

Key Treaties That Threaten American Sovereignty, Which the Senate Must Oppose During the Biden Presidency

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KEY TAKEAWAYS

The new Biden Administration will likely seek to revive several treaties and agreements that failed to gain Senate approval in the past.

These will likely include treaties on human rights, environmental agreements, arms control agreements, and the U.N. Convention on the Law of the Sea.

The Senate must fulfill its constitutional role to scrutinize treaties and reject any that undermine the interests and national sovereignty of the American people.

The Trump Administration was rightfully skeptical of treaties and other international agreements that would result in the loss of American sovereignty. The new Biden Administration will likely seek to revive several treaties or agreements that failed to gain congressional approval in the past.

Over the next four years, particularly the first two while Democrats have certain control of Congress, the Biden Administration can be expected to push for U.S. ratification of a number of international agreements, including human rights conventions, environmental agreements, arms control treaties, and the U.N. Convention on the Law of the Sea. The U.S. Congress must fulfill its constitutional role by scrutinizing such treaties and rejecting any that undermine the interests and national sovereignty of the American people.

This paper, in its entirety, can be found at <http://report.heritage.org/ib6045>

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Human Rights Conventions

Prior Democratic Administrations have tried and failed to push through various human rights conventions. In 2009, President Barack Obama signed the Convention on the Rights of Persons with Disabilities (CRPD) and submitted it to the Senate, then controlled by his own party, for advice and consent. The convention ultimately failed on the Senate floor by a vote of 61 to 38. Since the CRPD was signed when he served as Vice President, President Joe Biden may feel obligated to make another push for ratification.

Other human rights conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC),¹ have never enjoyed broad, bipartisan support, but that does not necessarily mean that the Biden Administration will not advocate for the Senate to consent to ratification.

These conventions would threaten U.S. sovereignty by subjecting U.S. domestic law to international rules, restricting American freedom of action on the battlefield and in the international commons, and imposing international norms on the American people.

The U.N. Convention on the Law of the Sea (UNCLOS)

When he was Chairman of the Senate Foreign Relations Committee in 2007, Joe Biden (D-DE) supported U.S. ratification of UNCLOS. Senator Biden successfully moved UNCLOS out of committee, but the convention never received a vote on the Senate floor.

The Obama Administration made a serious effort in 2012 to join UNCLOS. The Obama effort was a full-court press. High-level witnesses who testified before Congress in favor of ratification included Secretary of State Hillary Clinton, Secretary of Defense Leon Panetta, Joint Chiefs Chairman Martin Dempsey, as well as other high-ranking military officers and business leaders.

But despite Democratic control of the Senate, UNCLOS failed to garner enough support and did not even receive a vote in the Foreign Relations Committee, then chaired by Senator John Kerry (D-MA).

UNCLOS would threaten U.S. sovereignty by, among other things, forcing the United States to pay royalties on oil extracted from the U.S. outer continental shelf.²

International Environmental Agreements

During his presidential campaign, candidate Biden committed to “re-join” the deeply flawed Paris Agreement on climate change, which he will consider an “executive agreement” rather than a treaty. But there are other environmental agreements that may also be on his Administration’s radar.

The Convention on Biological Diversity, signed and submitted to the Senate in 1993 by the Clinton Administration, requires *inter alia* the “fair and equitable sharing” of the benefits arising from the use of genetic resources, especially those destined for commercial use.

Other environmental treaties are in the works within the international community, such as a legally binding instrument under UNCLOS on the conservation and use of marine biological diversity in the high seas, and an as yet undrafted U.N. treaty on eliminating plastic pollution.

Candidate Biden made clear that he has a highly ambitious, almost all-encompassing domestic climate change agenda. Congress and the American public can expect the Biden Administration to do all it can to advance the cause of reducing climate change on the international stage.

Such sweeping environmental treaties harm the U.S. and its population through higher energy costs, with virtually no change in global temperatures, while allowing other nations, such as China, to bypass the strict carbon limits.³

Arms Trade or Control Agreements

From conventional to nuclear weapons, the Biden Administration can be expected to push for international agreements that ban or regulate American trade in, or possession of, armaments.

The Arms Trade Treaty (ATT) was signed under the Obama Administration in 2013 and submitted to the Senate in late 2016, but the Senate took no action on the treaty. President Donald Trump wisely “un-signed” the ATT in April 2019, but the Biden Administration may seek to revive the agreement.

The supposed purpose of the ATT is to control irresponsible international arms sales, but the agreement will have no impact on the exports of arms-producing nations that have no intention of following the rules. Its only effect will be to reduce the ability of the U.S. to arm its allies.

President Biden has also long been a supporter of the Comprehensive Nuclear-Test-Ban Treaty (CTBT), an agreement requiring countries not to carry out nuclear weapons tests at any place under its jurisdiction. The CTBT was defeated on the Senate floor in 1999 by a vote of 51 to 48. The

Biden Administration may pursue ratification of the CTBT as part of its nuclear weapons policy, which will include an extension of the 2010 New Strategic Arms Reduction Treaty (New START), set to expire in February 2021.

The CTBT would harm U.S. national security by restricting the ability of the United States to test and modernize its nuclear stockpile.⁴

Recommendations for the Senate and the Administration

The Senate should reject any revival of the above-mentioned international agreements, all of which threaten the sovereignty of the United States. Their failure thus far to attain broad, bipartisan support is an indication that they do not enjoy the backing of the American people, nor are they likely to gain this backing.

The Biden White House should not negotiate or sign international agreements that have little or no chance of receiving the advice and consent of the Senate. The Biden Administration should consult with the Senate on its “advice” prior to, as well as during, the negotiation of new treaties.

Conclusion

In their infinite wisdom, the Framers of the Constitution required a two-thirds vote in the Senate to ratify treaties. This is a constitutional requirement and cannot be changed by Senate rule or procedure. As such, bipartisan support will be necessary to join any of the above-mentioned treaties. With an evenly divided Senate, it behooves that body and the White House to pursue only those international agreements that enjoy broad public support.

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Endnotes

1. The CRC was signed during the Clinton Administration in 1995, but has never been transmitted to the Senate for its advice and consent.
2. See, for example, Steven Groves, "The Law of the Sea: Costs of U.S. Accession to UNCLOS," testimony before the Committee on Foreign Relations, U.S. Senate, June 14, 2012, <https://www.heritage.org/testimony/the-law-the-sea-costs-us-accession-unclos>.
3. See, for example, Nicolas D. Loris, "Good Riddance to the Paris Accord," *Akron Beacon Journal*, June 9, 2017, <https://www.beaconjournal.com/article/20170609/OPINION/306099530> (accessed June 26, 2021).
4. See, for example, Baker Spring, "CTBT: New Study Fails to Resolve Differences over Risks to U.S. Nuclear Arsenal," Heritage Foundation *Issue Brief* No. 3556, March 31, 2021, <https://www.heritage.org/arms-control/report/ctbt-new-study-fails-resolve-differences-over-risks-us-nuclear-arsenal>.