108TH CONGRESS, 1st Session | SENATE | EXEC. RPT. 108–8

CONVENTION FOR INTERNATIONAL CARRIAGE BY AIR (TREATY DOC. 106–45) AND PROTOCOL TO AMEND THE CONVENTION FOR UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR (TREATY DOC. 107–14)

JULY 29, 2003.—Ordered to be printed

Mr. LUGAR, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 106–45 and Treaty Doc. 107–14)]

The Committee on Foreign Relations, to which was referred the Convention for the Unification of Certain Rules for International Carriage by Air (Treaty Doc. 106–45) and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on October 12, 1929 (Treaty Doc. 107–14), having considered the same reports favorably thereon with a reservation, as indicated in the resolutions of advice and consent, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolutions of advice and consent to ratification.

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I. PURPOSE

These treaties establish rules governing liability arising from international air carriage. This includes liability arising from injuries and deaths to persons, as well as damage to, or loss of, baggage and cargo, that occur in connection with international air carriage.

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II. BACKGROUND

The Convention for the Unification of Certain Rules for International Carriage by Air (Treaty Doc. 106–45) (hereinafter "the Montreal Convention"); and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on October 12, 1929 (Treaty Doc. 107–14) (hereinafter "the Hague Protocol") both address liability arising from international air carriage.

Montreal Convention

The Montreal Convention establishes a comprehensive regime governing liability arising from international air carriage. It is intended to replace the current patchwork set of liability regimes in this area, which include the 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air, various protocols to that Convention, and voluntary agreements among air carriers. The Warsaw system, as it is known, has long been considered antiquated in several respects. The new Montreal Convention represents the culmination of decades of efforts by the United States and other countries to establish a regime providing increased protection for international air travelers and shippers, and modern and efficient procedures reflecting developments in the aviation industry.

Hague Protocol

The Hague Protocol amends the 1929 Warsaw Convention that the Montreal Convention is designed to replace. Until the Montreal Convention gains wide adherence, the Warsaw system will remain in place between many countries. Accordingly, the Committee recommends that the Senate advise and consent to the Hague Protocol so that U.S. passengers, shippers, and air carriers, in this interim period, may take advantage of some modern elements of the protocol, especially those relating to the carriage of cargo. At present, there is uncertainty about whether the United States is a party to the Hague Protocol. This uncertainty arises, in part, from the confusion that results from the patchwork nature of the Warsaw system. The 1929 Warsaw Convention has been amended by a series of protocols. Some countries are parties only to the Warsaw Convention; others are parties only to particular protocols amending the Convention. Recent litigation in federal court has highlighted this confusion. In 2000, the U.S. Court of Appeals for the Second Circuit held in *Chubb & Son, Inc.* v. *Asiana Airlines,* 214 F.3d 301 (2d Cir. 2000), *cert. denied,* 533 U.S. 928 (2001), that the United States and South Korea did not have treaty relations with respect to international air carriage rules because the two countries were not parties to common pieces of this regime.

Ratification of the Hague Protocol will serve to clarify treaty relationships immediately with a number of countries with which the status of our treaty relationships under the Warsaw system may be unclear in light of the *Chubb* case. This includes countries with which we may have no treaty relationships at present. It also includes countries with which our only current treaty relationship may be the relatively antiquated 1929 Warsaw Convention,

unamended by any of the subsequent protocols. With respect to this latter group of countries, ratification of the Hague Protocol is useful because the Protocol streamlines the Warsaw Convention's cumbersome documentation requirements for cargo transportation. In the short-term, having cargo shipments to and from such countries governed by the Hague Protocol rather than by the unamended Warsaw Convention will benefit shippers.

The relevance of the Hague Protocol will wane as more countries become parties to the Montreal Convention, which provides updated rules governing air carriage. Where two countries are parties both to the Montreal Convention and to prior conventions governing international air carriage, the Montreal Convention, by its terms, supersedes the earlier instruments. The Committee hopes that United States ratification of the Montreal Convention will serve to encourage other countries also to become parties to it. The Committee encourages the Administration to undertake active diplomatic efforts to promote further ratifications.

III. Summary of Key Provisions of the Treaties

A detailed article-by-article discussion of these treaties may be found in the Letters of Submittal from the Secretary of State to the President, which are reprinted in full in the respective Senate Treaty Documents. A summary of the key provisions of the treaties is set forth below.

MONTREAL CONVENTION

Continuity of Applicable Warsaw Precedents

The Montreal Convention, like the Warsaw Convention, will provide the basis for a private right of action in U.S. courts in matters covered by the Convention. No separate implementing legislation is necessary for this purpose.

In the nearly seventy years that the Warsaw Convention has been in effect, a large body of judicial precedent has been established in the United States. The negotiators of the Montreal Convention intended to preserve these precedents. According to the Executive Branch testimony, "[w]hile the Montreal Convention provides essential improvements upon the Warsaw Convention and its related protocols, efforts were made in the negotiations and drafting to retain existing language and substance of other provisions to preserve judicial precedent relating to other aspects of the Warsaw Convention, in order to avoid unnecessary litigation over issues already decided by the courts under the Warsaw Convention and its related protocols." (Response to questions for the record submitted by Chairman Lugar, page 68).

Elimination of Liability Limits and of Defenses to Certain Damages

The Montreal Convention eliminates limits on air carrier liability for covered damages related to death or personal injury to passengers that applied under the Warsaw Convention. Article 21 of the Convention provides that for proven damages up to 100,000

Special Drawing Rights,[1] air carriers may not exclude or limit their liability, subject to the comparative fault provision in Article 20. For such damages exceeding 100,000 Special Drawing Rights, an air carrier shall not be liable if it proves that the damages were not due to the negligence, or other wrongful act or omission of the carriers, its servants or agents, or that such damage was solely due to the negligence or other wrongful act or omission of a third party. As with the similar provision in the Warsaw Convention (Article 20(1)), the burden is on the air carrier, not the injured party, to show that the air carrier was not negligent or that the damage was solely due to the acts of a third party. In sum, Article 21 permits injured parties or their heirs to recover all provable damages for death and personal injury allowed under applicable law and covered by the Convention. The Montreal Convention thus improves considerably on provisions in the Warsaw Convention that imposed limits on carrier liability for such damages. It also codifies an agreement made among major air carriers in 1996 (known as the IATA Intercarrier Agreement on Passenger Libaility) to waive the liability limits of the Warsaw system.

Limits on Liability for Delay, Baggage, and Cargo Related Damages

Article 22 of the Convention largely preserves limits on liability for damages related to delay, baggage, and cargo contained in the Warsaw Convention and the various protocols to it.

Jurisdiction Over Claims

Article 33 of the Convention addresses jurisdiction over claims for damages under the Convention. It improves on the Warsaw Convention by adding what has been referred to as a "fifth jurisdiction" for bringing claims for death or personal injury. Specifically, Article 33 permits claims relating to passenger death or injury to be brought against an air carrier in the courts of the country in which the passenger had his or her principal and permanent residence at the time of the accident, provided that two additional conditions are met: (1) the carrier provides service to or from that country either directly or via a code-share or other similar arrangement with another carrier, and (2) the carrier conducts business in that country from premises leased or owned by it or by a carrier with which it has a commercial arrangement, such as a code-share arrangement. The Convention also preserves provisions of the Warsaw Convention providing jurisdiction for death and injury claims, as well as claims relating to delay, baggage, or cargo, in the country (1) of the domicile of the carrier; (2) of the carrier's principal place of business; (3) where the ticket was purchased; or (4) of destination of the passenger. Under Article 33, therefore, U.S. courts will have jurisdiction in nearly all cases involving death or personal injury to passengers who reside in the United States, thus eliminating the need for such passengers or their heirs to bring suit in foreign courts in order to obtain jurisdiction over air carriers.

[1] "Special Drawing Rights" is an artificial "basket" currency developed by the International Monetary Fund for internal accounting purposes, and is used as the monetary unit of reference in the Convention. As of July 2003, one Special Drawing Right is equivalent to approximately $1.40.

Code-Share Liability

Chapter V of the Convention addresses a practice of modern aviation: "code-share" arrangements between airlines in which two airlines share reservations or contracting operations. Under the provisions of this chapter, in instances in which a flight is operated under a code-share or similar arrangement, a passenger may bring a claim arising under the Convention against either the carrier from which he or she purchased a ticket or the carrier that actually operated the flight under the code-share or similar arrangement. Article 40 provides for the respective liability of the "contracting carrier" and the "actual carrier" (terms that are defined by Article 39). These rules do not, however, create liability on the part of a carrier merely because of its participation in a code-share relationship. Where a passenger is traveling on a ticket purchased directly from the actual carrier, Article 40 provides that that passenger may only bring a claim against the actual carrier, and not against another carrier serving as a code-share partner on the flight. Similarly, a carrier not actually operating the aircraft is liable only to those passengers to which it sold tickets.

Exclusivity

Article 29 of the Convention provides that actions for damages related to the carriage of passengers, baggage, and cargo, whether under the Convention, in contract, in tort, or otherwise, can only be brought subject to the conditions and limits of liability set out in the Convention. This is consistent with U.S. decisional law under the Warsaw Convention. Four years ago, the Supreme Court ruled that the Warsaw Convention is the exclusive means by which passengers can seek damages for death or personal injury. *El Al Israel Airlines, Ltd.* v. *Tseng,* 525 U.S. 155 (1999). Article 29 also specifically provides that punitive, exemplary or other non-compensatory damages shall not be recoverable.

Entry Into Force and Denunciation

The Convention enters into force on the 60th day after the date of the deposit of the 30th instrument of ratification, acceptance, approval or accession to the Convention. As of the date of the Committee's hearing on the Convention, the Convention had not yet entered into force, but 29 countries had ratified it. Should the Convention enter into force prior to the United States becoming a party to it, the Convention would enter into force for the United States 60 days following the date of deposit of the United States' instrument of ratification, acceptance, approval or accession.

Any party to the Convention may denounce the Convention by written notification to the Convention's depositary. Such denunciations take effect 180 days after the depositary's receipt of the notification.

THE HAGUE PROTOCOL

The Protocol amends the 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air. These instruments address the same subject matter as the more recent Montreal Convention discussed above.

The Hague Protocol streamlines the Warsaw Convention's documentation requirements for international carriage of passengers, baggage, and cargo by limiting the information required to be included in cargo airway bills, passenger tickets, and baggage checks. It also narrows the circumstances under which failure to comply with such documentation requirements related to carriage of cargo would preclude the application of relevant carrier liability provisions. The Protocol also generally permits plaintiffs to recover court costs and other expenses of litigation they incur in connection with pursuing claims under the Warsaw Convention as amended.

The Hague Protocol also amends Article 25 of the Warsaw Convention, which allows plaintiffs to exceed the liability limits of Article 22 under certain circumstances. Under the Warsaw Convention, the liability limits may be exceeded if it is proved that the damage is caused by the "willful misconduct" of the carrier. Under Article XIII of the Hague Protocol, the "willful misconduct" standard was modified with a description of the conduct itself. The Committee developed a record on this matter in an exchange of questions with the Executive Branch during the review of the Montreal Protocol No. 4 in 1998. *See* S. Exec. Rept. 105–20, at 47, 52-53. This provision of the Hague Protocol is, however, unlikely to have much substantive effect on future litigation in the United States, because most carriers flying to and from this country are signatories to the 1996 inter-carrier agreements in which, by contract, the carriers waived the liability limits of the Warsaw system.

IV. Implementing Legislation

No implementing legislation is necessary for either the Montreal Convention or the Hague Protocol.

V. Committee Action

The Committee held a public hearing on these treaties on June 17, 2003 where it heard testimony from representatives of the Departments of State and Transportation (a transcript of this hearing and questions and answers for the record may be found in the appendix to this report). On July 23, 2003, the Committee considered these treaties and ordered them favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to their ratification, subject to a reservation contained in the resolution of advice and consent to ratification to the Montreal Convention.

VI. Committee Recommendation and Comments

The Committee recommends that the Senate advise and consent to the ratification of both the Montreal Convention and the Hague Protocol. In the case of the Montreal Convention, the Committee recommends that the Senate's advice and consent be made subject to a reservation.

The Committee recommends that the Senate's advice and consent to the Montreal Convention be made subject to a reservation that the Convention shall not apply to international carriage by air performed by the United States of America for non-commercial purposes in respect of the functions and duties of the United States

of America as a sovereign state. This reservation is specifically contemplated by Article 57 of the Montreal Convention, and was recommended by the Executive Branch when it transmitted the Convention to the Senate. The United States has made a similar reservation to its ratification of the Warsaw Convention; making this reservation to the Montreal Convention will thus serve to maintain the current exemption of such state-operated aircraft from regulation.

VII. RESOLUTIONS OF RATIFICATION

The Montreal Convention

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO RESERVATION.

The Senate advises and consents to the ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (T. Doc. 106–45, in this resolution referred to as the "Convention"), subject to the reservation in section 2.

SEC. 2. RESERVATION.

The advice and consent of the Senate to the ratification of the Convention is subject to the following reservation, which shall be included in the instrument of ratification:

> Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State.

The Hague Protocol

Resolved (two-thirds of the Senators present concurring therein), That the Senate advises and consents to the ratification of the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, done at The Hague on September 28, 1955 (T. Doc. 107–14).

VIII. APPENDIX

TREATIES RELATED TO AVIATION AND THE ENVIRONMENT

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ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

TUESDAY, JUNE 17, 2003

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room SD–419, Dirksen Senate Office Building, Hon. Richard G. Lugar (chairman of the committee), presiding.

Present: Senators Lugar and Sarbanes.

The CHAIRMAN. This hearing of the Senate Foreign Relations Committee is called to order. The committee meets today to hear testimony on a series of treaties on aviation and environmental issues. Within the Congress, the Senate Foreign Relations Committee is charged with the unique responsibility of reviewing treaties concluded by the administration, and our colleagues in the Senate depend on us to make timely and judicious recommendations on treaties. It's a serious responsibility, and I know that all members of the committee understand the importance of our role in this process.

In advance of this hearing, the committee has worked hard with the administration to prepare a set of treaties for committee consideration on which there is substantial agreement. Committee staff have reviewed these treaties carefully. We have held a formal committee briefing, and administration representatives have been available to answer questions. I appreciate the support and cooperation of Senator Biden and his staff throughout this process.

I'm pleased to welcome today representatives from the administration who are with us this morning, and our witnesses possess deep expertise on these treaties, most of which involve relatively esoteric matters of policy and international law.

First of all, we will hear from Jeffrey Shane, Under Secretary for Policy at the Department of Transportation, and John Byerly, Deputy Assistant Secretary of State for Transportation Affairs. They will testify on two aviation agreements, the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air, and the 1955 Hague Protocol to Amend the 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air.

These agreements update antiquated treaty rules that passengers rely on to protect their interests when they fly internationally. The treaties will improve the fairness and efficiency of the rules that govern how passengers on international flights are compensated for losses during air travel. These losses include both tragic cases involving the death or serious injury of passengers, and more routine cases involving minor injury or damage to property.

The agreements also will fill gaps that currently exist in our web of treaty relationships, removing uncertainties faced by individuals and companies that ship cargo to and from countries with which we currently lack treaty relationships.

Then we will hear from John Turner, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs. Assistant Secretary Turner will testify on five environmental treaties. Two of these treaties relate to hazardous chemi-

cals. The Stockholm Convention on Persistent Organic Pollutants severely restricts the international production and use of a dozen toxic chemicals, the so-called dirty dozen. These chemicals include DDT, dioxin, and PCBs. All 12 are already banned or severely restricted domestically by the United States. President Bush hailed this agreement when announcing the United States' decision to sign it in 2001. It represents a major step forward for international environmental protection.

We also will hear testimony on the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Chemicals in International Trade. This agreement will help to ensure that hazardous chemicals are not transported across national borders without the prior knowledge and consent of the importing country. It builds on a set of existing voluntary procedures that are used by more than 150 countries, including the United States.

Mr. Turner will then testify on three treaties related to fish and wildlife. Two of these agreements amend existing fisheries treaties, one with Canada and the other with Pacific Island states. The other is a treaty with Russia to help conserve the polar bear population, chaired by the United States and the Russian Federation.

I understand that these seven treaties enjoy wide support among the constituencies whose interests they affect. The committee welcomes statements or briefing materials on the treaties from any interested party. These statements should be submitted to the committee by the end of this week.

I commend the United States officials who have worked on these agreements for successfully negotiating documents that command wide support. Some of these agreements are the product of years of dedication and patient negotiations. Prompt ratification of these agreements will help the United States continue to play a leadership role internationally on these issues and will serve to advance United States' interests. It is my hope that our committee will report resolutions of ratification on each of these agreements prior to the August recess. Today's hearing is an important step in this process.

I look forward to the contributions of our witnesses. I would suggest that we proceed by hearing first from Mr. Shane and Mr. Byerly on the aviation treaties, and following questions on those treaties, I will excuse these witnesses, because Mr. Byerly needs to catch an international flight. We will then proceed to hear from Mr. Turner on the environmental treaties and settle into those five treaties later on in the hearing.

It is a real privilege to have each one of you before us today, and I would like to call upon you, Mr. Byerly, for your testimony, or Mr. Shane, if that is your preference. Perhaps you gentlemen have worked out a modus vivendi for the hearing.

STATEMENT OF HON. JEFFREY N. SHANE, UNDER SECRETARY FOR POLICY, U.S. DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC

Mr. SHANE. Yes, Mr. Chairman, we have, and good morning, Mr. Chairman. It is a great pleasure to appear before you today to urge that the Senate give its advice and consent to ratification of the 1999 Montreal Convention, and the 1955 Hague Protocol.

As you've indicated in your opening remarks, these two treaties will facilitate a long overdue modernization of the rules governing airlines' liability to passengers and shippers during international flights. It's a special pleasure for me to be here together with my friend and colleague of many years, John Byerly, who has been a real partner in this long enterprise.

Mr. Chairman, I have a longer prepared statement that I would ask to be submitted to the record.

The CHAIRMAN. Your statement will be published in the record in full, and that will be true for you, Mr. Byerly and Mr. Turner, so each one of you know that you will have that privilege, and please proceed in any way you wish.

Mr. SHANE. Thank you, Mr. Chairman. I'll just try to summarize the longer statement.

The Montreal Convention was signed by the United States and 51 other countries on May 28, 1999. To date, 29 countries have ratified it, just one short of the 30 that are needed to become effective. This new treaty will replace the outdated 1929 Warsaw Convention, and represents the culmination of a 40-year effort by the Department of Transportation, the State Department, families' organizations, and many others to increase the clearly inadequate passenger liability limits that are currently in place under the Warsaw Convention.

Absent an airline's voluntary waiver of the Warsaw liability limits, recoveries for death or injury during an accident that occurs on an international flight to or from the United States are currently subject to a limit of $75,000 per passenger. That limit has been in place since 1966, and was really a product of an agreement extracted by the Civil Aeronautics Board. The truth is that the limit in many foreign markets is actually much less than that.

Ratification of Montreal 1999 would bring about a number of important improvements. Most important, the new convention entirely eliminates all artificial monetary limits on recoveries from the airline for proven damages with respect to the death or injury of a passenger during an international airline mishap. First, it establishes strict liability on the part of the airline for proven damages up to 100,000 special drawing rights, or approximately $141,000 under the current conversion rate. That means in any accident there will be automatic recovery of $141,000, regardless of whether the airline was actually at fault.

Second, the convention permits the recovery of additional proven damages above 100,000 SDRs without any limit whatsoever. The only exception would be a case in which the airline was able to show that it was not responsible for any of the damage done, or that the damage was solely due to the responsibility of a third party.

A second major passenger benefit provided by the Montreal Convention is the right of claimants to bring action in a forum related to the passenger's principal and permanent residence. This provision will ensure in the vast majority of cases that an injured American passenger or a claimant on behalf of a deceased American passenger will be able to bring action in a U.S. court. Under Warsaw, not only are the limits of recovery hopelessly inadequate, and worst

of all in many foreign-to-foreign markets, but Americans have no assurance that they can even sue in a U.S. court.

The convention also includes provisions that clarify the liability regime for cooperative marketing arrangements such as code-sharing. For air travel pursuant to a code-sharing agreement, both the operator of the aircraft and the carrier whose airline code is used for ticketing purposes are jointly liable to the passenger.

Finally, for the carriage of air cargo, the new convention retains the important improvements brought about by Montreal Protocol Number 4, which became effective in the United States in March 1999. The most conspicuous advance in that treaty permitted the use of state-of-the-art electronic data transmission in documenting air cargo shipments, an efficiency that was seriously impeded by the old Warsaw Convention documentation requirements.

I'm also here today to express the administration's hope that the Senate will give advice and consent to ratification of a second aviation treaty, the 1955 Hague Protocol to the Warsaw Convention. Like the Montreal Convention, the Hague Protocol contains provisions that modernize the rules governing airline liability for damage to air cargo, notably, again, the rules governing the documentation of air freight shipments.

You may wonder why we are proposing ratification of Hague, when Montreal Protocol Number 4, which is already in force for the United States, does even more to modernize the air cargo liability regime, and when that protocol's improvements are incorporated in the Montreal Convention that I was just discussing and that we hope will take effect shortly.

The reason is that it will be some time before all possible shipments to and from the United States are covered, either by the benefits of Montreal Protocol 4 or the 1999 Montreal Convention. In the interim, it is important to assure that at least the Hague documentation improvements prevail in situations where the origin or destination of the cargo is in a country that has not ratified either Montreal Protocol 4 or the Montreal Convention.

To illustrate the point, recent litigation has created uncertainty about whether the Hague documentation provisions would apply between the United States, which is not currently a party to Hague, and countries that are party to the Hague, but not party to Montreal Protocol 4.

Ratification of the Hague Protocol by the United States would resolve this issue once and for all, and it is important to do so immediately because the vast majority of countries that have not yet ratified Montreal Protocol 4 or the Montreal Convention have ratified Hague. U.S. ratification of Hague, in other words, would facilitate the use of modern documentation in almost all cargo movements between the United States and other countries, even prior to the expected worldwide adoption of the Montreal Convention, and it is therefore strongly supported by our airlines.

In conclusion, Mr. Chairman, let me just note that prompt ratification of the Montreal Convention of 1999 has been called for by victims' families' organizations, the airline industry, plaintiffs' and defense lawyers, and manufacturers of aircraft and aircraft engines. In all the years that I've been privy to this effort, and that's a lot of years, Mr. Chairman, I have never seen so broad and so

deep a consensus about what the United States must do now. After so many years of work by so many interested groups, I am pleased to report that ratification now would be a unanimously celebrated win-win achievement of historic significance.

That concludes my prepared statement. I would certainly be prepared to answer any questions you may have afterwards.

[The prepared statement of Mr. Shane follows:]

PREPARED STATEMENT OF JEFFREY N. SHANE, UNDER SECRETARY FOR POLICY, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Lugar, Senator Biden and Members of the Committee, it is with great pleasure that I appear before you today in support of Senate ratification of the 1999 Montreal Convention and the 1955 Hague Protocol. Together, these two treaties will facilitate a long overdue modernization of the rules governing airlines' liability to passengers during international flights.

MONTREAL CONVENTION OF 1999

The Montreal Convention was signed by 52 countries, including the United States, on May 28, 1999. To date, 29 countries have ratified the Convention, just one short of the 30 needed for it to become effective. This new Convention is intended to replace the outdated 1929 Warsaw Convention and the regime that has developed around it. It represents the culmination of a 40-year effort, by the Department of Transportation, the State Department and many others, to rectify the injustices to international airline passengers and their families created by the archaic and now grossly inadequate passenger liability limits established under the Warsaw Convention. Currently, absent a voluntary waiver of the Warsaw liability limits by a carrier, recoveries for deaths or injuries arising as the result of an accident that occurs during an international flight to or from the United States are subject to a limit of $75,000, and can be limited to as little as $10,000 for flights in other markets, unless the passenger or the passenger's estate is able to prove "willful misconduct" on the part of the airline.

Ratification of Montreal 1999 would therefore facilitate a long overdue modernization of the liability regime governing international air travel.

First and foremost, the new Convention entirely eliminates all artificial monetary limits on recoveries from the airline for proven damages with respect to the death or injury of a passenger occurring as the result of an international airline accident. It also provides for "strict" liability—recoveries regardless of the carrier's fault—for proven damages up to 100,000 Special Drawing Rights, or approximately $141,000 under the current conversion rate.

Moreover, there would be no limit on the recovery of additional proven damages. Above the 100,000 SDR amount, the airline would retain its ability to show that the damage done was either not due to its own negligence or other wrongful act or omission or that the damage was solely due to the negligence or other wrongful act or omission of a third party. If a third party were only partially at fault, the carrier would remain liable as joint tortfeasor. In other words, if both the carrier and, for example, an aircraft repair station were each partially negligent, the carrier would be liable for the full amount of the proven damages, subject to contribution toward the recovery by the repair station.

Another major passenger benefit provided by this Convention—not available under the Warsaw Convention—is the right of claimants to bring their action in a forum based on the passenger's principal and permanent residence. This provision will assure, for the vast majority of cases, that an injured American passenger or a claimant acting on behalf of a deceased American passenger would be able to bring action in a U.S. court. Under the Warsaw Convention, when a ticket is purchased on a foreign carrier outside the United States and the destination is also a place outside the United States, claims arising out of an accident on such a flight could not be brought in the United States. Under the new Convention, an action on behalf of a U.S. citizen or other passenger that was permanently resident in the United States at the time of the accident may be brought in a U.S. court as long as the carrier meets certain reasonable tests to determine whether it has a commercial presence in the United States, including through code sharing operations with other carriers.

The new Convention also includes provisions that clarify the liability regime for cooperative marketing arrangements such as code sharing. One very important aspect of these provisions is the clarification that, for carriage pursuant to a code-

sharing agreement, both the operating carrier on whose aircraft the accident occurs and the carrier whose airline designator code is used for ticketing purposes are jointly liable to the passenger. Given the proliferation of code-share arrangements through the global alliances that have developed in recent years, this is a significant and important new protection for international air travelers.

Finally, for the carriage of air cargo, the new Convention retains, in all substantive respects, the important improvements brought about by Montreal Protocol No. 4, which became effective in the United States on March 4, 1999. Probably the most conspicuous advance in that treaty permitted the use of state-of-the-art electronic data transmission in documenting air cargo shipments. The Warsaw Convention's documentation requirements are wholly out of step with today's just-in-time, information-technology-driven approach to logistics. The new Montreal Convention retains those critical provisions. Importantly, the new Convention also has a provision for periodic inflation-related adjustments of the liability limits for baggage, cargo, delay, and the level up to which "strict" liability applies for passenger deaths and injuries.

As I indicated at the outset, in order to become effective the new Convention requires 30 ratifications to come into force. Twenty-nine ratifications already have been deposited with the International Civil Aviation Organization and so we have every reason to anticipate that the new treaty will enter into force very soon. It would be both unfortunate and ironic if it did not enter into force for the United States—one of the principal advocates of a more humane liability regime for international passenger travel—because we ourselves had not yet ratified it. It also seems clear that many more countries will ratify this Convention once the United States does so. Accordingly, if the Senate were to ratify this Convention, we anticipate that it would be very widely adhered to, just as the predecessor Warsaw Convention was.

THE 1955 HAGUE PROTOCOL

I am also here today to articulate the Department's strong support for ratification of the 1955 Hague Protocol to the Warsaw Convention. The Hague Protocol amended the Warsaw Convention. Montreal Protocol No. 4, which updates the liability regime for air cargo in important ways, is actually an amendment of the Warsaw Convention as amended by the Hague Protocol. Montreal Protocol No. 4—which became effective for the U.S. in 1999—is in fact predicated on cargo documentation improvements that first appeared in the Hague Protocol, although the new Protocol refined those provisions even further.

Unfortunately, because Hague contained such low passenger liability limits—a ceiling on recoveries of $20,000 per passenger—the U.S. was not willing to ratify it until now. In effect, we intentionally sacrificed an opportunity to update the air cargo liability regime through Hague because of its inadequate benefits for passengers.

You may wonder why we are proposing ratification of Hague now, when its modernization of the air cargo liability regime has already been accomplished—and more—in Montreal Protocol No. 4. The reason is that it will be some time before all possible journeys are covered by the benefits of Montreal Protocol No. 4 or the 1999 Montreal Convention. In the interim, it is important to assure that the Hague documentation improvements would prevail in situations where the origin and destination of the cargo is in a country that had not ratified either Montreal Protocol No. 4 or the Montreal Convention.

Recent litigation has drawn attention to the question of whether the Hague documentation provisions would apply as between the United States and countries that are party to the Hague Protocol, but not to Montreal Protocol No. 4. Ratification of the Hague Protocol would eliminate this issue. It is important to do so because the vast majority of countries that have not yet ratified Montreal Protocol No. 4 or the Montreal Convention *have* ratified Hague. U.S. ratification of Hague therefore would facilitate the use of modem documentation in almost all cargo movements between the U.S. and other countries, even where those other countries have not yet ratified Montreal Protocol No. 4 or the Montreal Convention. Ratification of the Hague Protocol thus is deemed essential by our airlines.

The problem of the low passenger liability limits contained in the Hague Protocol should no longer be an impediment to its ratification. Recognizing the inadequacy of existing passenger liability limits under the Warsaw-Hague regime, most of the world's major airlines signed intercarrier agreements in 1996 that waive the Warsaw-Hague passenger liability limits in their entirety. Many have also agreed to pay up to 100,000 Special Drawing Rights to accident victims regardless of whether the carrier was negligent or not. Thus, in those situations where the Montreal Conven-

tion of 1999 does not apply, but where Hague would apply if ratified for the purpose of modernizing the air cargo regime more widely, these voluntary carrier agreements will go a long way towards filling the residual passenger liability gap until the Montreal Convention of 1999 is more widely adopted.

Prompt ratification of the Montreal Convention of 1999 has been called for by victims' families' organizations, the airline industry, plaintiffs' and defense lawyers, and manufacturers of aircraft and aircraft engines. After years of work by a great many interested groups, I am pleased to report that ratification now would be a win-win achievement of historic significance.

That concludes my prepared statement. I would be pleased to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Shane.

Mr. Byerly, do you have additional comments?

STATEMENT OF JOHN R. BYERLY, DEPUTY ASSISTANT SECRETARY OF STATE FOR TRANSPORTATION AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Mr. BYERLY. Yes, sir, and thank you very much, Mr. Chairman, for the opportunity to be before this committee today, and thank you also for accommodating my need to travel to Europe this evening. That is very courteous and kind of you.

Under Secretary Shane has outlined what these two treaties would accomplish, and why ratification is so clearly in our Nation's interest. With your permission, I have submitted my written testimony for the record, and I will very briefly summarize four points I would wish to underscore.

The CHAIRMAN. Very well.

Mr. BYERLY. First, our country has an historic opportunity today. For almost half a century, America has sought to alter and to improve the airline accident liability regime established in 1929 by the Warsaw Convention, a treaty that was negotiated in the infancy of commercial aviation and one that is clearly inadequate today. It has been that way for a long time.

In fits and starts, the United States achieved partial improvements over the years, but it was only in 1999, with the landmark negotiation of the Montreal Convention, that we achieved the full breakthrough that was needed. This convention eliminates entirely the artificial caps on liability which are the bane of the Warsaw system. It also incorporates the so-called fifth basis of jurisdiction, which will allow access to U.S. courts for virtually all American accident survivors and the families of American victims of airline accidents.

A second and related point, the Montreal Convention, if ratified, will make a true difference in the lives of American citizens. It will facilitate prompt assistance to survivors and to the relatives of victims. It will bypass time-consuming litigation over the myriad complexities of the Warsaw legal patchwork, and it will also end the burden imposed on so many American families of having to pursue legal redress far from home, in foreign legal systems, at great expense, and with huge uncertainty.

The third point I would wish to make is that ratification by the United States will ensure that the Montreal Convention enters into force this year. This action would permit us at the State Department, at DOT, and at our embassies abroad to go forth and persuade the rest of the world to join us as parties to this historic

treaty. It will be our goal to achieve for the Montreal Convention the same virtually universal adherence that applied in the past to Warsaw.

With the approval of your committee, and with the advice and consent of the Senate, we can seize this unique opportunity. We can make an enormous difference for every American who suffers or whose family members suffer the tragedy of an airline accident, and we can change the legal framework of international aviation forever, and for the better.

My fourth and final point concerns the Hague Protocol. Pending wide adherence to the Montreal Convention by other countries, U.S. ratification of Hague would provide important interim modernization of the cargo rules, benefiting both shippers and consumers as well as airlines.

Mr. Chairman, so many have worked for decades to accomplish the legal breakthrough represented in the Montreal Convention, and many of them are in this room today. Hans Ephraimson, who lost his daughter in the KAL–007 tragedy and is spokesman of the Air Crash Victims Families Group; Allan Mendelsohn, my predecessor in two jobs in the State Department and a contributor to this effort over the years; Don Horn and Peter Schwarzkopf of the General Counsel's office at the Department of Transportation; and Jennifer Gergen, Sam Witten, and David Newman of the Legal Advisor's office at State are among so many who have contributed and sought to achieve what was accomplished in 1999 in Montreal, and which we can embark on right now.

I'm both honored and humbled to be among them and to come before you today to request that the Senate give its advice and consent to ratification of these two treaties.

Thank you.

[The prepared statement of Mr. Byerly follows:]

PREPARED STATEMENT OF JOHN R. BYERLY, DEPUTY ASSISTANT SECRETARY OF STATE FOR TRANSPORTATION AFFAIRS, DEPARTMENT OF STATE

Mr. Chairman and Members of the Committee:

I welcome the opportunity to present, together with the Department of Transportation, the views of the Administration regarding the Convention for the Unification of Certain Rules for International Carriage by Air, Done at Montreal 28 May 1999 ("the Montreal Convention" or the "Convention") and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on October 12, 1929, Done at The Hague September 28, 1955 ("The Hague Protocol" or "the Protocol").

INTRODUCTION

We urge the Senate to seize an historic opportunity to give its advice and consent to ratification of these two important treaties. For almost half a century, the United States has sought to replace the outmoded airline accident liability system established by the Warsaw Convention of 1929. The Montreal Convention would do just that and can make a real difference in the lives of American citizens by abolishing unreasonable liability limits and allowing most American accident victims and their families to seek redress in U.S. courts against foreign airlines. The Convention would modernize and clarify other aspects of the international airline accident liability system, including the rules applicable to code-share flights and to liability for the carriage of cargo. Pending wide adherence to the Montreal Convention by other countries, U.S. ratification of The Hague Protocol would provide important interim modernization of the cargo rules, which recent litigation has shown to be needed.

With the advice and consent of the Senate, the United States can be among the initial group of countries ratifying the Montreal Convention. Once we have acted,

we will undertake a broad global effort to urge additional countries to join us, with the goal of achieving universal adherence.

The Administration seeks the advice and consent of the Senate to ratification of the Montreal Convention subject to a declaration to be made on behalf of the United States that the Montreal Convention shall not apply to international carriage by air performed and operated directly by the United States for non-commercial purposes in respect to its functions and duties as a sovereign State. Such a declaration would be consistent with the declaration made by the United States under the Convention for the Unification of Certain Rules Relating to International Transportation by Air, Done at Warsaw 12 October 1929 (the "Warsaw Convention") and is specifically permitted by the terms of the Montreal Convention.

THE MONTREAL CONVENTION

The Montreal Convention is a remarkable accomplishment for U.S. aviation policy and U.S. diplomacy. The U.S. delegation at the diplomatic conference that negotiated this agreement in May of 1999 achieved all of America's core objectives. The new Convention has the potential to eliminate the patchwork of airline liability regimes around the world and replace it with a new, uniform set of rules appropriate for today's airlines and today's passengers and shippers.

Indeed, the 1999 Montreal Convention is the culmination of almost a half century of efforts by the United States to increase, and later to eliminate, the unconscionably low limits of liability applicable under the 1929 Warsaw Convention when passengers are killed or injured in international air carrier accidents. The Convention contains all of the key provisions sought by the United States at the outset of the negotiations. At the same time, since major portions of the Convention are based on, and generally follow the language of, the 1929 Warsaw Convention and a related protocol to which the United States is already a party (Montreal Protocol No. 4), prior judicial interpretations under those treaties are expected to have continuing validity.

BENEFITS UNDER THE MONTREAL CONVENTION

The significant new benefits of the Montreal Convention include:

- The new Convention eliminates the meager and arbitrary limits of liability applicable under the Warsaw Convention when passengers are killed or injured in international air carrier accidents. These limits applied in all cases, except where the harm was due to the carrier's willful misconduct.
- Under the Convention, in almost every case, American survivors of international aircraft accidents and the families of American accident victims will have access to U.S. courts in seeking damages for the losses they suffered.
- The Convention requires air carriers to make payments of up to approximately $141,000 of proven damages on behalf of accident victims, without regard to whether the airline was negligent.
- An escalation clause provides that monetary limits and thresholds that survive in the Convention will be adjusted for inflation.
- Provisions on code sharing and similar arrangements clarify that when the airline operating a flight is not the airline from which the transportation was purchased, a passenger may recover from either the airline operating the aircraft at the time of the accident or the airline whose code is carried on the passenger's ticket.
- The Convention furthers U.S. efforts to ensure that U.S. air cargo carriers and shippers can take advantage of technological innovations now available to facilitate and expedite the processing of international air cargo.
- The Convention simplifies litigation and promotes fairness through the passenger benefits described above, including eliminating all arbitrary limits on compensatory damages for passenger death and injury claims, among others, and by barring non-compensatory damages in all cases, consistent with existing law; and by establishing, in clear language, its exclusivity in the area of claims for damages arising in the international transportation of passengers, baggage and cargo.
- While the Convention provides essential improvements upon the Warsaw Convention in many respects to improve the rights of passengers, it also preserves established law relating to other aspects of the Warsaw Convention that were acceptable, to avoid unnecessary litigation. For example, the Convention preserves the status quo relative to legal actions against airline employees (Articles 30, 43). Consistent with existing law in the United States, the Montreal Convention extends to a carrier's employees acting within the scope of their employ-

ment all of the "conditions and limits of liability" available to the carrier under the Convention—referring to the monetary limits set out in Articles 21 and 22 of the Convention and the conditions under which those monetary limits may be exceeded.

The Montreal Convention has been signed by 71 countries, and has been ratified by 29 countries to date—only 1 short of the 30 required to bring the Convention into effect. In addition, given the importance of the United States and its airlines in international aviation, many countries are thought to be awaiting U.S. ratification before taking action themselves.

HISTORY OF EFFORTS TO MODERNIZE THE WARSAW CONVENTION

To date, in the area of claims for damages arising in the international transportation of passengers, baggage and cargo, the United States has ratified only the Warsaw Convention and the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Warsaw 12 October 1929 as Amended by the Protocol Done at The Hague 28 September 1955, Done at Montreal 25 September 1975 ("Montreal Protocol No. 4")

Under Montreal Protocol No. 4, which entered into force for the United States on March 4, 1999, the Warsaw Convention's rules relating to international air cargo operations were fully modernized. However, only 51 states are parties to Montreal Protocol No. 4. Moreover, the Warsaw Convention's unamended provisions relating to airline liability for death or injury to passengers are grossly inadequate. There were several attempts to modernize those provisions through international negotiations, but those efforts were unsuccessful.

