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## Remarks on Nuclear Terrorism Convention, the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, and the Amendment to the Convention on Physical Protection of Nuclear Material

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### Introduction

Thank you for the opportunity to appear before this Committee today to discuss four multilateral counterterrorism treaties: the International Convention for Suppression of Acts of Nuclear Terrorism (“Nuclear Terrorism Convention” or “NTC”), the Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“2005 SUA Protocol”), the Protocol of 2005 to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (“2005 Fixed Platforms Protocol”), and the Amendment to the Convention on Physical Protection of Nuclear Material (“CPPNM Amendment” or “Amendment”).

These treaties are important tools in the international fight against terrorism and the proliferation of Weapons of Mass Destruction (“WMD”). Each fills an important gap in the existing international regime, while building on an existing treaty to which the United States is already a party:

- The Nuclear Terrorism Convention (Treaty Doc. 110-4), while freestanding, builds upon the Terrorist Bombing Convention and Terrorist Financing Convention by addressing an additional and critical category of terrorist activity: the nexus between terrorism and nuclear weapons and other radioactive materials and devices, such as “dirty bombs.”
- The two SUA Protocols (Treaty Doc. 110-8) supplement the 1988 SUA Convention on the Safety of Maritime Navigation and its 1988 Fixed Platforms Protocol by addressing the potential use of vessels and platforms as a means of conducting or enabling terrorist activity, and by addressing the unlawful transport of WMD and related items via commercial ships.

- The CPPNM Amendment (Treaty Doc. 110-6) supplements the 1979 Convention on the Physical Protection of Nuclear Material and expands its scope to address the physical protection of nuclear material used for peaceful purposes in domestic use, storage and transport in addition to that in international nuclear transport, and of nuclear facilities used for peaceful purposes.

The Department of State strongly supports ratification of these treaties for several reasons:

First, joining them will enhance U.S. national security. The treaties modernize and strengthen the international counterterrorism and counterproliferation legal framework in a manner that is critical to our efforts to prevent terrorists from acquiring or using WMD.

Second, the treaties support related USG policy priorities, such as the Global Initiative to Combat Nuclear Terrorism and the Proliferation Security Initiative. Cooperation under the Global Initiative includes efforts to strengthen national legal frameworks to ensure the effective prosecution of, and the certainty of punishment for, terrorists and those who facilitate acts of nuclear terrorism. The treaties also further the objectives of, and support implementation of, the nonproliferation obligations set out in United Nations Security Council Resolutions 1540 (2004).

Third, as noted, each treaty fills a gap in a pre-existing treaty regime that has been successful and time-tested, and in which the United States already participates.

Fourth, U.S. ratification of these treaties can be expected to encourage ratification by other countries. Widespread ratification and implementation of the treaties is critical, given their significant national security focus. The Nuclear Terrorism Convention, which the United States has strongly supported and which entered into force on July 7, 2007, is the only one of the thirteen international counterterrorism treaties currently in force to which the United States is not a Party. The SUA Protocols and the CPNNM Amendment, which have not yet entered into force, were U.S.-led initiatives. We anticipate that U.S. ratification of those treaties will create significant momentum towards their entry into force.

Finally, U.S. ratification will reinforce the leading role the United States has played in promoting these treaties and the counterterrorism treaty regime and nonproliferation in general, and will strengthen the United States' position in other negotiations that involve related matters, such as an effort to amend the aviation counterterrorism treaties.

Based on these considerations, we urge the Committee and the Senate to give favorable consideration to all four treaties.

I now would like to turn to a more detailed discussion of each treaty.

### **Nuclear Terrorism Convention**

The President signed the NTC on September 14, 2005, the first day the treaty was open for signature, as part of his bold agenda to combat nuclear terrorism. The NTC closely follows the model of previously adopted counterterrorism conventions to which the U. S. is a party, such as the Terrorist Bombings and Terrorist Financing Conventions. It provides a specific legal basis for international cooperation in the investigation, prosecution, and extradition of those who commit terrorist acts involving radioactive material or a nuclear or radioactive device or nuclear facilities.

