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CHAPTER 48

Mechanisms for Global Agreements

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I. Introduction

This chapter will cover the primary instruments and vehicles through which international environmental law is developed, memorialized, and implemented. Practitioners should understand these processes in order to ensure that they have considered all relevant regimes in addressing specific questions. This procedural background will also provide important context to help facilitate an understanding of the substantive impact and legal effect of these regimes.

The chapter first discusses nonbinding "soft law" regimes, paying particular attention to the comparative advantages offered by a mechanism based on collaboration and voluntary participation. It also discusses the ways in which soft law may serve as a harbinger for hard law.

The second part of this chapter considers binding mechanisms and how they shape the field. Binding mechanisms are sundry: they may be bilateral, regional, or global, and they may take the form of agreements, frameworks, or protocols to frameworks or agreements. This section outlines the technical differences among various binding mechanisms for the practitioner. We focus in particular on the relatively exotic institutional and legal structures underpinning global multilateral environmental agreements. The remainder of the chapter is devoted to resolving questions that arise in practice, including which parties are bound by what agreements and whether a given text is binding or nonbinding.

II. Nonbinding Soft-Law Regimes

In theory, the sources of international environmental law are the same as those of general international law: international conventions, international custom, "general principles of law recognized by civilized nations," and writings of

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highly qualified jurists.[1] In practice, however, the practitioner can in most cases focus solely on conventional law—multilateral treaties, regional and bilateral treaties, and their progeny. In part this reflects the newcomer status of the field: unlike customary laws governing war or maritime trade, which have crystallized over millennia, legal norms regarding the protection of the environment, as well as the history of states' behavior in this sector, are relatively new.[2]

Nevertheless, in response to the uniquely critical challenges posed by environmental degradation, a significant body of nonbinding agreements, statements, declarations, resolutions, and recommendations has emerged in international environmental law. We will refer to these resources as "soft laws": that is, declarations, recommendations, resolutions, or guidance documents that, while negotiated among states on the international plane, are not legally binding and are discretionary in nature. The number of such texts—along with the nonbinding fora and initiatives that generate them—has grown rapidly in the past 30 years. The most prominent and foundational example is the Agenda 21 plan of action adopted at the 1992 U.N. Conference on Environment and Development (Rio Earth Summit).[3] The plan comprises a series of nonbinding chapters on key institutional and substantive topics such as transboundary air pollution, biodiversity, access to environmental information, biotechnology, and chemicals. In many of these subfields, Agenda 21 has guided substantive environmental policy-making at the international level for the past two decades.[4]

As evidenced by the impact of Agenda 21, "soft" does not mean irrelevant. Since the founding of the United Nations, international soft-law regimes governing everything from human rights to outer space have proliferated in quantity, in scope, and in influence of public and private sector behavior.[5] Soft law is particularly important in the field of international environmental law. First, soft-law regimes provide a low-resistance path for the introduction of solutions surrounding a given environmental issue, offering an opportunity for stakeholders to coalesce around concrete actions without the need to outline penalties or remedies for noncompliance. Most conventional, binding law in our field first emerged as soft-law guidance or resolutions that over time hardened into firm commitments that later were adopted as binding. Moreover, the development of soft-law mechanisms allows for the more direct and influential participation of non-state actors—including both environmental non-governmental organizations and business organizations—than is the case in treaty negotiations.[6] Soft law also influences domestic regulatory developments and frequently serves as guidance to domestic decision makers (legislators, regulators, or judges) who are faced with new or emerging environmental challenges at the domestic level that can directly affect practitioners. As discussed further next, this is particularly the case with respect to nonbinding decisions by conferences of the parties to global treaties, which serve as highly instructive interpretive guidance to flesh out the details of these broad framework agreements. For these reasons, it is important that practitioners track (and even try to influence) soft-law initiatives that can affect their clients' interests.