- In the early 1950s, multilateral negotiations achieved only a doubling of the original Warsaw Convention's per passenger liability limit (to what is now approximately $20,000), as codified in The Hague Protocol of 1955. The United States did not ratify The Hague Protocol.
- Efforts to amend the Warsaw Convention in 1975 focused on cargo issues, including the negotiation of Montreal Protocol No. 4, which modernized Warsaw Convention provisions relevant to the air-cargo industry. The United States ratified Montreal Protocol No. 4 in 1998. In the area of airline liability for passenger claims, provisions developed in a protocol done at Guatemala City in 1971 were incorporated into Montreal Protocol No. 3 (1975), but neither instrument was ratified by the United States or entered into force.
- In the absence of progress on airline liability for passenger deaths or injuries at the intergovernmental level, the major carriers of the world stepped into the breach, first in 1966 and again in 1996 with the encouragement of the Civil Aeronautics Board and Department of Transportation, respectively. An inter-carrier agreement in 1966 raised liability limits for airlines serving the United States to $75,000 per passenger. A 1996 inter-carrier agreement provided for airlines to waive liability limits with respect to claims for passenger injury or death. Although these private agreements provided a reasonable interim fix, the inter-carrier agreements are not an adequate substitute for international agreements, particularly in light of their narrow focus and their voluntary nature.

In response to the inadequacy of the Warsaw Convention liability limits, a number of States have adopted domestic laws or regulations, further complicating the maze of rules comprising the international liability regime. The Montreal Convention has the potential to end the patchwork of airline liability regulation. U.S. consumers of international air transportation will benefit from its modernized liability provisions, and U.S. airlines will benefit from a uniform international liability regime and a leveling of the playing field in relation to airlines that now benefit from more limited liability regimes.

THE 1955 HAGUE PROTOCOL

The President has also submitted for Senate advice and consent to ratification the 1955 Hague Protocol to the Warsaw Convention. U.S. ratification of The Hague Protocol would clarify for the cargo industry the rules on cargo documentation that apply to the carriage of cargo between the United States and 86 countries that are parties to that instrument, but not to Montreal Protocol No. 4. It would secure for U.S. carriers application of The Hague Protocol provisions in such cases, which significantly streamline the antiquated cargo documentation requirements of the Warsaw Convention.

Although The Hague Protocol also doubles the Warsaw Convention passenger liability limit to what is now approximately $20,000, the inter-carrier agreements of 1966 and 1996 have, as a practical matter, superseded this meager recovery limit.

A recent U.S. court decision (*Chubb & Son, Inc.* v. *Asiana Airlines,* 214 F.3d 301 (2d Cir. 2000), cert. denied, 533 U.S. 928 (2001)) held that, where the United States had ratified the Warsaw Convention but had not ratified The Hague Protocol, and the Republic of Korea had ratified The Hague Protocol but not the Warsaw Convention, Korea's adherence to The Hague Protocol did not make it a party to the unamended Warsaw Convention and there were no treaty relations between the United States and Korea under either instrument.

Although the *Chubb* decision did not address Montreal Protocol No. 4, which entered into force in 1999 for the United States, it focused industry attention on the question of whether the United States, by reason of its adherence to Montreal Protocol No. 4, automatically became a party to The Hague Protocol as such and therefore entered into treaty relations under The Hague Protocol with other countries party to that instrument (but not to Montreal Protocol No. 4).

If the courts were to conclude that Montreal Protocol No. 4 does not create treaty relations under The Hague Protocol, the United States' treaty relations with the 79 countries that are parties to both the Warsaw Convention and The Hague Protocol, but not to Montreal Protocol No. 4, would be based on the Warsaw Convention, unamended by any later protocol, at least until such countries become parties to the new Montreal Convention. (Nine of these countries have ratified the Montreal Convention so far.) Further, in that situation, the United States would have no treaty relations whatsoever under the Warsaw Convention system with Korea and six other countries that are parties only to The Hague Protocol. (None of these seven countries has ratified the Montreal Convention to date.)

This is an unsatisfactory result. The 1929 Warsaw Convention contains outdated rules in the area of cargo documentation, requiring much specific information on the air waybill that has no commercial significance today. These requirements: make international air cargo transactions time consuming and inefficient, driving up their costs; inhibit the free flow of international air commerce; and serve as a barrier to electronic information exchanges. Under the Warsaw Convention, U.S. cargo carriers must comply with these outmoded documentation rules or risk deprivation by courts of the Convention's benefits.

Ratification of The Hague Protocol will eliminate any ambiguity and secure for the U.S. industry The Hague Protocol's more modern cargo documentation rules, which are critical to the efficient movement of air cargo, in relations with the 86 countries party to that instrument (but not to Montreal Protocol No. 4), pending the entry into force and widespread ratification of the Montreal Convention.

The CHAIRMAN. Thank you very much, Mr. Byerly. I appreciate your recognition of a number of persons who have worked with you and worked on behalf of ratification of these treaties.

Let me ask some basic questions which are covered in your statements, just to underline my understanding and that of those who may be reading this record. When you have mentioned, Mr. Byerly, that the Montreal Protocol would clear up the problem of attempting to bring suits or legal action in far-off countries, do you mean by this that an American citizen who was aggrieved could seek redress in American courts? In other words, how does this simplification occur?

Mr. BYERLY. Precisely as you stated, Mr. Chairman. The Montreal Convention creates for the first time a basis of jurisdiction, the so-called fifth basis of jurisdiction, in addition to the four bases of jurisdiction in which the courts of any State party to the Warsaw system could hear a case. This allows jurisdiction by the U.S. courts not only in cases against an airline that is domiciled or has its principal place of business here, or where the passenger's destination was the United States, or where the passenger made the contract for carriage in the United States, but in addition, where the passenger has his principal and permanent residence in all cases where the carrier serves the United States, with its own air-

craft or through a commercial agreement such as code-sharing, and that carrier has a presence here. It can have that presence either itself, in its own name, or through a code-share partner. Given the vastness of the United States' aviation relations with countries and carriers around the world, virtually all American citizens who are injured or killed in airline accidents should be able to obtain access to U.S. courts through this fifth basis of jurisdiction.

This has been a longstanding objective of the United States. It was one that was opposed by many others, and in achieving that in 1999, we achieved the breakthrough that was critical, and that we had sought for decades.

The CHAIRMAN. Now, as you pointed out, 29 states ratified Montreal. Presumably, if the U.S. Senate and our Government ratifies, we're the 30th, which brings it into force. How soon will it be brought into force, just in a technical way? At what point do the provisions begin to prevail?

Mr. BYERLY. Upon the deposit of the instrument of ratification by the 30th state with the International Civil Aviation Organization in Montreal, 60 days after that date the treaty enters into force as among the parties to the treaty.

The CHAIRMAN. Now, I can understand the desire of those who have suffered losses to eliminate the limits that were involved previously. What has been the position of the airlines, both domestic carriers, and those with whom you have negotiated abroad? In other words, have they perceived in this some type of virtually unlimited liability that would be ruinous to a national airline, for example, in which sometimes countries vest considerable prestige. I'm just simply curious about the evolution of the negotiations which have led the parties to this agreement.

Mr. SHANE. Mr. Chairman, the Warsaw Convention has really been pernicious in its effects, so pernicious that both airlines and claimants have been disadvantaged by it. The airline industry itself, recognizing that the reform of the Warsaw system was going to take some time, took it upon itself to actually enter into an intercarrier agreement. They have done that both within the United States and also globally for purposes of voluntarily waiving some of these really atrocious limits on liability, simply in order to provide more humane treatment of claimants in the aftermath of an accident.

What they want, however, rather than simply having a voluntary agreement, which would obviously lead to some different effects in different jurisdictions, is to go back again to a global treaty like the Warsaw Convention, which would have absolutely uniform application everywhere, and that provides the stability and the predictability that the airline industry needs. There was no argument with the industry whatsoever about the importance of taking those artificial limits off.

There are, as I mentioned in my statement, some specific defenses that are available where the airline can say it actually had nothing to do with the cause of the accident. Those will be pretty rare instances, I think. The industry feels that this is the best approach, and so there really has not been a disagreement with the industry at all on this important point.

The CHAIRMAN. As you pointed out in that last response, the Warsaw Treaty is comprehensive. At this point, Montreal, with our ratification, would have 30 countries, which is obviously somewhat less than that. What does that mean in a common sense way, if a citizen is unlucky enough to be flying on an airline that does not have at least a country that has ratified this? Presumably you fall back on the Warsaw Convention or others, but—in other words, as a practical matter, how rapidly do the Montreal provisions come into effect, how comprehensive are the 30 countries that will have ratified it?

Mr. BYERLY. Thirty countries will, of course, be 30 countries.

The CHAIRMAN. What percentage may be of the airlines of the world, or the air traffic, do you have any idea?

Mr. SHANE. I don't have any idea of what the 30 countries would represent in terms of coverage, but we don't intend by any means to stop at 30. What's very clear is, a lot of countries are sitting on the fence right now waiting to see what we do. If the United States ratifies, and we anticipate that that will be the result, then it's fair to say that you will see a real avalanche of additional ratifications.

The Warsaw Convention is the most widely subscribed to international treaty that we have on the books. The Montreal Convention will supersede Warsaw, and there's every reason to think that the countries that have subscribed to Warsaw will see good reason to ratify Montreal as well. Perhaps John Byerly would like to talk about what the State Department intends to do once we have a ratified treaty in the United States to ensure that our trading partners follow suit.

The CHAIRMAN. That was my next question, will we be advocates for ratification and work with other countries to take that step?

Mr. BYERLY. Mr. Chairman, absolutely, and I give you our solemn pledge to that effect. I can give you my solemn pledge that that will be our effort. We will work in various ways. Our expectation is that upon U.S. ratification and entry into force of the treaty we would go out to all countries of the world through our embassies with what we call demarches in "diplospeak," and we would inform them that we have become a party, that the treaty is in force, and lay out the reasons, as we're trying to do today, why it is a good idea for the entire world.

Second, we would work in our bilateral and multilateral aviation contacts to put this on the agenda of all our discussions, urging other countries that aren't yet parties to Montreal to become parties.

And finally, we would support the efforts of the International Civil Aviation Organization, where this is a top priority under the leadership of Dr. Kotaite, the president of the ICAO Council, to support their efforts to ensure that adherence to the Montreal Convention is something that is universal. They've been very active on this front in the past with prior aviation treaties.

Thank you.

The CHAIRMAN. Yes, Mr. Shane.

Mr. SHANE. Mr. Chairman, I was just reminded by one of my colleagues that as soon as the United States ratifies, even if it ratifies all by itself, in the context of these 30 others, or if it's part of the 30, all international round trips that begin and end in the United

States will immediately be covered by the provisions under the Montreal Convention.

The CHAIRMAN. Thank you for that addition. I'm curious, I remember the negotiations surrounding Montreal, and as you pointed out, 1999 was sort of the year attached to this. What has happened in the last 4 years? Have there been continuous discussions or negotiations? I'm just simply curious. I'm delighted the treaty is coming before us in this year, 2003, but I'm curious as to why it has not come before us in earlier years.

Mr. BYERLY. Mr. Chairman, just as the Warsaw system is complex, there is a certain complexity in the evolution of the Montreal Convention. We submitted that convention to the Senate under the administration of President Clinton in September 2000. However, it was not possible in that election year to schedule a hearing.

Later in that year, or early in 2001, some litigation arose involving a cargo question in litigation called *Chubb* v. *Asiana Airlines* that raised some questions among carriers with respect to the Hague Protocol and whether the United States was or was not a party to that treaty in respect of certain other countries.

After that was carefully considered, and it was a very complex case, we decided, in conjunction with all the parties—the relevant private sector parties, the airlines, the victims groups—to submit or resubmit to the Senate for its advice and consent to ratification the 1955 Hague Protocol to provide stop-gap protection that Under Secretary Shane has outlined in his testimony to you this morning.

Again, we had hoped in 2002 to have a hearing. That proved impossible that year. It's 2003, and we're before you. Time moves fast, and we hope that this year it will be possible, as you have outlined in your statement, to receive positive action on this before the summer break, if possible, and certainly this year. Thank you.

The CHAIRMAN. Well, thank you for that candid explanation of all the things that have occurred. I think it is important in terms of public understanding that these treaties are difficult. They are complex, and the interests sometimes are not aligned.

I would just say parenthetically that one of the emphases of our committee this year really is to work with each of the departments of our Government to find those treaties that for some reason are not slumbering, but are there on the shelf and have not had the light of day. I think it is important that these issues be brought to the fore, and we will take the time to do so. We're really appreciative of this opportunity this morning.

Without going into a great deal of historical reverie, when I was last chairman of the committee in 1985 we had a similar cleansing process. We sort of went through all the archives to see what had been lying there for quite a while, and it was amazing the number of treaties that stumbled out and that had their day in court. So at least in that year, why, we progressed further, and perhaps this will be another remarkable year with regard to treaties. Certainly this one has enormous merit.

Obviously, I am supportive, and I think that will be true of my colleagues. As I pointed out, we will attempt to have a business meeting of the committee prior to the recess for the Fourth of July. If we miss that, we will miss by just a week, and we will be back at it, but I anticipate activity very soon.

There are no more questions because there are no more Senators to raise them. We appreciate both of you, your testimony, your complete statements, as well as your forthcoming responses and the work you're doing is obviously important. With that, why, you are dismissed to go on to other duties, and we will proceed to Mr. Turner and the five treaties under his jurisdiction.

I thank you for coming.

Mr. SHANE. Thank you, Mr. Chairman.

Mr. BYERLY. Thank you very much, Mr. Chairman.

STATEMENT OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Mr. TURNER. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning, Mr. Turner.

Mr. TURNER. Well, I and my colleagues at the State Department certainly appreciate this opportunity to discuss five important international environmental treaties which we believe are important to environmental stewardship, are important to protecting public health and provide economic opportunities for American citizens and our neighbors.

In looking at these five treaties, two on hazardous chemicals, two on fisheries, one on polar bears, I would just like in my remarks to briefly describe each treaty.

The first, as you indicated, Mr. Chairman, is the Stockholm Convention on Persistent Organic Pollutants, also known as the POPs Convention. This proposal aims to protect human health and also the environment from the 12 chemicals that have been initially known as the dirty dozen that are of particular concern due to their characteristics. And as you are aware, these four characteristics are: first, they are extremely toxic to not only humans but to other living resources; second, they bio-accumulate, they magnify up the food chain especially in fatty tissues; third, they persist in the environment for a long time, they're extremely stable; and fourth, they are able to travel a long distance. So regardless of where these are released around the world, in fact they can come back, as we have noticed, and be deposited, especially in our temperate zone, where they are of concern to our Native Americans, who often live on subsistence means, taking living resources from the wild.

The POPs Convention, of course, deals with chemicals that are already banned or severely restricted here in the United States. In support of the POPs Convention, President Bush appropriately said, "the risks are great and the need for action is clear. We must work to eliminate or severely restrict the release of these toxins without delay."

Under the Convention, parties commit to take steps similar to those long practiced here in the United States to limit or significantly restrict their production and use. And there are, of course, exemptions for developing nations, especially on DDT, where they have no substitute to address malaria. The convention also intends that developed countries reach out to developing countries and help them meet their responsibilities in this chemical arena.

The second treaty proposed, Mr. Chairman, is the Rotterdam Convention on the Prior Informed Consent, known as the PIC treaty. This is the first global treaty designed to protect human health and the environment from the risks of toxic chemicals. In fact, I believe the negotiations started back in the Reagan administration on a voluntary compliance mechanism. The Convention recognizes that the United States and other developed countries have the information, the resources, and the programs to deal with risky chemicals. This Convention has established a system of information sharing that promotes risk-based decisions for chemical management by all countries around the world.

The PIC convention simply stipulates that the export of certain especially hazardous substances can only take place with the prior informed consent of the importing countries. When and if exported, however, the chemicals must be labeled and accompanied by safety instructions explaining health risks and application procedures.

Our third treaty is an amendment to a treaty with Canada on Pacific Coast albacore tuna. This treaty, which has been around for a long time, originally allowed mutual unlimited access by U.S. vessels into Canadian water and unlimited access of Canadian vessels into U.S. waters. In recent years, we've seen the fish stock, the albacore, drifting south, where now the fishing is done mostly in U.S. waters. For this reason, we've seen more and more Canadian vessels fishing in our waters, causing burdens to U.S. fishing interests.

This agreement before you limits cross-border fishing and proposes a 3-year regime reducing Canadian entry into our waters each year until the third year, where their levels will be about at the 1998 average levels. It's a measure which we feel is necessary to protect U.S. fishermen and the fish stock.

Our fourth treaty before you is an amendment to the 1987 treaty on U.S. access to the tuna-rich fishing grounds of the South Pacific Island states. Under this proposal, we simply ask for a 10-year extension which would allow U.S. vessels into these waters. These tuna supplies are the life blood of the economy of the American Samoa economic interests.

In addition, the amendments will allow U.S. longliners to fish in the pockets of the high seas in this South Pacific area. It will also allow parties to consider fishing capacity in the future. It will require data sharing and will ensure consistency with any future multilateral fish agreements which might come into play, especially the Western and Central Pacific Fisheries Convention.

Our last treaty, finally, is an agreement with Russia on the Chukotka polar bear population in the Chukchi Sea. We feel this is a very vulnerable population; it lives in the semipolar region; and there are recent concerns about a higher harvest level, especially on the Russian side, than this population can sustain in the future. The treaty would provide a legal and scientific and administrative framework for managing and conserving polar bear populations shared by the United States and Russia. It would coordinate a new regime of harvest restrictions in cooperation with our Native Alaskans. It culminates from discussions that I recall we started with Russia back in the first Bush administration.

Mr. Chairman, in summary, I believe these proposed treaties reflect well on our diplomatic efforts and U.S. leadership. It reflects years and sometimes decades of hard work. These treaties embody concepts that we cherish and embrace. They help protect the health and economic well-being of the American people, as well as strengthen our stewardship of living resources out and around the world.

Our implementation will encourage other nations to take similar action. We look forward to the Senate's early advice and consent on these proposals. Again, thank you, Mr. Chairman, and I look forward to trying to answer any of your questions.

[The prepared statement of Mr. Turner follows:]

PREPARED STATEMENT OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE

INTRODUCTION

Thank you for the opportunity to appear before this Committee today to discuss five important international agreements—the Stockholm Convention on Persistent Organic Pollutants, with annexes, done at Stockholm May 22-23, 2001 ("POPs"); the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, with annexes, done at Rotterdam September 18, 1998 ("PIC"); the Agreement Amending the Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, effected by exchange of notes July 17 and August 13, 2002 ("Albacore Tuna Treaty"); Amendments to the 1987 Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America, done at Koror March 30, 1999 and Kiritimati March 24, 2002 ("South Pacific Tuna Access Agreement"); and the Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, done at Washington October 16, 2000 ("Polar Bear Treaty").

These agreements directly affect the health and economic well-being of the American people. They embody concepts and ideas that we cherish, such as creating economic opportunities and preserving our ecosystems. Hazardous chemicals, like POPs, respect no boundaries and can harm Americans even when released abroad. They are of particular concern because of their impacts on human health and the environment in places such as Alaska and in the Great Lakes Region. Indigenous people in Alaska and elsewhere in the United States are particularly at risk due to their reliance on a subsistence diet. Meanwhile, in the fish industry, changes are needed to permit more effective control over fishing for albacore in U.S. and Canadian waters. In American Samoa, tuna provided by U.S. fishing vessels supplies tuna canneries that serve as the lifeblood of the economy in this region. If these jobs disappear, political and economic instability would result. Much further North, we find the beauty and majesty of a living marine resource—the polar bear—the population of which could be depleted in the absence of adequate safeguards.

U.S. negotiation of these agreements sought to address these and other issues of direct benefit to Americans. They uphold our notion of U.S. sovereignty, ensuring that the voice of the United States is heard in appropriate cases, through measures such as consensus-decision making or the ability to decide whether to opt in to significant new legal commitments. Additional legislative authority will, however, be needed to implement certain of our obligations under these agreements.

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POPS)

The Stockholm Convention on Persistent Organic Pollutants, or the POPs Convention, aims to protect human health and the environment from twelve chemicals that are of particular concern because they have four intrinsic characteristics. First, they are toxic and known to have deleterious health or environmental impacts. Second, they have the potential to bioaccumulate, meaning that they work their way through the food chain by accumulating in the fat of living organisms and become more concentrated as they move from one creature to another. Third, they are stable

and thus resistant to natural breakdown. Fourth, they can be transported over long distances.

The twelve POPs chemicals, known as the "dirty dozen" covered by the POPs Convention are: aldrin, hexachlorobenzene, chlordane, mirex, DDT, toxaphene, Dieldrin, polychlorinated biphenyls (PCBs), endrin, polychlorinated dibenzo-p-dioxins (dioxins), heptachlor, and Polychlorinated dibenzo furans (furans). Each of these chemicals has been linked through solid scientific information to adverse human health effects, including cancer, damage to the nervous system, reproductive disorders, and disruption of the immune system. Many of these chemicals are also known to cause deleterious environmental effects, including egg shell thinning and other effects. All twelve of these chemicals are already banned or tightly controlled in the United States.

Nevertheless, U.S. action alone is not enough. These chemicals are still in use, or are being released, in many places abroad, particularly in developing countries. The reality is that POPs are capable of impacting human health and the environment far away from where they are released; they respect no national boundaries. POPs released in East Asia or Northern Europe have been shown to travel all the way to Alaska. As a result, POPs can have impacts all over the United States, and have been of particular concern in Alaska and in the Great Lakes Region. Thus, as President Bush remarked in announcing U.S. plans to sign the POPs Convention, "[t]he risks are great and the need for action is clear. We must work to eliminate, or severely restrict the release of these toxins without delay."

Under the POPs Convention, parties commit to taking steps similar to those already taken by the United States to eliminate or restrict the production, use, and/or release of the twelve POPs. The Convention will also restrict trade in intentionally produced POPs and includes obligations with respect to the treatment of POPs stockpiles and wastes. All of these control measures were carefully negotiated, keeping in mind the impact they could have in light of existing uses of these chemicals. As a result, the Convention allows certain exemptions to its control measures where they were deemed necessary, such as the need for DDT, for example, to fight malaria in Africa, in line with World Health Organization guidelines until locally safe, effective and affordable alternatives are available.

The Convention also recognizes the situation of less-developed nations, which have fewer resources to phase out their use of these chemicals of global concern. In order to lend them a hand in addressing this threat, the Convention includes a flexible system of financial and technical assistance by which developed countries will help developing countries meet their obligations under the POPs Convention. The Global Environment Facility has already initiated action to provide financial assistance to developing countries to help them implement the Convention.

Finally, the POPs Convention creates a science-based procedure that will govern the inclusion of additional chemicals to the Convention, and defines the criteria that must be met by proposed chemicals. These criteria insure inclusion of substances that are toxic, that bioaccumulate, that are resistant to natural breakdown and that can be transported over long distances. In accordance with Article 8, paragraph 7(a) of the Convention, this science-based procedure will involve an evaluation of whether "the chemical is likely as a result of its long-range environmental transport to lead to significant adverse human health and/or environmental effects such that global action is warranted . . ." Inclusion of such science based procedures and criteria in the Convention make it an important vehicle in protecting human health and the environment in the United States from the harmful impacts of these POPs chemicals wherever they may be used in the world. It is particularly important that the United States ratify the Convention so that we are at the table when it enters into force and issues of importance to the United States are decided.

ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

The Rotterdam Convention on Prior Informed Consent (PIC), which was concluded in 1998 under the auspices of the UN Environment Program and the UN Food and Agriculture Organization, was the first international agreement designed to protect human health and the environment from the risks posed by trade in toxic chemicals. The Convention recognizes that, while the United States and other developed countries have strong systems in place to deal with risks presented by imported chemicals, many countries lack the resources and capability needed to assess and control such risks. In order to address this issue, the Convention establishes a system of information sharing and technical assistance that promotes sound, risk-based decision making for chemicals management in all countries.

The Convention stipulates that export of certain especially hazardous chemicals that have been banned or severely restricted in some parts of the world can only take place with the prior informed consent (PIC) of the importing country. Prior informed consent is enabled by the creation of an internationally recognized summary of the chemical's risks and basis for control measures (known as Decision Guidance Documents). When exported, these chemicals must be labeled and accompanied by safety data sheets that explain their potential health and environmental effects. Importing countries are also required to inform the other Parties in a timely manner of any controls they would be placing on the import of PIC listed chemicals. In addition, countries must also ensure that any such controls they place on imports also apply to domestically produced PIC chemicals. Thus, the agreement enhances the safe management of chemicals by enabling countries, especially developing countries, to identify risks and make informed decisions about the importation and use of highly dangerous chemicals.

The Rotterdam Convention builds upon an existing voluntary PIC procedure that is already being implemented by the United States, with participation from major U.S. chemical manufacturers, and 150 other countries. The treaty signatories agreed to continue to implement the procedure on an interim basis until it comes into force. Thus, during this interim period, 5 additional pesticides have been added to the list of 27 chemicals developed during the voluntary PIC procedure; participants have agreed to exchange information and respect import decisions even before the Rotterdam Convention enters into force. These interim decisions must be approved by the first Conference of Parties (COP), but it is expected that the Rotterdam Convention will cover these same chemicals and provide for the addition of new chemicals to this list through a science-based process and on the basis of consensus among the Parties.

It is important to note that, in the case of both the POPs and PIC Conventions, a significant number of countries have already deposited their instruments of ratification and both Conventions are expected to enter into force in the relatively near future. Upon entry into force, Conferences of the Parties (COP) will be established and begin making critically important policy decisions on the implementation and future evolution of these treaties. For example, decisions on the rules of procedure, financial rules, noncompliance procedures, and consideration of new chemicals could all take place soon after these two treaties enter into force. If the United States is not a Party to these agreements by the time their respective COPs meet, we will not be in a position to influence major policy decisions that could directly affect U.S. interests. As a result, the Administration is seeking Senate advice and consent to these treaties at the earliest possible date. The Administration is separately working with the appropriate congressional committees to craft the necessary implementing legislation for these two treaties that we will need enacted before the United States may become a party to them.

AMENDMENTS TO AGREEMENT WITH CANADA CONCERNING PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES

The 1981 U.S.-Canada Albacore Treaty permits unlimited fishing for Pacific albacore tuna by vessels of each Party in waters under the jurisdiction of the other Party. Since the entry into force of the Treaty, most of the tuna appear to have shifted their migratory patterns in a southerly direction. As a result, U.S. fishermen have fished significantly in Canadian waters only in approximately three out of the last twenty years, while Canadian fishermen have continued to fish regularly in U.S. waters.

The imbalance in benefits flowing from the treaty has become particularly acute in recent years. Since 1998, Canada has more than doubled its albacore tuna fishery in U.S. waters, from its historical average of less than 100 vessels to 200 or more vessels per year. The U.S. albacore fishing industry began in 2000 to complain to the Administration of overcrowding on U.S. fishing grounds and the disproportionate benefits received by Canadian fishers under the Treaty.

The United States entered into negotiations with Canada with a goal to reduce Canadian fishing effort in U.S. waters to tolerable and more equitable levels and to create a fishery limitation mechanism for both Parties that could respond to future needs to conserve and manage the stock. The negotiations culminated in an Agreement to amend Article 1(b) of the Treaty to allow for a mutually agreed limitation on the previously unlimited albacore fishery by vessels of each Party in each others' waters. The Administration seeks the advice and consent of the Senate to this amendment.

The United States and Canada also agreed to an initial three-year reciprocal fisheries limitation regime that reduces the permitted fishing effort each year until a

level is reached in the third year that is slightly above the pre-1998 average level of fishing. This related agreement to amend the Annexes to the Treaty sets out the initial regime in a new Annex C as well as making a few minor technical changes to Annex A. The related agreement has been concluded, pursuant to Article VII of the Treaty, by executive agreement, but will not enter into force until the Amendment to the Treaty enters into force. Prior to entry into force of the treaty amendments, implementing legislation will also be necessary. The Senate passed such legislation at the close of 2002, but the House adjourned before taking action. The Administration hopes that the legislation will be reintroduced and enacted soon.

AMENDMENTS TO 1987 TREATY ON FISHERIES WITH PACIFIC ISLAND STATES

Since 1987, the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America has contributed substantially to U.S. foreign policy in the Pacific region, as well as to our commercial and security interests in the region. Under the Treaty, U.S. vessels have enjoyed access to fish in the rich tuna fishing grounds in waters under the jurisdiction of the Pacific Island Parties.

The original regime of the Treaty lasted for five years. In 1993, the Parties extended it for an additional ten years. Now, they have agreed to extend the regime for ten more years, until 2013. In doing so, the Parties have also negotiated several relatively minor amendments to the original Treaty, as described in the Report of the Secretary of State to the Senate, and for which the Administration seeks the advice and consent of the Senate. The extension of the regime also entails a series of amendments to the technical annexes to the Treaty, a new related economic assistance agreement and a memorandum of understanding on provisional application. These amendments to the annexes and the memorandum of understanding were previously transmitted by the Administration earlier this year as part of our treaty package.

The Amendments to the Treaty will, among other things: (1) allow U.S. longline vessels to fish in high seas portions of the Treaty Area; (2) streamline the way future amendments to the Treaty Annexes enter into force; (3) allow the Parties to consider the issue of fishing capacity in the Treaty Area; and (4) promote consistency between the Treaty and an emerging multilateral fisheries management convention, which is likely to come into force in the next few years.

Existing legislation, including the Magnuson-Stevens Fishery Conservation and Management Act and the South Pacific Tuna Act of 1988, provides sufficient legal authority to implement continuing U.S. obligations under the Treaty. Thus, no new legislation is necessary in order for the United States to ratify these Amendments. However, a minor amendment to Section 6 of the South Pacific Tuna Act will be necessary to allow U.S. longline vessels to take advantage of the opportunity afforded by the amendment to the Treaty that opens the high seas of the Treaty Area to fishing by U.S. longline vessels.

AGREEMENT WITH RUSSIAN FEDERATION ON THE CONSERVATION AND MANAGEMENT OF THE ALASKA-CHUKOTKA POLAR BEAR POPULATION

Polar bears are a potentially threatened species that live in the circumpolar North and are unique to five countries: the United States, Russia, Canada, Norway, and Denmark's Greenland. They are an important part of a sensitive ecosystem, and know no national boundaries. Polar bears also continue to be essential to the survival of Native Alaskan people as a renewable subsistence resource upon which they have depended for centuries.

The United States has long recognized our common interest in the responsible management of shared polar bear resources. Since 1976, we have been party to the 1973 Agreement on the Conservation of Polar Bears, along with the other four states where polar bears are found. The 1973 Agreement did several things. First, it generally prohibited the hunting, killing or capturing of polar bears. Second, it created several exceptions to this prohibition, including one for local people using traditional methods in the exercise of traditional rights, in accordance with applicable laws. Third, it required the parties to coordinate and consult on research, management of the species, and the exchange of information. Fourth, the 1973 Agreement explicitly allows Parties to adopt more stringent controls than those required under the Agreement itself.

The Polar Bear Treaty signed by the United States and Russia in 2000 would provide legal protections for the Alaska-Chukotka polar bear population beyond those found in the 1973 Agreement. It would establish a common legal, scientific, and administrative framework for conserving and managing the polar bear population shared by the United States and Russia. This framework is needed because of con-

cerns over the widely different polar bear harvest provisions and practices of the United States and Russia. As I just mentioned, the 1973 Agreement allows local people to take an unlimited number of polar bears for subsistence purposes. Our own law, the Marine Mammal Protection Act (MMPA) similarly authorizes Alaska Natives to take polar bears for subsistence purposes so long as it is done in a non-wasteful manner. However, despite Russia's general prohibition on hunting polar bears, harvest of this population is now occurring at levels that, when combined with the Alaskan legal subsistence harvest, could deplete the population. The MMPA, however, does not authorize limitations on Alaskan subsistence harvests until after the population is found to be depleted. The negotiated agreement would coordinate harvest restrictions to prevent such an unsustainable combined harvest by both Native people.

Discussions between the United States and Russia on a bilateral treaty to conserve our shared Alaska-Chukotka polar bear population began in 1992. The State Department and the Department of the Interior (Fish & Wildlife Service) jointly led subsequent negotiations. Alaska and Chukotka Natives and other public and private stakeholders also participated in these negotiations.

The Polar Bear Treaty with Russia continues to recognize subsistence use of polar bears from the Alaska-Chukotka region by Native people. At the same time, however, it includes a definition of sustainable harvest level, reflecting a clear obligation to conserve the population while safeguarding the interests of the Native people. It would also establish a joint management mechanism by creating a U.S.-Russia Polar Bear Commission that would, by consensus, establish quotas to ensure that subsistence take of polar bears on both sides is consistent with maintaining that population at sustainable levels. The Treaty includes provisions to ensure representation of the interests of the Native people of Alaska and Chukotka and equitable allocation of take between them. Finally, the joint research and population assessment mechanisms foreseen in the Treaty would constitute an ongoing means for assessing the environmental impact of removals from the population.

The Administration seeks prompt Senate action on this Treaty as it would establish a common legal, scientific and administrative framework for the conservation and management of the Alaska-Chukotka polar bear population, promote responsible management of the Alaska-Chukotka polar bear population at sustainable levels, preserve the interests of the Alaskan Native people, and enhance our collaborative efforts with Russia to conserve a treasured natural living resource.

CONCLUSION

Protecting our health, fostering international trade and serving as stewards of our resources are integral parts of U.S. foreign policy. U.S. ratification of these agreements will reinforce our leadership role in negotiating treaties that save lives; promote economic stability; and protect natural resources. Our implementation will encourage similar action by other nations.

The CHAIRMAN. Thank you very much, Mr. Turner. The first two treaties, the Convention on Persistent Organic Pollutants and the Rotterdam Convention on Prior Informed Consent would appear to be treaties that cover 150 countries or the world. Is that correct, and if so, how many parties have ratified either of these two documents at this point?

Mr. TURNER. Mr. Chairman, taking the POPs convention, the first one, 151 countries originally signed that. We need 50 countries to have it come into force. To this date, it's my understanding 33 have ratified.

With the PIC convention, there were 73 nations that originally signed that, 50 again are needed for it to come into force, 43 have ratified it.

The CHAIRMAN. Is there a probability that the United States' ratification would accelerate the numbers coming in? This is analogous to the question we raised on the aviation treaties. Will our leadership in this respect, or our advocacy, be likely to bring about the 50 or the required number in each case?

Mr. TURNER. Mr. Chairman, it's my feeling that both these treaties are in the state they are in because of the United States' leadership. We are recognized as the world leader in not only chemical production but our science, our risk analysis, our cost and benefits of regulation are the best. So the United States taking responsibility in providing leadership on this would definitely be an excellent signal to other nations that this is coming online, and it is important. I think, that the United States should be on deck early as they develop the procedures for the conventions, the guidelines, and the criteria. Our expertise simply needs to be a part of this process.

The CHAIRMAN. Now, as a part of that leadership, how would the United States implement the conventions' financial and technical assistance provisions? Do you believe that, in fact, we would be able to offer assistance to countries under those provisions? Specifically, for example, in substitution of chemicals or assistance, can we ensure that we do not get into the difficulties of having toxic chemicals crossing borders?

Mr. TURNER. Well, Mr. Chairman, I think the United States and other developed countries definitely have an obligation to share and help, especially developing countries that don't have the experience, expertise or resources we have. I think the United States will be the primary leader that developing countries will look to for technical assistance for substitute chemicals and applications.

On the financial side, the United States feels that its contribution has been and will continue to be through the Global Environmental Fund. In fact, I believe using rough numbers, the generous contributions that we make and that Congress authorizes, about $250 million will go to chemical capacity-building in developing countries from 2002-2006 and, of course, we have pledged to pay roughly 22 percent of that.

The CHAIRMAN. The environmental treaty that we're discussing provides for a review committee which assesses whether a chemical is likely to have long-range environmental impact. I just query whether we're likely to be a member of that review committee. I presume so, but can you give any thought about that?

Mr. TURNER. We fully expect, Mr. Chairman, to be members of the scientific and review committee for both the POPs convention and the PIC convention. There's just no substitute for U.S. leadership and know-how and capacity in both these conventions.

The CHAIRMAN. So in summary, with these two conventions the United States has provided leadership which has probably brought these two documents to the status that they now have. Our intent through our State Department would be to offer technical guidance about chemicals from our own experience to assist other nations to avoid mishaps, whenever possible to make substitutes, but to have some understanding of the implications that we can at least testify to from our own experience. Therefore there is a pro feeling both in trying to formulate the agreements as well as in attempting to make them work, and with as few miscues and international difficulties as possible.

Mr. TURNER. Well, as I mentioned, the opportunity for U.S. leadership is just superb. There are several areas that I personally feel we lead the world in environmental stewardship, and one is our

ability to do good research and to handle properly toxic chemicals. It's in our best interests, it's in the best interests of our relationships out around the world, and I look forward to working these issues with the expertise at EPA and Health and Social Services and State regulatory agencies. We just have great capacity, and we can share that with our neighbors out around the world.

The CHAIRMAN. Now, in the case of the Pacific Island Fisheries Agreement, how many signatories are there to that?

Mr. TURNER. Mr. Chairman, it is the United States' agreement with 16 island states, and so there will be a total of 17 parties to that convention.

The CHAIRMAN. Now, is there any threshold for that to come into force?

Mr. TURNER. It would have to be agreed to by all 17 countries.

The CHAIRMAN. Of course, the last two agreements, the U.S.-Canada Albacore Tuna Agreement and the U.S.-Russia Polar Bear Agreement are bilateral agreements with Canada and Russia.

Mr. TURNER. Those would come into force upon the acceptance of the agreement by both nations in both cases.

The CHAIRMAN. Now, in the case of the two agreements, the Pacific Island Fisheries Agreement and the United States-Canada Albacore Tuna Agreement, you've described the provisions of those treaties. They are sound, at least in my judgment. I am curious as to how far-reaching our thinking is. Presently I've been persuaded that the new Pew Foundation study that deals with the reserves has great importance, and you've touched upon this a bit. However, after we've restricted the lines for Canada or the United States or for whoever, what is occurring, at least as I understand it from the limited study, is that a number of waters not only in the Pacific but around the world are being fished out. Fish are simply disappearing—certain fish that fishermen are looking for—so again you're looking for something else at that point.

Obviously, these treaties help in that respect by noting the overfishing and trying to hold it down to a dull roar. At the same time, in terms of a more profound situation in which the countries agree that there are just certain waters we ought not to be fishing at all for a while—whether it be the tuna or the cod or whatever—they might grow again. I'm simply curious as to whether in these negotiations or discussions any of that sort of thinking has intruded. Surely among professional people, either as companies or individual countries looking at their interests, they perceive that the stock is going down, that there is a potential crisis at least with regard to our oceans and fish.

Mr. TURNER. Well, Mr. Chairman, I welcome that question, and it is my hope that this will be a year where all of us here in the United States and out around the world focus on the status of our marine resources, and especially fisheries. Certainly the Pew Commission has contributed to that, as have recent articles in Nature Magazine and elsewhere, and then we all look forward to the congressionally authorized Oceans Policy Commission headed up by Admiral Watkins, which we expect to come out later in the fall.

There is no question that the status of a lot of our major fish stocks are in trouble. We estimate that about 70 percent are either fully exploited or they're overexploited or depleted and in tough

shape. What the United States is doing has been to lead, I believe, in trying to get management regimes out covering the whole globe, and in fact we're about there, we're just about there. Of course, then the real test will be implementing those management regimes. We have to address the issue of overcapacity. There are too many vessels out there with new techniques, fishing techniques that are just too lethal. We also have to address the issue of subsidies, and we are doing that at to the WTO, at the FAO.

We're looking at codes of conduct and compliance on the high seas. We ratified a new international fish stocks agreement, and so we're bringing some other instruments into force. If we can get the willpower and the enforcement and the monitoring technique. Certainly it is my hope this year we will all look for new approaches as a world community of what kind of stewardship we're giving our oceans and marine resources.

The CHAIRMAN. Well, I'm pleased you've given that statement of advocacy. Obviously you have some willing listeners here, with the Senator from Maryland as a champion in this area. I've learned a great deal from my colleagues in recent times about the urgency here.

