Contents

CHAPTER 13

Environment and Other Transnational Scientific Issues

A. LAND AND AIR POLLUTION AND RELATED ISSUES

1. Climate Change

On November 4, 2019, the United States formally initiated its withdrawal from the Paris Agreement. As explained in a November 4, 2019 press statement by Secretary of State Michael R. Pompeo, available at https://www.state.gov/on-the-u-s-withdrawal-from-the-paris-agreement/, the United States submitted notification of its withdrawal to the UN. Withdrawal takes effect one year after delivery of the withdrawal notification, in accordance with the terms of the Paris Agreement. See *Digest 2017* at 547-49 regarding President Trump's decision to withdraw from the Paris Agreement.

The United States continued to participate in international climate change negotiations and meetings, including the 25th session of the Conference of the Parties ("COP25") to the UN Framework Convention on Climate Change ("UNFCCC") held in Madrid, Spain from December 2-13, 2019. See November 30, 2019 State Department media note, available at https://www.state.gov/u-s-delegation-to-the-25th-session-of-the-conference-of-the-parties-to-the-un-framework-convention-on-climate-change/.

Principal Deputy Assistant Secretary of State Marcia Bernicat delivered the U.S. national statement at COP25 on December 11, 2019, which is excerpted below and available at https://www.state.gov/united-states-national-statement-at-unfccc-cop25/.

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The United States continues to lead on clean, affordable, and secure energy while reducing all types of emissions—including greenhouse gases—over the last 15 years. Our last day as a Party to the Paris Agreement will be November 4, 2020, but we will remain focused on a realistic and

pragmatic model—backed by a record of real world results. Our model shows how innovation and open markets lead to greater prosperity, fewer emissions, and more secure sources of energy. We remain fully committed to working with you, our global partners, to enhance resilience, mitigate the impacts of climate change, and prepare for and respond to natural disasters.

U.S. investments in research and development will continue to spur landmark breakthroughs across the full range of energy technologies—natural gas; wind; solar; nuclear; hydroelectric; clean coal and biofuels. Our investments will improve energy efficiency and storage as well. We have successfully proven the potential for carbon capture, utilization, and storage through demonstrations and large-scale industrial projects.

U.S. scientific research and data collection, transformed by our national laboratories' supercomputer modeling, provide the international scientific community with a deeper understanding of our shared environment. Open data from U.S. satellites help fight forest fires and track trends in deforestation. NOAA and NASA data and research help countries predict and prepare for the impacts of climate change, extreme weather, sea level fluctuations, and drought. U.S. companies develop resilient crops to withstand these phenomena. All of this work supports American businesses, farmers, and communities—as well as our friends and partners around the world.

Chile has named COP25 the "Blue COP," highlighting its focus on oceans. At this year's Our Ocean Conference in Norway, the United States announced 23 new commitments—that is, $1.2 billion dollars to promote sustainable fisheries, combat marine debris, and support marine science, observation, and exploration.

Since 2017, the U.S. Congress has appropriated $372 million dollars in foreign assistance to preserve and restore forests and other lands that help many of the countries represented in this room build resilience and reduce carbon emissions. The State Department also committed over $11 million dollars this year alone to address environmental degradation and climate change in the Pacific and Caribbean regions.

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2. Working Group Established by UN General Assembly Resolution 72/277 ("Towards a Global Pact for the Environment")

As discussed in *Digest 2018* at 500-01, the United States voted against UN General Assembly Resolution 72/277, which established an ad hoc open-ended working group to discuss the possibility of a new international instrument to address gaps in international environmental law and environment-related instruments. In 2019, the working group established by Resolution 72/277 met three times to fulfill its mandate to consider a report by the Secretary-General on possible gaps in international environmental law and "discuss …, as appropriate, and, if deemed necessary, the scope, parameters and feasibility of an international instrument, with a view to making recommendations" to the General Assembly "which may include the convening of an intergovernmental conference to adopt an international instrument." U.N. Doc. A/RES/72/277, ¶ 2 (May 10, 2018). The United States participated in all of the working group sessions and made two written submissions. The February 20, 2019 U.S. submission to the co-chairs of the

working group is available at https://wedocs.unep.org/handle/20.500.11822/27600 and excerpted below.

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The United States is committed to engaging in transparent, open discussions among member states about whether there are gaps in the international environmental system that should be addressed to improve international environmental governance. We believe this open-ended working group provides an opportunity for member states to engage in substantive debate about how the international community can most effectively use our time and resources to address these environmental issues without prejudging the outcome of those deliberations. The mandate for this working group set out in OP2 of 72/277 is clear and logical: we must determine what constitutes a gap and whether there are gaps before moving on to a discussion of options for addressing them.

The modalities resolution sets out a step-by-step process for undertaking these discussions, starting with consideration of the report submitted by the Secretary-General (Report A/73/419, "Gaps in international environmental law and environment-related instruments: towards a global pact for the environment"), which Member States commented on at length during the first substantive session in Nairobi from January 14-18. As the United States made clear during the meeting, we do not believe that the final report comports with the mandate set out in General Assembly Resolution 72/277 for the Secretary General to produce a "technical and evidence-based report," and we do not believe the working group should rely on the report as an objective or fully accurate reference text in its discussions going forward. The United States—and many other delegations—enumerated myriad concerns with each section of the report, highlighting numerous examples of bias, unfounded assertions, and inaccurate and out-of-date information.

