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I. Atmosphere and Climate

A. CLIMATE

Heads of state gathered at the United Nations in New York in September for a global summit to address climate change.¹ While the meeting did not lead to legally-binding commitments, numerous countries' pledges helped shift the momentum towards multilateral collaboration at the Twentieth Session of the Conference of the Parties to the U.N. Framework Convention on Climate Change (UNFCCC) (COP-20) and its associated bodies, which met in December.² COP-20 advanced efforts to secure a new climate agreement in 2015, principally by garnering agreements to work from a draft text as the basis of

* Any views or opinions expressed in this report are those of the authors in their personal capacities and do not represent the views of their organizations, including the Department of State or the U.S. Government. This report is jointly submitted on behalf of the International Environmental Law Committee of the ABA Section on International Law (SIL) and the International Environmental and Resources Law Committee of the Section on Environment, Energy, and Resources Law (SEER) by Vice-Chairs and Co-Editors Kristen Hite, who also contributed to the climate change section and Joseph W. Dellapenna, Professor of Law, Villanova University, who also contributed the section on water resources. Stephanie Altman, Attorney Advisor in the Office of General Counsel, International Law Section, National Oceanic and Atmospheric Administration (NOAA), contributed on marine environmental protection. Derek Campbell, Attorney-Advisor, Office of General Counsel, International Law Section, NOAA, contributed on marine conservation and trade and the environment. David N. Cassuto, Professor of Law, Pace University, contributed on biodiversity and wildlife. Royal Gardner, Professor of Law and Director, Institute for Biodiversity Law and Policy, Stetson University College of Law, contributed on the Ramsar Convention. David Gravallese, Attorney-Advisor in the Office of the Legal Adviser, U.S. Department of State, contributed on ozone. Richard A. Horsch, a Partner with White & Case LLP, contributed on hazardous waste. Thomas Parker Redick, with Global Environmental Ethics Counsel, contributed on international regulation of biotechnology. R. Justin Smith, Assistant Chief, Law and Policy Section, Environment and Natural Resources Division, U.S. Department of Justice, contributed on international environmental litigation.

1. *UN Climate Summit 2014*, UNITED NATIONS (Sept. 23, 2014), <http://www.un.org/climatechange/summit/>.

2. *Lima Climate Change Conference – December 2014*, UNITED NATIONS (Dec. 2014), http://unfccc.int/meetings/lima_dec_2014/meeting/8141.php.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

340 THE YEAR IN REVIEW

negotiations. Countries made additional agreements regarding the scope of “intended nationally determined contributions” on adaptation and mitigation efforts for the years following 2020.³ Discussions on loss and damage are also advancing, and countries are now in the process of identifying activities, needs, best practices, and analytical tools to address those climate impacts for which adaptation measures are insufficient. In terms of climate finance, a total of \$10 billion has now been pledged to the Green Climate Fund,⁴ which is formally constituted with a secretariat based in South Korea and whose governing policies are becoming operational.

B. OZONE

At the Twenty-sixth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (MOP-26)⁵ in Paris, the Parties again considered a proposal by the United States, Canada, and Mexico to amend the Protocol to phase down the production and consumption of hydrofluorocarbons (HFCs). HFCs are potent greenhouse gases used as alternatives to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), which are being phased out under the Montreal Protocol. The proposed HFC phase-down would take place in gradual steps between 2018 and 2035 for developed countries, and between 2020 and 2045 for developing countries.⁶ The phase-down would have large climate mitigation potential—more than ninety billion metric tons of CO₂-equivalent through 2050, or roughly two years of current anthropogenic emissions of all greenhouse gases.⁷

At MOP-26, proponents of the phase-down amendment sought establishment of a contact group, the mechanism typically used by Parties to negotiate significant issues. Despite high-level diplomatic efforts by the United States and its partners, strong opposition by Pakistan, Iran, and India prevented the Parties from reaching consensus on the formation of a contact group. During the debate, opponents expressed a range of concerns, including the availability of alternatives to HFCs in high ambient temperature conditions, the difficulty of taking on a phase-down of HFCs while simultaneously phasing out HCFCs, and the availability of financial assistance. Some also argued that HFCs must be addressed only under the UNFCCC and its Kyoto Protocol, and not under the Montreal Protocol, because HFCs are not ozone-depleting substances.⁸ Proponents countered that Article 2(b)(2) of the Vienna Convention for the Protection of the Ozone Layer, to which the Montreal Protocol is attached, states that “Parties shall . . . co-operate in harmonizing

3. *What Is An INDC?*, World Resources Institute, <http://www.wri.org/indc-definition>.

4. Mat Hope, *Briefing: Country Pledges to the UN's Green Climate Fund*, THE CARBON BRIEF (Dec. 10, 2014), <http://www.carbonbrief.org/blog/2014/11/briefing-country-pledges-to-the-green-climate-fund/>.

5. U.N. Environment Programme, *Report of the Tenth Meeting of the Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer and the Twenty-Sixth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer*, ¶ 113, U.N. Doc. UNEP/OzL.Conv.10/7 (Dec. 10, 2014) [hereinafter *Joint Meeting Report*].

6. *Id.* at 3.

7. . *Id.*

8. See Joint Tenth Meeting of the Conference of the Parties to the Vienna Convention and Twenty-Sixth Meeting of the Parties to the Montreal Protocol, Paris, France, Nov. 17-21, 2014, Report for the Protection of the Ozone and on Substances that Deplete the Ozone Layer, ¶¶ 124-26, 131-32, U.N. Doc. UNEP/OzL.Conv.10/7-UNEP/OzL.Pro.26/10 [hereinafter *Joint Meeting Report*].

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 341

appropriate policies” associated with controlling ozone depleting substances.⁹ They argued that such harmonization can include managing substitutes for CFCs and HCFCs, such as HFCs. Proponents also pointed to Article III of the proposed amendment, which explicitly states that the amendment would not exempt HFCs from the coverage of the UNFCCC or the Kyoto Protocol.¹⁰

In the end, the Parties agreed to hold a special Open-Ended Working Group meeting on all issues related to HFC management and a two-day technical workshop focused on HFC alternatives in high ambient temperature conditions in April 2015 in Bangkok, Thailand. The Parties also approved the full critical use exemption requested by the United States for methyl bromide, an ozone-depleting substance that is used as an agricultural fumigant.¹¹

II. Marine Environment and Conservation

A. MARINE ENVIRONMENTAL PROTECTION

In 2014, efforts to improve the conservation of sharks continued in international fisheries fora, with mixed results. At the global level, the U.N. General Assembly, through its 2014 Sustainable Fisheries Resolution, renewed calls for action to conserve sharks.¹² Accordingly, a number of regional fisheries management organizations (RFMOs) considered requiring such actions. In November, the Northeast Atlantic Fisheries Commission (NEAFC) became the first RFMO to adopt a measure to prohibit the removal of shark fins at sea.¹³ Other RFMOs (the Commission for the Conservation of Arctic Marine Living Resources, Indian Ocean Tuna Commission, International Commission for the Conservation of Atlantic Tunas, Inter-American Tropical Tuna Commission, and Northwest Atlantic Fisheries Organization), however, could not reach agreement on the adoption of similar proposed requirements.

