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INTER-AMERICAN CONVENTION AGAINST CORRUPTION

JUNE 30, 2000.—Ordered to be printed

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

REPORT

[To accompany Treaty Doc. 105–39]

The Committee on Foreign Relations, to which was referred the Inter-American Convention Against Corruption ("The Convention"), adopted and opened for signature at the Specialized Conference of the Organization of American States (OAS) at Caracas, Venezuela, on March 29, 1996, signed by the United States on June 27, 1996, at the Twenty-Seventh Regular Session of the OAS General Assembly meeting in Panama City, Panama, having considered the same, reports favorably thereon with six understandings, one declaration and three provisos, and recommends that the Senate give its advice and consent to ratification thereof as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The purpose of the Inter-American Convention Against Corruption ("the Convention") is to require Parties to the Convention to criminalize solicitation or acceptance of bribes and other corrupt acts, to criminalize transnational bribery in commerce, and to eliminate bank secrecy or political grounds as the bases to refuse

cooperation with other Parties in criminal investigations under the Convention.

II. BACKGROUND

On March 29, 1996, a Specialized Inter-American Conference met in Caracas, Venezuela, and negotiators from twenty-one OAS member states signed the Convention. The United States signed the Convention on June 2, 1996, at the twenty-seventh regular session of the OAS General Assembly in Panama City, Panama. On March 6, 1997, the Convention entered into force following deposit of the second instrument of ratification. The President submitted the Convention to the Senate for advice and consent on April 1, 1998. As of the date of this report, twenty-six OAS member states had signed the Convention, and twenty had deposited their instruments of ratification.

III. SUMMARY

A. GENERAL

The Convention was the first multilateral instrument of its kind. It is hoped that the Convention will be an effective tool to assist in the hemispheric effort to combat corruption. It may also enhance the law enforcement efforts of the Parties in other areas, given the links that often exist between corruption and organized criminal activity such as drug trafficking.

The United States has long been concerned about bribery of foreign officials. In 1977, the United States enacted the Foreign Corrupt Practices Act to criminalize the bribery of foreign officials, and has urged other nations to adopt similar statutes. The Convention is intended to ensure that Parties enact statutes to criminalize bribery and other kinds of public corruption. It establishes a treaty-based regime of obligations among OAS member states to fight corruption. Within the Convention are limited requirements similar to the U.S. Foreign Corrupt Practices Act and other U.S. laws relative to bribery of public officials.

In 1998 the United States became Party to the Organization for Economic Cooperation and Development (OECD) Convention on Bribery in International Business Practices. Like the OAS Convention, the OECD agreement requires parties to enact statutes similar to the Foreign Corrupt Practices Act. The OECD Convention criminalizes payment, or the "supply side" of bribes. While the OAS Convention, too, addresses the supply side, it also addresses the "demand side" by committing its parties to outlaw solicitation or acceptance of bribes and other corrupt acts.

In submitting the Convention to the Senate, the Executive Branch stated that the Convention will not require implementing legislation for the United States.

B. KEY PROVISIONS

The Convention has a preamble and twenty-eight articles. Key provisions are summarized below.

Federalism. Article I of the Convention sets forth the scope of the Convention's operation. The United States understands the Con-

vention to impose obligations on the Federal Government. The Convention does not impose obligations on the conduct of state, local or other non-Federal officials.

Anti-Corruption Measures. In Article III of the Convention, Parties undertake a broad obligation to consider—with a view to creating, maintaining and strengthening institutional capacity—a variety of domestic measures. These measures include: (1) standards of conduct and implementation of the standards for the correct, honorable, and proper fulfillment of public functions; (2) instruction to government personnel to ensure proper understanding of their responsibilities; (3) systems for financial disclosure of persons who perform public functions; (4) open and transparent government procurement systems; (5) government revenue collection and control systems that deter corruption; (6) laws that deny favorable tax treatment for expenditures made in violation of the anti-corruption laws; (7) systems for protecting individuals who report acts of corruption; (8) oversight bodies to implement anti-corruption laws; (9) deterrents to the bribery of government officials, such as the requirement that businesses keep accurate books and records; (10) mechanisms to encourage participation by civil society in anti-corruption activities; and (11) further study of preventative measures.

Jurisdiction. Article V of the Convention obliges the Parties to establish jurisdiction over covered offenses. Parties must establish jurisdiction over acts committed in their territory, and over the acts of persons present in their territory whose extradition to a second country they deny on the basis of nationality.

Covered Offenses. Article VI of the Convention specifies the acts of corruption to which the Convention applies: (1) the solicitation or acceptance by a government official or by a person who performs public functions of any article of monetary value or other benefit in exchange for any act or omission in the performance of his public functions; (2) the offering or granting to a government official or a person who performs public functions of any article of monetary value or other benefit in exchange for any act or omission in the performance of his public functions; (3) any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits; (4) the fraudulent use or concealment of property derived from any acts referred to in this article; and (5) the participation in any manner in the commission or attempted commission of any of these acts. In addition, two or more Parties to the Convention may agree to cover additional offenses.

Criminalization. Article VII obligates Parties to establish as criminal offenses the acts of corruption described in Article VI. Parties must also facilitate cooperation among themselves pursuant to the Convention. There are statutes already in effect in the United States that criminalize a wide range of corrupt acts. Although these statutes may not in all cases be defined in terms or elements identical to those used in the Convention, the conduct intended under the Convention to be criminalized would in fact be criminal conduct under U.S. law. Although there is no general "attempt" statute in U.S. federal criminal law, federal statutes criminalize "attempts" in connection with specific crimes. Moreover, significant acts of corruption involving "attempts" would be generally subject

to prosecution in the context of one or more other crimes. Accordingly, the United States will enact no new legislation to implement Article VII.

Transnational Bribery. Pursuant to Article VIII, each Party, subject to its Constitution and fundamental legal principles, must prohibit and punish transnational bribery. This offense is defined as the offering or granting by Party nationals, persons having habitual residence in a Party, and Party-domiciled businesses, to a government official of another state any article of monetary value or any other benefit in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. However, because of the constitutional proviso mentioned above, the Article does not assume that every state will criminalize such activity. In the event a country has not criminalized transnational bribery it is obligated to provide assistance and cooperation to the extent possible to other states. Current United States law provides criminal sanctions for transnational bribery. No additional legislation is needed for the United States to comply with the obligation imposed in Article VIII of the Convention.

Illicit Enrichment. Subject to its Constitution and fundamental legal principles, each Party is required by Article IX of the Convention to establish as an offense the significant increase in the assets of a government official that cannot reasonably be explained by lawful earnings during the performance of public functions. If a nation does not establish such a criminal offense, it is nonetheless obligated to provide assistance and cooperation to the extent possible. In the United States such a statute would be unconstitutional because it would place the burden of proof on the individual, rather than the government. Consequently, the Executive Branch proposed an understanding stating that in the United States the establishment of such an offense would be inconsistent with the U.S. Constitution and the fundamental principles of the U.S. legal system, and that the United States is not obligated to establish a new criminal offense of illicit enrichment under Article IX of the Convention.

Progressive Development. Article XI sets out a list describing conduct that is not covered by the Convention, but which negotiators view as desirable areas for the enactment of domestic laws in order to criminalize and deter corruption. For Parties with statutes already in place which criminalize the conduct described in Article XI, the relevant conduct will be deemed to fall within the Convention's coverage. Article XI covers (1) the improper use by a government official or a person who performs public functions of any kind of classified information which that person has obtained because of or in the performance of his functions; (2) the improper use by a government official or a person who performs public functions of any kind of property belonging to the state to which that person has access because of or in the performance of his functions; (3) any act or omission by any person who seeks to obtain a decision from a public authority whereby he illicitly obtains any benefit or gain, whether or not the act or omission harms state property; and (4) the diversion by a government official of any movable or immovable property, monies, or securities belonging to the state, to an inde-

pendent agency, or to an individual that the official has obtained because of his position for purposes of administration, custody, or other reasons.

Extradition. Article XIII provides that the Convention may serve as the legal basis for extradition with respect to any offense to which the Convention applies. However, the United States shall not consider the Convention to be the legal basis for extradition to any country with which the United States has no bilateral extradition treaty in force. Where the United States does have a bilateral extradition treaty in force, that bilateral extradition treaty shall serve as the legal basis for extradition for offenses that are extraditable in accordance with this Convention.

Mutual Legal Assistance. Article XIV of the Convention requires broad mutual legal and technical assistance among the Parties. In no case may United States assistance be provided to the International Criminal Court, unless the treaty establishing the Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

Property/Proceeds of Offenses. Article XV sets out assistance requirements regarding proceeds and property. Parties must provide to each other the broadest possible measure of assistance, in the identification, tracing, freezing, seizure, and forfeiture of property or proceeds obtained, derived from, or used in the commission of corruption offenses. However, in no case may United States assistance be provided to the International Criminal Court, unless the treaty establishing the Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

Bank Secrecy. Under Article XVI of the Convention, Parties may not invoke bank secrecy as a basis to refuse to provide assistance sought by a requesting state. In applying this Article, Parties may take into account their domestic law, procedural provisions, or bilateral or multilateral agreements. The Article also permits a requested Party to limit use by the requesting state of information provided under this Article.

Political Exception. Article XVII provides that a political purpose, in and of itself, may not be a grounds for refusing a request for assistance from a Party under Articles XIII (Extradition), XIV (Assistance and Cooperation), XV (Measures Regarding Property) and/or XVI (Bank Secrecy).

Central Authorities. Under Article XVIII, each Party must designate a central authority to make and receive requests for assistance and cooperation.

Final Clauses. Articles XXI (Signature), XXII (Ratification), XXIII (Accession) and XXIV (Reservations) provide that the Convention is open for signature by OAS Member States. The Convention is subject to ratification, and shall remain open for accession by states which are not OAS members. Instruments of ratification and accession must be deposited with the OAS General Secretariat, currently located in Washington, D.C. Reservations that are not incompatible with the object and purpose of the Convention are permitted.

C. THE U.S. FOREIGN CORRUPT PRACTICES ACT

During the mid-1970s, investigations and legal actions against numerous domestic corporations revealed the practice by some U.S. corporations of making questionable or illegal payments to foreign government officials. The legal and regulatory mechanisms for dealing with these payments had involved actions by the Securities and Exchange Commission (SEC) against public corporations for concealing from required public disclosure substantial payments made by the firm and the potential for an antitrust action for restraint of trade or fraud prosecutions by the Justice Department.

Government officials and administrators contended that more direct prohibitions on foreign bribery and more detailed requirements concerning corporate record-keeping and accountability were needed to deal effectively with the problem. The revelations of slush funds and secret payments by American corporations were stated to have affected adversely American foreign policy, damaged the image of American democracy, and impaired public confidence in the financial integrity of American corporations. Congress responded with the passage of the Foreign Corrupt Practices Act of 1977.

After enactment, Congress for a number of years considered amending the Foreign Corrupt Practices Act. After a great deal of debate through at least three Congresses, the Foreign Corrupt Practices Act Amendments were signed into law as Title V of the Omnibus Trade and Competitiveness Act of 1988 on August 23, 1988. One provision of the 1988 Amendments encouraged the Administration to negotiate a treaty at the OECD that would require other countries to enact similar laws prohibiting bribery of foreign government officials.

The OAS Convention is another step forward in the effort to multinationalize the fight against corruption in transnational business. Although there are differences in detail, the Committee believes that the OAS Convention's provisions on transnational bribery (Article VIII) are consistent with the Foreign Corrupt Practices Act. Both are concerned with payments made to obtain business, or the giving of something for value for an official act, omission or exercise of influence.

IV. ENTRY INTO FORCE AND DENUNCIATION

A. ENTRY INTO FORCE

The Convention entered into force on March 6, 1997. For each State ratifying or acceding to the Convention after its entry into force, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

B. DENUNCIATION

The Convention shall remain in force indefinitely, but any of the States Parties may denounce it. A denouncing state party's instrument of denunciation must be deposited with the General Secretariat of the Organization of American States. One year from the

date of deposit of the instrument of denunciation, the Convention shall cease to be in force for the denouncing State.

V. Committee Action

The Committee on Foreign Relations held a public hearing on the Convention on May 2, 2000 (a transcript of the hearing and questions for the record can be found in the annex to this report). The Committee considered the Convention on June 7, 2000, and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed Convention subject to six understandings, one declaration and three provisos.

VI. Committee Recommendation and Comments

The Committee on Foreign Relations recommends favorably the proposed Convention. On balance, the Committee believes that the proposed Convention is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification.

EXTRADITION AND MUTUAL LEGAL ASSISTANCE

Ratification of a bilateral extradition treaty granting the authority to extradite individuals in the United States to other nations generally reflects an endorsement of the judicial system, and the level of respect for human rights in the nation with which the United States enters into an extradition relationship. Although the proposed Convention provides the authority for extradition and legal assistance (should Parties choose to use the Convention for such authority), the Committee is concerned that nations may seek extradition of individuals in the United States under the Convention even in situations where there is no bilateral extradition treaty with the United States authorizing extradition.

In order to ensure that this possibility does not arise, the Committee's recommended resolution of ratification includes an understanding that the United States will not use the proposed Convention as the legal basis for extradition to any country with which the United States has no bilateral extradition treaty in force. In addition, the understanding makes clear that when the United States has a bilateral extradition treaty in force, that bilateral extradition treaty, not the Convention, will serve as the legal basis for extradition of individuals for offenses covered under the Convention.

In addition, the Committee's recommended resolution of ratification includes an understanding that no assistance may be provided to the International Criminal Court in connection with United States activities under this Convention unless the International Criminal Court's organic statute, the Rome Statute, enters into force for the United States pursuant to constitutional procedures.

Finally, the Committee understands that lawful intelligence activities of the United States Government are not covered by this Convention, and therefore it is unnecessary to provide any exemptions for such activities.

VII. Explanation of Proposed Convention

For a detailed article-by-article analysis of the proposed Convention, see the corresponding Letter of Submittal from the Secretary of State, which is set forth at pages V–XIV of Senate Treaty Document 105–39.