Moreover, the United States understood there to be general agreement among Member States during the first substantive session that specific design elements of existing international environmental regimes do not constitute "gaps" in international environmental law and environment-related instruments as the authors of the report appear to allege. The United States does not believe that the authors of the report or this working group have the mandate or the expertise to second-guess careful and intentional decisions made by States Parties in the negotiation and implementation of existing environmental regimes developed over many years. These regimes are typically developed in delicate balance to achieve broad support. To mischaracterize necessary trade-offs as "gaps" threatens the overall balance of the regime, and it is in the hands of Parties to those regimes to make decisions within their mandate.

Furthermore, the United States rejects the report's assertion—unsupported by any evidence—that the lack of a "single overarching normative framework" setting out rules and principles of international environmental law somehow produces gaps or deficiencies in the international environmental system. There is no one-size-fits all approach to addressing environmental challenges. Many of the most successful environmental agreements, such as the Montreal Protocol or CITES, are narrowly tailored and specially designed to effectively address the particular environmental problems. This type of specialization contributes to the success of these regimes—it is not a so-called "gap" that needs to be addressed. Comments from other

delegations during the first substantive session demonstrate that many other Member States share our view in this regard.

On this point, the United States does not support suggestions that Member States should reaffirm, reopen, or otherwise renegotiate environmental principles such as the 1992 Rio Principles, including by attempting to convert these non-legally binding principles into legally-binding obligations. The existing 1992 Rio Principles provide a set of common, aspirational principles that States have used as a guide in negotiating subsequent sectoral instruments where they saw fit to do so. Those principles have not been universally applied in the same way in every sector, but that was an intentional decision by States in developing each of the existing regimes, and—like other intentional decisions by States Parties in the negotiation and implementation of existing agreements—not a "gap" that this group has the mandate or expertise to second-guess. In the U.S. view, reopening discussions on the Rio Principles or their application has the potential to undermine continuing implementation of existing international environmental agreements without delivering any actual environmental benefits.

Pursuant to the mandate for this working group set out in OP2 of 72/277, and logically, unless and until Member States have identified and agreed on particular gaps in international environmental law and environment-related instruments that need to be addressed, there is no mandate for the group to proceed to discussing possible options for addressing such gaps. For this reason, the United States views agenda item 4 of the proposed agenda for the second substantive session as consisting of two parts that should be taken in order in the program of work, starting with a discussion of possible gaps in international environmental law and environment-related instruments. We look forward to engaging with other Member States in a discussion of possible gaps under this agenda item during the next session.

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The April 12, 2019 U.S. submission to the working group is available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27980/US_proposal.pdf?sequence=1&isAllowed=y and excerpted below.

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The United States has actively engaged in the ad-hoc open-ended working group. During the discussions at the first two substantive sessions of the working group, many have emphasized the importance that any recommendations delivered back to the General Assembly must be made with consensus and reflecting options that can be implemented and supported on a consensus basis. However, we regret that it is clear that there remains a lack of consensus on key issues.

No consensus on possible gaps to be addressed

The first two sessions have demonstrated that there is no emerging consensus on specific gaps in international environmental law and environment-related instruments to be addressed, or even a general sense among member states of areas where gaps may exist. As the United States noted in our previous submission and in our interventions, we do not believe the working group can rely on the Secretary General's report because it, and the possible "gaps" it identified, do not comport with the mandate in Resolution 72/277, and there were many inaccuracies in the report.

No case has been made that any perceived gaps cannot be addressed through existing fora and mechanisms.

Further it should be noted that in negotiating existing environmental treaties and instruments, member states have in many cases made intentional choices to exclude certain elements. Such design choices are in no sense "gaps" that need to be filled, but purposeful decisions that take into account a careful balance of equities achieved by negotiating states and intentional decisions about what to regulate. Any working group recommendation must exclude such design choices from the conception of gaps.

Many options proposed are not feasible and lack support

Without consensus on the identification, or indeed the definition, of gaps, there can be no coherent discussion of possible options to address possible gaps, as laid out in the mandate given this group by the U.N. General Assembly in Resolution 72/277 and certainly there is no possibility of determining that a new instrument has been "deemed necessary." Nevertheless, and regrettably, the working group held unfocused discussions on a disparate set of options without a clear sense of what problems such options would in fact address. Several ideas were raised that clearly do not enjoy consensus support, and the United States would not support inclusion in working group recommendations. For example:

- First, it is clear from the first two substantive sessions of the working group that there is no significant support, much less anything close to consensus, for negotiating a legally binding instrument. Indeed, many delegations have indicated that such an outcome would cross a red line for them. The United States will not support any recommendations to the General Assembly that include the possibility of a legally binding instrument.
- Second, there is also not convergence for proposals for a high-level declaration or renegotiating a common set of international environmental "principles"—even if in nonbinding form. In the working group discussions, a number of countries noted that such a negotiation would likely weaken certain standards and lead to more fragmentation and inconsistency if such principles were endorsed only by a subset of States. Some also felt that it would be almost impossible to achieve a general update of existing principles given the way that, for example, the Rio principles have been adapted in particular ways to be fit for purpose to address particular environmental issues.
- Nor should we seek to engineer an outcome that simply creates new layers of bureaucracy in the name of seeking undefined "synergies" among existing regimes, for example by creating elaborate new mechanisms or processes for joint action by treaty secretariats. We have found that such efforts often, in fact, increase costs rather than create efficiencies. Moreover, such approaches often disempower member states in their efforts to address concrete problems by focusing treaty secretariats away from their governing bodies and the priorities identified by member states, and towards external processes. While there are many positive current avenues for information sharing and cooperation—for example, participation of observers and information sharing channels—we do not see a value and have not seen any shared sense among member states that a top-down synergies effort is needed.

