

U.S. HAS NO ROLE IN U.N. TREATY PROCESS;

Senate Reluctant to Ratify

J.W. Anderson

Thirteen global environmental treaties have gone into force in the last three decades, but the United States is party to only half of them. The Senate's great reluctance to ratify loosely worded treaties, such as the Kyoto Protocol, has meant the United States has no role in their implementation.

While the United States' refusal to ratify the Kyoto Protocol took the rest of the world by surprise, it was part of a wider pattern. If Kyoto goes into effect later this year, as its supporters hope, it will be the fourth worldwide environmental treaty in the past decade that the United States has refused to join.

The United States is likely to find itself on the defensive at the United Nations World Summit on Sustainable Development in Johannesburg, South Africa. It will be assailed as the great example of a powerful country that has declined to take part in a dramatic expansion of international environmental

law—a country that insists on making its own rules, rather than joining a worldwide effort for the common good.

The United States failed to join those four treaties because of the specific political disputes that they generated (see Table 1 for a list of all the treaties currently in effect or pending). The American constitutional requirement of a two-thirds vote to ratify in the Senate always gives the advantage to treaty opponents.

But underlying these political quarrels is a collision over legal standards that has become more visible over time.

The United Nations, under which these treaties were drafted, has developed a negotiating process that proceeds by consensus rather than by divisive up-or-down votes. Maintaining consensus in an organization with 189 members generates great pressure to paper over difficult issues and to set aside awkward details. In particular, it creates a strong incentive not to insist on rigorous procedures for verification and enforcement. The U.N. environmental tradition is based on a belief that it's better to agree on a loosely worded text and trust to governments' good faith, than to press for tight legal language that risks sinking the whole enterprise.

Treaties negotiated in that spirit then get sent to the respective governments for ratification. In most parliamentary democracies, the government has absolute control over ratification. But in the United States the president must submit the treaty to the Senate, where the standards for ratification have been hammered out in fierce struggles over trade and, especially, arms control, subjects in which clarity in the details is essential and enforcement is everything. In that atmosphere, a treaty like Kyoto—which would impose significant economic costs on the United States but contains no credible sanctions against other countries' failures to meet their commitments—has little chance for ratification. Woe to the unfortunate assistant secretary of State who is sent up to Capitol Hill to try to persuade the Foreign Relations Committee to vote for a treaty the enforcement of which depends essentially on the good will of this country's competitors and adversaries.

THE SENATE'S ROLE

Many American politicians also believe that the nature of the legal system in this country would force the U.S. government to live up to its treaty commitments more rigorously than other countries might. Upon ratification a treaty becomes U.S. law, and the

American courts have permitted environmental organizations to bring suits demanding strict enforcement of law. In most other countries, courts are much less willing to give citizens standing to sue their government. Policymakers here fear that the courts will hold them to strict adherence to a treaty's requirements, while other countries could fall short with impunity.

But American abstention from these new environmental treaties can create legal anomalies affecting substantial American economic interests. For example, negotiations over rules for trade in genetically modified foodstuffs have been proceeding under the Convention on Biological Diversity, which took force in 1993. The United States is the largest exporter of genetically modified agricultural products, but since it has never signed on to this treaty, it attends these negotiations as an outsider with, legally, no seat at the table.

Other recent treaties that the United States has not joined are the Convention on the Law of the Sea, in force since 1994, and the Basel Convention on Transboundary Movements of Hazardous Wastes, since 1992.

In the 1990s, the United States ratified only two global environmental treaties. The Senate voted to join the Framework Convention on Climate change in 1992 after the first Bush administration assured the senators that there was nothing in the treaty that could actually require any change in American policy or habits regarding greenhouse gas emissions and the use of energy. (Negotiators drafted the Kyoto Protocol in 1997 after it had become clear that the unenforceable exhortations in the Framework Convention were having no effect. The purpose of Kyoto is to impose explicit and binding limits on the greenhouse emissions of the industrial countries.)

The United States also ratified the Convention to Combat Desertification, which went into effect in 1996. This treaty pertains primarily to Africa.

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The United States has ratified only one family of global environmental treaties that impose serious restrictions. It joined the Montreal Protocol of 1988 and its subsequent amendments, which required reductions and ultimately a ban on a class of gases that were eroding the stratospheric ozone layer. The ozone layer protects the Earth from solar radiation that can cause skin cancers. The treaty was pushed rapidly through the Senate by the public fear of cancer, and by the chemical industry's success in rapidly developing substitutes for the harmful gases.

Environmental diplomats around the world considered the Montreal Protocol to be the model for international action, and used it as their template in drafting the Kyoto Protocol. They failed to perceive the enormous differences in the politics of the two treaties, however. Unlike Montreal, Kyoto addressed no urgent and widely understood health threat. Nor could the threat be met by a quick technical solution. Instead, in the United States, Kyoto became entangled in controversy over its costs and the defects in the treaty itself.

