America, China, and the Struggle for World Order

Ideas, Traditions, Historical Legacies, and Global Visions

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9

A Green Giant? Inconsistency and American Environmental Diplomacy

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Introduction

The United States is home to the world's most vibrant and well-resourced environmental advocacy sector, but the country has been an inconsistent leader in global environmental diplomacy. Beginning in the 1970s, the US developed a reputation for global environmental leadership as it sought to internationalize its ambitious domestic environmental goals. For issues such as ozone depletion and whaling, the United States coordinated and cajoled others to take on commitments to support environmental aims. For other problems, foremost among them climate change, the United States has influenced global negotiations but has generally been regarded as a laggard from an environmental perspective. Some analysts interpret this as part of a larger secular trend away from global environmental leadership by the United States that began in the early 1990s. This chapter seeks to answer two main questions: (1) What explains the variation in US leadership on environmental issues? (2) Is the US increasingly moving away from leadership in global environmental diplomacy?

The chapter is divided into five sections. The first seeks to anchor the environment in the context of the larger narrative of the country's ideas, traditions, and historical legacies and introduces the notion of environmental leadership. The second explains the source of the country's inconsistent leadership, primarily as a function of the country's pluralism and domestic institutions that intermittently give material and ideational interests opposed to environmental protection influence over policy. The third examines the evidence of a secular decline in US global environmental leadership and focuses on the structure of the country's political system, particularly the tradition governing the accession of the United States to international treaties. The fourth suggests how divisions over climate change have cast a pall

over US environmental policy broadly (and, by extension, its international reputation), crowding out space for other environmental goals and increasingly politicizing the broader environmental agenda. The final section evaluates how these attributes of US international environmental policy relate to China, both with respect to Sino-American relations and also how the countries are similar and/or different from each other.

America's Environmental Traditions and Global Leadership

As Ming Wan's chapter discusses, China has thousands of years of history, practice, and thought related to the environment. The United States as a polity has a much shorter history by comparison, and its traditions with respect to the environment reflect the challenges of a young, economically ambitious country with a rich and diverse natural heritage. In the colonial era of the seventeenth century, the continent's wildness was dangerous to new arrivals, forcing them to adjust to seasonal climate extremes, produce food, and fend off wild animals, as well as deal with native populations whose lives were dependent on the same resources for survival.

After the early history of settlement, conquest, and consolidation, westward expansion of the country in the eighteenth and nineteenth centuries increasingly brought in to the union more diverse and wild lands. Native populations and wildlife were violently tamed as demands for minerals, timber, and agricultural and grazing lands grew larger. In the mid-1800s, the tumult of change inspired countervailing landscape romanticism by the likes of writers Ralph Waldo Emerson and Henry David Thoreau as well as painters affiliated with the Hudson River School such as Thomas Cole and Albert Bierstadt.[1] Such artistic and philosophical appreciation of the environment took more concrete form as a movement for preservation and protection of America's natural treasures like Yellowstone National Park, the country's first national park created in 1872. Naturalist John Muir deepened this movement in California with efforts to protect the Yosemite Valley, out of which came the nation's oldest environmental group, the Sierra Club in 1892. Muir was a prolific writer and enlisted the support of President Theodore Roosevelt, a Republican and an avid outdoorsman who became an advocate for the national parks. The idea of national parks, of areas largely set aside from consumptive use for tourism and wildlife, has had important ramifications for how other countries think about natural areas.[2]

With much of the western United States in the hands of the federal government, tensions between preservation and use of America's public lands has been a constant in US history. Gifford Pinchot, who helped establish the US Forest Service in 1905, embodied the stewardship and sustainable use side of this debate. Other classifications such as wilderness areas and wildlife refuges have had a different status with respect to resource use and extraction. This tradition of instrumental and managed use of natural resources has influenced how other countries think about the environment. In a sense, both campaigns for national parks and sustainable use were part of the Progressive Era reaction to rising industrialization of the late nineteenth century that succeeded in creating a number of rich barons but also accentuated class divides, environmental degradation, and public health worries.

With rising urbanization, the natural lands focus of American environmentalism took on more urban and human health-centered form, particularly in the aftermath of World War II. Writers like Rachel Carson in her landmark book 1962 *Silent Spring* helped usher in the modern environmental movement. Though this book focused on the effects of the pesticide DDT on wildlife, Western environmentalists, led by US environmental groups, increasingly addressed problems of human health from dirty air and water. Many groups, like the Natural Resources Defense Council, came into being in the early 1970s. While most addressed national and local challenges, the international footprint of human action became more important as scientific understanding of transnational air pollution problems like acid rain, ozone depletion, and global warming deepened. US civil society inspired environmental movements around the world. The US government, with the establishment of the Environmental Protection Agency in 1970 during the Republican Nixon administration, also became an important exemplar. With the 1972 conference on the environment in Stockholm, an era of global environmental diplomacy and leadership truly began.

In this chapter, I assess America's inconsistent global leadership on the environment. By leadership, I mean that the US government offered by its own example (policy leadership) and through proposals in the international arena (diplomatic leadership) measures that influenced the actions of others in a way that improved environmental outcomes. The long lag time between the period of leadership and broader outcomes makes it difficult to distinguish positive leadership for environmental change from influence, which may reinforce antienvironmental outcomes. As a consequence, the motivation of policymakers at the time is important. Where policies that were put forward plausibly were intended to improve environmental outcomes, then these policies contemporaneously can be described as leadership. By contrast, if the policies were put forward to obstruct and delay improvements in environmental outcomes, then they are more accurately described as influence.[3] By focusing on the US government, this notion of environmental leadership deliberately sidesteps the contributions of the American environmental advocacy and scientific sectors that provide important inspiration and expertise. However, the US government is the embodiment of the country, and where there has been inconsistency in its leadership, this has undermined the ability of civil society or the scientific community to advance global environmental goals.

Intermittent US Environmental Leadership

Scholars have explained US international environmental leadership largely by referencing its domestic traditions of pluralistic interest groups and

competitive party politics. Scholars have explained leadership episodes as an outgrowth of settled policy at home as the country sought to internationalize domestic regulation. Where the United States has failed to lead (such as on climate change), the absence of settled domestic policy and the importance of internal societal cleavages are identified as the major determinants.

US domestic political traditions and institutions, with the country's separation of powers, create multiple access points for both proponents and opponents of environmental goals to influence the policy process. This engenders a status quo bias, which favors environmental protection where green goals have already been internalized in policy but blocks or delays environmental protection where such rules are lacking. The legislative branch is granted specific powers with respect to treaties and appropriations that can constrain an environmentally minded executive or prod a recalcitrant US president to be more supportive of environmental goals.

At the same time, an important ideational tradition with respect to treaty ratification distinguishes American policymaking even from its closest allies. The US policymaking community perceives itself to be different from other countries when it comes to the seriousness with which it takes ratification of international treaties, and indeed, the country's ratification procedure for treaties requires an almost uniquely high bar of support. Relatedly, observers of the United States note that the country has an unusually robust minority ideology held by influential people who largely reject international treaty commitments on philosophical grounds. Coupled with environmentalists' preferences for legally binding agreements over other approaches, the United States has increasingly been unable (as in the Law of the Sea Treaty) or unwilling (as in the Kyoto Protocol) to ratify international environmental treaties and has often sought alternative venues and processes for addressing global environmental problems.