On April 3, the U.S. Senate agreed to resolutions of advice and consent to ratification of four international fisheries agreements: (1) the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing,¹⁴ the first binding global instrument specifically designed to combat such fishing; (2) the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries,¹⁵ which will bring the Convention in line with modern international fisheries governance approaches through provisions for the application of the precautionary ap-

9. Vienna Convention for the Protection of the Ozone Layer art. 2 (2)(b), Sept. 22, 1988, 1513 U.N.T.S. 293.

10. U.N. Environment Programme, *Proposed Amendment to the Montreal Protocol Submitted by Canada, Mexico, and the United States of America: Frequently Asked Questions*, ¶ 2-3, U.N. Doc. UNEP/OzL.Pro/26/INF/6 (Nov. 4, 2014) [hereinafter *Amendments*].

11. *Joint Meeting Report*, *supra* note 9, at Dec. XXVI/6.

12. G.A. Res. 68/71, ¶ 15, U.N. Doc. A/RES/68/71 (Feb. 25, 2014).

13. . See Report of the 33rd Annual Meeting of the NEAFC: Annexes, Recommendation 10:2015: Recommendation on Conservation of Sharks Caught in Association with Fisheries Managed by the North-East Atlantic Fisheries Commission (Nov. 10-14, 2014).

14. S. Treaty Doc. No. 112-4 (2011). Agreement on Port State Measures to Prevent, Deter, & Eliminate Illegal, Unreported, & Unregulated Fishing, Nov. 22, 2009, S. TREATY DOC. NO. 112-4 (2011).

15. S. Treaty Doc. No. 113-3 (2013). Amendment to the Convention on Future Multilateral Cooperation in the Nw. Atl. Fisheries, Sept. 28, 2007, S. TREATY DOC. NO. 113-3 (2013); *see also* Convention on Future

SPRING 2015

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

342 THE YEAR IN REVIEW

proach and ecosystem approaches; (3) agreements establishing the North Pacific Fisheries Commission;¹⁶ and (4) the South Pacific Regional Fisheries Management Organisation,¹⁷ which fill gaps in international management over a broad range of species on the high seas in the Pacific and which provide a framework to protect vulnerable marine ecosystems on biodiverse seamounts.

On June 17, U.S. President Barack Obama issued a Presidential Memorandum on *Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud*.¹⁸ The Memorandum states that it is U.S. policy to combat such activities by improving the transparency and traceability of the seafood supply chain. Through the memorandum, President Obama established a Presidential Task Force of interested federal agencies that shall report to the President “with recommendations for the implementation of a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud,” by identifying opportunities to address these issues at the international level through the RFMOs, as well as bilateral efforts, such as technical assistance and capacity building for foreign countries.¹⁹

In June, the U.S. State Department hosted the “Our Ocean” Conference,²⁰ an international two-day conference that brought together heads of state, scientists, policy makers, and entrepreneurs from almost ninety countries. Led by Secretary of State John Kerry, the conference focused on three principal threats to the ocean—marine pollution, acidification, and overfishing—and resulted in an array of outcomes valued at over \$3.8 billion as well as new commitments to protect more than three million square miles of the ocean.²¹

In response to the changing environment and increase of shipping in the Arctic and Antarctic, in November, the International Maritime Organization (IMO) adopted Part I (safety measures) of the International Code for Ships Operating in Polar Waters (Polar Code), an agreement intended to govern all aspects of polar shipping, including safety, crewing, navigation, voyage planning, and environmental protection.²² Part II of the Polar Code, which focuses on pollution prevention from ships, is scheduled to be adopted by the IMO’s Marine Environmental Protection Committee in May 2015. Under the IMO’s tacit amendment process, the Polar Code is scheduled to enter into effect on January 1, 2017, through amendments to existing IMO Conventions, namely the Safety of Life at

Multilevel Cooperation in Northwest Atlantic Fisheries, NAFO, *available at* <http://www.nafo.int/about/overview/governance/convention.pdf>.

16. S. Treaty Doc. No. 113-2 (2013). Convention on the Conservation & Mgmt. of High Seas Fisheries Res. in the N. Pac. Ocean, May 2, 2012, S. TREATY DOC. NO. 113-2 (2013); *Background*, N. Am. Fisheries Comm’n, <http://nwpbfo.nomaki.jp/> (last visited Feb. 13, 2015).

17. S. Treaty Doc. No. 113-1 (2013). Convention on the Conservation & Mgmt. of High Seas Fishery Res. in the S. Pac. Ocean, Nov. 14, 2009, S. TREATY DOC. NO. 113-1 (2013); S. PAC. REG’L FISHERIES MGMT. ORG., <http://www.southpacificrfmo.org/> (last visited Feb. 15, 2015).

18. . Press Release, Office of the Press Secretary, The White House, Presidential Memorandum—Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud (June 17, 2014).

19. *Id.*

20. Press release, Office of the Spokesperson, U.S. State Dep’t, Secretary Kerry’s State Department Ocean Conference Results in \$1.8 Billion in Pledges (June 17, 2014).

21. *Id.*

22. Press Release, IMO, IMO Adopts Mandatory Code for Ships Operating in Polar Waters (Nov. 21, 2014).

VOL. 49

**PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 343

Sea Convention and the International Convention for the Prevention of Pollution from Ships. Notably, both the environment and safety chapters of the Polar Code include a number of regulations intended to protect and preserve polar marine ecosystems from the impacts of international shipping activities. Chief among these include: (1) a ban on the discharge of oil and oily mixtures and noxious liquid substances into the sea from ships—with some exceptions; (2) heightened regulations for the discharge of garbage and sewage; and (3) enhanced voyage planning criteria that consider local ecology and wildlife.²³

B. MARINE CONSERVATION

1. *Antarctic Marine Protected Areas*

The Commission for the Conservation of Antarctic Marine Living Resources, at its October annual meeting in Australia, once again rejected two proposals to establish marine protected areas (MPAs) in waters around Antarctica, namely the Ross Sea Region MPA and the East Antarctic Representative System of MPAs. The first was for the Ross Sea Region MPA, intended to establish 1.34 million square kilometers “to conserve living marine resources; maintain ecosystem structure and function; protect vital ecosystem processes and areas of ecological significance; and establish reference areas that will promote scientific research.”²⁴ The second was a proposal to establish the East Antarctic Representative System of MPAs.²⁵ Although both proposals were widely supported, several members requested additional time to consider issues associated with the sizes of the proposed areas and the proposed duration of the MPAs.

