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THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY AND THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

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Mr. BIDEN, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 106–37]

The Committee on Foreign Relations, to which was referred the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, having considered the same, reports favorably thereon with 1 reservation, 6 understandings, 1 declaration, and 1 condition regarding the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and 5 understandings and 3 conditions regarding the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, as set forth in the resolutions of advice and consent, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolutions of advice and consent to ratification.

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I. PURPOSE

The two treaties are designed to protect children around the world. The first requires States Parties to criminalize the sale of children for various forms of exploitation, and the use of children in prostitution or pornography. The second contains new standards, in the form of higher minimum age requirements, on recruitment of children into the armed forces and use of children in armed conflict.

II. BACKGROUND

A. GENERAL

On May 25, 2000, the United Nations General Assembly approved two Optional Protocols to the Convention on the Rights of the Child: (1) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and (2) the Optional Protocol on Involvement of Children in Armed Conflict (hereafter referred to as "Protocol on the Sale of Children" and "Protocol on Child Soldiers," respectively).

On July 5, 2000, the United States signed the Protocols. The United States is not a party to the Convention on the Rights of the Child, but has signed it; the Protocols are open to signature by any country which has signed the Convention. After President Clinton signed the Protocols, Congress approved a non-binding provision in the annual defense authorization bill welcoming the Protocol on Child Soldiers, and urging that the Senate move forward "as expeditiously as possible" in considering it.[1]

President Clinton submitted the Protocols to the Senate on July 25, 2000. The Protocols are set forth in one Senate treaty document (Treaty Doc. 106–37), but are two separate legal instruments.

The Bush administration indicated its support for the Protocols by letter to the Committee dated August 31, 2000, stating that the two treaties "urgently need Senate approval" (letter from Paul Kelly, Assistant Secretary of State for Legislative Affairs). That statement was reaffirmed by the administration by letter to the Committee dated February 7, 2002 (the letter sets forth the administration's treaty priority list for the 107th Congress; the list places the Protocols in the first category—those treaties "for which there is an urgent need for Senate approval").

B. KEY OBLIGATIONS OF THE PROTOCOLS AND CURRENT U.S. LAW AND PRACTICE

1. Protocol on the Sale of Children

The basic obligations of the Protocol on the Sale of Children, set forth in Article 3, are as follows: States Parties to the Protocol are required to ensure that the following acts are "fully covered under its criminal or penal law, whether these offenses are committed domestically or transnationally or on an individual or organized basis:"

[1] Sec. 1236 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (P.L. 106–398).

(1) in the context of the sale of children, which is defined as any act or transaction whereby a child is offered, delivered, or accepted by one to another for remuneration or any other consideration, for the purpose of sexual exploitation, the transfer of a child's organs for profit, or the engagement of a child in forced labor. The Protocol also requires States Parties to ban the act of improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(2) the offering, obtaining, procuring or providing a child for child prostitution, which is defined as using a child in sexual activities for remuneration or any other form of consideration; and

(3) producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography, which is defined as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Other key provisions of the Protocol require States Parties to:

- establish jurisdiction in their laws for these offenses (Article 4);
- recognize offenses covered by the treaty as extraditable offenses (subject to national practice on the existence of an extradition treaty as a prerequisite to extradition), and, in the case of States Parties which do not extradite on the basis of nationality, to take measures to submit the case to its competent authorities for the purpose of prosecution; (Article 5);
- cooperate with other parties in investigating or prosecuting cases under the Protocol (Articles 6 and 10);
- provide, subject to provisions of their national law, for seizure and forfeiture of goods used to facilitate the offense and proceeds derived from such offenses (Article 7).

U.S. domestic law, at both the Federal and state level, already covers the subjects addressed by the Protocol (see pages 10-30 of the Treaty Document for an extensive analysis of applicable Federal and state law). Congress enacted two statutes in 2000—after submission of the Protocol to the Senate—which further strengthen federal law in these areas. These laws are the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106–386) and the Intercountry Adoption Act of 2000 (P.L. 106–279). The former provides several new statutory provisions addressing trafficking of children for sexual activity, child prostitution, and forced labor. The latter implements a multilateral treaty on adoption, and includes, among other things, criminal and civil penalties for improper inducement of relinquishment of parental rights in an international adoption covered by that treaty.

Accordingly, with one exception, no new legislation will be required to comply with the Protocol. The exception relates to a provision on court jurisdiction. Article 4(1) obligates States Parties to take such measures as may be necessary to establish jurisdiction over the criminal offenses set forth in Article 3 when the offenses are committed in its territory or "on board a ship or aircraft registered in that state." U.S. court jurisdiction over such offenses is

not always stated in terms of "registration" of a ship or aircraft (it is focused, rather, on ownership by U.S. persons or corporations). U.S. Federal law will need to be amended in order for the United States to comply with this requirement. In the meantime, the Committee recommends a reservation in the instrument of ratification stating that the treaty obligation on this aspect of the Protocol will not apply to the United States until such time as U.S. law is amended accordingly, at which time it is expected that the President will withdraw the reservation.

2. Protocol on Child Soldiers

The Protocol on Child Soldiers contains four key obligations. States Parties are obliged to:

(1) "take all feasible measures" to ensure that members of the national armed forces who are under age 18 do not take a "direct part" in hostilities (Article 1);

(2) ensure that people under age 18 are not "compulsorily recruited" into the armed forces (Article 2);

(3) raise the minimum age for voluntary recruitment into their national armed forces from the age of 15 (Article 3); and

(4) maintain safeguards to ensure that, if a State permits voluntary recruitment for persons under age 18, such recruitment is genuinely voluntary, it is done with the informed consent of the person's parents or legal guardians, such persons are fully informed of the duties involved in military service, and such persons provide reliable proof of age prior to their acceptance into military service.

No changes in U.S. law will be required to fulfill the obligations of the Protocol, although the Department of Defense will need to issue appropriate internal directives to ensure implementation of the obligation contained in Article 1.

The United States is already in compliance, by law and practice, with the obligations of Articles 2 through 4.

Article 2 requires States Parties to ensure that people under age 18 are not forcibly recruited into the armed forces. The United States does not have a policy of compulsory military service for persons of any age (the Selective Service System is a registration system). According to testimony received by the Committee from the Executive Branch, the Department of Defense does not envision the need to reinstate the draft. It should also be noted that the United States has already accepted a similar international legal obligation. Under International Labor Organization Convention 182 on the Worst Forms of Child Labor (approved by the Senate in November 1999), the United States is obligated to not compulsorily recruit people under 18 for "use in armed conflict."

Article 3 requires States Parties to raise the minimum age for voluntary recruitment from that set out in Article 38(3) of the Convention on the Rights of Child (which the United States understands to mean 15 years of age). Article 4 requires nations which enlist persons under age 18 to provide certain safeguards. By law, persons less than 17 years of age may not enlist in the U.S. armed forces, and those who are 17 may not enlist unless they have the written consent of a parent or guardian (10 U.S.C. §505). Persons

under 18 also may not, without parental consent, enter the Delayed Entry Program (under the Delayed Entry Program, individuals sign enlistment contracts committing to enlist in the military within one year). (10 U.S.C. §513) The Defense Department requires that every person recruited into the military receive a comprehensive briefing and to sign an enlistment contract which, together, specify the duties involved in military service. Further, all recruits must provide reliable proof of age before their entry into the military service.

Finally, it is worth noting that the Protocol will have no effect on U.S. military academies, or Reserve Officer Training Corps (ROTC) programs. Article 3(5) provides that the requirement to raise the minimum age of recruitment in Article 3(1) "does not apply to schools operated by or under the control of the armed forces . . ." In any event, individuals must be 17 to enter U.S. military academies (e.g., 10 U.S.C. §4346 (17-year-old minimum age for entrance to U.S. Military Academy); 10 U.S.C. §6958 (same requirement for U.S. Naval Academy); 10 U.S.C. §9346 (same requirement for U.S. Air Force Academy)).

III. Entry into Force/Amendment/Termination

A. ENTRY INTO FORCE

Each Protocol enters into force three months after the deposit of the tenth instrument of ratification or accession. The Protocol on the Sale of Children entered into force on January 18, 2002. The Protocol on Child Soldiers entered into force on February 12, 2002. If the United States ratifies the Protocols, they would enter into force for the United States one month after the date of deposit of the instrument of ratification (Article 14(2) of the Protocol on the Sale of Children; Article 10(2) on the Protocol on Child Soldiers).

B. AMENDMENTS

Each Protocol has identical provision for amendments. Any State Party may propose an amendment by presenting it to the depository, the UN Secretary-General, who then communicates the proposal to the States Parties, asking whether they support a conference of States Parties to consider the proposals. If, within four months of the communication by the Secretary-General, at least one-third of the States Parties support such a conference, he must convene it. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the UN General Assembly for its approval. An amendment enters into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties. An amendment is binding only on States Parties accepting it. (Article 16 of Protocol on the Sale of Children; Article 12 of Protocol on Child Soldiers).

C. DENUNCIATION/TERMINATION

Under the terms of each Protocol, a State Party may denounce the protocol at any time by written notification to the UN Secretary-General. The denunciation takes effect one year after the date of receipt of the notification. (Article 15(1) of the Protocol on the Sale of Children; Article 11(1) of the Protocol on Child Sol-

diers). In the case of the Protocol on Child Soldiers, however, if at the end of that one-year period the denouncing State Party is engaged in armed conflict, the denunciation "shall not take effect before the end of the armed conflict." Denunciation also does not release a State party from obligations with regard to acts that occur prior to the effective date of a denunciation.

IV. COMMITTEE ACTION

The Committee held a public hearing on the Protocols on March 7, 2002, receiving testimony from representatives of the Departments of State, Defense, and Justice. Testimony was also received (focusing primarily on the Protocol on Child Soldiers) from a panel of private witnesses consisting of two retired admirals and a representative of a human rights organization. All witnesses testified in favor of the Protocols. (The transcript of the hearing is printed as an annex to this report.)

On May 23, 2002, the Committee considered the Protocols and ordered them favorably reported by voice vote, with a recommendation that the Senate give its advice and consent to the ratification of the Protocols subject to 1 reservation, 6 understandings, 1 declaration, and 1 condition regarding the Protocol on the Sale of Children; and 5 understandings and 3 conditions regarding the Protocol on Children in Armed Conflict, as set forth in the resolutions of advice and consent.

V. COMMITTEE RECOMMENDATIONS AND COMMENTS

The Committee recommends that the Senate advise and consent to the ratification of the two Protocols.

The Protocol on the Sale of Children will provide important new standards—and provide a framework for international cooperation—to combat the heinous crimes of the sale of children, child pornography, and child prostitution. The scope of the problem of trafficking, particularly of women and children—for use in slave labor or in the sex industry—defies comprehension. A State Department report indicates that, according to reliable estimates, "at least 700,000 persons, especially women and children, are trafficked each year across international borders," and that tens of thousands of women and children are trafficked into the United States annually.[2] Like-minded states must take all reasonable steps to prevent and punish such odious offenses. The Protocol sets standards which the United States will expect other nations to embrace and enforce.

The United States is already in a position to fulfill nearly all of the obligations of the Protocol, with one exception. It will have to make one minor modification to Federal law related to jurisdiction.

The Protocol on Child Soldiers also addresses a problem of unimaginable scope. Around the world, perhaps hundreds of thousands of young children—some under the age of 10—engage in armed conflict every year. The Protocol will not end this outrageous practice, but it will establish new standards and help shine a spot-

[2] Department of State, Trafficking in Persons Report (July 2001).

light on those governments, and non-state actors, which continue to employ children in armed conflict.

For the United States, the Protocol will impose a manageable burden.

The Protocol will have no effect on recruiting into the U.S. armed forces. It requires nations to ensure that people under age 18 are not forcibly recruited into the armed forces. As noted above, the United States does not forcibly recruit people of any age. The Protocol also requires that States Parties raise the minimum age for voluntary recruitment to some age higher than 15. The United States does not permit enlistment of individuals under the age of 17.

In considering the implications of the Protocol for the United States, the key issue is whether the Protocol will affect military readiness and U.S. operational requirements. Article 1 of the Protocol requires States Parties to take "all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities." The Department of Defense has assured the Committee that, based on its review of the Protocol, it "will not harm the military's ability to accomplish its national security mission." The Committee agrees with this judgment, for three reasons.

First, 17-year-olds are not a major part of U.S. military recruiting. Of the nearly 175,000 new enlistees in the U.S. military in Fiscal Year 2001, about 12,000 were 17 when they enlisted, or about 7 percent. The percentage of 17-year-old enlistees has varied in the last two decades—ranging from a low of 3.6 percent in Fiscal 1993 to a high of 8.2 percent in Fiscal 1982—but since Fiscal 1982 it has never exceeded 7 percent. Thus, as the Department of Defense testified, 17-year-olds are an important part of military recruiting, but they do not dominate the recruiting pool.

Second, meeting the Article 1 obligation will be manageable for a simple reason: most 17-year-old recruits turn 18 while still in training—either during basic training or in subsequent training in a recruit's military specialty. In Fiscal 2001, for example, there were only 2,263 individuals who were 17 when they reached their operational bases. Of these individuals, very few are deployed overseas, where they face a higher probability of encountering a combat situation. In February 2002, just 45 of these service personnel under the age of 18 were assigned to units outside the continental United States. Of these, only 7 servicemen and women—all sailors—were participating in Operation Enduring Freedom. These data indicate that the number of servicemen and women who are likely to be assigned to units in theaters of potential combat is minuscule.

Third, by its terms, Article 1 does not impose a complete prohibition on participation in combat by those under age 18. Rather, it requires states to take "all feasible measures" to ensure that such individuals do not take a "direct part" in hostilities. This flexible standard, and the interpretation set forth in recommended understanding (2), will permit 17-year-olds to engage in a range of activities, including combat support or combat service support. The interpretation of Article 1 is addressed in further detail below, in Section VI.

In sum, the Protocol will not require significant changes in U.S. practice. The Committee notes, in particular, that the Protocol accommodates the long-standing United States policy of allowing 17-year-olds to voluntarily enlist in the armed forces. The Committee supports this policy and this resolution of the issue.

VI. Discussion of the Resolutions of Advice and Consent to Ratification

A. Protocol on the Sale of Children

Reservation regarding Article 4(1)

Article 4(1) of the Protocol obligates States Parties to take "such measures as may be necessary" to establish jurisdiction over the offenses referred to in Article 3(1), when the offenses set forth in Article 3(1) are committed in its territory or on board a ship or aircraft registered in that State. Because U.S. jurisdiction is not usually couched in terms of "registration" in the United States—it is generally focused, rather, on ownership by U.S. persons or corporations—the reach of U.S. jurisdiction is inadequate to comply with the Protocol upon ratification. Department of Justice representatives have indicated to the Committee that they are working on a legislative proposal to amend U.S. law accordingly.

In the meantime, the Committee recommends a reservation which would have the effect of opting out of this obligation temporarily. Once U.S. law is changed, it is expected that the President would promptly withdraw the reservation. In this connection, once U.S. law changes, the President need not seek a further decision by the Senate in connection with the withdrawal of the reservation.

Understanding (1)—Convention on the Rights of the Child

The United States is not a party to the Convention on the Rights of the Child, though it is a signatory. Although styled as a Protocol to the Convention, it is a stand-alone legal instrument and therefore the United States does not assume any obligations under the Convention on the Rights of the Child by becoming a party to the Protocol. The first proposed understanding would state that principle.

Understanding (2)—Definition of sale of children

Article 2(a) of the Protocol broadly defines the sale of a child as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration." This broad definition could be construed to include lawful acts, such as the placement of a child in the temporary custody of a friend or family member with the promise of payment for the child's living or academic expenses. To ensure that such an improper construction is not given, the Executive Branch recommends, and the Committee agrees, that the Senate adopt an understanding which makes clear that Article 2(a) is intended to cover those transactions in which a person who does not have a lawful right to custody of the child thereby obtains *de facto* control over the child.

Understanding (3)—Definition of child pornography

Article 2(c) of the Protocol defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." To ensure that the term as applied by the United States conforms with U.S. law, the Executive Branch recommends, and the Committee agrees, that the Senate adopt an understanding that the definition means the "visual representation of a child, engaged in real or simulated sexual activities, or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose."

Understanding (4)—Definition of transfer of organs

Article 3(1)(a)(i)b requires States Parties to ensure that, in the context of sale of children, the offering, delivering, or accepting of a child for the "purpose of transfer of organs of the child for profit" is fully covered under its criminal law. The understanding makes clear that "transfer of organs for profit" in the context of the sale of a child is not intended to reach situations in which a child donates an organ pursuant to lawful consent. The understanding also makes clear that the term "profit," as used in the provision, does not extend to the lawful payment of reasonable expenses associated with an organ transfer, for expenses such as travel, housing, lost wages, and medical costs.

Understanding (5)—Improper inducement in relinquishment of parental rights

Article 3(1)(a)(ii) requires States Parties to ensure that, in the context of sale of children, the act of improperly inducing consent, as an intermediary, for adoption in violation of applicable international legal instruments on adoption is fully covered under its criminal law. The use of the term "applicable international legal instruments" is understood to mean the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the "Hague Convention"). Because the United States is not currently a party to the Hague Convention, the understanding states that the United States is not obligated to criminalize the conduct prohibited in Article 3(1)(a)(ii) or take action as required under Article 3(5). The understanding also elaborates on the meaning of the term "improperly inducing consent."

It should be noted that the Senate gave advice and consent to the ratification of the Hague Convention during the 106th Congress. The United States has not, however, deposited its instrument of ratification, because it is not yet in a position to fulfill the obligations of the Convention; that is because the regulatory structure for implementation of the Convention has not been finalized, though the necessary implementing legislation has been enacted (P.L. 106–279).

Understanding (6)—Implementation of the Protocol in the Federal system of the United States

This understanding makes clear that the United States will carry out its obligations under the Protocol consistent with its federal system of government, through legislation already enacted by the

federal government and the states of the United States. The range of laws required by the Protocol are addressed at both the federal and state level. Some provisions required by the Protocol are, in the U.S. system, largely the responsibility of the states. The understanding therefore underscores that the Protocol will be implemented at the federal level to the extent the federal government exercises jurisdiction over matters covered therein, and that it will otherwise be implemented by state and local governments. The understanding is identical to one approved by the Senate in 1994 in consideration of the International Convention on the Elimination of All Forms of Racial Discrimination.

Declaration

This declaration, which would not be included in the instrument of ratification, provides that the provisions of the Protocol are not self-executing, with one exception. The exception is Article 5, which permits parties to consider the offences covered by Article 3(1) as extraditable offenses in any existing extradition treaty between States Parties. That said, the United States will continue to undertake any extraditions pursuant to the provisions of Chapter 209 of Title 18, United States Code. The declaration also makes plain that the United States considers that current law, including the laws of the states, adequately fulfills the obligations of the Protocol, and therefore it does not intend to enact new legislation to fulfill its obligations. There is one exception to this statement as well: as noted in the reservation described above, a minor change to federal law will be required to satisfy the obligations of Article 4(1).

Condition on interpretation

This condition sets forth important principles of treaty interpretation, which the Senate has reaffirmed on numerous occasions in the last decade. These principles apply whether or not the Senate chooses to say so during consideration of a treaty.

B. PROTOCOL ON CHILD SOLDIERS

Understanding (1)—Convention on the Rights of the Child

The United States is not a party to the Convention on the Rights of the Child, though it is a signatory. Although styled as a Protocol to the Convention, the Protocol is a stand-alone legal instrument and therefore the United States does not assume any obligations under the Convention on the Rights of the Child by becoming a party to the Protocol. This understanding would state that principle.

Understanding (2)—Implementation of Article 1 obligation

Article 1 of the Protocol requires States Parties to take "all feasible measures" to ensure that members of the national armed forces who are under age 18 to not take a "direct part" in hostilities. The understanding recommended by the Executive Branch (and modified by the Committee only for sake of clarity, but not in substance) would set forth the United States understanding with regard to the meaning of the terms "feasible measures" and "direct part in hostilities."

First, the phrase "feasible measures," according to the understanding, means "those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations."

This reading of the flexibility of Article 1 is derived from a common sense reading of the text. Quite obviously, a requirement to take "all feasible measures" does not require a rule of rigid application, but rather requires an assessment of what is practical based on the totality of circumstances. At the same time, it should not be read by the United States, or other States Parties, as a loophole to permit widespread employment of 17-year-olds in direct hostilities. A good faith implementation of the treaty obligation requires parties to take reasonable steps to keep those under 18 from direct participation in combat, and that such participation should occur only in exceptional circumstances.

The flexible reading of the term is also rooted in antecedents in existing multilateral treaties related to the law of armed conflict. For example, under Protocol II to the Conventional Weapons Convention, the term "feasible" is a defined term, meaning that which is "practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations"[3]—precisely the formulation in the proposed understanding.

As to the scope of "direct part in hostilities," the proposed understanding states that it means "immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy." Further, the proposed understanding states what the United States believes the phrase does not include: namely, it does not include "indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions and other supplies, or forward deployment." This list of activities considered to be "indirect participation in hostilities" should not be considered exhaustive.

This interpretation of "direct part in hostilities" is, in the view of the Committee, a natural reading of the text. The prohibition on "direct" participation obviously means that "indirect participation" in hostilities is permitted. This phrase also has roots in a prior international legal instrument. As noted above, Article 77 of Additional Protocol I to the Geneva Conventions requires that parties take all feasible measures to ensure that children under age 15 do not take a "direct part in hostilities." The ICRC commentary on this article indicates that the term "implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place."[4]

Finally, the proposed understanding sets forth the principle that military commanders and other personnel in positions of authority with regard to a military action shall only be judged with respect

[3] Article 3(10) of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 Annexed 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. The United States ratified the Convention on Conventional Weapons and Protocol II in 1995; the amended Protocol II was ratified in 1999.

[4] ICRC Commentary on Additional Protocol I, ¶1679; ¶3187 & n.7 (commentary on Article 77, which cross-references commentary on the term in Article 43).

to the U.S. obligation under Article 1, on the basis of all the relevant circumstances and on the basis of "that person's assessment of the information reasonably available to the person" at the time they made the decisions resulting in the action under review.

Understanding (3)—Minimum age for voluntary recruitment

Under Article 3(1), States Parties are required to raise the minimum age for voluntary recruitment of persons into the armed forces from "that set out in Article 38, paragraph 3 of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under 18 are entitled to special protection." Article 38(3) of the Convention on the Rights of the Child requires parties to "refrain from recruiting" any person not yet 15 years of age. In the event that the provisions of Article 38 is subsequently modified, an understanding is recommended to make clear that the United States understands that the obligation of the Protocol is to raise the minimum age for voluntary recruitment into the armed forces from the current international standard of 15.

Understanding (4)—Armed groups

This states that the United States understands the term "armed groups" in Article 4 of the Protocol to mean non-governmental armed groups, such as rebel groups, dissident armed forces, and other insurgent groups. This statement also makes clear that the term "armed groups" does not refer to any governmental entities.

Understanding (5)—No basis for jurisdiction by any international tribunal

This provision states the United States understanding that nothing in the Protocol establishes a basis for jurisdiction by any international tribunal, including the International Criminal Court.

Condition 1—Declaration on minimum age for recruitment

Under Article 3(2) of the Protocol, States Parties are required to deposit a binding declaration upon ratification setting forth the minimum age at which it will permit voluntary recruitment and describing the safeguards it has adopted to ensure that such recruitment is not forced. The condition requires the President to deposit a declaration stating U.S. law and policy on enlistment of 17-year-olds.

Condition 2—Interpretation of the Protocol

This condition sets forth important principles of treaty interpretation, which the Senate has reaffirmed on numerous occasions in the last decade. These principles apply whether or not the Senate chooses to say so during consideration of a treaty.

Condition 3—Reports on implementation

This condition requires the Secretary of Defense to report to the Committees on Foreign Relations and Armed Services within 90 days of the deposit of the instrument of ratification on the steps the military departments have taken to comply with the obligation of Article 1. The condition also requires the Secretary of State to sub-

mit to the same Committees the report required under Article 8 of the Protocol. Finally, the condition requires the Secretary of Defense to report to the Committees whenever there is a significant change in the policies of the military departments in implementing the obligation set forth in Article 1.

The Committee believes that the Department of Defense should have flexibility in implementing the obligation of Article 1. At the same time, this Committee and the Committee on Armed Services have an oversight responsibility to monitor compliance with this core obligation. To date, the Department has indicated only that it will focus on "when and where 17-year-olds are deployed," a formulation that provides little substantive information. The Department obviously has a range of options, including banning deployment of 17-year-olds to areas where combat is likely (as the Air Force did before signature of the Protocol[5]). That is a matter left to the sound discretion of the Department of Defense. With this reporting requirement, the Committee intends to ensure that Congress is informed of the measures taken to comply with the Protocol, and informed of any significant changes to such policies.

VII. TEXT OF RESOLUTIONS OF ADVICE AND CONSENT TO RATIFICATION

A. PROTOCOL ON THE SALE OF CHILDREN

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY, SUBJECT TO A RESERVATION, UNDERSTANDINGS, A DECLARATION, AND A CONDITION.

The Senate advises and consents to the ratification of the Optional Protocol Relating to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, opened for signature at New York on May 25, 2000 (Treaty Doc. 106–37; in this resolution referred to as the "Protocol"), subject to the reservation in section 2, the understandings in section 3, the declaration in section 4, and the condition in section 5.

SEC. 2. RESERVATION.

The advice and consent of the Senate under section 1 is subject to the reservation, which shall be included in the United States instrument of ratification of the Protocol, that, to the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3(1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Na-

[5] Air Force Instruction 36–2110 (issued February 2000) states that Air Force members must be "at least 18 years of age to be assigned to a hostile fire or imminent danger area."

tions that United States domestic law is in full conformity with the requirements of Article 4(1) of the Protocol.

SEC. 3. UNDERSTANDINGS.

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the United States instrument of ratification of the Protocol:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER CONVENTION ON THE RIGHTS OF THE CHILD.—The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) THE TERM "SALE OF CHILDREN".—The United States understands that the term "sale of children", as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.

(3) THE TERM "CHILD PORNOGRAPHY".—The United States understands the term "child pornography", as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.

(4) THE TERM "TRANSFER OF ORGANS FOR PROFIT".—The United States understands that—

(A) the term "transfer of organs for profit", as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and

(B) the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful payment of a reasonable amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.

(5) THE TERMS "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS" AND "IMPROPERLY INDUCING CONSENT".—

(A) UNDERSTANDING OF "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS".—The United States understands that the term "applicable international legal instruments" in Articles 3(1)(a)(ii) and 3(5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").

(B) NO OBLIGATION TO TAKE CERTAIN ACTION.—The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.

(C) UNDERSTANDING OF "IMPROPERLY INDUCING CONSENT".—The United States understands that the term "improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.

(6) IMPLEMENTATION OF THE PROTOCOL IN THE FEDERAL SYSTEM OF THE UNITED STATES.—The United States understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall, as necessary, take appropriate measures to ensure the fulfillment of the Protocol.

SEC. 4. DECLARATION.