The way forward

The working group needs to take a realistic approach. In this context, a clear recommendation to New York is: no further action be taken. Member states have limited time and resources, and we should resist simply moving through the motions to negotiate an inapposite solution to an undefined problem. Such an approach would only yield failure, which

could result in diminishing rather than increasing attention and energy to addressing environmental problems, and would in the meantime pull away limited technical, financial, and diplomatic resources.

In the absence of any consensus on specific gaps to be addressed, there is a general sense among many delegations that there is inadequate implementation of existing commitments and instruments. Rather than focusing on top-down approaches, however, the working group should consider how member states can focus efforts on finding pragmatic ways to improve implementation of existing commitments under treaties or instruments in which they have decided to participate, or in making progress on their own domestic priorities to seek clean air and clean water, and protect the health of their citizens. Of course, this will involve different solutions in different contexts, and the locus of such efforts must necessarily remain within the responsible governance bodies and existing processes for particular treaty regimes or instruments. Such efforts should involve appropriate engagement with non-state actors, including the private sector and civil society.

We have seen time and time again that identifying solutions to international environmental problems involves finding pragmatic solutions to specifically identified challenges—and not through debating general principles in the abstract. A more useful exercise would be to focus on finding ways to help member states improve the implementation of existing commitments. Our revitalized discussions under UNEP's Montevideo Programme, which has provided support for national-level enforcement of environmental law, has shown great promise on how we can support national-level enforcement of environmental law.

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The working group adopted recommendations for the General Assembly, and did not recommend convening an intergovernmental conference to adopt an international instrument, but rather recommended preparation by the UN Environment Assembly of a political declaration for a United Nations high-level meeting in the context of the commemoration of the creation of the United Nations Environment Programme. The United States made a concluding statement in connection with the adoption of the recommendations of the working group. The U.S. concluding statement is available at https://www.unenvironment.org/events/conference/towards-global-pact-environment and appears below. In August 2019, the UN General Assembly adopted resolution 73/333, endorsing the recommendations from the Working Group. U.N. Doc. A/RES/73/333.

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With respect to recommendations relating to multilateral environment agreements, including recommendations referring to policy coherence, we underscore that it is the governing bodies of such instruments that determine the policies and priorities to be addressed under those agreements and by their secretariats.

With respect to the language in paragraph 2(b) on means of implementation, the United States notes that the language is not to be understood to imply a call for increased finance from any particular country, and we emphasize the role of all sources in the mobilization of means of

implementation. We underscore in particular the need for an expansion of the donor pool beyond traditional donors and the increasingly important role of domestic resource mobilization and private investment, noting in particular the need for good governance, transparency, and strong investment climates.

We will also be submitting a statement for the record, which was delivered in the second committee of the UNGA on November 8, 2018, setting out our general views regarding the 2030 Agenda, the Addis Ababa Action Agenda, the Paris Agreement, and other issues.

We want to reiterate that the United States supports strong levels of environmental protection as part of a balanced approach to promote economic growth and foster access to affordable and reliable energy while protecting the environment.

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3. ILC Draft Guidelines on Protection of the Atmosphere

On December 15, 2019, the United States submitted comments on the International Law Commission ("ILC") Draft Guidelines on Protection of the Atmosphere, as adopted by the ILC on first reading in 2018. Excerpts follow from the U.S. comments.

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General Observations

The United States has repeatedly expressed its concerns, through statements in the Sixth Committee, that the Commission's work on this topic would complicate rather than facilitate negotiations regarding environmental issues related to the atmosphere and thus could inhibit progress in this area. The draft guidelines that have been adopted on first reading essentially confirm this broad concern, but also raise specific issues with regard to their form and substance. In accordance with the comments below, it is the view of the United States that the Commission's time could more profitably be spent on other topics and the draft guidelines should not be adopted at second reading, but instead reconsidered in a working group to determine whether completion of this project is viable, in light of the comments received.

The draft guidelines are likely to give rise to confusion by virtue of the incongruence among their title, substance, and form. As we explained in general comments in the Sixth Committee regarding ILC work products, "[a]s the ILC has increasingly moved away from draft articles, its work products have been variously described as conclusions, principles or guidelines. It is not always clear what the difference is among these labels, particularly when some of these proposed conclusions, principles, and guidelines contain what appear to be suggestions for new, affirmative obligations of States, which would be more suitable for draft articles." In general international practice, documents entitled "guidelines" are not understood as setting forth international legal obligations. Draft guidelines 3, 4, and 8, however, all assert categorically that "States have the obligation" to undertake certain actions. While the Commission's Guide to Practice on Reservations to Treaties ("Guide to Practice on Reservations") provides some precedent for considering the scope of a State's obligations in the context of "guidelines," that topic necessarily concerned the ability to make reservations to binding treaty obligations.

Moreover, the form of the Guide to Practice on Reservations was chosen to make it clear that the document was providing guidance as opposed to setting forth obligations. The draft guidelines, in contrast, are presented in a format that more closely resembles draft articles for a treaty or multilateral convention, with a preamble and apparent operative clauses that include provisions addressing "compliance" and "dispute settlement" that appear out of place in a non-binding set of guidelines.

