

CARTAGENA CONVENTION

AUGUST 3 (legislative day, JULY 30), 1984.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 98-13]

The Committee on Foreign Relations, to which was referred the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, signed by the United States, 12 other countries, and the EEC, and transmitted to the Senate for advice and consent on January 27, 1984. The purpose of the Convention is to create a general legal framework for the protection of the marine environment of the Caribbean Sea, the Gulf of Mexico and the adjacent areas of the Atlantic. Developed under the auspices of the United Nations Environment Program (UNEP) Regional Seas Program, it complements the specific projects approach of the Caribbean Action Plan, provides for the application of existing international agreements, and directly contributes to the creation of higher and more consistent international standards of marine pollution control.

BACKGROUND

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region was drafted in March 1983 at Cartagena, Colombia, signed by the United States, 12 other countries, and the EEC, and transmitted to the Senate for advice and consent on January 27, 1984. The purpose of the Convention is to create a general legal framework for the protection of the marine environment of the Caribbean Sea, the Gulf of Mexico and the adjacent areas of the Atlantic. Developed under the auspices of the United Nations Environment Program (UNEP) Regional Seas Program, it complements the specific projects approach of the Caribbean Action Plan, provides for the application of existing international agreements, and directly contributes to the creation of higher and more consistent international standards of marine pollution control.

The scope of the Convention is well-suited to the many and diverse environmental challenges of the area. The Wider Caribbean Region is made up of states with different economic and political structures, natural resources, social systems, ecological characteristics and potential capabilities. Most are developing countries and suffer from environmental problems resulting from under-development or from the side effects of development programs that neglect to take into account their environmental consequences. The small islands, in particular, suffer uncontrolled urban growth, erosion, soil loss and deforestation, loss of economically valuable plant and animal species, extensive loss

of beach sand, and oil pollution. Tourism, in some cases the most important source of national income, has made new demands on the fragile coastal areas and habitats.

In confronting these problems, the Convention employs a definition of pollution closely in line with that of the U.S. Clean Air Act and includes provisions on specially protected areas, wildlife protection, environmental impact assessment and cooperation in emergency situations. It calls for coordination of scientific research and technical assistance in order to strengthen the institutions of the smaller states that are responsible for environmental management. It also contains an annex for non-compulsory but binding arbitration for the settlement of disputes. Financial rules will be determined after the Convention enters into force and must be adopted unanimously.

The Convention is designed to be supplemented by detailed protocols. A Protocol to the Convention Concerning Cooperation in Combating Oil Spills has already been drawn up, signed and approved as an Executive Agreement. It is particularly important to the United States because of the tremendous flow of oil through the region and because it extends to other hazardous substances as well. The United States is also seeking protocols on land-based sources of marine pollution, protected areas and wildlife preservation. However, in order to become party to any protocol, including the oil spill protocol, the United States must ratify the Convention.

SIGNATORIES

As of July 26, 1984, the following countries and regional organizations had signed this Convention: United States, Colombia, European Economic Community, France, Grenada, Honduras, Jamaica, Mexico, Netherlands, Nicaragua, Panama, St. Lucia, United Kingdom, and Venezuela.

MAJOR PROVISIONS

The following is a summary of the Convention's major provisions prepared by the Department of State.

The Convention consists of thirty articles.

Article 1: Provides that the Convention applies to the wider Caribbean region as defined in Article 2, but does not include internal waters except as otherwise provided in a protocol.

Article 2: Provides a definition of the term "Convention area" as described above and a definition of the term "organization", which is designated to provide the secretariat functions under the Convention as set forth in Article 15.

Article 3: Encourages Contracting Parties to conclude bilateral and multilateral agreements, including regional or subregional agreements to protect the marine environment consistent with the Convention and in accordance with international law. It also contains general provisions on the relationship of the Convention to other agreements, subjects the Convention's provisions and actions by the Contracting Parties to implement it to international law, and provides that the Convention does not affect the views or claims of Contracting Parties on the nature and extent of maritime jurisdiction nor obligations of Contracting Parties pursuant to previously concluded international

Article 4: Contains general obligations requiring Contracting Parties to take measures necessary to implement the Convention to prevent, reduce and control pollution of the Convention area without increasing pollution outside the Convention area; to ensure sound environmental management; and to cooperate in implementation of the Convention. All such measures must be in conformity with international law.

