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PROTOCOL OF 1997 TO AMEND THE INTERNATIONAL  
CONVENTION FOR THE PREVENTION OF POLLUTION  
FROM SHIPS, 1973, AS MODIFIED BY THE PROTOCOL OF  
1978 RELATING THERETO (TREATY DOC. 108-7)

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

REPORT

[To accompany Treaty Doc. 108-7]

The Committee on Foreign Relations, to which was referred the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as Modified by the Protocol of 1978 Relating Thereto (hereinafter the “Protocol of 1997”), signed by the United States on December 22, 1998, having considered the same, reports favorably thereon and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of ratification.

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I. PURPOSE

The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (hereinafter the “MARPOL Convention”), is a multilateral agreement regulating pollution from ships. The Protocol of 1997 amends the MARPOL Convention to add Annex VI, Regulations for the Prevention of Air Pollution from Ships.

## II. BACKGROUND

The MARPOL Convention is a multilateral agreement governing accidental and operational discharges of pollution from ships. It consists of a framework agreement setting forth general obligations and several annexes that relate to particular sources of marine pollution from ships. Annexes I and II are mandatory for all MARPOL Convention parties and cover, respectively, the transport of oil and the transport of harmful substances carried in bulk. The other four annexes are optional: Annex III, which addresses the transport of harmful substances in packaged form; Annex IV, which regulates ship-generated sewage; Annex V, which governs ship-generated garbage; and Annex VI, which regulates air pollution from ships.

The United States ratified the Protocol of 1978 (which incorporates with modifications the 1973 Convention) along with Annexes I and II on August 12, 1980. The MARPOL Convention and Annexes I and II entered into force for the United States on October 2, 1983. On December 30, 1987, the United States ratified Annex V, which entered into force on December 31, 1988. On December 3, 1991, the United States ratified Annex III, which entered into force on July 1, 1992. The United States is not a party to Annex IV, which entered into force on September 27, 2003.

The Protocol of 1997, adding a new Annex VI, was signed by the United States on December 22, 1998, and transmitted to the Senate for advice and consent to ratification on May 15, 2003 (*see* Treaty Doc. 108-7). The Protocol entered into force on May 19, 2005, and currently has 31 parties.

## III. SUMMARY OF KEY PROVISIONS OF THE PROTOCOL

A detailed article-by-article discussion of the Protocol of 1997 may be found in the Letter of Transmittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 108-7. A summary of the key provisions of the Protocol is set forth below.

The Protocol of 1997 would add Annex VI to the MARPOL Convention. Annex VI seeks to reduce air pollution from ships at sea and in port by: limiting the emission of nitrogen oxides (NO<sub>x</sub>) from large marine diesel engines; governing the sulphur content of marine diesel fuel; prohibiting the deliberate emission of ozone-depleting substances; providing a framework for regulating the emission of volatile organic compounds during transfer of cargoes between tankers and terminals; and setting international standards for shipboard incinerators and fuel oil quality. In addition, Annex VI establishes similar requirements for platforms and drilling rigs at sea and contains provisions for the establishment of special SO<sub>x</sub> (sulphur oxide) Emission Control Areas.

### APPLICATION OF ANNEX VI

Annex VI is comprised of 19 regulations containing the specific obligations of the parties. Pursuant to Articles 3 and 5 of the MARPOL Convention and Article 3 of the Protocol, Annex VI regulations would apply to all ships entitled to fly the flag of or operating under the authority of a party to the Protocol, as well as to ships of non-parties to the Protocol as may be necessary to ensure

that no more favorable treatment is given to such ships. Ratification of the Protocol of 1997, however, would not prohibit the United States from implementing more stringent regulations on ships entering its ports or internal waters.

Article 3 of the MARPOL Convention exempts warships, naval auxiliaries and other ships owned or operated by a state and used in governmental non-commercial service from the application of the provisions of its annexes. In negotiating the Protocol of 1997, the parties agreed that, under Article 3(3) of the MARPOL Convention, such ships will be exempt from the application of the provisions of Annex VI. Parties to MARPOL, however, are required to take appropriate measures not impairing the operations or operational capabilities of such ships owned or operated by it, to ensure that such ships act in a manner consistent, so far as is reasonable and practicable, with Annex VI. The executive branch has confirmed to the committee that the United States already meets this standard with respect to such vessels.

