

to offer much needed support and to provide a strong voice for the endangered and involuntarily missing adults of our Nation;

Whereas we must support and encourage the citizens of our Nation to continue with efforts to awaken our Nation's awareness to the plight of our missing adults;

Whereas we must improve and promote reporting procedures involving missing adults and unidentified deceased persons; and

Whereas our Nation's awareness, acknowledgment, and support of missing adults, and encouragement of efforts to continue our search for these adults, must continue from this day forward: Now, therefore, be it

*Resolved*, That the Senate—

(1) designates August 2003, as "National Missing Adult Awareness Month"; and

(2) requests that the President issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

#### CONGRATULATING LANCE ARMSTRONG FOR WINNING THE 2003 TOUR DE FRANCE

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 214, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title. The legislative clerk read as follows:

A resolution (S. Res. 214) congratulating Lance Armstrong for winning the 2003 Tour de France.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 214) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

##### S. RES. 214

Whereas Lance Armstrong won the 2003 Tour de France, the 100th anniversary of the race, by completing the 2,125-mile, 23-day course in 83 hours, 41 minutes, and 12 seconds, finishing 1 minute and 1 second ahead of his nearest competitor;

Whereas Lance Armstrong's win on July 27, 2003, marks his fifth Tour de France victory;

Whereas, with this victory, Lance Armstrong joined Miguel Indurain as the only riders in history to win cycling's most prestigious race in 5 consecutive years;

Whereas Lance Armstrong displayed incredible perseverance, determination, and leadership in prevailing over the mountainous terrain of the Alps and Pyrenees and in overcoming crashes, illness, hard-charging rivals, and driving rain on the way to winning the premier cycling event in the world;

Whereas, in 1997, Lance Armstrong defeated choriocarcinoma, an aggressive form of testicular cancer that had spread throughout his abdomen, lungs, and brain, and after treatment has remained cancer-free for the past 6 years;

Whereas Lance Armstrong is the first cancer survivor to win the Tour de France;

Whereas Lance Armstrong's courage and resolution to overcome cancer has made him a role model to cancer patients and their loved ones, and his efforts through the Lance Armstrong Foundation have helped to advance cancer research, diagnosis, and treatment, and after-treatment services;

Whereas Lance Armstrong continues to be the face of cycling as a sport, a healthy fitness activity, and a pollution-free transportation alternative; and

Whereas Lance Armstrong's accomplishments as an athlete, teammate, cancer survivor, and advocate have made him an inspiration to millions of people around the world: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates Lance Armstrong and the United States Postal Service team on their historic victory in the 2003 Tour de France; and

(2) commends the unwavering commitment to cancer awareness and survivorship demonstrated by Lance Armstrong.

SEC. 2. The Secretary of the Senate shall transmit an enrolled copy of this resolution to Lance Armstrong.

#### AUTHORIZING REPRESENTATION BY SENATE LEGAL COUNSEL IN THE CASE OF WAGNER V. UNITED STATES SENATE COMMITTEE ON THE JUDICIARY

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 215, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 215) to authorize representation by the Senate Legal Counsel in the case of Wagner v. United States Senate Committee on the Judiciary, et al.

There being no objection, the Senate proceeded to consider the resolution.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 215) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

##### S. RES. 215

Whereas, the United States Senate Committee on the Judiciary and Senator Orrin G. Hatch have been named as defendants in the case of Wagner v. United States Senate Committee on the Judiciary, et al., No. 1:03CV01225 (RMU), pending in the United States District Court for the District of Columbia;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to defend in civil actions Committees of the Senate, and Members of the Senate relating to the Members' official responsibilities: Now therefore, be it

*Resolved*, That the Senate Legal Counsel is authorized to represent the United States Senate Committee on the Judiciary and Senator Orrin G. Hatch in the case of Wagner v.

United States Senate Committee on the Judiciary, et al.

#### EXECUTIVE SESSION

##### TREATIES

Mr. SUNUNU. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following treaties on today's Executive Calendar: Nos. 7, 8, 9, 10, 11.

I further ask consent that the treaties be considered as having passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification; that any committee conditions, declaration, or reservations be agreed to as applicable; that any statements in regard to these treaties be printed in the RECORD as if read; and that the Senate take one vote on the resolution of ratifications to be considered as separate votes; further, that when the resolutions of ratification are voted upon, the motion to reconsider be laid upon the table, the President be notified of the Senate's action, and that following the disposition of the treaties, the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The treaties will be considered to have passed through their various parliamentary stages up to and including the presentation of the resolutions of ratification.

The resolutions of ratification are as follows:

Resolutions of Ratification as approved by the Senate:

Agreement with Russian Federation concerning Polar Bear Population (Treaty Doc. 107-10)

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

Section 1. Senate Advice and Consent subject to a condition.

