
INTER-AMERICAN CONVENTION ON SEA TURTLES

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Mr. HELMS, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 105-48]

The Committee on Foreign Relations, to which was referred the Inter-American Convention for the Protection and Conservation of Sea Turtles, with Annexes, done at Caracas, Venezuela, on December 1, 1996, which was signed by the United States, subject to ratification, on December 13, 1996, having considered the same, reports favorably thereon with three understandings, five declarations and two provisos, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The purpose of the Inter-American Convention for the Protection and Conservation of Sea Turtles (“the Convention”) is to require Parties to the Convention to promote the protection and conservation of sea turtle populations and their habitats; to reduce the incidental capture, injury and mortality of sea turtles associated with commercial fisheries; to prohibit the intentional taking of, and domestic and international trade in, sea turtles, their eggs, parts and products; and to foster international cooperation in the research and management of sea turtles. The Convention specifically obligates Parties to require the use of turtle excluder devices (“TEDs”)

by commercial shrimp trawl vessels in a manner comparable to the requirements in effect in the United States. The Convention also includes provisions on monitoring and compliance.

II. BACKGROUND

Congress called for the negotiation of multilateral agreements for the protection and conservation of sea turtles in Section 609 of the Departments of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act of 1990 (P.L. 101–162). Substantive negotiations on the Convention concluded on September 5, 1996, at a meeting in Salvador da Bahia, Brazil. The Convention was opened for signature on December 1, 1996. The United States signed the Convention, subject to ratification, on December 13, 1996. The President submitted the Convention to the Senate for advice and consent on May 22, 1998. As of the date of this report, twelve countries (Belize, Brazil, Costa Rica, Ecuador, Honduras, Mexico, The Netherlands, for its American possessions, Nicaragua, Peru, Uruguay, Venezuela and the United States) had signed the Convention, and four (Venezuela, Peru, Brazil and Costa Rica) had deposited instruments of ratification. The Convention will enter into force with the eighth ratification.

III. SUMMARY

A. GENERAL

The protection of sea turtles has been addressed in both national and international law. In 1973, Congress enacted the “Endangered Species Act” (ESA) to protect certain fish, wildlife, and plants from extinction. Under the ESA the Secretary of Commerce has determined that five species of sea turtles within the jurisdiction of the United States are endangered, and that an additional species is threatened. Consequently, such turtles may not be taken within U.S. jurisdiction.

In 1973 the U.S. took the lead in negotiating the “Convention on International Trade in Endangered Species of Wild Fauna and Flora” (CITES), and in 1975 became the first nation to ratify that agreement. All six species of Western Hemisphere sea turtles have been designated under CITES as endangered, and trading in any of these species is prohibited. Other international agreements and guidelines have also promoted the conservation of sea turtles.

Shrimp trawling has been an activity of particular concern to sea turtle conservationists and governments. Because the Department of Commerce concluded that a significant number of sea turtles were perishing in the nets of shrimp trawlers, in 1987 the Department adopted regulations pursuant to the ESA requiring large domestic shrimp trawlers to use “Turtle Excluder Devices” (TEDs) in their nets. The regulations also required smaller domestic trawlers to limit their “tow times”—i.e., the period during which their nets are actually deployed in the sea—to a maximum of 90 minutes. In 1989 Congress amended the ESA to extend those requirements to foreign shrimp trawlers.

Section 609 of P.L. 101–162 bars the importation into the United States of shrimp harvested by methods harmful to sea turtles unless the President certifies that the harvesting nation requires its

trawling vessels to use TEDs or tow-time restrictions, that trawling occurs in waters uninhabited by sea turtles, or that the incidental taking of sea turtles—called “by-catch”—is comparable to that of U.S. vessels using TEDs and restricted tow times.

Section 609 also mandated that the Secretary of State negotiate bilateral or multilateral agreements with other nations to protect and conserve endangered sea turtles. Subsequently the United States Court of Appeals for the Ninth Circuit held in *Earth Island Institute v. Christopher*, 6 F.3d 648 (9th Cir. 1993) that this mandate was an unconstitutional invasion of the President’s treaty-making authority. Nevertheless, the Secretary of State initiated treaty negotiations with several Latin American nations. Four negotiating sessions produced the proposed Inter-American Convention in 1996.

In submitting the Convention to the Senate, the Executive Branch stated that the Convention will not require implementing legislation for the United States.