2. *Caspian Sea*

The Protocol for the Conservation of Biological Diversity to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Ashgabat Protocol) was adopted and signed at the Fifth Meeting of the Conference of the Parties in Ashgabat, Turkmenistan, on May 30.²⁶ As the first regional legally-binding instrument

23. Press Release, IMO, Draft Polar Code Approved by IMO's Marine Environment Protection Committee (Oct. 20, 2014).

24. A Proposal for the Establishment of a Ross Sea Region Marine Protected Area, from the Delegations of New Zealand and the United States to the Commission for the Conservation of Antarctic Marine Living Resources, CCAMLR Doc. No. CCAMLR-XXXIII/21 (2014). *See also* A Proposal for the Establishment of a Ross Sea Region Marine Protected Area, from the Delegations of New Zealand and the United States to the Commission for the Conservation of Antarctic Marine Living Resources, CCAMLR Doc. No. CCAMLR-SM-II/04 (2013).

25. Proposal for a Conservation Measure Establishing an East Antarctic Representative System of Marine Protected Areas, from the Delegations of Australia, France, and European Union to the Commission for the Conservation of Antarctic Marine Living Resources, at 1, CCAMLR Doc. CCAMLR-XXXIII/23 (2014); *see also* Proposal for a Conservation Measure Establishing an East Antarctic Representative System of Marine Protected Areas, from the Delegations of Australia, France, and European Union to the CCAMLR, at 1, CCAMLR Doc. No. CCAMLR-XXXII/34 Rev. 1 (2013) (a system of seven marine protected areas to, among other things, “(i) conserv[e] areas of biodiversity that help meet objectives for comprehensiveness, adequacy and representativeness, (ii) provid[e] reference areas for determining the effects of fishing and for estimating change[s] in productivity and dynamics of Southern Ocean ecosystems, and (iii) provid[e] refuge for larval krill and juvenile toothfish”).

26. . The Protocol for the Conservation of Biological Diversity (“Ashgabat Protocol”), May 30, 2014, [hereinafter *Ashgabat Protocol*].

SPRING 2015

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

344 THE YEAR IN REVIEW

signed by all five Caspian littoral states, the Framework Convention for the Protection of the Marine Environment of the Caspian Sea serves as an overarching framework setting forth the general requirements and the institutional mechanism for environmental protection in the Caspian region. The objective of the Ashgabat Protocol is to protect, preserve, and restore the health and integrity of the biological diversity of the Caspian Sea by (1) safeguarding “threatened species, and vulnerable ecosystems, to ensure their long-term viability and diversity;” (2) preventing the “decline, degradation, and damage to species, habitats and ecological systems, directed by the precautionary principle;” and (3) protecting and conserving “those areas that best represent the high range of species, special habitats [and] ecological systems.”²⁷ Contracting Parties are required to designate protected areas in the marine environment that are critical to the survival, reproduction, and recovery of biological diversity in the Caspian Sea.²⁸

3. *Sargasso Sea*

In March 2014, the governments of the United States, United Kingdom, Monaco, and Azores and Bermuda gathered in Bermuda to sign the Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea,²⁹ a non-binding political statement aimed at conserving the Sargasso Sea ecosystem—a vast patch of mid-Atlantic Ocean known for its unique floating seaweeds that harbor rich biodiversity. The first of its kind, the declaration establishes the Sargasso Sea Commission, a stewardship body intended to encourage and facilitate future efforts to protect the Sargasso Sea ecosystem from human impacts such as shipping, overfishing, and marine pollution. The agreement seeks protection for the Sargasso Sea—a large patch of the mid-Atlantic Ocean known for its floating Sargassum seaweed—using existing international bodies that regulate areas beyond national jurisdiction, such as regional fisheries management organizations, the International Maritime Organization, and the Convention on Migratory Species.³⁰ The parties agreed to hold a regular Meeting of Signatories and to endorse the establishment of a Sargasso Sea Commission to encourage and facilitate voluntary collaboration toward the conservation of the Sargasso Sea.³¹ The Sargasso Sea Commission has no management authority but will exercise a stewardship role and will keep the region’s health, productivity, and resilience under continual review.

III. International Hazard Management

A. TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE

Building on the “Geneva Statement,” which articulated an approach to implementing the Basel Convention in conjunction with the Rotterdam³² and Stockholm Conventions,³³

27. *Id.* at art. 2.

28. *Id.* at art. 9 (1).

29.

30. *Id.*

31. *Id.* at ¶ 5.

32. U.N. Environment Programme, *Conference on the Plenipotentiaries on the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, U.N. Doc. UNEP/FAO/PIC/CONF/5 (Sept. 17, 1988)

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 345

the bureaus for the three conventions met to prepare for the meetings of all three conventions, which will take place in Geneva, Switzerland in May 2015.³⁴

The intercessional work of the Basel Convention also saw developments on environmentally sound management (ESM), progress on the development of guidelines for the management of wastes containing or contaminated with persistent organic pollutants (POPs), and the issuance for comment of revised draft technical guidelines on e-waste.

At its second meeting in Jakarta, Indonesia from May 29 to 31, the Basel Convention's Expert Working Group on ESM³⁵ approved three pilot projects in Egypt, Madagascar, and Tanzania; made progress on the development of waste stream fact sheets; and advanced the compilation of training material and information on ESM as well as the compilation of information on private sector incentives.³⁶ The Parties continued to express differing views as to the best approach for ESM; some Parties favored the establishment of some level of minimum criteria to assist developing countries in building capacity, while others expressed concern that the establishment of minimum criteria will remove incentives for the Parties to exceed the minimum.³⁷

Work continued on the development of new technical ESM guidelines for wastes containing or contaminated with POPs.³⁸ On February 28, the Small Intercessional Working Group on POP Wastes promulgated draft technical guidelines that are intended to supersede existing technical guidelines.³⁹ On November 20, revised draft technical guidelines on e-waste, focusing especially on the distinction of between waste and non-waste—with used equipment being a particularly challenging matter—were issued for comment, with adoption of the final proposed guidelines to be considered during COP-12.⁴⁰

B. INTERNATIONAL REGULATION OF AGRICULTURAL BIOTECHNOLOGY

As the rise of biotech crops continued,⁴¹ Member Parties to the 2003 Cartagena Protocol on Biosafety (CPB) to the Convention on Biological Diversity (CBD) adopted regula-

33. U.N. Environment Programme, *Conference of Plenipotentiaries on the Stockholm Convention on Persistent Organic Pollutants*, UNEP/POPS/CONF/4 (June 4, 2001).