The remainder of this section unpacks these elements of US domestic political traditions and ideas and their influence on the country's leadership on environmental policy. The third section addresses the structural constraints imposed by traditions of US treaty ratification and the implications for the secular decline in US environmental leadership.

Where there is a strong division domestically on an environmental issue, the United States is less likely to be a consistent voice for action internationally, with societal cleavages between business interests and green groups reflected in divisions between the executive and legislative branches. Where US domestic environmental policy is already law and reasonably settled, the business and environmental communities often make common cause to internationalize US policy. Such situations may emerge when the business community has costs imposed upon it, but international actors lack such costs or constraints. In a 1995 piece, DeSombre identified 13 different episodes, particularly in the fishing sector from the early 1960s onward, where the United States sought to impose sanctions on countries that failed to abide by certain US conservation laws or international conservation agreements.[4]

One can expect a replay of such dynamics for more contemporary environmental problems. For example, if any domestic climate change legislation ever passes in the United States, that legislation will almost inevitably include attempts to subject foreign producers to comparable costs in the US market by imposing some form of border tax adjustment.[5] One can code this as basket level one use of American power or a reflection of basket level two interests. However, the use of American power to advance global environmental interests (or the interests of a subset of American companies) has limits. Moreover, unlike a monolithic national interest in survival vis-à-vis an external threat, in the environmental space, interests tend to be plural and contested, a mélange of material interests and ideational influences.

Business-green group coalitions may also emerge where foreign actors impose negative environmental or economic externalities on US interests. For example, as former US State Department negotiator Richard Smith recounts in his memoir, in the 1980s the practice of driftnet squid fishing on the high seas by a number of Asian countries had a devastating effect on other fish species, marine mammals, and seabirds inadvertently snagged as "by-catch." The Alaskan salmon fishery industry was concerned that among those were salmon, caught before they could return home to spawn. Though the US Congress had already passed legislation threatening trade sanctions for countries that did not restrict driftnet fishing, internationally the practice largely remained unregulated. Smith describes how negotiations by the US government to better document the destructive by-catch of Japanese driftnet practices ultimately led Japan and other Asian countries to phase out the process. Implicitly, Alaskan fishery interests and conservationists' goals were both served by US leadership.[6] In some cases, these efforts to internationalize an issue may undermine environmental goals. For example, in December 2010, prompted by labor groups and to a lesser extent the US renewables industry, the Obama administration filed a complaint with the WTO that China's subsidies to its wind power sector were illegal under international trade rules.[7]

A third scenario for US leadership is also possible. Where the US domestic industry affected by international environmental commitments is small, their influence may be limited, and environmental groups may find it easier to secure support from the US government. Here, we can think of the external leadership position of the United States as a reflection of the strong domestic ideational attachment to conservation of a vocal minority in the absence of countervailing material interests. For example, in the late 1970s and 1980s, the United States was an exceptionally robust proponent of antiwhaling concerns, seeking to use its economic power, and the threat of trade sanctions and other leverage (basket level one in the parlance of this book), to induce both whaling states and other parties to whaling conventions to take a hard line against whaling.[8] Similarly, in March 2010, the United States was a strong proponent of (largely failed) efforts to restrict fishing of bluefin tuna and a number of shark species in the Convention on the Trade in Endangered Species (CITES) triennial conference of the

parties, species that are overwhelmingly consumed by Asian countries.[9] While the US Congress passed legislation in December 2010 to ban the practice of shark finning (where sharks are caught, their fins cut off, and the rest of the shark is discarded), the US National Oceanographic and Atmospheric Administration declined in May 2011 to list the bluefin tuna as an endangered species, perhaps because the US tuna fishing industry, albeit small, has powerful supporters in Congress.[10]

In sum, the United States may play a leadership role on global environmental causes (1) when green groups and business actors make common cause to internationalize US regulatory standards (the externalization of domestic ideational and material interests); (2) when foreign actors generate negative externalities for US firms (a reflection of material concerns about competitiveness); and/or (3) where US business interests that might benefit from lower environmental standards are weak (the projection of domestic ideational attachments).

From Inconsistent to Declining Environmental Leadership

As several observers have noted, the United States, despite a strong record of global environmental leadership dating back to the early 1970s, ceased to be the global environmental leader beginning in the early 1990s. Scholars frequently date the change to the 1992 Earth Summit in Rio where President George H. W. Bush resisted attempts to address climate change and biodiversity loss by weakening the climate change treaty to be purely hortatory and by resisting elements of the biodiversity convention.[11]

Subsequently, the United States failed to ratify a number of international environmental agreements, most famously the Kyoto Protocol as well as the Law of the Sea Treaty (1982), the Biological Diversity (1992), the Cartagena Protocol on Biosafety (2000, neither signed nor ratified), the Basel Convention on hazardous waste disposal and transport (1989), the Stockholm Convention on Persistent Organic Pollutants (signed by George W. Bush in 2001 but not ratified), among other agreements.[12]

Kelemen and Vogel suggest that the United States and Europe have changed places in global environmental leadership since the early 1990s with Europe increasingly seizing the mantle of leadership. What explains the change? They suggest leadership is a function of "regulatory politics." When environmentalists are stronger, they will be more successful pressuring their governments to make international environmental commitments. An alternative pathway for leadership also emerges when environmentalists are politically powerful: their governments will more likely enact strong domestic environmental standards, in turn incentivizing domestic industries to seek to impose similar standards on foreign competitors.

In their view, beginning in the late 1960s, the US environmental movement buoyed both political parties to accept sweeping environmental goals,

leading the Nixon administration to create the Environmental Protection Agency and champion the 1972 foundational international environmental conference in Stockholm. They suggest that the decline since the early 1990s in US support for international environmental agreements is largely a function of changes in the balance of domestic power between environmental groups, who lost power, and opponents of regulation, largely business groups, who gained political influence. They credit this shift to regulatory fatigue and increasing complacency by the American public as they became more content about the level of environmental protection.[13]

One possible contributing factor to the change in the political balance of power is increasing party polarization over the environment. As Sussman documents, environmental concerns increasingly have become the preserve of the Democratic Party. Sussman finds a large and increasing gap in support between the green voting position between Democrats and Republicans, as reflected by the nonpartisan League of Conservation Voters scorecards. For example, during the Carter era, the gap between Democrats and Republicans in the US House was 27 points. During the Reagan era, the gap in both chambers increased to 32 points and then 35 under George H. W. Bush. By the Clinton era, the gap extended to 52 points and in the first year of the George W. Bush administration stood at 65 points.[14] By 2010, the gap between Democrats and Republicans remained wide. Among the leadership of the top five environmental committees, the partisan gap was 60 points in the Senate (with Democrats receiving an average score of 60 and Republicans 0) and 76 points in the House (with Democratic committee leaders receiving an average score of 88).[15]

Similar dynamics are evident for specific environmental issues, such as climate change. In 2006, a Pew Center poll found that a majority of Democrats (81%), Republicans (58%), and Independents (71%) agreed there was solid evidence of global warming. However, only 24 percent of Republicans were willing to say that this was due to human activity, compared to 54 percent of Democrats and 47 percent of independents.[16] By March 2008, the partisan gap on whether climate change was already occurring had grown to more than 30 percentage points, up from an indistinguishable difference in 1998.[17] An October 2010 Pew poll found 79 percent of Democrats agreeing with the question, "Is there solid evidence the earth is warming?" while only 38 percent of Republicans agreed. Of the Democrats, 53 percent ascribed it to human activity while only 16 percent of Republicans did.[18] US elites are even more divided than the mass public. In February 2007, in a poll of some 113 members of Congress, only 13 percent of Republicans (down from 23% in April 2006) said it had been proven beyond a reasonable doubt that man-made causes were responsible for warming compared to 95 percent of Democrats.[19] Disbelief in the science of climate change has become such an ideologically significant article of faith among Republicans that leading candidates for the presidential nomination like the 2012 Republican presidential nominee Mitt Romney had to disavow prior support for measures to address climate change and

to express doubts about the cause of the problem. In short, the argument suggests that domestic ideational currents with respect to the environment, particularly the drift by Republicans away from support for environmental goals, have made it difficult for the United States to exercise leadership.

