



ENVIRONMENTAL TREATIES: TREATY DOC. 103-4, 1992 PROTOCOL TO THE 1966 CONSERVATION OF ATLANTIC TUNAS CONVENTION; TREATY DOC. 103-5, 1990 PROTOCOL TO THE 1983 MARINE ENVIRONMENT OF THE WIDER CARIBBEAN REGION CONVENTION; TREATY DOC. 103-9, AMENDMENT TO THE MONTREAL PROTOCOL ON SUBSTANCES THAT DEplete THE OZONE LAYER; AND OTHER TREATIES: TREATY DOC. 103-8, CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION; TREATY DOC. 103-10, CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS

HEARING
BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
ONE HUNDRED THIRD CONGRESS
FIRST SESSION

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a very complex protocol, together with its annexes on which more than 200 species of plants and animals are listed. Due to the complexity, it was understood in some cases different treatment in parts of the Caribbean for certain species might be justified. In this regard, the executive branch intends to notify the depositary that U.S. obligations under the protocol would not apply to four species of animals listed in annex two. These include the least tern, the Audubon shearwater, certain populations of the wood stork, and certain populations of the brown pelican; and to two species listed in Annex 3: The fulvous whistling duck and wigeon grass.

We have also proposed two other reservations. Because our law limits takings of marine mammals, whereas the protocol could be read to prohibit any such taking, we propose a reservation making clear our intent to authorize any taking only consistent with the Marine Mammal Protection Act or the Endangered Species Act. I note that the reservation we propose, which is set forth in my prepared testimony, is slightly different from that contained in the Secretary of State's report on this treaty which was submitted to the Senate. We will follow up explaining this difference in a letter to the committee.

The second reservation concerns the protocol's obligations regarding environmental impact assessments. This is, of course, a very important area which I know, Mr. Chairman, you are very interested in. But the protocol language could be read as going beyond the Cartagena convention to require such assessments on strictly private projects rather than those undertaken through Government authority. Thus, our second reservation clarifies that we will comply with the protocol's requirements only to the extent that they are consistent with the convention's requirements.

Finally, we also intend to file an understanding making clear that certain exotic species found in the United States such as the Muscovy duck and the common iguana are not covered by the protocol.

Turning now to the ICCAT protocol, Article 10 of the present convention sets out a formula for calculating the budget contributions of contracting parties. This has created a problem as the very poor developing countries have been unable to meet their obligations, leading to a commission budget shortfall in the vicinity of \$700,000. ICCAT is an important regional fisheries management organization, and it is important that all relevant countries participate actively in its work. Our fishery is valued at between \$150 and \$200 million, and we need to make the commission to be effective as possible.

An amendment to the present financial structure has been negotiated which we believe fairly shares the financial burden among the parties. Its details are set out in the prepared testimony. Suffice it to say that the U.S. contribution will probably increase from about \$140,000 annually to about \$160,000 annually, but it could be less, in all events we believe it can be accommodated within the International Fisheries Commission account administered by the State Department.

I also note that at least two other countries—Spain and France—contribute more to the ICCAT budget than the United States does.

Mr. Chairman, the administration urges early advice and consent to these protocols.

I would be happy to answer any questions you might have.
[The prepared statement of Ambassador Colson follows:]

PREPARED STATEMENT OF AMBASSADOR DAVID A. COLSON

Thank you for the opportunity to discuss with you the Protocol to the International Convention for the Conservation of Atlantic Tunas (ICCAT) which would amend the Convention to modify the formula used to calculate budgetary obligations of the parties to the ICCAT. The Protocol was adopted on June 5, 1992 and was signed by the United States on October 22, 1992. The entry into force of the Protocol is essential to the long-term viability of the ICCAT Commission, and the Department strongly urges the Senate to give its advice and consent to ratification of the Protocol.