VIII. Text of the Resolution of Ratification

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Inter-American Convention Against Corruption, adopted and opened for signature at the Specialized Conference of the Organization of American States (OAS) at Caracas, Venezuela, on March 29, 1996, (Treaty Doc. 105–39); referred to in this resolution of ratification as "The Convention," subject to the understandings of subsection (a), the declaration of subsection (b), and the provisos of subsection (c).

(a) Understandings.—The advice and consent of the Senate is subject to the following understandings, which shall be included in the instrument of ratification of the Convention and shall be binding on the President:

(1) Application of article I.—The United States of America understands that the phrase "at any level of its hierarchy" in the first and second subparagraphs of Article I of the Convention refers, in the case of the United States, to all levels of the hierarchy of the Federal Government of the United States, and that the Convention does not impose obligations with respect to the conduct of officials other than Federal officials.

(2) Article VII ("domestic law").—

(A) Article VII of the Convention sets forth an obligation to adopt legislative measures to establish as criminal offenses the acts of corruption described in Article VI(1). There is an extensive network of laws already in place in the United States that criminalize a wide range of corrupt acts. Although United States laws may not in all cases be defined in terms or elements identical to those used in the Convention, it is the understanding of the United States, with the caveat set forth in subparagraph (B), that the kinds of official corruption which are intended under the Convention to be criminalized would in fact be criminal offenses under U.S. law. Accordingly, the United States does not intend to enact new legislation to implement Article VII of the Convention.

(B) There is no general "attempt" statute in U.S. federal criminal law. Nevertheless, federal statutes make "attempts" criminal in connection with specific crimes. This is of particular relevance with respect to Article VI(1)(c) of the Convention, which by its literal terms would embrace a single preparatory act done with the requisite "purpose" of profiting illicitly at some future time, even though the course of conduct is neither pursued, nor in any sense consummated.

The United States will not criminalize such conduct per se, although significant acts of corruption in this regard would be generally subject to prosecution in the context of one or more other crimes.

(3) TRANSNATIONAL BRIBERY.—Current United States law provides criminal sanctions for transnational bribery. Therefore, it is the understanding of the United States of America that no additional legislation is needed for the United States to comply with the obligation imposed in Article VIII of the Convention.

(4) ILLICIT ENRICHMENT.—The United States of America intends to assist and cooperate with other States Parties pursuant to paragraph 3 of Article IX of the Convention to the extent permitted by its domestic law. The United States recognizes the importance of combating improper financial gains by public officials, and has criminal statutes to deter or punish such conduct. These statutes obligate senior-level officials in the federal government to file truthful financial disclosure statements, subject to criminal penalties. They also permit prosecution of federal public officials who evade taxes on wealth that is acquired illicitly. The offense of illicit enrichment as set forth in Article IX of the Convention, however, places the burden of proof on the defendant, which is inconsistent with the United States Constitution and fundamental principles of the United States legal system. Therefore, the United States understands that it is not obligated to establish a new criminal offense of illicit enrichment under Article IX of the Convention.

(5) EXTRADITION.—The United States of America shall not consider this Convention as the legal basis for extradition to any country with which the United States has no bilateral extradition treaty in force. In such cases where the United States does have a bilateral extradition treaty in force, that bilateral extradition treaty shall serve as the legal basis for extradition for offenses that are extraditable in accordance with this Convention.

(6) PROHIBITION ON ASSISTANCE TO THE INTERNATIONAL CRIMINAL COURT.—The United States of America shall exercise its rights to limit the use of assistance it provides under the Convention so that any assistance provided by the Government of the United States shall not be transferred to or otherwise used to assist the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing the Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) DECLARATION.—The advice and consent of the Senate is subject to the following declaration:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on

May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the State Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) PROVISOS.—The advice and consent of the Senate is subject to the following provisos:

(1) ENFORCEMENT AND MONITORING.—Not later than April 1, 2001, and annually thereafter for five years, unless extended by an Act of Congress, the President shall submit to the Committee on Foreign Relations of the Senate, and the Speaker of the House of Representatives, a report that sets out:

(A) RATIFICATION.—A list of the countries that have ratified the Convention, the dates of ratification and entry into force for each country, and a detailed account of U.S. efforts to encourage other nations that are signatories to the Convention to ratify and implement it.

(B) DOMESTIC LEGISLATION IMPLEMENTING THE CONVENTION AND ACTIONS TO ADVANCE ITS OBJECT AND PURPOSE.—A description of the domestic laws enacted by each Party to the Convention that implement commitments under the Convention and actions taken by each Party during the previous year, including domestic law enforcement measures, to advance the object and purpose of the Convention.

(C) PROGRESS AT THE ORGANIZATION OF AMERICAN STATES ON A MONITORING PROCESS.—An assessment of progress in the Organization of American States (OAS) toward creation of an effective, transparent, and viable Convention compliance monitoring process which includes input from the private sector and non-governmental organizations.

(D) FUTURE NEGOTIATIONS.— A description of the anticipated future work of the Parties to the Convention to expand its scope and assess other areas where the Convention could be amended to decrease corrupt activities.

(2) MUTUAL LEGAL ASSISTANCE.—When the United States receives a request for assistance under Article XIV of the Convention from a country with which it has in force a bilateral treaty for mutual legal assistance in criminal matters, the bilateral treaty will provide the legal basis for responding to that request. In any case of assistance sought from the United States under Article XIV of the Convention, the United States shall, consistent with U.S. laws, relevant treaties and arrangements, deny assistance where granting the assistance sought would prejudice its essential public policy interest, including cases where the Central Authority, after consultation with all appropriate intelligence, anti-narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this Convention is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(3) SUPREMACY OF THE CONSTITUTION.—Nothing in the Convention requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

IX. ANNEX

INTER-AMERICAN CONVENTION AGAINST CORRUPTION (Treaty Doc. 105–39)

TUESDAY, MAY 2, 2000

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

The committee met, pursuant to notice, at 2:03 p.m., in room SD–419, Dirksen Senate Office Building, the Hon. Lincoln D. Chafee, presiding.

Present: Senator Chafee.

Senator CHAFEE. This afternoon we are having a hearing to consider the Inter-American Convention Against Corruption, and the United States signed the Convention on June 27, 1996. And it was transmitted to the Senate on April 1, 1998. To date, 18 of the Convention's 26 signatories have ratified.

Today's hearing will give this committee an opportunity to explore the many facets of the Convention, including how the United States becoming a party to it will affect U.S. interests.

As long as history has been recorded, corruption has been an unfortunate fact of life in the administration of government. For a variety of reasons, cultural, economic and moral, public officials have been lured by and often succumb to the temptation to put the common good aside for personal gain.

Corruption is antithetical to successful democracy, as it severs the trust that links public servants with the people they represent.

As the world's leader in the promotion of democratic values, the United States has a unique obligation to confront the many challenges to these cherished values. Public corruption ranks among those challenges.

Corruption not only wastes public resources, but it also discourages investment from overseas. Indeed when conducting operations abroad, an international businessperson seeks, among other things, a sound and honest host government that upholds the rule of law.

If a government is known or suspected to be corrupt, the willingness of the business community to invest is diminished. Corruption thus deters international trade and consequently hinders economic growth.

The United States has been in the forefront of the fight against international corruption. In 1977, Congress enacted the Foreign

Corrupt Practices Act which, among other things, criminalizes the bribing of foreign officials.

More recently, in 1998, the United States became party to the Organization for Economic Cooperation and Development Convention on Bribery in International Business Practices, a treaty aimed at combating corruption in the private sector.

The next major step in fighting international corruption is the Inter-American Convention Against Corruption. The Convention commits our trading partners in the Americas to criminalize a wide range of corrupt acts, increase enforcement, enhance legal and judicial cooperation and strengthen preventive measures such as disclosures of assets.

The administration has indicated that no implementing legislation will be needed for U.S. compliance with the Convention.

Other nations, however, will have to enact substantial reform measures. I believe that ratification of this Convention is very much in our national interest, and hope this hearing can illuminate its many attributes.

As an elected official, I surely recognize that foreign aid is one of the least popular expenditures of the Federal Government. Skeptics often liken providing foreign assistance to pouring money down the drain of corrupt governments.

Perhaps, this Convention will, among other things, help begin to erase that perception and enhance the confidence of American taxpayers in continued U.S. international engagement.

I would like to thank all of today's witnesses for sharing with the committee their informed views on these important issues. I look forward to a useful and informative discussion.

I am very honored to have as our first witness, the Honorable Alan P. Larson, the Under Secretary of State for Economic, Business and Agricultural Affairs.

And I am very honored that you took your valuable time to present your views on this important subject. Welcome.

[Prepared statement and news release by Senator Chafee follow:]

PREPARED STATEMENT OF SENATOR LINCOLN D. CHAFEE

This afternoon the Foreign Relations Committee holds a hearing on an important international agreement, the Inter-American Convention Against Corruption. The United States signed the Convention on June 27, 1996 and it was transmitted to the Senate on April 1, 1998. To date, eighteen of the Convention's twenty-six signatories have ratified. Today's hearing will give this committee an opportunity to explore the many facets of the Convention, including how the U.S. becoming a party to it will affect U.S. interests.

As long as history has been recorded, corruption has been an unfortunate fact of life in the administration of government. For a variety of reasons—cultural, economic and moral—public officials have been lured by, and often succumb to, the temptation to put the common good aside for personal gain. Corruption is antithetical to successful democracy, as it severs the trust that links public servants with the people they represent. As the world's leader in the promotion of democratic values, the United States has a unique obligation to confront the many challenges to these cherished values. Public corruption ranks among those challenges.

Corruption not only wastes public resources, but it also discourages investment from overseas. Indeed, when conducting operations abroad, an international businessperson seeks, among other things, a sound and honest host government that upholds the rule of law. If a government is known or suspected to be corrupt, the willingness of the business community to invest is diminished. Corruption thus deters international trade and, consequently, hinders economic growth.

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The next major step in fighting international corruption is the Inter-American Convention Against Corruption. The Convention commits our trading partners in the Americas to criminalize a wide range of corrupt acts, increase enforcement, enhance legal and judicial cooperation, and strengthen preventive measures such as disclosure of assets. The Administration has indicated that no implementing legislation will be needed for U.S. compliance with the Convention. Other nations, however, will have to enact substantial reform measures. I believe that ratification of this Convention is very much in our national interest, and hope this hearing can illuminate its many attributes.

As an elected official, I surely recognize that foreign aid is one of the least popular expenditures of the federal government. Skeptics often liken providing foreign assistance to "pouring money down the drain of corrupt governments." Perhaps this Convention will, among other things, help begin to erase that perception and enhance the confidence of American taxpayers in continued U.S. international engagement.

I would like to thank all of today's witnesses for sharing with the committee their informed views on these important issues. I look forward to a useful and informative discussion.

[For Immediate Release—Tuesday, May 2, 2000]

CHAFEE SIGNALS APPROVAL OF INTER-AMERICAN CONVENTION AGAINST CORRUPTION

WASHINGTON, DC.—U.S. Senator Lincoln D. Chafee (R–RI)—Chairman of the Senate Foreign Relations Subcommittee on the Western Hemisphere, Peace Corps, Narcotics and Terrorism—today signalled his support for the Inter-American Convention Against Corruption.

At a Foreign Relations Committee hearing to examine the merits of the convention, Chafee noted that the treaty would require many of its signatory nations to take substantial legislative steps to eliminate public corruption, while the United States is already in full compliance. He also noted that anti-corruption campaigns were critical for many developing nations which hope to attract foreign direct investment.

"As long as history has been recorded, corruption has been an unfortunate fact of life in the administration of government," Chafee said at the hearing. "For a variety of reasons—cultural, economic and moral—public officials have been lured by, and often succumb to, the temptation to put the common good aside for personal gain."

Chafee continued. "Corruption not only wastes public resources, but it also discourages investment from overseas. Moreover, corruption is antithetical to successful democracy, as it severs the trust that links public servants with the people they represent. As the world's leader in the promotion of democratic values, the United States has a unique obligation to confront the many challenges to these cherished values. Public corruption ranks among those challenges."

In 1996, President Clinton signed the Inter-American Convention Against Corruption. The terms of the treaty require parties to criminalize the solicitation or acceptance of bribes; strengthen cooperation in criminal investigations, and; enact preventative measures, including asset disclosure and conflict of interest standards for public officials, as well as strong procurement rules.

Since the Western Hemisphere accounted for 44 percent of U.S. exports in 1999, the adoption of anti-corruption measures will significantly aid U.S. businesses with international ties. U.S. businesses, already bound by the Convention Against Bribery of Foreign Public Officials to avoid offering bribes to foreign officials, often find themselves competing on an uneven playing field against foreign domestic competition. Domestic businesses often feel free—or even required—to provide bribes and kickbacks to public officials as the cost of doing business. The Inter-American Convention would require signatories to outlaw and aggressively prosecute these practices.

STATEMENT OF HON. ALAN P. LARSON, UNDER SECRETARY OF STATE FOR ECONOMIC, BUSINESS AND AGRICULTURAL AFFAIRS, DEPARTMENT OF STATE

Mr. LARSON. Mr. Chairman, thank you. And I am very honored to be here today to testify in support, enthusiastically, of the Inter-American Convention Against Corruption.

With your permission, Mr. Chairman, I would like to submit my written statement for the record——

Senator CHAFEE. Yes.

Mr. LARSON [continuing]. And make, very quickly, a few main points about this Convention.

The first is that it is very strongly in our interest. The second is that it is part of a global strategy. Third, it advances our interest in several important discreet ways. It has significant substantive provisions. And as you indicated, Mr. Chairman, it requires no change in U.S. law.

Mr. Chairman, in the Americas, corruption is a major obstacle to development, and it is a threat to democracy. Corruption also deprives our businesses of the opportunity to operate in a transparent, honest and predictable environment. And this Convention is a very important regional instrument to help us combat these problems.

It is part of a global strategy, and you outlined some of the most important features of that: Our leadership in passing the Foreign Corrupt Practices Act in 1977; our leadership in pushing for the multi-lateralization of many of the key attributes of the Foreign Corrupt Practices Act in the OECD Convention Against Bribery.

We are also working in other fora. We have made anti-corruption efforts a major part of the stability pact for the countries of Southeast Europe. And we are working very hard with the international financial institutions, the IMF and the regional development banks to incorporate anti-corruption principles in their programs.

