

## Table of Contents

<b>CHAPTER 13</b> .....	<a href="#">542</a>
<b>Environment and Other Transnational Scientific Issues</b> .....	<a href="#">542</a>
<b>A. LAND AND AIR POLLUTION AND RELATED ISSUES</b> .....	<a href="#">542</a>
1. Climate Change .....	<a href="#">542</a>
a. <i>UN Framework Convention on Climate Change</i> .....	<a href="#">542</a>
b. <i>Joint Action with Other Countries</i> .....	<a href="#">551</a>
2. Sustainable Development .....	<a href="#">553</a>
a. <i>U.S. Support for UN Sustainable Development Goals</i> .....	<a href="#">553</a>
b. <i>2030 Agenda for Sustainable Development</i> .....	<a href="#">553</a>
3. Ozone Depletion .....	<a href="#">554</a>
<b>B. PROTECTION OF MARINE ENVIRONMENT AND MARINE CONSERVATION</b> .....	<a href="#">559</a>
1. Fishing Regulation and Agreements .....	<a href="#">559</a>
a. <i>South Pacific Tuna Treaty</i> .....	<a href="#">559</a>
b. <i>Port State Measures Agreement</i> .....	<a href="#">560</a>
2. Marine Pollution .....	<a href="#">560</a>
3. Biodiversity Beyond National Jurisdiction .....	<a href="#">560</a>
4. Sea Turtle Conservation and Shrimp Imports .....	<a href="#">569</a>
5. Whaling .....	<a href="#">569</a>
<b>C. OTHER CONSERVATION ISSUES</b> .....	<a href="#">571</a>
1. Treaty on Plant Genetic Resources .....	<a href="#">571</a>
2. Convention on International Trade in Endangered Species of Wild Fauna and Flora .....	<a href="#">573</a>
3. Wildlife Trafficking .....	<a href="#">577</a>
<b>Cross references</b> .....	<a href="#">578</a>

## CHAPTER 13

### Environment and Other Transnational Scientific Issues

#### A. LAND AND AIR POLLUTION AND RELATED ISSUES

##### 1. Climate Change

###### a. *UN Framework Convention on Climate Change*

As discussed in *Digest 2015* at 553-60, the Paris Agreement was adopted at the 21st Conference of the Parties (“COP-21”) of the United Nations Framework Convention on Climate Change (“UNFCCC”) in 2015. On April 22, 2016, the Paris Agreement was opened for signature. As the State Department explained in an April 20, 2016 briefing, each signatory must complete its own domestic procedures in order to join the Paris Agreement, and those procedures vary by country in terms of complexity and time. See April 20, 2016 special briefing by a senior State Department official on the Paris Agreement signing ceremony, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/04/256415.htm>. At a high-level event at the UN on the day of the signing ceremony, Secretary Kerry recognized that “countries representing nearly 50 percent of global emissions are prepared to announce they will join this year” and that the United States was among them. See April 22, 2016 remarks, available at <http://2009-2017.state.gov/secretary/remarks/2016/04/256525.htm>. Secretary Kerry also delivered remarks at the signing ceremony at the UN on April 22, excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/04/256497.htm>.

---

\* \* \* \*

It’s an enormous privilege to be here on Earth Day to join in signing this historic agreement.

\* \* \* \*

Paris was a turning point in the fight against climate change.

Paris marked the moment when the world finally decided to heed the ever-rising mountain of evidence that had been piling up for years...and began ...to galvanize our focus on how, as a global community, we are going to address the irrefutable reality that nature is changing at an increasingly rapid pace due to our own choices.

For sure, the agreement that we reached in Paris is the strongest, most ambitious global climate pact ever negotiated. But the power of this agreement is not that it, in and of itself, guarantees that we will actually hold the increase of temperature to the target of 1.5 degrees or 2 degrees centigrade. In fact, it does not and we know that, we acknowledge it. The power of this agreement is the opportunity that it creates. The power is the message that it sends to the marketplace. It is the unmistakable signal that innovation, entrepreneurial activity, the allocation of capital, the decisions that governments make, all of this is what we now know definitively is what is going to define the new energy future—a future that is already being defined but even yet to be discovered. The power of this agreement is what it is going to do to unleash the private sector, and it is already doing to set in pace the global economy on a new path for smart, responsible, sustainable development.

Already last year, my friends, renewable energy investment was at an all-time high—nearly \$330 billion. And it is predicted that we will invest tens of trillions of dollars by the middle of this century.

For the first time in history—despite the low prices of oil, coal, and gas—more of the world’s money was spent fostering renewable energy technologies than on new fossil fuel plants.

Today we know: The new energy future, the efficiencies, the alternative resources, the clean options—none of what we have to achieve is beyond our capacity technologically. The only question is whether it is beyond our collective resolve.

Indeed, even in the time since we convened in Paris, we have seen new evidence of the danger that the climate change pace poses to our planet. We learned that 2015 was the hottest year in recorded history—by far—and we learned that after knowing that the past decade was the hottest on record, and the one before that was the hottest on record, and the one before that the third hottest on record. And now we know that this year is already on track to be the warmest of all, and last month, March, was the hottest recorded March in all of history. This past winter, the maximum extent of Arctic sea ice was the lowest ever reported—breaking the record that was set just one year ago.

So the urgency of this challenge is only becoming more pronounced. And that is why our gathering today is, in fact, historic. The United States looks forward to formally joining this agreement this year, and we call on all of our international partners to do so.

\* \* \* \*

Parties to the UNFCCC met in Bonn from May 16-26, 2016 for the first intersessional meeting since the adoption of the Paris Agreement. The Agreement left several issues open for future development, including the adoption of various modalities, procedures, and guidelines related to the implementation of the Agreement. The task to develop drafts of these modalities, procedures, and guidelines was divided among a new group, the Ad-Hoc Working Group on the Paris Agreement (“APA”), and existing subsidiary bodies under the Framework Convention.

On September 3, 2016, President Obama and Chinese President Xi deposited their country's official instruments to join the Paris Agreement for the United States and China on the margins of the G-20 Leaders' Summit in Hangzhou, China. See September 3, 2016 press statement by Secretary Kerry, available at <http://2009-2017.state.gov/secretary/remarks/2016/09/261567.htm>. In his statement, Secretary Kerry emphasized the importance of bringing the Paris Agreement into force as quickly as possible, urging others to join as the United States and China had. Secretary Kerry's press statement also highlighted other key steps the United States had on its climate change agenda for 2016:

The United States and China also committed today to working together and with other countries to achieve successful climate outcomes this year by adopting an amendment to the Montreal Protocol to phase down hydrofluorocarbons, and approving a global market-based measure for addressing carbon emissions from international aviation. Achieving these important actions this year will help the world reach the ambitious goals we set in Paris. And it would send a clear signal to all sectors that the global momentum to tackle climate change is only building.

On September 21, 2016, Secretary Kerry offered remarks at an event at the UN marking the first step toward entry into force of the Paris Agreement: 55 countries joining the agreement. Entry into force also requires countries accounting for at least 55 percent of global greenhouse gas emissions to have joined. Secretary Kerry's remarks are excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/09/262237.htm>.

---

\* \* \* \*

The Paris Agreement was an extraordinary milestone. It was one that, for so many of you here, took decades to achieve. But the feeling of satisfaction that comes with that milestone is tempered by the knowledge that those of us who have worked in this vineyard for a long time know that even as we mobilized on this issue, even as we advocated over so many years, even as we pointed to the science that motivated us and spurred our efforts, even as we negotiated in Paris, we were aware that with each passing day the problem that we confronted and continue to confront was growing worse.

Each day, the course that our planet is on has become more dangerous, and the alarming findings have only continued since the agreement was gaveled in. Recently, we learned that the last two months, July and August, were the hottest ever recorded on the planet, but they were the 14th and 15th consecutive record-setting months in a row. And we know now that last year contributed to the last decade that was the hottest decade in recorded history, and the decade before that was the second-hottest decade in recorded history, and the decade before that the third-hottest decade in recorded history.

So if ever anybody doubted science, all they have to do is watch, feel, sense what is happening in the world today. And make no mistake, anybody, these high temperatures are already having consequences, already people dying in the heat, already people moving because of lack of water, already we have climate refugees on this planet, already we see more powerful storm surges, already we see lower productivity in many industries, and serious impacts on public health and well-being. We know there are diseases that used to die because it got cold and it doesn't get cold. We know that species are moving and that the ecosystem of the planet, including the oceans, is changing.

\* \* \* \*

Earlier this month the United States and China—the two largest emitters in the world, I regret to say—formally joined the agreement. And now with the people who have joined here today, virtually every small island in the Pacific, every island state whose very existence depends on our success, has now joined this agreement. That tells you something. And we are extremely grateful to the 31 others who marched up here and presented today, which now brings us over the 55 countries necessary, and all that is left now to do is get the 55 percent of emissions. But this is a great accomplishment today, and everybody should be proud of what has happened.

Now, I know ... from conversations that President Obama and I have had with leaders in certain key countries, I am absolutely confident that this agreement will come into force this year before we convene again for COP22 in Marrakech.

Now, the global community's path to limit the warming of our planet and stave off the impacts of climate change, as all of you know, has been long and it has been frustrating. Until last December, it was a pretty grim story. With many of you, I remember being in Rio 1992. And between Rio and today, so many meetings—Durban, Cancun, Doha, Warsaw, Buenos Aires, Poznan, Kyoto, Copenhagen, Lima. And I remember China managed the legislation that would have brought Kyoto into force on the floor of the United States Senate and running into a buzz saw of opposition from the coal industry in our country.

So we have shared our part of the blame for what has been a difficult road, and we accept that. And it's one of the reasons why President Obama and I have been so focused and so committed to try to make up that difference and help us to get where we are today. But in Paris, my friends, in Paris, a remarkable thing happened. More than 185 countries came together; more than 175 signed on. In Paris, we began to rewrite the ending of this story. And provided that we implement the agreement that we reached last year, provided that we make progress on other important climate efforts in the market-based measure that we are seeking to address in international aviation emissions and the HFC amendment, the Montreal Protocol that we're hoping to pass later this fall, provided we take all these steps, we will continue writing this new ending, and it will finally become a story that we will be proud to tell our grandchildren and future generations. It will be a story of how the world came together in the greatest aspirations of United Nations, of this institution, to embrace this moment and to safeguard the future of this planet for generations to come. That is this mission, nothing less, and we intend to get the job done.

\* \* \* \*

On October 5, 2016, Secretary Kerry announced that enough countries, accounting for more than 55 percent of the world’s greenhouse gas emissions, had submitted their instruments to formally join the Paris Agreement to allow it to enter into force in 30 days, in accordance with its terms. See October 5, 2016 press statement, available at <http://2009-2017.state.gov/secretary/remarks/2016/10/262822.htm>. Secretary Kerry continued:

The rapid entry into force timeline underscores the widespread recognition of the urgency at hand. It is a testament to the continued determination of states large and small, rich and poor, to act on the moral, social, and economic imperative to address the dangerous impacts of climate change. Together, the world’s largest emitters have worked to overcome the divides that have led to the demise of past attempts, and are instead leading the way together. The reason we were able to pass the required threshold so early is that many of the largest emitters in the world—including the United States, China, India, the EU and a number of its member states—recognized the need to continue the momentum from Paris and joined swiftly to bring this Agreement into force as quickly as possible.

Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, also issued a statement on October 5, 2016 heralding the crossing of the threshold for entry into force of the Paris Agreement. See statement available at <http://2009-2017-usun.state.gov/remarks/7465>. Ambassador Power’s statement includes the following:

The United States is proud to have been a vocal proponent of speedy entry into force for the Paris Agreement, and to have worked closely with our partners and allies so as to be able to cross this threshold today. When President Obama announced his Climate Action Plan in 2013, he asked if the nation and the world had the courage to act on climate before it was too late. Today, almost two decades after governments met in Kyoto, Japan to negotiate the first international treaty aimed at slowing climate change, the global community has answered the call.

On November 3, 2016, Dr. Jonathan Pershing, U.S. Deputy Special Envoy for Climate Change, and John Morton, Director for Energy and Climate Change for the U.S. National Security Council, held a special briefing to preview the 22nd Conference of the Parties (“COP-22”) of the UNFCCC, which convened in Marrakech, Morocco. See special briefing, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/11/264077.htm>, and excerpted below.

---

\* \* \* \*

**MR MORTON:** ... [B]y all measures, this year, 2016, has been a truly historic year for international climate action. We have seen in the last two months alone the rapid entry into force of the Paris Agreement, much, much faster, years faster, than most people expected. And with that entry into force, that puts us on a much accelerated path toward implementation of the goals that we laid out in Paris a year ago.

We have secured an ambitious amendment, as you know, to the Montreal Protocol to phase down the production and use of HFCs, or hydrofluorocarbons, a group of the extremely potent greenhouse gases, which by some accounts, that agreement ... puts us on a path to avoiding up to a full half a degree centigrade of warming. And subsequently to that, we achieved adoption of a global market-based measure to set international aviation on a path to sustainable and carbon-neutral growth. And international aviation, as you may know, is one of the fastest growing segments of greenhouse gas emissions.

So in the last couple months alone, due to the really kind of concerted work of this Administration and the president himself and many others throughout the international community, we've set the tone for ... coming into Marrakesh...in a very, very positive light.

So as we look forward to the two weeks ahead, we see COP22 is really a COP of implementation and action. So the Paris Agreement was a turning point in terms of setting in place a framework, an international framework for action. And in the COP that is approaching, we intend to really intensify our work in turning toward implementation.

\* \* \* \*

**MR PERSHING:** ... The Moroccans themselves are calling this a COP of action. An action agenda is therefore one of the big things that they've got. That's going to feature work by businesses, by cities, by states and civil society, either themselves or in partnership with others on a variety of topics. So they've got an energy discussion, an agriculture discussion, an oceans discussion, a cities discussion, a whole variety of these, that really begin to elevate the implementation side.

The second is there's going to be a series of discussions around the details and the negotiation of specific advancing [the] ... framework ... in Paris in some components. This is the start now of the detailed implementation agenda. Guidelines for transparency, the rules for what countries have to report on, discussions further about how to implement the various adaptation provisions—all of this will take place in the round of negotiations coming forward.

The third thing that I note is that the political dynamics here are quite significant. We take advantage, and John's mentioned the things that have happened—entry into force has occurred. That's a big political signal of intent and focus. The Montreal Protocol on HFCs, the amendment there has occurred. That's a huge win. Civil aviation has occurred. But we've also had resources being put forward on the private sector side. This is a year of the first time we've seen more investment in renewables than investment in fossil fuels. Those kinds of things are a clear mark of progress, and this COP will kind of reflect those and advance those.

I don't expect the consequence of this negotiation will resolve all of these technical issues. We're on a very rapid timetable. We thought we had until 2020 to finish one of these negotiations. We're going to try to work now to accelerate it and make 2018 the year—so a two-year advancing of the schedule. It will take a lot of that time. There's going to be a great deal of intense work that has to happen to deliver this, and that detailed part of Morocco is a part of the deal coming forward here.

\* \* \* \*

**MR PERSHING:** Thanks. Let me just turn to the second question, which is on loss and damage. The issue, for those of you who are not following this in detail, is a question of damages that countries are unable to cope with. So if you imagine some rise in sea level and you can move or you can elevate your buildings, that's an adaptive strategy. But if at the other end your island gets washed away and you can't live there anymore, that's a loss and damage problem. And that distinction is real, and we're beginning to see countries increasingly concerned about this agenda.

But while it's real, it's some ways off in the future, and the focus on the financing side here has been on an adaptation agenda, not the financing on loss and damage. So while I expect it to be a conversation coming forward over the years, I don't really anticipate that this will be the focus of the conversation in Morocco.

On the finance side, we certainly do see enormous efforts being made by countries around the world to increase their resources for adaptation, and many of the things that you're looking to do to prevent risks, to manage this tropical storms intensity, to manage increasing sea level rise, to manage drought—those are things that are actually being funded with resilience programs through the multilateral development banks, through bilateral lending from countries around the world. And I would note that this is going to be increasingly something that countries themselves start to pay attention to.

And this is not just a developing country issue. This is something we do in United States; it's something we see in Europe, as they manage their floods; it's something we see in Japan, as they manage constraints around increasing typhoons. All of this is coming, and it's a global issue, and we're seeing increasing attention to the problem. The negotiations will emphasize this probably significantly in Morocco.

\* \* \* \*

On November 7, 2016, the 22<sup>nd</sup> Conference of the Parties to the UN Framework Convention on Climate Change and the 1<sup>st</sup> session of the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement commenced in Marrakech. The State Department released a fact sheet on November 16, recounting the launch of new adaptation partnerships since COP-21. That fact sheet is excerpted below, and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/11/264363.htm>.

---

\* \* \* \*

Between 2010 and 2015, the United States committed over \$2.5 billion to support for adaptation to climate change in developing countries. These funds helped to advance national adaptation planning through the National Adaptation Plans (NAP) Global Network, to promote access to and use of satellite climate data through SERVIR, and to fund multilateral adaptation funds, such as the Least Developed Countries Fund and the Special Climate Change Fund.



The Paris Agreement charges all countries to engage in adaptation planning processes and to implement adaptation actions. The Agreement also instructed Parties to strengthen their cooperation on adaptation, and highlights the importance of continued and enhanced support to developing countries for adaptation.

Earlier this year, developed countries, including the United States, released a climate finance roadmap establishing that they are collectively on track to double public finance for adaptation by 2020.

The United States has launched several new adaptation programs this year to enhance resilience to climate change and, thereby, promote implementation of the Paris Agreement.

\* \* \* \*

Secretary Kerry addressed COP-22 on November 16, 2016. His remarks are excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/11/264366.htm>.

\* \* \* \*

... [H]ere at the 22nd COP, no one can deny the remarkable progress that we have made—progress that actually was pretty hard to imagine even a few years ago. The global community is more united than ever not just in accepting the challenge, but in confronting it with real action, in making a difference. And no one should doubt the overwhelming majority of the citizens of the United States who know climate change is happening and who are determined to keep our commitments that were made in Paris.

\* \* \* \*

And when we left Paris, no one rested on their laurels. Instead, the world—unified—moved expeditiously ... to pull the agreement permanently into force, crossing the thresholds of 55 countries representing 55 percent of global emissions, and doing so far faster than even the most optimistic among us might have predicted. In a powerful statement of the whole world's broad commitment to this agreement, in less than a year, 109 countries representing nearly 75 percent of the world's emissions have now formally committed to bold, decisive action—and we are determined to affirm that action and to stick with it out of Marrakech.

Now, we have in place ... a foundation, based on national climate goals—109 nations, each of them have come up with their own plan, each of us setting goals that are based on our own abilities and our own circumstances. This agreement is, in fact, the essence of common but differentiated responsibilities. It provides support to countries that need help meeting the targets. It leaves no country to weather the storm of climate change alone. It marshals an array of tools in order to help developing nations to invest in infrastructure, technology, and the science to get the job done. It supports the most vulnerable countries, so they can better adapt to the climate impacts that many of those countries are already confronting.

And finally, it enables us to ratchet up ambition over time as technology develops and as the price of clean energy comes down. This is critical: the agreement calls on the parties to revisit their national pledges every five years, in order to ensure that we keep pace with the technology and that we accelerate the global transition to a clean energy economy.

This process—a cornerstone of our agreement—gives us a framework that is built to last, and a degree of global accountability that has never before existed. But I want to share with you that the progress that we've made this year goes well beyond Paris.

In early October, the International Civil Aviation Organization established a sector-wide agreement for carbon-neutral growth. Why is this so important? Because international aviation wasn't covered by what we did in Paris, and if that aviation was a country, it would rank among the top dozen greenhouse gas emitters in the world.

A few weeks later, I was pleased to be in Kigali, Rwanda, when representatives from again nearly 200 countries came together to phase down the global use and production of hydrofluorocarbons—which has been expected to increase very rapidly with a danger that is multiple of times more damaging than carbon dioxide. The Kigali agreement could singlehandedly help us to avoid an entire half a degree centigrade of warming by the end of the century—while at the same time opening up new opportunities for growth in a range of industries.

All of these steps combine to move the needle in the direction that we need to. And in large part because global leaders have woken up to the enormity of this challenge, the world is now beginning to move forward together towards a clean energy future.

Over the past decade, the global renewable energy market has expanded more than six-fold. Last year, investment in renewable energy was at an all-time high—nearly \$350 billion. But that only tells you part of the story. ...[T]hat 350 billion is the first time that we've been able to see that money outpacing what is being put into fossil fuels. An average of half a million new solar panels were installed every single day last year. And for the first time since the Pre-Industrial Era, despite the fact that you have global prices of oil and gas and coal that are lower than ever, still more of the world's money was invested in renewable energy technologies than in new fossil fuel plants.

And like many of you, I've seen this transformation take hold in my own country. That's why I'm confident about the future, regardless of what policy might be chosen, because of the marketplace. I've met with leaders and innovators in the energy industry all across our nation, and I am excited about the path that they are on. America's wind generation has tripled since 2008 and that will continue, and solar generation has increased 30 times over. And the reason both of those will continue is that the marketplace will dictate that, not the government. I can tell you with confidence that the United States is right now, today, on our way to meeting all of the international targets that we've set, and because of the market decisions that are being made, I do not believe that that can or will be reversed.

Now, much of this is due to President Obama's leadership, and our Congress also moving in a bipartisan fashion on things like tax credits for renewable energy. This leadership has helped to inspire targeted investment from the private sector. Today our emissions are being driven down because market-based forces are taking hold all over the world. And that's what we said we would do in Paris. None of us pretended that in Paris, the agreement itself was going to achieve two degrees. What we knew is we were sending that critical message to the marketplace, and businesses have responded, as I just described. Most businesspeople have come to

understand: investing in clean energy simply makes good economic sense. You can make money. You can do good and do well at the same time.

Now, significantly, the renewable energy boom isn't limited to industrialized countries, and that's important to note. In fact, emerging economies like China, India, and Brazil invested even more in renewable technologies last year than the developed world.