34. Basel Convention, *Preparation of the Reports on Credentials for the Ordinary Meetings of the Conferences of the Parties to the Basel, Rotterdam and Stockholm Conventions* in 2015, U.N. Doc. UNEP/FAO/CHW/RC/POPS/JCOPBUR.4-4 (Nov. 11-12, 2014), available at <http://synergies.pops.int/Decisionmaking/JointBureaux/JointBureauxMeetings/JointBureauxMeeting2014/Overview/tabid/4134/mct/ViewDetails/EventModID/8751/EventID/527/xmid/12634/language/en-US/Default.aspx>.

35. Basel Convention, *Report of the Expert Working Group on Environmentally Sound Management on the Work of its Second Meeting*, U.N. Doc. UNEP/CHW/CLI-EWG.2/2 (June 5, 2014).

36. *Id.*

37. *Id.*

38. Basel Convention, *General Technical Guidelines for the Environmentally Sound Management of Wastes Consisting of, Containing or Contaminated with Persistent Organic Pollutants (POPs)*, Draft U.N. Doc. UNEP/CHW/POPS/SUBM/Canada, (Feb. 28, 2014) [hereinafter *POP Guidelines*].

39. *Id.*

40. Basel Convention, *Draft Technical Guidelines on Transboundary Movements of Electronic and Electrical Waste and Used Electrical and Electronic Equipment, in Particular Regarding the Distinction Between Waste and Non-waste Under the Basel Convention*, U.N. Doc. UNEP/CHW/EWASTE/TGs/Draft (Nov. 20, 2014) (For options on used equipment, see ¶ 26).

41. *ISAAA Brief 44-2012: Executive Summary - Global Status of Commercialized Biotech/GM Crops: 2013*, INT'L SVC. FOR THE ACQUISITION OF AGRI-BIOTECH APPLICATIONS (2014), <http://www.isaaa.org/resources/publications/briefs/46/executivesummary/default.asp>.

SPRING 2015

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

346 THE YEAR IN REVIEW

tory approval requirements (both for planting and food-feed-processing import approvals). The CPB now has 169 parties, while the 2010 Nagoya-Kuala Lumpur Supplemental Protocol (NKLS Protocol), with twenty-seven parties on liability, remains short of the ratifications needed to enter into force.⁴²

Since November 2013, trade in corn from the United States to China has been disrupted, costing several billion dollars. China's decision to stop U.S. corn shipments due to an unapproved genetic event produced by Syngenta has led to filing of litigation in the United States by grain traders and growers (the latter in class actions).⁴³

IV. Chemicals

As of November, the Minamata Convention on Mercury⁴⁴ has ten parties and 128 signatures.⁴⁵ The treaty's purpose is to control products, processes, and industries using mercury, as well as mercury mining, international trade, and safe storage and disposal of mercury waste. Minamata Convention Article 13 addresses financial resources and includes a mechanism that the parties established to provide "adequate, predictable, and timely financial resources" to developing country parties and country parties with economies in transition.⁴⁶ In addition, each party agreed, within its capabilities, to provide resources for national activities.⁴⁷ The new U.N. Special Rapporteur on Human Rights and Toxics, Baskut Tuncak, pressed nations to ratify the Minamata Convention without delay.⁴⁸

Europe's regulation of chemicals under its Registration, Evaluation, Authorization, and Restriction of Chemicals law added nine new substances. The European Union (EU) updated directives on waste electrical and electronic equipment, with an expected five-fold increase in e-waste collections. Depending on which goal member states choose to adopt, they must collect forty-five percent in 2016, sixty-five percent of equipment sold or eighty-five percent of electronic waste generated by 2019.⁴⁹

The EU is also adding more types of equipment covered under the disclosure-reduction mandate under its Reduction of Hazardous Substance 2 (RoHS 2). Additional categories

42. *Parties to the Protocol and Signature and Ratification of the Supplementary Protocol*, CONVENTION ON BIOLOGICAL DIVERSITY, <http://bch.cbd.int/protocol/parties/#tab=1> (last visited Feb. 13, 2015).

43. . Mae-Wan Ho, *Syngenta Sued for \$1 Billion Damages over China's Rejection of GM Corn as China Halts Its GM Rice and Corn Programmes*, THE PERMACULTURE RESEARCH INSTITUTE (Oct. 14, 2014) <http://permaculturenews.org/2014/10/14/syngenta-sued-1-billion-damages-chinas-rejection-gm-corn-china-halts-gm-rice-corn-programmes/>.

44. *Minamata Convention on Mercury, Texts and Annexes*, UNITED NATIONS ENVIRONMENT PROGRAMME, Oct. 2013 [hereinafter *Minimata Convention*].

45. *Minamata Convention on Mercury*, UNITED NATIONS ENVIRONMENT PROGRAMME, <http://www.mercuryconvention.org/Countries/tabid/3428/Default.aspx> (last visited Nov. 25, 2014).

46. 46. *Id.*

47. *Id.*

48. John Knox, *Special Rapporteur on Toxics Urges Governments to Ratify Minamata Convention*, UNITED NATIONS MANDATE ON HUMAN RIGHTS AND THE ENVIRONMENT (Oct. 31, 2014), <http://ieenvironment.org/2014/10/31/1967/> (Mr. Tuncak stated, "A delay in ratifying the Convention means that people and the environment will continue to suffer the human rights impacts of mercury pollution." *Id.*

49. James Murray, *EU Revamps E-waste Rules with Demanding New Recovery Targets*, THE GUARDIAN (Oct. 14, 2012), <http://www.theguardian.com/environment/2012/aug/14/eu-waste>.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 347

(such as medical devices and control equipment) took effect in July of 2014.⁵⁰ The implementation of these laws by member states may result in stricter RoHS laws, complicating compliance and impacting trade.

V. Natural Resources

A. WATER

Global water problems have been brewing for several years and a full-blown global water crisis emerged in 2014, with at least one-third of the planet suffering severe water shortages.⁵¹ The crisis is driven, to some extent, by increasing climate disruption.⁵² More frequent international disputes and talk of water “conflicts”—ranging from minor criticisms to the possibility of all-out war—abound.⁵³ International law provides an essential, but insufficient and only partial response; whether international law is up to the challenge is an open question.⁵⁴

Potentially the most important development in international water law occurred on May 19, when Vietnam deposited its ratification of the UN Convention on the Law of Non-Navigational Uses of International Watercourses⁵⁵ with the Secretary-General of the United Nations,⁵⁶ enabling the Convention to enter into force some seventeen years after its approval by the U.N. General Assembly. Many view this convention as a reflection of customary international water law.

50. Victoria Fraza Kickham, *RoHS 2 Creeps Up on the Industry*, GLOBAL PURCHASING (Feb. 8, 2013), <http://globalpurchasing.com/features/rohs-2-creeps-industry>.

