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UNITED NATIONS CONVENTION AGAINST CORRUPTION (TREATY DOC. 109–6)

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

REPORT

[To accompany Treaty Doc. 109–6]

The Committee on Foreign Relations, to which was referred the United Nations Convention Against Corruption (Treaty Doc. 109–6), signed at Merida, Mexico on December 9, 2003, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof with two reservations, and three declarations, as set forth in this report and the accompanying resolution of advice and consent to ratification.

CONTENTS

I. PURPOSE

The United Nations Convention Against Corruption (the "Corruption Convention" or "Convention") is designed to prevent and suppress corruption, promote integrity and accountability, and facilitate international cooperation and technical assistance to prevent and combat corruption and to recover assets. It is the first multilateral treaty to target corruption on a global basis and is also the most comprehensive international legally-binding anti-corruption instrument in terms of the scope of activities covered.

II. BACKGROUND

The Corruption Convention was adopted by the United Nations General Assembly on October 31, 2003, and was signed by the United States on December 9, 2003, at Merida, Mexico. The Convention, which entered into force on December 15, 2005, now has 60 parties. The first Conference of States Parties for the Convention will take place in Amman, Jordan in December 2006.

The Convention builds on the anti-corruption measures contained in Articles 8 and 9 of the U.N. Convention Against Transnational Organized Crime, which was approved by the Senate in 2005. The Convention also expands on the provisions and geographical breadth of the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Organization of American States Inter-American Convention Against Corruption, to which the Senate gave advice and consent in 1998 and 2000, respectively. As compared to these existing treaties, the Convention adopts more expansive provisions to prevent and criminalize corruption and affords procedures for governments to recover assets that were illicitly obtained by corrupt officials.

The Convention creates a regime for mutual legal assistance that is equivalent to those embodied in other law enforcement treaties to which the United States is a party. It would level the playing field for U.S. companies, which are already prohibited by U.S. law from bribing foreign officials. The Convention would improve the tools available to U.S. law enforcement by enhancing its ability to obtain assistance internationally in its efforts to investigate and prosecute corruption and to recover illicitly acquired assets from corrupt government officials. Further, it would support broader U.S. efforts within the United Nations, the G–8, and elsewhere to promote transparency, accountability and anti-corruption measures.

III. SUMMARY OF KEY PROVISIONS

A detailed article-by-article discussion of the Convention may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 109–6. A summary of key provisions of the Convention is set forth below.

The Convention is divided into eight chapters containing (1) general provisions; (2) preventive measures; (3) criminalization and law enforcement; (4) international co-operation; (5) asset recovery; (6) technical assistance and information exchange; (7) mechanisms for implementation; and (8) final provisions. Some measures are mandatory, while others are discretionary. With the reservations recommended by the committee, no new legislation will be required for the United States to comply with the Convention upon ratification.

General Provisions. Chapter I sets forth the Convention's objectives, as described above, and provides definitions of terms used throughout the Convention. The definition of "public official" may vary according to the domestic law of a State Party, and need not necessarily include state or local officials, but the definition of "foreign public official" remains uniform, and includes "any person

holding a legislative, administrative or judicial office of a foreign country . . . [or] exercising a public function for a foreign country, including for a public agency or public enterprise."

Preventive Measures. Chapter II contains measures Parties are to take to minimize the potential for corruption. Many of the articles in this chapter specify that the obligations are undertaken "in accordance with the fundamental principles" of each Party's domestic legal system. Parties are required to develop and implement or maintain effective anti-corruption policies, to collaborate with other States Parties and relevant international organizations to promote and develop measures to prevent corruption (article 5), and to create bodies to carry out these functions that are free from undue influence and have the independence and resources necessary to function effectively (article 6). Other articles address, among other subjects, the hiring and conduct of civil servants (articles 7 and 8), public procurement (article 9), and accounting standards in the private sector (article 12), as well as anti-money laundering regulatory measures (article 14). Parties are specifically required to disallow the tax deductibility of bribes of public officials, which Parties must criminalize under articles 15 and 16(a) (article 12).

Criminal Prohibitions. Chapter III obligates Parties to outlaw certain forms of corruption-related misconduct: bribery of national public officials, bribery of foreign public officials or officials of public international organizations, embezzlement by public officials, and certain offenses related to money laundering and obstruction of justice (Articles 15, 16, 17, 23, and 25, respectively). U.S. federal law already criminalizes these offenses. As explained in Section VI below, at the suggestion of the executive branch the committee has recommended that the United States reserve against these obligations with regard to the limited scope of conduct that is not within U.S. federal jurisdiction and would not be adequately covered by existing U.S. state laws.

Other articles in Chapter III call on Parties to consider establishing further offenses under their domestic law. U.S. law already criminalizes several of these other offenses, such as private sector embezzlement. There is no obligation to adopt these offenses, however, and the executive branch has affirmed that it does not intend to seek any changes to existing U.S. law in this respect.

Article 31 obligates Parties to adopt measures, to the greatest extent possible within their legal systems, to enable confiscation of proceeds of (or property of equivalent value to the proceeds), or property used in or destined for use in, offenses established in accordance with the Convention.

Article 35 requires Parties to take measures, in accordance with the principles of their domestic law, to ensure that persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible to obtain compensation. The United States, through an existing body of laws, already provides legal avenues for claimants who have been wronged by those who commit corrupt acts in certain transactions. The Convention does not create a new cause of action in U.S. courts. As the Secretary of State explained in transmitting the Convention to the President:

> [T]he *travaux preparatoires* clarify that Article 35 was intended to address only legal proceedings against those who commit acts of corruption, rather than those who may be associated with others who commit acts of corruption. The article intentionally provides the States Parties significant flexibility in its implementation. The article does not restrict the right of a State Party to decide the precise circumstances under which it will make its courts available, nor does it require or endorse a particular choice made by a State Party in determining how it will meet its obligations under this article.
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> Article 35 would not have any direct effect on the potential exposure of U.S. companies or others in private litigation in the United States. The current laws and practices of the United States are in compliance with Article 35, and the United States does not construe Article 35 to require broadening or enhancing current U.S. law and practice in any way. U.S. jurisprudence permits persons who have suffered from criminal acts such as bribery to seek damages from the offenders under various theories. These remedies are sufficient to comply with this article. It should be noted that nothing in this article should be interpreted as requiring the United States to create a private right of action under the Foreign Corrupt Practices Act or as expanding the scope of the Alien Tort Statute to permit foreigners to litigate corruption claims in U.S. courts.[1]

The committee agrees with this interpretation of Article 35. As explained in Section VI below, at the suggestion of the executive branch the committee has recommended that a declaration be included in the resolution of advice and consent clarifying that the provisions of the Convention (with the exception of articles 44 and 46) are non-self-executing, and that none of the provisions of the Convention creates a private right of action.

International Cooperation. Chapter IV of the Convention addresses international cooperation, including extradition and mutual legal assistance among the parties. Article 44 of the Convention adds the crimes established in accordance with the Convention to those offenses for which extradition may be sought under extradition treaties in force among parties to the Convention, and permits, but does not require, Parties to use the Convention as a basis for extradition in the absence of such treaties. For the United States, the Convention will not provide an independent legal basis for extradition, which will continue to be based on U.S. domestic law and applicable bilateral treaties.[2] In accordance with paragraph 6 of this Article, the executive branch will provide notification of this fact to the depositary at the time of ratification. The Convention will, however, effectively expand the scope of offenses covered under certain existing U.S. bilateral extradition treaties (those that specifically list the offenses for which extradition may be granted).

Article 46 addresses mutual legal assistance between the Parties. Paragraph 1 requires Parties to provide each other the widest

[1] Treaty Doc. 109–6, at 10.
[2] *Id.* at 12.

measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offenses covered by the Convention. The article provides that existing mutual legal assistance treaties ("MLATs") between the Parties will not be affected, and will continue to be applied by the Parties where they exist. Where no such agreement exists, the Parties will make and receive requests for mutual legal assistance under the provisions of Article 46, paragraphs 9 through 29. The procedures in paragraphs 9–29 of this article are analogous to those contained in U.S. bilateral and multilateral treaties approved by the Senate in recent years, but contain somewhat broader grounds for refusal of assistance.

Paragraph 9(b) of article 46 gives Parties the ability to decline to provide assistance with regard to a request for coercive measures, such as search and seizure, if the offense being investigated does not also constitute a crime under its laws ("dual criminality"). A Party must provide assistance with regard to requests for non-coercive measures in the absence of dual criminality where the assistance requested is "consistent with the basic concepts of its legal system," but can refuse such requests of a *de minimis* nature or if the cooperation requested is available under other provisions of the Convention. In addition, paragraph 21 of this article provides four specific grounds upon which any request for assistance may be refused: (a) if the request does not conform to the requirements of article 46; (b) if the requested Party considers that compliance is likely to prejudice its sovereignty, security, *ordre public,* or other essential interests; (c) if the Party would be prohibited by its own law from taking the action requested with regard to any similar offense under its own jurisdiction; or (d) if granting the request would be contrary to the legal system of the requested Party relating to mutual legal assistance. In this regard, the executive branch has testified that these grounds for refusal authorize the United States to refuse assistance where it considers that a request is politically motivated or that execution of a request would impinge on U.S. Constitutional protections, such as the freedom of speech.

Asset Recovery. Chapter V of the Convention provides procedures for the Parties to cooperate in the recovery of assets that have been illicitly acquired by corrupt officials.

Article 52 obligates Parties to adopt preventive measures to detect corrupt transactions involving public officials, including requiring their financial institutions to verify customer identity and apply enhanced scrutiny to accounts held by current or former prominent public officials.

Article 53 requires each Party to allow other Parties to bring civil actions in its courts to recover property and to enable courts to award damages and evaluate Parties' claims over property confiscated for offenses established in accordance with the Convention.

Article 54 requires Parties to put in place a legal framework for providing assistance to other Parties with regard to recovery of assets acquired through or involved in the commission of offenses established in accordance with the Convention. This framework must include mechanisms enabling their competent authorities to execute confiscation orders issued by the courts of another Party, and to order confiscation of such foreign origin property through adjudication of money laundering or other offenses that may be within

its jurisdiction. In addition, Parties must be able to freeze or seize property based on a freezing or seizure order issue by a court or competent authority of another Party or upon a request by another Party, where sufficient grounds are provided for taking such actions.

Under article 55, Parties receiving requests for assistance in asset recovery must use the mechanisms established in accordance with articles 31 and 54. Paragraph 3 of this article states that the provisions of article 46 apply to such requests, which includes the grounds for denial of mutual legal assistance requests. Paragraph 7 provides an additional safeguard, authorizing refusal of cooperation where the requesting Party does not provide sufficient and timely evidence or the property at issue is of a *de minimis* value. Paragraph 9 clarifies that nothing in this article shall be construed to prejudice the rights of bona fide third parties.

Article 57 provides a detailed framework for the return and disposal of assets confiscated by one Party at the request of another.

IV. Implementing Legislation

No implementing legislation is required for the Convention. An existing body of federal and state laws will suffice to implement the obligations of the Convention, although two narrow reservations are needed, as explained below in section VI.

V. Committee Action

The Convention was transmitted to the Senate for advice and consent to ratification on October 27, 2005 (see Treaty Doc. 109–6). The Committee on Foreign Relations held a public hearing on this instrument on June 21, 2006, at which it heard testimony from representatives of the Departments of State and Justice, as well as the National Foreign Trade Council and Transparency International.[3] On August 1, 2006, the committee considered the Convention and ordered it favorably reported by voice vote, with a quorum present and without objection, with the recommendation that the Senate give advice and consent to ratification of the Convention, subject to the reservations and declarations contained in the resolution of advice and consent.

VI. Committee Recommendation and Comments

The Committee on Foreign Relations believes that the Convention is in the interest of the United States and urges the Senate to act promptly to give advice and consent to ratification, subject to the two reservations and three declarations contained in the resolution of advice and consent. U.S. ratification of the Corruption Convention is supported by the executive branch, the U.S. business community, the American Bar Association, and anti-corruption organizations. The United States already conducts itself in a manner consistent with the Convention through an existing body of law as well as federal and state policies, and therefore no implementing legislation is required.

[3] The edited transcript of the hearing is attached to this report (page 11).

The Convention supports the international fight against corruption, an important foreign and economic policy priority for the United States. By becoming a party to the Convention, the United States will enhance its leadership role in the global anti-corruption effort, help ensure that the Convention is implemented properly by other countries, and cooperate with treaty partners in the investigation and prosecution of corruption-related offenses.

With 60 parties and 140 signatories, the Convention has already become a global instrument and reference point for the international community. Widespread ratification of the Convention by other countries would benefit U.S. businesses by helping to level the playing field for U.S. companies, which are already prohibited by U.S. law from bribing foreign officials. In addition to putting U.S. businesses at a disadvantage, corruption can impede business transactions and negatively affect their financial results. Implementation of the anti-corruption measures required by the Convention would promote the integrity of foreign markets, creating opportunities for U.S. investment.

The Convention strengthens the ability of U.S. law enforcement to combat corruption. It requires other Parties to criminalize corruption-related offenses consistent with U.S. law, and includes provisions to facilitate the ability of U.S. prosecutors to obtain assistance from other countries in U.S. criminal investigations and prosecutions of such offenses.

U.S. ratification of the Convention would also support broader U.S. efforts, within the United Nations, the G–8, and elsewhere to promote transparency, accountability, and anti-corruption measures. The United States has a strong national security interest in opposing corruption and bribery worldwide. Bribery of public officials is one of the most plausible means through which a terrorist might gain access to weapons of mass destruction.

Full realization of all of the benefits of the Convention will require not only widespread ratification of the Convention, but also full implementation of its provisions by the Parties. Therefore, the committee urges the executive branch, with input from the private sector and non-governmental organizations, to promote widespread adherence and to work with other treaty partners to create an effective, transparent, and viable system to monitor implementation of the Convention. The executive branch should also keep the committee informed of its progress in this regard.

The committee has included a number of reservations and declarations in the resolution of advice and consent. Section two of the resolution contains two reservations. The first relates to the federal system in the United States and concerns the preventive measures and criminalization obligations of the Convention (Chapters II and III). With regard to the criminalization obligations, although U.S. federal law prohibits the conduct proscribed by the Convention, federal criminal law generally covers conduct involving interstate or foreign commerce or another important federal interest. U.S. state, not federal law, would therefore apply to a narrow category of conduct that does not implicate a foreign, interstate, or other federal interest. Not all forms of conduct proscribed by the Convention, however, are criminalized by all U.S. states in the manner required by the Convention. Similarly, the obligations undertaken with re-

gard to preventive measures relating to state and local officials generally would be addressed in the United States at the state and local level. State and local governments may in some cases regulate these issues differently than the Convention. Therefore, the executive branch recommended that the United States reserve against these obligations in these narrow circumstances. The committee agrees with this recommendation.

The second reservation concerns the scope of the Convention. Article 42 of the Convention requires each Party to establish jurisdiction in respect of the offenses established under the Convention when committed in its territory or on board a vessel flying its flag or an aircraft registered under its laws. U.S. law does not expressly extend U.S. jurisdiction over these particular crimes when committed on board U.S. vessels and aircraft outside of U.S. territory, although in certain cases U.S. jurisdiction may exist on other jurisdictional bases. Because the United States cannot ensure its ability to exercise jurisdiction in all such cases, the committee concurs with an executive branch recommendation that the United States enter a reservation limiting the obligation of the United States consistent with the reach of U.S. law.

Section three of the resolution contains three declarations. The first declaration relates to U.S. implementation of the Convention under existing U.S. law. The executive branch recommended that the United States include an understanding to clarify that the United States intends to comply with the Convention based on existing law. The committee has included such a statement in the resolution, formulated as a declaration in accordance with recent committee practice.

The second declaration relates to dispute settlement. Article 66 of the Convention establishes a mechanism for the Parties to settle disputes concerning the interpretation or application of the Convention. Paragraph 2 of the article provides that if such a dispute cannot be settled within a reasonable time through negotiation, a Party may submit it to arbitration and, if the disputing Parties are unable to agree on the organization of the arbitration within six months, a Party may submit the dispute to the International Court of Justice. Paragraph 3 permits each Party to declare, at the time of its ratification, that it does not consider itself bound by paragraph 2 of this article. The executive branch recommended that the United States make such a declaration, and the committee concurs with this recommendation.

The third declaration, consistent with an executive branch recommendation, clarifies that the provisions of the Convention (with the exception of articles 44 and 46) are non-self-executing, and that none of the provisions of the Convention creates a private right of action. The committee notes that Articles 44 and 46 of the Convention on extradition and mutual legal assistance are intended to operate in the same way as similar provisions contained in bilateral extradition and mutual legal assistance treaties. As with such provisions in bilateral treaties, these provisions are self-executing. They will be implemented by the United States in conjunction with applicable federal statutes. The lack of a private right of action does not affect the ability of a person whose extradition is sought

to raise any available defense in the context of the extradition proceeding.

VII. Resolution of Advice and Consent to Ratification

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

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO RESERVATIONS AND DECLARATIONS

The Senate advises and consents to the ratification of the United Nations Convention Against Corruption (hereinafter in this resolution referred to as the "Convention"), adopted by the United Nations General Assembly on October 31, 2003, and signed by the United States on December 9, 2003, at Merida, Mexico (T. Doc. 109–6), subject to the reservations in section 2 and the declarations in section 3.

SECTION 2. RESERVATIONS

The advice and consent of the Senate under section 1 is subject to the following reservations, which shall be included in the United States instrument of ratification:

(1) The United States of America reserves the right to assume obligations under the Convention in a manner consistent with its fundamental principles of federalism, pursuant to which both federal and state criminal laws must be considered in relation to the conduct addressed in the Convention. U.S. federal criminal law, which regulates conduct based on its effect on interstate or foreign commerce, or another federal interest, serves as an important component of the legal regime within the United States for combating corruption and is broadly effective for this purpose. Federal criminal law does not apply where such criminal conduct does not so involve interstate or foreign commerce, or another federal interest. There are conceivable situations involving offenses of a purely local character where U.S. federal and state criminal law may not be entirely adequate to satisfy an obligation under the Convention. Similarly, in the U.S. system, the states are responsible for preventive measures governing their own officials. While the states generally regulate their own affairs in a manner consistent with the obligations set forth in the chapter on preventive measures in the Convention, in some cases they may do so in a different manner. Accordingly, there may be situations where state and federal law will not be entirely adequate to satisfy an obligation in Chapters II and III of the Convention. The United States of America therefore reserves to the obligations set forth in the Convention to the extent they (1) address conduct that would fall within this narrow category of highly localized activity or (2) involve preventive measures not covered by federal law governing state and local officials. This reservation does not affect in any respect the ability of the United States to provide international cooperation to other States Parties in accordance with the provisions of the Convention.

(2) The United States of America reserves the right not to apply in part the obligation set forth in Article 42, paragraph

1(b) with respect to the offenses established in accordance with the Convention. The United States does not provide for plenary jurisdiction over offenses that are committed on board ships flying its flag or aircraft registered under its laws. However, in many circumstances, U.S. law provides for jurisdiction over such offenses committed on board U.S.-flagged ships or aircraft registered under U.S. law. Accordingly, the United States shall implement paragraph 1(b) to the extent provided for under its federal law.

SECTION 3. DECLARATIONS

(a) The advice and consent of the Senate under section 1 is subject to the following declaration:

The United States of America declares that, in view of its reservations, current United States law, including the laws of the States of United States, fulfills the obligations of the Convention for the United States. Accordingly, the United States of America does not intend to enact new legislation to fulfill its obligations under the Convention.

(b) The advice and consent of the Senate under section 1 is subject to the following declarations, which shall be included in the United States instrument of ratification:

(1) In accordance with Article 66, paragraph 3, the United States of America declares that it does not consider itself bound by the obligation set forth in Article 66, paragraph 2.

(2) The United States declares that the provisions of the Convention (with the exception of Articles 44 and 46) are non-self-executing. None of the provisions of the Convention creates a private right of action.

VIII. APPENDIX: HEARING—UNITED NATIONS CONVENTION AGAINST CORRUPTION

UNITED NATIONS CONVENTION AGAINST CORRUPTION

WEDNESDAY, JUNE 21, 2006

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

The committee met, pursuant to notice, at 9:32 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Richard Lugar (chairman of the committee) presiding.

Present: Senator Lugar.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

The CHAIRMAN. This hearing of the Senate Foreign Relations Committee is called to order. The committee meets today to review the United Nations Convention Against Corruption, which was signed by the United States in December 2003 and transmitted to the Senate for advice and consent last October. This treaty targets corruption on a global basis. It obliges parties to take measures designed to prevent corruption, to criminalize bribery and other corruption-related offenses, to cooperate in the investigation and prosecution of such offenses, and to adopt procedures to recover assets stolen by corrupt officials. The Convention also improves the tools through which our law enforcement agencies can investigate and prosecute money laundering, which can and has been used to fund terrorism.

By requiring parties to strengthen their anticorruption efforts, the Convention would help level the playing field for U.S. companies, which are already prohibited by U.S. law from bribing foreign officials. The Convention would also provide mechanisms to assist U.S. law enforcement in obtaining overseas evidence and suspects in domestic corruption-related cases. The administration has indicated that U.S. law already complies with the obligations of this treaty, with no need for further legislation.

The Convention entered into force on December 15, 2005, and currently has 55 parties. The United States is among 88 countries that have signed, but not yet ratified the Convention. The first conference of the parties is scheduled for December 2006.