The advice and consent of the Senate under section 1 is subject to the declaration that—

(1)(A) the provisions of the Protocol (other than Article 5) are non-self-executing; and

(B) the United States will implement Article 5 of the Protocol pursuant to chapter 209 of title 18, United States Code; and

(2) except as described in the reservation in section 2—

(A) current United States law, including the laws of the States of the United States, fulfills the obligations of the Protocol for the United States; and

(B) accordingly, the United States does not intend to enact new legislation to fulfill its obligations under the Protocol.

SEC. 5. CONDITION.

The advice and consent of the Senate under section 1 is subject to the condition that the Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(B) PROTOCOL ON CHILD SOLDIERS

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. ADVICE AND CONSENT TO RATIFICATION OF THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT, SUBJECT TO UNDERSTANDINGS AND CONDITIONS.

The Senate advises and consents to the ratification of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children In Armed Conflict, opened for signature at New York on May 25, 2000 (Treaty Doc. 106–37; in this resolution referred to as the "Protocol"), subject to the understandings in section 2 and the conditions in section 3.

SEC. 2. UNDERSTANDINGS.

The advice and consent of the Senate under section 1 is subject to the following understandings, which shall be included in the United States instrument of ratification of the Protocol:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD.—The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) IMPLEMENTATION OF OBLIGATION NOT TO PERMIT CHILDREN TO TAKE DIRECT PART IN HOSTILITIES.—The United States understands that, with respect to Article 1 of the Protocol—

(A) the term "feasible measures" means those measures that are practical or practically possible, taking into account all the circumstances ruling at the time, including humanitarian and military considerations;

(B) the phrase "direct part in hostilities"—

(i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and

(ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment; and

(C) any decision by any military commander, military personnel, or other person responsible for planning, authorizing, or executing military action, including the assignment of military personnel, shall only be judged on the basis of all the relevant circumstances and on the basis of that person's assessment of the information reasonably available to the person at the time the person planned, authorized, or executed the action under review, and shall not be judged on the basis of information that comes to light after the action under review was taken.

(3) MINIMUM AGE FOR VOLUNTARY RECRUITMENT.—The United States understands that Article 3 of the Protocol obligates States Parties to the Protocol to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of 15 years of age.

(4) ARMED GROUPS.—The United States understands that the term "armed groups" in Article 4 of the Protocol means non-governmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups.

(5) NO BASIS FOR JURISDICTION BY ANY INTERNATIONAL TRIBUNAL.—The United States understands that nothing in the Protocol establishes a basis for jurisdiction by any international tribunal, including the International Criminal Court.

SEC. 3. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) REQUIREMENT TO DEPOSIT DECLARATION.—The President shall, upon ratification of the Protocol, deposit a binding declaration under Article 3(2) of the Protocol that states in substance that—

(A) the minimum age at which the United States permits voluntary recruitment into the Armed Forces of the United States is 17 years of age;

(B) the United States has established safeguards to ensure that such recruitment is not forced or coerced, including a requirement in section 505(a) of title 10, United States Code, that no person under 18 years of age may be originally enlisted in the Armed Forces of the United States without the written consent of the person's parent or guardian, if the parent or guardian is entitled to the person's custody and control;

(C) each person recruited into the Armed Forces of the United States receives a comprehensive briefing and must sign an enlistment contract that, taken together, specify the duties involved in military service; and

(D) all persons recruited into the Armed Forces of the United States must provide reliable proof of age before their entry into military service.

(2) INTERPRETATION OF THE PROTOCOL.—The Senate reaffirms condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe (CFE) of November 19, 1990 (adopted at Vienna on May 31, 1996), approved by the Senate on May 14, 1997 (relating to condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988).

(3) REPORTS.—

(A) INITIAL REPORT.—Not later than 90 days after the deposit of the United States instrument of ratification, the Secretary of Defense shall submit to the Committee on Foreign Relations and the Committee on Armed Services of the Senate a report describing the measures taken by the military departments to comply with the obligation set forth in Article 1 of the Protocol. The report shall include the text of any applicable regulations, directives, or memoranda governing the policies of the departments in implementing that obligation.

(B) SUBSEQUENT REPORTS.—

(i) REPORT BY THE SECRETARY OF STATE.—The Secretary of State shall submit to the Committee on Foreign Relations and the Committee on Armed Services of the Senate a copy of any report submitted to the Committee on the Rights of the Child pursuant to Article 8 of the Protocol.

(ii) REPORT BY THE SECRETARY OF DEFENSE.—Not later than 30 days after any significant change in the policies of the military departments in implementing the obligation set forth in Article 1 of the Protocol, the Secretary of Defense shall submit a report to the Committee on Foreign Relations and the Committee on Armed Services of the Senate describing the change and the rationale therefor.

VIII. ANNEX

HEARING ON PROTOCOLS ON CHILD SOLDIERS AND SALE OF CHILDREN (Treaty Doc. 106–37)

CONTENTS

THURSDAY, MARCH 7, 2002

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The Committee met at 10:20 a.m., in room SD–419, Dirksen Senate Office Building, Hon. Barbara Boxer, presiding.

Present: Senators Boxer, Wellstone, and Helms.

Senator BOXER. The Senate Foreign Relations Committee will come to order.

I am very delighted to see that Senator Helms is here at this very important hearing.

Today the Committee meets to consider two optional protocols to the U.N. Convention on the Rights of the Child. The Optional Protocol on Involvement of Children in Armed Conflict, also known as the Child Soldiers Protocol, aims to prevent children under the age of 18 from directly participating in hostilities. The second treaty, the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, aims to strengthen efforts to put a stop to the trafficking and exploitation of children.

To avoid any confusion, I want to point out that these are protocols to the U.N. Convention on the Rights of the Child. While the United States has not ratified the underlying convention, we can become a party to both protocols without becoming a party to the convention or without becoming subject to its provisions. There are divisions on that particular question, so we are not taking up the underlying treaty. We are just talking about the optional protocols.

The Child Soldiers Protocol requires states parties to the treaty to, one, take all feasible measures to ensure that individuals under the age of 18 do not take a direct part in hostilities. Two, it bans involuntary recruitment into the armed forces for those under the age of 18, and I underline "involuntary." And three, it raises the minimum age for voluntary recruitment into the armed forces from the current benchmark of 15 years of age to that of 16 or higher. Under current law, the minimum age for voluntary recruitment in the United States of America is already set at 17.

Why is ratification of the Child Soldiers Protocol important? Right now, an estimated 300,000 children under the age of 18 are currently fighting in more than 30 conflicts around the world. In places like Sierra Leone, children have been kidnaped by rebel groups, given drugs, and forced to commit atrocities. Child soldiers not only lose their childhood, but they develop psychological scars, they suffer physical injuries, and in the worst cases, they die.

Listen to the story of a 16-year-old girl who was abducted by the Lord's Resistance Army in Uganda, and I am quoting this child, this girl. "One boy tired to escape but he was caught. His hands were tied, and then they made us, the other new captives, kill him with a stick. I felt sick. I knew this boy from before. We were from the same village. I refused to kill him, and they told me they would shoot me. They pointed a gun at me, so I had to do it. The boy was asking me, why are you doing this? I said I had no choice. After we killed him, they made us smear his blood on our arms. They said we had to do this so we would not fear death and so we would not try to escape. I still dream about the boy from my village who I killed. I see him in my dreams and he is talking to me and saying I killed him for nothing and I am crying."

To those who believe this is a problem that does not affect us in the United States, because clearly our rules comply with the protocol, you only have to look at Afghanistan. And I want to show you a photo here, Senator Helms. This was actually a photo pre-Taliban where you see these literally—I call them babies, but children with their guns, with their tattered shoes, and with a look in their eyes that you could just see—well, in many ways the numbness.

So, here you have a situation in Afghanistan, and there are reports today that children as young as 12 are taking part in the fighting. As one captured Taliban fighter said earlier this year—

and you see the cynicism and the evil in this comment—"Children are innocent, so they are the best tools against dark forces."

This is one reason why it is in our national interest to ratify this protocol. Our military personnel are some of our Nation's most decent and honorable citizens. I can only imagine the moral dilemma faced by our soldiers if they come face to face with an AK–47 in the hands of a 12-year-old child.

But it is not only in our national interest, it is our moral obligation. We must send a signal to the rest of the world that the use of child soldiers is intolerable.

The second treaty for consideration this morning is the Protocol on the Sale of Children, Child Prostitution, and Child Pornography. The Sale of Children Protocol requires states parties to make sure that these acts are fully covered by penal or criminal law. This abuse of children is a global problem. Millions of boys and girls under the age of 18 are bought and sold each year. Girls are particularly vulnerable.

According to UNICEF, the U.N. Children's Fund, girls appear to be forced into the sex industry at increasingly younger ages, partly as a result of the mistaken belief that younger girls are unlikely to be infected with HIV or AIDS. Let me mention a few atrocious examples.

A 15-year-old boy from Mali watched the torture and subsequent death of two other forced laborers who tried to escape from a coffee plantation in the Ivory Coast.

A 14-year-old girl was brutally raped and then prostituted for months by traffickers in Florida who lured her there by promising her a job in the restaurant business.

An 11-year-old girl in Thailand was included in a sexually explicit videotape produced by a pornographer in the United States of America.

Under the protocol, countries are encouraged to cooperate to protect children trafficked across borders. The optional protocol also calls on states parties to ensure that children who have been sexually trafficked, exploited, or sexually abused receive services to ensure a complete physical and psychological recovery.

Ratification of this treaty is important to protect these vulnerable children. These children cannot often get help on their own not only because of the young age, but also because they have no birth certificate or official document. They are, in effect, invisible.

Earlier this year, both of these protocols obtained the necessary 10 ratifications to make them operative. The Child Soldier Protocol entered into force on February 12. The Sale of Children Protocol entered into force on January 18.

I very much appreciate the support of the administration for these protocols, and I want to thank the representatives from the Departments of State, Defense, and Justice for joining us here this morning. Before I introduce them formally, it is my honor to call on Senator Helms for his opening remarks.

Senator HELMS. Thank you, Madam Chairman. I was watching you intently as you delivered your statement, and you were on the verge of choking up a time or two. I think that tells something about you, as well as the issue that we have.

I sit at home and see these children on television with their little bloated bellies and little, tiny arms, and I wonder what in the dickens Jesse Helms could do.

And maybe this will strike a blow a little bit, but before I get started, I do not know whether any of you gentlemen have ever heard of Franklin Graham or not. He is Billy Graham's son. And he does great work with Samaritan's Purse, an organization that he operates worldwide. One of the features of this past year was the collection of 5½ million shoe boxes filled with little gifts, toothpaste, soap, candy, a comb maybe, whatever, and wrapped in Christmas paper. And the Air Force has been so helpful in distributing those.

Franklin told me that one little boy broke his heart. He had never gotten a present of any sort before, none ever. And this gaudy Christmas package, he thought the package was his present. He did not know he was supposed to unwrap it and see what Santa Claus had brought him.

So, we can sit here smugly in our comfort and in our good fortune—and the older I get, and I am getting older faster. But we have got to do something about the children of the world, and this is a step.

Now, the two protocols represent, as the distinguished chairman has said, well-intended efforts to protect the lives of children.

The Protocol on the Sale of Children seems to protect children from the most reprehensible attacks that she has talked about by criminalizing such activities as the outright sale of children and pornography and the prostitution of children. And it is going on rampant. I think all countries, none excluded, have got to do their utmost to provide a safe and nurturing environment for these children.

With regard to the Child Soldiers Protocol, I guess I better make myself perfectly clear, as one of the Presidents used to say. The forced conscription of children—some as young as 7 years old—to fight is an abominable, reprehensible practice wherever it is occurring. But this horrible practice is taking place in Africa, East Asia, and elsewhere, and everybody on this panel knows that as well as I do or better. Our visitors, whom we welcome here this morning, I hope will understand the importance of this meeting here.

American ratification of this protocol should not and must not be used by some to undermine our military recruiting efforts and deployment policies. Most of the estimated 300,000 children who are fighting as soldiers—and I find that absolutely amazing—are fighting as soldiers in 41 countries. They are conscripted by paramilitary groups, not the legitimate governments of those countries. So, my conclusion, Madam Chair, is that we better not fool ourselves that another international convention which will never be seen nor read nor considered nor observed by these paramilitaries will solve this unthinkable problem.

Now, the Department of Defense representative here today may tell us that compliance with the protocol is manageable, as indeed almost any problem is, but I do hope that we will be hearing assurances that military commanders will not be impeded in their operations or charged with violating this protocol. In fairness to them, whom we send overseas to defend us, we must see that the disrup-

tion of unit morale and readiness—factors critical to maintaining a robust military and winning in any armed conflict, are not hurt or deterred.

One more thing, Madam Chairman. I am going to seek assurances that this protocol will not incur a legal liability on the United States taxpayers to help other nations through financial and other assistance comply with this protocol, and that ratification will not give legal recognition to the Convention on the Rights of the Child.

I am just about through. I have assured Senator Biden, the chairman of this Committee, that I will work with him and with our President to ensure that the appropriate conditions and reservations are placed in the resolution of ratification to protect our current recruitment practices and safeguard our existing foreign policies and support military commanders who are trying to do their duty. We must do that, but we must find a way to help these children and I think we can do it if we put our minds to it.

Thank you, Madam Chair.

Senator BOXER. Thank you so much, Senator Helms. I hope when our panel speaks today, they will address your concerns. I have a feeling they knew you had them, and so I think that you may well have your fears allayed on this. I hope so, in any case.

Let me introduce the whole panel and then we will start with Ambassador Southwick. Ambassador Michael Southwick, Deputy Assistant Secretary for the Bureau on International Organization Affairs at the State Department, led the team that successfully negotiated the Optional Protocol on Child Soldiers. He is a native of my home State of California and a graduate of Stanford University.

Mr. Marshall Billingslea is Deputy Assistant Secretary for Negotiations Policy at the Department of Defense. Mr. Billingslea is a former staff member of the Senate Foreign Relations Committee and he is a new father, and we welcome you back and we thank you for coming this morning.

Mr. John Malcolm, Deputy Assistant Attorney General at the Justice Department's Criminal Division, recently headed the U.S. delegation to the Second World Congress on Commercial Sexual Exploitation of Children.

We are very happy the three of you are here. Again, I want to thank the administration for working with us on this very important hearing and hopefully to see this thing through successfully.

Ambassador Southwick, will you open please.

STATEMENT OF HON. E. MICHAEL SOUTHWICK, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Ambassador SOUTHWICK. Thank you, Madam Chairperson, Senator Helms. I am very pleased to appear before you today representing the Bush administration to speak in support of Senate advice and consent to ratification of two historic international treaties advancing international efforts to protect the children of the world. The first concerns children in armed conflict; the second concerns the sale of children, child prostitution, and child pornography.

The State Department worked closely with the Department of Defense on the Protocol on Children in Armed Conflict, and with the Justice Department on the Protocol on the Sale of Children.

As the German theologian Dietrich Bonhoeffer observed, "the test of morality of a society is what it does for children." This is a test we believe that the United States and the international community cannot afford to fail. The statistics are staggering, as some of you have mentioned already. An estimated 30 million children worldwide are sexually exploited, prostituted, and trafficked each year. Sixty million children work under intolerable forms of labor, and an estimate 300,000 children have been recruited as participants in ongoing armed conflicts. These two treaties are a part of the efforts of the United States and many other countries to address these problems.

In this connection, 2 years ago the United States became the third state to ratify International Labor Organization's Convention 182 on the Worst Forms of Child Labor. Now, the administration hopes that the United States will become one of the first states to ratify these two protocols now under consideration. Together these instruments form a trio of vital protections for children around the world.

We recognize that these treaties are not magic wands. They are tools. They can be used. They can help. A lot depends on how we followup once, if the Senate so agrees, they receive advice and consent.

The transmittal of these two protocols to the Senate on July 25, 2000, includes a detailed article-by-article analysis of each instrument. I will not restate in my testimony today detailed explanations of the protocol's provisions or our proposed understandings and declaration, but will highlight for the Committee some of the key provisions of each protocol.

I note, as has already been mentioned, that though these protocols are styled as protocols to the Convention on the Rights of the Child, by its terms these protocols will operate as independent multilateral agreements under international law. States may ratify either protocol without becoming a party to the convention or being subject to its provisions.

The Children in Armed Conflict Protocol deals realistically with difficult issues of minimum ages for compulsory recruitment, voluntary recruitment, and participation in hostilities. The protocol raises the age for military conscription in international legal instruments from 15 years to 18 years, consistent with the requirements of ILO Convention 182. It obliges states parties to raise the minimum age for voluntary recruitment to an age above the current 15-year international standard. It also mandates that states parties take all feasible measures to ensure that personnel in their national armed services who are not yet 18 do not take a direct part in hostilities. States parties to the protocol must also prohibit and criminalize the recruitment and use of persons below the age of 18 by non-governmental armed groups.

The provisions permitting voluntary recruitment below 18 and direct use of those soldiers in hostilities in exceptional circumstances were essential for the United States, given our longstanding tradition of allowing 17-year-olds with parental consent to

enter the military. As my counterpart from the Department of Defense will explain in more detail, the administration believes that the provisions in the protocol are fully consistent with current U.S. recruiting practice and would not adversely affect the military's ability to accomplish its national security missions.

In our view, another important aspect of the protocol concerns its provisions promoting international cooperation. In many parts of the world, including Uganda where I served as Ambassador, children as young as 10 or 11 years old carry guns, machetes, and are deeply involved in armed conflict. The protocol will promote rehabilitation of children who have been victimized by armed conflict.

The Sale of Children Protocol directly complements ILO 182 on the Worst Forms of Child Labor. It is the first international instrument to define the terms "sale of children," "child prostitution," "child pornography." The protocol requires these offenses to be treated as criminal acts and provides law enforcement and cooperation tools for the purpose of bringing perpetrators of these offenses to justice. Additionally, the protocol establishes stronger grounds for jurisdiction and extradition. Moreover, its extensive provisions on prevention and cooperation will help child victims receive the protection and assistance they need.

In many countries, the age of sexual consent is set between the ages of 13 and 16, and if a child of that age has consented to a sexual act, no crime involving child prostitution or child pornography has been committed. The protocol, however, precludes the possibility that a child under 18 could consent to crimes such as child prostitution, child pornography, and trafficking in children. It broadly requires that states parties criminalize activities relating to child prostitution and child pornography without reference to state law or the age of consent.

The two protocols, together with ILO 182, provide we believe a firm foundation for international action on behalf of children. No one country can fight this battle alone. It is a worldwide problem. Nations must join together in taking responsibility for improving the plight of children. The goal of the United States, we hope, is that all countries will join this battle and put an end to these abuses.

Thank you, Madam Chairperson.

[The prepared statement of Ambassador Southwick follows:]

PREPARED STATEMENT OF HON. E. MICHAEL SOUTHWICK, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE

I am pleased to appear before you today to speak in support of Senate advice and consent to ratification of two historic international treaties advancing international efforts to protect the children of the world. The first is the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict. The second is the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

The State Department worked closely with the Defense Department on the Protocols on Children in Armed Conflict and with the Justice Department on the Protocol on the Sale of Children, Child Prostitution and Child Pornography. I am pleased to be joined here today by representatives of both agencies.

As the German theologian Dietrich Bonhoeffer observed, "the test of morality of a society is what it does for children." This is a test the United States and the international community cannot afford to fail. The statistics are staggering: (1) an estimated 30 million children world-wide are sexually exploited, prostituted and trafficked each year; (2) 60 million children work under intolerable forms of labor; and,

(3) an estimated 300,000 children have been recruited as participants in on-going armed conflicts and over two million have been killed as a result of these conflicts. These two treaties are a part of the efforts of the United States and many other countries to address these problems.

In this connection, two years ago the United States became the third state to ratify International Labor Organization's Convention 182 on the Worst Forms of Child Labor. That instrument has become the most quickly ratified convention in the history of the ILO, with 117 states parties. Now the Administration hopes that the United States will become one of the first states to ratify these two protocols now under consideration by this Committee. Together these new instruments form a trio of vital protections for children around the world.

The transmittal of these two protocols to the Senate, on July 25, 2000, includes a detailed article-by-article analysis of each instrument. The transmittal recommended three understandings and one declaration on the children in armed conflict protocol and five understandings and one declaration for the sale of children protocol. I will not restate in my testimony today detailed explanations of the protocols' provisions or our proposed understandings and declaration, but will highlight for the Committee some of the key provisions of each protocol and will explain why the Administration strongly supports early Senate approval of these two protocols.

Before discussing the protocols further, I note that although they are styled as protocols to the Convention on the Rights of the Child, each protocol, by its terms, will operate as an independent multilateral agreement under international law. States may ratify either protocol without becoming a party to the Convention or being subject to its provisions.

CHILDREN IN ARMED CONFLICT PROTOCOL

The Children in Armed Conflict Protocol deals realistically and reasonably with the difficult issues of minimum ages for compulsory recruitment, voluntary recruitment, and participation in hostilities. The protocol raises the age for military conscription in international legal instruments from 15 years to 18 years, consistent with the requirements of ILO Convention 182. It also obliges states parties to raise the minimum age for voluntary recruitment to an age above the current fifteen-year international standard, and also mandates that states parties take all feasible measures to ensure that personnel in their national armed forces who are not yet eighteen do not take a direct part in hostilities. States parties to the protocol must also prohibit and criminalize the recruitment and use of persons below the age of eighteen by non-governmental armed groups.

The provisions permitting voluntary recruitment below 18 and direct use of those soldiers in hostilities in exceptional circumstances were essential for the U.S., given our long standing tradition of allowing 17-year-olds with parental consent to enter the military. As my counterpart from DOD will explain in more detail, the Administration believes that the provisions in the protocol are fully consistent with current U.S. recruiting practices and would not adversely affect the military's ability to accomplish its national security missions.

In our view, another important aspect of the protocol concerns its provisions promoting international cooperation. In many parts of the world, children as young as ten or eleven years old carry guns or machetes and are deeply engaged in armed conflict. In Angola and Uganda, for example, thousands of children have been abducted and forced to become child soldiers. The protocol will not only require that states cooperate internationally to prohibit such practices, but also to promote rehabilitation of children who have been victimized by armed conflict.

SALE OF CHILDREN PROTOCOL

The Sale of Children Protocol directly complements ILO 182 on the Worst Forms of Child Labor. It is the first international instrument to define the terms "sale of children," "child prostitution" and "child pornography." The protocol requires these offenses to be treated as criminal acts and provides law enforcement and cooperation tools for the purpose of bringing perpetrators of these offenses to justice. Additionally, the protocol establishes stronger, clearer grounds for jurisdiction and extradition, to better ensure that offenders can be prosecuted regardless of where they are found. Moreover, its extensive provisions on prevention and cooperation will help child victims receive the protection and assistance they desperately need.

A major dispute in the sale of children negotiations, which was resolved to the satisfaction of the United States, concerned the minimum age for protection of children from prostitution and pornography. In many countries, the age of sexual consent is set between the ages of thirteen and sixteen, and if a child of that age has consented to a sexual act, no crime involving child prostitution or child pornography

has been committed. The protocol, however, precludes the possibility that a child under eighteen could consent to crimes such as child prostitution, child pornography, and trafficking in children. It broadly requires that states parties criminalize activities relating to child prostitution and child pornography without reference to State law or the age of consent.

The two protocols, together with ILO 182, provide a firm foundation for international action on behalf of children. There is simply no excuse for children being enslaved, trafficked, exploited in the commercial sex and drug trade, or abducted into militias for armed conflict.

No one country can fight this battle alone. Nations must join together in taking responsibility for improving the plight of children. Governments and the international community must continue to work together to prosecute offenders, dismantle the networks of trafficking, care for the young victims, establish mechanisms to monitor compliance with these instruments to ensure that children have access to schools, and enhance international cooperation. The goal of the United States is that all countries will join this battle and put an end to these abuses.

Thank you, Madam Chairperson. I will be happy to address any questions the Committee might have.

RESPONSES OF AMB. E. MICHAEL SOUTHWICK, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL ORGANIZATION AFFAIRS, DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question 1. This horrible practice of conscripting children to fight wars is occurring in places such as Africa and Asia, and by mostly non-state groups and militias.

- How will United States participation in this agreement halt the conscription of "child soldiers" in those parts of the world?
- How many countries in Africa or Asia, where "child soldiers" are being used, have ratified, or are likely to ratify, the Child Soldiers Protocol?

Answer. The Children in Armed Conflict Protocol has 100 signatories. As of April 8, 2002, 19 States have ratified the Protocol. They are: Andorra, Austria, Bangladesh, Bulgaria, Canada, the Czech Republic, the Democratic Republic of the Congo, the Holy See, Iceland, Kenya, Mexico, Monaco, New Zealand, Panama, Romania, Spain, Sri Lanka, and Vietnam. The goal of the United States is that all the countries of the world will join together and ratify both the Children in Armed Conflict Protocol and the Sale of Children Protocol. The two protocols, along with ILO Convention No. 182 on the Worst Forms of Child Labor form a trio of vital protections for children around the world. In December 1999, in large part due to the swift action of the Senate Foreign Relations Committee, the United States became the third state to ratify ILO Convention No. 182. Subsequently, the United States urged all the countries of the world to ratify that Convention. Today, ILO Convention No. 182 has become the most quickly ratified convention in the history of the ILO with 117 States Parties. We intend to take similar action with respect to the two protocols if the Senate gives its advice and consent to ratification.

Question 2. In Article 7 of the Protocol, it states that "States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance." Furthermore, part two of this article states that "States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programs. . . ." I read this article to incur a legal obligation by the United States to provide financial and other assistance to countries that are plagued by the conscription of child soldiers. Do you agree, and if so, how much do you think this will cost the U.S. taxpayer to live up to our obligations under this agreement?

Answer. Article 7(2), like Article 10(4) of the Sale of Children Protocol, specifies that States Parties "in a position to do so" shall provide financial, technical or other assistance through existing multilateral, bilateral or other programs. This language was specifically designed to reserve to contributing States the determination of what specific assistance they might provide under the Protocol. The Protocol will not create any financial obligation for U.S. taxpayers since it does not require States Parties to provide a specific type or amount of assistance.

Article 7 reflects the U.S. commitment to assist in bringing an end to the tragedy of child soldiers through international cooperation and assistance among concerned States and relevant international organization. The United States has contributed substantial resources to programs aimed at reintegrating child soldiers into society

and is committed to continue to develop rehabilitation approaches that are effective in addressing this seriously difficult problem. The United States actively supports activities to assist children affected by war, including demobilization, rehabilitation and integration into civilian society. The Children in Armed Conflict Protocol should serve as a means for encouraging such programs and constitutes an important tool for increasing assistance to children who are victims of armed conflict.

Question 3. Article 8 of this Protocol requires States Parties to provide reports to the Committee on the Rights of the Child on their implementation under this Protocol, and guarantees the Committee on the Rights of the Child the right to request additional information from States Parties. As you know, the United States does not recognize the Committee on the Rights of the Child. Yet, the rights and obligations outlined in this article seem to require U.S. recognition of not only the Committee, but also the legitimacy of it and its activities. Would you agree?

Answer. At U.S. insistence, both Protocols are independent multilateral agreements under international law; States may ratify either Protocol without becoming a party to the Convention or being subject to its provisions. Our proposed understanding for both protocols expressly states: "The United States understands that the Protocol constitutes an independent multi-lateral treaty, and that the United States does not assume any obligations under the Convention on the Rights of the Child by becoming a party to the Protocol."