51. See, e.g., *Central America Hit by Severe Drought*, N.Y. TIMES, Aug. 30, 2014, at A9; J.S. Famiglietti, *The Global Groundwater Crisis*, 4 NATURE CLIMATE CHANGE 945 (2014); Michael Field, *Pacific Nations Facing Drought*, PRESS (N.Z.), Sept. 25, 2014, at 6; Ian Lovett, *Forceful Steps Amid a Severe Drought*, N.Y. TIMES, July 16, 2014, at A16; Jim Malewitz, *Drought Hastens End of a Region's Hydropower Era*, N.Y. TIMES, Mar. 8, 2014, at A29A; Caroline Stauffer, *Water Shortage Takes Toll on Brazil*, CHI. TRIB., Nov. 2, 2014, at 22; Michael Wines, *West's Drought and Growth Intensify Conflict over Water Rights*, N.Y. TIMES, Mar. 17, 2014, at A1.

52. See, e.g., Arun Rana et al., *Impact of Climate Change on Rainfall over Mumbai Using Distribution -Based Scaling of Global Climate Model Projections*, 1 J. HYDROLOGY: REGIONAL STUD. 107 (2014); Furat A.M. Al-Faraj et al., *Sensitivity of Surface Runoff to Drought and Climate Change: Application for Shared River Basins*, 6 WATER 3033 (2014); Tribeni C. Sharma & Umed S. Panu, *Modeling of Hydrological Drought Durations and Magnitudes: Experiences on Canadian Streamflows*, 1 J. HYDROLOGY: REGIONAL STUD. 92 (2014).

53. See, e.g., BENJAMIN POHL ET AL., *THE RISE OF HYDRO-DIPLOMACY: STRENGTHENING FOREIGN POLICY FOR TRANSBOUNDARY WATERS* (2014); WATER AND POST-CONFLICT PEACEBUILDING (Erika Weinthal, Jessica Troell, & Mikiyasu Nakayama eds. 2014); Jason Bart, *Weaponizing Water: Water and Energy as Sources of Conflict among the Central Asian Soviet Successor States*, 22 MICH. ST. INT'L L. REV. 409 (2013); Bellie Sivakumar, *Water Crisis: From Conflict to Cooperation—An Overview*, 56 HYDROLOGICAL SCI. J. 531 (2011); John Vidal, *Water Supply Key to Outcome of Conflicts in Iraq and Syria, Experts Warn*, THE GUARDIAN, (July 2, 2014), <http://www.theguardian.com/environment/2014/jul/02/water-key-conflict-iraq-syria-isis>; Thomas Bernauer & Tobias Böhmelt, *Can We Forecast Where Water Conflicts Are Likely to Occur?*, NEW SECURITY BEAT (Oct. 27, 2014), <http://www.newsecuritybeat.org/2014/10/forecast-water-conflicts-occur/>.

54. Joseph W. Dellapenna et al., *Thinking about the Future of Global Water Governance*, 18 ECOLOGY & SOC'Y 28 (2013).

55. *UN Convention on the Law of Non-Navigational Uses of International Watercourses*, G.A. Res. 51/229/Report of the Sixth Committee Convening as the Working Group of the Whole, approved by the General Assembly, May 21, 1997, U.N. Doc. No. A/51/869, reprinted in 36 INT'L LEGAL MAT'LS 700 (1997).

56. *UN Convention on the Law of Non-Navigational Uses of International Watercourses: Viet Nam Accession*, G.A. Res. 51/229, U.N. Doc. A/51/49, Ref. C.N.270.2014.TREATIES-XXVII-21 (May 19, 2014).

SPRING 2015

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

348 THE YEAR IN REVIEW

Regarding international litigation, Costa Rica and Nicaragua have continued their ongoing disputes before the International Court of Justice (ICJ) over riparian rights and activities centering on the San Juan River. In 2014, the ICJ declined to issue provisional measures to preserve the status quo based on the absence of proof of threat of irreparable harm to Nicaragua from Costa Rica's activities.⁵⁷

Waters along the U.S.-Canada border were the focus of considerable legal attention in 2014. Negotiations resulting from the reopening of the Columbia River Treaty continued.⁵⁸ The International Joint Commission grappled with issues on the quantity and quality of the Great Lakes. Algae blooms poisoning the water supply for Toledo, Ohio⁵⁹ received considerable attention.⁶⁰ Litigation failed to protect the lakes from the impending arrival of Asian carp and has left local officials with few options.⁶¹ Meanwhile, the alarming decline in the water levels seems to have reversed, in part because of prolonged freezing that lasted until June in some areas.⁶²

On the other U.S. border, drought is emptying Lake Mead and challenging existing arrangements within the United States and Mexico.⁶³ Despite tensions associated with a partially successful suit by the Navajo Nation over the tribe's water rights in the Colorado basin,⁶⁴ California and Mexico signed a memorandum of understanding to cooperate on energy and climate disruptions.⁶⁵

In the Nile basin, Egypt, Ethiopia, and Sudan turned towards negotiations,⁶⁶ although the ultimate outcome still remains uncertain.⁶⁷ Egypt was pressured toward negotiations not only by its internal problems, but also by the slow but steady consolidation of mutual support in the upper basin states through the Cooperative Framework Agreement on the

57. Construction of a Road in Costa Rica along the San Juan River (Nicar. v. Costa Rica), 2013 I.C.J. 39 (Dec. 13).

58. See, e.g., Sonya Baskerville et al., *The Columbia River Treaty at 50: Looking Back, Looking Ahead*, 45 Trends 13 (July/Aug. 2014), available at http://www.americanbar.org/publications/trends/2013-14/july-august-2014/the_columbia_river_treaty_50_looking_back_looking_ahead.html; *The Columbia River Treaty: Salmon en Route*, THE ECONOMIST (June 7, 2014).

59. See Emma G. Fitzsimmons, *Tap Water Ban Continues for Toledo Residents*, N.Y. TIMES, Aug. 4, 2014, at A12.

60. See Int'l Joint Comm'n, A Balanced Diet for Lake Erie (: REDUCING PHOSPHORUS LOADINGS AND HARMFUL ALGAL BLOOMS, A REPORT OF THE Lake Erie Ecosystem Priority (2014), available at <http://www.ijc.org/files/publications/2014%20IJC%20LEEP%20REPORT.pdf>; Josh Knights, *Solving Phosphorous Woes in Lake Erie Is Within Reach*, CLEVE. PLAIN DEALER, Aug. 17, 2014, at E8; Michael Wines, *EPA Unveils Second Phase of Plan to Reverse Great Lakes Drainage*, N.Y. TIMES, Sept. 25, 2014, at A27.