Comments on Specific Provisions of the Draft Guidelines, accompanying commentary or both.

The actual content of the draft guidelines does nothing to clarify the confusion introduced by the choice of format. The core of the draft guidelines appears to be draft guideline 3, yet this draft guideline is confusing at best. This draft guideline states that the purported "obligation to protect the atmosphere" is to be fulfilled by "exercising due diligence in taking appropriate measures, in accordance with applicable rules of international law, to prevent, reduce or control atmospheric pollution and atmospheric degradation." The best reading of draft guideline 3 is that it constitutes a simple assertion that States should comply with existing "applicable rules of international law" concerning atmospheric pollution and atmospheric degradation, and thus adds nothing to existing law. Even so, however, draft guideline 3 introduces needless confusion.

According to draft guideline 3, other "applicable rules of international law" require States to "prevent, reduce or control atmospheric pollution and atmospheric degradation." It is unclear, though, whether the Commission believes that international law at present requires States to do all the elements indicated in this draft guideline, specifically to: (1) prevent atmospheric pollution; (2) prevent atmospheric degradation; (3) reduce atmospheric pollution; (4) reduce atmospheric degradation; (5) control atmospheric pollution; and/or (6) control atmospheric degradation. There are, therefore, at least six potentially independent legal obligations, that the Commission is asserting require distinct actions on the part of States. Yet there appears to be little basis for making that assertion. The commentary notes that the "prevent, reduce, or control" framework is borrowed from the Law of the Sea Convention (LOSC). The LOSC, however, is not addressing atmospheric pollution and degradation. Moreover, even in the context of protecting the marine environment, the LOSC includes specific provisions addressing what is meant by "prevent, reduce, or control" at Part XII Section 5. The absence of detailed provisions in the draft guidelines that would correspond to LOSC Part XII Section 5 in the context of atmospheric pollution and atmospheric degradation only contributes to the confusion introduced by draft guideline 3.

Draft guideline 8 similarly suffers from a lack of clarity concerning its legal underpinnings. In particular, draft guideline 8(1) provides that "States have an obligation to cooperate, as appropriate, with each other and with relevant international organizations for the protection of the atmosphere from atmospheric pollution and atmospheric degradation." Unlike draft guideline 3, however, draft guideline 8(1) does not appear to incorporate existing applicable rules of international law to inform the purported obligation identified therein. In fact, none of the sources referenced in the corresponding commentary to this draft guideline establish the general obligation to cooperate set forth in draft guideline 8(1). Specifically, the commentary notes two political declarations, the preambles to two multilateral conventions, and three sets of draft articles produced by the Commission, none of which establish any legal obligation in respect of cooperation. The single example of a binding obligation to cooperate comes from the Convention on the Law of the Non-navigational Uses of International Watercourses, a treaty with only thirty-six parties addressing a wholly separate area of international law. The purported

obligation in draft guideline 8(1) is therefore best understood as a recommendation that States cooperate and not as encompassing a legal obligation.

The essentially recommendatory or hortatory nature of draft guideline 8(1) is shared by draft guidelines 5, 6, and 7. Each of these draft guidelines contain assertions about what States "should be" doing with regard to distinct activities concerning the atmosphere. While the commentary to draft guidelines 5 and 7 acknowledge that their formulations are "simple and not overly legalistic" and "hortatory" respectively, it bears observing that these draft guidelines are policy prescriptions based on value judgments. Inclusion of such policy preferences in Commission products is inconsistent with the Commission's Statute, Article 1(1), which unambiguously states that the Commission "shall have for its object the promotion of the progressive development of international law and its codification." Policy prescriptions for diplomatic cooperation, however well-intentioned, are not part of the Commission's mandate and therefore should not be a part of the Commission's work.

The final four draft guidelines each address topics of general applicability within public international law that do not warrant special or specific consideration in the context of protection of the atmosphere. Specifically, draft guidelines 9, 10, 11, and 12 address "interrelationship among relevant rules," "implementation," "compliance," and "dispute settlement" respectively. Any one of these topics could be, and at least two have been, considered as topics by the Commission in their own right, but by addressing these general areas of law in the draft guidelines the Commission introduces needless confusion.

In particular, the United States sees no need for draft guideline 12(1)'s call to settle disputes relating to the protection of the atmosphere by peaceful means. Article 2(3) of the United Nations Charter, which is not mentioned in the commentary, requires that international disputes be settled by peaceful means, and this applies as well in the context of disputes relating to protection of the atmosphere. Nevertheless, the reference to peaceful settlement of disputes in draft guideline 12(1) gives the appearance that disputes concerning protection of the atmosphere enjoy a special status as compared with other types of disputes; in so doing, it weakens the general rule set forth in Article 2(3) of the United Nations Charter.

Similarly, draft guideline 9 concerning "interrelationship among relevant rules," gives the appearance that issues concerning fragmentation of international law are to be treated in a special way in the context of protection of the atmosphere. The Commission released in 2006 a lengthy report by a Study Group addressing exactly this topic, including in particular the relationship between trade and environmental regimes referenced in draft guideline 9(1). The report included extended considerations of international environmental law, but reached no definitive normative conclusion about the interaction between international environmental law and other international legal regimes. Notably, the Study Group's report cast doubt about the viability of harmonizing interpretation in precisely this context. The report did not directly address protection of the atmosphere. However, despite the topic of fragmentation having been the subject of exhaustive study by the Commission's Study Group, draft guideline 9 purports to identify specific norms of harmonization and systemic integration that should apply in the context of protection of the atmosphere. The United States sees no basis for establishing specific norms in this context and cautions the Commission against establishing a practice whereby previous Commission products and efforts intended to address broad topics are undermined by new projects with a narrow focus.

