DANGERS OF THE BIODIVERSITY TREATY

A SUMMARY OF THE UNCONVENTIONAL CONVENTION

Although its importance has been kept exceedingly quiet. The Convention on Biological Diversity is the most sweeping treaty ever to be proposed in American history, calling for an unprecedented intrusion of government into the economic and social fabric of America and other nations. No other treaty in American history has proposed to so interfere with human interactions or the internal affairs of nations. The treaty provides its signers with potential to employ the treaty's provisions and language in social and cultural engineering, intervention in cultural and social development, and the promotion or retardation of current social lifestyles. The Convention calls on countries to inventory and data base not only biological information (National Biological Survey), but also information having more to do with social, cultural and economic structure than with biodiversity.

This treaty promises to be the source of more litigation than all other treaties combined. The goals of the Convention are:

- 1) to preserve maximum biological diversity in the unsupported belief that in doing so provides substantial benefits. Because no two deer, trout or blades of grass are exactly identical, everything on earth will require government protection;
- 2) to control the nature and extent of natural and human resources within ecosystems. Since the Convention treats human activity as the principle threat to biodiversity, human activity must be tightly controlled and directed. Furthermore, the Convention demands these actions occur even without "scientific certainty;"
- 3) to ensure that others ("developing countries" receiving preferential treatment) obtain a fair and equitable share of the products of research and development carried out by other individuals and businesses. Signers of the Convention are encouraged to alter patent laws to allow for this "sharing" or redistribution of technology;
- 4) to transfer the production of goods and technologies that can in any manner be related to biodiversity, including machinery, computer technology and possible even military technology. The treaty makes no mention of personal property rights.

The vague twenty-odd page treaty will be enforced by implementation protocol based on a three thousand page United Nations document entitled the Global Biodiversity Assessment (GBA). Yet, when the Senate requested copies, the United Nations refused to acknowledge the document even existed. Copies of the GBA do exist, however, and it permits governmental control of any activity or thing which could conceivably have an impact on biodiversity. Because terms such as "biodiversity" and "sustainable use" are exceedingly broad and vague, this demand permits federal control of everything and every activity.

The Bush administration rejected the treaty because of its financial implications on America. They also rejected the treaty because it was clear the treaty would retard the development of new technology to meet future needs "by providing inadequate protection of intellectual property rights, and implying that biotechnology development is unsafe." To obtain ratification of the Convention under the Clinton administration. Senator Pell and the State Department have offered the American public reservations to protect the interests of this nation. Article 37 of the Convention, however, specifically states that "[n]o reservations may be made to this treaty."

If this treaty is ratified, the treaty will:

1. Weaken the sovereignty of the United States. Unless Congress specifically states otherwise. The courts will assume that Congress has ratified the treaty with good faith intent to live up to the letter and spirit of the document. Numerous judicial decisions have made it abundantly clear that the courts will, wherever possible, seek to harmonize later Acts of Congress with prior passed treaties unless Congress has clearly indicated otherwise. The history of court decisions also makes it clear that the treaty, will replace inconsistent existing federal laws.

- 2. Give Federal agencies powers that they would not have in the absence of the Convention. Environmental groups as well as the Environmental Protection Agency and other agencies make it clear that they intend to treat the Convention as a self-executing treaty (meaning that Congress needs to take no further action to implement all the provisions of the treaty other than ratification). Agencies and the Administration are justifying this self-executing without Congressional approval by interpretating from the treaty language such as "take legislative, administrative, and policy measures." If Congress leaves such language without specific stated checks and limitations, federal agencies will be able to expand their regulatory powers over land use and environmental regulations without limit.
- 3. Provide for the adoption of protocols, annexes and amendments without Congressional authorization because of the treaty's intentional vagueness. The treaty only allows the United States with one vote in decision making, and no veto power or other protection against unreasonable or overbearing action made by the Conference of the Parties. The only mechanism by which the United States can object to an action under the treaty is to withdraw from the entire treaty. Otherwise we are legally bound to the treaty's provisions and protocols. This is something we should not do lightly once ratification has occurred. Withdrawal cannot occur for a period of two years after the treaty is ratified. After this two year period has passed, withdrawal takes a minimum of one year.
- 4. Relegate people and their interests to a secondary place compared with animals and plants. Because the Convention places the interests of people to a secondary level to nature, the Convention may allow government to ignore or overrule the protection given to individuals under the Constitution.
- 5. Usurp state and local land use and environmental regulatory power. Federal treaty powers in combination with the court's broad interpretation of the Commerce Clause give the federal government broad regulatory powers normally reserved for state and local government. This is especially true in light of statutes such as the ESA and Clean Water Act. Furthermore, if the Convention is implemented as a self-executing treaty, then the Supremacy Clause of the Constitution will render all inconsistent laws including each and every state and local land use and environmental regulation null and void. Environmental groups have made it clear that they will litigate under the Administrative Procedure Act, NEPA and the citizen suit provisions of the ESA and Clean Water, mineral, wildlife and zoning questions inevitably federal questions based on a claim of preemption. These groups will have authority to do this because the courts are mandated to enforce treaties in litigation of private rights which are brought about by citizen suit provisions.

If ratified, the treaty will require broad expansion of current regulations. At this time there are no laws requiring protection of entire ecosystems or restoration of human-impacted ecosystems. There are no laws requiring control or eradication of alien species or engaging in determining what cultures, cultural practices, lifestyles and traditions should be encouraged and which should be abolished. There are no laws that contemplate the systematic and wholesale transference of technology and existing property or the fruits of research and development from the hands of those who own that technology, property and research to those who do not. Ratification of this treaty will require the rewriting of America's legal system.

