S. HRG. 107–721

LAW ENFORCEMENT TREATIES

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

SEPTEMBER 19, 2002

Printed for the use of the Committee on Foreign Relations

Available via the World Wide Web: http://www.access.gpo.gov/congress/senate

U.S. GOVERNMENT PRINTING OFFICE

82–266 PDF WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
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LAW ENFORCEMENT TREATIES

THURSDAY, SEPTEMBER 19, 2002

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

The committee met, pursuant to notice, at 11:10 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Barbara Boxer, presiding.

Present: Senator Boxer.

Senator BOXER. The committee will come to order. Today, the Senate Foreign Relations Committee meets to review nine law enforcement treaties. These bilateral agreements include three extradition treaties between the United States and the nations of Canada, Lithuania, and Peru, five mutual U.S. assistance treaties between the United States and the nations of Belize, India, Liechtenstein, Ireland, and Sweden, and one treaty with Honduras on the return of stolen, robbed, or embezzled vehicles and aircraft.

The committee would like to welcome our witnesses joining us today, Mr. Samuel Witten, Deputy Legal Adviser at the Department of State, and Mr. Bruce Swartz, Deputy Assistant Attorney General at the Department of Justices' Criminal Division. Welcome.

In 2000, Mr. Witten and Mr. Swartz testified before the committee when it considered 20 separate law enforcement treaties. Both witnesses before us today are experts in international law enforcement, and understand the necessity and benefits of cooperation between all nations, especially at this critical time in our history. The United States has entered into more than 100 bilateral treaties, extradition treaties. These treaties are important agreements that ensure that those who commit crimes in the United States cannot flee to other nations to escape justice and punishment.

I want to take a moment to clarify the need for a second extradition treaty with Canada. An important reason is to incorporate a temporary surrender mechanism into the current agreement between our two nations. As stated in the President's letter of submittal, this has become a standard provision in recent bilateral treaties, and allows for an extraditable person to stand trial while they are still serving sentences in another State.

The other two extradition treaties with Peru and Lithuania replace treaties signed in 1899 and 1924 respectively. I think the time has come to do this. In each of the new treaties before us today, extraditable offenses are determined by the method of dual criminality. Dual criminality covers offenses that are punishable by

imprisonment of at least 1 year by both the requesting State and the requested State. This is an improvement over the list treaties of the past, which simply listed covered crimes.

A second type of treaty before us today, mutual legal assistance treaties [MLATs], are designed to enhance cooperation between countries in the area of law enforcement through the sharing of evidence, information, and other assistance. The United States has entered into these treaties with more than 50 countries. The committee has heard concerns about the administration's proposal to enter into a mutual legal assistance treaty with Sweden because of that nation's unwillingness to fully comply with the Hague Treaty on International Abduction.

I understand these serious concerns. In fact, in 1998, I intervened on behalf of a California father who had a son abducted to Sweden. I hope that our witnesses will be able to address some of these concerns during the hearing.

Finally, the committee will also be considering a treaty with Honduras on the return of stolen vehicles, which addresses this growing international problem.

So I want to thank you for being here, and I would ask Mr. Witten, would you like to start?

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

Mr. WITTEN. Thank you, Senator.

Madam Chairman, with your permission, I will submit the full statement for the record and just summarize several key points. The Department of State greatly appreciates the opportunity to move toward ratification of these important treaties. I will focus on the extradition treaties and protocol and the stolen vehicle treaty, and Mr. Swartz will focus on the mutual legal assistance treaties.

The growth in transnational criminal activity, especially terrorism, violent crime, drug trafficking, arms trafficking, trafficking in persons, the laundering of proceeds of criminal activity, including terrorist financing, organized crime, and corruption generally has confirmed the need for increased international law enforcement cooperation. The treaties before the Senate Foreign Relations Committee are essential tools in that effort.

I will turn first to the extradition treaties. The two new treaties and one protocol pending before the committee will update our existing treaty relationships with two law enforcement partners and create a new treaty relationship with one partner, Canada, by way of updating the underlying treaty and protocol between the United States and Canada. This is part of the administration's ongoing program to review and revise older extradition treaty relationships, many of which are seriously outdated and do not include many modern crimes or modern procedures.

The new extradition treaty with Peru will replace an outdated treaty signed in 1899. The new treaty represents a major step forward in law enforcement cooperation between our two countries. It obligates each country to extradite its own nationals, which is a high priority for U.S. law enforcement authorities. For many years, Peruvian law prohibited the extradition of Peruvian nationals.

Second, the new treaty will replace the old list of extraditable offenses with the modern dual criminality approach. Extraditable offenses are defined as those punishable under the laws in both countries by a sentence of more than one year or a more severe penalty. This modern approach allows extradition for a broader range of offenses, and encompasses new crimes such as cyber crime as they develop in the two countries, without having to amend the treaty.

The new treaty with Lithuania is the first such treaty concluded with one of the Baltic States since the dissolution of the Soviet Union a decade ago. The new extradition treaty and an MLAT with Lithuania that entered into force in 1999 together constitute a fully modernized bilateral law enforcement relationship between the United States and Lithuania that will be particularly valuable in combatting organized crime.

Like the Peru treaty, the treaty with Lithuania contains an obligation on each party to extradite nationals to face justice in each other's courts, thereby overcoming the preexisting bar in Lithuania's criminal code. Lithuania is to be commended for becoming the most recent European country to recognize that the time has come to remove this obstacle in extradition relations with the United States. The protocol to the extradition treaty with Canada, as you mentioned, Senator, allows for the temporary surrender of persons to stand trial in one State while still serving a sentence in the other State. My prepared testimony will give more details, and I will not repeat it here.

And finally, Madam Chairman, the stolen vehicle treaty with Honduras is substantially the same as the five similar stolen vehicle treaties this committee approved 2 years ago in October 2000. We had hoped to include the Honduras treaty in that group of treaties, but its negotiation had not been completed in time, and so it is a stand-alone treaty substantially identical to those that have previously been approved by the committee.

The U.S. insurance industry strongly supports these treaties, since U.S. insurers are typically subrogated to the ownership interests of U.S. citizens or businesses whose vehicles have been stolen and taken overseas. Insurance industry representatives have informed us the stolen vehicle treaties provide discernible improvements in the cooperation of foreign authorities. The treaty should significantly improve and facilitate the return of U.S. vehicles from Honduras.

Thank you, Madam Chairman. I will be pleased to answer any questions.

[The prepared statement of Mr. Witten follows:]

PREPARED STATEMENT OF SAMUEL M. WITTEN, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE

Madam Chairman and Members of the Committee:

I am pleased to appear before you today to testify in support of nine new treaties for international law enforcement cooperation, including a protocol to the U.S.-Canada Extradition Treaty. The treaties, which have been transmitted to the Senate for advice and consent to ratification, fall into three categories:

- extradition treaties with Lithuania and Peru and a Second Protocol amending the U.S.-Canada Extradition Treaty;
- mutual legal assistance treaties—or "MLATs"—with Belize, India, Ireland, Liechtenstein and Sweden;

• a treaty for the return of stolen vehicles and aircraft with Honduras.

The Department of State greatly appreciates this opportunity to move toward ratification of these important assistance treaties first, followed by the stolen vehicle and aircraft treaty.

The growth in transborder criminal activity, especially terrorism, violent crime, drug trafficking, arms trafficking, trafficking in persons, the laundering of proceeds of criminal activity, including terrorist financing, organized crime and corruption, generally has confirmed the need for increased international law enforcement cooperation. Extradition treaties and MLATs are essential tools in that effort.

The negotiation of new extradition and mutual legal assistance treaties is an important part of the Administration's many efforts to address international crime, and in particular the heightened incidents of international terrorism. One important measure to better address this threat is to enhance the ability of U.S. law enforcement officials to cooperate effectively with their overseas counterparts in investigating and prosecuting international criminal cases. Replacing outdated extradition treaties with modern ones and negotiating such treaties with new partners is necessary to create a seamless web of mutual obligations to facilitate the prompt location, arrest and extradition of international fugitives. Similarly, mutual legal assistance treaties are needed to provide witness testimony, records and other evidence in a form admissible in criminal prosecutions. The instruments before you today will be important tools in achieving this goal.

EXTRADITION TREATIES

I will first address the pending extradition treaties. As you know, under U.S. law, fugitives can only be extradited from the United States pursuant to authorization granted by statute or treaty. The two new treaties and one protocol pending before the Committee will update our existing treaty relationships with two law enforcement partners and create a new treaty relationship with one partner. This is part of the Administration's ongoing program to review and revise older extradition treaty relationships, many of which are seriously outdated and do not include many modern crimes or modern procedures.

The new extradition treaty with Peru, signed at Lima July 26, 2001, will replace an outdated treaty signed in 1899. The new treaty represents a major step forward in law enforcement cooperation between the two countries. Certain features of the treaty are worth noting. First, the new treaty obligates each country to extradite its own nationals, a high priority for U.S. law enforcement authorities. For many years, Peruvian law prohibited the extradition of Peruvian nationals. Second, the new treaty replaces the old "list" of extraditable offenses with the modern "dual criminality" approach. Extraditable offenses are defined as those punishable under the laws in both countries by a sentence of more than one year or a more severe penalty. This modern approach allows extradition for a broader range of offenses and encompasses new ones, e.g., cyber crime, as they develop in the two countries, without having to amend the treaty.

The new extradition treaty with Lithuania, signed in October, 2001, is the first such treaty concluded with one of the Baltic states since the dissolution of the Soviet Union a decade ago. The new extradition treaty, and an MLAT with Lithuania that entered into force in 1999, together constitute a fully-modernized bilateral law enforcement relationship that will be particularly valuable in combating organized crime.

Like the Peru treaty, the new treaty with Lithuania contains an obligation to extradite nationals to face justice in each other's courts, thereby overcoming the preexisting bar in Lithuania's criminal code. Lithuania is to be commended for becoming the most recent European country to recognize that the time has come to remove this historic obstacle in extradition relations with the United States.

The second protocol to the extradition treaty with Canada, signed at Ottawa January 12, 2001, allows for the temporary surrender of persons to stand trial in one State while still serving a sentence in the other State. This mechanism can be an important law enforcement tool in cases where an individual has committed serious crimes in both countries. Temporary surrender allows for the prompt trial of an accused person while witnesses and evidence are still available. Such a mechanism has become a standard feature in recent U.S. bilateral extradition treaties, and will be a useful addition to the 1971 treaty with Canada and the 1988 protocol, which addresses other issues. The second protocol will also streamline authentication requirements to take advantage of changes in Canadian law regarding the admissibility of extradition documents.

MLATS

Also before you today are five mutual legal assistance treaties. The MLATs with Ireland and Sweden, both signed in 2001, are standard in content. They reflect the importance of a modern, treaty-based framework for mutual legal assistance with important West European partners. With these treaties the United States will have MLATs in place with 11 of the 15 member states of the European Union. The MLAT with India, which is also standard in content, will improve our ability to cooperate in law enforcement matters with that country, and will complement the new extradition treaty we brought into force with India in 1999.

The MLAT with Liechtenstein, signed this summer, represents the first ever concluded by that country. Conclusion of this treaty is a significant step by Liechtenstein, a bank secrecy jurisdiction, to improve its cooperation with foreign criminal tax investigations and prosecutions. Through this treaty, Liechtenstein has for the first time agreed to provide a foreign country with assistance in pursuing tax fraud offenses. An exchange of diplomatic notes forming a part of the treaty makes clear that assistance also would be made available to U.S. authorities for conduct that would be considered tax evasion under U.S. law.

The MLAT with Belize, signed in 2000, together with the new extradition treaty also signed that year, represents the culmination of our efforts to modernize law enforcement treaty relations with this Central American country. Belize, like Liechtenstein, is an off-shore financial jurisdiction. The treaty includes an exchange of diplomatic notes reflecting the Parties' understanding that assistance includes criminal tax matters. This treaty closely resembles the seven MLATs concluded in the late 1990's with the English-speaking countries of the Eastern Caribbean, with which Belize shares a British legal heritage.

STOLEN VEHICLE TREATY

The stolen vehicle treaty with Honduras is substantially the same as the five similar stolen vehicle treaties approved by this Committee two years ago in October 2000. Its negotiation had not yet been completed when those treaties—with Belize, Costa Rica, the Dominican Republic, Guatemala and Panama—were approved, so it could not be considered at that time.

Like those treaties, the Honduras treaty establishes procedures that can be used for the recovery and return of vehicles that are documented in the territory of one party, stolen within its territory or from one of its nationals, and found in the territory of the other party. Like the parallel treaties already in force with Mexico, Costa Rica, Guatemala, and Panama, the Honduran treaty also provides for the return of stolen aircraft.

The U.S. insurance industry strongly supports these treaties, since U.S. insurers are typically subrogated to the ownership interests of U.S. citizens or businesses whose vehicles have been stolen and taken overseas. In fact, insurance industry representatives have informed us that these stolen vehicle treaties provide discernible improvements in the cooperation of the foreign authorities. The treaty should significantly improve and facilitate the return of U.S. vehicles from Honduras.

Thank you, Madam Chairman. I will be pleased to answer any questions you or other members of the Committee may have.

Senator BOXER. Thank you, Mr. Witten.

Mr. Swartz.

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

Mr. SWARTZ. Thank you, Madam Chairman. I am pleased to appear today before the committee to present the views of the Department of State with regard to the nine law enforcement treaties that have been referred to the committee.

The extradition and mutual legal assistance agreements that are before the committee today represent the next stage in the ongoing creation of our country's international law enforcement network with regard to agreements with our foreign counterparts. The importance of that network has been once again demonstrated in the months since September 11, 2001. Our extradition and mutual

legal assistance agreements have played a vital role in the war on terrorism. They have played an equally important role in our efforts to fight international organize crime, to deal with complex financial fraud, and to address trafficking in persons and in narcotics.

With the committee's permission, I will submit my full statement for the record and simply address some of the features of mutual legal assistance treaties that are before the committee today.