\* \* \* \*

One of the strongest signals that government can send, one of the most powerful ways to reduce emissions at the lowest possible ...cost ...is to move toward carbon pricing that puts basic, free-market economics to work in addressing this challenge.

Now obviously, this is not a new idea. Many have come to this conclusion already. The share of global emissions that are covered by a carbon price has tripled over the last decade. Last year, more than 1,000 businesses and investors—including sectors that might be surprising to some of you—all came together to voice their support for carbon pricing. ...These companies all believe that carbon pricing will establish the necessary certainty in the marketplace that helps the private sector to move the capital that helps to solve the problem.

Carbon pricing allows citizens, innovators, and companies—it allows the market to make independent decisions free from the government to be able to best drive their emission reductions. And this is also, by the way, the chief reason that carbon pricing has received support from leaders and economists on both sides of the aisle in the United States of America. A price on carbon, coupled with government support for innovation in key sectors, is easily one of the most compelling tools for the world to accelerate the clean energy transformation that we are working to achieve. Now, while it may be some time before we see this ideal outcome, the effort to improve carbon markets ought to be a priority going forward.

The bottom line is that there are many tools at the world's disposal. The COP itself is an important tool, in a sense. It has become ... much more than just a gathering of government officials. It's really a yearly summit, 25,000 people strong this year from all over the world, for all sectors to showcase their commitment to climate action and to discuss ways to expand shared efforts. It's a regular reminder of exactly how much this movement has grown—and how many people, in how many countries, are committed to action.

Walking around the conference here before I was coming in here and seeing this site in Marrakech, and seeing the delegations and the business leaders, the entrepreneurs and the activists who have traveled from near and far to be here, it's abundantly clear we have the ability to prevent the worst impacts of climate change.

\* \* \* \*

**b. *Joint Action with Other Countries***

As discussed in *Digest 2015* at 560-61 and *Digest 2014* at 560-62, the United States and China have maintained an ongoing dialogue regarding cooperation to reduce pollution jointly. On June 6, 2016 U.S. Secretary of State John Kerry, U.S. Treasury Secretary Jacob J. Lew, Chinese State Councilor Yang Jiechi and Chinese Vice Premier Wang Yang chaired the high-level U.S.-China Joint Session on Climate Change. See June 8, 2016 State Department media note, available at <http://2009->

[2017.state.gov/r/pa/prs/ps/2016/06/258179.htm](http://2017.state.gov/r/pa/prs/ps/2016/06/258179.htm). Excerpts follow from the media note describing the 2016 joint session.

---

\* \* \* \*

The Joint Session offered a chance to review climate progress and achievements over the past year. Chief among them was the historic Paris Agreement, which would not have been possible without the leadership of the United States and China. Both countries reaffirmed their plans to join the Agreement as early as possible this year, and agreed to work together to urge others to do so.

In the high level discussion, the United States and China committed to continue working together to achieve successful climate outcomes in other key multilateral fora. These include: reaffirming their support for adopting an ambitious hydrofluorocarbon (HFC) phasedown amendment to the Montreal Protocol this year that could prevent up to half a degree Celsius of warming (nearly one degree Fahrenheit); supporting the adoption of an International Civil Aviation Organization (ICAO) Assembly Resolution this fall for a market based measure to address CO<sub>2</sub> emissions from international aviation; and agreeing to work together to drive strong G-20 outcomes on climate change and clean energy, including on heavy-duty vehicles. Both Secretaries Kerry and Lew highlighted the need to address the climate impacts of overseas investments.

The Strategic & Economic Dialogue was hosted concurrently with the second U.S.-China Climate-Smart / Low-Carbon Cities Summit to showcase the expansion of sub-national climate cooperation and leadership. Attended by leaders from 47 Chinese cities and provinces and 17 U.S. cities, counties, and states, the event saw 66 cities from both countries endorse the U.S.-China Climate Leaders Declaration, bringing the total number of endorsements to [75]. The cities declared their intention to establish ambitious climate targets, regularly report on greenhouse gas emissions, establish climate action plans, and expand bilateral cooperation.

Additionally, the United States and China demonstrated progress by releasing dozens of outcomes with results from concrete cooperation on climate change and clean energy, a number of them developed through the U.S.-China Climate Change Working Group (CCWG). The CCWG was launched by Secretary Kerry and State Councilor Yang in 2013 and is the premier mechanism for U.S.-China cooperation and dialogue on climate change.

\* \* \* \*

The United States also cooperated with Canada and Mexico on climate and environment issues. Prime Minister Justin Trudeau of Canada, President Barack Obama of the United States, and President Enrique Peña Nieto of Mexico announced the North American Climate, Energy, and Environment Partnership on June 29, 2016, at the North American Leaders Summit in Ottawa, Canada. The Action Plan for the North American Partnership is available at <https://obamawhitehouse.archives.gov/the-press-office/2016/06/29/north-american-climate-clean-energy-and-environment-partnership-action>.

## 2. Sustainable Development

### a. *U.S. Support for UN Sustainable Development Goals*

See Chapter 19 for discussion of the ways the U.S. is supporting the UN Sustainable Development Goals through the IAEA Peaceful Uses Initiative.

### b. *2030 Agenda for Sustainable Development*

On July 19, 2016, Ambassador Power delivered remarks at a UN high-level political forum on the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (“SDGs”). Her remarks are excerpted below and available at <http://2009-2017-usun.state.gov/remarks/7378>.

---

\* \* \* \*

It’s been 10 months since 193 Member States came together to make these collective commitments—a real achievement. But the real test is, of course, what each of our nations will do to meet those commitments, within our own countries and around the world.

President Obama committed the United States to achieve the SDGs, and since September, we’ve made significant efforts, both within our own country and abroad, to do our part. Today, I’d like to focus on three key areas where all our countries, including the United States, can and must do better.

First, we must make the data tracking our relative progress toward reaching these goals more transparent and more accessible, and use it to adapt and improve public policies. We have never had so much capacity to measure—in real time—our efforts; yet our findings are too rarely made public, or rendered in a way that’s useful to policymakers and potential problem solvers. For example, data shows us that approximately one-third of food in the United States is wasted each year at the consumer and retail level. One-third. If we can use data to pinpoint sources of food loss and waste, we can improve our chances of reducing it—which is target 12.3. The United States is committed to establishing a transparent, publicly accessible online platform tracking our progress on the SDGs, and we urge other countries to do the same.

Second, where such analysis identifies areas where we need to improve, we have to speak openly to them. Too often, we governments try to hide these shortfalls, rather than shine a light on them. But acknowledging where we are coming short is an essential first step toward remedying chronic deficiencies and gaps in opportunity. ...

Third, and finally, we must draw upon the ideas, innovation, and resources beyond government—including civil society groups, the private sector, faith-based institutions, academia, and individual citizens. We all witnessed how the Agenda’s drafting was enriched by incorporating a diverse range of stakeholders; we would be foolish not to do everything we can to involve the same partners—and others—in working to implement the SDGs. To give just one quick example of how this can work, the Open Government Partnership brings together governments and civil societies from 70 countries around the world—including the U.S.—to share innovative strategies in tackling many of the key drivers of poverty and inequality, such as

corruption. We welcome Nigeria, OGP's newest member, and encourage other countries that are eligible to join as well.

Despite the essential role of civil society, many UN Member States continue to view civil society groups as adversaries in this and other efforts, rather than partners, and are taking steps to suppress them, rather than to empower them. ...

As many of you know, as the SDGs were being negotiated, the UN made an effort to reach out directly to individuals who are often excluded from designing such development efforts. A person from the Philippines spoke of wanting, as she put it, "a whole world without discrimination," saying that, too often, "being different means being hurt." A mother in Kosovo spoke of the need for a reliable source of water. A disabled man in Thailand said greater support was needed for people who are unable to work. And one Rwandan farmer said it was meaningful just to be consulted. She said, "I used to think of the United Nations as a high-level body that is not close to people. But now, we are sitting together and the UN is hearing my ideas on how I see the future."

\* \* \* \*

### 3. Ozone Depletion

As discussed in *Digest 2015* at 570, the United States is part of a coalition that has been pursuing an amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer to phase down the production and consumption of hydrofluorocarbons ("HFCs"). Secretary Kerry advocated for the amendment throughout 2016. See July 22, 2016 remarks at the Montreal Protocol high-level segment, available at <http://2009-2017.state.gov/secretary/remarks/2016/07/260401.htm>. On September 22, 2016, Secretary Kerry delivered remarks at a Montreal Protocol donor declaration event in New York. His remarks are excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/09/262293.htm>.

\_\_\_\_\_

\* \* \* \*

... We know that the Paris Agreement itself won't, in and of itself, get the job done. So we need to do more. And one the single-most important actions that the global community can take is to amend the Montreal Protocol to include an ambitious amendment that phases down the use of hydrofluorocarbons, HFCs.

Now, the Montreal Protocol, designed in 1987, which I had the privilege of working on and helping to get through the United States Senate, was passed in order to address the deeply troubling hole that existed in the ozone layer. And it actually has become one of the most successful environmental agreements in history. Virtually all parties met their obligations under the accord. And nearly 100 of the most ozone-depleting substances have been completely phased out. As a result, the hole in the ozone layer is shrinking and on its way to full repair.

And we can all recall how we kept talking about the growing hole in the ozone, the dangers that it presented to us, and many people doubted whether or not we'd have the capacity to be able to do something about it. Well, we did do something about it. We proved that human

beings have the ability to be able to make a difference on the environment, if we, when we, make the choices that are available to us. ...[T]hat's the good news.

The bad news is that the substances banned by the Montreal Protocol have been replaced by substances that cause a different kind of danger. HFCs may be safer for the ozone, but they are exceptionally potent drivers of climate change itself, often thousands of times more potent than, for example, carbon dioxide. So today, the growing use of HFCs in everyday items, like refrigerators or air conditioners, in inhalers, is responsible for an entire gigaton of CO<sub>2</sub>-equivalent pollution annually. It's extraordinary.

... These substances, HFCs, already emit almost as much pollution as 300 coal-fired power plants. And that is only going to get worse if we don't act soon.

That is why a phasedown is so important. But it's also important if I translate that into impact. In Paris, we set the goal of eliminating the Earth's rising temperature because of global climate change to 1.5 degrees centigrade, or 2 degrees centigrade with an aspiration for the 1.5. But amending the Montreal Protocol to phase down HFC use would actually help us to avoid a full one half degree centigrade of increase. So just in this HFC effort, we have the ability to have a profound impact on reaching our goal of the Paris Agreement.

And if we take advantage of this transition and move to appliances that are not only ozone friendly and climate friendly but also more energy efficient, then we can potentially double the climate benefits and save consumers, tax payers, billions of dollars on their power bills. So, this is what we all call win-win-win in terms of public policy. And when the parties to the Montreal Protocol come together next month in Kigali, it is essential not just that an HFC amendment pass, but that an ambitious HFC amendment be adopted.