The Convention builds on other treaties to which the United States is a party, namely the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Inter-American Convention Against Corruption. The Convention is also consistent with the Bush administration's efforts within the G–8 to promote transparency, accountability, and anticorruption measures.

Corruption has been a major concern of this committee. The World Bank has identified corruption as "the single greatest obstacle to economic and social development." We have held five hearings over the past 2 years to consider how to thwart corruption related to multilateral development bank financing, and we will hold a sixth hearing in the coming weeks. My MDB reform bill, S. 1129, which was passed unanimously by the Senate Foreign Relations Committee, became law in November 2005. This law contains many reforms aimed at achieving more transparency and accountability in the banks' operations.

The United States has a strong national security interest in opposing corruption and bribery worldwide. For example, we want to prevent foreign officials from accepting bribes that might lead to a dangerous container being allowed onto a ship bound for our shores. We want to prevent bribes that might help a criminal or terrorist gain access to our country. And we want to prevent bribes that might provide terrorists with access to nuclear material, chemical and biological weapons, MANPADS, or other dangerous items.

For almost 15 years, I have traveled through the former Soviet Union and beyond in support of the Nunn-Lugar Cooperative Threat Reduction program. On many occasions, I have seen WMD storage facilities that were imperfectly secured. At the Shchuchye chemical weapons facility in Russia, for example, 1.9 million chemical weapons shells, many small enough to fit in a briefcase, were stacked like wine bottles on racks in ordinary wood frame buildings. The facility was lightly guarded by U.S. standards and was surrounded by an unimpressive fence which had several holes in it. Through the work of dedicated Russians and Americans, security at this facility and many others has been improved immeasurably. But safeguarding weapons continues to depend on the actions of those who are entrusted to operate and guard such facilities, and bribery is one of the most plausible means through which a terrorist might gain access to a weapon of mass destruction.

Last year I surveyed 85 top nonproliferation experts on proliferation threats and responses. And among my many questions, I asked their opinion of the most likely method through which terrorists might acquire nuclear weapons or weapons-grade material. By an overwhelming margin, they responded that black market activity was the most likely method. They judged such a corruption-driven transfer to be far more plausible than other scenarios, including the outright theft of a weapon by a terrorist group or the deliberate transfer of a weapon from nuclear weapon states to a terrorist group.

The ratification of this Corruption Convention might not prevent a specific foreign official from taking a particular bribe. But fundamental U.S. national security interests demand the United States work hard to establish a global climate of intolerance for corruption

and bribery. Ratifying this Convention is an essential element in that campaign. If we fail to ratify, not only will the chances of a national security disaster increase, our advocacy on numerous anticorruption issues, including those involving U.N. reform, MDB reform, the transparency of international development assistance, and the dispensation of huge profits flowing into the hands of oil-rich regimes around the world, would be diluted.

Failure to ratify would also be a loss to U.S. businesses and workers. We do not want to give global economic competitors any excuse to fail to adopt the strong anticorruption laws that already prevail in our country. We want nations that are in direct competition with us to ratify this Convention so that their legal framework addresses corruption with the same vigor that ours does. We do not want to lose contracts, markets, and jobs to corrupt activities overseas. If we fail to promptly ratify this Convention, it will keep us from fully influencing the monitoring mechanisms for the Convention, which will be considered at the conference of parties in December 2006.

Today, we are pleased to be joined by two distinguished panels. First, Samuel Witten, Deputy Legal Adviser at the Department of State, and Bruce Swartz, Deputy Assistant Attorney General in the Criminal Division of the Department of Justice, will share the Bush administration's views with regard to the Convention Against Corruption. On our second panel, we will have the benefit of the expert testimony of Alan Larson, chairman of Transparency International–USA, and William Reinsch, president of the National Foreign Trade Council.

We welcome all of our witnesses, and we look forward to their testimony.

I will ask you to testify in the order that I introduced you, which would be Mr. Witten and then Mr. Swartz. Your full statements will be made a part of the record. You may proceed with summaries or as you wish. I thank you for coming, and would you please proceed, Mr. Witten.

STATEMENT OF SAMUEL M. WITTEN, DEPUTY LEGAL ADVISER, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. WITTEN. Thank you very much, Mr. Chairman. I am very pleased to appear before the committee today to testify in support of Senate approval of the United Nations Convention Against Corruption. The Department of State greatly appreciates this opportunity to address this important international instrument, and we appreciate the committee's deciding to hold a hearing at this time.

The international fight against corruption is an important foreign policy priority for the United States. As President Bush stated in his submission of the treaty to the Senate, corruption "hinders the sustainable development, erodes confidence in democratic institutions, and facilitates transnational crime and terrorism." Corruption debilitates and destabilizes government institutions. Its effect on impoverished nations is especially devastating. Corruption also undermines the ability of businesses of the United States and other countries to operate in a transparent, honest, and predictable environment. Fighting corruption must be an integral component of

U.S. diplomacy and our international efforts to work with other countries to combat crime.

This morning I will just summarize briefly the importance of the U.N. Convention Against Corruption, amplifying several key points from my more detailed written testimony.

Mr. Chairman, there are three primary reasons why ratification of this Convention is so important for the United States. First, the Convention represents international anticorruption commitments undertaken by the international community, the first such commitments undertaken on such a global scale. Over 130 countries were involved in the negotiation of the Convention, and as of this month, 140 countries have signed the Convention and 55 have already become parties. This is a remarkable result given that 11 years ago there were no existing international corruption instruments at all.

Second, the commitments in this Convention are comprehensive, recognizing that the fight against corruption requires simultaneous action on a number of fronts. The parties commit themselves to institute effective measures to criminalize corruption, to take appropriate measures to prevent corruption from happening, and to deny safe haven to corrupt actors through international cooperation and asset recovery. The Convention wisely avoids several other more complex substantive areas that are less appropriate for multilateral solutions.

Third, the Convention will begin the process of bringing a good portion of the world community up to the anticorruption standards already in place in the United States. For example, the Convention in effect globalizes commitments made by the United States and other countries in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention before the Senate requires governments to criminalize matters already covered under U.S. law, such as bribery of foreign officials, and pushes countries to institute procedures for enhanced scrutiny and to establish effective asset-forfeiture mechanisms.

Making laws around the world as tough as our own benefits the world community as well as the United States by establishing a common framework for international anticorruption cooperation and expanding existing law enforcement and other relationships. As a party, our ability to continue to assert the leadership role we have held since the 1977 enactment of the Foreign Corrupt Practices Act, the FCPA, would be strengthened.

In contrast, as you mentioned, Mr. Chairman, our absence from this treaty regime would be conspicuous and could detract from our ability to exert influence on the various states that are a party to implement the Convention and take effective action against corruption.

U.S. business will benefit in a global economy from legal regimes that are designed to address the problem of corruption. Many of the Nation's major business groups, in addition to anticorruption groups, have already urged rapid Senate approval of this agreement.

As my colleague, Mr. Swartz, will explain, this Convention has many helpful provisions to assist in the extradition of fugitives to and from the United States and to facilitate the ability of U.S.

prosecutors to obtain assistance from other countries in U.S. criminal investigations and prosecutions.

For the United States, the Convention will not create new extradition relationships, but it will broaden some of our older existing treaties by expanding their scope to include the offenses described in the Convention.

By contrast, we will be able to use the Convention as a basis for legal assistance requests to countries with which we lack bilateral mutual legal assistance treaties, particularly in parts of Asia, Africa, and the Middle East. In this connection, the Convention fully incorporates safeguards the United States insists on in our bilateral MLATs, and thereby ensures that we may deny requests that are contrary to our essential interests or are improperly motivated.

Mr. Chairman, the Convention would not require implementing legislation for the United States, and in this connection, the administration recommends that the Senate include in its resolution of advice and consent to ratification two reservations, an understanding, and two declarations. If the United States makes the proposed reservations, the existing body of Federal and State law and regulations will be adequate to satisfy the Convention's requirements for legislation, and further legislation will not be required for the United States to implement this Convention.

U.S. law already incorporates the measures found in the Convention, and our interests will be well-served by wide implementation of the Convention throughout the world. As a governmental leader in the international anticorruption movement, the United States has been actively promoting the Convention, already, as the cornerstone for regional multilateral anticorruption action, including, most recently, within the Group of 8, the Asia-Pacific Economic Cooperation forum, the Organization of American States, and in the United Nations Development Programme–OECD's Initiative on Good Governance for Development in the Middle East and North Africa.

As you mentioned, Mr. Chairman, a Conference of the States Parties will convene in December of this year, the 1-year anniversary of the Convention's entering into force, to discuss what governments can do to promote implementation, and we're working with other governments to develop some realistic options. Our ability to play a leading role at that Conference in December will be enhanced if the United States ratifies the Convention prior to the conference.

Mr. Chairman, with that I'll conclude my remarks. We very much appreciate the committee's decision to consider this important treaty. As you know, Mr. Chairman, the United States helped develop many of the treaty's provisions, and we consulted extensively with the private sector, including the business and legal communities, and are confident that the Convention enjoys widespread support.

I'll be happy to answer any questions the committee may have.

[The prepared statement of Mr. Witten follows:]

PREPARED STATEMENT OF SAMUEL M. WITTEN, DEPUTY LEGAL ADVISER, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Mr. Chairman and members of the committee, I am pleased to appear before you today to testify in support of the United Nations Convention against Corruption.

The Department of State greatly appreciates this opportunity to address this international instrument.

THE FIGHT AGAINST CORRUPTION AS A FOREIGN POLICY PRIORITY

As noted by President Bush in his message transmitting the Convention to the Senate for its advice and consent to ratification, the international fight against corruption is an important foreign policy priority for the United States. In the President's words, corruption "hinders sustainable development, erodes confidence in democratic institutions, and facilitates transnational crime and terrorism." Corruption debilitates and destabilizes government institutions. The toll on impoverished nations is especially devastating and real. Money that could have been spent to improve the lives of the underprivileged and improve health, energy, or other infrastructure is frittered away for personal enrichment. Corruption also undermines the ability of businesses of the United States and other countries to operate in a transparent, honest, and predictable environment. Because corruption's effects are wide-ranging and pernicious, fighting corruption must be an integral component of U.S. diplomacy and our international efforts to work with other countries to combat crime.

THE IMPORTANCE OF THE U.N. CONVENTION AGAINST CORRUPTION

I will first focus on the importance of the U.N. Convention against Corruption to the U.S. Government's international anticorruption efforts.

First, the Convention represents the first set of international anticorruption commitments undertaken by the international community, with the leadership of the United States, on a truly global scale. The sheer size of the group of nations involved in negotiating the instrument in 2002 and 2003—over 130 countries—was a good sign that this Convention would be applied widely throughout the globe. However, interest in the Convention has even gone beyond expectations—as of this month, 140 countries had signed the Convention and 55 had already become parties. The Convention's support is all the more remarkable considering that 11 years ago there were no existing international anticorruption instruments and the development of a global instrument on the subject was not viewed as a realistic option.

Second, the Convention is by far the most comprehensive set of international commitments relating to corruption. Previous international anticorruption agreements are relatively limited in their geographic scope and substantive coverage. The Convention recognizes that the fight against corruption requires simultaneous action on a number of fronts. Parties are obligated to ensure that law enforcement against corruption is effective and active, and they are also obligated to take appropriate measures to prevent corruption from happening in the first place and to deny safe haven to corrupt actors through international cooperation and asset recovery. The Convention avoids obligations regarding complex substantive areas that are less appropriate or unripe for multilateral solutions, such as political party financing and criminalization of purely private sector corruption, that are currently handled by individual nations under their domestic laws.

The breadth of the chapter of the Convention addressing the prevention of corruption is a good example of the broad yet flexible nature of this instrument. Under this set of articles, which contains both mandatory and discretionary provisions, parties to the Convention commit themselves to build a more ethical public service, work toward effective transparency and controls in public procurement and spending, increase civil society access to government, and promote integrity in the private sector without burdening the private sector with new laws or regulations. The goal of all these and other measures in the Convention is to make the risk of corruption greater than any reward it may bring.

Third, and very importantly, the Convention will begin the process of bringing a good portion of the world community up to the anticorruption standards already in place for the United States. For example, the Convention, in effect, globalizes commitments made by the United States and other countries in the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which has now been in force for more than 7 years. The Convention before the Senate requires governments to criminalize bribery of foreign officials and officials of public international organization in the course of international business and also requires governments to establish minimal "books and records" requirements for the private sector—matters already covered under U.S. law. The asset recovery chapter, as another example, pushes countries to institute procedures for enhanced scrutiny and to establish effective asset forfeiture mechanisms. All of these are common tools already used and well-established in the United States.

The United States already conducts itself consistently with the Convention's provisions, so our work related to implementation will largely involve ensuring that the Convention is implemented properly by others and cooperating in appropriate cases that are covered under the Convention. A Conference of the States Parties will convene in December 2006 to discuss what governments can do to promote implementation, and because of our central role in the drafting of the Convention and our leadership in this area, we are working with other governments to develop some realistic options. The United States delegation can and should play a leading role at that conference, and of course our ability to do so will be enhanced if we have already ratified the Convention prior to the conference.

The United Nations Convention against Corruption is quickly becoming a focal point for U.S. and international anticorruption action. The U.S. Government is a leader in the international anticorruption movement, and the Convention represents an extremely useful tool to help us further our goals in this area. We have been actively promoting the Convention as the cornerstone for regional multilateral anticorruption action, including, most recently, within the G–8, the Asia-Pacific Economic Cooperation forum, the Organization of American States, and in the United Nations Development Programme–OECD's Initiative on Good Governance for Development in Arab Countries. Using the Convention as an internationally created and accepted guideline for taking action against corruption will bolster our current efforts—using the Millennium Challenge Account, the various regional initiatives just mentioned, and our foreign assistance programs—to encourage and help other governments build effective anticorruption regimes. By becoming a party to the Convention, the United States will be even better placed to encourage and promote its effective implementation.

BENEFITS OF U.S. RATIFICATION

With this, I return to where I began—the benefits to the United States from becoming a party to the Convention. First, becoming a party would strengthen the ability of the United States to continue to assert a leadership role in this area, which it has held ever since the enactment in 1977 of the Foreign Corrupt Practices Act (FCPA). Given the strong position the United States has historically taken in opposition to corruption, and the fact that our laws and policies on this issue are at the forefront internationally, our absence from this treaty regime would be conspicuous and could detract from our ability to exert pressure on the various states that are party to implement the Convention and take effective action against corruption.

Second, U.S. business will benefit in the global economy from legal regimes that are designed to address the problem of corruption. The corruption of governmental officials significantly hinders business transactions and yields economic inefficiencies. Corruption causes investors either to flee or never show up in the first place. We understand that many of the Nation's major business groups, in addition to anticorruption groups, have already contacted this committee to urge rapid Senate approval of this agreement.

Third, the Convention augments existing mechanisms for international cooperation in law enforcement matters. Corruption facilitates terrorism, drug trafficking, organized crime, money laundering, and illicit international money transfers, which can be used to support mechanisms for international terrorists. As my colleague from the Justice Department will explain, this Convention has many helpful provisions to assist in the extradition of fugitives to and from the United States and to facilitate the ability of U.S prosecutors to obtain assistance from other countries in U.S. criminal investigations and prosecutions. indeed, many countries, particularly in the developing world, lack existing bilateral extradition or mutual legal assistance treaty relationships with one another, but now will be able to rely on this Convention to fill that legal gap for many corruption crimes.

For the United States, the Convention will not create new extradition relationships, as we will continue to rely on our extensive web of bilateral treaties for that purpose, but it will broaden some of our older existing treaties by expanding their scope to include the offenses described in the Convention. By contrast, we will be able to use the Convention as a basis for legal assistance requests to countries with which we lack bilateral mutual legal assistance treaties (MLATs), primarily those in parts of Asia, Africa, and the Middle East. In this connection, the Convention fully incorporates all the safeguard provisions the United States insists upon in our bilateral MLATs and thereby ensures that we may deny requests that are contrary to our essential interests or are improperly motivated.

U.S. IMPLEMENTATION

The Convention would not require implementing legislation for the United States. As discussed at length in the Department of State's Detailed Analysis of the Provisions of the Convention, the administration recommends that the Senate include in its resolution of advice and consent to ratification two reservations, an understanding, and two declarations. If the United States makes the proposed reservations, the existing body of Federal and State law and regulations will be adequate to satisfy the Convention's requirements for legislation, and, thus, further legislation will not be required for the United States to implement the Convention.

Mr. Chairman, we very much appreciate the committee's decision to consider this important treaty. The United States is proud to have actively participated in the negotiation of the Convention and to have helped develop many of its provisions. We have consulted extensively with the private sector, including the business and legal communities, and we are confident that the Convention enjoys widespread support.

I will be happy to answer any questions the committee may have.

The CHAIRMAN. We thank you very much, Mr. Witten for your testimony. I'd like to call now on Mr. Swartz, if you would proceed.

STATEMENT OF BRUCE C. SWARTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. SWARTZ. Thank you, Mr. Chairman. Mr. Chairman, I am pleased to appear before you here today on behalf of the U.S. Department of Justice to testify in favor of the United Nations Convention Against Corruption.

Mr. Chairman, as you noted, the United States has a strong national security interest in fighting corruption, and this Convention will directly advance our national security and law enforcement interests in that regard. As former Attorney General Ashcroft said at the signing ceremony in Merida, Mexico: "The fight against corruption is critical to realizing our shared and essential interests. Corruption . . . undermines the legitimacy of democratic governments, and can, in its extreme forms, even threaten democracy itself."

This morning I would like to take the opportunity to discuss briefly the importance of this treaty from a Federal criminal law enforcement perspective. Specifically, I would like to discuss the core criminalization provisions set forth in chapter III, the provisions related to international law enforcement cooperation set forth in chapter IV, the provisions related to asset recovery in chapter V, and the technical assistance provisions in chapter VI.

Turning first, briefly, to the core criminalization provisions, as the committee is aware, the Convention requires that five offenses be criminalized by every State Party to this Convention. First, it requires criminalization of bribery of public officials domestically. Second, it requires countries to criminalize bribery of foreign public officials. Third, it requires criminalization of embezzlement by public officials. Fourth, it requires criminalization of money laundering and requires countries to expand the reach of their money-laundering statutes to make certain that the predicate offenses associated with this Convention are predicate offenses for the purposes of their money-laundering offenses. Finally, the Convention requires criminalization of obstruction of justice related to the offenses set forth in the Convention.

As Mr. Witten has noted, the United States does not need to enact any new legislation to implement these or any other provi-

sions of this Convention. Rather than placing a burden on the United States to change its laws, this Convention, in essence, puts the burden on other countries around the world to enact anticorruption provisions like those that the United States already has in place.

This will directly benefit U.S. economic, law enforcement, and security interests. First, it will benefit U.S. businesses operating abroad by ensuring that everyone is playing by the same rules. Under the United States Foreign Corrupt Practices Act, for instance, it is illegal for U.S. companies to bribe foreign government officials. The Convention effectively requires all States Parties to adopt a foreign corrupt practices act of their own.

Second, the Convention will directly advance U.S. law enforcement interests in this regard by helping to ensure that we have stable, noncorrupt law enforcement partners in other parts of the world.

Finally, the Convention will help advance U.S. security interests by helping to prevent destabilization of foreign democracies through corruption, as well as cutting off funding that flows from corruption to domestic criminal and terrorist groups, and to international terrorist groups as well. And, finally, it will help ensure that the kind of corruption that exposes us to the danger of weapons of mass destruction, as noted by the chairman, is directly addressed by the countries themselves in the first instance.

The second set of provisions that will be of direct assistance to law enforcement in the United States are the international cooperation provisions of chapter IV of the Convention. This chapter provides critical new tools to Federal law enforcement by creating mechanisms for extradition and mutual legal assistance. At the same time, the provisions contain safeguards found in all of our modern extradition and mutual legal assistance treaties that we have on a bilateral basis and that we have put in place in our more recent multilateral treaties.

With regard to extradition, the United States will continue to make extradition contingent upon the existence of a bilateral treaty, as the Convention permits. But the Convention does update, as Mr. Witten noted, all of our older list treaties by providing that the five mandatory offenses required by the Convention shall be deemed to be extraditable offenses in any existing treaty. Thus, the practical effect of this Convention is to expand the substantive scope of our existing, older bilateral treaties to include money laundering, obstruction of justice, foreign and domestic bribery, and embezzlement.

The treaty also creates a framework for mutual legal assistance in corruption-related cases where the States Parties do not otherwise have an existing bilateral mutual legal assistance relationship. Where there is no existing mutual legal assistance treaty, the United States may now use the Convention as an independent legal basis for requesting and providing assistance. Article 46 of the treaty is thus a treaty within a treaty. Significantly, however, the Convention also provides, as Mr. Witten noted, all of the safeguards that we would expect to see in such a convention, including the possibility of denying a request for mutual legal assistance

whenever the United States essential interests would be jeopardized.

Turning to the asset recovery provisions of this Convention, here, too, we find important developments for U.S. law enforcement. These provisions make possible for law enforcement to provide assistance from the detection to the seizure to the disposition of illicitly obtained assets, assets that have been obtained through corruption. They will help foreign officials be assured that any corruption that they undertake will not result in their ultimate gain, and it will help ensure that property is returned to the states from which it may have been corruptly taken.