Senator BOXER. Without objection, so ordered.

Mr. SWARTZ. Thank you. The committee is fully aware from its past experience of the benefits that mutual legal assistance treaties provide over other forms of formal legal assistance. Those benefits include a more efficient approach, certainly more efficient than letters rogatory, since they do not require court orders. They allow us to process these requests not through diplomatic channels but from central authority to central authority.

They also create a binding obligation to provide assistance if the terms of the treaty are met. They allow assistance in an investigatory stage, which therefore advances our interest in being able to move quickly with regard to criminal cases. They allow us to pierce bank secrecy. They establish a framework for addressing a number of issues, including admissibility of evidence, confrontation of witnesses, foreign depositions, and confidentiality. Finally, they establish a framework for freezing and seizing and forfeiting criminally derived assets.

I would like to briefly look at some of the features of the treaties that are before us today with regard to mutual legal assistance. The Belize treaty creates a now fully modern law enforcement relationship with Belize, following the entering into force of our extradition treaty with Belize, that will allow us to combat narcotics trafficking. It will also allow us to engage in freezing and seizure of assets with regard to narcotics trafficking and other offenses.

Since Belize is also a significant off-shore financial jurisdiction, the mutual legal assistance treaty is important with regard to the ability to deal with financial crimes, including tax matters.

India. The MLAT with India will allow us to create a modern law enforcement relationship thanks to entry into force of our extradition treaty. The India treaty, as itself makes clear in its terms, allows us to deal with terrorism, narcotics, economic crime, and organized crime offenses in addition to other offenses.

The Ireland mutual legal assistance treaty will allow us to enhance our network of treaties with the EU countries. It will allow us to deal with money laundering, international terrorism, and organized crime.

Liechtenstein represents an important breakthrough with regard to our ability to pierce bank secrecy. Liechtenstein is, of course, a major off-shore financial center. This is the first mutual legal assistance treaty that Liechtenstein has entered into, and as a result of this Liechtenstein will provide assistance to the United States with regard to tax law offenses, including tax evasion.

Sweden, which, Madam Chairman, you have referred to, is another important EU State. We recognize, of course, the issues that you have suggested with regard to parental abduction, and would be glad to address those at greater length, but we would like to

point out that this treaty will allow us assistance in a number of matters, including matters involving terrorism, fraud, tax, computer crime, and money laundering.

We appreciate the committee's support over the years to strengthen and enlarge this framework of international agreements. This is an important next step in going forward with these treaties, and we join with our colleagues in the Department of State in urging the prompt and favorable consideration of these.

Thank you again.

[The prepared statement of Mr. Swartz follows:]

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

Madam Chairman and members of the Committee, I am pleased to appear before you today to present the views of the Department of Justice on nine law enforcement treaties, including one protocol, that have been referred to the Committee. Each of these instruments will advance the law enforcement interests of the United States. They are of particular importance as we face an increasing need for cooperation and assistance from the international community in the investigation of crimes relating to terrorism and other serious violent activity, trafficking in persons and drugs, and large-scale financial offenses.

Two of the treaties—with Lithuania and Peru—replace old, outdated extradition treaties. The second protocol to the extradition treaty between the United States and Canada amends the terms of the existing treaty. Five treaties are bilateral mutual legal assistance treaties ("MLATs")—with Belize, India, Ireland, Liechtenstein and Sweden—each of which is the first of its kind to be negotiated between the United States and the treaty partner. The final instrument is a treaty for the return of stolen vehicles and aircraft with Honduras.

The decision to proceed with the negotiation of law enforcement treaties such as these is made by the Departments of State and Justice, and reflects our international law enforcement priorities. The Department of Justice participated in the negotiation of these extradition and mutual legal assistance treaties, and we join the Department of State today in urging the Committee to report favorably to the Senate and recommend its advice and consent to ratification of all of the treaties.

The Departments of Justice and State have prepared and submitted to the Committee technical analyses of seven of the treaties. In my testimony today, I will concentrate on why these treaties are important for United States law enforcement agencies engaged in investigating and prosecuting serious offenses.

THE EXTRADITION TREATIES AND PROTOCOL

Modernizing our extradition treaties and, where appropriate, establishing new extradition relationships, are among the top priorities of the Justice Department's international law enforcement efforts.

The two extradition treaties and one protocol being considered by the Committee replace or update the following, existing treaties: the 1924 treaty and the 1934 supplement that currently govern our extradition relations with Lithuania; the U.S.-Peru extradition treaty of 1899; and the 1971 extradition treaty between the U.S. and Canada, as amended by an exchange of notes of June 28 and July 9, 1974, and a first protocol in 1988. Each of the new instruments contains features we regularly seek in order to establish a modern, effective extradition relationship.

Most notably, the new extradition treaties with Lithuania and Peru establish that extradition shall not be refused on the basis of the nationality of the person sought. This provision overcomes legal barriers to the extradition of Lithuanian and Peruvian citizens in the respective, existing treaties, and provides an affirmative obligation for the extradition of nationals. Non-extradition of nationals remains among the most serious obstacles to bringing fugitives to justice, and so whenever possible, we include in our treaties an explicit obligation to extradite nationals. Most countries with a common law tradition, including the United States, extradite their citizens, provided there is a treaty in force and evidence to support the criminal charges. Many countries with a civil law tradition, however, historically have refused to extradite their nationals. In this regard, the treaty with Peru continues the modern trend in Latin American countries of abandoning the bar on extradition of nationals and denying safe haven to fugitives. Peru omitted this bar when it updated its extradition law in 1987, but neither the new law nor the 1899 extradition treaty pro-

vides any affirmative basis for the extradition of Peruvian nationals. That basis is now contained in the new extradition treaty. Similarly, the new United States-Lithuania treaty enables Lithuania to extradite its citizens.

Both extradition treaties contain features that are standard to our modern extradition practice. Each is a "dual criminality" treaty, carrying the obligation to extradite for all offenses that are punishable in both treaty partners' countries by imprisonment for a period of more than one year, or by a more severe penalty. This approach replaces the outmoded "list" regime of our current treaties with Lithuania and Peru, which limits extradition to those crimes enumerated in the treaties. Dual criminality treaties carry the advantage of reaching the broadest range of felony offense behavior, without requiring the repeated updating of the treaty as new forms of criminality emerge. This is particularly important as United States authorities investigate and prosecute crimes related to terrorism, trafficking in persons, money laundering, computer crime and other recent trends.

The treaties with Lithuania and Peru incorporate a variety of procedural improvements in extradition practice. Both clarify the procedures for "provisional arrest," the process by which a fugitive can be detained immediately in exigent circumstances, for a specified period of time, pending the preparation and submission of formal documents in support of extradition.

Both treaties contain "temporary surrender" provisions, which allow a person found extraditable, but who is already in custody in the requested State on another charge, to be temporarily transferred to the requesting State for purposes of trial. This provision is designed to overcome the problem of delaying extradition while a fugitive is serving a sentence abroad, during which time the case underlying the extradition request may become stale—or completely unviable—because of the unavailability of witnesses or other evidentiary difficulties.

The treaties permit an individual to waive extradition or otherwise agree to immediate surrender to the requesting State, thereby expediting the extradition process in uncontested cases. Both treaties contemplate extradition for extraterritorial offenses, which is particularly important to the United States in terrorism and drug trafficking cases. The two treaties are explicitly retroactive, so their terms also will apply to crimes committed before the treaties entered into force.

Both treaties give the requested State the standard discretion to refuse extradition in cases in which the offense for which extradition is sought is punishable by death in the requesting State, but is not punishable by such penalty in the requested State, unless the requesting State provides an assurance that the person sought will not be executed.

The treaties with Peru and Lithuania contain standard language concerning the political offense exception to extradition. Both treaties establish that a murder or other violent crime against a Head of State of the requesting or requested State, or a member of that person's family, shall not constitute a political offense. Likewise, an offense for which both States are obligated pursuant to a multilateral international agreement to extradite the person sought or submit the case to their competent authorities for decision as to prosecution is not a political offense. The treaty with Lithuania includes additional crimes of violence that shall not be considered political offenses and is similar to several other modern treaties.

The second protocol amending the United States-Canada extradition treaty is very limited in scope. It authorizes the temporary extradition to the requesting State of individuals charged with crimes there who are serving sentences in the requested State, and contains modifications to the authentication requirements for U.S. documents submitted in support of extradition from Canada. It serves as a supplement to, and is incorporated as a part of, the existing extradition treaty, which we already have modernized in other respects, through the first protocol. The second protocol takes advantage of extradition legislation that Canada enacted in 1999, including a provision on temporary surrender. Absent the authorization provided by the second protocol, surrender through the extradition process of persons already convicted and sentenced in the country from which extradition is sought must generally be deferred until the completion of their sentence, by which time the evidence in the other country may no longer be compelling or available. Pursuant to the second protocol, such individuals, upon the granting of requests for their extradition, can be surrendered temporarily to the requesting State for purposes of immediate prosecution and then returned to the requested State for the completion of their original sentences. Given the high volume of extradition work between the United States and Canada, we anticipate that the ability to grant temporary surrender will facilitate the efficient administration of justice on both sides of the border.

The second protocol also makes several technical changes that will streamline the extradition treaty's authentication provisions, which govern the admissibility of extradition documents in the courts of the requested State. These changes also came

about as a result of Canada's amendments to its extradition legislation, and accrue to the benefit of the United States. The protocol eliminates the need for Department of State and diplomatic or consular authentication for documents submitted in support of U.S. extradition requests. Instead, the protocol allows for a judicial authority or prosecutor in the United States to provide the necessary certification when the person is sought for prosecution. When an individual already has been convicted, documents supporting the U.S. extradition request may be certified by a judicial, correctional or prosecuting authority. Although the protocol retains the existing authentication provisions for extradition documents from Canada, it provides the alternative that documents may be certified or authenticated in any other manner accepted by the law of the requested State. This alternative enables both countries to take advantage of any future changes to their laws.

THE MUTUAL LEGAL ASSISTANCE TREATIES

The five MLATs before this Committee will expand the United States' complement of law enforcement mechanisms designed to strengthen our ability to obtain evidence and other forms of assistance from overseas in support of our criminal investigations and prosecutions. I realize the Committee has become acquainted with the significant benefits MLATs provide to the international law enforcement community since the first such treaty came into force in 1977. Accordingly, I will briefly review only some of those benefits in this statement.

Our practical experience with MLATs over the years has demonstrated that they are far more efficient than other formal means of international legal assistance, specifically including letters rogatory, as MLAT requests do not require a court order and they are not routed through diplomatic channels. MLATs establish a direct channel of communication between Central Authorities—usually contained within the respective treaty partners' Departments of Justice—and they confer a binding legal obligation to provide assistance if the requirements of the treaty are met. MLATs are broad in scope, and provide for assistance at the investigatory stage, usually without the requirement of dual criminality. These treaties pierce bank secrecy and provide a mechanism for addressing legal and policy issues such as confidentiality, admissibility requirements for evidence, allocation of costs, confrontation of witnesses at foreign depositions and custodial transfer of witnesses. Significantly, MLATs provide a framework for cooperating in the tracing, seizure and forfeiture of criminally-derived assets.

Despite these and other benefits, we realize that MLATs in themselves are not the solution to all aspects of law enforcement cooperation. They are similar to extradition treaties in that their success depends on our ability to implement them effectively, combining comprehensive and updated legal provisions with the competence and political will of our treaty partners. Our recognition of the importance of effective treaty implementation led to the development of a consultation clause that we include in our MLATs, to ensure that we will have regular dialogues with our treaty partners on the handling of our cases.

While all the MLATs before the Committee share certain standard features, the specific provisions vary to some extent. The technical analyses and transmittal packages explain these variations, which are the result of negotiations over a period of years with a range of countries, each of which has a different legal system and each of which represents a different law enforcement priority for the United States.

I would like to highlight how each of the MLATs before the Committee reflects our international law enforcement priorities:

- *Belize MLAT:* The MLAT will join the new extradition treaty with Belize to form the basis of a modern law enforcement relationship between our two countries. Both U.S. and Belizean negotiators viewed the MLAT as an instrument to enhance efforts to combat narcotics trafficking, which efforts will be carried out, in part, through assistance in freezing and seizing criminally-derived assets. In addition, as Belize is an off-shore financial jurisdiction, an exchange of diplomatic notes accompanies the treaty to memorialize the parties' intent to cover assistance in criminal tax matters.
- *India MLAT:* The MLAT with India will, similarly, join with a new extradition treaty to update and enhance our law enforcement relationship. We expect the MLAT to be of particular assistance in investigating and prosecuting criminal matters relating to terrorism, narcotics trafficking, economic crimes and organized crime.
- *Ireland MLAT:* The Ireland MLAT will enhance our network of such treaties with member states of the European Union and will facilitate our requests to Ireland for assistance in a variety of cases, including those related to money laundering, transnational terrorism and organized crime.

- *Liechtenstein MLAT:* This treaty represents an important breakthrough in our ability to pierce bank secrecy laws in Liechtenstein, a major off-shore financial center, and is the first MLAT for Liechtenstein. Liechtenstein has agreed to provide assistance in investigations and prosecutions involving tax fraud offenses and, through an exchange of notes accompanying the treaty, conduct which is deemed tax evasion under U.S. law clearly will be covered.
- *Sweden MLAT:* This MLAT will facilitate our requests to Sweden—another European Union state—for assistance in a variety of criminal cases, including those related to terrorism, fraud, tax, computer crime, money laundering and homicide.

THE STOLEN VEHICLE TREATY

The Department of Justice supports the stolen vehicle treaty with Honduras, which is similar to the other such treaties in force with Belize, the Dominican Republic, Mexico and Panama. I endorse Mr. Witten's testimony on behalf of this treaty, and join him in urging the Committee to recommend its advice and consent to ratification.