I just have one further question and then I will yield to my distinguished colleague. On the polar bear conservation treaty, what estimates do you make of the polar bear population presently that you're attempting to conserve in this case?

Mr. TURNER. Mr. Chairman, we need better information on that population, but it's somewhere hovering below or above 3,000 animals, and the United States' harvest was too high back in the fifties and sixties, when we had recreational hunting. You all addressed that in the Marine Mammal Protection Act, so we're down to subsistence hunting, which we think is sustainable, but with the lack of centralized control on the Russian side and an increase in the black market with bear parts we feel that the number of bears being taken in the primary denning area over on the Russian side has just gotten excessive, so Russia feels that this cooperative agreement will give them a better handle, and we together, in cooperation with our subsistence Native interests on both sides of the sea that we can do a much better job in managing this population.

The CHAIRMAN. Obviously, we would not have reached this point without some Russian enthusiasm for the process. That is important, because I suppose that has been a problem over the years. The coming together of the two nations on these issues has been a tedious process.

Mr. TURNER. The cooperation on polar bears has always struck me as an interesting one between Russia and U.S. relationships. We were working positively together during the height of the cold war on polar bears, so this type of goodwill and intent, whatever we can do together, it would be good for polar bears and good for both countries.

The CHAIRMAN. I thank you, and I recognize the distinguished Senator from Maryland, Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman, and Assistant Secretary Turner, we're very pleased to welcome you. First of all, I want to say, Mr. Chairman, I'm glad we're moving along with these treaties. They've only recently been concluded, but

I think it is important for us to act expeditiously and I know you're planning, I think, before the summer is out, to bring these treaties to the Senate for ratification.

The CHAIRMAN. As soon as we can.

Senator SARBANES. And we're having so much difficulty in the international community because of some very high profile environmental treaties we're not participating in that I think it obviously behooves us, when the opportunity comes along and we have reached agreements, to try to seek to put them into place as promptly as we can, although those larger issues, of course, continue to hang over us, and presumably, Secretary Turner, they put you in a difficult posture on occasions in the international scene.

Let me followup on just the polar bear. I'm looking at a Fish & Wildlife Service report on the Chukchi Sea polar bears. It says, "increased harvest of polar bears in Chukotka, Russia raises significant concerns about the status of the Chukchi Sea population. With intrinsically low reproductive rates, polar bears are vulnerable to long-term effects from overharvest. Current harvest rates are similar to or potentially greater than levels that resulted in significant population declines in the 1960s." And later in this report the Fish & Wildlife Service says, "while the magnitude of Russian harvests from the Chukchi Sea population is not quantified, persistent reports of high harvests from local exports and hunters are of serious concern. Harvest estimates vary by year, and some estimates place this harvest as high as 200 to 400 bears per year. Notably large numbers of polar bear hides are listed for sale in Russia over the Internet."

First of all, is that accurate, and second of all, would this treaty bring that under control?

Mr. TURNER. Senator, I think the treaty will bring together a commission which will get better information. They will start to agree on a coordinated take level. We will be able to help the Russians with surveillance. It's my understanding that we will prohibit the taking of sows with young cubs, which would be most appropriate, and also prohibit the taking of bears coming and going from their dens. Their primary denning will be outside the United States, so it is certainly our hope that working together we can reduce the harvest and the monitoring on the Russian side, because indeed that is the area of major concern.

Senator SARBANES. Is this harvesting going on contrary to the desires of the Russian authorities, or is it going on with their tacit or maybe even more support?

Mr. TURNER. Senator, I might have to clarify my response, but I believe Russia has banned the taking of bears for many years, except for subsistence takes, so this harvest currently is not a legal harvest on the Russian side.

Senator SARBANES. Now, I wanted to ask about the Persistent Organic Pollutants Treaty. As I understand it, under that treaty, the technical and financial assistance to less developed countries will be through the World Bank's Global Environment Fund, is that correct?

Mr. TURNER. The technical assistance can go on bilaterally, multilaterally with the United States and through the convention, but

it is correct the primary funding mechanism would be the Global Environmental Fund, known as the GEF.

Senator SARBANES. Now, we're in significant arrears to the GEF, aren't we? I understand we're in arrears to the tune of more than $200 million, is that correct?

Mr. TURNER. It is the view of the GEF that the United States has been in arrears. President Bush has proposed a $70 million increase in our payments, so that the United States unilaterally took leadership on upping their donation to the GEF to help developing countries. Other countries have followed suit, but with those projected fundings I believe I'm correct in saying we'll be in good standing on our commitments to the GEF, but I will check that, Senator.

Senator SARBANES. Well, was the additional commitment the President made to increase our continuing share, or to eliminate the arrearages that had built up?

Mr. TURNER. I'm reading my notes here, Senator. In fiscal year 2004, the administration's request for the GEF totaled $185 million, $107 million of that was for the second installment of the U.S. pledge of $500 million to the GEF's third replenishment and $75 million to clear a portion of the arrears, and I might note that in fiscal 2003, Congress appropriated a total of $148 million for the GEF. This amount is less than the administration's 2003 request of $178 million for the GEF.

Senator SARBANES. How much are our arrearages? You said the administration requested, was it $75 million for the arrearages?

Mr. TURNER. We had $77 million to clear a portion of the arrears.

Senator SARBANES. Portion. What was the total amount of the arrearages?

Mr. TURNER. I will have to get back to you, Senator. I cannot recall that.

[The following information was subsequently supplied:]

With the payment of $40.3 million in FY 2003 funds toward previous contributions due, the U.S. will owe $171.6 million in previous contributions owed toward the GEF's second replenishment.

Senator SARBANES. Mr. Chairman, thank you. Thank you very much.

The CHAIRMAN. Thank you very much, Senator Sarbanes.

Mr. Turner, we thank you for your testimony, and we know that you will respond to Senator Sarbanes' question. I think there are no other overhanging questions, but to complete the record we would like to have those answers promptly. Likewise, as I stated at the outset, statements or opinions from any interested party on any of the seven treaties we have discussed today by the end of business this week, would be much appreciated. It would be our hope to have a business meeting in which these treaties could be on the agenda soon, as I have indicated, and place them before the Senate as a whole.

We thank you for bringing along an able staff and we look forward to working with you and your colleagues in the Department.

Mr. TURNER. Mr. Chairman, our hearty thanks for your considering these five treaties. Thank you.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 10:30 a.m., the committee adjourned, to reconvene subject to the call of the Chair.]

ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF AIR CRASH VICTIMS FAMILIES GROUP, SPOKESMAN HANS EPHRAIMSON

Mr. Chairman, Members of the Committee:

My name is Hans Ephraimson and I appear before you as the Spokesman of the Air Crash Victims Families Group, as well as in my own capacity.

The Air Crash Victims Families Group is an informal umbrella organization for the individual bereaved families associations of KAL007, TWA800, Swissair 111, Egyptair 990, AF4590 (Concorde), Birgenair and individual survivors of air crashes, as well as surviving families.

Although I am privileged to appear before you as the Spokesman of our Group, besides me stand: A. Frank Carven III who lost his sister and nephew in TWA800, Miles Gerety who lost his brother Pierce with Swissair 111, a much beloved assistant of UN Secretary General for Refugee Affairs, James Brokaw, Paige Stockley and Christoph Kappus who lost their parents with Egyptair 990, AF4590 (Concorde) and Alaska Air respectively, Heike Bethke-Weisner who lost her brother with Birgenair and her husband Claus Weisner, Stephen Push who lost his wife with American Airlines flight 77 (Pentagon) on September 11, 2001, Victoria Cummock whose husband perished with PAA 103 (Lockerbie) and the many others too numerous to mention, all of them leaders in their families groups—all of them dedicated that through their shared and sad experiences we can together contribute to the improvement of the after crash crisis management system, air safety and security.

My oldest daughter Alice Ephraimson was a passenger on Korean Airlines Flight 007, which strayed 585 miles into Soviet airspace for over a period of five hours. The flight was tracked by a Soviet fighter plane, ultimately attacked, and disabled. After a twelve minute controlled descent Flight KAL007 ultimately crashed into the territorial waters off the coast of Sakhalin Island on September 1, 1983 with the loss of 269 passengers and crew. None of our loved ones has ever been returned to us, we are still looking for them.

Alice was 23 years old. She had just graduated from Wittenberg University in Springfield, OH. During her undergraduate years she had studied at Exeter University in England, at Fudan University in Shanghai, China, at the University of Taipei, Taiwan and at the Eberhard Karls University in Tuebingen, Germany. She was conversant in four languages. On September 1, 1983 she was on her way to Beijing, China to teach English at the Peoples University and continue East Asian graduate studies.

The immediate interests of the surviving families in sixteen countries was to cope with their grief, to learn how this tragedy could have happened, to address their immediate needs and to find each other. Instead we were immediately besieged by the media and solicited by eager legal advisors who embarrassed us greatly by filing damages actions in unrealistic amounts, none of which were ever obtained.

We also received an introduction into what was called "The Warsaw Convention" which would be with us for seventeen years.

Since our tragedy occurred outside of the United States we also discovered the limitations and the impediments that faced our legal advisers in accessing witnesses and conducting discoveries.

Faced with all of those issues three family groups were organized in the United States, Japan and Korea—first and foremost to take care of the families needs, then to assist our attorneys to obtain needed documentation.

It took the KAL007 families six years before the stage of a "Wilful Misconduct" trial was reached. By that time it became quite clear that there was something fundamentally wrong with "Warsaw".

In 1989 in a trial at the United States District Court in Washington, DC, a jury found that the "Wilful Misconduct" of Korean Airlines was the "probable cause" of our tragedy. The Warsaw cap was broken. However instead of proceeding to settlements, Korean Airlines with great persistence, chose to use every avenue of appeals over a period of another six years, including three appearances before the Supreme Court. Once the appeals process was exhausted, Korean Airlines invoked the 1920 "Death On The High Seas Act" to limit further their liability. The inequities of this

act were remedied in 2000. However, the KAL007 families lost out again, because the retroactivity was extended only to the TWA800 crash.

Since efforts starting in 1955 to modernize the Warsaw system were unsuccessful, our Government, the Airline Associations, American Airlines and Delta Airlines decided on a concerted effort to form a coalition to bring the needed changes.

This initiative was started by Huguette LaRose, then General Counsel of the "International Air Transportation Association" (IATA) with their Washington Counsel: Warren Dean, James Landry, then General Counsel, later Chairman of the Air Transport Association and his assistant Nancy van Duyne, later joined by Robert Warren and James Casey, Anne McNamara, General Counsel at American Airlines, Jeffrey N. Shane, then Assistant Secretary for Policy at the Department of Transportation, with Patrick Murphy, Donald Horn, Deputy Assistant General Counsel and Peter Schwarzkopf, G. Gene Griffiths then Deputy Assistant Secretary for Aviation Affairs at the Department of State, later joined by John Byerly, Susan Parson and others.

Our sad experiences with the Warsaw Convention prompted us to join this coalition. We testified for the first time in 1989 before your Committee, then chaired by Senator Clayborne Pell, in support of the Montreal Aviation Protocol No 3. In 1989.

The Montreal Aviation Protocols did not pass, nor was an attempt successful to enact a "Supplemental Compensation Plan" in 1992.

Despite the lack of success, the Warsaw modernization coalition held together and even expanded its size when the then National Economic Adviser, Robert Rubin, convened a work group under the chairmanship of Peter Yu to discuss the needed improvement in the "Warsaw" system in 1994.

This time the group included even more of the interested parties, the plaintiffs and defense bar, the aerospace manufacturers, the airlines and their association, Government agencies, families representation, the insurers, etc.

It became quite clear that while the Work Group could make recommendations Treaty changes had to be negotiated within the International Civil Aviation Organization in Montreal.

The ICAO treaty process is a long one. Immediate changes in the system were needed. Like in 1965, when the United States had actually denounced "Warsaw", Alan Mendelsohn at the State Department had stepped in and convinced IATA to devise an interairline agreement increasing, for the United States only, the liability cap from the original "Warsaw" $8,300 to $75,000.

Like in 1965 "IATA" again provided a solution in 1995—this time with the assistance of their General Counsel Lorne Clark (Huguette LaRose had died too prematurely of cancer) to conclude a new global "IATA" Intercarrier Agreement (IIA). This IIA agreement became the bridge between the old "Warsaw" system and a new Treaty, to be negotiated by ICAO, sponsored by ICAO President Assad Kotaite with Ludwig Weber his Director of the Legal Bureau. The United States Mission at ICAO, then with Carol Carmody and Jack Orlando, now with Edward Stimpson and Peter Shapiro assisted in the travails leading to a new Treaty.

Through a continuous series of meetings and via an ICAO Secretary General Study Group in which most especially the general Counsel of Air New Zealand, Anthony Mercer and the Deputy Assistant General Counsel of the US Department of Transportation Don Horn were most helpful, a new Treaty Draft evolved which was presented to the ICAO Diplomatic Conference in May of 1999—discussed, debated, negotiated and adopted as the "Montreal Convention" for the Twenty-first Century.

The original "Warsaw Convention" of 1929 and its subsequent additional Protocols will ultimately be folded into the new "Montreal Convention" to restore a truly unified international system for travel by air, covering documentation and liability. A companion Treaty (the present Treaty of Rome of 1952—not ratified by the United States) to address damages caused by air craft on the ground, is presently the subject of a General Secretary Study group at ICAO.

We leave it to others, more qualified to discuss the finer points of the two Treaties before you and limit ourselves to discuss the most salient improvements in the new "Montreal Convention" with "The Hague Protocols" on the basis of our twenty years experience with the old Warsaw system:

ARTICLES 33.2-36 AND 39—FIFTH JURISDICTION AND CARRIAGE

The introduction of the jurisdiction of the principal or permanent residence of the passenger, with definitions of succeeding carriage and combined carriage clarifies once and for all where damages are resolved. It also addresses the continuity of code share and alliance arrangements.

Our world today operates in global dimensions. Millions of nationals of individual countries travel or work all around the world, often far away from the domicile

where their families continue to live. In case of accidents or death their damages issues should be addressed fairly in the jurisdiction of the domicile, where their surviving families live.

Presently the jurisdiction is attached to either: where the travel document was bought, the final destination, the principal place of business or the domicile of the carrier.

Eva van Schinjdel lived with her husband, an executive of Lucent Industries, in Mendham Township, New Jersey. He was assigned to the companies office in Singapore and died when Singapore Airlines flight SQ006 crashed into construction equipment on taking off from the wrong runway in Taipei, Taiwan. Presently, three attorney firms in three countries are trying to untangle the problem of the proper jurisdiction. In the process Mrs. Van Schinjdel who is a Dutch national is reduced to live in a trailer in Holland waiting anxiously for the resolution of her predicament.

Or take Jessica King, an executive of the Marriott Corporation, resident of California who was on assignment at the Marriott Hotel in Copenhagen (Denmark). Returning from a trip to Milan, her SAS flight collided on takeoff with a Cessna business jet, operated by a German charter company, at Linate airport in Milan (Italy). The jurisdictional, costly and time-consuming disputes in four countries are holding up the resolution of her damages to the detriment of her surviving United States family.

Had the Montreal Convention been in force those convoluted disputes would not have occurred,

ARTICLES 17, 21, 23 AND 24—LIABILITY

The new Montreal Convention continues to recognize the concept that "damages sustained" can be recovered in a two step process. First step: "Strict liability" of SDR100,000 (a basket of currencies from the United States, England, Japan and the European Community (formerly France and Germany), followed by determination of actual provable damages.

This procedure eliminates the "Warsaw" cap—originally $8,300 and the need to prove "Wilful Misconduct" before proceeding to damages.

The new Montreal Convention therefore eliminates the onerous and costly litigation that was to keep the KAL007 families in court for almost seventeen years.

The SDR100,000 are also attached to an escalation clause to maintain present day value.

ARTICLE 38—ADVANCE PAYMENTS

With the development of ever larger, faster planes, flying long distances at great height with hundreds of passenger, air crashes have resulted in almost total destruction. Because of the sheer force and the brutality of such crashes very few identifiable bodies, if any are ever recovered. Instead, we are left with thousands of body parts, which takes a long time to recover and to identify, mostly through DNA. In the Swissair 111 Crash 2½ million pieces of wreckage and body parts were recovered and had to be sorted out.

Without any identifiable body no death certificate can be issued. Without death certificate no will can be probated. Surviving families have however to continue their daily lives.

There is a specific need of reasonable advance payments against recoveries for damages sustained. Some carriers have distributed $25,000 to cover immediate expenses. The more responsible carriers like Air France, Swissair, American Airlines, Alaska Air have distributed the the SDR100,000 "strict liability" amount. Egyptair has distributed one half of the initial settlement offers. Some unification in this process is needed.

ARTICLE 21 (A) AND (B)—PRESERVATION OF RIGHTS

The carrier preserves its rights to prove that it "has taken all measures" for the accident not to happen. It also retains the right of recourse against third parties.

Once the United States has ratified the "Montreal Convention" it is applicable to our country together with all other countries who have already deposited their instruments with the 999 ICAO, such as: Canada, Japan, New Zealand. Two European Countries (Greece and Portugal) have deposited their ratifications. Eleven European countries have ratified but wait for the remaining two countries (Germany and Holland) to complete their process.

Mr. Chairman, Members of the Committee, we thank you for your attention. We shall gladly answer any questions you may have and we conclude with the hope that you will recognize the substantial work which our coalition has done to come before

you with a mature Treaty for the Twenty first Century, worthy for the Senate's Advice and Consent.

PREPARED STATEMENT OF AIR TRANSPORT ASSOCIATION OF AMERICA, INC.

Chairman Lugar, Senator Biden, and Members of the Committee, the member airlines of the Air Transport Association of America, Inc.,[1] would like to thank you for giving the industry the opportunity to submit its views on two important aviation treaties pending before the Committee, the Montreal Convention of 1999 and The Hague Protocol of 1955. These two treaties are important components of one of the most widely accepted treaty systems in effect, consisting of the 1929 Warsaw Convention and its related instruments. Their ratification by the United States will not only bring important benefits to both the users and providers of international air transportation services, it will also bring the United States into legal conformity with the vast majority of the aviation partners of the United States.

The Committee held a hearing on these important treaties on June 17, 2003, at which representatives of the Departments of State and Transportation appeared as witnesses. As an initial matter, we would like to expand upon some important issues raised at the hearing. The first is that the principal feature of the Montreal Convention, the elimination of the Warsaw system's limits of liability for passenger injury and death, is not new. The world's major U.S. and foreign air carriers, including all members of the Air Transport Association, agreed to enter into special contracts to waive the limits in 1996 and implemented those agreements soon thereafter. In effect, the Montreal Convention codifies the liability rules the industry itself adopted in 1996. The industry took that initiative shortly after it became apparent that the United States Senate had continuing concerns about the liability rules reflected in Montreal Protocol No. 3 to the Warsaw Convention, and that advice and consent to the ratification of that instrument was not likely.

For these reasons, the ratification of the Montreal Convention presents an historic opportunity for the United States to realize the Warsaw system's goal of true uniformity in the documentation and liability rules applicable to international air transportation. It is an instrument that recognizes and accepts many principles that are important to U.S. interests. For example, the Montreal Convention codifies an unlimited compensatory liability system premised on presumed air carrier liability to protect international passengers in the event of an accident that results in injury or death. In addition, passengers will be able to recover up to approximately $140,000 in proven compensatory damages without regard to any fault whatsoever. At the same time, the Montreal Convention recognizes and accepts the legitimate concerns of the major aviation partners of the United States. For example, the kinds of damages recoverable under the Montreal Convention have not changed, the requirement that an accident must have occurred is preserved, and the exclusivity of the Montreal Convention's rules is affirmed to preserve their integrity. In sum, these rules, derived from the industry's 1996 intercarrier agreements, will continue to provide important benefits to passengers for the foreseeable future while ensuring their worldwide uniformity.

In the case of cargo, the Montreal Convention incorporates and modernizes the important documentation and liability reforms of Montreal Protocol No. 4, to which the Senate gave its advice and consent in 1998. These rules are extremely important to the economy of the United States because approximately $600 billion of goods annually enter and depart the United States by air. Air carriers, shippers, and insurers depend upon the predictable and uniform application of the Warsaw system's rules with respect to the international air transportation of cargo. It was the objective of the United States to preserve the benefits of Montreal Protocol No. 4 in the Montreal Convention and the Air Transport Association of America strongly supported the realization of that objective. The Montreal Convention, like Montreal Protocol No. 4, allows electronic documentation of shipments, without unnecessary and archaic documentation requirements, such as a description of the nature of the goods.

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[1] The ATA's member airlines are: Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, ATA Airlines (formerly American Trans Air), Atlas Air, Continental Airlines, Delta Air Lines, DHL Airways, Emery Worldwide, Evergreen International Airlines, Federal Express, Hawaiian Airlines, JetBlue Airways, Midwest Airlines, Northwest Airlines, Polar Air Cargo, Southwest Airlines, United Airlines, United Parcel Service, and US Airways. Associate members are: Aerovías de México, Air Canada, Air Jamaica, KLM-Royal Dutch Airlines, and Mexicana de Aviación.

The Montreal Convention reflects many improvements that will bring up to date the application of the Warsaw system's rules. Important among these is the addition of a rule that expands the jurisdictional options available to passengers in the case of transportation that is not to and from the passenger's state of principal and permanent residence, the so-called fifth basis ofjurisdiction. The Air Transport Association of America has been a consistent supporter of this reform, which we hope will encourage courts to apply the law of passengers' country of residence to determine the amount of damages to which they are entitled.

The Montreal Convention also reflects changes in light of modem commercial practice in the industry, such as code-share operations. The Montreal Convention provides that both the operating air carrier and the ticketing air carrier are liable to the code-share passenger. It is important to understand that the operation of these rules is consistent with current law. These rules apply only with regard to passengers actually traveling under a code-share ticket. Passengers traveling under the code of the operating carrier have recourse only against that carrier, regardless of whether there are also code-share passengers on that particular flight.

Another important improvement is that the Montreal Convention brings up to date the rules applicable to cargo in light of the fact that many air cargo terminals are now located outside the boundaries of the airport itself. Some courts have held that the language of the old Warsaw Convention effectively excludes losses that occur in off-airport, as opposed to on-airport, warehouses. The Montreal Convention adds new language recognizing that surface carriage outside the airport itself takes place in performance of the carriage by air, to be deemed to be within the period of carriage by air. That includes off-airport facilities, and should allow air carriers to cover those activities by their contract of carriage.

The Montreal Convention is unique among the instruments of the Warsaw system in that it is a recodification of its rules in their entirety and will replace, according to its terms, the Warsaw Convention, as amended. As with any recodification effort, the treaty contains changes in language that reflect the passage of the seventy years since the original Warsaw Convention was finalized. It is therefore important that courts not read the Montreal Convention as changing the legal landscape in ways that were not intended just because the Montreal Convention may use somewhat different language from that used by the Warsaw Convention to state the same rule. We therefore believe that the Committee's report on the Montreal Convention should reflect this principle, which commonly accompanies recodifications of U.S. law by the Congress.

Finally, the Air Transport Association of America is pleased that the Committee is also considering The Hague Protocol of 1955 to the Warsaw Convention. This treaty was before the Committee when it recommended that the Senate give its advice and consent to ratification of Montreal Protocol No. 4. At that time, it was assumed that adherence to Montreal Protocol No. 4 effected adherence to The Hague Protocol. There continues to be agreement on that principle for transportation involving other countries party to Montreal Protocol No. 4. However, a recent judicial decision has raised uncertainty about the application of this principle to transportation involving a state that has ratified The Hague Protocol but not Montreal Protocol No. 4. While the Air Transport Association believes that decision to be incorrect, the uncertainty created by that decision could undermine many of the benefits often associated with the ratification of Montreal Protocol No. 4, and those largely will be corrected with prompt ratification of The Hague Protocol.

In conclusion, the Air Transport Association appreciates this opportunity to express its views on the two important aviation treaties. We look forward to working with you in support of the advice and consent of the United States Senate for these two instruments.

AMERICAN CHEMISTRY COUNCIL,
1300 WILSON BLVD.,
Arlington, VA, June 20, 2003.

The Honorable RICHARD LUGAR, *Chairman*
Senate Foreign Relations Committee,
United States Senate,
Washington, DC.

The Honorable JOSEPH BIDEN
Senate Foreign Relations Committee,
United States Senate,
Washington, DC.

DEAR SENATOR LUGAR AND SENATOR BIDEN:

On behalf of the American Chemistry Council and the Chlorine Chemistry Council, I am submitting our written statement in support of the Senate Foreign Relations Committee's action on two new treaties designed to improve international chemicals management, the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on Prior Informed Consent.

The Councils and their members worked with the U.S. and other governments throughout the negotiations to assure that these agreements enhance health and environmental protection and protect commercial interests. We believe it is in the interest of the United States to be one of the original ratifying governments on each of the treaties, and we look forward to working with you and your staff as the Committee considers the agreements.

If we can provide any additional information on these treaties or the Council's position, please let me know, or have your staff contact Michael Walls, ACC's Senior Counsel.

Sincerely,

LARRY W. RAMPY
AMERICAN CHEMISTRY COUNCIL
Product Stewardship Team

PREPARED STATEMENT OF THE AMERICAN CHEMISTRY COUNCIL

The American Chemistry Council (ACC), on behalf of itself and the Chlorine Chemistry Council (CCC), is pleased to state strong support for the Stockholm Convention on Persistent Organic Pollutants (POPs) and the Rotterdam Convention on Prior Informed Consent (PIC). The Council and its members urge the Senate Foreign Relations Committee to recommend that the Senate provide advice and consent to U.S. ratification of the treaties as soon as possible.

The American Chemistry Council is the national trade association whose member companies represent more than 90 percent of the productive capacity for basic industrial chemicals in the United States. The Chlorine Chemistry Council is a unit of the ACC dedicated to representing the interests of chlorine manufacturers. Together, ACC and CCC members represent an industry on the cutting-edge of technological innovation and progress, whose products provide significant benefits to every sector of the global economy. The industry was actively engaged in the negotiation of both the Stockholm and Rotterdam Conventions for many years, and has been a strong supporter of measures necessary to implement both Conventions into U.S. law and practice.

The chemical industry's support for these treaties lies in several simple points.

- The industry's support is based on our commitment to product stewardship, including our goal of preventing health and environmental damage in the manufacture and use of chemical products. Our industry's product stewardship commitment is an integral part of our Responsible Care® program, which is now being implemented by the chemical industry in more than 42 countries.
- The Stockholm Convention is the culmination of many different initiatives by both industry and governments to address the concerns about persistent organic pollutants. It is the next best step to assure that governments around the world take appropriate measures to control the manufacture, use and disposal of POPs and to reduce unwanted POPs emissions.
- The Stockholm Convention adopts a risk-based, science-justified approach to considering possible additions to the list of chemicals. It is an approach entirely consistent with longstanding U.S. law and practice, and one that will lead to appropriate controls on those POPs chemicals that pose global threats.

- The Rotterdam Convention reflects the internationalization of a chemical export notification process first adopted by the United States as part of the Toxic Substances Control Act (TSCA). The treaty provides an appropriate mechanism to inform importing governments of the chemical regulatory measures adopted in other countries, in a way that does not unnecessarily burden international trade or commerce.
- Further, the treaty codifies an existing voluntary program already being implemented by 155 countries around the world. The voluntary program was first implemented in 1987, as a set of guidelines for industry and governments developed through the U.N. Environment Programme (UNEP) and the U.N. Food and Agriculture Organization (FAO).

The U.S. chemical industry's work on the Stockholm and Rotterdam Conventions dates back to 1986, when the international intergovernmental community began to turn its attention to the need for improved information exchange between governments on chemical regulatory matters. We worked with UNEP and FAO on the U.N. Guidelines for the Exchange of Information on Chemicals in International Trade, and we provided critical support for the amendments to the Guidelines that first adopted the concept of Prior Informed Consent. Our efforts on POPs began shortly after the Rio Summit on Environment and Development, in 1992. We worked with the Intergovernmental Forum on Chemical Safety (IFCS) in its effort to map the best approaches to dealing with POPs, particularly in discussions on criteria for identifying potential POPs. The industry also participated in the negotiations sponsored by the U.N. Economic Commission for Europe (UNECE) and the North American Commission on Environmental Cooperation (NACEC) as those regional POPs programs were developed and implemented.

In short, the U.S. chemical industry has been an early and consistent supporter of enhanced, harmonized international programs on chemicals, including appropriate controls on global pollutants of concern such as POPs.

The Council believes that it is critical for the United States to continue its longstanding leadership role in both the Stockholm and Rotterdam Conventions. In order to continue in that role, however, the United States must be a full Party to the agreements. In ACC's view, the United States should be one of the first 50 countries ratifying the Stockholm and Rotterdam Conventions. As an original ratifying Party, the United States will be able to lead—and appropriately influence—the development of procedures necessary to implement the treaties at the international level. The U.S. government's ability to influence the further development and implementation of the treaties at the international level requires, simply, full U.S. participation in the agreement.

Several provisions of the two treaties warrant the Committee's attention.

The Council is particularly pleased that the Stockholm Convention incorporates the use of a risk/benefit approach in implementing appropriate regulatory controls on listed chemicals, and in considering chemicals nominated as potential POPs. The treaty's reliance on technical and economic considerations should ensure that priority pollutants are targeted and meaningful control actions taken.

It is imperative that the Senate maintains a strong oversight role with regard to chemical additions under the Stockholm Convention. The addition of a chemical to the Stockholm Convention constitutes an amendment to the Convention and could result in significant implications for U.S. commerce. Therefore, in ACC's view, it is important that the Senate in general, and the Foreign Relations Committee in particular, retain appropriate oversight of the additions process. This strong oversight role is consistent with the Senate's actions on other agreements.

Article 25 of the Stockholm Convention contains a provision allowing any government to "opt-in" to potential amendments listing new chemicals. The Council believes that the resolution of ratification on the Stockholm Convention should expressly note the United States' intention to rely on that provision with respect to future amendments. Further, the Council believes that the Committee should be notified and consulted regarding potential Administration decisions on amendments, including additions, to the Convention. This advance notice and consultation should be ongoing so that it occurs at critical intervals during the international process for considering additions under the Convention.

The Rotterdam Convention on Prior Informed Consent also merits the Committee's favorable consideration. As noted earlier, this Convention was negotiated on the basis of a very successful government-to-government information exchange system that reflects existing U.S. law and practice. The Convention requires the United States to provide appropriate notification of exports of PIC chemicals to other countries, a requirement well in keeping with our industry's efforts to assure appropriate stewardship of chemical products.

In conclusion, the American Chemistry Council believes that the Stockholm and Rotterdam Conventions are an important step in harmonizing international and national chemical regulatory approaches. Once these agreements are implemented, they should make a meaningful contribution to improvements in public health and environmental protection. The Council looks forward to working with the Committee in its consideration of the Stockholm and Rotterdam Conventions.

PREPARED STATEMENT OF ALASKA NANUUQ COMMISSION, CHARLES H. JOHNSON, EXECUTIVE DIRECTOR

U.S.-RUSSIA AGREEMENT ON THE CONSERVATION AND MANAGEMENT OF THE ALASKA-CHUKOTKA POLAR BEAR POPULATION

Chairman Lugar,

Thank you for this opportunity to submit testimony on this historic hearing to ratify a treaty that insures that nanuuq the polar bear will be enjoyed by our descendants. This treaty is a tribute to the late Mollie Beatty, director of the U.S. Fish and Wildlife Service and her Native American Policies.

The Alaska Nanuuq Commission (ANC) was formed in 1994 to represent Alaska Natives in North and Northwest Alaska on matters concerning the conservation and sustainable subsistence use of polar bears. Our goal and objectives are:

1. Encourage and implement self-regulation of polar bear hunting and use by Alaska Natives.
2. Enter into co-management and other local and international agreements with appropriate governmental, Native, or other organizations.
3. Be involved in all phases of scientific, biological, and other research programs involving polar bears and the Arctic ecosystem.
4. Provide information and educational materials to the public, appropriate state and federal agencies, and other interested parties.

In 1989 the Soviet Union informed the U.S. Fish and Wildlife Service that it had reclassified the polar bear in the Alaska-Chukotka population from endangered to "recovered" in it "Red Book" and wanted to share in the harvest with Alaska Natives. The Service then notified the Alaska Native organizations in North and Northwest Alaska that an agreement with the Soviet Union was being considered that would allow Native Peoples of Chukotka to legally hunt polar bears and invited representatives of the Native community to participate in the negotiation.

The Alaska Nanuuq Commission participated as an equal partner with the Service in the negotiations with Russia and encouraged Russia to include representatives of the Chukotka native community on their delegation.

In 1997 a grass roots organization to represent native hunters was formed in Chukotka. That organization now called the Chukotka Association of Traditional Marine Mammal Hunters (CHAZTO in Russian) is now well established in Chukotka and was able to participate in the final negotiations of the treaty. The ANC and CHAZTO have developed a draft Native-to-Native agreement to implement the treaty and develop methods for quota distribution and management of the subsistence hunt when it becomes legal in Chukotka.

Because polar bear hunting in Chukotka has been banned since 1956, measures to manage the hunt and enforce regulations are not in place. A draft management plan has been developed by CHAZTO for Chukotka in cooperation with the government of Chukotka and the Ministry of Natural Resources. However the Russian government is waiting for the U.S. ratification of the treaty before it enacts its management plan.

Unfortunately many native (and some non-native) hunters in Chukotka are under the false impression that hunting polar bear is now legal because the treaty was signed on October 16, 2000 and polar bears are being harvested in alarming numbers.

During a meeting in Anadyr, Chukotka, CHAZTO and ANC issued a joint statement urging our respective governments to quickly ratify the treaty for the conservation of our shared polar bear population. I have attached that joint statement.

This treaty allows the Native Peoples of Alaska and Chukotka to actively participate in the management of the subsistence hunt of polar bears and we hope that it is quickly passed on the full Senate for ratification.

Thank you.

PREPARED STATEMENT OF BERING SEA PROGRAM, WORLD WILDLIFE FUND

WORLD WILDLIFE FUND,
1250 TWENTY-FOURTH ST., NW,
Washington, DC, June 17, 2003.

The Honorable RICHARD LUGAR, *Chairman*
Senate Foreign Relations Committee,
U.S. Senate,
Washington, DC.

Re: *U.S.-Russia Agreement on The Conservation and Management of the Alaska-Chukotka Polar Bear Population*

DEAR CHAIRMAN LUGAR:

On behalf of World Wildlife Fund's 1.2 million members in the United States, I wish to express support for the ratification of the U.S.-Russia agreement "On the Conservation and Management of the Alaska-Chukotka Polar Bear Population," and to ask that you please make this letter a part of the committee's hearing record on the treaty.

This agreement represents an important measure needed to conserve a species which the U.S. and Russia share in the region that binds our two nations—the Bering-Chukchi Sea. In October 2000, after several years of negotiation, the U.S. and Russia signed the polar bear agreement. However, despite broad national and international support and support within Chukotka and Alaska—particularly among the Alaska congressional delegation—the treaty has yet to be ratified. Implementing legislation for the treaty is long overdue.

There are an estimated 2,000-5,000 polar bears in the Alaska-Chukotka polar bear population. These animals range widely along northeastern Siberia's Chukotka Peninsula, on the ice and islands and nearshore areas (seasonally) of the Chukchi and northern Bering seas, and in northwest Alaska. Conservation efforts have been hampered by a lack of adequate coordinated management and funding across the U.S.-Russia boundary. This agreement is a critical step forward in overcoming these obstacles, restricting hunting of the bear for the first time and instituting a system to sustainably manage the polar bear population.

Currently a wide range of threats to the bears and their habitat continues to pose concern to conservationists. Climate change, toxic contamination, poaching, habitat loss, oil spills, and the disruption of their food chain caused by fisheries mismanagement are among those factors that may adversely affect the polar bear's future.

More urgent, however, is the unregulated and illegal hunting occurring on the Russian side of the Bering Sea. According to local Russian experts monitoring the situation on the ground, approximately 100-200 bears have been harvested annually in recent years. Although the main motivation for taking polar bears in Russia is for food, many of the hides from these animals are entering commercial markets illegally and acting to fuel harvest demand. In the 1950's in the United States, sport hunting of polar bears at the same or lower levels severely depleted the polar bear population, which finally gained protection under the Marine Mammal Protection Act. In Russia, the polar bear is listed in the Russian Red Book of Rare and Endangered Species (because this population is listed as Category V—"recovered"—it is eligible to be hunted). This bilateral agreement is critical to establishing a sanctioned program of management and enforcement of subsistence-use only harvesting.

The bilateral agreement specifically bans the hunting of bears in dens or females with cubs and prohibits the use of poison, traps and snares, as well as the use of aircraft or large motorized vessels or vehicles to hunt polar bears. The agreement also authorizes limited hunting by native peoples for subsistence purposes, and creates a bilateral commission to determine and allocate annual harvest quotas and requires monitoring and enforcement to protect against the kind of polar bear population decline that might occur at the hands of poachers or commercial hunters.

We urge you to ratify this agreement for the benefit of this population of polar bears, a keystone species in the northern environment, as well as for future generations of Americans.

Sincerely,

MARGARET WILLIAMS
Director, Bering Sea Program

DEFENDERS OF WILDLIFE,
1130 SEVENTEENTH ST., N.W.,
Washington, DC, June 18, 2003.

The Honorable RICHARD LUGAR, *Chairman*
Foreign Relations Committee,
U.S. Senate,
Washington, DC.

The Honorable JOSEPH BIDEN, *Ranking Member*
Foreign Relations Committee,
U.S. Senate,
Washington, DC.

DEAR MR. LUGAR AND MR. BIDEN:

Defenders of Wildlife is writing to reiterate our wholehearted support for ratification of Treaty Doc. 107-10, dated July 11,2002 and titled:

> *Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population done at Washington on October 16, 2000.*

Defenders represents nearly a million members and supporters from all walks of life across the United States and we focus much of our efforts on issues such as this that help to preserve biodiversity and ensure good scientific management of the world's wildlife resources. Enclosed is a copy of our original letter of support written to Interior Secretary Gale Norton and Assistant Secretary of State John Turner urging their support of this Treaty. Conditions for this population of polar bears have not improved since we sent the original letter and are unlikely to do so until this Treaty is ratified. We respectfully urge you to do what you can to expedite this process and get the Treaty in action. Thanks for your attention to this matter.

Sincerely Yours,

MARK L. SHAFFER, PH.D.
Senior Vice President for Programs

DEFENDERS OF WILDLIFE,
1130 SEVENTEENTH ST., N.W.,
Washington, DC, June 18, 2003.

Honorable GALE NORTON
Secretary of the Interior
Department of the Interior
1849 C Street, NW
Washington D.C. 20240

RE: Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population

DEAR SECRETARY NORTON:

We are writing to express our concern at the apparent delay in presenting the Agreement on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, to the U.S. Senate for ratification. This landmark agreement was signed by both the United States and Russia on 16 October 2000 but has not yet been ratified. The exact status of this polar bear population unknown and it may be vulnerable to over-exploitation because of illegal hunting in the Chukotka region of Russia, and because of unrestricted, but legal, hunting by Alaskan natives on the American side (unrestricted unless they become "Threatened" or "Endangered" under the Endangered Species Act or "depleted" under the Marine Mammal Protection Act).

This agreement ensures the long-term conservation of the Alaska-Chukotka polar bear population through unified management, conservation and research programs between Russia and the US. It also provides the authority to develop and enforce harvest limits for this western arctic population of bears, something that is lacking at present. The Agreement also is responsive to the indigenous culture of both countries regarding subsistence hunting, and includes a native official and a government official from both countries on the joint commission that establishes enforceable harvest limits. In fact, the agreement is fully supported by Native organizations from

both countries who identified the need for cooperative management of this polar bear population and freely surrender their unlimited harvest rights to this end.

