

**Mr. Richard Douglas, Deputy Assistant Secretary of Defense**

**Statement to the Senate Foreign Relations Committee  
Regarding the 2005 Protocols to the Convention for the Suppression of Unlawful Acts  
Against the Safety of Maritime Navigation and to the Protocol for the Suppression of  
Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf**

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify today. Although I am primarily here to testify in support of the 2005 Protocols to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and its accompanying Fixed Platforms Protocol, I would also like to express the Department of Defense's strong support for the multilateral counterterrorism treaties before the committee today. The Nuclear Terrorism Convention and the Amendment to the Convention on the Physical Protection of Nuclear Material, along with the 2005 SUA Protocols, will enhance U.S. national security by modernizing and strengthening the international counterterrorism and counterproliferation legal framework.

As Deputy Assistant Secretary of Defense for Counter-Narcotics, Counter-Proliferation and Global Threats, it is my duty to develop policy and manage various programs that support the efforts of the United States and its allies to combat the transfer and use of weapons of mass destruction. It is with this duty in mind that I come before this Committee today to give the Department's strongest support to these Protocols and ask that they be favorably reported to the full Senate for its advice and consent during the current session.

Sadly, use of the "world's highways" by terrorists is not a new phenomena. The 1988 SUA Convention was, in part, a response to the takeover by Palestinian terrorists of the Italian passenger ship Achille Lauro in 1985, when a wheelchair-bound American passenger, Leon

Klinghoffer, was murdered and his body was thrown overboard. That terrorist murder helped lead to the 1988 SUA convention. In the aftermath of 9/11, it became clear that changes to international law were necessary to address terrorism in the 21<sup>st</sup> Century. The 1988 SUA Convention was viewed as an ideal foundation upon which to build an international legal regime to combat the modern terrorist threat. The Department of Defense strongly supports the 2005 Protocols because they should substantially bolster efforts to combat and prosecute the maritime transportation of terrorists, weapons of mass destruction (WMD), their delivery systems and related materials, and the use of a ship or fixed platform to commit a terrorist attack. The 2005 Protocols do just that and, of particular importance, contain a critical operational mechanism to enforce the Convention's provisions that was lacking in the original Convention – a maritime boarding regime.

September 11 forced the international community to look more closely at potential instruments of terrorism and proliferation. The Department of Defense actively participated and strongly supported a three-year United States effort to broaden the Convention's scope to include provisions countering the movement of weapons of mass destruction and related items by ship and to address the use of a ship or fixed platform to conduct a terrorist act or transport a terrorist fugitive. In October 2005 State parties at the International Maritime Organization overwhelmingly supported the United States initiative, and adopted the Protocols that are being considered by the Committee today. The Protocols are an important weapon in the Global War on Terror and could contribute substantially to our national security.

The 2005 Protocols represent a significant new tool in the fight against terrorism and WMD proliferation. Instead of treating vessels and fixed platforms at sea as potential *objects* of

terrorist activity, the new protocols treat vessels and platforms as potential *means* of conducting or enabling terrorist activity. Specifically, they establish the first treaty framework for the investigation, prosecution, and extradition of persons who (1) use a ship or fixed platform as a weapon or as a means to carry out a terrorist attack; (2) unlawfully transport WMD (including “dual use materials”) or WMD delivery systems on the high seas; or (3) transport of terrorists by sea.

Additionally, the 2005 Protocols establish the operational enforcement mechanism— a maritime boarding regime. They provide for interdiction on the high seas of vessels suspected of being involved in an offense under the SUA Convention, based on flag State consent. A State may provide consent to boarding of its flagged vessels in advance through a written agreement, or may provide consent on a case-by-case basis. The United States will not provide advance consent for other States to board U.S.-flagged vessels.

The boarding procedures do not change existing international maritime law or infringe upon the traditional principle of freedom of navigation. Rather they eliminate the need to negotiate time-consuming, ad-hoc boarding arrangements when facing the immediacy of criminal activity.

The 2005 Protocols further other U.S. interests. For example, the boarding procedures and criminal offenses created by these Protocols will support the Proliferation Security Initiative (PSI). Since its inception in May 2003, the United States has joined with like-minded States to develop PSI -- a cooperative international effort to combat the common threat posed by the proliferation of WMD, their delivery systems, and related materials. As part of the PSI, participating States are committed to strengthening national and international legal authorities to

stop WMD proliferation. The SUA Protocols will strengthen the legal basis for conducting maritime interdictions under PSI and facilitate prosecution of WMD proliferators.

I have discussed what the 2005 Protocols do; now I would like to review what they do *not* do. The Protocols do not create for the United States any new budgetary or resource obligations. Nor do they restrict U.S. abilities to transport weapons/material by sea. Nothing in the 2005 Protocols prevents the boarding of a ship based on self-defense, nor limits authority to board a ship on any other legal basis. Further, the 2005 Protocols, as well as the other treaties under discussion today, specifically exempt military activities from the scope of their defined criminal offenses. Lastly, the United States is not required to consent to a foreign boarding of a U.S.-flagged ship, and a requesting Party may not board a ship pursuant to the SUA Protocols absent express authorization from the flag State.

Given the leading role of the United States in initiating and promoting the Protocols, prompt U.S. ratification would underscore our authority as a leader in the fight against terrorism and the spread of WMD. Expeditious U.S. ratification of these Protocols would likely speed their ultimate entry into force, resulting in early availability of a significant tool in the fight against terrorism and WMD proliferation. As was the case for the three years at the IMO, other States are looking to the United States for leadership on this important maritime law treaty.

The United States must enact implementing legislation, primarily Title 18 provisions, before it can deposit its instrument of ratification. The Department of Defense, is ready to execute its obligations relative to its responsibilities under these Protocols now.

The 2005 Protocols are an important addition to international efforts to combat and prosecute the maritime transportation of terrorists and weapons of mass destruction. They provide the international framework for criminalizing the use of a ship to transport terrorists or

WMD, and provide a framework for boarding suspect vessels engaged in these acts. The Protocols play a key role in the Department of Defense's efforts to combat terrorism and the spread of WMD, preserve freedom of the seas, and promote peace and security.

Thank you for the opportunity to express the Department's views on this important matter.