Like previous treaties, the NTC establishes offenses, requires domestic criminalization of those offenses, and obligates Parties to establish jurisdiction over the offenses under certain circumstances. More specifically, the NTC requires Parties to criminalize the unlawful and intentional:

- possession of radioactive material (including nuclear materials) or the making or possession of a device, which includes nuclear explosive devices and “dirty bombs,” with the intent to cause (1) death or serious bodily injury, or (2) substantial damage to property or to the environment; and
- use of radioactive material or a device, or use or damage a nuclear facility in a manner which releases or risks the release of radioactive material with the intent (1) to cause death or serious bodily injury, (2) to cause substantial damage to property or to the environment; or (3) to compel a natural or legal person, an international organization, or a country to do or refrain from doing an act.

In addition to the principal offenses, the NTC includes ancillary offense provisions that require states to criminalize threats and attempts to commit an act of nuclear terrorism and participation as an accomplice, organizing and directing, and certain contributions to acts of nuclear terrorism.

Similar to other multilateral counterterrorism treaties to which the United States is a party, the NTC obligates Parties to extradite or submit for prosecution persons accused of committing the relevant offenses and to provide one another assistance in connection with investigations or criminal or extradition proceedings in relation to such offenses. We have successfully relied on equivalent provisions, especially in the Terrorist Bombings and Terrorist Financing Conventions, to support U.S. extradition and provisional arrest requests and as a basis to request mutual legal assistance from other Parties.

The NTC also requires Parties to make every effort to ensure appropriate physical protection for nuclear and radiological material and obligates States to take all practicable measures to prevent and counter preparations in their territories for the commission of the covered offenses.

The Convention entered into force as of July 7, 2007, and there are currently [35] State Parties, including India, Japan, Russia, Spain, and Saudi Arabia.

### **2005 SUA Protocol and 2005 Fixed Platforms Protocol**

In the wake of the 9-11 terrorist attacks, the United States was concerned that the scope of the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (“1988 SUA Convention”) and the accompanying 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms (“1988 Protocol”) was not adequate to address maritime-related terrorism. Specifically, while the 1988 Convention and Protocol covered vessels and fixed platforms at sea as potential *objects* of terrorist activity, it did not address the use of vessels and fixed platforms as *means* of conducting or enabling terrorist activity.

As a result, the United States initiated a three-year process at the International Maritime Organization (IMO) to negotiate multilateral instruments that would provide a more effective international framework to combat maritime terrorism and to conduct maritime interdictions of weapons of mass destruction and prosecutions of unlawful transport of WMD and their delivery systems. The effort culminated in the adoption by a diplomatic conference of the IMO, on October 14, 2005, of the 2005 SUA Protocol and the 2005 Fixed Platforms Protocol (collectively “the 2005 Protocols”).

The new Protocols, among other things, set forth new principal offenses and add ancillary offenses and establish a shipboarding regime that will expedite consensual boardings at sea. In terms of establishing offenses, the Protocols are the first multilateral treaty framework for the investigation, detention, prosecution, and extradition of persons who (1) commit terrorist attacks using a ship or fixed platforms; (2) transport by sea WMD, their delivery systems or related materials to be used for WMD, including dual-use items; or (3) transport terrorist fugitives by sea. The Protocols also create a robust framework for criminal liability for ancillary offenses, including accomplice liability, organizing or directing a covered offense, and certain

contributions to such offenses. Parties must criminalize domestically the offenses introduced by the 2005 Protocols, and obligations in the 1988 SUA Convention to extradite or submit for prosecution persons accused of committing such offenses and to provide mutual legal assistance extend to the new offense provisions. It is important to note that the WMD-related offense provisions do not affect the rights and obligations under the Nuclear Non-Proliferation Treaty, the Biological Weapons Convention and the Chemical Weapons Convention of Parties to those treaties.

The framework for consensual shipboarding of vessels on the high seas suspected of involvement in the covered offenses is a major development. This shipboarding regime will serve to strengthen the international legal basis for interdictions at sea carried out under the Proliferation Security Initiative (PSI) and will promote implementation of UN sanctions on Iran and North Korea.