Two key examples of nonbinding fora that generate influential nonbinding soft law help illustrate why practitioners should pay attention to these important sources of influence. The first are United Nations Environment Program (UNEP) Governing Council decisions, which frequently evolve into negotiated treaties. (The Governing Council was replaced in 2013 with a successor body known as the United Nations.) UNEP's approach to mercury provides a good example. UNEP's attention to the issue of mercury pollution began with a Governing Council decision in 2001 calling for, inter alia, comprehensive studies of the anthropogenic sources of mercury, existing toxicity studies, and prevention and control technologies. Subsequent decisions built on those studies and led ultimately to a 2009 decision to establish an Intergovernmental Negotiating Committee. This committee was tasked with negotiating a global, legally binding instrument on mercury to be adopted in 2013.[7] Although driven by governments, each stage of this process was open to input from non-governmental stakeholders (both environmental activists and industry representatives). A practitioner seeking to influence the adoption of regulatory requirements applicable to mercury emissions and uses in any given country would therefore have done well to track and engage in these processes throughout their development. On January 19, 2013, participating states agreed to the text of the global, legally binding instrument on mercury, called the Minamata Convention on Mercury.[8] Minamata, Japan, was the site of industrial mercury dumping and subsequent widespread mercury poisoning in the mid-20th century[9] and will be the site of the diplomatic convention that formally adopts the treaty. The final text targets primary mining and emissions from coal combustion and contains restrictions on certain categories of mercury-containing products.[10] The Minamata Convention opened for signature from October 9 to 11 at a diplomatic convention in Kumamoto and Minamata, Japan.

The Strategic Approach to International Chemicals Management (SAICM) is another example of new soft-law venues that can presage the development of binding domestic or international commitments. SAICM was launched at the 2006 International Conference of Chemicals Management (ICCM). SAICM's stated objective is to "achieve the sound management of chemicals throughout their life cycle so that, by 2020, chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment."[11] SAICM, which is designed as a multistakeholder forum that is open to governments as well as civil society, is expressly intended to serve as a driver of national chemicals regulatory measures, especially in developed countries. In the absence of a formal agreement or another forum on chemicals management, however, SAICM currently serves as the primary global forum for international chemicals policy. Workshops and resolutions adopted under SAICM, including at the third ICCM in 2012, are already driving national regulatory activity on chemicals management and influencing private sector decision making with respect to, for example, disclosure of chemicals in products.[12]

Indeed, because private sector actors anticipate that soft-law decisions may drive future policy and regulatory decisions in key markets, soft-law

decisions also frequently shape corporate behavior, even before hardening into binding legal obligations. Many voluntary sector-specific commitments on sustainability, such as the Equator Principles for large project finance institutions and the Electronic Industry Citizenship Coalition's Code of Conduct for electronics manufacturers, incorporate and reflect soft-law environmental and social responsibility policies adopted at the global level.[13] At the level of individual companies, soft law can also influence corporate social responsibility policies and actions, including responsible procurement. In the minerals sector, for example, U.N. General Assembly resolution 55/56, introduced in 2000, led to the development of the Kimberley Process Certification Scheme used by the diamond industry to certify the origins of diamonds from conflict-free sources.[14]

Accordingly, practitioners should give consideration to how soft-law agreements can shape their approach to legal questions, open channels for client advocacy, predict future industry guidance and codes of conduct, and guide their predictions of future binding laws and regulations. Issues related to soft law arising in practice will be addressed later in this chapter.

III. Sources of Binding International Environmental Law

We turn next to the mechanisms for global agreements that practitioners will most readily associate with international environmental law: treaties. Treaties and related agreements take a wide variety of forms, ranging from bilateral to regional to global in scope. Any given international environmental issue, moreover, may implicate agreements at more than one level. It is therefore important for practitioners to understand the different types of agreements and how they interact.

A. Bilateral Agreements

International environmental practitioners should first consider whether their matter is addressed by obligations found within a bilateral treaty between the affected jurisdictions. Bilateral agreements are, in brief, enforceable agreements between two states. In the environmental field, they are frequently concluded between two adjacent states in relation to either a shared natural resource (e.g., a shared watershed) or a transboundary pollution source. These agreements impose binding obligations on the parties, who in turn may impose obligations on private actors within their jurisdiction through domestic implementing laws. Notable examples include the United States–Canada Air Quality Agreement of 1991, which focused originally on measures to reduce acid rain in the shared airshed,[15] and the Boundary Waters Treaty of 1909, which established the International Joint Commission (IJC) to oversee water resource issues involving the United States and Canada.[16] A practitioner working on an infrastructure or effluent matter involving the Great Lakes or other boundary watercourses, for example, would need not

only to carefully review the international obligations that each party bears under the treaty but also to understand the procedural role that the IJC plays in regulatory processes in each country.

