

Testimony before the House Committee on the Judiciary

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

Introduction

Chairman Sensenbrenner, Ranking Member Scott, distinguished Members of this committee, thank you for the opportunity to appear before you today to discuss implementing legislation that would allow the United States to ratify four important multilateral counterterrorism treaties:

- The International Convention for the Suppression of Acts of Nuclear Terrorism (“ICSANT” or “the Nuclear Terrorism Convention”) addresses a critical category of terrorist activity, the nexus between terrorism and nuclear weapons and other radioactive materials and devices, such as "dirty bombs;"
- The Amendment to the Convention on Physical Protection of Nuclear Material (“CPPNM Amendment”) addresses 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 the physical protection of nuclear facilities used for peaceful purposes;
- And Protocols to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (“2005 SUA Protocols”), address the potential use of maritime vessels and platforms as a means of conducting or enabling terrorist activity and the unlawful transport of WMD and related items via commercial ships.

These four treaties are key tools in the international fight against terrorism and the proliferation of Weapons of Mass Destruction (WMD) and each of these treaties fill gaps in the existing international regime.

In 2008, all four of these treaties received advice and consent from the Senate. The Department of State strongly supports passage of implementing legislation that will now allow the United States to ratify these treaties. While my colleague from the Department of Justice can discuss the provisions of the proposed implementing legislation, I would highlight a few points with respect to the relationship between the proposed legislation and these four treaties:

First, the proposed implementing legislation will ensure that the United States complies with our international obligations under each treaty to criminalize

certain conduct and establish criminal jurisdiction over that conduct. The criminal offenses covered under these treaties are serious offenses involving nuclear terrorism, WMD proliferation, maritime terrorism, and unlawful maritime transport of WMD and their delivery systems. There is international consensus that countries should cooperate in the prevention, investigation, and prosecution of these offenses. The proposed implementing legislation will both fill gaps within U.S. law and facilitate international cooperation with foreign partners under the framework of these treaties.

Second, the proposed implementing legislation is modeled after legislation passed by Congress to implement earlier counterterrorism treaties. Most recently, in 2002 Congress passed legislation to implement two treaties which focused on terrorist bombings and terrorist finance. The form of the proposed legislation tracks that which has been successfully used in the past. Indeed, the proposed legislation for the 2005 SUA Protocols itself amends legislation originally passed by Congress to implement the SUA Convention and Fixed Platforms Protocol. Just as the 2005 SUA Protocols amend those earlier treaties, so would the proposed legislation amend U.S. law implementing those treaties.

The ratification of these treaties is critical for several reasons:

First, joining these treaties will enhance U.S. national security. Terrorism and WMD proliferation do not recognize international boundaries. To combat these threats effectively we need a broad international legal framework, and each of these treaties fill a gap in an existing international regime that is time tested and in which the U.S. already participates. The treaties modernize and strengthen the international legal framework in a manner that is critical to our efforts to prevent terrorists from acquiring or using WMD.

Second, the treaties bolster related U.S. government policy priorities, such as the Global Initiative to Combat Nuclear Terrorism, the Proliferation Security Initiative (PSI), and the Nuclear Security Summit. The treaties also further the objectives and support implementation of the international obligations concerning nonproliferation set out in United Nations Security Council Resolution 1540.

Third, U.S. ratification of these treaties will encourage widespread ratification and implementation by other countries and will reinforce the leading role the United States has played in promoting these treaties, the counter-terrorism treaty regime, and nonproliferation in general. The CPPNM Amendment, a U.S.-led initiative, is not yet in force. The SUA Protocols, both

of which are also U.S.-led initiatives, have recently entered into force, but have not achieved the number of ratifications that we would like to see. While 77 states are party to the ICSANT, it still lags far behind other similar counterterrorism conventions, most of which have over 150 states parties. U.S. ratification will likely generate powerful momentum towards other states' ratification. The U.S. has ratified the 12 counterterrorism conventions that preceded these four treaties, and U.S. leadership in promoting those treaties has been instrumental in getting other countries to also ratify those treaties.

