TESTIMONY OF

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BEFORE THE COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

ON THE INTER-AMERICAN CONVENTION AGAINST TERRORISM,

THE PROTOCOL OF AMENDMENT TO THE INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES,

THE COUNCIL OF EUROPE CONVENTION ON CYBERCRIME, AND

THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, AND SUPPLEMENTARY PROTOCOLS ON TRAFFICKING IN PERSONS AND MIGRANT SMUGGLING

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Mr. Chairman and members of the Committee:

I am pleased to appear before you today to testify in support of six multilateral instruments, five relating to international law enforcement cooperation and one concerning customs procedures. The law enforcement treaties address the major criminal concerns of terrorism, cybercrime, transnational organized crime, and trafficking and smuggling of persons. The customs protocol seeks to meet the needs of international trade and customs services through the simplification and harmonization of customs procedures. The Department of State greatly appreciates this opportunity to address these international instruments.

In recent years, the world community as a whole has had to confront a rising tide of trans-border crime of many types. The multilateral law enforcement conventions before you today reflect that the United States has been working together with other countries – indeed, leading efforts – at the United Nations as well as at regional organizations like the Council of Europe and the Organization of American States, to improve our collective abilities to prevent and punish terrorist crimes, computer crimes, and organized crimes such as those involving the exploitation of persons. They break new ground legally, and provide essential and practical tools for international cooperation.

These law enforcement instruments are innovative in containing definitions of certain serious crimes – computer crime and trafficking in persons, for example – on which there never previously had been an international consensus. Now we not only agree collectively on what constitutes such crimes, but also commit ourselves to punish them comparably and to extradite fugitives and otherwise assist in the investigation and prosecution of persons who commit them.

These instruments also contain breakthroughs in methods for providing and obtaining assistance to and from other countries. The investigation of computer crimes, for instance, requires real-time coordination in tracing electronic communications across borders, and the Cybercrime Convention commits parties to do just that. The Transnational Organized Crime Convention similarly details procedures for mutual legal assistance that will be able to function effectively without the need to resort solely to cumbersome domestic law processes. And to ensure that fugitive terrorists in our hemisphere are brought to justice, the OAS Terrorism Convention eliminates the possibility that they could hide behind assertions that their crimes are "political offenses."

The customs protocol, meanwhile, represents the kind of modernization and customs harmonization that is becoming increasingly necessary to U.S. exporters and other traders alike. It responds to the modernization in business and administrative methods and to the growth of international trade, without

compromising standards of customs control. Accession to the protocol would facilitate greater economic growth, increase foreign investment, and stimulate U.S. exports.

I will address each of the instruments individually.

THE INTER-AMERICAN CONVENTION AGAINST TERRORISM

The Inter-American Convention Against Terrorism was negotiated as a direct response to the attacks on the United States of September 11, 2001. Within 10 days of the attacks, the foreign ministers of the OAS member states endorsed the negotiation of a regional convention against terrorism, and the resulting convention was adopted by the OAS General Assembly and opened for signature nine months later on June 3, 2002.

Thirty-three OAS member states have signed the Convention, which entered into force on July 10, 2003. As of last week, eight states are party to the Convention, including Canada, Mexico, Peru and Venezuela.

The Convention builds upon other multilateral and bilateral instruments already in force. Following the model of the 1999 International Convention for the Suppression of Financing of Terrorism, the Convention incorporates by reference the offenses set forth in ten counter-terrorism instruments listed in Article 2 of the Convention to which the United States is already a party. The cooperative

measures set forth in the rest of the convention will thus be available for a wide-range of terrorism-related offenses, including hijackings, bombings, attacks on diplomats, and the financing of terrorism. My colleague from the Department of Justice will provide an overview of these measures in his testimony.

Parties are required under the Convention to "endeavor to become a party" to these ten counter-terrorism instruments. In addition to facilitating the implementation of the Convention, this obligation also furthers the United States' interest in securing the broadest possible adherence to these instruments and advances implementation of United Nations Security Council Resolution 1373, which calls upon states to become parties to these instruments "as soon as possible."