CONCLUSION

We appreciate the Committee's support in our efforts over the years to strengthen and enlarge the framework of treaties that assist us in combating international crime. We at the Department of Justice view extradition and mutual legal assistance treaties as particularly useful tools in this regard. In addition, as our network of international law enforcement treaties has grown in recent years, we have focused increasing efforts on implementing our existing treaties, with a view to making them as effective as possible in the investigation and prosecution of our most serious crimes, including those related to terrorism. We join our colleagues from the Department of State in urging the prompt and favorable consideration of these treaties, to enhance our ability to fight transnational crime. I will be pleased to respond to any questions the Committee may have.

Senator BOXER. Thank you very much, Mr. Witten and Mr. Swartz. Having you there is a comfort to us, because you clearly know what you are doing, and that is a comfort to us.

Here is what I am going to do. I have a number of questions, and I am going to tell you what they are and then I am going to submit them for the record in the hopes that—I do not think any of them will stump you, but I need to have the answers in writing before we take this to the committee, so I am hoping you will be able to get to these immediately and then if you have any problem with that, let us know, because we want to get these through as much as you do, so I am going to kind of lay out the questions in an abbreviated form, but you will get them all in writing, so not to worry, and I am going to ask you about the one issue about Sweden here, but on the extradition treaties, does the dual criminality provision in the treaties before us today ensure that child abduction is a covered crime? Is the United States making an effort to update aged extradition treaties with those nations where child abduction problems are most common?

The second question, if confidence among the Peruvian public and the judiciary is low, why should the United States have confidence that a subject extradited to Peru will have a fair trial? Doesn't Peru's appeal of the commission's decision to the Inter-American Court show an unwillingness to acknowledge problems with its judicial system?

The third question deals with a treaty that is not before us today, but I recently received a letter from a district attorney in California who was concerned about a decision by the Mexican Supreme Court that has resulted in the refusal to extradite Mexican

nationals charged with serious offenses that carry a potential life sentence.

On October 2, 2001, Mexico's Supreme Court of Justice ruled that in order for any extradition to proceed, the requesting State must provide assurances that life imprisonment will not be imposed. The ruling has the potential to impact all extradition cases between the United States and Mexico, and this seriously and severely impacts my State of California. Is this a problem that is limited to Mexico, or the beginning of a larger trend?

And while, again, the treaty is not before us today, I will submit the letter from my California constituent for the record and let you see it, and ask that you get back to me and my constituent about this serious concern.

[The letter referred to is on page 29.]

Senator BOXER. A fourth question, are you aware of any significant outstanding cases pending between the United States and either Lithuania or Peru which would be impacted by the approval of either of these extradition treaties?

Then on the mutual legal assistance treaties, this is the one I am going to ask you to answer now, but the other questions you will receive in written form.

As I mentioned in my opening statement, serious concerns have been raised about Sweden's failure to meet its obligations under the Hague Convention on the Civil Aspects of International Child Abduction. In 1998, Paul Marikovich, a constituent of mine from California, testified before this committee on the issue of parental abduction. He spoke about his own painful and personal experience of having a son abducted and taken to Sweden by his ex-wife.

While father and son are now together, it is not because of any assistance provided by the Swedish Government, that actually did nothing to find the abducted child or the kidnaper. According to the most recent report to Congress, "the Department of State remains concerned about the commitment of Swedish authorities to act promptly to locate children and to force return on access orders issued under the convention."

Now, I also have another statement I am going to place in the record without objection. A gentleman from Alexandria, Virginia, writes regarding a request for denial of Senate advice and consent to ratification of the Swedish mutual legal assistance treaty, and he basically says: this gentleman has had a painful situation, as well as a child abducted, and it is not resolved, and he goes on for quite a while, and again I would ask that you write to him and let us know.

[The statement referred to is on page 32.]

Senator BOXER. In any event, why should the United States enter into this mutual legal assistance treaty relationship with Sweden when it is not living up to its commitments under other treaties? I think that is a fair question for my constituent to ask as well as this gentleman. I would ask it on their behalf.

Mr. SWARTZ. Thank you, Madam Chairman. We certainly understand the importance of asking this question and, as I mentioned in my opening statement, we certainly recognize the seriousness of this issue. My colleague, Mr. Witten, will address a number of

steps that the State Department is taking to deal with the child abduction issue.

From the perspective of the Department of Justice, child abduction is a serious problem. We, in fact, did seek mutual legal assistance from Sweden with regard to the case of your constituent, and were active in trying to pursue that matter and, of course, as you know, there was a criminal prosecution as well in connection with that case.

We believe, however, from the Department of Justice perspective that we look at the broader picture with regard both to the child abduction issue as it plays out in other countries and the mutual legal assistance treaty involving Sweden. It, of course, is well-known that Sweden is not the only country, unfortunately, in which there have been problems in dealing with child abduction matters. These are always difficult and very painful cases.

We take an interest in trying to ensure that proper steps are taken, but the sad fact remains that a number of countries, including countries we have treaty relationships with, have presented issues in this regard. Sweden is not the only country, and the treaty, of course, extends far beyond child abduction issues. Its importance to the United States that it runs from organized crime to money laundering to, more recently, terrorism.

Sweden, of course, as you know, Madam Chairman, has taken into custody an individual who tried to board a plane with a weapon. It is that kind of case, kind of situation we have had with terrorism financing, that we believe makes it particularly important to move forward now, while at the same time seeking to ensure that we push Sweden and all other countries to comply with the Hague Convention.

Senator BOXER. Thank you.

Mr. Witten.

Mr. WITTEN. Thank you, Senator. First, the State Department fully shares the comments made by Mr. Swartz about the importance of the treaty. The treaty is of general and broad application, and has been sought by the Justice Department for some years. We are very conscious, though, of the concerns that you stated back in 1998, when Senator Helms raised similar questions. We spent a fair amount of time with the committee and the committee staff discussing these issues, and we continue to work with Sweden and other countries to improve their compliance with the Hague Convention, notwithstanding certain longstanding cases, including the ones that you mentioned that continue to be of concern.

Sweden's performance is steadily improving. More needs to be done. Its current performance exceeds or is similar to other European countries, and is similar to the performance of the United States vis-a-vis Sweden in these cases.

The United States, through the Consular Affairs Bureau and through our Childrens Issues Office, works closely with American parents, does what it can to assist them in pursuit of these cases. As Mr. Swartz' comments reflect, this is an issue that the State Department works on both on its own and with the Justice Department in connection with the criminal aspects of child abduction, be they extradition matters or framework agreements like the Sweden MLAT that, in addition to applying to all of the crimes that Mr.

Swartz mentioned, could be used to seek assistance in connection with the criminal aspects of parental child abduction. As a result, there are distinct advantages to going forward with the treaty.

We will be pleased to lay this out in greater detail for you and the committee in writing when we get your written questions, but that is the thrust of what we will say.

Senator BOXER. Let me just respond to you and say that I think we need to speak out a little stronger on this issue, if I might say. This is not just a criticism of this administration. My criticism goes way back, it does not matter, and I think that there is a lot of bigger fish to fry in your minds. You said that, Mr. Swartz. I understand it, but let me just say—I want to read to you from this letter from Thomas Johnson. He says, "it has been my privilege to serve my country for more than 33 years of active and reserve Marine Corps duty, retiring as a colonel in 1999, and for more than 23 years with the Department of State, primarily as an attorney, including extensive experience concerning law enforcement treaties."

He says, "I have no complaints about the manner in which I have been treated and, in fact, owe the Marine Corps far more in many ways than I can ever repay. As you undoubtedly know, one point emphasized from the outset at Quantico and the recruit depots is that marines never leave anyone behind, including the bodies of our dead."

Not surprisingly, therefore, he writes, "I have major complaints about the manner in which the executive branch, despite the absence of any possible justification or excuse, has badly let down and then abandoned thousands of our youngest citizens who have been abducted and retained abroad and are, of course, victims of Federal and State felonies. This abandonment includes the State Department practice of, 'writing off' American children by asserting an American child's case is resolved—for purposes of the annual Hague child abduction convention report to Congress—as soon as the foreign country concerned definitively refuses to return the child.

"The many years of congressional efforts to help abducted American children and their left-behind parents have, in varying degrees, been opposed, weakened, undermined, ignored, or violated.

"As all of us were forcefully reminded last week, there is probably no greater loss than the loss of a child. We all know there are many ways to lose a child. None of them is acceptable . . ." and this whole letter will be included in the record.

I have to say, my experience tells me—and again, this is not a matter of just this administration in particular—that other issues trump this issue, and it is very disturbing. What I hope that you can do before we vote on this treaty is to give me, as you answer these questions in writing, the steps the State Department is taking today to resolve these issues, and I would also like to see us address this on a very high level to the Government of Sweden and all other governments that are known to sweep these issues under the rug, despite promises to the contrary, and I understand what you are saying to me, but I translate it as, this is not as important as other things.

Now, my view is that we need to fight for this a little more than we do, and we need to call attention to it, because my view is that

world opinion is important to these countries, and if we just try to be very quiet about this—it is like my efforts when I worked to free refuseniks in the old Soviet Union.

I was so afraid in the beginning. I said, well, if I mention their names, if I highlight them, won't they be jeopardized, and I was told by the people who knew best, the people who knew how to get these people out, shine the light of day, so we need to shine the light of truth on these cases, despite the fact that we may embarrass some of our friends. It is not right, and God knows, I have seen too many of these things, and we mourn for our children that are abducted and lost, and kidnaped here. Why don't we mourn for the ones that wind up over there?

So I would like to see in your answer some very concrete steps that you plan to take, and if we are not taking them, that you will consider taking, that otherwise we are going to have to pass some laws, and it is going to get confused here, so I would rather see it done through your good offices than we get into some legislative infrastructure.

Senator Helms and others are very concerned about this matter, so we have concerns across party lines here, which I think is an indication to you that this is not something we want to sweep under the rug.

Would you like to respond?

Mr. WITTEN. Yes, Senator. I will address your comments, and then I think my colleague, Bruce Swartz will as well.

First, we will certainly answer in detail the questions you have raised and the concerns. The issue of parental child abduction does not get swept under the rug. It is true that it is one of a number of issues, but it is a very high priority for us. We have worked with respect to Sweden, and the Swedish Central Authority has recently arranged the return of an abducted child, and we will lay that out for you. While progress has been made, the State Department stands firm and strong in its commitment to help families, and we will continue to do so.

We will lay this out in detail for you, Senator, but I just want to be sure you understand that this is not being swept under the rug by anybody. We are totally committed to this issue.

Senator BOXER. I am glad to hear that.

Mr. SWARTZ. And Madam Chairman, if I may for a moment, I certainly did not want to leave the impression by my testimony that the Department of Justice believes that other law enforcement considerations trump this important issue of child abduction. It is the case that we do feel strongly about those abduction matters. We work closely with the State Department in that regard.

The mutual legal assistance treaty with Sweden is important for the American public for a variety of reasons. It is not being suggested that we enter into this treaty to reward Sweden. It is simply to allow us to do a better job of protecting American citizens against international terrorism.

Senator BOXER. Thank you, and I look forward to your responses in addition to this particular case, if you can, and then we will also ask you to let us know in writing how will ratification—and you have touched on this a little bit, I think, and expansion would be good. How will ratification of these and future mutual legal assist-

ance treaties help in fighting the war on terrorism? I assume it is very important. There are outstanding cases in which quick passage of these five treaties is necessary. That would be helpful, too.

In general terms, please describe the volume of requests that normally result following entry into force of an MLAT. Do the Departments of State and Justice have adequate resources to implement requests in a timely fashion, so let us know that.

And then on the stolen vehicle treaty with Honduras, what is the current state of law enforcement cooperation in general with Honduras? What has been the experience to date under the stolen vehicle treaties which entered into force since the Senate approved such treaties in 2000?

So that will be the questions that we ask you. I want to thank you both very, very much, and I really look forward to getting your answers, and will present them to Senator Biden and to our Ranking Member, Senator Helms, and hope that we can move forward with these, and at that time, if I have some good answers to this question regarding these kidnapings it would be very helpful in pushing that particular treaty forward, because I know several colleagues have concerns, but I do have a lot of faith in your expertise.

And again, I want to thank you both for being here, and this meeting stands adjourned.

[Whereupon, at 11:40 a.m., the committee adjourned, to reconvene subject to the call of the Chair.]

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD

RESPONSES FROM THE DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

Question. Are there any related exchange of notes, official communications, or statements of the negotiating delegations not submitted to the Senate with regard to any of the treaties which would provide additional clarification of the meaning of treaty terms?

Answer. No additional exchanges of notes, official communications or statements of the negotiating delegations exist that would provide additional clarification of the meaning of any of the treaties and that have not already been submitted to the Senate.

U.S.-CANADA PROTOCOL

Question. Why is the provision on crediting of sentences in new Article 7bis(3) discretionary?

Answer. The provision on crediting of sentences in Article 7bis(3) is discretionary to allow the Requested State the flexibility to accommodate different approaches, particularly as among U.S. states and between U.S. state and federal authorities.

Question. The discussion of new Article 7 bis(3) (page vi of Treaty Doc. 107–1) indicates that "credit for time served by a person surrendered to Canadian authorities may differ among U.S. state and federal authorities." Please provide some examples of such differences.

Answer. There are variations in state law with respect to credit for time served. In addition, in drafting this permissive provision, the negotiators wanted to preserve the Requesting State's flexibility to accommodate possible future changes to relevant law. For instance, there has been consideration at the federal level in the United States of a legislative change that would disallow credit against a U.S. sentence for time spent in foreign custody fighting extradition to the United States.

EXTRADITION TREATY WITH PERU

Question. Please provide the following information with regard to extradition requests by each country under the existing extradition treaty in each of the last three calendar years: the number of requests; the types of offense involved in the requests; the number of requests granted; and the number of requests denied and the stated reason for denial.

