon closer scrutiny, however, it becomes clear that trade sanctions would be far less effective than their advocates believe, and would damage vital U.S. interests.

A. Multilateral Development of Environmental Protection Standards Will Yield More Effective Results.

Trade sanctions by themselves are a less than effective means of enforcing environmental agreements because they eschew cooperation and coordination for unilateral fiat. The success of international environmental protection measures will hinge upon action at the national level, be it the enactment of domestic legislation or adherence to international agreements. In a world of sovereign states, such action cannot be coerced. The sincere commitment of national governments to both the means and ends expressed in international covenants will be the key to their strength.

Furthermore, because any given environmental threat may be susceptible to more than one possible solution, cooperation between governments to ensure that different approaches are at least consistent with each other will vastly increase the success of national efforts. An example of the potential for counter-productivity when countries act in isolation from each other may be seen in the diverse approaches to bottle recycling. While many U.S. states have focused on breaking down and reprocessing the glass from which the bottles are made, a number of European countries encourage the washing and reuse of individual bottles several times before reprocessing. Thus, Grolsch Beer, a Dutch brewery, produces and distributes bottles with attached, reusable ceramic stoppers that facilitate the European method of recycling. The state of California, however, recently announced its intention to ban the Grolsch bottles because the stoppers impede the glass recycling process it has adopted. The optimal solution to this dilemma is obviously not to force compliance with the American system by punishing European manufacturers. Rather, the parties should work together to devise a compromise approach that can incorporate the needs of all sides. To insist singlemindedly on the American procedure in this case would be counterproductive, resulting in an unnecessary diversion of recycling dollars to accommodate the differences.

Cooperation for its own sake, therefore, is to be desired. It can both reduce inconsistencies and produce better overall solutions, since wider participation means a wider range of perspectives from which to develop a plan of action. Attempts to impose our own solutions unilaterally on the rest of the world through the use of trade sanctions, however, will only serve to alienate those with whom we should be collaborating, and diminish the chances for a cooperative response.

In addition to discouraging cooperation, unilateral trade sanctions become less effective as the United States' own predominance in world trade diminishes. Access to the U.S. market is not as crucial as it once was, and foreign producers can accommodate to U.S. trade barriers or, in a globalized economy, can shift production for the U.S. from sanctioned to unsanctioned facilities, without changing their production practices. Clearly, therefore, the most effective solutions to the increasing number of global environmental challenges will be developed multilaterally.

B. Multilateral Development of Environmental Protection Standards Will Best Protect Vital U.S. Interests in Preserving a Free and Open International Trade System.

Unilateral trade sanctions are not only of questionable effectiveness, they are irresponsible because they harm our own interests far more then they contribute to environmental protection. The United States has invested years of time and effort as the leading international proponent of a multilateral trading system. The General Agreement on Tariffs and Trade (GATT) -- the world trade body forged primarily through U.S. leadership -- is founded upon the twin principles of multilateralism and liberalized trade. Thanks largely to this open approach, participating nations have prospered and grown. Our continued leadership in support of liberalized multilateral trade is essential if the system is to remain viable.

Trade sanctions of the sort discussed above threaten to undermine these efforts, for a number of reasons. First, they establish a precedent which may come back to haunt us in the future. Article XX of the GATT allows states to enact trade restrictions necessary for certain national health, safety and welfare goals, as long as they are not enacted arbitrarily or

discriminatorily. In order to prevent this clause from becoming a gaping loophole in the multilateral trading system, Article XX must be interpreted narrowly. Traditionally, therefore, allowable trade restrictions have been closely tied to the harm caused by the trade in question. For example, when pharmaceutical products fall below U.S. regulatory standards, we may ban their import in order to protect our health. This new brand of environmental trade sanctions, however, breaks that nexus. CFCs which may be imported from country X may not be imported from country Y not because the level of CFCs in the product is unacceptably high but because country Y has not signed the Montreal Protocol. Television sets may not be imported from country Z not because the television sets themselves pose a health or safety threat but because country Z has not sufficiently implemented a fisheries agreement. If we allow the nexus between harm and restriction under Article XX to be broken -- even for such a meritorious goal as environmental protection -- the precedent could unleash a whole host of similar Article XX exceptions which could combine to threaten the viability of the multilateral trading system itself.

