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International Environmental and Resources Law 2015 Annual Report

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International Environmental and Resources Law 2015 Annual Report

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I. Atmosphere and Climate

A. CLIMATE

The December 2015 UN climate meetings in Paris (“COP 21”) marked a watershed moment politically for international efforts to combat climate change. Following the signature of the 1992 UN Framework Convention on Climate Change (UNFCCC) by nearly every country in the world, subsequent efforts have thus far been limited in scope or success. The 1997 Kyoto Protocol established a top-down approach, mandating

* 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 United States 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, Consultant, Environmental Law Institute, who also contributed to the section on climate change, and LYNN A. LONG, Attorney-Adviser in the Office of the Solicitor, U.S. Department of the Interior, who also contributed to the section on water. STEPHANIE ALTMAN, Attorney Advisor in the Office of General Counsel, International Law Section, National Oceanic and Atmospheric Administration (NOAA), contributed on marine environmental protection and conservation. DEREK CAMPBELL, Attorney-Advisor, Office of General Counsel, International Law Section, NOAA, contributed on marine environmental protection and conservation. DAVID GRAVALLESE, Attorney-Adviser 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. Finance-related developments are incorporated throughout and were contributed by DAVID HUNTER, Professor, and ERIKA LENNON, Coordinator of the Program on International and Comparative Environmental Law, at American University Washington College of Law. THOMAS PARKER REDICK, with Global Environmental Ethics Counsel, contributed on international regulation of biotechnology. MATT OAKES, Trial Attorney in the Law and Policy Section, Environment and Natural Resources Division, U.S. Department of Justice, contributed on international environmental litigation. ERICA LYMAN, Professor, Lewis and Clark Law School, contributed on natural resources. ANDREW SCHATZ, Legal Advisor, Ecosystem Finance Division, Conservation International, contributed on climate change. BASKUT TUNCAK and GIULIA CARLINI of the Center for International Environmental Law contributed on international chemicals.

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specific emissions reductions for industrialized nations only, and was not ratified by the United States. In 2009, Parties at the Fifteenth Conference of the Parties to the UNFCCC (COP15) in Copenhagen agreed to a patchwork of actions until 2020. Although the Parties extended the Kyoto Protocol for an increasingly small number of countries and others set forth their own pledges to reduce greenhouse gas (GHG) emissions, they failed to agree on a comprehensive long-term implementation plan with universal applicability.

Learning from Kyoto and Copenhagen, a universal, bottom-up agreement emerged at COP21 in Paris in 2015, setting forth the global rules and framework applicable to all countries, but ultimately allowing them to choose their emissions reduction targets. In accordance with *Decision 1/CP.20* (The Lima Call for Climate Action) at COP20 in Lima, Peru in 2014, Parties were thus required to submit their individually chosen GHG emission reduction targets known as “Intended Nationally Determined Contributions” (INDCs) by October 2015.¹

In the months leading up to COP21, almost all countries submitted these pledges. China agreed to increase its share of renewable energy to 20 percent and achieve peaking of CO₂ emissions by around 2030, while making best efforts to peak early.² The United States agreed to reduce emissions by 26–28 percent below 2005 levels by 2025.³ The European Union agreed to a binding target to reduce domestic emissions by at least 40 percent below 1990 levels by 2030.⁴ India pledged to reduce the emissions intensity of its GDP by 33–35 percent below 2005 levels by 2030.⁵ Cumulatively, all announced pledges would only limit temperature increases to 2.7°C above pre-industrial levels by 2100, as compared to a 4–5°C increase under business as usual, but still above the global target recommended by the Intergovernmental Panel on Climate Change to limit warming to 1.5–2°C.⁶

Following two weeks of negotiations, 195 countries adopted the “Paris Agreement”⁷ on December 12, 2015, establishing the first universally applicable global agreement to implement the UNFCCC. The Paris Agreement sets an overarching goal to hold global temperature increases to “well below 2°C above pre-industrial levels” and aims to limit

1. UNFCCC, INDCs as Communicated by Parties, <http://www4.unfccc.int/submissions/inde/Submission%20Pages/submissions.aspx>.

2. UNFCCC, Enhanced Actions on Climate Change: China’s Intended Nationally Determined Contributions (June 30, 2015), <http://www4.unfccc.int/submissions/INDC/Published%20Documents/China/1/China's%20INDC%20-%20on%2030%20June%202015.pdf>. See also The White House Office of the Press Secretary, U.S.–China Joint Announcement on Climate Change, (Nov. 11, 2014), <https://www.whitehouse.gov/the-press-office/2014/11/11/us-china-joint-announcement-climate-change>.

3. UNFCCC, United States INDC (Mar. 31, 2015), <http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf>.

4. UNFCCC, EU Submission INDC (Mar. 6, 2015), <http://www4.unfccc.int/submissions/INDC/Published%20Documents/Latvia/1/LV-03-06-EU%20INDC.pdf>.

5. UNFCCC, India’s Intended Nationally Determined Contributions: Working Towards Climate Justice (Oct. 1, 2015), <http://www4.unfccc.int/submissions/INDC/Published%20Documents/India/1/INDIA%20INDC%20TO%20UNFCCC.pdf>.

6. UNFCCC, Global Response to Climate Change Keeps Door Open to 2 Degree C Temperature Limit, 30 Oct. 2015, <http://newsroom.unfccc.int/unfccc-newsroom/inde-synthesis-report-press-release/>.

7. COP 21 to the UNFCCC, Draft Decision -/CP.21, Adoption of the Paris Agreement, FCCC/CP/2015/L.9/Rev.1 (Dec. 12, 2015), available at <http://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>.

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increases to 1.5°C.⁸ It further seeks to achieve a global peaking of GHG emissions as soon as possible and achieve carbon neutrality—a balance between anthropogenic emissions by sources and removals by sinks—by the second half of this century.⁹

The Paris Agreement implements a common set of obligations applicable to all countries while recognizing differentiated responsibilities through some flexibility and support to developing and particularly vulnerable countries. To achieve the temperature goal of 1.5–2°C, Article 4 directs developed countries to take the lead by setting economy-wide emissions targets, while developing nations are encouraged to do so over time. Recognizing the need to further reduce annual emissions in order to meet the global temperature goal, the Paris Agreement provides that each Party shall submit a nationally determined contribution (NDC) every five years, and that “each Party’s successive [NDC] will represent a progression beyond the Party’s then current [NDC] and reflect its highest possible ambition”¹⁰ An interim review assessing the Parties’ progress in meeting the objective will take place in 2018, and then every five years starting in 2023 (a “global stocktaking”). Decision text from COP21 outlines a detailed process for developing a more detailed suite of rules and decisions to implement the Paris Agreement.

The Paris Agreement reaffirms and encourages current efforts to enhance the use of carbon sinks (i.e., REDD+) and, together with the decision text, contemplates a suite of market and non-market approaches to help countries achieve their NDCs.¹¹ Notably, Article 6 also creates a mechanism to mitigate GHGs and support sustainable development to be further developed at future meetings.