The Convention provides that a state may declare that the obligations contained in the Convention shall not apply to the offenses set forth in any of the listed counter-terrorism instruments if it is not yet a party to that instrument or if it ceases to be a party. This procedure provides flexibility for states that are considering becoming parties to this Convention, without undermining our interests in having all states ultimately become parties to the other counter-terrorism instruments. The United States will not need to make such a declaration since it is already a party to the ten instruments.

Existing Federal authority is sufficient to discharge our obligations under this Convention, so no implementing legislation is required. The State Department's report on the Convention recommended two Understandings, one relating to Article 10 and the other relating to Article 15. Upon further review, we have determined that the Understanding relating to Article 10 is unnecessary and we are therefore no longer recommending its inclusion in the Senate's resolution of advice and consent.

PROTOCOL OF AMENDMENT TO THE INTERNATIONAL CONVENTION ON THE SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES

I am also pleased to speak in support of the Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures. The Protocol amends the original Convention done at Kyoto on May 18, 1973, which entered into force for the United States on January 28, 1984, and replaces the Annexes to the 1973 Convention with a General Annex and 10 Specific Annexes, all of which I will refer to as the "Revised Customs Convention."

Over the past two decades, changes in technology and patterns of international trade have made the original Convention outdated. The United States

took an active role in negotiating these amendments in order to produce the kind of modernization and customs harmonization that is becoming increasingly necessary to U.S. exporters and other traders alike. The revision process also included participation by the private sector through various groups such as the International Chamber of Commerce, the International Federation of Customs Brokers Association and the International Express Couriers Conference. On June 26, 1999, after 4 years of study and deliberation, the members of the World Customs Organization adopted the Protocol in Brussels, Belgium.

The Revised Customs Convention aims to meet the needs of international trade and customs services through the simplification and harmonization of customs procedures. It responds to the modernization in business and administrative methods and to the growth of international trade, without compromising standards of customs control.

Accession to the Protocol by the United States would contribute to important U.S. interests. First, accession would benefit the United States and U.S. businesses by facilitating greater economic growth, increasing foreign investment, and stimulating U.S. exports through more predictable, standard and harmonized customs procedures governing cross-border trade transactions. These achievements can best be pursued by the United States as a Party to the Revised Customs Convention.

Second, acceding to the Protocol will enable the United States to continue its leadership role in the areas of customs and international trade facilitation. Accession signals to our trading partners that the U.S. is committed to an international Convention that establishes a blueprint for modern customs procedures throughout the world.

By acceding to the Protocol, we also encourage other countries to sign on and implement procedures that will make trade in goods across our borders more predictable and, therefore, potentially more secure. Our understanding from U.S. Customs and Border Protection is that the Revised Customs Convention will **not** limit the U.S. Government's ability to institute necessary measures to provide for our own national security.

U.S. industry has been consulted throughout the negotiation process and has expressed its very strong interest and support for obtaining the Senate's consent to accession. Strong supporters include the U.S. Council for International Business (USCIB) and the American Electronics Association (AeA), which includes companies such as Hewlett Packard and Microsoft.

By acceding to the Protocol, the United States would consent to be bound by the amended 1973 Convention and the new General Annex. At the same time, or anytime thereafter, Parties have the option of accepting any of the Specific Annexes (or Chapters thereof), and may enter reservations with respect to any

Recommended Practices contained in the Specific Annexes. After careful study, we have proposed that the United States accept most of the Specific Annexes, and enter the reservations to certain Recommended Practices proposed by U.S. Customs and Border Protection as set forth in the Report by the Secretary of State, attached to the President's transmittal of the Protocol. We have made these recommendations with current U.S. legislation or regulations in mind. With them, no new implementing legislation would be necessary for the United States to implement the Revised Customs Convention.

The Protocol and proposed U.S. reservations have been circulated and cleared through the U.S. Inter-Agency Working Group on the Customs Cooperation Council, which includes, among others, the Departments of State, Treasury, Commerce, and Homeland Security and the Office of the U.S. Trade Representative. U.S. Government agencies are not aware of any opposition to the Revised Customs Convention.