Where the parties both compete for environmentally minded voters, this can be good for environmental protection. During the George H. W. Bush administration, pressure from environmentalists led President Bush to support the Clean Air Act amendments of 1990 and to pursue a bilateral agreement with Canada to address air quality concerns. However, with Democrats now virtually owning environmental issues, Republicans infrequently compete for the votes of environmentally minded voters. Moreover, unlike much of continental Europe, where parliamentary systems give voters with intense preferences the possibility of representation through the Green Party, US parties are catch-all parties that have to appeal to voters across a broad cross-section of issues.[20] Environmental issues are rarely among the most salient for the American people, which means they receive short shrift from both parties. With Republicans having relinquished competition for environmental voters, the green voters have no place to go. Democrats can count on their support with lip service and mild action to support environmental goals. However, sole reliance on Democrats for support for green policies is ultimately bad for US global leadership on the environment. Democrats are rarely politically powerful enough or united to push through ambitious environmental goals.

While partisan divisions often shape the domestic landscape of environmental policy, regional differences between different US states, often based on idiosyncrasies of local economies, also affect US domestic environmental politics and in turn the country's international posture. Again, these are in a sense, basket level two interests, but they are often the parochial interests of particular regions and industries rather than the interests of the country as a whole. Democratic lawmakers from resource-rich or manufacturing-based states often support local economic interests rather than the broader green sensibilities of their party. For example, members of Congress from states with large coal, oil, manufacturing, or agricultural sectors—such as West Virginia, Montana (coal); Louisiana (oil); Ohio, Michigan, Pennsylvania, and Indiana (automobiles/heavy industry); and, Iowa (agriculture)—are frequently swing votes on domestic environmental policy. Such states oscillate in support between the two parties during presidential and legislative elections. Democratic legislators from these states are regular holdouts on domestic environmental goals because the costs for their states are thought to be higher. They often seek special dispensation in US legislation and, in turn, the US international negotiating position to protect their interests. By contrast, New England states and California and the Pacific Northwest, with little heavy industry and knowledge-based industries, are more reliable supporters of environmental goals. A number of these states have had moderate Republicans sought after as the source of votes and support for environmental goals. Their numbers are dwindling in Congress as the parties have become more homogenous and regionally concentrated.[21]

As a consequence of these dynamics, Democratic presidents with strong environmental goals often face difficulties convincing Democratic lawmakers from swing states to support environmental goals.[22] President Clinton faced opposition from Senator Robert Byrd of West Virginia on the issue of climate change. By the same token, President Obama, after having already faced difficulties passing cap-and-trade legislation that would have imposed economy-wide caps on carbon emissions, pursued environmental goals through EPA regulatory authority. He has, however, like the previous Democratic occupant of the White House, faced difficulties with lawmakers from his own party, like Senators Jay Rockefeller of West Virginia and Mary Landrieu of Louisiana.[23]

With power between the two parties frequently divided (with one party controlling the executive branch and the other controlling the legislative branch), Republicans often possess veto power to block environmental agendas. As the next section details, this veto power is especially important with respect to international treaties but also has implications for financing of international commitments. Moreover, as suggested earlier, to the extent that US domestic environmental regulation is often a foundation for global regulation, paralysis at home on environmental problems may mean little US leadership abroad.

The US political system is often credited with exacerbating such domestic divisions. The fragmentation and division of power between the branches are often cited—specifically the role of the Senate in providing advice and consent for international treaties and the legislative branch in providing appropriations. These powers of the legislature can constrain a president when it comes to treaty commitments like the Convention on Biodiversity, the Kyoto Protocol, and the Law of the Sea. They can also undermine the executive branch where it has made pledges of financial commitments for environmental goals, such as the US commitment to provide climate finance in the 2009 Copenhagen Accord. At Copenhagen, the leaders of rich countries promised to mobilize up to US$100 billion per year in public and private sources by 2020. However, America's ability to provide its share of this pie was contingent upon passing domestic climate legislation with its incentives for the private sector and credits to support adaptation and forestry initiatives. The Obama administration sought to meet its commitments of fast-start climate finance for the period 2010–2012, but the country's long-run commitments are increasingly suspect.

US traditions of past global environmental practice lead a number of analysts like Bodansky to conclude, "successful foreign policy must grow out of domestic political consensus. Certainly this is true in the United States with respect to environmental issues, where virtually every successful international regime has had its roots in U.S. domestic law."[24] As former Deputy Assistant Secretary of State Nigel Purvis argued, "the Senate

rarely approves international agreements, particularly environmental treaties, unless they are based on prior domestic action."[25]

While the US president can on occasion enter into executive agreements, two-thirds of the Senate has to vote in favor to provide so-called advice and consent for contentious international agreements on issues like climate change.[26] This requirement is an especially high bar and is almost unique among advanced democracies. In most parliamentary systems, for example, the head of state is also head of the majority party in the legislature and can count on his or her party's support in treaty ratification, lest a negative vote cause a vote of no confidence in the government and trigger a new election.

This attribute makes the United States not only a reluctant partner in ratifying international environmental treaties but also across a range of issues, from the Comprehensive Nuclear Test Ban Treaty to the Ottawa Treaty banning landmines to the Rome Statute that created the International Criminal Court. As DeSombre notes, "it is neither an entirely new phenomenon, nor one restricted to environmental issues, and it is certainly not one that can be attributed to the administration of George W. Bush."[27] Moravcsik explains the paradox that the United States is home to one of the most vigorous human rights NGO communities yet has difficulty ratifying international human rights treaties:

> The most immediate veto group involved with human rights treaties, a one-third minority of recalcitrant senators, is created by the unique U.S. constitutional requirement of a two-thirds "supermajority" vote to advise and consent to an international treaty. This is a threshold higher than that in nearly all industrial democracies, which generally ratify international treaties by legislative majority.[28]

One manifestation of the difference between treaty-making by the United States and other countries is a difference in the legal practice of how countries view treaty ratification more broadly. The United States has a reputation for faithfully complying with treaties that it does ratify. Glennon and Stewart reviewed five environmental agreements (four treaties and one executive agreement) including the London Ocean Dumping Convention, CITES, the World Heritage Convention, the Montreal Protocol on ozone, and the International Tropical Timber Agreement. They concluded that the United States had met the "primary obligations of each of the agreements."[29]

A disputed, but oft-repeated claim (particularly by US negotiators) is that differences in legal regimes between the United States, Europe, and (to a lesser extent) Japan have contributed to conflicts over climate change. William O'Keefe, former head of the Global Climate Coalition, an industry group opposed to action on climate change, made the general point:

