Obama Climate Deal Would Reduce Power of Congress, U.S. Sovereignty

Continuing his pattern of running roughshod over Congress, the U.S. Constitution, and America's national sovereignty, President Obama is now asserting that he can unilaterally negotiate climate deals that are legally binding on the United States. And all without a vote of the U.S. Senate.

His aggressive assertion of power has demonstrated itself in a multitude of ways in the past: military interventions in Egypt, Libya, Iraq, Syria and elsewhere, all without a declaration of war by Congress; using executive fiat to alter provisions of the Affordable Care Act; forging a nuclear weapons deal with Iran without Senate advice or consent; and changing immigration law by executive order, to name only a few.

Obama has now assured the more than 120 world leaders attending the 2015 United Nations Climate Change Conference taking place in Paris (November 30-December 11) that the United States will reduce its emissions of "greenhouse gases" (GHGs) by 28 percent by 2025. Because the Senate appears disinclined to ratify such an agreement, Obama has adopted a strategy of avoiding specific targets. Instead, he is pushing for binding procedures on how and when a supposedly sovereign nation should review its targets.

In his speech, Obama boldly declared that the reduction of greenhouse gases would be "legally binding" on nations, including the United States. "Although the targets themselves may not have the force of treaties, the process, the procedures that ensure transparency and periodic reviews, that needs to be legally binding," he insisted.

Senator James Inhofe (R-Okla.), chairman of the Senate Environment and Public Works Committee, took issue with Obama's power grab, insisting,

> The U.S. Senate will not be ignored. If the president wishes to sign the American people up to a legally binding agreement, the deal must go through the Senate. There's no way around it.

Inhofe, it will be remembered, was a voice crying in the wilderness years ago in opposition to the global-warming scare.

Globalists have long desired to strike down the constitutional requirement that two-thirds of the Senate must concur with any international agreement before it is considered law. The Council on Foreign Relations (CFR) — (an organization formed in the aftermath of President Woodrow Wilson's failure to push the United States into a world government via the League of Nations after World War I — in 1928

called for the elimination of the two-thirds requirement, recognizing it as a formidable obstacle to their one-world plans.

Nigel Purvis, president of Climate Advisers and a major supporter of global action on "climate change," argues that Obama already possesses all the legislative authority he needs to enter into an agreement without further Senate action, because the 1992 Rio Treaty was signed by President George H.W. Bush and approved by the Senate.

However, the Rio Treaty set no binding limits on GHGs for individual nations, and contained no enforcement mechanisms. What it did, however, was dangerous enough. It created "protocols" on how treaties would be negotiated in order to set up binding limits on GHGs. Five years later, the Kyoto Protocol established legally binding obligations for developed countries; however, this proposal was roundly rejected by the U.S. Senate. Chinese and Indian officials also declared that they would not ratify any treaty binding them to reducing CO_2 emissions. Canada later withdrew from Kyoto, recognizing that it was a scheme to transfer wealth to lesser-developed nations.

Nigel Purvis paints an ominous scenario of where the global-warming alarmists are headed. Recently, he declared, "Paris may be remembered as a turning point — the moment when governments sent a clear signal that this complex *global transformation is inevitable*. (Emphasis added.) He heaped praise on Obama for his "leadership" on the issue in forcing "accountability" upon nations of the world, adding that what has happened in Paris is "only the beginning" in the construction of a global "architecture." He declared that what has emerged from the Paris talks is a change from what countries could do "on their own" to reduce GHG emissions, to "what they can do together."

Purvis hopes that "what they can do together" is transfer wealth from nations such as the United States to developing nations. No doubt realizing that American taxpayers may not wish to have even more of their wealth transferred out of the country, Purvis called upon the Obama administration to use the authority of the "executive branch" to promote climate-change action abroad.

In other words, Obama should use his "pen and phone" to bypass Congress, placing the responsibility for action on climate-change policy in the hands of international governing bodies.

In 2008, John Dexhage, director of the International Institute for Sustainable Development (IISD), published a paper that openly called for a reduction in national sovereignty in order to deal with the issue of supposed global climate change. He declared,

> Climate change poses serious challenges to traditional global environmental governance models and by doing so, demonstrates itself to be a fascinating issue on a number of fronts. For one, it represents a strong challenge to traditional, (neo) realist paradigms of international order, which assume state/national hegemony in an anarchic world, although the staying power of the neo-realist model in frustrating real progress on climate change should not be underestimated.

In other words, although people governing themselves in states and nations is a difficult problem to overcome in dealing with supposed anthropogenic (man-made) global climate change, the effort to diminish the sovereignty of nations must continue.

Drexhage argued, "To address the multi-faceted climate challenge we face, governance efforts must evolve beyond the current global-building model and that environmental and development policies must become much better integrated."

While Drexhage allowed that "Kyoto played a critical and necessary role in establishing a global value

to carbon and in sending positive investment signals, directly and indirectly, for clean energy investments worldwide," a "tremendous achievement," now more must be done, he insisted. What did he suggest?