B. KEY PROVISIONS

The Convention has a preamble, twenty-seven articles and four annexes. Key provisions are summarized below.

The Convention is based on the premise that “sea turtles migrate widely throughout marine areas and that their protection and conservation require cooperation and coordination among States within the range of such species” (Preamble). Stating its objective to be “the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend” (Article II), the Convention would obligate its Parties to take “appropriate and necessary measures” in service of that objective.

Article IV is the heart of the Convention. It obligates parties to prohibit the intentional capture, retention, and killing of sea turtles, as well as domestic trade in sea turtles, their eggs, parts or products. It obligates parties to observe the CITES ban on international trade in sea turtles, their eggs, parts or products. Article IV obligates parties, “to the extent practicable,” to restrict human activities that could have a serious adverse impact on sea turtles. It also calls for the protection, conservation, and restoration of sea turtle habitats and nesting areas, including the designation of protected areas. Parties also would be obligated to promote scientific research relating to sea turtles and their habitats, and to promote efforts to enhance sea turtle populations.

Article IV would also obligate parties to promote environmental education and dissemination of information as a means of promoting participation in conservation efforts. In addition, parties would be obligated to reduce, “to the greatest extent practicable,” incidental capture, retention, harm or mortality of sea turtles in the course of fishing activities through, inter alia, the use of turtle excluder devices (TEDs).

Each Party would also be obligated to establish a program to monitor the application of the measures it adopts for the protection and conservation of sea turtles and their habitats (Article IX) and to “ensure compliance” with such measures (Articles X and XVIII). The measures would have to be in accordance with the provisions of the WTO (Article XV), and exceptions to the ban on the inten-

tional capture and killing of sea turtles would be allowed “to satisfy economic subsistence needs of traditional communities” (Article IV(3)). The Parties would be encouraged to coordinate their activities with relevant international organizations (Article XIV).

Under the Convention the Parties would establish a Scientific Committee to conduct research and formulate recommendations for the protection and conservation of sea turtles and their habitats (Article VIII), a Consultative Committee of Experts to review the annual reports required to be submitted by each Party on the measures they have undertaken and to evaluate the efficiency of various measures to reduce the capture and incidental mortality of sea turtles, including TEDs (Article VII), and, optionally, a Secretariat (Article VI). The Parties would also meet periodically to evaluate compliance with the Convention, to adopt additional conservation and management measures, to propose amendments to the Convention, and to modify the annexes (Article IV). All such decisions by the Parties would be by consensus (Article V).

Financing of Convention implementation is not provided for in the text. Rather, this issue will be discussed at the first meeting of the Parties (Article XIII) following entry into force. Voluntary dispute settlement measures are discussed in Article XVI.

The Convention would apply to the land territory in the Americas of the Parties and to maritime areas over which they exercise sovereignty (Article III). The Convention is open to signature or accession by the countries of North, Central, and South America and the Caribbean, and other countries with territories in the region (Article I). The Parties would also be encouraged to negotiate a complementary protocol opening the Convention to other interested countries (Article XX).

The Convention and any future amendments to the Convention are subject to ratification by those that signed it by December 31, 1998, and to accession by other States (Article XXI). No reservations to the Convention may be made in doing so (Article XXIII). The Convention will enter into effect 90 days after the deposit of the eighth instrument of ratification (Article XXII). Withdrawal from the Convention is permitted six months after the submission of a written notice to the Depositary to that effect (Article XXV). The Depositary is Venezuela (Article XXVII).

Four Annexes are attached to the Convention, all of which are deemed to be “integral parts” of the Convention and each of which can be amended by consensus at any meeting of the Parties (Article XXVI). Annex I lists the sea turtles to be protected under the Convention. Annex II sets forth possible measures that can be taken to protect and conserve sea turtle habitats. Annex III mandates that, with certain exceptions, each Party require its shrimp trawl vessels to use TEDs. Annex IV requires that annual reports on implementation be prepared by each party.

IV. ENTRY INTO FORCE AND TERMINATION

A. ENTRY INTO FORCE

The Convention will enter into force ninety days after deposit of the eighth instrument of ratification. For each State acceding to the Convention after its entry into force, the Convention shall enter

into force on the day such State deposits its instrument of accession with the Depositary, namely, the Venezuelan Foreign Ministry.