The Protocol will enter into force three months after 40 contracting parties have consented to be bound by it. As of last month, 32 countries have consented to be bound, including some of our largest trading partners (Australia, Canada, China, Japan, and most members of the European Union).

COUNCIL OF EUROPE CONVENTION ON CYBERCRIME

The Committee also has before it the Council of Europe Convention on Cybercrime, the product of years of study and work by experts from a wide range of countries. Although it was negotiated in a European forum, the United States played a leading role in its development.

In 1997, the Council of Europe established a Committee of Experts on Crime in Cyber-space, with participants from the United States, Canada, Japan, and South Africa, as well as Council of Europe member states, to undertake negotiation of the Cybercrime Convention. Beginning in April 2000, at the urging of the United States, supported by other countries, the Council of Europe published drafts of the Convention to allow for review and comment by interested members of the public. In addition, U.S. Government officials made information about the Convention available to interested members of the public. The Convention was opened for signature – and was signed by the United States – on November 23, 2001. As of last week, 38 countries have signed the Convention, and six have also ratified it. The Convention will enter into force on July 1, 2004.

The Convention has three main parts, each of which provides important law enforcement benefits for the United States. First, it requires Parties to criminalize certain conduct related to computer systems. For example, Article 2 requires parties to criminalize "illegal access" into computer systems, including activities

known as “hacking.” By requiring Parties to establish these kinds of substantive offenses, the Convention will help deny safe havens to criminals, including terrorists, who can cause damage to U.S. interests from abroad using computer systems.

Second, it requires Parties to ensure that certain investigative procedures are available to enable their domestic law enforcement authorities to investigate cybercrime offenses effectively and obtain electronic evidence (such as computer data) of crime. In this way, the Convention will enhance the ability of foreign law enforcement authorities to investigate crimes effectively and expeditiously, including those committed by criminals against U.S. individuals, U.S. government agencies, and other U.S. institutions and interests.

Third, in a manner analogous to other law enforcement treaties to which the United States is a party, the Convention requires Parties to provide each other broad international cooperation in investigating computer-related crime and obtaining electronic evidence, in addition to assisting the extradition of fugitives sought for crimes identified under the Convention. It provides mechanisms for U.S. law enforcement authorities to work cooperatively with their foreign counterparts to trace the source of a computer attack and, most importantly, to do so immediately when necessary, 24 hours a day, 7 days a week. The Convention would therefore enhance the United States’ ability to receive, as well as render,

international cooperation in preventing, investigating, and prosecuting computer-related crime. Because such international cooperation is vitally important to our efforts to defend against cyber attacks and generally improve global cybersecurity, support for the Cybercrime Convention has been identified as a key initiative in the 2003 National Strategy to Secure Cyberspace.

The Convention would not require implementing legislation for the United States. As discussed at length in the Secretary of State's report accompanying the transmittal of the Convention, the Administration has recommended six reservations and four declarations, all envisaged by the Convention itself, in connection with this Convention. To make clear that the United States intends to comply with the Convention based on existing U.S. federal law, we have also recommended that the Senate adopt an understanding to that effect.

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

The United Nations Convention against Transnational Organized Crime ("TOC Convention") is the first and only global instrument designed specifically to combat the dangerous contemporary phenomenon of criminal groups operating internationally. During the second half of the 1990's, the United States and its G-8 allies, concerned about the rapid spread of organized crime across borders no

longer frozen by Cold War geopolitics, recognized the need for coordinated international action. The United Nations also embraced the idea, and negotiations on the Convention took place under UN auspices in 1999 and 2000. Developing and developed countries from all regions participated actively, reflecting their awareness of the serious threat transnational organized crime poses to the effectiveness of their governments.

As of last week, 147 countries, including the United States, have signed the TOC Convention, and 78 countries are Parties to it. The Convention has been in force since September 29, 2003. On June 28, the Parties to the TOC Convention will meet collectively for the first time to elaborate procedures for promoting and reviewing its implementation. The United States will participate in this conference as a signatory but not yet a Party; the farther along we are on the road to ratification, the more effective we can be at the Conference of the Parties in ensuring that the Convention is implemented in ways consistent with our own anti-crime philosophy and priorities.