> I believe that one reason for this was the fact that European culture embraces commitments to lofty goals that are pursued pragmatically... Most European governments work closely with industry in pursuing policies. If good faith efforts at implementation fall short, industry is generally told to keep trying. In the United States, policies are implemented by rigid regulations. Failure to achieve these regulatory requirements leads to fines, enforcement actions and citizen suits.[30]

Tom Jacob, a former senior advisor for Global Affairs for Dupont, echoed this view and contrasted the US model of law from European systems. He characterized the US model as one where "The letter of the law counts more than the spirit of the law." Jacob goes on to write that: "This 'rule of law' character of governance is vigorously disciplined by a legal system in which virtually any significant deviation from the letter of the law by agencies such as EPA is certain to be litigated by one side or another (regulated industry, public interest advocates, etc.)."[31] Kagan terms this tradition "adverserial legalism," and suggests that the fragmentation of authority in the United States leads to "American legal exceptionalism."[32] This threat of lawsuits, according to Stewart and Reiner, "tends to lead U.S. treaty negotiators to resist environmental regulatory treaties that they fear would be more rigorously applied in the United States than elsewhere."[33]

Jacob contrasts this with a European model where "The spirit of the law counts more than the letter of the law." He suggests that "governments in Europe are routinely granted relatively more flexibility in implementing their laws and policies—in essence, greater flexibility to govern," which "liberates policy at the front-end to more of an aspirational character."[34] In Europe, governments can sign on to international agreements as goals to be sought without risks of being sued for noncompliance. Harold Jacobson summarized the idea as follows:

> Simply put, the United States will not ratify treaties unless it feels that it can comply with them. In the United States private parties can sue the government, seeking an injunction to force it to comply with a treaty that has been ratified and consequently has become law of the land... Many other countries, including some members of the EU, sign and ratify treaties that contain commitments that their governments know they will have difficulty fulfilling: these commitments are regarded as targets that they will seek to achieve rather than obligations that they will have to fulfill.[35]

Nigel Purvis, who served as deputy assistant secretary of state under both President Clinton and George W. Bush, supported these accounts. Unless the executive branch has the legal authority in domestic legislation to allow the country to comply under all reasonably foreseeable circumstances, Purvis suggested the State Department does not recommend to the president to ratify a treaty even if the Senate has given its advice and consent.[36]

Bodansky sees this argument as self-serving for the United States and noted that the US compliance record with international commitments is more mixed (citing the failure of the United States to pay its dues to United Nations for several years and its violations of the duty of consular

notification under the Vienna Convention on Consular Relations).[37] He noted that because the United States often has to depend on nonstate actors to implement treaty requirements, it is difficult to ensure compliance, more so where treaties require Congress to appropriate money year in year out.[38]

Susan Biniaz in the Office of Legal Advisor in the State Department provided additional nuance.[39] She described this process as a legal practice rather than a constitutional requirement. While there are probably exceptions, the United States does not generally ratify a treaty unless it can comply. The threat of lawsuits for failure to comply with a treaty she thought was overstated; the executive branch and Senate generally make clear through the ratification process that they do not intend for a treaty to provide for private causes or action or otherwise be judicially enforceable in the domestic arena. In other words, private organizations could not file suit in US courts for the government's failure to comply with the treaty.[40] Rather than being sued, the United States would suffer foreign policy criticism or be shamed by the environmental community in the national media for failure to comply.[41] On a related note, Glennon and Stewart stress that US terms of accession usually determine whether or not an international agreement is viewed as "self-executing," which is enforceable by the courts in the absence of further legislative action. Many international agreements are generally not regarded by the United States as self-executing, meaning that they require additional legislative action to be domestically enforceable.[42] This helps explain why treaty commitments often follow rather than precede domestic action since successful compliance in many instances requires more thoroughgoing domestic acceptance of obligations.

Senate advice and consent authority imposes a higher bar for treaty ratification in the United States than the process most other advanced industrialized countries face. However, Senate advice and consent is not a constitutional requirement for all legally binding international commitments.[43] Within US law, alternatives to treaties that are equally legally binding exist. Leaving aside executive agreements solely negotiated by the president (which may be politically contentious and rather rare), Hathaway notes that most free trade agreements are handled through a different process—so-called congressional-executive agreements, merely subject to a majority vote of both chambers of Congress. She sees the treaty ratification procedure as an anachronism, with no clear rules or rationale for why some agreements are handled under the Treaty Clause rather than through congressional approval. Though the Law of the Sea Treaty was subject to Senate advice and consent under the Treaty Clause, most fisheries agreements are handled as congressional-executive agreements.[44] To obviate the challenges of treaty ratification, Purvis encourages greater use of executive agreements with Congress and suggests that Congress should, as is typical with free trade agreements, grant the president, by statute, negotiating authority to pursue a new climate agreement.[45] That said, as more recent experience with free trade agreements with Panama, Colombia, and South Korea suggest, congressional approval of these agreements has also been problematic.[46]

Even though executive agreements or up-or-down congressional votes are other ways the United States can enter into legally binding international agreements, tradition dictates that contentious pieces of global environmental agreements like the Kyoto Protocol and the Law of the Sea Treaty be subject to Senate advice and consent subject to the two-thirds support requirement. Given the domestic political obstacles to passage of legally binding agreements, some observers see the United States as increasingly embracing alternative strategies such as nonbinding agreements like the Copenhagen Accord and the annual communiqués from the G8 and more informal, smaller negotiating forums such as the now-defunct Asia Pacific Partnership, the Major Economies Forum, and the Clean Energy Ministerial.[47] Others see the United States as more supportive of voluntary public-private partnerships.[48] Raustiala makes the case that nonbinding pledges may permit states to make deeper, more ambitious agreements that, even if not fulfilled, would achieve more than a shallow legal commitment.[49]

However, as Victor and Coben argue, there has been a "herd mentality" in the design of international environmental agreements of legally binding emissions caps as the only viable way to address pollution problems.[50] For politicians seeking the support of environmental groups as a green stamp of approval, there may be few rewards for departing from such orthodoxy. Why do environmental advocates privilege legally binding agreements? Prominent environmental scholars James Gustave Speth and Peter Haas make the paradigmatic case: "Only when an agreement is binding will the parties be sufficiently engaged to work out an agreement that they truly accept and intend to implement. If you are really serious, or you want the world to think you are, you write a law."[51]

The Copenhagen Accord (and the subsequent Cancun Accord that largely reaffirmed the Copenhagen commitments but with more international buy-in) are departures, and it is premature to assess whether or not they will be as or more effective than legally binding efforts. With respect to US-China relations, the clean energy agreements signed by President Obama and President Hu during Obama's November 2009 visit to Beijing were also nonbinding agreements. Though modest, these agreements set the stage for Sino-American cooperation on a number of topics including carbon sequestration, fuel efficiency, energy efficiency, among other areas.[52] At an operational level, this more prosaic cooperation between the United States and countries like China—carried out by USAID and EPA, by contractors like ICF International, by government-supported laboratories like Lawrence Berkeley National Labs, by academic institutions like MIT, Harvard, and Ohio State, and by industry partners like American Electric Power and Honeywell—has been ongoing for decades and has received renewed impetus under the Obama administration through the Clean Energy Research Centers. While not high-level environmental diplomacy,

technical cooperation and action of this nature are ultimately as, if not more, significant than meetings and summits.[53]