The Paris Agreement also strengthened international support to help countries adapt and cope with the adverse effects of climate change. It establishes a global goal of enhancing the capacity of countries to adapt to climate change, strengthening resilience, and reducing vulnerability; requires parties to plan and implement adaptation efforts; encourages parties to report their adaptation efforts and needs; and includes a review of progress through the global stocktake.¹² The Parties agreed to continue and strengthen the Warsaw International Mechanism for Loss and Damage associated with the negative impacts of climate change, but recognized that it “does not involve or provide a basis for any liability or compensation.”¹³

The Paris Agreement also creates a transparency framework for action and support. Under this transparency regime, all Parties are required to submit and post reports regarding their emissions data and progress in meeting their INDCs using a uniform accounting method, with flexibility for developing countries lacking capacity.¹⁴ Developed and other countries should also provide information on financial, technology-transfer, and capacity building support given.

The Paris Agreement will enter into force after it is formally ratified or approved by 55 countries cumulatively responsible for 55 percent of global GHG emissions, and will take

8. *Id.* at annex, art. 2.

9. *Id.* at annex, art. 4.

10. *Id.*

11. *Id.* ¶ 40, annex arts. 5, 6; Draft Decision -/CP.21.

12. Paris Agreement, art. 8.

13. *Id.* art. 8; Draft Decision -/CP.21, at ¶ 52.

14. Paris Agreement, art. 13.

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effect in 2020. The Parties to the UNFCCC will meet for COP22 in Marrakesh, Morocco, from November 7–18, 2016.

Financially, the Decision text accompanying the Paris Agreement calls on developed nations to mobilize a floor of \$100 billion annually in climate finance through 2025, when a new goal will be set, to help developing countries meet their mitigation and adaptation goals under the Agreement.¹⁵ Financial aid may come from a variety of sources and should seek to achieve parity in allocation of resources between mitigation and adaptation support. Like each country's INDC, the financial commitments do not create new treaty-level obligations, a concession won by the United States so that the Agreement would not need Senate ratification, as compared to Kyoto.

It is unclear what portion of climate finance will ultimately flow from the Green Climate Fund (GCF), which continued to advance its work in 2015. Entities seeking to become accredited to receive funds to implement projects ("implementing entities") have to demonstrate their ability to comply with the GCF's fiduciary policy, environmental and social safeguards (which are currently the International Finance Corporation's Performance Standards), and gender policy.¹⁶ Each entity is evaluated and accredited based on its capabilities, and thus, not all entities will be able to implement all projects. For example, projects with more significant environmental and social risks will have to be implemented by entities capable of dealing with those risks. As of December 2015, the GCF had accredited twenty implementing entities, including UN agencies, multilateral development banks, and government ministries, among others.¹⁷ At the GCF's December 2015 meeting, the Board approved eight projects, totaling \$168 million in funds.¹⁸ Despite having approved these projects, the GCF had not yet finalized adoption of operational procedures and structures such as an accountability mechanism.

Beyond the GCF, countries made some progress particularly for climate forest funding. The World Bank Group's Forest Carbon Partnership Facility (FCPF)¹⁹ continued to facilitate progress of countries towards reducing emissions from deforestation and forest degradation (REDD) readiness. In 2015, the FCPF's Readiness Fund received \$27 million in new contributions.²⁰ By the end of the financial year it had allocated \$211

15. Draft Decision -/CP.21, ¶ 54; Paris Agreement at Article 9, ¶ 3.

16. In November 2014, the GCF opened its accreditation process. Press release, "Green Climate Fund Opens Online Accreditation System for Implementing Entities and Intermediaries" (Nov. 17, 2014), http://www.greenclimate.fund/documents/20182/38417/2014_11_17_-_Green_Climate_Fund_Opens_Online_Accreditation_System_For_Implementing_Entities_and_Intermediaries.pdf/fd26c46f-9462-495b-bb19-d4d7fde95ae7. See also Green Climate Fund, Accreditation, "Why Accredite," <http://www.greenclimate.fund/ventures/accreditation/#why-accredit>.

17. Green Climate Fund, List of Accredited Entities, http://www.greenclimate.fund/documents/20182/114261/20151119_-_GCF_List_of_Accredited_Entities.pdf/e09bb9b3-9730-4adc-bca9-ff32739ecae8 (last visited Feb. 27, 2016).

18. The projects are in Peru, Malawi, Senegal, Bangladesh, Eastern Africa, Latin America, the Caribbean, the Maldives, and Fiji. Each of the projects will be administered by an implementing entity. See Press Release, "Green Climate Fund Approves first 8 investments" (Nov. 6, 2015), <http://www.greenclimate.fund/green-climate-fund-approves-first-8-investmen-1>.

19. See Forest Carbon Partnership Facility, <http://www.forestcarbonpartnership.org/>.

20. Forest Carbon Partnership Facility, 2015 Annual Report, p. 15, sec. 4.1 (Nov. 2015), available at https://www.forestcarbonpartnership.org/sites/fcp/files/2015/November/FCPF%20AR%20FY15%2011%204%20%28web%29_0.pdf. (hereinafter FCPF Annual Report) (noting that the funds came from Germany and Finland).

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million in readiness funding and began making strides to support results-based payments to certain countries for demonstrated emissions reductions.²¹ In May, the Democratic Republic of Congo became the first country to present its readiness package.²² Additionally, Costa Rica, Ghana, Liberia, Mexico, Republic of Congo, and Vietnam all reported mid-term progress.²³ Additionally, the FCPF's Carbon Fund gained stability when it was extended to 2025, allowing for the expansion of pipeline projects, which now include eleven countries.²⁴ The FCPF continued its collaboration with other REDD programs such as the Forest Investment Program (FIP), which in May 2015 selected six new countries in which to invest.²⁵

B. OZONE

At the 27th Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (MOP-27) in Dubai, the Parties agreed for the first time to work to an amendment to the Protocol to address the rapidly growing production and consumption of hydrofluorocarbons (HFCs).²⁶ To that end, in a decision called the "Dubai Pathway on Hydrofluorocarbons," the Parties also agreed to hold a series of meetings in 2016, including an Extraordinary Meeting of the Parties.²⁷ HFCs are potent greenhouse gases that are used as alternatives to chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs), which are being phased out under the Montreal Protocol.

The Dubai Pathway represents a significant breakthrough in the efforts of more than 40 Parties who sponsored a total of four different HFC amendment proposals for consideration at MOP-27.²⁸ The Dubai Pathway decision includes two annexes: The first

21. *Id.*

22. *Id.* at 15, 26.

23. *Id.* at 15.

24. *Id.* (highlighting that this increased stability for the Carbon Fund led to Guatemala and Peru being selected and Indonesia being provisionally accepted and noting up to eight additional countries pending).