Now, I'm very proud to stand here today with representatives from many of the more than 100 countries that have formed a coalition committed to a strong amendment, an amendment that would do three key things. One, it would require the United States and other donor countries to take the first reduction steps. Second, soon thereafter it would freeze HFC consumption and production in countries that need more assistance—the so-called “Article III countries,” as they're known in the lingo of the Montreal Protocol talks. And third, it would include ambitious phasedown schedules for all parties everywhere.

Now, I want to underscore that we understand that while the phasedown amendment is a critical piece of the climate puzzle, it doesn't mean it's going to be easy to implement. It's going to require a concerted effort and everybody knows that. But as I said during the last round of negotiations in Vienna, the reason the Montreal Protocol has been so successful is because cooperation is at its core. Under its provisions, no country is or has ever been expected to go it alone. That is why the multilateral fund exists; to assist countries in implementing their obligations. And today, I am pleased to announce that if an ambitious amendment is concluded in Kigali, the United States and other donor countries intend to contribute an additional \$27 million to the multilateral fund in 2017 alone as extra support for the amendment's implementation. And because we all recognize that governments alone will not solve this challenge, nearly 20 donors from the philanthropic community are today announcing that they will complement these funds to the tune of more than \$50 million. Now, this money will be targeted at helping countries that need assistance with the phasedown to be able to expand their energy efficiency and thus expand their economic savings.

And so, I just emphasize to everybody this is public-private partnership at its best. And this is also the developed countries, the larger nations, understanding the responsibility to help other countries be able to make it work.

So, that's the reason I'm confident that together we're going to achieve what this moment demands. And provided we do, if the nations of the world join together to fulfill the commitment that we've made, then we can leave Kigali with an ambitious amendment to phase down the use and production of HFCs and we will make a huge step, again, to move closer to the goal that we set in Paris, and most importantly, to honor our moral responsibility to protect the health and the livability of the planet that we share.

\* \* \* \*

The 28th Meeting of the Parties to the Montreal Protocol was held in October in Kigali, Rwanda. Secretary Kerry delivered remarks at the plenary on October 14, 2016, urging adoption of the amendment on HFCs. His remarks are excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/10/263133.htm>.

---

\* \* \* \*

Now, nearly 30 years ago, the countries that we represent came together in Montreal around an agreement that fundamentally shifted the path that our planet was on. It was one of the earliest efforts. ... 28 times we have come together since that time in order to nurture and advance this incredibly daring and effective protocol. And with success, we have the ability to be able now once again to prove the value of multilateral work, the value of diplomacy, and the value of patience.

So thanks to the cooperation and the courage that we summoned at that critical time almost 30 years ago, the hole in the ozone layer—which had been growing at an alarming rate, and which was the reason that we came together—that hole is now shrinking, and it's on its way to full repair.

So we proved that we can make a difference. We proved that science has a value. We proved that if we come together in a forum like this, we can actually do things that affect the entire planet.

Today, in Kigali, the parties to the Montreal Protocol are again called on to summon our shared commitment to the only planet that we have. And I can assure you, that in the 30 years' time from now, our successors will look back and scrutinize, make judgments about the steps that we take or don't take, fail to take at this time. The only question is whether or not they will be as proud of what we do now as we are of what our predecessors did three decades ago.

Now, everyone in this room is aware of how serious the stakes are. Everyone here knows about the reams of scientific evidence that is gathering by the day and by the week, all of it compounding to provide one of the most authoritative scientific cases we have ever seen with respect to things that happen on the planet, all of them detailing how catastrophic climate change could be for future generations. We all know that the window of time that we have to prevent the worst impacts from happening is in fact narrow, and it is closing fast. ... We all know that adopting an ambitious amendment to phase down the use and production of hydrofluorocarbons—or HFCs—is likely the single most important step that we could take at this moment to limit the warming of our planet and protect the planet for future generations to come.



It is not often you get a chance to have a .5-degree centigrade reduction by taking one single step together as countries—each doing different things perhaps at different times, but getting the job done.

All of us here know that HFCs, which was supposed to be the solution, turned out not to be the solution. We replaced the ozone depleting substances, but we came to understand the hard way that HFCs may be safe for the ozone layer but they are disastrous for our climate, in many cases thousands of times more damaging than carbon dioxide. So today, the use of HFCs in everyday items like refrigerators and air conditioners is responsible for an entire gigaton of carbon dioxide equivalent pollution every single year. Put another way, in a single year, these substances emit as much CO<sub>2</sub> equivalent as nearly 300 coal-fired power plants.

In Paris, the world set the goal of limiting the Earth's warming to well below 2 degrees Celsius. Everybody here understands, and we have heard again and again, an ambitious HFC amendment is the single biggest thing we can do in one giant swoop, in one moment. Kigali can become the pace setter for Marrakesh and the pace setter for next year. That is how much our work here in Kigali matters. That is the responsibility that we share.

Now, obviously, I recognize that although approving the amendment that we seek is an essential step forward, it's not an easy solution for some countries to decide to make. I understand that. Not easy for anybody to make fundamentally. Implementing it is a different process for each of our countries, and we need to respect that and we are. Some nations, including the United States, have already begun to phase down the use of HFCs, but others have not. And therefore, some of those countries have real concerns about the potential costs.

I believe that what we have done here in the workup to this amendment recognizes those differences, understands the differences, makes genuine efforts in order to try to deal with them by putting money on the table, by stretching out certain kinds of schedules, by dealing with baselines responsibly, and ultimately by having different freeze years that recognize what is genuinely possible.

But it is important for everybody here to remember that one of the reasons that the Montreal Protocol has worked so well is because it accounts for these differences. Cooperation is written right into the text of the agreement. No country has ever been expected to go it alone, and that is absolutely true under the HFC amendment of the type that we have proposed. No country is expected to go it alone. In fact, the multilateral fund exists with the sole purpose of assisting countries in implementing their obligations.

Last month I announced in New York that in order to help with the early stages of an ambitious HFC amendment, the United States and other donor countries intended to contribute an additional \$27 million now, and I am confident as we go forward that more money will be produced, but that is the amount that we will produce immediately into the fund in 2017. And because we all recognize that governments aren't going to do this all by themselves, a dozen donors from philanthropic and private sector community announced that they, too, are going to contribute, and they pledged at least another \$50 million if we are successful.

Now, I remember a very late night in Paris when people were agitating and some people were worried that somehow the differentiation because of common and differentiated wasn't being acknowledged enough. Well remember, that has never been part of the Montreal Protocol discussion. Never. That is not the standard we have ever applied. But nevertheless, in Paris we passed the most differentiated agreement ever in history. How can I say that? Because it's true. Every single country came to Paris with its own plan designed by itself with a review process that is not accountable under the law, so it's open to everybody's application.

Well, here it's the same thing. We have countries coming in that are prepared to start in 2021. We are and we will, but we know we can't hold everybody to that. So other countries will start at a later time with a different baseline, and other countries perhaps even different from that. We understand that. That's why we have a group 1 and a group 2, and we're working through these things. But no country has a right to turn its back on this effort and to forget about the meaning of a multilateral effort where the world is looking to us to try to literally save this planet from what we ourselves have chosen to do with respect to how we power our energy and what we have done for more than 150 years or more.

\* \* \* \*

This is a time for leadership. And everybody here is a leader in this effort.

Again and again, we have gone beyond the targets that we set for ourselves in the Montreal Protocol. Remember that. We've consistently beaten the targets and we'll beat these targets. If we're going to adopt an amendment this year, we need to conclude negotiations on a level of ambition in the coming hours. And if we're going to give this amendment the teeth that it needs to prevent as much a half a degree of warming, then we need to make sure that we are pushing the most far-reaching amendment that we can adopt. Every week, every day that we are able to move up the freeze dates, or every hour we're able to accelerate our phasedown schedules—every bit of HFC production and consumption that we can reduce all makes a difference.

\* \* \* \*

So if we can adopt an ambitious HFC amendment here in Kigali, the message is going to be underscored the same way that it was in Paris, and it will demonstrate to the private sector just how serious we are, and that will immediately move capital into finding the solutions to this problem. Why? Because people will make money, because there are revenue streams for energy, for refrigerators, for air conditioning.

In the end, what we do here today is actually about much more than just one amendment. It's about much more than the Montreal Protocol. It's about whether we have actually woken up as a world in a meaningful way to the harsh reality of climate change.

We've known about this threat for decades now. But for a long time, we have allowed countries to be divided into certain kinds of fault lines – rich and poor, north and south, industrialized and developing. And those divisions prevented us for years from achieving any meaningful progress. And so I can remember from the day I went to Rio in 1992 to the follow-on conferences in Buenos Aires, the Kyoto efforts we made, all the way to Copenhagen and that failure, and then the passage in Paris. We lost years in this effort. We delayed action and the challenge grew and it became harder and harder to overcome. And every year that we wait here, it will become more expensive and it will become more demanding.

\* \* \* \*

So I say to everybody here, let's get this job done, just as we did in Paris. Let's do it the way we did, let's get it done in the next few hours, let's move forward, and together, I think we can leave here with pride in the foundation we have laid for the greatest change our planet has ever seen in how we energize and service our marketplaces, and most importantly, live up to our obligation to protect the future for the future.

\* \* \* \*

On October 15, 2016, Secretary Kerry announced in a press statement that the parties to the Montreal Protocol meeting in Kigali had agreed to the amendment to phase down the use and production of HFCs. See October 15, 2016 press statement, available at <http://2009-2017.state.gov/secretary/remarks/2016/10/263170.htm>, and excerpted below.

---

\* \* \* \*

The world came together today in yet another milestone on the path toward a safer, more sustainable future. In Kigali, Rwanda, I was proud to help represent the United States as the nearly 200 Parties to the Montreal Protocol agreed to an amendment to phase down the use and production of potent greenhouse gases known as hydrofluorocarbons (HFCs). The Kigali Amendment we adopted could avoid up to half a degree Celsius of warming by the end of the century.

The amendment also amplifies the important message we've been sending to industry and the private sector: Entrepreneurs and innovators everywhere can continue to invest in climate solutions with confidence. Nations in every part of the world are committed to changing the course our planet has been on. We are moving toward a more sustainable world—and our pace is quickening.

The Kigali Amendment is just the latest example of the tangible progress the world is making to address climate change. Just last week, the Paris Agreement reached the thresholds to enter into force... and we also adopted a measure aimed at carbon neutral growth in the international aviation sector.

\* \* \* \*

## **B. PROTECTION OF MARINE ENVIRONMENT AND MARINE CONSERVATION**

### **1. Fishing Regulation and Agreements**

#### ***a. South Pacific Tuna Treaty***

See Chapter 4 for a discussion of the process by which, during 2016, the United States notified the depositary to the South Pacific Tuna Treaty of U.S. withdrawal and subsequently rescinded that notification after amendments to the 27-year-old treaty were agreed to and adopted by the United States and the Pacific Island governments which are parties to the Treaty.

