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Global Climate Change: Selected Legal Questions About the Kyoto Protocol

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Summary

On December 10, 1997, delegates from 161 nations concluded the Kyoto Protocol to the United Nations Framework Convention on Climate Change setting binding targets for reduction of emissions of greenhouse gases by developed nations. The Clinton Administration is generally supportive of the Protocol but will not sign it and submit it to the Senate for its advice and consent until further negotiations on the Protocol are held later this year. Nonetheless, a number of legal questions about the Protocol and its possible implementation have already arisen. This report addresses whether the United States is now legally bound by the Protocol, the legal implications of signing it, whether it could be implemented as an executive agreement without submission to the Senate, and whether the Protocol could be used as the legal basis for regulation of emissions even prior to ratification.

(1) Is the United States now legally bound by the Kyoto Protocol?

No. The Protocol has been negotiated, and the Administration has indicated its intent eventually to seek its ratification. But the Protocol has not as yet been signed by the U.S. or submitted to the Senate for its advice and consent, nor has it entered into force internationally. Both steps — ratification by the U.S. and entry into force internationally — are necessary for the Protocol to be legally binding on the U.S.

(2) What would be the legal effect of the United States signing the Kyoto Protocol?

The Kyoto Protocol provides that it is open for signature from March 16, 1998, to March 15, 1999, and is subject to ratification, acceptance, or approval.¹ As noted, the United States has not as yet signed the Protocol but Under Secretary of State Eisenstadt has stated that the Administration intends to do so sometime during this one year period.

¹ Kyoto Protocol, Art. 23(1).

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Signature in itself would not make the Protocol legally binding on the United States. But it would have at least two consequences. First, it would initiate the process by which the U.S. could become legally bound. That is, signature of a treaty is essentially a political statement of approval and represents "at least a moral obligation to seek (its) ratification."² Signature of the Protocol, thus, would be a public declaration of the Administration's intent to make it legally binding. That is only the first step in the process, however. The Protocol could not become legally binding until it is submitted to the Senate, the Senate gives its advice and consent, the President signs and deposits the appropriate instruments of ratification with the United Nations, and the Protocol gains sufficient ratifications to enter into force internationally.

Secondly, signature of a treaty or protocol obligates a state "to refrain from acts that would defeat the object and purpose of the agreement."³ The Vienna Convention on the Law of Treaties, Art. 18, states the matter as follows:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
- (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.⁴

The United States has not ratified the Vienna Convention but this portion likely represents customary international law on the subject.

As a practical matter, "[i]t is often unclear what actions would have such effect."⁵ The *Restatement* suggests, however, that the irreversibility of an action may be an important criterion.⁶

(3) Could the Kyoto Protocol be treated as an executive agreement for which Senate or Congressional consent is not required?

Executive agreements are not mentioned as such in the Constitution, but their existence has been validated by historical practice and judicial decision.⁷ Such agreements can generally be categorized as (1) congressional-executive agreements sanctioned by the joint authority of the President and the Congress, (2) agreements concluded pursuant to

² American Law Institute, *Restatement of the Foreign Relations Law of the United States Third*, Vol. 1 (1987), § 312, Comment d, at 173 (hereinafter *Restatement*).

³ *Id.*, § 312(3).

⁴ Vienna Convention on the Law of Treaties, Exec. L. 92d Cong., 1st Sess. (1971), Art. XVIII, reprinted in Congressional Research Service, *Treaties and Other International Agreements: The Role of the United States Senate*, 103d Cong., 1st Sess. (Comm. Print 1993), at 318, 334.

⁵ *Restatement, supra*, Comment i, at 174.

⁶ *Id.*

⁷ See *Treaties and Other International Agreements, supra*, at 52-68.

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existing treaties, and (3) Presidential or "sole" executive agreements made by on the basis of the President's independent constitutional authority.