The agreement is similar to existing management guidelines established for American bear populations and would prohibit the taking of cubs, females with cubs and denning bears. It would also prohibit all commercial use of harvested bears and eliminate the use of aircraft and large motorized craft in the hunt. Finally the agreement would help coordinate habitat conservation and population monitoring between the two countries. In our consultations with many of the world's leading polar bear experts there is unified agreement that this agreement is necessary for long-term conservation of this polar bear population. The danger of over-harvesting most of the remaining polar bear populations has been virtually eliminated because of cooperative management using the most modern monitoring techniques available. It is time to ensure the same for the Alaska-Chukotka population as well.

Thanks for your consideration in this matter and we hope you will agree with the value of this Agreement and send your endorsement on to the Senate for ratification in the near future.

Sincerely,

MARK L. SHAFFER, PH.D.
Senior Vice President for Programs

PREPARED STATEMENT OF ENVIRONMENTAL TECHNOLOGY COUNCIL, SCOTT SLESINGER, VICE-PRESIDENT FOR GOVERNMENTAL AFFAIRS

ON THE RATIFICATION OF THE STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

My name is Scott Slesinger. I am Vice-President for Governmental Affairs of the Environmental Technology Council. Our council represents environmental service companies that dispose, destroy and recycle hazardous waste. Several of our companies have Toxic Substances Control Act (TSCA) permits for destruction and disposal of PCBs, the most ubiquitous of the Annex A chemicals. Many of our companies hold Resource Conservation and Recovery Act (RCRA) permits for proper destruction and disposal of the other POPs Annex A chemicals. We support the entire Persistent Organic Pollutant Treaty. However, because the Senate is expected not to pass language implementing a key principle of the treaty dealing with destruction of persistent pollutants, *we urge that this Committee recommend that the Senate reject the Treaty's ratification.*

THE INTENT OF THE TREATY

The treaty is concerned with the intention and unintentional spread of organic persistent organic pollutants. Because of their chemical make-up, these chemicals persistent in the environment, vaporize into the atmosphere and eventually drop back to earth to contaminate areas sometimes thousands of miles from their source. EPA has noted that despite the over 25-year ban on PCBs in Canada and the United States, PCBs continue to appear in the Great Lakes and Great Lakes organisms from foreign sources.

As the Treaty notes, ending the manufacturing and use of these chemicals does not solve the problem. The chemicals must be chemically or molecularly changed so they no longer have the dangerous characteristics. Because the technology to properly disposed and destroy is expensive, complex and dangerous in unskilled hands, few countries have the volume of these chemicals to justify the costs to construct facilities to meet the Treaty's standards for proper disposal. In recognition of this, the treaty bans imports and exports *except for proper disposal.*

DOMESTIC LAW

Because of an anomaly in domestic law only one chemical in the universe cannot be imported into the United States even for proper disposal except through a unique burdensome administrative rulemaking procedure that makes it impractical.[1] That chemical is PCBs, a Treaty Annex A chemical. Under a 1976 provision in the Toxic Substances Control Act (TSCA) Section 6(e), a full rulemaking is required before PCBs can be imported for manufacturing or use. If such rule is issued, it allows imports for only one year. Private entities have tried to import PCBs for disposal but

[1] In 27 years, EPA has approved only one 6(e) exemption. That was in January of this year for the only entity with the resources and volume of PCBs to justify going through the process—The Department of Defense. 68 Federal Register 4934 (January 31, 2003).

have found the legal cost—not to mention the likelihood of the petition being rejected—to far outweigh the financial revenue such import could justify. In recognition of this problem, former EPA Administrator Carol Browner issued a programmatic rule that stated that importing for disposal (as opposed to use) was an environmental preferable option and stated that importing PCBs for disposal is consistent with Section 6(e) of TSCA and protecting public health and the environment. 61 FR 11096 (March 18, 1996). However the Ninth Circuit threw out the rule on a narrow interpretation that the term "manufacture" in TSCA included "import for disposal."

WHERE DO PCBS COME FROM?

Ironically, most the PCBs that are banned for importation for disposal were manufactured in the United States. The vast majority of PCBs in the world, 700,000 tons, were manufactured in the United States between 1927 and 1977.[2] Before the risks of PCBs were known, American companies exported equipment that used PCBs as an insulator. Because of §6(e), those American-made PCBs, even those owned by American companies, are now considered "foreign" and cannot be imported back into the United States for destruction. Imagine if the Canadians exported a dangerous substance, shipped it to the Untied States and then banned their export back into Canada. That is exactly the case with PCBs except we are the country that refuses to repatriate the chemical in question. That arguably contradicts the Treaty's references to manufacturers' and polluters' responsibility under this and various other international agreements.

PROPER TREATMENT AND DISPOSAL

The United States, through both TSCA and the Resource Conservation and Recovery Act (RCRA) have world class standards for PCB disposal and destruction that meets the Treaty's requirements for proper disposal. Chemical dechlorination is an effective non-thermal technology for lower concentration PCB wastes. Chemical dechlorination separates the chlorine molecule from the PCBs to form salts. This chemical treatment is 100% effective in destroying PCBs that are in concentrations below 12,000 parts per million but it is too dangerous at higher concentrations. Most of the PCBs, including all 1,500 tons that is now being imported by the Department of Defense are in concentrations of less that 12,000 parts per million. Incineration is the necessary treatment with higher concentrations. Under TSCA, incinerators are required to have an efficiency of PCB destruction of 99.9999%. Land disposal in engineered Subtitle C landfills is permitted when PCBs are below 500 parts per from remediation sites or otherwise to 50 parts per million. These are consistent with world-class requirements required in Article 6 of the Treaty.

Those who are urging the Senate not to implement this part of the treaty concentrate on the issue of thermal destruction of PCBs would cause dioxin releases. Under the Clean Air Act, these incinerators must meet the most protective emission standards of any industrial source in the U.S. that include specific technologies to control dioxin. As the EPA data in Appendix A shows, hazardous waste combustors are very minor emitters of dioxin compared to wood burning stoves, municipal incinerators and most sources of dioxin in the United States.

Critics of our position believe that exporting technology is the answer to destruction of foreign-based PCBs. However, such exports are a chimera. Basel and other treaties, as well as activists are very concerned that if developing countries have the capacity for hazardous waste disposal, they will become the dumping ground for first world waste. Hence, any attempt to export mobile technologies to destroy U.S.-made PCBs is seen in that light. Clearly, exporting such technology is not politically practical.

In addition, we must remember that the technology to properly dispose of these chemicals is highly capital intensive. Many countries, such as Mexico, have significant volumes of PCBs but not the volumes justifying investment into the treatment technologies that are required to meet international standards. As President Bush stated at the Treaty signing:

> ". . . This treaty takes into account understandable concerns of less-developed nations. When these chemicals are used, they pose a health and environmental threat, no matter where in the world they are allowed to spread.

[2] "Status of PCB Management in the United States," Ross and Associates, prepared for the Commission for Environmental Cooperation, Montreal, Canada, August 24, 1995. The volume eventually exported is estimated by Ross to be 75,000 tons.

But some nations with fewer resources have a harder time addressing these threats, and this treaty promises to lend them a hand."

If we don't allow imports for proper disposal, unused equipment, contaminated with PCBs will be continued to be improperly disposed in municipal landfills or stored indefinitely until they leak and enter the environment. These conditions pose a continuing potential threat to health and the environment in those countries and in the United States.

When Administrator Carol Browner issued their programmatic PCB determination, the preamble state:

> "The EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment. Therefore, EPA believes today's rule which allows foreign generated PCB wastes to be disposed of in a proper and safe manner in the United States is consistent with the requirements it has promulgated for storage and disposal of domestically generated PCB wastes."[3] *Id.* at 11096.

In 1979, EPA stated

> "that closing the U.S. border to shipment of PCB wastes at this time . . . could have a serious adverse effects on the environment by making safe disposal of PCBs more difficult In particular, baring import of PCBs for disposal could make export for disposal impossible and thereby eliminate what in many cases would be the most desirable disposal alternative. 44 FR 31514, 31526-27 (May 31, 1979). . . . [f]oreign disposal alternatives may not adequately destroy the PCBs and create a threat to human health and the environment in the Untied States. Id. at 31526.

WHAT DOES THE TREATY REQUIRE?

Some have tried to argued that a narrow reading of the treaty is consistent with continuing the restrictions on PCB imports. We believe that is an improper reading of the treaty. Article 3 Section 2.(a) states "Each Party shall take measures to ensure that a chemical listed in Annex A is imported only for the purpose of environmentally sound disposal as set forth in paragraph 1(d) of Article 6." It does not say "No export or import of Annex A except a country may make an exception for proper disposal." The preamble notes that developed and developing countries have different capabilities and needs and there is a conscious need to take measures to prevent adverse effects caused by possess at all stages of their life cycle. The preamble also states the general theory that the polluter is responsible for the pollution. Restricting the importation of a pollutant into the country of origin is inconsistent with this treaty intent.

Some argue that placing a three-year delay rulemaking process that is not required for importing any other item into the United States is consistent with this section. We believe such a barrier is not only inconsistent with this treaty but with virtually all our trading agreements such as NAFTA. As I noted, most countries do not have the volumes of PCBs to justify the sophisticated technology to properly dispose or destroy their domestic supplies of PCBs. Keeping the present regulatory barrier at the border would make it economically infeasible to import and therefore destroy PCBs is clearly contrary to the Treaty's preamble to "protect human health and the environment through measures which will reduce and/or eliminate emissions and discharges of persistent organic pollutants."

The Carter, Clinton and George W. Bush Administration recognized that disposal of "foreign" PCBs in the United States was good environmental policy that was barred by a Court interpretation that precluded imports of PCBs. Now the Senate is presented with a Treaty that is consistent with that policy but still contradicts the wording in TSCA. However, it appears the authorizing Committee, listening to narrow interests and those who feel this issue is too controversial, are going to spurn good environmental policy that helps American companies abroad, helps the world environment and the goals of the Treaty.

Some critics of environmental treaties argue that place a disproportional burden on our country. As the country of origin of the key pollutant in this treaty, that is clearly not the case with this Treaty. In fact, not amending TSCA to be consistent

[3] The Agency makes clear that it only considered the impact on the environment in the United States in making its determination. Id. at 11097. Clearly, there is a benefit in the country where the PCBs were being stored.

with the Treaty is inconsistent with our moral obligations as the manufacturer of PCBs.

In conclusion, until the authorizing Committee demonstrates that it intends to implement the entire Treaty, we urge the Senate to not ratify a treaty our country has no intention in implementing.

APPENDIX A—Inventory of Sources of Dioxin-Like Compounds in the United States

[grams dioxin equivalent emitted per year]

Source	1987 Emissions (g TEQdf-WHO 98/yr)	1995 Emissions (g TEQdf-WHO 98/yr)	Percent Reduction 1987-1995
Municiple Solid Waste Incineration, air	8877.0	1250.0	88%
Backyard Refuse Barrel Burning, air	604.0	628.0	–4%
Medical Waste Incineration, air	2590.0	488.0	81%
Secondary Copper Smelting, air	983.0	271.0	72%
Cement Kilns (hazardous waste burning), air	117.8	156.1	–33%
Sewage Slude/land applied, land	76.6	76.6	0%
Residential Wood Burning, air	89.6	62.8	30%
Coal-fired Utilities, air	50.8	60.1	–18%
Diesel Trucks, air	27.8	35.5	–28%
Secondary Aluminum Smelting, air	16.3	29.1	–79%
2,4D, land	33.4	28.9	13%
Iron Ore Sintering, air	32.7	28.0	14%
lndustriaI Wood Burning, air	26.4	27.6	–5%
Bleached Pulp and Paper Mills, water	356.0	19.5	95%
Cement Kilns (non-hazardous waste burning)	13.7	17.8	–30%
Sewage Sludge Incineration, air	6.1	14.8	–143%
EDC/Vinyl chloride, air	NA	11.2	NA
Oil-fired Utilities, air	17.8	10.7	40%
Crematoria, air	5.5	9.1	–65%
Unleaded Gasoline, air	3.6	5.6	–56%
Hazardous Waste Incineration, air	5.0	5.8	–16%
Lightweight ag kilns, haz waste, air	2.4	3.3	–38%
Commercially Marketed Sewage Sludge, land	2.6	2.6	0%
Kraft Black Liquor Boilers, air	2.0	2.3	–15%
Petrol Refine Catalyst Reg., air	2.24	2.21	1%
Leaded Gasoline, air	37.5	2.0	95%
Secondary Lead Smelting, air	1.29	1.72	–33%
Paper Mill Sludge, land	14.1	1.4	90
Cigarette Smoke, air	1.0	0.8	20%
EDC/Vinyl chloride, land	NA	0.73	NA
Primary Copper, air	0.5	0.5	0%
EDC/Vinyl chloride, water	NA	0.43	NA
Boiler/industrial furnaces	0.78	0.39	50%
Tire Combination, air	0.11	0.11	0%
Drum Reclamation, air	0.1	0.1	0%
Carbon Reactivation Furnace,air	0.08	0.06	25%
Totals	13,998	3,255	77%
Percent Reduction from 1987 to 1995			77%

The "Database of Sources of environmental Releases of Dioxin-Like Compounds in the United States" EPA/600/C-O1/O12.

FEDEX® EXPRESS,
LEGAL DEPARTMENT,
3620 HACKS CROSS RD.,
Memphis, TN, June 20, 2003.

The Honorable RICHARD G. LUGAR,
Chairman, United States Senate,
Senate Foreign Relations Committee
Washington, DC.

The Honorable JOSEPH R. BIDEN, JR.
United States Senate,
Washington, DC.

Re: *The Montreal Convention and The Hague Protocol*

DEAR MR. CHAIRMAN AND SENATOR BIDEN:

On behalf of Federal Express, I would like to express our support for the United States Senate advice and consent to ratification of two aviation treaties pending before the Committee, the Montreal Convention for the Unification of Certain Rules for International Carriage by Air and The Hague Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air. Federal Express believes that the ratification of these important treaties is a prudent and necessary step in the evolution of air transportation. Once ratified, they will bring the law regarding the international transportation of cargo into step with the realities of the modem shipping industry.

Federal Express anticipates numerous benefits to the shipping industry once the Montreal Convention is ratified and gains wide acceptance. One of the first benefits will be the simplification of the notice requirement to the shipper of the Convention's applicability, which is a significant improvement over the Warsaw Convention. The Montreal Convention also provides for the use of electronic shipping documents, and also allows carriers to refuse to accept cargo for carriage if use of electronic forms is impossible. These changes acknowledge the technological advancements made in the transportation industry since the Warsaw Convention was finalized in 1929.

The Montreal Convention also clears up several issues that have troubled the air cargo transportation industry. In particular, the Convention clarifies that the consignor is responsible for the particulars of documentation of the air waybill, even where the person acting on behalf of the consignor is an agent of the carrier. The Montreal Convention also rectifies one of the most confusing issues for cargo carriers regarding loss or damage occurring off airport property. Article 18 allows a carrier to substitute another mode of carriage for carriage by air, but the substitute transportation is deemed to be carriage by air and subject to the Convention. This provision should rectify the uncertainties surrounding loss of or damage to cargo outside of airport boundaries.

The comparative negligence scheme for cargo will also be expanded by the new Convention. A carrier's liability will be limited to the extent that damage to the cargo resulted from inherent defects, quality or vice of the cargo, defective packing, act of war or of a public authority. Presently, a carrier may limit its liability only if the damage to the cargo results solely from the above listed acts.

Some of the other improvements found in the Montreal Convention include providing an unbreakable limit of liability for cargo carriers equal to 17 Special Drawing Rights per kilogram; an improved defense for delayed cargo when the carrier proves it took all measures that could reasonably be required to avoid the damage; a provision for factoring in inflation every five years for cargo and baggage liability limitations; and a prohibition against the recovery of punitive, exemplary and non-compensatory damages against cargo carriers.

Ratification of The Hague Protocol will in turn resolve uncertainty concerning the application of the rules of the Protocol that are incorporated by reference into Montreal Protocol No. 4, which entered into force for the United States in 1999. A recent judicial decision called into question the applicability of those rules, and that question will be resolved by ratification of The Hague Protocol. Federal Express is grateful that the Committee is also considering this instrument for advice and consent to ratification.

Federal Express strongly supports the advice and consent to ratification of these treaties by the United States Senate. The new provisions found in the Montreal Convention will modernize the current Warsaw Convention regime while improving certain aspects of cargo transportation by clarifying issues that have confused both

carriers and shippers for decades. If our company can be of assistance to your Committee by providing further information, please do not hesitate to contact me.

Sincerely,

TOMAS F. DONALDSON
VICE PRESIDENT, REGULATORY AFFAIRS
Federal Express Corporation

PREPARED STATEMENT OF GLOBAL THREATS PROGRAM, WORLD WILDLIFE FUND

WORLD WILDLIFE FUND,
1250 TWENTY-FOURTH ST., NW,
Washington, DC, June 16, 2003.

Honorable RICHARD LUGAR, *Chairman,*
Senate Foreign Relations Committee,
Dirksen Senate Office Building, Room 450,
Washington, DC.

Re: *June 17, 2003 Hearing on Stockholm POPs Convention and Other Treaties*

DEAR MR. CHAIRMAN,

In the context of the scheduled June 17 Committee hearing on treaties available for ratification, and on behalf of 1.2 million Americans who are members of the World Wildlife Fund, I would like to express our support for the ratification of the Stockholm and Rotterdam Conventions concerning toxic chemicals. These two important environmental agreements have the potential to contribute significantly to making this world a safer place for people and wildlife.

At the same time, I would like to draw to the Committee's attention our serious concern regarding the adequacy of Stockholm Convention-related legislative proposals put forward by the administration, and to request that the Committee seek assurances from the administration that it will cooperate in the development of effective implementing legislation for this very critical treaty.

Before joining WWF, I was Deputy Assistant Secretary for Environment and Development at the U.S. Department of State, in which capacity I led the U.S. delegation for the negotiation of the Stockholm Convention. I have attached for the Committee's consideration a copy of my testimony presented on May 9, 2002, before the Senate Committee on Environment and Public Works. The testimony outlines the significant benefits that the United States will derive from the elimination of persistent organic pollutants (POPs) chemicals under the Stockholm Convention, and addresses a number of key issues that will determine the effectiveness of the Convention's implementation.

Principal among these issues is the process for adding chemicals to the Convention. The Convention contains a carefully worked out scientific and institutional process for adding chemicals that are determined to have POPs characteristics and therefore warrant global concern. This process fully protects the rights of parties to challenge or even reject the addition of any particular chemical. It is critical, in ratifying the Convention, to ensure that the United States, as a party, is fully capable of regulating chemicals that may be added to the POPs list. Without the enactment of implementing legislation including expedited provisions allowing the appropriate regulation of new POPs chemicals, the United States will not be able to fully carry out its obligations under the treaty. However, the administration's approach to this issue has been one of confusion and crossed signals. Advice and consent to ratification would, in WWF's view, be a hollow victory if this situation is not remedied.

During the past twelve months, WWF and other environmental and public health NGOs have met on several occasions with representatives of the American Chemistry Council (ACC) and Bush Administration to discuss differences regarding implementing legislation. NGOs and ACC representatives were able to reach substantial common ground regarding the information that should be taken into account, domestically, for chemicals being considered for inclusion in the Stockholm Convention. Regrettably, though, there has been very little progress in agreeing on the "adding mechanism" that would be the basis, domestically, for deciding whether to regulate a chemical once it is added to the Convention.

We applaud Senators Chafee and Jeffords for their perseverance and hard work in striving to craft a legislative text that addresses the adding mechanism issue effectively. Unfortunately, efforts to include an effective adding mechanism that gives substantial weight to the international listing decision have been delayed and impeded by interventions of administration officials. The initial implementing lan-

guage proposed last year by the White House would have left out the adding mechanism altogether. Proposals put forward earlier this year, coordinated by the White House's Office of Management and Budget, risk bogging down that mechanism in lengthy and cumbersome cost-benefit related proceedings that would make it extremely difficult if not impossible for EPA to take action when POPs are added to the treaty. Earlier this month, the administration, chemical industry, and NGO representatives each submitted comments on these issues to Senator Chafee's Subcommittee on Superfund and Waste Management as a basis for arriving at a more acceptable legislative text on this critical element. We look forward to reviewing revised legislative text as soon as it is available.

A timely and effective mechanism to allow the appropriate regulation of POPs chemicals as they are added to the Convention is in our view the most important component of the POPs treaty implementing legislation. *We therefore urge Members of the Foreign Relations Committee to request explicit assurances from the administration that it will support the enactment of effective implementing legislation, including provisions for the expeditious regulation of new POPs consistent with the following principles:*

(1) The domestic regulatory process should promote timely decisions by the United States on new chemicals that are added to the Stockholm Convention. The legislation should seek to avoid redundancy and unnecessary delays whenever possible. It should facilitate, through the rulemaking process, the development of a U.S. position on these chemicals that is in sync with the scope and timing of the Convention's Article 8 international process. This will avoid the necessity of a de novo domestic review and scientific determination after the Conference of Parties (COP) decides to add a chemical; and

(2) The COP listing process and decision should provide the default option for domestic action, unless the EPA Administrator finds that the COP has erred and the chemical in question is not likely, as a result of its long-range environmental transport, to lead to significant adverse human health and/or environmental effects such that global action is warranted.

We would be happy to provide further assistance to Members of this Committee or staff in your consideration of advice and consent action on the Stockholm and Rotterdam Conventions.

Sincerely,

BROOKS B. YEAGER
VICE PRESIDENT, GLOBAL THREATS PROGRAM
World Wildlife Fund

[Attachment.]

LEGISLATION TO IMPLEMENT THE 2001 STOCKHOLM CONVENTION, INCLUDING THE PERSISTENT ORGANIC POLLUTANTS (POPS) IMPLEMENTATION ACT OF 2002 (S. 2118)

TESTIMONY OF BROOKS B. YEAGER, VICE PRESIDENT FOR GLOBAL THREATS, WORLD WILDLIFE FUND, BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, UNITED STATES SENATE—MAY 9, 2002

Mr. Chairman and Members of the Committee:

On behalf of World Wildlife Fund's 1.2 million members, thank you for the opportunity to testify on the implementing legislation for the Stockholm Convention on Persistent Organic Pollutants (POPs). Known worldwide by its panda logo, World Wildlife Fund (WWF) is dedicated to protecting the rich biological diversity on which the prosperity and survival of human societies depends. As the leading privately supported international conservation organization in the world, WWF has sponsored conservation work in more than 100 countries since 1961.

For the record, I am Brooks Yeager, Vice President for Global Threats at WWF, where I supervise campaigns to conserve global forests and ocean resources, to avert damage to the global environment from climate change and toxic pollution, and to ensure the environmental sustainability of global commerce. Before joining WWF, I served as the Deputy Assistant Secretary for Environment and Development at the U.S. State Department. At State I was responsible for the development and negotiation of U.S. Government policy in a range of bilateral and global environmental discussions and undertakings. These included the Convention on Biological Diversity (CBD), the CBD Biosafety Protocol, the Global Environment Facility, the International Coral Reef Initiative (ICRI), the International Tropical Timber Organization, and United Nations forest discussions.

I also served as the United States' lead negotiator for the Stockholm POPs Convention. We are here today to discuss the implementing legislation for this groundbreaking treaty. With your permission, I will try to distinguish the views I express on behalf of WWF from those observations I can make from my involvement on behalf of the U.S. Government in the Convention's development.

The Stockholm POPs Convention represents the most important effort by the global community, to date, to rein in and ultimately halt the proliferation of toxic chemicals. It's an agreement that is at once ambitious, comprehensive, and realistic. The treaty targets some of the world's most dangerous chemicals—POPs include pesticides such as chlordane, industrial chemicals such as PCBs, and by-products such as dioxins.

POPs pose a particular hazard because of four characteristics: they are toxic; they are persistent, resisting normal processes that break down contaminants; they accumulate in the body fat of people, marine mammals, and other animals and are passed from mother to fetus; and they can travel great distances on wind and water currents. Even small quantities of POPs can wreak havoc in human and animal tissue, causing nervous system damage, diseases of the immune system, reproductive and developmental disorders, and cancers.

Persistent organic pollutants are a threat to human health, wildlife, and marine and terrestrial ecosystems in the United States and around the world. From Alaska to the Great Lakes to Florida, Americans face an insidious but largely invisible threat from POPs chemicals. Despite more than two decades of U.S. efforts to control POPs pollution, POPs used and released in other countries—often thousands of miles from our borders—continue to contaminate our lands and waterways, the food we eat, and the air we breathe.

Our government made a concerted effort, starting not long after the publication of Rachel Carson's pathbreaking "Silent Spring," to eliminate the production and use of known POPs chemicals in the United States—yet we are still vulnerable to POPs pollution. Our environment, wildlife, and human health continue to be affected by POPs from unremediated contaminated sites at home and the production and use of POPs elsewhere in the world. This last fact is central to understanding the United States' strong national interest in the success of this global effort to reduce and eliminate POPs. POPs' mobility in air and water currents, for example, makes possible their presence along with metals and other particulates in incursions of Saharan dust into the continental United States. African dust is the dominant aerosol constituent in southern Florida's dense summer hazes. Similarly, one potential source of DDT in some salmon returns to Alaska rivers is its extensive use in Asian agriculture. A global mechanism to reduce these "chemical travelers without passports" is necessary, urgent, and very much in our national interest.

[Note: "A Toxic Hot Spots" map submitted with this testimony will be referred to in relation to statements made in the prior paragraph.]

The Stockholm POPs Convention was negotiated by more than one hundred and twenty governments over a four-year period. As the head of the U.S. delegation, I was responsible for developing the United States' negotiating objectives and strategies, and for assuring that our national interest, positions, and requirements were reflected in the final text. Development of the U.S. position was accomplished through a thorough, not to say exhaustive, domestic process involving regular consultations with seven domestic agencies, industry, the environmental and public health communities, native American representatives, and various interested state governments, including the State of Alaska.

This careful process of developing the U.S. negotiating position is one of the reasons, I believe, that President Bush's decision to sign the Stockholm Convention last April received such broad support. WWF and many others—including the chemical industry, environmental and public health organizations and members of Congress on both sides of the aisle—applauded the President's Rose Garden announcement. We are pleased that the President has decided to send the treaty package to the Senate for ratification.

In fact, both industry and environmental representatives made important contributions to the final product. I would like to note in particular the constructive roles played by Mr. Michael Walls and Mr. Paul Hagen of the American Chemistry Council (ACC). A letter to Governor Whitman on February 26, 2002, from Mr. Frederick Webber, ACC's President and CEO, noted that,

> ACC strongly recommends that the Administration seek the U.S. Senate's advice and consent to ratification as soon as possible. We believe it is important for the United States to continue its leadership role in the global effort to address the risks posed by POPs emissions, and believe that the

United States should make every effort to be among the first 50 countries ratifying the Convention.

WWF looks forward to working with our environment and public health NGO colleagues, indigenous peoples, the ACC and other business groups, and other stakeholders in moving forward the POPs implementing legislation and treaty ratification packages as expeditiously as possible.

The POPs treaty represents a significant and innovative breakthrough in global chemicals management, calling for concrete steps to restrict or phase out dangerous chemicals rather than relying on expensive, end-of-pipe measures such as pollution scrubbers and filters. The treaty's ambitious control obligations were developed with enough flexibility that they can be accomplished largely within the established U.S. statutory and regulatory structure. As we will discuss today, only limited adjustments are needed to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA).

In Stockholm in May 2001, the POPs treaty was signed by 91 governments and ratified by two. Already those numbers have climbed to 128 signatories and the equivalent of 7 Parties (six ratifications and one accession) as of May 1, 2002. WWF is working with governments around the world in the hope of generating the required 50 ratifications by the World Summit on Sustainable Development in late August in Johannesburg, South Africa, so that the treaty can enter into force before the end of 2002. This is an ambitious target, but one fully justified by the urgency of the problem. WWF believes that the Johannesburg Summit presents a significant opportunity for American leadership in the global effort to eliminate POPs, as well as in broader issues affecting the global environment and human development. Achieving Senate advice and consent for ratification within the next 15 weeks is admittedly a much-accelerated timeframe, but with energy and determination we believe this is achievable. Enacting implementing legislation in such a period may be even more challenging, but we urge you to try and do so.

WWF extends heartfelt thanks and congratulations to Senator Jeffords and his staff on the Senate Environment and Public Works Committee for introducing sound, forward-thinking legislation to implement the POPs treaty.

OVERVIEW OF THE STOCKHOLM POPS CONVENTION

Before delving into the specifics of the implementing legislation, a brief overview of the structure and mechanisms of the Stockholm POPs Convention may be in order. The POPs treaty is designed to eliminate or severely restrict production and use of POPs pesticides and industrial chemicals; ensure environmentally sound management and chemical transformation of POPs waste; and avert the development of new chemicals with POPs-like characteristics.

Eliminating intentionally produced POPs. The agreement targets chemicals that are detrimental to human health and the environment globally, starting with a list of 12 POPs that includes formerly used pesticides, dioxins, and PCBs. Most of the pesticides are slated for immediate bans once the treaty takes effect. A longer phase-out (until 2025) is planned for certain PCB uses. With regard to DDT, the agreement sets the goal of ultimate elimination, with a timeline determined by the availability of cost-effective alternatives for malaria prevention. The agreement limits use in the interim to disease vector control in accordance with World Health Organization guidelines, and calls for research, development, and implementation of safe, effective, and affordable alternatives to DDT.

Ultimately eliminating byproduct POPs. For dioxins, furans, and hexachlorobenzene, parties are called on to reduce total releases with the goal of their continuing minimization and, where feasible, ultimate elimination. The treaty urges the use of substitute or modified materials, products, and processes to prevent the formation and release of by-product POPs.

Incorporating precaution. Precaution, including transparency and public participation, is a guiding approach throughout the treaty, with explicit references in the preamble, objective, provisions for adding POPs, and determination of best available technologies.

Disposing of POPs wastes. The treaty includes provisions for the environmentally sound management and disposal of POPs wastes (including stockpiles, products, articles in use, and materials contaminated with POPs). The POP content in waste is to be destroyed, irreversibly transformed, or, in very limited situations, otherwise disposed of in an environmentally sound manner in coordination with Basel Convention requirements.

Controlling POPs trade. Trade in POPs is allowed only for the purpose of environmentally sound disposal or in other very limited circumstances where the importing

State provides certification of its environmental and human health commitments and its compliance with the POPs treaty's waste provisions.

Allowing limited and transparent exemptions. Most exemptions to the treaty requirements are chemical-and country-specific. There are also broader exceptions for use in laboratory-scale research; for small quantities in the possession of an end-user; and for quantities occurring as unintentional trace contaminants in products. Notification procedures and other conditions apply to exemptions for POPs as constituents of manufactured articles and for certain closed-system site-limited intermediates.

Funding commitments enabling all countries to participate. The ability of all countries to fulfill their obligations will be integral to the treaty's success. The treaty contains a sensible and realistic financial mechanism, utilizing the Global Environment Facility (GEF), through which donor countries have committed to assisting developing countries and transitional economies in meeting their obligations under the treaty. Adequacy, predictability, and timely flow of funds are essential. The treaty calls for regular review by the Conference of Parties of both the level of funding and the effectiveness of performance of the institutions entrusted with the treaty's financial operations.

THE POPS TREATY AS A CAREFUL BALANCE OF INTERESTS

In my view, Mr. Chairman, this is a solid and carefully crafted treaty. But it is also a treaty that reflects a careful balance of interests achieved through negotiation and compromise. The U.S. interest, as we articulated it during the negotiations, was to achieve an ambitious treaty that would address the global environmental damage caused by POPs, but do so in a way that would be practical, implementable, financially efficient, and consistent with the fundamental structure of our national approach to chemical regulation.

Other countries had different interests, some similar, some at variance with ours. The developing countries were neither willing nor able to invest in what to them was a new environmental priority such as POPs control and remediation without financial and technical assistance from the developed world. The G-77 negotiators insisted throughout the negotiation on a new financial mechanism, specific to the Convention, with mandatory assessments. The establishment of the GEF as the Convention's interim financial mechanism represents a genuine compromise in which the donor countries committed to provide additional financial resources, but through a channel with a proven track record and one over which donor countries exert significant control.

Similarly, the EU and a number of other countries insisted early in the negotiations on a framework for regulating byproducts such as dioxins based on quantitative baselines and mandatory percentage reductions. The United States and some developing countries considered this unrealistically rigid, in view of the highly varying levels of knowledge regarding dioxin sources in various national contexts and the even higher variation among countries in the capacity to address such sources. The framework for dioxin regulation which emerged sets an ambitious goal of "ultimate elimination . . . where feasible," but seeks to reach this goal through a nationally-driven process of inventory, planning, and appropriate regulation, under guidance from the Convention. This too was a genuine compromise that should produce real progress in dioxin source reduction in the coming years.

The process of balancing interests and finding a unified way forward was critical to developing a consensus as to how to add new POPs chemicals to the treaty over time. All parties clearly recognized that the Convention could not be successful if it were limited solely to the 12 chemicals already on the POPs list. All parties recognized, and stated, that the Convention was intended to be dynamic rather than static. But the question of what scientific and institutional process to use in adding chemicals to the list was fraught with difficulties and misunderstandings.

For the United States, it was critical that this process be scientifically-driven and not subject to political whim. Some in the U.S. feared that other countries might be almost cavalier in adding chemicals to the list, and that such an approach would distort the treaty and distract parties from the strong efforts needed to deal with the chemicals already on the list.

For some in the EU and elsewhere, it was critical that the process for adding chemicals not be subject to endless procedural roadblocks. This concern reflected an anxiety that the affected industries or governments might use procedural challenges to block the addition of chemicals that would legitimately qualify for the list on scientific grounds, and that this approach would impede the effectiveness of the Convention over time.

The procedure for adding new chemicals which was finally adopted is, once again, a genuine compromise, but one which, in my view, successfully protects the U.S. interest in every respect. It may be useful to give a short account of the negotiations on this important issue.

First, the U.S. negotiating team insisted on, and successfully negotiated, the scientific criteria according to which a nominated chemical would be evaluated. These criteria are contained in Annex D of the Convention. Then we negotiated the process through which these criteria should be applied, by a scientific screening committee (the so-called POPs Review Committee or "POPRC"), working under the supervision of the Conference of the Parties (the COP). Finally, we negotiated the terms under which the COP would review the recommendation of this scientific group, the conditions under which the COP could make a decision to add or reject a chemical, and the procedures for party governments to accept or reject the COP's decision.

The process which emerged is described in more detail in our substantive discussion of the new chemicals provisions. Let me just say here that it offers the United States the safeguards of rigorous science, a careful review procedure, a high institutional threshold for COP decisions to add chemicals, and the right to reject the addition of a new chemical, if appropriate. In addition, this compromise also successfully resolved, at least in this context, the long-running controversy between the United States and the European Union on the subject of precaution, and did so in a way which may have useful applications in the future.

CONGRESSIONAL ACTION NEEDED TO IMPLEMENT THE STOCKHOLM CONVENTION

The Congressional action necessary to implement the POPs treaty must come in two areas—financial support and implementing legislation.

POPs Financial Support

Negotiators agreed to request that the Global Environment Facility serve as the treaty's principal financial mechanism, on an interim basis. It is WWF's strong view that the GEF must be fully funded in order to provide sufficient resources for developing countries to begin to eliminate POPs. In order to take on the added responsibility of assisting the global effort to eliminate POPs without robbing its other critical priorities, the GEF needs to be replenished at a higher level. It will take American leadership to do this. The Administration's $177.5 million FY03 request for the GEF, including paying a portion of U.S. arrears, is an important first step towards this goal. We urge the Committee to work with the Appropriations Committee to fully fund the Administration's $177.5 million request, and to allow the President sufficient flexibility within the request to position the United States to lead efforts to replenish the GEF at the level necessary.

POPS Implementing Legislation

As WWF has not had an opportunity to review the official transmission from the Administration, our comments will be directed primarily to the Chairman's bill, S. 2118. We would be happy to submit comments on the Administration's bill at a later date.

S. 2118 amends FIFRA and TSCA (the first amendments to TSCA since its enactment in 1976) to implement both the Stockholm POPs Convention and the Protocol on POPs to the Convention on Long-Range Transboundary Air Pollution (LRTAP POPs Protocol). My comments will address primarily the implementing legislation for the Stockholm Convention.

S. 2118 would provide EPA with the authority to prohibit manufacture of the twelve POPs identified in the Stockholm Convention annexes as well as other POPs subsequently added to the Convention. The legislation also includes related provisions calling on the National Academy of Sciences to develop new methodologies for screening future POPs candidates.

First and foremost, I would like to address the provisions for adding new chemicals to the treaty. Speaking both as the lead U.S. negotiator and in my capacity for WWF, I want to emphasize the importance of including the targeted statutory amendments needed to add other chemicals to the treaty.

The international community envisioned a dynamic instrument that could take into account emerging scientific knowledge about chemicals beyond the initial 12. Integral to the treaty is a process for nomination, science-based assessment (including risk profiles and risk assessments), and decision-making that involves both the subsidiary POPs Review Committee and the Conference of Parties before a substance can be added to the treaty's annexes. Unless this element of the treaty is considered to be self-executing, the legal mechanism to eliminate the production, use, and export of new POPs must be reflected in the implementing legislation. We

applaud Senator Jeffords for including in his bill the critical amendments to TSCA and FIFRA to regulate subsequent additions.

WWF and other environmental and public health organizations stand alongside the chemical industry in voicing our support for full implementation. Again to quote from the American Chemistry Council's letter to Governor Whitman,

> ACC believes it is possible to craft appropriate amendments to TSCA and FIFRA to reflect the treaty additions process. . . . Although we have not yet seen the Administration's draft implementing legislation, we are confident that matters concerning the substance selection process can be addressed as necessary in the course of the legislative process.

It is our understanding that both the Jeffords bill and the Administration proposal are based on a legislative proposal crafted by EPA and other U.S. Government agencies last summer, but the Administration removed these essential provisions for adding new POPs from its final implementing package.

The Administration's proposal apparently envisions a case-by-case revision of domestic legislation for each POP candidate beyond the initial 12. Such an approach risks politicizing decisions that would otherwise be based on sound science. Moreover, we find it hard to believe that Congress will be willing or able to repeatedly reopen domestic laws such as TSCA and FIFRA which have rarely if ever been amended.

In our view, as I have already mentioned, the Convention as negotiated provides the U.S. with a great deal of flexibility in deciding whether and how to take domestic action against future POPs:

- *The international selection process involves input from all countries that are Parties to the Convention:* Article 8 of the Convention provides for the evaluation and addition of chemicals beyond the initial 12. Upon entry into force, the Conference of the Parties (COP) will establish a Persistent Organic Pollutants Review Committee (POPRC). Parties will submit chemical nominations to the POPRC, which will evaluate them based on agreed scientific criteria including persistence, bioaccumulation, long-range transport, and toxicity. The POPRC must prepare a draft risk profile in accordance with Annex E, to be made available for input from all Parties and observers. The POPRC will then make recommendations that must be approved by the entire Conference of the Parties before a nominated chemical can be added to the treaty as a binding amendment.
- *The Convention does not automatically obligate the U.S. to eliminate each new POP that is added internationally:* Under Article 22(3) of the Convention, COP-agreed amendments to add new chemicals become binding upon all Parties, subject to the opportunity to "opt out" of such obligations within one year. However, there exists another safeguard under Article 25(4), which was proposed by the U.S., allowing a Party to declare when ratifying the Convention that it will be bound by new chemical amendments only if it affirmatively "opts in" via a separate, subsequent ratification process. The State Department has indicated that the U.S. will take advantage of the "opt in" provision, enabling the Senate to give its advice and consent to the addition of each new POP in the future.