Expediently enacting implementing legislation would allow us to ratify these key treaties. Ratification, in turn, will enhance our national security and reinforce U.S. leadership in nonproliferation and counterterrorism.

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

CPPNM Amendment

The 1987 Convention on the Physical Protection of Nuclear Material ("CPPNM") established international obligations for physical protection of nuclear material used for peaceful purposes in international transport. It 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 the physical protection of nuclear facilities. The terrorist attacks on September 11, 2001, 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 the 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, imposes international 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. This significantly expands the scope of the original CPPNM. In effect, the Amendment globalizes U.S. nuclear physical protection practices. Specifically, it establishes, *inter alia*:

- new international norms for the physical protection of nuclear material and facilities used for peaceful purposes, including protection from sabotage;
- strengthened international 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 the Convention requires Parties to criminalize in their domestic law.

The basic physical protection requirements set out in the Amendment place international obligations on 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. The Convention requires Parties, insofar as reasonable and practicable, to apply these principles in their physical protection regimes.

Under the Amendment's expanded cooperation and assistance provisions, Parties are 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, the Convention requires Parties 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 requiring Parties to criminalize domestically two new principal offenses --nuclear smuggling and sabotage of a nuclear facility. The amended Convention also includes a range of accessory offenses found in modern counterterrorism treaties. Like the CPPNM, the Convention as amended requires Parties to extradite or submit for prosecution persons accused of covered offenses.

The Amendment will enter into force only after two-thirds (97) of the current 145 Parties to the CPPNM join the Amendment. Forty-nine countries have ratified to date. We believe that ratification by the United States will create significant momentum towards entry into force.

The ICSANT

The United States signed the ICSANT on September 14, 2005, the first day the treaty was open for signature. The ICSANT closely follows the model of other counterterrorism conventions to which the United States 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 ICSANT establishes offenses, requires domestic criminalization of those offenses, and obligates Parties to establish jurisdiction over the offenses under certain circumstances. More specifically, the treaty 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 of or damage to 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 ICSANT includes ancillary offense provisions that require Parties 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 ICSANT 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 ICSANT 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 on July 7, 2007, and there are currently 77 State Parties, including Russia, India, Japan, the United Kingdom, Spain, and Saudi Arabia.

The 2005 SUA Protocols

In the wake of the September 11th 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 process at the International Maritime Organization (IMO) to negotiate multilateral instruments that provide a more effective international framework to combat maritime terrorism, conduct maritime interdictions of weapons of mass destruction, and prosecute unlawful transport of WMD and their delivery systems. Our efforts 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, add ancillary offenses, and establish a ship boarding 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 WMD, their delivery systems, or related materials to be used for WMD, including dual use items by sea; 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. The Protocols require Parties to criminalize domestically these offenses, and obligations in the new Protocols are covered by the obligation under the 1988 SUA Convention to extradite or submit for prosecution persons accused of committing such new offenses. The Protocols also require Parties to provide mutual legal assistance for 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 and Toxins Weapons Convention, and the Chemical Weapons Convention of Parties to those treaties.

The framework for consensual ship boarding of vessels on the high seas suspected of involvement in the covered offenses is a major development. This ship boarding regime will serve to strengthen the international legal basis for inspecting vessels at sea and will promote implementation of UN sanctions on Iran and North Korea.

The 2005 SUA Protocols entered into force last year. Twenty states have ratified the 2005 SUA Protocol and 16 states have ratified the 2005 Fixed Platforms Protocol. We believe that ratification by the United States will increase momentum for further ratifications of these Protocols and reinforce our leading role in initiating and promoting these Protocols.

Conclusion

In sum, Mr. Chairman, these treaties are important for our security, for nonproliferation and the fight against WMD terrorism, and for continued U.S. leadership in these areas. We urge you and your colleagues to introduce implementing legislation for these treaties as soon as possible and stand ready to work with you to do so.