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Mr. Chairman,

I am pleased to testify, along with my colleagues from the Department of Defense, before the Committee today to express the strong support of the State Department and the Administration for the Senate's prompt provision of advice and consent to ratification of five important treaties that deal with the law of armed conflict. One of the treaties concerns the protection of cultural property and the other four concern certain conventional weapons.

In its February 2007 letter to Chairman Biden setting out its treaty priorities for the 110th Congress, the Administration supported Senate action on each of these treaties. In August of last year, in a letter to this Committee, the Deputy Secretaries of State and Defense reaffirmed their support for all five treaties. Ratification of these treaties will promote the cultural and humanitarian values of the United States, while being fully consistent with our military needs.

These treaties operate in a field of international law that regulates the conduct of hostilities once there is an armed conflict, as do the 1949 Geneva Conventions. This area of law is referred to as the law of war, the law of armed conflict, or international humanitarian law. The aim of these treaties is to reduce

the suffering caused during armed conflicts and provide protection to the victims of war, particularly to the civilian population and civilian objects, in a manner consistent with legitimate military requirements.

The United States has been a long-standing and historic leader in the law of armed conflict, and we played a significant role in shaping the treaties before you now. At the same time, due to the complexity of the law in this field and the involvement of our military forces in armed conflict, we subject all treaties dealing with the law of armed conflict to close examination, even after adoption of the texts. I would note that in some cases the United States has taken more time than many of our friends and allies in ratifying the treaties we initiate, negotiate, support and with which we generally comply, even where we have not formally become a party. But we believe that such close examination is necessary, and allows us to be sure that the treaties we propose to ratify are in our national interests.

Some may question why it is important to ratify these treaties now after they have entered into force for other nations long ago. The answer, in part, is that over time we have seen how these treaties operate and we are confident that they promote U.S. national interests and are consistent with U.S. practice. Another reason for the United States to ratify these treaties is that ratification would promote U.S. international security interests in vigorously supporting, along with

our friends and allies, both the rule of law and the appropriate development of international humanitarian law. Additionally, when the United States ratifies a treaty, other nations are more likely to ratify as well, with the result that overall implementation of and compliance with these norms will improve over time, which ultimately helps to protect our forces.

Ratification will also specifically enhance U.S. leadership in international humanitarian law and increase our ability to work with other states to promote effective implementation of these treaties in at least two ways. First, after ratification, the United States will be able to participate fully in meetings of states parties aimed at implementation of these treaties and, thereby, more directly affect how the practice under these treaties develops. Second, becoming a party to these treaties will significantly strengthen our negotiating leverage and credibility in our work on other law of war treaties, to the extent other states ask why they should cede to U.S. positions if we do not ratify those treaties after they do so. We hope to change that situation with the ratification of the five instruments under consideration today.

We believe that these treaties are not contentious. Some have been transmitted to the Senate for advice and consent to ratification by Democratic Administrations and some by Republican Administrations. The American Bar Association has urged the ratification of all five treaties.

The five treaties before you are the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which was transmitted to the Senate on January 6, 1999; three protocols to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, or "CCW": Protocol III on Incendiary Weapons, which was adopted in 1980 and transmitted to the Senate on January 7, 1997; Protocol IV on Blinding Laser Weapons, which was adopted in 1995 and transmitted to the Senate on January 7, 1997; and Protocol V on Explosive Remnants of War, which was adopted in 2003 and transmitted to the Senate on June 20, 2006; and an amendment to this Convention, which was adopted in 2001 and was transmitted to the Senate on June 20, 2006. All of these instruments have already entered into force for those states that have ratified them.

Hague Cultural Property Convention

I would like to address the Cultural Property Convention first. It prohibits direct attacks upon cultural property, theft and pillage of cultural property, and reprisals against cultural property. While the United States helped negotiate this Convention after World War II to address problems encountered during that war – indeed, the Convention is based in large measure on practices of U.S. military

forces during World War II – we have seen in much more recent conflicts how important it is to take measures to protect cultural property. While there were some initial U.S. concerns related to the Convention after it was adopted, and for that reason it was not transmitted to the Senate until 1999, now, after some 50 years of experience and detailed interagency review, we have concluded that U.S. practice is entirely consistent with this Convention and that ratifying it will cause no problems for the United States or for the conduct of U.S. military operations. Because of some minor concerns that relate to ambiguities in language, however, we propose four understandings that are set out in Treaty Document 106-1. These are entirely consistent with the goals of the Convention and serve to clarify a number of important points.

The American Bar Association Report accompanying its Resolution recommending ratification of this Convention stated that "[b]y ratifying the 1954 Hague Convention, the United States would demonstrate . . . the importance the United States places on the protection of the cultural heritage of humanity."