B. WITHDRAWAL

The Convention shall remain in force indefinitely, but any of the Parties may withdraw from it at any time after 12 months from the date on which it enters into force with respect to that Party. To withdraw, the Party must give written notice of withdrawal to the Depositary. The Depositary shall inform the other Parties of the withdrawal within 30 days of receipt of such notice. The withdrawal shall become effective six months after receipt of such notice.

V. COMMITTEE ACTION

The Committee on Foreign Relations held an informal public meeting on the Convention on July 20, 2000 (a transcript of the session and questions for the record can be found in the appendix to Executive Report 106–16, Convention (No. 176) Concerning Safety and Health in Mines, also filed this day).¹ The Committee considered the Convention on July 26, 2000, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed Convention subject to three understandings, five declarations and two provisos.

VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Convention. On balance, the Committee believes that the proposed Convention is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification.

VII. EXPLANATION OF PROPOSED CONVENTION

For analysis of the proposed Convention, see the corresponding Letter of Submittal from the Secretary of State, which is set forth at pages V–IX of Senate Treaty Document 105–48.

VIII. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two thirds of the Senators present concurring therein), that the Senate advise and consent to the ratification of the Inter-American Convention for the Protection and Conservation of Sea Turtles, With Annexes, done at Caracas, Venezuela, on December 1, 1996 (Treaty Doc. 105–48), which was signed by the United States, subject to ratification, on December 13, 1996, referred to in this resolution of ratification as “The Convention,” subject to the understandings of subsection (a), the declarations of subsection (b) and the provisos of subsection (c).

¹ On the day the Committee was scheduled to conduct a hearing on the treaty, permission to do so pursuant to Senate Rule 26(5)(a) had not been granted. Therefore, the Committee proceeded in informal session. A transcript is appended to Executive Report 106–16.

(a) UNDERSTANDINGS.—The advice and consent of the Senate is subject to the following understandings, which shall be included in the instrument of ratification of the Convention and shall be binding on the President:

(1) ARTICLE VI (“SECRETARIAT”).—The United States understands that no permanent secretariat is established by this Convention, and that nothing in the Convention obligates the United States to appropriate funds for the purpose of establishing a permanent secretariat now or in the future.

(2) ARTICLE XII (“INTERNATIONAL COOPERATION”).—The United States understands that, upon entry into force of this Convention for the United States, the United States will have no binding obligation under the Convention to provide additional funding or technical assistance for any of the measures listed in Article XII.

(3) ARTICLE XIII (“FINANCIAL RESOURCES”).—Bearing in mind the provisions of paragraph (7), the United States understands that establishment of a “special fund,” as described in this Article, imposes no obligation on Parties to participate or contribute to the fund.

(b) DECLARATIONS.—The advice and consent of the Senate is subject to the following declarations:

(1) “NO RESERVATIONS” CLAUSE.—Concerning Article XXIII, it is the sense of the Senate that this “no reservations” provision has the effect of inhibiting the Senate in its exercise of its constitutional duty to give advice and consent to ratification of a treaty, and the Senate’s approval of these treaties should not be construed as a precedent for acquiescence to future treaties containing such provisions.

(2) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the State Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(3) NEW LEGISLATION.—Existing federal legislation provides sufficient legislative authority to implement United States obligations under the Convention. Accordingly, no new legislation is necessary in order for the United States to implement the Convention. Because all species of sea turtles occurring in the Western Hemisphere are listed as endangered or threatened under the Endangered Species Act of 1973, as amended (Title 16, United States Code, Section 1536 *et seq.*), said Act will serve as the basic authority for implementation of United States obligations under the Convention.

(4) ARTICLES IX AND X (“MONITORING PROGRAMS,” “COMPLIANCE”).—The United States understands that nothing in the Convention precludes the boarding, inspection or arrest by United States authorities of any vessel which is found within United States territory or maritime areas with respect to which it exercises sovereignty, sovereign rights or jurisdiction,

for purposes consistent with Articles IX and X of this Convention.

(5) It is the sense of the Senate that the entry into force and implementation of this Convention in the United States should not interfere with the right of waterfront property owners, public or private, to use or alienate their property as they see fit consistent with pre-existing domestic law.

(c) PROVISOS.—The advice and consent of the Senate is subject to the following provisos:

(1) REPORT TO CONGRESS.—The Secretary of State shall provide to the Committee on Foreign Relations of the Senate a copy of each annual report prepared by the United States in accordance with Article XI of the Convention. The Secretary shall include for the Committee's information a list of "traditional communities" exceptions which may have been declared by any party to the Convention.

(2) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.