25. At the FIP sub-committee meeting in May 2015, the Republic of the Congo, Ecuador, Guatemala, Cote d'Ivoire, Mozambique, and Nepal were all approved as FIP countries. *Forest Investment Program (FIP): Bretton Woods Project, CIFS Monitor 12* (Nov. 2015), <http://www.brettonwoodsproject.org/2015/11/forest-investment-program-fip-5/>. The FIP also agreed to fund the development of investment plans in nine countries: Bangladesh, Cambodia, Cameroon, Guyana, Honduras, Rwanda, Tanzania, Uganda, and Zambia. *Id.*

26. At earlier MOPs, some Parties had 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. Supporters of an HFC amendment in the Montreal Protocol have 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 appropriate policies associated with controlling ozone-depleting substances." They have argued that such harmonization can include managing substitutes for CFCs and HCFCs. Supporters also point to language in the proposed amendments discussed at MOP-27 which states explicitly that HFCs would not be exempted from the coverage of the UNFCCC and Kyoto Protocol. See 49 *Year in Review*, 340-341 (2015).

27. Decision XXVII/1, Advance, unedited compilation of the decisions adopted by the Twenty-Seventh Meeting of the Parties to the Montreal Protocol, available at <http://conf.montreal-protocol.org/meeting/mop/mop-27/report/SitePages/Home.aspx>. The decision states that the Parties will "[w]ork within the Montreal Protocol to an HFC amendment in 2016 by first resolving challenges by generating solutions in the contact group on the feasibility and ways of managing HFCs at Montreal Protocol meetings." *Id.* pt. X, ¶ 1.

28. *Id.* ¶¶ 59, 63, 68, 72; U.N. Doc. UNEP/OzL.Pro.27/5 (proposed amendment submitted by Canada, Mexico, and the United States); U.N. Doc. UNEP/OzL.Pro.27/6 (proposed amendment submitted by India);

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carries forward a mandate for a “contact group” to continue to negotiate an HFC phasedown amendment; the second records progress made on issues discussed in a contact group at MOP-27.²⁹ The annexes reflect the continuing concern of some developing country Parties regarding the availability of alternatives to HFCs in high ambient temperature conditions, the difficulty of phasing down HFCs while simultaneously phasing out HCFCs, and the availability of financial assistance and technology transfer, including relevant intellectual property rights. Some Parties are calling for an exemption for high ambient temperature countries, arguing that there are insufficient alternatives to HFCs in certain air conditioning applications.

Intensive, high-level diplomatic contacts between many Parties, both before and during MOP-27, was key to the adoption of the Dubai Pathway. Given the list of challenges and concerns, negotiations toward an amendment in 2016 promise to be contentious.

II. Marine Environmental Protection and Conservation

A. MARINE BIODIVERSITY

In 2015, several regional actions were taken to advance marine environmental protection, conservation, and sustainable use of marine biodiversity. In November, NOAA and the National Park Service signed a Memorandum of Understanding (MOU) with Cuba’s Ministry of Science, Technology, and Environment.³⁰ The first of its kind since the United States and Cuba reestablished diplomatic ties, the MOU aims to facilitate joint efforts concerning science, stewardship, and management related to Marine Protected Areas. In particular, the MOU establishes a sister-sanctuary relationship between Guanahacabibes National Park, including its offshore Banco de San Antonio in Cuba, and Florida Keys and Flower Garden Banks National Marine Sanctuaries in the United States (as well as Dry Tortugas and Biscayne National Parks) to foster conservation of the interconnected ecosystems.

Also at the regional level, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), at its October 2015 annual meeting in Hobart, Australia, for the fifth time rejected two proposals to establish marine protected areas in waters around Antarctica. The Ross Sea Region Marine Protected Area, 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,” was

U.N. Doc. UNEP/OzL.Pro.27/7 (proposed amendment submitted by the European Union and its Member States); U.N. Doc. UNEP/OzL.Pro.27/8 (proposed amendment submitted by Kiribari, Marshall Islands, Mauritius, Federated States of Micronesia, Palau, Philippines, Samoa, and Solomon Islands).

29. Decision XXVII/1, Advance, unedited compilation of the decisions adopted by the Twenty-Seventh Meeting of the Parties to the Montreal Protocol, *available at* <http://conf.montreal-protocol.org/meeting/mop/mop-27/report/SitePages/Home.aspx>.

30. Memorandum of Understanding between NOAA, U.S. Dep’t of Commerce, and Nat’l Park Serv., U.S. Dep’t of the Interior, of the one part and the Republic of Cuba Ministry of Science, Tech. and Env’t Nat’l Ctr. for Protected Areas of the other part on Cooperation in the Conservation and Management of Marine Protected Areas (Nov. 18, 2015); Press release, NOAA, U.S. and Cuba to cooperate on conservation and management of marine protected areas (November 18, 2015).

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broadly supported but failed to pass.³¹ Also defeated was a proposal to establish the East Antarctic Representative System of Marine Protected Areas, a system of seven marine protected areas.³²

In October 2015, Chile hosted the second “Our Ocean Conference,”³³ an international two-day conference that brought together heads of state, scientists, policy makers, and entrepreneurs from over 50 countries. 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 \$2.1 billion, as well as new commitments to protect more than 1.9 million square miles of the ocean.³⁴

B. FISHERIES MANAGEMENT

The year 2015 saw continued advancements in multilateral efforts to establish new, and improve existing, regional fisheries management organizations (RFMOs). On July 19, 2015, the Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean entered into force.³⁵ The Convention establishes the North Pacific Fisheries Commission (NPFC), a RFMO with international responsibility for the conservation and management of living marine resources in the high seas of the North Pacific Ocean that are not covered by another RFMO, and establishes a framework for protecting vulnerable marine ecosystems on biodiverse seamounts from impacts of bottom fishing.³⁶ With respect to Atlantic highly migratory species fisheries, members of the International Commission for the Conservation of Atlantic Tunas (ICCAT) made progress in developing amendments to the ICCAT Convention to reflect international fisheries management principles that have evolved since the Convention’s adoption in 1966, including new articles to require the Commission to apply the precautionary approach and an ecosystem approach to fisheries management, and to enhance Taiwan’s participation in ICCAT as a fishing entity that enjoys rights and obligations of members of the Commission.³⁷

On November 5, 2015, President Obama signed into law H.R. 774, the “Illegal, Unreported, and Unregulated Fishing Enforcement Act.”³⁸ The Act includes legislation

31. 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. CCAMLR-XXXIV/29 Rev. 1 (2015).

32. Revision 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, CCAMLR Doc. CCAMLR-XXXIV/30 (2015).

33. Press release, U.S. State Department, Our Oceans Conference 2015 Results (October 7, 2015).

34. *Id.*

35. Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, Feb. 24, 2012, S. TREATY DOC. NO. 112-4 (2013).

36. North Pacific Fisheries Commission Website, <http://nwpbfo.nomaki.jp/index.html> (last visited Dec. 7, 2015).

37. Report of the Third Meeting of the Working Group on Convention Amendment, May 22, 2015; Compiled Proposals for Amendment of the International Convention for the Conservation of Atlantic Tunas, DOC. No. CONV-005A / i 2015, Nov. 17, 2015; Proposal Related to the Participation of Fishing Entities in ICCAT, Doc. No. CONV-011B / 2015, Nov. 17, 2015.

38. Press Release, Statement by the Press Secretary on H.R. 774, Illegal, Unreported, and Unregulated Fishing Enforcement Act, *available at* <https://www.whitehouse.gov/the-press-office/2015/11/05/statement-press-secretary-hr-774-illegal-unreported-and-unregulated> (Nov. 5, 2015).