As detailed in Article 42 of the Convention on the Rights of the Child, the Committee on the Rights of the Child consists of ten "experts of high moral standing and recognized competence in the field of human rights" serving in their individual capacities and not as representatives of governments. The creation of such a body is a standard procedure; similar bodies were established, for example, by the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (all of which have been ratified by the United States).

As a non-party to the Convention on the Rights of the Child, the United States has no obligation to comply with the reporting obligations contained in Article 44 of the Convention on the Rights of the Child, nor would the Committee on the Rights of the Child be authorized to request information from the United States on any matter other than implementation of the Protocols, assuming the United States becomes a party to the Protocols.

As discussed more fully in the transmittal memorandum, Articles 8 (Children in Armed Conflict Protocol) and 12 (Sale of Children Protocol) provide that States Parties shall submit, within two years following the entry into force of each protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures they have taken to implement the provisions of each protocol. U.S. reporting would be limited to reporting on the measures the United States has taken to implement the provisions of the Protocols, consistent with the information provided in the transmittal package.

The protocols grant the Committee on the Rights of the Child no authority other than receiving reports and requesting additional information relevant to the implementation of the protocols. During the negotiations, States rejected proposals that would have permitted the Committee, *inter alia,* to hold hearings, initiate confidential inquiries, conduct country visits, and transmit findings to the concerned State Party.

Senator BOXER. Thank you, Mr. Ambassador.

Senator Helms, you wanted to say a word before Mr. Billingslea speaks?

Senator HELMS. Yes, I do. As a matter of personal privilege, we have guests in the back, and I want a show of hands. Are you able to understand what the witnesses are saying? You can hear. If I or anybody else fails to deliver, will you raise your hand? Because I want you to hear this.

Now, I used to work for Marshall Billingslea.

He was a good boss, and I was sorry to see him go. I was visiting with the President yesterday, and he said, well, how are things going down there in the shop? I said, well, you stole about half of my employees. But we have got some new ones. But we miss you, Marshall.

And as a father of two little girls one time some years back—I will not say how many—and five grandchildren who are little girls, I say that you have got a pleasant, pleasant life ahead of you. Marshall Billingslea is a fine, young man and I am honored to see you this morning and I am proud of you Marshall.

Senator BOXER. Mr. Billingslea, please go right ahead, and we will remind people you are the Deputy Assistant Secretary for Negotiations Policy at the Department of Defense.

STATEMENT OF MARSHALL S. BILLINGSLEA, DEPUTY ASSISTANT SECRETARY FOR NEGOTIATIONS POLICY, DEPARTMENT OF DEFENSE, WASHINGTON, DC

Mr. BILLINGSLEA. Thank you, Madam Chairwoman, Senator Helms. I do not think I could possibly express what an honor it is for me to appear before my former Committee and my old boss. It is a deeply personal experience for me, and I appreciate the opportunity.

Senator Helms, at the outset let me say that we agree in toto with your opening statement. I see it as my task here today to provide you with the Department of Defense's assessment of the Child Soldiers Protocol and with our assessment of the military implications that that protocol will have for the United States military.

After reviewing the protocol, the Department of Defense has decided to support its ratification. We do this based on the three understandings and the one declaration that were set forth in the July 25, 2000, transmittal letter to the Senate. These understandings, together with our interpretation of key treaty provisions, are fundamental to the Department of Defense's determination that the treaty, as drafted, will have no impact on our current recruitment practices and will not harm the military's ability to accomplish its national security mission.

The rationale for pursuing the Child Soldiers Protocol has been clearly articulated by my State Department colleague, Ambassador Southwick. The protocol makes clear that the practice of recruiting and using underage soldiers in war is a morally reprehensible act. The United States, its allies, and its friends do not recruit or use underage soldiers.

We need to be clear at the outset that we do not view the Child Soldiers Protocol as a perfect solution to the underage soldier problem and that, in and of itself, it will not bring an end to the practice. But the protocol will serve as a moral and ethical statement by like-minded countries and it will foster the kind of diplomatic dialog, attention, and pressure that is needed if we are truly to bring an end to the practice of recruiting and using underage soldiers.

For this reason, the Department of Defense has agreed with the decision to pursue Senate advice and consent.

I will now turn to an assessment of the military implications of the protocol for the United States on our recruitment policies and on our readiness posture.

In terms of recruitment, our assessment is that ratification of the Child Soldiers Protocol should have no impact on U.S. military recruiting efforts. The current U.S. military practice, which is consistent with existing law, sets 17 already as the minimum age for

voluntary recruitment into the armed services. Absent parental consent, the minimum age for voluntary recruitment in the United States is 18. For this reason, we assess that the protocol will not have an effect on U.S. recruiting practices since it simply obligates states parties to raise the minimum age for voluntary recruitment to something above 15 years.

Now, the Department of Defense requires that at least 90 percent of its new recruits have a high school diploma. But many enlistment contracts are signed with high school seniors who may be as young as 17, and while waiting for graduation, these individuals are placed into a delayed entry program. Most of these folks turn 18 before they graduate from high school and before they ship off to basic training. Of the nearly 175,000 new enlistees each year that we have, only about 12,000, about 7 percent, are 17 when they ship to basic training, and nearly all of those will be 18 while they are in training. In fact, at no time since 1982 has the percentage of 17-year-old recruits into the armed forces exceeded 8 percent. So, what I will tell you is that we see that qualified 17-year-olds will remain an integral part of the United States military recruiting efforts for the foreseeable future, but we do not expect the numbers to fluctuate significantly or to see 17-year-olds begin to dominate our recruiting pool. No one under age 17 is eligible for recruitment, and that includes participation in the delayed entry program.

For this reason, we see that ratifying the Child Soldiers Protocol will not affect our ability to recruit 17-year-old volunteers. The administration recommends, consistent with the transmittal package to the Senate, that a declaration be adopted providing inter alia that 17 is the minimum age at which the United States will permit voluntary recruitment. That is consistent with U.S. law and current recruiting practices.

The provisions of the Child Soldiers Protocol prohibiting compulsory recruitment, conscription, below the age of 18 also are consistent with U.S. law and practice. Although the United States does not currently employ the draft to fill the ranks of our armed forces and we do not envision in the future a need to do so, U.S. law already prohibits compulsory recruitment of people under the age of 18.

Now, on several occasions we have consulted with senior Committee staff, and we have been queried about how the United States is going to implement the protocol in the event of a major, unforeseen regional or global contingency. It has been pointed out to us that a number of United States Senators and Congressmen were 17 when they volunteered to fight in World War II.

First, I would like to reiterate that the protocol permits voluntary recruitment of 17-year-olds. So, the United States, if we ratify the protocol, will continue to have patriotic 17-year-olds voluntarily enlist with the consent of their parents to defend the United States in time of need.

Second, we point out that the requirements of the protocol concerning recruitment are consistent with the practices that we used during previous national emergencies, such as World Wars I and II. The Joint Chiefs of Staff have assessed that ratification of the protocol would not affect their ability to carry out their national security missions, but if a national emergency of unforeseen propor-

tions were to arise, we would evaluate the situation in light of the nature and the scope of that emergency.

On to readiness. The second question to ask is how will ratification of the Child Soldiers Protocol affect our military readiness and the Department of Defense's ability to successfully accomplish its missions. The short answer, based on how the United States interprets the treaty—and I am going to provide you with the interpretation here today—is that it should not—it should not—affect our readiness, although we are going to have to make some changes in our military practices.

Should the United States ratify the Child Soldier Protocol, Article I of the protocol would require us to "take all feasible measures" to ensure that members of our armed forces who have not attained the age of 18 do not take a "direct part in hostilities."

As discussed earlier, virtually all 17-year-olds who enter the United States armed forces are high school seniors and then placed in the delayed entry program until after they earn their diploma. When they ship to basic training, only about 12,000 are still 17 years old. On average, basic training lasts from 4 to 6 months, depending on the service, and nearly all of the 17-year-olds going to basic training turn 18 during this period. It is only after this training is completed that a servicemember would be considered fully trained and ready for an operational assignment. In other words, most of our recruits age-out of the protocol's Article I restriction before being deployed.

We estimate that of the 12,000 17-year-olds, only about 2,300 in any given year—in other words, less than 0.25 percent of the total enlisted force—are still 17 by the time they complete their training, and most of these are going to turn 18 within 1 to 3 months. For fiscal year 2001, there were only 2,263 individuals who were 17 when they reached their operational base.

For the remainder of time prior to their 18th birthday, these 17-year-old servicemembers are going to be covered by the protocol's Article I restriction. However, this should not pose a problem. The services already have great leeway in how they assign troops to units and how units are deployed. Further, we are going to interpret the requirements of Article I in a way that makes most operational assignments no problem for 17-year-olds. Consistent with our proposed understanding, we interpret the phrase "direct part in hostilities" to mean immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy.

Thus, a fully trained and deployable servicemember can perform any function in theater for combat units as long as they themselves are not taking actual action on the battlefield that is likely to cause harm to the enemy. In other words, we read the protocol to apply specifically to 17-year-olds directly engaged in hostile activity on the battlefield. We do not interpret activities engaged in or by combat support or combat service support units or functions as falling within the scope of Article I. This interpretation is consistent with the overall humanitarian concern the protocol is meant to address; that is, children being misused by warring factions in various civil and ethnic conflicts around the globe.

So, in order to implement the protocol, the Department of Defense is going to focus on when and where 17-year-olds are deployed. Certainly we do not want the protocol to have a negative effect on morale and unit cohesion, as you warned in your opening statement, Senator. Further, we need to be able to put 17-year-olds in roles where they can make the greatest contribution to the military, rather than to start placing them on the basis of their age. By focusing on deployment, as opposed to how we assign 17-year-olds to units, we will avoid needlessly complicating our military readiness posture.

I note that we are also obligated by the protocol to take all measures to prevent 17-year-olds from taking part in hostilities. I am sorry. Let me clarify that. We are not obligated to take all measures to stop them from taking part in hostilities or even a direct part in hostilities. We are obligated to take all feasible measures.

The word "feasible" is significant. Consistent with our proposed understanding, we interpret this to mean that our U.S. military commanders are obligated to take "those measures which are practical or practically possible taking into account all circumstances ruling at the time." That includes humanitarian and military considerations. We are not prepared to adopt an absolute standard. Flexibility and the rule of reason have got to apply.

Given our presence in many countries around the globe and the wide range of missions that the military is called upon to fulfill and the ongoing war against terrorism, we must recognize that unusual circumstances may arise requiring a 17-year-old servicemember to take a direct part in hostilities. For example, a 17-year-old could be part of the peacekeeping contingent that is unexpectedly fired upon. He may be a crewmember on a ship that unexpectedly comes under terrorist attack or which is diverted into an area of operations to respond to an unforeseen contingency. We cannot be in a situation where a ship's captain, suddenly called upon to engage in combat operations, has to cull through the ship's crew all of the 17-year-olds and either send them home or below decks. Similarly, we cannot allow a situation to arise, in the midst of perhaps a crisis such as that which occurred in Somalia, where the base commander, before sending an extraction team to help U.S. peacekeepers suddenly under attack, would have to cull through all of his units to remove 17-year-olds.

We should not put our field commanders in the position of constantly worrying about being second-guessed. Therefore, the presumption of the commander in the field should be that the headquarters unit issuing or authorizing the deployment of the 17-year-old has already taken into account the protocol's requirements. Concomitantly, we do not foresee changes to the Uniform Code of Military Justice which would affect field commanders or lead to them being second-guessed.

Within these parameters, we believe that the effect of the Child Soldiers Protocol upon our military will be manageable. Application of the protocol in this fashion, as I said at the outset, is fundamental to our decision to support ratification.

Finally, there are two other important views that the Department of Defense takes regarding the protocol.

First, as stated by Ambassador Southwick, and by Chairman Boxer, although the protocol is styled as a protocol to the Convention on Rights of the Child, it will by its own terms operate as an independent multilateral agreement under international law. States may ratify the protocol without becoming a party to the Convention on Rights of the Child or being subject to its provisions. We intend to keep a "firewall" between the two treaties, and we are going to work with our Department of State colleagues to ensure that as information is provided under Article 8 to the Committee on Rights of the Child, that the distinction between the two does not become blurred.

Second, the United States will retain sole responsibility for ensuring that it adheres to the protocol. Accordingly, no United States national will ever be subjected to the jurisdiction of any international tribunal, whether the International Criminal Court or an ad hoc arrangement, unless the United States has first explicitly recognized the jurisdiction of such a tribunal over these matters. As the administration has made clear, we oppose the International Criminal Court and we will not allow under any circumstances the ICC to claim jurisdiction over U.S. nationals.

And finally, I reiterate that we intend to interpret these key terms such as "all feasible measures" and "direct part in hostilities" in a straightforward, common sense fashion as set out in the administration's transmittal documents.

So, in conclusion, the Department of Defense supports the administration's decision to proceed with asking for Senate advice and consent to ratification of the Child Soldiers Protocol. Utilizing the approach we have identified here, we think that ratification of the protocol will not have an adverse impact on our recruiting practices or force structure, nor would it impair the ability of our armed services to execute their operational missions.

Thank you.

[The prepared statement of Mr. Billingslea follows:]

PREPARED STATEMENT OF MARSHALL S. BILLINGSLEA, DEPUTY ASSISTANT SECRETARY OF DEFENSE, DEPARTMENT OF DEFENSE

INTRODUCTION

Madame Chairman, other Members of the Committee, I appear before the Senate Committee on Foreign Relations to present the views of the Department of Defense on the Optional Protocol on the Involvement of Children in Armed Conflict, otherwise known as the "Child Soldiers Protocol."

After reviewing the Protocol, the Department of Defense has decided to support its ratification, based upon the three understandings and one declaration set forth in the July 25, 2000, transmittal letter. These understandings, and our interpretation of key treaty provisions, are fundamental to the Department of Defense's determination that the treaty, as drafted, will have no impact on our current recruitment practices, and will not harm the military's ability to accomplish its national security mission.

The rationale for pursuing the Child Soldiers Protocol has been clearly articulated by my State Department colleague, Ambassador Southwick. The Protocol makes clear that the practice of recruiting and using underage soldiers in war is a morally reprehensible act. The United States, its allies, and its friends do not recruit or use underage soldiers.

But in many regions of the world, wracked by civil war or insurgency, it is commonplace to see children bearing arms. In some cases, this occurs when communities try to defend themselves from aggression or genocide. In other cases, it is the result of child conscription, literally at gunpoint, by warring factions. Recruiting and

using underage soldiers—and the social, political, and economic conditions that give rise to the practice—is deplorable.

We need to be clear, at the outset, that we do not view the Child Soldiers Protocol as a perfect solution to the underage soldier problem and that, in and of itself, it will not bring an end to the practice. But, the Protocol will serve as a moral and ethical statement by likeminded countries, and will foster the kind of diplomatic dialogue, attention, and pressure, that is needed to truly bring an end to the practice of recruiting and using underage soldiers.

For this reason, the Department of Defense has agreed with the decision to pursue Senate advice and consent. I will turn now to an assessment of the military implications of that decision on our recruitment policies and readiness posture.

RECRUITING

U.S. ratification of the Child Soldiers Protocol should have no impact on U.S. military recruiting efforts. The current U.S. military practice, which comports with U.S. law (10 USC 505), sets seventeen as the minimum age for voluntary recruitment, provided parental consent is obtained. Absent parental consent, the minimum age for voluntary recruitment in the United States is eighteen. For this reason, the Protocol will not have an effect on U.S. recruiting practices, since it simply obligates States parties to raise the minimum age for voluntary recruitment to an age above 15 years.

The Department requires at least 90% of new recruits to have a high school degree, but many enlistment contracts are signed with high school seniors who may be as young as 17. While waiting for graduation, these individuals are placed in the Delayed Entry Program. Most of these individuals turn 18 before graduating from high school and shipping to basic training. Of the nearly 175,000 new enlistees each year, only about 12,000 (just under 7%) are 17 when they ship to basic training, and nearly all of those will turn 18 while in training. At no time since 1982 has the percentage of 17-year-old recruits into the Armed Forces exceeded 8%. Qualified 17-year-olds will remain an integral part of the U.S. military's recruiting efforts into the foreseeable future, but we do not expect their numbers to fluctuate significantly, or to dominate our recruiting pool. No one under age 17 is eligible for recruitment, including participation in the Delayed Entry Program.

Ratifying the Child Soldiers Protocol will not affect our ability to recruit 17-year-old volunteers. The Administration recommends, consistent with the transmittal package, that a declaration be adopted providing *inter alia* that 17 is the minimum age at which the United States will permit voluntary recruitment. That is consistent with U.S. law and current recruiting practices.

The provisions of the Child Soldiers Protocol prohibiting compulsory recruitment of persons below the age of 18 also are consistent with U.S. law and practice. Although the United States does not employ the draft to fill the ranks of its Armed Forces (nor do we envision the need to do so), U.S. law already prohibits compulsory recruitment of persons under the age of eighteen.

Now, on several occasions as we have consulted with senior Committee staff, we were queried about how the United States would implement the Protocol in the event of a major, unforeseen regional or global contingency. It has been pointed out to us that a number of United States Senators and Congressmen were 17 when they volunteered to fight in World War II.

First, I would like to reiterate that the Protocol permits voluntary recruitment of 17-year-olds. So, should the United States ratify the Protocol, patriotic 17-year-olds will still be able to voluntarily enlist (with the consent of their parents) to defend the United States in time of need, just as many brave 17-year-olds have done throughout our nation's history. Second, we would point out that the requirements of the Protocol concerning recruitment are entirely consistent with U.S. practices during previous major national emergencies such as World Wars I and II. The Joint Chiefs of Staff have assessed that ratification of the Protocol would not affect their ability to carry out their national security missions. But, if a national emergency of unseen proportions were to arise, we would evaluate the situation in light of the nature and scope of the emergency.

READINESS

A second question to ask is how ratification of the Child Soldiers Protocol would affect our military "readiness" and the Department of Defense's ability to successfully accomplish its mission. The short answer, based on how the United States interprets the treaty, is that it should not (although we will have to make some changes in our practices).

Should the United States ratify the Child Soldiers Protocol, Article I would require us to "take all feasible measures" to ensure that members of our Armed Forces who have not attained the age of eighteen do not take "a direct part in hostilities."

On a year-to-year basis, this restriction will affect approximately 2,300 17-year-old servicemembers. That is "drop in the bucket" in terms of our total manpower, and the effect will be both negligible and manageable provided that we interpret the treaty in a common sense fashion.

As discussed earlier, virtually all 17-year-olds who enter the U.S. Armed Forces are high school seniors and are placed in the Delayed Entry Program until after they earn their diploma. When they ship to basic training, only about 12,000 are still 17 years old. On average, initial training lasts from 4 to 6 months depending on the Service, and nearly all of the 17-year-olds turn 18 during this period. Only after this training is completed will a servicemember be considered fully trained and ready for his operational assignment.

In other words, most of our recruits "age out" of the Protocol's Article I restriction before being deployed. We estimate that of the 12,000 17-year-olds, only about 2,300 in any given year, or less than 0.25% of the total U.S. enlisted force, are still seventeen by the time they complete their training—and most of these will turn 18 within one to three months. For Fiscal Year 2001, there were only 2,263 individuals who were 17 when they reached their operational bases.

For the remainder of time prior to their 18th birthday, these 17-year-old servicemembers would be covered by the Protocol's Article I restriction. However, this should not pose a problem. The Services already have great leeway in how they assign troops to units, and how units are deployed on operational assignments. Further, we interpret the requirements of Article I in a way that makes most operational assignments no problem for 17-year-olds. Consistent with our proposed understanding, we interpret the phrase "direct part in hostilities" to mean "immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy."

Thus fully trained and deployable 17-year-old servicemembers can perform any function "in theater" for combat units as long as they are not themselves taking actual action on the battlefield that is likely to cause harm to the enemy. In other words, we read the Protocol to apply specifically to 17-year-olds directly engaged in hostile activity on the battlefield. We do not interpret activities engaged in by combat support (or combat service support) units or the types of functions such units perform as falling within the scope of Article 1. This interpretation is consistent with the overall humanitarian concern the Protocol is meant to address (i.e., children being misused by waning factions in various civil and ethnic conflicts around the globe).

In order to implement the Protocol, we will focus on when and where 17-year-olds are deployed. Certainly we do not want the Protocol to have a negative effect upon morale and unit cohesion. Further, we need to be able to place 17-year-olds in the roles where they can make the greatest contribution to the military, rather than placing them on the basis of their age. By focusing on deployment, as opposed to how 17-year-olds are assigned to units, we will avoid needlessly complicating our military readiness posture. I note that we are not obligated by the Protocol to take "all measures" to prevent 17-year-olds from taking part in hostilities, or even a "direct" part. We are obligated to take "all feasible measures."

The word "feasible" is significant. Consistent with our proposed understanding, we interpret this to mean that U.S. military commanders are obligated to take "those measures which are practical or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations." We are not prepared to adopt an absolute standard. Flexibility and the rule of reason must apply.

This flexibility is precisely why U.S. ratification of the Protocol would not adversely affect our operations in any theater, including Operation Enduring Freedom and our ongoing campaign against terrorism. For example, there are only seven 17-year-olds participating in Operation Enduring Freedom. They are Sailors. In fact, there are only a total of 42 17-year-olds serving outside the United States in total. Four of these servicemembers are in Korea, and we will continue to retain the ability to deploy 17-year-olds to the Korean Peninsula. Should the United States ratify the Protocol, these Servicemembers may perform military duties in support of all U.S. operations anywhere as long as we take all feasible measures to ensure that they do not take a direct part in hostilities.

Given our presence in many countries around the globe, the wide range of missions that the military is called upon to fulfill, and the ongoing war against terrorism, we must recognize that unusual circumstances may arise requiring 17-year-

old servicemembers to take a direct part in hostilities. For example, a 17-year-old could be part of a peacekeeping contingent that is unexpectedly fired upon. He may be a crewmember on a ship that unexpectedly comes under terrorist attack, or which is diverted into an area of operations to respond to an unforeseen contingency. We cannot be in a situation where a ship's captain, suddenly called upon to engage in combat operations, has to cull from the ship's crew all 17-year-olds and send them home or below decks. Similarly, we cannot allow a situation to arise, in the midst of a crisis such as that which occurred in Somalia, where the base commander—before sending an extraction team to help U.S. peacekeepers suddenly under attack—has to cull through units to remove 17-year-olds.

We should not put our field commanders in the position of constantly worrying about being "second-guessed." Therefore, the presumption of the commander in the field should be that the headquarters unit issuing, or authorizing, the deployment of a 17-year-old has already taken the Protocol's requirements into account. Concomitantly, we do not foresee changes to the Uniform Code of Military Justice which would affect field commanders, or lead to them being "second-guessed."

Within these parameters, we believe the effect of the Child Soldiers Protocol upon our military capabilities will be manageable. Application of the Protocol in this fashion, as I said at the outset, is fundamental to our decision to support ratification.

OTHER ISSUES

Finally, there are two other important views that the Department of Defense takes regarding the Protocol.

First, as stated by Ambassador Southwick, although the Protocol is styled as a protocol to the Convention on the Rights of the Child, it will by its own terms operate as an independent multilateral agreement under international law. States may ratify the Protocol without becoming a party to the Convention on the Rights of the Child or being subject to its provisions. We intend to keep a "firewall" between the two treaties, and will work with our Department of State colleagues to ensure that—as information is provided under Article 8 to the Committee on the Rights of the Child—that distinction does not become blurred.

Similarly, and consistent with the treaty transmittal package, we recommend that the U.S. make clear the nature of the obligation assumed under Article 3(1) of the Protocol by expressing an understanding to the effect that the United States views Article 3 as obligating States parties to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of age 15, as set forth in the Rights of the Child Convention. Because the United States is not a party to the Convention, we must be clear that the formulation under Article 3 means "15," and that the "principles" and "special protections" to which the United States subscribes are delineated by the Child Soldiers Protocol, not by the Rights of the Child Convention. Consistent with international law, the Administration's recommended understanding makes it clear that, regardless of any future changes to Article 38 of the Rights of the Child, the obligations contained in Article 3 will remain as I have stated, unless a specific amendment to the Protocol has been adopted by the United States.

Second, the United States will retain sole responsibility for ensuring that it adheres to this Protocol. Accordingly, no United States national will ever be subjected to the jurisdiction of any international tribunal, whether the International Criminal Court or an *ad hoc* arrangement, unless the United States has first explicitly recognized the jurisdiction of such a tribunal over these matters. As the Administration has made clear, it opposes the International Criminal Court and will not allow, under any circumstances, the ICC to claim jurisdiction over U.S. nationals.

Finally, I reiterate that the United States intends to interpret key terms in the treaty, such as "all feasible measures" and "direct part in hostilities" in a straightforward, common sense fashion as set out in the Administration's transmittal documents.

CONCLUSION

In conclusion, the Department of Defense supports the Administration's decision to proceed with ratification of the Child Soldiers Protocol. Utilizing the approach we have identified here, U.S. ratification of the Child Soldiers Protocol would not have an adverse impact on U.S. recruiting practices or force structure, nor would it impair the ability of our Armed Forces to execute their operational missions.

Thank you.