"There is a growing consensus," observed Drexhage, "that, at the very least, global greenhouse gas (GHG) emissions will need to be reduced by at least 50 percent by the middle of this century. Clearly, achieving such a goal will require the engagement of *all major economies*." (Emphasis added.) Such actions will most likely lead to drastic reductions in the standard of living for Americans (such as living in smaller houses, making more use of public transportation, etc.), and Drexhage admits that is a political problem. Still, he wants to push a "globally binding regime by the end of this decade."

Obama's speech in Paris contained similar wording to that of Drexhage, and inferring from it, "binding" and "sovereignty" appear to be opposites, when applied to the nations of the world. If the U.S. Senate refuses to ratify such an agreement, Drexhage suggested setting up "an alternative structure, even if only as an initial step."

He envisions that ultimately the United Nations would take control of policy, in regard to GHG emissions, and impose an "internationally binding GHG emission cap regime." Developed countries would help "fund and support" non-developed countries as they adopt environmental policies favored by those such as Drexhage.

By 2025, Drexhage expects the imposition of "an internationally binding regime that will literally determine the mode of societies' development over this century and beyond."

So, it is clear that policies favored by Drexhage and Obama (note both cite 2025 as the year globalists will establish an "internationally binding regime") will lead to an increase in the executive power of the president to impose his environmental agenda through a world government — and a corresponding decrease in the national sovereignty of America. And Americans will be expected to reduce their standard of living significantly in order to accommodate this new world order.

However, the U.S. Constitution is crystal clear: No treaty is considered law in the United States unless it is approved by two-thirds of the U.S. Senate present. In the Constitution, the Founders gave "all legislative powers" to Congress. The president (the executive branch) is given no power to make law, even by making agreements with other nations.

It should also be emphasized that even were the president able to obtain a two-thirds concurrence from the Senate, any treaty so approved is constitutional only if it does not violate the Constitution. A treaty cannot be used to amend the Constitution. The Framers of the Constitution provided the process by which it can be amended (in Article V), and amendment by treaty is not mentioned.

Thomas Jefferson, while serving as the third president of the United States, addressed this issue directly in 1803. "I say the same as to the opinion of those who consider the grant of the treaty-making power as boundless. If it is, then we have no Constitution."

Secretary of State John Foster Dulles expressed a contrary view in 1952, when he claimed,

> Treaties make international law and also they make domestic law. Under our Constitution, treaties become the supreme law of the land.… Treaty law can override the Constitution. Treaties, for example, can take powers away from Congress and give them to the President; they can take powers from the States and give them to the Federal Government or to some international body, and they can cut across the rights given the people by the constitutional Bill of Rights.

It should be noted that Bill of Rights does not "give" the people rights. Under the philosophy of government expounded by Thomas Jefferson and the Continental Congress in the Declaration of Independence, "We are endowed by our Creator with certain unalienable rights." The Bill of Rights simply guards those God-given rights.

So who is right on the effect of a treaty — Jefferson or Dulles?

Article VI of the Constitution is at the heart of this dispute. It states, "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

This is the "supremacy clause" of the Constitution. It is often misquoted to say that federal law trumps state law. That is not at all what it says. The "supremacy" spoken of here is not the federal government, but rather the federal Constitution. After all, it clearly states, "This Constitution," not "This Federal Government." Federal law is supreme only when it is made *in pursuance of* the enumerated powers given to the federal government in Article I, Section 8, of the Constitution.

The same can said of treaties, which after all are another form of federal law. International agreements are not law anywhere in the United States until they are approved by two-thirds of the U.S. Senate. Otherwise, the president could make law through a treaty. And again, the Article I of the Constitution states clearly that Congress (not the executive branch) has all legislative power.

To affirm, as Dulles did, that a treaty could override the Constitution itself, is ludicrous. That would be adding another method of amending the Constitution, in addition to that found in Article V. In Article V of the Constitution, under the method that has been used for all 27 constitutional amendments, Congress (both houses, not just the Senate) must approve by two-thirds vote of each house, and then send the proposed amendment to the states for ratification. Only after three-fourths of the states ratify the proposal is the Constitution legally amended.

Under Dulles' faulty reasoning, the president and the Senate, could, acting on their own, cut the House of Representatives and the states completely out of the amendment process.

Once a treaty is approved under the authority of the United States (which means through the constitutional process provided for in the Constitution itself), it is indeed the law of the land, and it is superior to anything found in the constitutions or laws of any state not in the federal Constitution.

The only way that a treaty could amend the Constitution itself is if it were adopted through one of the methods provided for in Article V. It appears that Dulles was just developing "supremacy clause" theory to support increased power for international organizations, such as the UN, at the expense of the United States.

It is a commentary on the wisdom of the Founding Fathers that they had the foresight to include the requirement that a simple majority of the Senate is not enough to ratify a treaty, but rather two-thirds vote is needed, and that no treaty can amend the Constitution.

Steve Byas is a professor of history and government at Hillsdale Free Will Baptist College in Moore, Oklahoma. His book, History's Greatest Libels*, offers a challenge to some of the lies told about great heroes of history.*