The full scope of the President's authority to conclude and implement executive agreements remains a subject of scholarly debate, and the guidelines issued by the Department of State to direct whether a particular agreement should be in the form of a treaty or an executive agreement are suggestive but indeterminate.⁸ But with respect to the Kyoto Protocol the issue appears to have been anticipated when the Senate gave its advice and consent to the Framework Convention on Climate Change in 1992.⁹ During the hearing on the Convention the Senate Foreign Relations Committee propounded to the Administration the general question of whether protocols and amendments to the Convention and to the Convention's Annexes would be submitted to the Senate for its advice and consent. The Bush Administration responded as follows:

Amendments to the convention will be submitted to the Senate for its advice and consent. Amendments to the convention's annex (i.e., changes in the lists of countries contained in annex I and annex II) would not be submitted to the Senate for its advice and consent. With respect to protocols, given that a protocol could be adopted on any number of subjects, treatment of any given protocol would depend on its subject matter. However, we would expect that any protocol would be submitted to the Senate for its advice and consent.¹⁰

The committee also asked more specifically whether a protocol containing targets and timetables for emissions reductions would be submitted to the Senate. The Administration responded:

⁸ In Circular 175, "Procedure on Treaties," the Department sets forth the following considerations to guide the decision whether a particular agreement is to be concluded as a treaty or an executive agreement:

- a. The extent to which the agreement involves commitments or risks affecting the nation as a whole;
- b. Whether the agreement is intended to affect State laws;
- c. Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;
- d. Past U.S. practice as to similar agreements;
- e. The preference of the Congress as to a particular type of agreement;
- f. The degree of formality desired for an agreement;
- g. The proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement; and
- h. The general international practice as to similar agreements.

The Circular further provides that "[i]n determining whether any international agreement should be brought into force as a treaty or as an international agreement other than a treaty, the utmost care is to be exercised to avoid any invasion or compromise of the constitutional powers of the Senate, the Congress as a whole, or the President." See *Treaties and Other International Agreements*, *supra*, Appendix IV, at 301, 304.

⁹ 138 CONG. REC. S 17156 (daily ed., Oct. 7, 1992).

¹⁰ *Hearing Before the Senate Committee on Foreign Relations on the U.N. Framework Convention on Climate Change*, 102d Cong., 2d Sess. (1992), at 105 (Appendix).

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If such a protocol were negotiated and adopted, and the United States wished to become a party, we would expect such a protocol to be submitted to the Senate.¹¹

The Senate did not attach any formal conditions to its resolution of ratification for the Convention. But the report of the Senate Foreign Relations Committee on the resolution stated as follows:

The Committee notes that a decision by the Conference of the Parties to adopt targets and timetables would have to be submitted to the Senate for its advice and consent before the United States could deposit its instruments of ratification for such an agreement. The Committee notes further that a decision by the executive branch to reinterpret the Convention to apply legally binding targets and timetables for reducing emissions of greenhouse gases to the United States would alter the "shared understanding" of the Convention between the Senate and the executive branch and would therefore require the Senate's advice and consent.¹²

The committee made clear, in other words, its view that "[t]he final framework convention contains no legally binding commitments to reduce greenhouse gas emissions" and its intent that any future agreement containing legally binding targets and timetables for reducing such emissions would have to be submitted to the Senate. The Bush Administration concurred with that view and agreed to submit any such agreement. That commitment was cited during Senate debate on the resolution of ratification as an important element of the Senate's consent.¹³ While these statements may not be as legally binding as a formal condition to the Senate's resolution of ratification for the 1992 Convention, it is doubtful that any administration could ignore them.

The Clinton Administration, it might be noted, has repeatedly stated that it intends to submit the Kyoto Protocol to the Senate for its advice and consent.

(4) Could the Kyoto Protocol, prior to ratification, be used as a basis for regulations imposing emissions restrictions on industry?

On rare occasion in the past treaties have been given provisional application prior to their ratification, *i.e.*, measures have been taken to carry them out even though they have not completed the ratification process. The Vienna Convention on the Law of Treaties states:

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
 - a. the treaty itself so provides; or
 - b. the negotiating States have in some other manner so agreed.¹⁴

Most recently, for instance, the U.S. agreed to the provisional application of a revised deep seabed regime under the Law of the Sea (LOS) Convention. That Convention was put forward by the United Nations General Assembly as a multilateral treaty in 1982, but the

¹¹ *Id.* at 106.

¹² S. Exec. Rept. 102-55, 102d Cong., 2d Sess. (1992), at 14.

¹³ See 138 CONG. REC. S 17150 (daily ed. Oct. 7, 1992) (statement of Sen. McConnell).

¹⁴ Vienna Convention, *supra*, Art. 25.