61. See Jim Lynch, *State Debates Next Steps against Asian Carp after Law Suit to Raise Barrier Is Dismissed*, DET. NEWS, July 16, 2014, at A6.

62. See, e.g., Leslie Armstrong, *Bitter Winter a Boon for the Lakes*, TOR. STAR, Aug. 15, 2014, at A6; Julie Bosman, *Creeping up on Unsuspecting Shores: The Great Lakes in a Welcome Turnaround*, N.Y. TIMES, June 29, 2014, at A16.

63. See, e.g., Michael Wines, *Colorado River Drought Forces a Painful Reckoning for States*, N.Y. TIMES, Jan. 6, 2014, at A1.

64. Julie Turkewitz, *Navajos to Get \$554 Million to Settle Suit against U.S.*, N.Y. TIMES, Sept. 25, 2014, at A16.

65. Chris Megerian, *Brown Signs Climate Pact with Mexico*, L.A. TIMES, July 29, 2014, at 1.

66. *Egyptian-Ethiopian Cooperation Continues*, AL-AHRAM WEEKLY (EGYPT) (Nov. 7, 2014) *Where Did Egypt's "We Are Happy" Stance Come from All of a Sudden?*, available at <http://www.thereporterethiopia.com/index.php/opinion/viewpoint/item/2548-where-did-egypts-%E2%80%9Cwe-are-happy%E2%80%9D-stance-come-from-all-of-a-sudden>.

67. Jacey Fortin, *Dam Rising in Ethiopia Stirs Hope and Tensions*, N.Y. TIMES, Oct. 12, 2014, at A14.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 349

Nile⁶⁸ as well as the splitting of Sudan. The new nation of South Sudan is not committed to the Egyptian-Sudanese partnership on the Nile.⁶⁹ Egypt completed a newly negotiated agreement with Chad, Libya, and Sudan on the waters of their shared Nubian Sandstone Aquifer.⁷⁰ Jordan, facing increasing demand and limited water supplies,⁷¹ joined Israel and Palestine to obtain funding from the World Bank for Phase 1 of the Red Sea-Dead Sea Water Conveyance.⁷² Phase 1 is to provide desalinated water for Jordan; it is unclear if Phases 2 and 3 will ever be authorized.

In the absence of effective international cooperation among the central Asian states, the Aral Sea is now virtually gone.⁷³ Meanwhile, the Mekong Commission continues to be ineffectual, with potentially disastrous results.⁷⁴

B. BIOLOGICAL RESOURCES AND WILDLIFE

1. Invasive and Alien Species

On October 22, the EU Parliament enacted legislation aiming to prevent and manage the introduction and spread of invasive alien species.⁷⁵ The new law prohibits the possession, breeding, transportation, and release of invasive alien species.⁷⁶ The act also directs member states to take all necessary steps to prevent the unintentional introduction or spread of invasive alien species.⁷⁷

2. Migratory Species

The Eleventh Meeting of the Conference of the Parties to the Convention on Migratory Species (CMS)⁷⁸ adopted thirty-one proposals to add species to the CMS's two appendices, significantly improving the conservation status of endangered species such as the polar bear, red-fronted gazelle, Cuvier's beaked whale, hammerhead shark, and reef manta

68. See, e.g., *Tanzanian Cabinet Ratifies Nile Deal*, NEWSTIME AFRICA (Oct. 7, 2014), <http://www.newstimeafrica.com/archives/35754>. Tanzania became the third to ratify, joining Ethiopia and Rwanda; four are necessary to make the agreement legally binding. *Id.*

69. See Charles L. Katz, *Another Cup at the Nile's Crowded Spigot: South Sudan and Its Nile Water Rights*, 44 GEO. J. INT'L ENVTL. L. 1249 (2013).

70. *Sudan: Chad, Egypt, Libya, and Sudan Agree on Use of Nubian Sandstone Aquifer System*, available at <http://allafrica.com/stories/201309200107.html>.

71. Saad Merayyan & Salwa Mrayyan, *Jordan's Water Resources: Increased Demand with Unreliable Supply*, 3 COMPUTATIONAL WATER, ENERGY, & ENVTL. ENG'NG 48 (2014).

72. Isabel Kershner, *A Rare Middle East Agreement, on Water*, N.Y. TIMES (Dec. 9, 2013).

73. See Anna Nemtsova, *The Aral Sea's Disappearing Act*, THE DAILY BEAST (Oct. 4, 2014), <http://www.thedailybeast.com/articles/2014/10/04/how-russia-destroyed-the-aral-sea.html>.

74. See, e.g., David Roberts, *No More Dams on the Mekong*, N.Y. TIMES (Sept. 3, 2014), <http://www.nytimes.com/2014/09/04/opinion/no-more-dams-on-the-mekong.html?referrer=&r=0>.

75. Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the Prevention and Management of the Introduction and Spread of Invasive Alien Species, 2014 O.J. (L 317/35).

76. *Id.* at art. 7.

77. *Id.*

78. *Press Release*, Convention on the Conservation of Migratory Species of Wild Animals [CMS], Governments Commit to Step up Action for Migratory Animals at UN Wildlife Conference (Nov. 9, 2014) (on file with CMS).

SPRING 2015

**PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW**

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

350 THE YEAR IN REVIEW

ray.⁷⁹ Additionally, CMS approved Species Action Plans for the Argali sheep, the Pacific loggerhead turtle, and the saker falcon.⁸⁰ Beyond these listings, the most substantial agreement adopted at the convention was the Central Asia Migratory Mammal Initiative (CAMI), intended to protect fifteen species⁸¹ from development threats in fourteen countries.⁸² Under CAMI, countries and stakeholders must commit to measures designed to eliminate barriers to migration, protect habitat from degradation, and fight poaching and illegal trade.⁸³

C. CONVENTION ON BIOLOGICAL DIVERSITY

The Twelfth Meeting of the Conference of the Parties to the CBD (COP-12) was held from October 6-17 in Pyeongchang, South Korea. The focus of the convention was on a midterm review of the implementation of the Strategic Plan for Biodiversity 2011–2020 and the achievement of the Aichi Biodiversity Targets.⁸⁴ CBD's review concluded with the adoption of the Gangwon Declaration and Pyeongchang Roadmap, which outline the efforts needed to achieve the Aichi Targets and reaffirms the need for scientific and technical partnerships.⁸⁵ Additionally, the Korean Government launched the Forest Ecosystem Restoration Initiative (FERI) to support implementation of Aichi Targets for restoration of protected areas.⁸⁶ COP-11 parties also reaffirmed to double total biodiversity-related international financial resource flows to developing countries by 2015 and maintain this level until 2020.⁸⁷

In November, the CBD announced a Memorandum of Understanding with the Pacific Regional Environment Programme for joint implementation of the Pacific Region's Framework for Nature Conservation and Protected Areas in the Pacific Island Region 2014-2020, the CBD Strategic Plan for Biological Diversity 2011-2020 and its Aichi Bi-

79. *Id.*

80. *Id.*

81. U.N. ENVTL. PROGRAM, CENTRAL ASIAN MAMMALS INITIATIVE: SAVING THE LAST MIGRATIONS occurring in the region).

82. *Id.* at 3 (Eight nations have ratified the Convention (India, Iran, Kazakhstan, Kyrgyzstan, Mongolia, Pakistan, Tajikistan, and Uzbekistan), and another six countries are not yet Parties to CMS (Afghanistan, Bhutan, China, Nepal, Russian Federation, Turkmenistan)).