DEPARTMENT OF DEFENSE

Selected Manpower Statistics

FISCAL YEAR 2000

Prepared by Department of Defense, Washington Headquarters Service, Directorate for Information, Operations and Reports

TABLE 2-17
Department of Defense
AGE DISTRIBUTION OF MALE MILITARY PERSONNEL STRENGTH
(IN THOUSANDS) AND PERCENT FIGURES
FISCAL YEARS 1991 THROUGH PRESENT

Attained Age	1991		1992		1993		1994		1995		1996		1997		1998		1999		2000	
	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%
17	2	0.11%	2	0.13%	2	0.13%	2	0.14%	2	0.15%	2	0.16%	2	0.16%	2	0.17%	3	0.25%	3	0.25%
18	37	2.10%	37	2.32%	36	2.40%	31	2.17%	29	2.19%	31	2.43%	34	2.75%	36	2.98%	37	3.12%	40	3.38%
19	88	4.99%	77	4.82%	75	4.99%	68	4.75%	59	4.46%	62	4.87%	62	5.01%	65	5.38%	67	5.65%	69	5.83%
20	128	7.26%	106	6.64%	96	6.39%	90	6.29%	81	6.13%	75	5.89%	78	6.30%	75	6.21%	78	6.58%	82	6.93%
21	136	7.71%	122	7.64%	104	6.92%	95	6.64%	88	6.66%	83	6.51%	78	6.30%	80	6.62%	78	6.58%	81	6.85%
22	118	6.69%	109	6.83%	104	6.92%	93	6.50%	85	6.43%	79	6.20%	76	6.14%	71	5.88%	74	6.24%	73	6.17%
23	101	5.73%	92	5.76%	90	5.99%	89	6.22%	77	5.82%	72	5.65%	67	5.41%	64	5.30%	62	5.23%	65	5.49%
24	91	5.16%	81	5.07%	77	5.13%	78	5.45%	75	5.67%	67	5.26%	62	5.01%	59	4.88%	57	4.81%	56	4.73%
25	85	4.82%	75	4.70%	69	4.59%	68	4.75%	65	4.92%	66	5.18%	60	4.85%	55	4.55%	53	4.47%	52	4.40%
26	83	4.71%	71	4.45%	65	4.33%	62	4.33%	59	4.46%	59	4.63%	58	4.68%	53	4.39%	50	4.22%	48	4.06%
27	81	4.59%	69	4.32%	62	4.13%	59	4.12%	54	4.08%	52	4.08%	52	4.20%	52	4.30%	48	4.05%	45	3.80%
28	76	4.31%	67	4.20%	60	3.99%	57	3.98%	51	3.86%	48	3.77%	46	3.72%	47	3.89%	47	3.97%	42	3.55%
29	71	4.02%	63	3.94%	60	3.99%	56	3.91%	49	3.71%	46	3.61%	43	3.47%	42	3.48%	42	3.54%	42	3.55%
30	68	3.85%	60	3.76%	56	3.73%	56	3.91%	49	3.71%	45	3.53%	42	3.39%	39	3.23%	38	3.21%	39	3.30%
31	62	3.51%	58	3.63%	54	3.60%	53	3.70%	49	3.71%	45	3.53%	42	3.39%	39	3.23%	37	3.12%	35	2.96%
32	58	3.29%	54	3.38%	52	3.46%	52	3.63%	47	3.56%	46	3.61%	42	3.39%	39	3.23%	36	3.04%	35	2.96%
33	54	3.06%	51	3.19%	49	3.26%	50	3.49%	46	3.48%	45	3.53%	44	3.55%	40	3.31%	37	3.12%	34	2.87%
34	51	2.89%	48	3.01%	47	3.13%	48	3.35%	45	3.40%	43	3.38%	43	3.47%	41	3.39%	38	3.21%	35	2.96%
35	48	2.72%	46	2.88%	45	3.00%	46	3.21%	42	3.18%	42	3.30%	41	3.31%	41	3.39%	40	3.38%	37	3.13%
36	46	2.61%	44	2.76%	43	2.86%	43	3.00%	40	3.03%	40	3.14%	41	3.31%	39	3.23%	39	3.29%	38	3.21%
37	43	2.44%	42	2.63%	41	2.73%	41	2.87%	38	2.87%	38	2.98%	38	3.07%	39	3.23%	38	3.21%	38	3.21%
38	40	2.27%	38	2.38%	37	2.46%	36	2.52%	33	2.50%	33	2.59%	34	2.75%	33	2.73%	34	2.87%	34	2.87%
39	36	2.04%	33	2.07%	32	2.13%	30	2.10%	28	2.12%	28	2.20%	28	2.26%	27	2.24%	28	2.36%	29	2.45%
40 - 44	109	6.18%	101	6.32%	95	6.32%	90	6.29%	83	6.28%	81	6.36%	80	6.46%	77	6.37%	79	6.67%	80	6.76%
45 - 49	32	1.81%	33	2.07%	32	2.13%	31	2.17%	28	2.12%	28	2.20%	28	2.26%	27	2.24%	27	2.28%	27	2.28%
50/Over	8	0.45%	8	0.50%	7	0.47%	7	0.49%	6	0.45%	7	0.55%	8	0.65%	8	0.66%	9	0.76%	9	0.76%
Not Reported	12	0.68%	10	0.63%	12	0.80%	0	0.00%	14	1.06%	11	0.86%	9	0.73%	18	1.49%	9	0.76%	15	1.27%
TOTAL	1,764	100.00%	1,597	100.00%	1,502	100.00%	1,431	100.00%	1,322	100.00%	1,274	100.00%	1,238	100.00%	1,208	100.00%	1,185	100.00%	1,183	100.00%

Prepared by: Washington Headquarters Services
Directorate for Information Operations and Reports

TABLE 2-17A

Department of Defense

AGE DISTRIBUTION OF FEMALE PERSONNEL STRENGTH (IN THOUSANDS) AND PERCENT FIGURES

FISCAL YEARS 1996 THROUGH PRESENT

Attained Age	1996		1997		1998		1999		2000	
	NO.	%	NO.	%	NO.	%	NO.	%	NO.	%
17	1	0.51%	1	0.50%	1	0.51%	1	0.50%	1	0.49%
18	6	3.03%	4	1.99%	8	4.04%	8	4.00%	10	4.93%
19	12	6.06%	12	5.97%	13	6.57%	13	6.50%	15	7.39%
20	13	6.57%	15	7.46%	14	7.07%	15	7.50%	16	7.88%
21	14	7.07%	14	6.97%	15	7.58%	15	7.50%	16	7.88%
22	13	6.57%	14	6.97%	13	6.57%	14	7.00%	14	6.90%
23	12	6.06%	12	5.97%	12	6.06%	12	6.00%	13	6.40%
24	11	5.56%	11	5.47%	11	5.56%	11	5.50%	11	5.42%
25	11	5.56%	10	4.98%	8	4.04%	10	5.00%	10	4.93%
26	10	5.05%	10	4.98%	9	4.55%	9	4.50%	9	4.43%
27	8	4.04%	9	4.48%	9	4.55%	8	4.00%	8	3.94%
28	7	3.54%	7	3.48%	8	4.04%	8	4.00%	7	3.45%
29	7	3.54%	7	3.48%	7	3.54%	7	3.50%	7	3.45%
30	6	3.03%	6	2.99%	6	3.03%	6	3.00%	6	2.96%
31	6	3.03%	6	2.99%	6	3.03%	5	2.50%	5	2.46%
32	6	3.03%	6	2.99%	5	2.53%	5	2.50%	5	2.46%
33	6	3.03%	6	2.99%	5	2.53%	5	2.50%	5	2.46%
34	6	3.03%	6	2.99%	5	2.53%	5	2.50%	5	2.46%
35	5	2.53%	6	2.99%	5	2.53%	5	2.50%	5	2.46%
36	5	2.53%	5	2.49%	5	2.53%	5	2.50%	5	2.46%
37	5	2.53%	5	2.49%	5	2.53%	5	2.50%	5	2.46%
38	4	2.02%	5	2.49%	4	2.02%	4	2.00%	4	1.97%
39	4	2.02%	4	1.99%	4	2.02%	4	2.00%	4	1.97%
40 - 44	11	5.56%	11	5.47%	11	5.56%	11	5.50%	11	5.42%
45 - 49	3	1.52%	3	1.49%	4	2.02%	4	2.00%	4	1.97%
50/Over	1	0.51%	1	0.50%	1	0.51%	1	0.50%	1	0.49%
Not Reporte	5	2.53%	5	2.49%	4	2.02%	4	2.00%	1	0.49%
TOTAL	198	100.00%	201	100.00%	198	100.00%	200	100.00%	203	100.00%

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Non-Prior Service Accessions
FY 1991 - FY 2001

		1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
ARMY												
	17-Year Old	2858	2961	2677	2147	2274	2569	3273	4058	4235	4526	4738
	Total	77073	76546	73789	61401	57401	69910	75727	68740	67007	61873	64371
	% 17-Year Old	3.71%	3.87%	3.63%	3.50%	3.96%	3.67%	4.32%	5.90%	6.32%	7.31%	7.36%
NAVY												
	17-Year Old	2923	2213	2382	2067	2029	1942	2008	2833	3262	2957	2965
	Total	68424	58440	63116	53496	47152	46144	49131	46793	51436	46381	46905
	% 17-Year Old	4.27%	3.79%	3.77%	3.86%	4.30%	4.21%	4.09%	6.05%	6.34%	6.38%	6.32%
MARINE CORPS												
	17-Year Old	963	1260	1430	1503	1617	1626	1759	2320	2271	2321	2272
	Total	29630	31764	34722	31756	31946	32531	33949	33468	32998	27911	27875
	% 17-Year Old	3.25%	3.97%	4.12%	4.73%	5.06%	5.00%	5.18%	6.93%	6.88%	8.32%	8.15%
AIR FORCE												
	17-Year Old	885	1221	853	884	1028	1034	1147	1396	1509	1785	1688
	Total	29755	34815	31282	29756	30788	30548	30088	31537	32327	31079	32162
	% 17-Year Old	2.97%	3.51%	2.73%	2.97%	3.34%	3.38%	3.81%	4.43%	4.67%	5.74%	5.25%
TOTAL												
	17-Year Old	7629	7655	7342	6601	6948	7171	8187	10607	11277	11589	11663
	Total	204882	201565	202909	176409	167287	179133	188895	180538	183768	167244	171313
	% 17-Year Old	3.72%	3.80%	3.62%	3.74%	4.15%	4.00%	4.33%	5.88%	6.14%	6.93%	6.81%

Note: The non-prior service 17-year-old accessions figure is the number of 17-year-olds entering active duty each year. After basic military training and advanced technical training, most have turned 18. For example, in FY 1999, only about 2,500 recruits were still 17 after completing basic and advanced training.

Non-Prior Service Accessions
FY 1980 - FY 1990

		1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
ARMY												
	17-Year Old	25631	13623	10972	10005	9368	9140	8885	7742	6262	6919	4472
	Total	157674	108928	119903	132430	129528	118826	126660	120134	105532	111639	84351
	% 17-Year Old	16.26%	12.51%	9.15%	7.55%	7.23%	7.69%	7.01%	6.44%	5.93%	6.20%	5.30%
NAVY												
	17-Year Old	12437	11643	6061	4182	3908	5545	6527	6054	6244	5945	4307
	Total	87631	85806	79948	73839	77129	82892	88272	87719	89733	89419	70453
	% 17-Year Old	14.19%	13.57%	7.58%	5.66%	5.07%	6.69%	7.39%	6.90%	6.96%	6.65%	6.11%
MARINE CORPS												
	17-Year Old	6791	6838	5073	3193	2688	2284	2373	2130	1977	1972	1712
	Total	41654	38760	37921	36617	39114	34047	34662	33522	34955	32910	32888
	% 17-Year Old	16.30%	17.64%	13.38%	8.72%	6.87%	6.71%	6.85%	6.35%	5.66%	5.99%	5.21%
AIR FORCE												
	17-Year Old	7139	6137	3093	1796	2083	2768	2839	2088	1350	1187	1213
	Total	71214	70421	67239	60258	59099	64946	64045	54661	40774	43145	35709
	% 17-Year Old	10.02%	8.71%	4.60%	2.98%	3.52%	4.26%	4.43%	3.82%	3.31%	2.75%	3.40%
TOTAL												
	17-Year Old	51998	38241	25199	19176	18047	19737	20624	18014	15833	16023	11704
	Total	358173	303915	305011	303144	304870	300711	313639	296036	270994	277113	223401
	% 17-Year Old	14.52%	12.58%	8.26%	6.33%	5.92%	6.56%	6.58%	6.09%	5.84%	5.78%	5.24%

Note: The non-prior service 17-year-old accessions figure is the number of 17-year-olds entering active duty each year. After basic military training and advanced technical training, most have turned 18. For example, in FY 1999, only about 2,500 recruits were still 17 after completing basic and advanced training.

FEBUARY 2002
CONUS & OCONUS

SERVICE	CONUS	OCONUS	TOTAL
Army	715	22	737
Coast Guard	6	3	9
Air Force	207	2	209
Marine Corps	244	6	250
Navy	279	12	291
TOTAL	1,451	45	1,496

ACTIVE DUTY 17-YEAR-OLDS
FEBUARY 2002

SERVICE	Republic of Korea	Balkans/ Kuwait	Enduring Freedom	Total
Army	4	9	0	13
Navy	0	0	7	7
TOTAL	4	9	7	20

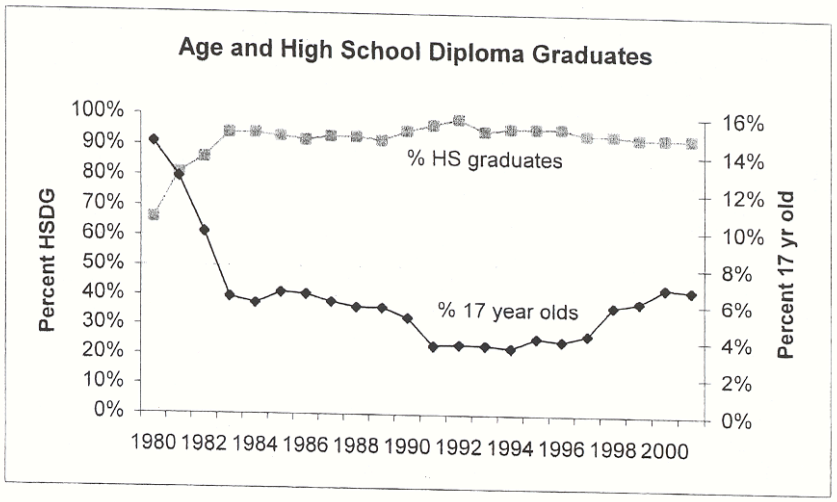
ACCESSION OF 17-YEAR-OLDS INTO THE ARMED FORCES

The attached excel workbook has the percent of 17-year-olds over time graphed next to the percent of high school diploma graduates (HSDGs) over time. The percent of 17-year-olds is graphed on the right axis; the percent of HSDG is graphed on the left axis. It also has a column showing the mean age.

The mean age has not changed much over time—it's about 19.6. The highest mean age was 19.9. Right now, we're at 19.8. It is approaching it's high point because the Army contracted with a lot of high school graduates from the work force in FY 2000 and FY 2001. (In FY 2001, the Army struggled in the hard to fill months of February through May. In fact, the Army entered these months with almost half of the recruiting mission left to find. Therefore, they contracted with high school graduates who were in the work force and available to ship.)

Since we access about 175,000 new people each year, we will probably enlist about 12,000 17-year-olds each year for the foreseeable future.

	% 17 yr olds	% HSDG	Mean Age
1980	14.54%	66%	19.24
1981	12.73%	81%	19.2952
1982	9.82%	86%	19.54293
1983	6.33%	94%	19.67106
1984	6.00%	94%	19.512
1985	6.60%	93%	19.533
1986	6.50%	92%	19.9
1987	6.09%	93%	19.9
1988	5.81%	93%	19.58716
1989	5.78%	92%	19.51124
1990	5.24%	95%	19.34982
1991	3.72%	97%	19.8147
1992	3.80%	99%	19.68249
1993	3.74%	95%	19.69167
1994	3.62%	96%	19.68996
1995	4.16%	96%	19.71133
1996	4.00%	96%	19.80056
1997	4.34%	94%	19.8058
1998	5.89%	94%	19.62606
1999	6.14%	93%	19.65365
2000	6.93%	93%	19.52
2001	6.81%	93%	19.78



RESPONSES OF MARSHALL S. BILLINGSLEA TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR BARBARA BOXER

Question 1. Concretely, how will deployment procedures for 17-year-olds under the protocol differ from the procedures that are now in place?

Answer: The Protocol puts no geographical limits on where 17-year-old servicemembers may be deployed. Similarly, it does not restrict the types of units to which 17-year-olds may be assigned. It simply requires that we take all feasible measures to ensure that servicemembers under 18 do not take a direct part in hostilities. Accordingly, should the United States ratify the Protocol, the Services will promulgate implementation plans, as approved by the Office of the Secretary of Defense, that both fulfill U.S. commitments under the Protocol and ensure there is no effect on each Service's military readiness.

Question 2. What are the steps that the Department of Defense takes to ensure that the 17-year-old has a real ID and the parental consent is real?

Answer: The Military Entrance Processing Command (MEPCOM) has programs that check to ensure that the date of birth entered by a recruiter falls into the age window outlined by Title 10, MEPCOM regulations, and other joint regulations. Additionally, each recruiter is required to obtain an original (or certified) government document that states an individual's age. Typically, this is an original birth certificate. If the individual is 17 years old, the recruiter is required to witness both parents' signatures. If a parent is divorced, then only one signature is required provided the custodial parent can produce the original (raised seal) divorce decree.

RESPONSES OF MARSHALL S. BILLINGSLEA TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question 1. Mr. Billingslea, according to a variety of reports, the United States had 17-year-old soldiers participating in military operations during the Gulf War, Somalia, and the Balkans. Under this protocol, the United States could be held in violation if a 17-year-old participates in direct combat.

- How does the Pentagon propose to prevent such a possibility, and what plans have the Services made?

Answer. The Protocol does not ban the use of 17-year-olds in combat. The Protocol's "all feasible measures" standard recognizes that, over time, there are likely to be exceptional cases where, due to military, humanitarian or other considerations, 17-year-olds may take a direct part in hostilities. Several delegations made this clear in their statements made at the time of adoption of the Protocol.

Further, as we have made clear, the Protocol only refers to a 17-year-old taking a "direct" part in hostilities. It therefore is permissible to assign 17-year-olds to combat units, provided we then take feasible precautions to ensure that they do not engage in actions, on a battlefield, which cause direct harm to an enemy combatant.

Finally, in the negotiations, no delegation objected to the U.S. interpretation of the term "all feasible measures." We recognize the possibility that certain countries and nongovernmental organizations may choose to allege U.S. violations of the Protocol since we will implement our obligations in a manner that does not foreclose the assignment of 17-year-olds to combat units. However, the Protocol and the negotiating record make clear that the United States can implement the Protocol as described above. Furthermore, the Protocol contains no dispute settlement or other provision that would lead to the United States being "held in violation" of the Protocol.

Accordingly, the Department of Defense will continue to assign 17-year-olds (once they are fully trained) to combat units and to then deploy these personnel on a wide variety of operational assignments.

Should the United States ratify the Protocol, the Services will promulgate implementation plans, as approved by the Secretary of Defense, that both fulfill U.S. commitments under the Protocol and ensure there is no adverse effect on each Service's military readiness.

Ouestion 2. If the Military Services have not developed detailed plans to implement this Protocol, how can we assess whether implementation of the Protocol is manageable?

Answer. The Protocol will be manageable if it is implemented in the fashion I described during testimony. The position set forth in my testimony is that the Department of Defense will implement the Protocol so that the presumption of the commander in the field will be that the headquarters unit issuing, or authorizing, the deployment of a 17-year-old has already taken the Protocol's requirements into ac-

count. The Department of Defense will continue to review the Services' implementation plans to ensure they best support U.S. military readiness.

More generally, implementation of the Protocol is manageable because of the limited number of 17-year-old servicemembers affected by its provisions. After an average of four to six months of initial training (depending upon the Service) only about 2,300 servicemembers are still 17 when they reach their operational bases. That number is less than one-quarter of one percent of our total enlisted strength. Most of these 2,300 servicemembers will turn 18 within one to three months of completing their training and "age out" of the Article 1 restriction.

Furthermore, we interpret the requirements of Article 1 in a way that makes most operational assignments no problem for 17-year-olds. Consistent with the Administration's proposed understanding, we interpret the phrase "direct part in hostilities" to mean "immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy." Thus, fully trained and deployable 17-year-old servicemembers can perform any function in theater for combat units as long as all feasible efforts are made to ensure that they do not take a direct part in hostilities, such as actual action on the battlefield likely to cause harm to the enemy.

Question 3. Mr. Billingslea, barring 17-year-olds from participation in military operations will mean that they must be pulled from their units in the event of a deployment.

- Have you assessed the impact of such a scenario on unit morale and readiness?

Answer. Such a scenario could have a harmful effect on morale and readiness. For this reason, the Department of Defense views implementation of the Protocol along the lines I have described in my testimony as essential. The Protocol does not bar 17-year-olds from participating in military operations or require that they be pulled from their units in the event of a deployment. It only requires that Parties "take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities." This is not an absolute standard, but allows for a flexible implementation of the Protocol's provisions. As I stated in my response to the previous question, the Department of Defense will implement the Protocol so that the presumption of the commander in the field will be that the headquarters unit issuing, or authorizing, the deployment of a 17-year-old has already taken the Protocol's requirements into account. Implementing the Protocol in this manner, together with the small number of 17-year-old servicemembers affected by its terms, will permit us to comply with the Protocol's terms without affecting unit morale and readiness. It also will enable the commander in the field to perform his duties without fear of being "secondguessed."

Question 4. Mr. Billingslea, your prepared statement indicates that the Pentagon doesn't interpret activities by combat support personnel as falling within the scope of Article 1. Yet not surprisingly, some authors of the Protocol and Human Rights Groups believe they do.

- How will the United States defend itself against allegations of violating the Protocol?

Answer. The United States takes a backseat to no one in terms of our military professionalism. We do not use underage combatants, or engage in any of the morally reprehensible abuses which the Protocol is intended to address. Indeed, we were a driving force behind the creation of this document.

The Department of State is best suited to answer for the Committee how it intends to respond to spurious accusations of noncompliance. We will work with the Department of State, and will insist that no international tribunal be allowed to assert or exercise jurisdiction over U.S. nationals in connection with this Protocol.

Article 1 of the Protocol requires only that Parties take all feasible measures to ensure that servicemembers under 18 do not take a direct part in hostilities. This standard does not prohibit 17-year-old servicemembers from being forward deployed, from taking an indirect part in hostilities, or even from taking a direct part in hostilities under extenuating circumstances. The discussion pertaining to Article 1 in the Administration's Article-by-Article Analysis submitted with the transmittal package makes it clear that U.S. negotiators, together with those from other countries, repeatedly and successfully rejected attempts to restrict these options, leaving intact the flexibility the U.S. military requires. The understandings recommended by the Administration in the transmittal package adequately describe the U.S. interpretation of what "all feasible measures" and "a direct part in hostilities" entail. The U.S. interpretations of these terms correspond with the meaning attributed to them under the law of armed conflict.

Additionally, during the negotiations, the U.S. delegation made a statement about its understanding of the obligation under Article 1. No other delegation disputed the U.S. understanding. In fact, some other delegations expressed disappointment that the Protocol did not bar "indirect" participation in hostilities and that the discretionary power granted to States through use of the term "feasible measures" weakened the Protocol. The Russian delegation acknowledged that since States were not required to prohibit participation, but only called on to take "all feasible measures" to prevent such participation, the Protocol left States open to the possibility in any emergency of involving persons under 18 years of age in hostilities.

Question 5. Will the Protocol remain "manageable" if the United States becomes involved in a world war similar to World War II?

Answer. The United States would be able, consistent with the Protocol, to recruit the servicemembers it would need to defend the United States, just as it did in World War II. Because the United States has never needed to draft below the age of 18, we do not view the Protocol's prohibition on conscription below the age of 18 as problematic.

Regarding readiness, the Protocol's "all feasible measures" standard would allow the United States to have its 17-year-old servicemembers "take a direct part in hostilities," if, in the judgement of the United States, there was no other practical option. We assess, in the event of a world war, that it may not be feasible to prohibit our 17-year-old servicemembers from engaging in combat.

Question 6. If a unit commander, in the middle of a conflict, fails to remove a 17-year-old member of his unit from a combat situation, can the United States be held in violation of the protocol? Is it possible that the unit commander could be charged under the Uniform Code of Military Justice?

Answer. We stress that the United States will not recognize the jurisdiction of any other nation or group over the United States or its nationals in terms of this Protocol's implementation. Therefore we will not agree that anyone outside of the United States can "hold" us in violation of the treaty, although other parties have the right to raise concerns about compliance. That said, the Protocol contains no dispute settlement, enforcement mechanism, or other provision that would lead to the United States being compelled to alter its implementation procedures.

Regarding the unit commander, we do not intend to put our field commanders in a position where they must worry about being "second-guessed" regarding their decisions to have 17-year-old servicemembers under their command take a direct part in hostilities when, in their judgement, the military situation requires it. Accordingly, the Department of Defense will implement the Protocol so that the presumption of the commander in the field will be that the headquarters unit issuing, or authorizing, the deployment of a 17-year-old has already taken the Protocol's requirements into account. As a result, we are not going to make any changes to the Uniform Code of Military Justice. We do not foresee charging unit commanders under the Uniform Code of Military Justice in order to "second-guess" their determinations regarding any 17-year-old members of their command.

I would also like to reiterate one point I made during my testimony on 7 March 2002. No United States national will ever be subjected to the jurisdiction of any international tribunal, whether the International Criminal Court or an ad hoc arrangement, unless the United States has first explicitly recognized the jurisdiction of such a tribunal over the matter. As the Administration has made clear, it opposes the International Criminal Court and will not allow, under any circumstances, the ICC to claim jurisdiction over U.S. nationals.

Question 7. Given that under the current practice in the United States, 17-year-olds must be volunteers, have the consent of their parents or guardians, and be fully informed of the duties involved with military service, why shouldn't these young men and women be permitted to fulfill their duties and serve in combat?

Answer. The Administration has decided that the Protocol offers important foreign policy benefits, and that its affect on the U.S. military will be negligible. In light of the fact that the Services generally require attainment of a high school degree, and in light of the fact that any prospective soldier, sailor, airman or Marine is required to go through four to six months of training, the actual number of 17-year-olds affected by the treaty is fairly small. These 17-year-olds generally have only one to three months left before they turn 18. Accordingly, we see that our current practices, together with the Protocol, give the Services sufficient leeway to assign 17-year-olds, once they are fully trained, to their units and to then deploy these personnel on a wide variety of operational assignments, so long as we take "all feasible measures" to ensure these personnel do not take "a direct part in hostilities."

Question 8. During the Kosovo war, some liberal human rights groups attempted to try American pilots for war crimes because of an accidental bombing of a civilian target. Would you agree that similar groups might charge the United States with violating this agreement if a 17-year-old soldier gets caught up in a combat situation?

Answer. It is reasonable to expect some groups to make such allegations. As indicated under my response to question 4, we will aggressively respond to any such assertions. We will not be deterred from using the flexibility afforded by the treaty. The Department of Defense negotiated very hard to obtain these flexible legal formulations and our ability to support the Protocol is dependent upon our ability to interpret the treaty in the fashion I have described.

RESPONSE OF MARSHALL S. BILLINGSLEA TO A FOLLOW-UP QUESTION FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question. Your answers to questions submitted previously do not address the impact of the Child Soldiers Protocol on the powers of U.S. state governors insofar as recruitment and employment of state militia or National Guard units are concerned. How extensively will entry into force of the Protocol interfere with and curtail these powers?

Answer. Entry into force of the Child Soldiers Protocol would not interfere with or curtail the powers of state governors with respect to state militia or National Guard units, both of which are authorized by federal statute. We note that Article 4 of the Child Soldiers Protocol requiring States Parties to take all feasible measures to prevent the recruitment or use in hostilities of persons under the age of 18 years by "armed groups that are distinct from the armed forces of a State" pertains to "non-governmental armed groups, often involved in non-international armed conflicts." (See the article-by-article analysis accompanying the treaty, page 6.) U.S. law already prohibits insurgent activities by non-governmental actors (18 U.S.C. §2381). We do not interpret the term "armed groups" to refer to state militia or National Guard units.

Senator BOXER. Thank you, Mr. Billingslea.

We have been joined by Senator Paul Wellstone, who has been a longtime champion of children's rights, and he is going to give an opening statement after we conclude our panel.

So, it is my pleasure to call on Mr. John Malcolm, Deputy Assistant Attorney General at the Justice Department's Criminal Division. Mr. Malcolm recently headed the U.S. Delegation to the Second World Congress on Commercial Exploitation of Children. Welcome.

STATEMENT OF JOHN G. MALCOLM, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. MALCOLM. Thank you. Madam Chairperson and members of the Committee, thank you for giving me this opportunity to testify on behalf of the Criminal Division of the Department of Justice in support of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography. The Department of Justice and the administration supports prompt ratification of the optional protocol which will serve to enhance the United States' position as a leader in the fight against the exploitation and abuse of children worldwide.