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U.S. chose not to sign it or to pursue ratification because of objections to the deep seabed regime set forth in Part XI. Part XI was subsequently renegotiated in the early part of this decade; and in order to allow the participation of industrial nations such as the U.S. which had not yet ratified the Convention in the policy making body for the deep seabed (the Council of the International Sea-Bed Authority), the agreement provided that it could be provisionally applied even before ratification. The U.S. voted in favor of the General Assembly resolution endorsing the Agreement revising Part XI,¹⁵ subsequently signed the Agreement, submitted the LOS Convention as amended by the Agreement to the Senate for its advice and consent, and began participating in the initial implementation of the Agreement. However, the provisional application of the Agreement will, by its terms, terminate in November, 1998.

A few other treaties have similarly been given provisional application — the Maritime Boundary Agreement between the United States and Cuba,¹⁶ the Maritime Boundaries Agreement between the U.S. and Mexico,¹⁷ the 1971 International Wheat Agreement,¹⁸ and, arguably, the 1979 SALT II Treaty on the Limitation of Strategic Offensive Arms.¹⁹ Nonetheless, the provisional application of a treaty remains an unusual occurrence.

For the U.S. the provisional application of a treaty "is in essence an executive agreement to undertake temporarily what the treaty may call for permanently."²⁰ According to the *Restatement*, such an executive agreement "normally must rest on the President's own constitutional authority"²¹ but it also appears possible that that authority can be buttressed by Congressional or Senate authorization or approval, express or implied.²²

¹⁵ GA Res. 48/263 (July 28, 1994).

¹⁶ Exec. G. 96th Cong., 1st Sess. (1979). See Senate Exec. Rept. 96-49 (to accompany Execs. F, G, and H, 96-1) (1979). The treaty itself contained a provision providing that the maritime boundaries would be applied provisionally for up to two years pending ratification, and that provision has been renewed by a periodic exchanges of notes from the time of its signing in 1977 to the present.

¹⁷ Exec. F. 96th Cong., 1st Sess. (1979). The maritime boundaries set forth in the treaty were identical to those in an executive agreement concluded in 1976, and the executive agreement provided that it would remain provisionally in effect "pending final determination by treaty of the Maritime Boundaries between the two countries. The Senate gave its consent to the treaty in October, 1997, and final ratification occurred in November. See 143 CONG. REC. S 11165 (daily ed. Oct. 23, 1997).

¹⁸ See *Treaties and Other International Agreements*, *supra*, at 85.

¹⁹ *Id.* Ratification of the treaty was forestalled by the Soviet invasion of Afghanistan, but both parties stated independently that they would observe the restraints of the treaty so long as the other party did so.

²⁰ *Id.* at 84.

²¹ *Restatement*, *supra*, Comment I, at 175.

²² *Id.* See also Charney, Jonathan, "U.S. Provisional Application of the 1994 Deep Seabed Agreement," 88 *Amer. J. Int. Law* 705 (1994) (arguing that Congressional participation in, and support for, the LOS Convention negotiations, the compatibility of the Agreement with the "Deep Seabed Hard Mineral Resources Act" adopted by Congress in 1988, and the authority given in the

(continued...)

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There does not appear to be any clear legal authority that might be invoked to sustain the provisional application of the Kyoto Protocol. Congress, for instance, has not assented to, or otherwise authorized, the provisional implementation of the Protocol either expressly or by implication. Indeed, Senate action in the summer of 1997 was expressly to the contrary. On July 25, 1997, the Senate unanimously adopted (95-0) a resolution expressing the view that the U.S. should not sign any agreement at Kyoto that would commit developed nations, but not developing ones, to reduce or limit greenhouse emissions by a certain date or that would do "serious harm" to the U.S. economy. The resolution further stated the view that any agreement which would require Senate advice and consent should be accompanied by a detailed analysis of its economic impact and of any legislation and regulations necessary to implement the agreement.²³ Moreover, the President's independent constitutional authority to impose such restrictions appears dubious. In *Youngstown Sheet & Tube Co. v. Sawyer*,²⁴ it might be noted, President Truman's claim of independent constitutional authority to take control of and operate the nation's steel mills to ensure continued production during the Korean War was rejected by the Supreme Court. In that instance the President claimed his action to be legally justified not only on the basis of an "inherent" power to protect the well-being and safety of the nation but also on the basis of the Commander-in-Chief and executive power clauses of Article II of the Constitution.²⁵ But the Court rejected his claims individually and in the aggregate, finding his actions to be a usurpation of the lawmaking power of Congress.