DEVELOPING COUNTRIES' SUSPICIONS

The Johannesburg summit is likely to demonstrate that its tradition of loosely written and loosely enforced environmental agreements has costs that are not limited to the United States. One abiding reality of world environmental politics is the deep suspicion among developing countries that these agreements are merely devices to suppress their economic growth, engineered by the rich countries to prevent the emergence of competitors. That is why, for example, the Kyoto Protocol's limits on greenhouse gas emissions apply only to the industrial countries, not to the developing countries.

In repeated attempts to allay these suspicions, the rich countries have made large promises to help the poor ones in many ways. But, again, there has been little in the way of enforcement and many of the promises have remained unfulfilled. That, in turn, has reinforced the suspicions and the inclination not to cooperate.

At Johannesburg, the World Summit on Sustainable Development will be different from its predecessors. Its main business will not be to set new goals, but rather to try to find ways to make visible progress toward all the goals set by similar meetings in the past.

The phrase "sustainable development" has an instructive history. It originally was used to mean simply that one generation has an obligation not to use resources in ways that would degrade the lives of future generations. But that hit a nerve, since one obvious way to save resources is to slow the industrialization of developing countries. The architects of sustainable development immediately agreed that the term had to include economic growth. If it included economic growth, sustainable development also had to mean better education and health care. It had to mean access for poor countries' exports in rich countries' markets. It had to mean aid, both financial and technical.

As this conversation went on, the definition of sustainable development came to cover the whole agenda for worldwide social equity. It was codified in a book-length document, Agenda 21, and adopted with great applause at the U.N. Conference on Environment and Development (UNCED) in Rio de Janeiro 10 years ago.

In preparation for the Johannesburg meeting, U.N. Secretary General Kofi Annan submitted a report last December taking stock of developments under Agenda 21.

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“...[P]rogress towards the goals established at UNCED have been slower than anticipated, and in some respects conditions are actually worse than they were 10 years ago,” the report said.

“Second, no major changes have occurred since UNCED in the unsustainable patterns of consumption and production which are putting the natural life-support system at peril...”

“Third, there is a lack of mutually coherent policies or approaches in the areas of finance, trade, investment, technology and sustainable development...”

“Fourth, the financial resources required for implementing Agenda 21 have not been forthcoming and mechanisms for the transfer of technology have not improved.”

One reason for nonperformance under Agenda 21 and similar agreements is that U.N. environmental meetings tend to be attended by the respective governments’ ministers of the environment who, in the company of kindred spirits, make ambitious declarations that they then carry home and turn over to the finance ministers, on whose desks they gather dust.

TABLE 1 – MAJOR WORLDWIDE ENVIRONMENTAL TREATIES SINCE 1975

Treaty	Status
Convention on International Trade in Endangered Species, in force since 1975.	The U.S. is a party.
Geneva Convention on Long-Range Transboundary Air Pollution, in force since 1983.	The U.S. is a party.
Bonn Convention on Conservation of Migratory Species, in force since 1983.	The U.S. is not a party.
Vienna Convention for the Protection of the Ozone Layer, in force since 1988.	The U.S. is a party.
Montreal Protocol to the Vienna Convention, in force since 1989. This protocol set the first explicit limits to emissions of gases that erode the ozone layer.	The U.S. is a party.
Basel Convention on Transboundary Movements of Hazardous Wastes and Their Disposal, in force since 1992. This convention was a response to the growing practice of dumping wastes in developing countries and Eastern Europe.	The U.S. is a party.
Convention on Biological Diversity, in force since 1993.	The U.S. is not a party.
Framework Convention on Climate Change, in force since 1994.	The U.S. is a party.
Convention on the Law of the Sea, in force since 1994.	The U.S. is not a party.
Convention to Combat Desertification, in force since 1996.	The U.S. is a party.
Kyoto Protocol to the Framework Convention. The negotiators adopted the text in 1997, but it has not yet collected enough ratifications to go into force. Supporters hope that will happen later this year.	The U.S. has said that it will not ratify.
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade. The text was adopted in 1998, but is not yet in force.	The U.S. has not ratified.
Stockholm Convention on Persistent Organic Pollutants. The text was adopted in 2001, but it is not yet in force.	The U.S. has not ratified.

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In an attempt to address this resistance directly, the United Nations called a meeting last March in Monterrey, Mexico, summoning the finance ministers and their bosses to discuss development aid.

President Bush attended, delivering a notable address in which he said that the United States would increase development assistance by half over the next three years, an increase of \$5 billion a year over the current level. That would be a highly significant jump in American aid. But the total would still be less than one-fourth the United Nations' longstanding goal of 0.7% of each donor country's gross national product.

Development assistance worldwide is small compared to private investment, Bush observed, and investment in turn is small compared to the flows of trade. "So to be serious about fighting poverty," the president said, "we must be serious about trade."