Including these and other safeguards in the POPs treaty was a major objective of U.S. negotiators, and one which I believe was fully achieved. At the end of the long, hard concluding week of negotiations in Johannesburg in December 2000, I can say that the U.S. negotiators felt extremely pleased with the balance of the treaty, and were fully satisfied with the particular provisions for the addition of new chemicals. In my view, the Administration's reluctance to include authority to regulate new POPs—the so-called 13th POP, and beyond—cannot be justified by any need to add to an already elaborate system of protections. It is also my view that the absence of such provisions jeopardizes U.S. participation in the Convention, and will injure the credibility of the United States in this context.

We recognize that broad options exist for regulating additional POPs under U.S. law. Two major options can be considered for amending TSCA and FIFRA to deal with future POPs under the Convention. The first option would amend these statutes to allow for automatic regulation of new POPs once the United States "opts in" to the corresponding treaty amendments. This option is preferred by environmental and public health NGOs, given the other existing safeguards described above. The second option, according to Administration officials, would provide that a "rebuttable presumption" be given to the COP's decision on a new POP, while preserving the right to make a persuasive case that modified controls are necessary.

From the point of view of an environmental organization, in view of the safeguards built into the treaty mechanism itself, it would make sense to make regula-

tion of newly-listed POPs automatic, triggered by the government's decision to "opt in" to the listing under Article 25(4). While the rebuttable-presumption language contained in S. 2118 offers the additional reassurance of a domestic process of notice and comment, which may be attractive for some interests, we would note that FIFRA's special review and cancellation process, if challenged, generally takes at least five years and often more than 10. This is clearly far too long a period to revisit, via the procedures set forth in domestic regulations that govern the cancellation process, a scientific conclusion and policy decision already taken by the government in its role as a party to the Convention.

One solution to this dilemma might be to amend the cancellation process so that when a pesticide is listed as a POP, or in the judgment of EPA deserves to be listed as a POP, the EPA's evidentiary burden would be restricted to proving that the basic POPs listing criteria apply—thereby precluding a full FIFRA cost-benefit analysis. Administrative review would be limited to the data and scientific judgments supporting EPA's conclusion that the POPs criteria apply to a given pesticide.

In addition, it is important that the legislation ensure the elimination of any POPs pesticide—whether registered for a formulated end-use product or a technical material—to enable U.S. compliance with obligations under the POPs treaty. In other words, each of a pesticide's registrations—the one covering "technical material," i.e., the pure active ingredient, and the second for "end-use products" formulated with the addition of inert ingredients (surfactants, emulsifiers, carriers, etc.)—should count as "existing registrations" even if the pesticide is not being actively marketed or used in the United States.

In step with the cancellation action (but lagged by about two years to allow channels of trade to clear), whenever a pesticide is listed as a POP, EPA should be directed to phase out all tolerances covering food uses of the pesticide. Likewise, listing as a POP should be enough to trigger EPA revocation of any "import tolerances" or exemptions. Revocation of a tolerance is the only tool the EPA has to alter how high-risk pesticides are used outside U.S. borders—and to protect human health inside the United States. Tolerances set in the United States can serve as de facto global standards because so many countries depend on access to the U.S market and because changes in U.S. tolerance levels often trigger changes in the international Maximum Residue Limits set by Codex.

WWF is undertaking a thorough assessment of these issues as presented in S. 2118, with the intent of assisting the Committee in assuring that any changes to FIFRA and TSCA effectively and efficiently carry out the aims of the POPs treaty. We would be happy to share that analysis upon completion.

Research Program to Support POPs Convention

WWF is pleased to see that S. 2118 calls for a program of scientific research to assist the U.S. Government in meeting its obligations under the POPs treaty. The bill directs the National Academy of Sciences to review scientific models and testing methods for screening candidate POPs; to propose alternative designs for a global monitoring program on persistent and bioaccumulative substances; and to recommend priority POPs chemical substances or mixtures for possible nomination to the POPRC.

WWF strongly supports these provisions, which are described in Section 107 of the bill. While not essential to the legislation amending TSCA and FIFRA, the research provisions are a valuable complement to POPs treaty implementation. They will help ensure that proposals for subsequent additions to the treaty target the worst offenders and are supported by sound testing methods, risk assessment models, and environmental monitoring techniques. Carrying out this program of rigorous scientific research on POPs places the United States in a strong position not only to nominate the most appropriate candidates for future POPs but also to question any proposed listings that are based on misguided information or inaccurate data.

The Chairman's bill also very appropriately calls upon the Administrator of EPA to submit no later than 90 days after enactment of S. 2118 the agency's final exposure and human health reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and related compounds, which are among the most dangerous POPs. In this regard, less than two weeks ago the U.S. General Accounting Office released a report, "Environmental Health Risks: Information on EPA's Draft Assessment of Dioxins." In its transmittal letter, the GAO notes that, according to EPA officials, the assessment will conclude that (p. 1)

> dioxins may adversely affect human health at lower exposure levels than previously thought and that most exposure to dioxins occurs from eating such dietary staples as meats, fish, and dairy products, which contain minute traces of dioxin. These foods contain dioxins because animals eat

plants and commercial feed, and drink water contaminated with dioxins, which then accumulate in animals' fatty tissue.

The GAO report is significant in that it endorses the work undertaken thus far by EPA and provides a solid basis for the long-awaited reassessment to be expeditiously completed and released. Release of the dioxin reassessment will contribute important information relevant to actions that may be required to address dioxins and other unwanted byproducts under the POPs treaty, measures that would benefit citizens in the United States and other countries.

LRTAP POPs Protocol

WWF also supports the inclusion of implementing legislation for the Economic Commission for Europe's Long-Range Transboundary Air Pollution (LRTAP) POPs Protocol. An outgrowth of scientific findings linking sulfur emissions in continental Europe to acid deposition in Scandinavian lakes, LRTAP was the first legally-binding agreement to address air pollution problems on a broad regional basis. Parties to LRTAP include the United States, Canada, and Western and Eastern European countries including Russia.

The LRTAP POPs Protocol—the first legally-binding multi-lateral instrument on POPs—was added in 1998. It targets 16 substances including the 12 POPs chemicals plus chlordecone, hexabromobiphenyl, and hexachlorocyclohexane (including lindane). It also includes obligations to reduce emissions of polycyclic aromatic hydrocarbons (PAHs) which—as with other byproduct chemicals—do not require changes to TSCA or FIFRA. Although the LRTAP POPs Protocol includes more chemicals than the POPs treaty, it is not a replacement. LRTAP deals with transmission of POPs through only a single medium (air); confines its reach to northern, largely European countries; and does not address many of the issues involving developing countries.

To date, eight countries have ratified the LRTAP POPs Protocol out of 15 needed for entry-into-force. WWF would welcome U.S. participation in these regional efforts. Given POPs' global reach, however, a realistic and comprehensive solution needs to include developing countries as well. The United States and other donor countries must assist the developing world in coming to grips with the POPs problem—and the global POPs treaty is the ideal vehicle through which to do this.

Rotterdam Convention on Prior Informed Consent

We are pleased to see that the Administration has bundled the Rotterdam PIC Convention in its implementing legislation alongside the POPs treaty and the LRTAP POPs Protocol. The PIC treaty alerts governments as to what chemicals are banned or severely restricted, by which governments, and for what reasons. The cornerstone of the treaty is prior informed consent, a procedure that enables Parties to review basic health and environmental data on specified chemicals and to permit or refuse any incoming shipments of those chemicals. Each Party's decisions are disseminated widely, allowing those countries with less advanced regulatory systems to benefit from the assessments of those with more sophisticated facilities. Instituting PIC is a critical first step in the process of improving chemical management capacity.

The PIC treaty includes provisions for:

- alerting countries when there is an impending import of a chemical which has been banned or severely restricted in the exporting country;
- labeling hazards to human health or the environment; and
- exchanging information about toxicological findings and domestic regulatory action.

Ultimately the Rotterdam Convention will replace the voluntary PIC procedure, which has been operated by UNEP and FAO since 1989. Governments have elected to follow the new PIC procedures during this interim period before the Convention enters into force.

The PIC treaty makes an important contribution to global chemicals management by drawing attention to those substances causing the greatest harm, disseminating that information, and facilitating national decision-making on chemical imports. To date, the Convention has 20 Parties out of 50 required for entry into force. As with the POPs treaty, WWF would like to see the United States ratify PIC prior to the Johannesburg Summit, and we therefore support the Bush Administration's decision to bundle PIC for the purpose of Senate "advice and consent" and implementing legislation.

Many of the POPs-, LRTAP-, and PIC-related legislative provisions are inter-related. WWF would be happy to work with E&PW staff to help ensure that the im-

plementing legislation facilitates rather than hinders the efficient working of these laws.

In closing, we wish to applaud Chairman Jeffords and Committee staff for the hard work and initiative that went into introducing this legislation. Full implementation of these agreements is essential to protecting the American people from the threat of POPs and other toxic substances.

Thank you for the opportunity to testify today. I would be happy to answer any questions.

PREPARED STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM VERMONT

The dramatic growth in chemicals production and trade over the past several decades has raised awareness about the potential risks posed by hazardous chemicals and pesticides to human health and the environment. While many countries have developed extensive regulatory controls, since chemicals circulate globally through trade or naturally via air, water, and animals, it is evident that international action is required. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention) and the Stockholm Convention on Persistent Organic Pollutants (POPs Convention) provide the international framework for the environmentally sound management of hazardous chemicals.

The PIC Convention requires exporters trading in a list of hazardous substances to obtain the prior informed consent of importers before proceeding with the trade. The Convention provides importing countries with information to identify potential hazards and exclude chemicals they cannot manage safely. If a country agrees to import chemicals, the Convention promotes their safe use through labeling standards, technical assistance, and other forms of support. It also ensures that exporters comply with the requirements.

Persistent Organic Pollutants, or POPs, are pesticides and industrial chemicals that resist degradation in the environment, bioaccumulate in human and animal tissue, can travel long distances from their sites of use and release, and are toxic to humans and wildlife. Specific health effects resulting from exposure to POPs can include cancer, allergies and hypersensitivity, damage to the nervous systems, reproductive disorders, and disruption of the immune system.

The POPs Convention built on the accomplishments of the PIC Convention by targeting the phaseout of 12 of the most hazardous pesticides and industrial chemicals, including DDT and PCBs, and providing a process for the nomination, science-based assessment, and addition of other POPs to the treaty. For intentionally produced POPs, that is, pesticides and industrial chemicals, production and use will either be eliminated or restricted and, in each case, trade will be restricted. Releases of unintentionally produced POPs will continue to be minimized and, where feasible, eliminated. Stockpiles must be disposed of in an environmentally sound manner.

During negotiations on these treaties, the U.S. sought input from both industry and public interest organizations, and these groups as well as the Administration and Members of Congress have supported ratification. The POPs Convention was endorsed in April 2001 by President Bush, Secretary of State Colin Powell, and EPA Administrator Christine Todd Whitman in a Rose Garden ceremony, and was signed by the U.S. in May 2001.

I enthusiastically support the PIC and POPs Conventions and have been working for over a year on implementing legislation so that the U.S. will be in a position to ratify these treaties. On April 11, 2002, I introduced the POPs Implementation Act of 2002 (S. 2118). The bill sought to amend the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to enable the ratification of the POPs Convention and the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants (LRTAP POPs Protocol), a regional agreement targeting 16 POPs, including the 12 covered by the POPs Convention. The same day the Administration submitted implementing legislation to ratify and implement these treaties as well as the PIC Convention.

While the two bills were similar, the Administration's package failed to include a mechanism for the addition of new POPs chemicals. As a result, FIFRA and TSCA which had never been amended since its enactment in 1976, would have to be amended each time a chemical was added to the treaty. Such a process would be extremely cumbersome. This is not sound legislative policy as this approach invites politicizing of decisions that are important to the health of communities all around

the world. In addition, this would not fulfill all our commitments to the POPs Convention.

Since last spring the Environment and Public Works Committee has been working on a bipartisan basis on compromise legislation with respect to TSCA, including on a science-based process consistent with the POPs Convention for listing additional chemicals exhibiting POPs characteristics. A similar process is underway in the Senate Agriculture, Nutrition and Forestry Committee, which has jurisdiction over FIFRA, and a similar adding mechanism is anticipated.

The U.S. is currently in compliance with most aspects of this treaty. While one important amendment must provide EPA with the authority, which it currently does not have, to prohibit the manufacture for export of the twelve POPs and POPs that are identified in the future, the registrations for nine of the twelve POPs covered by the Convention have been canceled, the manufacture of PCBs has been banned, and stringent controls have been placed on the release of other covered chemicals.

The impetus for a global POPs treaty came from developed countries. Many developing countries have undertaken substantial commitments with respect to the phaseout of the initial 12 POPs and finding affordable substitutes. The U.S., which must do so little to comply with the treaty's current obligations, should at a minimum be prepared to implement the treaty in its entirety—by having in place a mechanism to address additional chemicals so that they can be eliminated in a timely manner once international consensus has been reached on their deleterious effects to human health and the environment.

The Convention also contains two safeguards that offer flexibility in determining whether and how to take domestic action against future POPs. Under Article 22(3), agreed additions become binding on all parties, subject to the option to "opt out" of such obligations within one year. Another provision under Article 25(4), which was proposed by the U.S. during negotiations, permits a party to declare when ratifying the Convention that it will be bound by new chemical amendments only if it affirmatively "opts in" via a separate, subsequent ratification process. The State Department has indicated that the U.S. will avail itself of the "opt in" provision, enabling the Senate to give its advice and consent to the addition of each new POP.

I encourage the Senate Foreign Relations Committee to stipulate in its resolution of ratification that the U.S. shall not deposit the instruments of ratification for these treaties until the President signs into law a bill that implements the treaties, and that shall include clarifications to U.S. law regarding the listing of additional POPs chemicals. This would permit the committees with jurisdiction over the applicable domestic laws to complete their work and would enable the U.S. to fully implement its treaty obligations with respect to the addition of new chemicals as outlined in Articles 8 and 22 and Annexes D, E, and F of the treaty. There is precedent for such conditions for ratification, notably the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty (Treaty Doc. 105-17) and the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Treaty Doc. 105-51).

I look forward to continuing to work with my colleagues, the Administration, and other stakeholders to ratify these treaties and to pass environmentally responsible implementing legislation that addresses all treaty obligations. Ratification based on incomplete legislative authority would further weaken U.S. credibility with respect to the environment and increase resentment among the international community over perceived U.S. unilateralism. Such ratification would also be unnecessary and unfortunate, given the widespread support for these treaties, a rarity in international environmental policymaking. The U.S. must resume its leadership role on global environmental problems by serving as a model for other countries. We cannot expect other countries to take on new commitments if we are unwilling to implement our most basic obligations.

PREPARED STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

I am pleased that the Chairman has taken up consideration of these important treaties, in particular the Stockholm Convention on Persistent Organic Pollutants (POPs Convention). The POPs Convention addresses a specific group of chemicals, such as DDT, that share four characteristics of concern: they are toxic; extremely persistent in the environment; bioaccumulate in the food chain; and are able to travel long distances. POPs have been linked to adverse health impacts on humans and other living beings, including cancer and reproductive disorders, and disruption of

the immune system. Although the U.S. has already banned many of these chemicals, their continued use by other countries has impacted the United States. POPs are truly a global problem that require a global solution.

The POPs Convention provides a balanced, realistic approach to reducing the threats from these chemicals and has garnered broad support from many different stakeholders. I understand that the Convention has the support not only of the U.S. chemical industry, but also of U.S. environmental groups.

One of the most important aspects of the Convention is that it creates a mechanism to add new chemicals that share these same four characteristics. The adding mechanism ensures that the treaty will have relevance beyond the initial twelve chemicals that are named in the agreement. The mechanism is science-based, with multiple criteria that must be met before a chemical can be considered for addition to the Convention.

While I believe the Senate should support this important instrument in giving its advice and consent, I am concerned that the Administration's proposed implementing legislation fails to adequately address this most important aspect of the Convention. Without comprehensive legislation, the U.S. will not be able to implement the entire agreement, and will risk putting itself, its citizens, and its industry on unequal footing with the rest of the world. Therefore, the Senate should ensure that when the U.S. deposits its instrument of ratification, that it does so with legislation necessary to fully implement the provisions regarding the addition of substances.

I look forward to working with my colleagues on the Senate Foreign Relations Committee, on the Environment and Public Works Committee, and on the Agriculture Committee to achieve this goal.

PREPARED STATEMENT OF JUANITA M. MADOLE, COUNSEL, LAW FIRM OF SPEISER KRAUSE

Mr. Chairman and Members of the Committee:

My name is Juanita M. Madole and I am of counsel to the law firm of Speiser Krause, with which I have practiced for the past 27 years, primarily representing families of people who are killed or people who are injured in airplane accidents. Prior to moving into the private practice of law, I was a trial attorney with the Aviation Litigation Unit, Civil Division, United States Department of Justice.

I am currently serving as Liaison Counsel in the litigation arising from the crash of Singapore Airline's 747 at Taipei, Taiwan on October 31, 2000. I am also a member of the Steering Committees designated to handle the litigation arising from the crash of Korean Air Lines B-747 at Agana, Guam in August 1997, pending in the Central District of California, and the January 31, 2000 Alaska Airlines 261 disaster, pending in the Northern District of California. I previously served as a member of the Plaintiffs' Steering Committee representing the passengers on board United Flight 811, which experienced a cargo door failure out of Honolulu on February 24, 1989 (MDL 807), and was Liaison Counsel on the Steering Committee representing the passengers on Korean Air Lines Flight 007 (MDL 565), which was shot down over the Soviet Union in September, 1983. Both United 811 and Korean Air 007 involved issues of willful misconduct against the airlines. I also represented numerous claimants in the United 232 disaster, the DC-10 that crashed at Sioux City, Iowa on July 19, 1989 (MDL 817). I have acted as counsel to Plaintiffs' Steering Committees in the following multidistrict litigation: the Northwest MD8O crash at Detroit, Michigan, 1987 (MDL 742); Continental DC-9 accident at Denver, Colorado 1987 (MDL 751); Arrow Air crash at Gander Newfoundland, 1985; Air Canada DC-9 fire, 1983 (MDL 569); Air Florida B-737 crash at Washington, D.C., 1982 (MDL 499); Saudia Airlines L1011 crash at Riyadh, Saudi Arabia, 1980 (MDL 458); American Airlines DC-10 crash at Chicago, Illinois litigation, 1979 (MDL 391); Southern Airways DC-9 crash, New Hope, Georgia litigation, 1977 (MDL 320); Turkish Airlines DC-10 crash at Paris, France, 1974 (MDL 164); and the Alaska Airlines B-727 crash at Juneau, Alaska, 1971 (MDL 107).

I have prepared numerous legal briefs for the United States Supreme Court, and was chosen to present oral argument in a case before the Supreme Court in April 1998. I have also appeared before most of the United States Circuit Courts of Appeal.

I am the past Chairman of the Aviation and Space Law Committee of the Tort and Insurance Practice Section, American Bar Association, as well as one of the five-member Advisory Board to the prestigious SMU Journal of Air Law and Commerce. I am also on the Editorial Advisory Board to the Aviation Litigation Re-

porter, and am an active member of the D.C. Bar Association, Federal Bar Association, Texas Bar Association, Colorado Bar Association, California Bar Association, American Trial Lawyer's Association, and the Lawyer Pilot Bar Association.

I am the author or co-author of *Recovery for Wrongful Death* (Third Edition) (Clark Boardman Callahan, 1992); *Negligence Litigation Handbook: State and Federal* (John Wiley & Sons, 1986); "Wrongful Death Damages", *Trial Magazine,* September, 1989; "Litigating the General Aviation Case", *Trial Magazine,* February, 1989; and am the Editor of *Litigating the Aviation Case* and *The Government Contractor Defense: A Fair Defense or the Contractors' Shield.*

In 1992, I was a member of a Presidential Delegation to Moscow, which met with the Russian government to obtain previously unreleased documents relating to the 1983 shootdown of KAL Flight 7; the only lawyer included in the Delegation.

In the course of my practice I have frequently become involved with litigation to which the Warsaw Convention in its original form applied. The restrictions and constraints imposed by the original Warsaw Convention have been burdensome and unfair to many American passengers on both domestic and international flights. Because application of the Warsaw Convention is dependent upon the itinerary purchased by the passenger, passengers involved in domestic flights may be covered by the Warsaw Convention as well as those who are clearly on international legs if they bought their ticket overseas, even if the crash involves one leg of their journey on an American air carrier.

When the United States adhered to the original Warsaw Convention in 1934, it did so because the airline industry was in its infancy and there was felt the need to provide some protections so it could develop in to a major economic resource. While that may have been a laudable goal almost 70 years ago, it was not well considered as it was related to American jurisdiction. The Warsaw Convention was drafted by civil code countries rather that ones imbued with common law concepts, as is The United States. Thus its interpretation in American courts has been problematic. The United States did not send a delegate to the conference discussing the terms of the Treaty, only an observer, and this oversight resulted in the absence of consideration of common law jurisdictions' needs. Unfortunately this has meant that its provisions have been amongst the most litigated of any treaty, usually to the detriment of the innocent passengers.

Much has changed since 1934. The airline industry has long ago left its infancy. This Committee has the opportunity to examine the Montreal Convention in the light of modern development. This Committee can and has solicited the views of a wide variety of interested individuals and entities, unlike the Foreign Relations Committee of 70 years ago, which only heard testimony from the Secretary of State. This Committee should pay heed to all those, including me, who support ratification of the Montreal Convention which, like the airline industry, has evolved over the past decades to a mature and well considered vehicle for compensation.

During the years of the regime of the original Warsaw Convention, we, as litigators in behalf of the passengers, had to prove willful misconduct in order to break the maximum limit of $75,000 imposed by the Warsaw Convention and the special contract known as the Montreal Agreement. Because of the burdensome nature of having to prove willful misconduct, many of the passengers were unable to receive full compensation and were limited to the maximum limit of $75,000. This, of course, was wholly inequitable be those passengers, both because of the arbitrary monetary cap and also because we often had to incur considerable expenses in order to try to establish willful misconduct to try to provide full compensation for the passengers.

Not only was there the arbitrary monetary limit, but also some American passengers were unable to sue in the United States, their home country, because of the venue provisions for Article 28 of the Warsaw Convention. There are thousands of Americans who work overseas, in embassies, for American companies doing business overseas, for charitable organizations, as part of the United Nations efforts, and for many other reasons. If any of the thousands of Americans who worked overseas were on international flights for which they purchased their tickets overseas and were killed or injured on a non-American carrier, they were unable to bring suit in the United States, even if the carrier did considerable business here. This is true even if all of the passengers' beneficiaries and heirs lived in the United States.

The Montreal Convention, which is before this august body for ratification, would remedy the inequities to Americans contained in the original Warsaw Convention. It would provide a guaranteed recovery of 100,000 SDRs and would provide for full compensation unless the airline could prove that it had taken all necessary measures to avoid the accident. It would also provide jurisdiction in the United States for all Americans where the airline involved did business in the United States.

Importantly, it would positively address the needs of the truby innocent injured: the widowed spouses, children, and parents of persons killed or passengers injured in accidents through no fault of their own. It will provide compensation in a timelier manner with lower cost and less attorneys' fees. And it would do so in a just manner to all involved.

The Montreal Convention is a winning vehicle all around. It is beneficial to the passengers, who of course are my main concern, but it is also beneficial to the airlines and to the insurers. The airlines and their insurers would know what their exposure is and would benefit from decreased legal fees because they would not have to pay defense lawyers to defend against protracted and expensive litigation on willful misconduct. The Montreal Convention also permits the airline to maintain any claims over against other third party wrongdoers or products liability claims.

I herewith strongly urge the Senate Foreign Relations Committee to ratify the Montreal Convention as expeditiously as possible so that it can become the law of the land governing recoveries in international air transportation.

I would be delighted and honored to testify personally before this Committee should anyone wish to have further explanation of my position.

STATEMENT OF PHYSICIANS FOR SOCIAL RESPONSIBILITY, KAREN L. PERRY, DEPUTY DIRECTOR, ENVIRONMENT AND HEALTH PROGRAM

PHYSICIANS FOR SOCIAL RESPONSIBILITY • OCEANA • U.S. PUBLIC INTEREST RESEARCH GROUP • CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW • NATIONAL ENVIRONMENTAL TRUST • FRIENDS OF THE EARTH • ENVIRONMENTAL DEFENSE • SIERRA CLUB • NATURAL RESOURCES DEFENSE COUNCIL • THE OCEAN CONSERVANCY • NATIONAL WILDLIFE FEDERATION • CREENPEACE • CHILDREN'S ENVIRONMENTAL HEALTH NETWORK • PESTICIDE ACTION NETWORK NORTH AMERICA • CIRCUMPOLAR CONSERVATION UNION • CENTER FOR ENVIRONMENTAL HEALTH • CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE • ENVIRONMENTAL HEALTH FUND • SCIENCE AND ENVIRONMENTAL HEALTH NETWORK • ALASKA COMMUNITY ACTION ON TOXICS • CITIZENS' ENVIRONMENTAL COALITION • MONTANA ENVIRONMENTAL INFORMATION CENTER • WASHINGTON TOXICS COALITION • OREGON TOXICS ALLIANCE • ARIZONA TOXICS INFORMATION • ENVIRONMENTAL RESEARCH FOUNDATION • WOMEN'S VOICES FOR THE EARTH • MONTANA-CHEER • DEPARTMENT OF THE PLANET EARTH • RESOURCES FOR SUSTAINABLE COMMUNITIES • INSTITUTE FOR CHILDREN'S ENVIRONMENTAL HEALTH • BASEL ACTION NETWORK • ASIA PACIFIC ENVIRONMENTAL EXCHANGE • ECOLOGY CENTER

June 20, 2003.

The Honorable RICHARD G. LUGAR
United States Senate
Washington, DC.

The Honorable JOSEPH R. BIDEN, JR.
United States Senate
Washington, DC.

DEAR SENATORS LUGAR AND BIDEN,

Our organizations write in response to your Committee's hearing this week on the Stockholm Convention on Persistent Organic Pollutants (POPs). As organizations committed to protecting the environment and public health from toxic substances, we staunchly support the aims of this important environmental treaty, and have advocated domestically and abroad for its swift ratification and entry into force. *At the same time, we believe that ratification by the United States must be coupled with the passage of full and effective implementing legislation, and we ask that your Committee include provisions in the resolution of ratification that will condition the Senate's advice and consent upon completion of such legislation.*

THE ADDITION OF POPS IS CENTRAL TO THE TREATY

As you know, the Stockholm Convention seeks to eliminate a group of dangerous chemicals that harm human health and the environment globally. Assistant Secretary of State Turner, in his oral statement before your Committee, said the treaty aims to protect human health and the environment from 12 chemicals often referred to as the "dirty dozen." This is true, but it is only the beginning.

The Stockholm Convention is a dynamic, forward-looking agreement In addition to phasing out and eliminating the initial 12 POPs, it includes a science-based process to identify, assess, and control other dangerous POPs that warrant global concern. The United States has already banned most of the dirty dozen. Addressing the small group of additional POPs in the future will thus be among the United States key Stockholm obligations.

POPs pose a hazard because of their toxicity to animals and people, their persistence in the environment and in the fatty tissues of living organisms, their ability to travel long distances on air and water currents, and their propensity to bioaccumulate in food chains. The 12 chemicals named in the treaty *and other POPs not yet listed* have become common contaminants of fish, dairy products, and other foods in the United States and around the world. Many Americans may now carry enough POPs in their bodies to cause serious health effects, including reproductive and developmental problems, cancer, and disruption of the immune system. Children in the most heavily contaminated areas, including Alaska and the Great Lakes region, are at particular risk.

IMPLEMENTING LEGISLATION MUST INCLUDE AN EFFECTIVE "ADDING MECHANISM"

In a Rose Garden ceremony in 2001, President Bush announced his support for the Stockholm Convention, noting that it "shows the possibilities for cooperation among all parties to our environmental debates." The Administration's official treaty transmittal to the Senate in 2002, however, was unclear as to whether it would seek domestic legislative changes related to additional POPs, and a bill subsequently proposed by the White House failed even to recognize this crucial element of the treaty. This omission raises significant concerns for our organizations. In our view, *a timely and effective mechanism that enables the United States to regulate POPs chemicals as they are added to the Convention is the most important component of the Stockholm Convention implementing legislation.*

Over the past year, public interest groups and the chemical industry have worked closely with a bipartisan group of Senators in the Environment and Public Works Committee (EPW), including Senators Jeffords and Chafee, to craft legislation that includes the so-called POPs "adding mechanism." While the Bush Administration has by now acknowledged the necessity of the adding mechanism and has participated in some of these discussions, recent OMB proposals would create an adding mechanism so cumbersome and regressive that it would be extremely difficult if not impossible for EPA to take action when POPs are added to the treaty.

A number of our organizations are continuing to work with EPW to achieve a legislative solution. After EPW develops an adding mechanism to govern industrial chemicals under the Toxic Substances Control Act (TSCA), that mechanism must be adapted to address the complexities of pesticide regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The mechanism must enable EPA to respond swiftly when new POPs are identified and added to the Convention, and to take prompt, health-protective action to address these chemicals domestically. We appreciate the hard work and perseverance of Senators Chafee and Jeffords in striving to address these issues. We remain hopeful that their legislation will include a robust, protective process to authorize the United States to regulate additional POPs effectively and efficiently.

ADVICE AND CONSENT SHOULD BE CONDITIONED ON COMPLETE IMPLEMENTING AUTHORITY

The Senate has an obligation to ensure that the Stockholm Convention can be fully implemented in the United States. To achieve such an outcome, the Senate will need to hold the Administration firmly to its commitment to an effective adding mechanism.

It is not uncommon for the, Senate to condition its advice and consent to an international agreement on the completion of appropriate legislative authority, including specific implementation issues. For example, in its resolution of ratification for the World Intellectual Property Organization Copyright Treaty and the World Intellectual Property Organization Performances and Phonograms Treaty, the Senate placed the following condition on ratification:

> The United States shall not deposit the instruments of ratification for these Treaties until such time as the President signs into law a bill that implements the Treaties, and that shall include clarifications to United States law regarding infringement liability for on-line service providers, such as contained in H.R. 2281.

A similar condition would be appropriate for the Stockholm Convention, specifying the need for implementing legislation that includes an effective adding mechanism:

> The United States shall not deposit the instrument of ratification for this Convention until such time as the President signs into law a bill that implements the Convention, and that shall include changes to United States law that fully implement and give substantial weight to its Article 8 provisions for adding new persistent organic pollutants.

The Stockholm Convention offers a rare example of consensus in the current international environmental policy arena. However, unless the Foreign Relations Committee and the full Senate insist upon domestic legislation that includes a timely and effective mechanism to enable the United States to regulate POPs chemicals as they are added to the Convention, the treaty will not provide the level of public health protections it was designed for, and the United States may be seen as skirting its most important Stockholm commitment. If this occurs, widespread environmental and public health support for the treaty will not be assured.

Please do not hesitate to contact us if we can be of assistance in this important endeavor. Contact Karen Perry at Physicians for Social Responsibility, 202-667-4260 x249 or kperry@psr.org.

Sincerely,

Karen L. Perry, Deputy Director
Environnent and Health Program
Physicians for Social Resonsibility

Julie Wolk
Environmental Health Advocate
U.S. Public Interest Research Group

Kevin S. Curtis
Vice President
National Environmental Trust

Elizabeth Thompson
Legislative Director
Environmental Defense

Jacob Scherr
Director, International Programs
Natural Resources Defense Council

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Wendy Steffensen
North Sound Baykeeper
RE Sources for SustainabIe Communities

Jim Puckett
Coordinator
Easel Action Network

Tracey Easthope, MPH
Director, Environmental Health Project
Ecology Center

ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

RESPONSES OF HON. JEFFREY N. SHANE, UNDER SECRETARY FOR POLICY, DEPARTMENT OF TRANSPORTATION AND JOHN R. BYERLY, DEPUTY ASSISTANT SECRETARY OF STATE FOR TRANSPORTATION AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G. LUGAR

THE MONTREAL CONVENTION AND THE HAGUE PROTOCOL

Question 1. There is a great deal of practice and judicial precedent interpreting the Warsaw Convention and the various protocols to it. While the Montreal Convention is designed to replace these prior agreements, is it intended that this body of practice and judicial precedent will remain applicable to similar interpretive questions that may arise under the Montreal Convention?

Answer. While the Montreal Convention provides essential improvements upon the Warsaw Convention and its related protocols, efforts were made in the negotiation and drafting to retain existing language and substance of other provisions to preserve judicial precedent relating to other aspects of the Warsaw Convention, in order to avoid unnecessary litigation over issues already decided by the courts under the Warsaw Convention and its related protocols.

To this end, the Reference Text, which constituted the basic text utilized by the Diplomatic Conference, set forth for each article references to the articles of the earlier instrument from which the article was derived, with red-lined additions or deletions showing the changes to the earlier articles adopted by the Legal Committee and the Special Group in preparing the draft text submitted to the Diplomatic Conference. The language of the prior convention and protocols was tracked specifically for the purpose of preserving, to the greatest extent possible, the validity of judicial precedents that apply to the provisions of the previous convention and protocols.

This intention was also confirmed by the Rapporteur, who acknowledged that the new Convention "would modernize the liability regime, while incorporating as far as possible the existing instruments of the 'Warsaw System.'" Report of the 30th Session of the Legal Committee at ¶4:5, ICAO Doc. 9693-LC/190 (May 9, 1997), *reprinted in* ICAO Doc. 9775-DC/2, International Conference on Air Law, Vol. III (Preparatory Materials), 151, 159. The Chairman of the Legal Committee underscored this approach in his comments to the Drafting Group. (The Chairman of the Legal Committee "reminded the Drafting Group of the working method that had been used for the Legal Committee which was not to change the wording of provisions of existing instruments, particularly the Warsaw Convention, unless there was a need to do so for purposes of modernization and consolidation." Id. at ¶4:83.) *See*

also Report of the 30th Session of the Legal Committee at ¶4:231 (the Chairman of the Drafting Group reporting to the Legal Committee that "it had been the understanding of the Drafting Group that, where appropriate, the Secretariat would provide linguistic embellishments to the text, without touching its substance")

Question 2. In submitting this convention to the Senate, the prior Administration recommended that the United States should make a declaration pursuant to Article 57(a) of the convention that the convention shall not apply to the operations of State aircraft. Does the current administration also recommend this declaration? If so, please explain the effect of the declaration and the reason for recommending it.

Answer. Yes, we recommend that the Senate give its advice and consent to ratification of the Montreal Convention subject to the condition that a declaration be made on behalf of the United States that the Convention shall not apply to international carriage by air performed and operated directly by the United States for non-commercial purposes in respect to its functions and duties as a sovereign State.

This declaration would be consistent with the declaration made by the United States under the Warsaw Convention and is specifically permitted by Article 57(a) of the Montreal Convention. We recommend making this declaration in order to continue the existing law in the United States, under which U.S. Government liability relative to transportation provided on aircraft owned and operated by the U.S. Government, including by the U.S. military, is determined under U.S. law, with no application of the Warsaw Convention or its protocols.

RESPONSES OF HON. JEFFREY N. SHANE, UNDER SECRETARY FOR POLICY, DEPARTMENT OF TRANSPORTATION AND JOHN R. BYERLY, DEPUTY ASSISTANT SECRETARY OF STATE FOR TRANSPORTATION AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R BIDEN, JR.

THE MONTREAL CONVENTION AND THE HAGUE PROTOCOL

Question 1. Are there any related exchange of notes, official communications, or statements of the U.S. negotiating delegation not submitted to the Senate with regard to the Convention which would provide additional clarification of the meaning of terms of the Convention?

Answer. The Administration has supplied the Senate Foreign Relations Committee staff with the Record of Proceedings of the 1999 Montreal Diplomatic Conference at which the 1999 Montreal Convention was adopted. That Record consisted of three Volumes: I Minutes; II Documents; and III Preparatory Materials. All U.S. communications which might clarify the meaning of terms of the Convention are contained in those proceedings.

We note that the United States Delegation submitted a paper to the Diplomatic Conference (DCW Doc. No. 51, May 5, 1999), proposing a clarification of what is now Article 41 of the Montreal Convention that a carrier that participates in a code share with the actual carrier, but is not the marketing carrier with respect to a particular passenger, is not liable for claims brought by or on behalf of that passenger. Furthermore, the paper proposed clarifying that Article 41 would not apply to successive carriage within the meaning of what is now Article 36. The proposal was withdrawn when there was a general consensus that this clearly would be the case, and that no clarification was needed.

Question 2. The transmittal letter from the President to the Senate, and the letter from Secretary of State to the President, both discuss the recommendation that the Senate enter a reservation related to international carriage by air performed and operated directly by the United States for non-commercial purposes. Does the State Department recommend any particular language that the Committee should adopt?

Answer. We recommend that the Senate give its advice and consent to ratification of the Montreal Convention subject to the condition that a declaration be made on behalf of the United States pursuant to Article 57(a) that: "This Convention shall not apply to international carriage by air performed and operated directly by the United States for non-commercial purposes in respect to the functions and duties of the United States as a sovereign State."

Question 3. In the article-by-article analysis, it is stated that "[m]uch of the Convention derives from provisions in the Warsaw Convention and its related instruments negotiated over the span of several decades" (T.Doc. 106-45, at 1)

With regard to articles drawn from a prior provision in the Warsaw Convention, as amended by the Hague Protocol and Montreal Protocol No. 4, and such

article is not materially different in the Montreal Convention, did the signatories intend that the meaning of the provision of the Warsaw Convention, as amended by the Hague Protocol and Montreal Protocol No. 4 (and the applicable decisional law) should continue without change?

The only authentic language of the Warsaw Convention is French. There are several authentic languages in the Montreal Convention. Are you aware of any provisions in the original Warsaw Convention which are contained in the Montreal Convention which have a materially different meaning in English?

Answer. It is clear from the negotiating record that the drafters of the Montreal Convention, while providing essential improvements upon the Warsaw Convention and its related protocols, made efforts in the negotiation and drafting of the Convention to retain existing language and substance of other provisions to preserve judicial precedent relating to other aspects of the Warsaw Convention, in order to avoid unnecessary litigation over issues already decided by the courts under the Warsaw Convention and its related protocols.

To this end, the Reference Text, which constituted the basic text utilized by the Diplomatic Conference, set forth for each article references to the articles of the earlier instrument from which the article was derived, with red-lined additions or deletions showing the changes to the earlier articles adopted by the Legal Committee and the Special Group in preparing the draft text submitted to the Diplomatic Conference. The language of the prior convention and protocols was tracked specifically for the purpose of preserving, to the greatest extent possible, the validity of judicial precedents that apply to the provisions of the previous convention and protocols.

This intention was also confirmed by the Rapporteur, who acknowledged that the new Convention "would modernize the liability regime, while incorporating as far as possible the existing instruments of the 'Warsaw System.'" Report of the 30th Session of the Legal Committee at ¶4:5, ICAO Doc. 9693-LC/190 (May 9, 1997), *reprinted in* ICAO Doc. 9775-DC/2, International Conference on Air Law, Vol. III (Preparatory Materials), 151, 159. The Chairman of the Legal Committee underscored this approach in his comments to the Drafting Group. (The Chairman of the Legal Committee "reminded the Drafting Group of the working method that had been used for the Legal Committee which was not to change the wording of provisions of existing instruments, particularly the Warsaw Convention, unless there was a need to do so for purposes of modernization and consolidation." Id. at ¶4:83.) *See also* Report of the 30th Session of the Legal Committee at ¶4:231 (the Chairman of the Drafting Group reporting to the Legal Committee that "it had been the understanding of the Drafting Group that, where appropriate, the Secretariat would provide linguistic embellishments to the text, without touching its substance").

