
UNITED NATIONS CONVENTION TO COMBAT DESERTIFI-
CATION IN COUNTRIES EXPERIENCING DROUGHT, PAR-
TICULARLY IN AFRICA, WITH ANNEXES

OCTOBER 4, (legislative day, SEPTEMBER 22), 2000.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 104-29]

The Committee on Foreign Relations, to which was referred the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, With Annexes, adopted at Paris, June 17, 1994, and signed by the United States on October 14, 1994, (Treaty Doc. 104-29) (“the Convention”), having considered the same, reports favorably thereon with the five understandings, three declarations and two provisos indicated below, 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 proposed Convention is to combat desertification and mitigate the effects of drought on arid, semi-arid, and dry sub-humid lands through effective action at all levels. In particular, the proposed Convention is intended to address the fundamental causes of famine and food insecurity in Africa, by stimulating more effective partnership between governments, local communities, non-governmental organizations, and aid donors, and

by encouraging the dissemination of information derived from new technology.

II. SUMMARY

A. GENERAL

Desertification is the degradation of land in arid, semi-arid, and dry sub-humid areas (collectively known as drylands). While the causes of desertification are varied and complex, it is generally attributed to a combination of climatic variations and human activities that tax the land's ability to support vegetation. The chief climatic problem is drought, while some commonly cited man-made factors include population pressure, overgrazing, deforestation, overcultivation, overuse of water supplies, and poor irrigation. In the past, drylands generally recovered from drought, but contemporary human activities in many areas may undermine their recovery. Complicating the problem is that desertification is not the same everywhere, and key factors are site-specific. Among the contributing factors in a particular area are the natural environment, natural and other disasters, local and international economic conditions, land laws and customs, and technologies employed on the land. On the other hand, there are critics who challenge the nature, extent, causes, and solutions of the dryland problem. Critics oppose the Treaty for scientific reasons, and as promoting state intervention in land use, rather than allowing people in developing countries to determine their own solutions.

Remedial measures exist to halt desertification, including reducing grazing, rotating productive activity (such as agriculture), afforesting areas, providing alternatives to fuelwood for energy, or providing alternative livelihoods to people in arid areas. These measures may be difficult or controversial to implement in particular areas, because they may require changes in longstanding practices. The U.N. Environment Program estimates the cost of combating desertification at between \$10 billion and \$22 billion annually for a 20-year program.

Desertification occurs over approximately one-quarter of the land in the world, and could affect about a billion people in both developing and developed countries. Desertification often is associated with Africa, where 73% of the drylands are moderately or severely desertified, but it occurs all over the world. In recognition of the global nature of the phenomenon, the Treaty contains four regional annexes for addressing desertification in Africa, Asia, Latin America and the Caribbean, and the Northern Mediterranean.

Indirect effects of desertification abroad have been posited. Desertification may prompt increased United States foreign aid outlays and increased migration to the United States. It also may reduce trade and other business opportunities and reduce the agricultural production that feeds the world's population.

In 1977, the United Nations adopted a Plan of Action to Combat Desertification at a Conference on Desertification in Nairobi, Kenya. Under the plan, carried out by the UNEP, relatively little money was spent on various remedies including reforestation, alternative energy sources, and water resource management. Despite this and other efforts, in 1991 the UNEP determined that overall land degradation had worsened, although in limited areas the prob-

lems had been remedied. A lack of coherent assistance for affected countries has been cited as a primary reason for the failure of previous anti-desertification efforts.

Desertification was among the major issues addressed by the 1992 United Nations Conference on Environment and Development (UNCED). (The Conference also is known as the “Rio Earth Summit,” owing to its convening in Rio de Janeiro, Brazil.) The Conference recommended that the United Nations General Assembly establish an Intergovernmental Negotiating Committee (INCD) to draft, by June 1994, a treaty to combat desertification. African countries in particular supported this proposal, and the United States ultimately agreed. The INCD held five negotiating sessions before adopting the Desertification Treaty on June 17, 1994. The Treaty was opened for signature on October 14–15, 1994, and it entered into force on December 26, 1996, 90 days after ratification by 50 countries. As of June 23, 1998, 125 countries had ratified the Treaty, including nearly all major developed countries. The United States signed the Treaty on October 14, 1994, and on August 2, 1996, President Clinton sent it to the Senate for advice and consent.