Like Agenda 21, the Bush administration is strongly in favor of open markets. But its recent restrictions on steel imports were a harsh signal that its tolerance for politically painful imports is low. Even more recently, a large bipartisan majority swept through Congress a huge expansion of agricultural subsidies, which will depress prices for farmers in other countries. The American enthusiasm for farm subsidies is exceeded only in the European Union, which is now trying to find a way to reconcile admission of Eastern European countries with the preservation of its aggressively protectionist agricultural rules.

On this subject, Agenda 21 called it "essential" that there be "substantial and progressive reduction in the support and protection of agriculture—covering internal regimes, market access and export subsidies—... in order to avoid inflicting large losses on the more efficient producers, especially in developing countries."

U.N. environmental politics has two sides—a spirit of high idealism but a record of unfulfilled promises and agreements weak on enforcement. Agenda 21 and the Kyoto Protocol reflect both sides. As time goes on, the lack of follow-through is alienating both the richest and the poorest of the U.N.'s members. Johannesburg is the place where the United Nations will ask the world's governments whether they want to do anything about that. ■

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For More Information:

Brack, Duncan, Fanny Calder, and Muge Dolun. 2001. "From Rio to Johannesburg: the Earth Summit and Rio+10." Royal Institute of International Affairs, Briefing Paper, New Series No. 19, (www.riia.org/pdf/briefing_papers/from_rio_to_johannesburg.pdf, accessed July 19, 2002).

Elliott, Lorraine. 1998. *The Global Politics of the Environment*. New York: New York University Press. An extremely useful account of the development of international environmental policy from the Stockholm Conference of 1972 to mid-1997, just before the Kyoto Conference.

International Institute for Sustainable Development. 2002. Earth Negotiations Bulletin, Vol. 22, No. 41, (www.iisd.ca/linkages/vol22/enb2241e.html, accessed July 19, 2002). A detailed summary of the fourth and final preparatory meeting for the Johannesburg Summit.

Editor's Note: This article, and the one on the next page, were prepared prior to the summit.

A PERSPECTIVE ON THE JOHANNESBURG SUMMIT ON SUSTAINABLE DEVELOPMENT

Michael Toman

At the World Summit on Sustainable Development, held in Johannesburg, South Africa, governments, international institutions, and members of the private sector and civil society will meet to review the 10 years since the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992. Out of UNCED came Agenda 21, an extremely detailed and ambitious action plan for promoting various facets of sustainable development; several specific international agreements, including treaties on climate change and biodiversity; and the U.N. Commission on Sustainable Development, charged with following up on the UNCED objectives.

Progress on giving operational meaning to the principle of sustainable development and accomplishing the lofty goals of the Rio Summit can only be described as mixed. Poverty has fallen in some places, while others have barely kept pace and still others have retrogressed. Some societies are freer and more open today, with stronger institutions of civil society; others are not. And with respect to natural resources and the environment, the main focus of work at RFF, many challenges remain.

Many, many millions of people continue to suffer from water short-

ages and water contamination, polluted indoor air or urban airsheds, challenges in meeting food needs, and access to reliable, affordable energy. Internationally, the community of nations still struggles with effective means to address protection of biodiversity, marine fish stocks, and the climate system while also achieving progress in living standards through resource development and energy use. New questions have arisen as well, especially concerning trade and the environment and problems related to disease and pest resistance.

Participants at the summit will seek to take stock of what has been accomplished since Rio 1992, what lessons have been learned about the effectiveness of different approaches, and what might be done to strengthen progress toward sustainable development.

RFF has long played a part in international discussions about sustainable development. RFF Board Member Maurice Strong was the secretary general of the 1972 United Nations Conference on the Human Environment, held in Stockholm, Sweden, which was the predecessor to the Rio conference. And the late RFF Senior Fellow Hans Landsberg served as his advisor. This year, RFF Senior Fellow Richard Morgenstern

will be co-chairing a workshop in Johannesburg on environment and development and will present a paper on the RFF project on SO₂ trading in Taiyuan, China.

In advance of the Johannesburg summit, a number of experts at RFF and invited participants from other research institutions have come together to produce a series of Issue Briefs on natural resources, the environment and sustainable development, available on our website at www.rff.org/Johannesburg/Johannesburg.htm.

Our goal in putting together this series of papers is to make available to as broad an audience as possible the fruits of analysis at RFF and elsewhere on how progress toward sustainable development might be made. Knowledge is power; we hope the facts and insights provided by these papers are useful not just in the deliberations at the summit but afterwards, when the hard work to change unproductive policies and practices must be tackled. Comments on the papers are welcome and can be addressed to me by email (toman@rff.org).

Michael Toman is a senior fellow at RFF and series editor, RFF Sustainable Development Issue Briefs.