Answer. Peru made two requests in 2000, ten requests in 2001 and six requests in 2002 (year to date) in cases involving bribery, drug trafficking, embezzlement, extortion, fraud, forgery, money laundering, official corruption and theft. The United States made no requests in 2000, three requests in 2001 and one request in 2002 (year to date) in cases involving narcotics and money laundering. During this period, the United States has granted two of Peru's requests and denied 14 requests for insufficiency of the evidence or non-extraditable offenses. One case remains pending before U.S. courts and one fugitive was arrested outside the United States and returned to Peru. Peru has granted three U.S. requests (two fugitives approved for extradition are awaiting surrender, one is at large). One other fugitive that is the subject of an U.S. request is also at large. Peru denied one request (submitted in 1999) in 2002 due to expiration of the Peruvian statute of limitations for the offense charged (DUI homicide).

Question. The most recent Country Report on Human Rights Practices (2001) for Peru states that "[t]he Constitution provides for an independent judiciary; however, in practice the judiciary has been subject to interference from the executive. It is also subject to corruption and is notably inefficient. Public confidence in the judiciary remains low."

If confidence among the Peruvian public in the judiciary is low, why should the United States have confidence that a suspect extradited by the United States to Peru will receive a fair and speedy trial?

Answer. Since the downfall of the Fujimori government in November 2000, Peru has made many strides to correct deficiencies in its judicial system. At the end of 2000, Peru abolished the executive committees through which former president Fujimori had exercised control over the judiciary, restored the powers of the National Magistrates Council (CNM) to evaluate judges and prosecutors, and created transitory councils to remove corrupt judges. In late 2000, the Peruvian government established a new Pardons Commission to examine the cases of persons imprisoned for terrorism under the Fujimori government. As of October 2001, 90 persons had been released from prison. Along with over 600 persons pardoned between 1996 and 2000, a total of over 700 persons were pardoned and released after being accused unjustly of terrorism. In August 2001, President Toledo nearly doubled the salaries of tenured judges and prosecutors to make working in the judiciary more attractive and to reduce corruption incentives. Thus, while much work remains to be done, Peru is taking active steps to reform its judicial system.

Under U.S. extradition law and practice, once a fugitive has been found extraditable by a U.S. court, the Secretary of State (or Deputy Secretary) must review the case and issue a surrender warrant before that person could be extradited to Peru or any other country with which we have an extradition treaty. As part of that review and decision-making process, the Secretary takes into account any information available that may affect the defendant's ability to receive a fair trial.

Question. With regard to Article IV(5):

- please summarize the concerns of the U.S. delegation that led to the conclusion of this paragraph;
- what laws or practices in Peru does the United States consider to constitute "extraordinary laws and procedures";
- did the two sides reach a common understanding with regard to the meaning of "extraordinary criminal laws or procedures, and if so, what was it;
- did the Peruvian delegation indicate that it had any concerns about existing U.S. law or practices that it considered to constitute "extraordinary criminal laws or procedures"; and
- have there been any discussions with Peru regarding this paragraph since signature of the treaty?

Answer. This provision was included at the instance of the United States based on particular concerns at the time of the negotiations over due process issues in cases that were brought before Peru's special terrorism tribunals. During the Fujimori administration (1990–2000), military courts tried civilian (as well as military) defendants in cases of treason or aggravated terrorism. Certain procedures before those tribunals did not provide sufficient due process protection for the accused. During the negotiations, the two sides understood that the phrase "extraordinary

criminal laws or procedures" was specifically intended to refer to proceedings before Peru's special terrorism tribunals. The Peruvian delegation did not express any concerns about U.S. law or practice. Since the negotiations, the U.S. concerns have been assuaged considerably by the departure of former president Fujimori, subsequent reforms to the Peruvian legal system, and the decline in the use of such special terrorism tribunals in Peru. In fact, some cases originally tried in special terrorism tribunals have been retried recently in the civilian court system. There have not been any discussions with Peru regarding this paragraph since the treaty was signed.

Question. Article X(2) does not indicate whether a person serving in the Requested State who is temporarily surrendered to the Requesting State for prosecution in another matter will be eligible for credit for time served (as does the Canada Protocol). Why is that issue not addressed? Is such granting of credit for time served precluded?

Answer. Article X(2) of the Peru extradition treaty is similar to the temporary surrender provision in the Lithuania extradition treaty and is typical of those found in recent U.S. extradition treaties generally. The Canada Extradition Protocol specifically addresses the question of credit for time served because that was a particular concern of the Canadian delegation at the time of the negotiations. The lack of treatment of this issue in the Peru treaty or in other U.S. bilateral extradition treaties does not preclude the granting of credit by the Requested State for time served in the Requesting State.

Question. Does the use of the term "agreement" in the last sentence of Article X(2) imply that a formal agreement will be reached governing all such transfers, or are agreements negotiated in connection with each individual surrender?

Answer. The term "agreement" in this instance generally refers to informal agreements or arrangements concerning the conditions of a transfer that are made in connection with each individual surrender. Normally, such informal agreements or arrangements are made by the law enforcement authorities that have custody of the person being surrendered.

EXTRADITION TREATY WITH LITHUANIA

Question. Please provide the following information with regard to extradition requests by each country under the existing extradition treaty in each of the last three calendar years: the number of requests; the types of offense involved in the requests; the number of requests granted; the number of requests denied and the stated reason for denial.

Answer. Lithuania made two requests in 2001 and three requests in 2002 (year to date) in cases involving attempted homicide, embezzlement, fraud, forgery, narcotics and theft. The United States has not made any requests in the last three years. With respect to the requests from Lithuania, the United States has not yet granted or denied those requests.

Question. Please summarize the degree and nature of cooperation with Lithuania under the Mutual Legal Assistance Treaty with Lithuania.

Answer. Since entry into force of the MLAT with Lithuania on August 8, 1999, the U.S. Government has made four requests for assistance to Lithuania. Two requests were granted and have been fully executed. Two requests are pending. All the cases involved fraud offenses. Two cases also involved money laundering. One case also involved copyright infringement. In the cases in which Lithuania provided assistance, that assistance was timely and complete.

In the same time frame, Lithuania has submitted assistance requests to the United States in approximately 82 cases, of which 46 cases are pending. The U.S. granted complete or partial assistance in a vast majority of the closed cases. The requests arise in investigations or prosecutions for a wide range of criminal offenses, including, but not limited to: assault, homicide, narcotics trafficking, money laundering, fraud, embezzlement, extortion, computer crimes, tax offenses, weapons violations (firearms and explosives), immigration and customs violations and official corruption.

The type of assistance sought by both countries has generally involved the interview of witnesses and the production of official and business records.

Question. Article 13(1) does not indicate whether a person serving in the Requested State who is temporarily surrendered to the Requesting State for prosecution in another matter will be eligible for credit for time served (as does the Canada Protocol). Why is that issue not addressed? Is such granting of credit for time served precluded?

Answer. Article 13(1) of the Lithuania extradition treaty is similar to the temporary surrender provision in the Peru extradition treaty and is typical of those found in recent U.S. extradition treaties generally. The Canada Extradition Protocol specifically addresses the question of credit for time served because that was a particular concern of the Canadian delegation. The lack of treatment of this issue in the Lithuania treaty or in other U.S. bilateral extradition treaties does not mean that the granting of credit by a requested state for time served in the requesting state prior to temporary surrender is precluded.

MLAT WITH BELIZE

Question. Please summarize the nature and extent of law enforcement cooperation between the United States and Belize in recent years.

Answer. The current extradition treaty with Belize entered into force in March 2001. Cooperation under this treaty and its predecessor has generally been good. Since 1998, we have submitted ten extradition requests to Belize, and Belize has turned over four fugitives whose extradition we requested.

In recent years, the United States has formally (outside of police-to-police, informal channels) sought the assistance of the Government of Belize in several criminal cases involving fraud, money laundering, and narcotics trafficking. These requests have sought official/governmental records, bank records, and asset seizure.

The Department of Justice initially had problems securing bank records from Belize. The Government of Belize, through its Solicitor General, informed the Department of Justice that bank records could not be obtained in the absence of an MLAT and a change to Belize's domestic law. Since that time, the Department has developed contacts within the Central Bank of Belize who are able to obtain such authenticated records for use in U.S. criminal investigations and prosecutions.

The United States also has encountered problems trying to freeze assets in Belize due to the absence of an MLAT. Because of this problem, the Department of Justice utilized the USA Patriot Act to this end. Belize now has amended its laws, thereby potentially permitting such assistance at this time.

Although the United States has developed contacts and procedures enabling us to obtain assistance once not available, the MLAT will greatly enhance our ability to continue to receive assistance, and it will create a central authority for the receipt of all types of requests for mutual legal assistance.

Question. What does "compulsory measures," as used in Article 3(1)(f), contemplate?

Answer. The United States and Belize contemplate that subpoenas will be issued by the Requested State in order to satisfy many requests made pursuant to the MLAT. In some situations, requested assistance is readily available, such as when governmental records are sought or when a witness agrees to voluntarily give testimony. However, compulsory process is sometimes required, such as when a witness must be compelled to testify and when bank records are sought and a subpoena is required before they can be released. The Requested State should be satisfied that compulsory process is sought in connection with a criminal investigation or prosecution, and that the treaty provisions are not being abused.

Question. Why is Article 3(1)(e) necessary?

Answer. Article 3(1)(e) gives the Requested State the discretion to deny a request for search and seizure and asset forfeiture if the conduct under investigation or being prosecuted is not criminal in both countries. It is not unusual for MLATs to require dual criminality in such circumstances.

MLAT WITH SWEDEN

Question. Please summarize the nature and extent of law enforcement cooperation between the United States and Sweden in recent years.

Answer. Sweden has a proven track record in cooperating with us in connection with our existing law enforcement treaty—the Extradition Treaty between the United States and Sweden—has been in force since 1963. In the last two years, Sweden has extradited three defendants to the United States (one wanted for rape, one for fraud, and the other for narcotics offenses). All were provisionally arrested promptly at our request. In the same period, we have extradited two fugitives to Sweden (one was an accused murderer, the other was wanted for parental child kidnapping and requested that she be extradited after she was arrested). We have provisionally arrested another fugitive from Sweden for serious narcotics offenses.

In connection with mutual assistance requests, during this same time period, we have assisted Sweden in a number of fraud, computer crime, murder (3 cases), official corruption, and narcotics cases, as well as in a tax case. We have denied two

of their requests, however, because they sought tax returns. Without the treaty, we cannot give tax returns to Sweden.

In recent years, Sweden has acted promptly and professionally to assist us in cases involving pornography, weapons and explosives, computer hacking (including an attack on U.S. government computers), tax, and fraud.

Question. What is the value of this treaty to U.S. law enforcement interests?

Answer. The proposed MLAT with Sweden will enhance bilateral cooperation in law enforcement matters. The Administration plans to use this treaty to obtain assistance in connection with our efforts to fight terrorism, narcotics trafficking, organized crime, violent crime, money laundering, and terrorist financing and other crimes where Sweden has evidence that could assist us in our criminal investigations and prosecutions.

The United States and Sweden already cooperate on a broad range of law enforcement issues, and we have received assistance from Sweden on judicial assistance requests on a case-by-case basis. However, formal requests may require the burdensome and time-consuming process of letters rogatory, and there is no binding obligation on Sweden's part to assist the United States. The proposed MLAT will require Sweden to provide us assistance and only permits Sweden to decline to assist us in very specific instances. The treaty also designates a central authority to facilitate action under such requests, thereby improving the ability of both countries to obtain the necessary judicial assistance to prosecute and investigate crimes.

Question. Are there any significant pending cases in the United States, the investigation or prosecution of which will be facilitated by the entry into force of this treaty?

Answer. In recent years, Sweden has acted promptly and professionally to assist us in cases involving pornography, weapons and explosives, computer hacking (including an attack on U.S. government computers), tax, and fraud cases. The proposed MLAT would strengthen the legal foundation for such assistance and obligate Sweden to maintain this close and cooperative relationship on all criminal cases within the scope of the treaty.

MLAT WITH INDIA

Question. Please summarize the nature and extent of law enforcement cooperation between the United States and India in recent years.

Answer. Indo-U.S. cooperation on law enforcement has improved over the past few years. We now have a legal attaché's office in New Delhi, and shortly will open an office of the Customs Service. These offices have developed excellent relations with their local counterparts.

The practical indications of the new relationship can be seen since the extradition treaty entered into force in July 1999. After a history of lengthy delays, most recently in 2002, an individual was extradited from India to the United States for fraud and stolen property charges—within one year of the initial request. With respect to the United States, we most recently extradited two individuals to India in 2000 in connection with homicide and robbery charges. We expect this pattern to continue in the future.

We receive a number of mutual assistance requests from India each year, which usually require execution in multiple judicial districts. For the most part, these requests relate to economic crimes committed in India, although more recently we have been receiving requests relating to Indian investigations of terrorist crimes. The United States sends a smaller number of requests to India that relate mainly to white collar and violent crimes. Similar to the extradition treaty, we expect the level of cooperation to improve with the entry into force of the MLAT.

MLAT WITH IRELAND

Question. Please summarize the nature and extent of law enforcement cooperation between the United States and Ireland in recent years.

Answer. Under the current extradition treaty with Ireland, Ireland follows the treaty strictly as Irish law and courts are very exacting. Ireland did not make any extradition requests this past year, but the United States did extradite one person wanted on a murder charge to Ireland in connection with a previous request. This past year, the United States made two provisional arrest requests, which were executed by Ireland. The extradition proceedings in connection with these provisional arrests are ongoing.

On mutual assistance requests, Irish police cooperate extensively with U.S. law enforcement agents, including FBI, DEA and Customs agents based at our embassy

in London. Their cooperation often occurs on an informal basis and covers a wide variety of cases, and in particular, fraud.

MLAT WITH LIECHTENSTEIN

Question. Please summarize the nature and extent of law enforcement cooperation between the United States and Liechtenstein in recent years.