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to implement the Food and Agriculture Organization's Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.³⁹ Upon entry into force after the ratification of 25 countries, the agreement will require Parties to combat illegal, unreported, and unregulated (IUU) fishing by implementing certain monitoring and control measures in their ports, including prohibitions on port entry and landing of fish product by vessels engaged in IUU fishing.⁴⁰ H.R. 774 also includes legislation to implement the Convention for the Strengthening of the Inter-American Tropical Tuna Commission. Established by the 1949 Convention between the United States of America and Costa Rica (Antigua Convention), which updates the International Tropical Tuna Commission's mandate to reflect modern fisheries management principles.⁴¹

On April 2, 2015, the International Tribunal for the Law of the Sea (ITLOS) issued an advisory opinion on questions concerning the respective rights and obligations of flag and coastal states under international law to address IUU fishing.⁴² The opinion was issued in response to a 2013 request from the Sub-Regional Fisheries Commission (SRFC), a West African sub-regional fisheries management body comprised of a number of States that allow fishing in their waters by vessels of other nations.⁴³ In the opinion, ITLOS found that the coastal State has primary responsibility for taking the necessary measures to prevent, deter, and eliminate IUU fishing in its waters; the flag State has an obligation of due diligence to take necessary measures to ensure compliance by its vessels with the laws and regulations enacted by the coastal State for purposes of conservation and management its living marine resources; and a flag State may be held liable for IUU fishing of its vessels attributable to the flag State's failure to carry out this due diligence obligation.⁴⁴

On October 5, 2015, twelve Pacific nations announced they had reached agreement on the Trans-Pacific Partnership (TPP) regional trade agreement.⁴⁵ Unlike other free trade agreements to which the United States is a party, the Environment Chapter of the TPP contains sections specifically focused on marine fisheries. TPP fisheries provisions include prohibitions on certain types of fisheries subsidies; commitments to implement a fisheries management system aimed at the sustainable use and conservation of marine species that is based on international best practices; commitments to promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals; and requirements to take a broad range of enumerated actions to combat IUU fishing, such as through the implementation of port State measures, cooperation through regional fisheries management organizations, and capacity building.⁴⁶

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

40. *Id.*

41. Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and Costa Rica Nov. 14, 2003, S. TREATY DOC. NO. 109-2 (2005).

42. Advisory Opinion, Case No. 21, Int'l Tribunal for the Law of the Sea, Apr. 2, 2015.

43. Letter from Permanent Secretary to Present ITLOS, Request for Advisory Opinion, Sub-Regional Fisheries Commission, Mar. 27, 2013.

44. *See, e.g.*, Advisory Opinion, Case No. 21, paragraphs 106, 129, and 147.

45. Jackie Calmes, *11 Pacific Nations and U.S. Endorse Giant Trade Pact*, N.Y. TIMES, Oct. 6, 2015, at A1.

46. TPP Environment Chapter (subject to legal review and authentication), available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Environment.pdf> (last visited Dec. 7, 2015).

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III. International Hazard Management

A. TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTE

The 12th meeting of the Conference of the Parties (COP12) for the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal⁴⁷ was held in Geneva, Switzerland from May 4 to 15, 2015, in conjunction with the seventh meeting of the Rotterdam⁴⁸ and Stockholm Conventions⁴⁹ as part of the ongoing “synergies” process. The so-called “Triple COP” allowed delegates to negotiate issues of joint concern to more than one of the conventions, such as compliance, budgetary, and implementation issues, as well as address issues specific to only one of the conventions, including the Basel Convention. In all, the parties to the Basel Convention adopted 25 decisions, six of which were parallel decisions also adopted by the parties to the Rotterdam and Stockholm Conventions.⁵⁰

COP12 adopted six new or updated technical guidelines on the environmentally sound management (ESM) of persistent organic pollutants (POPs) wastes.⁵¹ Technical guidelines for the ESM of wastes consisting of, containing, or contaminated with mercury or mercury compounds were updated.⁵² Technical guidelines on transboundary movements of e-waste were also adopted, albeit on an “interim” and “non-legally binding” basis.⁵³ In addition to providing guidance on the requirements for the transboundary movement of e-waste, the guidelines distinguish between waste (which is subject to Basel requirements) and non-waste (which is not) when used equipment is moved across borders.⁵⁴

47. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, 1673 U.N.T.S. 126, 28 I.L.M. 657.

48. Conference of Plenipotentiaries on the Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, Neth., Sept. 10-11, 1998, *Final Act*, U.N. Doc. UNEP/FAO/PIC/CONF/5 (Sept. 17, 1998).

49. Conference of Plenipotentiaries on the Stockholm Convention on Persistent Organic Pollutants, Stockholm, Swed., May 22-23, 2001, *Final Act*, U.N. Doc. UNEP/POPS/CONF/4 (June 4, 2001).

50. Basel Convention, *Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal on the work of its twelfth meeting*, U.N. Doc. UNEP/CHW.12/27 (Aug. 13, 2015) (advance copy).

51. *Id.* at 49 (Annex at BC-12/3, adopting new ESM technical guidelines covering POPs wastes consisting of or contaminated with (a) perfluorooctane sulfonic acid, its salts and perfluorooctane sulfonyl fluoride; (b) hexabromodiphenyl ether, heptabromodiphenyl ether, tetrabromodiphenyl ether and pentabromodiphenyl ether; and (c) hexabromocyclododecane; updating ESM technical guidelines for wastes consisting of, containing, or contaminated with: (a) POPs; (b) unintentionally produced POPs (specifically, polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans, hexachlorobenzene, or polychlorinated biphenyls) to include pentachlorobenzene; and (c) polychlorinated biphenyls, polychlorinated terphenyls or polybrominated biphenyls to include hexabromobiphenyl).

52. *See Id.* at 51 (Annex at BC-12/4, new ESM technical guidelines covering wastes consisting of or contaminated with mercury).

53. *See Id.* at 52 (Annex at BC-12/5, new technical guidelines on transboundary movements and ESM of electrical and electronic waste and used electrical and electronic equipment); *see also* Basel Convention, *Technical guidelines: Technical guidelines on transboundary movements of electrical and electronic 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.12/5/Add.1/Rev/1, at ¶4 (June 23, 2015) (advance copy).

54. *Technical guidelines*, U.N. Doc. UNEP/CHW.12/5/Add.1/Rev/1 at ¶45.

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In other decisions, COP12 adopted a “roadmap” for implementing the Cartagena declaration on waste prevention, minimization, and recovery;⁵⁵ COP12 mandated the Expert Working Group on ESM to develop guidance to assist parties in preventing and minimizing the generation of hazardous and other wastes.⁵⁶ COP12 also addressed the ESM of household waste, agreeing to include in the work programme of the Open Ended Working Group the development of a workplan for, among other things, the preparation of guidance documents and manuals on best practices, business models, and innovative solutions to address the issue.⁵⁷

B. INTERNATIONAL REGULATION OF AGRICULTURAL BIOTECHNOLOGY

More nations planted biotech crops in 2014,⁵⁸ and regulatory approval requirements for biotech crops (both for planting and food-feed-processing import approvals) were adopted in more nations than are parties to the 2003 Cartagena Protocol on Biosafety (CPB) to the Convention on Biological Diversity (CBD).