In sum, then, legal authority for the provisional application of a treaty must exist either in the independent constitutional powers of the President or in Congressional (or Senate) assent or authorization. In the present situation there does not appear to be any clear legal basis for the provisional implementation of the Kyoto Protocol prior to ratification and its entry into force.

This does not, however, mean that the United States is unable to adopt and implement measures that might parallel or support the obligations of the Kyoto Protocol. The Administration, for instance, has proposed a \$6.3 billion climate change initiative as part of its budget for fiscal 1999, and Congress may choose to authorize and fund its implementation. But the legal authority for that initiative's implementation will be Congress' authorization, not the Kyoto Protocol.

²²(...continued)

"State Department Basic Authorities Act" for temporary participation in international institutions support the provisional application of the Agreement).

²³ S.Res. 98, 105th Cong., 1st Sess., adopted at 143 CONG. REC. S 8138 (daily ed. July 25, 1997).

²⁴ 343 U.S. 579 (1952).

²⁵ Article II provides that "The executive Power shall be vested in a President" and that he "shall be Commander in Chief of the Army and Navy of the United States."

CC: Al
RogerThe
William J. Casey
Institute of**PERSPECTIVE
For Immediate Release****No. 98-C 70
23 April 1998
(202) 466-0515****THE
CENTER
FOR
SECURITY
POLICY****IS THE ADMINISTRATION LYING TO THE SENATE ABOUT KYOTO'S
ADVERSE IMPACT ON NATIONAL SECURITY -- OR JUST KIDDING ITSELF?**

(Washington, D.C.): Today, Rep. David McIntosh (R-IN) will chair an important hearing of his House Government Reform and Oversight Subcommittee to consider the implications of the Kyoto Protocol on Global Climate Change. Such congressional oversight is particularly timely in light of evidence that the Clinton Administration is beginning to implement this flawed treaty without its submission to -- let alone its *approval by* -- the United States Senate.

Of particular concern is the impact this unratified treaty might have upon the American military and, therefore, upon the national security it is sworn and maintained to defend.¹ This concern was only intensified by what was, at best, peculiar and at worst *thoroughly disingenuous* testimony received last month on the other side of Capitol Hill from a senior Clinton Pentagon official.

Enter Sherri Goodman

On 11 March, Sen. Jim Inhofe (R-OK) convened a hearing of his Armed Services Readiness Subcommittee to consider, among other things, the status, character and impact of the Kyoto Protocol on the U.S. military. The principal witness on this subject was Ms. Sherri Goodman, Deputy Under Secretary of Defense for Environmental Security.

Ms. Goodman has been the Pentagon's point person on the Kyoto Protocol. In fact, on 5 September 1997, Ms. Goodman circulated a shocking memorandum identifying some of the deleterious effects arbitrary reductions in CO₂ emissions would have on the readiness and future war-fighting capabilities of the U.S. military.² Interestingly, on the basis of this assessment, the Deputy Under Secretary proposed a blanket waiver for "military tactical and strategic systems used in training to support readiness or in support of national security, humanitarian activities, peace keeping, peace enforcement and United Nation's actions."

Unfortunately, after the Clinton Administration agreed -- at the insistence of the Joint Chiefs of Staff -- to such a waiver in the run-up to the Kyoto conference, Vice President Al Gore's National Security Advisor (and the enforcer of the Veep's appalling order to U.S. negotiators to exhibit "more flexibility" during that negotiating session), Leon Fuerth, ordered that the blanket waiver be abandoned.

Not surprisingly, what emerged instead was a manifestly more limited exemption applying to only *some* military activities. Specifically, the Protocol says:

"The Conference of the Parties ... [Paragraph 5] decides that emissions resulting from multilateral operations pursuant to the United Nations Charter shall not be included in national totals, but reported separately. Emissions related to other

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operations shall be included in the national emissions totals of one or more parties involved."
(Emphasis added.)

Ms. Goodman's Puzzling and/or Misleading Testimony

Despite the clear meaning of this language, Ms. Goodman made the following extraordinary representations before Sen. Inhofe's subcommittee on 11 March:

"...Emissions for multilateral operations pursuant to the United Nations charter are exempted from emissions limits. This includes not only multilateral operations expressly authorized by the UN Security Council -- such as Desert Storm, Bosnia, Somalia -- but also, multilateral operations not expressly authorized, but consistent with the UN Charter, such as Grenada and Panama."