Article 52, for example, requires States Parties to have adequate procedures in place to detect suspicious transactions. Article 53 provides that a State Party that has been harmed by corruption may participate as a private litigant to recover the proceeds of embezzlement. And in article 54, the Convention requires State Parties to establish a legal framework for providing assistance and recovery of assets acquired through one of the core criminalized offenses. Under this provision, countries must enact legislation to enable them either to freeze or seize illicit property or to recognize a foreign judgement against the property. And article 57 sets forth a framework for the disposition of property confiscated by one State Party at the request of another.

Finally, Mr. Chairman, I would like to say a brief word about the technical assistance provisions of the Convention. The Convention in chapter 6 calls for States Parties to provide each other with technical assistance in implementing the various provisions of the Convention.

As the committee knows, the Department of Justice, with funding from the Department of State, provides technical law enforcement assistance by posting experienced Federal prosecutors abroad as resident legal advisors. We have found time and again that our assistance is most effective when we can point out that the law enforcement standards that we are suggesting be implemented are not simply those of the United States, but are universal standards.

By creating a universal law enforcement standard regarding the fight against corruption, the Convention will directly advance the interests of the United States in this regard as well.

In conclusion, Mr. Chairman, by combating global corruption, we restore confidence in democracy and the rule of law, we bolster the global economy by encouraging open trade and investment, and we strengthen the stability and integrity of government and economic systems worldwide.

The United Nations Convention Against Corruption helps us to do all of these things, but perhaps most significantly, Mr. Chairman, as you noted at the outset, the Convention significantly and directly advances the national security and law enforcement interests of the United States of America.

On behalf of the Department of Justice then, we respectfully urge the U.S. Senate to provide its advice and consent to ratification of this important treaty. And I look forward to answering any questions that the committee may have.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Swartz follows:]

PREPARED STATEMENT OF BRUCE C. SWARTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

I. INTRODUCTION

Mr. Chairman and members of the committee, I am pleased to appear before you today on behalf of the U.S. Department of Justice to testify in favor of the United Nations Convention Against Corruption. This new treaty will significantly and directly advance the national security and law enforcement interests of the United States. As former Attorney General Ashcroft stated at the treaty signing in Merida, Mexico: "The fight against corruption is critical to realizing our shared and essential interests. Corruption undermines the goals of peace loving and democratic nations. It jeopardizes free markets and sustainable development. It provides sanctuary to the forces of global terror, and facilitates the illicit activities of international and domestic criminals. It undermines the legitimacy of democratic governments and can, in its extreme forms, even threaten democracy itself."

The U.N. Convention Against Corruption is the culmination of a worldwide movement against corruption that has resulted in smaller scale corruption conventions, such as the Organization of American States Inter-American Convention Against Corruption and the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Although those other conventions have addressed corruption on a more limited basis, none has attacked corruption with the same substantive or geographical breadth as the U.N. Convention.

Mr. Chairman, I understand that the President and the Secretary of State have already submitted to this committee substantial information detailing the various provisions of the Convention. You have also heard this morning from my State Department colleague, Mr. Witten. I do not intend to duplicate the information you have received from those sources. I would, however, like to take this opportunity to more fully explain exactly why this treaty is so important from a Federal criminal law enforcement perspective. Specifically, I would like to discuss the Convention's core criminalization provisions under chapter III; the provisions related to international law enforcement cooperation under chapter IV; and the provisions related to asset recovery under chapter V. I would also like to briefly discuss the technical assistance and implementation provisions of chapters VI and VII.

The Attorney General has made fighting corruption one of his top priorities. And as Deputy Assistant Attorney General of the Justice Department's Criminal Division, I can tell you firsthand that the Department's anticorruption efforts do not stop at our borders. Under the Attorney General's leadership, as well as the leadership of Assistant Attorney General Alice Fisher, the Criminal Division's prosecutors are working tirelessly every day to root out global corruption and to prosecute bribery of foreign officials.

For example, we are aggressively investigating violations of our Foreign Corrupt Practices Act, which as you know makes it illegal for U.S. companies and individuals doing business overseas to bribe foreign officials. We are also working extremely hard to root out bribery in the Iraq reconstruction process. And in partnership with the Department of State, we are working with our international partners to build and strengthen the ability of prosecutors around the world to fight corruption through our Overseas Prosecutorial Development and Training Assistance Program.

The U.N. Corruption Convention would create new opportunities for international law enforcement cooperation to combat corruption around the world. It would give the Department new tools to more effectively prosecute companies and individuals who bribe foreign governments. And it would make it easier for the Department to recover the ill-gotten assets of corrupt government officials.

II. CRIMINALIZATION

Let me begin by describing the Convention's core criminalization provisions, which can be found in chapter III of the Convention. Articles 15, 16, 17, 23, and 25 require all signatory nations to enact laws criminalizing bribery and associated conduct. Article 15, for example, requires countries to criminalize bribery of domestic public officials. Article 16, in part, requires countries to criminalize bribery of foreign public officials. Article 17 requires criminalization of embezzlement by public officials. Article 23 requires criminalization of money laundering and requires countries to expand the reach of their money laundering laws to predicate offenses associated with corruption. Finally, article 25 requires criminalization of obstruction of justice related to offenses set forth in the Convention.

As this committee may know, all of the foregoing offenses are already illegal under U.S. law. For that reason, and because the other criminalization provisions in chapter III are discretionary, the United States does not need to enact any new legislation to implement chapter III (or any other components) of this Convention. Rather than placing a burden on the United States to change its laws, this Convention puts the burden on countries around the world to enact antibribery laws that the United States already has in place.

The effect on U.S. economic and security interests of criminalizing bribery and related offenses on a global scale cannot be overstated. Let me give you an example. Under the U.S. Foreign Corrupt Practices Act, or FCPA, it is illegal for U.S. companies to bribe foreign government officials for the purpose of retaining or obtaining business or securing any unfair advantage. Because corruption is rampant in certain parts of the world in which our companies do business, U.S. companies seeking to play by the rules often have been at a competitive disadvantage.

The core criminalization provisions of this Convention will level the playing field by requiring everyone to play by the same set of rules. The Convention effectively requires all States Parties to adopt a "Foreign Corrupt Practices Act" of their own. Now all companies based in countries that are parties to the Convention will have an obligation to comply with the same antibribery laws in competing for business overseas. That is good for U.S. businesses. It is also good for Federal law enforcement, because the less financial incentive companies have to bribe foreign government officials, the less likely they will be to ignore or subvert the requirements of the FCPA.

The Convention's core criminalization provisions are also good for the U.S. economy. As this committee knows, public corruption weakens the integrity, stability, and transparency of market systems. By criminalizing domestic and foreign public corruption and related offenses, this Convention helps to promote the integrity, stability, and transparency of foreign markets, thereby creating opportunities for U.S. investment in those markets.

Finally, the core criminalization provisions of the Convention are good for U.S. national security. For example, as President Bush stated in his transmittal message, corruption facilitates transnational crime and terrorism by funding—directly or indirectly—criminal and terrorist organizations. By criminalizing domestic and foreign bribery and related offenses, this Convention will reduce or cut off a critical funding source for terrorists, drug traffickers, money launderers, and other criminals.

At this point, Mr. Chairman, I would like to briefly note that the Secretary of State has recommended two reservations and one declaration relevant to the core criminalization provisions. Principally, the Secretary of State has recommended that the United States take a reservation to the Convention to accommodate federalism concerns. As the committee may know, Federal criminal law does not apply where the criminal conduct does not implicate interstate or foreign commerce or another Federal interest. There are conceivable situations involving offenses of a purely local character where U.S. Federal and State criminal law may not be entirely adequate to satisfy an obligation under the Convention. Accordingly, the Secretary of State has recommended that the U.S. reserve to the obligations set forth in the Convention "to the extent they address conduct that would fall within this narrow category of highly localized activity." In light of this reservation, as noted by the accompanying understanding, the Convention does not require any legislative or other measures. The Justice Department supports this reservation.

Additionally, the Secretary of State has recommended that the Senate include a declaration in its resolution of advice and consent that makes clear that the provisions of the Convention, with the exception of articles 44 and 46 regarding extradition and mutual legal assistance, are not self-executing. This is particularly relevant to article 35 of the criminalization chapter, which requires that "each State Party shall take such measures as may be necessary . . . to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage . . .".

Under U.S. law, private parties damaged by corruption already have private rights of action under various theories, e.g., fraud claims, tort claims, contract claims, antitrust theories, shareholder class actions or derivative suits. The United States is therefore already in compliance with article 35. The Secretary of State recommends this declaration, however, to clarify that none of the provisions, including article 35, creates an independent private right of action that could open U.S. courts to civil lawsuits that would not otherwise lie under U.S. law. The Justice Department fully supports such a declaration.

III. INTERNATIONAL COOPERATION

I would now like to briefly describe chapter IV of the Convention, which governs international law enforcement cooperation. Mr. Chairman, the provisions of this chapter provide critical new tools to Federal law enforcement by creating new mechanisms for extradition and mutual legal assistance. At the same time, these provisions provide the U.S. Government with all of the safeguards found in modem bilateral mutual legal assistance treaties, including options for noncompliance where assistance would offend the "essential interests" of the United States.

These provisions are closely modeled after similar provisions in the United Nations Convention Against Transnational Organized Crime, to which, as you know, the U.S. Senate gave its advice and consent. Article 44, for example, creates an extradition regime for offenses established pursuant to this Convention where dual criminality exists (i.e., where the offense is criminalized under the laws of both the requesting and the requested State). Article 44 provides that States Parties may make extradition conditional upon the existence of a bilateral extradition treaty (which is the practice in the United States). It also provides that "each of the offenses to which this article applies shall be deemed to be included as an extraditable offenses" in any existing treaty. Thus, the practical effect of this article is to expand the substantive scope of existing bilateral extradition treaties to new offenses such as money laundering, obstruction of justice, foreign and domestic bribery, and embezzlement. This article does not create obligations with countries with which we do not already have bilateral extradition treaties (nor does it alter the requirement of dual criminality under those treaties).

Additionally, article 46 creates a framework for mutual legal assistance in corruption-related cases where the States Parties do not otherwise have mutual legal assistance obligations. Parties with bilateral mutual legal assistance treaties can continue to use those existing agreements. Parties that do not have existing bilateral mutual legal assistance treaties can use article 46 as an independent legal basis for requesting or providing assistance. Article 46 is effectively a "treaty within a treaty" governing in great detail cooperation between the States Parties for offenses covered by the Convention.

Specifically, article 46 sets forth various types of assistance that States Parties may request under the Convention (including taking evidence or statements from persons, effecting service of judicial documents, executing searches and seizures, and other activities). Paragraphs 9 and 21, however, list various grounds upon which assistance may be refused, providing strong safeguards for the United States. For example, a State Party can deny assistance when the request is not made in conformity with the provisions of the article; if the requested State Party considers that execution of the request is likely to prejudice the sovereignty, security, or other essential interest; if the authorities of the requested party would be prohibited by its domestic law from carrying out the action; and if it would be contrary to the legal system of the requested party relating to mutual legal assistance. In addition, a State may deny assistance based on lack of dual criminality where the assistance would involve a coercive measure such as a search warrant or subpoena. Even where noncoercive measures are at issue, a State may deny assistance on dual criminality grounds if granting the assistance is inconsistent with its basic legal principles or the request involves de minimus matters.

I would also briefly note that article 46 requires on a global scale measures that have long been a standard aspect of U.S. mutual legal assistance practice but that are not always applicable in other countries, such as the prohibition on invoking bank secrecy to bar cooperation in paragraph 8.

Finally, chapter IV contains several other nonmandatory but helpful cooperation provisions, including article 48 (encouraging States Parties to cooperate closely to enhance the effectiveness of law enforcement action) and article 49 (whereby States Parties shall consider concluding bilateral or multilateral joint investigation agreements).

We believe that all of these provisions provide important new tools to U.S. law enforcement. Let me give you a practical example. As I stated earlier, enforcing the Foreign Corrupt Practices Act is a major priority for the Justice Department's Criminal Division. The very nature of FCPA investigations, however, is that many of the relevant witnesses and evidence often are located in foreign countries. The Justice Department believes that the international cooperation provisions in this Convention will increase our ability to obtain evidence from foreign countries, leading to more effective enforcement of the FCPA and other offenses. And by providing us with the tools to more effectively investigate and prosecute the FCPA, the Convention helps us to preserve the integrity, stability, and transparency of our political and economic systems.

IV. ASSET RECOVERY

I would now like to discuss a few of the key asset recovery provisions of the Convention, which can be found at articles 51–59. The asset recovery provisions establish new mechanisms for the recovery of illicitly acquired assets and for international cooperation regarding asset forfeiture. These provisions are important from a law enforcement perspective because they will help to deprive corrupt officials of their ill-gotten gains and may, in some cases, require the property to be returned to the nation from which it was taken.

Article 52, for example, requires States Parties to have adequate procedures in place to detect suspicious transactions. Article 53 provides that a State Party that has been harmed by corruption can participate as a private litigant to recover the proceeds of embezzlement and other crimes in a forfeiture proceeding, or as a victim for purposes of court ordered restitution. And in article 54, the Convention requires States Parties to establish a legal framework for providing assistance in the recovery of assets acquired through one of the core criminalized offenses. Under this provision, countries must enact legislation to enable them either to freeze or seize the illicit property or to recognize a foreign judgment against the property. The Department currently anticipates that in the event the United States requests assistance from another party under article 54, the United States would seek to have both in rem civil forfeiture and post-conviction criminal forfeiture judgments enforced.

Finally, article 57 sets forth a framework for the disposition of property confiscated by one State Party at the request of another. Although article 57 is a powerful new tool for returning ill-gotten gains to victim States, it is narrow in scope and thus will not burden the U.S. judicial system. First, article 57 applies only in cases in which one country has successfully recovered the proceeds of foreign corruption through enforcement of a foreign forfeiture order (i.e., pursuant to article 55(1)(b)). Second, article 57 reaffirms the principle that repatriation of forfeited assets is subject to the requirements and procedures of domestic law. Third, the obligation is subject to the same safeguards as provided in article 46. The U.S. Government could, therefore, refuse a request to repatriate funds under this article where assistance would offend the "essential interests" of the United States. The United States has ample authority through its asset sharing and remission statutes to execute the obligations under article 57.

V. TECHNICAL ASSISTANCE AND IMPLEMENTATION

Finally, Mr. Chairman, I would like to say a brief word about the technical assistance and implementation provisions of the Convention. The Convention, in chapter VI, calls for States Parties to provide each other with technical assistance in implementing the various provisions of the Convention. In chapter VII, the Convention creates a Conference of the States Parties to the Convention, the purpose of which is to "improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this Convention and to promote and review its implementation."

The first meeting of the Conference of the States Parties, or COSP, is tentatively scheduled to occur in December of this year. The COSP will determine the substance and scope of any technical assistance and implementation programs, including any mechanism for "peer review" or "monitoring." In the months leading up to the COSP, States will be working informally to develop an agenda for the COSP and to begin to discuss the substantive issues that the COSP will address. For example, the Criminal Division and other U.S. Government components have already been assisting the United Nations Office on Drugs and Crime with the drafting of legislative and technical guides for the Convention.

Critically, the United States will have more influence as a participant in the COSP as a State Party than a mere signatory. Participating in the COSP as a State Party will benefit the United States. Among other things, as a State Party we will be in a better position to influence the scope of any peer review mechanism that may emerge from the COSP to ensure that it is not unduly burdensome or otherwise unreasonable.

Accordingly, I respectfully urge the committee to report the Convention favorably and the Senate to provide its advice and consent to ratification as soon as practicable, but in any event prior to November 2006.

VI. CONCLUSION

Mr. Chairman, by combating global corruption, we restore confidence in democracy and the rule of law. We bolster the global economy by encouraging open trade and investment. We strengthen the stability, integrity, and transparency of govern-

ment and economic systems worldwide. The United Nations Convention Against Corruption helps us do all of those things.

But above all, Mr. Chairman, the Convention significantly and directly advances the national security and law enforcement interests of the United States of America. On behalf of the Department of Justice, I, therefore, urge the U.S. Senate to provide its advice and consent to ratification to this important treaty. I would be pleased to respond to any questions the committee may have.

The CHAIRMAN. Well, thank you very much, Mr. Swartz, for your testimony. We appreciate both of you illuminating the treaty. You have provided excellent summaries of your broader statements.

I have a series of questions that are not meant to challenge your testimony, but may offer you additional opportunities to once again cover the aspects, for the sake of a hearing record, that would be important to our members on the committee, and likewise to all Senators.

Let me ask you these questions, and either one of you may respond. One or the other may have a specialty in the areas we are going to talk about here. First of all I would point out that the United States is already a party to two treaties relating to corruption—the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Inter-American Convention Against Corruption that I mentioned in my opening statement.

What progress has been made against corruption as a result of these two earlier treaties, and how does this Convention build on these regional efforts? Why, therefore, is another convention needed, in your judgement?

Mr. SWARTZ. Mr. Chairman, these two Conventions have been, as you note, extremely important to the international fight against corruption. And this Convention builds upon those two prior Conventions in ways that we believe will be very useful for the law enforcement and for the national security interests of the United States. The Inter-American Convention Against Corruption was the first multilateral international agreement specifically relating to corruption, and it established the principle that international cooperation and preventive measures were necessary to fight corruption.

Now that that Convention is in force throughout the hemisphere, countries are more able and more willing to address problems relating to corruption, bilaterally and at the Organization of American States. And the Convention has been helpful in practical cases.

One striking example, from the perspective of the U.S. Government, was when the United States invoked the Convention in 2001 to arrest and to extradite two fugitive associates of the former chief of intelligence of Peru, Vladimir Montesinos. Montesinos had been charged in Peru with an array of corruption and abuse of office offenses, and the fugitives were charged with aiding him in evading arrest and destroying evidence.

Now, these offenses were not covered by the old 1899 treaty between the United States and Peru regarding extradition, but they were covered by the accessory after the fact provisions of the Convention, and thus extradition from the United States was possible.

The OECD Convention has been equally important. It was the first international agreement to solely target bribery of foreign offi-

cials in international business transactions, and it was the first to create an active peer-review monitoring mechanism to ensure effective implementation. Prior to that Convention, as the Chair is aware, the United States was the only country to investigate and prosecute bribery of foreign officials, and the Convention is slowly, but surely, leading the way to action by other OECD governments in this area. For example, France, Germany, and the United Kingdom all have a very active number of investigations into foreign bribery by their companies. Work at the OECD also eliminated the tax deductibility of bribes, and has strengthened significantly antibribery disciplines on export credits.

But even with such progress, there is a long way to go and the U.N. Convention will take the international fight against corruption to a new level. It is a far more comprehensive treaty than either the OECD or the Inter-American Conventions. The OECD Convention, as I noted, focuses on bribery of foreign officials; and the Inter-American Convention only requires action in the law enforcement area and is geographically based.

Neither of those Conventions provides as well the approach of comprehensively addressing asset forfeiture that the U.N. Convention does. In short, the U.N. Convention addresses corruption on multiple fronts, by taking preventive measures, as Mr. Witten noted; criminalizing a wide range of corrupt conduct; and cooperating on asset recovery. It will apply to countries around the world, and it will provide a comprehensive framework that we believe will be essential to advancing our anticorruption goals.

The CHAIRMAN. Thank you. One of the facets that you mentioned, and only one in that comprehensive list, but one which many Americans have found fascinating as well as repugnant, has been the deduction of bribes as people file tax returns in other countries; in other words, the perception that it's just simply a cost of doing business. And the internationalization of that principle in itself is really an important indicator of the seriousness of this activity.

Let me ask now a second question of this panel. In a speech commemorating the entry into force of the Corruption Convention last December, Ambassador John Bolton, U.S. Representative to the United Nations stated, and I quote, "The United States is proud to have actively participated in the negotiation of the Convention." And he encouraged the U.S. Senate to provide its advice and consent to ratification of this important convention at an early date. Ambassador Bolton is leading the U.S. efforts in the critical campaign to reform the United Nations in the wake of the oil-for-food scandal. What would be the impact on those efforts if the United States were to fail to ratify the Convention?

Mr. Witten.

Mr. WITTEN. Thank you, Mr. Chairman. The short answer, Mr. Chairman, is that becoming a party would help in this and all other efforts of the United States to address corruption as reflected in Ambassador Bolton's statements back in December which echoed the President's words when submitting the Convention to the Senate for its consideration. The administration strongly supports ratification of the Convention and requests rapid approval by the Senate.

The United States has been a world leader at addressing corruption wherever it occurs, whether at the national level or in international organizations such as the United Nations.

The United States is working on many fronts to further these anticorruption goals, for example, by pushing for governmental commitments to fight corruption through agreements such as the Corruption Convention, the OECD Convention, and the Inter-American Convention. Second, by pushing for government action against corruption through other means, for example, U.S. international diplomacy and foreign assistance. Third, by engaging governmental organizations and working with them in a partnership to address corruption issues throughout the world. And, finally, as you mentioned, Mr. Chairman, pushing for action by, and within, international organizations such as the United Nations.

Becoming a party to this Convention and participating in its implementation will certainly enhance our anticorruption efforts in all of these fronts, of course including our posture advocating reform at the United Nations and other public international organizations.

In addition, Mr. Chairman, I note that the Convention addresses bribery for commercial advantage not only of officials of foreign governments but also officials of public international organizations. This is one of the key criminalization requirements of the Convention. Parties, therefore, are required to criminalize bribes paid to officials of the United Nations and other public international organizations that are made for commercial advantage. Thank you.

