



Department of Justice

STATEMENT OF
JOHN C. DEMERS
DEPUTY ASSISTANT ATTORNEY GENERAL
NATIONAL SECURITY DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

AT A HEARING ENTITLED

“TREATIES”

PRESENTED

MAY 7, 2008

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Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss the implementation of four important international agreements. These agreements provide significant tools in our ability to protect the Nation against terrorism and weapons of mass destruction.

Two of these agreements—the Nuclear Terrorism Convention and the amendment to the Convention on the Physical Protection of Nuclear Material—focus on nuclear and radiological materials. The third set of agreements, the 2005 Protocols to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the “SUA Protocols”), prohibit the use of a ship or a maritime platform as a weapon and prohibit the transport by ship of terrorists, cargo intended for use in connection with weapons of mass destruction programs, and explosives or radioactive material for terrorist purposes.

The Administration is currently reviewing legislative proposals to implement the Nuclear Terrorism Convention and the Amendment to the Convention on the Physical Protection of Nuclear Material. The legislative proposals to implement the two SUA Protocols were submitted last year to the House and Senate.

I. Nuclear Terrorism Convention and Amendment to the Convention on the Physical Protection of Nuclear Material

President Bush signed the Nuclear Terrorism Convention on September 14, 2005. The Convention requires States Parties to criminalize certain acts relating to the possession and use of radioactive material and radiological dispersal devices and damage to nuclear facilities. The amendment to the Convention on the Physical Protection of Nuclear Material was adopted by acclamation at a diplomatic conference of States Parties on July 25, 2005. In relevant part, the

amendment requires States Parties to criminalize nuclear smuggling and sabotage of nuclear facilities.

Together, these conventions strengthen the United States' security against various forms of nuclear terrorism. The conventions prohibit nuclear smuggling, the release of radioactive or nuclear materials, and attacks on nuclear facilities. Importantly, the conventions will help the United States work with other nations to prevent these activities domestically and abroad.

Although existing law may cover portions of these two conventions, new legislation is necessary to ensure that the conventions are fully implemented. For instance, the Nuclear Terrorism Convention's prohibition against the possession or use of a nuclear explosive or radiation dispersal device may be covered by broader existing prohibitions against the unlawful possession or use of a radiological weapon (18 U.S.C. 832) and the unlawful possession of a weapon or device designed to release radiation (18 U.S.C. 2332h). Similarly, the prohibitions against causing damage to a nuclear facility contained in both the Nuclear Terrorism Convention and in the amendment to the Convention on the Physical Protection of Nuclear Material overlap with section 2284 of title 42, which prohibits sabotage of nuclear facilities. These scattered existing statutes, however, do not include the same *mens rea* as required by the conventions, and they do not include all the jurisdictional bases provided by the conventions, such as jurisdiction for offenders "found in" the United States. The Nuclear Terrorism Convention includes mandatory and optional jurisdictional bases in order to achieve broad coverage of these nuclear-related offenses, and appropriate legislation will be needed to ensure the full assertion of permissible authority over nuclear terrorism.

II. SUA Protocols

Last year, the Department of Justice submitted to the House and Senate proposed legislation to implement the 2005 SUA Protocols. One protocol applies to ships—the Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation—and the other applies to fixed maritime platforms—the Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf. The proposed legislation would amend sections 2280 and 2281 of title 18, which were the sections implementing the original SUA Convention and the Fixed Platforms Protocol.

The 2005 Protocols require parties to criminalize the use or targeting of a ship or a fixed maritime platform in a terrorist activity; the maritime transportation of explosives, radioactive material, or biological, chemical, or nuclear weapons or certain of their components, delivery means, or materials, under specified circumstances; and the maritime transport of terrorist fugitives.

Accordingly, the amendments to section 2280 of title 18 would make unlawful the targeting or use of a ship in terrorist acts. Specifically, it would be an offense to use against, on, or from a ship any explosive, radioactive material, or biological, chemical, or nuclear weapon. It

would also be an offense to discharge oil, liquefied natural gas, or another hazardous or noxious substance from a ship. These acts must be done in a manner that causes or is likely to cause death or serious injury or damage. It would also be an offense to otherwise use a ship in a manner that causes death or serious injury or damage.

In accordance with the protocol pertaining to ships, the new legislation would also forbid the maritime transportation of explosives and radioactive material and biological, chemical, or nuclear weapons, their delivery systems, or related materials. Such offenses would be qualified by the statute's *mens rea* requirements. Explosive or radioactive material must be intended for a terrorist act. In order for criminal liability to attach, the transport of biological, chemical, or nuclear weapons must be done with knowledge of the items being transported. Transportation of source material, special fissionable material, or related material must be done knowing that the material is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an International Atomic Energy Agency comprehensive safeguards agreement. Transportation of certain dual use items that significantly contribute to the design, manufacture, or delivery system of a biological, chemical, or nuclear weapon or other nuclear explosive device, must be done intending that the items be used for such purposes. The offenses prohibited are consistent with the rights and obligations of States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, the Biological Weapons Convention,¹ and the Chemical Weapons Convention.² In fact, the statute includes an exception specifying that certain nuclear transport activities that are consistent with the Treaty on the Non-Proliferation of Nuclear Weapons remain permissible under the statute, in accordance with the SUA Protocol. The offenses are also complementary with the obligations set out in U.N. Security Council Resolution 1540 regarding prohibitions against the transport of biological, chemical, and nuclear weapons and their means of delivery.

The SUA Protocol also established a mechanism to facilitate the boarding in international waters of vessels suspected of engaging in these activities, and the statute accordingly includes certain provisions regarding maritime interdictions.

The amendments to section 2281 of the same title would protect fixed maritime platforms (such as offshore oil platforms) from terrorist attacks. Specifically, the amendments would make unlawful the use against or discharge from a fixed platform of any explosive, radioactive material, or biological, chemical, or nuclear weapon, in a manner that causes or is likely to cause death or serious injury or damage. The amendments would also forbid the discharge from a fixed platform of oil, liquefied natural gas, or another hazardous or noxious substance, in a manner that causes or is likely to cause death or serious injury or damage. Such acts would have to be done unlawfully and intentionally and with a terrorist purpose.

¹Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

²Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

III. Conclusion

Again, thank you for the opportunity to discuss these important international treaties. I look forward to working with this Committee on developing appropriate implementing measures. At this time, I would be happy to answer any questions.