Relevant obligations may also be found in bilateral treaties that are not, strictly speaking, environmental agreements. Recent bilateral U.S. trade promotion agreements, for instance, have frequently included provisions that impose environment-related obligations. These include obligations to effectively enforce domestic environmental laws and regulations and obligations to take measures to implement certain multilateral environmental agreements. Both mature, long-standing treaties relating to "Friendship, Commerce, and Navigation" and newer bilateral investment agreements may implicate environmental issues.

Because of the sheer number of potentially relevant bilateral agreements, it can be a challenge for practitioners to identify and locate those that may be relevant to their matters. In the United States, practitioners should start with the State Department's Treaties in Force.[17] While practitioners may observe that many of the bilateral agreements are relatively unknown or inactive, obligations under the agreement are still effective as long as the agreement remains in force and has not been superseded by subsequent agreements in force between those parties.

B. Regional Agreements

Practitioners should also be aware that environmental obligations can also be found in regional treaties. These regional agreements take a variety of forms. In some cases, regional agreements may be freestanding and independent regimes that are tailored to the unique environmental circumstances of a given region. This is the case, for example, with the regional seas agreements adopted under UNEP, such as the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region and its protocols.[18] These regional agreements fit comfortably within the institutional architecture of ocean environmental management established under the much better-known U.N. Convention on the Law of the Sea, but their obligations are distinct from or in addition to obligations set out in the Convention itself.

In other cases, regional environmental agreements cover the same substantive terrain as global environmental agreements, but layer on additional obligations that apply only among the parties to the regional agreement. For example, the Bamako Convention,[19] adopted in 1991 under the auspices of the Organization of African Unity, amplifies and extends obligations set out in its global predecessor, the Basel Convention.[20] In still other cases, regional environmental agreements may overlap with but impose slightly different obligations than those set out in comparable global agreements. This scenario arises where the regional agreement may have preceded and served as a model for the subsequent global agreement. This is the case, for example, with the Protocol on Persistent Organic Pollutants to the Convention on

Long-Range Transboundary Air Pollution (LRTAP Protocol), which predates a global agreement that was adopted on the same topic: the Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention). Although their basic structure and function is very similar, there are subtle distinctions among the obligations in each agreement as well as in the lists of chemicals that they cover.[21] While generally it is possible to reconcile the multiple obligations of each party in such circumstances, it is critical that practitioners carefully examine and unpack the overlapping obligations as well as identify which states are party to which agreements. In cases of overlapping agreements, the determination of which obligations apply is subject to the rules of treaty interpretation, primarily those set out in the Vienna Convention on the Law of Treaties (which also generally reflects customary international law in this field).[22]

In still other cases, relevant regional agreements are not environment-focused at all but instead are directed primarily at trade or investment matters. As with the bilateral agreements discussed above, however, regional trade agreements may include important environmental substantive and procedural obligations. Examples of pertinent regional trade agreements include NAFTA[23] and its cousin in the Southern Cone, MERCOSUL.[24]

C. Global Multilateral Environmental Agreements

Global multilateral environmental agreements (MEAs) are the charismatic megafauna of the international environmental law ecosystem: they attract the most attention, and they can be fascinating to watch even when they do nothing. Indeed, for many people, "international environmental law" begins and ends with the MEAs. And although their impact and influence may be overrated, the MEAs do matter to the practitioner.

We focus in this chapter on the legal and institutional structure of MEAs (their substantive provisions are addressed elsewhere.[25] A key defining feature of the MEAs is that they are purpose-built agreements aimed at particular topics with limited (rather than open-ended) mandates and scopes. Dozens of MEAs have been negotiated across the spectrum of policy clusters, including chemicals/waste (e.g., Stockholm Convention; Basel Convention); biodiversity (e.g., Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES), Convention on Biological Diversity (CBD), Cartagena Protocol); atmosphere and climate (e.g., U.N. Framework Convention on Climate Change (UNFCCC)), and oceans (U.N. Convention on the Law of the Sea). Each of these agreements—most of which have been negotiated under UNEP auspices—is legally and institutionally distinct from the others, and each has a limited, substantive mandate.