Second, U.S. support for trade sanctions as environmental enforcement weakens the multilateral trading system because it severely undermines our credibility as an advocate of liberalized trade. Unilateral trade sanctions may well be a violation of the GATT. No GATT provision explicitly allows for such sanctions. And, as noted above, interpreting Article XX so expansively as to cover the use of trade restrictions as punishment for unrelated offenses would set a dangerous precedent for American exporters. Moreover, unilateral trade sanctions blatantly violate the GATT principles of multilateralism and nondiscrimination. In an era in which the pressure of unilateral protectionism is testing the limits of the international trade system, the United States should

be working actively to shore up the GATT. Yet if the U.S. insists upon an approach antithetical to the GATT's founding principles we will signal a new disregard for the system we helped to build. Once the commitment of the United States -- traditionally the most ardent GATT advocate -- is perceived to be waning, prospects for GATT's continued vitality will severely diminish. Our leadership on behalf of liberalized and open trade is critical. No other country is waiting on the sidelines to take over that role. In order to sustain that leadership, we must maintain our credibility and reject unilateralism.

Our unwavering support of multilateralism is particularly important in light of our goals for the currently ongoing Uruguay Round of trade talks in Geneva. The United States has strenuously maintained that the Uruguay Round should produce both a broader and deeper framework for open international trade. The U.S. is asking participating governments not only to refrain from enacting new measures restraining trade, but to make politically painful cuts in existing programs that have the effect of obstructing international commerce. U.S. support for the use of unilateral trade sanctions as a means of environmental enforcement is particularly damaging to the U.S. negotiating position in this respect because it introduces a <u>new</u> form of trade restraint. It will be difficult to convince our trading partners to dismantle existing barriers when we are simultaneously erecting new ones of our own. As President Bush's personal efforts at the recent Houston economic summit to unblock the GATT logjam on agriculture indicate, a successful GATT round is a vital national interest. We should not inadvertently undermine that interest by hastily adopting environmental protection policies that unnecessarily debilitate the multilateral international trade system.

Finally, unilateral trade sanctions would invite retaliation. Countries singled out for import bans would feel compelled to register their objection by enacting parallel bans on U.S. exports -- bans that would be designed to inflict maximum economic injury on our domestic industries. Such retaliation could provoke counter-retaliation, escalating into a bilateral trade war which the U.S. can ill-afford.

The danger of retaliation was clearly demonstrated in the fallout over the European Community's decision to ban the import of hormone-treated beef. In 1989 the Community introduced a total ban on beef treated with growth hormones, purportedly for health reasons. Well-intentioned or not, the Europeans' actions provoked a sharp U.S. response, as the President imposed 100 percent tariffs on E.C. exports of canned tomatoes and instant coffee. The U.S. reaction in turn led to a threat of further retaliation by the Community. The incident demonstrates the potential for unproductive tit-for-tat trade restrictions that can be triggered by the use of import bans, no matter how worthy the cause for their deployment may be. We ignore at our peril the dangers to the multilateral trading system posed by such a series of trade restrictions triggered by the use of unilateral import bans to enforce environmental protection standards.

III. Conclusion: Toward a Multilateral Approach to Environmental Protection.

Internationally and domestically, the use of unilateral trade restrictions to achieve environmental objectives is attracting increasing interest. AAEI believes the time has come to subject this device to critical scrutiny and to determine whether it really is the wisest option available. Such scrutiny will reveal the grave folly in following this course of action.

Imposing our own standards for environmental protection on the rest of the world is not only arrogant, it is counterproductive. It discourages cooperation and forecloses experimentation. Moreover, trade sanctions may prove more damaging to U.S. producers facing increased costs for their inputs, and to U.S. exporters confronting possible foreign retaliation, than to the foreign producers against whom they are aimed.

If the ineffectiveness of trade sanctions were the only argument against them, however, they may nevertheless be worth a try given the depth of the environmental challenges that face us. Yet trade sanctions are far from benign. They will cause severe damage to our vital interest in -- and complete economic dependence on -- a healthy, multilateral trade system. These costs will be far-reaching. Responsible policymaking demands that they be fully and carefully considered in any decision to adopt such a seemingly easy enforcement mechanism.

AAEI believes a far more appropriate response to the desire to bring international commerce to the assistance of our efforts to improve protection of the environment would be to seek new multilateral rules governing the use of trade restrictions to enforce environmental standards. The U.S. should call for a round of international discussions -- with the GATT, the OECD and other appropriate international organizations -- and lead the way in developing a consensus about the permissible uses and appropriate limits of linking trade and environmental issues. In so doing, the U.S. should consider the ramifications of such rules should they be used against U.S. business, given the fact that the U.S. is in some respects the world's greatest polluter. AAEI believes the U.S. should engage our trading partners in a cooperative effort to devise solutions everyone can abide by in good faith.

By pursuing a multilateral strategy, the U.S. can most effectively protect our fragile environment, while at the same time avoid damage to the world trading system that is so important to our future.

APPENDIX F

INDEX OF AGREEMENTS IN ORDER OF DATE SIGNED

Index of Agreements in Order of Date Signed by the United States

APPENDIX G

INDEX OF AGREEMENTS ARRANGED BY SUBJECT

Index of Agreements Arranged by Subject