The Convention focuses on the offenses that are characteristic of transnational organized crime and on the key methods of international cooperation for combating it. It is buttressed by three protocols concentrating on particularly problematic manifestations of transnational organized crime, all of which were negotiated simultaneously with the main Convention. Two of these protocols, on

trafficking in persons and on alien smuggling, are before you today. Adherence to each of the protocols is optional. States can only join the Protocols if they also join the main Convention, because the protocols rely directly upon the cooperation and other mechanisms set out in the Convention.

One of the Convention's key achievements is to require Parties to ensure that their national criminal laws meet the criteria set forth in the Convention with respect to four offenses characteristic of transnational organized crime – participation in an organized criminal group, laundering of the proceeds of serious crime, corruption of domestic public officials, and obstructing justice by intimidating witnesses and justice and law enforcement officials. Since the relevant U.S. criminal laws already provide for broad and effective application in these areas, we can comply with the Convention's criminalization obligations without need for new legislation. The value of these Convention provisions for the United States is that they oblige other countries that have been slower to react legislatively to the threat of transnational organized crime to adopt new criminal laws in harmony with ours.

As further described by my Department of Justice colleague, a second important feature of the Convention is that it provides a blueprint for international cooperation. Few global criminal law conventions are so detailed and precise in setting out mechanisms for extraditing fugitives and assisting foreign criminal

investigations and prosecutions. Many countries, particularly in the developing world, lack existing bilateral extradition or mutual legal assistance treaty relationships with one another, but now will be able to rely on this Convention to fill that legal gap for many serious crimes.

For the United States, the Convention will not create entirely new extradition relationships, as we will continue to rely on our extensive web of bilateral treaties for that purpose, but it will broaden some of our older existing treaties by expanding their scope to include the offenses described above. By contrast, we will be able to use the Convention as a basis for new relationships with countries with which we lack bilateral mutual legal assistance treaties (MLATs), primarily those in parts of Asia, Africa, and the Middle East. The Convention fully incorporates all the safeguard provisions the U.S. insists upon in our bilateral MLATs, and thereby ensures that we may deny requests that are contrary to our essential interests or are improperly motivated.

Finally, the Convention is noteworthy for its capacity to adapt to the many faces of transnational organized crime. It enables and facilitates international cooperation not only for the specific offenses it identifies, but also for serious crime generally that is transnational in nature and involves an organized group. Such groups operate for financial benefit, of course, but not always exclusively. Terrorist groups are known to finance their activities through the commission of

offenses such as kidnapping, extortion, and trafficking in persons or commodities. The TOC Convention thus can open doors for the United States in securing the help of other countries in investigating and prosecuting terrorist crimes.

The Administration has proposed several reservations and understandings to the Convention and its two Protocols. With these reservations and understandings, the Convention and the Protocols will not require implementing legislation for the United States.

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

The Committee is considering two protocols to the Transnational Organized Crime Convention as well. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, originally proposed and drafted by the United States, has the potential to be a powerful international law enforcement instrument, requiring countries to criminalize trafficking and providing a broad framework for international cooperation to prosecute traffickers, prevent trafficking, and protect trafficking victims. As of last week, 117 countries, including the United States, have signed the Trafficking Protocol, and 61 countries

are Parties to it. The Trafficking Protocol has been in force since December 25, 2003.

As my Justice Department colleague will describe in more detail, the Trafficking Protocol, the first binding international instrument to define the term "trafficking in persons," creates obligations to make certain acts criminal. It also contains provisions designed to protect the victims of trafficking and addressing prevention, cooperation, and other measures.

I want to highlight some of the groundbreaking victim protection provisions in this Protocol, which recognizes that protection of victims is as important as prosecuting traffickers. In addition to requiring that victims are offered the possibility of obtaining compensation, and that Parties facilitate and accept the return of their nationals and permanent residents who are trafficking victims, the Protocol calls on Parties to make available to trafficking victims certain protections and assistance, including protection of their privacy and physical safety, as well as provisions for their physical, psychological, and social recovery. Similarly, States Parties are to consider providing temporary or permanent residency to victims of trafficking in appropriate cases. In recognition of the fact that legal systems and available resources will affect how States Parties implement these particular measures, the Protocol includes language providing appropriate discretion and flexibility.