1. Conferences of the Parties

Unlike other fields of international law (e.g., trade, labor, nonproliferation, or human rights) the international environmental field does not have a global

institutional architecture that serves as a platform or hub for all related activity. Instead, each agreement, once it is negotiated and enters into force, establishes its own institutional governance structure and—crucially—its own quasi-regulatory processes. The plenary body for most MEAs is known as the Conference of the Parties (COP). The COP is an organization that comprises representatives from each party and that meets periodically (annually or biannually). The MEA typically designates the COP as the primary decision making authority for the treaty, which is intended to be dynamic and evolutionary in nature. As such, the COP is given not only the power to review compliance with and implementation of the treaty but also the authority to create subsidiary bodies, consider new information, and adopt resolutions that fill the interstices of the agreements through amendments and "decisions."[26] (We turn in more detail next to the evolutionary function played by COPs and COP decision making.) In addition, the MEAs each designate a secretariat—a permanent administrative staff to facilitate and record the meetings of the COP and its subsidiary bodies.

2. Framework Agreements and Protocols

Some of these agreements are expressly designated or otherwise function as "framework" agreements: broad and relatively shallow agreements that are intended to serve largely as platforms for later and more focused negotiations, typically through the subsequent adoption of protocols. They include most notably (1) the Vienna Convention on the Protection of the Ozone Layer, which spawned the much better-known Montreal Protocol; (2) the UNFCCC, which created the Kyoto Protocol; and (3) the CBD, which has given rise to a series of targeted protocols including the Cartagena Protocol on trade in transgenic organisms and the recently concluded Nagoya Protocol on access and benefit sharing. While such protocols typically share the institutional framework (i.e., shared secretariats and, often, shared meeting events) with their progenitors,[27] the protocols are themselves unique MEAs with a separate legal standing and separate party rosters. Although in some cases it may be important as a legal matter to interpret the obligations in a protocol against the terms of the parent convention (just as a regulation must often be understood against the backdrop of the primary legislation that authorized it), there are no inherent legal distinctions between MEAs that are designated as "conventions" and those that are designated as "protocols."

3. COP Technical Work, Amendments, and Decisions

For the practitioner, the COP serves several important functions. First, the COP can set in motion intersessional activity, such as meetings of subsidiary bodies or technical experts. Wholly apart from the formal outcome of such processes, this activity is often valuable to track and observe in its own right.[28] Because such processes frequently involve the participation of key

technical experts from capitals, the technical work and policy activity that takes place under the rubric of each MEA often serves as a benchmarking and training exercise for national regulators.[29] As a result, the technical processes and activities that the COP sets in motion can indirectly influence national regulatory developments. Conversely, the positions that national regulators take in these meetings can often provide practitioners with a window into the likely approach that national regulators may take in response to cutting-edge environmental issues.

Second, as a formal matter, COP decision making can lead to new legal obligations through amendments and the adoption of new protocols. Pursuant to amendments that may be adopted according to detailed procedures set out in the treaties, MEAs are frequently designed to evolve over time. The procedures vary by agreement but typically provide that amendments are adopted by supermajority decision making within the COP; those amendments typically do not enter into force until they have been ratified by a minimum threshold number of parties,[30] although recent MEAs have embraced a more expedited approach to address the problem of delay at the national ratification level. This approach flips the default result: amendments enter into force automatically after one year for all parties except those that have affirmatively provided notice of their rejection of the amendment.[31] One result is that not all amendments to an MEA are necessarily applicable to all MEA parties. It is vital for practitioners to understand the amendment processes and entry into force rules in order to understand both which obligations in an MEA have binding force and which obligations are applicable to which party.

Third, certain COP "decisions" can have impacts that, for the practitioner, are equal to or even more important than formal amendments. For example, COP decisions can take the form of guidance to the parties and the private sector about the meaning of ambiguous treaty terms. This process is now under way in the Basel Convention, for example, where the parties are negotiating the text of a guidance document that will help parties determine when used electronic equipment should be considered a "waste" that is subject to the trade disciplines set out in the agreement.[32] Even though it will not be legally binding, the decision, once adopted, will have a significant impact on the trade flows of used electronics because it will shape the approach that national regulators are likely to adopt, therefore informing the processes that shippers of such material will also adopt.

