



Why the United States Should Remove Its Signature from the Kyoto Protocol

by Christopher C. Horner and Iain Murray

On March 29, 2001, just over two months into his new administration, President Bush announced that the United States would not comply with the Kyoto Protocol on climate change, which would have led to energy rationing due to its required cuts in carbon emissions, the inescapable byproduct of energy generation. The President made clear his opposition to the unreasonable demands the Kyoto Protocol places on the United States. “We will not do anything that harms our economy,” he said then.

However, over three years later, the Clinton-era signature remains on this potentially very harmful document. The Bush Administration should move to unsign it.

The continued presence of America’s signature on the Kyoto treaty sends the wrong signal. Sensing ambiguity in the U.S. position, European officials continue to press Kyoto’s case, and are placing immense diplomatic pressure on Russia to ratify, which would bring the Protocol into legal effect, since it would push Kyoto over the necessary threshold of 55 percent of the world’s greenhouse gas emissions. This carries considerable risks.

When in Kyoto, do as in Rome

In May 2002, the Bush Administration announced it would “unsign”—that is, rescind the American signature from—the Treaty of Rome establishing an International Criminal Court,

1998 signature of it? Unsigning the Treaty of Rome belies the Bush Administration’s claim that the United States, as a non-ratifying signatory, faces no consequences from the Kyoto Protocol.

The Bush Administration has not stated that the U.S. will comply with Kyoto—yet the failure to rescind our signature sends that same message to other countries’ negotiators. Unsigning the Rome Treaty but not the Kyoto Protocol suggests that the U.S. intends to adopt Kyoto. This has emboldened the European Union (EU) to lobby Russia to seek the best deal it can while eventual ratification by a future U.S. Senate remains a possibility. Most major EU countries, recognizing that Russia holds all the cards right now, are willing to give Russia major concessions—and the possibility of American ratification places the pressure on Russia to ratify Kyoto first.

Invitation to Litigation

Once it is in effect, other countries will likely use Kyoto to beat up on the U.S.—a signatory—at various international fora, even without Senate ratification.

Recent litigation by state attorneys general against U.S. power generators and the Administration itself hint at future lawsuits: At least three law review articles have set forth how Third World plaintiffs can use the national signature on the

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which would have exposed American military personnel to politically motivated charges of “war crimes” (potentially brought by such humanitarian stalwarts as the governments of Cuba, Iran, and Syria).

This begs the question: If the United States does not intend to ratify the Kyoto Protocol, why does it refuse to rescind its

protocol to sue, under the Alien Tort Claims Act and other statutes, over costs allegedly imposed on them by climate change. The EU is threatening the use of the World Trade Organization’s Shrimp-Turtle precedent to make the case that our failure to match EU energy taxes is either an impermissible advantage (“eco-dumping”) or an unfair trade barrier. The



U.S. signature on the protocol invites such action.

Status Quo Makes No Sense

The 1972 Vienna Convention on Conventions (Title 18) delineates treaty interpretation, dealing specifically with the issue of a non-ratifying signatory state: "a State is obliged to refrain from acts which would defeat the object and purpose of a treaty," until and unless "it shall have made its intention clear not to become a party to the treaty, or it has expressed its consent to be bound by the treaty." This is restated by the Law of Foreign Relations of the United States (§ 312 of the Restatement 3d). This is expressly why President Bush unsigned the Treaty of Rome.

That requirement is not satisfied by verbally disavowing a treaty, while at the same time maintaining one's signature and continuing to send delegations to ongoing negotiations. The Vienna Convention's withdrawal requirement is achieved only by filing an instrument rescinding the signature with the same body to which the signature was communicated.

The Solution

The Bush Administration should formally announce its

intention to rescind the American signature on the Kyoto Protocol. The move would carry no risk. By formally doing what the American and global public believe he has already done, President Bush will surprise no one. And rescinding the signature will remove two possible risks. First, it will take Kyoto off the table and force the world to look again at the issues surrounding global warming alarmism. Second, it will much reduce the chance of litigation to force the U.S. to adopt Kyoto-style energy suppression policies regardless of the Administration's position.

Unsigned the Kyoto Protocol would be consistent with the President's correct approach to the Treaty of Rome and reiterate his Administration's willingness to defend American sovereignty and the Constitution against international pressure.

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