83. *Id.*

84. Draft Decisions for the Twelfth Meeting of the Conference of the Parties to the Convention on Biological Diversity, U.N. EP/CBD/COP/12/1/Add.2/Rev.1 (Oct. 5, 2014).

85. *Id.*; Conference of the Parties to the Convention on Biological Diversity, Pyeongchang, S. Kor., Oct. 15-16, 2014, *Gangwon Declaration on Biodiversity for Sustainable Development*, available at <http://www.thegef.org/gef/sites/thegef.org/files/gangwon-declaration-revised-13-oct-en.pdf>.

86. Forest Ecosystem Restoration Initiative, U.N. EP/CBD/COP/12INF/19 (Sept. 29, 2014) [hereinafter "FERI"] (FERI aims to assess the costs and benefits of restoration, identify degraded areas with potential for restoration, fund the implementation of restoration activities, and support the protection of the rights of different forest users).

87. *Press Release*, Secretariat of the Convention on Biological Diversity, Governments Commit to Significant Funding Increase and Accelerated Action to Achieve Biodiversity Targets and Sustainable Development, U.N. Press Release (Oct. 17, 2014).

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 351

odiversity Targets.⁸⁸ At the meeting in Korea, the CPB made key decisions relating to testing of shipments for unapproved varieties and socioeconomic risk assessment.

The CBD's 2010 Nagoya Protocol on access to genetic resources entered into force in late 2014 and held its first meeting of the parties in conjunction with the CPB and CBD meetings in Pyeongyang, Korea.

Parties to the CBD and its associated conventions will reconvene in Los Cabos, Mexico in October 2016.

D. WORLD HERITAGE COMMITTEE

In June, the World Heritage Committee (WHC) held its thirty-eighth session in Doha, Qatar. The committee added three natural properties to the World Heritage List: the Okavango Delta, Botswana; the Great Himalayan National Park Conservation Area, India; and the Mount Hamiguitan Range Wildlife Sanctuary, Philippines.⁸⁹ In addition, the committee approved extensions to the following listed properties: Bialowiez?a Forest, Wadden Sea, and the protected tropical forests of Calakmul.⁹⁰

Additionally, the International Union for Conservation of Nature held its quadrennial World Parks Congress in November, resulting in pledges from nearly 100 countries. Australia pledged AUD \$14 million for conservation. China pledged to increase land designated as protected areas by twenty percent, Brazil committed to protect five percent of its marine territory, and Madagascar to triple its marine protected areas.⁹¹

E. RAMSAR CONVENTION

The Ramsar Convention added five new wetlands to its list, the largest of which encompasses over a million hectares.⁹² Wetlands included in the list acquire a new status at the national level and are recognized by the international community as having significant value not only for the country (or countries) in which they are located, but for humanity as a whole.

88. Press Release, *SPREP and CBD Strengthen Commitments to Biodiversity Conservation in the Pacific*, CBD <http://www.cbd.int/doc/press/2014/pr-2014-11-15-sprep-en.pdf> (last visited Nov. 15, 2014) (on file with UNEP).

89. Convention Concerning the Protection of the World Cultural and Natural Heritage, Doha, Qatar, June 15-25, 2014, *World Heritage Committee Thirty-Eighth Session*, U.N.T.S. 151, 38 COP U.N. ESCO, Doc. WHC-14/38.com/16 (July 7, 2014) [hereinafter "WHC"].

90. WHC, 38 COP U.N. ESCO, WHC-14/38.com/16 (July 7, 2014).

91. *IUCN World Parks Congress 2014 Concludes with 'The Promise of Sydney'*, 2015), <http://biodiversity-lisid.org/news/iucn-world-parks-congress-2014-concludes-with-the-promise-of-sydney/>.

92. See Convention on Wetlands of International Importance, Especially as Waterfowl Habitat, Feb. 2, 1971, T.I.A.S. No. 11,084, 996 U.N.T.S. 245 (entered into force Dec. 21, 1975) [hereinafter Ramsar Convention]; see also Ramsar Convention, *List of Wetlands of International Importance* (Sept. 11, 2014) (adding Parque Natural Comunal de los Valles del Comapedrosa, Andorra (1,543 ha); Complejo Barra de Santiago, El Salvador (11,519 ha); Les Lacs du Grand Sud neéo-calédonien, France (43,970 ha); Archipel Bolama-Bijagoés, Guinea-Bissau (1,046,950 ha); Songdo Tidal Flat, Republic of Korea (611 ha)).

SPRING 2015

**PUBLISHED IN COOPERATION WITH
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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

352 THE YEAR IN REVIEW

F. CITES

At the Sixteenth Meeting of the Conference of Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the parties adopted a new decision requiring permits and certificates confirming the legal and sustainable harvest for the international trade of five shark species and all manta ray species, including their meat, gills, and fins.⁹³ A listing under CITES Appendix II is designed to ensure that commercial international trade is strictly regulated to ensure its sustainability, legality, and traceability for the long-term survival of the species in the wild.⁹⁴ Under CITES, exports and re-exports of the listed species will not be allowed from any of the 180 states parties unless they have been authorized by the designated national authorities.⁹⁵

In 2014, twenty new terrestrial species were added to Appendix III.⁹⁶ Appendix III is a list of species included at the request of a Party that already has regulations restricting the import and export of the species, and needs the cooperation of other countries to prevent unsustainable or illegal exploitation.⁹⁷ International trade in specimens of species listed in this Appendix is allowed only with the appropriate permits or certificates.⁹⁸

VI. Litigation

In March 2014, the ICJ released its much-anticipated decision in the *Whaling in the Antarctic* case.⁹⁹ In this dispute, Australia took the position that Japan's take of whales pursuant to its scientific research program in the vicinity of the Antarctic exceeded the scope permissible under Article VIII of the International Convention for the Regulation of Whaling (ICRW).¹⁰⁰

93. Appendix II lists species and specimens that are not yet threatened with extinction but which "may become" so if trade in them is not controlled. Convention on Int'l Trade in Endangered Species of Wild Fauna and Flora, *Entry into Force of Amendments to Appendix II*, Notification to the Parties, No. 2014/042 (Sept. 12, 2014) (adding the oceanic whitetip shark (*Carcharhinus longimanus*), scalloped hammerhead shark (*Sphyrna lewini*), great hammerhead shark (*Sphyrna mokarran*), smooth hammerhead shark (*Sphyrna zygaena*), porbeagle shark (*Lamna nasus*), and manta rays (*Manta spp.*)).