The challenge is that the resources available for such cooperation are limited. The Obama administration's ambitious longer-run plans to provide climate finance for mitigation (i.e., emissions reductions, forest conservation) and adaptation largely died when cap-and-trade legislation failed to move forward in the Senate in 2010. Nonetheless, the Obama administration still sought to meet its commitments for short-run climate finance that it pledged at the 2009 Copenhagen climate negotiations. In an exhaustive overview of all expenditures for the period 2010–2012, the Overseas Development Institute and research partners found that that United States committed nearly $7 billion for climate-related purposes, including mitigation of emissions and adaptation to climate change.[54]

In its June 2013 review of support for purely multilateral environmental initiatives (excluding bilateral programs), the Congressional Research Service identified nearly US$500 million in 2012 appropriations spread across different agencies and programs.[55] US support for the Global Environment Facility (GEF) is of particular interest, as it demonstrates the arc of inconsistency in the country's environmental leadership.[56] Since its founding, the GEF has undergone five replenishments of donor funds. The United States committed US$430 million in 1994, a similar sum again in 1998 and 2002, US$320 million in 2006, and US$575 million in 2010. These commitments amounted to 13.9 percent of the total contributions over the organization's history, though a declining share of each replenishment cycle until a slight uptick in the fifth cycle—21.3 percent of total contributions for GEF-1, 16.1 percent for GEF-2, 14.7 percent for GEF-3, 10.2 percent for GEF-4, and 13.2 percent for GEF-5. The Obama administration initially intended to commit US$680 million to the fifth replenishment but scaled back when other donors did not commit as much as expected. While its pledges are usually meant to be divided into equal installments over the four-year schedule of the replenishment cycle, congressional appropriations frequently have been variable, forcing the United States to be in arrears. Despite increasing commitments under the Obama administration, the United States as of September 2012 was more than US$107 million in arrears on pledged commitments (see figure 9.1).[57]

These trends in inconsistent and often declining US support for international environmental goals raise a number of questions. The United States did sign and ratify a spate of international treaties in the 1970s and 1980s (including the convention on wetlands, the Stockholm Declaration, the London Convention on Dumping at Sea, the Convention on Long-range Transboundary Air Pollution, among others). What has changed? Has the nature of multilateral treaty commitments changed? Has America changed?

While a systematic analysis of the nature of international commitments is beyond the scope of this chapter, some analysts suggest that, unlike the

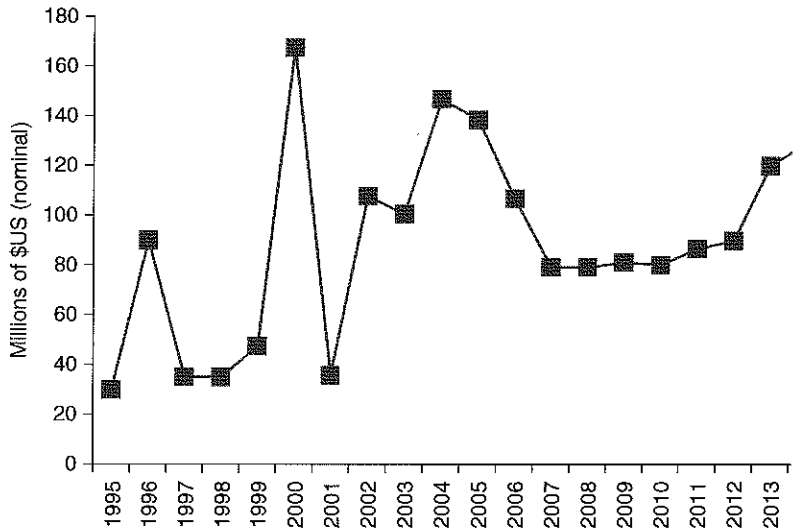

Figure 9.1 US contributions to the GEF 1994–2013.

Source: Richard K. Lattanzio, *International Environmental Financing: The Global Environment Facility (GEF)* (Washington, DC: Congressional Research Service, 2013); Nominal dollars, in millions, 2013, does not include sequestration reductions.

post-World War II instruments, more contemporary multilateral agreements may have fewer opt-outs and safeguards that protect the privileges of the powerful.[58] US opposition to the landmines ban, for example, is frequently seen as driven by an unwillingness by mine ban supporters to provide the United States an exception for mines along the demilitarized zone between North and South Korea. With respect to multilateral environmental initiatives, it is unclear if newer initiatives provide fewer protections of US interests. For example, despite European opposition, the United States successfully negotiated a number of flexibility mechanisms as part of the Kyoto Protocol to make compliance cheaper. Nonetheless, the treaty was a political nonstarter at home. Even before the negotiations took place, the Senate passed a non-binding resolution by a vote of 95–0 that suggested it would not support any treaty that did "serious harm" to the US economy and that failed to include some form of commitments for developing countries. Rather than an unwillingness by foreign delegates to cater to US negotiating demands, the Kyoto Protocol's political failure in the United States is more attributable to flaws in the Clinton administration's negotiating strategy—including acceptance of a high emissions reductions target (minus 7% below 1990 levels) and an earlier failure to press for phased-in developing country commitments.[59]

Some scholars explain declining US support for multilateral environmental efforts by emphasizing the country's largely interest-based objections to a number of treaties. The United States initially opposed the 1982 UN Law of the Sea Treaty because of specific concerns about sharing deep seabed resources, which seemed to be a product of the then fashionable

debates about the New International Economic Order. Similar objections were raised against the 1992 Convention on Biological Diversity, which sought to share profits from discoveries developed from developing countries' genetic resources. Jacobson suggests that these treaties, as well as the 1997 Kyoto Protocol (which promised technology transfer to and avoided commitments for developing countries), spurred American opposition.[60] DeSombre argues that resistance to redistribution, which one could code either as an ideational objection or potentially an interest-based one, is not a consistent, principled source of opposition, since the Montreal Protocol, which the US vigorously supported, also offered technology transfer and assistance funds for developing countries.[61]

A parsimonious explanation from Sprinz and Vaahtoranta would emphasize a basket level two interest-based argument, the confluence of high costs and low vulnerability.[62] This perspective would suggest that the United States is increasingly a laggard because newer environmental agreements pose higher costs for the United States for problems that do not affect it as much as other countries. For problems like desertification, which have little immediate implications for the United States, Sprinz and Vaahtoranta would expect the United States to support if not lead international agreements. It is notable that the 1994 Convention on Desertification is one of the few international environmental treaties that the United States has ratified in recent decades. While attractive, this argument has other flaws; as Kelemen and Vogel note, a country's sense of vulnerability is politically constructed. In their view, there is simply too much uncertainty about the effects of climate change to explain US intransigence and European leadership on the basis of vulnerability alone.[63]

Costs also provide a problematic basis for assessing US opposition to newer environmental instruments. In comparative terms, while Europe did face lower costs of implementing its Kyoto commitments, in part because of providential reductions of greenhouse gases by Germany and the United Kingdom, it is unclear whether the United States faced any higher implementation costs than Japan or Canada, yet the latter two ratified the Kyoto Protocol (though it is notable that neither of them have actually done much to constrain emissions).[64] For other issues, Kelemen and Vogel dispute the significance of costs, emphasizing the Montreal Protocol was more costly for the United States than it was for other countries. Here, the net cost-benefit ratio may be more relevant than total costs. As Sandler has noted, the United States faced clearer net benefits of avoided skin cancer by taking action on ozone, compared to climate change where the cost-benefit ratio for the United States was less clear.[65] Nonetheless, an interest-based logic of costs fails to explain US opposition to other initiatives like the Law of the Sea Treaty where US interests appear to be overwhelmingly served by ratification.