The CHAIRMAN. Let me ask, as we further examine our foreign policy goals, how does this Convention fit in with the broader U.S. anticorruption agenda? We've discussed already the U.S. reforms with regard to the United Nations, as you've just mentioned, Mr. Witten. But what other ramifications would result from a U.S. failure to ratify the Convention? For example, would it impair U.S. credibility in advancing other key anticorruption efforts, such as our own committee's efforts to combat corruption related to multilateral development bank financing?

Mr. Witten.

Mr. WITTEN. Thank you again, Mr. Chairman. Adherence to this Convention is part of a broader picture, as you've indicated in your opening statement, and as I've attempted to convey. The fight against corruption is a priority for the United States because it accomplishes so much. As we've discussed, it has national security implications; it affects U.S. businesses; it advances development; and it brings the world up to a higher standard of law enforcement cooperation and security cooperation.

In our view, the Convention will be a critical tool for enhancing U.S. international anticorruption efforts, and this is because we learned from the earlier treaties, which are regional or more limited in their scope. It takes those provisions, it builds on them, and it effectively creates a framework that the entire world can use.

In our view, if the United States does not become a party, it will make it much more difficult for us to continue what we have started by way of our international efforts to bring countries up to the higher standards of anticorruption in their domestic systems. We're currently, as you know, Mr. Chairman, going around the world, for example, at APEC, at the Group of 8, in OECD fora, working with

the United Nations, we are making every effort we can to remain a firm and resolute leader in the effort to combat international corruption. And, put simply, not becoming a party to this Convention at this stage would make our efforts much more difficult.

In addition, as you mentioned, Mr. Chairman, with the 1-year anniversary of the Convention entering into force almost upon us in December 2006, there will be the first Conference of State Parties. Although the United States will attend that Conference whether or not we're a party, our position will be strengthened materially if we are a party and are participating in that capacity. Thank you.

The CHAIRMAN. Thank you, Mr. Witten. As I've observed before, after some of our hearings on the multilateral development bank situations, often the press in our country has not really gotten into this, but the press in other countries has, and I compliment, really, the vigorous press in countries that have worked to frame this issue in ways that citizens are able to understand.

Mr. WITTEN. Mr. Chairman, could I add something?

The CHAIRMAN. Yes.

Mr. WITTEN. And I didn't——

The CHAIRMAN. Yes.

Mr. WITTEN. Your question particularly addressed the multilateral development bank issue, and I would note in the same way that in my comments about the United Nations, the same legal framework would apply. This Convention applies to bribery of officials of public international organizations. So I would just note for the record that this is yet another advantage of the Convention, and it's entirely consistent with this committee's excellent efforts in recent years to address this issue.

The CHAIRMAN. Well, I thank you for that comment. We believe that we've been able to assist the banks in not necessarily reforming the cultures that were a part of their administration, but in indicating that this has a higher priority around the world. And the citizens suffer twice if a loan is made to a country and that money is misused. The people then don't have the road or the bridge or whatever the money might have brought, and they do have a debt and are double losers in the process. So the attempt here to bring about some confidence in multilateral institutions is, we believe, an important effect of what you're proposing today.

Now, let me ask, although parties to the Convention are required to criminalize certain corruption related offenses, many of the other provisions contained in the Convention are not of a mandatory nature, or grant each party significant discretion in determining how and when to apply the provisions "in accordance with fundamental provisions of its legal system." In light of these so-called soft obligations, how does the administration envision the Convention will make significant headway against corruption, especially in countries where it is most endemic?

Mr. Swartz.

Mr. SWARTZ. Thank you, Mr. Chairman. This is an important issue. I believe that, as, of course, the chairman has pointed out, the five core criminalization provisions, the mandatory criminalization provisions, are important. But they are not the only mandatory provisions of the Convention. And it is important to recall in

this regard, first, that the Convention carries with it, both in the prevention context and the international legal assistance context and with regard to asset recovery, mandatory provisions that themselves will be very important in fighting corruption. For instance, in the prevention context, the disallowance of the deductibility of tax deductions, as the chairman has pointed out, is a critical and mandatory feature of the Convention, as are the actions that are mandated in other areas of the Convention, such as the books and records requirements. The requirement that countries be able to provide international cooperation is also mandatory and will be very important in pushing forward the fight against corruption. Similarly, the mandatory provisions set forth in the asset recovery portion are also essential.

But, as you point out, Mr. Chairman, there are only five mandatory core criminalization provisions, and there are various discretionary provisions put forward, particularly in the criminalization article of the Convention. But those discretionary provisions are there for two reasons. First, they provide some needed flexibility in how countries apply a certain principle for fighting corruption, as in the prevention chapter as well. And, second, they represent measures that were deemed important to various groups of countries during the negotiation of the Convention but did not enjoy wide enough support, the consensus of support, to be mandatory.

During negotiations, certain delegations argued that it was important for their domestic anticorruption efforts to have certain tools included in the Convention, even if discretionary. In that regard we believe that having those discretionary provisions available will not weaken enforcement of the Convention, but will provide additional tools for those countries that choose to use those tools.

Perhaps most importantly, the United States was successful in ensuring that all mandatory provisions in the U.N. Corruption Convention involved anticorruption measures that are deemed acceptable and already used by the United States. It is these provisions, we believe, that are most likely to lead to headway against corruption in many countries.

I'd also like to note that applying a provision in accordance with the fundamental provisions of its legal systems, the term used in the Convention, was not intended by the negotiators to make a provision discretionary in and of itself. It simply calls upon parties to apply a provision in a way that best suits their domestic legal systems. For example, the United States, given its Federal legal structure, may want to apply a provision differently than a country that has only one national legal system. But that said, we believe that the Convention does have a combination of mandatory and discretionary provisions that will advance the fight against corruption.

The CHAIRMAN. Thank you. The Convention encourages parties to adopt measures designed to prevent corruption, such as the application of codes of conduct for public officials and the transparent use of objective criteria in public procurement systems. Do you expect that many developing countries will have the resources to be able to implement such provisions? And is technical assistance envisioned to assist countries in their effort to implement these and other provisions of the Convention?

Mr. Witten.

Mr. WITTEN. Thank you, Mr. Chairman. The U.N. Corruption Convention not only encourages, but mandates, certain goals and actions to prevent corruption. I would draw the committee's attention to article IX. Designing transparent public procurement systems is one of the mandated preventive measures. And as your question reflects, Mr. Chairman, countries will, of course, have different resources to apply to implementing the Corruption Convention. Developing countries may have fewer resources. The United States will encourage countries to see that the return in investing resources in some of these areas, such as the transparent public procurement system, can outweigh the initial public cost. For example, taking the time and effort to design more transparent procurement systems may ultimately save the government millions of dollars in lower procurement costs.

We also expect that technical assistance will be needed by some countries to implement certain of the U.N. Corruption Convention provisions. The Corruption Convention will provide a basis for a political commitment on the part of the parties to take action in those areas, and also relevant to your question, will provide a basis for the United States and other donor countries to work cooperatively and closely with countries on fighting corruption. In fact, although the entire agenda of the Conference of State Parties has not been set, we expect that conference in December 2006 to focus heavily on the issue of what technical assistance could be useful to more effectively promote implementation of the provisions of this Convention.

The CHAIRMAN. I appreciate your mention of that agenda for the December 2006 conference. And I think that's important for public understanding and for the record that this is an opportunity, really, to try to fill in such things as technical assistance, recognizing that there are provisions here. But the practical effect will only be realized if countries have the resources to do this sort of thing, and that may require some international cooperation.

The Convention contains a framework for parties to provide legal assistance to each other in corruption-related cases in the absence of a bilateral mutual legal assistance treaty. What safeguards would be available to the United States to refuse to provide assistance if it should receive a mutual legal assistance request that it judges to be politically motivated or otherwise improper? How do these safeguards compare with those applicable under United States bilateral mutual legal assistance treaties?

Mr. Swartz.

Mr. SWARTZ. Mr. Chairman, thank you. The Convention provides broad safeguards for the United States to refuse politically motivated or otherwise improper requests for evidence. The mutual legal assistance article, article 46, unlike the extradition article, article 44, does not specifically reference improper political motivation as a basis for refusing the mutual legal assistance request. However, such a request would implicate each of the four bases for refusal set forth in article 46, paragraph 21.

As an initial matter, a request motivated by a desire to punish a person for his political views would not be a request made "in conformity with the mutual legal assistance provisions of article

46," because it would not be, in fact, for the article's required purpose of advancing legitimate investigation or prosecution of an offense under the Convention.

Second, it would be contrary to our essential efforts to use our courts to assist a foreign government in persecution, including the repression of political speech or other activities we would view as protected by the first amendment.

Finally, such action would constitute an abuse of process that would be both contrary to our legal system, the third basis for refusing a request, and an action that would be prohibited under our own laws if our agents and prosecutors sought to utilize their criminal investigative powers and the powers of our courts for such ends.

Overall then, the bases for refusal in the Convention are somewhat broader than under our bilateral treaties. Most significantly, under the Convention a request for a coercive measure, for example, a search or seizure of property, may be declined on the basis of lack of dual criminality.

While some bilateral mutual legal assistance treaties do have some limitations based on dual criminality considerations, the majority do not. Moreover, even as to noncoercive measures, we can decline under the Convention on the grounds that the request is de minimus or if the request could be channeled through informal channels such as police-to-police cooperation.

Also, while all of our bilateral treaties permit us to decline assistance if contrary to our essential interests, and we consider adherence to the Constitution and other fundamental provisions of our law as being within those central interests, the Convention goes further, permitting us to refuse a request where it is simply contrary to our legal system. This should give us, we believe, greater latitude in declining and limiting assistance.

The CHAIRMAN. Well, that's a very important response, because clearly as a commonsense matter, even as we're seeking to fight corruption worldwide, it would be very unfortunate if a country attempting to settle political scores within its own realm tried to utilize us as a method of prosecution. And I appreciate your illuminating that area, both in terms of our normal bilateral treaties, as well as its application in the one we're discussing this morning.

While the Convention contains a chapter on asset recovery, an area not addressed in significant detail in earlier anticorruption instruments, as a practical matter, how would these provisions facilitate the identification and recovery of assets illicitly acquired by a corrupt official, and how would a government using this Convention seek the return of assets embezzled from its treasury?

Mr. Swartz.

Mr. SWARTZ. Thank you, Mr. Chairman. As you note, the asset recovery provisions of the Convention are important ones. They receive an entire chapter, and they are some of the provisions that make this such an important convention. The provisions regarding asset recovery cover the entire range from detection through restraint to recovery and to final disposition of the assets. As a practical matter it provides important new tools for law enforcement and will help ensure that we can deprive corrupt officials of their ill-gotten gains and return funds to victim states.

Turning first to detection, article 52 requires States Parties to have adequate procedures in place to detect suspicious transactions and particularly to give heightened scrutiny to high-value accounts owned by foreign public officials. And the United States meets this obligation already under the Patriot Act as to foreign public officials.

The Convention also gives several routes for recovery of such illegally obtained assets. First, article 53 provides that a State Party that has been harmed by corruption can participate as a private litigant to recover the proceeds of embezzlement and other crimes in the country in which those funds may have been deposited or otherwise transferred.

In addition, article 54 provides that each State Party must provide a legal framework to provide assistance in the recovery of assets that were acquired under one of these mandated offenses under the Convention. Under this provision, countries must enact legislation to enable them to either freeze and seize the illicitly obtained property of foreign origin or to recognize a foreign judgement seizing or freezing the property, and to use that as a basis for recovery.

Article 55 provides that requests by a foreign government in recovering assets shall be governed by the mutual legal assistance provision, article 46, which, therefore, puts in place all of the safeguards that I discussed in my prior answer.

And then finally article 57 sets forth a framework for the disposition of property confiscated by a State Party at the request of another. These provisions are detailed. They are all in accordance with U.S. law, and we believe that they provide a framework that will be of tremendous value, not only for the United States, but for other countries trying to seek return of looted assets.

The CHAIRMAN. The first Conference of States Parties to the Convention is scheduled to take place, as we have been mentioning, in December of this year. What issues do you expect this conference to address? You've already touched upon some, but be expansive, if you will. Some private sector organizations have urged the U.S. Government to provide leadership at the conference in the establishment of an effective monitoring mechanism for the Convention. What is the U.S. position on that issue, and to what extent will the United States be in a position to influence the outcome of the conference? Wouldn't U.S. influence be enhanced if the United States were to become a party prior to the conference?

Mr. Witten.

Mr. WITTEN. Thank you, Mr. Chairman. The issue of what will take place at the conference is something that we are beginning to look at and consult about extensively. I can give you the best picture that we have at this time of how we intend to approach this conference. We view this as the beginning of an effort that will go over a long stretch of time to consider how parties can best promote implementation of the Corruption Convention. The role of technical assistance, as we've discussed, will of course be a major focus of the Conference of State Parties. We note that this first meeting has been tasked by the U.N. General Assembly to consider also how the Corruption Convention may help further the anticorruption efforts of public international organizations such as

the United Nations and other multilateral organizations. And I note that I believe two of your questions, Mr. Chairman, have addressed this issue.

The CHAIRMAN. Yes.

Mr. WITTEN. We're in the process of conducting internal discussions to determine what exactly we, the United States, would like to see happen at the Conference of State Parties. I can tell you our thinking as of this time. Initially, we will likely want to see a constructive process that will create a conduit for providing more effective technical assistance on issues of corruption. The Conference of State Parties will likely need to gather information on Corruption Convention implementation in order to inform donors and to help them determine which countries are committed to implementing the Corruption Convention and willing to take appropriate action to implement its terms.

One challenge that's clear—this will be the first conference, the first of many—will be to develop an effective and efficient process for an envisioned conference of 130-plus parties. This will be a complicated enterprise, just like the negotiation of the Convention.

The United States was active and very successful during those negotiations, and we hope to have a similarly active and influential role in the Conference of State Parties process. We've been able to secure a seat at the Conference of State Parties table, even as a signatory. However, as you've noted, Mr. Chairman, being a party to the Convention at the time the conference meets will definitely provide us more influence at the Conference of State Parties, and according to the rules of the conference, will guarantee us input on all substantive decisions. Thank you.

The CHAIRMAN. Well, that's useful, but we will have a seat at the conference in any event. But, of course, to the extent that we're a party, as you say, our influence will be substantially increased. Just out of curiosity, where is it likely the conference will be held and what dates in December, or has this been defined?

Mr. WITTEN. I'll consult. I believe Vienna, but I'll consult.

[Consults with staff.]

Mr. WITTEN. I'm sorry, Mr. Chairman. First, the dates are December 9–13, and I've just been reminded that Jordan has agreed to host this initial Conference of State Parties. The negotiations were in Vienna, hence my focus there.

The CHAIRMAN. So it will be in Amman, Jordan?

Mr. WITTEN. December 9 through 13.

The CHAIRMAN. And with as many as 130 parties around the table.

Mr. WITTEN. Well, we don't know at this time exactly how many will attend.

The CHAIRMAN. I see.

Mr. WITTEN. We know that there are a large number of signatories, and with 55 nations already having become parties, it's just June, I imagine there will be more and more. We'll see how many actually attend.

The CHAIRMAN. Once again just out of curiosity, from your experience, when there are that many parties attending, do they all sit around a large, round table, or how do you accommodate all these people who have differing views?

Mr. WITTEN. Well, I'm afraid I don't know the physical layout that will happen.

The CHAIRMAN. I see. The Jordanians will have to work that out.

Mr. WITTEN. The Jordanians will——

Mr. SWARTZ. They're building the table now.

The CHAIRMAN. I see.

Mr. WITTEN. You're thinking back to the seventies, I know, trying to configure the table.

The CHAIRMAN. Well, there are now, just to get into the details of this, over 55 parties to the Convention, including countries at all levels of economic development. Eighty-eight other countries, including the United States, have signed but not yet ratified the Convention. Thus, if we're doing the math, we've got up to the 130 range, actually, 143—55 plus 88, I guess. What is the U.S. Government doing to encourage wide ratification of the Convention among both our trade competitors and developing countries, and does the administration anticipate that this Convention will finally achieve truly global acceptance?

Mr. WITTEN. Thank you, Mr. Chairman. The U.N. Corruption Convention is being recognized internationally as the new and comprehensive global standard for fighting corruption, and we do expect it to become globally accepted over time.

With respect to your question, there is a lot of momentum already building. Just this week Spain added its name to the countries that are becoming parties. And with the 30-day notice requirement, Spain will become a party 30 days from this past Monday. So the momentum is building. Countries around the world have already signed, and a growing number are actually becoming parties.

The United States is doing a number of things to encourage countries to become a party. As I noted in my opening statement, the United States has been actively promoting the Convention in regional fora such as the G–8, the Asia-Pacific Economic Cooperation Forum, the Organization of American States, and the U.N. Development Programme–OECD's Initiative on Good Governance in the Middle East and North Africa. We've also provided some funding so far, and may be providing more in the future, to the U.N. Office on Drugs and Crime, which is the forum within the United Nations that is at the heart of these efforts. Our funding, which I understand to be $1 million already, has included regional conferences to educate countries on the Convention and to promote acceptance and ratification, and the placement of mentors in several regions to help provide advice on implementing the Convention. And these efforts, together with our outreach at regional fora, will only be helped once we become a party as opposed to a country that played a big role in this negotiation.

The CHAIRMAN. Well, I thank both of you for your detailed responses to these questions. We appreciate your initial testimony and look forward later to being in consultation with you as our committee proceeds and hopefully, on the Senate floor thereafter.

Do either of you have any final comments that you would like to make for the record?

Mr. WITTEN. Mr. Chairman, I would like to make one comment. It's a little unusual, but the head of our delegation is sitting behind

us, and I know I'll get into trouble by recognizing just one person——

The CHAIRMAN. Please go ahead.

Mr. WITTEN. I think it would be appropriate. Elizabeth Verville has been with this Convention from day one, along with John Brandolino and Molly Warlow, and a number of folks from State and Justice. And obviously this is an enterprise that required many round trips, many days and weeks away from home. And the effort was worth it, as we know. But I just wanted to recognize the outstanding work of the team that negotiated this on behalf of the United States.

The CHAIRMAN. Well, I thank you for recognizing these very, very able associates. We thank both of you, as well as all of the dedicated associates who have accompanied you to the hearing, for your testimony.

We will now proceed to our second panel, and that will include the Honorable Alan P. Larson, chairman of Transparency International–USA in Washington, DC, and the Honorable William A. Reinsch, president of the National Foreign Trade Council, Washington, DC.

Gentlemen, we welcome you both again to the committee witness table. We have appreciated your testimony in the past, frequently, Secretary Larson, in your other capacities at the State Department in addition to the new responsibilities that you have assumed.

I would like for you to testify in the order that I have introduced you, and your full statements will be made a part of the record. You may summarize, if you wish. Please proceed, Secretary Larson.

STATEMENT OF HON. ALAN P. LARSON, CHAIRMAN, TRANSPARENCY INTERNATIONAL–USA, WASHINGTON, DC

Mr. LARSON. Thank you very much, Mr. Chairman. On behalf of the U.S. Chapter of Transparency International, I want to congratulate you for holding this hearing. We appreciate the strong interest of this committee and particularly your leadership, Mr. Chairman, in making the issue of corruption in development assistance, at the World Bank and more broadly, a priority. It has stimulated significant progress, and we are honored by the interest you and committee staff have shown in our views.

Corruption is not simply an unpleasant fact of life that we must reluctantly accept. It, rather, is a cancer that threatens core American values and interests.

Corruption despoils democracy. It erodes development. It penalizes U.S. businesses. And, as you pointed out quite clearly in your statement, Mr. Chairman, it damages the very security of our country.

The United States has a strong record of leadership in the global fight against corruption. Congress enacted the Foreign Corrupt Practices Act in the 1970s. In 1988 the Congress instructed the executive branch to try to extend those disciplines to other countries through negotiations in the OECD. This committee led the ratification of that OECD Convention Against Bribery. The committee and past administrations pushed forward the Inter-American Convention Against Corruption.

As you pointed out in your statement, in the first term of the Bush administration there were many important initiatives against corruption that were pursued in our own policies and through the G–8.

And then, finally, the United States through the last two administrations has devoted considerable effort to the negotiation of the United Nations Convention Against Corruption.

This Convention Against Corruption significantly strengthens the international framework. It provides a global framework to combat what is a global phenomenon. It extends discipline, for example, of the bribery of foreign government officials to significant emerging market exporters such as China, which are not covered by the Foreign Corrupt Practices Act, of course, and are not parties to the OECD Convention either.

The Convention prohibits domestic bribery of public officials, and it recommends measures to prevent bribery in the private sector and to enhance auditing and accounting standards. It provides for preventative measures to raise the levels of integrity in public service. Importantly, it requires specific steps to enhance procurement transparency, something the United States has fought hard for intrade agreements, but we've achieved in substantial measure in this U.N. Convention. It expands mutual legal assistance on a global scale, and it breaks new ground in providing for the recovery of funds deposited in foreign banks by corrupt officials.

As important as the Convention is, it will not implement itself. Monitoring is going to be very important to ensure effective implementation and enforcement. We've learned from past experience that an effective monitoring regime is necessary to secure timely and consistent implementation and enforcement. And we believe that it is important that the Congress encourage this and subsequent administrations to report to the Congress on progress that's being made in implementing an effective monitoring mechanism.

Similarly, I underscore the comments, Mr. Chairman, that you and the previous witnesses made about the importance of technical assistance to the effective implementation of this Convention.

I do believe that prompt U.S. ratification is necessary for continued U.S. leadership in this effort. As has been pointed out by Mr. Witten and others, ratification will strengthen the hand of the United States at the Conference of the Parties at the end of this year. And that meeting will be very important to set the framework for monitoring and for the use of technical assistance to make sure that this Convention is implemented in the way we all want and expect it to be.