Finally, draft guidelines 10 and 11 address "implementation" and "compliance" respectively. As a general matter the means by which a State chooses to "implement" domestically and/or States may agree to achieve "compliance" with international legal

obligations is left for States to decide and are not prescribed in advance by general public international law. While such issues could be addressed in a treaty, the United States does not see the utility in addressing these topics in the abstract in non-binding draft guidelines.

Conclusion

The United States' concerns previously expressed about this project remain for all of the above reasons. It is the view of the United States that the Commission's time could more profitably be spent on other topics and the draft guidelines should not be adopted at second reading, but instead reconsidered in a working group to determine whether completion of this project is viable, in light of the comments received.

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4. Environmental Cooperation Agreements

On November 30, 2018, the United States, Mexico, and Canada concluded a trilateral agreement on environmental cooperation. See November 30, 2018 media note, available at https://www.state.gov/united-states-mexico-and-canada-conclude-successful-negotiations-on-a-trilateral-agreement-on-environmental-cooperation/. The agreement takes effect when the U.S.-Mexico-Canada trade agreement ("USMCA") enters into force and would replace the North American Agreement on Environmental Cooperation ("NAAEC") that was a companion to the NAFTA. See Chapter 11 for discussion of the USMCA and NAFTA. The trilateral Commission for Environmental Cooperation created under the NAAEC continues under the new ECA. The text of the ECA is available at https://www.epa.gov/international-cooperation/2018-agreement-environmental-cooperation-among-governments-united-states.

On December 10, 2019, the United States and Mexico also concluded the Environment Cooperation and Customs Verification Agreement, which, among other provisions, allows the parties to request certain customs information relating to trade in illegally taken wild flora and fauna, fisheries practices, and forest products. The text of this agreement is available at https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/Environment-Cooperation-and-Customs-Verification-Agreement.pdf.

B. PROTECTION OF MARINE ENVIRONMENT AND MARINE CONSERVATION

1. Fishing Regulation and Agreements

a. Central Arctic Fisheries Agreement

On July 29, 2019, Secretary Pompeo signed the U.S. instrument of acceptance for the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean. Through the Agreement, the United States agrees to prevent commercial fishing in the high seas of the central Arctic Ocean until there is adequate scientific information and a sufficient regulatory structure in place to manage such fisheries properly.

The State Department announced, in an August 27, 2019 media note available at

https://www.state.gov/the-united-states-ratifies-central-arctic-ocean-fisheries-agreement/, that the United States had ratified the Agreement after depositing the instrument of acceptance for the United States with Canada. The United States is the fourth signatory to the Agreement, after Canada, the Russian Federation, and the European Union. The Agreement will enter into force once all ten signatories ratify. As described in the media note:

> There are currently no commercial fisheries in the Arctic high seas, with most of the region covered by ice year round. However, with an ever-increasing ice-free area in the summer for an increasingly lengthy portion of the year, parties anticipate that commercial fishing will be possible in the foreseeable future. This Agreement is the first multilateral agreement of its kind to take a legally-binding, precautionary approach to protect an area from commercial fishing before that fishing has even begun.
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> Signed in Greenland on October 3, 2018, there were ten participants in the negotiation of the Agreement: Canada, the People's Republic of China, the Kingdom of Denmark (in respect of the Faroe Islands and Greenland), the European Union, Iceland, Japan, the Kingdom of Norway, the Republic of Korea, the Russian Federation, and the United States of America. The Agreement has two principal objectives: the prevention of unregulated fishing in the high seas portion of the central Arctic Ocean and the facilitation of joint scientific research and monitoring.

b. ICCAT Amendments

On November 18, 2019, in Mallorca, Spain, the Protocol to Amend the International Commission for the Conservation of Atlantic Tunas ("ICCAT") Convention was adopted by consensus of the ICCAT. The adoption of the protocol is the culmination of nearly a decade of work, including over six years of active negotiation. The amendments modernize the Convention's international fisheries governance regime, expand the species managed by the Commission, allow for participation by Taiwan as a "fishing entity," and provide for noncompulsory dispute resolution, among other achievements. The U.S. signed the Protocol at a signing ceremony on November 20, 2019. See entry entitled "Adoption and U.S. Signature of a Protocol to Amend the International Convention for the Conservation of Atlantic Tunas," available on NOAA webpage on significant developments for 2019, at https://www.gc.noaa.gov/gcil_sig_events.html.

On December 9, 2019, the State Department issued a media note, available at https://www.state.gov/the-united-states-signs-protocol-to-amend-the-international-commission-for-the-conservation-of-atlantic-tunas-convention/, to announce that the United States signed the newly adopted Protocol. The media note provides the following background on the ICCAT Convention:

> During the ICCAT annual meeting in Palma de Mallorca, Spain, November 18-25,

ICCAT adopted a Protocol containing amendments that bring the organization in line with modern fisheries management standards, clarify ICCAT's mandate to manage certain species of sharks and rays, protect other species caught as bycatch in ICCAT fisheries, and protect the broader marine ecosystem. The amendments will also streamline the Commission's decision-making processes and ensure that all key fleets targeting ICCAT species, including Taiwan, can participate in and be bound by Commission decisions. Together, these amendments will strengthen U.S. efforts to ensure the science-based, sustainable management of fisheries resources that generate hundreds of millions of dollars in annual U.S. economic activity.