The Protocol obligates States Parties to take measures to prevent and combat trafficking in persons and to protect victims from revictimization, and to do so in appropriate cooperation with non-governmental organizations. Among other things, States Parties are called upon to take measures, including research and mass media campaigns, to prevent and combat trafficking.

The Protocol also requires States Parties to exchange information, in accordance with their domestic law, in order to enable them to better detect traffickers and their routes. This provision does not affect mutual legal assistance relations, many aspects of which are instead governed by treaties for that purpose, and by provisions such as Article 18 of the Convention itself.

Finally, without prejudice to international commitments to the free movement of people, the Protocol provides for the strengthening of border controls, as necessary, to prevent and detect trafficking in persons. States Parties are obliged to take measures, within available means, to ensure that their travel and identity documents are of such a quality that they cannot easily be misused and cannot readily be falsified, altered, replicated or issued.

With the reservations and understandings that have been proposed by the Administration, the Protocol will not require implementing legislation for the United States. In this connection, the Trafficking Victims Protection Act of 2000 ("TVPA") sets out a comprehensive framework for protecting victims of

trafficking and combating trafficking in persons domestically and abroad. A Cabinet-level interagency task force, chaired by the Secretary of State, ensures the appropriate coordination and implementation of the Administration's anti-trafficking efforts.

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

The second protocol supplementing the Transnational Organized Crime Convention is the Protocol against the Smuggling of Migrants by Land, Sea and Air. The purposes of this protocol are to prevent and combat the smuggling of migrants, and to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants. As of last week, 112 countries, including the United States, have signed the Migrant Smuggling Protocol, and 55 countries are Parties to it. The Migrant Smuggling Protocol has been in force since January 28, 2004. Subject to the recommended reservations and understandings, the Protocol would not require implementing legislation for the United States.

In the Migrant Smuggling Protocol, the Parties designed an instrument that balances law enforcement provisions with appropriate protection of the rights of smuggled migrants. Here too, my Justice Department colleague will address the

Protocol's law enforcement benefits, such as the obligations to make certain acts criminal, while I will concentrate on the migrant-protection provisions.

First, the Protocol obligates States Parties to accept the return of smuggled migrants who are its nationals or permanent residents at the time of return. It is the first binding international instrument to codify this longstanding general principle of customary international law. Consistent with their obligations under international law, states parties must also take appropriate measures to preserve and protect certain rights of smuggled migrants. Parties are not precluded from prosecuting a smuggled person for illegal entry or other criminal violations.

The Protocol recognizes the pervasiveness of migrant smuggling via the seas, and sets forth procedures for interdicting vessels engaged in such smuggling. States Parties taking measures against a vessel engaged in migrant smuggling must ensure the safety and humanitarian handling of the persons on board and, within available means, that any actions taken with regard to the vessel are environmentally sound. States Parties must take care not to endanger the security of the vessel or its cargo, or prejudice the commercial or legal interests of the flag State or any other interested State. The Protocol also contains provisions requiring international cooperation to prevent and suppress migrant smuggling by sea in accordance with the international law of the sea.

The Protocol contains several useful cooperation and prevention provisions. States Parties, consistent with their domestic legal and administrative systems, are to exchange among themselves certain types of information for the purpose of achieving the Protocol's objectives, such as embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected or being used by an organized criminal group engaged in alien smuggling. States Parties are also required to have programs to ensure that the public is aware of the criminal nature of migrant smuggling and the risks it poses to migrants, as well as to promote development programs to combat the root socio-economic causes of the smuggling of migrants.

Finally, the Migrant Smuggling Protocol encourages States Parties to conclude bilateral or regional agreements or arrangements to implement the Protocol. This was an important Article to the United States, as we have bilateral migration agreements with a number of countries.

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Mr. Chairman, we very much appreciate the Committee's decision to consider these important treaties.

I will be happy to answer any questions the Committee may have.