The CBD has 196 Parties (excluding the United States) and the CPB added two nations in 2014 to reach 170 parties. The new Nagoya Protocol on Access and Benefit-Sharing (Nagoya) has 64 Parties, while the Nagoya-Kuala Lumpur Supplemental Protocol to the CPB (NKLS Protocol) on Liability & Redress has 31 parties after Slovakia’s ratification in April 2015,⁵⁹ and remains nine nations short of the ratifications needed to enter into force.⁶⁰ The eighth meeting of the CPB parties (MOP 9) will be held jointly with the CBD’s 13th (MOP 13) and Nagoya (MOP 2) in December 2016 in Cancun, Mexico.

Litigation over disruption of the corn trade to China in 2013–2014 is moving toward trial in a multidistrict litigation (MDL) case pending in the United States District Court for the District of Kansas, with over forty “bellwether” test plaintiffs selected from thousands of growers.⁶¹ Grain traders, including Cargill and Archer Daniels Midland (ADM), are also suing in state court.

While China approved Viptera in December 2014, this did not slow the steady progress of litigation involving farmers and grain traders from across the farm belt. In fact, plaintiffs won a significant victory on September 11, 2015, when the court denied most of Syngenta’s motion to dismiss. This historic decision is the first to allow claims for nuisance, negligence, and other causes of action to proceed against Syngenta for its decision to market two biotech corn events (“Viptera™” or MIR 162 and “Duracade™” event 5307) without waiting for China to approve these corn events for import as food and feed. As the court noted in its 116-page opinion, it did not believe that “the risk of a flood

55. Basel Convention, *Cartagena Declaration on the Prevention, Minimization and Recovery of Hazardous Wastes and Other Wastes* (Oct. 21, 2011).

56. *Report of the Conference of the Parties*, U.N. Doc. UNEP/CHW.12/27 at 11.

57. *Id.* at 67 (Annex at BC-12/13).

58. *ISAAA Brief No. 49 - 2014: Executive Summary - Global Status of Commercialized Biotech/GM Crops: 2014*, INT’L SVC. FOR THE ACQUISITION OF AGRI-BIOTECH APPLICATIONS (2015), <http://www.isaaa.org/resources/publications/briefs/49/default.asp> (last visited Nov. 25, 2014).

59. *Communique*, CBD, The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress comes closer to entry into force with the latest ratification by Slovakia (May 7, 2015).

60. THE CARTAGENA PROTOCOL ON BIOSAFETY TO THE CONVENTION ON BIOLOGICAL DIVERSITY, <http://bch.cbd.int/protocol> (last visited Nov. 25, 2015).

61. *Bellwether/Test Case Selection: Nebraska Example*, NebraskaLostCorn.com (Nov. 1, 2015).

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of new litigation is sufficiently great and sufficiently unfair to preclude the recognition of a legal duty here.”⁶² This decision will make international approvals even more critical for most biotech crops in the research pipeline, significantly raising the costs to innovators.

IV. Chemicals

The Conference of the Parties (CoP) to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, at its seventh meeting, amended Annex III of the Convention (Chemicals Subject to the Prior Informed Consent Procedure) to list the insecticide⁶³ known as methamidophos and deferred a decision on listing four additional hazardous substances—trichlorfon, fenthion, paraquat and chrysotile asbestos—to the next CoP.

At the seventh meeting of the CoP to the Stockholm Convention on Persistent Organic Pollutants (POPs), Parties agreed to three new listings: polychlorinated naphthalenes under Annexes A (elimination) and C (unintentional production) of the Convention; hexachlorobutadiene (HCBD) under Annex A; and pentachlorophenol (PCP) and its salts and esters under Annex A, exercising Article 21.3 of the Convention for the first time to list a new POP by voting instead of by consensus.⁶⁴

The twelfth meeting of the CoP to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal adopted, inter alia, technical guidelines regarding management of crucial waste streams and environmentally sound management (ESM), including POPs and mercury wastes, and ad interim technical guidelines on transboundary movements of electronic and electrical waste (e-waste).⁶⁵

As of December 2015, the Minamata Convention on Mercury has 128 signatories and 23 parties.⁶⁶ It will enter into force after the ratification of the fiftieth party.⁶⁷

The International Conference on Chemicals Management, the governing body of the United Nations Environmental Program (UNEP)’s Strategic Approach to International Chemicals Management (SAICM), met at its fourth session (ICCM4), the last before 2020. Addressing its future roadmap, conference delegates adopted the overall orientation and guidance for achieving its 2020 goal of “sound management of chemicals,” and its goal beyond 2020 on the sound management of chemicals and waste.⁶⁸ Additional outcomes include an omnibus resolution on existing emerging policy issues—lead in paint; chemicals in products; hazardous substance within the life cycle of electrical and electronic

62. Memorandum & Order, In re: Syngenta AG MIR 162 Corn Litigation, No. 14-md-2591-JWL (D. Kan. Sept. 11, 2015).

63. Decision RC-7/4, *Report of the Conference of the Parties to the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade on the work of its seventh meeting*, UNEP/FAO/RC/COP.7/21.

64. Decision SC-7/9, *Report of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants on the work of its seventh meeting*, UNEP/POPS/COP.7/36.

65. *Report of the Conference of the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal on the work of its twelfth meeting*, UNEP/CHW.12/27.

66. *Minamata Convention on Mercury*, UNITED NATIONS ENVIRONMENT PROGRAMME, <http://www.mercuryconvention.org/Countries> (last visited Nov. 19, 2015).

67. *Id.* art. 31 (“This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.”).

68. SAICM, ICCM4, *available at* http://www.saicm.org/index.php?option=com_content&view=article&id=534&Itemid=696.

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products; nanotechnology and manufactured nanomaterials; and endocrine disrupting chemicals—as well as the first-time inclusion of “environmentally persistent pharmaceutical products.” In addition, delegates to the ICCM4 passed a resolution on highly hazardous pesticides, supporting concerted action on the longstanding issue.