**b. Port State Measures Agreement**

As discussed in *Digest 2015* at 586-88, the United States enacted the Illegal, Unreported, and Unregulated (“IUU”) Fishing Enforcement Act of 2015, paving the way for the United States to take steps to address IUU fishing, including by ratifying the 2009 Agreement on Port State Measures to Prevent, Deter, and Eliminate IUU Fishing. On February 11, 2016, Secretary Kerry announced that President Obama had signed the instrument of ratification for the United States to join the Port State Measures Agreement. The United States was the 20<sup>th</sup> party to ratify the Agreement. See February 11, 2016 press statement, available at <http://2009-2017.state.gov/secretary/remarks/2016/02/252366.htm>. As explained by Secretary Kerry in his statement:

By joining the Port State Measures Agreement, the United States commits to work together with other nations to prevent illegally caught fish from entering into commerce worldwide by reducing the number of ports where these fishing products can be unloaded and making it harder for bad actors to do business. I hope other countries around the world will work urgently to ratify this vital Agreement as well.

In May 2016, the UN Food and Agriculture Organization (“FAO”) announced that, with 30 parties, the Port State Measures Agreement had reached the threshold for entry into force. See Secretary Kerry’s May 17, 2016 press statement, available at <http://2009-2017.state.gov/secretary/remarks/2016/05/257297.htm>. The Agreement entered into force on June 5, 2016. As Secretary Kerry pointed out in his statement welcoming the FAO’s announcement of the Agreement’s prospective entry into force, only 10 parties had joined the Agreement by 2014 when the United States decided to make it a priority.

**2. Marine Pollution**

The United States hosted the third “Our Ocean” conference, September 15-16, 2016, at which participants announced new initiatives on marine conservation and protection and made new commitments on the protection of the ocean. The State Department issued a fact sheet summarizing commitments made at the 2016 conference, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/09/262042.htm>. Indonesia announced that it would host the 2018 Our Ocean conference and Norway announced it would host in 2019.

**3. Biodiversity Beyond National Jurisdiction**

In 2015, the UN General Assembly decided to develop an international legally binding instrument under the United Nations Convention on the Law of the Sea (“UNCLOS”) on

the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. For a discussion of past U.S. views regarding such an instrument, see *Digest 2011* at 438-39. Views expressed by the United States at the Second Session of the Preparatory Committee on the Development of an International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity are summarized in a September 9, 2016 document, excerpted below and available on the website of the Division of Ocean Affairs and the Law of the Sea, <http://www.un.org/depts/los/biodiversity/prepcom.htm>.

---

\* \* \* \*

### Marine Genetic Resources

#### Marine Genetic Resources: Common Heritage of Mankind

There is no legal gap in regard to marine genetic resources in areas beyond national jurisdiction. Rather, these resources fall under the high seas regime of international law as reflected in the Law of the Sea Convention (LOSC). Marine genetic resources (MGR) in areas beyond national jurisdiction are not covered by the provisions pertaining to the International Seabed Authority or the Area (Part XI), except as part of the marine environment that must be protected in connection with “activities in the Area” (which are defined as activities of exploration for and exploitation of the resources of the Area; in the context of the Area, “resources” are expressly defined to include only mineral resources).

We support application of the concept of the common heritage of mankind to mineral resources in the Area, as is clearly articulated in the Law of the Sea Convention. However, we do not support the application of this concept beyond that, and in particular, we oppose any application of the concept of “common heritage of mankind” to marine genetic resources in areas beyond national jurisdiction.

#### Marine Genetic Resources: Definitions

We recommend that we first consider definitions of genetic material and genetic resources that appear in other contexts, including the Convention on Biodiversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) as the basis for this discussion. These definitions can be a good starting point for developing a definition for marine genetic material or marine genetic resources that provides for some consistency across fora yet is also tailored to suit our needs. We note that marine genetic resources should be limited to material from living organisms containing functional genetic units of heredity. The definition should not include material such as enzymes or other proteins or information generated from MGR such as genetic sequence data.

We have reviewed definitions of genetic material and genetic resources used in other contexts, including the Convention on Biodiversity (CBD) and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). We have relied on language from those definitions to arrive at definitions of marine genetic material (MGM) and MGR that are inclusive enough to accomplish the ends that we are seeking, and sufficiently tailored to steer clear of unforeseen or unintended consequences. Specifically, this Prepcom may wish to consider the following definitions of MGM and MGR that include functional units of heredity (DNA) from a plant, animal, or microbe from the seabed beyond national jurisdiction, but not

from the water column:

“*Marine genetic material* means any material of plant, animal, or microbial origin containing functional units of heredity collected from the Area; it does not include material made from material, such as derivatives, or information describing material, such as genetic sequence data.”

“*Marine genetic resources* means any marine genetic material of plant, animal, or microbial origin of actual or potential value collected from the Area.”

#### Marine Genetic Resources: Fish

In our view, if marine genetic resources from a fish are used for their genetic properties, they should be treated as other MGR under any new instrument. There would be no reason to treat a gene from a fish differently than a gene from any other marine organism. If, however, fish are used as a commodity, then many would fall under existing regimes, including regional fisheries management organizations, and should not be addressed here.

#### Marine Genetic Resources: *In Situ*, *Ex Situ*, *In Silico*

It is essential to maintain a conceptual and definitional distinction between marine genetic resources themselves and information about those resources. Indeed, for purposes of clarity, we should refer to information taken from MGR by its proper name: genetic sequence data, or GSD, and not use the term *in silico*. GSD is information and its sharing can promote uses of GSD in research and development. If GSD is included, and a decision were made to attempt to trace the downloading and use of such information, how would that work? We struggle to envision a scenario that could be workable. How could we manage benefit-sharing (and promote compliance) if data, something that is freely and openly shared as part of research best-practices, were included in it?

It is best to limit the definition of MGR to *in situ* collection. Including *ex situ* samples and procedures in the definition of MGR would introduce a range of complex variables, such as how materials are collected, transported, and stored. These would dramatically complicate the operation of BBNJ benefit-sharing and move us farther away from achieving our objectives.

#### Marine Genetic Resources: Access

In the high seas regime under international law, no State nor any other entity has sovereign rights over MGR in areas beyond national jurisdiction. Anyone can freely access such MGR in accordance with international law. As we do not have to discuss issues of ownership of MGR, we are instead free to share ideas on how sharing benefits might allow us to best achieve our overarching conservation objectives, and how such benefit sharing arrangements might work.

Benefit sharing must be considered in the context of how any benefit sharing might allow us to achieve our conservation objectives. We do not want to advance any benefit sharing conditions that might create operational inefficiencies or otherwise obstruct beneficial research or development activities. In our view, especially given the difficulty for many to even access MGR, access to MGR in areas beyond national jurisdiction could itself be considered a benefit, and it is important for this group to discuss how we might be able to advance access as a benefit.

#### Marine Genetic Resources: Benefit Sharing

MGR in areas beyond national jurisdiction fall under the high seas regime of the law of the sea, and we do not want to see restrictions placed on those resources. If, however, a new instrument were to include a benefit-sharing regime, the benefits should focus on capacity building and conservation. At the last Prepcom session we heard compelling descriptions of the difficulties some scientists, particularly from developing countries, face in terms of having

access to BBNJ. Increased access to BBNJ, in ways acceptable to States, could be an example of positive benefit sharing.

Marine Genetic Resources: Water Column

We do not support including MGR found in the water column in any benefit sharing arrangements. There is precedent in LOSC Article 77 for treating species on the seabed floor differently from species in the water column. We support a distinction being made for MGR from the Area and MGR in the water column.

Area-based Management Tools (ABMTs), including Marine Protected Areas

ABMTs, including Marine Protected Areas: General

The United States strongly supports the protection of the marine environment, both within and beyond national jurisdiction, and believes the conservation aspects we are discussing in this Prepcom are critical elements of any potential instrument. We are committed to an ecosystem-based approach to the management of the ocean, using the precautionary approach, and the best available science. This includes using tools such as marine protected areas and coastal and marine planning, which consider all uses of the environment towards the goal of conservation and sustainable use.

As science and experience with existing marine protected areas have demonstrated, when marine protected areas are science-based, designed, implemented, and managed effectively, and used in concert with other appropriate conservation tools, they can contribute greatly to enhancing ecosystem resilience, sustainable use of marine resources, and protecting marine ecosystems and biodiversity. To this end, States could consider establishing as part of the BBNJ implementing agreement a process to identify and designate areas to be protected, for example marine protected areas (MPAs).

MPAs are not exclusively “no take” zones, but rather they are spatial management tools that can allow for varying levels of ecosystem management, conservation, and sustainable use to achieve specific management objectives based on the characteristics of specific areas. MPAs are most successful when they are supported by the best available science and involve relevant stakeholders in their development and implementation.

An MPA must have clear and specific objectives; defined, user-friendly and science-based boundaries; and a strong link between potential harms to the ecosystem and the management measures developed to address them. MPAs must also be consistent with customary international law as reflected in the Law of the Sea Convention, including but not limited to its sovereign immunity provision in Article 236. As new information becomes available or ecosystem conditions change, there must be flexibility to adapt and respond with new or revised management measure recommendations.

Whatever steps we take here must be based on the best available science, and one of our key tasks is to determine how we can obtain the information necessary to ensure science-based decision-making related to MPAs that is supportable by a wide variety of stakeholders. We must ensure that scientists associated with relevant management sectors, including shipping, fisheries, and mining activities, are fully and adequately engaged in this endeavor, as well as scientists that have expertise in the conservation and management of biodiversity.

ABMTs, including Marine Protected Areas: Scientific and Policy Process

A potential BBNJ implementing agreement could establish a two-step approach, including a scientific process and a policy process, that identifies areas for protection as well as conservation goals and objectives for those areas. The scientific process could identify the area to be protected based on the best available science, including consultation with scientists who

have expertise in the conservation and management of biodiversity as well as scientists associated with relevant management sectors (e.g., shipping, fisheries, oil and gas, undersea cable operations, and mining).

We see great value in the progress that continues to be made worldwide in developing and applying scientific and technical criteria to identify marine areas and ecosystems that are ecologically and biologically significant, vulnerable or particularly sensitive. Any BBNJ implementing agreement scientific process should build upon this body of work, and use agreed-upon criteria to identify areas to be protected. We could look to the Convention on Biological Diversity's Ecologically or Biologically Significant Marine Areas and/or the scientific criteria used to identify them as a starting point for developing these criteria. The scientific process must inform the policy process, ensuring that there is adequate scientific basis for the policy process's designation of areas to be protected.

If an institutional mechanism is needed, we should consider one that will allow key decisions to be taken. Decisions might involve, for example, the location of sensitive and/or significant areas to be considered for protection, as well as identification of conservation goals for those areas.

In considering what sort of process might be established, we have looked to the precedent found in Article 36 of the UN Fish Stocks Agreement. Under Article 36, which involves establishment of a Review Conference, the Secretary-General "shall invite to the conference all States Parties and those States and entities which are entitled to become parties" to the Agreement.

Applying the same logic to BBNJ, we could establish a process that is open to all parties and those States and entities that are entitled to become parties. The process could include a meeting among all such participants at regular intervals, for example every two years, or on an otherwise determined basis. Such an approach can ensure that all States and entities have the opportunity to be involved in decision-making related to designation of marine protected areas where they feel they have an interest. At such meetings the participants, based on advice that comes out of the scientific process, could approve the overall conservation objectives and designate areas for protection based on those objectives. They could then ask existing regional or sectoral bodies to take action within their mandates.