Mr. Chairman, I believe that ratification of the Inter-American Convention would advance four important U.S. objectives.

First of all, it would strengthen the ability of the United States to continue to play a leadership role on these issues. The willingness of the countries in this hemisphere to sign and ratify this treaty is one indication of their seriousness.

And I have noticed in my travels throughout the region and in my meetings with senior officials from this part of the world that they genuinely believe that it is in their interest to attack this problem.

That said, signing and ratifying a treaty is not enough. As you indicated, many of them will have to implement new laws, and they will have to make sure that those laws are adequately enforced.

And to do that, I think we will need, as the United States, to play a leadership role in promoting effective implementation. U.S. businesses will benefit from the legal regimes that this Convention is designed to promote.

The Convention will also provide and strengthen—it will strengthen and augment the existing mechanisms that we have for international cooperation on law enforcement matters.

In addition the ratification of this treaty will bolster our efforts to support democratic institutions in this country—in this hemisphere, institutions that really are debilitated by corruption.

Now, the specific provisions of the Inter-American Convention are spelled out in more detail in my written testimony.

I would just like to highlight that the Convention does require states to take specific steps to combat corruption. It imposes an obligation on each state to enact legislation that will criminalize acts of corruption that are specified in the Convention, and that these include the solicitation or acceptance of bribes; the offering or granting of bribes; any act or omission by a government official to obtain illicit benefits for himself or others; the fraudulent use or concealment of property derived from the above mentioned acts; and participation in or association or a conspiracy to commit such acts.

Second, the Convention also includes provisions on international cooperation and assistance such as extradition, mutual legal assistance, asset seizure and forfeiture. This cooperation will be subject to the limits of applicable existing treaties including bilateral treaties and the domestic laws of each country. It also envisions technical cooperation and exchange of experience, which can help in the implementation.

Third, subject to each country's constitution and fundamental legal principles, the Convention establishes an obligation to criminalize the bribery of foreign government officials. In this way, it deals with the same type of core issue that the OECD Convention deals with.

To sum up, Mr. Chairman, I believe it is critical to the international strategy of the United States in combating corruption, for the United States to become a party to the Inter-American Convention Against Corruption. It gives us credibility in our international efforts. It helps us ensure that the obligations of the treaty are implemented faithfully.

It responds to the desire of our business community for the United States to be involved in this first-ever legal framework for cooperation among the governments of this hemisphere to address the problem.

We really appreciate the opportunity that this hearing provides for consideration of the treaty, and I would be pleased to answer any questions you may have.

I did want to mention that the Deputy Legal Advisor of the State Department, Jamie Borek, is with me, if there turns out to be highly technical or highly legal questions that arise.

Thank you.

Senator CHAFEE. Thank you, Mr. Larson.

[The prepared statement of Mr. Larson follows:]

PREPARED STATEMENT OF HON. ALAN P. LARSON

Mr. Chairman and members of the Committee:

I am pleased to appear before you today to testify in support of the Inter-American Convention Against Corruption ("the Convention"), and to address generally the issue of corruption in the Americas.

A POLITICAL COMMITMENT TO COMBAT CORRUPTION IN THIS HEMISPHERE

The problem of corruption is a major obstacle to development in the Americas, and we believe every effort must be made to address it. Corruption slows and impedes the consolidation of democratic institutions, and weakens the rule of law. It undermines the confidence of people in their government. It is all too often linked with trans-border criminal activity, including drug trafficking, organized crime, and money laundering. In sum, its effects are wide-ranging and pernicious.

Corruption also undermines the ability of businesses of the United States and other countries to operate in a transparent, honest and predictable environment. In 1996, an IMF study found that corruption lowers investment and economic growth. The reason is simple: investors are wary of investing in countries where corruption is prevalent, and low levels of investment lead to low growth. The Finance Ministers of the Western Hemisphere, at their meeting in Mexico in February 2000, noted that "corruption has been recognized as a serious problem that adversely affects investment, public revenue, growth, and development in much of the Western Hemisphere" and that corruption is "a threat to investor and taxpayer confidence."

A shared recognition of the importance of this issue prompted the nations of the Hemisphere to agree to develop an unprecedented regional instrument to help combat that scourge of corruption. During the early 1990s, the democratic governments of Latin America became increasingly aware that corruption threatened political stability and economic growth in their countries. When the 34 democratically elected heads of state met in Miami in 1994 for the first Summit of the Americas, there was widespread support for practical action to combat corruption. The President of Venezuela specifically recommended negotiation of an Inter-American Convention Against Corruption.

The willingness of the Hemisphere's countries to take this step, and to follow it up—as a significant number have—by signing and ratifying the treaty promptly, reflects a commitment by the governments of the region to address the problem in a serious fashion. My travels in the region and contacts with regional leaders convince me that popular support for anti-corruption initiatives remain strong and that governments are committed to action. However, it is not enough for countries to sign and ratify the Convention and pass new criminal laws. U.S. leadership will be critical to ensuring the implementation of the obligations of the Convention. We will be working on an effective strategy to ensure that the countries of the Hemisphere fully implement this agreement. By becoming a Party to the Convention, the United States will be better placed to promote its effective implementation.

ONE ELEMENT OF A GLOBAL APPROACH

The fight against corruption is a high priority in our foreign policy, particularly with regard to this Hemisphere. The United States has taken a leadership position in combating overseas commercial bribery ever since the enactment in 1977 of the Foreign Corrupt Practices Act ("FCPA"). Later, we led the effort to negotiate an international convention that would enshrine the basic provisions of the FCPA: the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the OECD Anti-Bribery Convention"). The United States Senate voted its advice and consent to ratification of that Convention in 1998. In the same year, Congress passed implementing legislation that broadened the FCPA slightly to conform to our obligations under the Convention. Nineteen other states have ratified the OECD Convention, which entered into force in February 1999. A vigorous review of implementation is under way; the domestic implementing laws of 21 countries have been scrutinized by the OECD Bribery Working Group. The success of the United States on the OECD Convention is a tribute to the strong bipartisan support from the members of this Committee, and from others in both the House and Senate.

The Administration is combating corruption on many other fronts. In February of last year, Vice President Gore hosted the Global Forum on Fighting Corruption, which was attended by representatives from over 90 countries. Among the attendees were twenty-one OAS member governments, five at the level of Vice-President, and one head of a national parliament; the Attorney General of Mexico; and several representatives from Latin American non-governmental organizations. At the Forum, the Vice President and the Secretary of State made clear the importance of the Inter-American Convention and the commitment of the Administration to its ratification. We are now making preparations for the Second Global Forum, which we are cohosting with the government of The Netherlands, and which will take place in The Hague in May of next year.

The Administration has encouraged the IMF, the World Bank, and the Inter-American Development Bank to incorporate anti-corruption principles in their pro-

grams. All three of these major international financial organizations are involved in supporting and monitoring a wide variety of anti-corruption programs that include judicial reform, integrated financial systems, the development of public ethics offices, and public administration reform. These institutions, along with the U.S. Government, the United Nations and a number of foundations belong to an 18 member Donor Consultative Group on Accountability/Anti-corruption in Latin America and the Caribbean. The Group meets regularly and shares information about anti-corruption activities in the hemisphere.

We have also pushed for a strong Anti-Corruption Initiative for the Stability Pact for Southeast Europe. Countries of the region have made commitments to take priority measures against corruption, especially actions to: implement international anti-corruption instruments, promote good governance, strengthen legislation, promote transparency and integrity in business, and support public involvement. An anti-corruption steering group under the Stability Pact will monitor progress in anti-corruption efforts. The United States, the European Commission, the OECD, and the Council of Europe, and the World Bank are working closely in support of this Initiative.

Thus, our anti-corruption effort involves a set of integrated policies. Regional efforts such as the Inter-American Convention are an integral part of this framework.

PROVISIONS OF THE INTER-AMERICAN CONVENTION

The Inter-American Convention was adopted at the Specialized Conference on Corruption of the Organization of American States (OAS) in Caracas, Venezuela, on March 29, 1996. Twenty-one states signed the treaty on the date of its adoption. The United States participated actively in the Convention's negotiation, and signed it on June 27, 1996. To date, 26 states have signed, and 18 states have deposited their instruments of ratification. The Convention entered into force on March 6, 1997.

The Convention was the first instrument of its kind in the world to be negotiated, and was adopted and opened for signature on March 29, 1996 at Caracas. In addition to requiring parties to criminalize acts of corruption, the Inter-American Convention will enhance cooperation among the nations in the Hemisphere in the battle against both domestic and transnational acts of corruption. I will describe the principal provisions of the Convention and then summarize some of the distinct advantages to the United States of becoming a party.

The Convention requires that the States Party take specific steps to combat corruption. It imposes an obligation on each State Party to enact such legislation as is necessary to criminalize the acts of corruption specified in the Convention. Such acts include, the solicitation or acceptance of bribes; the offering or granting of bribes; any act or omission by a government official to obtain illicit benefits for himself or others; the fraudulent use or concealment of property derived from the abovementioned acts; and participation in, or association or conspiracy to commit, such acts.

Thus, the treaty requires criminalization not only of the "supply side" or "active" bribery (i.e., the offering of bribes) but also the "demand side" or "passive" bribery (i.e., the solicitation or acceptance of bribes). Although most nations in the Hemisphere already to some extent have enacted corruption legislation, such as anti-bribery laws, the Convention seeks to ensure that such legislation is broad and comprehensive in key areas.

The United States can become a party to the Convention without any additional legislation, because existing U.S. law is already sufficient to satisfy the Convention's provisions regarding requirements for legislation, and the other provisions in the Convention are self-executing and will not require implementing legislation. However, to clarify our interpretation of certain provisions of the Convention, we recommend the submission with the U.S. instrument of ratification of certain Understandings, which I will describe further on in this statement.

The Convention also includes provisions on certain forms of international cooperation and assistance. These include extradition, mutual legal assistance, and asset seizure and forfeiture. With respect to all of these forms of cooperation, the Convention expressly provides that cooperation will be subject to the limitations of applicable existing treaties, including bilateral ones, and to the domestic law of each country. The Convention also contemplates technical cooperation and exchanges of experiences. All of the foregoing are comparable to forms of cooperation already envisioned in various law enforcement treaties to which the United States is a party. Through such cooperation and assistance, the Convention will facilitate the prevention, investigation, and prosecution of acts of corruption.

One especially noteworthy feature of the Convention is the obligation in Article VIII to criminalize the bribery of foreign officials. In recent years, the United States

Government has sought in a number of multilateral fora to persuade other governments to adopt legislation akin to the U.S. Foreign Corrupt Practices Act. The Convention represented a breakthrough on that front, and lent impetus to similar measures pursued by the United States in other multilateral fora, such as the OECD, the Council of Europe, and the United Nations.

BENEFITS OF U.S. RATIFICATION

The United States would benefit from becoming a Party to the Inter-American Convention in many ways. First, becoming a Party would strengthen the ability of the United States to continue to assert a leadership role in this area. Most of the countries in this Hemisphere are at least signatories to the Convention, and a significant number either are or may soon become Parties. 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 would detract from our ability to exert pressure on the various states which are party to implement the Convention to the most vigorous extent possible.

Second, U.S. business will benefit from a legal regime that is designed to address the problem of corruption in this Hemisphere. The corruption of governmental officials significantly hinders business transactions and yields economic inefficiencies. The Convention imposes requirements on other states to criminalize transnational bribery, which would help level the playing field for U.S. companies competing for business in the region. Some countries of the Hemisphere have significant capital-exporting multinational enterprises, so the further expansion of prohibitions on transnational bribery in those countries' legal systems would be a significant complement to the OECD Convention. Clearly, U.S. businesses see the benefits of this Convention, as manifested by the letter dated April 7, 2000 sent to Senator Helms by the leaders of 10 leading business associations to express support for the ratification this year of the Convention.

A third advantage to the United States is that the Convention augments existing mechanisms for international cooperation in law enforcement matters. For example, most of our older extradition treaties with countries in the region render extraditable only certain offenses listed in the treaty. The Corruption Convention would supplement such treaties with the additional offenses contemplated by the Convention, thereby enabling the United States to more effectively obtain the extradition of offenders accused of corruption offenses.

Fourth, ratification would further U.S. efforts to support democratic institutions in the region. Corruption debilitates and destabilizes government institutions. Democracy has made impressive strides in the Western Hemisphere; with the exception of Cuba, democratically elected governments are the norm. However, as recent events in Ecuador and Paraguay underline, democracies remain vulnerable and fragile. Public corruption further undermines the legitimacy of governments and weakens support for the often difficult steps that responsible governments must take. Corruption has become a rallying cry for citizens too long denied transparent, accountable government. A recent survey in the Hemisphere demonstrated that while the majority of citizens still support democracy as the preferred system of government, a majority are also deeply dissatisfied with the practice of democracy in their country. In many countries in the region, corruption by entrenched political parties and interests has become a major issue in electoral politics in recent years, bringing the issue front and center and demonstrating how corruption can bring down even democratically elected governments if it is not effectively addressed.

FOUR UNDERSTANDINGS

The Administration recommends that the United States include four Understandings when it deposits its instrument of ratification for the Convention. These Understandings, the proposed texts of which were included in the Administration's transmittal of the Convention to the Senate, would clarify views of the United States about certain provisions of the Convention. Our views as set forth in these Understandings are consistent with the text and history of the Convention.

First, regarding Article I (on definitions), we recommend an Understanding that the Treaty imposes obligations only with respect to the conduct of U.S. federal officials. We believe this needs to be an Understanding, rather than a Reservation, because it simply reaffirms a point that was already addressed without dissent during the treaty negotiations. At the conclusion of the negotiations, the United States delegate read a statement into the record, asserting that we understood the Convention would not impose obligations with respect to officials other than federal officials for countries with a federal system of government. This statement was seconded by the

delegation from Canada and from other States with federal systems, and was not challenged by any of the other delegations.

