



ITSSD: Americans' Constitutional Rights Will Be Trampled Unless Congress Convenes Public Hearings on the UN Law of the Sea Convention

Annotated Version

PRINCETON, N.J., May 5 /PRNewswire-USNewswire/ -- In a new article appearing within the forthcoming issue of the Santa Clara Journal of International Law entitled, *What Goes Around, Comes Around: How UNCLOS Ratification Will Herald Europe's Precautionary Principle as US Law*, international attorney Lawrence Kogan calls upon all Americans to immediately exercise their constitutionally guaranteed 'right to know'. This article identifies the multiple pathways through which global environmental extremists,¹ US trans-nationalists,² and the 111th Congressional supermajority³ seek to use the highly complex United Nations Convention on the Law of the Sea (UNCLOS) as a loading platform from which to import into the American heartland very harmful UN and European-anchored environmental treaty and customary international law rules. "Unless the public demands due process of law from their congressional representatives," emphasized Kogan, "such rules, resembling rogue waves,⁴ will collectively override US sovereignty and the supremacy of the US Constitution and its accompanying Bill of Rights".⁵

According to Kogan, "The US Navy continues to publicly deny the likely adverse consequences of the more than 45 plus environmental UNCLOS articles, regulations, protocols and annexes that implicitly and explicitly incorporate Europe's Precautionary Principle.⁶ This principle is known not only to raise indirect taxes⁷ and to threaten American free enterprise by chilling investments in technological innovations, reducing economic activity and increasing product manufacturing, processing and distribution costs and service fees,⁸ but to also severely impact military planning.⁹ Indeed, since, at least the late 1990's, foreign governments and environmental activist groups have invoked this controversial European legal nostrum to block US commercial activity,¹⁰ to curtail the Navy's ability to train offshore with sonar equipment,¹¹ and to impair the timely US naval exercise of customary international law rights to freedom of navigation and innocent passage, both on the high seas and in territorial waters¹² and at the north and south poles."¹³

"Meanwhile," notes Kogan, "there are 'environmentally-enlightened' congressional committee chairs and ranking members who appear to be enamored with the legislative and associated regulatory powers derived from Europe's political civil law Precautionary Principle,¹⁴ especially those who hail from the coastal States of Alaska,¹⁵ California, Maine, Massachusetts, New Jersey and New York. They are busily preparing amendments¹⁶ to a host of US federal environmental, chemical¹⁷ and energy statutes that would expressly incorporate said principle as US law from within our own borders¹⁸ and thereby obviate the need for special US legislation to implement the UNCLOS' land and air-based pollution provisions. For example, these amended statutes, the new carbon cap-and-trade regime¹⁹ currently under development and the proposal for a new federal oceans policy²⁰ are designed to achieve regulatory harmonization²¹ with socialist

Europe.²² Their effect is to attenuate and subjugate US constitutionally guaranteed individual rights, including private property, to global communal interests.²³ In addition to raising the cost of living for all Americans, they would also create disguised environmental trade barriers²⁴ that are likely to injure and trigger retaliation from US trading partners,²⁵ all at a time when the US is suffering from a deep financial crisis."

It has been observed that the Obama administration is paying lip service to ensuring Americans greater public transparency²⁶ and a higher standard of governmental ethics²⁷ than had its predecessors, even as it devises how to exploit the opaque federal administrative regulatory process to enshrine Europe's Precautionary Principle as US law. Perhaps, this explains why it has yet to 'walk the talk' to move those congressional committees possessing oversight jurisdiction concerning the UNCLOS' environmental, economic and tribunal components to hold open public hearings, prior to ratification, that substantively discuss their impact on the US economy, US national security, US constitutional rights and US sovereignty. If, however, 'change' is in the air as this administration insists, then nothing less than full disclosure will make it authentic.

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¹ See "Transition to Green: Leading the Way to a Healthy Environment, A Green Economy and a Sustainable Future – Environmental Transition Recommendations for the Obama Administration" (NOV. 2008), at: <http://www.scstatehouse.gov/citizensinterestpage/EnergyIssuesAndPolicies/CommentsReceived2ndRequest/Sierra%20Club%20Attachment%20No.%202%20to%2012-01-08%20Comments.pdf>.