Answer. Even in the absence of a treaty, Liechtenstein has begun to establish a track record for providing assistance in a number of our criminal investigations and prosecutions. Changes in their domestic legislation, both with respect to their criminal code and their legal assistance law, have made it possible for them to overcome challenges by defendants to the providing of legal assistance to foreign governments.

Question. What is the value of this treaty to U.S. law enforcement interests?

Answer. This treaty is of significant value to U.S. law enforcement interests. The U.S. makes a respectable number of assistance requests to Liechtenstein in very important investigations. As a prominent financial center, Liechtenstein has been an attractive destination for offshore deposits of illegal proceeds. While Liechtenstein has assisted U.S. authorities in the absence of a treaty, that assistance has not been consistently complete or timely. In recent years, however, political pressure placed on Liechtenstein through institutions such as the Financial Action Task Force and other fora has contributed to marked improvement in Liechtenstein's cooperation with the U.S. We believe the obligations Liechtenstein has undertaken in this treaty will continue and further bolster the improved cooperation we have seen in recent years.

This cooperation is important to the U.S. because the cases for which the U.S. has sought assistance from Liechtenstein are often of national importance. They include, but are not limited to, investigations and prosecutions of such offenses as: large-scale fraud, narcotics trafficking, money laundering, securities fraud, extortion, racketeering, customs violations, and tax offenses. Moreover, Liechtenstein has sought assistance from the U.S. in cases involving similar offenses and, most recently, in investigations of terrorist financing and providing material support to terrorists. As a banking center, Liechtenstein runs the risk of having its financial institutions used by terrorists and other criminals to facilitate their operations and to conceal or launder their finances. The MLAT will facilitate U.S. law enforcement's access to potentially critical banking information.

STOLEN VEHICLE TREATY WITH HONDURAS

Question. What is the current state of law enforcement cooperation, in general, with Honduras?

Answer. Our law enforcement cooperation relationship with Honduras is functional, and we hope it becomes more extensive in the future.

The extradition treaty between the United States and Honduras was signed in 1909, entered into force in 1912, and was modified by a supplementary convention of 1927. Although Honduras' recent record with respect to extradition under the treaty leaves room for improvement, the country has responded to U.S. requests by deporting fugitives to the United States where possible. We have as a long-term goal the negotiation of a modern extradition treaty with that country. Honduras does not have an MLAT relationship with the United States, but cooperates with U.S. law enforcement agencies on law enforcement matters in the absence of an MLAT.

Question. What has been the experience to date under the stolen vehicle treaties which entered into force since the Senate approved several such treaties in 2000?

Answer. In 2000, the Senate gave its advice and consent to ratification of five stolen vehicle treaties. Three of the five treaties have entered into force: the Dominican Republic treaty (entered into force August 3, 2001), the Panama treaty (entered into force September 13, 2001), and the Belize treaty (entered into force August 16, 2002). The Costa Rica and Guatemala treaties are in the final stages of approval and entry into force, and we hope to bring them into force soon.

The Belize treaty only came into force on August 16, and we have not yet had any experience under that treaty. We have begun making requests for the return of vehicles from Panama and Belize. We have thus far only made one request to Panama and are awaiting action on that request. Our Embassy in the Dominican Republic has made approximately 10 requests for the return of U.S. stolen vehicles. Dominican officials have already made six of these vehicles available for return, and the Embassy expects the remaining four vehicles to be available for return next month.

Question. Which of the countries concerned by these law enforcement treaties have concluded so-called Article 98 bilateral agreements with the United States to protect American officials and service members from surrender to the International Criminal Court? For those which have not, when will such agreements be concluded?

Answer. The United States and Honduras concluded an Article 98 agreement on September 19. We are continuing our efforts to conclude Article 98 Agreements with as many countries as possible, including with the countries concerned by these law enforcement treaties.

RESPONSES FROM THE DEPARTMENT OF STATE TO PRE-HEARING QUESTIONS ON MLAT AND EXTRADITION TREATIES SUBMITTED BY SENATOR JESSE HELMS

Question. Have any of these countries (Belize, Canada, India, Ireland, Liechtenstein, and Sweden) ever declined officially or informally to provide law enforcement assistance of any kind to the United States in a terrorism case without assurance that the death penalty or life imprisonment would not be imposed?

Answer. No, none of these countries has refused for any reason to assist the United States in terrorism-related extradition or mutual assistance cases.

Question. Do any of the indicated treaties explicitly require that the requested law enforcement assistance be provided to the United States, without "assurances", in a terrorism case even if the death penalty or life imprisonment could be imposed?

Answer. Both the Lithuania and Peru extradition treaties, like most recent extradition treaties, allow requests for assurances that the death penalty will not be imposed or carried out. The United States agrees to include such a provision because in many countries, including Lithuania and Peru, the death penalty has been outlawed, and extradition to the United States in some extremely serious cases would, as a practical matter, be impossible unless there is a mechanism for assurances. The Second Protocol to the Canada extradition treaty does not address these kinds of issues. The existing extradition treaty with Canada, however, also allows for death penalty assurances, in cases where the offense involved is not punishable by death in the Requested State.

Neither these extradition treaties nor the Canada extradition treaty contemplate the possibility of assurances that life imprisonment will not be imposed or carried out.

Unlike extradition treaties, U.S. mutual legal assistance treaties in general, including the five (Belize, India, Ireland, Liechtenstein and Sweden) before the Senate, do not include death penalty assurance provisions. The issue of death penalty assurances has rarely arisen in this context, but a small number of countries recently have raised the potential of capital punishment for crimes as in connection with U.S. requests for legal assistance (whether the requests are made under treaty or as a matter of international comity and reciprocity). In these cases we have argued that the potential punisbment in a U.S. proceeding should not be a factor in whethe assistance should be granted.

The issue of U.S. life imprisonment provisions has not arisen to our knowledge in the mutual assistance context.

RESPONSES FROM THE DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

On Monday, September 16, 2002, the State Department received fifteen questions from the Senate Foreign Relations Committee specifically directed at the proposed Mutual Legal Assistance Treaty (MLAT) with Sweden. Many of these questions addressed related aspects of the same issues. Because of this close relationship among many of the questions, and with the concurrence of the Senate Foreign Relations Committee staff, we have developed a single narrative reply to all of the questions. Set forth below are (i) the questions presented on September 16 and (ii) the consolidated answer.

Questions:

1. The Swedish MLAT was negotiated and initialed roughly seven years ago. Why did the Department wait so long to submit it to the Senate?

2. Provisions in the Swedish Penal Code have been used to imprison American citizens in Sweden, but in the United States would be considered unconstitutional (e.g., interference with freedom of speech or expression) or contrary to human rights or public policy standards (e.g., legislation originally intended for use against Afri-

can or Arab "fathers from the south" but utilized against Americans and any non-Swedish fathers for attempting to exercise sole or joint child custody rights even under Swedish law). Will the Department help the Swedes enforce such provisions?

3. Should the U.S. enter into the proposed MLAT before Sweden agrees to extradite its nationals for parental child abduction, to consistently return American children under the Hague Convention, and before Sweden reforms its child custody system to provide enforceable access and visitation for American parents to children held in Sweden?

4. As a practical matter, an MLAT with Sweden would put the U.S. Government in the position of: (a) being obligated to assist Sweden (e.g., concerning an alleged effort to re-abduct an American child being held in Sweden) in cases involving ongoing felonies against American citizens by Swedish citizens receiving financial support (especially payment of legal fees in Sweden and the U.S.) and other assistance from the Swedish government, and (b) being obligated, in cases where a Swedish custody order eventually appears for an abducted American child, to respect and enforce such orders against the left-behind American parents (under the extradition treaty, MLAT, and/or Hague Convention), despite the facts that Sweden will not respect any U.S. court orders in the case (owing to the absence of comity from the Swedish legal system) and cannot enforce any custody or visitation rights for the American parent even under the Swedish custody order (owing to the absence of anything comparable to contempt of court in the Swedish legal system). How can (a), (b), or both, be justified?

5. An MLAT with Sweden would constitute one more element in the two-front war faced by the victims of Swedish child abductors, in view of the willingness of the U.S. to extradite Americans who recover their abducted children from abductors enjoying a safe haven in Sweden, combined with the inability of the Swedish courts either to control the conduct of Swedish parents or enforce/protect the parental rights of non-Swedish parents through contempt of court or other means. How can this be justified?

6. What is your assessment as to the quality of due process of law in the Swedish criminal justice system (e.g., in terms of hearsay and other rules of evidence, right to confront witnesses, authentication of documents, etc.)?

7. What is your assessment of Sweden's tactics (arguably mail fraud, attempted extortion, and possibly RICO violations) in demanding that left-behind American parents reimburse the Swedish government for legal fees, maintenance, and child support it pays to Swedish child abductors?

8. What comments do you have on Sweden's general level of respect for U.S. law, as reflected by Swedish conduct in assisting an accused Swedish murderer to escape from the U.S. (Per Strom case in the late 1980s), engaging in diplomatic visa fraud (Franzen case in the early 1990s), and in instructing the Swedish police that U.S. child custody orders "have no validity in Sweden" even in the absence of any Swedish order (Foreign Ministry memorandum in 1996)?

9. In view of the generally one-way nature of our current extradition and Hague child abduction convention relationships with Sweden, and Sweden's violations of its treaty obligations to the United States under those treaties (e.g., Sweden's failure in certain cases to extradite even American citizens from Sweden), why should the United States enter into another law enforcement treaty with Sweden and undertake new obligations to a country that frequently has not met its existing obligations to us?

10. In view of Sweden's refusal to extradite its own citizens to the United States or effectively prosecute them with U.S. evidence, Sweden's frequent failure to return abducted American children under the Hague Convention, the absence of comity from the Swedish legal system resulting in U.S. court orders receiving no respect, and the inability and/or unwillingness of the Swedish legal system to enforce any access or visitation for left-behind American parents (owing to the absence of anything remotely comparable to contempt of court, how will the Swedish MLAT improve this situation?

11. Since American citizens have no effective remedy of any kind when they are victims of crimes by Swedish citizens who are not apprehended in the United States and then use Sweden as a safe haven, what is the justification for the recent extradition of an American mother to Sweden for parental child abduction (when there is no enforceable access or visitation in Sweden for non-Swedish parents)? Why increase the one-sided nature of this bilateral law enforcement treaty relationship with an MLAT?

12. In view of the fact that the Hague child abduction convention is an attempt to remedy criminal conduct by civil means (since even extradition and prosecution of a child abductor does not bring about return of the child), do you agree that the

interrelated civil and criminal nature of international parental child abduction makes it impossible to separate Sweden's Hague Convention violations and tangible support for child abductions by its citizens on the one hand from the question of its reliability in law enforcement matters on the other?

13. Should any promise by Sweden of meaningful assistance under an MLAT to U.S. law enforcement authorities in child abduction cases involving Swedish citizens be taken seriously?

14. When Sweden considers it in its interest to do so, doesn't Sweden already provide assistance in criminal matters without an MLAT?

15. In view of Sweden's poor record of compliance with the extradition treaty and Hague child abduction convention, what is the basis to conclude that its level of compliance would be better under an MLAT?

Answer:

Summary

This responds to the questions received by the State Department on Monday, September 16, 2002, regarding Sweden and the mutual legal assistance treaty (MLAT) between the United States and Sweden. The questions raise the issue of whether Sweden's record of compliance under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) should be a basis for the Committee to refuse approval of the MLAT with Sweden that the President has submitted for the Senate's advice and consent.

It is the Administration's position that the MLAT is a valuable law enforcement tool, and that it should be approved on its merits as such. The experience of this last year has only underscored the international character of the crimes most threatening to our citizens, and thus our responsibility to provide U.S. prosecutors and investigators the means to secure evidence from abroad. Our experience with Sweden under our extradition treaty, and in obtaining evidence even absent a treaty, has generally been good, and gives us confidence that an MLAT with Sweden—like the more than forty MLATs already in force with other countries around the world—will assist our law enforcement authorities in preventing, investigating and prosecuting serious crimes.

The problem of international parental child abduction, and of compliance with the Hague Convention by treaty partners including Sweden, are matters of serious concern to the State and Justice Departments. As discussed more fully below, while certain long-standing cases remain troubling, we believe Sweden's record under the Hague Convention—a convention governing the civil aspects of international parental abduction—has been steadily improving. The positive trend has been noted in our compliance reports to Congress and has been reinforced by recent experience involving Sweden. Notwithstanding these encouraging developments, we will continue to seek further improvement with Sweden, as with other countries, because compliance with the Hague Convention is a serious matter in its own right. However, these concerns need not and should not be linked to questions relating to the MLAT.

The MLAT is a law enforcement tool. The wisdom of the Foreign Relations Committee in approving dozens of similar treaties over the years has been well illustrated by the numerous cases—now including investigations related to the attacks of September 11th—in which the Department of Justice has been able to use MLATs to obtain evidence critical to the investigation and prosecution of serious crimes against the United States and its citizens. Accordingly, we urge the Committee to recommend advice and consent to ratification of the MLAT with Sweden.

The MLAT Is An Important Law Enforcement Tool

The proposed MLAT with Sweden will enhance bilateral cooperation in law enforcement matters. The Administration plans to use this treaty to obtain assistance in connection with our efforts to fight terrorism, narcotics trafficking, organized crime, violent crime, money laundering, and terrorist financing and other crimes where Sweden has evidence that could assist us in our criminal investigations and prosecutions.

The United States and Sweden already cooperate on a broad range of law enforcement issues, and we have received assistance from Sweden on judicial assistance requests on a case-by-case basis. However, formal requests may require the burdensome and time-consuming process of letters rogatory, and there is no binding obligation on Sweden's part to assist the United States. The proposed MLAT will require Sweden to provide us assistance and only permits Sweden to decline to assist us in very specific instances. The treaty also designates central authorities to facilitate action under such requests, thereby improving the ability of both countries to obtain the necessary judicial assistance to prosecute and investigate crimes.