Second, regarding Article VII (on legislation), we recommend an Understanding to the effect that existing U.S. laws already criminalize the conduct that the Convention requires be criminalized, even though such laws may not necessarily be defined in terms or elements identical to those used in the Convention. This should be an Understanding rather than a Reservation because the requirement in Article VII refers to criminalization by the Parties of certain acts of corruption described in Article VI, but does not call for each State Party to incorporate into its domestic law each specific element of the acts specified in Article VI.

Third, concerning Article VIII (on transnational bribery), we recommend an Understanding to indicate that the Foreign Corrupt Practices Act (FCPA), a law already in effect for the United States, satisfies the requirement of this Article. Such an Understanding would be consistent with the negotiating history, as this Article was included at the behest of the United States for the very purpose of requiring other States to enact legislation comparable to the FCPA. We believe an Understanding of this nature is necessary simply because the elements of the FCPA are not identical in every minute respect to the elements of the offense described in Article VIII, and there was no expectation by any of the negotiating delegations that the United States would need to modify the FCPA to comply with the Treaty.

Finally, regarding Article IX (on illicit enrichment), we recommend an Understanding that establishment of such an offense would be inconsistent with the U.S. Constitution and fundamental principles of our legal system, and that therefore—in accordance with the terms of the Article—the U.S. will not establish a new criminal offense of that nature. By its terms, Article IX renders the obligation to criminalize illicit enrichment subject to each State Party's "Constitution and the fundamental principles of its legal system." To the extent that Article IX contemplates establishment of an offense of "illicit enrichment" which would entail shifting the burden of proof to the defendant in a criminal prosecution, it would be inconsistent with the U.S. Constitution and fundamental principles of our legal system. Since the text of Article IX expressly contemplates opt-out in such circumstances, there would be no need to style this statement as a Reservation rather than as an Understanding.

CONCLUSION

In conclusion, Mr. Chairman, we believe that to support democracy and sound economic development, we need to take strong action against corruption. This has been a top priority of this Administration, and with strong bipartisan and private sector support, we have made significant progress. The Inter-American Convention Against Corruption will be an important step to advance this cause in our own Hemisphere. It addresses for the first time certain forms of corruption and encourages international cooperation and assistance. U.S. ratification will ensure that we remain a leader in anti-corruption efforts and help create an environment which will promote long-term growth and opportunities for U.S. firms. The Convention is very much in the interest of the United States and our partners in the Hemisphere. The Administration strongly supports and urges the United States Senate to give its advise and consent to the Convention.

I will be pleased to answer any questions the Committee may have.

RESPONSES OF HON. ALAN P. LARSON TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. The letter of submittal to the President by the Secretary of State recommends an understanding relating to Article VII. The proposed understanding indicates that there is an "extensive network of laws already in place in the United States that criminalize a wide range of corrupt acts."

Please elaborate on the network of such laws.

Answer. The following is a summary of the U.S. federal laws in place that satisfy the requirements of Article VII of the Convention, which requires the States Parties to criminalize the offenses set forth in Article VI.

While no single federal statute uses precisely the terms of Article VI of the Convention, Article VI(1)(a) (solicitation or acceptance of bribes) and VI(1)(b) (offering or granting bribes) were patterned on U.S. law (18 U.S.C. § 201 (b) and (c)), and various federal anti-corruption laws are so comprehensive that no further legislation

would be needed to prosecute the conduct described in Article VI. The following U.S. statutes cover the conduct described in Article VI(1)(a), VI(1)(b), and VI(1)(c):

18 U.S.C. § 201(b) (bribery of public officials)
18 U.S.C. § 201(c) (making or receiving illegal gratuities)
18 U.S.C. § 208 (acts affecting a personal financial interest)
18 U.S.C. § 641 (theft or misuse of Government property)
18 U.S.C. § 666 (theft or bribery involving Federal programs)
18 U.S.C. § 1951 (bribery or extortion affecting commerce)
18 U.S.C. § 371 (conspiracy to defraud the Government)
18 U.S.C. § 1341 (mail fraud)
18 U.S.C. § 1343 (wire fraud)
18 U.S.C. § 1346 (honest services fraud)
2 U.S.C. §§ 437g(d), 441a-441h (Federal campaign financing)

The offense of fraudulent use of property described in Article VI(1)(d) (fraudulently using or concealing property derived from bribery) would be covered under 18 U.S.C. §§ 1341, 1343, and 1346, the same Federal fraud statutes that are used to cover corruption-related acts. The fraudulent concealment of bribe proceeds could be prosecuted under 18 U.S.C. §§ 1956 and 1961(1), as a specified unlawful act for the purposes of money laundering.

Participation in any of the above acts of corruption, as described in Article VI(1)(e), is punishable pursuant to 18 U.S.C. § 2 (aiding and abetting) and 18 U.S.C. § 3 (accessory after the fact). Conspiracy is punishable under 18 U.S.C. § 371. As noted in the recommended understanding to Article VII, although there is no general "attempt" statute under federal law, the attempt to bribe or engage in other significant acts of corruption will generally be subject to prosecution under one of the substantive offenses described above.

Question 2. Article XIII(2) of the treaty provides that "[e]ach of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty in force between the States Parties." Article XIII(3) provides that the Convention may be used as the "legal basis for extradition with respect to any offense to which this article applies."

—Will the United States require the existence of a bilateral treaty in order to extradite for offenses under this Convention?

—Given that the United States does not have in effect an offense of illicit enrichment, and doing so would be inconsistent with the U.S. Constitution and fundamental principles of the U.S. legal system, will the United States regard offenses under Article IX as extraditable offenses under any treaty?

Answer. Consistent with past U.S. practice with respect to multilateral law enforcement conventions, the United States will not rely on the Convention alone as the basis for extradition, but rather will extradite only to countries with which it has a bilateral extradition treaty in force.

The crime of illicit enrichment, as it is defined in Article IX of the Convention, would not be an extraditable offense for the United States. United States extradition law and practice under our extradition treaties require "dual criminality," i.e., the conduct for which extradition is sought must be considered criminal in both the Requesting and Requested State. The offense of "illicit enrichment" as it is defined in Article IX is not criminal under current U.S. law and therefore would not be extraditable under U.S. practice. However, if the underlying conduct that was the basis for the foreign charges was criminal under applicable U.S. criminal statutes (e.g., false statements, fraud, criminal tax violations, embezzlement) extradition would be possible, assuming all other conditions for extradition under the relevant bilateral treaty are satisfied. This is consistent with Article XIII(5) of the Convention, which provides that "[e]xtradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition."

Senator CHAFEE. I am a big believer in when you have a hearing, you actually hear, and I welcome you. And I have no further questions. Thank you for your testimony.

Mr. LARSON. OK.

Senator CHAFEE. And we will convene the next panel.

Mr. LARSON. Great. Thank you very much.

Senator CHAFEE. Welcome.

For the next panel, we have Ms. Nancy Zucker Boswell, the Honorable William T. Pryce and Ms. Lucinda Low.

And we will start in the middle with the Honorable William T. Pryce. Welcome.

STATEMENT OF HON. WILLIAM T. PRYCE, VICE PRESIDENT, COUNCIL OF THE AMERICAS, WASHINGTON, DC

Mr. PRYCE. Thank you very much, Mr. Chairman. Good afternoon and I am Bill Pryce, the vice president of the Council of the Americas, in charge of our Washington operations. And I appreciate the opportunity to testify before you today.

I would like permission to submit my testimony for the record. And I will try to make it much briefer here.

First of all, I wanted to say that we certainly would associate ourselves with your very fine statement about the problems of corruption. And I would also associate our business organization with the words of Mr. Larson.

I want to applaud your efforts, Mr. Chairman, and those of Chairman Helms, for scheduling this hearing on the issue of corruption in the Americas. This once taboo subject can have such far-reaching negative consequences that addressing it is critical to continuing economic and political and social progress in development in Latin America.

Corruption and this Convention, of course, are also of concern to our member companies who suffer the consequences of missed opportunities and the uncertainty of investments.

The practice of corruption in the conduct of international business operations represents an inefficient use of resources that leads to economic, political and social costs.

Corruption is costly, inefficient; and it results in a poor quality product or service. It penalizes the best and most efficient producers and rewards the least efficient. The new interrelated economy of the 21st century warrants a new way of doing business.

There are also damaging political costs to corruption. Corruption is secretive and behind the scenes. Therefore, the public does not know what is going on and is left out of the process. The result is a loss of accountability and a weakening of institutions from the inside.

It is almost like a house that is getting rotted by termites and you do not see it, but all of sudden it falls down. The rule of law is weakened and democracy is undermined. Corruption, since it is hidden, is by its very nature undemocratic.

Socially, corruption is destructive of morality and public decency. It undermines and weakens the strong social values that are necessary for a true and modern democratic system to function.

It also reduces a sense of crime and guilt, because if corrupt acts can be done with impunity, then other types of theft and criminal activity will be more likely to occur.

Mr. Chairman, it was not long ago that businessmen would brag privately about their illicit business practices. Corruption was part of the business of doing business. Now, there are conferences on corruption, and there is a growing recognition that the topic must be addressed.

Although corrupt practices have certainly not been eliminated, there is a much greater sense that corruption is wrong and it needs to be minimized. In fact, although some industrialized countries

continue to offer tax deductions for bribes, this practice is generally being phased out.

The changing climate of opinion is largely due to U.S. leadership and to recent multilateral developments.

As we all know, the passage of the Foreign Corrupt Practices Act in 1977 was a historic first step. And it was a courageous bold move that made it a crime for U.S. citizens and companies to bribe U.S. officials.

This initiative in the beginning cost U.S. companies billions of dollars in lost business. And it was criticized in some circles. But it was a bold demonstration of leadership, and now most U.S. businessmen praise the legislation.

And although other countries did not follow suit for many years, we confronted the fact that over 400 U.S. companies admitted making questionable illegal payments to foreign governments and politicians. We took the high road and gained increased respect for the U.S. throughout the world.

We now have another opportunity following the OECD Convention, which I will not speak about, because I know it has already been covered—but we have another opportunity to continue the U.S. leadership in the fight against corruption.

The Inter-American Convention Against Corruption is the next logical step in the effort to combat unfair business practices.

Negotiated under the auspices of the Organization of American States, the Convention criminalizes the solicitation and acceptance of bribes, providing a comprehensive legal framework to combat public corruption in the hemisphere.

It identifies acts of corruption and creates binding obligations for enforcement of anti-corruption measures.

It is important both because it addresses the solicitation of bribes and because it broadens the reach of anti-corruption oversight by covering most of the countries of Latin America.

An important instrument in efforts to combat corruption is the establishment of transparency measures. The transparency laws and regulations go hand-in-hand with anti-corruption efforts and can serve to stop corruption before it happens.

They can shine a bright light into the dark and secret corners where corruption is practiced and bring it to an end. That which is not stopped then is attacked by the anti-corruption laws that have teeth.

The Inter-American Convention Against Corruption provides transparency measures in its provisions, requiring the registration of income, and assets and liabilities of persons who perform public functions in certain posts and making such registrations public.

The Convention also has a mechanism to ensure that publicly held companies and other types of associations maintain books and records which accurately reflect the acquisition and disposition of assets and have sufficient internal accounting controls to enable their officers to detect corrupt acts. Again, these measures can work to preempt corruption and are part of the Convention.

It is—in a colloquialism, it is a great help in keeping the honest people honest. It is a great, great help.

Although, it was U.S. leadership that helped bring about the Inter-American Convention, we are now in a position where other

countries are moving ahead on this agreement, while we have not yet given our full support.

Mr. Chairman, each year, the Council of the Americas assists its member companies in addressing disputes over questionable contracts and business practices with governments and business leaders throughout the Americas.

Corruption remains one of the most pressing problems for conducting international business. The costs of corruption for companies are very difficult to measure. And information on these missed opportunities is not quantifiable, but there is no doubt that corruption negatively impacts our companies.

This Convention is not a panacea, but what we are talking about is adopting an international agreement that promotes accountability and transparency, and it will lead to more predictable rules for U.S. companies doing business overseas. In effect, it will help level the playing field for U.S. business.

The corrosive influence of corruption hinders the full development of the countries of the hemisphere and limits opportunities for U.S. companies.

The U.S. must do all it can to address this critical issue. The U.S. has been a leader in combating corruption and taking bold stands and enacting landmark legislation.

And the Inter-American Convention is in U.S. interests, because it forbids what is already against U.S. law. U.S. corporations and investors are bound by the FCPA, and therefore, U.S. industry will lose a unilateral disadvantage that is otherwise applied to them, if this Convention is adopted. It will level the playing field, as I said, and remove our self-imposed unilateral sanction of ethical business practices.

As of now, the Inter-American Convention has been ratified by 18 of the 26 countries that have signed the document. The United States has yet to ratify it.

And to advance that Convention and to maintain our leadership role in the hemisphere, it is essential that we do ratify and do so soon.

This Convention will not solve all the problems of corruption in the hemisphere, but it is an excellent beginning. And if we do not ratify, we will be sending a message that we believe the Convention lacks merit.

Mr. Chairman, in conclusion, I would note that this Convention is a great start and gives the hemisphere a solid benchmark to work from. However, to fully realize the benefits of this Convention, we need to focus on implementation and the establishment of consistent rules.

Multilateral followup is required to ensure that the damaging effects of corruption of and by public officials are eliminated. But the U.S. cannot lead in these efforts to implement the Convention if we ourselves have not ratified it.

On behalf of the Council of the Americas, I strongly urge the committee to recommend that the Senate ratify this Convention as soon as possible.

Thank you, sir. And I would be happy to answer any questions.

Senator CHAFEE. Well, thank you, Mr. Pryce. It is exciting our hemisphere is leading the way in this area.

[The prepared statement of Mr. Pryce follows:]

PREPARED STATEMENT OF AMBASSADOR WILLIAM T. PRYCE

Good afternoon, Mr. Chairman and Members of the Committee. I am Bill Pryce, Vice President of the Council of the Americas in charge of our Washington operations, and I appreciate the opportunity to testify before you today.

The Council is the leading business organization dedicated to promoting hemispheric economic integration, free trade and investment, open markets, and the rule of law throughout the Western Hemisphere. The Council's membership includes major U.S. multinational companies with interests in Latin America. Members represent a variety of sectors: manufacturing, energy, transportation, technology, communications, banking, financial services, and natural resources, among others.