Other analysts locate increasing opposition to multilateral environmental agreements by the United States as part of a broader pattern of rising unilateralism. Some analysts like Robert Kagan saw this as emerging out

of the US power position, a basket level one explanation for US preferences. With the United States at the end of the Cold War hegemonic, it was able to pursue unilateralist strategies because it could do so, while weaker entities like Europe had to pursue multilateral strategies because they had to.[66] An extensive interrogation of this question is beyond the scope of this chapter, though scholars like Ikenberry have challenged the wisdom of self-consciously pursuing such a strategy.[67] Others, like Falkner, have noted that the US power position when it initially championed Bretton Woods organizations and other multilateral instruments was as great or greater than it was in the early post-Cold War years. In Falkner's view, power is not destiny.[68] As numerous analysts have noted, transnational environmental problems like climate change do not, in any case, lend themselves to successful unilateral action.

Some scholars see America's opposition compared to Europe's emergent environmental leadership as a function of more deeply embedded support in Europe for the "precautionary principle," a divergence in ideational currents. While the principle has received more explicit backing with respect to genetically modified foods, it is unclear if the principle is deeply embedded culturally. Previous scholars used to explain American leadership on environmental protection compared to Europe as a function of different approaches to risk that prompted Americans to be more responsive to new risks and more aggressive in addressing old ones.[69] As Falkner argues, European support for the precautionary principle is relatively new and may reflect particular fears of GMOs and attempts to internationalize European regulatory standards rather than a broader outgrowth of Europe's supranational identity.[70] As Brunnée suggests, American and European distance on this question may be less than appears.[71] Vogel emphasizes that Europe's regulatory turn started later than the United States, and it had yet to experience the societal and political backlash that the United States experienced in the 1980s.

Another ideational or values-based argument suggests the Americans broadly have views antithetical to accepting multilateral commitments that undermine defense of American sovereignty. A variation suggests that Americans possess fewer post-materialist attitudes than other polities. Given that the United States has in recent history been a leader of multilateral environmental initiatives, one would have to explain what has changed to generate a broader center of gravity if not cultural consensus to reject multilateral agreements of all kinds, including environmental ones. Scholars of American public opinion vigorously dispute the notion that Americans oppose multilateralism.[72] More convincing are arguments that emphasize the lack of political salience of foreign policy, including international environmental policy. Americans have generally not been deeply engaged in foreign policy, typically do not prioritize environmental issues, and know little about climate change in any case.[73]

A related objection to these variety of basket level three values-based and sovereignty arguments comes from Moravcsik on America's human rights

exceptionalism. He examines several arguments that suggest the United States has a distinctive "rights culture" and finds they are all flawed:

> we have learned that simple arguments based on a homogeneous American "political culture," that is, the cultural or ideological preference of American elites or citizens for specific procedural forms, tend to display fatal weaknesses. Such accounts explain change and cross-national differences poorly. Perhaps their most serious failing—and it is a classic failing of such theories—lies in the lack of an account for the extreme domestic cleavages over human rights.[74]

Moravcsik does conclude however, that the tail of extreme pro-sovereignty views is fatter than in other polities.[75] Indeed, as Walter Russell Mead argues, the Jacksonian wing in US foreign policy, often identified as opposing international commitments and preserving America's freedom of maneuver, is seen as increasingly politically ascendant.[76] It may be that the periodic dislocative effects of rising interdependence provokes a nativist backlash among segments of the American populace who have intense preferences. Where international initiatives couple with concentrated costs for particular sectors, as is the case with many environmental initiatives, the most passionate actors tend to be those with strong ideological axes to grind or particular interests. While the general public may benefit from global climate protection and other environmental goals, such benefits are likely to be diffused over the broader population.[77] The politics of intense passions and concentrated costs in a political structure that favors inertia helps explain why the United States has become a less consistent champion of global environmental goals. Given the episodic swings in attention to environmental issues, the political salience of environmental issues are, in the absence of breakthroughs in achieving environmental goals, bound to surge again as they did in the early 1970s and the early 1990s.[78]

Climate Change—A Darkening Cloud

Among global environmental issues, attention by the international community in the past decade has centered on the issue of global climate change. Very little attention by the media and/or government has been dedicated to other urgent environmental problems. For example, the emergent problem of overfishing in the oceans has received scant attention. Issues that once received independent emphasis such as forest conservation are now part and parcel of the climate change debate, as new initiatives seek low-cost greenhouse gas emissions reductions through Reduced Emissions from Deforestation and Degradation (REDD). Other issues like clean energy and renewables policies are also now bound up with climate change (and in the United States have increasingly been subject to the same partisan polarization).

Evidence of the almost exclusive attention to climate change is the amount of coverage in digitized English language books from Google Ngrams. One can see that climate change between 2000 and 2008 supplanted ozone as the leading environmental reference, with other issues like rainforests, overfishing, and renewables receiving little mention (see figure 9.2).[79] Similar results are visible when one searches congressional hearings for keywords (see figure 9.3).[80]

Statistics of media coverage tell a similar story. A keyword search of *New York Times* stories by year provides further support for the view

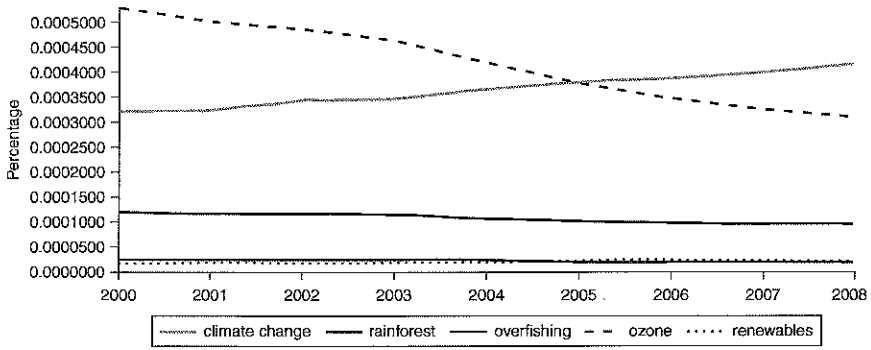

Figure 9.2 Keyword search in English-language digitized books.
Source: Google Ngrams.

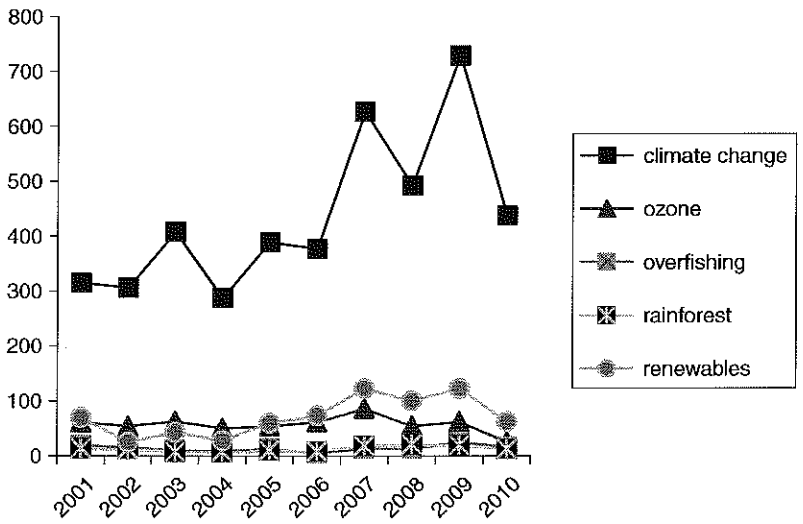

Figure 9.3 Keyword search congressional hearings 2001–2010.
Source: Federal Digital System.