Madam Chairperson, as you just stated, this past December, I had the pleasure and privilege of heading the United States' Delegation to the Second World Congress on Commercial Sexual Exploitation of Children in Yokohama, Japan. During that event, my colleagues and I spoke with many representatives from other countries and from various non-governmental organizations, based both

here and abroad, including women and children who had been victims themselves of the cruelest forms of exploitation. This experience confirmed for me the importance of ratifying this optional protocol so that we can play our part in addressing this international tragedy.

In 1999, the Senate ratified the International Labor Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Children Labor, which included the sale and use of children in labor, prostitution, and the production of pornography. This optional protocol before you today builds upon this important cornerstone by addressing the sale of children for these and other purposes, by raising international standards to which all nations must adhere, including requiring that parties provide protection to children up to the age of 18, and by requiring that offenses be treated as criminal acts which merit serious punishment. In short, along with ILO No. 182, the optional protocol provides a common language, mission, and strategy to accomplish our commitment to eradicate child exploitation and related illicit practices around the world.

I am pleased and proud to say that, with respect to the new international standards and obligations called for by this optional protocol, the United States is already an adherent, subject to the understandings and declarations contained in the administration's treaty ratification package. No implementing legislation will be required with respect to ratifying this optional protocol because U.S. law meets and in many cases exceeds the standards of the protocol. In the United States, Federal and State laws uniformly prohibit child prostitution, all activities associated with child pornography, and the sale of children for sexual exploitation. United States law similarly prohibits the sale of children for the purposes of forced labor or the transfer of organs for profit, as well as the sale of children via improperly induced adoptions that were knowingly and willfully done.

Federal and State laws have also long recognized the special interests and needs of child victims and witnesses and have provided varying measures of support and protection to take account of these interests and needs. In addition, since the time that the article-by-article analysis that accompanies this protocol was prepared, the United States has taken additional and important steps that will enhance its ability to address the core issues at the heart of the protocol. In 2000, Congress enacted and the President signed into law the Victims of Trafficking and Violence Protection Act which created several new crimes of relevance to this protocol and which provides support services and other forms of relief to victims of severe forms of trafficking and exploitation, as well as the Intercountry Adoption Act which establishes oversight, standards, and accreditation procedures for adoption agencies for intercountry adoptions.

The protocol also contains important provisions concerning international cooperation. Our law enforcement agencies already investigate international trafficking cases with other countries and engage in global child pornography investigations. The protocol provides useful cooperation and assistance mechanisms among nations that are parties to the protocol, including provisions covering such

diverse issues as extradition, mutual legal assistance, and appropriate asset confiscation. All of these provisions are comparable to and consonant with forms of cooperation currently provided for in various law enforcement agreements to which the United States is a party. This protocol will enhance our efforts by encouraging reciprocal efforts by other nations.

The United States is understandably proud of its position as a world leader in the fight to protect children from severe forms of exploitation. Ratification of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography will better enable the United States and the rest of the world to fight against those who would deprive children of their innocence by transferring them to people who have no lawful right to custody, by subjecting them to extreme forms of labor, and by subjecting them to the horrors of child prostitution and child pornography.

Madam Chairperson, that concludes my statement. I would like to thank you and the Committee again for soliciting the Department's views on these important issues and for allowing me to express them today through my testimony here. And I would be pleased to answer any questions that you might have.

[The prepared statement of Mr. Malcolm follows:]

PREPARED STATEMENT OF JOHN G. MALCOLM, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Madam Chairperson and Members of the Committee, thank you for giving me this opportunity to testify on behalf of the Criminal Division of the Department of Justice in support of the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography. The Department of Justice supports prompt ratification of the Optional Protocol, which will serve to enhance the United States' position as a leader in the fight against the exploitation and abuse of children worldwide.

This past December, I had the privilege of heading the United States' Delegation to the Second World Congress on Commercial Sexual Exploitation of Children in Yokohama, Japan. During the event, my colleagues and I spoke with many representatives from other countries and from various non-governmental organizations, based here and abroad, including women and children who had been victims themselves of the cruelest forms of exploitation. This experience confirmed for me the importance of ratifying this Optional Protocol, so that we can play our part in addressing this international tragedy.

In 1999, the Senate ratified International Labor Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, which included the sale and use of children in labor, prostitution and the production of pornography. The Optional Protocol before you today builds upon this important cornerstone by addressing the sale of children for these and other purposes, by raising international standards to which all nations must adhere, including requiring that State Parties provide protection to children up to the age of 18, and by requiring that offenses be treated as criminal acts that merit serious punishment. In short, along with ILO #182, the Optional Protocol provides a common language, mission, and strategy to accomplish our commitment to eradicate child exploitation and related illicit practices around the world.

I am pleased and proud to say that, with respect to the new international standards and obligations called for by this Optional Protocol, the United States is already an adherent, subject to the understandings and declaration contained in the Administration's treaty ratification package. No implementing legislation will be required with respect to ratifying this Optional Protocol, because current U.S. laws meet, and in many cases exceed, the standards of the Protocol. In the United States, federal and state laws uniformly prohibit child prostitution, all activities associated with child pornography, and the sale of children for sexual exploitation. United States law similarly prohibits the sale of children for the purpose of forced labor or for the transfer of organs for profit, as well as the sale of children via improperly-induced adoptions that were knowingly and willfully done.

Federal and state laws have also long recognized the special interests and needs of child victims and witnesses and have provided varying measures of support and

protection to take account of those interests and needs. In addition, since the time that the Article-by-Article Analysis that accompanies this Protocol was prepared, the United States has taken additional and important steps that will enhance its ability to address the core issues at the heart of the Protocol. In 2000, Congress enacted the Victims of Trafficking and Violence Protection Act, which created several new crimes of relevance to this Protocol and which provides support services and other forms of relief to victims of severe forms of trafficking and exploitation. Congress also enacted the Intercountry Adoption Act of 2000, which establishes oversight, standards, and accreditation procedures for adoption agencies for intercountry adoptions.

The Protocol also contains important provisions concerning international cooperation. Our law enforcement agencies already investigate international trafficking cases with other countries and engage in global child pornography investigations. The Protocol provides useful cooperation and assistance mechanisms among nations that are parties to the Protocol, including provisions covering such diverse issues as extradition, mutual legal assistance, and appropriate asset confiscation. All of these provisions are comparable to and consonant with forms of cooperation currently provided for in various law enforcement agreements to which the United States is a party. This Protocol will enhance our efforts by encouraging reciprocal efforts by other nations.

The United States is understandably proud of its position as a world leader in the fight to protect children from severe forms of exploitation. Ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography will better enable the United States and the rest of the world to fight against those who would deprive children of their innocence by transferring them to people who have no lawful right to custody, by subjecting them to extreme forms of labor, by subjecting them to the horrors of child prostitution and child pornography.

Madame Chairperson, that concludes my prepared statement. I would like to thank you and the Committee again for soliciting the Department's views on these important issues and for allowing me to express them through my testimony here today. I would be pleased to answer any questions that you may have.

RESPONSES OF JOHN G. MALCOLM, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question 1. Mr. Malcolm, during the Kosovo War, some liberal human rights groups attempted to try American pilots for war crimes because of an accidental bombing of a civilian target. Would you agree that similar groups might charge the United States with violating the Child Soldiers Protocol if a 17-year-old soldiers gets caught up in a combat situation.?

Answer. The Department of Justice concurs with the response to the identical question provided by the Department of Defense. The Protocol does not contain any provision that would permit states to be "charged" with "violating" the Protocol. Nor does the Protocol authorize the trial of any person before an international criminal tribunal for a violation of the Protocol or include any mechanism for cooperation in prosecution before international tribunals.

Question 2. Mr. Malcolm, in his testimony Mr. Billingslea emphasized the importance of the word "feasible" when stating the responsibility of commanders to take "all feasible measures" to keep 17-year-old soldiers out of combat. I am aware that some proponents of the Protocol have a different understanding of what is "feasible." If the United States defines "feasible" differently than others, will the United States be subject to charges that it violated the Protocol or will an American military commander be open to second-guessing after the fact.

Answer. The Department of Justice concurs with the response to a similar question posed to the Department of Defense concerning use of the term "feasible." The Protocol does not contain any provision that would permit states to be "charged" with "violating" the protocol. Nor does the Protocol authorize the trial of any person before an international criminal tribunal for a violation of the Protocol or include any mechanism for cooperation in prosecution before international tribunals.

Question 3. In Article 7 of the Protocol, it states that "States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary to the Protocol and in the rehabilitation and social reintegration of persons who are victims of acts contrary to this Protocol, including through technical cooperation and financial assistance." Furthermore, part two of this article states that "States Parties in a position to do so shall provide such assistance

through existing multilateral, bilateral or other programes. . . .'' I read this article to incur a legal obligation by the United States to provide financial and other assistance to countries that are plagued by the conscription of child soldiers. Do you agree, and if so, how much do you think this will cost the U.S. taxpayer to live up to our obligations under this agreement?

Answer. We concur with the analysis provided by the Department of State to the identical question. The Protocol does not create any financial obligation for U.S. taxpayers since it does not require a specific type or amount of assistance.

Question 4. Article 8 of this Protocol requires States Parties to provide reports to the Committee on the Rights of the Child on their implementation under this Protocol, and guarantees the Committee on the Rights of the Child the right to request additional information from States Parties. As you know, the United States does not recognize the Committee on the Rights of the Child. Yet, the rights and obligations outlined in this article seem to require U.S. recognition of not only the Committee, but also the legitimacy of it and its activities. Would you agree?

Answer. No. We concur with the response provided by the Department of State to the identical question.

Senator BOXER. Thank you very much, Mr. Malcolm.

Senator Wellstone, you are welcome to make an opening statement and then we will get to the questions.

Senator WELLSTONE. Thank you, Madam Chair. This will be brief I say to both my colleagues. And one of the reasons I appreciate the opportunity is that I have to be in and out because we are actually going to have an oversight hearing today on the trafficking bill this afternoon with Senator Brownback.

I want to thank Senator Boxer over here, the chair, for her good work. I am thanking you, Senator Boxer. I want to make sure you are attentive to my compliment.

And I actually think this is a really exciting day because the prospect that these protocols will be soon ratified by the U.S. Senate is just a huge step forward in our world, both to end the use of children as soldiers and the sexual exploitation of children.

On the Optional Protocol on the Sale of Children, again I think this fits in with the human rights legislation that fights trafficking that we are going to be focusing on this afternoon, and I would thank all of you for your work.

And on the Child Soldiers Protocol, a couple of things. Both Michael Southwick and Michael Dennis, who is sitting there, put an unbelievable effort into this, and you deserve a tremendous amount of credit for all of your fine work. It is much, much appreciated.

Really, I am just spending more of my time thanking people.

Jo Becker at Human Rights Watch, Senator Boxer and Senator Helms, when it comes to the whole question of child soldiers, has just been there for years now. In the very early days, I remember she brought by Angelina Atyam. His daughter Charlotte was abducted by the Lord's Resistance Army in Uganda. She was 14 years of age. She was impregnated by a rebel commander, and last year she gave birth. The name of the child is God Knows. She named her child God Knows. She remains in captivity. And I just think Jo Becker's passionate advocacy on behalf of mothers and also children has just been unbelievable. I think that is one of the reasons there has been such domestic and international support.

I think the only other thing that I would say is that on the Child Soldiers Protocol, there are a couple of amendments that I have introduced over the years, one of which passed, calling on the U.S. Government to take action on this human rights abuse and to sign

the Child Soldiers Protocol. I think after much struggle, we have signed the protocols. The Bush administration has signaled its support for ratification, and I am just very positive about the direction we are going in.

It is good to see you chairing this and it is good to see Senator Helms here.

Marshall, I remember many of our negotiations as well on these matters.

So, hey, I am in a good mood here today. This is a great gathering.

Thank you, everyone.

Senator BOXER. Thank you so much, Senator.

We will be hearing from Jo Becker on our next panel, along with RADM. Eugene Carroll, Jr. and RADM. Timothy Fanning, Jr. So, we have one more panel to go.

I only basically have one question for you, Mr. Billingslea. I appreciated how much effort you put into answering Senator Helms' point, does this in any way disadvantage us? I just want to make sure I understand in a nutshell what you said, and that is that essentially the protocol is in step with our current policy. There are a few concerns. You explained that, I thought, very well by giving a good example. What you said was that the protocol requires you to take all feasible steps. It does not say do the impossible or you are going to be held responsible. It says take all feasible steps, and you interpret that in the following way. And tell me if I am not saying it right.

That when there is a 17-year-old, he or she would come into the military with a signed authorization from the parents and that they would be placed in a situation that would not be a situation where there was combat. They would not be put into combat. If they are put on a ship or somewhere and there suddenly is an attack, you would say you have taken all feasible measures. You are not going to suddenly put requirements on the commander to not defend the ship or wherever this incident occurs.

So, I certainly support that approach because I think that is what we should be doing.

I have one question. I am working very hard on the anti-terrorism measures on the home front here dealing with false ID's. As we know, kids can get false ID's. I am stunned to see, Senator Helms, how easily these false ID's can be obtained. It is a stunning thing, and it is very difficult. You need special machines. Again, this falls under the take all feasible steps. But is the military very careful, when a 17-year-old comes forward, to check the ID and also to check the signatures of the parents? Are we taking those steps normally to ensure that we are not getting a 15-year-old or a 16-year-old?

Mr. BILLINGSLEA. Senator, we have a variety of requirements that are levied at the recruiting office level to make sure that the parental consent forms that are being signed are truthful and accurate. As in all things, you have to just be vigilant to make sure.

Senator BOXER. I would love to have something in the next week, what are the steps that the Department of Defense takes to ensure that the 17-year-old has a real ID and the parental consent is real.

Mr. BILLINGSLEA. May I take that for the record?

[The following answer was subsequently provided.]

The Military Entrance Processing Command (MEPCOM) has programs that check to ensure that the date of birth entered by a recruiter falls into the age window outlined by Title 10, MEPCOM regulations, and other joint regulations. Additionally, each recruiter is required to obtain an original (or certified) government document that states an individual's age. Typically, this is an original birth certificate. If the individual is 17 years old, the recruiter is required to witness both parents' signatures. If a parent is divorced, then only one signature is required provided the custodial parent can produce the original (raised seal) divorce decree.

Senator BOXER. I am interested for many reasons because I am attacking this issue in a lot of other ways. So, I would be very interested to see what you are doing. It might be a way to even beef that up because the new high tech equipment they have for just swiping a license is remarkable, and it instantaneously tells you if it is real or not. I do not believe this is a big problem for our military, but as I say, it is just of interest.

So, does what I said fit with what you said, that you take all feasible steps, but you are not going to tie the hands of someone who has been attacked?

Mr. BILLINGSLEA. I think that is right. You used the words not going to put them in combat. We even have a bit of a narrower look-in onto that term. The actual phraseology we are using and what the treaty uses is a "direct part in hostilities."

Senator BOXER. Direct part in hostilities.

Mr. BILLINGSLEA. As the understanding that we have supplied in the transmittal package from 2000 makes clear, we interpret that to mean literally that we cannot have 17-year-olds taking an action where there is a direct causal link between the action they take and harm to the enemy. So, it is very much a battlefield construct. We do not interpret it as prohibiting deployment into theater where combat operations may be occurring, as long as the 17-year-old is not on the battlefield taking this kind of action.

Senator BOXER. In other words, in a backup type of situation or administrative support.

Mr. BILLINGSLEA. We can even assign them to combat units, as long as we are not throwing the 17-year-old directly onto the battlefield where they as the shooter are engaging in hostilities.

Senator BOXER. So, they do go into a theater where there is combat, but they do not go into a battlefield.

Mr. BILLINGSLEA. That is what the assignment and deployment process needs to be vigilant about. Now, "feasible" is a very elastic term that we want to resist trying to pin down because we cannot have a one-size-fits-all kind of situation.

Senator BOXER. But that is what we do today. This is our policy today. We do not put a 17-year-old into a situation where he or she is taking part in direct hostilities.

Mr. BILLINGSLEA. The way I am trying to frame it up and the position we are taking on interpreting this is designed to ensure that we do not really change, in any way that harms our readiness posture, current practice. We are going to have to make some changes because this is a new treaty requirement, but the way we want to make the changes, to cause little or no impact on readiness, is at a level above the field commander. That field commander needs to be under the presumption, when he has got a 17-

year-old that is given to him, that the higher-ups have thought this through and they understand and they have factored the protocol's legal requirements. So, we are going to make sure it is done not at a field commander level but higher up the chain.

Senator BOXER. And my last point is that you are working with Senators Helms and Biden, it is my understanding, so that when we do bring this to the floor, which I am hopeful will be soon, all these questions will be resolved in the language that goes along with our ratification. Is that your understanding?

Mr. BILLINGSLEA. What I would say is that we think that the understandings and declarations that have already been supplied in the transmittal package, where President Clinton asked the Senate to give advice and consent on the basis of these understandings and to include the understandings and declarations in the resolution of ratification, ought to do it. What I have supplied you with in addition is how we interpret what is behind those words that we have given you in the transmittal package.

Senator BOXER. I understand. So, if a Senator wanted to have those as part of our record, we could do that. We could put that further explanation into the record.

Mr. BILLINGSLEA. That is why I am here, is to give you the interpretation behind the wording. I need to be clear. I am not here asking for any additional understandings.

Senator BOXER. I appreciate that greatly because that really helps us. I am just talking about some colloquies. I know that Senator Helms has some concerns. He is going to talk in a minute. I believe you have certainly addressed those. So, just because I am so interested in getting this done, it may be a colloquy that might be placed into the Congressional Record, not changing in any way the understandings, the official agreements, but just some colloquies of understanding that I hope you will be willing to help us with if we need to do that.

Mr. BILLINGSLEA. We are absolutely ready to work with you in any way.

Senator BOXER. I feel very comfortable with what you said, and I want to applaud again the administration for really bringing this over the finish line. Well, it is not quite there, but bringing it very close to the finish line.

Senator Helms, do you have any questions?

Senator HELMS. Yes, ma'am. One.

Mr. Ambassador, are not most of these—what do you call them—children soldiers enlisted, so to speak, by private groups? Is that not correct in most of these countries?

Ambassador SOUTHWICK. Yes.

Senator HELMS. Well, I would be interested in your opinion. How will this protocol help that situation where the government is not involved?

Ambassador SOUTHWICK. Well, thank you, Senator Helms. I think that question really strikes at the heart of what this whole protocol is about because this protocol to a very large extent is not about what the United States does or what Great Britain does.

Senator HELMS. Right.

Ambassador SOUTHWICK. It is what happens in the Sierra Leones of the world, the Angolas of the world, the Ugandas of the world.

And in those situations, you have what are called non-state actors who recruit children, and that is what has been a big phenomenon over the last 10 years, especially in Africa. This treaty criminalizes the recruitment of children under 18 for that purpose, and therefore there is some accountability for this.

I think the main thing that this treaty does is it creates a standard, which is readily understandable, that 18 is the breakpoint for these non-state actors. I am not talking about the United States. I am talking about these armed groups that you see in developing countries sometimes. And with a clear standard, replacing what has been kind of murky out there, it is easy for civil society, governments, the media, NGO's working in the field to put the spotlight on what those practices are. As I said in my statement, how effective this is going to be really depends on what people do with it once it comes into force.

Senator HELMS. You are exactly right. We would hope that all the countries would have this same kind of First Lady that Uganda has. You know what she has done in the case of AIDS. She has cut it, Marshall, in half with a private effort by herself. She was here a week or 10 days ago, and I had lunch with her. It is amazing what one person dedicated can do in a country like that.

In the interest of time, I am going to file some written questions. But I thank all three of you, for coming, and I would like to sit down and talk with you sometime, for example.

Mr. MALCOLM. I would be delighted, Senator.

Senator BOXER. Thank you, Senator.

I am going to also take the rest of my questions and put them in the record and hope you will get back to me.

I will ask unanimous consent to place into the record a document from the Department of Defense that outlines the active duty 17-year-olds that are in a theater, but not engaged in hostilities. I believe, Mr. Billingslea, these came from you.

Mr. BILLINGSLEA. Yes, ma'am. We got those to your staff the other night.

Senator BOXER. It is very helpful. It shows, just for people to know, a total of 20 17-year-olds in active duty not engaged in hostilities. In the Republic of Korea, there are four. In the Balkans/Kuwait, 9, and Enduring Freedom on ships, there are 7, for a total of 20. So, I place that in the record.[1]

We really want to thank you all. I must say that I feel, as Senator Wellstone does, that this is an exciting day. I think from listening to my friend, Senator Helms, it looks like we are on our way to moving forward. So, thank you for all your work.

Senator HELMS. Madam Chairman.

Senator BOXER. Yes, please.

Senator HELMS. Before we leave this, I feel a little bit on the spot because I went to the recruiting office on the afternoon of Pearl Harbor, December 7, 1941.

Senator BOXER. And how old were you?

Senator HELMS. I was examined and I passed the examination with one exception, my hearing. I finally, thanks to a chief petty officer, got a waiver, but I could not go to sea. But we were taking

[1] See Mr. Billingslea's prepared statement on page 33.

16-year-olds in the United States Navy, and a lot of them went into combat. So, we may be talking about ourselves to some extent.

All right. Thank you.

Senator BOXER. Thank you so much.

I say to the first panel, you may stay if you like to hear the next panel.

I want to now welcome the second panel: Ms. Jo Becker, Children's Rights Advocacy Director, Human Rights Watch; RADM. Eugene J. Carroll, Jr., USN, (Ret.), Vice President Emeritus, Center for Defense Information; and RADM. Timothy O. Fanning, Jr., USNR, (Ret.), National President of the Navy League of the United States. We are very honored to have the three of you here.

Again, I want to say to our first panel, thank you very much. If you could leave quietly so we could get going because we are facing a vote.

We are going to start with our second panel. We know that Senator Wellstone has pointed out your advocacy, Ms. Becker, over the years. You are the Advocacy Director for the Children's Rights Division at Human Rights Watch, and you serve on the Steering Committee of the U.S. Campaign to Stop the Use of Child Soldiers. From 1998 until 2001, you were the chair of the Steering Committee for the International Coalition to Stop the Use of Child Soldiers.

Admiral Gene Carroll serves as Vice President Emeritus of the nonpartisan Center for Defense Information in Washington. Admiral Carroll served in the Navy for over 30 years, rising to the rank of Rear Admiral.

And Admiral Timothy O. Fanning, Jr., is the National President of the Navy League. The Navy League of the United States was founded in 1902. It is a civilian organization dedicated to supporting our naval and maritime forces.

Jo Becker, I want to thank you for being here. I want you to know that years ago this issue was brought to my attention by a very young woman in California, and like so many of us—there are so many issues—we did not have any idea as to the extent of the use of child soldiers around the world. So, you have made a tremendous contribution. We welcome you.

STATEMENT OF MS. JO BECKER, CHILDREN'S RIGHTS ADVOCACY DIRECTOR, HUMAN RIGHTS WATCH, NEW YORK, NY

Ms. BECKER. Thank you very much, Madam Chair. It is a real privilege to be here this morning to address U.S. ratification of the two protocols to the Convention on the Rights of the Child.

I was also very gratified to hear the support by the representatives of the administration this morning for both protocols and from both yourself and Senator Wellstone and Senator Helms.

I would also like to just express my appreciation for your kind words and those of Senator Wellstone.

I would like to speak briefly this morning to the sexual exploitation and sale of children and then devote the bulk of my remarks to the issue of child soldiers.

Every year millions of children enter the commercial sex trade or are trafficked into slave-like practices. The State Department estimates that every year 50,000 to 100,000 women and children are

trafficked just into the United States. About half are trafficked into bonded sweatshop labor or domestic servitude and the rest into the sex industry. The most vulnerable to these practices include children who are poor, who are abandoned, orphaned, or displaced from their homes. Most of these children are girls who are often promised good jobs, only to find themselves working in brothels or sweatshops. They often have no control over the nature of their place or work. They have been deceived about what money they may receive and are subject to slave-like conditions and serious physical abuse. They are often held in debt bondage, raped, and subjected to torture, beatings, and exposure to HIV.

Human Rights Watch has investigated the trafficking of women and girls from Nepal to India, from Bangladesh to Pakistan, from Burma to Thailand, and from Thailand to Japan. In Nepal, we found that it was common for girls to be lured from remote hill villages and from poor communities by recruiters who promised them jobs or marriage. Sometimes they were sold for as little as $4 to brokers who would then, in turn, sell them to brothels in India for $500 or $1,000, and this then became an amount of money the girl was forced to work off. Many of these girls ended up in Bombay where an estimated 20,000 brothel workers are under the age of 18 and half of these are thought to be infected with HIV.

Children do not need to be trafficked to be exploited within the sex industry. Poor children living on the streets may enter the sex trade to earn more money than they can from other forms of street labor, to finance a drug habit, or simply to be able to eat. Pimps prey on these children and exploit their vulnerability for financial gain.

The recruitment of children as soldiers is another abhorrent abuse against children. As we have heard, there are currently 300,000 children fighting in more than 30 conflicts around the world. While this problem may seem very distant to some, on January 4 of this year, it hit very close to home when U.S. Army Sergeant Nathan Ross Chapman became the first U.S. military casualty killed in Afghanistan from hostile fire, after reportedly being shot by a 14-year-old boy.

Madam Chair, you noted the use of child soldiers in Afghanistan and we have seen youngsters as young as 12 recruited by the Northern Alliance, and the Taliban has actively recruited children from madrassas, or religious schools, in Pakistan.

And in other parts of the world, the ranks of child soldiers include children as young as 8 recruited into the paramilitaries in Colombia, teenaged boys taken by force from their villages in Burma to serve in the national army, and young girls who are kidnaped by the Lord's Resistance Army, like Charlotte, the young girl that Senator Wellstone described.

I would like to note, in response to Senator Helms' question about who is responsible for the use of these children, that it is true that the most notorious cases that we see in the media and on the news are those of the Revolutionary United Front recruiting children in Sierra Leone or the Lord's Resistance Army or the infamous twins from one of the ethnic groups in Thailand. But in fact, a significant number of child soldiers recruited around the world are recruited by government armed forces. In fact, our belief is that

the Government of Burma is itself the single largest user of child soldiers in the world and probably has upwards of 50,000 children in its own army. We have also seen children recruited by the Government of Ethiopia in its war against Eritrea, and Human Rights Watch has recently documented the complicity of the Governments of Uganda and Rwanda in recruiting children that fight in conflict in the DRC.

Ishmael Beth is a former child soldier from Sierra Leone who had hoped to be here to testify this morning. He was recruited when he was 13 years old. And I would like to just share one recollection from him. He said, "I vividly remember the very first day that I was in combat. I was recruited with the kids that were 8 years old, 9 years old. They were so small some of them couldn't even carry the AK–47's they were given so they had to drag it. I was in an ambush and bullets were flying back and forth, people were shooting. I didn't want to pull the trigger at all but when you watch kids being shot and killed and dying and crying and their blood spilling all over your face you just move beyond, something just pushed you and you start to pull the trigger."