2. Our Ocean Conference

The U.S. delegation participated in the Our Ocean 2019 conference, hosted by Norway in Oslo, October 23-24, 2019. An October 21, 2019 State Department media note, available at https://www.state.gov/u-s-delegation-to-our-ocean-2019/, outlines top U.S. priorities for the conference:

1. fostering collaboration among government, business, and other partners to create innovative solutions for the challenges facing the ocean;
2. tackling marine debris and illegal, unreported, and unregulated (IUU) fishing; and
3. promoting a sustainable blue economy and maritime security.

Additional details about the 2019 conference are available at ourocean2019.org.

3. Arctic Council

On May 7, 2019, Secretary Pompeo delivered remarks at the Arctic Council Ministerial Meeting in Finland. His remarks are excerpted below and available at https://www.state.gov/remarks-at-the-arctic-council-ministerial-meeting-2/.

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When the United States held the chair, the Arctic states signed a science cooperation agreement to facilitate the movement of scientists, equipment, and data across our borders. The first meeting under this new agreement was convened here in Finland just a few months ago. This strengthens our ability to cooperate on scientific endeavors that will benefit all of peoples, from improving weather forecasting to studying outer space to learning more about the planet and the resources beneath our feet. We've also conducted joint exercises to prepare for possible marine oil pollution incidents, and we've increased our search and rescue capacities and preparedness, which has already helped save lives.

To build on these and so many other successes, it's up to each member of this council to ensure that our underlying bonds of trust and responsibility remain unbroken. That includes the United States; we can always do better. The Trump administration has sought to engage the Arctic with renewed vigor, openness, and respect, as I spoke about at length yesterday. America's new Arctic focus prioritizes close cooperation with our partners on emerging challenges, including the increased presence and ambitions of non-Arctic nations in the region.

In addition to sharing our vision, I also came here to listen. I've appreciated this opportunity today to hear from each of you, including on topics that we don't always agree on. Even on those topics, I think it is the case that we tend to agree much more than we disagree. For example, the Trump administration shares your deep commitment to environmental stewardship. In fact, it's one reason Chinese activity, which has caused environmental destruction in other regions, continues to concern us in the Arctic. The Arctic has always been a fragile ecosystem, and protecting it is indeed our shared responsibility. But once again, the keys are indeed trust and responsibility.

Collective goals, even when well-intentioned, are not always the answer. They're rendered meaningless, even counterproductive, as soon as one nation fails to comply. Regardless of whether our goal is in place, the United States strives to operate with honesty and transparency. Though we are not signing on to the collective goal for reduction of black carbon, America nonetheless recently reported the largest reduction in black carbon emissions by any Arctic Council state. We are doing our part, and we encourage other states to do the same, and to do so with full transparency. That's true for every issue before this council. Under President Trump, the United States seeks candid engagement and close cooperation.

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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 note, which prohibits imports of shrimp and shrimp products harvested with methods that may adversely affect sea turtles. On April 23, 2019, the Department of State certified which nations (or specific fisheries within those nations) have adequate measures in place to protect sea turtles during the course of commercial shrimp fishing. 84 Fed. Reg. 39,047 (Aug. 8, 2019). On August 9, 2019, the State Department issued a media note about the certification regarding sea turtle conservation and shrimp imports to the United States. The media note is available at https://www.state.gov/sea-turtle-conservation-and-shrimp-imports-to-the-united-states-2/ and includes the following:

> In 2019, the acting Under Secretary of State for Economic Growth, Energy, and the Environment certified 39 nations and one economy and granted determinations for nine fisheries as having adequate measures in place to protect sea turtles during the course of commercial shrimp fishing. …
>
> The U.S. government hopes other nations can contribute to the recovery of sea turtle species and become certified under Section 609 and currently provides technology and capacity-building assistance in order to assist them in

> doing so. If properly designed, built, installed, used, and maintained, [turtle excluder devices, or] TEDs allow 97 percent of sea turtles to escape the shrimp net without appreciable loss of shrimp. The U.S. government is also encouraging similar legislation in other countries to prevent the importation of shrimp harvested in a manner harmful to protected sea turtles. …

C. OTHER ISSUES

1. Biodiversity

In 2017, the UN General Assembly convened an intergovernmental conference ("IGC") to elaborate the text of an international legally binding instrument under the UN Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction ("BBNJ"). U.S. views regarding such an instrument are discussed in *Digest 2011* at 438-39 and *Digest 2016* at 560-68. The State Department held a public information session on August 7, 2019 in preparation for the third session of the IGC on BBNJ later than month at the UN. 84 Fed. Reg. 36,999 (July 30, 2019). The IGC met for its second session in March 2019. *Id*. The IGC met for its third session in August 2019. Additional information on the BBNJ process is available at *www.un.org/bbnj*.

2. Transboundary Environmental Issues

a. Aquifers

On October 22, 2019, Attorney-Adviser David Bigge delivered a statement for the United States on the law of transboundary aquifers at the 74th session of the UN General Assembly Sixth Committee. Mr. Bigge's remarks are excerpted below and available at https://usun.usmission.gov/statement-at-the-74th-general-assembly-sixth-committee-agenda-item-85-the-law-of-transboundary-aquifers/.