V. Natural Resources

A. WATER

The global water crisis continues impact the planet with 1.6 billion people living with “absolute” water scarcity.⁶⁹ This number is estimated to rise to 2.8 billion, one-third of the world, by 2025.⁷⁰ Managing water resources will be critical, and the widespread effects “from accelerated glacier melt, altered precipitation, runoff, and groundwater recharge patterns, to extreme droughts and floods, water quality changes, saltwater intrusion in coastal aquifers” will “make water security even more difficult and costly to achieve.”⁷¹ Considering the increasing water security challenge, to even countries that have enjoyed reliable water supplies, the issue of fresh water and the ongoing global drought⁷² was absent from the CoP21 agenda,⁷³ despite the fact the global drought remained constant as of the end of October 2015.⁷⁴

Three important developments in international water law occurred in 2015. First, Israel and Jordan signed a bilateral agreement to exchange water and jointly funnel Red Sea brine to the shrinking Dead Sea.⁷⁵ This marks one of the most significant cross-border efforts to address water scarcity and will hopefully reverse the Dead Sea’s gradual decline. On March 25, 2015, the leaders of Ethiopia, Egypt, and Sudan gathered in Khartoum to sign a preliminary deal regarding Ethiopia’s Grand Renaissance Dam.⁷⁶ The project had been an issue of contention particularly as Egypt feared it would reduce its vital share of Nile’s water. This agreement represents an historical progress in the spirit of cooperation and peaceful resolution of water conflicts among Nile Basin countries. Finally, China released a plan for water pollution on April 16, 2015, which set goals for cleaning up the country’s heavily polluted water bodies by 2020.⁷⁷

69. World Bank Group, Water and Climate Change, *available at* <http://water.worldbank.org/topics/water-resources-management/water-and-climate-change> (last visited Dec. 1, 2015).

70. *Id.*

71. *Id.*

72. Katherine Purvis, *Global drought: why is no one discussing fresh water at Cop21?*, THE GUARDIAN, Sept. 16, 2015.

73. UNEP ClimateAction, CoP21Paris Agenda, *available at* <http://www.cop21paris.org/agenda> (last visited Dec. 1, 2015).

74. National Integrated Drought Information System (NIDIS), Global Drought Information System, Current Conditions, *available at* <http://www.drought.gov/gdm/> (last visited Dec. 1, 2015).

75. Sharon Udasin, *Israel, Jordan sign historic plan to save Dead Sea*, JERUSALEM POST, Feb. 27, 2017.

76. John Mukum Mbaku, *Confronting Water Allocation Problems in the Nile River Basin: The Need for a New Compact*, 1 WATER: REGIONAL THEMES 2-10 (2014). *See also* Ambereen Shaffie, *Arab Spring to Arab Drought: Securing International Cooperation Over the Nile River Basin* 3 WATER: IMPACTS OF CLIMATE CHANGE 23-30 (2015), *available at* http://www.americanbar.org/content/dam/aba/publications/nr_newsletters/wf/icle_water_impacts_of_climate_change_june_2015.authcheckdam.pdf.

77. Kong Lingyu, *Inside China’s grand plan to fight water pollution*, MARKET WATCH, May 4, 2015, *available at* <http://www.marketwatch.com/story/inside-chinas-grand-plan-for-water-pollution-2015-05-04>.

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Waters along the United States borders continue to receive considerable attention. The United States Department of State announced its intention to launch talks with Canada to renew and modernize the Columbia River Treaty.⁷⁸ The announcement came after 26 members of Congress complained in a second letter to the President that the administration had been slow to review the treaty.⁷⁹ On the United States–Mexican border, the most recent projections for Lake Mead have been released showing that the Lake’s water levels will fall below the drought trigger point in 2017, which will continue to challenge the existing arrangements between the United States and Mexico.⁸⁰

The Mekong Commission continues to be ineffectual, limiting its role in consultation on the proposed Don Sahong dam on the Lower Mekong River⁸¹ The government of Laos approved the controversial project, despite widespread objections on environmental impacts and health and safety concerns by neighboring countries and NGOs.⁸²

B. BIOLOGICAL RESOURCES AND WILDLIFE

Framed by the continued onslaught of poaching and illegal trade, 2015 showcased an outpouring of support for international collaboration in wildlife and biodiversity conservation. Related to the poaching and illegal wildlife trade crises, the international community deepened its understanding of the linkages between conservation and human development with a range of actions—most significantly, the adoption of the Sustainable Development Goals. The themes for World Wildlife Day (March 3), “It’s time to get serious about wildlife crime,”⁸³ and for International Day for Biodiversity (May 22), “Biodiversity for Sustainable Development,”⁸⁴ set the stage for ongoing discussions on these two issues. In addition, the World Heritage Convention and the Ramsar Convention both met and designated new sites important for wildlife and biodiversity conservation. Finally, as the year ends, States ramp up for a push to agree to biodiversity protection beyond national jurisdictions.

1. *Wildlife Trafficking*

As wildlife trafficking continues to threaten endangered species around the world, addressing the threat has been taken up as a major issue by a number of international fora. For example, CITES and UNEP have announced a new collaborative effort to improve

78. Rob Hotakainen, *US plans to focus on environment in Columbia River talks*, SEATTLE TIMES, June 11, 2015, available at <http://www.seattletimes.com/seattle-news/environment/us-plans-to-focus-on-environment-in-columbia-river-talks/>.

79. News Release, *Murray, Wyden, DeFazio, Walden & Northwest Delegation Urge Obama to Initiate Negotiations on Columbia River Treaty This Year* (Apr. 14, 2015).

80. Ken Ritter, *Feds project Lake Mead below drought trigger point in 2017*, ASSOCIATED PRESS (May 19, 2015).

81. Tom Fawthrop, *Death by strangulation? Hydropower threatens to kill the mighty Mekong*, ECOLOGIST (Mar. 27, 2015).

82. Prashanth Parameswaran, *Laos Officially Approves Controversial Dam Project*, THE DIPLOMAT (Sept. 4, 2015).

83. CITES, Notification to the Parties, No. 2015/007, Celebration of World Wildlife Day 2015 (Feb. 3, 2015).

84. CBD, Notification to the Parties, No. 2014-137, Theme of the International Day for Biological Diversity 2015 (Dec. 10, 2014).

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the target countries' legislation implementing CITES.⁸⁵ In a testament to the global concern and desire for cooperation, the United Nations General Assembly adopted a resolution, *Tackling Illicit Trafficking in Wildlife*.⁸⁶ The new Resolution calls for Member States to declare wildlife trafficking a "serious crime" pursuant to the Convention Against Transnational Organized Crime.⁸⁷ Bilaterally, the United States and China have formed an agreement to ban most imports and exports of ivory as part of a joint effort to stop illegal trading.⁸⁸ The agreement follows part of the United States's implementation plan for the National Strategy for Combating Wildlife Trafficking President Obama launched last year.⁸⁹

The TPP presented perhaps 2015's most historic opportunity for multilateral engagement in the fight against wildlife crime and other wildlife and biodiversity conservation concerns. Indeed, provisions lauded as "historic" suggest that the TPP Parties recognize a responsibility to implement their treaty obligations, such as CITES and fisheries agreements.⁹⁰ The conservation plight of several species is specifically noted in the TPP, including sharks, marine turtles, seabirds, and marine mammals; however, the actions agreed to with respect to these species are merely to "seek" to undertake actions "as appropriate" in most cases.⁹¹ Recognizing the overfished state of commercially important fisheries, the TPP prohibits subsidies that "negatively affect fish stocks that are in an overfished condition."⁹² But notably, subsidies that *cause* overfishing and fishery collapse are not prohibited. Little to nothing in these provisions pushes Parties beyond the scope of what they have already agreed multilaterally, so it remains to be seen whether the TPP marks a historic sea-change in international cooperation. One provision in the TPP, however, potentially presents an interesting wildlife and biodiversity conservation tool: The Parties have a duty to combat and cooperate to prevent trade in wildlife that was taken or traded in violation of law, including that Party's law or the law of the country where the take or trade occurred.⁹³ If used to prosecute wildlife crimes in one country for violations of law in another country, the TPP sets up a mechanism much like the United States Lacey Act, which makes it unlawful to import, export, sell, acquire, or purchase fish, wildlife, or plants taken, possessed, or sold in violation of state or foreign law.⁹⁴

85. Press Release, CITES, CITES and UNEP Support Strengthening of Wildlife Laws (May 5, 2015), available at https://cites.org/eng/CITES_UNEP_wildlife_laws.