I want to applaud your efforts Mr. Chairman and those of Chairman Helms for scheduling this hearing on the issue of corruption in the Americas. This once taboo subject can have such far-reaching negative consequences that addressing it is critical to continuing economic and political progress and development in Latin America. Corruption and this convention are of course also of concern to our member companies who suffer the consequences of missed contract opportunities and the uncertainty of investments.

The practice of corruption in the conduct of international business operations represents an inefficient use of resources that leads to economic, political and social costs. From an economic standpoint corruption is costly, inefficient and results in a poor quality product or service. It penalizes the best and most efficient producers and rewards the least efficient. The new interrelated economy of the 21st century warrants a new way of doing business.

There are also damaging political costs to corruption. Corruption is secretive and behind the scenes; therefore, the public does not know what is going on and is left out of the process. The result is a loss of accountability and a weakening of institutions from the inside. The rule of law is weakened and democracy is undermined. Corruption, since it is hidden, is by its very nature undemocratic.

Socially, corruption is destructive of morality and public decency. It undermines and weakens strong social values that are necessary for a true modern democratic system to function. It also reduces a sense of crime and guilt because if corrupt acts can be done with impunity, other types of theft and criminal activity will be more likely to occur.

These costs of corruption add up and must be addressed. Old habits are hard to break but there is a changing environment concerning corruption. We need to embrace this change in attitude and lead the effort to reduce corruption and its debilitating costs.

Mr. Chairman, it wasn't long ago that businessmen would brag privately about their illicit business practices. Corruption was part of the business of doing business. Now, there are conferences on corruption and there is a growing recognition that the topic must be addressed. Although corrupt practices have certainly not been eliminated, there is a much greater sense that corruption is wrong and needs to be minimized. In fact, although some industrialized countries continue to offer tax deductions for bribes, this practice is generally being phased out.

The changing climate of opinion is largely due to U.S. leadership and to recent multilateral developments. The passage of the Foreign Corrupt Practices Act (FCPA) in 1977 was a historic first step, where our country confronted corruption. This courageous move made it a crime for U.S. citizens and companies to bribe officials of another country. This initiative cost U.S. businesses billions in lost business and was criticized in some circles, but it was a bold demonstration of leadership and now most U.S. businessmen praise the legislation. Although other countries did not follow suit for many years, we confronted the fact that over 400 U.S. companies admitted making questionable or illegal payments to foreign government officials and politicians. We took the high road and gained increased respect for the U.S. throughout the world.

In 1988, the Congress called upon the Executive Branch to negotiate with our trading partners at the Organization for Economic Cooperation and Development (OECD) an international agreement that would require our trading partners to enact laws similar to our FCPA. Due to committed U.S. leadership and years of hard work, the OECD Convention to Combat Bribery of Foreign Public Officials was signed and ratified and came into force on February 15, 1999. This convention works to eliminate corruption in transactions involving companies and public-sector bodies. Under the convention it is illegal for any citizen of an OECD member country to bribe or attempt to bribe a foreign government official. This Convention would not have been adopted without U.S. leadership.

We now have another opportunity to continue U.S. leadership in the fight against corruption. The Inter-American Convention Against Corruption is the next logical step in the effort to combat unfair business practices. Negotiated under the auspices of the Organization of American States, the Convention criminalizes the solicitation and acceptance of bribes, providing a comprehensive legal framework to combat public corruption in the hemisphere. The Convention identifies acts of corruption and creates binding obligations and enforcement of anti-corruption measures. The Inter-American Convention is important both because it addresses the solicitation of bribes and because it broadens the reach of anti-corruption oversight by covering the countries of Latin America.

An important instrument in efforts to combat corruption is the establishment of transparency measures. Transparency laws and regulations go hand in hand with anti-corruption efforts and can serve to stop corruption before it happens. They can shine a bright light into the dark and secret corners where the corruption is practiced and bring it to an end. That which is not stopped is then attacked by the anti-corruption laws that have teeth. The Inter-American Convention Against Corruption provides transparency measures in its provisions requiring the registration of income, assets and liabilities of persons who perform public functions in certain posts and making such registrations public. The Convention also has a mechanism to ensure that publicly held companies and other types of associations maintain books and records which accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect corrupt acts. Again, these measures can work to preempt corruption and are part of the Convention.

Although it was U.S. leadership that helped bring about the Inter-American Convention, we are now in a position where other countries are moving ahead on this agreement while we have not yet offered our full support.

Mr. Chairman, each year, the Council assists its member companies in addressing disputes over questionable contracts and business practices with governments and business leaders throughout the Americas. Corruption remains one of the most pressing problems for conducting international business. The costs of corruption for companies are very difficult to measure. Information on missed opportunities is not quantifiable. But there is no doubt that corruption negatively impacts companies. This Convention is not a panacea, but what we are talking about is adopting an international agreement that promotes accountability and transparency and will lead to more predictable rules for U.S. companies doing business abroad. It will help level the playing field for U.S. business.

There is no question that corruption has a harmful effect on developing countries. Corruption discourages foreign investment and disrupts normal business practices. It undermines respect for governmental institutions and fosters organized crime. Examples of the tremendous costs of corruption on governments and citizens reveal how expensive this problem is. In a speech last year, Vice President Gore spoke of the case of Guatemala where third-party procurement monitoring has helped reduce corruption in the Ministry of Health. This has gained savings of 43 percent for the Ministry and lowered the price of its medicine by an average of 20 percent.

The corrosive influence of corruption hinders the full development of the countries of the hemisphere and limits opportunities for U.S. companies. The United States must do all it can to address this critical issue. The U.S. has been a leader in combating corruption, taking bold stands and enacting landmark legislation. The Inter-American Convention is in U.S. interests because it forbids what is already against U.S. law; U.S. corporations and investors are bound by the FCPA. Therefore, U.S. industry would lose a unilateral disadvantage that is otherwise applied to them. The Convention would level the playing field for U.S. business interests and remove our self-imposed, unilateral sanction of ethical business practices.

As of now, the Inter-American Convention Against Corruption has been ratified by 18 of the 26 countries that have signed the document. The United States has yet to ratify it. To advance the convention and to maintain our leadership role in the hemisphere it is absolutely essential that we do so and soon. The convention will not solve all the problems of corruption in the hemisphere but it is an excellent beginning, If we don't ratify we would be sending a message that we believe the convention lacks merit.

Mr. Chairman, in conclusion I would note that this convention is a great start and gives the hemisphere a solid benchmark to work from. However, to fully realize the benefits of this convention we need to focus on implementation and the establishment of consistent rules. Multilateral follow-up is required to ensure that the damaging effects of corruption of and by public officials are eliminated. But the U.S. cannot effectively lead in efforts to implement this convention if we ourselves have

not ratified it. On behalf of the Council of the Americas I strongly urge the committee to recommend that the Senate ratify the convention as soon as possible.

Senator CHAFEE. I would now like to hear from Ms. Nancy Zucker Boswell. Welcome, Nancy.

STATEMENT OF NANCY ZUCKER BOSWELL, MANAGING DIRECTOR, TRANSPARENCY INTERNATIONAL USA, WASHINGTON, DC

Ms. BOSWELL. Thank you, Mr. Chairman. I am honored to be here today to testify on behalf of Transparency International.

We are a non-governmental organization dedicated to combating international corruption. We have grass roots national chapters in over 70 countries worldwide; 20 of them here in the Americas, including in Argentina, Brazil, Canada, Chile, Colombia, Peru, Mexico, and Venezuela.

The U.S. chapter, of which I am the managing director, is supported by a broad coalition of more than 30 American multi-nationals and leading lawyers, accountants, judges, academics and other distinguished individuals.

Our chapters in Latin America have found that corruption undermines development, distorts income distribution and corrodes public trust in democratic institutions. As has been pointed out, it also adds to the cost of business.

Latin America is a particularly important growth market, but corruption has undermined its potential for growth. We believe the Inter-American Convention Against Corruption can make a major contribution to addressing these problems.

As you noted in your opening remarks, Mr. Chairman, the Convention will directly benefit U.S. interests. Ratification is broadly supported by major business organizations. Many of them have signed a letter of support. We would like to ask, Mr. Chairman, that this letter be submitted into the record of this hearing.

[The letter referred to follows Ms. Boswell's prepared statement.]

Let me suggest three primary reasons for Senate action. First, there is now a window of opportunity for reform in the Americas. Second, the Convention can make a major contribution to the broader anti-corruption efforts in this hemisphere. And third, U.S. leadership is essential to securing these objectives.

A window of opportunity for reform finally opened for the first time since Congress took the historic step to end widespread bibery in international business.

As my colleague Bill Pryce noted, when Congress enacted the Foreign Corrupt Practices Act, it expected others to follow. But for almost two decades, no one did. Recently, however, there has been a profound change in attitude; and the issue is now high on the international agenda.

This is in part due to the mounting evidence, both to the private sector, civil society, the government and development assistance communities that corruption has severe economic, social and political costs.

The interests of these various sectors in reducing these costs has fueled the growth of the anti-corruption movement and opened an opportunity for reform.

By 1994, massive bribery scandals had led to the removal of several Latin Presidents from office, and there was a new willingness to confront the issue. There was also a strong public demand for change that brought new leadership to the fore.

They agreed with the U.S. initiative to place the issue on the 1994 Summit of the Americas. The leaders committed then to negotiate a hemispheric agreement. And within 15 months, the Inter-American Convention was concluded. Its rapid conclusion is striking testimony, both to U.S. leadership and to the regional consensus, for action.

The Convention is also one part of a broader anti-corruption reform program. If we are truly to have an impact, that program must also include economic and legal reforms, such as deregulation and privatization, creating a more independent judicial system, private sector action, greater freedom of the press and more meaningful public participation.

The Convention thus is an important addition to this broader reform program. Under Secretary Larson has described some of the provisions, and my colleague from the American Bar Association will provide greater detail.

I would like to simply underscore that in addition to being one element of a broad reform program, the Convention makes a very valuable addition to the start made by the OECD Anti-Bribery Convention.

That Convention will have a marked impact limiting the actions of major U.S. competitors, because they are virtually all based in OECD member countries.

But it addresses only the supply side; in other words, the companies that pay the bribes. As we indicated when we testified before this committee in 1998, the demand side also has to be addressed, and the Inter-American Convention does that. It focuses primarily on the public officials.

It is far broader in scope than the OECD, reflecting the complex nature of corruption and the comprehensive approach that is needed to confront it. Together, these two landmark Conventions provide a pincer attack on corruption.

This brings me to the third reason for U.S. ratification. And that is: U.S. leadership is essential to securing the full potential of these two Conventions. They will only be realized if there is effective implementation and enforcement.

At this committee's hearings on the OECD Convention, Chairman Helms expressed his skepticism about the will of the OECD signatories to fully enforce their commitments. In ratifying the Convention, the Senate recognized the importance of a followup process.

Since the OECD Convention entered into force in 1999, a vigorous process has made encouraging progress moving signatories to fulfill their commitments. Many countries have already been found to be in compliance. And those that are not have been told to address their deficiencies.

Peer pressure is moving them to take the remedial steps necessary and warning others not to submit inadequate measures.

We believe that a peer review process will be even more important for the Inter-American Convention because its implementation

will be complex, time-consuming and costly. Countries will need to enact considerable new legislation and regulations in order to come into compliance. And experience demonstrates that peer review will ensure that high standards are met.

However, the Inter-American Convention does not provide for such a process, and the current program involves only country workshops and technical assistance. We have worked to encourage parties to move forward to create a peer process and are finding some resistance to creating it.

A key stumbling block is that the U.S. has not yet ratified the Convention. And it is difficult for us to press for strong followup until it has.

Senate ratification is clearly a prerequisite not only to creating the process but to enabling the U.S. to fully participate in it. We are concerned that unless the U.S. participates, regional progress may stall, and our ability to stimulate action in other countries may be handicapped.

On the other hand, ratification will demonstrate the importance the U.S. places on the Convention as a key element of its anti-corruption strategy. It will send a strong message of support to reformers and remove any pretext others might have for not moving forward.

As others have noted, this is a non-controversial agreement that embodies U.S. values. It enjoys bipartisan support and requires no implementing legislation. Therefore, we think the Convention should be ratified unanimously.

We would respectfully suggest that the committee maintain its important oversight function by requiring that progress reports on implementation be provided.

In 1998, Chairman Helms placed such stringent reporting requirements on the resolution of ratification for the OECD Convention. That resolution calls for an assessment of the effectiveness, transparency and viability of the OECD monitoring process, including its inclusion of input from the private sector and non-governmental organizations. Transparency International fully supported the chairman's action then and does so again today.

In conclusion, we believe that this Convention can make a real difference in reducing corruption and promoting the rule of law across the hemisphere.

Reform will significantly improve market opportunities, promote equitable development and make democratic institutions more effective. For over 20 years, this country has taken the lead in promoting anti-corruption reform here at home and around the world.

Ratification of this Convention will send a strong signal that we continue to place the utmost importance on good governance and we expect others to do the same.

We appreciate the committee's holding this hearing and your consideration of this important instrument.

Thank you.

Senator CHAFEE. Thank you, and also for the good work Transparency International does on this subject.

Ms. BOSWELL. Thank you.

[The prepared statement of Ms. Boswell follows:]

PREPARED STATEMENT OF NANCY ZUCKER BOSWELL

Mr. Chairman and members of the committee on Foreign Relations, I am very pleased to be invited to testify before you today on behalf of Transparency International. TI is a non-governmental organization that is dedicated to combating international corruption. Since its founding in 1993, it has grown rapidly and now has grass roots national chapters in over 70 countries. Twenty of them are in the Americas, including in Argentina, Brazil, Canada, Chile, Colombia, Peru, Mexico, Venezuela and the U.S.

The U.S. chapter, of which I am the Managing Director, is supported by a broad coalition, including more than thirty major American companies, lawyers, accountants, scholars, jurists, development experts, and other distinguished individuals.

In Latin America, as in many other parts of the world where corruption is systemic and institutions are weak, corruption has undermined development, distorted income distribution, and corroded trust in democratic institutions, with profound consequences both within and beyond national borders. It has also added to the cost of business. Latin America is an important growth market, but corruption has undermined the potential for growth.