At a more political level, Mr. Chairman, I think it's important for the United States, which has been the global leader in this fight against corruption, to be waging it on all fronts. And you, sir, mentioned the importance of the efforts that our government is making to clean up the U.N. administration and specifically to address the oil-for-food program. That is very important work, and it's work that's been spearheaded by a well-respected American, Mr. Volker, and someone on his team, Mark Pieth, who has been a leader in the global anticorruption, antibribery fight. So this is one fight that has to be waged on different fronts. And for us to be effective in the work in cleaning up the oil-for-food program, we need to be

pursuing just as vigorously ratification of the U.N. Convention and effective implementation of the U.N. Convention.

I do believe that this Convention is an indication of the rising tide, globally, of attention to this issue. I believe it has strong support from business interests and from a wide array of nonprofit and international public organizations who are working to promote rule of law, good governance, and democracy. It, in particular, enjoys strong support from reformers in other countries who are struggling, sometimes in fairly lonely battles, to promote democracy, transparency, accountability, and economic development in their own countries.

So, in conclusion, Mr. Chairman, as you indicated, I've had the honor to testify before this committee on many occasions as a spokesman for the administration. I'm very pleased today in my first appearance as a private citizen to be here and testify in support of the Convention and in support of a cause that's been championed by both parties. As you highlighted in your opening statement, it truly is a cause that's vital to American values and to American interests. Thank you.

[The prepared statement of Mr. Larson follows:]

PREPARED STATEMENT OF HON. ALAN LARSON, CHAIRMAN, TRANSPARENCY INTERNATIONAL–USA, WASHINGTON, DC

Chairman Lugar, Ranking Member Biden, and distinguished Senators, I congratulate the committee for organizing this hearing on the United Nations Convention Against Corruption (Convention).

My name is Alan Larson and I am testifying in my capacity as chairman of the board of directors of the U.S. chapter of Transparency International. We appreciate the strong interest of this committee and particularly your leadership, Mr. Chairman, in making the issue of corruption in development assistance, at the World Bank and more broadly, a priority. It has stimulated significant progress. We are honored by the interest you and committee staff have shown in our views.

At present, I am also a senior advisor at the law firm of Covington & Burling and I serve as a strategic advisor and director of the World Economic Forum. Formerly, I was a career ambassador in the Foreign Service of the United States, ending my government career in 2005, as Under Secretary of State for Economic, Business and Agricultural Affairs.

I mention these past and present affiliations because each of them contributes to my conviction that prompt Senate ratification of the Convention must be among the highest priorities. Prompt ratification will advance America's leadership in the world, contribute to our efforts to promote democracy and development, and will help level the playing field for American business. Delay, on the other hand, would damage each of these objectives.

Corruption damages core America values and interests

Corruption is not simply an unpleasant fact of life that we must reluctantly accept. Corruption, rather, is a cancer that threatens core American values and interests.

Corruption despoils democracy. It is impossible to build and sustain representative institutions when corruption runs rampant. Promoting institutions with integrity and combating corruption is a central element of America's policy of empowering people and promoting democracy.

Corruption erodes development. In country after country, corruption in the institutions of the marketplace has either prevented economic growth, perpetuated poverty, or has so distorted the distribution of the benefits of growth that public support for reform policies has been sapped.[1]

Corruption produces an unpredictable and unfair business playing field. It is a barrier to the trade and investment of American companies.

[1] According to the World Bank, over $1 trillion is lost to bribes annually. Embezzlement, fraud, and other corrupt acts raise these costs by diverting resources from poverty alleviation programs and essential public services such as education, nutrition, and health care.

For all these reasons and more, corruption must be tackled, not tolerated.

The United States has a strong record of leadership in the fight against corruption

The United States, the Congress, and this committee have reason to be proud of the leadership of the United States in the fight against corruption. That leadership has been bipartisan and sustained across changes in the leadership of the Congress and across changes of administration.

The Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977, to address the issue of overseas bribery of public officials to gain or retain business. In this way, the United States sought to ensure that American companies would be part of the solution, not part of the problem.

In 1988, Congress encouraged the executive branch to negotiate, within the Organization for Economic Cooperation and Development (OECD), an arrangement that would commit other nations to disciplines similar to those in the FCPA.

The task required persistent efforts over a decade by administrations of both political parties, and by 1997, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) had been negotiated. This committee played a leading role in securing Senate ratification of the treaty and enactment of the necessary implementing legislation in 1998, and TI–USA was privileged to testify before this committee when Senator Helms was chairman. Widespread enforcement of the OECD Convention is still essential not only to level the playing field for U.S. business, but for the developed world so it has credibility when it urges governance reforms, such as those in the Convention, in the developing nations.

The United States has played a leadership role in the negotiation of other anticorruption agreements, including the Inter-American Convention Against Corruption, which this committee reviewed and the full Senate ratified in 2000. Since then, it has encouraged other initiatives to address corruption in development, in the World Bank, in our own Millennium Challenge Corporation, and in initiatives of the Group of 8.

In addition, the Bush administration rightly has stressed anticorruption initiatives as central planks of efforts to promote democracy and to strengthen free societies.

Finally, the United States, throughout both the Clinton and Bush administrations, has devoted considerable effort to the negotiation of an effective universal arrangement, the United Nations Convention against Corruption, which entered into force on December 14, 2005.

Prompt ratification of this Convention will sustain this record of leadership. Delays will damage the image of the United States. More specifically, delays in ratification will limit the leadership of the United States in the implementation of the Convention.

The United Nations Convention Against Corruption significantly strengthens the international framework against corruption

The basic provisions of the Convention have been fully summarized by the administration and committee staff, and the administration's October 27, 2005, transmittal package notes that no change in U.S. law is required to implement the Convention.

I would simply highlight a few provisions that, in my opinion, represent significant advances over the status quo. First and foremost, the Convention provides a global framework to combat a global phenomenon. Corruption has global dimensions, and the Convention's universal reach, comprising developed and developing nations, makes it possible to tackle problems that cannot be addressed through existing regional regimes.

For example, foreign bribery by significant emerging exporters, such as China, is not covered by the OECD Convention, but is covered under this Convention. This will help reduce the competitive disadvantage faced by U.S. companies, which have long operated under more stringent rules than their foreign competitors.

In addition to prohibiting foreign bribery, the Convention prohibits domestic bribery of public officials and recommends measures to prevent bribery in the private sector and to enhance auditing and accounting standards. It requires parties to criminalize bribe solicitation, which is an important concern for businesses dealing with extortion.

It provides for preventive measures to raise levels of integrity in public service, including laws that prevent conflicts of interest and promote asset disclosure, and it requires specific steps to enhance procurement transparency—an area rife with corruption.

It expands mutual legal assistance on a global scale, requiring the widest possible cooperation in investigations, gathering and transferring evidence, and extradition. As a leading prosecutor of transnational crime, the United States stands to benefit greatly from this enhanced international cooperation.

Finally, the Convention breaks new ground by providing for the recovery of funds deposited in foreign banks by corrupt officials. The asset recovery provisions are of prime importance to many developing nations whose wealth has been plundered and they are intended to create a disincentive for future illicit acts.

Monitoring is essential to effective implementation and enforcement

The potential of this Convention is substantial, but we have learned from experience with other anticorruption conventions that an effective monitoring system is essential to secure timely, effective, and consistent implementation and enforcement.

This is particularly true for this Convention, which involves numerous and diverse parties with different legal systems and levels of capacity. It requires governments to pass numerous laws, create agencies and take other actions. Monitoring will help identify problems, facilitate guidance and assistance, and promote reform.

It will also provide important external impetus for action, particularly in countries lacking in political will.

For companies doing business in multiple jurisdictions, monitoring will promote consistent implementation. It will also provide a forum where governments, the private sector, and others can raise concerns or bring complaints about actions inconsistent with the spirit and letter of the Convention.

Given the importance of monitoring, TI convened experts with extensive experience to develop recommendations for an effective process. Last week, it presented its report to the U.N. Office of Drugs and Crime, which is expected to manage the process.[2] We respectfully request that the committee enter this report into the record.

[EDITOR'S NOTE.—This report was too large to print in this hearing. It will be maintained in the committee's permanent record.]

To ensure sustained attention to the important issue of monitoring, the committee may want to request that the administration report back annually on progress in creating the monitoring mechanism. The Senate provided for such a report in its ratification of the Inter-American Convention.

Prompt U.S. ratification is necessary to continued U.S. leadership

The Convention provides for a Conference of States Parties to promote and review Convention implementation, including by establishing an appropriate monitoring mechanism.

The Conference of States Parties will discuss this issue when it meets this December in Amman, Jordan. United States leadership at this event will be vital to ensure that an effective and transparent monitoring mechanism is put in place. Our ability to influence the process will be significantly diminished if the United States has not ratified the Convention beforehand.

The Convention enjoys broad support and is part of a rising tide of attention to the issue of corruption

The Convention enjoys strong support from business interests in the United States and abroad, as well as from a wide array of nonprofit and international public organizations working to promote rule of law, good governance, and democracy. The committee will hear from representatives of some of these groups today and in written testimony.

The Convention enjoys broad support from reformers in other countries who are struggling to promote democracy, transparency, accountability, and economic development. TI chapters in over 90 countries firmly believe this agreement has great potential and, therefore, played a key role throughout the negotiations. Many TI national chapters are actively engaged in efforts to promote ratification and implementation by their governments.

TI–USA enjoys the support of numerous leading U.S. multinationals who share the view that this Convention has great potential. We worked closely with the administration to craft Convention provisions and, more recently, a transmittal package that would maximize these benefits and address concerns.

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[2] TI's report on convention monitoring is entitled "Report of TI Study on Follow-up Process for UN Convention Against Corruption."

Through my work with TI and the World Economic Forum, I am aware of a growing number of international companies throughout the world who are seeking to form partnerships against corruption.

Through my work at Covington & Burling, I am aware that corporations are very interested in strengthening their compliance programs. The Convention will help create an environment in which they can operate according to these programs.

Through my work with other countries, I am aware that many governments consider corruption to be a central issue. Clearly, the fact that 140 countries signed and 53 ratified the Convention reflects a global consensus that corruption must be addressed.

Even in the United States, the public has become increasingly concerned about failures of corporate governance and instances of public corruption.

For all these reasons, prompt Senate ratification of the Convention will position the United States where our citizens and companies expect it to be and where the citizens and companies of other countries count on us to be.

Concluding Remarks

Mr. Chairman, I have had the honor to testify before this committee on many occasions as the representative of administrations of both parties. I am pleased that today, in my first appearance as a private citizen, I am able to testify in support of a cause that has been championed by both parties. It is a cause on which I labored while in government and on which the organization I now represent has an unparalleled record of leadership.

The CHAIRMAN. Thank you very much, Secretary Larson. We're grateful your public service continues.

Mr. Reinsch, will you please give us your testimony.

STATEMENT OF HON. WILLIAM A. REINSCH, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL, WASHINGTON, DC

Mr. REINSCH. Thank you, Mr. Chairman. I'm here in my capacity as president of the National Foreign Trade Council and the cochair of USA*Engage to make clear the American business community's support for a swift ratification of the Convention in accordance with the statements received from the administration in its transmittal package to this committee.

American business understands that corruption is highly detrimental to the global trading system. It impedes economic growth and development and siphons money from productive uses. In addition, it disadvantages U.S. firms internationally, as domestic laws like the Foreign Corrupt Practices Act have held American firms to higher standards than many of their foreign competitors. The business community supports efforts to create a more stringent anticorruption regime and thereby raise the bar for the behavior of foreign businesses and governments and in the process promote expanded investment and growth.

Ten organizations, including the NFTC, American Petroleum Institute, the Business Roundtable, the National Association of Manufacturers, the U.S. Chamber of Commerce, and the U.S. Council for International Business, have written you, Mr. Chairman, indicating that "the Convention can be a critical tool in the global fight against corruption," and that it is "noncontroversial and has broad support." I would like to ask that this letter be included in the record following my testimony.

The CHAIRMAN. The letter will be included.

Mr. REINSCH. Thank you. The business community has come to its support for the Convention after a long and fruitful dialog with representatives of the administration, including those who negotiated the document, who were sitting behind me. I don't know if

they're still there. And I'd like to thank them for their hard work, particularly former Assistant Secretary Anthony Wayne and his staff, and, of course, former Undersecretary Al Larson, who is sitting next to me.

The interaction we had with these people is a fine example of how good government is supposed to work. During the negotiation of the Convention, some of my members raised concerns as to how this new instrument might affect U.S. laws and questioned its potential domestic impact on American companies. The administration officials carefully listened to our concerns, participated in an extensive, open, and frank dialog, and provided detailed language in the transmittal package that enabled us to come to four very positive conclusions about the Convention. They also permitted us to review that language prior to submitting it and received a number of comments that we had on it.

First, the Convention, we believe, will level the playing field for American business by holding foreign companies around the world in places including Brazil, China, France, Russia, and the United Kingdom accountable for acts of corruption. It is the first truly global anticorruption effort, and it improves substantially upon other existing regional conventions that have attempted to address the issue of corruption. Those others, I gather, were discussed in some detail in previous testimony, so I won't elaborate on them now. I would point out, though, that some of the major exporters, as I believe Mr. Larson just mentioned, including China and India and all of Africa, are not parties to the existing conventions but hopefully will be to this one.

By harmonizing anticorruption obligations at a higher standard than any before and globalizing the standard for the first time, the United Nations Convention raises the bar overall and has the potential to level the playing field to a greater degree than any treaty or convention currently in existence.

The convention includes mandatory preventive measures, including calls to establish anticorruption policies and bodies, mechanisms to prevent public sector corruption and transparency in public procurement, and measures related to the judiciary, the private sector, and to civil society. The convention also criminalizes corrupt practices, including bribery and embezzlement of public funds, and includes provisions to recover illegally obtained assets and improve mutual legal assistance.

The United States already abides by the requirements spelled out in the Convention. For example, the transnational bribery provisions are incorporated in the United States within the FCPA. Campaign finance laws, obstruction statutes, and various State and Federal laws incorporate the remainder of the mandatory provisions contained in the Convention. As a result, no changes to U.S. law are required, which is a key point for the American business community.

Second, the reservations, declarations, and understandings contained in the transmittal package which accompanies the Convention ensure that the Convention does not impose any new costs or obligations under U.S. law. Secretary of State Rice indicated in her letter of submittal to the Senate that, "if the United States makes the proposed reservations, the existing body of Federal and State

law regulations will be adequate to satisfy the Convention's requirements for the legislation, and thus further legislation will not be required for the United States to implement the Convention."

The administration has concluded that this Convention does not require any changes to U.S. law and is generally not self-executing, with the exception of the articles that have already been discussed, subject to the declarations, understandings, and reservations they have already proposed. In addition, nothing in the treaty creates a private right of action to permit foreigners to litigate corruption complaints in U.S. courts. These statements confirm that the United States is already in compliance with its obligations under the Convention, and has no further steps to take beyond ratification to implement this treaty into U.S. law.

From our perspective, it's important that the Senate include the reservations, declarations, and understandings as part of its advice and consent, as the administration recommends in its transmittal package. We particularly support the following declaration in its resolution, which is contained on page 21 in the administration's transmittal package: "The United States declares that the provisions of the Convention, with the exception of articles 44 and 46, are non-self-executing. None of the provisions of the Convention creates a private right of action."

With the necessary declarations, reservations, and understandings in place, this Convention is costless from a domestic legal perspective, and squarely in the interest of the American business community.

Third, since this treaty raises the bar for other countries without imposing new obligations on us, the United States must focus its attention on implementation and monitoring, which was the subject of several of your questions for the preceding panel. The administration must make certain that implementation of the Convention is transparent and honest, and that implementation actually focuses on rooting out corruption and is not used as a pretext to bar or harass American businesses.

We should also urge other countries to implement the Convention consistent with due process protections and fundamental rights. In order to speak with the strongest and most credible voice to shape implementation of the Convention with these objectives in mind, prompt ratification by the Senate is imperative before December of this year, when the first Conference of State Parties meets in Amman.

That meeting will be the first time the parties to the Convention will have an opportunity to discuss implementation, monitoring, and technical and capacity-building assistance. As countries incorporate the requirements of the Convention into domestic law, U.S. negotiators will be in position, starting in December, to help ensure that implementation focuses on developing legal mechanisms to root out corruption as opposed establishing new levers to make life more difficult for American and other foreign competitors. If we do not have a vote and a voice at that meeting, our ability to achieve those objectives will be jeopardized.

Finally, the Convention will benefit political systems and investment regimes worldwide by empowering reform elements with tools they need to root out corruption and encourage transparent, stable

investment climates. Consultations and technical assistance from developed countries and institutions will benefit elements in developing countries interested in improving transparency and reducing corruption, thereby improving the climate for American and local businesses and aiding overall development.

For all these reasons, the National Foreign Trade Council supports swift ratification by the Senate of this Convention subject to the declarations and understandings contained in the transmittal package as received from the administration.

And we thank you in particular, Mr. Chairman, as I have many times before, for holding a hearing so promptly on the subject. Thank you.

[The prepared statement of Mr. Reinsch and the letter he requested to be put into the record follows:]

PREPARED STATEMENT OF HON. WILLIAM A. REINSCH, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL AND COCHAIRMAN OF USA*ENGAGE, WASHINGTON, DC

Mr. Chairman and members of the committee, thank you for the opportunity to testify in support of Senate ratification of the U.N. Convention against Corruption. I am the President of the National Foreign Trade Council (NFTC), a trade association of more than 300 companies committed to an open, rules-based trading system. Along with our USA*Engage coalition, we support multilateral cooperation and economic, humanitarian, and diplomatic engagement as the most effective means of advancing U.S. foreign policy interests and American values.

My testimony details the American business community's support for swift ratification of the Convention in accordance with the statements received from the administration in its transmittal package.

American business understands that corruption is highly detrimental to the global trading system. It impedes economic growth and development and siphons money from productive uses. In addition, it disadvantages U.S. firms internationally, as domestic laws like the Foreign Corrupt Practices Act have held American firms to higher standards than many of their foreign competitors. The business community supports efforts to create a more stringent anticorruption regime and thereby raise the bar for the behavior of foreign businesses and governments and in the process promote expanded investment and growth.

Ten organizations, including the NFTC, American Petroleum Institute, Business Roundtable, National Association of Manufacturers, U.S. Chamber of Commerce, and U.S. Council for International Business, have written you, Mr. Chairman, indicating that "the Convention can be a critical tool in the global fight against corruption," and that it "is noncontroversial and has broad support." The letter states that "timely Senate ratification is necessary for the United States to play a leadership role in moving implementation forward." Mr. Chairman, I would like to ask that this letter be included in the record following my testimony.

The business community has come to its support for the Convention after a long and fruitful dialog with representatives of the administration, including those who negotiated the document. I would like to thank these individuals for their hard work on this Convention and for their outreach to the business community. In particular, former Assistant Secretary of State for Economic and Business Affairs Tony Wayne and his staff should be commended for their efforts.

Our interaction with Ambassador Wayne and his staff is a fine example of how good government is supposed to work. During the negotiation of the Convention, some of my members raised concerns as to how this new instrument might affect U.S. law and questioned its potential domestic impact on American companies. Administration officials carefully listened to our concerns, participated in an extensive, open and frank dialog, and provided detailed language in the transmittal package that enables us to come to four very positive conclusions about the potential of the Convention to benefit American business:

(1) The Convention will level the playing field for U.S. businesses.

(2) There are no domestic costs or obligations imposed on the United States.

(3) Effective and transparent implementation by foreign governments is imperative.

(4) The Convention will benefit trade and improve investment climates worldwide.

I would like to discuss each of these in turn, as together they make clear why prompt ratification of this Convention by the United States is important to the American business community:

Leveling the playing field for U.S. businesses

This Convention will level the playing field for American business by holding foreign companies around the world—in places including Brazil, China, France, Russia, and the United Kingdom—accountable for acts of corruption.

It is the first truly global anticorruption effort. This Convention improves substantially upon other existing regional conventions that have attempted to address the issue of corruption. The broadest of the four, the Inter-American Convention Against Corruption, includes all 35 nations of the Western Hemisphere. The strongest of the four, the Organization for Economic Cooperation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, has 30 parties from Europe, Asia, and the Western Hemisphere. However, it only covers bribery and not other forms of corruption such as interference in a judicial process, which also threaten the interests of U.S. business. The Council of Europe Criminal Convention on Corruption has 45 States Parties, nearly all in Europe. Africa attempted its own convention, but that convention has not yet entered into force. Thus some of the major exporters—including China and India, and all of Africa—have been omitted from the international anticorruption legal regime until now.

Thus, by harmonizing anticorruption obligations at a higher standard than any before, and globalizing that standard for the first time, the United Nations Convention raises the bar overall and has the potential to level the playing field to a greater degree than any treaty or convention currently in existence.

The Convention includes mandatory preventive measures including calls to establish anticorruption policies and bodies, mechanisms to prevent public sector corruption and transparency in public procurement, and measures relating to the judiciary, the private sector, and to civil society. The Convention also criminalizes corrupt practices including bribery and embezzlement of public funds and includes provisions to recover illegally obtained assets and improve mutual legal assistance.