The Senate advises and consents to the ratification of the Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, done at Washington October 16, 2000 (T. Doc. 107-10, in this resolution referred to as the "Agreement"), subject to the condition in section 2.

Sec. 2. Condition.

The advice and consent of the Senate to the ratification of the Agreement is subject to the condition that the Secretary of State shall promptly notify the Committee on Environment and Public Works and the Committee on Foreign Relations of the Senate in any instance that, pursuant to Article 3 of the Agreement, the Contracting Parties modify the area to which the Agreement applies. Any such notice shall include the text of the modification and information regarding the reasons for the modification.

Agreement Amending Treaty with Canada Concerning Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty Doc. 108-1)

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

That the Senate advises and consents to the ratification of the Agreement Amending

the Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, done at Washington May 26, 1981, and effected by an exchange of diplomatic notes at Washington July 17, 2002, and August 13, 2002 (T. Doc. 108-1).

Amendments to the 1987 Treaty on Fisheries with Pacific Island States (Treaty Doc. 108-2)

Section 1. Senate Advice and Consent subject to a Declaration.

The Senate advises and consents to the ratification of the Amendments to the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, with Annexes and Agreed Statements, done at Port Moresby, April 2, 1987, done at Koror, Palau, March 30, 1999, and at Kiritimati, Kiribati March 24, 2002 (T. Doc. 108-2, in this resolution referred to as the "Amendments"), subject to the declaration in section 2.

Sec 2. Declaration.

The advice and consent of the Senate to the ratification of the Amendments is subject to the following declaration:

The advice and consent provided under section 1 is without prejudice to any position the Senate may take with respect to providing advice and consent to ratification of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, signed by the United States on September 9, 2000.

Convention for International Carriage by Air (Treaty Doc. 106-45)

Section 1. Senate Advice and Consent subject to reservation.

The Senate advises and consents to the ratification of the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal May 28, 1999 (T. Doc. 106-45, in this resolution referred to as the "Convention"), subject to the reservation in section 2.

Sec. 2. Reservation.

The advice and consent of the Senate to the ratification of the Convention is subject to the following reservation, which shall be included in the instrument of ratification:

Pursuant to Article 57 of the Convention, the United States of America declares that the Convention shall not apply to international carriage by air performed and operated directly by the United States of America for non-commercial purposes in respect to the functions and duties of the United States of America as a sovereign State.

Protocol to Amend the Convention for Unification of Certain Rules Relating to International Carriage by Air (Treaty Doc. 107-14)

That the Senate advise and consent to the ratification of the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, done at The Hague on September 28, 1955 (T. Doc. 107-14).

Mr. SUNUNU. Mr. President, I ask for a division vote on the resolutions of ratification.

The PRESIDING OFFICER. A division is requested. Senators in favor of the resolutions of ratification will rise and stand until counted. (After a pause.) Those opposed will rise and stand until counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolutions of ratification are agreed to.

MONTREAL CONVENTION AND HAGUE PROTOCOL

Mr. BIDEN. Mr. President, I am pleased to support the Convention for the Unification of Certain Rules for International Carriage by Air, known as the Montreal Convention, which was signed by the United States at a negotiating conference in that city in 1999. The convention provides the basic liability framework for international aviation and the air carriage of cargo and baggage. When it enters into force, the convention, for those nations party to it, will replace the current liability system, known as the Warsaw system, which had its origins in a 1929 treaty known as the Warsaw Convention. Since 1929, the Warsaw Convention has been amended numerous times by various protocols. But membership in the convention and the various protocols has not been universal, creating a patchwork quilt of treaty relations between and among nations. The Montreal Convention is designed to provide a clear and uniform system, and it is hoped that there will be widespread adherence to it.

The Warsaw Convention system is antiquated in several respects, particularly with regard to the absurdly low limitations it contains on liability in cases of passenger injury or death. These limits may have made sense in 1929, when the airline industry was in its infancy. But those limits are anachronistic and indefensible. The airline industry matured long ago, and has long been capable of purchasing adequate liability insurance.

To their credit, the major airline carriers agreed, by contract, to waive the limitations for liability for passenger injury or death in 1996 in the "IATA Inter-Carrier Agreement on Passenger Liability." Most of the airlines flying to and from the United States have taken this action, although several smaller airlines have not. The Montreal Convention will codify this inter-carrier agreement. Article 21 provides for payment, in cases of personal injury or death, of up to 100,000 Special Drawing Rights, currently about \$140,000, for proven damages. Above that amount, there will be no limit on the amount an injured person or his or her heirs may obtain; the burden, under Article 21(2), will be on the air carrier to prove that it was not negligent or that the damage was solely due to the negligence or other wrongful act or omission of a third party.

The Montreal Convention also creates a "fifth jurisdiction" in addition to the four jurisdictions provided under the Warsaw system. This additional jurisdiction, set forth in article 33(2), will ensure that, in nearly every case, Americans will be able to bring an action in a U.S. court.