It will be recalled that, at the time, a great many countries argued that the United States' operations in Grenada and Panama were *not* consistent with the UN Charter and roundly condemned the Reagan and Bush Administrations, respectively, for mounting these unilateral actions.

Ms. Goodman nonetheless went on to declare:

"...If you're asking what about if we undertake unilateral operations, which is actually in today's day and age, is quite rare As I said, we consider Panama and Grenada to be a multilateral operation conducted pursuant to the UN Charter. But our view is that if we were to undertake, for some reason, a completely unilateral operation, we do not need an international treaty to tell the United States how to operate unilaterally. That is a matter of the United States sovereignty."

She elaborated on this statement with the following remarks:

"Well, as I said, Mr. Chairman, virtually every military operation that we have conducted in the post-Cold War period has been multilateral even if -- because we construe that phrase very broadly to include even should we purchase fuel from a host nation. Or -- so that we have -- I'm hard pressed to even think of a case of a military operation that has been conducted that would be defined in such a narrow way as to be unilateral.

"But as I said, I will -- it's our view, certainly, that it's a matter of United States sovereignty as to what it conducts, what it does unilaterally, and we did not need an international treaty to tell us how to do that."

In other words, the Administration told the Senate last month that, *despite the obvious limitation established by the treaty on other-than-multilateral operations*, there will be no impact on the U.S. military because it doesn't engage any more in unilateral operations. Against the possibility that such a contention might be seen as implausible or just plain inaccurate, however, Ms. Goodman makes the mystifying statement that we would "not need an international treaty to tell us how to do" unilateral operations. Of course, that is not the point: What is, instead, at issue is whether an international treaty -- specifically the unratified Kyoto Protocol -- might effectively prevent, or at least significantly compound the costs involved in or other disincentives to unilateral action.

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What About Domestic Military Operations?

Even more remarkable than Ms. Goodman's interpretations of the meaning of the Kyoto Protocol's language for U.S. military operations overseas was its position -- dramatically unveiled at the Inhofe subcommittee hearing by the Deputy Under Secretary -- concerning the armed forces' *domestic* operations. As Ms. Goodman put it:

"I'm pleased to report to you today, Mr. Chairman, that the administration has decided that it will oppose efforts to impose emissions limits or constraints on domestic military operations and training. That is new news I am announcing here for the first time. This decision means that our military readiness will be protected due to climate change policy."

*** * ***

"I did not have that information at the time I submitted my written statement to you. So it is not contained in my written statement. It is contained only in the oral remarks I made to you this morning, which is that the Administration has determined that it will oppose any attempts to put emissions limits or constraints on our domestic, military operations in training."

"You and I have discussed how important that is before. Secretary Cohen is already on record as saying we must protect the ability to conduct domestic military operations and training. And so this is a very good news for us."

What is Needed Now

This would indeed be good news for the American military and for those concerned that it will be impaired by the Kyoto Protocol. It probably will be news of a different kind to the United States' negotiating partners, however. At the very least, since there is likely to be confusion about why the U.S. is not adhering to the clear language of the treaty, two things should be done forthwith:

First, the Clinton Administration should supply an official, written notification to the Congress waiving the application of the Kyoto Protocol's limitations on the Pentagon's domestic CO₂ emissions. For that matter, a clear statement to the effect of Ms. Goodman's testimony -- namely that overseas emissions will not be constrained either³ -- would also be desirable. Chairman Inhofe made such a request directly to the Deputy Under Secretary in the following exchange:

Sen. Inhofe: "I would feel more comfortable if we had more than just an interpretation of that -- I mean, whether it's your interpretation or mine -- because as I go back to the document, it just appears to me that we're talking only about multinational operations [being exempted] and not unilateral [domestic or overseas ones] What I would like to have -- maybe you have it with you -- is there an authority, a document, a presidential memo anything that has this policy change inscribed some place so that we will be able to carry it out of here?"

Sec. Goodman: "I will provide that to you for the record."

Sen. Inhofe: "In what form will that be?"

Sec. Goodman: "It will be in the form of a memo from the National Security Council."

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Inexplicably, some six weeks later, Sen. Inhofe has yet to receive this memo. It is impossible to determine at this writing whether this extraordinary fact means that: 1) the National Security Council misled Ms. Goodman, just as she was about to give important testimony to the Senate on the Kyoto Protocol; 2) Ms. Goodman misled the Committee about the Administration's interpretation of that treaty's constraints upon the U.S. military; or 3) the U.S. government has misled its negotiating partners about the nature of the agreement it has reached with them -- despite the clear meaning of the relevant words and its negotiating history and record.