B. KEY PROVISIONS

For a detailed, article-by-article discussion of the Convention’s provisions, please refer to Treaty Doc. 104–29, pp. IX–XXI.

III. ENTRY INTO FORCE AND WITHDRAWAL

A. ENTRY INTO FORCE

For the United States, the Convention shall enter into force on the ninetieth day after the date of deposit of the United States instrument of ratification.

B. WITHDRAWAL

At any time after three years from the date on which the Convention has entered into force for the United States, the United States may withdraw from the Convention by giving written notification to the Depositary. The withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

IV. COMMITTEE ACTION

The Committee on Foreign Relations held an informal public meeting on the proposed Convention on July 20, 2000 (a transcript of the hearing and questions for the record can be found in Senate Exec. Rept. 106–16).¹ The Committee considered the proposed Convention on September 27, 2000, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to ratification of the proposed Convention subject

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 which is appended to Executive Report 106–16.

to the five understandings, three declarations and two provisos noted below.

V. 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.

As noted above, the President has asserted that the obligations of the United States under the treaty “would be met under existing law and ongoing assistance programs.”² The Treaty does not call for any land use restrictions, or require legislation or regulations for United States implementation. The United States currently deals domestically with arid lands and desertification through a variety of programs, including the National Forest Management Act of 1976, the Coastal Zone Management Act of 1972, the Federal Land Policy and Management Act of 1976, the Public Rangelands Improvement Act of 1978, and the Global Change Prevention Act of 1990.

Ratifying the Treaty would appear to require the United States to appropriate funds to support United States obligations to support the work of the Global Mechanism and permanent secretariat. Although detailed, global data are not available, the United States Agency for International Development (USAID) obligated \$35.6 million in FY 1998 for anti-desertification efforts in Africa that are consistent with the Treaty. The Treaty seeks to reprioritize, and make more efficient use of, existing aid, and to coordinate on-going efforts of countries.

Potential advantages to United States accession to the Convention noted by the Administration include a demonstrated United States commitment to ending desertification, strengthened partnerships with affected countries, and enhanced participation of others. A successful international effort may reduce the levels of emergency relief, civil conflicts, and migration of refugees. Because the United States would be accorded full powers at Conference of Parties (“COP”) sessions, it might have more influence on policy development. The Administration further contends that ratification could stimulate cooperation on technical issues, create opportunities abroad for United States experts and industries involved in dryland issues, and allow United States experts to participate in the work of the COP.³

Relatively little formal opposition to the Treaty has surfaced, but as noted above, one critical essay has appeared challenging the nature, extent, causes, and solutions of the dryland problem.⁴ This essay opposes the Treaty as promoting state intervention in land use, rather than allowing people in developing countries to determine their own solutions. There also may be concern among individuals and groups who generally oppose the assumption of mounting and seemingly open-ended United States financial obligations

² Treaty Doc. 104–29, p. III. Information on obligations for the United States is drawn primarily from the Treaty Doc. and Administration fact sheets.

³ See, e.g., primarily Treaty Doc. 104–29 and Administration fact sheets.

⁴ Julian Morris. “Why the UN Desertification Treaty is All Wet,” Competitive Enterprise Institute, On Point. April 21, 1998.

to international organizations like the United Nations in the absence of concrete, measurable benefits to the United States. In addition, these individuals and organizations typically seek to avoid possible constraints on United States sovereignty or policies, and maintain that international agreements generally contain, or lead to, such constraints.

Some Members of the Committee have expressed similar concerns. The Executive Branch has assured the Committee, however, that the Convention and its annexes do not bind the United States to specific funding requirements. Nor does the Convention prescribe a level of funding for a Secretariat or the Global Mechanism. Ratification of the Convention will not require the United States to alter its national land management or agricultural practices. Nor will the United States be obligated to accept adjudication before the International Court of Justice or binding arbitration of any matter under the Convention. The Convention will not obligate the United States to provide increased levels of funding to the Global Environment Facility. Having received these assurances from the Executive Branch, the Committee has opted to move forward with the Convention in spite of the general concerns described above and the misgivings of individual Members.