The Inter-American Convention Against Corruption can make a major contribution to addressing these problems. It will strengthen the rule of law and transparency in Latin America. This will create a more hospitable environment for business, promote development, and build more accountable and democratic institutions.

The Convention has already been ratified by 18 nations, including most every major Latin American country. In order to have a practical impact, the Convention must be implemented and effectively enforced. U.S. leadership is vital to achieving this objective, and prompt U.S. ratification is needed or this effort will falter. The Convention clearly embodies our values and ratification requires no implementing action on our part. Senate action will directly benefit U.S. interests and is broadly supported by leading business organizations.[1] They have signed a letter in support of Senate ratification of the Convention, and we would like to ask the Chairman to submit it into the record of this hearing.

I would like to highlight in my testimony three primary reasons for prompt Senate action:

- first, there is now a window of opportunity for reform in the Americas;
- second, the Convention can make a major contribution to broader anti-corruption efforts in the hemisphere;
- third, U.S. leadership is essential to securing its objectives.

I. THERE IS NOW A WINDOW OF OPPORTUNITY FOR REFORM IN THE AMERICAS

In 1977, when Congress enacted the Foreign Corrupt Practices Act,[2] it took the first historic step on the path to end widespread bribery in international business. It was expected that others would also criminalize bribery of foreign officials.

For almost two decades, no one followed. But, in recent years, there has been a profound change in attitude. Thanks in part to the work of Transparency International, the issue is now high on the international agenda. Mounting evidence has demonstrated that corruption has severe economic, social and political costs with adverse effects on the private sector, civil society, the government and the development assistance community. This coincidence of interests has fueled the growth of the anti-corruption movement and created a window of opportunity for reform.

By 1994, following massive bribery scandals and the removal of several Latin presidents from office, there was a new willingness to confront the issue. There was strong public demand for change and new leadership elected to take action.

The U.S. found support among the leaders for placing the issue of corruption on the agenda of the Miami Summit of the Americas. The Summit Declaration stated that "effective democracy requires a comprehensive attack on corruption" and that "corruption in both public and private sectors weakens democracy and undermines the legitimacy of governments and institutions."[3]

The leaders committed to negotiate a hemispheric agreement and to undertake the many necessary economic, legal and regulatory reforms that are part of an effective anti-corruption program.

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[1] These include the Association of American Chambers of Commerce of Latin America, the Brazil-U.S. Business Council, the Business Roundtable, the Council of the Americas, , the Mexico-U.S. Business Committee, the National Association of Manufacturers, the National Foreign Trade Council, PhRMA, the U.S. Chamber of Commerce, and the U.S. Council for International Business.

[2] Pub. L. No. 95–213, 91 Stat. 1494 (1977).

[3] Summit of the Americas, Plan of Action, No. 5, Miami, Fla., Dec. 11, 1994.

Fifteen months after the Summit, the Inter-American Convention Against Corruption was concluded and signed by 21 nations.[4] The Convention's rapid conclusion is striking testimony both to U.S. leadership and to the regional consensus for action.

Since its conclusion, it has been ratified by 18 countries, including Argentina, Chile, Colombia, Costa Rica, Panama, and Venezuela. Recent elections in many of these countries have brought to power a new set of leaders committed to intensify reform efforts.

II. THE CONVENTION CONTRIBUTES TO BROADER REFORM EFFORTS IN THE HEMISPHERE

The Convention is an important part of the broader anti-corruption agenda that is needed to address corruption. That agenda was agreed to at the 1994 Summit and includes deregulation and privatization, simplification of administrative procedures and creating more independent judicial systems. It also includes private sector action; stricter auditing and accounting standards; and greater freedom of the press, wider publication of information and more meaningful public participation.

The criminal and preventive measures of the Convention are important steps in this broad approach. The principal provisions of the Convention call on parties to:

- Criminalize solicitation or acceptance of bribes and other corrupt acts by public officials;
- Strengthen cooperation in criminal investigations and preclude the use of bank secrecy laws or political grounds as the bases for refusing cooperation;
- Promote "preventive" measures, including disclosure of assets and conflict of interest standards for public officials, and strong procurement rules.

The Convention is far broader in scope than the OECD Convention on Bribery of Foreign Public Officials,[5] reflecting the complex nature of corruption and the comprehensive approach that is needed to confront it. The OECD Convention, which this body ratified unanimously on July 31, 1999, requires the 34 signatory nations to enact legislation similar to the FCPA, prohibiting companies from bribing foreign public officials to obtain or retain business or other improper advantage. The OECD Convention will have a marked impact on the actions of major U.S. competitors because they are virtually all based in OECD member countries.

The OECD Convention addresses only the "supply" side, e.g., the companies that pay bribes. As we indicated when TI testified before this committee on June 9, 1998, the "demand" side also has to be addressed and that is what the Inter-American Convention does. It focuses primarily on the public officials who demand or take bribes. Together, these two landmark conventions provide a pincer attack on corruption.

III. U.S. LEADERSHIP IS ESSENTIAL TO SECURING ITS OBJECTIVES

However, their full potential will only be realized if there is effective implementation and enforcement. U.S. leadership is critical to accomplishing this objective.

At this committee's hearings on the OECD Convention, Chairman Helms expressed his skepticism about the will of the OECD signatories to implement and fully enforce their commitments. In ratifying that convention, the Senate recognized the importance of a monitoring process.

Since the OECD Convention entered into force on February 15, 1999, a vigorous peer review monitoring process has made encouraging progress moving signatories to fulfill their commitments. It has reviewed the implementing legislation of most of the 21 countries that have ratified to date. TI National Chapters have played an active part in the monitoring process and have submitted their analysis of implementing legislation.

Many countries have been found to be in compliance. Those that are not have been told to address the deficiencies. Peer pressure is moving them to take remedial steps and warning others not to submit inadequate measures.

A peer review process will be even more important for the Inter-American Convention because its implementation will be more complex and time-consuming. Considerable new legislation and regulations will be required to bring countries into compliance. Technical expertise and best practices will be necessary to ensure high standards are met. Many government agencies will have to participate in the process and there will be competing demands for resources.

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[4] Reprinted at 35 I.L.M. 724 (1996).

[5] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, reprinted at 37 I.L.M. (1998).

Currently, the Inter-American Convention does not provide for a peer review monitoring process, and the OAS follow-up program involves only country workshops and technical assistance.

Transparency International has been encouraging the OAS to establish such a process, and there has been some good progress in building consensus over the past six months. Last November, we brought together experts from across the hemisphere to consider how best to make progress. The experts concluded that a peer review process will be essential to secure effective implementation, especially in countries where laws are on the books but not always effectively enforced.

The OAS is currently working to strengthen the follow-up process. In February, the Finance Ministers of the Western Hemisphere issued a statement calling for the establishment of a multilateral mutual review mechanism. In March, the OAS Secretary General opened a Special Session on the Convention by noting an emerging consensus for such mechanisms.

Nonetheless, there is still strong resistance to creating such a mechanism. A key stumbling block is that the U.S. has not yet ratified the Convention. It will be difficult for the U.S. to press for a strong follow-up process until it has ratified.

Prompt Senate ratification is clearly a prerequisite step to creating the process and to enabling the U.S. to fully participate in it. Unless the U.S. participates, progress may stall. Our ability to stimulate action in other countries will be handicapped if the U.S. is not at the table.

Ratification will demonstrate the importance we place on the Convention as a key element of an effective anti-corruption strategy. It will send a strong message of support for reformers and remove any pretext others might use for not moving forward.

This is a non-controversial agreement that embodies U.S. values. It enjoys the broad support of all sectors, including the leading business organizations. To our knowledge, no organization opposes it.

The Administration has indicated that no implementing legislation is needed because existing U.S. laws and practices are already in compliance with the Convention. As with the OECD Convention, we think that the Inter-American Convention should be ratified unanimously.

Chairman Helms placed stringent reporting requirements on the resolution of ratification for the OECD Convention. TI recommended that this committee ask the State Department to provide periodic progress reports on the OECD Convention. Today, we respectfully suggest again that the Committee continue to maintain its important oversight function by asking, as a condition for ratification, that it call for progress reports on the Inter-American Convention.

CONCLUSION

In conclusion, the Inter-American Convention can make a real difference in reducing corruption and promoting the rule of law and greater accountability across the hemisphere. These reforms will significantly raise standards, improving market opportunities, promoting equitable development, and making democratic institutions more accountable. For over twenty years, the U.S. has taken the lead in promoting anticorruption reform at home and around the world. Ratification of this Convention will send a strong signal that the U.S. continues to places the utmost importance on good governance and expects others to do the same.

We would like to express our appreciation for the Committees's scheduling this hearing and for its consideration of this important instrument.

APRIL 7, 2000.

The Honorable JESSE HELMS
Chairman,
Senate Committee on Foreign Relations,
450 Dirksen Senate Office Building,
Washington, DC.

DEAR MR. CHAIRMAN: We are writing to express our support for ratification this year of the Inter-American Convention Against Corruption that was transmitted to the Senate on April 1, 1998.

The Inter-American Convention is the next important step in the fight against bribery and corruption in this hemisphere. Your prompt action helped criminalize the "supply side" of bribery with the entry-into-force of the OECD Anti-Bribery Convention on February 15, 1999. Since then, the OECD Working Group has been mak-

ing good progress in ensuring that our trading partners enact laws comparable to the FCPA. But, the OECD Convention only applies to those who pay the bribe.

There is much to do on the "demand side" to secure laws and practices that provide a hospitable environment for U.S. business and trade, foster economic development, and promote democracy and accountable institutions. The Inter-American Convention is a strong beginning, committing our major trading partners in the hemisphere to criminalize a wide range of corrupt acts, step up enforcement, enhance legal and judicial cooperation, and strengthen preventive measures, such as codes of conduct for public officials, disclosure of assets, and whistle blower protection.

Realizing the Convention's full potential will be a long and difficult process and will require U.S. political leadership. Ratification is absolutely imperative to demonstrate that the United States takes its obligations seriously and expects the same of others.

The Administration has indicated that no implementing legislation is needed. For other countries, implementation will require substantial reform. To accelerate this process, the OAS has initiated a follow-up program, providing technical assistance and model laws, and has circulated a questionnaire that will reveal the extent of reform needed.

When the Convention was negotiated, the parties did not consider a formal monitoring program. However, in light of the positive experience of the OECD and the Financial Action Task Force, the OAS Working Group is currently considering creating a peer review monitoring mechanism. U.S. ratification is essential if we are to promote this outcome and to participate in the important follow-on process.

We look forward to the opportunity to address any issues of concern and appreciate your continued support for meaningful anti-corruption reform across the hemisphere.

Sincerely,

MASTON N. CUNNINGHAM, *President, AACCLA*
ROBERT C. PETTERSON, *Chairman, U.S. Section, Brazil-U.S. Business Council*
THOMAS E. MCNAMARA, *President, Council of the Americas*
JAMES R. JONES, *Chairman, U.S. Council, Mexico-U.S. Business Committee*
JERRY JASINOWSKI, *President, National Association of Manufacturers*
FRANK D. KITTREDGE, *President, National Foreign Trade Council*
ALAN F. HOLMER, *President and CEO, Pharmaceutical Research and Manufacturers of America*
FRITZ HEIMANN, *Chairman, Transparency International-USA*
L. CRAIG JOHNSTONE, *Senior Vice President, International, Economic and National Security Affairs, U.S. Chamber of Commerce*
THOMAS M.T. NILES, *President, U.S. Council for International Business*

Senator CHAFEE. I would just add that even with the ratification of the treaty, it is still going to be difficult back in my home State of Rhode Island. We still struggle with corruption.

We are not above it. There is scandal going on in our capital city of Providence, bribery of elected officials and officials that work for the government.

Ms. BOSWELL. You make a—that is an excellent point. That is indeed, I think, all the more reason why our partners down in the Americas need this Convention, to help them make the kind of progress we would all like to see them make.

Senator CHAFEE. Yes, sometimes it is ingrained so deeply in the culture, it takes awhile, but you have to start somewhere. And we are doing that here hopefully.

Ms. BOSWELL. Exactly. Thank you so much.

Senator CHAFEE. Thank you.

Ms. Lucinda Low, welcome.

STATEMENT OF LUCINDA A. LOW, REPRESENTATIVE TO THE INTER-AMERICAN BAR ASSOCIATION, AMERICAN BAR ASSOCIATION, WASHINGTON, DC

Ms. LOW. Thank you very much. I would like to thank the committee first for conducting this hearing and for the opportunity to testify.

I am testifying today on behalf of the American Bar Association. I currently serve as the American Bar Association's representative to the Inter-American Bar Association.

In 1997, when I had the privilege of chairing the ABA Section of International Law and Practice, the House of Delegates of the American Bar Association adopted a policy in support of ratification by the United States of the Inter-American Convention Against Corruption with minimal reservations, understandings, and declarations. The House of Delegates' policy also called for prompt, full and consistent implementation of the Convention.

With your permission, Mr. Chairman, I would like to submit our full statement for the record and summarize only some key points here today in my oral remarks.

I would like to focus on the Convention, what it is, how it fits in the context both of U.S. measures to combat corruption, and the international architecture that is growing up in recent years around this issue.

I would then like to address several reasons why we think now is an appropriate time for the United States to ratify the Convention, and then comment briefly on the issue of reservations, understandings and declarations.

As you have noted, Mr. Chairman, the Inter-American Convention was, in fact, the first multilateral instrument to combat corruption agreed to. It came out of the Summit of the Americas, and its focus is on the issue of public sector corruption, and the problems that public sector corruption creates for economic development, political stability and hemispheric integration.

The Inter-American Convention takes, what I like to call, a holistic view of the problem of corruption. It addresses corruption both from the supply side and from the demand side, as other speakers have indicated.

It requires criminalization of a number of acts of corruption, including the crime of trans-national bribery, which we criminalized in our Foreign Corrupt Practices Act.

It requires countries to consider a series of, what are called, preventive measures to promote the rule of law and to reform the states and state processes.

And finally, it contains provisions for international cooperation in the investigation and enforcement of offenses.