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The United States continues to believe that the International Law Commission's work on transboundary aquifers constituted an important advance in providing a possible framework for the reasonable use and protection of underground aquifers, which are playing an increasingly important role as water sources for human populations.

There is still much to learn about transboundary aquifers. Specific aquifer conditions and state practices vary widely. The United States therefore continues to believe that context-specific arrangements provide the best way to address pressures on transboundary groundwaters in aquifers, as opposed to refashioning the draft articles into a global framework treaty or into principles. States concerned should take into account the provisions of these draft articles when

negotiating appropriate bilateral or regional arrangements for the proper management of transboundary aquifers.

Numerous factors might appropriately be taken into account in any specific negotiation, such as hydrological characteristics of the aquifer at issue; present uses and expectations regarding future uses; climate conditions and expectations; and economic, social and cultural considerations. These factors will vary in each particular set of circumstances, and maintaining the articles as a resource in draft form seems to us the best way of ensuring that the draft articles will be a useful resource for states in all circumstances.

Further, many aspects of the draft articles go beyond current law and practice, and should be carefully considered by States in context-specific arrangements.

We therefore support commending the draft articles to the attention of governments, and encouraging states concerned to make appropriate bilateral or regional agreements or arrangements for the proper management of their transboundary aquifers, taking into account the provisions of the draft articles. With respect to this agenda item, the United States position has not changed since its last statement.

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b. Harm from hazardous activities

Also on October 22, 2019, Mr. Bigge delivered the U.S. statement on the prevention of transboundary harm from hazardous activities at the 74th meeting of the UN General Assembly Sixth Committee. That statement is excerpted below and available at https://usun.usmission.gov/statement-at-the-74th-general-assembly-sixth-committee-agenda-item-81-consideration-of-prevention-of-transboundary-harm-from-hazardous-activities/.

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The Commission's draft articles on prevention of transboundary harm from hazardous activities have marked a positive step toward encouraging States to establish the means to address such issues as notification in specific national and international contexts.

We continue to believe it is most appropriate for the draft articles to be treated as non-binding standards to guide the conduct and practice of states, and for the work on prevention of transboundary harm to remain formulated as draft articles. Retaining the current, recommendatory form of these draft articles and principles increases the likelihood that they will gain widespread consideration and fulfill their intended purposes of providing a valuable resource for States in this area. With respect to this agenda item, the United States position has not changed since our last statement.

As we have previously noted, both the draft articles and draft principles go beyond the present state of international law and practice, and are clearly innovative and aspirational in character rather than descriptive of current law or state practice. Both documents were designed as sources to encourage national and international action in specific contexts, rather than to form the basis of a global treaty. We therefore strongly support retaining these products in their current form.

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3. Sustainable Development

The November 21, 2019 U.S. statement regarding the 2030 Agenda for Sustainable Development, among other issues, which was referenced in remarks excerpted in Chapter 12, is excerpted below and available at https://usun.usmission.gov/united-states-second-committee-global-explanation-of-position/. Acting U.S. Representative to the Economic and Social Council Courtney Nemroff delivered the statement as a general explanation of position at the UN Second Committee.

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We underscore that many of the outcome documents referenced in various Second Committee resolutions, including the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, are non-binding documents that do not create new or effect existing rights or obligations under international law.

We underscore that the 2030 Agenda also does not create any new financial commitments. The United States recognizes the 2030 Agenda as a global framework for sustainable development that can help countries work toward global peace and prosperity. We applaud the call for shared responsibility, including national responsibility, in the 2030 Agenda and emphasize that all countries have a role to play in achieving its vision. The 2030 Agenda recognizes that each country must work toward implementation in accordance with its own national policies and priorities. Further, the United States understands any references to "internationally agreed development goals" to be referring to the 2030 Agenda.

The United States also underscores that paragraph 18 of the 2030 Agenda calls for countries to implement the Agenda in a manner that is consistent with the rights and obligations of States under international law. We also highlight our mutual recognition that 2030 Agenda implementation must respect and be without prejudice to the independent mandates of other processes and institutions, including negotiations, and does not prejudge or serve as precedent for decisions and actions underway in other forums. For example, this Agenda does not represent a commitment to provide new market access for goods or services. This Agenda also does not interpret or alter any WTO agreement or decision, including the Agreement on Trade-Related Aspects of Intellectual Property.

Regarding the reaffirmation of the Addis Ababa Action Agenda, we note that much of the trade-related language in the outcome document has been overtaken by events since July 2015; therefore, it is immaterial, and our reaffirmation of the outcome document has no standing for ongoing work and negotiations that involve trade.

The United States submitted formal notification of its withdrawal from the Paris Agreement to the United Nations on November 4, 2019. The withdrawal will take effect one year from the delivery of the notification. Therefore, references to the Paris Agreement and climate change are without prejudice to U.S. positions.

With respect to references to the Intergovernmental Panel on Climate Change (IPCC) special reports, the United States has indicated at the IPCC that acceptance of such reports and

approval of their respective Summaries for Policymakers by the IPCC does not imply U.S. endorsement of the specific findings or underlying contents of the reports. References to the IPCC special reports are also without prejudice to U.S. positions.

The United States reiterates our views on the Sendai Framework for Disaster Risk Reduction from the U.S. Explanation of Position delivered in 2015. We strongly support disaster risk-reduction initiatives designed to reduce loss of life and the social and economic impacts of disasters. This assistance helps recipients build a culture of preparedness, promote greater resilience, and achieve self-reliance.