#### REGULATION 12: EMISSIONS OF OZONE-DEPLETING SUBSTANCES

Regulation 12 of Annex VI prohibits deliberate emissions of ozone-depleting substances that are controlled under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (a treaty to which the United States is party), including halon compounds and five chlorofluorocarbon compounds (CFCs). New installations containing ozone-depleting substances are prohibited on all ships, with one exception: new installations containing hydrochlorofluorocarbons (HCFCs) are permitted until January 1, 2020.

#### REGULATION 13: NITROGEN OXIDE EMISSIONS

Regulation 13 of Annex VI limits NO<sub>x</sub> emissions from marine diesel engines with a power output of more than 130 kW to levels that the negotiating States in 1997 agreed as being achievable by the year 2000. These limits, which require the use of readily available emission control technology, apply to any such engine installed on a ship constructed on or after January 1, 2000, and to any such engine that undergoes a major conversion after that date. The NO<sub>x</sub> Technical Code attached to Resolution 2 of the 1997 MARPOL Conference contains testing and certification procedures for the engine NO<sub>x</sub> limits.

#### REGULATION 14: SULPHUR OXIDE EMISSIONS

Regulation 14 of Annex VI controls emissions of sulphur oxide (SO<sub>x</sub>) by imposing a global cap of 4.5% m/m (4.5% sulphur mass to total mass or 45,000 parts per million) on the sulphur content of fuel oil used on ships for combustion and calls on the International Maritime Organization to monitor the worldwide average sulphur content of residual fuel.

Regulation 14 also contains provisions for the establishment of special "SO<sub>x</sub> Emission Control Areas" (SECAs). Ships operating in these areas must use fuel that does not exceed 1.5% m/m (15,000 ppm). Alternatively, a ship can use an exhaust gas cleaning system or another technological method to limit SO<sub>x</sub> emissions. Annex VI designates the Baltic Sea as a SECA and provides a mechanism by

which the IMO may designate other SECAs. The executive branch has indicated that, upon ratification of Annex VI, the United States may seek the establishment of one or more SECAs in the United States pursuant to the procedures set out in Appendix III to Annex VI. The Environmental Protection Agency is currently conducting studies to evaluate proposed SECAs along the Pacific, Atlantic, and Gulf Coasts of the United States.

#### REGULATION 16: ON-BOARD INCINERATION

Regulation 16 of Annex VI establishes requirements for the incineration of certain materials on board ship, including prohibiting incineration of contaminated packaging materials and polychlorinated biphenyls (PCBs).

#### 2005 AMENDMENTS

On July 22, 2005, the Marine Environment Protection Committee of the International Maritime Organization (IMO) adopted several amendments (mostly technical) to Annex VI and the NO<sub>x</sub> Technical Code pursuant to the procedures in Article 16 of the MARPOL Convention. Most significantly, these amendments include recognition of a new SECA. In March 2000, the IMO approved the North Sea area as a new SECA, with a view to its adoption following entry into force of the Protocol of 1997. The 2005 amendments would add this new North Sea area SECA to Regulation 14. Pursuant to paragraph 7 of Regulation 14, the reduced SO<sub>x</sub> emission standards will become effective for vessels operating in the North Sea area on November 22, 2007, one year following entry into force of the amendments.

Under the simplified amendment process in Article 16(2)(f)(iii) of the MARPOL Convention, these amendments to Annex VI will be deemed to have been accepted on May 22, 2006, unless prior to that date not less than one-third of the parties, or parties the combined merchant fleets of which constitute not less than 50 percent of the gross tonnage of the world's merchant fleet, have communicated to the IMO their objection to the amendments. Article 6(3) of the Protocol of 1997 provides that if a party deposits an instrument of ratification after the date on which an amendment to the Protocol is deemed to have been accepted in accordance with Article 16 of the MARPOL Convention, it shall become a party to the Protocol as amended. Therefore, should the United States deposit its instrument of ratification for the Protocol after May 22, 2006, the United States will be a party to the Protocol as amended. Conversely, should the United States deposit its instrument of ratification prior to May 22, 2006, it would have the option of communicating to the IMO an objection to the amendments before that date.

Given this situation, the committee questioned the executive branch concerning its intention with regard to these amendments should the President deposit an instrument of ratification for the Protocol of 1997 prior to May 22, 2006. The executive branch confirmed that it does not intend to object to these amendments, which would then enter into force on November 22, 2006, six months following their acceptance. The committee supports this decision.