Ishmael was one of the lucky ones. After 3 years in the war, he was placed into a rehabilitation program where he received counseling and was assisted to go back to school. He is currently studying at a college in Ohio. But for many other children, the future is desperately bleak. They have been robbed of their childhood, of their education. They have witnessed and participated in horrific violence, and it is hard to imagine how they may ever become productive members of civilian society.

As international attention to these horrific abuses against children has grown, so has international action. We have heard about the ILO Convention 182 which defined the forced recruitment of children for use in armed conflict as one of the worst forms of child labor. There have been other actions taken by the Security Council and by regional organizations, but of most significance is the adoption of the Optional Protocol on Children in Armed Conflict.

There are many reasons why the United States should ratify this protocol, and I want to conclude by just focusing on five.

First of all, the protocol has already made a difference. It is true that international treaties are not always respected, but already we have seen results from the protocol and the increased attention to this issue. Even before the negotiations on the protocol were complete, some countries began to change their practices. Colombia which, as recently as 3 years ago, had more than 15,000 children in its national armed forces, began to demobilize and currently has no children under the age of 18. In June of 2000, President Kabila of the Democratic Republic of Congo issued a decree calling for the demobilization of children from his army and is now cooperating with UNICEF to make that happen. And other countries such as Portugal, South Africa, and Italy have adopted legislation to raise the age of recruitment into their armed forces.

Second, we have also seen that the protocol can, in fact, influence non-governmental forces. In the last 2 years, we have seen large scale demobilization of children, even from some rebel groups. Last February, over 2,500 children between the ages of 13 and 18 were demobilized from the Sudan People's Liberation Army in southern

Sudan. From May to November of last year, over 1,500 children were demobilized from the Revolutionary United Front in Sierra Leone. In these and in other cases, we have seen that non-state forces can be persuaded that complying with international standards can enhance their own credibility.

My third point is that the protocol has the support of the American public. In 1999, there was an opinion poll that asked Americans at what age is a person mature enough to be a combatant, and 93 percent of Americans responded that combatants should be at least 18. There is a broad range of non-governmental organizations in this country that strongly support the protocol, including the American Bar Association, the American Academy of Pediatrics, Children's Defense Fund, National Council of Churches, and the Vietnam Veterans of America Foundation.

Fourth, I want to point out that U.S. support for the Child Soldiers Protocol can also protect U.S. soldiers. Army Sergeant Chapman, who I referred to before, was not the first U.S. soldier to encounter a child soldier in a combat situation. Many U.S. soldiers faced armed children during the Vietnam War and had to make the choice, Madam Chair, that you referred to about whether or not to defend themselves or possibly take the life of a child. Children are often used as soldiers because they are more easily able to approach enemy forces without suspicion and are often more willing to undertake dangerous missions than their adult counterparts. And as a result, U.S. soldiers may be at increased risk in conflicts where children are being used.

And then finally, the need for U.S. leadership. The importance of U.S. leadership on this issue cannot be underestimated. By ratifying the optional protocol, the United States will be in a very strong position to use its considerable political and military influence to discourage the use of children as soldiers by other governments and armed groups. In addition, ratification will complement the substantial humanitarian assistance that the United States devotes to assist children affected by war.

The use of children as soldiers and the sale or sexual exploitation of children offends every American's sense of decency. By ratifying these optional protocols, the United States can provide critical support to global efforts to protect children from devastating exploitation.

Thank you very much for the opportunity to share this testimony with you.

[The prepared statement of Ms. Becker follows:]

PREPARED STATEMENT OF JO BECKER, ADVOCACY DIRECTOR, CHILDREN'S RIGHTS DIVISION, HUMAN RIGHTS WATCH

Madam Chair and members of the Committee:

Good morning. My name is Jo Becker, and I am the advocacy director for the Children's Rights Division of Human Rights Watch. I also serve on the steering Committee of the U.S. Campaign to Stop the Use of Child Soldiers, and from 1998 until 2001, was the chair of the steering Committee for the international Coalition to Stop the Use of Child Soldiers.

It's a privilege to speak on behalf of United States ratification of the Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. I'd like to speak briefly to the sexual exploitation and sale of children, and then devote the bulk of my remarks to the issue of child soldiers.

Every year, millions of children enter the commercial sex trade or are trafficked into slave-like labor practices. The State Department estimates that every year, 50,000-100,000 women and children are trafficked just into the United States. About half are trafficked into bonded sweatshop labor or domestic servitude, and another half are trafficked into the sex industry. The most vulnerable to these practices include children who are poor, abandoned, orphaned or displaced from their homes. Mostly girls, these children are often promised good jobs, only to find themselves working in brothels or sweatshops. They often have no control over the nature or place of work, have been deceived about what money they may receive, and are subject to slave-like conditions and serious physical abuse. They are often held in debt bondage, raped, and subjected to torture, beatings and exposure to AIDS.

Human Rights Watch has investigated the trafficking of women and girls from Nepal to India, from Bangladesh to Pakistan, from Burma to Thailand, and from Thailand to Japan. In Nepal, we found that girls are frequently lured from remote hill villages and poor communities by recruiters, relatives or neighbors who promise jobs or marriage. Sometimes they are sold for as little as $4 to brokers, who then sell them to brothels in India for $500 or $1000, an amount the girl is then forced to work off. Many of these girls end up in Bombay, where an estimated 20,000 brothel workers are thought to be under the age of 18. Half of these are thought to be infected with HIV.

Children do not need to be trafficked to be exploited within the sex industry. Poor children living on the streets may enter the sex trade to try to earn more money than they can from other forms of street labor, to finance a drug habit, or simply to be able to eat. Pimps prey on these children, and exploit their vulnerability for financial gain.

The Optional Protocol builds on other standards by obliging governments to take tangible steps to ensure that adults involved in the exploitation of children are punished, to prevent the sale of children, child prostitution and pornography, to protect particularly vulnerable groups and to protect the rights of child victims. To date, 92 governments have signed, and 18 have ratified the protocol.

The recruitment and use of children as soldiers is another abhorrent abuse against children. Approximately 300,000 children have been recruited to fight in armed conflicts in over 30 countries around the globe. While this problem may seem very distant to some, on January 4th, it hit very close to home when U.S. Army Sgt. Nathan Ross Chapman became the first U.S. military casualty in Afghanistan from hostile fire after reportedly being shot by a 14-year-old boy.

In Afghanistan, two generations of children have been subject to recruitment, first into the resistance to Soviet forces, and then into various warring factions. As part of the most recent conflict, the Northern Alliance recruited children as young as age eleven, and the Taliban commonly recruited children from *madrassas* (religious schools) in Pakistan.

Around the world, the ranks of child soldiers include children as young as eight recruited into paramilitaries in Colombia, teenaged boys forcibly taken from their villages in Burma to serve in the national army, and young girls who are kidnapped by the Lord's Resistance Army in Northern Uganda for use as soldiers and sex slaves.

Some child soldiers are recruited by force and compelled to follow orders under threat of death. Others, their lives devastated by poverty or war, join armed groups out of desperation. As society breaks down during conflict, children are left with no access to school, often driven from their homes or separated from their families. Many perceive armed groups as their best chance for survival.

Child soldiers often start out as porters, cooks or messengers, but frequently end up on the front line of combat. Considered "dispensable," they may be pushed into the most hazardous roles—going into mineflelds ahead of older troops, or being used for suicide missions. Some are forced to commit atrocities against their family or neighbors, in order to sever the child's ties with their community and ensure that they are not able to return home.

Ishmael Beth is a former child soldier from Sierra Leone that hoped to testify here today. He was recruited when he was 13 years old. He says, "I vividly remember the very first day that I was in combat . . . I was recruited with the kids that were eight years old, nine years old. They were so small some of them couldn't even carry the AK-47's that were given to us so they had to drag it. I was in an ambush and bullets were flying back and forth, people were shooting. I didn't want to pull the trigger at all but when you watch kids . . . being shot and killed and . . . dying and crying and their blood was spilling all over your face you just moved beyond, something just pushed you and you start pulling the trigger."

Ishmael was one of the lucky ones. After three years in the war, he was placed into a rehabilitation program where he received counseling and was assisted to go

back to school. He's now studying at a college in Ohio. But for many other children, the future is desperately bleak. Denied their childhood and education, and having witnessed and participated in horrific violence, it's hard to imagine how these children can ever become productive members of civilian society.

Human Rights Watch has directly documented the use of child soldiers in Angola, Burundi, Colombia, the Democratic Republic of Congo, Liberia, Rwanda, Sierra Leone, Sudan, and Uganda. These are brief snapshots of some of our findings:

In the Democratic Republic of Congo, thousands of children have been recruited into the war, often abducted from schools, roadsides, markets and their homes. Rwandan-backed rebel forces have forced unarmed children into battle as decoys. These children were ordered to make noise and beat on trees with sticks in order to draw government fire away from the more experienced, armed troops. The reported result was that they were "killed like flies."

In Uganda, the Lord's Resistance Army has abducted more than 10,000 children from Northern Uganda over the last decade. Children are forced to fight, and often compelled to help beat or hack to death fellow child captives that have attempted to escape. Girls are given as "wives" to rebel commanders.

In Colombia, up to 10,000 members of guerrilla forces and army-backed paramilitaries are under age eighteen. The guerrilla use children to collect intelligence, make and deploy mines, and serve as advance troops in ambush attacks, while paramilitaries force families to provide children for service or risk being killed as suspected guerrilla sympathizers.

In Burundi, hundreds of children as young as seven have been recruited into government-linked paramilitaries. They are subjected to harsh conditions and some have died as a result of beatings by older soldiers. Many others died in combat after being sent into battle ahead of regular troops.

In Sierra Leone, thousands of children abducted by rebel forces witnessed and participated in horrible atrocities, including beheadings, amputations, rape and burning people alive. Children forced to take part in atrocities were often given drugs to overcome their fear or reluctance to fight.

As international attention to these horrific abuses against children has grown, so has international action. In 1999, the International Labor Organization recognized the forced recruitment of children as soldiers for use in armed conflict as one of the worst forms of child labor. Over the last three years, the use of child soldiers has become a regular part of the UN Security Council's agenda. And increasingly, regional and other bodies have adopted resolutions on child soldiers, including the Organization of American States, Organization of African Unity, the European Parliament, and the Organization for Security and Cooperation in Europe.

Most significant of these milestones is the adoption of the Optional Protocol on children and armed conflict. It is the first international treaty prohibiting the forced recruitment or participation of children under the age of eighteen in armed conflict. It represents a new global consensus that children should not be used as instruments of war. Since its adoption by the UN, it has been signed by 99 governments, and ratified by 16. Human Rights Watch was pleased that the United States was one of the first countries to sign the treaty, on July 5, 2000, and believes that ratification should take place as soon as possible.

Under the protocol, governments must take all feasible measures to ensure that members of their armed forces that are under the age of eighteen do not take a direct part in hostilities, and are prohibited from conscripting or compulsorily recruiting any persons under the age of eighteen. Rebel or other non-governmental armed groups are prohibited from recruiting under-18s or using them in hostilities. Governments are required to criminalize such practices and take other measures to prevent the recruitment and use of children by such groups. Governments are also required to raise their minimum age for voluntary recruitment beyond the current minimum of fifteen, and must deposit a binding declaration stating the minimum age they will respect. (In practice, this means the minimum age for voluntary recruitment must be at least sixteen.) Those governments accepting volunteers under the age of eighteen must maintain a series of safeguards, including parental consent, and proof of age. Parties also must offer assistance for the rehabilitation and reintegration of former child soldiers.

There are many reasons why the United States should ratify the protocol. I'll focus on six:

(1) *The protocol has already made a difference.* International treaties aren't always respected. But we've already seen results from the protocol and increased international attention to child recruitment. Even before the protocol was finalized, some countries began to change their practices. In Colombia, thousands of children were demobilized from the Colombian armed forces. In

June of 2000, President Kabila of the Democratic Republic of Congo issued a decree calling for the demobilization of child soldiers from the Congolese army, and is cooperating with UNICEF to put rehabilitation programs into place. Other countries, such as Portugal, South Africa and Italy, have adopted legislation to raise the age of recruitment into their armed forces.

(2) *The protocol can influence non-governmental forces.* In the last two years, we've seen large-scale demobilizations of children even from rebel forces, Last February, over 2500 children between the age of thirteen and eighteen were demobilized from the Sudan People's Liberation Army. From May to November over 1500 children were demobilized from the Revolutionary United Front in Sierra Leone. In these and other cases, non-state forces can be persuaded to comply with international standards to enhance their own credibility.

(3) *The protocol has the support of the American public.* A 1999 public opinion poll conducted for the Red Cross asked Americans "At what age is a person mature enough to be a combatant?" 93% of the U.S. public responded that combatants should be at least 18. A broad range of non-governmental organizations also support the protocol, including the American Bar Association, American Academy of Pediatrics, Children's Defense Fund, National Council of Churches, Save the Children and Vietnam Veterans of America Foundation.

(4) *U.S. support for an international ban on the use of child soldiers can help protect U.S. soldiers.* Army Sgt. Chapman was not the first U.S. soldier to encounter a child soldier in a combat situation. Many U.S. soldiers faced armed children during the Vietnam war and had to make a choice whether to defend themselves or possibly take the life of a child. Children are often used as soldiers because they may be more easily able to approach enemy forces without suspicion and are more willing to undertake dangerous missions than their adult counterparts. As a result, U.S. soldiers may be at increased risk in conflicts where children are used.

(5) *U.S. recruitment and operations will not be significantly affected.* Under the protocol, the United States must take all feasible measures to ensure that members of its armed forces that are below age 18 do not participate directly in hostilities. Because of the small number of 17-year-olds on active duty, this provision affects an extremely small number of U.S. troops. The Defense Department reported to Human Rights Watch that of those enlisted troops who have completed both their basic and technical training and been assigned to units, 99.76% are age eighteen or older. Those that remain can be reassigned for the short period of time before they turn eighteen.

(6) *The need for U.S. leadership.* The importance of U.S. leadership by example on this issue should not be underestimated. By ratifying the Optional Protocol, the U.S. will be in a strong position to use its considerable political and military influence to discourage the use of children as soldiers by other governments and armed groups. Ratification will also complement the substantial humanitarian assistance the United States devotes to assist children affected by war.

Human Rights Watch takes the position that no child should be recruited—whether forcibly or voluntarily—before the age of eighteen. We believe this is the best way to ensure that children are not exposed to combat or the risk of attack. However, the protocol sets a lower standard, in part because significant compromises were made during the negotiation of the protocol to accommodate the United States and other countries that accept voluntary recruits before the age of eighteen. An additional concession was made solely for the United States to enable it to ratify the optional protocols as stand-alone agreements without having ratified the Convention on the Rights of the Child. In light of these concessions, we strongly urge this Committee to recommend the protocol to the full Senate with no reservations.

The use of children as soldiers and the sale or sexual exploitation of children offends every American's sense of decency. By ratifying these Optional Protocols, the United States can provide critical support to global efforts to protect children from devastating exploitation.

Thank you for the opportunity to share this testimony with you today.

RESPONSES OF MS. JO BECKER TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question. How will United States participation in this agreement halt the conscription of "child soldiers" when this horrible practice is occurring in places such as Africa and Asia and by mostly non-state groups and militias?

Answer. Because of the United States' international position of leadership, its ratification of the protocol will lend considerable weight to the new international standard that has been established. Once it ratifies the protocol, the U.S. will also be able to bring its significant diplomatic and military influence to bear on other governments and armed groups around the world, in order to influence theft recruiting and deployment practices.

Although the popular conception is that the use of child soldiers is primarily a problem of non-state groups, large numbers of child soldiers are also used by national governments. For example, the government of Burma utilizes more children in its national armed forces than any other country in the world. However, even non-state armed forces can be influenced by international law. I have personally spoken with representatives of opposition armies that have expressed interest in voluntary compliance with the optional protocol as a way of enhancing their international credibility.

Question. What is your view of the "understandings" that the Defense Department wants placed in the resolution of ratification? Do these make sense, or will they be criticized by you and other Protocol proponents?

Answer. Regarding the understandings related to the Convention on the Rights of the Child stating that the U.S. assumes no obligation to the CRC by becoming party to the Protocol: Human Rights Watch supports U.S. ratification of the Convention, and urges the U.S. to ratify the Convention in the future. However, given the current circumstances, the understandings are reasonable.

Regarding the understanding with respect to Article 1: In interpreting Article 1, it is important to recall the principal purpose of the Optional Protocol, which is to minimize the harm suffered by children (individuals under 18) involved in armed conflict. Understandings can have the effect of enhancing or restricting legal instruments in their application. We would hope that particularly when dealing with the protection of children, the United States will adopt understandings to enhance the protection of children. We would be concerned regarding any understanding that would have the effect of restricting these protections.

It is also important to remember that the protocol was negotiated over a long period, during which the United States was actively involved and had ample opportunity to put forward its views. Indeed, in several key respects, compromises were made to restrict the scope of the protocol due to concerns of the United States. In this light, further restrictions should not be necessary.

I have two specific points related to the understanding on Article 1: First, the protocol calls on states to take "all feasible measures" to ensure that members of the armed forces who have not attained the age of 18 years do not take a direct part in hostilities. "All feasible measures" implies that in some circumstances, exceptions can be made and a degree of discretion is given to the state party. However, given the object and purpose of this protocol, we would expect the United States to apply exceptions with the utmost restraint. Applying the interpretation of measures that "are practical or practically possible" may be too ambiguous and does not seem to be helpful or necessary.

Second, "direct part in hostilities" implies a sufficient causal relationship between the act of participation and its immediate consequences. However, "gathering and transmitting military information" or "transporting weapons, munitions and other supplies" may meet this criterion if these activities are directly related to the conduct of hostilities, and/or occur on the battlefield. There is a direct link between a member of the armed forces who transports ammunition to the front line or who pinpoints targets for attack and the harm caused to enemy forces.

Finally, I'd like to point out that given the extremely small number of 17-year-olds on active duty in the U.S. armed forces and deployed abroad, the U.S. should be able to apply rigorous measures to preclude their participation in hostilities.

Question. What is your understanding of U.S. military recruiting and deployment policies? Are they consistent with the letter and spirit of the Protocol?

Answer. I understand current law and policy to allow the voluntary enlistment of individuals into the armed forces beginning at age seventeen. Those enlisting before the age of eighteen are required to have the written permission of their parents or guardians. In the event of a draft, U.S. law allows the conscription of individuals beginning at age eighteen. These provisions are both consistent with the letter and spirit of the protocol.

I understand current U.S. deployment policies to allow the assignment of troops to units, including combat units, on the completion of their training. These units may then be deployed to a theater of combat. In the past, 17-year-old U.S. troops have been among those service members who have participated in operations in Bosnia, Somalia and the Gulf War. Although I do not have the details regarding

the specifics of these 17-year-olds' assignments, this past practice raises questions with respect to the protocol. Under the protocol, the U.S. will be required to take all feasible measures to ensure that members of the armed forces who have not achieved the age of 18 years do not take a direct part in hostilities.

Question. Does the United States incur a financial obligation upon ratification of this Protocol, as well as give legal recognition to the Convention on the Rights of the Child?

Answer. I do not believe that the United States will incur any financial obligations from ratifying the protocol, and it will not have any legal obligations under the Convention on the Rights of the Child.

Question. A United Nations report on Child Soldiers, the preparation of which was assisted by Amnesty International, makes the following allegations against the United States:

(1) Recruiters with the Deployed Entry Program (DEP) often harass, intimidate and threaten young people to enlist and/or keep their DEP commitment. They cite a 1999 investigation by an Atlanta TV station for this evidence. (According to DOD statistics, in 1998 between 11 and 19 percent of DEP enlistees ask to be released.)

(2) Girls are vulnerable to sexual harassment by recruiters. In 1999, a Washington state school district banned recruitment in schools after allegations of sexual harassment by recruiters.

(3) The report is extremely critical of military training programs and schools. They cite the Young Marines program (with participations as young as 8 years old) and JROTC. JROTC, although not an official recruiting tool, is accused by this report of engaging in this activity as well as promoting violence in schools. Furthermore, JROTC is criticized for its disproportionate number of minority participants and programs in poor schools.

Why should the United States sign up to a protocol whose chief sponsors and proponents make these misleading charges about our country, and attempt to make a comparison or link between the recruiting policies of countries such as the U.S., Canada and Britain, and the forced conscription of 8- and 10-year-olds in Africa and East Asia?

Answer. The report referenced is the Child Soldiers Global Report, published by the Coalition to Stop the Use of Child Soldiers in June 2001. It surveyed the recruitment laws and practices of 180 countries around the world. By including the United States and other Western countries in this global survey, I do not believe that the Coalition intended to compare U.S. practices to the forced conscription of 8- and 10-year-olds.

The Coalition report did not only survey the practices governed by the protocol, but also sought to provide information on the context for military recruitment, including military schools and other programs such as JROTC. Members of the Coalition believe the information provided about such programs in the United States is accurate. The information about recruiter harassment, including sexual harassment, was also based on credible sources and should be of concern to all parties, regardless of their position regarding the protocol.

Question. The authors of this Protocol, as well as the United Nations, understand the Protocol to read that 17-year-old soldiers functioning in a support role in a combat zone, such as driving a truck transporting supplies to the front, are "participating in hostilities." I am aware that the Pentagon has a different interpretation of this Article of the Protocol, but if the rest of the world reads it this way, then it is quite possible that the U.S. will be charged with violating the Protocol, and that U.S. commanders will be held responsible. Would you agree?

Answer. Support roles such as cooking at an army camp, or carrying out certain administrative duties would not be considered direct participation in hostilities. However, as stated above, a soldier delivering ammunition to the front lines could be considered to be a direct participant in hostilities, if there was a sufficient causal relationship between the act of participation and its immediate consequences. For example, if a 17-year-old is ordered to deliver munitions to a unit that has exhausted its supplies and is dependent on additional weaponry or ammunition in order to continue carrying out hostilities, a direct causal relationship could be argued. However, much more would need to be known about the specifics of a particular case before being able to say whether or not the protocol was being violated.

Question. The UN and proponents of this Protocol, such as Amnesty International, contend that any 17-year-old soldier deployed to a combat zone, regardless of whether he or she is in a combat unit, or in the front or rear, would constitute a violation of the Protocol. They argue that the Geneva Convention and its additional protocols define combatants, under international law, as members of a nation's armed forces.

And as such, they can lawfully kill or be killed. Therefore, putting a minor in a situation in which they can be lawfully killed—even if they are not in a situation where they will likely to be engaged in combat—would constitute a violation of the Protocol. What are your thoughts on this matter?

Answer. There are two important issues here: First, the definition of a combatant, and secondly, the requirements of the protocol. Regarding the first issue, in principle, during armed conflict, any member of the armed forces is a legitimate target of attack. Since the protocol allows 17-year-olds to serve in the armed forces, they are therefore vulnerable to attack, even if they are simply in their barracks. Therefore, there may be situations in which a minor being killed as a result of an enemy attack does not automatically constitute a violation of the protocol.

However, as stated earlier, the spirit and purpose of the protocol is to increase the protection of children from involvement in armed conflict. To be consistent with the spirit of the protocol, measures should be taken to avoid placing under-age soldiers in combat areas where they may face increased risks of attack, and as discussed previously, they should not be directly involved in hostilities.

Question. Based on the views of some human rights groups have written, a 17-year-old in uniform constitutes a legitimate target (a combatant). And because under the Geneva Convention combatants can be legally killed, the U.S. would be in violation of the Protocol for placing a 17-year-old in such a situation. Should, therefore, there be an understanding that the U.S. is not in violation of the Protocol if 17-year-olds are physically in a theater of operations or war zone and killed or banned by the enemy not as a result of "direct combat"?

Answer. See previous answer. An understanding of this type is not necessary.

Senator BOXER. Thank you so much.

And now we will hear from RADM. Eugene Carroll, who served in the Navy for over 30 years, rising to the rank of Rear Admiral. We are very happy you are with us, Admiral Carroll.

STATEMENT OF RADM. EUGENE J. CARROLL, JR., USN (RET.), VICE PRESIDENT EMERITUS, CENTER FOR DEFENSE INFORMATION, WASHINGTON, DC

Mr. CARROLL. Thank you, Madam Chairman. It is an honor to be here to address the Committee today on this very sensitive issue of child soldiers.

Because you have already heard excellent comments about the legal, moral, and political implications of the Child Soldier Protocol, I would like to confine my brief remarks to a very single pragmatic issue. Will implementation of the Child Soldiers Protocol in any way degrade the combat readiness and military effectiveness of the United States armed services?

I claim some special insight into this problem because for 2½ years I directed the Navy's military manpower requirements programs and personnel plans and policies immediately after President Nixon had ended the draft. I can assure you at that time the services were all in desperate straits trying to maintain military readiness and effectiveness. Considering that now we have about 1,400,000—then we were trying to maintain a much bigger force—and the fact that there are retention and recruitment bonuses abounding, personnel management, procurement, and assignment is easier now for the services. We have been dealing with peope problems for a long time.

Looking at the Child Soldiers Protocol, it becomes obvious that not a single one of the services' current recruiting programs will be in any way imperiled or degraded. Department of Defense military training programs can begin for children as young as 13 years of age, as now occurs, and recruiting begins on the 17th birthday.

The only new requirement is that when we assign these recruits to duty we take "all feasible measures to ensure that their members of the armed services who have not attained the age of 18 years do not take a direct part in hostilities." You discussed this with Mr. Billingslea. To meet this new requirement, however, is a very simple management matter.

First, the great majority of those who enlisted at 17 years of age come in through the delayed entry program and, as was explained, are already over 18 by the time they report for duty.

Second, the minimum time for basic and initial recruit training is from 4 to 6 months, so that another half of the 17-year-old cadre passes their 18th birthday before completing recruit training.

Finally, many of the recruits go directly from basic to advanced specialty or technical training which can take up to 64 weeks. So, another group gets aged-out of the problem. In the most recent DOD report, fewer than 3,000 recruits below the age of 18 were available for assignment to general duties.

It is impossible to make that figure any more precise because DOD simply has not provided the figures, but you can say that under normal circumstances today, observing the Child Soldiers Protocol will require us to find special assignments for about 100 recruits each month in each service who have not attained their 18th birthday.

In addition to the very small numbers you have to find noncombat assignments for, there is another reason why such assignments are not a problem. In each service, there are combat units at varying levels of readiness: Equipment changes, just returned from deployment, state of training. These units are simply not in condition to be ordered out to combat service. You can have the assignment offices flag these low priority units and take the 10 or 20 people that they have each month and push them into those units. If you spread them out very evenly among the low priority units you are not going to have any bunched-up group of recruits who are suddenly going to be subjected to combat service.

The way I would demonstrate this, by the way, is the army has just announced a program in which they will provide special assignment consideration for army members who are returning from arduous duties. Such duties involve family separation of more than 6 months. Army has announced that all such individuals will be posted to duties which will not result in further family separation for at least another 6 months. Because this policy will affect assignments for thousands of individuals, many of them senior with special skills and experiences, it will require major personnel management efforts to ensure that they are protected from deployment for 6 months. Protecting a very few inexperienced, unskilled 17-year-olds for 3 months is no challenge whatever by comparison.

Another point I would like to make is that those who argued against the optional protocol often claim that combat readiness and esprit would suffer if there was an early, unplanned deployment of a unit to combat duties that would require the transfer out of the 17-year-olds. Well, as I have noted, the numbers are small. They are inexperienced. They will have only been in the unit for a short time. This just is not going to tear up the unit's structure and readiness.