With respect to the New Urban Agenda, the United States believes that each Member State has the sovereign right to determine how it conducts trade with other countries and that this includes restricting trade in certain circumstances. Economic sanctions, whether unilateral or multilateral, can be a successful means of achieving foreign policy objectives. In cases where the United States has applied sanctions, we have used them with specific objectives in mind, including as a means to promote a return to rule of law or democratic systems, to insist on the protection of human rights and fundamental freedoms, or to prevent threats to international security. We are within our rights to deploy our trade and commercial policy as tools to achieve our objectives. Targeted economic sanctions can be an appropriate, effective, and legitimate alternative to the use of force.

The United States enjoys strong and growing trade relationships across the globe. We welcome efforts to bolster those relationships, increase economic cooperation, and drive prosperity to all of our peoples through free, fair, and reciprocal trade.

However, as President Trump stated to the 73rd UN General Assembly on September 25, 2018, the United States will act in its sovereign interest, including on trade matters. The United States does not take our trade policy direction from the UN.

It is our view that the UN must respect the independent mandates of other processes and institutions, including trade negotiations, and must not involve itself in decisions and actions in other forums, including at the WTO.

The UN is not the appropriate venue for these discussions, and there should be no expectation or misconception that the United States would understand recommendations made by the General Assembly or the Economic and Social Council on these issues to be binding.

This includes calls that undermine incentives for innovation, such as technology transfer that is not both voluntary and on mutually agreed terms.

With regards to official development assistance, the proper forum to discuss eligibility measures is the Boards of the Multilateral Development Banks and the Organization for Economic Cooperation and Development. We do not accept the UN as the appropriate forum for determining eligibility for, and allocation of, these resources.

The United States also notes that the term "inclusive growth" appears throughout many of the resolutions. Part of the problem with placing inclusive growth at the forefront of economic discussions is that the term itself is vaguely defined and applied freely to economic discussions, with little consideration for the trade-offs between higher levels of sustainable, supply-led economic growth and a more equitable distribution of resources of that growth. The United States recognizes the importance of studying inequality and improving the measurements of income and consumption across populations; however, we want to ensure that any work or goal related to inclusivity remain grounded in evidence and proven best practices.

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4. Wildlife Trafficking

On November 6, 2019, the U.S. Department of State submitted the third annual report to Congress as required by the Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016 ("END Wildlife Trafficking Act"). See November 6, 2019 Department media note, available at https://www.state.gov/eliminate-neutralize-and-disrupt-end-wildlife-trafficking-report-2019/. As explained in the media note:

> The END Wildlife Trafficking Act directs the Secretary of State, in consultation with the Secretaries of the Interior and Commerce, to submit to Congress a report that lists Focus Countries and Countries of Concern, as defined in the Act. Each Focus Country is a major source, transit point, or consumer of wildlife trafficking products or their derivatives. Identification as a Focus Country is neither a positive nor a negative designation. Many Focus Countries have taken significant steps to combat wildlife trafficking, including in partnership with the United States. A Country of Concern is defined as a Focus Country whose government has actively engaged in or knowingly profited from the trafficking of endangered or threatened species. The United States looks forward to continuing dialogue with both Focus Countries and Countries of Concern to thwart transnational organized crime engaged in wildlife trafficking.
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> The 2019 Focus Countries are Bangladesh, Brazil, Burma, Cambodia, Cameroon, China, Democratic Republic of the Congo, Gabon, Hong Kong Special Administrative Region, India, Indonesia, Kenya, Laos, Madagascar, Malaysia, Mexico, Mozambique, Nigeria, Philippines, Republic of the Congo, South Africa, Tanzania, Thailand, Togo, Uganda, United Arab Emirates, Vietnam, and Zimbabwe. The 2019 Countries of Concern are Madagascar, Democratic Republic of the Congo, and Laos.

The 2019 END Wildlife Trafficking Report is available at https://www.state.gov/2019-end-wildlife-trafficking-report/.

5. Columbia River Treaty

The United States and Canada continued negotiations to modernize the Columbia River Treaty regime in 2019. See *Digest 2018* at 511 regarding the first four rounds of negotiations, conducted in 2018. The fifth round of negotiations was held in February in Washington, DC. See March 1, 2019 State Department media note, available at https://www.state.gov/conclusion-of-the-fifth-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. The sixth round of negotiations was held in April in Victoria, British Colombia. See April 12, 2019 State Department media note, available at https://www.state.gov/conclusion-of-the-sixth-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. The seventh round was held in June in Washington, DC. See June 24, 2019 State Department media note, available at

https://www.state.gov/conclusion-of-the-seventh-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. The eighth round of negotiations was held in Cranbrook, British Colombia in September 2019. See September 12, 2019 State Department media note, available at https://www.state.gov/conclusion-of-the-eighth-round-of-negotiations-to-modernize-the-columbia-river-treaty-regime/. Further information on the Treaty and related meetings is available at https://www.state.gov/p/wha/ci/ca/topics/c78892.htm.

Cross references

Center for Biological Diversity *(case regarding the UNFCCC)*, **Ch. 4.C.2.**
ILC's work on protection of the environment in relation to armed conflicts, **Ch. 7.C.2.**
ILC's work on sea level rise and international law, **Ch. 7.C.2.**
Presidential permits (Keystone), **Ch. 11.F.7.**