ICCAT entered into force in 1969 and provides for the establishment of a Commission to promote the conservation of tuna and tuna-like fish in the Atlantic Ocean. The present Contracting Parties are: Angola, Benin, Brazil, Canada, Cape Verde, Equatorial Guinea, France, Gabon, Ghana, Guinea, Ivory Coast, Japan, Korea, Morocco, Portugal, the Russian Federation, Sao Tome and Principe, South Africa, Spain, United States, Uruguay, and Venezuela.

The Commission has an accumulated debt of over \$700,000 due to the inability of some of its very poor member states to meet their obligations to contribute to the annual budget of the Commission. At a Conference of Plenipotentiaries of the States Party to the Convention, held in Madrid June 4-5, 1992, a Protocol was adopted which, along with a new financial contribution scheme to be set forth in the ICCAT Financial Regulations, amends the Convention in such a way as to reduce the contributions of the developing countries to make it easier for them to meet their assessments. Under the present financial scheme, member country contributions are based on tuna production and on membership on the Commission's panels, which are responsible for formulating management recommendations. The Protocol and the new financial contribution scheme will include GNP per capita as an additional element in determining the assessments, with the poorer nations responsible for a smaller percentage of the Commission's budget.

The Protocol shall enter into force after it is ratified by three-quarters of the Contracting Parties, so long as these three-quarters include all of the Parties classified by the United Nations as developed market economy countries. Thus, ratification by the United States is necessary in order for the Protocol to enter into force.

U.S. commercial and recreational fisheries on the resources covered by ICCAT are valued at approximately \$150 million annually, and it is in the U.S. interest to have ICCAT be a strong multilateral conservation institution. The Protocol amending the budget scheme is necessary to ensure the continued viability of the organization. Following entry into force of the Protocol, the annual U.S. contribution to ICCAT will increase from \$140,000 to approximately \$160,000. However, this increase will not require any additional increase in the overall budget for U.S. participation in international fisheries organizations.

Mr. Chairman, it is in the best interests of the United States to do all we can to ensure that ICCAT is an effective organization for the conservation and management of the highly migratory tuna and tuna-like resources of the Atlantic Ocean. The U.S. has valuable fisheries for species under the auspices of ICCAT, and we have as well a broader interest in ensuring that the highly migratory fisheries resources in the Atlantic Ocean are effectively conserved and managed. ICCAT is the right organization to accomplish this task. Virtually all of the countries involved in the Atlantic highly migratory fisheries are ICCAT members, and the Convention is structured to provide for the adoption of binding conservation and management measures which would apply to all relevant fisheries species throughout their migratory range. The Commission's budgetary problems need to be resolved if ICCAT is to be an effective organization. The Protocol to the Convention which is now before the Senate for its advice and consent to ratification is crucial to the long-term viability of ICCAT. We urge the Committee to support the Protocol.

The CHAIRMAN. Is there any evidence in connection with the Montreal protocol, is there much evidence to the effect that it is not being complied with now?

Mr. SMITH. On the contrary. I think that we do have a lot of evidence that the compliance is good. The chemicals in question are

being phased out at rates faster, in general, than the schedules call for in the Montreal protocol. I do not know if Mr. Seidel might want to add some detail to that.

Mr. SEIDEL. If I may, one way to confirm the fact that these chemicals are, in fact, being phased out is the actual measurements from the atmosphere. Just a few months ago an article was published in the scientific literature by some NOAA scientists which, in fact, confirmed that the rate of growth of CFC-11 and CFC-12 in the atmosphere had significantly slowed. So that is very strong confirmation, independent confirmation, of the actual reporting of data as required under the Montreal protocol by individual countries.

The CHAIRMAN. I would be interested in your assessment of our experience with the Montreal protocol, what lessons can be drawn from the process for the convention and for other treaties. In other words, can this serve as a bellringer for other treaties?

Mr. SMITH. Thank you, Mr. Chairman. I think there are many important lessons that we can learn from the Montreal protocol. The situations are different. In climate change, for example, you are dealing not with a specific class of chemicals and a limited number of producers but with a much more pervasive problem. But at the same time, in my view, it is important that the Montreal protocol has shown that it is necessary to realize you do not have all the answers the first time you take a run at one of these problems. You need to set up a procedure for coming back to it and looking at the latest science and doing it every year and making sure that if there is reason to move more rapidly that you do it. And I think that has been one of the great strengths of the Montreal protocol, and that lesson was learned in what we are doing, for example, in the climate change convention, looking at annual programs which will be subject to review. So that lesson is very important.