We recognize that the responsibility for managing fisheries activities on the high seas rests primarily with flag States and the relevant regional fisheries management organizations (RFMOs); likewise, shipping regulations and concerns rest primarily with the States and the IMO, while issues concerning the use and regulation of the seabed primarily reside with the States and the International Seabed Authority. We must ensure that we do not undermine or duplicate relevant instruments, frameworks, or bodies that already exist, including by allowing due time for such bodies to complete internal processes for addressing conservation objectives. These sector-specific bodies should develop and implement measures within their competency and mandates. We support the work of the existing regional and sectoral bodies and believe that we must endeavor to work through these organizations to successfully manage areas and activities within their mandates.

If no regional or sectoral body takes action recommended at a BBNJ meeting, for example because they do not have a mandate or competence to take protective action, the States and entities involved could establish a regional mechanism that would be open to all States and entities or could take actions "inter se" to address the issue on an inclusive and transparent basis, consistent with customary international law as reflected in the LOS Convention. We believe this



entire process should be inclusive, allowing for “Observer” status for existing regional and sectoral bodies as well as other non-State actors, such as non-governmental organizations, scientific organizations, and the private sector.

#### Environmental Impact Assessments

The United States agrees with others that any potential new agreement should provide for environmental impact assessments, consistent with and providing greater detail than Article 206 of the Law of the Sea Convention. Impacts statements would provide information to the decision maker and a role for public participation for any planned activities under a State’s jurisdiction or control that the State has reasonable grounds for believing may cause substantial pollution of or significant and harmful changes to the marine environment. In the system we have in mind, the process itself is triggered, as under Article 206 of the Law of the Sea Convention, by activities under a State’s “jurisdiction or control.”

In our view, this would mean that the process is triggered in cases where the State exercises effective control over a particular activity or the State exercises jurisdiction in the form of licensing or funding a particular activity. In the United States, this is framed as projects, plans, policies, and procedures. The basic idea is that the EIA process is triggered where the State interjects itself in a manner inviting public engagement and disclosure of likely environmental impacts of a proposed action that may have significant environmental impact. Outside of these areas, the State would identify the specific proposed actions that trigger the EIA process, and would then engage in the EIA process prior to licensing or funding those actions.

We would support having a tiered structure that is common to many domestic and international environmental impact assessment processes, including those used by the United States, the United Nations Environment Programme, the World Bank, and the Antarctic Treaty system.

The tiers correspond to the level of anticipated environmental impact. At the first tier are those actions that normally do not have a significant effect on the marine environment. Categories of such actions may be identified by States ahead of time so that a State can simply confirm that the action is not likely to have a significant impact and does not involve extraordinary circumstances that would make environmental review necessary.

The higher tier would provide for an environmental impact assessment that is proportional to the significance of a proposed action’s environmental impact, starting with those proposed actions that are likely to cause significant environmental effects. For proposed actions that are significant, the State prepares a concise “environmental analysis.” Such an environmental analysis does what the name suggests: assesses the likely environmental effects of the proposed action and alternatives, which may include alternatives that may mitigate effects of the proposed action. If the analysis finds that there will be no significant environmental effects, then the government produces a written record of this finding.

If the State finds that there will be a significant environmental impact then the proposed action will be reviewed at a greater level of detail in an environmental impact statement. This document, again as the name suggests, describes the anticipated environmental impacts of the proposed action. These statements tend to be detailed documents that include consideration of alternate plans of action and a “no action” alternative; consideration of direct, indirect and cumulative impacts; and any measures to mitigate and monitor environmental impacts.

The purpose of the review is to bring information about anticipated environmental impacts to light, not necessarily to prevent a particular action based on those anticipated impacts. In other words, the EIA process is procedural and does not prejudice the State’s decision.

Towards this goal, the environmental review features active engagement with the public, including a “scoping” exercise that takes place before the review in order to identify areas that warrant analysis. As a point of principle we believe that the process should include public involvement at the national or sub-national level. Consistent with Article 205, and the general purpose of the EIA process, a report of the results of the EIA process would be published.

In our view, the EIA should be an obligation of States Parties to any potential new agreement, and the procedures would be carried out within and by or under the direction of States. They could be carried out by the States themselves, or under State supervision and subject to State approval, but they would not be carried out by a BBNJ institution or process. Moreover, EIAs would not be subject to review internationally by any new BBNJ institution or process.

We believe that Strategic Impact Assessments for plans and programs can be useful tools in identifying broad areas of environmental concern along with ways to avoid or mitigate potential harmful effects of a particular policy involving systematic and connected decisions. Like others, we are interested in questions related to evaluating cumulative impacts, and this may be a tool in that regard.

In order to be effective, however, Strategic Impact Assessments should inform development and adoption of a specific policy or program that will be followed. With over 190 States potentially participating in activities beyond national jurisdiction, however, it may be hard to effectively reach agreement regarding a particular policy or program of action. Indeed, this challenge is only heightened by the fact that one of the key functions of a Strategic Impact Assessment is to identify environmentally desirable uses and limits on use of a particular resource in advance.

It is perhaps for reasons like this that the Law of the Sea Convention clearly does not require Strategic Impact Assessments, but rather focuses, in Article 206, on specific “planned activities” under a State’s “jurisdiction or control.”

This broadly accepted approach to Environmental Impact Assessment of activities rather than plans and programs is reflected in other international instruments such as the Espoo Convention. Notably, however, when the Espoo Parties sought to incorporate a Strategic Impact Assessment approach they negotiated a new protocol to the Espoo Convention.

The United States would be interested to hear proposals for how a Strategic Impact Assessment approach could work in the area beyond national jurisdiction, with the recognition, however, that this goes beyond the current scope of the Law of the Sea Convention.

#### Capacity Building and Technology Transfer

##### Capacity Building and Technology Transfer: General

The United States strongly supports including provisions regarding capacity building in any potential new instrument on the conservation and sustainable use of BBNJ in accordance with the existing provisions of the LOSC on capacity building and marine technology. We underscore the importance of fostering marine science and further investments in research and development, as well as international scientific collaboration, to improve sharing of knowledge and capacities. The best-available scientific information should form the basis for management decisions and conservation policies, and any potential new agreement on BBNJ.

In our view, a potential new instrument must ensure that capacity building and technology transfer are voluntary, respect intellectual property rights and foster marine science, innovation, research and development.

We fully support the need for meaningful capacity building, as others have persuasively stated. As we consider the scope of this undertaking, we do think it is important to take into account that we are not starting from scratch. We need to consider what is being done now, and in that context consider how we might go farther. We should consider where we have education programs, science training that includes developing country scientists, including early career scientists, programs that exist in the RFMOs, etc.

When it comes to capacity building and technology transfer for marine research and science, we have been supporting work in this regard through the Intergovernmental Oceanographic Commission (IOC), for example, through the IOC Criteria and Guidelines on the Transfer of Marine Technology<sup>1</sup> and in the implementation of data repositories. Furthermore, at the IOC, there is an ongoing effort to understand the capacity needs of developing countries and tailor IOC's capacity-building work to those needs.

We are also supporting capacity building and technology transfer through the Group on Earth Observations Marine Biodiversity Observation Network (global MBON), where there is an ongoing effort to understand needs of member countries with regard to establishment of marine biodiversity monitoring activities, technology applications, and data management. This work is being led by the Group on Earth Observations (GEO) in partnership with IOC.

We have also been participating in the Global Environment Facility (GEF) Areas Beyond National Jurisdiction project, which is exploring ways to better manage fisheries in an ecosystem manner, specifically working with developing nations to enhance their fisheries management sectors.

All of this work builds upon significant capacity building efforts around the globe to support work to preserve and conserve biodiversity.

Delegations have called for more effective and efficient capacity building and technology transfer. We agree with that. There is much more we can be doing to coordinate efforts and increase developing countries' capacities. At the same time, we should not lose sight of work that is already occurring, especially developing countries' efforts to improve absorptive capacity to integrate transferred technologies.

#### Capacity Building

The United States believes it is important to consider how to integrate practical steps for capacity building into a potential new implementing agreement, keeping in mind that the instrument will exist for a long time, perhaps longer than some of the programs we are talking about. In terms of how capacity and technology needs are to be identified, we believe that provisions in the implementing agreement on capacity and technology transfer should be compatible with, and responsive to, local, national, and regional realities and needs.

Regarding what specific measures might be included in a potential new agreement, we again note the ongoing work of various international organizations, such as the IOC. The IOC has recently agreed to a Capacity Building Strategy, and has also launched a Capacity Building website that acts as a gateway to the many capacity building activities around the world, and is aimed at improved coordination and cooperation.

Regarding a capacity building clearinghouse, or data clearinghouse that we have heard some delegations reference, we are supportive of establishing mechanisms that are not unduly burdensome, and that will improve the efficiency and effectiveness of existing international mechanisms already in place. In this respect, we note efforts under the IOC's International

---

<sup>1</sup> <http://unesdoc.unesco.org/images/0013/001391/139193m.pdf>

Oceanographic Data and Information Exchange (IODE).

The IODE was established to enhance marine research, exploitation, and development, by facilitating the exchange of oceanographic data and information between participating IOC Member States, and by meeting the needs of users for data and information products.

A program under IODE, which we have heard about already during the Prepcom, is the Ocean Biogeographic Information System, or OBIS. OBIS serves as a global data sharing platform and clearinghouse for marine biodiversity (biogeographic and biometric) data in all ocean basins, including in areas beyond national jurisdiction (ABNJ). Any clearinghouse efforts under the IA should, we believe, begin with focusing on IODE and OBIS.

With respect to regional training centers, we note that Article 276 of part XIV of UNCLOS encourages the establishment of regional centers in order to stimulate and advance the conduct of marine scientific research, particularly by developing States, and to foster the transfer of marine technology. Again, we would point to ongoing efforts in this regard, such as the IODE's OceanTeacher Program, and the IOC's Regional Network of Training and Research Centres on Marine Science. IODE's OceanTeacher program was started in 2005 with an initial focus on oceanographic data and information management, and has gradually added courses on all IOC activities, such as operational oceanography, marine spatial planning, tsunami warning, taxonomy of harmful algal species, science and spatial data analysis. More than 1,000 graduate students and professionals from 120 countries have been trained so far.

IOC's Regional Network of Training and Research Centres on Marine Science aims to improve regional capability and capacity in marine science in a sustainable and systematic manner, through the establishment of IOC Regional Training and Research Centres in national oceanographic institutes or universities. The overall goal of this project is to help advance marine science capacity in Asia and the Pacific through the transfer of technology.

#### Transfer of Marine Technology

The United States is prepared to consider for inclusion in an implementing agreement provisions for the transfer of marine technology, provided such transfer is on a voluntary basis, based on mutually agreed terms and conditions, respects intellectual property rights, and fosters marine science, innovation, research and development.

We've already referenced the IOC Tech Transfer Guidelines as a guiding tool for building capacity in marine science and related activities, as have other delegations, and we note that the Guidelines recognize that marine technology includes more than physical infrastructure.