86. Tackling illicit trafficking in wildlife, G.A. Res. 69/L.80, U.N. GAOR, 69th Sess., U.N. Doc. A/69/L.80 (July 15, 2015).

87. *Id.* ¶4.

88. Press Release, Office of the Press Secretary, The White House, Fact Sheet: President Xi Jinping's State Visit to the United States (Sept. 25, 2015).

89. Press Release, Office of the Press Secretary, The White House, Fact Sheet: National Strategy for Combating Wildlife Trafficking & Commercial Ban on Trade in Elephant Ivory (Feb. 11, 2014).

90. Press Release, office of the United States Trade Representative, Trans-Pacific Partnership Ministers' Statement (Oct. 5, 2015); see also Brian Deese & Christy Goldfuss, *What They're Saying: Environmental Advocates Point to the Trans-Pacific Partnership as a Historic Opportunity to Protect Our Oceans, Forests, and Wildlife*, WHITE HOUSE BLOG (Mar. 31, 2015), <https://www.whitehouse.gov/blog/2015/03/31/what-theyre-saying-environmental-advocates-point-trans-pacific-partnership-historic->.

91. *Id.*

92. Trans-Pacific Partnership, art. 20.16(5)(a), Oct. 4, 2015.

93. *Id.* at art. 20.17(5), n.26.

94. 16 U.S.C. § 3372(a)(2) (2013).

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2. *Biodiversity for Sustainable Development*

The linkages between conservation and development are more visibly at the forefront of wildlife and biodiversity law than in the past. The UN General Assembly adopted the Sustainable Development Goals to replace its Millennium Development Goals.⁹⁵ Notably, Goal 15 encourages nations to “[p]rotect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”⁹⁶ One of the ‘targets’ for achieving this Goal encourages nations to “[t]ake urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products.”⁹⁷

3. *Multilateral Environmental Agreement (MEA) Updates*

The only biodiversity-related MEAs that met this year were the World Heritage Convention and Ramsar Convention. The meetings resulted in the designation of natural heritage and wetlands, respectively, that positively impact biodiversity conservation. The 39th meeting of the World Heritage Committee inscribed the Blue and John Crow mountains in Jamaica as a world heritage site, recognizing its value as a biodiversity hotspot in the Caribbean.⁹⁸ Additionally, the Committee recognized extensions of the boundaries of two natural sites: the Cape Floral Region Protected Areas in South Africa and the Phong Nha-Ke Bang National Park in Viet Nam.⁹⁹ Nineteen sites were added to the Ramsar’s List of Wetlands of International Importance.¹⁰⁰

4. *Marine Biodiversity*

The year 2015 also set the stage for more collaboration next year, especially regarding marine biodiversity. In January 2015, a UN working group concluded its final meeting on marine biodiversity beyond national jurisdiction.¹⁰¹ The group recommended the UN establish a new instrument under the UN Convention on the Law of the Sea. In June, the UN adopted a resolution to create a new instrument and called for a preparatory

95. Transforming Our World: the 2030 Agenda for Sustainable Development, G.A. Res. 70/1, U.N. Doc. A/RES/70/1 (Oct. 21, 2015).

96. *Id.* at 24.

97. *Id.* at 25. The release of the SDGs also inspired a number of statements from the international community. The Biodiversity Liaison Group, which includes seven complementary multilateral environmental agreements, noted the world faces cross-cutting global issues and highlighted how collaborative work, such as the BLG does, will be necessary to achieving the new goals. Joint Statement by the Liaison Group of the Biodiversity-Related Conventions on the Occasion of the United Nations Sustainable Development Summit (Sept. 25–27, 2015). It concluded, “By working together, we can achieve the future we want.” *Id.*

98. World Heritage Committee, 39th Sess., Decision 39 COM 8B.7, Blue and John Crow Mountains, Jamaica (2015).

99. World Heritage Committee, 39th Sess., Decision 39 COM 8B.2, Cape Floral Region Protected Areas, South Africa (2015); World Heritage Committee, 39th Sess., Decision 39 COM 8B.6, Phong Nha-Ke Bang National Park, Viet Nam (2015).

100. THE SECRETARIAT OF THE CONVENTION ON WETLANDS, THE LIST OF WETLANDS OF INTERNATIONAL IMPORTANCE (2015).

101. Letter dated 13 February 2015 from the Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly, U.N. Doc. A/69/780 (Feb. 13, 2015).

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committee to meet and prepare recommendations on a draft text in early 2016 and 2017.¹⁰² Thus, as 2016, the Year of the Whale,¹⁰³ begins, collaboration will remain an international focus.

VI. Litigation

Particularly from a United States perspective, a significant development in the international criminal arena occurred with the criminal conviction under the United States Lacey Act¹⁰⁴ of Lumber Liquidators, which agreed to pay \$13 million for the illegal importation of hardwood¹⁰⁵ from an area of eastern Russia that formed critical habitat for the endangered Siberian tiger.¹⁰⁶ The company falsely identified the types and origin of the imported wood, and failed to take action when suppliers could not provide supporting documentation on the wood's source.¹⁰⁷ This action constituted the first felony conviction for the import of illegal timber, and the largest fine ever under the Lacey Act.¹⁰⁸

On November 20, 2015, the Appellate Body of World Trade Organization (WTO) ruled against the United States and in favor of Mexico in a case challenging the United States' "dolphin safe" tuna labeling requirements.¹⁰⁹ Mexico took the position that the US statutory and regulatory requirements for tuna products to be marketed as "dolphin safe"¹¹⁰—already amended in part to address previous WTO disputes on this matter¹¹¹—violated both the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Technical Barriers to Trade (TBT).¹¹² The Appellate Body found, *inter alia*, that the amended requirements modify "the conditions of competition to the detriment of Mexican tuna products in the United States market; that such detrimental impact does not stem exclusively from a legitimate regulatory distinction; and, thus, that

102. G.A. Res. 69/292, U.N. GAOR, 69th Sess., U.N. Doc. A/RES/69/292 (July 6, 2015).

103. Secretariat of the Pacific Regional Environment Programme, Circular 15/55, Year of the Whale in the Pacific Islands 2016/17 Background Information and Proposal for Workshop (Aug. 25, 2015).

104. 16 U.S.C. §§ 3371-78. The Lacey Act is a federal statute that prohibits the illegal importation, possession, transportation, or sale of wildlife, plants, and fish.

105. Plea Agreement §§ 5, 7, 8, 12, United States v. Lumber Liquidators, Inc., Case 2:15-cr-00126-RAJ-LRL (E.D. Va. 2015), Dkt. 11 (filed Oct. 22, 2015).