Another lesson that I believe is critical is the demonstrated need in dealing with this kind of global environmental problem to find a way for the developing and the developed countries to work together constructively and positively. We have done that in the Montreal protocol and it is necessary if we are really going to really come to grips with any of these broader problems.

The CHAIRMAN. Thank you. We have briefly covered, then, as I read, a rather confused agenda here, the Convention of the Limitation of International Sale of Goods, the Protocol to the Convention on Atlantic Tunas, the Protocol to the Marine Environment of the Wider Caribbean and the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, is that correct?

Mr. SMITH. Yes.

Ambassador COLSON. Yes.

The CHAIRMAN. Returning to the Protocol to the Conservation of Atlantic Tunas Convention, do you have a further statement in connection with that?

Ambassador COLSON. No, sir. I do not have an additional statement. The prepared statement goes into considerable detail on the changes in the financial regulations that are being required under this amendment. We think it is important to create a little bit of flexibility in respect of this financial burden on the developing

countries so that we can ensure their full participation in this important international organization and it really will not add any budget burden in the international fisheries account to accommodate this amendment.

The CHAIRMAN. I appreciate the desire to see our conventions commission put on sound financial basis. Nevertheless, critics might argue that the United States is just picking up the tab for Nations that do not want to pay their agreed dues. What would be your response to that criticism.

Ambassador COLSON. Mr. Chairman, I think that an examination of the developing countries that are in arrears, would find that they are some of the poorest countries in the world. Many of these are African Coastal States, and I believe that generally speaking you would find that these are not the countries that we are concerned about violating some of the rules of this organization. Those countries have paid their dues in full, and are not these small African countries that we need in the organization.

The CHAIRMAN. There will be further questions and the record will be kept open until the end of the week. I think we have covered the areas that you and Mr. Seidel, Mr. Smith, and Secretary Colson came up to be prepared for, so you might be excused now. And I believe that Mr. Borek has now joined us. Mr. Borek?

STATEMENT OF TED A. BOREK, ASSISTANT LEGAL ADVISER, DEPARTMENT OF STATE ACCOMPANIED BY: MICHAEL JAKUB, THE DIRECTOR OF SPECIAL PRODUCTS FOR THE OFFICE OF THE COORDINATOR FOR COUNTER TERRORISM AT THE DEPARTMENT OF STATE; DR. JOSEPH LANNON OF THE U.S. ARMY'S ARMAMENT RESEARCH AND DEVELOPMENT COMMAND AT PICATINNY ARSENAL, NJ; AND MR. JACK PATTERSON, THE ASSOCIATE CHIEF COUNSEL, FIREARMS AND EXPLOSIVES, OF THE BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS

Mr. BOREK. Thank you, Mr. Chairman. I wish, first of all, to express my regret for any inconvenience we may have caused the committee this morning by not being here promptly at the beginning of the hearing. There was a misunderstanding on our part, and as I say, we apologize.

The CHAIRMAN. Absolutely.

Mr. BOREK. Mr. Chairman, I want to thank you for the opportunity to appear and testify in support of the Convention on the Marking of Plastic Explosives for the Purpose of Detection. I am accompanied by Michael Jakub, the Director of Special Products for the Office of the Coordinator for Counterterrorism at the Department of State; Dr. Joseph Lannon of the U.S. Army's Armament Research and Development Command at Picatinny Arsenal, N.J.; Mr. Jack Patterson, the Associate Chief Counsel, Firearms and Explosives, of the Bureau of Alcohol, Tobacco, and Firearms.

Mr. Chairman, I have a prepared statement. If you wish, I would be happy to enter it into the record and to summarize instead.

The CHAIRMAN. It will, without objection, be inserted in the record.

Mr. BOREK. I have then, Mr. Chairman, a very brief summary statement to make.