According to the IOC Guidelines, tech transfer includes both physical (infrastructure) as well as non-physical elements (data, knowledge), for example,

- *Information and data on marine sciences*
- *Manuals, guidelines, criteria, standards, reference materials*
- *Sampling and methodology equipment*
- *Observation facilities and equipment*
- *Equipment for in situ and laboratory observations, analysis and experimentation*
- *Computer and computer software, models and modeling techniques*
- *Expertise, knowledge, skills, know-how and analytical methods.*

We view this as a very useful guiding document upon which to build.

Regarding whether we should establish a funding mechanism for capacity building and technology transfer, we are open to discussions on this topic; however we believe that if any trust fund is to be established, it should be purely voluntary in nature.

\* \* \* \*

#### 4. Sea Turtle Conservation and Shrimp Imports

The Department of State makes annual certifications related to conservation of sea turtles, consistent with § 609 of Public Law 101-162, 16 U.S.C. § 1537, which prohibits imports of shrimp and shrimp products harvested with methods that may adversely affect sea turtles. On May 3, 2016, the Department of State certified 40 nations and one economy as having adequate measures in place to protect sea turtles during the course of commercial shrimp fishing, permitting those countries to export wild-caught shrimp to the United States under Section 609 of Public Law 101-162 (Section 609). See June 9, 2016 media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/06/258312.htm>. As elaborated in the media note:

Section 609 prohibits the importation of wild-caught shrimp and products of shrimp harvested in ways that may adversely affect sea turtles unless the Department of State certifies to Congress that the government of the harvesting nation or economy has adopted a regulatory program comparable to that of the United States to reduce the incidental catch of sea turtles in its shrimp trawl fisheries, such as through the use of turtle excluder devices (TEDs), or that the particular fishing environment of the harvesting nation or economy does not threaten sea turtles. The Department makes certifications annually and bases them in part on the results of overseas verification visits by a team composed of State Department and National Marine Fisheries Service representatives.

See also 81 Fed. Reg. 33,575 (May 26, 2016); and information on United States government sea turtle conservation efforts, available at <http://2009-2017.state.gov/e/oes/ocns/fish/bycatch/turtles/index.htm> or <http://www.nmfs.noaa.gov/pr/species/turtles/teds.html>.

\* \* \* \*

#### 5. Whaling

On January 11, 2016, the State Department issued as a media note the joint statement on whaling and safety at sea by the governments of Australia, the Netherlands, New Zealand, and the United States. The joint statement is excerpted below and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/01/251100.htm>.

---

\* \* \* \*

The Governments of Australia, the Netherlands, New Zealand, and the United States jointly condemn any actions at sea that may cause injury, loss of human life or damage to property or the marine environment during Southern Ocean whaling operations in 2016.

The Southern Ocean can be a treacherous, remote, and unforgiving environment. Its isolation and extreme conditions mean that search and rescue capability is extremely limited. Dangerous, reckless, or unlawful behavior jeopardizes not only the safety of whaling and protest vessels and their crews but also anyone who comes to their assistance.

Incidents during previous whaling seasons clearly demonstrated the dangers involved. We reiterate our call to the masters of all vessels involved to uphold their responsibility to ensure safety at sea, including ensuring that international collision avoidance regulations are observed in order to avoid the risk of loss of life or injury and damage to property or the marine environment.

We draw the attention of the masters of the vessels involved to the International Maritime Organization's May 17, 2010 resolution on assuring safety during demonstrations, protests or confrontations on the high seas, and the International Whaling Commission's 2011 Resolution on Safety at Sea.

We also draw the attention of the masters of vessels involved to their duty to render assistance in the event of a collision and to render assistance to persons in distress. Providing assistance in these circumstances is critical in the remote areas of the Southern Ocean.

We respect the right to freedom of expression, including through peaceful protests on the high seas, when protests are conducted lawfully and without violence. However, we unreservedly condemn dangerous, reckless, or unlawful behavior by all participants on all sides, whether in the Southern Ocean or elsewhere. We are prepared to respond to unlawful activity in accordance with relevant international and domestic laws.

Our Governments remain resolutely opposed to commercial whaling, in particular in the Southern Ocean Whale Sanctuary established by the International Whaling Commission. We do not believe that Japan has sufficiently demonstrated that it has given due regard to the guidance found in the 2014 International Court of Justice judgment on ensuring that lethal research whaling is consistent with the obligations under the International Convention for the Regulation of Whaling. On December 7, 2015, our Governments joined 29 other nations to protest Japan's decision. We urged Japan to respect the International Whaling Commission's procedures and the advice of its Expert Review Panel and Scientific Committee. The science is clear: all information necessary for management and conservation of whales can be obtained through non-lethal methods.

We note that the final NEWREP-A research plan, circulated to the Scientific Committee members on November 27, 2015, has not proceeded through the International Whaling Commission's processes, set out in Resolution 2014-5, which requests that proponents allow the IWC to consider the Scientific Committee's review of special permit proposals prior to their commencement.

Australia, the Netherlands, New Zealand and the United States are committed to improving the conservation status of whales worldwide, maintaining the International Whaling Commission's global moratorium on commercial whaling, and implementing meaningful reform of the International Whaling Commission.

\* \* \* \*

## C. OTHER CONSERVATION ISSUES

### 1. Treaty on Plant Genetic Resources

On May 19, 2016, Acting Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs Judith G. Garber testified before the Senate Foreign Relations Committee in support of U.S. ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture, adopted by the Food and Agriculture Organization of the UN on November 3, 2001. Ms. Garber's testimony is excerpted below and available at

[http://www.foreign.senate.gov/imo/media/doc/051916\\_Garber\\_Testimony.pdf](http://www.foreign.senate.gov/imo/media/doc/051916_Garber_Testimony.pdf).

---

\* \* \* \*

U.S. agriculture depends on the stable high yields of U.S. crops, which, in turn, depend on the continual development of new crop varieties. The crops we grow are under constant threat from diseases and pests, droughts and floods. Our food security and the future of U.S. agriculture will depend upon our ability to breed new crops that require fewer inputs, such as water, fertilizers, and energy, to grow; new crops that are more resilient or resistant to pests and diseases; and new crops that still reliably produce high-quality yields. To develop these new crop varieties, breeders and researchers require access to a broad spectrum of plant germplasm. Plant germplasm includes the seeds, bulbs, roots, and other propagating raw materials from which plants can be reproduced. These materials for plant breeding contain key traits, such as immunity to virulent pests and diseases, or tolerance for drought. Because plant genetic diversity is spread around the world, the United States needs to have access to germplasm from other countries in order to be best equipped to develop the crops we need. This means that facilitating access to what is termed "plant genetic resources" is a critical priority for the United States. It is also a critical priority for the entire international community. This is exactly why the Treaty was created.

Technological advances have significantly improved our ability to identify, characterize, and utilize plant genetic materials, meaning that now more than ever it is important for us to be able to access the diversity of plant genetic resources outside our borders. However, U.S. researchers have found it increasingly difficult to gain access to plant genetic resources in other countries. This Treaty establishes a stable legal framework for international plant germplasm exchanges, benefitting both research and commercial interests in the United States, and promoting U.S. and global food security through the conservation and sustainable use of plant genetic resources for food and agriculture.

The centerpiece of the Treaty is the establishment of a "Multilateral System" for access to, and benefit-sharing regarding, certain plant genetic resources to be used for research, breeding, and training for food and agriculture. The Multilateral System currently applies to 64 food, feed and grazing crops that are maintained by International Agricultural Research Centers or that are under the management and control of national governments and in the public domain.

Access to germplasm in the multilateral system is granted through a Standard Material Transfer Agreement (SMTA), a contract that defines the terms of access and benefit-sharing.

As a global leader in agricultural production, research and breeding, the United States was intensively involved in negotiating the Treaty and the SMTA, which accompanies every transfer of materials under the multilateral system. President George W. Bush signed the Treaty in 2002. It entered into force in 2004 and now has 139 Parties including Australia, Brazil, Canada, Japan, and the EU. President Bush forwarded the Treaty to the Senate for consideration in July 2008, after negotiation of the SMTA was completed.

Throughout the Treaty negotiating process, the United States was firmly committed to creating a system that promotes U.S. and global food security, protects U.S. access to genetic resources held outside our borders, and supports research and breeding in both the public and private sectors. The United States also sought to protect the ability of the International Agricultural Research Centers—the institutions largely responsible for the “Green Revolution” which saved hundreds of millions of lives—to continue to breed crops that are the foundation for global food security. We were successful in achieving these objectives.

U.S. ratification of the Treaty enjoys broad stakeholder support, including support from major U.S. companies as well as prominent industry organizations such as the American Seed Trade Association, the American Farm Bureau Federation, the National Farmers Union, the National Association of Wheat Growers, the National Corn Growers Association, the Biotechnology Industry Organization, and the Intellectual Property Owners of America. In addition, the Association of Public Land-grant Universities also supports ratification.

U.S. stakeholders strongly support ratification because it would guarantee U.S. users what is known as “facilitated access,” that is, access on consistent terms for little or no cost, to plant genetic materials held by other Treaty Parties. Currently U.S. entities are at a disadvantage, as they are not assured access to these resources due to our non-party status. When they do gain access, they sometimes have to engage in lengthy ad hoc negotiations of terms of access, and those terms are not always as favorable as those in the SMTA. If the United States were a Party to the Treaty, U.S. users would have guaranteed access under the SMTA, and the United States could ensure that any revisions to the SMTA were consistent with U.S. interests.

The Treaty is consistent with existing U.S. practice and can be implemented under existing U.S. authorities. The United States is already in compliance with key provisions of the Treaty. The Agricultural Research Service, in its capacity as manager of the National Plant Germplasm System, would play a major role in domestic Treaty implementation. Ratification would not entail major policy or technical changes to current National Plant Germplasm System operations. For more than 60 years, the U.S. National Plant Germplasm System has distributed samples of germplasm to plant breeders and researchers worldwide and without restriction. One notable example of collaboration is the Agricultural Research Service-University of Georgia crop genebank in Griffin, Georgia, which is working to collect, characterize, conserve, and distribute plant genetic resources for sorghum, peanut, vegetables, cowpeas, and other crops and crop wild relatives.

The U.S. Department of Agriculture has long been recognized as the world leader in plant germplasm conservation and distribution. If the United States were to ratify the Treaty, U.S. entities would gain guaranteed access to plant genetic resources covered by the Treaty’s Multilateral System. This guaranteed access is critical to the efforts of researchers and plant breeders to develop new crop varieties that are more nutritious, that are resistant to pests and diseases, that show improved yields of high-quality products, and that are better able to tolerate



environmental stresses. The emergence of new plant breeding tools only heightens the importance of open access to plant genetic resources.

Ratification of the Treaty would not only underscore our continued leadership in agricultural research, breeding, and markets; it would also help U.S. farmers and researchers sustain and improve their crops and promote food security for future generations. Finally, it would enable the United States effectively to guide the trajectory of the Treaty and its Material Transfer Agreement as they evolve to meet future challenges and changing conditions.