Article 5: Contains a general obligation to prevent pollution of the Convention area from discharges from ships and to ensure the effective application of internationally recognized rules and standards established by the competent international organization (which is understood to mean the International Maritime Organization).

Article 6: Contains a general obligation to prevent pollution of the Convention area by dumping of wastes and to ensure effective implementation of applicable international rules and standards. (This obligation is understood to refer to rules promulgated under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, the 1972 London Dumping Convention.)

Article 7: Contains a general obligation to prevent pollution of the Convention area from land-based sources. It is expected that a detailed protocol will be developed on this subject as a first priority after entry into force of the Convention.

Article 8: Contains a general obligation to prevent pollution of the Convention area from exploration and exploitation of the seabed and subsoil.

Article 9: Contains a general obligation to prevent pollution of the Convention area from discharges into the atmosphere from activities under the jurisdiction of a Contracting Party.

Article 10: Contains a general obligation to protect and preserve rare and fragile ecosystems in the Convention area and to establish protected areas. Such areas are not to affect the rights of third States or other Contracting Parties (i.e., such protected areas may not infringe upon internationally recognized navigational overflight rights and freedoms).

Article 11: Requires the Contracting Parties to develop individual and joint contingency plans and to take necessary measures to respond to pollution emergencies in the Convention area. It also requires Contracting Parties to inform other States likely to be affected by such pollution.

Article 12: Obligates Contracting Parties to develop technical and other guidelines for their major development project and to assess the potential effects of such projects on the marine environment so that appropriate measures may be taken to prevent substantial pollution or significant and harmful changes to the Convention area. The Article was drafted in a manner so as not to obligate Contracting Parties to do or require environmental assessment for purely private actions.

Article 13: Provides for the Contracting Parties to undertake to cooperate in scientific research, monitoring and the exchange of data and other scientific information relating to the purposes of the Convention. It also provides for them to undertake to cooperate in providing technical and other assistance in fields relative to pollution and sound environmental management of the Convention area.

Article 14: Requires the Contracting Parties to cooperate in adopting appropriate rules and procedures in the field of liability and compensation for damage resulting from pollution of the Convention area.

Article 15: Designates the United Nations Environment Program to carry out specific secretariat functions such as preparing and convening meetings of the Contracting Parties.

Articles 16, 17, 18, and 19 provide, *inter alia*, for meetings of the Contracting Parties at two year intervals, for the adoption of additional protocols, for amendment of the Convention and its protocols, and for rules and procedures with respect to annexes to the Convention and its protocols.

Articles 20, 21, and 22 provide, *inter alia*, for the unanimous adoption of financial rules and rules of procedure, the criteria for participation by regional economic integration organizations, and for exchange of information on implementation of the Convention and its protocols.

Article 23: Obligates Contracting Parties to seek settlement of disputes relating to the interpretation or application of the Convention or its protocols through negotiation or other peaceful means of their choice. If such a settlement is not possible, the dispute, upon common agreement, is to be submitted to binding arbitration under the procedures set forth in the Annex on Arbitration unless otherwise agreed. Although such arbitration is not compulsory, express provision was made for future protocols to so provide, and for a Contracting Party to recognize the procedures as compulsory in relation to another Contracting Party accepting the same obligation.

Article 24: Establishes a linkage between the Convention and its protocols by providing (a) that no State or regional economic organization may become a party to the Convention without becoming a party to at least one of its protocols, and (b) that no entity may become a party to a protocol without becoming a party to the Convention. The rationale for this linkage, which is also reflected in Article 29 on withdrawal from the Convention and its protocols, is that while the Convention provides a general legal framework by which Contracting Parties are bound, the undertakings contained in the Convention are meaningful only when supplemented by detailed obligations contained in one or more of the protocols.

Articles 25 through 30 contain final clauses relating to signature, ratification, accession, entry into force and denunciation of the Convention, the depositary and the Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region, and any additional protocols to the Convention.

COMMITTEE ACTION

On July 31, 1984, the Committee on Foreign Relations considered the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Treaty Doc. 98-13). At that time, the Committee by a unanimous voice vote ordered the treaty favorably reported to the Senate for its advice and consent to ratification.

The Committee had received statements of support from the Acting Secretary of State for Legislative and Intergovernmental Affairs, the Chairman of the Council on Environmental Quality and a representative of 17 major environmental and conservation groups (see appendix).

TEXT OF RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region done at Cartagena de Indias March 24, 1983.