The Montreal Convention contains several other provisions that modernize the liability regime for cargo. These provisions were drawn from those in Montreal Protocol No. 4 (to the Warsaw Convention), which the Senate approved in 1998.

The Montreal Convention is self-executing. No implementing legislation is required to fulfill U.S. obligations under it, and, like the Warsaw Convention, will provide the basis for a private right of action in U.S. courts for cases arising under it. Since the United States joined the Warsaw Convention in 1934, that convention has been the basis for hundreds of lawsuits in U.S. courts. Accordingly, a large body of judicial precedents has developed during these seven decades. The negotiators intended that, to the extent applicable, to preserve these precedents.

A question arises whether the judicial doctrine of *forum non conveniens* applies to cases under the Montreal Convention. The circuit courts of appeals in the United States are divided on this question with regard to the Warsaw Convention. Compare *Hosaka v. United Airlines, Inc.*, 305 F.3d 989 (9th Cir. 2020), *cert. denied*, 123 S. Ct. 1284 (2003) with *In re Air Crash Disaster Near New Orleans, Louisiana on July 9, 1982*, 821 F.2d 1147 (5th Cir. 1987) (en banc), vacated and remanded on other grounds sub nom. *Pan American World Airways, Inc. v. Lopez*, 490 U.S. 1032 (1989). At the diplomatic conference, the United States delegation offered an amendment to the draft text during a meeting of the "Friends of the Chairman's Group" to make clear that the doctrine may be applied if consistent with the country's procedural laws. See 1 International Civil Aviation Organization, International Conference on Air Law, Montreal 10-28 May 1999, at 159 (2001) (Advance Copy of Minutes). This provision was not incorporated in the final text of the Montreal Convention. The Committee on Foreign Relations did not address this issue in its deliberations.

The Senate is also considering the Hague Protocol of 1955, a protocol to the Warsaw Convention. It was first submitted to the Senate in 1959, but then returned to the President in 1967. The circumstances that led to the return of the Protocol related to the unreasonably low liability limits that I described earlier. The Protocol was re-submitted by President Bush in 2002.

The Protocol is still relevant for this reason: even with entry into force of the Montreal Convention, the Warsaw system will remain in force among many nations, probably for several years. The Hague Protocol contains many provisions modernizing the Warsaw's systems rules on cargo shipment, and therefore remains important for shippers and consumers.

In 1998, the Senate approved Montreal Protocol No. 4, a protocol to the Warsaw Convention; the United States became a party to the Protocol in March 1999. At the time, it was presumed that, in doing so, the United States also became bound by the provisions of the Hague Protocol. Article XVII of Montreal Protocol No. 4 states that "[r]atification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State

which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the Warsaw Convention as amended at the Hague, 1955, and by Protocol No. 4 of Montreal, 1975." Several courts in the United States appear to have assumed as much. *E.g.*, *Cortes v. American Airlines, Inc.*, 177 F.3d 1272 (11th Cir. 1999), *cert. denied*, 528 U.S. 1136 (2000); *Motorola, Inc. v. Federal Express Corp.*, 308 F.3d 995 (9th Cir. 2002), *cert. denied sub nom.*, *Kuehne & Nagel, Inc. v. Motorola, Inc.*, 123 S. Ct. 2213 (2003). In submitting the Montreal Convention to the Senate, the Executive Branch stated that "[i]n accordance with the provisions of Montreal Protocol No. 4, the United States also became bound by the provisions of The Hague Protocol when it ratified Montreal Protocol No.

4." See S. Treaty Doc. 106-45, at ix (2000).

A decision in 2000 by the United States Court of Appeals for the Second Circuit has raised a question about whether the United States has treaty relations under the Hague Protocol with certain states. See *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.2d 301 (2d Cir. 2000), *cert. denied*, 533 U.S. 928 (2001). The executive branch elaborated on this issue in its submission of the Hague Protocol in 2002. S. Treaty Doc. 107-14, at viii-ix (2002). Approval of the Hague Protocol at this time will end any uncertainty that may exist about the question of the status of the United States as a party to the Hague Protocol.

Mr. President, the Montreal Convention is an important achievement, the culmination of many decades of effort by the United States and many U.S.

citizens to remove the unreasonably low liability limits of the Warsaw Convention. I commend the Clinton Administration negotiators for their fine work in 1999, as well as the many officials of the State and Transportation Departments, before and after 1999, who have worked to develop this treaty and present it to the Senate. The Montreal Convention is supported by all the main interests in the private sector—the airlines, passenger groups, cargo firms, and attorneys representing passengers. It deserves the support of the Senate.

I want to thank Chairman LUGAR and his staff for bringing this treaty forward at this time, and for ensuring Senate action prior to the August recess. I urge all my colleagues to support the Montreal Convention and the Hague Protocol.