\* \* \* \*

On September 28, 2016 the Senate provided its advice and consent to the ratification of the Treaty on Plant Genetic Resources. 162 Cong. Rec. S6195 (Sep. 28, 2016). The President transmitted the Treaty to the Senate in 2008. See *Digest 2008* at 725-27 for discussion of the transmittal package, including excerpts from the State Department’s article-by-article analysis. Senate advice and consent is subject to the understanding that, “Article 12.3d shall not be construed in a manner that diminishes the availability or exercise of intellectual property rights under national laws.” Advice and consent is also subject to one declaration: that the Treaty is not self-executing.

## 2. Convention on International Trade in Endangered Species of Wild Fauna and Flora

The 1983 Gabarone Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”) entered into force in 2015, making the 17<sup>th</sup> Conference of the Parties (“CoP17”) the first CITES CoP in which a regional economic integration organization (“REIO”) participated as a Party. This triggered a need to amend the Rules of Procedure (“RoP”) to allow for REIO participation, including voting procedures. In preparation for CoP17, held in Johannesburg, South Africa from September 24 to October 5, 2016, the United States submitted its views on the RoP for CoP17. The U.S. views relate, in particular, to the participation of REIOs, such as the European Union. For discussion of U.S. views regarding the role of the EU with respect to other treaties and organizations, see *Digest 2000* at 296-308. Excerpts follow from the U.S. submission of its views for CoP17. CITES Doc. No. CoP17 Inf. 10 (available at <https://cites.org/sites/default/files/eng/cop/17/InfDocs/E-CoP17-Inf-10.pdf>).

---

\* \* \* \*

3. Rules of Procedure (RoP) should provide clear guidance to all participants in a meeting and should explain how each Chair is to conduct business. In providing draft RoP (CoP17 Doc. 4.1 Annex 2) and “proposed practical arrangements for the participation of a regional economic integration organization” (CoP17 Doc. 4.1 Annex 3), the Secretariat suggests that the draft RoP

do not provide sufficient clarity and guidance to run the meeting in which a REIO will participate as a Party.

4. The United States believes the best way forward is to further revise the RoP relating to REIO participation so that additional guidance is not needed.

5. CITES Articles XXI(4) and XXI(5) contain two guiding principles for REIO participation in CITES. First, the participation rights of REIOs should not be “additional” to the aggregate rights of their Member States. That is, a REIO should be able to exercise the participation rights equivalent to the aggregate rights of its Member States, but should not exercise rights that are additional to those aggregate rights or provide Member States with additional rights that would not exist in the absence of the REIO. Second, REIOs may only participate on matters within their competence. These principles could be addressed directly in the RoP with additional revisions to the draft RoP in Document CoP17 Doc. 4.1 Annex 2 in three areas: Right to Vote (Rule 26, paragraph 3), Quorum (Rule 9), and Competence (Rule 26, paragraph 4), as follows:

6. **Right to Vote (Rule 26, paragraph 3):** Each State Party to CITES must be accredited and present in the meeting room to cast a vote. To avoid granting REIO Member States additional rights, a REIO should vote only on behalf of those Member States that are accredited and present in the meeting room at the time of the vote. Therefore, we recommend that the text in bold and underline be added such that draft Rule 26, paragraph 3 reads as follows:

26 (3). In the fields of their competence, regional economic integration organizations shall exercise their right to vote with a number of votes equal to the number of their Member States which are Parties to the Convention. Such organizations shall not exercise their right to vote if any of their Member States exercises theirs, and vice versa. **When regional economic integration organizations exercise their right to vote, they shall do so only with a number of votes equal to the number of their Member States that are present at the time of the vote, and eligible to vote.**

7. **Quorum (Rule 9):** As stated in Document CoP17 Doc. 4.1 Annex 3, for purposes of a quorum, a REIO should not be counted, as its Member States will be counted. To ensure that the RoP provide clear guidance on this issue, we recommend that the text in bold and underline be added such that Rule 9 reads as follows:

A quorum for a plenary session of the meeting or for a session of Committee I or II shall consist of one-half the Parties having delegations at the meeting. No plenary session or session of Committee I or II shall take place in the absence of a quorum. **For purposes of calculating a quorum, the Member States of regional economic integration organizations having delegations at the meeting shall count but the regional economic integration organizations shall not.**

8. **Competence (Rule 26, paragraph 4):** To ensure that the CITES Parties understand and are aware of the areas of competence for a REIO, the RoP should require a REIO to specifically identify its fields of competence prior to each meeting, rather than in advance of each vote. Competence refers to the authority conferred upon the REIO by its Member States to act in certain areas. Therefore, we recommend the following revisions to draft Rule 26, paragraph 4, shown in strikethrough and bold underline as follows:

26 (4). In advance of each vote **meeting**, each regional economic integration organization that is a Party to the Convention shall ~~announce whether~~ **indicate the matters on the agenda within its competence on which it** will exercise its right to vote in accordance with paragraph 3 of this Rule ~~or~~ **and matters on the agenda on which** ~~whether~~ its Member States will exercise their right to vote. **If during the course of the meeting there are changes to the announcement of competence, the regional economic integration organization should so announce as soon as possible and at least in advance any affected vote. The rights of the REIO extend to the limits of its competence.**

\* \* \* \*

At the second plenary session of the CoP, on September 24, 2016, the Parties discussed the proposals for the new RoP. The summary record of the second plenary session is excerpted below and available at <https://cites.org/eng/cop/17/sum/index.php>.

---

#### 4. Rules of Procedure

The Chair explained that there were three documents for consideration: CoP17 Doc. 4.1 (Rev. 1), Doc. 4.2 and Doc. 4.3 (Rev. 1). She indicated that the proposals contained in CoP17 Doc. 4.2 were addressed in Doc. 4.1 (Rev. 1); if the latter were adopted, there would be no need to consider the former any further. She also suggested that proposals in CoP17 Doc. 4.3 (Rev. 1) be considered intersessionally. She then asked the Secretariat to introduce CoP Doc. 4.1 (Rev. 1) noting that the meeting had a long agenda and imploring the Parties to use a pragmatic approach in adopting Rules of Procedure for the present meeting on the understanding that outstanding issues would be addressed intersessionally under the guidance of the Standing Committee. She drew attention to information documents submitted by the European Union and its member States (CoP17 Inf. 9, CoP17 Inf. 20 and CoP17 Inf. 29) and the United States of America (CoP17 Inf. 10).

##### 4.1 Report of the Secretariat and 4.2 Proposal of Botswana and South Africa

The Secretariat introduced CoP17 Doc. 4.1 (Rev. 1) indicating that the proposed new Rules of Procedure contained in Annex 2 of the document were the outcome of intersessional work and incorporated comments received from a number of Parties, the originals of which were contained in CoP17 Inf. 12. No consensus had been reached on some issues, reflected by the presence of text in square brackets in Annex 2. She suggested that the meeting concentrate on the Rules of Procedure for meetings of the Conference of the Parties at this time.

The United States of America summarized its views on CoP17 Doc. 4.1 (Rev. 1), particularly with regard to the participation of Regional Economic Integration Organizations (REIOs) in the Convention, drawing attention to guiding principles in paragraphs 4 and 5 of Article XXI of the Convention, which indicated that the participation rights of REIOs should not be additional to the aggregate rights of their Member States, and that REIOs should only participate on matters within their competence. They expressed their position that a REIO vote only with a number of votes equal to the number of its member States that are accredited and

present in the room at the time of the vote. They believed that these principles could be addressed through the adoption of the text in square brackets in proposed new Rule 9 (on quorum) and paragraph 3 of proposed new Rule 26 (on right to vote) and through the adoption of the complete text in paragraph 4 of proposed new Rule 26. They generally supported other proposed amendments to the Rules of Procedure but did not support new Rule 28 (on majority) or Rule 32 (on amendment). They agreed that the Standing Committee be mandated to look at the Rules of Procedure interessionally.

The Russian Federation, followed by China, Kuwait, speaking on behalf of the member States of the Gulf Cooperation Council, Uganda and the Bolivarian Republic of Venezuela supported the position of the United States. China also proposed deletion of the last line in paragraph 3 of proposed new Rule 4 (on observers). Brazil indicated that they were not yet in a position to adopt the proposed new Rules of Procedure and proposed the establishment of a working group to address outstanding issues.

The European Union (EU) indicated its pleasure at participating in a meeting of the Convention as a Party for the first time. They noted that all EU Member States were present and accredited at the meeting and intended to stay throughout. They drew attention to CoP17 Inf. 29 which set out information on the distribution of voting rights between the European Union and its members States. They stated that they could not accept the bracketed text in proposed new Rule 26 and proposed instead that text from Article XXI paragraph 5 be inserted directly into the Rules of Procedure, to ensure that the latter did not illegitimately limit the rights of Parties under the Convention. Under proposed new Rule 9, they believed that rules regarding quorum should relate to specific votes and did not consider this to be reflected accurately in the text in square brackets. Canada, Germany and Mexico supported the position of the European Union.

Noting that no consensus had been reached on adoption of the Rules of Procedure, the Chair established a working group, chaired by the Chair of the Standing Committee, to address outstanding issues and report back to the meeting on the following day. The group comprised: Australia, Brazil, Burkina Faso, Canada, China, the European Union, Germany, Israel, Japan, Kuwait, Mexico, the Russian Federation, South Africa, Switzerland, Uganda, the United States and the Bolivarian Republic of Venezuela.

\* \* \* \*

At the third plenary session of the CoP, on September 25, 2016, the Parties adopted rules for CoP 17 and instructed the Standing Committee to undertake further review and propose amendments, if needed, for consideration at CoP 18 in 2019. The final text of the rule on voting, Rule 26(1), stated: "Each Party shall have one vote, except as provided for in the Convention." Since the Rule did not speak to the specifics of EU voting, Parties also negotiated a statement by the EU that was included in the record of the meeting, which stated, *inter alia*, "The 28 EU Member States will remain present during the entire CoP 17 and it is understood that the EU Member States will attend each session of the CoP and it is understood that no Party will challenge the EU's exercise of its right to vote at CoP 17." The summary record of the third plenary session is available at <https://cites.org/eng/cop/17/sum/index.php>.

### 3. Wildlife Trafficking

On March 3, 2016, the Presidential Task Force on Wildlife Trafficking released its first annual progress report. See State Department media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/03/253942.htm>. The Task Force is charged with implementing the U.S. National Strategy for Combating Wildlife Trafficking, which was released in 2014. See *Digest 2014* at 570-72. As summarized in the media note, the progress report identifies how the Task Force “carried out the three main objectives of the National Strategy: strengthening enforcement, reducing demand, and expanding international cooperation.” The report is available at <https://2009-2017.state.gov/documents/organization/254013.pdf>. As discussed in *Digest 2015* at 603-04, the Implementation Plan for the National Strategy was rolled out in 2015.

**Cross references**

*Treaties generally*, **Chapter 4.A.1.**

*Senate advice and consent to ratification*, **Chapter 4.A.3.**

*Amendment to South Pacific Tuna Treaty*, **Chapter 4.B.**

*Center for Biodiversity v. Hagel*, **Chapter 5.C.2.**

*ILC's work protection of the atmosphere and the environment*, **Chapter 7.C.**

*Peaceful Uses Initiative and UN Sustainable Development Goals*, **Chapter 19.B.3.**