The Navy, for example, before a carrier or a battle group deploys today, will find the enlisted members and officers whose service expires in the next 2 months, and they will move them all out rather than send them overseas and bring them back.

So, the management system is in place. The numbers that will be involved are very limited, and people can be protected from combat service without either loss of unit strength or esprit.

I would point out that the units most subject to early deployment, Rangers, Seals, Airborne forces, Air Force Special Operations units, all require special training, and they do not have any 17-year-olds. So, there is no problem with sudden, unexpected exposure there.

In summary, I would say the 17-year-old recruits who are available for assignment to combat units probably number fewer than 100 on any one day, or about 0.1 percent of our current active force. This presents no personnel management problems nor threat to the combat readiness and effectiveness of the United States armed services.

[The prepared statement of Admiral Carroll follows:]

PREPARED STATEMENT OF RADM. EUGENE J. CARROLL JR., USN (RET.), VICE PRESIDENT EMERITUS, CENTER FOR DEFENSE INFORMATION

You have already heard information and comments about the legal, moral and political implications of assigning individuals under the age of 18 to combat duties.

For that reason I will confine my brief remarks to a more pragmatic issue: Will combat readiness and effectiveness of the U.S. Armed Services be reduced by restricting U.S. servicemen and women under the age of 18 from assignment to combat duties?

I claim some special insight into this issue by virtue of two and one-half years concurrent service as both Director of U.S. Navy Manpower Planning and Programming and as Assistant Chief of Naval Personnel Plans and Programs. In these assignments I directed two staffs, which determined how many and what kind of people Navy needed; and then, determined how we would recruit, train, assign, promote and retire those people. This was during the period immediately after President Nixon had ended the draft and all of the services were in desperate straits to man forces much larger than today's 1,400,000 active forces. Since then basic pay has more than tripled and recruitment and retention bonuses abound. Today the services face new problems in a terrorist world but personnel numbers and force management are not among them.

Looking at the Child Soldiers Protocol, it becomes obvious that not a single one of the service's current recruiting programs is adversely affected in any way. Department of Defense Military training programs can legally begin for children as young as 13 years of age and recruiting for active service still begins at the 17th birthday.

The only new requirement is that the United States government must "take all feasible measures to ensure that members of their armed services who have not attained the age of 18 years do not take a direct part in hostilities." To meet this new requirement is a very simple matter for three reasons:

1. The great majority of those who enlist at 17 years of age actually enter service under the Delayed Entry Program, which permits them to delay service for up to 12 months. Only 6% of all recruits are less than 18 years old when they finally report for active duty.
2. The minimum period of time for basic recruit training ranges from 4 to 6 months. About half of the 17-year-old cadre passes their 18th birthday before completing recruit training.
3. Finally, the majority of recruits go directly from basic to advanced specialty or technical training which can take up to 64 months. Thus, all but one quarter of one percent of all recruits are more than 18 years of age before they become available for assignment to combat units.

It is impossible to determine a precise number of 17-year-olds who complete basic training and become available immediately for combat assignments. In June 1999, DOD estimated that less than 100 17-year-olds were serving in combat units. A dif-

ferent figure was offered by DOD as of 30 September, 2000 when they reported that there were a total of 3289 individuals less than 18 years of age on active duty but only 468 had completed training and were available for assignment to service units. Thus, under the Child Soldiers Protocol, over a one-year period each service, on average, would have to find assignments, which would not expose 120 recruits to combat for a period of about three months until they attained their 18th birthday.

In addition to the small numbers involved, there is another reason why such assignments would be no problem. In each service there are units at various stages of training and equipment readiness for deployment. In each service assignment offices would flag the lowest rated units and every month spaces would be found in them for about 10 recruits. When one considers that every month each service must find spaces for about 3,000 to 4,000 recruits in the active forces, 10 restricted assignments per month pose no personnel management problem at all.

This can be demonstrated by the recent Army decision to provide special assignment consideration for all Army members returning from arduous duties, which involved family separation of more than six months. Army has announced that all such individuals will be posted to duties which will not result in further family separation for at least six months. Because each year this policy will affect assignments for thousands of individuals, many of them senior with special skills and experiences, it will require major management efforts to ensure that they are protected from deployment for at least six months. Protecting a few inexperienced 17-year-old recruits for about three months is no challenge, by comparison.

As a last point, in the past those who argued against the Optional Protocol often claimed that combat readiness and unit esprit would both suffer if an unplanned deployment to a combat zone suddenly required the transfer out of 17-year-olds. As explained above, this would involve at most a few very junior, unskilled members who had been with the unit only a few weeks. The few vacancies could be quickly filled by lateral transfers of 18 year-olds from nearby units without loss of either unit strength or esprit. Also, it is noted that this would never happen in the highly mobile, readily deployable prestigious combat units such as Rangers, Seals, Airborne or Air Force Special 0ps units because the special training required to qualify for duty in such units ensures that no 17-year-olds serve in them.

In summary, 17-year-old recruits who are available for assignment to combat units number fewer than 200, or about one tenth of one percent of the current 1,400,000 active duty force. This presents no personnel management problems nor threat to the combat readiness of the U.S. Armed Services.

RESPONSES OF RADM. EUGENE J. CARROLL, JR., USN (RET.) TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question. Admiral Carroll, what is your view of the "understandings" that the Defense Department wants placed in the resolution of ratification? Do these make sense, or will they be criticized by you and other Protocol proponents?

Answer. I am unable to identify any "understandings" proposed by the Department of Defense. Assuming that the question refers to the Understandings set forth in a State Department Report which was forwarded to the Senate on July 25, 2000 by President Clinton, my answer follows. The apparent intent of the Understanding relating to Article 1 of the Protocol is to set the stage for a U.S. defense in the unlikely event of a 17-year-old becoming involved in combat action. The tortured legal circumlocution seeks to exculpate the U.S. in advance by narrowly defining the terms "all feasible measures" and "direct part in hostilities." None of this in anyway reduces the services' obligation under the Protocol to make formal, effective provisions to assign several hundred 17-year-old recruits each year to duties outside of areas of active hostilities and/or to units scheduled for early deployment to such areas. As long as there is a good faith effort to do this, no individual or group would have any basis for complaint if one or more 17-year-old service members happened to come under fire through the exigencies of military service. As the events of September 11, 2001 make clear, not all violence can be predicted or avoided.

All of the Understandings under each of the other Articles except Article 9 are innocuous and should not interfere with full U.S. compliance with the letter and spirit of the Protocol. For this reason they should draw no public criticism.

Article 9, however, raises once again all of the fundamental questions as to why the U.S. will not accede to the U.N. Convention on the Rights of the Child, a Convention which is American in spirit, objectives and values. Nevertheless, that is a separate debate which will go on without respect to the undeniable importance and value of the Child Soldiers Protocol which stands alone as an independent multilat-

eral treaty. Taken altogether, the Understandings are sensible and should be accepted without complaint by all those who support the Protocol as drafted.

Question. Will this protocol have any impact on the United States Armed Forces ability to enlist 17-year-olds, or on the military's ability to recruit at high schools, sponsor JROTC programs, or participate in other activities involving Americans who are not yet eighteen?

Answer. The Child Soldiers Protocol permits the United States to continue all current recruiting and training practices, specifically the voluntary enlistment of 17-year-olds and enrollment of ninth grade students as young as 13 years of age in the JROTC and NJROTC programs. It interposes no restraints whatever on voluntary recruiting activities. The prohibition of conscription below the age of 18 is consistent with U.S. laws. For those several hundred recruits who complete entry level training each year before their 18th birthday, the Protocol requires only that the services "take all feasible measures" to assign them to units which will not be subject to hostile action before they attain their 18th birthday. Based on my personal experiences in personnel planning, management and assignment programs, this poses no significant problems for any of the services. It certainly will not impair combat readiness, unit integrity and esprit because it involves only a miniscule number of the least experienced members in a very few units. It could even have a positive effect on recruiting because it could encourage parents to grant permission for a child to enlist at age 17, secure in the knowledge that the services will endeavor to assure that the child will not be sent directly into combat.

Senator BOXER. Thank you very much, Admiral Carroll.

We will turn to Admiral Fanning of the Navy League and we welcome you.

By the way, let me state that I am going to put all of your statements in the record, as you have submitted them, and that goes for the first panel as well. We appreciate that you are summarizing. Please proceed.

STATEMENT OF RADM. TIMOTHY O. FANNING, JR., USNR (RET.), NATIONAL PRESIDENT, THE NAVY LEAGUE OF THE UNITED STATES, WASHINGTON, DC

Mr. FANNING. Thank you. Madam Chairperson, Senator Helms, I would like to thank you for the opportunity to testify before your Committee on the child soldier issue as it relates to the Protocol on Children in Armed Conflict. The practice by which young children are taken from their families and forced to join armed factions in endless conflicts is a scourge and should be eradicated as quickly as possible. Pursuit of that goal is a noble effort.

However, care must be taken to avoid unintentional consequences in pursuit of that goal. A strict reading of the protocol raises questions with regard to the assignment of young armed service members. I am aware of the potential impacts on morale and readiness that restrictions on personnel assignments can have. I have acquired this knowledge through a series of command positions in the course of 31 years of active and reserve duty in the Naval Reserve, including an assignment on the Reserve Policy Board.

I am also aware of the attitudes and circumstances associated with young volunteers and the benefits that can be provided by certain youth organizations. Among other activities, I founded a United States Naval Sea Cadet unit and went on to be President and Chairman of the Board of Directors of the United States Naval Sea Cadet Corps. This corps directs a nationwide youth leadership program involving young men and young women, ages 11 to 17. It has been my personal observation that for those who wish to par-

ticipate in programs like the U.S. Naval Sea Cadet Corps, Junior ROTC in our high schools, and the Young Marines program provide an opportunity for young people to become involved in an alternative, structured program in which leadership skills are acquired and self-discipline is developed. Many of those who participate in these programs come from one-parent families under circumstances where these opportunities and appropriate role models are not otherwise available. Participation in these programs allows young people to make an informed decision as to whether they would be interested in joining our all-volunteer armed forces. I believe you will find a much higher retention rate in boot camps for volunteers who have been in these youth programs because they enter military life with better preparation and a more realistic view of its benefits and demands. I certainly hope the provisions of this protocol will not be manipulated by some groups to adversely affect the useful contributions of these volunteer civilian organizations.

From a military point of view, our service chiefs are charged with developing a superior military force available to carry out the commands of the Commander-in-Chief for the defense of our great Nation. Currently our armed services are permitted to recruit 17-year-old volunteers with parental consent. This practice, as we have been shown, is carefully regulated and should be allowed to continue without additional hindrance. To impose on unit and ship commanding officers a requirement to consider birthdays when making duty assignments or forcing them on the verge of deployment to replace team members that have trained hard together and developed a mutual trust runs counter to our proven philosophy of readiness. It also places an unnecessary burden on commanders whose shoulders are already heavily ladened with responsibility.

I agree that young children should not be soldiers and should never be forced into armed factions at a tender age of 10 or 12, but care must be taken to ensure the protocol is not misused. If the protocol is ratified, we need to carefully establish how it will be applied and how we will interpret our obligations under it. In doing so, we should pursue two goals. First, we should ensure that the original problem is confronted and confronted without unnecessary collateral damage to our military readiness and requirements. Second, we should always keep in mind the duty we owe to our commanders to ensure that they are not subjected to additional burdens or liability for honest decisions made under adverse conditions.

After hearing the previous panel, I believe that the protocol should be ratified but that the criminality provision should be carefully considered.

Thank you very much, Madam Chairperson.

[The prepared statement of Admiral Fanning follows:]

PREPARED STATEMENT OF RADM. TIMOTHY O. FANNING, JR., USNR (RET.), NATIONAL PRESIDENT, THE NAVY LEAGUE OF THE UNITED STATES

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a noble effort. However, care must be taken to avoid unintentional consequences in pursuit of that goal. A strict reading of the Protocol raises questions with regard to the assignment of young armed service members. I am aware of the potential impacts on morale and readiness that restrictions on personnel assignments can have. I have acquired this knowledge through a series of command positions in the course of 31 years of active and reserve duty in the Naval Reserve, including an assignment on the Naval Reserve Policy Board.

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I agree that young children should not be soldiers, and should never be forced into armed factions at the tender age of ten or twelve, but care must be taken to ensure that the Protocol is not misused. If the Protocol is ratified, we need to carefully establish exactly how it will be applied and how we will interpret our obligations under it. In doing so, we should pursue two goals. First, we should ensure that the original problem is confronted and confronted without unnecessary collateral damage to our military readiness and recruitment. Second, we should always keep in mind the duty we owe to our commanders to ensure tbat they are not subjected to additional burdens or liability for honest decisions made under adverse conditions.

RESPONSES OF RADM. TIMOTHY O. FANNING, JR., USNR (RET.) TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Admiral Fanning, our Navy is deployed around the world. It can be difficult to determine when you are in a hostile environment. (For example, the Port of Yemen was not considered a combat zone at the time the USS *Cole* was attacked by terrorists.)

Question. Is our Navy particularly susceptible to charges that it failed to keep its 17-year-old sailors out of direct combat?

Answer. I don't think the Navy is particularly susceptible to charges that it failed to keep its 17-year-old soldiers out of direct combat. It is my understanding that the Navy can do this with minimum administrative impact due to fairly small numbers and a training pipeline which would take most new recruits past their 18-year-old birthday. Again, the point of my testimony is that I am more concerned with the principle of criminality rather than the actual impact.

Question. Do you have any concerns about unit morale or readiness if, in the event of a real-world deployment, 17-year-old soldiers and sailors are pulled from the unit at the last moment?

Answer. No, I don't think that there would be much of an impact on morale because the actual incidence in which this could conceivably occur is quite small. I am confident that our commanding officers can properly explain this to their people.

Question. What impact will this Protocol have on U.S. military commanders for failing to pull their l7-year-olds from a deployment—if that becomes DOD policy—or not taking precautions to ensure their l7-years-olds are not engaged in direct combat?

Answer. As I said before, the actual impact is likely to be negligible because of the small number of affected personnel.

Question. Could commanders be charged under the Uniform Code of Military Justice in certain situations related to this Protocol?

Answer. Charging commanders with violation of the Protocol is not likely to happen. As your Committee is well aware, treaties are not self-executing and unless Congress passed a criminal provisions codifying the Protocol in the UCMJ it would not result in a UCMJ or federal prosecution. If DOD adopted the Protocol and made it binding via a lawful general order, then it would be possible for commanders to be prosecuted by U.S. military authorities although I think the likelihood is fairly remote. As I said before, I am most concerned about the underage serviceperson who slips through the cracks and that person or his/her commander is held accountable by foreign legal authorities.

Question. What impact will this Protocol, and subsequent Pentagon policies to implement it, have on military recruiting, particularly since the military does a great deal of its recruiting at high schools?

Answer. I don't think a bar on 17-year-old combatants will affect recruiting in any measurable way, but I'd defer to DOD's analysis of this.

Question. Will this Protocol have any impact on the United States Armed Forces ability to enlist 17-year-olds, or on the military's ability to recruit at high schools, sponsor JROTC programs, or participate in other activities involving Americans who are not yet eighteen?

Answer. No. The Protocol should not have any direct impact on our youth recruitment or sponsorship programs. I must reiterate that a ratification of the Protocol may mean that we have some public relations work to explain why JROTC, Sea Cadets and other youth programs are positive and separate and distinct from the intent of the Child Soldiers Protocol.

Senator BOXER. Thank you very, very much, Admiral, and thanks to all of you.

I just wanted to state I thought that your concerns were very well put forward here. I am very glad that, after listening, you feel now that you can support the ratification.

I think that because it uses the word "feasible," that is a very important word in the protocol itself because something could happen that you could not expect, and we are not going to be harmed if something like that happens. So, I hope you feel, as I do, that we can move forward.

The point that you made, Admiral Carroll, that I thought was very good, that there are disruptions that happen in our military all the time and this would be a very small one, if that at all, given the numbers. You pointed out that the commanders have to make sure that families are not separated for too long. I remember when I was on the Armed Services Committee in the House, we were concerned about husband and wife being sent into combat in those years, and that took some work because there were a lot of people that it affected.

So, I do not have any questions except to thank the panel for clearly, Jo Becker, your long labors in this field and, to my friends from the military, for looking at this and giving us a really honest assessment and giving us a heads-up on what could be a problem and explaining to us that there are occasions every day in the mili-

tary where looking after particular personnel problems does occur. But this appears to be a smaller one than some of the others. I greatly appreciate it.

I do not have anything else today. I will turn it over to Senator Helms.

Senator HELMS. Thank you, Madam Chairman.

A question of each of you, and I have one question. Let me ask you first, Ms. Becker. Have you read the executive branch's proposal for three understandings and one declaration?

Ms. BECKER. Yes, I have.

Senator HELMS. Do you agree with it?

Ms. BECKER. My personal preference would be if the Defense Department would be willing to go just a little bit further and exclude 17-year-olds from combat units altogether. But on balance, certainly the understandings around the relationship between the protocol and the Convention on the Rights of the Child seem very reasonable given the current status of the Convention here in the United States. And I believe that the interpretation around feasible measures is one that also makes sense for the U.S. military. So, although, as I said, I would prefer operationally for the Defense Department to be able to go a little bit further, I think that what they have proposed is reasonable.

Senator HELMS. How about you, Admiral?

Mr. CARROLL. I have not read the statement, no.

Mr. FANNING. I have not seen it either, Senator.

Senator HELMS. Obviously, she has, but make a copy, if you will, and hand it to them before they leave. I would ask you to write to me—and I will make it available for the Committee's records—whether you would be willing to agree to this proposal by the executive branch because I need to know. If you will do that, I will appreciate it. You will be handed a copy of this as you leave.

[The following reply from Mr. Fanning was subsequently provided.]

In reply to your question before the Senate Foreign Relations Committee, I believe that clarification of the terms "feasible" and "direct part in hostilities" is acceptable provided that is the way that other countries, and their courts, interpret those words in their implementation of the Protocol. As I said before, I am in favor of the adoption of the Protocol for the reasons set forth by DOD. However, I have some continuing concerns about the possibility that a foreign or international criminal court would not agree with our interpretation of the Protocol in their prosecution of a U.S. serviceperson. I expect that there is a low probability that this will ever happen, but no U.S. serviceperson should ever have to stand trial because there is a difference of opinion between two sovereigns as to the meaning of certain words.

Senator HELMS. Madam Chairman, I have nothing further, and I commend you on the way you have conducted this meeting.

Senator BOXER. Thank you very much.

Again, our thanks to everyone. I am very hopeful that with Senator Biden and Senator Helms working together, we can really move this forward. I thank you so much for coming here today.

The Committee stands adjourned.

[Whereupon, at 11:53 a.m., the Committee was adjourned.]

STATEMENTS SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF SENATOR RUSSELL D. FEINGOLD

Madame Chair, thank you for calling this hearing today on two important protocols to the Convention on the Rights of the Child. One protocol addresses the sale of children, child prostitution and child pornography. The second protocol addresses the problem of child soldiers. Taken together, these two protocols address some of the most egregious human rights violations experienced by children in the world today.

Having traveled extensively in Africa as Chairman of the SubCommittee on African Affairs, I have seen the devastating effects of armed conflict on children in Angola, the Democratic Republic of Congo, and Sierra Leone. I have also witnessed the heartbreaking exploitation of children in many other countries, particularly in societies where entrenched poverty and despair make children particularly vulnerable to neglect and abuse.

I am pleased that the Senate is considering these treaties, and I look forward to hearing how they will strengthen the international regime to protect all children from violence and exploitation.

PREPARED STATEMENT OF CRIS R. REVAZ, AMERICAN BAR ASSOCIATION

The American Bar Association appreciates this opportunity to communicate its views on the issue of U.S. ratification of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict. My name is Cris Revaz. I am a practicing attorney at the firm of Hale and Dorr in Washington D.C. and I co-chair the International Human Rights Committee of the ABA's Section of International Law and Practice.

The American Bar Association supports U.S. ratification of the two Optional Protocols to the UN. Convention on the Rights of the Child ("CRC"). Indeed, the ABA has long supported U.S. actions to enhance legal protections to children throughout the world. The ABA has called for ratification of the CRC on several occasions, as well as the Hague Conventions on Abduction, Intercountry Adoption, and Parental Responsibility and Protection of Children. The ABA has endorsed the abolition of economic exploitation of children and enforcement of child labor protections, and the protection of the legal rights of immigrant children. Its work, particularly through the ABA Center on Children and the Law, also has included special attention to the issue of child victims of sexual exploitation. Our call for ratification of these two Optional Protocols extends a long tradition of child advocacy to two of the most heinous human rights abuses on the planet.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography ("OP-SC"), which entered into force on January 18, 2002, takes on the modern-day slavery and exploitation of children. This scourge includes a growing, global, multi-billion dollar industry that is now a principle bedrock of transnational crime—trafficking for sexual exploitation and forced labor. Thanks to the public debate that presaged enactment of the Trafficking Victims Protection Act, as well as ongoing federal and law enforcement initiatives, media reports and continuing pressure from the NGO community, the public is more aware of the scope and severity of the trafficking phenomenon. However, a sometimes overlooked aspect of this problem is the increasing number of innocent children, who are bought and sold into a living hell of degradation, torture, rape, disease, and alienatioa The OP-SC deals with the trafficking of children by making punishable its underlying legal act, the sale of a child. In addition, it separately extends to two other insidious and related aspects of commercial sexual exploitation—child prostitution and child pornography.

The Optional Protocol on the Involvement of Children in Armed Conflict ("OP-AC"), which entered into force February 12, 2002, addresses the despicable use of children to fight and die in numerous battlefronts across the globe. It sets the age of eighteen as the minimum age requirement for direct participation in armed conflict and conscription, *i.e.,* forced recruitment.

THE UNDERLYING PROBLEMS ADDRESSED BY THE OPTIONAL PROTOCOLS

The Sale of Children for Commercial Sexual Exploitation or Forced Labor

UNICEF estimates that one million children are forced into prostitution in South Asia alone, and another one million worldwide. The child victims of commercial sexual exploitation are both boys and girls, although they are primarily girls between

10 and 18 years of age. Research suggests that the age of the children involved is decreasing, and sexual exploitation of children as young as 6 has been documented. Illicit trafficking is expanding through the use of child pornography on the Internet which attracts sex tourists and pedophiles. Children are favored targets for commercial sexual exploitation, and certain disadvantaged groups—minorities, refugees, street children, poor children, juveniles from broken homes, and disabled minors—are often the most vulnerable to exploitation. In addition, children are trafficked out of orphanages for illegal adoptIon or prostitution.

The United States certainly is not immune to the trafficking and exploitation of children for sexual purposes or forced labor. The U.S. State Department conservatively estimates that 50,000 women and children are trafficked into the United States annually, primarily from Latin America, the former Soviet Union and Southeast Asia. Roughly half of this amount end up in coerced or bonded sweatshop labor and domestic servitude, and the rest are sexually exploited. Trafficking of children is highly lucrative—a single trafficked child can earn a trafficker as much as $30,000 or more in fees.

A recent landmark study on the commercial sexual exploitation of children in the United States by Dr. Richard Estes and Dr. Alan Weiner of the University of Pennsylvania conservatively estimates that 17,000 children make up these 50,000 victims, with half of this group exploited for sex and the other half exploited for labor. According to ECPAT-International, there are numerous reports of trafficking of children into the United States, but the cases are difficult to verify because of the underground and illegal nature of the trade.

Children sold or trafficked into sexual servitude often suffer extreme physical and mental abuse, including rape, torture, starvation, imprisonment, death threats, and physical brutality. They are continually exposed to deadly diseases, including HIV/AIDS, and experience stigmatization, depression, and post-traumatic shock. Children sold into domestic servitude, bonded sweatshop labor, and other industries are subjected to violence and may be literally worked to death.

Child Prostitution

UNICEF estimates that there are between 90,000 and 300,000 minors engaged in prostitution in the United States. ECPAT believes the figure could be substantially higher. According to a 1990 Department of Justice study, over 577,000 children annually were runaways or had been kicked out of their homes. The Estes report found that children and youth older than 12 years are prime targets for sexual exploitation, and are most often runaways or homeless youth. It further found that approximately 30% of shelter youth and 70% of street youth engage in prostitution to meet their daily needs for food, shelter, drugs and the like. Some 80% of child prostitutes were sexually abused at home.

The Estes report found that up to 70% of female juvenile prostitutes were raped by their customers an average of 31 times per prostitute. According to ECPAT-USA, child prostitutes experience depression, self destructive tendencies, the inability to enter mainstream society, and ostracism. Child victims of prostitution may experience a lifetime of recurrent illnesses, such as venereal diseases, fertility problems, pregnancy complications, malnutrition and tuberculosis and severe mental illness.

Child Pornography

Thanks to the internet, strong demand and ready supply, child pornography is on the rise. According to ECPAT-USA, there has been a major increase in the commercial production of child pornography since the early 1970s and computer bulletin boards and other on-line services have become a major avenue. Regionally, the most likely source of pornographic films and photos is now Eastern Europe and Southeast Asia, with Japan the largest producer and consumer of child pornography in the world. In August, 2001, the FBI and U.S. Customs shut down an internet company based in Ft. Worth, Texas, that provided its 250,000 subscribers with access to sexual images of adults and children through websites based in Indonesia and Russia, and arrested 100 people. According to authorities, the company grossed as much as $1.4 million in a single month. The number of children involved is unknown, but a child as young as 4 years old was identified. The FBI estimates that over 50% of all child pornography seized in the United States depicts boys.

Child Soldiers

The Coalition to Stop the Use of Child Soldiers reports that approximately 300,000 children in over 40 countries worldwide are engaged in military conflict. Another 500,000 are recruited into paramilitary organizations, guerrilla groups and civil militias in more than 85 countries. The exact number, ages, and distribution of child soldiers are extremely difficult to calculate because of the efforts to hide the use of child soldiers, the tendency of many youth to lie about their true age, because

armed opposition groups do not operate under public scrutiny, and because of the constantly changing locations and intensity of armed conflicts. According to UNICEF data, armed conflict killed more than two million children in the decade between 1986-1996, injured 6 million, traumatized over 10 million and left more than 1 million orphaned.

Children are easily manipulated and drawn into violence they are unable to resist or understand largely because of their emotional and physical immaturity. The most vulnerable children are those who are poor, separated from their families, displaced from their homes, living in a combat zone, or with limited access to education. Serving as frontline grunts, sexual servants, spies, and porters, child soldiers are exposed to serious injury and death, as well as disease, physical assault, and rape.

As soldiers, both boys and girls may be sent to the front lines of combat or into minefields ahead of other troops. In certain countries, such as El Salvador, Ethiopia and Uganda, nearly a third of the child soldiers were reported to be girls. Child soldiers have been used for suicide missions and have been forced to commit atrocities against their own family and neighbors. In some places, young soldiers have been given drugs to increase their courage and dull their sensitivity to pain. Because of their inexperience and lack of training, child soldiers suffer far higher casualty rates than adult soldiers. Those who survive may be permanently disabled, with the most common injuries being loss of hearing, loss of limbs, and blindness. Others bear psychological scars from being forced to both commit and witness horrific atrocities. The difficulty of demobilizing and reintegrating child soldiers into peacetime society and values is one of the greatest challenges facing a number of post-conflict societies.