Sweden's Record of Cooperation

Sweden has a proven track record in cooperating with us in connection with our existing law enforcement treaty—the Extradition Treaty between the United States and Sweden—has been in force since 1963. On October 1, 2000, new legislation entered into force in Sweden that transferred traditional authority to handle international criminal judicial cooperation (mutual assistance, extradition, transfer of prisoners, and service of documents) from the Ministry of Foreign Affairs to the Ministry of Justice. This has enhanced Sweden's ability to work effectively and expeditiously with the United States on law enforcement matters.

In the last two years, Sweden has extradited three defendants to the United States (one wanted for rape, one for fraud, the other for narcotics offenses). All were provisionally arrested promptly at our request. In the same period, we have extradited two fugitives to Sweden (one was an accused murderer, the other was wanted for parental child kidnapping and requested that she be extradited after she was arrested). We have provisionally arrested another fugitive from Sweden for serious narcotics offenses.

The questions also raise the issue of Sweden's extradition of its own nationals. Over time, we have come to support strongly the practice of a country extraditing its own nationals, and we now take every opportunity to encourage this change in practice by making it one of our highest priorities when negotiating new or updated extradition treaty relationships. We, therefore, strongly encourage Sweden to extradite its nationals. Sweden, however, is not obligated to do so under the existing extradition treaty. As a result, when it declines to extradite its nationals, Sweden is not only acting according to Swedish law, which bars extradition of its nationals, but completely consistent with its treaty obligations to the United States.

In connection with mutual assistance requests, during this same time period, we have assisted Sweden in a number of fraud, computer crime, murder (3 cases), official corruption, and narcotics cases, as well as in a tax case. We have denied two of their requests, however, because they sought tax returns. Without the treaty, we cannot give tax returns to Sweden.

In recent years, Sweden has acted promptly and professionally to assist us in cases involving pornography, weapons and explosives, computer hacking (including an attack on U.S. government computers), tax, and fraud cases. The proposed MLAT would strengthen the legal foundation for such assistance and obligate Sweden to maintain this close and cooperative relationship on all criminal cases within the scope of the treaty.

With respect to child abduction matters, a number of the questions address Sweden's compliance with the Hague Convention and related issues. The Department of State continues to work with Sweden and other countries to improve their compliance with the Hague Convention. Notwithstanding certain long-standing cases that continue to be of concern to us, we believe that Sweden's performance under the Hague Convention has steadily improved, as reflected in our past annual compliance reports. Sweden's current performance exceeds or is similar to that of other European Hague Convention countries, and it is similar to the performance of the United States vis a vis Sweden.

Recently, for example, we worked closely with the Swedish Central Authority in an abduction case in which the Swedish Central Authority responded promptly to the left-behind parent's application for return, in accordance with Hague procedures. We believe the Swedish judiciary decided the case consistently with the Hague Convention, and the child was ordered returned to the United States. The return order was enforced, despite a lack of cooperation by the taking parent. The child returned to the United States in the spring of this year.

Our Hague Convention dialogue with Sweden is ongoing, and we have raised concerns we have had about their compliance directly with them. We will certainly continue to do so.

Conclusion

The U.S. Government took each action in connection with the proposed MLAT (i.e., the decisions to negotiate, sign, and submit this treaty to the Senate for its advice and consent to ratification) after considering the benefits to U.S. law enforcement interests and the American people of improving and solidifying our law enforcement relationship with Sweden. Through this treaty, the U.S. law enforcement community will be able to obtain crucial evidence to assist in the investigation and prosecution of criminals in the courts of the United States. We, therefore, ask that the Senate give early advice and consent to ratification of this treaty.

RESPONSES FROM THE DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR BARBARA BOXER

EXTRADITION TREATIES

Question. Does the dual criminality provision in the treaties before us today ensure that child abduction is a covered crime? Is the U.S. making an effort to update aged extradition treaties with those nations where child abduction problems are most common?

Answer. We expect that parental child abduction will be an extraditable offense under these two new treaties. Extradition is required under the new treaties with Lithuania and Peru if the offense is punishable by a period of more than one year or by a more severe penalty. (Lithuania Treaty, Art. 2(1); Peru Treaty, Art. II(1)). Parental child abduction is punishable in the United States by a period of more than one year. Because we understand that the conduct constituting parental child abduction is also punishable in both Lithuania and Peru by more than one year, we expect it will be an extraditable offense under both of these treaties.

With respect to other U.S. extradition treaties, all of the U.S. Government's extradition treaties agreed upon since 1980 are dual criminality treaties similar to the Lithuania and Peru treaties. Parental child abduction is thus an extraditable offense under these treaties if our treaty partner has also criminalized the conduct. While many countries still treat parental child abduction solely as a civil and family law matter, an increasing number are providing for serious criminal penalties.

As noted in the question, our older extradition treaties (generally those signed before 1980) are most typically "list" treaties that did not include "parental child abduction" or "parental kidnapping" or a similar phrase or concept among the list of extraditable offenses. This is because at the time the treaties were negotiated parental child abduction was not a criminal offense, including in the United States. Normally, the interpretation of "list" treaties would simply evolve to reflect the evolution of new aspects of crimes that are identified in the list treaties. In this instance, however, the U.S. view that extradition list treaties did not include parental child abduction had been widely disseminated, including by publication in the Federal Register of the United States in 1976.

To remedy this situation, the State and Justice Departments brought this issue to the attention of Congress in 1997. These consultations led to Public Law 105–323 (The Extradition Treaties Interpretation Act of 1998), which addresses the matter by clarifying that "kidnapping" in extradition list treaties may include parental kidnapping, thus reflecting the major changes that have occurred in this area of criminal law in the last 20 years. With this clarification, the Executive Branch is now in a position to make and act upon the full range of possible extradition requests dealing with parental kidnapping under list treaties that include the word "kidnapping" on such lists. This will help achieve the goal of enhancing international law enforcement in this area. The United States would, however, adopt this broader interpretation only once it has confirmed with respect to a given treaty that this would be a shared understanding of the parties regarding the interpretation of the treaty in question. In this respect, as other countries criminalize parental child abduction, we will have an increasing number of extradition treaty relationships that cover this offense.

After Public Law 105–323 was enacted, this change in the U.S. practice of interpreting extradition list treaties was announced in the Federal Register on January 25, 1999 (Vol. 64, No. 15, pages 3735–36). As Senator Boxer's question reflects, however, the relevant passage discussing extradition list treaties in the State Department's web site and in the State Department's brochure on parental child abduction similarly needs to be updated to reflect this change in practice. We will change the relevant sentences in the web site and in future editions of the print version of the brochure. We appreciate the Committee's bringing this issue to our attention.

Question. If confidence among the Peruvian public in the judiciary is low, why should the United States have confidence that a suspect extradited by the United States to Peru will receive a fair trial? Doesn't Peru's appeal of the Commission's decision to the Inter-American Court show an unwillingness to acknowledge problems with its judicial system?

Answer. Since the downfall of the Fujimori government in November 2000, Peru has made many strides to correct deficiencies in its judicial system. At the end of 2000, Peru abolished the executive committees through which former president Fujimori had exercised control over the judiciary, restored the powers of the National Magistrates Council (CNM) to evaluate judges and prosecutors, and created transitory councils to remove corrupt judges. In late 2000, the Peruvian government established a new Pardons Commission to examine the cases of persons imprisoned

for terrorism under the Fujimori government. As of October 2001, 90 persons had been released from prison. Along with over 600 persons pardoned between 1996 and 2000, a total of over 700 persons were pardoned and released after being accused unjustly of terrorism. In August 2001, President Toledo nearly doubled the salaries of tenured judges and prosecutors to make working in the judiciary more attractive and to reduce corruption incentives. Thus, while much work remains to be done, Peru is taking active steps to reform its judicial system.

Under U.S. extradition law and practice, once a fugitive has been found extraditable by a U.S. court, the Secretary of State (or Deputy Secretary) must review the case and issue a surrender warrant before that person could be extradited to Peru or any other country with which we have an extradition treaty. As part of that review and decision-making process, the Secretary takes into account any information available that may affect the defendant's ability to receive a fair trial.

With respect to the case of Lori Berenson, Peru's Supreme Court in 2001, in an unprecedented action, nullified Ms. Berenson's original conviction by a military court and ordered a civilian re-trial. During her civilian trial, Ms. Berenson was allowed to confront the witnesses against her and present evidence in her defense. The civilian court found Ms. Berenson guilty of terrorist collaboration. She appealed her sentence, which was upheld by the Peruvian Supreme Court. The case is now in the Inter-American Human Rights system. The Inter-American Commission on Human Rights, based here in Washington, issued non-binding recommendations finding Ms. Berenson had not received due process. As a party to the American Convention on Human Rights, Peru exercised its right under Article 51 to ask the Inter-American Court of Human Rights, in San Jose, Costa Rica, to review the case. The decisions of the Court are legally binding, and we have every expectation that Peru will comply with whatever decision the Court renders.

Meanwhile, U.S. consular officials continue to monitor the situation closely and visit Ms. Berenson regularly. They will continue to make every effort to ensure that the Government of Peru provides her with humane living conditions and appropriate medical care while she is in confinement.

Question. On October 2, 2001 Mexico's Supreme Court of Justice ruled that in order for any extradition to proceed, the Requesting State must provide assurances that life imprisonment will not be imposed. The ruling has the potential to impact all extradition cases between the U.S. and Mexico-and this severely impacts California. Is this a problem that is limited to just Mexico or the beginning of a larger trend?

Answer. A worldwide trend does not appear to exist with respect to seeking life imprisonment assurances. In addition to Mexico, a handful of other countries have raised life imprisonment assurances issues (e.g., Colombia, where extradition takes place under its national extradition law), but as to those other countries, there has not been a significant adverse effect on our ability to extradite fugitives. This is not the case with Mexico, where we have experienced a severe impact on our ability to secure the surrender of our most serious criminal offenders.

The Department of Justice has corresponded with Los Angeles District Attorney Steve Cooley concerning his Mexican extradition cases, as well. We continue to work closely with D.A. Cooley's office, as well as with federal and state prosecutors throughout the country, in an attempt to provide Mexico with assurances that are consistent with U.S. law and serve the ends of justice. In addition, we continue to raise the assurances issue with the Government of Mexico. In fact, Secretary Powell explicitly raised the issue in his meeting on September 30, 2002 with Mexican Foreign Minister Jorge Castaneda. We will also raise the issue again at a meeting of senior U.S. and Mexican law enforcement officials at the end of October.

Question. Are you aware of any significant outstanding cases pending between the United States and either Lithuania or Peru which would be impacted by the approval of either of these extradition treaties?

Answer. The improved terms and procedures of the two treaties will help in all future cases in which the United States is seeking the return of fugitives from Lithuania and Peru. In coming years, we can anticipate requests to and from both countries on a broad range of extradition cases, including narcotics and violent crime cases.

According to Article 22, the new Lithuania Extradition Treaty will apply to any extradition proceedings in which the request for extradition was received by the Requested State but not submitted to its courts before the entry into force of the treaty. Also, Articles 16 and 17 of the treaty will be applicable to any pending extradition requests even if they have been submitted to the courts of the Requested State. As of this date, there are five Lithuanian cases pending with the United States that potentially could be affected. The new Peru Extradition Treaty, per Arti-

cle XVIII, will apply to pending extradition requests for which a final decision has not yet been rendered on the date the treaty enters into force. As of this date, there is one Peruvian case pending before the U.S. courts and one U.S. request pending in Peru that could be affected by this provision. Whether the handful of cases pending with Lithuania and Peru will come within the terms of the new extradition treaties will depend on when the treaties actually enter into force and the timing of the final decisions on pending extradition requests.

MUTUAL LEGAL ASSISTANCE TREATIES (MLATS)

Question. Why should the United States enter into an MLAT relationship with Sweden when it is not living up to its commitments under other treaties?

Answer. The United States should enter into this MLAT relationship because it is in the United States' interest to do so. Moreover, Sweden is in fact generally living up to its commitments under other treaties.

It is the Administration's position that the MLAT is a valuable law enforcement tool, and that it should be approved on its merits as such. The experience of this last year has only underscored the international character of the crimes most threatening to our citizens, and thus, our responsibility to provide U.S. prosecutors and investigators the means to secure evidence from abroad.

The proposed MLAT with Sweden will enhance bilateral cooperation in law enforcement matters. The Administration plans to use this treaty to obtain assistance in connection with our efforts to fight terrorism, narcotics trafficking, organized crime, violent crime, money laundering, and terrorist financing and other crimes where Sweden has evidence that could assist us in our criminal investigations and prosecutions.

The United States and Sweden already cooperate on a broad range of law enforcement issues, and we have received assistance from Sweden on judicial assistance requests on a case-by-case basis. However, formal requests may require the burdensome and time-consuming process of letters rogatory, and there is no binding obligation on Sweden's part to assist the United States. The proposed MLAT will require Sweden to provide us assistance and only permits Sweden to decline to assist us in very specific instances. The treaty also designates a central authority to facilitate action under such requests, thereby improving the ability of both countries to obtain the necessary judicial assistance to prosecute and investigate crimes.

Moreover, although no relationship with any country is without its disagreements, we consider Sweden a good treaty partner that generally complies with its treaty obligations. In fact, the United States and Sweden have many bilateral treaties and agreements in force. According to the January 1, 2002 Treaties in Force, we currently have in force over 45 bilateral treaties or agreements with Sweden on a wide variety of topics including with respect to atomic energy, aviation, customs, defense, environmental cooperation, scientific cooperation, social security, space cooperation and taxation—the most recent agreement being a defense agreement that entered into force on December 20, 1999, and the earliest an agreement with respect to mapping entered into force on April 1, 1885.

In the area of law enforcement in particular, Sweden has a proven track record in cooperating with us in connection with our existing law enforcement treaty—the Extradition Treaty between the United States and Sweden—has been in force since 1963. In the last two years, Sweden has extradited three defendants to the United States (one wanted for rape, one for fraud, and the other for narcotics offenses). All were provisionally arrested promptly at our request. In the same period, we have extradited two fugitives to Sweden (one was an accused murderer, the other was wanted for parental child kidnapping and requested that she be extradited after she was arrested). We have provisionally arrested another fugitive from Sweden for serious narcotics offenses.