With regard to the second part of this question, we are not aware of any provisions in the original Warsaw Convention, for which French was the official language, that are contained in the Montreal Convention and would have a materially different meaning in English. We note that the courts have looked to the French language text of Article 25 of the Warsaw Convention in connection with the interpretation of "*dol ou d'une faute qui, d'apres la loi du tribunal saisi, est considérée comrne équivalente au dol,*" translated in the U.S. English-language text as "*wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.*" This French phrase was not uniformly translated and interpreted around the world, resulting in confusion for lawyers and judges attempting to apply the Convention. This confusion was largely resolved in the amendment to Article 25 included in The Hague Protocol, and later adopted in Montreal Protocol No. 4 and the 1999 Montreal Convention. The amendment, in all substantive respects, adopts the language of the New York trial court's instructions to the jury in *Froman* v. *Pan American Airways,* Supreme Court of New York County, March 9, 1953. The Hague Protocol language, "done with intent to cause damage or recklessly and with knowledge that damage would probably result," was intended to replace the standard of wilful misconduct with a common law definition of wilful misconduct, and was not intended to modify the scope of the standard.

Question 4. Article 1(2) of the Montreal Convention uses the phrase "according to the agreement between the parties;" the same paragraph in the Warsaw Convention uses the phrase "according to the contract made by the parties." Does Article 1(2) of the Montreal Convention mean the same thing—that is, the contract of carriage between the passenger and the air carrier?

Answer. The term "agreement between the parties" in Article 1(2) of the Montreal Convention was taken from Article 1(2) of the 1955 Hague Protocol. Our understanding is that this term was not intended to change materially the meaning of "contract made by the parties" in the Warsaw Convention.

Question 5. Article 1(3) provides that a carriage by several successive carriers is deemed to be one undivided carriage "if it has been regarded by the parties a single operation." How is such intent of the parties that carriage is a "single operation" to be discerned? What does the decisional law in the United States reflect?

Answer. The intent of the parties would be a matter of proof, specifically whether the passenger intended to book a through journey (perhaps with a stopover) to the ultimate destination. This is reflected in the decisional law. *Compare, Haldimann* v. *Delta Airlines, Inc.,* 168 F. 3d 1324 (D.C. Cir. 1999) and *Egan* v. *Kollsrnan Instrument Corp.,* 263 N.Y.S.2d 398 (Sup. Ct. NY 1965) with *Karfunkel* v. *Compagnie Nationale Air France,* 427 F. Supp. 971 (S.D.N.Y. 1977), and *Khan* v. *Deutsche Lufthansa German Airlines,* 2000 U.S. Dist. Lexis 15408 (S.D.N.Y. Oct. 18, 2000)

Question 6. The Article-by-Article analysis indicates that Article 7 is derived from the new Article 7 inserted in the Warsaw Convention by Article III of Montreal Protocol No. 4. This appears to be erroneous. The provisions of Montreal Article 7 appear to be derived from the new Article 6 added to the Warsaw Convention by Article III of Montreal Protocol No. 4. Do you agree that the Article-by-Article analysis is incorrect in this regard?

Answer. Yes, we agree that the reference should be to the new Article 6 added to the Warsaw Convention by Article III of Montreal Protocol No.4.

Question 7. Please provide background to, and the effect of, the exclusion of the word "solely" from paragraph 2 of Article 18 (the word "solely" was in the analogous provision of Montreal Protocol No. 4 (Article 18, paragraph 3 of the Warsaw Convention as amended by the Hague Protocol and Montreal Protocol No. 4).

Answer. Montreal Protocol No. 4, in effect, made the carrier an insurer of goods in its custody, with certain defenses which wholly absolved the carrier from liability, but only if the damage was solely due to one or more of the listed defenses. The 1999 Montreal Convention adopts the comparative contributory negligence concept found in Article 21 of the 1971 Guatemala City Protocol; Article 21(2) of Montreal Protocol No. 4; and Article 20 of the 1999 Montreal Convention. Accordingly, under Article 18 of the Montreal Convention, if one of the defenses applies, the carrier is relieved of liability only "to the extent" that the listed defense contributed to the damage.

Question 8. Article 20 provides for a form of comparative negligence which applies to "all the liability provisions in the Convention, including paragraph 1 of Article 21." This contrasts with Warsaw Convention 21, which provides for comparative negligence "in accordance with the provisions" of the law of the forum. Aside from applying the comparative negligence standard in all cases in the United States, are there any substantive changes to the law as applied in the United States which would result under Article 20?

Answer. At the time the Warsaw Convention was drafted in 1929, the doctrine of contributory negligence in many States in the United States denied recovery if the claimant was even partially at fault. The 1971 Guatemala Protocol adopted the standard of comparative contributory negligence, whereby a claimant is denied recovery only to the extent that his or her negligence contributed to the damage. We believe that the comparative contributory negligence concept is applied in a large majority of, if not all, U.S. States today. The last sentence of Article 20 of the 1999 Montreal Convention clarifies that, notwithstanding the "strict liability" (liability without fault) provided in Article 21(1), a carrier retains the defense of comparative contributory negligence in Article 20. *See* Commission of the Whole, Minutes of the Thirteenth Meeting (Tuesday, 25 May 1999, at 1545 hours), International Conference on Air Law, Volume I (Minutes), 199, 202, ¶10, ICAO Doc. 9775-DC/2 (1999), (containing the statement of the Chairman of the Diplomatic Conference that "it was necessary for the avoidance of doubt to specify in that Article that it would equally apply to paragraph 1 of Article 20 [now Article 21] and thus to all the liability provisions of the Convention").

Question 9. Is there not a contradiction between the last sentence of Article 20 and paragraph 1 of Article 21? If not, why not?

Answer. We see no contradiction between the last sentence of Article 20 and paragraph 1 of Article 21, as the following example illustrates. In the case of sabotage of an aircraft, the carrier would be liable without fault to all passengers for damages up to 100,000 SDRs. However, if the saboteur were a passenger or a claimant, it would not be appropriate for the saboteur, or those claiming on his or her behalf, to recover anything, even under the "strict liability" provision. The last sentence of Article 20 provides exoneration for a carrier from liability to such a passenger or

claimant, including from the compensation not exceeding 100,000 SDRs provided in paragraph 1 of Article 21.

Question 10. Article 21(2)(a) of the Montreal Convention provides that the carrier shall not be liable for damages exceeding 100,000 SDRs per passenger if the carrier proves that "such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents." This contrasts with Article 20(1) of the Warsaw Convention, which allows the carrier to escape liability if he proves that he and his agents have taken "all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

Did the signatories intend a different standard as a result of this change? Please elaborate.

Answer. The language of Article 21(2)(a) is new, but it was not, in our view, intended by the signatories to change the standard of proof of non-negligence applicable under the Warsaw Convention.

Question 11. Article 21(2)(b) of the Montreal Convention provides that the carrier shall not be liable for damages exceeding 100,000 SDRs per passenger if the carrier proves that "such damage was solely due to the negligence or other wrongful act or omission of a third party." In the United States, terrorist attacks have been found to be "accidents" within the meaning of Article 17, e.g., *Day* v. *Trans World Airlines, Inc.,* 528 F.2d 31 (2d Cir. 1975), a finding which the Supreme Court noted without disapproval in *Air France* v. *Saks,* 470 U.S. 392, 405(1985). Is it possible that some terrorist attacks would constitute a "wrongful act or omission of a third party" within the meaning of this provision?

Answer. Yes, depending on the facts in a particular case, courts could well find a terrorist attack to be "a wrongful act or omission of a third party" under Article 21(2)(b) of the Montreal Convention. If a court finds that the damage at issue in a particular case was caused solely by the "negligence or other wrongful act or omission of a third party," the carrier would be liable only for damages up to 100,000 SDRs per passenger. This is consistent with the Convention's overall framework that a carrier must be at fault in order to be liable to the passenger for damages over 100,000 SDRs, with the burden of proof on the carrier to show that it was not at fault.

Question 12. Under Article 24(3), is there a common understanding among the signatories about how the States Parties are to "express a desire" that the limits of liability shall be revised. Under the procedure in paragraph 2, how will the new limits be determined? Simply by using the applicable inflation factor? Or will there be some other method?

Answer. There is no prescribed means for States Parties to "express a desire" that the limits shall be increased under Article 24(3). Official notification to the International Civil Aviation Organization (ICAO), the depositary, would be one such means and could take the form of individual notifications or a collective notification initiated by one or more States.

The new limits under paragraph 2 would normally be a simple mechanical determination by ICAO as the depositary, using the formula specified in Article 24(1). This was done to avoid future objections that States may be subjected to limits that they never agreed to; they have agreed in advance to the formula that is to be applied, and thus to the increase. In the unusual event that the increase so calculated were rejected by a majority of the Parties to the Convention, the question would then be referred to a meeting of the Parties as provided in Article 24(2).

Question 13. Article 30(1) provides that a servant or agent of the carrier acting within the scope of their employment shall be entitled "to avail themselves of the *conditions* and limits of liability which the carrier itself is entitled to invoke under this Convention." (emphasis added). Paragraph 3 of the same article provides that, in cases not involving cargo, paragraphs 1 and 2 "shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result." The term "conditions" (italicized) was not in the predecessor provision (Article 25A of the Warsaw Convention, as amended by the Hague Protocol and Montreal Protocol No. 4). What is intended by the addition of this term to this provision and what is the practical result?

Answer. The Montreal Convention preserves the status quo relative to legal actions against airline employees. Consistent with existing law in the United States under Montreal Protocol No. 4, the new Convention extends to a carrier's employees acting within the scope of their employment all of the "conditions and limits of liability" available to the carrier under the Convention. The phrase "conditions and

limits of liability" in this context refers to the monetary limits set out in Articles 21 and 22 of the Convention and the conditions under which those monetary limits may be exceeded.

Question 14. Article 43 contains this phrase at the end: ". . . unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention." The provision relates to servants or agents of the carrier acting within the scope of employment. The Article-by-Article analysis for the same article says as follows: "An exception is made where the servant or agent acts in a manner that prevents the *protections of the Convention* from applying." (emphasis added). The Article-by-Article analysis is inconsistent with the text of Article 43. Do you agree that it is incorrect?

Answer. The language used in the Article-by-Article analysis for Article 43 of the Montreal Convention ("the protections of the Convention") paraphrases, rather than quotes, that contained in the Convention. To the extent that it raises any question, however, we wish to clarify that the term "the protections of the Convention" was intended as a reference to "the conditions and limits of liability which are applicable under this Convention," as used in Article 43—referring to the monetary limits set out in Articles 21 and 22 of the Convention and the conditions under which those monetary limits may be exceeded.

Question 15. Under Secretary Shane's testimony states as follows: "Currently, absent a voluntary waiver of the Warsaw liability limits by a carrier, recoveries for deaths or injuries arising as the result of an accident that occurs during an international flight to or from the United States are subject to a limit of $75,000, and can be limited to as little as $10,000 for flights in other markets, unless the passenger or the passenger's estate is able to prove 'willful misconduct' on the part of the airline." Are there any foreign carriers flying to the United States which have not waived the Warsaw limits under the 1996 inter-carrier agreements? Please specify which carriers, if any, have not done so.

Answer. There are currently 123 carriers that are parties to the IATA Intercarrier Agreement on Passenger Liability (IIA) that requires, at a minimum, the waiver of the Warsaw, or Warsaw/Hague, liability limits in their entirety. There are, however, a number of foreign scheduled passenger carriers licensed to fly to the United States which have not signed any of the 1996 inter-carrier agreements. Those carriers are listed below:

MAJOR FOREIGN SCHEDULED PASSENGER AIRLINES LICENSED TO FLY TO THE UNITED STATES THAT ARE NOT SIGNATORIES OF THE 1996 INTER-CARRIER AGREEMENTS

Aero California
Aero Continente Dominicana S.A.
Aero Continente, S.A.
Aero Honduras, S.A. de C.V.
Aeroejecutivo, S.A. de C.V.
Aerolane, Lineas Aereas Nacionales del Ecuador S.A.
Aerolineas Centrales de Colombia, S.A.
Aerolineas Dominicana, S.A.
Aerolitoral, S.A. de C.V.
Aeromar C. por A.
Aeropostal Alas de Venezuela, C.A.
AeroSvit Airlines
Aerotours Dominicanas, S.A.
Aerovias Caribe, S.A. de C.V.
Aerovias Venezolanas S.A. ("AVENSA")
Afinat (Gambia) International Airlines Limited
Air Canada Regional, Inc.
Air Comet, S.A.
Air Europa Lineas Aereas, S.A.
Air Georgian Ltd.
Air Haiti, S.A.
Air India Limited
Air Japan Co., Ltd.
Air Liberte AOM
Air Malta Plc.
Air Marshall Islands, Inc.
Air Nauru
Air Nippon Co., Ltd.
Air Tahiti Nui
Air Transat A.T. Inc.
Air Tungaru Limited
Air Ukraine
Alia-The Royal Jordanian Airline
Ghana Airways Limited
Gulf Air Company, G.S.C.
Haiti Ambassador Airlines, S.A.
Haiti Aviation, S.A.
Haiti Caribbean Airlines, S.A.
Helijet International Inc.
Hispaniola Airways C. por A.
Hong Kong Dragon Airlines, Limited
I.M.P. Group Limited
Iran National Airlines Corporation
Jetsgo Corporation
Kuwait Airways Corporation
Laker Airways (Bahamas) Limited
Lan Peru, S.A.
LIAT (1974) Limited
Linea Aerea de Navegacion Dominicana, S.A. Lan Dominicana
Linea Aerea Nacional Hondurena, S.A. de C.V.
Lineas Aereas Allegro, S.A. de C.V.
Lineas Aereas Azteca, S.A. de C.V.
Lineas Aereas Costarricenses, S.A.
Lineas Aereas Privadas Argentinas, S.A.
LLoyd Aereo Boliviano, S.A.
LTU Lufttransport-Unternehmen GmbH.
Magadan Airlines
Nicaraguense de Aviacion, S.A.
Nigeria Airways, Ltd.
Northwest Territorial Airways Ltd.
Olympic Airways, S.A.
Philippine Airlines, Inc.
Polynesian Limited
Queen Air, Aeronaves Queen, S.A.
Royal Aviation Express, Inc.

Ansett New Zealand Limited
Antigua & Barbuda Airways International, Ltd.
APA International Air, S.A.
Aviacion del Noroeste, S.A. de C.V.
Aviateca, S.A.
Bahamasair Holdings Limited
Balkan Bulgarian Airlines
Bearskin Lake Air Service, Ltd.
Belair Airlines Ltd.
Biman Bangladesh Airlines
Bradley Air Services Limited
BWIA West Indies Airways Limited
Canada 3000 Airlines Limited
Cayman Airways Limited
China Airlines, Ltd.
City Bird, S.A.
Compagnie Nationale de Transports Aeriens
Compania de Transporturi Aeriene Romane (Tarom)
Compania Mexicana de Aviacion, S.A. de C.V.
Condor Flugdienst GmbH.
Consorcio Aviaxsa, S.A. de C.V.
Dalavia Far East Airways-Khabarovsk
Dutch Caribbean Airline N.y.
El Al Israel Airlines, Ltd.
Empresa Consolidada Cubana de Aviacion
Ethiopian Airlines Enterprise
EVA Airways Corporation
Far Eastern Air Transport Corporation
Royal Aviation Group
Royal Tongan Airlines
Santa Barbara Airlines, C.A.
Servicios Aereos de Nicaragua S.A.
Skyservice Airlines Inc.
Southern Winds, S.A.
Spanair, S.A.
Surinaamse Luchtvaart Maatschappij, N.y.
Swiss International Air Lines Ltd.
TACA de Honduras, S.A. de C.V.
TACA Ecuador, S.A.
TAM-Linhas Aereas S.A.
Trans American Airlines, S.A.
Trans North Turbo Air Limited
Transaero Airlines
Translifi Airways Limited
Transportes Aereos de Cabo Verde
Transportes Aereos del Mercosur Sociedad Anonima
Transportes Aeromar, S.A. de C.V.
Tropical International Airways, Ltd.
Universal Airlines, Incorporated
Uzbekistan Airways
Virgin Atlantic Airways Limited
Voyageur Airways Limited
WestJet
Windward Islands Airways International, N.y.

Question 16. The brief for the United States as *amicus curiae* in the petition for a writ of certiorari in the case of *Chubb & Son, Inc.* v. *Asiana Airlines* states, in footnote 11, that a 1991 letter from the Assistant Legal Adviser for Treaty Affairs opined that Singapore was a party to the Warsaw Convention by reason of its adherence to the Hague Protocol. Please provide a copy of the letter.

Answer. Attached is a copy of the letter.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, October 10, 1991.

Mr. DAVID M. SALENTINE
Hong Kong Bank Building
11th Floor
160 Sansome Street
San Francisco, California 94104

DEAR MR. SALENTINE

This is in response to your letter of September 27, 1991, to Ms. Brandt of this office, in which you requested confirmation of certain states party to the Convention for the Unification of Certain Rules Relating to International Transportation by Air (Warsaw Convention). According to the records maintained in this office, Australia deposited an instrument of ratification to the Warsaw Convention on August 1, 1935, and to the 1955 Hague Protocol on June 23, 1959. Singapore is a party to the Warsaw Convention by reason of its adherence on November 6, 1967 to the Hague Protocol of 1955, which amends the Convention. Article XXI of the Hague Protocol states that ratification of the Protocol by any state which is not a party to the Convention shall have the effect of adherence to the Convention, as amended by the Protocol. Our records indicate that neither state has ratified Montreal Protocol No. 4, and that Montreal Protocol No. 4 has not yet received the sufficient number of ratifications to bring it into force. It should be noted that U.S. records on this Convention, and the Protocols that amend it, may not be current because the Government of Poland, and not the United States, is the depositary for the Warsaw Convention and its Protocols.

I hope that this information will be of assistance to you.

Sincerely,

ROBERT E. DALTON
Assistant Legal Adviser for Treaty Affairs

Question 17. In the same *amicus* brief, in footnote 13, there is a reference to a letter of the Director of the Legal Bureau of ICAO to the Alternate U.S. Representative on the Council of ICAO. Please provide a copy of the letter.

Answer. Attached is a copy of the letter.

INTERNATIONAL CIVIL AVIATION ORGANIZATION
ORGANISATION DE L'AVIATION CIVILE INTERNATIONALE
ORGANIZACIÓN DE AVIACIÓN CIVIL INTERNACIONAL
МЕЖДУНАРОДНАЯ ОРГАНИЗАЦИЯ ГРАЖДАНСКОЙ АВИАЦ
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17 May 2001

Dear Mr. Shapiro,

As requested, enclosed are lists of parties to the *Convention for the Unification of Cert Rules relating to International Carriage by Air*, signed at Warsaw on 12 October 1929 (Warsaw Conventic the *Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carri by Air signed at Warsaw on 12 October 1929*, done at The Hague on 28 September 1955 (Hague Protoc and *Montreal Protocol No. 4 to Amend the Convention for the Unification of Certain Rules relating International Carriage by Air signed at Warsaw on 12 October 1929 as Amended by the Protocol done The Hague on 28 September 1955*, signed at Montreal on 25 September 1975 (Montreal Protocol No. Please note that as a result of ongoing consultations between ICAO and the depositary of these instrumer the Government of Poland, these lists are currently in the process of revision.

During the consultations, ICAO and Poland reached a common understanding that Sta which have ratified or adhered to the Hague Protocol only will not be considered as party also to the origi Warsaw Convention of 1929, and that a separate notification of ratification of or adherence to the origi Convention is necessary to become party to it.

Consequently, the Republic of Korea is party to the Hague Protocol only (i.e. the Wars Convention as amended by the Hague Protocol) and not to the original Warsaw Convention. The United Sta is party to the original Warsaw Convention only and not to that instrument as amended at The Hague.

The United States is party to Montreal Protocol No. 4 of 1975 (i.e. the Warsaw Convent as amended by the Hague Protocol and by Protocol No. 4); the Republic of Korea is not.

I trust that this information is useful.

Yours sincerely,

Dr. Ludwig Weber
Director, Legal Bure

Enclosures

Mr. David Shapiro
Alternate Representative of
the United States
on the Council of ICAO
Suite 14.10

CONTRACTING PARTIES TO THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929 AND THE PROTOCOL MODIFYING THE SAID CONVENTION SIGNED AT THE HAGUE ON 28 SEPTEMBER 1955*

(Status as of 17 May 2001)

DATES OF ENTRY INTO FORCE: CONVENTION: 13 FEBRUARY 1933 PROTOCOL: 1 AUGUST 1963

	WARSAW CONVENTION			THE HAGUE PROTOCOL		
States	Signature	Ratification, Adherence or Succession	Date of entry into force	Signature	Ratification, Adherence or Succession	Date of entry into force
Afghanistan		20/2/69	21/5/69		20/2/69	21/5/69
Algeria		2/6/64	31/8/64		2/6/64	31/8/64
Angola		10/3/98	8/6/98		10/3/98	8/6/98
Argentina		21/3/52	19/6/52		12/6/69	10/9/69
Armenia		25/11/98	23/2/99			
Australia(1)	12/10/29	1/8/35	30/10/35	12/7/56	23/6/59	1/8/63
Austria	12/10/29	28/9/61	27/12/61		26/3/71	24/6/71
Azerbaijan		24/1/00	23/4/00		24/1/00	23/4/00
Bahamas(2)		23/5/75(s)	-		23/5/75(s)	-
Bahrain		12/3/98	10/6/98		12/3/98	10/6/98
Bangladesh(3)		1/3/79(s)	-		1/3/79(s)	-
Barbados(4)		29/1/70(s)	-			
Belarus		26/9/59	25/12/59	9/4/60	17/1/61	1/8/63
Belgium	12/10/29	13/7/36	11/10/36	28/9/55	27/8/63	25/11/63
Benin(5)		27/1/62(s)	-		27/1/62(s)	1/8/63
Bolivia		29/12/98	29/3/99			
Bosnia and Herzegovina(6)		3/3/95(s)	-		3/3/95(s)	-
Botswana(7)		21/3/77(s)	-			
Brazil	12/10/29	2/5/31	13/7/33	28/9/55	16/6/64	14/9/64
Brunei Darussalam(8)		28/2/84(s)	-			
Bulgaria		25/6/49	23/9/49		14/12/63	13/3/64
Burkina Faso		9/12/61	9/3/62			
Cambodia		12/12/96	12/3/97		12/12/96	12/3/97
Cameroon(9)		2/9/61(s)	-		2/9/61(s)	-
Canada		10/6/47r	8/9/47	16/8/56	18/4/64	17/7/64
Chile		2/3/79r	31/5/79		2/3/79	31/5/79
China(10)		20/7/58	18/10/58		20/8/75	18/11/75
Colombia		15/8/66	13/11/66		15/8/66	13/11/66
Comoros		11/6/91	9/9/91			
Congo(11)		19/1/62r(s)	-		19/1/62r(s)	-

* This list, including the footnotes and reservations, reproduces the information received from the depositary, the Government of the Republic of Poland

r Reservations - see page 11.

s Succession

	WARSAW CONVENTION			THE HAGUE PROTOCOL		
States	Signature	Ratification, Adherence or Succession	Date of entry into force	Signature	Ratification, Adherence or Succession	Date of entry into force
Costa Rica		10/5/84	8/8/84		10/5/84	8/8/84
Côte d'Ivoire(12)		22/2/62(s)	-		22/2/62(s)	-
Croatia(13)		14/7/93(s)	-		14/7/93(s)	-
Cuba		21/7/64r	19/10/64		30/8/65	28/11/65
Cyprus(14)		8/5/63(s)	-		23/7/70	21/10/70
Czech Republic(15)		29/11/94(s)	-		29/11/94(s)	-
Democratic People's Republic of Korea		1/3/61	30/5/61		4/11/80	2/2/81
Democratic Republic of the Congo(16)		1/12/62(s)	-			
Denmark	12/10/29	3/7/37	1/10/37	16/3/57	3/5/63	1/8/63
Dominican Republic		25/2/72	25/5/72		25/2/72	25/5/72
Ecuador		1/12/69	1/3/70		1/12/69	1/3/70
Egypt(17)		6/9/55	5/12/55	28/9/55	26/4/56	1/8/63
El Salvador				28/9/55	17/9/56	1/8/63
Equatorial Guinea		20/12/88	19/3/89			
Estonia		16/3/98	14/6/98		16/3/98	14/6/98
Ethiopia		14/8/50r	12/11/50			
Federal Republic of Yugoslavia (Serbia and Montenegro)(18)	12/10/29	27/5/31	13/2/33	3/12/58	16/4/59	1/8/63
Fiji(19)		15/3/72(s)	-		15/3/72(s)	-
Finland		3/7/37	1/10/37		25/5/77	23/8/77
France	12/10/29	15/11/32	13/2/33	28/9/55	19/5/59	1/8/63
Gabon		15/2/69	16/5/69		15/2/69	16/5/69
Germany(20)	12/10/29	30/9/33	29/12/33	28/9/55	27/10/60	1/8/63
Ghana		11/8/97	9/11/97		11/8/97	9/11/97
Greece	12/10/29	11/1/38	11/4/38	28/9/55	23/6/65	21/9/65
Grenada					15/8/85	13/11/85
Guatemala(21)		3/2/97	4/5/97		28/7/71	26/10/71
Guinea		11/9/61	10/12/61		9/10/90	7/1/91
Honduras		27/6/94	25/9/94			
Hungary		29/5/36	27/8/36	28/9/55	4/10/57	1/8/63
Iceland		21/8/48	19/11/48	3/5/63	3/5/63	1/8/63
India(22)		29/1/70(s)	-		14/2/73	15/5/73
Indonesia(23)		2/2/52(s)	-			
Iran, Islamic Republic of		8/7/75	6/10/75		8/7/75	6/10/75
Iraq(24)		28/6/72	26/9/72		28/6/72	26/9/72
Ireland		20/9/35	19/12/35	28/9/55	12/10/59	1/8/63
Ismel		8/10/49	6/1/50	28/9/55	5/8/64	3/11/64
Italy	12/10/29	14/2/33	15/5/33	28/9/55	4/5/63	2/8/63
Japan	12/10/29	20/5/53	18/8/53	2/5/56	10/8/67	8/11/67
Jordan(25)		8/12/69(s)	-		15/11/73	13/2/74

	WARSAW CONVENTION			THE HAGUE PROTOCOL		
States	Signature	Ratification, Adherence or Succession	Date of entry into force	Signature	Ratification, Adherence or Succession	Date of entry into force
Kenya(26)		7/10/64(s)	-		6/7/99	4/10/99
Kuwait		11/8/75	9/11/75		11/8/75	9/11/75
Kyrgyzstan		9/2/00	9/5/00		9/2/00	9/5/00
Lao People's Democratic Republic(27)		9/5/56	-	28/9/55	9/5/56	1/8/63
Latvia	12/10/29	15/11/32	13/2/33		2/10/98	31/12/98
Lebanon(28)		23/2/62(s)	-		10/5/78	8/8/78
Lesotho(29)		12/5/75(s)	-		17/10/75	15/1/76
Liberia		2/5/42	31/7/42			
Libyan Arab Jamahiriya		16/5/69	14/8/69		16/5/69	14/8/69
Liechtenstein		9/5/34	7/8/34	28/9/55	3/1/66	3/4/66
Lithuania			-		21/11/96	19/2/97
Luxembourg	12/10/29	7/10/49	5/1/50	28/9/55	13/2/57	1/8/63
Madagascar(30)		17/8/62(s)	-		17/8/62(s)	-
Malawi		27/10/77	25/1/78		9/6/71	7/9/71
Malaysia(31)		16/12/70(s)	-		20/9/74r	19/12/74
Maldives		13/10/95	11/1/96		13/10/95	11/1/96
Mali		26/1/61	26/4/61	16/8/62	30/12/63	29/3/64
Malta(32)		19/2/86(s)	-			
Mauritania		6/8/62	4/11/62			
Mauritius		17/10/89	15/1/90		17/10/89	15/1/90
Mexico		14/2/33	15/5/33	28/9/55	24/5/57	1/8/63
Monaco					9/4/79	8/7/79
Mongolia		30/4/62	29/7/62			
Morocco		5/1/58	5/4/58	31/5/63	17/11/75	15/2/76
Myanmar(33)		2/1/52(s)	-			
Nauru(34)		16/11/70(s)	-		16/11/70(s)	-
Nepal		12/2/66	13/5/66		12/2/66	13/5/66
Netherlands(35)	12/10/29	1/7/33	29/9/33	28/9/55	21/9/60	1/8/63
New Zealand(36)		6/4/37	5/7/37	19/3/58	16/3/67	14/6/67
Niger(37)		8/3/62(s)	-		8/3/62(s)	1/8/63
Nigeria(38)		15/10/63(s)	-		1/7/69	29/9/69
Norway	12/10/29	3/7/37	1/10/37		3/5/63	1/8/63
Oman		6/8/76	4/11/76		4/8/87	2/11/87
Pakistan(39)		30/12/69(s)	-	8/8/60	16/1/61	1/8/63
Panama		12/11/96	10/1/97		12/11/96	10/1/97
Papua New Guinea(40)		6/11/75(s)	-		6/11/75(s)	-
Paraguay		28/8/69	26/11/69		28/8/69	26/11/69
Peru		5/7/88	3/10/88		5/7/88	3/10/88
Philippines		9/11/50r	7/2/51	28/9/55	30/11/66	28/2/67
Poland	12/10/29	15/11/32	13/2/33	28/9/55	23/4/56	1/8/63
Portugal(41)		20/3/47	18/6/47	28/9/55	16/9/63	15/12/63

	WARSAW CONVENTION			THE HAGUE PROTOCOL		
States	Signature	Ratification, Adherence or Succession	Date of entry into force	Signature	Ratification, Adherence or Succession	Date of entry into force
Qatar		22/12/86	22/3/87		22/12/86	21/3/87
Republic of Korea					13/7/67	11/10/67
Republic of Moldova		20/3/97	19/6/97		20/3/97	19/6/97
Romania	12/10/29	8/7/31	13/2/33	28/9/55	3/12/58	1/8/63
Russian Federation(42)	12/10/29	20/8/34	18/11/34	28/9/55	25/3/57	1/8/63
Rwanda(43)		16/12/64(s)	-		27/12/90	27/3/91
Samoa(44)		20/1/64(s)	-		16/10/72	14/1/73
Saudi Arabia		27/1/69	27/4/69		27/1/69	27/4/69
Senegal		19/6/64	17/9/64		19/6/64	17/9/64
Seychelles		24/6/80	22/9/80		24/6/80	22/9/80
Sierra Leone(45)		2/4/68(s)	-			
Singapore		4/9/71	3/12/71		6/11/67	4/2/68
Slovakia(46)		24/3/95(s)	-		24/3/95(s)	-
Slovenia(47)		7/8/98(s)	-		7/8/98(s)	-
Solomon Islands(48)		9/9/81(s)	-		9/9/81(s)	-
South Africa	12/10/29	22/12/54	22/3/55		18/9/67	17/12/67
Spain	12/10/29	31/3/30	13/2/33		6/12/65	6/3/66
Sri Lanka(49)		2/5/51(s)	-		21/2/97	22/5/97
Sudan		11/2/75	12/5/75		11/2/75	12/5/75
Swaziland					20/7/71	18/10/71
Sweden		3/7/37	1/10/37	28/9/55	3/5/63	1/8/63
Switzerland	12/10/29	9/5/34	7/8/34	28/9/55	19/10/62	1/8/63
Syrian Arab Republic(50)		3/6/64(s)	-		3/6/64(s)	-
Tajikistan		3/2/94	4/5/94			
The former Yugoslav Republic of Macedonia(51)		1/9/94(s)	-		1/9/94(s)	-
Togo		2/7/80	30/9/80		2/7/80	30/9/80
Tonga(52)		21/2/77(s)	-		21/2/77	22/5/77
Trinidad and Tobago(53)		10/5/83(s)	-		10/5/83(s)	-
Tunisia		15/11/63	13/2/64		15/11/63	13/2/64
Turkey		25/3/78	23/6/78		25/3/78	23/6/78
Turkmenistan		21/12/94	20/3/95			
Uganda		24/7/63	22/10/63			
Ukraine		14/8/59	12/11/59	15/1/60	23/6/60	1/8/63
United Arab Emirates		4/4/86	3/7/86		18/10/93	16/1/94
United Kingdom	12/10/29	14/2/33	15/5/33	23/3/56	3/3/67	1/6/67

(25) By a note dated 17 November 1969, Jordan declared that it considered itself bound without interruption by the Convention (before Jordan became independent, acceptance of the Convention was effected by the United Kingdom on 17 December 1937).

(26) By a note dated 28 August 1968, Kenya declared that it considered itself bound, as from 12 December 1963, on which date it became an independent State, by the provisions of the Convention (before Kenya became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(27) By a note dated 14 March 1956, the Lao People's Democratic Republic declared that it considered itself bound by the Warsaw Convention of 1929 (before the Lao People's Democratic Republic became independent, acceptance of the Convention was effected by France on 15 November 1932).

(28) By a note dated 10 February 1962, Lebanon declared that it considered itself bound by the Convention, to which the trustee authorities adhered on its behalf on 26 October 1933.

(29) Lesotho, in the declaration of 3 March 1975 by its Prime Minister and Minister for External Affairs, submitted by means of a note dated 29 April 1975 of the Lesotho High Commissioner's Office in London, stated that it considers itself bound by the provisions of the Warsaw Convention of 1929 (prior to Lesotho's accession to independence, adherence to the Convention was effected by the United Kingdom on 2 September 1952).

(30) By a note dated 17 August 1962, Madagascar declared that it considered itself bound by the Convention and the Protocol (before Madagascar became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(31) By a note dated 3 September 1970, Malaysia declared that it considered itself bound by the Convention (before this State became independent, acceptance of the Convention was effected by the United Kingdom on 4 July 1936).

(32) By a note from the Minister of Foreign Affairs dated 27 January 1986, received by the Depositary on 19 February 1986, the Government of Malta declared that it considered itself bound, with effect from 21 September 1964, by the provisions of the Warsaw Convention of 1929 which had been extended to its territory by the United Kingdom on 3 December 1934.

(33) In the instrument of adherence of 20 November 1951 received by the Depositary on 2 January 1952, the Government of Burma (now Myanmar) stipulated that it considered itself bound without interruption by the Convention (before Myanmar became independent, acceptance of the Convention was effected by the United Kingdom on 20 November 1934).

(34) The Republic of Nauru, in the statement of the Minister of Foreign Affairs of the Republic of Nauru included in the note dated 4 November 1970 from the Office of the High Commissioner of Australia in London, has declared that it considers itself bound by the provisions of the Warsaw Convention of 1929 and The Hague Protocol of 1955. (Before the Republic of Nauru became independent, the acceptance of the Convention was effected by the United Kingdom on 1 August 1935; the acceptance of the Protocol was effected by Australia on 23 June 1959).

(35) In the document of ratification of The Hague Protocol, it is stipulated that ratification concerns the Kingdom in Europe, the Netherlands Antilles and Dutch New Guinea. By a note dated 27 December 1985 the Government of the Kingdom of the Netherlands informed that as of 1 January 1986 the Warsaw Convention of 1929 and The Hague Protocol of 1955 are applicable to the Netherlands Antilles [without Aruba] and to Aruba.

(36) Before this State became independent, acceptance of the Convention was effected by the United Kingdom on 6 April 1937.

(37) By a note dated 20 February 1962, Niger declared that it considered itself bound by the Convention and the Protocol (before Niger became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(38) By a note dated 9 October 1963, Nigeria declared that it considered itself bound by the Convention (before Nigeria became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(4) In a document dated 8 December 1969 transmitted to the Depositary by a note dated 8 January 1970, the Government of Barbados stipulated that it considered itself bound by the provisions of the Warsaw Convention of 1929 (before Barbados became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(5) By a note dated 9 January 1962 Dahomey (now Benin) declared that it considered itself bound by the Convention and the Protocol (before Benin became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(6) By a note dated 9 February 1995, deposited on 3 March 1995, the Government of the Republic of Bosnia and Herzegovina declared that it considered itself bound, by virtue of succession, by the provisions of, *inter alia*, the Warsaw Convention of 1929.

(7) By a letter dated 31 January 1977 from the Office of the President, the Government of Botswana informed the Depositary that it considered itself bound by the provisions of the Warsaw Convention of 1929 which, before that State became independent, had been extended to its territory by the United Kingdom on 2 September 1952.

(8) In its instrument of succession of 6 February 1984, received by the Depositary on 28 February 1984, the Government of Brunei Darussalam declared that it considered itself bound by the provisions of the Warsaw Convention of 1929 which had been extended to its territory by the United Kingdom on 4 July 1936.

(9) By a note dated 21 August 1961, the Government of the Republic of Cameroon declared that it considered itself bound by the Convention and the Protocol (before Cameroon became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(10) The instrument of accession by the People's Republic of China contains the following declaration: "The Government of the People's Republic of China is the sole legal government representing the Chinese people. The [Warsaw] Convention to which the Government of the People's Republic of China adheres shall of course apply to the entire Chinese territory including Taiwan".

Notification by the Embassy of the People's Republic of China dated 16 June 1997:
"...In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland signed on 19 December 1984, the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China. In this connection I am instructed by the Minister of Foreign Affairs of the People's Republic of China to make the following notification. The Convention for the Unification of Certain Rules Relating to International Carriage by Air done in Warsaw on 12 October 1929 to which the Government of the People's Republic of China deposited its instrument of accession on 20 July 1958 and the Protocol Amending the Convention for the Unification of Certain Rules Relating to International Carriage by Air done in Warsaw on 12 October 1929 to which the Government of the People's Republic of China deposited its instrument of accession on 20 August 1975 (hereinafter referred to as the Convention and Protocol) will apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. The Government of the People's Republic of China will assume responsibility for the international rights and obligations arising from the application of the above Convention and Protocol to the Hong Kong Special Administrative Region."

Notification by the Embassy of the People's Republic of China dated 8 October 1999:
"In accordance with the Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao signed on 13 April 1987, the Government of the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999. Macao will, with effect from that date, become a Special Administrative Region of the People's Republic of China and will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government of the People's Republic of China.

In this connection, I am instructed by the Minister of Foreign Affairs of the People's Republic of China to inform your Excellency of the following:

The Convention for the Unification of Certain Rules relating to International Carriage by Air, done on 12 October 1929, as amended by the Hague Protocol done on 28 September 1955 (hereinafter referred to as the Convention), to which the

Government of the People's Republic of China deposited its instrument of accession on 20 August 1975, will apply to the Macao Special Administrative Region with effect from 20 December 1999.

The Government of the People's Republic of China will assume responsibility for the international rights and obligations arising from the application of the above Convention and Protocol to the Macao Special Administrative Region."

(11) By a note dated 5 January 1962, the People's Republic of the Congo declared that it considered itself bound by the Convention and the Protocol (before Congo became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(12) By a note dated 7 February 1962, Côte d'Ivoire declared that it considered itself bound by the Convention and the Protocol (before Côte d'Ivoire became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(13) By a note dated 8 July 1993, the Government of Croatia declared that it considered itself bound, by virtue of succession, by the provisions of, *inter alia*, the Warsaw Convention of 1929 and The Hague Protocol of 1955 (with effect from 8 October 1991).

(14) By a note dated 23 April 1963, Cyprus declared that it considered itself bound by the Convention (before Cyprus became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(15) By a declaration dated 14 November 1994, transmitted with a note dated 24 November 1994 from the Embassy of the Czech Republic in Warsaw, the Government of the Czech Republic declared that it considered itself bound, by virtue of succession, by the provisions of, *inter alia*, the Warsaw Convention and The Hague Protocol (with effect from 1 January 1993).