Let me note that there are two protocols to this Convention, one adopted in 1954 – on preventing the exportation of cultural property and providing for restitution of illegally exported objects – and one in 1999 – on establishing an enhanced system of protection for specifically designated cultural property. Both protocols require further review, but the Convention itself stands on its own, and

the Administration urges that the Committee take action now on the Convention itself.

Convention on Certain Conventional Weapons

The Convention on Certain Conventional Weapons ("CCW") is a framework instrument. It was adopted after extensive multilateral negotiations between 1974 and 1980, with significant U.S. involvement and participation, and was approved by the Senate and ratified by President Clinton in 1995. The CCW establishes scope and procedural provisions that apply to a number of annexed protocols, each of which deals with a particular type of conventional weapon that may be deemed to pose special risks of having indiscriminate effects or causing unnecessary suffering, or a problem common to certain weapons. We believe that the CCW is a particularly valuable framework for considering such questions because it is designed to balance humanitarian and military considerations.

The framework instrument and the protocols are separate treaties each requiring advice and consent to ratification. With Senate advice and consent, the United States ratified the framework instrument and the first two protocols, on non-detectable fragments and landmines, in 1995. We ratified an amended version of the landmines protocol in 1999.

The four instruments under consideration today – a 2001 amendment to Article 1 of the Convention itself, the 1980 Protocol III on incendiary weapons,

the 1995 Protocol IV on blinding laser weapons, and the 2003 Protocol V on explosive remnants of war – are consistent with U.S. military requirements and existing military practices. Each one advances the U.S. national objective of preserving humanitarian values in times of armed conflict, and ratification will permit the United States to participate fully in relevant meetings of states parties to these instruments and to insist that other states parties follow the norms that each instrument creates.

The American Bar Association Report accompanying its Resolution urging ratification of this Amendment and these Protocols concluded that "U.S. ratification would further the United States' humanitarian objectives without compromising the appropriate use of important military technologies."

All the major military powers are parties to the CCW and participate in meetings convened under its framework, and all decisions are made by consensus. It is because of the involvement of all the major military powers in the CCW that the United States supported the initiation of and has actively participated in two rounds of negotiations on the issue of cluster munitions within the CCW framework. While this step is important, it is also critical that we ratify the existing CCW instruments – particularly the protocol on explosive remnants of war, which will have a direct impact on mitigating the humanitarian effects of cluster munitions by focusing on concrete actions to be taken in the post-conflict

period by the state in control of the affected territory as well as the users of such munitions. While these measures are already consistent with U.S. practice, our ratification will encourage other states to adopt similar practices through their ratification.

Let me briefly describe the four CCW instruments under consideration.

Amendment To Article 1

Article 1 of the Convention as adopted in 1980 limited the scope of application of the Convention to international armed conflicts between states and to wars of national liberation. As we informed the Senate, the United States declared, when we deposited the instruments of ratification, that the provision in Article 1 concerning wars of national liberation would have no effect because it injected subjective and politically controversial standards into international humanitarian law and undermined the important traditional distinction between international and non-international armed conflicts. We also informed the Senate that the United States will apply the provisions of the CCW to all armed conflicts, whatever their nature – international or non-international – and that we intended to support an amendment to the CCW formally extending the scope of application to all armed conflicts.

The amendment to Article 1 before you today does just that. The United States proposed this amendment, which conforms the Convention to U.S. practice and extends the Convention's and Protocol's existing rules to non-international as well as international armed conflicts. For instance, it would lead to increased protection of the civilian population from the effects of hostilities during civil war by requiring adherence by the state party involved to the restrictions contained in any of the first four protocols it had ratified. The amendment was adopted in 2001 and was transmitted to the Senate in 2006, along with Protocol V.

As of the date of this hearing, 59 states are bound by the amendment to Article 1 of the Convention, including most of our NATO allies, Japan, South Korea, Russia, and China.

Protocol III (Incendiary Weapons)

Protocol III, which was adopted in 1980 along with the CCW and the first two protocols, provides increased protection for civilians from the potentially harmful effects of incendiary weapons, while reconfirming the legality and military value of incendiary weapons for targeting specific types of military objectives. Incendiary weapons are weapons or munitions that are primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat or a combination thereof, produced by a chemical reaction of a

substance delivered on the target. They do not include tracer or smoke munitions, such as white phosphorus munitions.

This protocol was not transmitted to the Senate in 1994 along with the CCW and the first two protocols because of concerns raised at that time relating to the possible need to use air-delivered incendiaries in certain situations. It was subsequently transmitted to the Senate in 1997 with a proposed condition that would make the protocol acceptable from a broader national security perspective. The precise wording of this condition, however, continued to undergo military review, in order to ensure that the United States was able to retain its ability to employ incendiaries against high-priority military targets.