#### IV. IMPLEMENTING LEGISLATION

The Protocol of 1997 will require implementing legislation. The executive branch submitted proposed legislation to Congress on October 6, 2005. That legislation is under consideration by the Committee on Commerce, Science, and Transportation.

#### V. COMMITTEE ACTION

The committee held a public hearing on the Protocol of 1997 on September 29, 2005, where it heard testimony from representatives of the Department of State and the Environmental Protection Agency (S. Hrg. 109–324).<sup>1</sup> On March 14, 2006, the committee considered the Protocol of 1997 and ordered it favorably reported by voice vote, with a quorum present and without objection, with the recommendation that the Senate give its advice and consent to its ratification, subject to an understanding and two declarations contained in the resolution of advice and consent to ratification.

#### VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that the Protocol of 1997 is in the interest of the United States and urges the Senate to act promptly to give advice and consent to its ratification, subject to the understandings and declaration contained in the resolution of advice and consent.

The committee recommends that the Senate's advice and consent be made subject to two understandings and one declaration, which are contained in sections two and three of the resolution of advice and consent. Section two of the resolution contains two understandings. The first understanding confirms that international law does not prohibit parties to the Protocol from requiring vessels entering their ports or internal waters to comply with stricter emission standards or fuel oil requirements. The executive branch recommended a similar understanding regarding only the emission control limits for nitrogen oxides. Insofar as this principle applies more broadly, and based on discussions with the executive branch (and with its support), the committee has broadened this understanding to reference all emission standards and fuel oil requirements contained in the Protocol.

The second understanding concerns Regulation 15 of the Protocol, which relates to volatile organic compounds. Regulation 15 does not establish emission standards. Rather, it contains certain requirements with which a party must comply if it chooses to set such standards. Consistent with the recommendation of the executive branch, the committee has included an understanding that clarifies the scope of this regulation.

The declaration in section three of the resolution relates to the emission control limits for nitrogen oxides (NO<sub>x</sub>) contained in Regulation 13. The executive branch recommended that the United States make a declaration expressing its support for an amendment to Annex VI that would strengthen these NO<sub>x</sub> emission con-

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<sup>1</sup>A transcript of this hearing and questions and answers for the record may be found on the Internet at <http://www.access.gpo.gov/congress/senate/senate11sh109.html>

trol limits in keeping with new technological developments. The committee agrees with this recommendation.

Finally, the committee wishes to emphasize to the executive branch that the simplified amendment process for certain matters under MARPOL necessitates that it keep the committee informed about pending amendments that are subject to this process. When a prior Annex to the MARPOL Convention was considered by the committee in the 102nd Congress, the executive branch assured the committee that it would be “apprised of all pending amendments, to ensure that they are of a technical nature.” Unfortunately, that pledge was not fulfilled. The executive branch has committed to improve the process of consulting with the committee on such amendments.

#### VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

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

##### **SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO UNDERSTANDINGS AND DECLARATION**

The Senate advises and consents to the ratification of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (hereinafter in this resolution referred to as the “Protocol of 1997”), signed by the United States on December 22, 1998 (T. Doc 108–7), subject to the understandings and declaration in sections 2 and 3.

##### **SECTION 2. UNDERSTANDINGS**

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

(1) The United States of America understands that the Protocol of 1997 does not, as a matter of international law, prohibit Parties from imposing, as a condition of entry into their ports or internal waters, more stringent emission standards or fuel oil requirements than those identified in the Protocol.

(2) The United States of America understands that Regulation 15 applies only to safety aspects associated with the operation of vapor emission control systems that may be applied during cargo transfer operations between a tanker and port-side facilities and to the requirements specified in Regulation 15 for notification to the International Maritime Organization of port State regulation of such systems.

##### **SECTION 3. DECLARATION**

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

The United States of America notes that at the time of adoption of the Protocol of 1997, the NO<sub>x</sub> emission control limits contained in Regulation 13 were those agreed as being achievable by January 1, 2000, on new marine diesel engines, and further notes that Regulation 13(3)(b) contemplated that new technology would become available to reduce on-board NO<sub>x</sub>

emissions below those limits. As such improved technology is now available, the United States expresses its support for an amendment to Annex VI, that would, on an urgent basis, revise the agreed NO<sub>x</sub> emission control limits contained in Regulation 13 in keeping with new technological developments.