As such, it is a broader instrument than the OECD Anti-Bribery Convention, which targets specifically the issue of the transnational bribery of foreign public officials and international cooperation in the investigation and enforcement of that specific offense.

In a way, you can see the Inter-American Convention as the outline or the blueprint for the legal and institutional infrastructure that countries need to put into place to combat what Nancy has rightly indicated is the complex problem of public corruption.

I like to see it as a kind of "to do" list for countries, steps they need to take to deal with this problem of corruption.

Now, in the case of the United States, we have basically created this infrastructure over a period of years. We have enacted all of the elements on the "to do" list, not always precisely in the same form as the Convention calls for. But if you study this instrument, as I have, you will see that they are all there.

And that means that the United States does not need to enact any implementing legislation upon ratification of the Convention, although there are several understandings that may be appropriate.

Why then, if the United States has already enacted everything it needs to enact does the United States need to be part of this regime?

There are several reasons why U.S. participation is, in our view, essential; and previous speakers have touched on these. But let me just highlight three that I think are particularly salient.

First, it is important and useful for the United States to be part of the international cooperation provisions of this Convention, which Under Secretary Larson alluded to. This will help us enforce our own laws and will support other countries' efforts to make corruption not a crime of impunity, but a crime that can be enforced.

And I would note that the Inter-American Convention's provisions in this regard are very similar to the provisions of the OECD Antibribery Convention, which the U.S. has supported.

I would also note that if you look at recent enforcement of the U.S. Foreign Corrupt Practices Act, you will see that a number of recent cases come out of the Latin American region. So this is not an academic issue.

The second reason why I think the United States needs to be part of this regime is to help shape the implementation and enforcement of the Convention, to help develop implementation priorities.

For the most part, the Convention is what we would call a non-self-executing treaty. It requires the enactment of domestic laws. It requires the enforcement of those laws.

And so the manner in which countries implement this Convention, the priorities they attach to issues of preventive measures, what should come first becomes a very, very important issue. And the United States should be at the table for that process.

Third, but not least in this list of three of the reasons for U.S. ratification, is for the United States to show its long-term commitment to the problem of combating corruption in the Americas. The Convention, as has already been noted, was done with significant support from the United States.

Certain provisions of the Convention such as the transnational bribery provision were done with the direct encouragement of the United States. And so it is especially important for the United States to follow through with ratification of the Convention.

Now is arguably a critical time for the United States to act. The Convention has now been in force for 3 years. As you, yourself, noted, Mr. Chairman, it has widespread adherence in the region. And that is a very encouraging sign. That it could attract 26 sig-

natories and 18 parties in such a short period of time is very good progress indeed.

And there are many key countries in the hemisphere list. But there are still gaps in ratification. And I note that the momentum may be beginning to slow down. We had eight countries ratify in 1997; five in 1998; four in 1999; and only one to date in this year 2000. And when the issue comes to implementation, the gaps may be even larger.

U.S. ratification, in our view, would help reinvigorate this process and would allow the United States, as I have indicated, to push for full implementation, consistent implementation and active enforcement, as we believe in the American Bar Association would be appropriate and desirable.

So for these reasons, the American Bar Association supports ratification of this Convention by the United States this year.

The last issue I would like to comment on is a more technical issue dealing with reservations, understandings and declarations. As noted earlier, the ABA believes in general that the RUD's to this Convention should be kept to a minimum.

Reservations can undercut the effectiveness of a Convention. And we note that to date among the 18 countries that have ratified, the number of reservations has been quite minimal, only one that we are aware of.

For the United States, we believe no reservations to the Convention are warranted.

There are several understandings that have been proposed by the administration. These, in general, reflect differences between the U.S. approach to the problem of criminalization of acts of corruption and the Latin American approach, or differences between common law systems and civil law system, as well as the fact that we have a Federal system of government.

The only real issue in our view with respect to the proposed understandings is what to do on the subject of illicit enrichment. Illicit enrichment is one of the Convention's provisions that calls for a criminalization when a public official has assets that cannot be explained in relation to the lawfully earned income of that official during his term in office.

As this offense is written in the Inter-American Convention, to implement it by the United States would create a constitutional conflict, because it would violate the presumption of innocence set forth in our Constitution.

However, the Inter-American Convention allows for an opt-out right with respect to this offense of illicit enrichment, which means that the United States can ratify the Convention if it wishes without taking a reservation on this point.

If the U.S. does exercise this opt-out right—and we understand that is what has been proposed by the administration—there is some risk that this opting out could encourage other countries to opt out, not so much of the illicit enrichment provision which is already a feature of the legal regimes of many Latin America countries, but possibly opt out of the transnational bribery criminalization obligation, which is structurally analogous to illicit enrichment.

We would view this as an undesirable result and, therefore, suggest that the committee may want to consider another alternative, which would be rather than opting out, to declare that existing laws in the United States effectively implement this provision.

And we are speaking here specifically of the combination of disclosure laws for senior Federal Government officials coupled with criminal tax enforcement provisions and specifically the net worth method of proof for criminal tax evasion. If the United States were to choose this approach, it should do so with the understanding that it would not be shifting the constitutional burden of proof.

On that technical note, then, let me close my remarks by reiterating my thanks to the committee for its leadership in taking this issue up at this time.

Let me also express the hope that the committee will move expeditiously to recommend advise and consent to this Convention so it can go to the floor. This will be an excellent year for the United States to ratify the Inter-American Convention and would confirm continued U.S. leadership in this critical area.

I am available to answer any questions you may have. And let me also introduce my colleague from the American Bar Association, Stuart Demming, who heads the ABA's task force on corrupt practices, who is also available for any questions.

Thank you very much.

Senator CHAFEE. Thank you.

[The prepared statement of Ms. Low follows:]

PREPARED STATEMENT OF LUCINDA A. LOW

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify before the Committee concerning U.S. ratification of the Inter-American Convention Against Corruption.

My testimony today is submitted on behalf of the American Bar Association. I am a former chair of the ABA Section of International Law and Practice, and currently serve on the International Section's Council and as the ABA's representative to the Inter-American Bar Association. With me is Stuart Deming, an officer of the Section of International Law and Practice and current co-Chair of an ABA Task Force on Standards on Corrupt Practices.

In 1997, during my chairmanship, the International Law Section of the ABA developed a report and recommendation on the Inter-American Convention Against Corruption. This report and recommendation, a copy of which is attached, calls on the United States and other OAS Member States to ratify the Inter-American Convention Against Corruption promptly, encourages ratification to be subject to minimal reservations and understandings, and urges prompt, full and consistent implementation by States Parties. Our recommendation was approved by the ABA House of Delegates in 1997 and thus constitutes official ABA policy. It is complemented by a 1998 ABA policy supporting U.S. ratification of the OECD Antibribery Convention, and an earlier policy urging the development of international standards to combat public corruption in international business transactions.

In my testimony today, I would like to focus principally on how the Inter-American Convention Against Corruption, as a regional instrument for the Western Hemisphere, fits into the emerging international standards against public corruption, and, within that context, why it is in the U.S. interest to participate in the Convention's regime. I would also like to address certain technical issues regarding ratification and implementation, and to answer any questions the Committee members may have about the Convention, or how it compares to U.S. law or other international instruments.

At the outset, I would like to commend the Committee for its support of U.S. ratification of the OECD Antibribery Convention in 1998. The OECD Convention is a highly-targeted instrument that addresses one principal issue—transnational bribery of foreign public officials—from the "supply," or bribe payers, side. Its focus is on disciplining business actors from major capital exporting countries and on establishing cooperation mechanisms for facilitating investigations and enforcing its pro-

visions. Prompt U.S. ratification of the OECD Convention was a crucial step in putting its prohibitions into effect for a critical mass of countries in a record time frame. The OECD Convention furthered an important U.S. policy goal of establishing, in the countries that compete most strongly with the U.S. for major international projects, standards regarding the bribery of foreign public officials that parallel U.S. standards, as reflected in our Foreign Corrupt Practices Act (FCPA). The OECD Convention thus leveled the playing field for U.S. international business and set an international standard with which U.S. business could readily comply.

Now that the OECD Convention has entered into force and is being implemented, it is an appropriate time to turn to ratification of the Inter-American Convention. For different reasons, U.S. ratification of this instrument is also strongly in the interests of the United States. And unlike the OECD Convention, which required amendments to the FCPA, the Inter-American Convention requires no changes to U.S. law.

Why is it in the U.S. interest to ratify the Inter-American Convention? To answer this question requires an understanding of how the Inter-American Convention differs from its OECD counterpart. The Inter-American Convention was borne of the first Summit of the Americas in Miami in 1994. It was recognized by the Summit participants that hemispheric economic integration, made possible by the shift in the region towards democratic governments and the establishment of free-market economies, required progress in the rule of law, transparency in administrative processes, and modernization of the state. Corruption—especially public corruption—undermines the development of democratic institutions and effective market mechanisms. It leads to misallocation of resources, and threatens the rule of law and political stability, adversely affecting the ability of countries to attract capital and foster economic development.

In many Latin American countries, public corruption is a "demand side" problem as much as a supply side problem. There is a need to strengthen civil service and the judiciary, reform laws and administrative processes (e.g., public procurement) to make them more modern, transparent and efficient, and to develop new systems of checks and balances, and watchdog institutions. Although some countries in the region are capital exporters, most are not. Thus, most of the OAS countries are not likely in the near to medium term to become parties to the OECD Antibribery Convention. More importantly, the OECD Convention approach, which focuses narrowly on the issue of transnational bribery and closely-related offenses, is not currently an approach—as the OAS Member States themselves have recognized—that adequately addresses the needs of the Latin American region. Rather, a broader-based effort, focusing on both the demand and the supply sides of public corruption, and on preventive measures as well as criminalization, is the more appropriate approach for the region as a whole at this time.

The Inter-American Convention reflects this broader, systemic approach to the issue of public corruption. In addition to requiring criminalization of a range of offenses (referred to as "acts of corruption")—domestic bribery, transnational bribery, illicit enrichment, among others—and providing for cooperation among signatory countries in investigations and enforcement, it requires countries to undertake reforms on the "demand" (or official government) side, in tax and customs administration, procurement systems, civil service reform, and the like—the so-called preventive measures. In addition, like the OECD Convention, it requires parties to cooperate in the investigation and prosecution of offenses, including in the areas of mutual legal assistance, extradition, and asset tracing and seizure. The Inter-American Convention can thus be seen as representing a kind of "to do" list for countries to combat public corruption as well as providing tools for effective enforcement of the relevant laws. In our view, it is precisely this kind of approach that makes sense for the region at this time.

Unlike some Inter-American treaties, the OAS Anticorruption Convention has garnered significant support from the countries of the region in a relatively short time. It has been signed by 26 OAS Member States, and went into effect in 1997. Currently 18 countries are parties, including two countries—Argentina and Mexico—that are also parties to the OECD Convention. Despite this strong start, however, significant gaps remain in ratification and implementation.

Like the OECD Antibribery Convention, the Inter-American Corruption Convention's success depends on widespread ratification, implementation and enforcement by the relevant countries. And because the Inter-American Convention is significantly broader in scope than the OECD Convention, implementation and enforcement poses even a greater challenge for States Parties than they do in the OECD Convention context. Priorities must be established, especially in the area of preventive measures, and resources must be allocated. Under the best of circumstances, full implementation cannot be expected to happen overnight, but will occur over a

period of years. In fact, the history to date is that although important steps have been taken by a number of countries, overall implementation has been spotty.

The United States, as the country most responsible for putting the issue of public corruption onto the hemispheric agenda and, among capital exporting countries, among the countries with the most at stake in the region in terms of promoting the rule of law and democratic institutions and developing market economies, needs to be a full participant in this implementation process. The United States does not need any implementing legislation of its own to participate in the Convention's regime; we have over the years enacted in some form all of the various items on the Convention's "to do" list. The United States does have an interest, however, in ensuring that the Convention is fully implemented and enforced by other countries of the region. in helping countries set priorities among the range of items on the "to do" list, in helping devise the best approach to a particular issue, and in keeping countries' feet to the fire if implementation and enforcement lag.

Without having ratified the Convention, however, it is unlikely the United States will have the ability to influence the implementation and enforcement process as fully as it would like. For example, the OAS is exploring the establishment of a monitoring mechanism for the Convention that will be open only to countries that have ratified the Convention. Even without such a mechanism, however, the views of non-ratifying countries on implementation and enforcement issues are unlikely to be accorded the same deference as ratifying countries. Moreover, for the United States, as one of the proponents of the Convention, to refuse to ratify the Inter-American Convention now would be taken as a sign by the other OAS Member States that the United States is not seriously committed to reform in this hemisphere.

For these reasons, U.S. ratification of the Convention makes sense. Ratification sends a strong message to countries of the region of a sustained commitment of the United States to this issue. It positions the United States to play a continued leadership role within the hemisphere on this issue. It supports our national goals of promoting democratization and economic development, and is an important complement to hemispheric integration. It also promotes the goal of universal ratification in the region.

Let me now turn to the questions of reservations, understandings and declarations (RUDs). As noted at the outset, the ABA's 1997 policy on the Inter-American Convention recommended that any ratifications be subject to minimal RUDs. Reservations, if excessive, can undercut the effectiveness of a treaty. The Inter-American Convention, Article XXIV, permits reservations to specific articles provided the reservations do not conflict with the purpose of the treaty. To date, the reservations taken by ratifying countries have been minimal.

As we understand it, the Administration has proposed no reservations to the Convention, but has proposed several understandings, to Articles VII, VIII and IX. The proposed understanding with respect to Article VII would make clear that the United States does not intend to enact new laws to implement Article VII, since existing laws effectively reflect the "acts of corruption" required to be criminalized in that Article. The proposed understanding with respect to Article VIII similarly would clarify that the United States considers the Foreign Corrupt Practices Act to constitute adequate implementation of that Article's requirement to criminalize transnational bribery. We concur with both those understandings. We also note with respect to Article VIII that the Inter-American Juridical Committee of the OAS has clarified that facilitating payments may be excepted from a prohibition on transnational bribery consistent with the Convention.