Finally, some MEAs expressly provide for the adoption of decisions that do have legally binding effect. These decisions allow for rapid evolution of legal obligations without triggering the more burdensome process for treaty amendments or national ratification decisions. This is the case, for example, with respect to decisions to list or delist species by the COP for CITES, which triggers obligations on parties to impose trade restrictions on those species,[33] and decisions to "adjust" the phase-out schedule for ozone-depleting substances under the Montreal Protocol.[34]

In many cases, the agreements provide detailed procedures that must be followed before an issue is considered ripe for adoption by the COP, either as a nonbinding decision, a binding decision, or as an amendment. These technical procedures—and the meetings and processes that they trigger—provide an important opportunity for engagement by practitioners seeking to influence the evolution of the MEAs.

4. Tracking and Influencing

How can practitioners track the activities at these COPs? All the major MEAs now maintain detailed websites. Researchers can track not only the documentation that is considered and adopted at each meeting (including decisions and amendments adopted, as well as official meeting "reports" that summarize the outcomes of each session), but also in many cases the proceedings of intersessional technical meetings and interim reports. Some secretariats maintain "handbooks" or compilations of decisions that are indexed and organized by topic. One useful but nonofficial resource for tracking developments, and for summarizing the background and history of key initiatives, in major international environmental fora is the Earth Negotiations Bulletin reporting service provided by the International Institute for Sustainable Development.[35]

In addition, most MEA meetings are open to direct stakeholder participation, although typically some type of accreditation is required before participation is permitted. For those seeking to influence (rather than merely track) these developments, there are two key considerations to take into account. First, most government delegations have adopted their negotiating positions on key issues well in advance of the MEA meeting itself, so it is often essential to initiate your lobbying activity in national capitals prior to the meeting you are seeking to influence. Second, it is very difficult to "parachute" into a long-standing intergovernmental process and be successful: relationships and individual and institutional credibility are important in these fora, and an effective lobbying campaign therefore typically involves sustained participation in the processes across multiple meetings (which can involve months or years of involvement).[36]

Notes

1. Restatement (Third) of the Foreign Relations Law of the United States § 102, Reporters' Note 1 (1986).

2. *See* Table 2: Growth in the Number of International Environmental Treaties, at viii, in William H. Rodgers, Jr., Environmental Law (2d ed. 1994), *reproduced from* N. Choucri & R.C. North, *Global Accord: Imperatives for the Twenty-First Century, in* Global Accord: Environmental Challenges and International Responses 477, 493 & fig.15.1 (N. Choucri ed. 1993) (based on compilations by Haas with Sundgren and derived from UNEP's International Registry of Environmental Treaties).

3. Agenda 21, Proc. of United Nations Conference on Environment & Development, Brazil, Rio De Janerio. UN, 1992, *available at* http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf.

4. *See* William Onzivu, *International Environmental Law, the Public's Health, and Domestic Environmental Governance in Developing Countries,* 21 Am. U. Int'l L. Rev. 597, 614 (2006).

5. *See* Pierre-Marie Dupuy, *Soft Law and the International Law of the Environment,* 12 Mich. J. Int'l L. 420, 421 (1990–1991).

6. *See* Duncan B. Hollis, *Why State Consent Still Matters—Non-State Actors, Treaties, and the Changing Sources of International Law,* 23 Berkeley J. Int'l L. 137, 138 (2005) (acknowledging that "international organizations, multinational corporations, nongovernmental organizations (NGOs), and even individuals . . . exercise increased influence in the creation, implementation, and enforcement of international law").

7. United Nations Environment Programme Governing Council decision 25/5 III, *available at* http://www.chem.unep.ch/mercury/GC25/GC25Report_English.pdf.

8. Press Release, United Nations Environment Programme, "Minamata" Convention Agreed by Nations: Global Mercury Agreement to Lift Health Threats from Lives of Millions Worldwide, INC5 Press Release (Jan. 19, 2013).

9. M. Harada, *Minamata Disease: Methylmercury Poisoning in Japan Caused by Environmental Pollution.* 25(1) Crit. Rev. Toxicol. 1–24 (1995), http://www.ncbi.nlm.nih.gov/pubmed/7734058?report=abstract (abstract only).

10. For detailed coverage of the negotiations, see Pia M. Kohler et al. eds., *Summary of the Fifth Session of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury: 13–19 January, 2013,* 28(22) Earth Negotiations Bull. (2013).