To the extent the question is directed at Sweden's compliance under the Hague Convention, the problem of international parental child abduction, and of compliance with the Hague Convention by treaty partners including Sweden, are matters of serious concern to the State and Justice Departments.

Assisting the victims of international parental child abduction has long been a priority for the Department of State and is an important activity of State's Bureau of Consular Affairs. In 1994, the Bureau created the Office of Children's Issues. The Abduction Unit of this office now employs 17 officers and staff devoted exclusively to working with parents to resolve the cases of their abducted children. The Office currently handles approximately 1,100 international parental child abduction cases yearly, including abductions to and from the United States. We have active child abduction cases in many countries and in every region of the world.

We have designated a specific point of contact at each of our Embassies and Consulates worldwide to facilitate our work on abduction cases. Additionally, in 1998 the Secretary of State and Attorney General established an inter-agency policy group to improve the federal response to this issue. This policy group created a specific action plan and established an inter-agency working group, chaired by the Director of the Office of Children's Issues to implement this plan.

In connection with Sweden in particular, as discussed more fully in our response to the September 16 questions, while certain long-standing cases remain troubling, we believe Sweden's record under the Hague Convention—a convention governing the civil aspects of international parental abduction—has been steadily improving. The positive trend has been noted in our compliance reports to Congress and has been reinforced by recent experience involving Sweden. Notwithstanding these encouraging developments, we will continue to seek further improvement with Sweden, as with other countries, because compliance with the Hague Convention is a serious matter in its own right. However, these concerns need not and should not be linked to questions relating to the MLAT. The MLAT is a law enforcement tool.

The wisdom of the Foreign Relations Committee in approving dozens of similar MLATs over the years has been well illustrated by the numerous cases—now including investigations related to the attacks of September 11th—in which the Department of Justice has been able to use MLATs to obtain evidence critical to the investigation and prosecution of serious crimes against the United States and its citizens. Accordingly, we urge the Committee to recommend advice and consent to ratification of the MLAT with Sweden.

Question. How will ratification of these and future mutual legal assistance treaties help in fighting the war on terrorism? Are there outstanding cases in which quick passage of these 5 treaties is necessary?

Answer. The ratification and effective implementation of the five MLATs pending before the Committee, as well as such action on future MLATs, will increase the number of countries with which the United States Government can rely on the existence of a binding legal obligation to provide assistance in support of our criminal investigations and prosecutions. Since September 11, 2001, our existing MLATs have enabled us to make requests on behalf of federal terrorism prosecutors to approximately 17 foreign countries, in connection with a variety of investigations and cases, including Zacarias Moussaoui and Richard Reid. These requests have sought a broad spectrum of assistance, from physical evidence to documents to witness statements. Likewise, our MLATs have enabled us to assist a number of foreign countries by providing evidence for use in their terrorism investigations and prosecutions.

In addition to the types of assistance noted above, MLATs provide access to bank and other corporate records that could support terrorist financing cases, telephone and cell phone toll and subscriber information to help in identifying suspected terrorists, and enable us to effect searches and seizures, including providing a framework for cooperation in the tracing, seizure and forfeiture of criminally-derived assets. The terms of these treaties contemplate procedures for ensuring the admissibility of foreign evidence in the courts of the requesting state, as well as for asking that the request or the evidence be kept confidential. All of the benefits conferred by MLATs are available for assistance in terrorism cases, as well as in the full range of investigations and prosecutions of other forms of serious criminal activity.

While we are not aware of any pending cases in which quick entry into force of these five treaties is necessary, we want to be in a position to use the treaties whenever such need arises in the future.

Question. In general terms, please describe the volume of requests that normally results following entry into force of an MLAT. Do the Departments of State and Justice have adequate resources to implement requests in a timely manner?

Answer. Because each treaty relationship is country-specific, it is difficult to generalize in terms of the volume of requests that follow the entry into force of an MLAT. At this point, we can anticipate that we may receive a number of requests from U.S. prosecutors when the MLATs with Belize and Liechtenstein enter into force, as those treaties will allow us to request assistance in criminal tax matters—an area of heightened concern with respect to those two jurisdictions. We may also see an initial increase in requests for bank records from Liechtenstein, because the MLAT will pierce bank secrecy laws there.

As the central authority under U.S. MLATs, the Department of Justice is responsible for implementing these treaties. The increasing number of MLATs in recent years has significantly increased the Department's volume of casework, and the Department of Justice has not always been in a position to handle requests as expeditiously as it would like. In the fiscal year 2002 budget, Congress gave the Depart-

ment of Justice an allocation for additional positions which it hopes will assist in handling MLAT requests (as well as extradition requests) more quickly and efficiently.

The State Department is fully committed to supporting the Justice Department whenever necessary in the implementation of MLATs. If additional resources are needed beyond our current staffing and appropriations, the Department of State will seek those resources through the legislative process.

STOLEN VEHICLE TREATY WITH HONDURAS

Question. What is the current state of law enforcement cooperation, in general, with Honduras?

Answer. Our law enforcement cooperation relationship with Honduras is functional, and we hope it becomes more extensive in the future.

The extradition treaty between the United States and Honduras was signed in 1909, entered into force in 1912, and was modified by a supplementary convention of 1927. Although Honduras' recent record with respect to extradition under the treaty leaves room for improvement, the country has responded to U.S. requests by deporting fugitives to the United States where possible. We have as a long-term goal the negotiation of a modern extradition treaty with that country. Honduras does not have a MLAT relationship with the United States, but cooperates with U.S. law enforcement agencies on law enforcement matters in the absence of an MLAT.

Question. What has been the experience to date under the stolen vehicle treaties which entered into force since the Senate approved several such treaties in 2000.

Answer. In 2000, the Senate gave its advice and consent to ratification of five stolen vehicle treaties. Three of the five treaties have entered into force: the Dominican Republic treaty (entered into force August 3, 2001), the Panama treaty (entered into force September 13, 2001), and the Belize treaty (entered into force August 16, 2002). The Costa Rica and Guatemala treaties are in the final stages of approval and entry into force, and we hope to bring them into force soon.

The Belize treaty only came into force on August 16, and we have not yet had any experience under that treaty. We have begun making requests for the return of vehicles from Panama and Belize. We have thus far only made one request to Panama and are awaiting action on that request. Our Embassy in the Dominican Republic has made approximately 10 requests for the return of U.S. stolen vehicles. Dominican officials have already made six of these vehicles available for return, and the Embassy expects the remaining four vehicles to be available for return next month.

ADDITIONAL SUBMISSIONS FOR THE RECORD

STEVE COOLEY,
LOS ANGELES COUNTY DISTRICT ATTORNEY,
Los Angeles, CA, June 6, 2002.

The Honorable BARBARA BOXER
United States Senate,
112 Hart Senate Office Building,
Washington, DC.

DEAR SENATOR BOXER:

As the District Attorney of Los Angeles County, consistent with the spirit of the Extradition Treaty and the Mutual Legal Assistance Treaty, I am requesting your immediate assistance in urging the federal government to obtain cooperation from the Republic of Mexico to extradite Mexican nationals in exceptional circumstances.

Historically, the Mexican government refused to extradite Mexican nationals who committed crimes in the United States and fled to Mexico unless there were assurances that the death penalty would not be sought. Now, as a result of a recent decision by the Mexican Supreme Court, the Mexican government refuses to extradite Mexican nationals charged with serious offenses if the offense carries a potential "life" sentence. In California, all murders and certain specified serious crimes call for indeterminate life sentences. Such sentences cannot be converted to "determinate sentences" by either a prosecutor or a judge. The actions by the Mexican government have greater impact on California than many other states because of California's sentencing scheme and its proximity to Mexico.

California prosecutors are faced with four unsatisfactory options:

1) Refuse to seek extradition and allow murderers, rapists, child molesters, and other very serious criminals to escape justice by fleeing to Mexico.

2) Seek extradition and give the requested assurances guaranteeing that a person charged with a crime carrying a potential life sentence would be extradited on a reduced or lesser charge for which a determinate sentence would be imposed.

3) Seek extradition, refuse assurances, and have the matter convert to an Article IV prosecution under the penal laws of Mexico. Such a prosecution is subject to the rules and regulations of the Mexican legal system with no guarantee of aggressive apprehension efforts, actual prosecution, or an adequate sentence. If an Article IV is accomplished, jeopardy attaches barring future domestic prosecution.

4) Seek prosecution under Article IV as described above in 3).

Last March, I met with Attorney General John Ashcroft and Assistant Attorney General Michael Chertoff in Washington, D.C. and urged them to address this issue. Recently, the Attorneys General from all 50 states and the territories of the District of Columbia and the Virgin Islands wrote to Attorney General Ashcroft and Secretary of State Colin Powell demanding action in this area.

To illustrate the urgency of this matter, I have attached histories of several serious cases now pending in Los Angeles County where a grave miscarriage of justice has occurred or will inevitably occur without immediate action. Federal and state governments should possess the absolute sovereign right to prosecute and punish according to their laws for cases occurring in their jurisdictions. No foreign nation should be allowed to dictate the terms of our criminal justice system and prevent legitimate and appropriate prosecutions.

I request that you immediately cause congressional committees and caucuses to conduct hearings to address this issue, an issue that only the federal government can resolve.

Very truly yours,

STEVE COOLEY, *District Attorney.*

[Enclosure.]

CASE HISTORIES—EXTRADITION FROM MEXICO

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

People v. Armando Garcia (Pending Filing/Los Angeles County)

On April 29, 2002, 33-year-old Los Angeles County Deputy Sheriff David March was shot and killed, execution-style, during a routine traffic stop in Irwindale, California. Suspect Armando Garcia, a Mexican national, is believed to have fled to Mexico. He previously had been charged in an unrelated case involving two counts of attempted murder. A warrant for his arrest has been issued on that case. If extradition is sought solely on the filed case, Article 17 of the Extradition Treaty would prevent extradition on the attempted murder case and on any future prosecution in the United States for the murder of Deputy March. The Mexican government can waive Article 17. However, the American Consulate in Mexico City and the Office of International Affairs have advised that no waiver will be granted without assurances that the death penalty or a life sentence will *not* be sought in either case. A filing of murder charges for the slaying of Deputy March and a request for extradition on both cases concurrently would likely result in the same refusal of the Mexican government to extradite Garcia. In order to extradite Garcia and prosecute him in California for the murder of Deputy March, under the current Mexican Supreme Court ruling, this office would be required to charge a lesser offense such as manslaughter or assault with a deadly weapon to avoid a potential life sentence. Even with such assurances, it is unclear whether or not the Mexican government would extradite Garcia since recent court rulings have indicated that only a judge can give sufficient assurances—a legal impossibility under California's judicial system.

People v. Daniel Perez (Case No. VA035691/Los Angeles County & San Bernardino County)

In August of 1999, Defendant Daniel Perez was convicted in absentia by a jury for the crimes of attempted first degree murder, use of a firearm, spousal battery, kidnapping, false imprisonment and stalking his estranged wife. The defendant and

the 21-year-old victim, Anabella Vara, were separated. They met at a pizza place where the defendant kidnapped her at gunpoint. After terrorizing her for two hours, Anabella finally convinced Perez that she would return home with him. He drove Anabella to her car and she attempted to drive away from him. The defendant chased the victim in his car, while she was in her car, ramming her vehicle and forcing her to run red lights through the streets of Southgate, California. Ultimately, Anabella was caught in traffic and had to abandon her car. The defendant caught her at a gas station and shot her in the head. Miraculously, she survived. During the trial and while out on bail, the defendant drove to the victim's father's home in Fontana, California and in front of his children, Anabella's siblings, the defendant shot and killed Anabella's father. The victim's father was a key witness against Perez. The defendant, a Mexican national, has allegedly fled to Mexico. He was sentenced in absentia on the attempted murder case to a term of 33 years to life, plus an additional life term. The San Bernardino County District Attorney's Office has charged Perez with the murder of the victim's father and the special circumstance of killing a witness. The charges carry a potential punishment of life in prison without the possibility of parole or death. Extradition solely on the sentenced case and later local prosecution of the murder requires an Article 17 waiver and accompanying assurances to satisfy the Mexican government—a legal impossibility under the current law. Extradition for prosecution on both cases concurrently would have the same result.

People v. Alvaro Luna Jara (Case No. BA174264/Los Angeles County)

Defendant Jara is charged with the special circumstances murder of a 12-year-old boy and the attempted murder of three others. On August 29, 1998, at approximately 7:15 p.m., the deceased victim was playing with several other children in front of their apartment adjacent to the children were three members of a local street gang. As the defendant was driving by, he and the three gang members exchanged hand gestures. The defendant extended his ann out of the car window and fired three rounds into the crowd killing 12-year-old Steven Morales with a gunshot to his head. The defendant, who is not a Mexican national, fled to Mexico. The Mexican government refused to deport the defendant because his parents are Mexican nationals. Formal extradition proceedings are pending, but assurances will have to be given to the Mexican government.

People v. Casillas (Case No. BA188561/Los Angeles County)

On June 8, 1999, Defendant Casillas, a Mexican national, shot and killed his 17-year-old ex-girlfriend and her 15-year-old female cousin as they walked to Lynwood High School in Lynwood, California. Olivia Zavala Muniga, the defendant's ex-girlfriend, was shot multiple times in the back with a 9 millimeter handgun. Her young cousin, Jessica Yvette Zavala, was shot once in the back. Olivia had recently broken off her relationship with Casillas and he had been threatening her. On January 8, 2001, the Los Angeles County District Attorney agreed to waive the death penalty and requested extradition of the defendant. On September 5, 2001, the defendant was arrested in Mexico on a Provisional Arrest Warrant. On October 2, 2001, the Mexican Supreme Court ruled in an unrelated case that a life sentence was "cruel and unusual" punishment. After refusing to give assurances that a life sentence would not be sought, the Los Angeles County District Attorney's Office was notified that the extradition request had been converted to anArticle IV prosecution in Mexico. The trial is in progress in Mexico and jeopardy has attached barring any future prosecution in California.