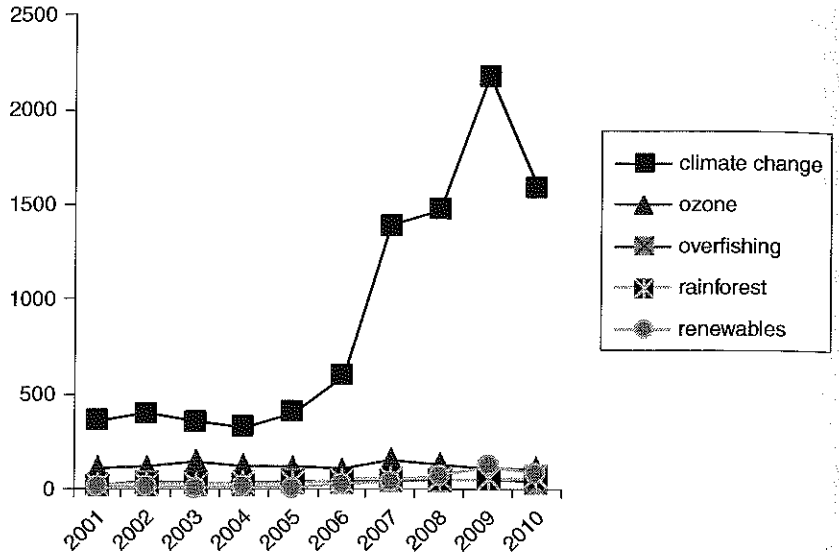

Figure 9.4 Keyword search *New York Times* 2001–2010.
Source: New York Times.

that climate change has overwhelmingly dominated environmental news coverage (see figure 9.4).

Not to diminish the problem's importance, but climate change has sucked most if not all of the oxygen from the policy space to consider other global environmental issues of import. With environmental issues almost exclusively revolving around climate change and identified as Democratic Party issues, the prospects for renewed American leadership on global environmental problems remain grim as long as (1) Republicans remain unconcerned about climate change and (2) few other issues get any attention by policymakers, academics, or the media.

The United States and China

Given the size of the US economy, the environmental footprint of its citizenry, and its robust environmental regulatory tradition at home and influence abroad, the world needs the United States to reassert itself as an environmental leader. The prospect of continued reluctant and inconsistent leadership on the part of the United States is inopportune to say the least.

China is less likely to take ambitious steps to address its global environment impact without parallel action by the United States. China has significant incentives to unilaterally address its air and water quality problems (to guard against negative effects on public health) and to become more energy efficient (if only to be more energy secure). However, while climate change is increasingly of concern to China, particularly as drought and

water scarcity loom large, the imperative of sustained economic growth remains a powerful objective. While China's climate change policies now have their own internal logic, the international pressure for China to be more aggressive in reducing the carbon intensity of its economy will be reduced if the United States fails to address its emissions.[81] As China's people become richer, their consumption of fish, meat, paper, wood products, and energy will rise still further. China's search for and acquisition of natural resources will generate even larger negative externalities on habitats, wildlife, resources, and human populations across the world. In this context, a powerful environmental benefactor will need to speak up for nature. While the United States, with its own consumptive history and behavior, is not the most legitimate interlocutor, it is difficult to imagine either Europe or Japan, given their recent challenges, from performing such a role. China may have discipline to rein in some of its worst antienvironmental tendencies, but the country's growth trajectory is so rapid that left to itself it is hard to believe China possessing sufficient wherewithal to look out for the interests of others.

Observers of China have noted that its environmental regulatory structure is weak and understaffed. Here, China has much to learn from the more robust regulatory institutions of the United States. Observers, including Ming Wan in this volume, have noted that local leaders in China are often able to resist environmental directives from the center. In this respect, China's regional heterogeneity and diffusion of power begin to resemble the fragmentation of the US system. However, one has to be careful about extending this metaphor too far. The Chinese state is still able to impose incredible restrictions on individual mobility and economic activity when the stakes are high, as was the case during the 2008 Olympics and, more recently, when the country sought to meet its energy efficiency goals of its 11th five year plan by shutting down dirty industries. China's state can mobilize a vast system of subsidies and industrial policies to support a homegrown clean energy industry in ways that make Americans jealous.

As the last section suggested and as Ming Wan's chapter in this volume attests, US-China relations on the global environment are frequently seen through the prism of global climate change. Certainly, there are other issues. In its search for resources from around the world, China's global environmental impact is likely going to become a more contentious issue in coming decades for issues as diverse as shark fins to regional air pollution to forests to arable land grabs in Africa. That said, climate change has already eclipsed all these issues and will likely remain the critical fault line in US-China global environmental relations, particularly as these issues intersect with energy issues and competitiveness concerns.

As Ming Wan's chapter detailed, China and the United States experienced considerable diplomatic friction in the early years of the Obama administration. Each side had unrealistic expectations of the other. In the lead up to Copenhagen, the United States expected more willingness by China during the 2009 negotiations to embrace a transparency regime

around climate change actions. The China delegation, for its part, thought it had secured a favorable US and global reception to its plans by announcing unprecedented emissions intensity targets in the lead up to the negotiations. The Copenhagen meeting, however, resulted in negative reputational consequences for China as it was blamed for having been uncooperative. In part, this was a product of skillful diplomatic deflection by US negotiators. As Ming Wan's chapter in this volume details, China has in subsequent climate change negotiations sought to ensure no subsequent meeting results in the perception that China played the role of diplomatic spoiler. This road was made a little easier by the Obama administration's weakened hand at home as its climate and energy agenda stalled and its ability to offer China much in the way of positive inducement to embrace broader environmental goals became attenuated.

After Copenhagen, US-China relations became more contentious on a host of issues, many of which are discussed in this volume, from American concerns about the value of China's currency and other measures that undercut US competitiveness, tensions over industrial espionage and censorship in China of American companies like Google, worries about rising assertiveness by China in the South China Sea, as well as American anxiety about China's monopoly on the export of rare earth minerals. For its part, China's principal concern was the contagion effects of the Great Recession in America and the rest of the West. In this context, environmental issues played a bit part, but an important one. The heady optimism of the incoming Obama administration on the environment and other issues gave way in 2010 to a more nuanced and assertive hedging strategy on the part of the United States that ultimately culminated in a new American military base in Australia. Even as the US military and diplomatic posture in Asia on security and economic matters has become more forceful, its global environmental position has become more defensive, a reflection of heightened domestic contestation over its climate and energy policies. America's pluralism and separation of powers again worked to stymie the leadership aspirations of the Obama administration.