106. Statement of Facts § II, United States v. Lumber Liquidators, Inc., Case 2:15-cr-00126-RAJ-LRL (E.D. Va. 2015), Dkt. 14 (filed Oct. 22, 2015).

107. *Id.* at pt. II, B.

108. See Press Release, United States Department of Justice, Lumber Liquidators Inc. Pleads Guilty to Environmental Crimes and Agrees to Pay More Than \$13 Million in Fines, Forfeiture and Community Service Payments (Oct. 22, 2015).

109. United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, ¶¶ 8.1–8.2, WT/DS381/ (United States v. Mexico), Appellate Body Report, AB/RW-2015-6 (Nov. 20, 2015).

110. *Id.* at 13, ¶¶ 1.3, 1.9.

111. See *id.* ¶¶ 1.3–1.8. See also panel report (WT/DS381/R) in U.S. – Tuna II (Mexico). The United States does not require the "dolphin safe" label, but previous Appellate Body findings establish that such labeling does have "significant commercial value" that constitutes an "advantage" in the U.S. market. See Panel Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, ¶ 7.111, WT/DS381/R (Apr. 14, 2015).

112. *Id.* at 12, ¶ 1.2.

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the amended tuna measure accords less favorable treatment to Mexican tuna products [as compared] to like [tuna] products from the United States.”¹¹³

VII. Finance

A. GLOBAL ENVIRONMENT FACILITY

Since 2012, the Global Environment Facility (GEF) has been undertaking an “Accreditation Pilot” to accredit up to ten new GEF Project Agencies that will be able to help implement GEF Financed projects.¹¹⁴ Additionally, the Accreditation Panel approved the Development Bank of Latin America (CAF), Foreign Economic Cooperation Office of the Ministry of Environmental Protection of China (FECO), and Banque Quest Africaine de Developpement (BOAD), to progress from Stage II to Stage III (the final stage of the accreditation process)¹¹⁵ and established grant-funding ceilings for these four agencies to ensure that they will not be able to take on projects that they cannot handle.¹¹⁶ Following desk reviews, the accreditation panel rejected the International Federation of the Red Cross and the National Environment Fund–Peru (FONAM).¹¹⁷

B. WORLD BANK ENVIRONMENTAL AND SOCIAL SAFEGUARD POLICY REVIEW

The World Bank continued its Environmental and Social Safeguard Policy Review.¹¹⁸ Following a global consultation on its Environmental and Social Framework, the World Bank released a second draft Environmental and Social Framework in August 2015 and began phase 3 consultations.¹¹⁹ Along with the new draft, the World Bank released a list of outstanding issues on which phase 3 of the consultations would focus. The list of issues include a number of environmental concerns, including the relationship between the World Bank’s safeguards and the UNFCCC and countries’ climate change commitments under it, criteria for biodiversity offsets, and assessing cumulative impacts in the

113. *Id.* at ¶ 8.1(viii). Note the US requirements varied depending on the fishing method by which tuna was harvested, where the tuna was caught, and the type of vessel used. *Id.*, citing Appellate Body Report, U.S. – Tuna II (Mexico), ¶ 233.

114. These Project Agencies include Fundo Brasileiro para a Biodiversidade (FUNBIO) and the World Wildlife Fund, *inter alia*. See Global Environment Facility, “Progress Report on the Pilot Accreditation of GEF Project Agencies,” GEF/C.48/10/Rev.01, para. 13 (June 1, 2015), available at https://www.thegef.org/gef/sites/thegef.org/files/documents/EN_GEF.C48.10.Rev_01_Progress_Report_on_the_Pilot_Accreditation_of_GEF_Project_Agencies.pdf.

115. *Id.* ¶ 5.

116. *Id.* ¶ 13.

117. *Id.* ¶ 7.

118. Review and Update of the World Bank Safeguard Policies, WORLD BANK, <http://consultations.worldbank.org/consultation/review-and-update-world-bank-safeguard-policies>.

119. World Bank Environmental and Social Framework: Second Draft for Consultation (July 1, 2015), http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/clean_second_draft_es_framework_final_draft_for_consultation_july_1_2015.pdf.

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environmental impact assessment, among others.¹²⁰ The World Bank is still in phase 3 of consultations and expects to finalize its new Environmental and Social Framework in 2016.

C. ASIAN INFRASTRUCTURE INVESTMENT BANK

The Asian Infrastructure Investment Bank (AIIB), which is led by China and designed to promote investment and economic growth in Asia, continued its path toward full operation. In June 2015, the fifty-seven prospective founding members finalized the AIIB Articles of Agreement and fifty of the fifty-seven prospective founding members signed it immediately.¹²¹ In September 2015, the AIIB released a draft Environmental and Social Framework for comments.¹²² This draft framework is similar to the safeguard policies at other international financial institutions, including the World Bank, International Finance Corporation, and Asian Development Bank (ADB). It includes a vision statement, a broad Environmental and Social Policy (ESP) that sets forth overarching policies, including categorization, due diligence, environmental and social management planning, consultation, access to information, monitoring, and grievances, among others, and sets out the requirements for the AIIB and its clients.

The ESP includes an “Environmental and Social Exclusion List” in Appendix I, which sets forth the operations that AIIB will not knowingly finance and it includes projects that violate several international environmental agreements such as CITES and the Montreal Protocol, but does not include all of the MEAs nor does it exclude coal-fired power plants.¹²³ Additionally, the framework includes three Environmental and Social Standards (ESS): ESS1, Environmental and Social Assessment; ESS2, Involuntary Resettlement; and ESS3, Indigenous Peoples. Lastly, it includes brief Environmental and Social Procedures that gives more detailed information on the mandatory actions detailed in the ESP and ESSs, namely relating to the Environmental and Social Management Plan (ESMP) and Environmental and Social Management Planning Framework (ESMPF).

The draft environmental and social framework is significant; however, the draft framework fails to detail procedures and the AIIB has yet to provide information about how a potential accountability mechanism would operate.¹²⁴ The framework was expected to be finalized by the end of 2015, but neither an update nor a final version was available online by December.

120. Issues for Phase 3 Consultations (Aug. 3, 2015), http://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/list_of_issues_for_consultations.pdf.

121. Asian Infrastructure Investment Bank, Articles of Agreement (2015), <http://www.aiib.org/uploadfile/2015/0814/20150814022158430.pdf>.

122. Asian Infrastructure Investment Bank (AIIB), Consultation Draft: Environmental and Social Framework (Aug. 3, 2015), *available at* <http://www.aiib.org/uploadfile/2015/0907/20150907061253489.pdf> (hereinafter AIIB Draft ESF).

123. *Id.* at 19 (Appendix I).

124. The AIIB Draft ESF says that AIIB clients will have to establish suitable operational level grievance redress mechanisms for their projects, but it does not provide any detail about how that should be done. Additionally, it says that operation-affected people can bring a complaint to the AIIB “Oversight Mechanism” in accordance with the policies for that mechanism, but those have yet to be established and the policy notes that the mechanism is still under development. *See id.* ¶¶ 50-51.