VI. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to ratification to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, With Annexes, adopted at Paris, June 17, 1994, and signed by the United States on October 14, 1994 (Treaty Doc. 104-29), (hereinafter, "The Convention"), subject to the understandings of subsection (a), the declarations of subsection (b) and the provisos of subsection (c).

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

(1) FOREIGN ASSISTANCE.—The United States understands that, as a "developed country," pursuant to Article 6 of the Convention and its Annexes, it is not obligated to satisfy specific funding requirements or other specific requirements regarding the provision of any resource, including technology, to any "affected country," as defined in Article 1 of the Convention. The United States understands that ratification to the Convention does not alter its domestic legal processes to determine foreign assistance funding or programs.

(2) FINANCIAL RESOURCES AND MECHANISM.—The United States understands that neither Article 20 nor Article 21 of the Convention impose obligations to provide specific levels of funding for the Global Environment Facility, or the Global Mechanism, to carry out the objectives of the Convention, or for any other purpose.

(3) UNITED STATES LAND MANAGEMENT.—The United States understands that it is a "developed country party" as defined in Article 1 of the Convention, and that it is not required to prepare a national action program pursuant to Part

III, Section 1, of the Convention. The United States also understands that no changes to its existing land management practices and programs will be required to meet its obligations under Articles 4 or 5 of the Convention.

(4) LEGAL PROCESS FOR AMENDING THE CONVENTION.—In accordance with Article 34(4), any additional regional implementation annex to the Convention or any amendment to any regional implementation annex to the Convention shall enter into force for the United States only upon the deposit of a corresponding instrument of ratification, acceptance, approval or accession.

(5) DISPUTE SETTLEMENT.—The United States declines to accept as compulsory either of the dispute settlement means set out in Article 28(2), and understands that it will not be bound by the outcome, findings, conclusions or recommendations of a conciliation process initiated under Article 28(6). For any dispute arising from this Convention, the United States does not recognize or accept the jurisdiction of the International Court of Justice.

(b) DECLARATIONS.—The advice and consent of the Senate is subject to the following declarations, which shall be binding on the President:

(1) CONSULTATIONS.—It is the sense of the Senate that the Executive Branch should consult with the Committee on Foreign Relations of the Senate about the possibility of United States participation in future negotiations concerning this Convention, and in particular, negotiation of any Protocols to this Convention.

(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) ADOPTION OF NO RESERVATIONS PROVISION.—It is the sense of the Senate that the “no reservations” provision contained in Article 37 of the Convention has the effect of inhibiting the Senate in its exercise of its constitutional duty to give advice and consent to accession to a treaty, and that the Senate’s approval of the Convention should not be construed as a precedent for acquiescence to future treaties containing such provisions.

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

(1) REPORT TO CONGRESS.—Two years after the date the Convention enters into force for the United States, and biennially thereafter, the Secretary of State shall provide a report to the Committee on Foreign Relations of the Senate setting forth the following:

(i) a description of the programs in each affected country party designed to implement the Convention, including a list of community-based non-governmental organizations involved, a list of amounts of funding provided by the na-

tional government and each international donor country, and the projected date for full implementation of the national action program;

(ii) an assessment of the adequacy of each national action program (including the timeliness of program submittal), the degree to which the plan attempts to fully implement the Convention, the degree of involvement by all levels of government in implementation of the Convention, and the percentage of government revenues expended on implementation of the Convention;

(iii) a list of United States persons designated as independent experts pursuant to Article 24 of the Convention, and a description of the process for making such designations;

(iv) an identification of the specific benefits to the United States, as well as United States persons (including United States exporters and other commercial enterprises), resulting from United States participation in the Convention;

(v) a detailed description of the staffing levels and budget of the Permanent Secretariat established pursuant to Article 23;

(vi) a breakdown of all direct and indirect United States contributions to the Permanent Secretariat, and a statement of the number of United States citizens who are staff members or contract employees of the Permanent Secretariat;

(vii) a list of affected party countries that have become developed countries, within the meaning of the Convention; and

(viii) for each affected party country, a discussion of results (including discussion of specific successes and failures) flowing from national action plans generated under 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.