This uncertainty simply reinforces the urgency that attends a congressional initiative making it clear that there must be no implementation of the Kyoto Protocol in the absence of the Senate's advice and consent to its ratification. While Ms. Goodman told stated flatly that "The administration does not intend to implement the Kyoto protocol,"⁴ there is much evidence to the contrary.⁵

Second, in the interest of avoiding future problems, the Congress should at the very least incorporate into the next Defense Authorization bill language capturing the substance of Ms. Goodman's testimony. Neither the Pentagon nor America's negotiating partners should be under any illusion that the Kyoto Protocol will ever apply to -- and be allowed to constrain -- U.S. military operations overseas or domestically. Neither should the Protocol's emissions reduction targets be permitted to become a factor in future American force structure decisions, a distinct possibility in the absence of clear executive and legislative branch guidance.⁶ It would certainly be instructive to see whether the Clinton Administration has any objections to the adoption of such a legislative initiative.

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1. For more on these concerns, see the Center for Security Policy's Decision Brief entitled *Eco-Disarmament: Clinton-Gore's Global Warming Crusade Threatens U.S. Military -- As Well As The Nation's Economy* (No. 97-D 135, 15 September 1997).

2. See the Casey Institute's Perspective entitled *Effects of Clinton's Global Warming Treaty on U.S. Security Gives New Meaning to the Term 'Environmental Impact'* (No. 97-C 149, 6 October 1997).

3. Ms. Goodman declared that, in addition to the broad interpretation of "multilateral" operations being used by the Administration, the United States will retain "flexibility" with respect to the accounting for greenhouse gasses emitted in the course of overseas training: "Emissions associated with training U.S. forces at overseas bases may be attributed either to the host nation or the nation producing the emissions giving us the flexibility to do what is best for us in a given situation." As a practical matter, it is hard to believe -- absent some categorical U.S. statement or bilateral understanding before the fact that the American military will actually be able to exercise this "flexibility" when the crunch comes.

4. Ms. Goodman actually went so far as to tell the Inhofe Subcommittee: "There is no effort to measure our emissions in compliance with something that we're not implementing at this point. I can tell you because we know what our energy consumption is and that our emissions are down."

5. For more on this evidence, see the Casey Institute Perspective entitled *Clinton Tries To Steal A March On Kyoto Treaty: Will The Senate Allow Implementation Without Ratification?* (No. 98-C 42, 9 March 1998).

6. After all, as Ms. Goodman noted in her testimony: "[The Defense Department] might actually have permits to sell because our emissions are lower in 1998, and maybe in 2000 -- whatever -- than they were in 1990. So the baseline year of 1990 is right now quite favorable to the Department of Defense because 1990 is the approximate end of the Cold War. The military was much larger. It's smaller today."

Elvis has yet to sign the anti-Kyoto petition

WASH. TIMES
FRI 4-24-98

I would like to clarify your April 21 article "Foes of Kyoto treaty petition against it." You wrongly classify all 15,000 signatories of the Oregon Institute of Science and Medicine's Global Warming Petition Project as scientists when there is no proof that any are scientists.

Several members of the scientific community have looked over the signatories listed on the petition's Web site, and they did not recognize a single scientist known for work on climate change. When I looked over the list, I did recognize one name: Geri Halliwell, a.k.a. Ginger Spice of the Spice Girls. It's nice to know that today's music groups are made up of expert "climate specialists, doctors or health practitioners." Unfortunately, Elvis was nowhere to be found. But not to worry, they are still collecting signatures.

This brings up the serious issue of accountability on the part of the petition's sponsors. The names of all their signatories are listed on their Web site without title, affiliation, area of expertise or any other means of checking the validity of the names as scientists, or even as real people.

In contrast, the Scientists' Statement on Global Climatic Disruption, an unprecedented statement urging the United States to lead in the efforts to stop climate change, lists the university or other affiliation, home state and name of the scientist (as well as highest degree earned) — not just a first and last name.

It is entirely possible that the bulk of the signatories on the Global Warming Petition Project are rock stars, pets or dead relatives of the staff at the Oregon Institute.