The United States already abides by the requirements spelled out in the Convention. For example, the transnational bribery provisions are incorporated in the United States within the Foreign Corrupt Practices Act. Campaign finance laws, obstruction statutes, and various State and Federal laws incorporate the remainder of the mandatory provisions contained in the Convention. As a result, no changes to U.S. law are required, which is a key point for the American business community.

No domestic costs or obligations imposed on the United States

The reservations, declarations, and understandings contained in the administration's transmittal package, which accompanies the Convention, ensure that this Convention does not impose any new costs or obligations under U.S. law.

Secretary of State Condoleezza Rice indicated in her September 23, 2005, letter of submittal to the Senate that, "if the United States makes the proposed reservations, the existing body of Federal and State law and regulations will be adequate to satisfy the Convention's requirements for legislation, and, thus, further legislation will not be required for the United States to implement the Convention."

The administration has concluded that this Convention does not require any changes to U.S. law and is generally not self-executing, subject to the declarations, understandings, and reservations that they have proposed. In addition, nothing in the treaty creates a private right of action to permit foreigners to litigate corruption complaints in U.S. courts. These statements confirm that the United States is already in compliance with its obligations under the Convention and has no further steps to take beyond ratification to implement this treaty in U.S. law.

From our perspective, it is important that the Senate include the reservations, declarations and understandings as part of its advice and consent, as the administration recommends in its transmittal package. We particularly support the following declaration in its resolution, which is contained on page 21 of the administration's transmittal package:

> The United States declares that the provisions of the Convention (with the exception of Articles 44 and 46) are non-self-executing. None of the provisions of the Convention creates a private right of action.

With the necessary declarations, reservations, and understandings in place, this Convention is costless from a domestic legal perspective, and squarely in the interests of the American business community.

Effective and transparent implementation is imperative

Since this treaty raises the bar for other countries without imposing new obligations on us, the United States must focus its attention on implementation and monitoring. The administration must make certain that implementation of the Convention is transparent and honest, and that implementation actually focuses on rooting out corruption and is not used as a pretext to bar or harass American businesses. We should also urge other countries to implement the Convention consistent with due process protections and fundamental rights.

In order to speak with the strongest and most credible voice to shape implementation of the Convention with these objectives in mind, prompt ratification by the Senate of this Convention is imperative. The business community urges the Senate to ratify the Convention before December of this year, when the first Conference of State Parties meets in Amman, Jordan.

That meeting will be the first time the parties to the Convention will have an opportunity to discuss implementation, monitoring, and technical and capacity-building assistance.

As countries incorporate the requirements of the Convention into domestic law, U.S. negotiators will be in a position—starting in December—to help ensure that implementation focuses on developing legal mechanisms to root out corruption as opposed to establishing new levers to harass American or other foreign competitors. If we do not have a vote and voice at that meeting, our ability to achieve those objectives will be jeopardized.

This Convention will only be truly effective if it is implemented properly and subject to adequate monitoring. By ratifying this Convention promptly and before the December conference, the United States will be in the strongest position to guide implementation and monitoring efforts, which will be essential to its ultimate success. Timing is important, and swift ratification is absolutely in the interests of the American business community.

Providing tools for reform-minded leaders

Finally, this Convention will benefit political systems and investment regimes worldwide by empowering reform elements with the tools they need to root out corruption and encourage transparent, stable investment climates.

Consultations and technical assistance from developed countries and institutions will benefit elements in developing countries interested in improving transparency and reducing corruption, thereby improving the climate for American and local businesses and aiding overall development.

For all of these reasons, the National Foreign Trade Council supports swift ratification by the Senate of this Convention subject to the declarations and understandings contained in the transmittal package as received from the administration.

JUNE 19, 2006.

Re ratification of the United Nations Convention Against Corruption.

Senator RICHARD G. LUGAR,
Chairman, Senate Foreign Relations Committee,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR LUGAR: We are writing on behalf of the undersigned organizations to urge the Senate to ratify the United Nations Convention Against Corruption before December 2006. The Convention, which entered into force on December 14, 2005, reflects a global consensus on the international legal system necessary to fight corruption. To date, more than 140 countries have signed the Convention, and over 50 countries, including France, Russia, Brazil, Mexico, and the United Kingdom, have ratified it. Timely Senate ratification is necessary for the United States to play a leadership role in moving implementation forward.

The Convention can be a critical tool in the global fight against corruption. It includes provisions to prevent and criminalize corruption, and procedures for governments to recover assets that have been acquired illicitly by corrupt officials. It also includes a broad range of measures that enhance international cooperation among governments, including extradition and mutual legal assistance. As a leading prosecutor of transnational crime, the United States stands to benefit greatly from this enhanced cooperation.

United States ratification of the Convention in accordance with the Administration's October 27, 2005, transmittal package is non-controversial and has broad support. The transmittal package notes that no change in U.S. law is required. The Convention's universal prohibition on foreign bribery—the first effort of its kind

with truly global reach—has unique potential to reduce the competitive disadvantage faced by U.S. companies, which have long operated under more stringent rules than their foreign competitors. It is also a crucial tool to improve rule of law, thus promoting more effective economic development and a more stable environment in countries around the world.

An effective monitoring process is critical to successful implementation of the Convention. Although the Convention provides for such a process, its specific contours will be decided in December 2006, at the first Conference of States Parties. United States leadership at that Conference is vital to ensure that an effective and transparent monitoring mechanism is put in place. As a global defender of due process rights, it is also important that the United States participate actively in interpretation and application of the Convention around the world to ensure that those countries with less robust protections use it as a tool to prosecute corrupt actors, not harass political or economic competition. The ability of the U.S. to influence these discussions will be significantly diminished if it has not ratified the Convention before the Conference takes place.

Accordingly, we would appreciate your leadership in moving the Convention through the ratification process in a timely manner.

Respectfully,

American Petroleum Institute; Business Roundtable; Coalition for Employment Through Exports; Coalition of Service Industries; Emergency Committee for American Trade; National Association of Manufacturers; National Foreign Trade Council; United States Council for International Business; U.S. Chamber of Commerce; USA*Engage.

The CHAIRMAN. Well, thank you, sir, for the very strong endorsement of American business in the letter that you asked to be inserted in the record. It has a very important group of business organizations.

Let me start the questions with you, Secretary Larson. I want you to discuss, essentially, the role the Convention will play in global transparency efforts. Based on Transparency International's experience and anticorruption efforts around the world, do you expect that this Convention is likely to become truly global in scope? And what are you hearing from your counterparts with other Transparency International chapters around the world? Are they engaging their host governments in an effort to expand the reach of the Convention, as you are?

Mr. LARSON. Thank you very much, Mr. Chairman. I believe that this Convention will create, over time, the global framework that you were alluding to. And I can tell you that the TI chapters around the world are actively involved in this effort. TI chapters have been very engaged in the ratification efforts with their governments and in offering strong support, and in some cases strong pressure, for ratification.

I think the work of Transparency International abroad will also be enhanced by the ratification of the treaty. In other words, this creates a global set of expectations, norms, and obligations. Many of these norms and obligations had not been part of the legal fabric in many of these countries. And now it is much easier for local TI chapters to go to the government and say, well, you know you are not quite living up to this obligation. We need to strengthen our track record in another area. And it was that which I had in mind when I alluded to the fact that in many countries this treaty provides support and cover for individuals and groups that are fighting for greater transparency, but don't necessarily have—did not have, before the Convention, a legal framework in place in the countries in which they are operating.

The CHAIRMAN. How many chapters are there of Transparency International?

Mr. LARSON. We have chapters throughout the world, and we're finding that there's interest in countries that don't have chapters in getting involved. One thing that truly is the case in my experience is that this issue has become a salient central issue for people around the world.

When we first came to the OECD, at the encouragement of the Congress, to try to get the first antibribery convention negotiated, frankly, people thought we were a little foolish. You know, how could we be trying to negotiate something that was just a fact of life? Now we are seeing, some 16–18 years later, that countries around the world recognize that this is a serious problem. They may not welcome the fact that they are under pressure in some cases, but they recognize that it is so important to their people that they have to be involved in tackling it.

And so I think there's been tremendous progress. I think this Convention gives a base for further progress.

The CHAIRMAN. Fine. Well, if you could satisfy the record with a number, that would be helpful.

Mr. LARSON. I will.

[The requested information follows:]

Transparency International currently has 96 national chapters and chapters-information around the world. In their view, the Convention is a critically important instrument by which to hold their leaders accountable. Many are promoting ratification in their countries and believe that U.S. ratification would assist their efforts.

The CHAIRMAN. I take your points very seriously. In fact, in our own legislation, our Millennium Challenge Account situation really highlights corruption as a major factor. It is an item that is discussed with each applicant country. Each of these applicants are taken very seriously as a part of our own major foreign aid assistance area. You've had experience throughout the formation of that legislation, as well as in your current capacity.

Mr. LARSON. If I could just add one or two sentences on that point, Mr. Chairman. When I was, briefly, the temporary, interim CEO of the Millennium Challenge Corporation, it was striking to me that Ministers from foreign governments would come to me and grab me and want to sit me down so they could say, we know that having a strong record against corruption is essential for us to be eligible for MCC support, we know that we fall short today, but let me take the next 20 minutes to explain to you all the measures that we are introducing to correct our record, because we're serious about tackling this issue.

And I think it has been demonstrated that those responses have not just been rhetorical, they have spurred change in many developing countries, and so that is another indication of just how much an effect a strong stance on the part of the United States and a commitment to that stance can—how important that can be in changing behavior around the world.

The CHAIRMAN. Well, it certainly has. I would just say, anecdotally, from my own experience, that having gone to Albania, to take a look for weapons of mass destruction and nerve gas in the mountains above Tirana, I found in the host government a very considerable concern about the corruption provision. But likewise,

interestingly enough, among some of the Ministers, I noted some relief that because the United States had taken such a strong stand on this, they could do so within their own internal affairs. This had become, really, a world standard in a different way from, as you suggested, the early part of your experience. People might have sat you down and said, now, I want to tell you how the world works. So the fact that the world is working differently comes, in part, from our own leadership in the Unites States, but also now in this more broadly based international compact that we're discussing this morning.

Let me ask you, Mr. Reinsch, if you would illuminate, if you can, some more of the economic benefits to U.S. companies that U.S. ratification of the Corruption Convention might bring. Can you give, perhaps, an example of how a company might benefit directly from the implementation process? What would be the financial costs to American businesses if for some reason the United States failed to ratify this Convention?

Mr. REINSCH. Well, on the benefit side, Mr. Chairman, I think the general answer is contained in what you said. It levels the playing field, which means there will be more situations in which we do not lose deals because of corrupt activities on the part of our companies' competitors.

I can site a couple of anecdotes in that regard that might be helpful. I don't want to name corrupt countries—I'm not sure that would be fruitful at this point—but, I can suggest, first of all, that the Commerce Department, about 10 years ago, in the mid-1990s, actually did that, and conducted a study in which they detailed a fairly lengthy list of transactions in which the American company had lost out or was at risk because of corruption from another party. That report was classified, but it might be something the committee would want to look at. The information, of course, is old, but I don't think a lot has changed in the intervening period. Maybe the quantity, but not the kinds of cases that occur.

When I was in the government, I was personally aware of a situation, where, without mentioning the country involved, there was an American company bidding on a very large project valued at more than a billion dollars in exports of both goods and technology and with a lot of ongoing benefits down the line in follow-on costs, so it was a major opportunity. Information came to the attention of the U.S. Government that the main foreign competitor on this particular project, which was a bid to the government—it was going to be a decision by the procuring government—was essentially using a corrupt action to attempt to obtain the contract.

The fact that the United States found out about it allowed us to take some remedial measures, and in the end the Americans prevailed. Were this kind of agreement to be in effect, there would be, I think, two benefits for the Americans. One, because in that particular case both the procuring country and the country that was engaged in the corrupt activities would be parties, it would be less likely that would happen, and the playing field would actually be level. In addition, though, there would be recourse for the American company were it to lose in the circumstances I described.

Those things happen a lot. Companies don't like to talk about them because they don't like to talk about any deal that they don't

get. So it would be very hard to get people to come up and go on the record. That's why I referenced the Commerce Department study.

The other comment I'd make that would be a little bit more specific on that is—I don't know if you had the same opportunity, about a month, 6 weeks ago, to meet with the Nigerian Finance Minister when she was here. I had an opportunity to attend a luncheon with her, and she gave a really stirring speech about the importance of transparency and opposing corruption and described, in some detail, things that she had done in her country in her scope of responsibility to try to deter corruption. And it occurs to me, in light of your question, that I have a number of members who do business in Nigeria, particularly those in extractive industries, because that's where the resources are. I have probably a larger number that don't do business in Nigeria, and the reason they don't is because they find it impossible to do business there successfully because of the level of corruption.

Anything that we can do to help the Finance Minister or anybody else in Nigeria who wants to create a climate of intolerance of corruption and create a general view that this is a pariah activity that legitimate countries don't engage in, is going to be a good thing. It's going to provide opportunities for American business to go back in there because they're deterred now. And it will give them an opportunity to succeed on the basis of a better climate for both investment and trade. I singled that one out only because the Minister herself has been so prominent in making the same statements about the cultural problem that she's trying to deal with.

Now, on the down side, or the second half of your question about financial costs, we've been thinking about that, and those, of course, are harder to quantify because it would depend upon how the implementation plays out. The downside risk is simply that in the absence of the United States being there pursuing and pushing for implementation in the way that I described in my testimony, States Parties might instead choose to implement the Convention in ways that do not provide protection or due process or permit, effectively, discrimination against foreigners, foreign competitors, which might not only be the United States but would be others, in the domestic laws that they establish to implement the Convention.

There are some other circumstances that I can think of, and I can site one circumstance, in particular, that is not involved in corruption, as an example. It involves a case of environmental protection where another country has created a law that for all intents and purposes is designed to discriminate against, essentially, American polluters as opposed to indigenous polluters, and to try to create, in a sense, a funnel for a large amount of claims to be made against the American company, but not necessarily anybody else.

That's not, as I said, a case of corruption, but it does demonstrate that some countries find it difficult to resist the temptation to structure their laws in a way that disadvantages, in particular, large multinational companies, the assumption being that they have large wallets and can afford to pay large costs, whether they're legal costs or other kinds of fees.

I don't know that a convention would deliberately set out to permit those activities. That would be, I think, unlikely. On the other hand, there is always that potential. And the absence of the United States as a vigorous force in the implementation of the monitoring process, I think, would make it more likely that that would happen. If it did happen, of course, then American companies, have several downside risks. One, the risk of lost business, because they wouldn't enter into transactions in those situations, but also they would run the risk of significant legal costs and reputational costs when they would have to defend themselves in adverse situations that would end up being very expensive for them.

They have a lot of experience with that right now in other contexts, and they discover that the problem with these cases is they go on and on and on. Even when you win, somebody appeals, and they go on and on and on. It costs companies enormous amounts of money in legal costs and enormous reputational damage, particularly if they have a brand name. So that's the kind of thing that we would like to avoid, and I think effective and balanced implementation of the Convention would enable us to avoid those risks.

The CHAIRMAN. Well, I thank you very much for that response.

Mr. REINSCH. Sorry for the long answer.

The CHAIRMAN. It is an important one. And I join you in commending, not only the Finance Minister of Nigeria in her testimony, but our Government in inviting important leaders from countries to come and offer that kind of testimony, in either governmental forums or forums provided by American business. I think this has been a very important advance in this general area we're discussing this morning.

Secretary Larson, I'd like for you, likewise, to pick up in a two-part way, the adverse impacts on international transparency efforts if we were not to ratify. But then on a more positive theme, in your statement you've emphasized the importance of monitoring the implementation of the Convention. Could you briefly summarize the key findings of this study that you have completed on this issue?

Mr. LARSON. Certainly, Mr. Chairman. I think that my answer to your first question really picks up where Mr. Reinsch was, that we have an opportunity, through prompt ratification of this treaty, to play a leadership role in the implementation process, including at the meeting to be held in Jordan in December. We will have a louder and more effective voice, and we'll be able to lead effectively in a more substantial way, if we have ratified. And we'll be able to shape this treaty and its implementation so that it achieves the results that we all have in mind.

Second, I would repeat what I was saying earlier about the importance politically of strong U.S. leadership in the Convention in our efforts elsewhere in pursuing anticorruption and transparency objectives. I think our efforts to ensure greater transparency and effectiveness in the United Nations and to repair some of the mistakes like the oil-for-food program will proceed better if we're seen as leading in this area as well. Similarly, I think it will strengthen the efforts that the administration is making more generally to promote a transparent approach toward economic development through reform of the practices of the multilateral development

banks. I think it will support the role the United States is taking to promote democracy around the world.

This administration, correctly, has made anticorruption a significant part of the governance and prodemocracy initiatives that we've stressed throughout the world, because we know that nothing works more quickly to undermine support for free institutions than the sense on part of the public that they're being corruptly managed. So I think in all these ways movement on this Convention supports important administration policy objectives.

If I could, I'd just add one other example. Mr. Reinsch was talking about particular problems acknowledged by the Government of Nigeria. Your colleague, Senator Hagel, chaired or cochaired a series of hearings about energy security over the last several years, and I testified once at one of those hearings that work to promote a more transparent approach toward the use of oil resources in countries like this, so their people know how the money is being spent by their own government, not only is a good government initiative, not only is a prodevelopment initiative, but for us it's an energy security initiative, because it helps ensure that production will be forthcoming and will be reliable.

Now, on the question that you asked about monitoring, per se, and our analysis of the importance of monitoring, I think I can limit it to three basic points. One is that many of these obligations, standards, and norms that countries accept in this Convention are new to them, and it requires a change in behavior, not only on the part of private individuals, but on the part of the government. You mentioned, Mr. Chairman, that in the early days of work on the OECD Anti-Bribery Convention, many of our trading partners in Europe not only tolerated bribery of foreign public officials, but they subsidized it through a tax deduction. And it has been important to have a monitoring process in place and efforts to work with prosecutors in place, so that the people who are in charge of enforcing the laws recognize the ways in which the laws are enforced and understand how to proceed, where appropriate, with prosecutions.

Second, I think that it is important for a convention that's as wide-ranging as this one—you heard this morning about a number of the important provisions that this treaty has, the new obligations that countries are accepting—for it to be monitored. There's a lot of things that need to be done in a lot of countries that haven't had these obligations before, and it's only, in my estimation, through a monitoring process that we will have the visibility into whether those things that should be done are being done. And I think, for the sake of the countries involved, you have a little bit of constructive pressure. They know that someone is looking over their shoulder, and that is an incentive in many instances to getting governments to do what needs to be done.

The third and last point I'd stress is that this can be a collaborative approach that identifies problem areas and helps countries address them. This gets back, Mr. Chairman, to the point about technical assistance. I think we've seen in other cases where we have been trying to change behavior in large developing countries that you need to be able to identify problems, and where appropriate, provide technical assistance at an early stage so that they can deal with these implementation problems effectively. And

that's why monitoring is important. Monitoring, in other words, isn't simply a way of saying to a country you're not completely living up to what your obligation is in this area, but it's to sit down with a country and say, you clearly have a problem in this area, let's figure out how, through stronger enforcement on your part, but also through targeted technical assistance, you'll have the tools to enforce this in the way that it's intended to be enforced.

The CHAIRMAN. Well, thank you very much for that response. I would supplement the work of my colleague, Senator Hagel, by mentioning that during a visit I had in Azerbaijan in September with President Aliyev at the beginning of the long awaited Baku-Jehan pipeline, it was apparent that the wealth of his country may even double in terms of their gross national product in 2 years time. With the addition of a natural gas pipeline 2 years later, it could quadruple. So the issue of transparency to Azeris, quite apart from the rest of the world, becomes of critical importance when you have these dynamic changes occurring. His assurance was that they would adopt the so-called Norwegian model, which is a good suggestion. We're hopeful that will be the case for the sake of transparency as well as for the success of that modern state.

Let me ask one final question of you, Mr. Reinsch. Article 35 of the Convention requires parties to ensure that persons suffering damage as a result of an act of corruption can initiate legal proceedings to obtain compensation. I understand this article initially raised some concern within the United States business community. Those concerns were the focus of discussion with the administration. Please, if you will, explain the concerns, the discussion, and how they have been resolved.

Mr. REINSCH. Well, let me say first, Mr. Chairman, it was an iterative process. Over more than a year, we presented a number of thoughts to the administration. In some cases they persuaded us that they were not important problems, and we agreed with the administration. In other cases, I think we were able to persuade the administration, not that they were so much problems, but persuade them to be a little bit more detailed in their letter of transmittal in addressing the problems. I don't think there were many situations where they and we disagreed over fundamental interpretation of the Convention or its significance. It was more a question of how many words one wanted to put into the various documents.

I think the three most important issues were the following. Initially, we took the view that a reservation would be necessary with respect to article 35, and the administration ultimately persuaded us that that was the wrong course, and we no longer believe that and are satisfied with the way they've chosen to deal with it.

The other two issues that we discussed with them in some detail were, one, the statutory basis for their belief and our belief that existing law covers the obligation adequately already, and, second, the degree of liability that would be attached via article 35. Our concern, which is now addressed in the transmittal statement, was that it be clear that the right of action that would be provided here under our implementation process would relate to direct liability of those directly engaged in acts of corruption as opposed to those who are simply associated with others who are engaged in acts of corruption.

One of the problems for the business community in other contexts has been the extension of the liability chain to the point where it becomes very tenuous, and people are being sued because they were in the room. Or, in the case of some alien tort law cases, that I'm sure you're familiar with, many of these companies that have been sued in what are known as the South African cases. The essence of the allegation in most of them is, you were in South Africa, you did business between 1948 and 1994, and, therefore, you're guilty and owe a large amount of damages. I think the companies believe that if they actually engage in a corrupt activity or they actually engage in some illegal activity that's one thing, but their mere presence or their association with somebody else who's engaged in the activity shouldn't be construed as liability.