The final proposed understanding relates to Article IX, illicit enrichment. The Convention permits countries to "opt out" of the criminalization obligations of Articles VIII and IX both, without the need to take a reservation, if criminalization would conflict with their constitutions or fundamental legal principles. As the State Department report accompanying the transmittal of the Convention to the Senate points out, Article IX of the Convention raises such a conflict in light of the constitutional presumption of innocence in Article IV of the U.S. Constitution. The Administration therefore recommends that the United States "opt out" of the criminalization obligation under Article IX, but declare its willingness to provide assistance to other countries in the investigation and enforcement of illicit enrichment cases consistent with U.S. domestic law, as required by the Convention.

The ABA policy does not explicitly address how the illicit enrichment issue should be handled. The accompanying report notes, however, that although the constitutional concern with our enacting a penal offense as specified in Article IX would be substantial, U.S. law currently contains measures that collectively function as the equivalent of such a provision for senior federal government officials. Specifically, when the financial disclosure obligations for senior federal officials under the Ethics

in Government Act are coupled with the so-called "net worth method of proof" for criminal tax evasion under 26 U.S.C. § 7201, the result is the effective criminalization of illicit enrichment of these officials, enforced through the tax code. A similar result follows in other contexts when state and local disclosure regimes are taken into consideration.

Accordingly, one alternative to the U.S. exercising the "opt out" right built into the Convention (the exercise of which may prompt other countries to opt out of Article VIII or IX as well) might be for the United States to declare that the foregoing measures represent effective implementation of this obligation and that no further implementing legislation is contemplated. Were the United States to do so, care would need to be taken to ensure that such a step is not construed as shifting the burden of proof. For this reason, if the United States does not opt out of Article IX, its ratification should be subject to the understanding that the burden of proof under U.S. law would remain unchanged.

Again, thank you for the opportunity to testify and for your consideration of the Convention at this timely juncture. I would be happy to answer any questions the Committee may have.

AMERICAN BAR ASSOCIATION

POLICY ADOPTED AT THE ABA'S 1997 ANNUAL MEETING

Resolved, That the American Bar Association supports the prompt ratification and implementation of the Inter-American Convention Against Corruption (Inter-American Convention) by the United States, by other members of the Organization of American States (OAS), and by other countries that are eligible to accede to the Inter-American Convention.

Further Resolved, That the American Bar Association urges:

(1) that such ratification be subject to minimal reservations and under- standings; and

(2) that such implementation be full, effective and consistent.

Further Resolved, That, to assure consistency and effectiveness, the American Bar Association supports the criminalization of the bribery of foreign officials through the Inter-American Convention and through other instruments and fora in a manner consistent with the agreed upon common elements set forth in the Annex to the Organization for Economic Cooperation and Development's (OECD) Revised Recommendation of the Council on Combating Bribery in International Business Transactions and with the basic principles of the Foreign Corrupt Practices Act of the United States.

Further Resolved, That the American Bar Association supports efforts by the OECD and its member countries to promptly carry out, fully implement, and actively enforce the OECD's Revised Recommendation of the Council on Combating Bribery in International Business Transactions in a manner that effectively deters foreign corrupt practices in the conduct of international business.

Senator CHAFEE. And as Nancy said earlier, this should not be controversial and hopefully we can move expeditiously forward. And before we adjourn, I would just like to ask if you would like to add anything extemporaneous on the subject.

Mr. Pryce.

Mr. PRYCE. I would just say that there is real progress, but that one of the biggest impediments to new investment in Latin America among our countries is the lack of respect for the rule of the law, and not combating corruption undermines that respect. And it is one part of a greater whole that is very important to have it ratified for that reason also.

Senator CHAFEE. Yes. We talk about a global economy. Well, we should start with a hemispheric economy, especially considering the broad range of first, second, and Third World economies in this hemisphere. And so this is an exciting move forward and hopefully we can ratify soon.

Any other comments before we adjourn?

Lucinda.

Ms. LOW. Just to endorse the comment about corruption being the flip side of the rule of law. I think that, in part, explains why the Bar has been so committed to this issue.

Senator CHAFEE. Thank you.

And the hearing record will be left open for 3 days to give members an opportunity, who were not able to be here this afternoon, to further ask questions for the record.

So thank you once again for taking your valuable time and sharing your thoughts with us here.

The meeting is adjourned.

[Whereupon, at 2:45 p.m., the hearing was adjourned.]

[The following letter was received subsequent to the hearing for inclusion in the record.]

THE CARTER CENTER,
LATIN AMERICAN AND CARIBBEAN PROGRAM,
Atlanta, GA, May 4, 2000.

The Honorable JESSE HELMS
Chairman,
Senate Committee on Foreign Relations,
450 Dirksen Senate Office Building,
Washington, DC.

TO SENATOR JESSE HELMS:

I write to commend you for holding a hearing on the Inter-American Convention Against Corruption and to urge the Senate to ratify this convention. Since the Congress approved the Foreign Corrupt Practices Act during my administration, the U.S. has been a leader in the field of ending bribery and corruption. It is essential that we continue to demonstrate our commitment and leadership to encourage others to confront this vice that harms investment, development, and democracy.

The OECD approval of its Convention Against the Bribery of Foreign Officials in 1997 and the subsequent Senate ratification of this convention was a crucial step forward in ending the supply side of foreign bribery. The OAS Convention provides the other side of the coin—focusing on the demand side within countries and the necessary implementation of legal and policy reforms to criminalize and to prevent corruption, as well as mutual assistance needed to combat international corruption.

We have been working with governments in this hemisphere and with Transparency International and national NGOs in Latin America to encourage ratification and implementation of the OAS Convention. In May 1999, we held a major conference at The Carter Center in Atlanta on Transparency for Growth, focusing on measures to combat and prevent corruption in our hemisphere. A number of current and former leaders signed our final declaration (attached) with recommendations that included not only the urgency to ratify and implement the OAS Convention, but also the need to establish a monitoring mechanism to help ensure that the new rules are actually enforced. I then wrote to all the leaders of this hemisphere, including President Clinton, to inform them of our findings and to urge ratification and implementation of the Convention.

We would be in a much stronger position to work for change among our Latin American neighbors and to encourage the OAS to adopt monitoring mechanisms if the U.S. first ratifies the Convention. The United States would not have to implement any new legislation to come into compliance with the treaty. Continued United States leadership in this area is vital, and l hope that you will expedite the Convention's coming to the Senate floor and give it your full support.

Sincerely,

JIMMY CARTER.

[Attachment]

FINAL STATEMENT

"TRANSPARENCY FOR GROWTH" CONFERENCE, COUNCIL OF PRESIDENTS AND PRIME MINISTERS OF THE AMERICAS, WEDNESDAY, MAY 5, 1999

Corruption is one of the principal threats to democracy, growth and equity in the hemisphere. It distorts public services, deters investment, discriminates against the poor, and destroys public confidence in democratic governments. This was the starting point of two days of discussion at The Carter Center by hemispheric leaders, members of the private sector, journalists, and NGOs. Representing the Council of Presidents and Prime Ministers, a group of 32 former and current heads of government from Latin America and the Caribbean, the leaders in this conference concluded that progress toward transparency can be achieved where civil society and governments work together to overcome opposition from vested interests. Indeed, important progress has been made already.

Participants from two dozen countries discussed strategies, including implementation of international conventions against corruption, the role of civil society including media and the private sector in promoting transparency, and measures to increase accountability in government-business transactions. The group encountered a diversity of opinion, driven by the very different social and economic contexts in the region, and recognized that solutions will necessarily need to be tailored to each country. Furthermore, some sources of corruption are international, including multinational corporations and narco-trafficking, and small countries may be particularly vulnerable. Solutions must therefore reach across borders. We are also aware that corruption is systemic, affecting all aspects of society, and consequently there will be no quick fix. The solutions, too, will need to be systemic, engaging society broadly and tackling the problem from several directions at once.

Rich discussions yielded creative ideas about practical first steps. Here are some of our conclusions:

First, we recognize that although corruption is an ethical issue, it is also a policy problem, meaning it can be remedied by setting and enforcing rules that encourage people to do the right thing. It is a crime of calculation. Where the benefits outweigh the penalties for illicit behavior, systems can provide incentives for corruption. A shorthand description is Corruption = Monopoly + Discretion – Accountability. The task is to remove the opportunities provided by monopolies and discretionary decision-making power, and increase the costs of corruption through detection and enforcement of a nation's laws.

The good news is that there are solutions, and improvements can begin immediately. But it takes civic courage and commitment from leaders, international lenders and other organizations, coalitions of businesses and NGOs in civil society, to illuminate previously dark corners of government transactions. The antidote to corruption is information, committed leadership, collective action and clear rules.

Second, it is time to move from denunciations to diagnosis. Hard data is necessary to combat the problem, and it is now possible to get it. New diagnostic tools, including analyses and interviews of businesses, citizens and public officials, are now available from the World Bank and others to provide a map of the nature and location of corruption in public and private organizations. This information that can be used to devise national action plans for every segment of the society. We encourage governments to carry out these diagnoses and make them public, and then to challenge every branch of the government and civil society to create action plans to resolve their specific problems.

Third, as democracy has begun to consolidate more broadly in the hemisphere, one dilemma it has introduced is how to finance campaigns and political parties without leaving elected leaders obligated to special interest groups, narco-traffickers, or tainted money, or without spending vast quantities of money that is desperately needed for development. The interdependence of the public and private sector is highlighted by businesses dependent on public contracts for their livelihood, and political parties dependent on private contributions. Opening up those transactions through specific disclosure mechanisms will begin to level the playing field. We recommend:

a) Enforcing existing laws and strengthening regulation, oversight institutions and audit capacity.

b) Regulation and disclosure requirements for income and expenditures of parties and candidates.

c) Reducing campaign expenses by limiting the campaign period, and fostering free media time on TV and radio under equal conditions.

d) Financial disclosure requirements for public officials, elected or appointed, to avoid conflict of interest and illicit enrichment, with periodic monitoring by a special office.

e) National laws prohibiting bribery, which might be developed via a model statute process.

f) Business codes of conducts and compliance programs as a prerequisite to bid on World Bank and IDB-financed projects, or to appear on national registers of approved contractors.

g) Streamlining of public procurement laws and broad deregulation.

Fourth, transparency is the first step in combating corruption, but it requires a media and civil society capable of accessing information and then using it to demand accountability from their governments. We recommend:

a) Laws be enacted that require governments to open up and provide documentation about their budgeting and spending procedures so that citizens and journalists can have the information they need to understand and evaluate what their governments are doing.

b) Training NGOs to use new technologies, including the internet, and to monitor privatization and public contracting.

c) Publication of public contract awards, dates of delivery of goods, schedules of payments, and the bidding process in privatizations.

d) Quarterly report cards on the service delivery quality in certain sectors, such as health, as well as on efforts to reduce corruption via the national action plans.

e) Databases about civil servant credentials in order to prevent nepotism and patronage.

f) Public hearings to provide opportunities for citizens to give input on priorities for public works projects and bid requirements within budgetary limitations.

g) Formation of regional informational networks and databases so that citizens can learn about access to information and share successful strategies to combat corruption.

Fifth, we wish to emphasize the importance of a free press in promoting transparency and democracy. The status of press freedom in the hemisphere is sometimes discouraging. The Inter-American Press Association recently found that fourteen countries have press laws that place regulations on freedom of the press. Seventeen countries have so-called insult laws that can result in imprisonment for journalists convicted of criticizing government officials. Eight countries have laws requiring licensing of journalists or mandatory membership in associations. In the last decade, 203 journalists have been killed in the Americas, a human rights situation so deplorable that the region's presidents and prime ministers asked the OAS last year to establish a special office for preventing such incidents, which the OAS has done. Only six countries in the hemisphere have laws dealing with the right of access to information that are considered effective.

To support professionalism in the media, and avoid unsupported denunciations that make headlines and sell papers but undercut the media's credibility, we recommend:

a) Development of laws that will secure access to information by making official documents open to public inspection without undue delay or burdensome paperwork.

b) Expansion of programs to train the press to conduct solid investigations based on evidence.

c) Strengthening of the judicial system's capacity to investigate and prosecute corruption where the evidence indicates it is merited, such that no one is tried in the press and innocent citizens have an oppomtunity to defend their good names in a just court.

Sixth, we are convinced that recent treaties, including the OECD Convention Against Bribery and the Inter-American Convention Against Corruption are important steps in bringing a common approach to solving both the demand and supply side of bribery. But they will only be effective when fully implemented by signatory countries. We urge member states of the OAS at their June 1999 General Assembly to call for:

a) Prompt ratification by all OAS member states as per their commitments in the Plan of Action of the Santiago Summit of the Americas;

b) Creation of a peer review mechanism that will promote consistent and effective implementation of criminal laws and preventive measures, and which will share best practices and model laws;

c) Provision by the IDB and World Bank of all necessary technical assistance for capacity building in order to enable and support full implementation of the Inter-American Convention.

The corruption issue is one of concern to all nations, and should receive attention at the highest levels. Here we want to commend U.S. Vice President Al Gore for his global forum last February. In closing, we want to emphasize the need for ethical values not only in government but in businesses, journalism, banking and indeed every walk of life. Perhaps most important are the messages we convey to our children through education in schools and churches, as it is they who will pay the price if we fail to act now to stem this ill. We are committed to carrying our transparency work further, and we hope you will join us in this important endeavor.

JAMIL MAHUAD WITT, *President of Ecuador*
SAID MUSA, *Prime Minister of Belize*
ARTHUR ROBINSON, *President of Trinidad and Tobago*
NICOLAS ARDITO-BARLETTA, *former president of Panama*
RODRIGO CARAZO, *former president of Costa Rica*
JIMMY CARTER, *former president of the United States*
OSVALDO HURTADO, *former president of Ecuador*
ALFONSO LØPEZ MICHELSEN, *former president of Colombia*
GONZALO SANCHEZ DE LOZADA, *former president of Bolivia*
JUAN CARLOS WASMOSY, *former president of Paraguay*
AMBASSADOR RICHARD BERNAL, *representative of Jamaican Prime Minister P.J. Patterson*
DANIEL ROMERO, *representative of former Venezuelan president Carlos Andres Perez*
JOSE MIGUEL VILLALOBOS, *representative of Costa Rican president Miguel Angel Rodriguez*

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