The science commentary used in this statement is laughable. While everyone is entitled to his or her own opinion, it is important to note that the science behind this petition is just that — opinion, not fact. What is not laughable is the attempt of the Oregon Institute to pass off this petition as a legitimate ground swell of scientific opinion against acting on one of the most serious threats ever to face humankind: global climate change.

BRANDON MACGILLIS

Director of campaigns
Ozone Action
Washington

With regard to your April 21 coverage of a petition circulating against the Kyoto treaty on carbon-dioxide emissions, I write to make it clear that the National Academy of Sciences has no role in this activity.

I am concerned because the petition was mailed with a manuscript in a format that is nearly identical to that of scientific articles published in the Proceedings of the National Academy of Sciences. The petition also was accompanied by a cover note from a former president of the academy, which you mentioned in your article.

I wish to make clear that this petition has nothing to do with the academy and that the manuscript was not published in the Proceedings of the National Academy of Sciences or in any other peer-reviewed journal.

Moreover, the petition does not reflect the conclusions of expert reports of the academy. In particular, our Committee on Science,

Engineering and Public Policy conducted a major consensus study on this issue, titled "Policy Implications of Greenhouse Warming" (1991, 1992). This analysis concludes: "[E]ven given the considerable uncertainties in our knowledge of the relevant phenomena, greenhouse warming poses a potential threat sufficient to merit prompt responses. . . . Investment in mitigation measures acts as insurance protection against the great uncertainties and the possibility of dramatic surprises."

BRUCE ALBERTS

President
National Academy of Sciences
Washington

Clinton malaise

In "Earth to Mrs. Albright," you say in effect that the United States has "proven" to the world that our system of government is better than tyranny, dictatorship, fascism and communism (Editorials, April 16).

To call this country's experience "proof" of anything goes too far. Our critics can point out that as long as President Clinton remains in the White House, elected, re-elected and unimpeached, the American form of self-government proves nothing — or at any rate, nothing I would care to acknowledge.

JOHN S. MASON JR.
Alexandria

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April 20, 1998

The Honorable Stuart F. Eizenstat
Under Secretary for Economic, Business and Agricultural Affairs
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Under Secretary Eizenstat:

The Administration has urged Congress to support the Kyoto Treaty once certain side agreements have been reached. I believe that the Treaty's economic impact must be studied in greater detail before the Administration promotes a proposal of this magnitude. To supplement private analysis, the Administration should provide its own thorough study on this issue.

Recently, you and CEA Chair Janet Yellen commented on the Kyoto Treaty's possible economic impact before the House Commerce Committee. However, it is my understanding that the Administration report cited consisted only of written testimony, which referenced work done on one model. No documentation was provided on the results themselves, nor was any detail given on the underlying assumptions used and adjustments made.

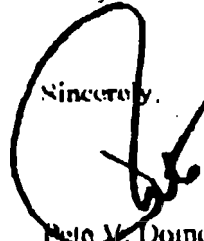
I plan to schedule a major hearing on the economic effects of the Kyoto Treaty. However, before such a hearing can be scheduled, I believe that the Administration should undertake further detailed study of the Treaty's potential economic impact which:

- 1) employs several types of models, so as to reflect both the short-term and long-term impact on GDP, consumption and energy prices;
- 2) provides documentation of its results and explicitly states its assumptions;
- 3) states how permits are to be allocated - via auctioning or grandfathering. If via auction, it should indicate what is done with the added revenue and how this affects the overall results;
- 4) addresses the impact of an international trading permit system on international trade and capital flows;
- 5) is reviewed by outside academics and experts

The Administration's Interagency Analytic Team made a commendable effort last year to attempt to examine the potential economic impact of freezing greenhouse emissions at 1990 levels. However, the terms of the Kyoto Treaty have changed since last summer, bespeaking the need for a new comprehensive economic analysis. A new study would also permit the full incorporation of the remedial suggestions made by the panel of outside experts who reviewed the IAT's report.

While I understand that it will take time to investigate the Kyoto Treaty's full economic effects, I believe that it should be a topic of ongoing analytic efforts within the Administration if it is serious about promoting the Treaty to Congress. As such, I request that the Administration conduct and submit a comprehensive economic analysis of the Kyoto Treaty that addresses the points raised above.

Sincerely,



Peter V. Domenici
Chairman

cc: The Honorable Janet Yellen ✓
The Honorable Larry Summers