² See "ITSSD Letter to SFRC Objecting to the Nomination of Harold Koh as the Next Legal Adviser to the US State Department", Institute for Trade, Standards and Sustainable Development (April 2009) at: <http://www.itssd.org/correspondences.html>.

³ See Tom Baldwin, "Obama Super-Majority as Senator Jumps Ship", UK Independent (April 29, 2009), at: <http://www.independent.ie/world-news/obama-supermajority-as-senator-jumps-ship-1722589.html>.



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⁴ See William J. Broad, "Rogue Giants at Sea", New York Times Science (July 11, 2006) at: http://www.nytimes.com/2006/07/11/science/11wave.html?_r=1.

⁵ See Lawrence A. Kogan, "The Extra-WTO Precautionary Principle: One European 'Fashion' Export the United States Can Do Without", 17 TEMPLE POLITICAL & CIVIL RIGHTS L. R. 491, 591-95 (Spring 2008), at: <http://www.itssd.org/Kogan%2017%5B1%5D.2.pdf>.

⁶ See J. William Middendorf II & Lawrence A. Kogan, "The 'LOST 45' UN Environmental Restrictions on US Sovereignty", Institute for Trade, Standards and Sustainable Development (Sept. 27, 2007) at: <http://www.coin.dk/default.asp?aid=1370>.

⁷ See "ITSSD Journal on Indirect Taxation", at: <http://itssdjournaltaxation.blogspot.com>.

⁸ See Lawrence A. Kogan, "Exporting Precaution: How Europe's Risk Free Regulatory Agenda Threatens American Free Enterprise", Institute for Trade, Standards and Sustainable Development (2005) at: <http://www.itssd.org/White%20Papers/KoganMonograph.pdf>.

⁹ See Lawrence A. Kogan, "US Military Review of the Law of the Sea Treaty Lacking: Planned Outsourcing Risks Triggering Logistics Nightmare", ITSSD Journal on the UN Law of the Sea Convention (Oct. 4, 2007) at: <http://itssdjournalunclos-lost.blogspot.com/2008/01/us-military-review-of-law-of-sea-treaty.html>.

¹⁰ See Lawrence A. Kogan, "Looking Behind the Curtain: The Growth of Trade Barriers That Ignore Sound Science", National Foreign Trade Council (May 6, 2003), at: http://www.wto.org/english/forums_e/ngo_e/posp47_nftc_looking_behind_e.pdf.

¹¹ See Lawrence A. Kogan, "A Chill Wind for Precaution?: The Broader Ramification of the U.S. Supreme Court's *Winter* Ruling", Wash. Lgl. Fnd. Critical Legal Issues Working Paper (April 2009), at: <http://www.itssd.org/Winter%20Decision%20--%200409KoganWPFinal.pdf>.

¹² See Lawrence A. Kogan, "Arctic Escapades: Can The Precautionary Principle Be Invoked via UNCLOS to Undermine U.S. Polar Interests?", Presented at the National Defense University and Forces Transformation and Resources Seminar *Transforming National Security Unfrozen Treasures National Security, Climate Change and the Arctic Frontier Laws of the Sea: Changing Air Land and Sea Routes*, at pp. 175-179, at: http://www.ndu.edu/CTNSP/NCW_course/Arctic%20Security%20Compilation.pdf and <http://www.itssd.org/Programs/KOGANIII.ppt>.

¹³ See Lawrence A. Kogan, "Polar Sea Ice Melts Away in Time for Antarctic Easter Surprise", Institute for Trade, Standards and Sustainable Development (April 2009) at: <http://www.itssd.org/Polar%20Sea%20Ice%20Melts%20Away%20in%20Time%20for%20Antarctic%20Easter%20Surprise%20III.pdf>.

¹⁴ See generally, Maria Vittoria Lumetti, "Brief Notes on the Precautionary Principle in Systems of Common Law and Civil Law", Presentation at the International Conference *The Precautionary EMF Approach: Rationale, Legislation and Implementation*, convened by the International Commission for Electromagnetic Safety, Benevento, Italy (Feb. 2006), English Translation of Abstract accessible at: <http://www.icems.eu/docs/Lumetti.pdf>. English Translation of Full Presentation accessible at: <http://itssd.org/Maria%20Vittoria%20Lumetti%20-%20Brief%20Note%20on%20PP%20in%20Common%20Law%20&%20Civil%20Law%20Systems.pdf>.