94. Convention on International Trade in Endangered Species of Wild Flora and Fauna, Mar. 3, 1973, 993 U.N.T.S. 243, art. 2, ¶ 2 [hereinafter CITES].

95. For a list of member countries, visit <http://cites.org/eng/disc/parties/alphabet.php>.

96. CITES, *supra* note 94. *Amendments to Appendix III*, Notification to the Parties, No. 2014/014 (Mar. 26, 2014) (adding Rosewood (*Dalbergia tucurensis*), Blackbuck (*Antelope cervicapra*), Nilgai (*Baselaphus tragocamelus*), Goat (*Capra bircus aegagrus*), Siberian ibex (*Capra sibirica*), Chinkara (*Gazella bennetti*), Bharal (*Pseudois naysaur*), Indian hog deer (*Axis porcinus*), Indian gray mongoose (*Herpestes edwardsi*), Small Asian mongoose (*Herpestes javanicus*), Striped hyena (*Hyaena hyaena*), Kalij pheasant (*Lophura leucomelanos*), Indian peafowl (*Pavo cristatus*), Koklass pheasant (*Pucrasia macrolopha*), Mongolian oak (*Quercus mongolica*) and Manchurian ash (*Fraxinus mandshurica*)); CITES, *Amendment to Appendix III*, Notification to the Parties, No. 2014/051 (Nov. 7, 2014) (Species of Legumes added to Appendix III: *Dalbergia calycina*, *Dalbergia cubilquitzensis*, *Dalbergia glomerata* and *Dalbergia tucurensis*).

97. CITES, *supra* note 94, at art. II, ¶ 3.

98. *Id.* at art. V.

99. *Whaling in the Antarctic* (Austl. v. Japan: N.Z. Intervening), Judgment, 2014 I.C.J. No. 148, at 9 (Mar. 31, 2014). For more information, see Section VII, *infra*.

100. *Id.* ¶¶ 24-25.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ENVIRONMENTAL LAW 353

The ICJ held Japan's continued pursuit of a large-scale whaling program under the Second Phase of its Japanese Whale Research Program (JARPA II) was a breach of its obligations under the ICRW.¹⁰¹ Specifically, the ICJ found that the special permits granted by Japan in connection with JARPA II do not fall within the provisions for scientific research programs established by Article VIII of the Convention.¹⁰² In reaching this conclusion, the ICJ was careful to state that it was not assessing the merit of Japan's scientific objectives, but instead was analyzing whether the elements of the research program's "design and implementation are reasonable in relation to its stated scientific objectives."¹⁰³ The ICJ found that Japan had devoted little attention to analyzing nonlethal alternatives that would produce similar data, and that Japan had expanded its sample size without awaiting pertinent results from previous research.¹⁰⁴ The ICJ stated that Japan's research program suffered from a number of design flaws,¹⁰⁵ that there were indications that Japan had selected its sample size based on a desire to take a predetermined number of whales, and that "the scientific output [of the program] to date appears limited."¹⁰⁶ The ICJ concluded that "the evidence does not establish that the programme's design and implementation are reasonable in relation to achieving its stated objectives."¹⁰⁷ The ICJ invalidated Japan's Antarctic research program, while leaving open the possibility that Japan could "take account of the reasoning and conclusions contained in this Judgment" and grant a permit for a different future program.¹⁰⁸

Following the decision, Japan agreed to revoke any extant authorization, permit, or license to kill, take, or treat whales in relation to JARPA II and refrain from granting any further permits in pursuance of that program.¹⁰⁹ The International Whaling Commission adopted the criteria used by the ICJ in a new resolution at its sixty-fifth meeting in September.¹¹⁰ Despite these decisions, Japan has announced its intentions to restart its scientific whaling program in 2015.¹¹¹

The International Tribunal for the Law of the Sea (the Tribunal) issued provisional measures in the *Arctic Sunrise* case, a dispute relating to the detention of a Greenpeace vessel by the Russian Federation.¹¹² The vessel had been detained while protesting oil drilling in the Arctic, and the crew was held by Russia for criminal investigation. The Netherlands invoked arbitral remedies under the Law of the Sea Convention, asserting,

101. *Id.* ¶ 1.

102. . *Id.* ¶ 227.

103. *Id.* ¶ 88.

104. *Id.* ¶ 156.

105. *Id.* ¶¶ 180-181.

106. *Id.* ¶¶ 195, 219.

107. *Id.* ¶ 227.

108. *Id.* ¶¶ 245-46.

109. *Id.* ¶ 245. See also *Press Release*, Chief Cabinet Secretary, the Government of Japan, on the International Court of Justice "Whaling in the Antarctic (*Austl. v. Japan: N.Z. intervening*)" (Mar. 31, 2014).

110. Int'l Whaling Comm'n, *Resolution on Whaling under Special Permit*, Annex E, Res. 2014-5 (Oct. 31, 2014).

111. See Martin Fackler, *Japan Plans to Resume Whaling Program, With Changes to Address Court Concerns*, N.Y. TIMES, Apr. 18, 2014.

112. *The Arctic Sunrise (Netherlands v. Russian Federation)*, Provisional Measures, Nov. 22, 2013, I.T.L.O.S. Reports 2013, http://www.itlos.org/fileadmin/itlos/documents/cases/case_no.22/Order/C22_Ord_22_11_2013_orig_Eng.pdf ¶ 1.

SPRING 2015

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

354 THE YEAR IN REVIEW

inter alia, that the detentions violated the rights of the Netherlands as a flag state.¹¹³ The Tribunal issued provisional measures directing Russia to release the vessel and crew, subject to posting of a bond by the Netherlands.¹¹⁴ An act of the Russian parliament subsequently granted amnesty to the crew members, and the vessel was released the following year.¹¹⁵

113. *Id.* ¶ 33.

114. *Id.* ¶ 105. See also *The Arctic Sunrise and NGOs in International Judicial Proceedings*, 18 ASIL INSIGHTS 1 (Jan. 3, 2014) (discussing the Tribunal's agreement to accept a submission by Greenpeace, although "[t]he Tribunal decided not to include the brief as part of the case file").

115. *Greenpeace Arctic Sunrise: Russia Frees Protest Ship*, BBC NEWS EUROPE (June 6, 2014).