We are now in a position to state that U.S. ratification of this protocol, subject to a reservation that I will describe, would further humanitarian purposes as well as provide even clearer legal support for U.S. practice, particularly given past controversies surrounding the use of incendiary weapons. Based on the military review, we can say that U.S. military doctrine and practice are consistent with Protocol III, except for the two paragraphs for which we have proposed the reservation – which is permitted under the CCW – in the interest of reducing risk to innocent civilians and collateral damage to civilian objects.

The protocol would prohibit the employment of incendiary weapons against military objectives within a "concentration of civilians." This is usually the right

rule, but there could be particular combat situations in which it would cause fewer civilian injuries and less damage to use an incendiary, even where a concentration of civilians is present. Therefore, the Administration recommends that the United States, when ratifying Protocol III, reserve the right to use incendiary weapons against military objectives located in concentrations of civilians where it is judged that such use would cause fewer casualties and less collateral damage than alternative weapons, such as high-explosive bombs or artillery.

There are currently 99 states parties to Protocol III, including all NATO member states except Turkey and the United States.

Protocol IV (Blinding Laser Weapons)

The negotiation of Protocol IV, which began in 1994, had as its impetus the possibility that countries would develop weapons with the capability to disable enemy forces through mass blinding, although such weapons had not actually been developed at the time. As adopted in 1995, the protocol prohibits the use, against any individual enemy combatant, of blinding laser weapons "specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices." This prohibition is fully consistent with DoD policy, which served as the principal basis for the Protocol IV text.

Protocol IV also obligates States Parties to take "all feasible precautions" in using laser systems, "to avoid the incidence of permanent blindness to unenhanced vision. Such precautions shall include training of their armed forces and other practical measures." This is also fully consistent with DoD policy. Such lasers include those used for range-finding, target discrimination, and communications.

There are currently 89 states parties to Protocol IV, including all other NATO member states and Israel. Protocol IV was transmitted to the Senate on January 7, 1997, together with Protocol III.

Protocol V (Explosive Remnants of War)

The negotiation of Protocol V was begun in 2002, based on concerns that a large proportion of civilian deaths and injuries from explosive remnants of war during post-conflict periods are both predictable and preventable. The situation in Kosovo had been cited as an example of the problems caused by explosive remnants of war. Protocol V, which was adopted in November 2003, is the first international agreement specifically aimed at reducing the humanitarian threat posed by unexploded and abandoned munitions of all types that remain on the battlefield after the end of armed conflicts (together known as "ERW"). ERW have existed since the earliest use of explosive devices in armed conflict. The protocol contains no restrictions or prohibitions on the use of weapons as such but

provides rules for what must be done with respect to ERW, in order to reduce the threat such ordnance poses to civilians and post-conflict reconstruction.

The primary focus of Protocol V is on the post-conflict period. The protocol provides that, after entry into force, the party in control of the territory on which the munitions are found is responsible for the clearance, removal, and destruction of the ERW.

The Party that used the munitions – if the munitions are not located on its territory – is obligated to assist "to the extent feasible." The users of munitions are obligated to record and retain information on the use of munitions and on the abandonment of munitions "to the maximum extent possible and as far as practicable." They are also to transmit such information to the party in control of the territory. The protocol contains voluntary "best practices" on recording, storage, and release of information on ERW, as well as on warning and risk education for ERW-affected areas.

The protocol also includes a technical annex that encourages states to take steps to achieve the greatest reliability of munitions and to prevent munitions from becoming "duds."

There are currently 42 states parties to Protocol V, including 14 NATO member states, with a number of the remaining NATO member states close to ratifying. Israel is not a party to Protocol V but it took part in the negotiations and

supported the final text. A large number of states have indicated that they expect to join this protocol in the near future. Protocol V was transmitted to the Senate on June 20, 2006, along with amended Article I and Protocol III to the 1949 Geneva Convention, following extensive interagency review. Priority for Senate action was given to Protocol III to the 1949 Geneva Convention, given its relative importance, and that protocol entered into force for the United States on March 8, 2007.

Conclusion

United States ratification of the treaties before you today is in our military and security interest and would promote the rule of law and the development of international law. These treaties are widely supported and are not contentious in our view. This Administration, including the State and Defense Departments, strongly supports these treaties. They promote our cultural and humanitarian values while not interfering with legitimate military operations, as you will shortly hear from my colleagues from the Defense Department. The United States has traditionally been at the forefront of efforts to improve the legal regime dealing with the conduct of armed conflict, in order to protect our own forces, to reduce the suffering caused by armed conflicts and to provide protection to the victims of

war, in a manner consistent with legitimate military requirements. Our ratification of these instruments will therefore serve our interests in these areas.

Mr. Chairman, I urge that the Committee give prompt and favorable consideration to these treaties.

Thank you.