¹⁵ See Chris Horner, "Has Sen. Murkowski LOST Her Mind?", National Review Online (July 25, 2008) at: <http://planetgore.nationalreview.com/post/?q=NjBiNDM2NTAxMDFmOGQ0NTBhODhmMjJkNmIxMzBjNWQ>.

¹⁶ See "Markey, Feinstein and Schumer Introduce Federal Ban on BPA in Food & Bev Containers", Press Release, Congressman Edward Markey (March 13, 2009) at: http://markey.house.gov/index.php?option=com_content&task=view&id=3565&Itemid=15 announcing "Ban Poisonous Additives Act of 2009", accessible at: http://markey.house.gov/docs/consumer_protection/2009bpalegislation.pdf.

¹⁷ See Glenn Hess, "Guarded Optimism", 87 Chemical & Engineering News pp. 19-23 (Jan. 5, 2009) at: <http://itecsinsider.com/?p=1601>.

¹⁸ See "BPA: When the Nuns Take Action, Legislators Do Too", Acronym Required (March 14, 2009) at: <http://acronymrequired.com/2009/03/bisphenol-a-nuns-and-legislators-unite-on-bisphenol-a.html>.



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- ¹⁹ See Tom LoBianco, “Climate Bill Could Trigger Lawsuit Landslide”, Washington Times (April 10, 2009) at: <http://www.washingtontimes.com/news/2009/apr/10/climate-bill-could-trigger-lawsuit-landslide> .
- ²⁰ See “Proposal for New Federal Ocean Policy Has Broad Implications for California Firms”, CalChamber Federal Update, California Chamber of Commerce (Feb. 20, 2009) at: <http://www.calchamber.com/Headlines/Pages/ProposalforNewFederalOceanPolicyHasBroadImplicationsforCaliforniaFirms.aspx> .
- ²¹ See Steve Watson, “EU/US Merger: New Global Order By Stealth”, Infowars.net (May 4, 2007) at: <http://infowars.net/articles/may2007/040507EUUS.htm> ; “US and EU Agree ‘Single Market’”, BBC News (April 30, 2007) at: <http://news.bbc.co.uk/2/hi/europe/6607757.stm> .
- ²² See “President Obama Meets British PM Brown” Glenn Beck Interviews Daniel Mitchell of CATO Institute, Fox News.com (March 4, 2009) at: <http://www.foxnews.com/story/0,2933,504476,00.html> .
- ²³ See Svetozar Pejovich, “From Socialism to Socialism: A Property Rights Analysis of The Transition in Europe”, Presentation Delivered at The Wieser Memorial Lecture of the Prague Conference on Political Economy, “New Perspectives in Austrian Economics and Political Economy of Freedom” (April 24-26, 2009). Information about this conference is accessible online at: <http://pcpe.libinst.cz/pcpe09>. Excerpts from this presentation are accessible at: <http://itssd.org/NEGATIVE%20SUSTAINABLE%20DEVELOPMENT%20IS%20SOCIALISM.pdf> .
- ²⁴ See Lawrence A. Kogan, “‘Enlightened’ Environmentalism or Disguised Protectionism? Assessing the Impact of EU Precaution-Based Standards on Developing Countries”, National Foreign Trade Council (Apr. 2004) at: http://www.wto.org/english/forums_e/ngo_e/posp47_nftc_enlightened_e.pdf .
- ²⁵ See Allen Rappeport, “Chinese Official Warns US On Protectionism”, Financial Times (April 21, 2009) at: <http://www.ft.com/cms/s/0/0318fd3c-2ea1-11de-b7d3-00144feabdc0.html> .
- ²⁶ See “Obama Administration Struggling to Live Up to Transparency Pledges”, FoxNews.com (March 10, 2009) at: <http://www.foxnews.com/politics/first100days/2009/03/10/obama-administration-struggling-live-transparency-pledges> .
- ²⁷ See Juan Williams and Renee Montagne, “Are Obama's High Ethics Standards Too High?”, National Public Radio (Feb. 4, 2009) at: <http://www.npr.org/templates/story/story.php?storyId=100229474> .