Those points were all addressed satisfactorily in the submission document, and so we had a happy ending to our dialog. And I must say that I was a little surprised, frankly, that it was a happy ending because I've been in so many of these that weren't. It was led by the State Department, but it was a joint effort that included the Justice Department as well as other relevant agencies. They consistently listened and consistently attempted to deal with the concerns that I've just described. We passed a lot of papers back and forth in which we suggested some wording, and they'd come back and say, well, how about this? We don't want to, you know, be as specific as that. A lot of their concerns were not in substantive opposition, but addressed more the question of what was appropriate to put into a declaration, understanding, or letter of transmission as opposed to what was not appropriate. And they, of course, are better judges of that than we are, having done this many times. So it was a genuinely joint exercise in which they ended up persuading us that they were right in a number of areas, and we ended up persuading them that there were some things they needed to address in more detail.

The CHAIRMAN. Well, I thank you for complimenting the Department of State and the Department of Justice. These have been a remarkably harmonious two panels of discussion of people who have been visiting with each other constructively. Let me just spread the compliments to our bipartisan staff, who are deeply interested in these issues, and their excellent preparation for this hearing and the timely way in which they have moved so that we could all meet together today.

I'll ask that the record be kept open until the end of business tomorrow, which would be June 22, for any further questions of members of this committee who were not able to attend the hearing today, and who may, for the sake of completing the record, want to raise questions. And I would ask you and the members of our first panel to respond as promptly as you could to help us complete that record.

Let me finally ask if you have any further statements that you would like to make before we adjourn our hearing.

Mr. REINSCH. Only, Mr. Chairman, that we would also like to thank the members of the bipartisan staff, who were very kind to meet with us at some length on this and have had a lot of interaction with us by e-mail or on the phone since. We particularly appreciate their work in creating and facilitating the hearing, and

your work in being willing to schedule it and sit through all this testimony.

I know that the management of treaties is complicated in the Senate. We've worked on some where the ending was not quite so happy, Law of the Sea, and we've worked together on some where the endings were very happy. I have enormous respect for the amount of time and attention it takes you and the staff to put these things together. We are very grateful that you have been willing to move this one forward so quickly. We're delighted, and we hope it will move on to ratification.

The CHAIRMAN. Thank you.

Secretary Larson.

Mr. LARSON. Thank you. I'd simply like to thank you for the hearing; thank the staff for an excellent job, and to make certain you all understand that Transparency International–USA is ready to assist in any way we can on the road to ratification, but also on the other important initiatives on transparency that you and other senators are leading. Thank you.

The CHAIRMAN. Well, thank you. We'll continue to work on this treaty. And let me just say, given the spur of your comment, we are still trying to continue to work on the Law of the Sea. Sufficient endurance may finally prevail. This is one aspect, as you know, of public life.

Mr. REINSCH. I think it's approaching the Genocide Convention in longevity at this point.

The CHAIRMAN. Longevity, persistence, patience are all required. Well, thank you very much, and the hearing is adjourned.

[Whereupon, at 11:26 a.m., the hearing was adjourned.]

ADDITIONAL QUESTIONS AND ANSWERS AND LETTERS SUBMITTED FOR THE RECORD

RESPONSES OF STATE DEPARTMENT DEPUTY LEGAL ADVISER, SAMUEL M. WITTEN, AND JUSTICE DEPARTMENT DEPUTY ASSISTANT ATTORNEY GENERAL, BRUCE SWARTZ, TO QUESTIONS SUBMITTED BY SENATOR LUGAR

Question 1(a). Several provisions in chapter III (Criminalization and Law Enforcement) of the Convention against Corruption require the parties to consider criminalizing certain conduct under their domestic laws. These provisions are articles 16(2), 18, 19, 20, 21, 22, and 24.

What, if any, of the conduct described in these articles is criminalized under current U.S. law?

Answer.

- Article 16(2): Solicitation by Foreign Public Official.

  The conduct described in article 16(2) could be punishable under various Federal criminal theories, including but not limited to the honest services, wire, and mail fraud statutes (18 U.S.C. 1341, 1343, and 1346), depending upon the facts of a given case. State laws may also criminalize solicitation by foreign public officials under various theories.

- Article 18: Trading in Influence.

  Although lawful lobbying activity is constitutionally protected in the United States, U.S. law criminalizes unlawful trading in influence in various ways. For example, the Federal bribery and gratuity statute (18 U.S.C. 201) criminalizes trading in influence for Federal officials. Additionally, the honest services, wire, and mail fraud statutes (18 U.S.C. 1341, 1343, and 1346) could be used to prosecute trading in influence for Federal, State and local officials. The Hobbs Act prohibits extortion under color of official right by Federal, State and local officials (18 U.S.C. 1951). The Federal Program Bribery statute (18 U.S.C. 666)

covers bribery in programs that receive Federal funds. Finally, State law bribery statutes also prohibit trading in influence in various ways.

- Article 19: Abuse of Functions.
  U.S. law criminalizes "abuse of functions" in various ways. First, abuse of functions is criminalized by the Federal bribery and gratuity statute (18 U.S.C. 201) and the conflict of interest statute (18 U.S.C. 208) for Federal officials. Second, the honest services, wire, and mail fraud statutes (18 U.S.C. 1341, 1343, and 1346) could be used to prosecute trading in influence for Federal, State, and local officials. Third, the Hobbs Act prohibits extortion under color of official right by Federal, State and local officials (18 U.S.C. 1951). Fourth, the Federal Program Bribery statute (18 U.S.C. 666) covers bribery in programs that receive Federal funds. Finally, State law bribery statutes also criminalize abuse of functions in various ways.
- Article 20: Illicit Enrichment.
  U.S. law does not criminalize illicit enrichment as described in article 20. See response to question 1(c) for additional explanation of this provision.
- Article 21: Bribery in Private Sector.
  The conduct described in article 21 could be punishable under various Federal criminal theories, including but not limited to mail and wire fraud, antitrust violations, conspiracy, and securities fraud, depending upon the facts of a given case. Additionally, commercial bribery can be charged federally under 18 U.S.C. 1952(b)(2) (interstate and foreign travel or transportation in aid of racketeering enterprises), which criminalizes bribery in violation of the laws of the State in which committed, based on State commercial bribery violations. Commercial bribery has been criminalized in most, but not all, of the 50 States. Even in the States where commercial bribery is not a crime, the conduct is often punishable under unfair trade practices laws, which define bribery as an improper means of gaining a competitive advantage.
- Article 22: Embezzlement in the Private Sector.
  The conduct described in article 22 could be punishable under various Federal criminal theories, including but not limited to mail and wire fraud, securities fraud, conspiracy, or interstate transportation of stolen property, depending upon the facts of a given case. Additionally, State law typically criminalizes private theft and embezzlement.
- Article 24: Concealment of Ill-Gotten Property.
  Federal law prohibits the type of conduct described in article 24 under various theories, principally the receipt of stolen money statute, 18 U.S.C. 2315 (which states that "whoever . . . conceals . . . money of the value of $5,000 or more . . . which has crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted or taken" is subject to punishment). Additionally, concealment of ill-gotten property could be punishable under, among other provision, the Federal aiding and abetting statute (18 U.S.C. 2), the Federal accessory after the fact statute (18 U.S.C. 3), or the Federal misprision of felony statute (18 U.S.C. 4).

Question 1(b). Does the executive branch plan to seek the criminalization of any of the conduct described in these articles that is not now criminalized under U.S. law?

Answer. The executive branch does not currently intend to seek the criminalization of any of the conduct described in articles 16(2), 18, 19, 20, 21, 22, and 24 that is not now criminalized under U.S. law.

Question 1(c). Article 20 requires each party, "subject to its constitution and the fundamental principles of its legal system" to "consider" establishing the crime of illicit enrichment which is defined as "a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income." The conduct described in this article appears to place the burden on the defendant to prove the absence of wrongdoing. Does U.S. law currently criminalize this conduct? What is the executive branch's interpretation of the obligation imposed on each party under this article? What action, if any, does the executive branch intend to take with regard to this article?

Answer. U.S. law does not criminalize illicit enrichment as described in article 20. As the Department of State's Letter of Transmittal, dated September 23, 2005, stated: "Article 20 was included at the insistence of a number of the developing nations. The article requires States Parties to consider establishing the offense known as illicit enrichment, which is defined as a significant increase in the assets of a public

official that such official cannot reasonably explain in relation to his or her lawful income. Such an offense could require a defendant to bear the burden of establishing the legitimate source of the income in question. This article is nonobligatory."

Question 2. Article 27(3) states that parties may criminalize the "preparation for an offense established in accordance with the Convention." Does U.S. law currently prohibit preparation for an offense?

Answer. U.S. law would criminalize "preparation" for an offense to the extent that such conduct constitutes an inchoate offense recognized under U.S. law. U.S. Federal law, for example, criminalizes inchoate offenses principally under the conspiracy statute (18 U.S.C. 371) and also punishes attempts to commit certain offenses covered under the Convention (see, e.g., 18 U.S.C. 1512 (tampering with witness, victim, or an informant)). In addition, "preparatory" activities may also be punishable under the aiding and abetting statute (18 U.S.C. 2(a)). State law also typically criminalizes "attempted" crimes as well as conspiracy and aiding and abetting, all of which could be considered "preparation" for an offense.

Question 3. Article 31(8) provides that parties "may consider the possibility of requiring that an offender demonstrate the lawful origin of [the] alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings." The requirement described in this provision appears to shift the burden of proof from the government to the defendant. Does U.S. law currently require such a demonstration by the offender? Does the executive branch plan to take any action with respect to this provision?

Answer. Under U.S. asset forfeiture law, a defendant may be required to prove that his assets are not subject to forfeiture in some limited instances. Although the general rule is that the Government must prove the forfeitability of assets to be recovered, U.S. law provides for certain exceptions where burden shifting occurs, such as forfeitures in traditional customs cases, see 19 U.S.C. 1615, 18 U.S.C. 983(i), and forfeitures of terrorists' assets under the USA PATRIOT Act, see 18 U.S.C. 981(a)(1)(G), USA PATRIOT Act sections 316(a)(1) and 316(b), 115 Stat. at 309. Even in those cases, however, the Government must make an initial showing of forfeitability, but the burden then shifts to the defendant to establish that the property is not subject to forfeiture. Regardless, article 31(8) is nonobligatory and only applies to the extent consistent with domestic law, which article 31(8) generally is not. Accordingly, the executive branch does not interpret this article as imposing any obligation on the U.S. Government, and the executive branch does not intend to take any action with regard to this article.

Question 4. Article 34 requires each party to take measures "in accordance with the fundamental principles of its domestic law" to address the consequences of corruption. What new measures, if any, does the executive branch plan to take to implement this article?

Answer. No new measures are needed to implement article 34. As a world leader in anticorruption efforts, the United States has in place a broad spectrum of measures that establish standards for government conduct, provide oversight of public activities, and establish remedies for redress. These measures include laws that address specific conduct, such as 18 U.S.C. 218, which allows the Federal Government to rescind a contract or other benefit gained through bribery or graft, and which is consistent with article 34; an extensive network of laws and regulations related to government contracting, government procurement, and ethics in government; integrity policy institutions, such as the Office of Government Ethics; institutional monitors, such as inspectors general; and remedies such as suspension and debarment of contractors pursuant to the authority of the General Services Administration, which maintains a web-based list (the Excluded Parties List System) that identifies parties excluded from receiving Federal contracts. From time to time, the administration may suggest additional provisions to improve its domestic laws and regulations, but no changes are needed to discharge the obligations of this Convention.

Question 5. Article 49 requires parties to consider entering into bilateral or multilateral agreements or arrangements regarding the establishment of joint investigative bodies. Does the executive branch plan to enter into such agreements or arrangements?

Answer. In a number of contexts, U.S. law enforcement agencies currently pursue joint investigative efforts with foreign counterparts. For example, our DEA frequently works closely with certain drug enforcement agencies overseas to investigate drug trafficking activity that affects both countries. In an appropriate case, we would consider undertaking a joint investigative effort with another country

where acts of corruption had a nexus with both the United States and that country. In an appropriate case, we would consider undertaking a joint investigative effort with another country where the criminal acts had a nexus with both the United States and that country.

Our ability to engage in such joint efforts does not depend on this or any other treaty. In large measure, joint investigative efforts take place on a case-by-case basis, at the level of informal police cooperation, and entail sharing information and cooperating on developing effective investigative strategies. A more formal arrangement may be appropriate if requested by the foreign government, or where it otherwise appears appropriate in light of: The potential subject matter for investigation; our experience with the foreign country and law enforcement agency involved; the types of investigative activity contemplated; and the respective laws and other authorities that may govern the activities of law enforcement agents working in such a setting.

As reflected in the text of article 49, such joint investigative efforts do not contemplate visiting law enforcement personnel acting in any manner in violation of the sovereignty of the host nation. Generally, U.S. law enforcement personnel involved in any joint investigative activity overseas are either prohibited from exercising law enforcement powers in the host government or are permitted to do so only as explicitly authorized by the law enforcement or judicial authorities of the host government.

With respect to the activities of foreign law enforcement officers in the United States, as we recently explained in response to a question for the record from Senator Biden about a similar provision regarding joint investigative teams in the pending MLAT with Germany, foreign law enforcement agents are subject to the provisions of the Foreign Agents Registration Act (18 U.S.C. 951), which are implemented in part through regulations at 28 CFR 73.3. Subsections (b) and (c) of those regulations provide that foreign law enforcement agents must notify U.S. law enforcement authorities, or the Justice Department's Office of International Affairs, with respect to their pursuing investigative or other official actions in the United States. As a practical matter, U.S. law enforcement authorities would object to foreign law enforcement authorities conducting investigative activities within the United States unless such activities were approved by, and coordinated with, U.S. law enforcement authorities. To the extent foreign law enforcement authorities act within the United States they are subject to U.S. laws.

RESPONSES FROM SAMUEL WITTEN AND BRUCE SWARTZ TO QUESTIONS SUBMITTED BY SENATOR BIDEN

Question. Were there any statements made by the U.S. delegation in connection with signature of the Convention or at the session of the U.N. General Assembly when the Convention was adopted? If so, please provide them.

Answer. The U.S. delegation made statements in connection with the signing of the Convention and in connection with the adoption of the Convention at the United Nations General Assembly, as follows:

STATEMENT OF JOHN D. NEGROPONTE, U.S. PERMANENT REPRESENTATIVE TO THE UNITED NATIONS AT THE U.N. GENERAL ASSEMBLY, NEW YORK, NY, OCTOBER 31, 2003

Mr. President, bribes were still tax deductible in some countries 10 years ago and no international anticorruption treaties existed. Today's resolution is therefore a milestone achievement in the global effort to ensure transparency, fairness, and justice in public affairs.

This is vital not only to the rule of law, but to the fundamental confidence citizens must have for representative government and private enterprise to succeed.

Corruption and democracy are incompatible; corruption and economic prosperity are incompatible; and corruption and equal opportunity are incompatible.

As a consequence, I am pleased to say that the draft convention (A/58/422 and Add.l) we consider for adoption represents the first globally negotiated anticorruption treaty and will likely be the first anticorruption treaty applied on a truly global level. It is more comprehensive than any existing anticorruption treaty, and, for the first time in any multilateral agreement, provides a useful framework for governments to cooperate in recovery of illicitly obtained assets. An important chapter of the text creates a Conference of States Parties that will be responsible for followup. We expect that this body will play a prominent role in promoting im-

plementation, and we believe it is not too soon for us to share our visions informally of how that body can be most effective.

Like other anticrime treaties before it, the new convention establishes commitments to criminalize certain undesirable and harmful conduct—in this case, corrupt actions such as bribery, embezzlement, and money laundering. But the convention does not stop there. It also requires that governments take action in a number of areas—for example, in public procurement, public financial management, and in regulating their public officials—that will help prevent corruption from happening in the first place.

The international fight against corruption has long been a priority for my country, beginning with our efforts in the 1980s to rally international attention to bribery in international business transactions. In fact, President Bush considers anticorruption efforts to be so central to development that he has made progress on fighting corruption an essential element for participation in the Millennium Challenge Account (MCA), which we expect will add $5 billion and thereby increase our core development assistance 50 percent by fiscal year 2006.

Mr. President, experts from approximately 130 countries spent countless hours over the past 2 years developing this convention. The United States was pleased to participate actively in these long and highly technical negotiations. Our experience convinces us that the United Nations Convention Against Corruption is the product of a true partnership among most of the countries represented in this room.

We think this is crucial. A successful fight against corruption requires action on many fronts; clearly our efforts will only be effective to the extent that we maintain the partnership we have forged over the last 2 years.

So now, as with all treaties, the end of negotiations marks the real beginning of engagement. The words of this convention must be translated into action, or else the hard work of the ad hoc committee will be for naught. Numerous compromises had to be made in the negotiations; no country obtained everything it sought, but with an agreed text before us, the time has come for all countries to move as quickly as possible in their national processes to consider signature and ratification, to engage civil society and the private sector and to work to promote the implementation of the innovative and helpful approaches that we have developed together.

In closing, we thank the members of the bureau of the ad hoc committee and its Secretariat from the United Nations Office on Drugs and Crime in Vienna, Eduardo Vetere and his staff, particularly Dimitri Vlassis, for their tireless dedication during the 2 years of negotiations.

Our acting chair, Ambassador Muhyieddeen Touk from Jordan, deserves special credit for his wise leadership following the sad and untimely death of Ambassador Chary Samper of Colombia. We also want to recognize the contributions of the late Ambassador Samper, who believed wholeheartedly in our efforts and, we believe, would be pleased with the finishing touches to his work.

Thank you, Mr. President, for allowing me the floor and congratulations to our colleagues who participated in the important work of the ad hoc committee.

PREPARED REMARKS OF JOHN ASHCROFT, U.S. ATTORNEY GENERAL, AT TREATY SIGNING, MERIDA, MEXICO, DECEMBER 9, 2003

Thank you for the opportunity to address this conference. By making the fight against corruption a priority for his administration, President Fox has become a hemispheric and world leader for integrity in government. The United States applauds his efforts and expresses gratitude for the excellent work of the Government of Mexico to bring the world community together in Merida for the signing of the United Nations Convention Against Corruption.

Just 10 short years ago, corruption was a topic that governments avoided in international discourse. Bribery was generally considered to be a domestic issue. It was simply a part of human nature, a trivial issue, or even promoted as a normal business expense to be deducted from taxes at home. In some nations, corruption threatened to, in the words of philosopher and poet Alexander Pope, "deluge all; and spread like a low-born mist, and blot the sun."

The fight against corruption is critical to realizing our shared interests. Corruption undermines the goals of peace loving and democratic nations. It jeopardizes free markets and sustainable development. It provides sanctuary to the forces of global tenor. It facilitates the illicit activities of international and domestic criminals. It saps the legitimacy of democratic governments and can, in its extreme forms, threaten democracy itself. Worst of all, it is a tax on the poor—it provides benefits to the crooked by channeling money from projects to pockets. From projects like bet-

ter roads and water supplies to the bank accounts of cronies. It steals from the needy to enrich the wealthy. Corruption must end.

By combating corruption, we restore confidence in democracy and the rule of law. We strengthen the open trade and investment that drive the world economy. We ensure that donor and government resources benefit a wide range of citizens, not only a select few. When these conditions are secured, they combine to create faith in the institutions of a civil society.

Beginning with a series of regional anticorruption conventions and related initiatives, among the first of which was this hemisphere's 1996 Inter-American Convention against Corruption, the international community has made concerted efforts to address this serious problem. The United States is thankful to have worked alongside other nations in this international movement. In the past 6 years, working together, we have achieved:

- A major campaign to end bribery in international business transactions;
- The creation of a high-level Global Forum process to generate governmental political will against corruption;
- The development of several regional anticorruption treaties; and
- The creation of several regional multilateral mechanisms to monitor implementation of anticorruption commitments.

The United Nations Convention Against Corruption we are signing today is a permanent enshrinement of the new global attitude towards corruption. Corruption is now unacceptable in any form, and international cooperation is considered a key element of our respective efforts to combat this scourge.

The product of our negotiations over the past 2 years will sustain our fight against corruption. It will ensure that corruption is more than merely a passing common interest among nations.

But this document is not enough. It must not become an empty symbolic gesture, Our governments must translate the words of this convention into effective actions. These deeds will reinforce intergovernmental cooperation and, through domestic efforts to stem corruption, reaffirm our collective goals.

Question. What is the authoritative nature of the travaux préparatoires that was submitted to the Senate for its information in connection with submission of the Convention?

Answer. The Interpretive Notes for the official records (travaux préparatoires) preserve certain points relating to articles of the instruments that are subsidiary to the text, but nonetheless of potential interpretive importance. In accordance with article 32 of the Vienna Convention on the Law of Treaties, to which the United States is not a party but which reflects several commonly accepted principles of treaty interpretation, preparatory work such as that memorialized in the Interpretive Notes may serve as a supplementary means of interpretation, if an interpretation of the treaty done in good faith and in accordance with the ordinary meaning given to the terms of the treaty results in ambiguity or is manifestly absurd. Thus, the Interpretive Notes, while not binding as a matter of treaty law, could be important as a guide to the meaning of terms in the Convention and Protocols.

