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Law of the Sea Treaty, Domestic Wastewater

Bush's Toilet Bowl Treaty

By Cliff Kincaid Tuesday, October 30, 2007

When State Department Legal Adviser John B. Bellinger III gave a controversial June 6 speech on the subject of "The United States and International Law," he mentioned that the Bush Administration had "put forward a priority list of over 35 treaty [packages](#) that we have urged the Senate to approve soon, including the UN Convention on the Law of the Sea."

The latter is now up for Senate ratification, with a vote scheduled on Wednesday, and one of its many controversial provisions is the regulation of land-based sources of pollution. This treaty covers the water and the land. But now we have discovered that [the Bush Administration](#) has asked the Senate to ratify a treaty that defines one of those land-based sources of pollution as toilet flushing. No kidding.

It is amazing but true. The [Bush Administration](#) wants the Senate to ratify a treaty that will invite international inspections of what you flush down your toilet.

We are talking about Annex III of the "Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, with Annexes." You can read it for yourself [here](#).

Annex III is titled, "Domestic Wastewater," which is defined as including "all discharges from households, commercial facilities, [hotels](#), septage and any other entity..." These discharges are defined as encompassing (1) toilet flushing, (2) discharges from showers, wash basins, kitchens and laundries, or discharges from small industries, provided their composition and quantity are compatible with treatment in a domestic wastewater system.

Lawrence A. Kogan of the [Institute for Trade, Standards, and Sustainable Development](#) uncovered the dangerous details of this agreement and has termed it the "Toilet bowl treaty," noting that it constitutes a sort of mini-Law of the Sea Treaty. The protocol, he says, is one of 11 "regional seas" agreements. It is on an

October 1 State Department list of "Treaties Pending in the Senate." (Not all of these treaties are currently being pushed by the Bush Administration).

Our major media were, as usual, asleep at the switch. It turns out that the White House issued a [press release](#) about submitting this treaty to the Senate for ratification. President Bush's statement was quite specific. He noted that "It is estimated that 70 to 90 percent of pollution entering the marine environment emanates from land-based sources and activities," and that parties to the treaty "are required to ensure that domestic wastewater discharges meet specific effluent limitations, and to develop plans for the prevention and reduction of agricultural nonpoint source pollution."

Bush claimed that "The United States would be able to implement its obligations under the Protocol under existing statutory and regulatory authority." In other words, he thinks this is supposed to affect others, not us. But this may not be the way some activist judges and international lawyers see it.

Bush's admission that 70 to 90 percent of pollution entering the marine environment emanates from land-based sources and activities is directly relevant to the U.N.

Convention on the Law of the Sea (UNCLOS), which has provisions relating to prohibiting pollution from such sources. That is why many observers have concluded that the Law of the Sea Treaty can serve as a back-door way to implement the (unratified) global warming treaty. Foreign judges and lawyers could easily interpret greenhouse gas emissions as contributing to pollution of the oceans. As a result, under UNCLOS they could order cuts in energy use.

Since the State Department submitted the protocol for ratification, along with the Law of the Sea Treaty, it's a certainty that Legal Adviser John B. Bellinger III knew all about the potential for regulating land-based pollution sources and activities, including toilet bowls, when he testified before the Senate about UNCLOS on September 27. But not only did he deny that UNCLOS had any such potential, he said it had no such provisions. When pressed, he claimed the provisions were "hortatory" and had no practical legal impact. This is why Tom Fitton of Judicial Watch and I have asked for a [formal review](#) (PDF) of his testimony. He clearly misled the Senate.

But now we find out that it's worse than we thought. The State Department had previously submitted another treaty that specifically and explicitly defined a land-based source of pollution as being a toilet bowl. Ratification of this treaty, in conjunction with ratification of UNCLOS, would literally invite U.N. inspectors to review and manage discharge from your toilet bowl. Why didn't Bellinger tell the Senate about that during his UNCLOS testimony?

Bellinger seems to be far more open and honest with international audiences that he is trying to appease and impress. In his [June 6 speech](#) to a group at The Hague, for example, Bellinger boasted about using his own staff of 171 lawyers to “integrate” international law “into the decision-making process” of the U.S. Government. He defended the President’s order to Texas to comply with a ruling by the U.N.’s International Court of Justice on giving convicted Mexican killers another hearing. Bellinger called this compliance with “an international obligation.”

The [Senate Foreign Relations Committee](#) is scheduled to vote on UNCLOS on Wednesday. UNCLOS is the first order of business and if it passes, as seems likely, Majority Leader Senator Harry Reid could call it up for a quick Senate floor vote.

Before the committee votes, it should recall Bellinger as a witness and determine why he has been less than open and honest about the “obligations” of the U.S. under UNCLOS. Then he should be asked to explain why we need a treaty targeting toilet bowls and showers. If he claims the need to adhere to “international obligations,” he should be laughed out of the hearing room, along with his treaties.

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