11. Strategic Approach to International Chemicals Management, SAICM, http://www.saicm.org.

12. *See generally* United Nations Environment Programme (UNEP), Strategic Approach to International Chemicals Management, Progress Report on the Chemicals in Products Project, including proposed recommendations for further international cooperative action, U.N. Doc. SAICM/ICCM.3/15 (June 21, 2012).

13. The Equator Principles III, for example, references due diligence obligations as referenced by the United Nations Office of the High Commission on Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework,* HR/PUB/11/04 (2011). Version 4.0 of the Electronic Industry Citizenship Coalition's Code of Conduct cites as reference documents the U.N.'s Universal Declaration of Human Rights, Convention against Corruption, and Global Compact.

14. Kimberley Process Certification Scheme, Kimberley Process Authority para. 6 (Nov. 5, 2002).

15. Agreement between the Government of the United States of America and the Government of Canada on Air Quality, U.S.-Can., Mar. 13, 1991, 1991 U.S.T. LEXIS 108.

16. Treaty between the United States and Great Britain Relating to Boundary Waters, and Questions Arising between the United States and Canada, U.S.-G.B., Jan. 11, 1909, *available at* http://www.ijc.org/rel/agree/water.html#text.

17. http://www.state.gov/s/l/treaty/tif/index.htm.

18. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Mar. 24, 1983, 1984 U.S.T. LEXIS 254.

19. Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted in 1991 under the auspices of the Organization of African Unity.

20. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1989 U.S.T. LEXIS 240.

21. For a discussion of the differences, see Report from the Comm. on Agric. to the Comm. of the Whole House on PIC and POPs and the LRTAP POPs Protocol Implementation Act, H.R. Rep. No. 109-668 (2006), *available at* http://www.gpo.gov/fdsys/pkg/CRPT-109hrpt668/html/CRPT-109hrpt668.htm.

22. *See* Restatement (Third) of the Law of the Foreign Relations of the United States pt. III, Introductory Note, for a discussion of the relationship between the Vienna Convention and U.S. law.

23. North American Free Trade Agreement, Jan. 1, 1994, *available at* https://www.nafta-sec-alena.org/Default.aspx?tabid=97&language=en-US.

24. Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay, Mar. 26, 1991, *available at* http://www.sice.oas.org/trade/mrcsr/mrcsrtoc.asp.

25. See chapter 49, Key Environmental Treaties and Agreements, in this volume.

26. For a detailed history on the origin and evolution of this institutional arrangement, see Robin R. Churchill & Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law,* 94 Am. J. Int'l L. 623 (2000).

27. In such cases, the meetings of the Protocol parties are typically referred to as Meetings of the Parties (MOPs), and joint meetings of both bodies under the framework agreement are known as meetings of the COP/MOP.

28. "The importance of communication between scientists and decisionmakers to raise government concern, improve implementation and compliance with treaty commitments, and thereby further global environmental protection, has been noted by several authors." Dagmar Lohan, *A Framework for Assessing the Input of Scientific Information into Global Decisionmaking,* 17 Colo. J. Int'l Envtl. L. & Pol'y 1, 25 (2006).

29. *Id.* at 36.

30. *See* Churchill & Ulfstein, *supra* note 26, at 636.

31. The Stockholm Convention, for example, adopts such an expedited procedure for adding new chemicals to the global restrictions and phase-out obligations in the agreement.

32. Eleventh Meeting of the Conference of the Parties to the Basel Convention, Geneva, Switz., May 2013, Draft technical guidelines on transboundary movements of e-waste and used electrical and electronic equipment, in particular regarding the distinction between waste and nonwaste under the Basel Convention (Dec. 22, 2012), UNEP/CHW.11/7/Add.1.

33. Article XV of CITES provides that "amendments adopted at a meeting [of the COP] shall enter into force 90 days after that meeting for all Parties except those which make a reservation in accordance with paragraph 3 of this Article." Convention on the International Trade in Endangered Species of Wild Fauna and Flora art. XV, Mar. 3, 1973, TIAS 8249.

34. Montreal Protocol on Substances That Deplete the Ozone Layer art. 2, Sept. 16, 1987, 1987 U.S.T. LEXIS 207.

35. The International Institute for Sustainable Development, http://www.iisd.org. The Earth Negotiations Bulletin is available at http://www.iisd.ca/enbvol/enb-background.htm.

36. A good resource for practitioners looking for guidance on how to engage in these settings is Michael Strauss, How to Lobby at Intergovernmental Meetings (2004).