The Biodiversity convention is the cornerstone of future environmental litigation and legislation. Without ratification of this treaty, environmentalists will be unable to obtain many of the changes to the Endangered Species Act and Clean Water Act which they desire, but cannot justify in an open debate. Without ratification of the treaty, many of the actions taken by federal agencies in recent years may be proven unconstitutional.

This summary is based on the "Technical Considerations of the Convention on Biological Diversity—The Unconventional Convention" by Mark Pollot and published by the National Wilderness Institute. Mr. Poliot was formerly a special assistant in the Land and Natural Resources Division in the U.S. Department of Justice and currently President Constitutional Law Foundation in Boise Idaho and practices environmental, land use and constitutional law. The full legal brief on this can be obtained by calling The National Wilderness institute at (703) 836-7404 and has been entered into the Congressional Record by Senator Helms. Portions of the summary were taken from the Senate Foreign Relations Minority Report on the Convention on Biological Diversity dated September 9, 1994.

WE DID IT!

THANKS TO YOUR HELP WE STOPPED THE CONVENTION ON BIOLOGICAL DIVERSITY FROM EVEN COMING TO THE SENATE FLOOR FOR A VOTE! YOUR PHONE CALLS MADE THE DIFFERENCE! THREE THINGS HAPPENED THAT KEPT SENATE MAJORITY LEADER MITCHELL FROM BRINGING THE TREATY TO THE FLOOR FOR VOTING:

- 1. THE FAX ALERT THAT WAS SENT OUT ON WEDNESDAY NIGHT, SEPTEMBER 28, AND YOUR SUBSEQUENT PHONE-IN EFFORTS LITERALLY TIED UP MOST SENATORS PHONES THROUGH MONDAY, OCTOBER 3RD.
- 2. THE AMERICAN SHEEP INDUSTRY COVERTLY GOT A COPY OF SECTION 10 OF THE UNITED NATIONS GLOBAL BIODIVERSITY ASSESSMENT (GBA) ON THURSDAY, SEPTEMBER 29. THE GBA IS TO BE USED AS THE BASIS TO WRITE THE TREATY PROTOCOL THIS NOVEMBER. THE PROTOCOL WILL PROVIDE THE REGULATORY AND ENFORCEMENT PROVISIONS FOR THE VAGUELY WRITTEN TWENTY PAGE TREATY.

THE GBA HAS TWELVE SECTIONS. SECTION 10 ALONE IS NEARLY 300 PAGES OF TEXT OUTLINING A TOTAL REORGANIZATION OF WESTERN CIVILIZATION AROUND NATURE WITHIN BIOREGIONS. PROPERTY RIGHTS AND OTHER CIVIL RIGHTS WOULD BE LIMITED TO ONLY THOSE ACTIVITIES THAT DO NO HARM TO BIODIVERSITY AS DETERMINED BY BIOREGIONAL COUNCILS DIRECTED BY NGOS (Non-GOVERNMENTAL ORGANIZATIONS, I.E. ENVIRONMENTAL GROUPS)

THE BASIS FOR PROTECTING BIODIVERSITY WAS TO BE CENTERED ON WHAT IS KNOWN AS THE WILDLANDS PROJECT WHICH CALLS FOR SETTING ASIDE VAST AREAS (ABOUT 50%) OF AMERICA INTO RESERVE WILDERNESS AREAS, INTERCONNECTING CORRIDORS, AND HUMAN BUFFER ZONES WHERE HUMAN USE WOULD BE ELIMINATED OR SEVERELY RESTRICTED. (Details in the Sept. 25, 1993 edition of Science Magazine)

UNTIL FRIDAY, SEPTEMBER 30 THE UNITED NATIONS CONTINUED TO DENY THE GLOBAL BIODIVERSITY ASSESSMENT DOCUMENT EVEN EXISTED!

3. THE MAINE CONSERVATION RIGHTS INSTITUTE HAD ALREADY MADE HIGH QUALITY COLORED MAPS OF WHAT THESE RESERVES AND CORRIDORS WOULD LOOK LIKE IN DIFFERENT PARTS OF AMERICA AND, ALONG WITH SECTION 10 OF THE GBA, FEDEXED THEM TO THE SENATE. FOUR BY SIX FOOT POSTERS OF THE MAPS AND KEY TEXT FROM GBA SECTION 10 WERE TAKEN TO THE SENATE FLOOR FRIDAY AFTERNOON OF SEPTEMBER 30. THEY HAD A DEVASTATING EFFECT. SENATOR MITCHELL WITHDREW HIS INTENT TO PETITION TO CLOTURE THE TREATY, AND NEVER AGAIN BROUGHT IT UP THROUGH THE TIME THE SENATE ADJOURNED ON OCTOBER 8.

SECTION 10 OF THE GBA AND THE MAPS PROVED THAT WE WERE RIGHT IN OUR CLAIMS THAT THE TREATY WOULD HAVE A DEVASTATING EFFECT ON AMERICA, AND THE SENATE WOULD HAVE BEEN RATIFYING A BLANK CHECK FOR RADICAL CHANGES.

THANKS AGAIN! WE COULDN'T HAVE DONE IT WITHOUT YOU!

BUT LET'S STAY ON OUR TOES. THIS WILL BE INTRODUCED NEXT YEAR WITH THE SAME GOAL, BUT WITH WATERED DOWN LANGUAGE TO APPEAL TO AN UNINFORMED SENATE.

For Further information Call Mike Collinan (207) 945-9878