People v. Rivera (Case No. A967075/Los Angeles County)

On May 7, 1988, Father Nicholas Aguilar Rivera, a Catholic priest, was charged with 19 counts of child molestation. The day after he was charged, Father Rivera fled to Mexico. The case was submitted to the Mexican government for an Article IV prosecution. Following a series of dilatory tactics, Mexican prosecutors failed to submit the case for prosecution until 1995. The Mexican court dismissed the matter as untimely and entered an acquittal. Now, both countries are barred from further prosecution.

People v. Evelio Rivera Zacarias (Case No. BA190892/Los Angeles County)

Defendant Zacarias is charged with the special circumstances murder of four members of a Rosemead, California family and the attempted murder, kidnapping, sodomy and rape of a family member of the defendant's ex-girlfriend's new boyfriend. The defendant stormed into the family's home and opened fire in a fit of jealousy. He fled to Mexico. The Los Angeles County District Attorney agreed to waive the death penalty and requested extradition on July 11, 2001. An unlawfull flight warrant was issued on August 15, 2001, however, the suspect has not been arrested.

If he is arrested in Mexico, the Mexican government will require assurances that a life or death sentence will not be sought.

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907 DALEBROOK DRIVE,
Alexandria, VA, September 19, 2002.

The Honorable BARBARA BOXER, *Chairman,*
Subcommittee on International Operations and Terrorism,
Committee on Foreign Relations,
United States Senate,
Washington, DC.

Re: Request for Denial of Senate Advice and Consent to Ratification of the Swedish Mutual Legal Assistance Treaty (Swedish MLAT)

DEAR MADAME CHAIRMAN:

Thank you for the opportunity to submit a statement in opposition to the Swedish MLAT. This statement is made solely in my personal capacity as a private citizen and as the parent of an internationally abducted American child (Amanda Kristina Johnson) who remains a hostage in Sweden. Many of my points are expressed in far greater detail (and documented) in my testimony before the full Committee on Foreign Relations (October 1, 1998) and the full House International Relations Committee (October 14, 1999), as well as in my article in the Fall 2000 edition of the New York University Journal of International Law and Politics that has been provided to your staff. I hope that you will permit me to supplement this statement if any information supplied to you by the government witnesses or their agencies is incomplete, inaccurate, intentionally misleading, or false.

As your constituent and a witness in the previous hearings mentioned above (Paul Marinkovich of Simi Valley) could explain far more effectively if given the opportunity, both the Swedish MLAT and the overall Swedish law enforcement system are deeply flawed, and the proposed treaty could thus be rejected outright or tabled indefinitely for reasons unrelated to the direct, institutionalized support by the Swedish Government (and its legal and social welfare systems) for the abduction and permanent retention in Sweden of American children. The Swedish MLAT could certainly be denied advice and consent because it is in fact a proposed law enforcement treaty with a country that provides a safe haven for criminals, contrary to the U.S. Government's no safe haven policy, in that Sweden will not extradite Swedish nationals or effectively prosecute and punish them for crimes subject to U.S. jurisdiction, and has even denied U.S. extradition requests for American citizens.

But, as Congress recognized in its concurrent resolution in 2000 (H.R. Con. Res. 293), Sweden is in fact one of the worst offenders concerning the abduction and retention abroad of American (and other) children, including some of your constituents (e.g., the two children of Greg O'Donoghue of Burbank, the four children of Greg Benson of San Diego). No thanks to the Swedish Government or its legal system that cannot enforce civil court orders, some sort of arrangement for access may be worked out privately (as may have happened in the Benson case), or the child may be rescued from a third country (as with the child of your constituent Paul Marinkovich, who asserts that Sweden deserves no credit in the case). However, Sweden's citizens who abduct and retain American children generally succeed completely and could not do so without the extensive direct and indirect support of the Swedish Government, including the Swedish law enforcement system that would be embraced by the Swedish MLAT.

It has been a privilege for me to serve my country, for more than 33 years of active and reserve Marine Corps duty (retiring as a colonel in 1999) and for more than 23 years with the Department of State (primarily as an attorney, including extensive experience concerning law enforcement treaties). I have no complaints about the manner in which I have been treated, and in fact owe the Marine Corps far more in many ways than I can ever repay. As you undoubtedly know, one point "emphasized" from the outset at Quantico and the recruit depots is that Marines never leave anyone behind, including the bodies of our dead.

Not surprisingly, therefore, I have major complaints about the manner in which the Executive Branch, despite the absence of any possible justification or excuse, has badly let down and then abandoned thousands of our youngest citizens who have been abducted and retained abroad, and are, of course, victims of Federal and state felonies. This abandonment includes the State Department practice of "writing off" American children by asserting that an American child's case is "resolved" (for purposes of the annual Hague child abduction convention report to Congress) as soon as the foreign country concerned definitively refuses to return the child. The

many years of Congressional efforts to help abducted American children and their left-behind parents have, in varying degrees, been opposed, weakened, undermined, ignored, or violated.

As all of us were forcefully reminded last week, there is probably no greater loss than the loss of a child. We all know that there are many ways to lose a child, none of them acceptable. It is ironic that the Swedish MLAT may be touted as important in the war against terrorism. Under any circumstances, child abduction constitutes unending terrorism and torture for its victims. Governmental support for, and involvement in, such terrorism is particularly reprehensible. The Swedish Government is engaged in such support and involvement, and a new law enforcement treaty with such a regime should not even be considered until Sweden extradites its own citizens for parental child abduction and other offenses, consistently returns children under the Hague Convention (as does the United States at a 90-100 percent rate with Sweden), ensures substantial enforceable access and visitation *in the United States* for children not returned under the Hague Convention, ceases the payment of legal fees to its abductors and the financing of abusive appellate litigation in U.S. courts when it has no intention of respecting the results if adverse to the Swedish citizen, and carries out various other reforms.

Whatever token returns of American children from Sweden or "improvements" may be claimed, there has been no significant change in the Swedish Government Child Abduction Support System described in my previous testimony and NYU article. That governmental *system* is the most sophisticated and well-financed in the world, and guarantees successful felonies against American children and their left-behind parents. No one was fooled by the sudden return of the daughter of Ian McAnich of Dallas in May 2000. After two years of claims by Swedish law enforcement that they were unable to find the abducting Swedish mother and the child, both were magically located within 48 hours of the House unanimously passing the concurrent resolution, while at the same time a Swedish damage control team was in Washington experiencing very unsuccessful meetings with Congress and the media. The relevance to the MLAT, as in the Marinkovich case, is that Swedish law enforcement was either corrupt or incompetent in the McAnich case, combined with the usual Swedish sexism and ultra-nationalism in these cases. None of these "qualities" are acceptable in Western European law enforcement "partners" of the United States.

According to the aforementioned Swedish team in May 2000, Sweden has more parental child abduction cases with the United States than with the rest of the world combined. Most of those American children, who are the victims of Federal and state felonies, remain in Sweden and are totally lost to their American parents because the Swedish legal system has nothing comparable to contempt of court to enforce access or visitation even under a Swedish custody order. The process of losing an American child that is begun by a Swedish citizen committing a felony with impunity against American citizens due to the support of the Swedish Government is, of course, completed within the child by the very aptly-named Stockholm Syndrome, followed at some point by the Parental Alienation Syndrome. In terms of experiencing the latter, you may be familiar with the testimony before this Committee (and the HIRC), as well as a book, by Lady Catherine Meyer, wife of the British ambassador in Washington.

Even if the Justice Department would enforce (and make extradition requests under) the International Parental Kidnapping Crimes Act of 1993 (18 USC 1204), which it generally refuses to do, the Swedish MLAT would provide no meaningful assistance in cases involving Swedish abductors, and almost certainly not in cases involving American abductors in Sweden (as shown by the Marinkovich case).

To avoid Congressional, media, or other scrutiny, this proposed treaty was very quietly signed in Stockholm late last year, more than six years after its negotiation. Those who were fearful that the Senate would rightly have denied advice and consent to this treaty before 9/11 apparently saw that tragedy as an opportunity for anything with a "law enforcement" or "anti-terrorism" label. In the advice and consent process for the Swedish MLAT, the Senate also has an opportunity: to show that there is in fact a lower limit beneath which the United States should not go even if an effort is made to cloak something with one of those labels. The "quiet" approach by the State Department concerning the Swedish MLAT has continued in connection with this hearing. And there is something to hide: the fact that the Swedish MLAT is a proposed law enforcement treaty with a country that is directly involved in facilitating, financing, rewarding, and otherwise supporting the commission of Federal and state felonies by its citizens against American citizens through a legal and social welfare system that is utterly incompatible with the status of U.S. law enforcement treaty partner.

In addition, the Swedish MLAT should be rejected outright or not acted upon by the Senate because:

- It is unlikely that either the Secretary of State (in authorizing signature and forwarding of the treaty to the Senate) or the Senate itself has been provided with complete and accurate information on this proposed treaty, which is not in the best interests of the United States,
- It is unlikely that any proponents of the Swedish MLAT have more than the most rudimentary knowledge of the Swedish legal system in general and its criminal "justice" system in particular, both of which are extraordinarily primitive by U.S. standards and lack some of the most minimal standards of due process, including the absence of hearsay and other rules of evidence, no right to confront witnesses, and no authentication of documentary evidence, all of which is combined with ultra-nationalist bias in Swedish courts, and
- MLATs lack basic safeguards to protect the rights of American citizens and, like other law enforcement treaties, depend on an international "honor system," with which an unscrupulous government like Sweden that aggressively "takes care of its own" at all costs cannot and will not comply.

In short, the Swedish MLAT is a proposed law enforcement treaty with:

- a foreign government whose citizens commit crimes with impunity against American citizens because every element of the Swedish legal and social welfare systems works for Swedish citizens and against their non-Swedish victims (including payment of the legal fees of Swedish abductors both in Sweden and the U.S.),
- a foreign government that is actively engaged in systematic and institutionalized human rights abuses against American citizens (e.g., the human rights cited by the U.S. Government in the Elian Gonzalez case but ignored in the annual U.S. human rights reports, as well as those regarding access to both parents in the Convention on the Rights of the Child that Sweden violates as a State Party and the U.S. respects even as a non-Party), and
- a foreign government that prevents or blocks any adequate or effective remedies for American citizens who are the victims of crimes committed by Swedish citizens.

Moreover, the Swedish MLAT is a proposed law enforcement treaty that has serious technical flaws in several respects that almost certainly will NOT vanish in day-to-day implementation at the working level of the Justice Department whatever "safeguards" are claimed:

1) The U.S. obligation under the treaty to provide assistance for everything in the Swedish penal code ("non-dual criminality") means that the U.S. would be obligated to assist with Swedish criminal laws that would be unconstitutional in the U.S. or that deny constitutionally protected activities. Your staff has an example of American citizens being jailed in Sweden under such laws.

2) With regard to child abduction, the U.S. obligation to provide assistance for the entire Swedish Penal Code includes a law (your staff has a copy) designed and utilized to protect Swedish child abductors and to intimidate and ultimately prosecute non-Swedish parents attempting to exercise their joint or even sole child custody rights in Sweden even under Swedish law. This ultra-nationalist and racist law was, according to senior Swedish prosecutors, originally intended to deal with "fathers from the South" in their words (i.e., Africans, Arabs, or anyone with a dark skin). But it has been used very effectively and wrongly against Americans, including your constituent Greg O'Donoghue of Burbank (six months in a UK prison awaiting extradition to Sweden), Mark Larson of Utah (issuance of arrest warrant prevented any access to his abducted daughter for a lengthy period), and me (2 days in a Swedish jail, with eventual compensation by the Swedish Government for false arrest).

3) Sweden cannot meet the standard in the Senate proviso that has previously conditioned advice and consent to MLATs, namely that no senior foreign government official who will have access to information under the MLAT is engaged in a felony. The central authority for the MLAT would be in the same part of the Swedish Foreign Ministry as the existing central authority for the Hague child abduction convention (which is actively engaged in perpetuating ongoing Federal and state felonies against American citizens, and does far more to support Swedish child abductors than the U.S. central authority does to assist their victims).

Some final points against the Swedish MLAT:

• It is a proposed law enforcement treaty with an historically unreliable treaty "partner" that has violated its existing law enforcement (extradition treaty) and related (Hague child abduction convention—a convention with civil remedies for criminal conduct) treaty obligations to the United States and others (Convention on the Rights of the Child).

• It is a proposed treaty that the United States does not need because Sweden considers its treaty obligations to be optional and only complies when convenient or in its interest to do so (meaning that Sweden will provide assistance on its own terms with or without a treaty, as it does now).

• It is a proposed treaty with a country that has no principle of comity in its legal system, which has frequently shown its lack of respect for U.S. laws and court orders, declaring that U.S. orders "have no validity in Sweden," and which has abused the U.S. legal process by financing costly appellate litigation against American citizens with no intention of respecting or enforcing the results in Sweden if adverse to the Swedish citizen concerned.

Senate advice and consent to the Swedish MLAT would send the wrong signal to Sweden, a country that has shown longstanding contempt for U.S. law and policy generally, to the extreme detriment of many American citizens (i.e., abducted American children and their American parents who lose them forever. An MLAT with Sweden would put the entire U.S. law enforcement system at the disposal of Swedish law enforcement, the shortcomings of which have been amply discussed above. It would be wrong from a law enforcement standpoint, a human rights standpoint, and an American standpoint. It is not possible to compartmentalize the Swedish Government's direct support for felonies by its citizens against Americans on the one hand from the question of its worthiness as a U.S. law enforcement treaty partner on the other hand.

Sincerely,

THOMAS A. JOHNSON.