Question. In the course of the negotiations, and in preparing to submit the Convention to the Senate, did the executive branch review the OECD Anti-Bribery Convention and the Inter-American Convention Against Corruption to ensure that the obligations of those conventions did not conflict with the obligations of the U.N. Convention?

Answer. The interagency team tasked with negotiating the U.N. Convention carefully reviewed provisions of the OECD and Inter-American Conventions when developing and negotiating U.N. Convention provisions. The team sought to ensure that U.S. compliance with the U.N. Convention provisions would not adversely affect or conflict with our implementation of OECD and Inter-American Convention provisions. At the same time, the negotiating team searched for areas where we could, consistent with current U.S. law and practice, strengthen standards found in the OECD and Inter-American Conventions.

As a result, the U.N. Convention contains certain provisions that are almost identical to those found in the OECD and Inter-American Conventions (e.g.—articles on criminalizing bribery of domestic and foreign public officials), but also contains provisions that go further than the OECD and Inter-American Conventions (e.g.—articles that mandate the disallowance of tax deductibility for bribes and promote transparency in government procurement) and provisions that are not found in either convention (e.g.—articles relating to asset recovery and the disposition of illicitly obtained assets).

Question. In the United States, what body or bodies will fulfill the obligation of articles 6(1) and 36?

Answer. Article 6(1) requires States Parties to "ensure the existence of a body or bodies" to prevent corruption. As the analysis accompanying the Secretary's transmittal message stated, in the United States those bodies include the Department of Justice (including the Office of Justice Programs and the National Institute of Justice) and the Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Anticorruption Unit. Additional bodies that fulfill this role include, but are not limited to, the U.S. Office of Government Ethics, departmental inspectors general, and the Government Accountability Office.

Article 36 complements article 6 in requiring a State Party to ensure the existence of at least one body that is specialized in combating corruption through law enforcement. In the United States, the Criminal Division of the Department of Justice and the 93 United States Attorneys' Offices combat corruption through enforcement of Federal antibribery laws. The United States is, therefore, in compliance with article 36.

Question. Article 7(2) calls on State Parties to consider adopting measures to "prescribe criteria concerning candidature for and election to public office." What types of criteria are envisaged by this provision? What current U.S. law, if any, would be relevant to this provision?

Answer. Article 7(2) is nonmandatory. Accordingly, the executive branch does not intend to take or propose any action to implement this article. Various provisions of U.S. law prescribe criteria concerning candidature for and election to public office. For example, the United States Constitution prescribes age and citizenship requirements for election to office as President, Vice President, and Member of Congress, Federal and State laws also prescribe various candidature requirements, including residence requirements, candidate registration requirements, and the like.

Question. In the United States, what laws or programs fulfill the obligation of article 13?

Answer. The United States has a variety of laws and practices in place that promote the active participation of individuals and groups outside the public sector in the domestic fight against corruption. For example, our inspectors general and various law enforcement agencies provide hotlines that allow the public to report potential mismanagement or corrupt government activities. Our Freedom of Information Act allows public access to government information. Our Administrative Procedures Act provides for open and transparent government decisionmaking and the input of the public into government rulemaking. Agencies may also seek outside policy advice and recommendations by establishing an advisory committee following the requirements of the Federal Advisory Committee Act (FACA) including publishing advance public announcements of committee meetings and holding open meetings. The Government in the Sunshine Act requires Federal agencies that are headed by a collegial body to publish public notices of meetings and to hold, with some exceptions, those meetings in public. Various organizations, including the Offices of Inspectors General and the General Accountability Office, produce publicly available reports on government activities and efforts to stem mismanagement and corruption within government. The public availability of government budgets and related financial information allow the public to monitor and help shape government fiscal priorities and spending. Furthermore, various government agencies and offices involved in the prevention of corruption and promotion of integrity within government, such as the U.S. Office of Government Ethics, maintain outreach to nongovernmental and private sector individuals and organizations via Internet Web sites and formal advisory groups.

Question. In a briefing with committee staff, administration representatives described articles 15, 16(1), 17, 23, and 25 as the "core criminalization" provisions of the Convention. What U.S. laws fulfill the obligations of these articles?

- Article 15: Bribery of national public officials

Bribery of national public officials is criminalized under U.S. law in various ways. First, Title 18 U.S.C. Section 201 makes it illegal for a Federal official to solicit or take things of value in exchange for a promise to do an official act. It also punishes the individual who offers or agrees to give the thing of value to the public official. Second, the honest services, wire, and mail fraud statutes (18 U.S.C. 1341, 1343, and 1346) could be used to prosecute bribery of Federal, State and local officials. Third, the Hobbs Act prohibits extortion under color of official right by Federal, State and local officials (18 U.S.C. 1951). Fourth, the Federal Program Bribery stat-

ute (18 U.S.C. 666) covers bribery in programs that receive Federal funds. Finally, State law bribery statutes also criminalize abuse of functions in various ways.

- Article 16(1): Bribery of foreign public officials and officials of public international organizations

U.S. Federal law criminalizes bribery of foreign public officials and officials of public international organizations principally through the Foreign Corrupt Practices Act as amended).

- Article 17: Embezzlement, misappropriation or other diversion of property by a public official

U.S. Federal law criminalizes embezzlement, misappropriation or other diversion of Federal property by a public official in 18 U.S.C. 641. The honest services, mail fraud and wire fraud statutes (18 U.S.C. 1341, 1343, and 1346) also could be used to prosecute such conduct. The Federal Program Bribery statute (18 U.S.C. 666) criminalizes the bribery, conversion, or embezzlement of money or property valued at $5,000 or more from a program that receives Federal funds. State embezzlement statutes also criminalize this conduct on the State and local level.

- Article 23: Laundering proceeds of crime

U.S. Federal law criminalizes the laundering of proceeds of crime in 18 U.S.C. 1956.

- Article 25: Obstruction of justice

U.S. Federal law criminalizes obstruction of justice in various ways, including but not limited to the following:

Title 18, U.S.C., Section 1505 criminalizes actions to avoid, conceal, or impede the due administration of a proceeding before any department or agency. Title 18, U.S.C., Section 1510 criminalizes bribery to obstruct, delay, or prevent communications related to the violation of a criminal law. Title 18, U.S.C., Section 1510 criminalizes witness tampering. Title 18, U.S.C., Section 1519 criminalizes conduct meant to impede, obstruct, or influence an investigation by altering, destroying concealing any record or tangible object. State laws also criminalize obstruction of justice in various ways.

Question. The analysis accompanying the Secretary's letter of submittal to the President states "current laws and practices of the United States are in compliance with article 35," and further states that "U.S. jurisprudence permits persons who have suffered from criminal acts such as bribery to seek damages from the offenders under various theories." Please elaborate on (a) the laws and practices of the United States that comply with article 35; and (b) the theories under U.S. law and jurisprudence that permit victims of bribery to seek damages.

Answer. Article 35 does not create new causes of action against U.S. companies or citizens. The combination of a declaration—that none of the provisions of the Convention creates a private right of action and that the provisions of the Convention (except for articles 44 and 46) are non-self-executing—and the discussion of article 35 in the Secretary's transmittal package provide ample protection against the possibility that article 35 could be misconstrued in a manner that would increase the litigation exposure of U.S. companies in the United States.

Furthermore, the executive branch does not intend to take any action to implement article 35, because U.S. law already permits persons who have suffered damage from criminal acts such as bribery to seek damages from offenders under various theories. For example, shareholders whose stock value declines as a result of a company's indictment for violations of the Foreign Corrupt Practices Act potentially have a private cause of action for securities fraud against the company individually or as a class. Likewise, a company that is harmed by the corrupt actions of one of its officers and a resulting government investigation potentially has a cause of action against that officer for, depending upon the facts of a given case, breach of contract or breach of fiduciary duty.

Other private causes of action may apply in particular circumstances as well, including tort offenses (such as conversion or intentional interference with contractual relations); civil RICO remedies under 18 U.S.C. 1964 (based upon fraud, bribery, or money laundering offenses), private causes of action under antitrust and unfair competition theories, or qui tam actions.

Question. Article 50 of the Convention provides that each party "shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems it appropriate, other special in-

vestigative techniques, such as electronic and other forms of surveillance and under cover operations, within its territory."

Does this provision authorize warrantless surveillance in the United States, including any surveillance authorized by the President and about which the Attorney General testified before the Senate Committee on the Judiciary on February 6, 2006 (the so-called "Terrorist Surveillance Program")?

Answer. Article 50 complements articles 48 and 49, which govern police-to-police law enforcement cooperation between States Parties regarding the offenses established under the treaty, i.e., bribery and money laundering in various forms. Article 48, for example, states that "States Parties shall cooperate closely with one another . . . to enhance the effectiveness of law enforcement cooperation to combat the offenses covered by this Convention." Article 49 requires States Parties to consider forming joint investigative bodies. Article 50(1), as indicated in the analysis accompanying the President's letter transmitting the Convention to the Senate, "contemplates that, if permitted by the basic principles of its domestic legal system, law enforcement authorities be given the ability to use controlled delivery, electronic surveillance, and undercover operations." Article 50(2)–(4) provides for cooperative use of these "special investigative techniques" between nations, which "would be regulated by the States Parties involved through general or case-specific agreements or arrangements."

As indicated in the analysis accompanying the President's letter of transmittal, article 50, like virtually all of the articles in this treaty, is non-self-executing. Accordingly, article 50 does not confer any new authority on U.S. law enforcement agencies to conduct electronic surveillance or any other investigative techniques referred to in the article. However, there is no need for any new legislation to implement article 50(1), since current U.S. law provides appropriate authority for the conduct of controlled deliveries, undercover operations, and electronic surveillance. Thus, this provision of the Convention neither enlarges existing surveillance authorities nor requires any expansion of such authorities for its implementation.

The administration has stated previously that the Terrorist Surveillance Program is a narrowly focused early warning system, targeting for interception only those international communications for which there is probable cause to believe that at least one of the parties to the communication is a member or agent of al-Qaeda or an affiliated terrorist organization. It is a critical intelligence tool for protecting the United States from another catastrophic al-Qaeda attack in the midst of an armed conflict. It is not a means of collecting information for ordinary criminal investigations of public corruption and other related offenses covered by this Convention.

Question. In the United States, what laws fulfill the obligations of articles 53, 54 and 55?

Answer. The provisions of the Asset Recovery Chapter are consistent with, and often inspired by, U.S. law. Accordingly, the United States is in compliance with articles 53, 54 and 55, and the executive branch does not intend to take any action with regard to these articles.

In article 53, States Parties recognize that victim states can take action and responsibility for recovering the proceeds of corruption, independent of mutual legal assistance procedures, by participating as a litigant in the courts of another State Party. United States law does not preclude foreign governments from litigating in our courts to establish ownership, superior title, or as a victim for purposes of restitution, and accordingly is in compliance with article 53.

Article 54 requires countries to adopt legislation to enable them to either open their own case in response to a foreign request for assistance or to recognize a foreign forfeiture judgment for enforcement. It also includes parallel provisions for instituting a restraint of assets through domestic action or by enforcing a foreign restraint order. The United States complies with the obligation to be able to open its own proceedings and institute domestic restraints through such provisions as 18 U.S.C. 981 and 982, which authorize the United States to initiate in rem civil forfeiture and post-conviction criminal forfeiture proceedings based upon a broad range of foreign offenses, including foreign corruption as enumerated in 18 U.S.C. 1956(c)(7)(b)(iv), as well as other violations of U.S. law. It complies with the requirement of being able to enforce foreign restraint and forfeiture orders through 28 U.S.C. 2467. Article 54 suggests that countries should consider enacting nonconviction-based forfeiture in certain circumstances, and further follows U.S. legislation in suggesting countries be able to base a preliminary restraint on a foreign arrest or charge, as provided for in 18 U.S.C. 981(b)(4).

In contrast to article 54, which establishes the legislative framework for countries to be able to provide assistance, article 55 sets forth the procedures for requesting and providing assistance in a particular case. The procedures in article 55 largely

track the traditional forfeiture cooperation provisions embodied in the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the U.N. Convention against Transnational Organized Crime, such as in paragraphs 7, which informs countries that they must provide supporting evidence in a timely fashion or risk release of restrained assets and that requests for forfeiture assistance must be reserved for cases of a serious nature. Application of this article is subject to the requirements of mutual legal assistance under article 46, and does not impose new obligations on the United States. The United States will comply with article 55 to the extent it receives or submits requests for assistance pursuant to article 54.

Question. What is likely to be on the agenda for the first Conference of States Parties? How is that agenda being formulated? What role is the United States playing in shaping the agenda?

Answer. The agenda for the first Conference of States Parties will likely include several topics for plenary debate that will help parties establish a future process for promoting and reviewing implementation of the Convention and facilitating related donor technical assistance. We expect that the Conference will seek to determine how best to gather information on how countries are implementing the Convention and how to best facilitate and integrate donor technical assistance. The Conference is also mandated by U.N. General Assembly Resolution 58/4 of October 31, 2003 (the resolution that formally adopted the Convention) to consider how the Convention standards might be utilized to fight corruption within international organizations. The Conference agenda may also include events that showcase international and regional anticorruption efforts and allow dialog with nongovernmental observers.

A draft agenda for the first Conference of States Parties is currently being developed by the U.N. Office on Drugs and Crime (UNODC) in Vienna, with the input of various Convention parties and signatories. Any such draft agenda must be approved by the Conference at its opening session in December.

The United States is active in trying to shape the agenda and ensure that the work of the Conference ultimately leads to wide implementation of the Convention provisions and more effective international efforts to fight corruption. U.S. Government representatives have attended multiple informal meetings in the past 2 years—in Vienna and elsewhere—with various interested governments to help shape an agenda that will further our goals mentioned above. We will continue to work closely with UNODC and relevant governments on this issue.

LETTERS RECEIVED FOR THE RECORD

MAY 11, 2006.

Senator RICHARD G. LUGAR,
Hart Senate Office Building, Washington, DC.

Senator JOSEPH R. BIDEN, Jr.,
Russell Senate Office Building, Washington, DC.

DEAR SENATORS LUGAR AND BIDEN: We are writing on behalf of the undersigned organizations to urge the Senate to ratify the United Nations Convention Against Corruption before December 2006. The Convention, which entered into force on December 14, 2005, reflects a global consensus on the international legal system necessary to fight corruption. To date, more than 140 countries have signed the Convention, and more than 50 countries, including China, France, and the United Kingdom, have ratified it. Timely Senate ratification is necessary for the United States to play a leadership role in moving implementation forward.

The Convention can be a critical tool in the global fight against corruption. It includes provisions to prevent and criminalize corruption and procedures for governments to recover assets that have been acquired illicitly by corrupt officials. It also includes a broad range of measures that enhance international cooperation among governments, including extradition and mutual legal assistance. As a leading prosecutor of transnational crime, the United States stands to benefit greatly from this enhanced cooperation.

United States ratification of the Convention in accordance with the Administration's October 27, 2005, transmittal package is non-controversial and has broad support. The transmittal package notes that no change in U.S. law is required. The Convention's universal prohibition on foreign bribery—the first effort of its kind with truly global reach—has unique potential to reduce the competitive disadvantage faced by U.S. companies, which have long operated under more stringent rules than their foreign competitors. It is also a crucial tool to improve rule of law, thus

promoting more effective economic development and a more stable environment in countries around the world.

An effective monitoring process is critical to successful implementation of the Convention. Although the Convention provides for such a process, its specific contours will be decided in December 2006, at the first Conference of States Parties. United States leadership at that Conference is vital to ensure that an effective and transparent monitoring mechanism is put in place. As a global defender of due process rights, it is also important that the United States participate actively in interpretation and application of the Convention around the world to ensure that those countries with less robust protections use it as a tool to prosecute corrupt actors, not harass political or economic competition. The ability of the U.S. to influence these discussions will be significantly diminished if it has not ratified the Convention before the Conference takes place.

Accordingly, we would appreciate your leadership in convening a hearing on the Convention in the very near future. We are hopeful that ratification by the full Senate will quickly follow, and we will work with you to secure this objective. We look forward to meeting with the Senate Foreign Relations Committee staff on May 15, 2006, to discuss this issue.

Respectfully,

NANCY BOSWELL,
President, Transparency International–USA.
WILLIAM A. REINSCH,
President, National Foreign Trade Council.
JAKE COLVIN,
*Director, USA*Engage.*
DENNIS R. MARTENSON,
President, American Society of Civil Engineers.
PETER M. ROBINSON,
President, U.S. Council for International Business.
ALEXANDRA WRAGE,
President The TRACE Institute.

AMERICAN BAR ASSOCIATION,
OFFICE OF THE SECRETARY,
Chicago, IL, September 1, 2005.

Re UN Convention Against Corruption.

Hon. RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At the meeting of the House of Delegates of the American Bar Association held August 8–9, 2005, the enclosed resolution was adopted upon recommendation of the Section of International Law. Thus, this resolution now states the official policy of the Association.

We are transmitting it for your information and whatever action you think appropriate. Please advise if you need any further information, have any questions or if we can be of any assistance. Such inquiries should be directed to my Chicago office.

Sincerely yours,

ELLEN F. ROSENBLUM,
Secretary.

Enclosure.

ADOPTED BY THE HOUSE OF DELEGATES, AUGUST 8–9, 2005

RECOMMENDATION

Resolved, That the American Bar Association supports the prompt ratification by the United States, and by other members of the United Nations of the United Nations Convention Against Corruption (UN Convention).

Further Resolved, That the American Bar Association urges that:

(1) such ratification be subject to minimal reservations, understandings and declarations by the United States, but should include in the Senate's resolution

of advice and consent a declaration that (i) the Convention, except for Articles 44 (Extradition) and 46 (Mutual Legal Assistance) is non-self-executing, (ii) that no new legislation is necessary to implement the Convention, including Article 35 (Private Rights of Action), given that U.S. courts currently recognize private remedies in certain circumstances for corruption-related actions, and that (iii) in ratifying the Convention, the United States does not intend to broaden or enhance current U.S. law; and

(2) to the extent implementation is required in other countries, the United States should urge other countries to implement the UN Convention in ways consistent with recognized concepts of due process and fundamental rights, including the presumption of innocence.

Further Resolved, The American Bar Association supports the development of a mechanism to monitor the implementation and enforcement of the UN Convention, taking into account the monitoring efforts of other organizations such as the Organization for Economic Cooperation and Development, and taking such steps as may be necessary or appropriate to promote efficiency in monitoring and avoid duplication of effort, while promoting the participation of civil society in the monitoring process.

NATIONAL FOREIGN TRADE COUNCIL, INC.
Washington, DC, June 22, 2006.

Re June 21 hearing on the United Nations Convention Against Corruption.

Senator RICHARD G. LUGAR,
Chairman, Senate Foreign Relations Committee,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR LUGAR: As a followup to the June 21 hearing of the Senate Foreign Relations Committee regarding the U.N. Convention Against Corruption, I wanted to submit the following for the record regarding corruption in the global construction industry:

> The American Society of Civil Engineers (ASCE) estimates that corruption siphons off approximately 10 percent—or roughly $400 billion—of the annual $4 trillion spent globally on the construction industry. Capturing even 25 percent of that loss through the mechanisms provided under the U.N. Convention Against Corruption would save money and redirect scarce national resources to productive development around the world. This type of cost savings from corruption is likely to benefit the least developed countries the most.

Thank you for holding this important hearing and for your continued attention to the Convention.

Sincerely,

JAKE COLVIN,
*Director, USA*Engage.*

AMERICAN BAR ASSOCIATION,
Chicago, IL, May 11, 2006.

Hon. Richard G. Lugar,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of the American Bar Association, I write to urge the Senate to ratify the United Nations Convention Against Corruption. The Convention, which entered into force on December 14, 2005, reflects a global consensus on the international legal system necessary to fight corruption. To date, over 50 countries, including China and the United Kingdom, have ratified the Convention.

The Convention can be a critically important tool in the global fight against corruption. It includes provisions to prevent and criminalize corruption and procedures for governments to recover assets that have been acquired illicitly by corrupt officials. It also includes a broad range of measures that enhance international cooperation among governments, including extradition and mutual legal assistance. As a leading prosecutor of transnational crime, the United States stands to benefit greatly from this enhanced cooperation.

U.S. ratification of the Convention is non-controversial and has broad support. The Administration's transmittal of October 27, 2005, notes that no change in U.S. law is required. The Convention's universal prohibition on foreign bribery can help

level the playing field for U.S. companies which have long operated under more stringent rules than their foreign competitors. It is also a crucial tool for improving the rule of law, thus promoting more effective economic development and a more stable environment in countries around the world.

Prompt Senate ratification is also necessary for the United States to take a leadership role in moving forward with implementation. This is particularly true with respect to creation of an effective monitoring process. Although the Convention provides for such a process, the specific contours of that process will be discussed in November 2006 at the first Conference of States Parties. U.S. leadership at the Conference of States Parties is vital to ensuring that an effective and transparent monitoring mechanism is put in place. As a global defender of due process rights, it is also important that the United States participate actively in interpretation and application of the Convention around the world to ensure that those countries with less robust protections use it as a tool to prosecute the guilty, not harass political or economic competition. The ability of the U.S. to influence these discussions will be significantly diminished if it has not ratified the Convention before the Conference takes place.

For these reasons, we would appreciate your leadership in convening a hearing on the Convention in the very near future. The ABA is hopeful that ratification by the full Senate will quickly follow, and will be pleased to work with you to secure this objective.

Sincerely,

MICHAEL S. GRECO,
President.

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