(16) By a note dated 27 July 1962, the Democratic Republic of the Congo declared that it considered itself bound by the Warsaw Convention of 1929 (before the Democratic Republic of the Congo became independent, acceptance of the Convention was effected by Belgium on 13 July 1936).

(17) By a note dated 2 March 1959, the Arab Republic of Egypt declared that it considered itself bound by the ratifications previously made by the United Arab Republic: of the Convention, on 6 September 1955; of the Protocol, on 26 April 1956.

(18) By a note dated 8 November 1993, the Federal Republic of Yugoslavia informed the Ministry of Foreign Affairs of the Republic of Poland that it would continue the international obligations (including those obligations related to aeronautical communication) concluded by the Socialist Federal Republic of Yugoslavia.

(19) In a declaration dated 25 February 1972, Fiji announced that it considered itself bound by the provisions of the Warsaw Convention of 1929 and by the provisions of The Hague Protocol of 1955 which, before that State became independent, had been extended to its territory by the United Kingdom on 3 December 1934.

(20) The German Democratic Republic, which ratified the Protocol on 19 May 1959, acceded to the Federal Republic of Germany on 3 October 1990.

(21) On 3 February 1997, Guatemala deposited its instrument of adherence to the Warsaw Convention of 1929, having been party to The Hague Protocol of 1955 since 26 October 1971.

(22) By a note dated 29 January 1970, India declared that it considered itself bound by the Convention (before India became independent, acceptance of the Convention was effected by the United Kingdom on 20 November 1934).

(23) By a note dated 2 February 1952, Indonesia declared that it considered itself bound by the Convention (before Indonesia became independent, acceptance of the Convention was effected by the Netherlands on 1 July 1933).

(24) The instrument of adherence of the Republic of Iraq contains the following declaration: "The adherence of the Republic of Iraq to the Convention (to the Protocol) in no way signifies the recognition of Israel or the establishment with Israel of any relations whatsoever".

(25) By a note dated 17 November 1969, Jordan declared that it considered itself bound without interruption by the Convention (before Jordan became independent, acceptance of the Convention was effected by the United Kingdom on 17 December 1937).

(26) By a note dated 28 August 1968, Kenya declared that it considered itself bound, as from 12 December 1963, on which date it became an independent State, by the provisions of the Convention (before Kenya became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(27) By a note dated 14 March 1956, the Lao People's Democratic Republic declared that it considered itself bound by the Warsaw Convention of 1929 (before the Lao People's Democratic Republic became independent, acceptance of the Convention was effected by France on 15 November 1932).

(28) By a note dated 10 February 1962, Lebanon declared that it considered itself bound by the Convention, to which the trustee authorities adhered on its behalf on 26 October 1933.

(29) Lesotho, in the declaration of 3 March 1975 by its Prime Minister and Minister for External Affairs, submitted by means of a note dated 29 April 1975 of the Lesotho High Commissioner's Office in London, stated that it considers itself bound by the provisions of the Warsaw Convention of 1929 (prior to Lesotho's accession to independence, adherence to the Convention was effected by the United Kingdom on 2 September 1952).

(30) By a note dated 17 August 1962, Madagascar declared that it considered itself bound by the Convention and the Protocol (before Madagascar became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(31) By a note dated 3 September 1970, Malaysia declared that it considered itself bound by the Convention (before this State became independent, acceptance of the Convention was effected by the United Kingdom on 4 July 1936).

(32) By a note from the Minister of Foreign Affairs dated 27 January 1986, received by the Depositary on 19 February 1986, the Government of Malta declared that it considered itself bound, with effect from 21 September 1964, by the provisions of the Warsaw Convention of 1929 which had been extended to its territory by the United Kingdom on 3 December 1934.

(33) In the instrument of adherence of 20 November 1951 received by the Depositary on 2 January 1952, the Government of Burma (now Myanmar) stipulated that it considered itself bound without interruption by the Convention (before Myanmar became independent, acceptance of the Convention was effected by the United Kingdom on 20 November 1934).

(34) The Republic of Nauru, in the statement of the Minister of Foreign Affairs of the Republic of Nauru included in the note dated 4 November 1970 from the Office of the High Commissioner of Australia in London, has declared that it considers itself bound by the provisions of the Warsaw Convention of 1929 and The Hague Protocol of 1955. (Before the Republic of Nauru became independent, the acceptance of the Convention was effected by the United Kingdom on 1 August 1935; the acceptance of the Protocol was effected by Australia on 23 June 1959).

(35) In the document of ratification of The Hague Protocol, it is stipulated that ratification concerns the Kingdom in Europe, the Netherlands Antilles and Dutch New Guinea. By a note dated 27 December 1985 the Government of the Kingdom of the Netherlands informed that as of 1 January 1986 the Warsaw Convention of 1929 and The Hague Protocol of 1955 are applicable to the Netherlands Antilles [without Aruba] and to Aruba.

(36) Before this State became independent, acceptance of the Convention was effected by the United Kingdom on 6 April 1937.

(37) By a note dated 20 February 1962, Niger declared that it considered itself bound by the Convention and the Protocol (before Niger became independent, acceptance was effected by France: of the Convention, on 15 November 1932; of the Protocol, on 19 May 1959).

(38) By a note dated 9 October 1963, Nigeria declared that it considered itself bound by the Convention (before Nigeria became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(39) By a note dated 26 December 1969, Pakistan declared that it became a party to the Convention with effect from 14 August 194 by virtue of the statute relating to the independence of India (International Arrangements), 1947, (before Pakistan becam independent, acceptance of the Convention was effected by the United Kingdom on 20 November 1934).

(40) By a note dated 6 November 1975, the Government of Papua New Guinea informed that it considered itself to be bound by th Warsaw Convention of 1929 and The Hague Protocol of 1955. Before it became independent (on 16 September 1975) acceptance of the Convention and Protocol was effected on behalf of its territory by Australia.

(41) By a note dated 15 May 1997, the Government of Portugal informed that the Hague Protocol of 1955 applied to the Territor of Macau.

By a note dated 23 September 1999, the Government of Portugal made the following notifications:

a) "I am instructed by my Government to refer to the Convention for the Unification of Certain Rules relating to Internationa Carriage by Air, signed at Warsaw on 12 October 1929 (hereinafter referred to as the 'Convention') which applies to Macao a present, and to state as follows.

In accordance with the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macao signed on 13 April 1987, the Portuguese Republic will continue to have international responsibility for Macao until 19 December 1999 and from that date onwards the People's Republic of China wil resume the exercise of sovereignty over Macao with effect from 20 December 1999.

From 20 December 1999 onwards the Portuguese Republic will cease to be responsible for the international rights and obligations arising from the application of the Convention to Macao.", and

b) "I am instructed by my Government to refer to the Protocol to Amend the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at The Hague on 28 September 1955 (hereinafter referred to as the 'Protocol'), which applies to Macao at present, and to state as follows.

In accordance with the Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macao signed on 13 April 1987, the Portuguese Republic will continue to have international responsibility for Macao until 19 December 1999 and from that date onwards the People's Republic of China will resume the exercise of sovereignty over Macao with effect from 20 December 1999.

From 20 December 1999 onwards the Portuguese Republic will cease to be responsible for the international rights and obligations arising from the application of the Protocol to Macao."

(42) By a note dated 11 February 1992, the Government of the Russian Federation declared that it considered itself bound by the provisions of all international obligations concluded by the former Union of the Soviet Socialist Republics, *inter alia*, the Warsaw Convention, to which the former Union of the Soviet Socialist Republics was party.

(43) By a note dated 1 December 1964, the Government of the Republic of Rwanda declared that it considered itself bound, by virtue of succession, by the provisions of the Warsaw Convention (before Rwanda became independent, acceptance of the Convention was effected by Belgium on 13 July 1936).

(44) By a note dated 16 October 1963, Samoa declared that it considered itself bound, by virtue of succession, by the provisions of the Convention (before Samoa became independent, acceptance of the Convention was effected by the United Kingdom on 6 April 1937).

(45) In its declaration of 6 March 1968 transmitted by a note from the Office of the High Commissioner dated 21 March 1968, Sierra Leone stated that it considers that it is bound, by virtue of succession, by the provisions of the Convention (before Sierra Leone became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(46) In its declaration dated 16 February 1995 transmitted to the Depositary on 24 March 1995, the Government of the Sloval Republic stated that it considered itself bound by virtue of succession, by the provisions of, *inter alia*, the Warsaw Convention of 1929 and The Hague Protocol of 1955 (with effect from 1 January 1993).

(47) In its notification dated 7 August 1998 transmitted to the Depositary, the Government of the Republic of Slovenia stated that i considered itself bound by virtue of succession, by the provisions of, *inter alia*, the Warsaw Convention of 1929 and The Hagu Protocol of 1955 (with effect from 25 June 1991).

(48) By a note dated 21 August 1981, the Solomon Islands declared that it considered itself bound by the Warsaw Convention an the Hague Protocol (before the Solomon Islands attained independence, acceptance was effected by the United Kingdom o 3 December 1934 for the Convention and on 3 March 1968 for the Protocol).

(49) By a note dated 24 April 1951, Ceylon (now Sri Lanka) declared that it considered itself bound by the Convention (befor Sri Lanka became independent, acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(50) By a note dated 13 April 1964, the Syrian Arab Republic declared that "Constitutional Decree No. 25 of 13 June 1962 decide to consider adherence to the multilateral international Conventions and Agreements effected during the period of its union wit Egypt to be valid for the Syrian Arab Republic - and since the United Arab Republic had, in 1959, taken the appropriate measure for its adherence to the Warsaw Convention, signed on 12 October 1929 and the Protocol modifying the said Convention, signe at The Hague on 28 September 1955, the Syrian Arab Republic, considering the aforementioned Constitutional Decree, consider itself a party to the Warsaw Convention and its Protocol mentioned above".

(51) By a note dated 15 August 1994, the Government of the former Yugoslav Republic of Macedonia declared that it considered itsel bound, by virtue of succession, by the provisions of, *inter alia*, the Warsaw Convention and The Hague Protocol.

(52) The Government of Tonga, in a letter from its Prime Minister and the Minister for External Affairs dated 31 January 1977 informed that it considers itself bound by the provisions of the Warsaw Convention of 1929. Before this State becam independent, acceptance was effected by the United Kingdom on 4 July 1936.

(53) The Republic of Trinidad and Tobago, in its note dated 11 March 1983, declared that it considered itself to be bound b the provisions of the Warsaw Convention of 1929, the acceptance of which was effected on its territory by the United Kingdon on 3 December 1934.

(54) According to a note dated 17 June 1980, the United Kingdom informed the depositary that the following territories, to whic the Convention and the Protocol had been previously applied, should be omitted as they attained independence: Dominica (dat of independence: 3 November 1978), Gilbert Islands (12 July 1979), Ellice Islands, now Tuvalu (12 July 1979), Grenad (7 February 1974), Saint Lucia (22 February 1979), Saint Vincent (27 October 1979), Seychelles (29 June 1978), Solomo Islands (7 July 1978), Zimbabwe, formerly Southern Rhodesia (18 April 1980).

According to a note dated 3 March 1967 made by the United Kingdom of Great Britain and Northern Ireland in accordance wit Article XXV, paragraph 2, of the said Protocol, the Protocol does not apply to the following territories: Aden, Antigua, Brunei Dominica, Grenada, Kamaran, Kuria Muria Islands, Perim, Protectorate of Southern Arabia, Southern Rhodesia, St. Christopher Nevis and Anguilla, St. Lucia, St. Vincent, Swaziland and Tonga.

Notification by the Embassy of the United Kingdom of Great Britain and Northern Ireland, dated 26 June 1997:
"...I am instructed by Her Britannic Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs to refer to th Convention for the Unification of Certain Rules relating to International Carriage by Air, done at Warsaw on 12 October 192 as amended by the Hague Protocol 1955 (hereinafter referred to the 'Convention') which applies to Hong Kong at present. I am also instructed to state that in accordance with the Joint Declaration of the Government of the United Kingdom of Great Britai and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, signed o 19 December 1984, the Government of the United Kingdom will restore Hong Kong to the People's Republic of China with effec from 1 July 1997. The Government of the United Kingdom will continue to have international responsibility for Hong Kong unti that date. Therefore, from that date the Government of the United Kingdom will cease to be responsible for the internationa rights and obligations arising from the application of the Convention to Hong Kong."

(55) In its declaration dated 17 February 1970 transmitted to the Depositary on 25 March 1970, the Government of Zambia stated that it considered itself bound by the provisions of the Warsaw Convention of 1929 (before Zambia became independent acceptance of the Convention was effected by the United Kingdom on 3 December 1934).

(56) The Government of Zimbabwe, in a note dated 10 September 1980 from the Ministry for External Affairs, informed the Government of the Polish People's Republic (now the Republic of Poland) that it considers itself bound by the provisions of the Warsaw Convention of 1929, the acceptance of which was effected on its territory by the United Kingdom on 3 April 1935.

RESERVATIONS

CANADA

Canada has deposited the following reservation: "Article 2, paragraph 1, of the present Convention shall not apply to international air transport effected directly by Canada".

CHILE

The document of adherence of Chile contains the reservation provided for in the Additional Protocol to Article 2 of the Warsaw Convention of 1929.

CONGO, PEOPLE'S REPUBLIC OF THE

Congo has deposited the following reservation: "The Government of the Congo (Brazzaville) wishes to state that, in application of the Additional Protocol (Article 2) and of Article XXVI of The Hague Protocol, it will not apply these texts

- to international air transport effected directly by the State,
- to the carriage of persons, cargo and baggage for its military authorities on aircraft registered in the Congo, the whole capacity of which has been reserved by or on behalf of such authorities".

CUBA

Cuba has deposited the following reservation: "Article 2, paragraph 1, of the Convention shall not apply to international air transport effected directly by Cuba".

ETHIOPIA

Ethiopia has deposited the following reservation: "Article 2, paragraph 1, of the Convention shall not apply to international air transport effected directly by Ethiopia".

MALAYSIA

Malaysia deposited at the time of its adherence to the Hague Protocol the following reservation: "...in accordance with Article XXVI of the Protocol, the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for the military authorities of Malaysia on aircraft, registered in Malaysia, the whole capacity of which has been reserved by or on behalf of such authorities".

PHILIPPINES

The Philippines has deposited the following reservation: "Article 2, paragraph 1, of the Convention shall not apply to international air transport effected by the Republic of the Philippines".

UNITED STATES

The United States of America has deposited the following reservation: "Article 2, paragraph 1, of the present Convention shall not apply to international air transport which may be effected by the United States of America or any territory or possession under its jurisdiction".

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VENEZUELA

The Government of Venezuela has filed the following reservation: "Pursuant to the provisions of Article XXVI of the said Protocol, the Government of the Republic of Venezuela has declared that the Convention as amended by the Protocol shall not apply to the carriage of persons, goods and baggage performed for the military authorities of the Republic of Venezuela on board aircraft which are registered in Venezuela and whose entire capacity has been reserved by or on the behalf of these authorities".

MONTREAL PROTOCOL NO. 4
TO AMEND THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929 AS AMENDED BY THE PROTOCOL DONE AT THE HAGUE ON 28 SEPTEMBER 1955

SIGNED AT MONTREAL ON 25 SEPTEMBER 1975*
(Status as of 17 May 2001)

State	Date of signature	Date of deposit of Instrument of Ratification or Accession(a) or Succession(s)	Effective date
Argentina (1)	14 March 1990	14 March 1990	14 June 1998
Australia	24 April 1991	13 January 1997	14 June 1998
Azerbaijan		24 January 2000(a)	23 April 2000
Bahrain		21 January 1999(a)	21 April 1999
Barbados	25 September 1975		
Belgium	25 September 1975		
Bosnia and Herzegovina (2)		3 March 1995(s)	14 June 1998
Brazil	25 September 1975	27 July 1979	14 June 1998
Canada	30 December 1975	27 August 1999r	25 November 1999
Chile	23 November 1984		
Colombia	20 May 1982	20 May 1982	14 June 1998
Croatia (3)		14 July 1993(s)	14 June 1998
Cyprus	10 November 1992	10 November 1992	14 June 1998
Democratic Republic of the Congo	25 September 1975		
Denmark	1 December 1976	4 May 1988	14 June 1998
Ecuador		12 February 1999(a)	12 May 1999
Egypt	25 September 1975	17 November 1978	14 June 1998
Estonia	25 November 1997	16 March 1998	14 June 1998
Ethiopia	14 July 1987	14 July 1987	14 June 1998
Federal Republic of Yugoslavia (4)	25 September 1975	11 March 1977	14 June 1998
Finland	2 May 1978	4 May 1988	14 June 1998
France	30 December 1975		
Ghana	25 September 1975	11 August 1997	14 June 1998
Greece	10 November 1988	12 November 1988	14 June 1998
Guatemala	25 September 1975	3 February 1997	14 June 1998
Guinea		12 February 1999(a)	12 May 1999
Honduras		14 June 1998(a)	12 September 1998
Hungary	29 June 1987	30 June 1987	14 June 1998
Ireland	27 June 1989	27 June 1989	14 June 1998
Israel	27 November 1987	16 February 1988	14 June 1998
Italy	15 May 1978	2 April 1985	14 June 1998
Japan		20 June 2000(a)	18 September 2000

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* This list, including footnotes, reproduces the information received from the Depositary, the Government of the Republic of Poland.
The Protocol entered into force on 14 June 1998
r Reservations - see page 4
s Succession

State	Date of signature	Date of deposit of Instrument of Ratification or Accession(a) or Succession(s)	Effective date
Jordan		22 July 1999(a)	20 October 1999
Kenya		6 July 1999(a)	4 October 1999
Kuwait	21 March 1995	8 November 1996	14 June 1998
Lebanon		4 August 2000(a)	2 November 2000
Mauritius		14 June 1998(a)	12 September 1998
Morocco	18 October 1984		
Nauru		14 June 1998(a)	12 September 1998
New Zealand (9)		3 December 1999(a)	2 March 2000
Netherlands (5)	19 May 1982	7 January 1983	14 June 1998
Niger		14 June 1998(a)	12 September 1998
Norway	21 October 1977	4 May 1988	14 June 1998
Oman		14 June 1998(a)	12 September 1998
Portugal	25 September 1975	7 April 1982	14 June 1998
Qatar	28 August 1987		
Senegal	18 August 1976		
Singapore		14 June 1998(a)	12 September 1998
Slovenia (6)		7 August 1998(s)	14 June 1998
Spain	30 September 1981	8 January 1985	14 June 1998
Sweden	12 December 1977	4 May 1988	14 June 1998
Switzerland	25 September 1975	9 December 1987	14 June 1998
The former Yugoslav Republic of Macedonia (7)		1 September 1994(s)	14 June 1998
Togo	21 August 1985	5 May 1987	14 June 1998
Turkey		14 June 1998(a)	12 September 1998
United Arab Emirates		20 March 2000(a)	18 June 2000
United Kingdom (8)	25 September 1975	5 July 1984	14 June 1998
United States	25 September 1975	4 December 1998	4 March 1999
Uzbekistan		14 June 1998(a)	12 September 1998
Venezuela	25 September 1975		

(1) The instrument of ratification by the Government of Argentina contains the following declaration:

"The United Kingdom of Great Britain and Northern Ireland having proceeded to ratification of the Additional Protocols to the Warsaw Convention of 1929, adopted in Montreal (Canada) in 1975, the Argentine Republic rejects the said ratification inasmuch as it is made in the name of the 'Malvinas Islands and of their Dependencies', and reaffirms its sovereign right over the Malvinas Islands, South Georgia and the South Sandwich Islands which are an integral part of its national territory.

The General Assembly of the United Nations has adopted Resolutions 2065/XX/, 3160/XXVIII/, 31/49, 38/12 and 39/6 in which it recognizes the existence of a dispute relating to the question of the sovereignty of the Malvinas Islands and urges the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland to resume as soon as possible their negotiations with a view to seeking by peaceful means a definitive solution to their dispute and to the other differences relating to the said question, through the good offices of the Secretary-General of the Organization who is to report on the progress achieved.

The Argentine Republic at the same time rejects the ratification referred to in the preceding paragraph inasmuch as it is made in the name of the 'British Antarctic Territory', and reaffirms that it does not accept any denomination which would attribute as belonging to another State, or which would admit thereof, the sector extending between

longitude 25° West and longitude 74° West and between latitude 60° South and the South Pole over which the Argentine Republic exercises its sovereignty since this sector is an integral part of its territory".

(2) By a Note dated 9 February 1995, the Government of the Republic of Bosnia and Herzegovina declared that it considered itself bound, by virtue of succession, by the provisions of, *inter alia*, this Protocol.

(3) By a Note dated 8 July 1993, the Government of the Republic of Croatia declared that it considered itself bound, by virtue of succession, by the provisions of, *inter alia*, this Protocol (with effect from 8 October 1991).

(4) By a Note dated 8 November 1993, the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) declared that it considered itself bound by, *inter alia*, this Protocol, to which the former Socialist Federal Republic of Yugoslavia was a Contracting State.

(5) The ratification concerns the Kingdom in Europe and the Netherlands Antilles.

(6) In its notification dated 7 August 1998 transmitted to the Depositary, the Government of the Republic of Slovenia stated that it considered itself bound by virtue of succession, by the provisions of, *inter alia*, Montreal Protocol No. 4 (with effect from 14 June 1998).

(7) By a Note dated 15 August 1994, the Government of the former Yugoslav Republic of Macedonia declared that it considered itself bound, by virtue of succession, by the provisions of, *inter alia*, this Protocol (with effect from 8 September 1991).

(8) Ratification by the United Kingdom was also done on behalf of: the Bailiwick of Jersey, the Bailiwick of Guernsey, the Isle of Man, Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Falkland Islands Dependencies, Gibraltar, Hong Kong, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, Saint Helena, Saint Helena Dependencies, Turks and Caicos Islands, United Kingdom Sovereigning Base and the areas of Akrotiri and Dhekelia in the Island of Cyprus.

Furthermore, the following declaration was subsequently made:

"In reference to the declaration made by the Argentine Republic when depositing the instruments of ratification of Protocols Nos. 1, 2 and 3 as well as Montreal Protocol No. 4, signed at Montreal on 25 September 1975, the position of the United Kingdom is well known and remains unchanged. The United Kingdom has no doubt of its sovereignty over the Falkland Islands, South Georgia and the South Sandwich Islands and its incontestable right to apply the treaties thereto. As for the part of the declaration concerning the British Antarctic Territory, the Embassy recalls the contents of the Antarctic Treaty and particularly the provisions of Article IV of the said Treaty ...".

(9) New Zealand deposited its instrument of accession with a declaration that this accession shall extend to Tokelau.

RESERVATIONS

CANADA

At the time of ratification, pursuant to Article XXI (1) a) of Montreal Protocol No. 4, the Government of Canada made the following reservation: Canada declares that the Warsaw Convention as amended at The Hague, 1955 and by Protocol No. 4 of Montreal, 1975, shall not apply to the carriage of persons, baggage and cargo for Canada's military authorities on aircraft, registered in Canada, the whole capacity of which has been reserved by or on behalf of such authorities.

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR DONE AT MONTREAL ON 28 MAY 1999

(Status as of 17 May 2001)

Entry into force:	Not yet in force. This Convention shall come into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession.
Status:	Signatories: 66 States and 1 Regional Economic Integration Organisation; contracting States: 11

State	Date of signature	Date of deposit of instrument of ratification, acceptance (A), approval (AA) or accession (a)	Date of entry into force
Bahamas	28/05/99		
Bangladesh	28/05/99		
Belgium[1]	28/05/99		
Belize	28/05/99	24/08/99	
Benin	28/05/99		
Bolivia	28/05/99		
Burkina Faso	28/05/99		
Cambodia	28/05/99		
Chile	28/05/99		
China	28/05/99		
Côte d'Ivoire	28/05/99		
Cuba	28/05/99		
Czech Republic[3]	28/05/99	16/11/00	
Denmark[1]	28/05/99		
Dominican Republic	28/05/99		
France[1]	28/05/99		
Gabon	28/05/99		
Germany[1]	28/05/99		
Ghana	28/05/99		
Greece[1]	28/05/99		
Iceland	28/05/99		
Italy[1]	28/05/99		
Jamaica	28/05/99		
Kenya	28/05/99		
Kuwait	28/05/99		
Lithuania	28/05/99		
Madagascar	28/05/99		
Malta	28/05/99		
Mauritius	28/05/99		
Mexico	28/05/99	20/11/00	
Monaco	28/05/99		
Mozambique	28/05/99		
Namibia	28/05/99		
Niger	28/05/99		
Nigeria	28/05/99		
Pakistan	28/05/99		
Panama	28/05/99		
Poland	28/05/99		
Portugal[1]	28/05/99		
Saudi Arabia	28/05/99		

State	Date of signature	Date of deposit of instrument of ratification, acceptance (A), approval (AA) or accession (a)	Date of entry into force
Senegal	28/05/99		
Slovakia	28/05/99	11/10/00	
Slovenia	28/05/99		
South Africa	28/05/99		
Sudan	28/05/99		
Swaziland	28/05/99		
Switzerland	28/05/99		
Togo	28/05/99		
Turkey	28/05/99		
United Kingdom[1]	28/05/99		
United States	28/05/99		
Zambia	28/05/99		
Uruguay	09/06/99		
Brazil	03/08/99		
Sweden[1]	27/08/99		
Peru	07/09/99		
Romania	18/11/99	20/03/01	
Finland[4]	09/12/99		
Colombia	15/12/99		
Costa Rica	20/12/99		
Netherlands	30/12/99		
Spain	14/01/00		
Luxembourg[2]	29/02/00		
Paraguay	17/03/00	29/03/01	
The former Yugoslav Republic of Macedonia		15/05/00 (a)	
Japan		20/06/00 (A)	
United Arab Emirates		07/07/00 (a)	
Ireland[1]	16/08/00		
Jordan	05/10/00		
Bahrain		02/02/01 (a)	
Botswana		28/03/01 (a)	
Regional Economic Integration Organisations			
European Community	09/12/99		

(1) Upon signature of the Convention, this State, Member State of the European Community, declared that, "in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

(2) On 3 October 2000, ICAO received from Luxembourg the following declaration (original in French): "The Grand Duchy of Luxembourg, Member State of the European Community, declares that in accordance with the Treaty establishing the European Community, the Community has competence to take actions in certain matters governed by the Convention".

(3) Upon deposit of its instrument of ratification, the Czech Republic notified ICAO that "as a Member of the International Monetary Fund, [the Czech Republic] shall proceed in accordance with Article 23, paragraph 1 of the Convention".

(4) By a note dated 13 July 2000, Finland transmitted a declaration dated 7 July 2000 signed by the Minister for Foreign Trade, setting forth the wording quoted in note (1) above.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

AGREEMENT WITH RUSSIAN FEDERATION CONCERNING POLAR BEAR POPULATION

Question 1. Has your testimony today been coordinated with the Department of the Interior?

Answer. Yes.

Question 2. How will members of the U.S. section of the U.S.-Russia Polar Bear Commission contemplated by Article 8 be appointed?

Answer. The Administration is now preparing implementing legislation that will establish the membership of the U.S. Section of the U.S.-Russia Polar Bear Commission. It is envisioned that members of the U.S. Section would be appointed by, and serve at the pleasure of, the President.

Question 3. The letter from the Secretary of State in the submittal package indicates that "some legislative amendments and new authorities will be necessary" to ensure implementation of the Agreement.

a. Please describe the amendments that are necessary to implement the treaty.

b. Has the necessary legislation been submitted to Congress by the Executive Branch? If not, why not? If not, when do you expect to submit it?

Answer. Much legal authority already exists to meet the Agreement's obligations (e.g., the Marine Mammal Protection Act and other domestic legislation already provide sufficient authority to meet the obligations of Article 2 with respect to conserving polar bear habitats) . However, there are a few places where additional legislation will be required. For example, legislation will be needed to:

- Authorize implementation of restrictions on subsistence hunting introduced through the U.S.-Russia Polar Bear Agreement;
- Establish the U.S. Section of the U.S.-Russia Polar Bear Commission; and
- Authorize appropriation of funds to carry out provisions of the Agreement.

The Administration has been coordinating this legislation among the various interested agencies. It will propose such legislation to Congress once this process is complete.

Question 4. What are the anticipated U.S. budgetary resources necessary to implement the treaty and for what purposes? Please provide details by function (in particular, with regard to funding for the U.S. section, collection of scientific data on the polar bear population, and management and enforcement measures) and by agency.

Answer. The Administration is currently considering draft implementing legislation and estimating the costs of implementing the Treaty. The Administration has been coordinating this legislation among the various interested agencies. It will propose such legislation to Congress once this process is complete.

Funds appropriated to the Department of the Interior would be used for the U.S. portion of the proposed Joint Commission operations and to fund studies needed to develop sustainable harvest quotas estimates. As contemplated in Article 8 of the Agreement, Commission operations could include, for example, the actual meetings and associated preparation work for the Commission and work to identify polar bear habitats and to develop recommendations for habitat conservation measures. Studies necessary to develop quotas and track population status could include the following: aerial surveys and/or mark-recapture studies to develop population estimates; den surveys and collection of demographic information to monitor population status and trends; development of models to predict and evaluate sustainable harvest levels; monitoring of harvest levels and collection of biological samples. Appropriated funds would also be used to support the Alaska Nanuuq Commission in its role representing Alaska Native subsistence polar bear hunters and participation at the Joint Commission.

Question 5. If the treaty is ratified in the coming months, are there funds in the fiscal year 2004 budget requests of the Departments of State and Interior to implement the treaty?

Answer. Activities related to establishing and starting the Joint Commission may be initiated using currently available and FY 2004 President's Request funds. Studies to determine population status and trends, comprehensive harvest monitoring in both countries and full administrative support for the Commission will, however, require further dedicated funding.

Question 6. How do anticipated budgetary resources for collection of scientific data on the polar bear population compare to the budgets for that purpose in the current fiscal year and fiscal year 2002?

Answer. Current budget levels support ongoing collection of harvest levels and patterns in the United States, as harvest reporting is a regulatory requirement. In addition, efforts to develop appropriate techniques for assessing population status and trends are ongoing. In Russia, studies based on Traditional Ecological Knowledge provide some insights into harvest levels and habitat use patterns. Current budget levels, however, do not include funding to fully implement comprehensive status and trends studies and gather other information needed to fully implement the agreement. For example, there were no funds programmed in the Fiscal Year 2002 or 2003 budgets to collect comprehensive information on the Alaska-Chukotka polar bear population itself.

Question 7. Which agencies in the government of the Russian Federation will be responsible for implementing Russia's obligations under the treaty? Do we have confidence in the ability of the relevant agency or ministry to fully implement Russia's obligations? Does such agency or ministry have adequate resources to fulfill Russia's obligations?

Answer. Article 8, Paragraph 4 of the Agreement stipulates: "The Contracting Parties shall be responsible for organizing and supporting the activities of their respective national sections as well as the joint activities of the Commission." Under the Agreement the Russian Federation made a commitment to "take such steps as are necessary to ensure implementation of this Agreement." (Article 10, Paragraph 1).

The specific steps planned by the Russian government to implement its obligations under the Agreement are detailed in their "normative" act, which is an administrative action. Our understanding is that their act will be signed upon completion of U.S. domestic procedures to bring the Agreement into force.

The Russian entity with primary responsibility for polar bears, and the implementation of this Agreement, is the Ministry of Natural Resources. Within the Ministry, the Federal Environmental Protection Agency/Department of Protected Areas and Biodiversity Conservation and the Russian Academy of Sciences have been involved in development of the Agreement and will continue to be involved in its subsequent implementation. On a regional level, the Wrangell Island Nature Area, regional government of Chukotka and the Association of Traditional Marine Mammal Hunters will all be involved.

We do not know the precise funding arrangements Russia will make to implement this Agreement. We do, however, understand that some level of financial support has already been given to the Chukotka branch of the Pacific Ocean Institute for Fisheries and Oceanography (TINRO) to plan and design a harvest monitoring and enforcement program.

Question 8. Please summarize the consultative process that was undertaken with stakeholders during negotiation of the treaty.

Answer. U.S. government negotiators held close and continuing consultations with the involved Native groups and with State of Alaska officials during the negotiation of the Agreement, and their representatives were included in the U.S. delegation. U.S. government negotiators also held regular consultations with environmental groups interested in polar bear conservation, and an environmental group representative was included in the U.S. delegation. These consultations revealed broad support for the Agreement. We have received extensive correspondence from various nongovernmental organizations supporting the Agreement and would be glad to share copies and specifics with anyone interested.

Question 9. Does the Executive Branch expect that any amendments to the treaty would be submitted to the Senate for advice and consent?

Answer. We would expect to send amendments to the Agreement to the Senate for advice and consent. However, we note that Article 3 provides that the Parties may, by mutual agreement, modify the geographical area to which the Agreement applies.

Question 10. Under Article 1, when read together with Article 8, decisions on the annual sustainable harvest level must be based on "reliable scientific information." The Article-by-Article analysis states that the "Commission will not take management decisions in the absence of reliable data" (internal quotes omitted).

a. Does the government of the Russian Federation agree with the statement expressed in the Article-by-Article analysis?

b. Does the Executive Branch believe that it currently has access to "reliable scientific information" regarding the polar bear population? If not, what measures will be necessary in order to obtain such information and what would be the anticipated time period for doing so?

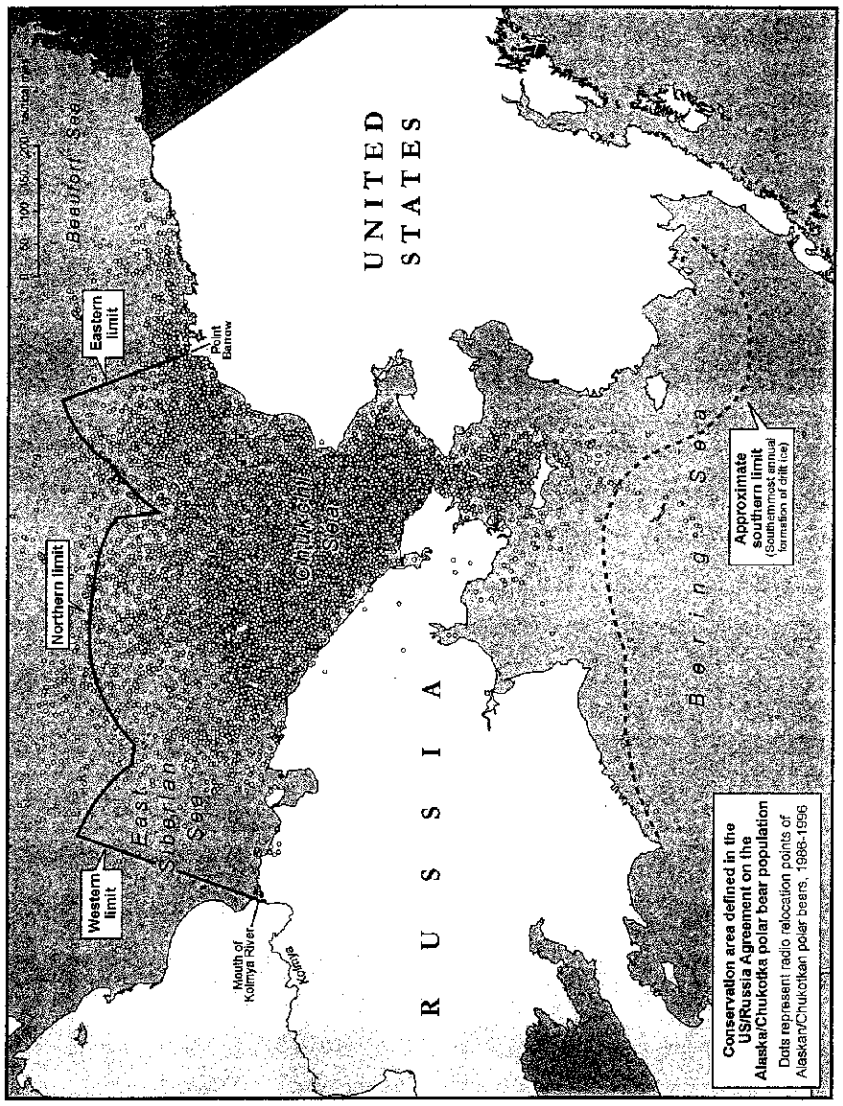
Answer. We believe the text is clear on this point. Under Article VIII (7)(b), any determination of the annual sustainable harvest level for the Alaska-Chukotka polar bear population must be made "on the basis of reliable scientific data." We have no indication that the Russian Federation does not share our interpretation that the "Commission will not take management decisions in the absence of reliable data."

Based on the negotiations and subsequent meetings with our Russian counterparts, we expect the Commission to recommend harvest limits and support their decision based on reliable data, some of which will be retrospective.

Sufficient reliable information exists to propose initial harvest restrictions. Additional information will be necessary to refine and track the efficacy of the initial parameters. The word "reliable" was used consciously to motivate collection of good quality, current information for decision-making, while also satisfying the requirement of the 1973 Agreement on the Conservation of Polar Bears to use the "best available" information.

Question 11. Please provide a map or facsimile thereof denoting the geographic area covered by the Agreement under Article 3.

Answer. Please see attached map.


Western limit
Northern limit
Eastern limit
East Siberian Sea
Beaufort Sea
Chukchi Sea
Point Barrow
Mouth of Kolmya River
Anadyr
RUSSIA
UNITED STATES
Bering Sea
Approximate southern limit
(Southernmost annual formation of drift ice)
Conservation area defined in the US/Russia Agreement on the Alaska/Chukotka polar bear population
Dots represent radio relocation points of Alaskan/Chukotkan polar bears, 1988-1996

Question 12. Are the habitats of the Alaska-Chukotka polar bear population found only in the area covered by Article 3, or do they extend beyond that area?

a. If so, what are the outer boundaries of such habitats?

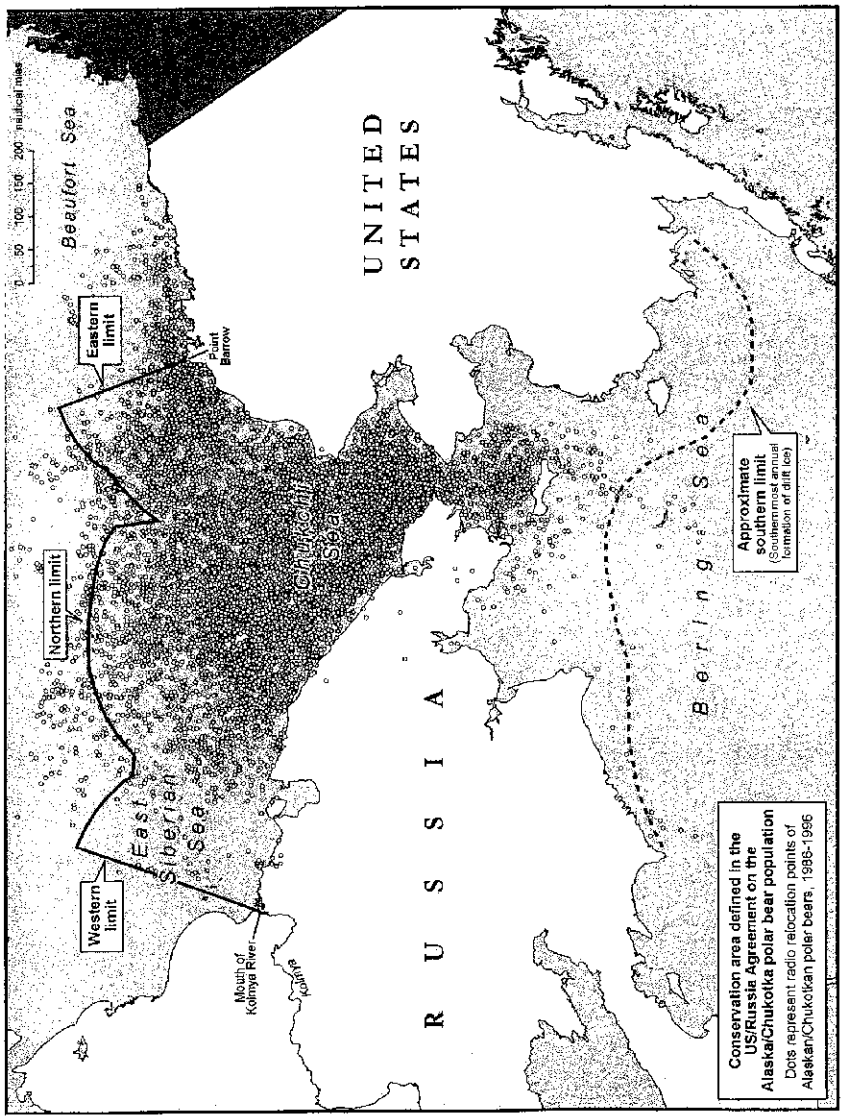
b. If so, what obligations are there under the treaty to conserve polar bear habitats outside of the area covered by Article 3?