In terms of Sino-American relations on the global environment, the challenge will remain managing the tensions between rivalry and cooperation to realize joint gains where possible and to avoid lapsing into unhealthy patterns of security and economic contestation that China's rising power otherwise might provoke. Elsewhere, I have explored the kinds of policies that might foster greater trust and cooperation between the United States and China with respect to cooperation on climate change.[82] However, most of the policies reflect technocratic cooperation on the margins. Unless the United States is prepared to do something more aggressive such as border tax adjustments to price the carbon content of Chinese exports, China's global environmental posture largely has its own logic, both a reaction to rising domestic pollution, concerns about energy security, the desire by the leadership to transition away from heavy manufacturing, as well as the rising sentiment in the developing world that China is becoming a

climate scofflaw. The 2011 Durban climate negotiations opened the door to a new agreement that would generate obligations both for the United States and China (though the results were quickly disputed after the fact). Even if an agreement emerges in 2015 at the climate negotiations in Paris, the US-China relationship is likely to be more productive on the environment if US policymakers can decide to do something at home.[83]

Conclusion

What then are the implications of US traditions of global environmental policy for world order? The United States expects that commitments made will be kept. Treaty commitments, given the challenges of making them, in particular are perceived as a very important undertaking. The country's leadership also has a pragmatic and presentist bias. Whereas other countries are concerned about historic responsibility, US concerns about fairness have much more to do with burden-sharing and distribution of responsibilities to resolve the problem in the moment. Countries like China currently responsible for a problem like climate change will have to do their fair share. The confluence of both of these dynamics—a high regard for treaty commitments and concerns about equitable distribution of responsibilities—means that if the United States makes a commitment to a treaty then other parties responsible for a problem will have to have commensurate obligations. If others are not willing, then the United States will not be bound either.

America's leadership may be conveniently amnesiac about the past. The United States also is not sentimental about multilateral agreements. Its leaders are perhaps more willing than others to abandon multilateral processes and agreements when they are seen as unworkable. For example, the language in previous climate agreements enshrining common but differentiated responsibilities has given China no legal commitments to address the problem and has long been regarded by American policymakers as unhelpful.

Given the challenges of securing domestic consensus in the United States, the country's leadership is cautious about overpromising, though individual leaders are like politicians of other countries: anxious to use the global stage to advance both their personal ambitions as well as the prestige of the country. Perhaps more than other countries, however, US leaders are more attuned to how the global stage will play politically at home.

Though some observers express optimism that global challenges can be resolved without the involvement or leadership of the United States, the country's power and its environmental footprint generally make it a necessary, albeit sometimes unreliable, partner from the perspective of global public goods provision. Despite what will likely remain a difficult relationship with the international community on climate change, some environmental issues lend themselves to sustained US leadership, particularly (1) where US domestic legislation is already in place (which typically requires

material and ideational convergence), (2) where US economic interests are hurt by overseas environmental damage, or (3) where no sizable US economic interests oppose environmental goals. Given the onerous tradition of US treaty ratification that almost inevitably engenders significant opposition to even mundane treaties like the UN Law of the Sea Treaty, the United States and its international partners would be better served by seeking nontreaty-based instruments for future global environmental agreements. With respect to China, its competitive position and increasing transnational environmental footprint on air quality, forests, and food will likely engender efforts by Americans to internationalize standards and expectations of environmental quality, creating another source of friction in the Sino-American relationship but potentially a productive one to the extent that pro-environmental forces in China can seize the initiative and forestall punitive action by the United States. Ideally, that relationship would increasingly be characterized by technical cooperation, joint research projects and ventures, and educational exchanges on a frequency, duration, and depth that can withstand the inevitable strain imposed by economic and security tensions.

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43. Other attributes also help further delay and shape US ratification of international treaties. In the Senate, lead prerogative over international issues rests with the Senate Foreign Relations Committee. The Law of the Sea Treaty shows how the Senate majority leader can delay final vote on a widely popular treaty, even when the Senate Foreign Relations Committee (SFRC) has already supported a treaty in committee. The Law of the Sea Treaty was initially negotiated in the 1980s but was rejected by the Reagan administration due to obscure institutional requirements for revenue sharing from the as-yet undeveloped industry of seabed mining. The more objectionable aspects of the treaty were jettisoned, and it has been in force since 1994. Helms had prevented the treaty from moving forward during his tenure as chair of SFRC. In 2004, SFRC chair Richard Lugar, a moderate Republican, attempted to bring the Law of the Sea Treaty up for a vote in the full Senate. His committee voted to support the treaty and send it to the full Senate in February 2004. The US military, business, and environmental communities all came out strongly in support of the treaty. Nonetheless, Bill Frist, Senate majority leader, delayed schedule of discussion and final vote before the full Senate as a handful of treaty-shy Senators upped the political stakes of ratification in an election year. Despite overwhelming support from core societal interests, the Law of the Sea Treaty remains unratified as of September 2014.
44. Oona Hathaway, "Treaties End: The Past, Present, and Future of International Lawmaking in the United States," *The Yale Law Journal*, Vol. 117 (2008): 1240.
45. Nigel Purvis, "Paving the Way for U.S. Climate Leadership The Case for Executive Agreements and Climate Protection Authority," *Resources for the Future*, 2008, http://www.rff.org/documents/rff-dp-08-09.pdf (accessed March 28, 2015).
46. Both the US-Panama and US-South Korea free trade agreements were originally negotiated in 2007. One with Colombia was negotiated in 2006. All three were finally ratified in October 2011.
47. For a review of these initiatives, see Busby, "After Copenhagen: Climate Governance and the Road Ahead"; Katherine E. Michonski and Michael A. Levi, "Harnessing International Institutions to Address Climate Change," *Council on Foreign*

Relations, 2010, http://www.cfr.org/climate-change/harnessing-international-institutions-address-climate-change/p21609 (accessed March 28, 2015).

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49. Kal Raustiala, "Form and Substance in International Agreements," *The American Journal of International Law*, Vol. 99, No. 3 (2005): 610–612.
50. David G. Victor and Lesley A. Coben, "A Herd Mentality in the Design of International Environmental Agreements?," *Global Environmental Politics*, Vol. 5, No. 1 (2005): 24–57.
51. James Gustave Speth and Peter Haas, *Global Environmental Governance* (New York: Island Press, 2006), 56.
52. For a discussion, see Josh Busby, "China and Climate Change: A Strategy for U.S. Engagement," 2010, www.rff.org/rff/documents/rff-rpt-busby-chinaclimatechangefinal.pdf; Joshua Busby, "The Need for Power: Implications of Chinese Energy Security and Climate Change Policies for Sino-American Relations," in Abraham Denmark et al., eds., *China's Arrival: A Strategic Framework for a Global Relationship* (Washington, DC: Center for a New American Security, 2009), 19–42.
53. See http://www.us-china-cerc.org (accessed March 28, 2015).
54. Taryn Fransen et al., *Mobilising International Climate Finance: Lessons from the Fast-Start Finance Period* (London: Overseas Development Institute, November 2013), http://www.wri.org/publication/mobilising-international-climate-finance (accessed March 28, 2015). While some of this represented repackaging of existing funds, these commitments also represented new money for climate-related purposes. According to the World Resources Institute, US appropriations of climate-related finance increased from US$305 million in 2009 to US$1.3 billion in 2010. Athena Ballesteros et al., "Summary of Developed Country 'Fast-Start' Climate Finance Pledges," *World Resources Institute*, 2010, http://www.wri.org/publication/summary-of-developed-country-fast-start-climate-finance-pledges (accessed March 28, 2015).
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