The 2005 SUA Protocol will enter into force once 12 states have become Parties. The 2005 Fixed Platforms Protocol requires only 3 Parties, but it may enter into force only once the 2005 SUA Protocol has taken effect. As of May 1, 18 states had signed each Protocol subject to ratification. Only two states have become Parties to the SUA Protocol and none have become Parties to the Fixed Platforms Protocol.

### **CPPNM Amendment**

The 1987 Convention on the Physical Protection of Nuclear Material (“CPPNM”) established physical protection obligations for nuclear material used for peaceful purposes in international transport, required criminalization of certain offenses involving nuclear material, and included the “extradite or prosecute” regime and mutual legal assistance provisions common to the other counterterrorism conventions.

Beginning in the late 1990s, the United States led the initiative to expand CPPNM to cover physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities. The 9/11 terrorist attacks, greater terrorist interest in acquiring nuclear material for nuclear weapons and “dirty bombs,” and increased concerns about illicit trafficking in nuclear materials added urgency to the efforts to expand CPPNM. The Amendment to the CPPNM, adopted on July 8, 2005, at a diplomatic conference held under the auspices of the International Atomic Energy Agency (IAEA) in Vienna, Austria, is the result of those efforts.

The CPPNM, as amended, will impose requirements for the physical protection of nuclear material used for peaceful purposes in domestic use, storage, and transport, as well as in international nuclear transport, and of nuclear facilities used for peaceful purposes, thereby significantly expanding the scope of the original CPPNM. The Amendment will, in effect, globalize U. S. nuclear physical protection practices. Specifically, it will, *inter alia*, establish:

- new international norms for the physical protection of nuclear material and facilities used for peaceful purposes, including protection from sabotage;
- strengthened obligations for cooperation among State Parties to the Amendment on matters of physical protection and for protection of the confidentiality of physical protection information; and
- new offenses that Parties must criminalize in their domestic law.

The basic physical protection obligations set out in the Amendment require each State Party to establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities used for peaceful purposes under its jurisdiction, with the aim of:

- protecting against theft and other unlawful taking of nuclear material in use, storage and transport;

- ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material;
- protecting nuclear material and nuclear facilities against sabotage; and
- mitigating or minimizing the radiological consequences of sabotage.

The Convention also sets a series of “Fundamental Principles” covering a number of aspects of physical protection. For example, the principles address the overall responsibility of the State for establishing, implementing, and maintaining a regime to govern physical protection. States are required, insofar as reasonable and practicable, to apply these principles in their physical protection regimes.

Under the Amendment’s expanded cooperation and assistance provisions, Parties will be required, in accordance with their national law, to provide cooperation and assistance to the maximum extent feasible on matters within the scope of the amended CPPNM. For example, Parties with knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State must decide on appropriate steps to be taken to inform that State as soon as possible and, where appropriate, the IAEA and other relevant international organizations. Further, in the case of sabotage of nuclear material or a nuclear facility in its territory, a Party will be required to take appropriate steps to inform, as soon as possible, other States likely to be radiologically affected, and to inform, where appropriate, the IAEA and other relevant international organizations.

Finally, the Amendment builds upon the penal regime provided for in the CPPNM by adding two new principal offenses – nuclear smuggling and sabotage of a nuclear facility -- which Parties must criminalize domestically. The amended Convention will also include a range of accessory offenses found in the modern counterterrorism treaties discussed above in relation to the Nuclear Terrorism Convention and the SUA Protocols. Like the CPPNM, the Amended Convention will require Parties to extradite or submit for prosecution persons accused of covered offenses.

The Amendment will enter into force only after two-thirds of the current 134 Parties to the CPPNM join the Amendment. Fifteen countries have ratified to date.

## **Conclusion**

In sum, Mr. Chairman, we urge early ratification for these treaties, which will bolster our efforts to prevent terrorists from acquiring or using WMD and enhance the international legal framework for counterterrorism and counterproliferation.

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