Answer. The Agreement's geographic area (Article 3) covers those areas subject to the national jurisdiction of the United States and the Russian Federation in which the Alaska-Chukotka polar bear population is currently found. As demonstrated in the attached map outlining the different polar bear stocks, the Alaska-Chukotka polar bear population also is found in areas of the high seas outside the jurisdiction of either party.

Due to the wide range in movements and natural annual fluctuations, a small fraction of the population may occasionally move outside the zone of the Agreement. (See attached map of point locations for radio-collared bears from this population and for the outer boundaries of these habitats.)

To take into account the possibility that polar bear migratory patterns may change within the areas subject to each Party's national jurisdiction, the Agreement allows for modification of the Agreement's geographic scope by mutual agreement of the Parties. If the Parties later agree to modify the geographic scope of the Agreement, the obligations of the Agreement would extend to the new geographic boundaries.

With respect to those areas outside either Party's jurisdiction, it should be noted that both Russia and the United States remain bound by the obligations of the 1973 agreement on the conservation of polar bears, which does apply in areas outside the national jurisdiction of the parties.


Beaufort Sea
0 50 100 150 200 nautical miles
Eastern limit
Point Barrow
UNITED STATES
Northern limit
Western limit
East Siberian Sea
Chukchi Sea
Mouth of Kolyma River
Kolyma
R U S S I A
Bering Sea
Approximate southern limit
(Southern most annual formation of drift ice)
Conservation area defined in the US/Russia Agreement on the Alaska/Chukotka polar bear population
Dots represent radio relocation points of Alaskan/Chukotkan polar bears, 1986-1996

RESPONSES OF HON. JOHN F. TURNER TO FOLLOW-UP QUESTIONS FROM SENATOR JOSEPH R. BIDEN, JR.

AGREEMENT WITH RUSSIAN FEDERATION CONCERNING POLAR BEAR POPULATION

Question 1. The treaty was submitted to the Senate in July 2002. Please provide an estimate of when the implementing legislation will be submitted to Congress.

Answer. The Administration anticipates submitting implementing legislation to Congress in September.

Question 2. There was no response to the second part of question 7 (previously submitted). Please answer the question.

Answer. Question 7 reads: "Which agencies in the government of the Russian Federation will be responsible for implementing Russia's obligatiions under the treaty? Do we have confidence in the ability of the relevant agency or ministry to fully implement Russia's obligations? Does such agency or ministry have adequate resources to fulfill Russia's obligations?"

Our understanding of the Russian Government's ability to implement the Polar Bear Agreement is based on a series of meetings and correspondence with officials from the Ministry of Natural Resources, regional government of Chukotka and the Association of Traditional Marine Mammal Hunters. All parties attended a key meeting in June 2002, hosted by the Russian Government, to discuss progress on implementation of the Agreement with officials from the United States. The U.S. delegation was led by the Department of the Interior and included representatives from Alaska Native organizations. The purpose of the meeting was to review relative progress towards implementation and identify joint tasks necessary prior to formal implementation. Both sides expressed their continued support for the Agreement and the importance placed on this agreement. In reviewing relative progress towards implementation, Russia has completed ratification of the Agreement but needs to prepare implementing acts; our understanding is that these have now been drafted and will be signed when the U.S. ratification process is completed. With these implementing acts, we would expect Russia to have in place adequate legislative authority resources to implement its obligations under the Agreement. Participation by Alaskan and Chukotkan Natives is addressed in a companion Native-to-Native agreement, which is in final draft form and signature and is also awaiting completion of the U.S. ratification process.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

AGREEMENT AMENDING TREATY WITH CANADA CONCERNING PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES

Question 1. Has your testimony today been coordinated with the Department of Commerce?

Answer. Yes.

Question 2. The President's letter accompanying the submittal of the treaty indicates that legislation necessary to implement the treaty will be submitted to Congress.

Please describe the amendments necessary.

Has the necessary legislation been submitted to Congress by the Executive Branch? If not, why not? If not, when do you expect to submit it?

Answer. The amendments to the 1981 Treaty will, for the first time, impose limits on the amount of fishing by Canadian vessels in the U.S. EEZ and by U.S. vessels in the Canadian EEZ. Even though it is unlikely that U.S. vessels fishing in the Canadian EEZ will reach these new limits, legislation is needed to give the Federal Government a statutory basis on which to ensure that U.S. fishing in Canadian waters does not exceed these limits.

The Administration also believes that legislation is desirable to provide a sound basis for implementing certain other aspects of the Treaty. For example, the Treaty envisions that Canadian vessels fishing in the U.S. EEZ should "hail in" and "hail out"—i.e., provide notice of their entry to and exit from U.S. waters. There has never been express statutory authority for implementing this feature of the original Treaty. With the advent of the new limitations on fishing under the Treaty, the

"hail in/hail out" mechanism takes on new importance as a way to monitor the level of fishing by Canadian vessels in the U.S. EEZ.

The necessary legislation was included in a proposed bill submitted to Congress to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act.

Question 3. How were the limits set forth in Annex C derived?

Answer. These limits were derived as a phased-in transition to return Canadian fishing effort to circa 1998 fishing levels.

Question 4. The Secretary's letter to the President in the submittal package states that the amendments to the Treaty are "noncontroversial and are widely supported by U.S. domestic constituent interests." On what is this assertion based? Please submit any relevant letters of support from domestic constituent interests.

Please summarize the consultative process that was undertaken with stakeholders during negotiation of the treaty.

Answer. The assertion that the amendments to the Treaty are non-controversial and widely supported is based upon the views expressed by attendees at numerous constituent meetings. Stakeholders were active participants during all phases of the negotiations. These stakeholders included representatives from industry, fishers, NGOs, state governments and U.S. government agencies. Many were present during negotiations and participated fully in decision-making.

RESPONSE OF HON. JOHN F. TURNER TO A FOLLOW-UP QUESTION BY SENATOR JOSEPH R. BIDEN, JR.

AGREEMENT AMENDING TREATY WITH CANADA CONCERNING PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES

Question 1. Question 4 (previously submitted) requests any relevant letters of support received from domestic constituent interests. Are there such letters in the possession of the Department? Please provide them.

Answer. The Department is not in possession of specific letters of support from domestic constitutent interests. However, as we have previously stated, these interests were well represented on the U.S. delegation throughout the negotiating process and informed us in that context of their support for the negotiated amendments to the treaty and its annexes.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RICHARD G. LUGAR

AMENDMENTS TO THE TREATY ON FISHERIES BETWEEN THE UNITED STATES AND THE GOVERNMENT OF CERTAIN PACIFIC ISLAND STATES

Question 1. The Amendments to the Treaty on Fisheries Between the United States and the Governments of Certain Pacific Island States contain a number of references to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the "WCPFC Convention"), which the United States has signed but which has not yet been submitted to the Senate for advice and consent. Does the administration expect to submit the WCPFC Convention to the Senate for advice and consent?

Answer. Yes. The United States is satisfied with the Convention because it establishes an effective system for ensuring the conservation and long-term sustainability of the highly migratory fish stocks of the region throughout their range and ensures that the system accommodates the basic interests of the states fishing in the region, as well as those of the coastal states of the region, in a fair and balanced way. The WCPFC Convention is strongly supported by the U.S domestic fishery managers, the U.S. tuna industry, and the environmental community. The Department of State intends to submit the Convention to the Senate for advice and consent to ratification in 2004.

Question 2. By ratifying this agreement, would the United States be assuming any obligations with respect to the WCPFC Convention?

Answer. No. The two substantive amendments to Article 7 of the Treaty that relate to the WCPFC Convention pertain to linkages between the Treaty and the WCPFC Convention, once the latter enters into force. The first of these amend-

ments, a new paragraph 2, provides that parties to the Treaty shall, where appropriate, consider the extent to which adjustments to the provisions of the Treaty or measures adopted thereunder may be necessary to promote consistency with measures adopted under the WCPFC Convention. The second, a new paragraph 3, provides that parties to the Treaty may cooperate to address matters of common concern under the WCPFC Convention. These amendments provide for cooperation and the promotion of consistency between the two treaties, without binding the United States to the WCPFC Convention or any future measures adopted under it prior to its entry into force for the United States.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

AMENDMENTS TO THE TREATY ON FISHERIES BETWEEN THE UNITED STATES AND THE GOVERNMENT OF CERTAIN PACIFIC ISLAND STATES

Question 1. Had your testimony today been coordinated with the Department of Commerce?

Answer. Yes.

Question 2. Your testimony states that the "original regime of the Treaty lasted for five years," and that it was extended in 1993 and 2003. The Treaty does not have an expiration date. Please clarify your statement.

Answer. The 1987 Treaty on Fisheries itself is of unlimited duration, unless it is terminated in accordance with the provisions of Article 12. However, associated with the Treaty is the Economic Assistance Agreement between the United States and the South Pacific Forum Fisheries Agency (FFA), which does have an expiration date. The Treaty and the associated Economic Assistance Agreement together constitute the "regime" referred to in the testimony. Under the Agreement, the United States provides funds to the Pacific Island Parties, through the FFA, to be used solely for economic development. Following the entry into force of the Treaty in 1988, the associated Agreement had a term of 5 years. In 1993, the United States and the Pacific Island Parties extended the Agreement for an additional ten years. The term of that Agreement expired on June 14, 2003. To serve U.S. interests and to maintain the stability of this successful regime, in conjunction with the amendments to the Treaty and Annexes, in March 2002 the United States and the Pacific Island parties agreed to extend the Agreement for another term of 10 years. The United States and the South Pacific Forum Fisheries Agency signed the new Economic Assistance Agreement in March 2003.

Question 3. The Secretary of State's letter in the submittal package indicates that amendments to Section 6 of the South Pacific Tuna Act of 1988 will be necessary to take account of the amendment to paragraph 2 of Article 3. Have such amendments been submitted to Congress? If not, when do you expect to submit them?

Answer. The Amendment to Section 6 of the South Pacific Tuna Act will entail a very minor adjustment in its wording. We look forward to working with the relevant committees to develop the appropriate language in the near future.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Question 1. Has your testimony today been coordinated with the Environmental Protection Agency?

Answer. Yes.

Question 2. Were any statements made by the U.S. delegation that relate to the meaning of treaty terms which are not referenced or described in the submittal to the Senate of which the committee should be aware?

Answer. I am not aware of any formal recorded statements made by the U.S. delegation during the negotiations that relate to the meaning of treaty terms that are not encapsulated in the Administration's understanding of the Treaty reflected in the package of materials sent by the President to the Senate and my own testimony

before the Committee. If, however, there are particular treaty terms where you wish further clarification of the Administration's interpretation, we would be happy to provide it to you.

Question 3. In the Secretary of State's letter to the President, at page xx of Treaty Doc. 107-5, the Executive Branch indicates that the United States expects to make use of the exemption permitted under note (ii) of Annex A "with respect to a number of articles, such as treated wood" (emphasis added). Please provide information on the other use exemptions that the Executive Branch intends to notify to the Secretariat.

Answer. Annex A contains a list of nine chemicals that each Party shall prohibit and/or take necessary measures to eliminate their production and use. The third column of Annex A, like the third column in Annex B, contains a list of the specific exemptions that parties may take with respect to those chemicals. If a party wishes to avail itself of one of these specific exemptions, pursuant to Article 4, it shall on becoming party notify the Secretariat of the Convention, so that this exemption will be recorded in a Register. As noted on page ix of the Secretary's Letter of Submittal, "[T]he United States does not anticipate the need to submit any registrations for specific exemptions for the substances currently in the POPs Convention."

The category of chemicals referred to in footnote (ii) of Annexes A and B are quantities of POPs occurring as constituents of articles manufactured or already in use before the Convention's entry into force for a Party. By the terms of the footnote, this is not a production and use specific exemption. The U.S. would notify the Secretariat as needed to comply with this exemption.

The U.S. anticipates that it will make use of the exemption for closed-system site limited intermediates pursuant to footnote (iii) in Annexes A and B for the POPs chemical hexachlorobenzene. By the terms of the footnote, this is not a production and use specific exemption. The U.S. would notify the Secretariat as needed to comply with this exemption.

Question 4. Article 3(5) provides that paragraphs 1 and 2 of the same article do not apply to "quantities of a chemical to be used for laboratory-scale research or as a reference standard."

a. Is there a common understanding among the states present at the negotiations about the scope of this exemption?

b. What is a "reference standard?"

Answer. Article 3(5) was drafted to ensure that the Convention's restrictions on production, import and export would not have the unintended effect of restricting scientific research involving these chemicals.

Reference standards, or reference materials, are specially prepared samples of chemicals or other materials that have precisely measured and documented properties, and are used by analytical chemistry (and other) laboratories to ensure that the labs are properly identifying chemical compounds, and for quantitative calibration of laboratory instruments. Reference materials are considered to be authoritative standard references for labs, and are a critical part of any laboratory's quality control/quality assurance program. The National Institute of Standards and Technology (NIST) conducts an extensive program for preparing reference materials and making them available for sale.

With respect to chemicals used in lab-scale research or as a reference standard, the quantities of the chemical to which this paragraph would apply would only be those necessary to conduct the laboratory research in question or for use as a reference standard. There is a common understanding among states about this exemption.

Question 5. The phrase "Parties with economies in transition" is used in several places in the Convention, such as the preamble, and Articles 4(7), 12(2), and 13(2).

a. Is there a common understanding among the States present at the negotiation about which nations would be considered "Parties with economies in transition" for the purpose of these provisions?

b. What are the criteria for this category of states?

Answer a. There is a common understanding among the Parties as to which countries this designation applies. Specifically, it is those countries in Eastern Europe and the former Soviet Republics that have been moving over the past 13 years or so from a communist economy to a free market economy. This designation has been used in many other multilateral environmental agreements.

Answer b. There are no specific criteria established for this category of states.

Question 6. Article 5(a) requires development of an action plan designed to "identify, characterize, and address the release of the chemicals listed in Annex C and to facilitate implementation of subparagraphs (b) to (e)." The letter of the Secretary of State indicates that the United States has existing authority under the Clean Air Act and Clean Water Act to develop inventories and release estimates.

a. To what extent has such authority already been exercised with respect to the chemicals listed in Annex C?

b. What would be the scope of work remaining to fulfill the obligations of this provision?

Answer. The United States has more than twenty years of experience in dealing with the principal Annex C chemicals (dioxins and furans). The U.S. EPA maintains and routinely updates a national inventory of emissions and has successfully regulated most of the source categories listed in Annex C. EPA is currently working to expand the inventory to include the unintentionally released polychlorinated biphenyls (PCBs) and hexachlorobenzene (HCB).

The core of the United States national action plan, due two years from the entry into force of the Convention, will focus on dioxin and an accompanying strategy. Some expansion of this effort will be necessary to cover the other pollutants (unintentional PCBs and HCB).

Question 7. The Executive Branch recommends an understanding with regard to Article 6(d)(ii) and the meaning of "low" persistent organic pollutant content.

a. Why is this understanding necessary? Is it not self-evident that the recommendations of the Conference would not be binding, given the various qualifications set forth in paragraph (d) and (d)(ii)?

b. Was there a statement made by other delegations at the negotiating session that necessitates this understanding? If so, please elaborate.

Answer a. The understanding is required to avoid any ambiguity created by the language in Article 6(2) authorizing the Conference of the Parties "to define" low POPs content. While the Administration agrees with the conclusion in the question that the work of the Conference of the Parties would not be legally binding, an understanding clarifying and memorializing this position is a prudent way to put on record the U.S. position and to help avoid future misunderstandings among the Parties on this important issue.

Answer b. The text in Article 6 was one of the final elements of the Convention to be negotiated. We are not aware of statements made by other delegations arguing that the definitions provided by the Conference of the Parties would be legally binding on the Parties.

Question 8. Are there any existing "international rules, standards and guidelines" with regard to what constitutes low persistent organic pollutant content within the meaning of Article 6(d)(ii)?

Answer. We are not aware of any existing international rules, standards and guidelines on what constitutes low POPs content. However, the Conference of the Parties to the Basel Convention is in the process of drafting technical guidelines on the environmentally sound management of persistent organic pollutant wastes, with a view to finalizing them by the end of 2004. The Intergovernmental Negotiating Conference for the POPs Convention has been monitoring this exercise and the POPs Secretariat is working with the Easel Secretariat and the U.N. Environment Program Division of Technology, Industry and Economics to try and ensure that any such guidelines meet the needs of the POPs Convention.

Question 9. Does the United States have a position with regard to what constitutes low persistent organic pollutant content within the meaning of Article 6(d)(ii)?

Answer. Article 6.1(d)(ii) must be read in context with Article 6.2, which directs cooperation between the Stockholm Conference of Parties and the appropriate bodies of the Basel Convention. Development of "low content" values was one of a number of agenda items discussed at the Basel Convention Open Ended Working Group meeting April 28-May 2, 2003. No set of consensus values was developed at that meeting, and discussion will be ongoing. Values that are eventually determined to be "low content" will in all likelihood vary by chemical because the POPs chemicals have different toxic potencies, and can be effectively treated to different levels.

Regarding U.S. ability to implement any values that are eventually adopted, it is useful to note that current U.S. hazardous waste regulations regulate all the POPs

chemicals except Mirex either as waste constitutents [1] or when product chemicals are designated as waste. Because they are regulated as hazardous waste constituents, we understand the Environmental Protection Agency has already established treatment levels for all of the POPs chemicals except Mirex. The Agency will bring its information on treatment methods and treatability levels for POPs chemicals to the Basel Convention discussion of what constitutes "low content" under the Stockholm Convention.

Question 10. How will the membership of the Persistent Organic Pollutants Review Committee be determined? Is it expected that the United States will always be a member? Why?

Answer. The membership of the Persistent Organic Pollutants Review Committee will be set out in its terms of reference. These terms are still the subject of negotiations and will be adopted at the first meeting of the Conference of Parties (COP) after the Convention has entered into force. This underlines the importance of ensuring that the U.S. is among the first 50 governments to ratify the Convention and among the Parties at the first COP. Consistent with our experience with other technical bodies of this type, we expect that the United States will be a member of the Committee once we become a Party. Besides the fact that the United States is a major chemicals producer and user, other countries value U.S. technical and regulatory expertise in this field and desire our input on technical issues of this kind.

Question 11. The Secretary of State's letter states that Article 9 does not "require the exchange of any information" (emphasis in original). What then, is the meaning of Article 9(1)? Why is the phrase "shall facilitate or undertake the exchange of information" considered non-binding? Please provide a brief legal analysis.

Answer. Article 9(1) requires parties to facilitate or undertake the exchange of information relevant to the reduction or elimination of production, use, and release of POPs and on alternatives to POPs. The Article thus affords the United States two alternative paths to satisfying its obligations. It could comply with Article 9 by undertaking the exchange of information. In some instances, however, this approach might give rise to potential conflicts with U.S. laws regarding the protection of confidential business information (CBI) . Article 9(1), however, in the alternative, would be satisfied by the facilitation of the exchange of information, without actually requiring any such exchange. This could be done, for example, by encouraging industry to waive any CEI protection that might attach to information and disclose it where it goes to the economic and socials costs of alternatives or other relevant information regarding POPs.

Question 12. Article 9(5) provides that for the "purposes of the Convention, information on health and safety of humans and the environment shall not be regarded as confidential" but the "other information" exchanged by the Parties under the Convention shall be protected as mutually agreed by the Parties.

a. How does the Executive Branch intend to implement this provision?

b. What does the Executive Branch understand to be the scope of "information on the health and safety of humans and the environment?" Is the term "environment" as used in this paragraph modified by "health and safety"?

Answer a. The United States would intend to implement this provision by facilitating the exchange of relevant information, including information on health and safety of humans and the environment. Since the United States is not required to exchange any information under Article 9 (see Question 11), the fact that the Convention treats information on health and safety of humans and the environment as non-confidential will not conflict with U.S. laws regarding the protection of confidential business information. To the extent that there is a desire to exchange other information that is confidential with other Parties, the U.S. would need to work out mutually agreed procedures.

Answer b. In the first sentence of this paragraph, we understand the scope of the phrase "information on health and safety of humans and the environment" to cover two separate categories of information: (a) information on the health and safety of humans; and (b) information on the environment.

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[1] This is not to say that all POPs Chemicals are regulated in all wastes in which they occur. Some are regulated as waste constituents of specific listed waste streams, regardless of concentration, while others are regulated based on their concentration in a waste, under the Toxicity Characteristic, and still others are only regulated as of specification product designated as waste. However, regulation as hazardous waste by any of these methods provides the Agency the opportunity to establish required treatment levels.

Question 13. Under the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.), certain firms are required to submit on an annual basis a "toxic chemicals source reduction and recycling report," including information on source reduction practices (42 U.S.C. 13106). Does information that is withheld from public release under the authority of 42 U.S.C. 13106(e) relate, in any respect, to health and safety of humans or the environment?

Answer. EPA has informed us that the only type of information that can be withheld under 42 U.S.C. section 13106(e) is chemical identity information. In the place of such information, the reporter must provide the generic class or category of the chemical. The reporter, moreover, may only withhold the chemical identity if it is a trade secret. To do this, the reporter must demonstrate that "disclosure of the chemical identity] is likely to cause substantial harm to the competitive position of the reporter." Given this statutory regime, EPA does not believe that information withheld from public release under 42 USC §13106(e) would relate to the health and safety of humans or the environment. In any event, the United States does not interpret the POPs Convention to require the United States to undertake to disclose or exchange such information as it relates to reporting under the Pollution Prevention Act.

Question 14. Does the United States expect to be present and voting at every meeting of the Conference of the Parties?

Answer. After becoming a party to the Convention, the United States expects to be present at every meeting of the Conference of the Parties and to actively participate in decisions taken by the Conference of the Parties.

Question 15. What are the anticipated U.S. budgetary resources necessary to implement the treaty and for what purposes?

Answer. The State Department supports the operation of the Secretariat of the Stockholm Convention through the International Organization and Programs (IO&P) account. We expect that as the agreement matures, the cost of the Secretariat will be approximately $4-5 million annually; the United States typically aims to pay, on a voluntary basis, approximately 22% of budgets of multilateral environmental agreements to which we are party.

Separately, the Convention has provisions to provide financial assistance to developing countries through the Global Environment Facility (GEF) as the agreement's interim funding mechanism. The United States has pledged a total of $500 million to the GEF for 2003-2006 to cover all GEF-related projects, including those pertaining to Stockholm Convention. The GEF has set a nominal program allocation of over $200 million from 2003-2006 to support POPs projects.

Question 16. Please summarize the consultative process that was undertaken with stakeholders during negotiation of the treaty.

Answer. The Executive Branch engaged in extensive discussions with industry, environmental, tribal, and State interests throughout the negotiations. Meetings were typically held with these groups before, during, and sometimes after each of the negotiating sessions. This stakeholder outreach will continue for current and future meetings of the Stockholm Convention.

Question 17. Does the Executive Branch intend to make a declaration under Article 25(4) upon deposit of the instrument of ratification?

Answer. Yes. The U.S. delegation was instrumental in ensuring that the Convention contained this language, known as the "opt-in" approach, which will bind parties making a declaration to the provisions regarding a new chemical added to the Convention's first three annexes (or any other amendments to those annexes) only upon affirmative ratification, acceptance, approval or accession by the declaring party.

Question 18. Will the Executive Branch await the enactment of the necessary implementing legislation prior to depositing the instrument of ratification?

Answer. As is customary in U.S. treaty practice, the United States does not consent to be bound by treaties until it has in place the necessary domestic legal authorities to comply with the treaty's obligations. Thus, in the POPs case, the United States will not deposit its instrument of ratification until such time as the necessary implementing legislation has been enacted.

Question 19. In the Secretary of State's letter in the submittal package, the Secretary indicates that certain amendments to Toxic Substances Control Act and the Federal Insecticide, Fungicide, and Rodenticide Act are needed to "ensure the United States' ability to implement provisions of the Convention." The Secretary

also states that "[o]ther targeted changes *may also be sought* to ensure our ability to participate effectively in negotiations regarding proposed amendments to add chemicals, and to ensure that the United States is able to ratify such amendments in a timely manner, if it so chooses" (emphasis added).

What is the Executive Branch's current position on the need for the type of amendments referenced in the second sentence above?

Answer. For the reasons stated in the Secretary of State's letter, the Administration supports implementing legislation that includes legislative provisions authorizing domestic regulations in light of proposed amendments to add chemicals under the Convention. At the same time, however, these provisions are not necessary for the United States to become party to the Convention since, for example, the United States would plan to invoke the "opt-in" provision in Article 25(4) (See Response to Question 17).

An example of a targeted change to ensure the ability of the United States to participate effectively in negotiations to add new chemicals to Convention's annexes is a proposal in the Administration bill introduced during the last Congress, which sought authority to collect information on existing manufacturing, processing, distribution in commerce for export, use and disposal of substances proposed for addition. We believe that such information will be crucial ensuring that the United States can protect its interests during the process of negotiating proposed amendments to add chemicals to Convention annexes.

RESPONSES OF HON. JOHN F. TURNER TO FOLLOW-UP QUESTIONS FROM SENATOR JOSEPH R. BIDEN, JR.

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Question 1. The answer to Question 3 (previously submitted) is unresponsive. The Secretary's letter, at page xx of Treaty Doc. 107-5, states that the "United States expects to make use of this exemption (in note ii to Annex A) with respect to a number of articles, such as treated wood" (emphasis added). The response to question 3 states the "U.S. would notify the Secretariat as needed to comply with this exemption."

a. Does the United States know today what other articles will need to be notified to the Secretariat under note ii to Annex A? If so, what are they?

b. Please answer the same two questions set forth in part (a) of this question with regard to articles that may be notified under note iii to Annex A.

Answer a. Although we have not completed a final examination of this issue at this time, we intend to do so before making a notification to the Secretariat. We have reviewed the matter and believe there are a number of uses that may be the subject of such a notification as described in the following paragraph.

A number of the POPS termaticides were used to treat structures before their registrations were cancelled.

Specifically, aldrin, dieldrin, chlordane, and heptachlor may remain in use in structures that had previously been treated with these chemicals. Heptachlor has also been used for fire ant control in electrical cable boxes and some heptachlor may remain in such cable boxes. Endrin was used as an avicide on bird perches and there may still be perches with endrin residue. Mirex was historically used as an industrial fire retardant and there may still be in use certain articles containing mirex.

Answer b. As noted previously, the United States anticipates it will make use of the closed-system site-limited intermediate provision of Annex A note iii in the case of hexachlorobenzene. This is the only notification for note iii that we are aware of at this time; however, we intend to review this issue further before making a notification to the Secretariat.

Question 2. Question 15 (previously submitted) asks for information about anticipated U.S. budgetary resources necessary to implement the treaty and for what purpose. It was not limited to the Department of State budget or contributions for the Secretariat. Are there any budget implications for the Environmental Protection Agency? Please provide relevant estimates.

Answer. We understand from EPA that there would likely be a marginal increase in the staff and related costs associated with implementing the POPs treaty's provisions. This would include costs associated with, in particular: (1) preparing Federal Register notices related to the possible addition of new chemicals and following through, as appropriate, on necessary regulatory actions, (2) preparing a national

implementation plan and a national action plan as called for under the Convention, (3) compiling the necessary information related to reporting provisions under the convention, and (4) providing or facilitating technical assistance to developing countries and countries with economies in transition independent of our efforts through the GEF. A more precise response to this question is not possible until the Convention finalizes discussions on issues such as guidance for national implementation plans and reporting formats, and the precise nature of the U.S. procedural approach is defined with regard to new chemicals proposed for addition to the Convention in the future.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR RUSSELL D. FEINGOLD

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Question 1. As a Senator from the Great Lakes Region, I support the POPs Convention, and believe international efforts to restrict persistent organic pollutants stemmed, in part, from our longstanding efforts with the Canadian government to reduce toxics loading into the Great Lakes. I want, therefore, to make certain that the Stockholm Convention can be fully and effectively implemented domestically.

Assistant Secretary Turner, you are certainly aware that, in order to meet our commitments under the Convention we will need to pass domestic legislation that addresses how EPA will regulate additional POPs. Will you review for me the administration's commitment to such legislation, and your progress in working with the Senate to develop legislation that will allow for the addition of new chemicals that is consistent with the provisions of the convention? Does the administration presently have a time frame for concluding these discussions?

Answer. The Administration is firmly committed to the Stockholm Convention on POPs, and to working with Congress to ensure that legislation is passed that will allow the United States to ratify this important agreement. Significant progress has been made over the past year on the implementing legislation. The Administration has been working over this time with the Congress to prepare a legislative package that will allow the United States to implement the treaty provisions, including the provisions on new chemicals (however, as discussed in question #2, such provisions are not in a strict sense required by the Convention) We are committed to continuing our work with the Congress to ensure a successful outcome is achieved from these discussions. We do not have a specific timeline for completion of negotiations, but we believe it is important that implementing legislation is completed and the United States ratify the agreement by the time important decisions are taken at the first Conference of the Parties, expected to be in early 2005.

Question 2. Do you agree that U.S. implementing legislation must include a mechanism for adding future chemicals that are found to be a concern under the Convention?

Answer. The Administration is currently working with the Congress to develop an adding mechanism to be included in implementing legislation. There are several options on this subject that are the subject of ongoing discussions on the implementing legislation between the Administration and the Congress.

However, it should be noted that the legislative provisions on future chemicals referred to in the question are not strictly necessary to allow the United States to ratify the Convention since, for example, the United States would plan to invoke the "opt-in" provision in Article 25(4), allowing it to become bound by amendments adding new chemicals only where it affirmatively consents to be bound by such amendments. Moreover, all states have the right under Article 22(3)(b) to decline to consent to amendments adding new chemicals, which, even in the absence of Article 25(4), could be invoked if such an amendment would require additional legislation or regulatory action.

Question 3. Many countries have already ratified this agreement, and international implementation discussions are ongoing. Have any second rounds of particular substances yet been discussed, or will the Convention need to be fully in force before such determinations are made?

Answer. When the Stockholm Convention was adopted, the negotiating States agreed that before the Convention entered into force they would focus on issues directly related to implementing existing obligations under the treaty for the 12 persistent organic pollutants (POPs) in the Annexes. Therefore, there has not been a

"second round" of proposed substances under discussion within the Convention. The Convention has to enter into force before the formal body that reviews proposals on potential additions, the POPs Review Committee, convenes to consider proposals.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR BARBARA BOXER ON BEHALF OF HERSELF AND SENATORS JEFFORDS, KERRY AND SARBANES

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS

Question 1. On Page XXII of the Message from the President, Secretary of State Powell lays out certain amendments to FIFPA and TSCA that will be sought, then states that "other targeted changes *may also be sought* to ensure our ability to participate effectively in negotiations regarding proposed amendments to add chemicals, and to ensure that the United States is able to ratify such amendments in a timely manner, if it so chooses" (emphasis added). Does the administration continue to seek such targeted changes? And, if so, what are these "targeted" changes?

Answer. For the reasons stated in the Secretary of State's letter, the Administration supports implementing legislation that includes legislative provisions authorizing domestic regulations in light of proposed amendments to add chemicals under the Convention. At the same time, however, these provisions are not necessary for the United States to become party to the Convention since, for example, the United States would plan to invoke the "opt-in" provision in Article 25(4), ensuring that it would become bound by amendments adding new chemicals only where it affirmatively consents to be bound by such amendments.

In terms of implementing legislation, there are several options on this subject that have been proposed, which are the subject of discussions between the Administration and the Congress.

Question 2. As I understand the position of the administration, it is that the United States will not deposit its Instrument of Ratification until and unless implementing legislation is enacted that will enable the United States to implement all the Convention obligations. Is this understanding correct?

Answer. As is customary in U.S. treaty practice, the United States does not consent to be bound by treaties until it has in place the necessary domestic legal authorities to comply with the treaty's obligations. Thus, in the POPs case, the United States will not deposit its instrument of ratification until such time as the necessary implementing legislation has been enacted.

Question 3. Please clarify the administration's position as to whether it is seeking changes to ensure the ability of the United States to participate effectively in negotiations to add new chemicals to the POPs list and, if not, how you fully plan to implement the POPs convention without such changes?

Answer. See response to Question 1.

Question 4. The President, in the Letter of Transmittal of May 6, 2002, notes that the POPs Convention "includes obligations on . . . a science-based procedure to add new chemicals that meet defined criteria." Is this still the view of the administration?

Answer. This is still the view of the Administration. The United States was heavily involved in the negotiations of these provisions and ensured that a science-based approach was the framework for the review process under the Convention. However, many key details in the process for adding new chemicals must still be worked out. This underlines the importance of ensuring that the U.S. is among the first 50 governments to ratify the Convention and among the parties at the first COP.

Question 5. Do you consider this Convention to be a static agreement or a dynamic one? Would you agree that an essential component to ensure that it remains dynamic is the science-based procedure built into the Convention to nominate, assess, and add additional chemicals with POPs characteristics beyond the initial dirty dozen?

Answer. We consider the agreement to be a dynamic one that will evolve over time to include other chemicals that are not currently listed. One of the major U.S. negotiating objectives, which we believe was successful, was to ensure that the framework for assessing proposals for new chemicals was a science-based process. However, there are also many key details in this process that must be worked out

among the members of the COP. At the same time, however, the United States also negotiated the "opt-in" provision in Article 25(4) to ensure its ability to weigh the results of this process on a case-by-case basis and to reserve its right to decide whether to become bound by changes adding new chemicals to the Convention.

Question 6. The Secretary of State's Letter of Transmittal, which forms an integral part of the President's Letter of Transmittal of May 6, 2002, states that the United States has "already taken substantial action to address the risks associated with those POPs chemicals currently covered by the Convention," but that other countries still use these substances. Is it correct that this means that most of the work to cease production and use of the original twelve intentionally-produced POPs will be in countries other than the United States?

Answer. Much of the work to be done is in other countries, but the United States and many other developed countries are assisting others by sharing our experiences and by providing technical and financial assistance.

Question 7. Is it correct that the real work for the United States regarding banning production and use of POPs chemicals will come if additional substances with POPs characteristics are added to the Convention through an open and transparent science-based procedure? Is it not correct that this means that the United States must be ready, willing, and able to work with other nations of the world on proposals to add chemicals beyond the original twelve POPs chemicals in a timely manner if it is going to be able to convince other nations that we take this Convention seriously?

Answer. There is a considerable amount of work to do globally to work with other countries to ensure they are able to phase out or reduce the production, use and/or release of these substances. We provide considerable technical and financial assistance to help countries with this often-difficult task. There will be additional challenges for the United States and others as more chemicals are added to the Convention.

One important aspect of the Convention is that it will evolve over time as chemicals are added to the Annexes in the future. We intend to be a constructive part of that science-based, evolutionary process. The most important factor in convincing other countries that we take the Convention seriously is for the United States to act now to ratify it. Once we become a party to the Convention, we would expect other countries to seriously and thoughtfully consider the considerable technical and scientific resources that the United States can bring to the discussion of possible additional chemicals.

RESPONSES OF HON. JOHN F. TURNER, ASSISTANT SECRETARY OF STATE FOR OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

ROTTERDAM CONVENTION ON THE PRIOR INFORMED CONSENT PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

Question 1. Has your testimony today been coordinated with the Environmental Protection Agency?

Answer. Yes.

Question 2. President Clinton submitted the treaty to the Senate. In so doing, he recommended that ratification be subject to an understanding regarding Article 12. Does the Bush Administration support the proposed understanding without modification?

Answer. Yes.

Question 3. Will the Executive Branch await the enactment of the necessary implementing legislation prior to depositing the instrument of ratification?

Answer. As is customary in U.S. treaty practice, the United States does not consent to be bound by treaties until it has in place the necessary domestic legal authorities to comply with all treaty obligations. Thus, in the case of the Rotterdam Convention, the United States will not deposit its instrument of ratification until such time as the necessary implementing legislation has been enacted.

Question 4. How will the membership of the Chemical Review Committee provided for under Article 18(6) be determined? Is it expected that the United States will always be a member? Why?

Answer. The membership of the Chemical Review Committee will be set out in its terms of reference to be adopted by the first meeting of the Conference of the Parties (COP). We expect that the United States would be a member of the Committee once we become a Party as we have the world's most advanced chemicals regulatory system as well as a large share of the global chemicals industry, and can provide substantial technical expertise. Furthermore, Article 18(6)(a) requires that the Committee membership be based on "equitable geographic distribution." Should the COP adopt the same geographic structure that has been used in the voluntary interim PIC procedure as expected, the U.S. would have one of the two seats in the North America region which consists of only two countries (Canada and the United States).

Question 5. What are the anticipated U.S. budgetary resources necessary to implement the treaty and for what purposes?

Answer. The State Department supports the operation of the Secretariat of the Rotterdam Convention through the International Organizations and Programs (IO&P) account. We expect that as the agreement matures, the cost of the Secretariat will be approximately $3.5-$5 million annually; the United States typically aims to pay, on a voluntary basis, approximately 22% of budgets of multilateral environmental agreements to which we are party. Operational costs are for the Convention's Secretariat and technical assistance/capacity building.

Question 6. Does the United States expect to be present and voting at every meeting of the Conference of the Parties?

Answer. After becoming a party to the Convention, the United States expects to be present at every meeting of the Conference of the Parties and to actively participate in decisions taken by the Conference of the Parties.

Question 7. Please summarize the consultative process that was undertaken with stakeholders during negotiation of the treaty.

Answer. The Executive Branch engaged in extensive discussions with industry and environmental interests during the negotiations of the treaty. Meetings were typically held with these groups before, during, and sometimes after each of the treaty negotiating sessions. We expect stakeholder outreach to continue as necessary in connection with Conferences of the Parties and other meetings of the Rotterdam Convention.

RESPONSE OF HON. JOHN F. TURNER TO A FOLLOW-UP QUESTION FROM SENATOR JOSEPH R. BIDEN, JR.

ROTTERDAM CONVENTION CONCERNING HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

Question 1. Question 5 (previously submitted) asks for information about anticipated U.S. budgetary resources necessary to implement the treaty and for what purpose. It was not limited to the Department of State budget or contributions for the Secretariat. Are there any budget implications for the Environmental Protection Agency? Please provide relevant estimates.

Answer. We understand from EPA that there would likely be a marginal increase in the staff and related costs associated with implementing the Rotterdam Convention's provisions. This would include costs associated with, in particular: (1) preparing Federal Register notices related to the possible addition of new chemicals and following through, as appropriate, on necessary regulatory actions, (2) preparing notifications of final regulatory actions pursuant to Article 5, (3) preparing import responses pursuant to Article 10, (4) processing export notifications pursuant to Article 12, (5) implementing the information exchange provisions of Article 14, and (G) providing technical assistance to developing countries and countries with economies in transition pursuant to Article 16.