THE PROTOCOLS IN THE CONTEXT OF INTERNATIONAL HUMAN RIGHTS AGREEMENTS

The OP-SC

The OP-SC is not the first international instrument to condemn trafficking or other modern-day forms of slavery. There are a number of such agreements, some dating back to the early 20th century, such as the "1904 International Agreement for the Suppression of White Slave Traffic." Others include the 1926 Slavery Convention; the 1930 ILO Forced Labor Convention; the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; and the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. While many of these conventions took laudable stances against slavery-like practices or forced labor, they often suffered from imprecise definitions and offered few tools for combating the problem. The result was that the international community remained without a clear set of comprehensive, meaningful standards, the agreements were largely ignored, and the practices festered.

In recent years, with the commercial sexual exploitation of women and children exploding, the U.N. has struggled to more effectively deal with the problem. In 2000, after six long years of negotiations, it adopted the OP-SC. Later that same year, the U.N. also adopted the Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, to the U.N. Convention Against Transnational Organized Crime. This Protocol offers the first comprehensive definition of trafficking, one that incorporates notions of coercion, deception or fraud in the recruitment phase, and an emphasis on the exploitation victims suffer in the slavery phase. It also articulates a comprehensive enforcement strategy.

By comparison, sex trafficking per se is not the express focus of the OP-SC; yet the OP-SC clearly aims to make punishable its underlying acts, methods and outcomes. It does so by being the first international instrument to define and require criminalization of the sale of children, child prostitution and child pornography. By encompassing attributes of trafficking without limiting its terms as such, the OP-SC can be a tool against trafficking even as it makes actionable a broader spectrum of commercial sexual exploitation. In addition, just as ILO 182 did with the worst forms of child labor, the OP-SC focuses only on commercial sexual exploitation as to children.

More directly, the OP-SC advances clear prohibitions in the CRC against sexual exploitation and abuse, including prostitution and involvement in pornography, and the sale, trafficking and abduction of children, as well as the right to be protected from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Comparable language is found in ILO Convention 182 on the Worst Forms of Child Labor, whose scope encompasses trafficking, and which the United States was among the first countries to ratify.

The OP-AC

Under the CRC, the general definition of a child is any person under the age of 18. However, Article 38 of the CRC, governing children and armed conflict, uses 15 as the minimum age for recruitment and participation in hostilities. This is the only explicit departure from the general definition of a child based on the 18-year minimum age.

Other international legal instruments reflect the view that 18 should be the minimum age for involvement in military conflict. The African Charter on the Rights and Welfare of the Child adopted shortly after the CRC defines a child as being up to 18 years (without exception), and Article 22(2) provides: "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and shall refrain, in particular from recruiting any child." In December, 1995, the 26th International Conference of the Red Cross and Red Crescent passed a recommendation whereby parties to armed conflict must take every feasible step to ensure that children under 18 do not participate in hostilities.

In addition, ILO Convention No. 182, adopted unanimously by the 174 members of the ILO, requires each ratifying Member to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency; defines a "child" as all persons under the age of 18, and "the worst forms of child labor" as, *inter alia,* "forced or compulsory recruitment of children for use in armed conflict" and "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children."

Several years after the CRC's adoption, the anomaly between its general definition of a child as under 18 and the age 15 minimum for armed conflict, led the U.N. Commission on Human Rights to establish an open-ended inter-sessional working group to elaborate, as a matter of priority, a draft optional protocol to the CRC that would raise the minimum age for recruitment and participation in hostilities to 18.

The practices addressed by both protocols violate longstanding human rights principles embraced by the international community and extended to all persons. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (which the United States has ratified), the CRC and the International Covenant on Economic, Social and Cultural Rights (both of which the United States has signed), proclaim a range of human tights that are mocked by the sale of children, child prostitution and child pornography, and the use of child soldiers. Such rights include, among others, the right to life; the right not to be tortured or subjected to cruel and degrading treatment; the right to personal liberty and security of person and to be free from physical violence; the right to freedom of choice of residence and movement; the right to consensual marriage; the right to work and just, fair, and safe working conditions; and the right to education, health and social services.

PRINCIPAL PROVISIONS OF THE OPTIONAL PROTOCOLS

Principal Provisions of the OP-SC

The key elements of the OP-SC relate by varying degrees to the widely-accepted mantra for fighting commercial sexual exploitation—prevention, prosecution and punishment, and protection.

The thrust of the OP-SC is prosecution and punishment. It requires states parties to prohibit the "sale of children, child prostitution and child pornography," and clearly defines these terms. (Art. 2) It makes actionable, under a state party's criminal or penal law, certain broadly-defined practices relating to these acts, including attempts, complicity, or participation, and requires punishment by appropriate penalties that take into account the "grave nature" of the offense. (Art 3) These provisions are to apply both domestically and internationally, as well as to individuals and organizations.

Why is the OP-SC's demand for strong national legislation important? According to the Protection Project, as of one year ago only 48 countries had laws that criminalized trafficking for sexual purposes. While many countries have laws that prohibit the procuration of women and children for prostitution or forced labor, they are rarely enforced. The fact is that even where laws exist, law enforcement personnel and prosecutors often do not give high priority to trafficking-related offenses. Quite often, penalties are so weak as to be ineffective, and progress is stifled by complicity and corruption in law enforcement.

The OP-SC sets forth the bases for states parties to assert jurisdiction over actionable practices. (Art. 4) It requires each party to take necessary measures to establish its jurisdiction over such offenses when the offense is committed in its territory, and also provides for jurisdiction when either the alleged offender is a national of that state or habitually resides there, or the victim is a national of that state. It

also clarifies and strengthens the ability of states parties to pursue extradition of offenders. (Art 5) These provisions are helpful in facilitating the prosecution of offenders regardless of their location.

With respect to prevention, the OP-SC mandates that states parties take certain legal and policy measures to prevent the sale of children, child prostitution and child pornography, and must pay particular attention to protecting those children who are especially vulnerable to the proscribed practices. (Art. 9) It further mandates promoting public awareness through education and training about the preventative measures and harmful effects of these offenses, and seeks the involvement of the community and children and child victims in this campaign. These provisions, which might foster internationally the sorts of programs the U.S. is already required to establish under the new trafficking law, also are welcome. According to the Protection Project, few countries have developed programs to prevent trafficking by educating women and children about how to avoid being trafficked, or to educate men and boys against the sexual exploitation of women, or to educate government officials about prevention.

Admittedly, the protection and assistance provisions are not as strong as they might be. In particular, various NGOs expressed a legitimate concern that the OP-SC did not go far enough to ensure the non-criminalization of child trafficking victims. Nonetheless, the protection language may be of significant benefit to sexually exploited children. States parties are to pursue "all feasible measures" in rendering appropriate assistance to victims of such offenses, including their "full social reintegration, and their full physical and psychological recovery." (Art. 9.3) Child victims are to have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible. (Art. 9.4). Moreover, states parties must adopt "appropriate measures" to protect the rights and interests of child victims at all stages of the criminal justice process. (Art. 8.1)

This last provision enumerates numerous duties for states parties, such as the duties to: recognize the vulnerability of child victims and adapt procedures to recognize their special needs; inform child victims of their rights; allow the views, needs, and concerns of child victims to be presented and considered in proceedings where their personal interests are affected; provide appropriate support services to child victims; protect the privacy and identity of child victims and act to avoid disseminating information that could identify child victims; protect child victims from intimidation and retaliation; and avoid unnecessary delay in disposing of cases and executing compensation orders or decrees for child victims. As a guiding principle, Article 8.1 states that where the judicial treatment of child victims is concerned, the best interest of the child must constitute the primary consideration.

In addition, our new U.S. trafficking law helps address the non-criminalization of child victims by providing that while in federal custody and to the extent practicable, victims of severe forms of trafficking (which include children) shall not be detained in facilities inappropriate to their status as crime victims.

Importantly, the OP-SC seeks a cooperative global approach to ending commercial exploitation of children. It requires that states parties "afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings," including obtaining evidentiary support. (Art. 64) It also calls for all necessary steps to strengthen international cooperation by multilateral, regional, and bilateral arrangements for the prevention, detection, investigation, prosecution, and punishment of those that commit acts involving the sale of children, child prostitution, child pornography, and child sex tourism. (Art. 10.1)

Principal Provisions of the OP-AC

The OP-AC extends to eighteen years-old the minimum age requirement for direct participation in armed conflict and conscription, *i.e.,* forced recruitment. It states that governments "shall take all feasible measures to ensure that members of their armed forces who have not attained the age of eighteen years do not take a direct part in hostilities." (Art. 1) It provides that governments "shall ensure that persons who have not attained the age of eighteen years are not compulsorily recruited into their armed forces." (Art. 2) The OP-AC forbids rebel or other non-governmental armed groups under any circumstances from recruiting persons under the age of eighteen years or using them in hostilities. Article 4(1) Governments are required to take all feasible measures to prevent the recruitment and use of children by such groups, including the criminalization of such practices. Article 4(2)

The OP-AC departs from the age eighteen minimum, however, with respect to voluntary recruitment into a state's armed forces. Governments must raise the minimum age for voluntary recruitment beyond the current minimum of fifteen, as established under Article 38(3) of the CRC. (Art. 3) This means the minimum age for voluntary recruitment is sixteen. Governments that recruit persons under eighteen

must maintain a series of safeguards, which ensure such recruitment is genuinely voluntary and conducted with the informed consent of the person's parents or legal guardians, that recruits are fully informed of the duties involved in military service, and proof of age is established.

With respect to implementation, the OP-AC requires governments to "take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement" of the Protocol, and must take "all feasible measures to ensure" demobilization of children recruited or used in violation of the Protocol, and "when necessary," provide appropriate rehabilitation and reintegration assistance. (Art. 6)

It is important to note the relationship of both Optional Protocols to the CRC, from which they originate. The CRC is the most widely-acclaimed human tights treaty in history, with 191 countries now having ratified it. Only the U.S. and Somalia have not done so. On three separate occasions, the ABA has called for U.S. ratification, going so far in 1994 as to suggest certain appropriate reservations, understandings and declarations. The ABA remains hopeful that someday the United States will join other members of the international community in seeking to realize the CRC's universal principles for the rights and protection of children. Until then, however, there is no legal impediment to ratifying either the OP-SC or the OP-AC. Both Protocols expressly provide they may be signed and ratified by countries regardless of whether they have ratified the CRC. This language was actually negotiated at the behest of the United States, and the "freestanding" nature of the Optional Protocols are supported by a legal opinion from the U.N. Office for Legal Affairs.

IMPACT OF RATIFICATION ON U.S. LAW AND OPPORTUNITY FOR U.S. LEADERSHIP

In its July 2000 report to Congress, the State Department did a very thorough job of examining the impact of both Optional Protocols on U.S. law. With respect to the OP-SC, Congress subsequently enacted the Trafficking Victims Protection Act, which significantly enhances our ability to deal with the commercial sexual exploitation of children.

Briefly reviewing State's analysis, several provisions of Title 18, among other laws, satisfy the OP-SC's requirement to make punishable the offering, delivering or accepting of a child for the purpose of sexual exploitation, or for forced labor. §1591, added by the new trafficking law, provides punishment for defendants who knowingly recruit, entice, harbor, transport, provide or obtain a person knowing that either force, fraud, or coercion will be used to cause the person to engage in a commercial sex act, or the person is under 18 and will be caused to engage in a commercial sex act. Depending on the age of the child or whether force, fraud or coercion was involved, penalties under this provision can include prison for any term of years to life. §2423(a) prohibits the transport in interstate or foreign commerce of any individual under age 18 "with the intent that the individual engage in prostitution and or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so." Penalties include fines and prison term up to 15 years. §2251A criminalizes the selling or buying of children for pornographic purposes. Penalties include fines and 20 years to life.

Where the sale of the child is for forced labor, §1589, part of the new trafficking law, punishes those who knowingly provide or obtain the labor services of another by use of threats of serious harm or physical restraint against a person, or by a scheme or plan intended to make the person believe that if they did not perform the labor or services, they would suffer physical restraint or physical harm. The penalties are fines and prison terms of up to 20 years, and life in prison under certain aggravating circumstances.

In addition, the involuntary servitude statutes, §1581 (peonage), §1583 (enticement into slavery), and §1584 (sale into involuntary servitude) may also be used to prosecute the sale of a child or any person for forced labor. §1590, also part of the trafficking statute, provides punishment for defendants who knowingly harbor, transport, or are otherwise involved in obtaining a person for peonage, slavery, or involuntary labor or services. These provisions carry fines and prison terms of up to 20 years, and life in prison under certain aggravating circumstances. Title 8, §1328 also prohibits importing any alien into the United States for prostitution or other immoral purposes.

Section 404 of the Hague Intercountry Adoption Act, which imposes fines up to $250,000 and/or 5 years in prison, meets the OP-SC's prohibition on the sale of children in connection with improperly inducing consent as an intermediary for adoption.

State laws prohibit prostitution, pimping, pandering, procuring and other related activities. And a provision of the Mann Act, 18 U.S.C. §2421, generally prohibits transporting a person across foreign or state borders for purposes of prostitution, and a separate provision, §2423(a), specifically prohibits transportation across foreign or state borders of any individual under 18 with the intent that the "individual engage in prostitution or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so." The punishment is fines and/or imprisonment up to 15 years. Other provisions with comparable penalties prohibit coercing and enticing persons to travel across state lines for prostitution or for any sexual activity for which any person may be charged with a crime (§2422), and travel with intent to engage in any sexual act with minor (§2423(a)).

In addition, federal and state criminal statutes address the OP-SC's prohibition on child pornography. Federal law prohibits the production, distribution, receipt and possession of child pornography if produced using materials transported across interstate or foreign commerce. (18 U.S.C. §2251-2252(A)). Penalties depend on the provision, but can run up to 30 years or even life in prison. And each state has its own laws addressing child pornography.

With respect to the OP-AC, State concludes current U.S. law meets its standards. Specifically, the U.S. does not permit compulsory recruitment of any person under 18 for any military service. Under 10 U.S.C. §505(a), the United States does not accept voluntary recruits under age 17. And the United States is prepared to take all feasible measures to ensure that persons under 18 do not take a direct part in military hostilities, and can do so without undermining military readiness.

Although both Optional Protocols are thus consistent with U.S. law, the Administration has recommended a number of understandings and declarations in connection with U.S. ratification. These understandings and declarations were first presented subsequent to the ABA's policy urging ratification of the two Optional Protocols, and so were not subject to the ABA's formal review process. However, in my personal view, these understandings or declarations are generally appropriate and noncontroversial.

Notwithstanding that U.S. law already reflects the Protocols' requirements, U.S. ratification is critical to the extent the U.S. wants to demonstrate real global leadership on these issues. The success of both Protocols will be judged by their implementation rather than ratification. However, it is only through ratification that the United States can help compel a truly global effort towards realizing the objectives of these Protocols.

The horror of trafficking, child prostitution, child pornography and child soldiering is the anguish and suffering inflicted upon children preyed upon and betrayed by the very people they look to for protection. These children are robbed of their freedom, their childhood, their hope and their humanity, and there is nothing more wrong than that, legally or otherwise. The United States should do everything in its power to abolish these evils, and back up ratification of both protocols with strong, decisive action, taken in concert with other nations.

Thank you.

RESPONSES TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED TO VARIOUS WITNESSES AND GOVERNMENT AGENCIES

RESPONSES OF THE DEPARTMENTS OF STATE, DEFENSE AND JUSTICE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

Question 1. In submitting the Protocols to the Senate, the Clinton administration recommended that the Senate include several understandings and declarations in the resolution of advice and consent. Does the Bush administration support these recommendations without change?

Answer. Yes, the Bush administration supports the Understandings and Declarations presented in the transmittal package. We do not seek any changes to the language provided.

Question 2. Was the testimony today coordinated and approved by the affected departments of the Executive Branch?

Answer. Yes. The testimony also reflects the independent views and judgments of the various affected departments, all of which supported these treaties.

Question 3. Are there any confidential or classified side agreements or understandings between the United States and any other signatories or negotiating partners of which the Committee should be aware?

Answer. No.

Question 4. Are there any statements by the U.S. delegation pertinent to the meaning or interpretation of treaty terms which are not contained in the Executive Branch's submittal to the Senate?

Answer. No. All significant statements are reflected in the Executive Branch's submittal to the Senate, or in testimony on behalf of the treaties.

Question 5. Are there any significant statements in the preparatory work of the treaty (*traveux preparatories*) to which you would direct the Committee's attention?

Answer. All significant statements are reflected in the Executive Branch's submittal to the Senate, or in testimony on behalf of the treaties.

Question 6. Please explain why, as a matter of law, the United States may become a party to the Protocols even though it is not a party to the underlying Convention on the Rights of the Child?

Answer. As discussed in the Executive Branch's submittal to the Senate, Article 9 of the Children in Armed Conflict Protocol is subject to ratification or open for accession by any State, i.e., it is not limited to parties to the Convention on the Rights of the Child. Thus, the United States is eligible to become a party to the Children in Armed Conflict Protocol even though it has not ratified the Convention.

Similarly, Article 13 of the Sale of Children Protocol is subject to ratification or open for accession by any State that is a party to the Convention on the Rights of the Child, or has signed it. Thus, the United States is eligible to become a party to the Protocol because it signed the Convention in February of 1995.

To reflect the fact that both Protocols are independent international agreements, the following understanding has been recommended to accompany the U.S. instrument of ratification for each Protocol:

> "The United States understands that the Protocol constitutes an independent multilateral treaty, and that the United States does not assume any obligations under the Convention on the Rights of the Child by becoming a party to the Protocol."

Question 7. Each Protocol provides for amendments. Does the Executive Branch commit to submit amendments approved by the UN General Assembly to the Senate for its advice and consent?

Answer. Any amendment or modification of the Protocols would enter into force with respect to the United States only pursuant to the treaty-making power of the President, by and with the advice and consent of the Senate, as set forth in Article II, Section 2, clause 2 of the Constitution of the United States.

Question 8. Each Protocol requires States Parties to submit periodic reports to the Committee on the Rights of the Child established by the underlying Convention. Does the Committee have any enforcement power?

Answer. No. As explained in the Executive Branch's submittal to the Senate the Protocols grant the Committee on the Rights of the Child no authority other than receiving reports and requesting additional information relevant to the implementation of the protocols. During the negotiations, States rejected proposals for language that would have permitted the Committee to, *inter alia,* hold hearings, initiate confidential inquiries, conduct country visits, and transmit findings to the concerned State Party.

RESPONSES OF THE DEPARTMENTS OF STATE AND JUSTICE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

QUESTIONS WITH REGARD TO THE PROTOCOL ON THE SALE OF CHILDREN

Question 1. What is the legal basis for "suspending" an obligation, as envisaged by the proposed declaration with regard to Article 4(1)? What precedents are there in recent U.S. practice for such an act?

Answer. The legal basis for the proposed declaration would be the condition in the Senate's resolution of advice and consent and the decision of the President to ratify the Protocol subject to that condition. Since existing United States law does not provide for criminal jurisdiction over some of the offenses identified in Article 3(1) when such offenses are committed on board a ship or aircraft registered in the United States, legislation will be necessary to fill the gaps. In order to proceed with ratification before enactment of that legislation and to protect the United States against a charge of non-compliance in regard to Article 4(1) pending enactment of the legislation, the declaration would make clear that until the condition was fulfilled, the United States would not be bound by the obligation in Article 4(1) to the extent that its law was not fully in compliance with that article.

Question 2. Article 5(2) provides that a State Party may consider this Protocol as a legal basis for extradition with respect to offenses covered by it in a case where it has no extradition treaty with the requesting State Party. The United States generally does not extradite criminal suspects in the absence of a bilateral extradition treaty. Does the Executive Branch intend to require the existence of a bilateral extradition treaty in cases under this Protocol?

Answer. Yes. The United States would not use these Conventions as an independent legal basis for extradition from the United States in cases where the United States has no extradition treaty with another State Party seeking extradition. We will continue our practice of extraditing persons under the authority of bilateral extradition treaties, in conjunction with multilateral conventions, and other agreements as applicable.

Question 3. The proposed understanding with regard to Article 2(c) focuses on the definition of child pornography in that article. The understanding states that the term means "visual representation" of a child, "engaged in real or simulated sexual activities." Is this "visual representation" standard the same standard used in U.S. law?

Answer. Yes. As is explained more fully in the Executive Branch's submittal to the Senate, 18 U.S.C. § 2251 establishes as criminal offenses the use, enticement, employment, coercion or inducement of any minor to engage in "any sexually explicit conduct for the purpose of producing any visual depiction" of that conduct. That provision further prohibits the transportation of any minor in interstate or foreign commerce with the intent that the minor engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct. Parents, legal guardians and custodians are punishable under this provision if they permit a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct and the parent or guardian knows or has reason to know it will be transported or has been transported in interstate or foreign commerce. The provision also subjects to criminal penalty those who produce and reproduce the offending material, as well as those who advertise seeking/offering to receive such materials or seeking/offering participation in the visual depictions of minors engaged in sexually explicit conduct.

Federal law also prohibits (1) the transfer, sale, purchase and receipt of minors for use in production of visual depictions of minors engaged in sexually explicit conduct, 18 U.S.C. § 2251A; (2) knowingly transporting, shipping, receiving, distributing, or possessing any visual depiction involving a minor in sexually explicit conduct, 18 U.S.C. §§ 2252 and 2252A; (3) the use of a minor to produce child pornography for importation into the United States, and the receipt, distribution, sale or possession of child pornography intending that the visual depiction will be imported into the United States, 18 U.S.C. § 2260. For purposes of these statutes, minor is defined as anyone under age 18. 18 U.S.C. § 2256(1).

Sexually explicit conduct is defined in these federal statutes as "actual or simulated—(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person." 18 U.S.C. § 2256(2).

Further, each state has enacted laws addressing child pornography. The precise scope of these statutes vary from state to state; however, they all prohibit the visual depiction by any means of a child engaging in sexually explicit conduct. While the exact wording of the statutes may differ, all state statutes address the following three areas: (1) *production:* employment or use of a minor to engage in or assist in any sexually explicit conduct for the purpose of producing a depiction of that conduct; (2) *trafficking:* distributing, transmitting or selling child pornography; and (3) *procurement:* inducing or persuading a minor to be the subject of child pornography.

Hence, both federal and state law cover the "visual representation" of a child, "engaged in real or simulated sexual activities."

Question 4. What is the rationale for the proposed understanding related to Article 2(a)? The stated purpose is that it is needed to clarify the definition. What about the definition is unclear? What circumstances is the proposed understanding designed to address?

Answer. The Protocol broadly defines the sale of a child as a transfer from a person or group of persons to another for remuneration or other consideration. Since this could conceivably be construed to include lawful transfers, the United States' understanding is intended to make clear that the definition is only intended to reach transfers where the person receiving the child does not have a lawful right to custody and, through the transfer, gains the ability to exercise control over the child.

Question 5. Article 3(1) requires parties to ensure that the acts covered by the article are "fully covered" under its criminal or penal law, whether these offenses are committed domestically or transnationally." What does "committed trasnationally" mean in this context?

Answer. The terms "domestically or transnationally" need to be read together. During the negotiations some delegations proposed the adoption of universal jurisdiction for the Protocol. However, delegations finally concluded that the assertion of such broad jurisdiction for the offenses covered by the Protocol was not appropriate. In contrast, the text finally adopted requires a State Party to criminalize the stated offenses when they occur entirely in that State (i.e., domestically) and when they involve conduct committed in that State and another State (i.e., transnationally). This understanding of the term "transnationally" is also confirmed by Article 4, which requires the United States to establish jurisdiction only with respect to conduct that occurs in its territory.

Accordingly, the use of the term "transnationally" does not obligate the United States to assert jurisdiction over offenses that occur wholly outside its territory. Subject to the proposed understandings and declaration, the United States can prosecute all of the offenses under Article 3 committed in its territory, irrespective of whether the conduct is entirely domestic in nature, or part of a course of conduct that is transnational in nature.

Question 6. In the proposed understanding relating to Article 3(1)(a)(ii) (relating to the Hague Convention), is not the second sentence a reservation? If so, should it be styled as such?]

Answer. No. The fact that the United States has not yet ratified the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoptions does not require that it take a reservation to Article 3(a)(ii) of the Protocol. Article 3(a)(ii), which was based upon a joint U.S. and Egyptian proposal, obligates States Parties to criminalize "improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption." The term "applicable" when used in reference to international instruments refers only to those instruments to which the state is a party. Therefore, the plain meaning of Article 3(a)(ii) is that States Parties have an obligation to criminalize "improperly inducing consent as an intermediary" if they are also already parties to an international instrument that bars such conduct.

Article 3(a)(ii) is drawn from Article 4(c)(3) of the Hague Convention on Protection of Children and Co-Operation in Respect of Inter-country Adoptions (Hague Convention), adopted May 29, 1993, which requires that an adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin determine, *inter alia,* that consent has not been induced by payment or compensation of any kind. During the negotiations of the Sale of Children Protocol, both Japan and the United States stated their understanding that "applicable international instruments on adoption" meant the Hague Convention and that since they were not parties to that instrument, they would not be bound to penalize the conduct barred by the Hague Convention, *i.e.,* improperly inducing consent. These understandings are reflected in the negotiating record of the last session. No State stated a contrary understanding.

On September 20, 2000, the United States Senate gave its advice and consent to ratification of the Hague Convention. The Executive Branch intends to deposit the instrument of ratification for that Convention once regulations for implementation of the Convention and the Intercountry Adoption Act are in place and other preparations for implementation of the law have been completed. The implementing legislation for the Hague Convention criminalizes an intermediary's knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights. *See* 42 U.S.C. § 14944. This legislation will come into force at the time the United States ratifies the Hague Convention.

Question 7. What is the scope of the obligation under Article 10 to provide assistance to other nations?

Answer. Article 10(4) of the Sale of Children Protocol provides that States Parties "in a position to do so" shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programs. This language was specifically designed to reserve to contributing States the determination of what specific assistance they might provide under the Protocol. The protocol will not create any financial obligation for U.S. taxpayers since the Protocol does not require States Parties to provide a specific type or amount of assistance.

As is explained more fully in the transmittal memorandum, Article 10 is consistent with the U.S. commitment to bring about an end to the sexual exploitation and trafficking in children. Consistent with the provisions of Article 10(1), the

United States regularly engages in bilateral and multilateral efforts to deter and prevent the increased international traffic in children for labor and sexual exploitation. With respect to Articles 10 (2) and (3), the United States is committed to working with other governments to address the root causes of these crimes and to developing rehabilitation approaches that are effective. The Sale of Children Protocol should serve as a means of encouraging such programs and constitute an important tool for increasing assistance to children who are victims of sexual exploitation.

RESPONSES OF THE DEPARTMENT OF DEFENSE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

QUESTIONS WITH REGARD TO THE CHILD SOLDIERS PROTOCOL

Question 1. Have the Joint Chiefs of Staff considered this Protocol and its effect on U.S. military readiness? Have they closely reviewed the proposed understanding on Article 1?

Answer. Yes. Secretary of Defense and the Joint Chiefs of Staff have assessed that ratification of the Protocol would not affect their ability to carry out their national security missions.

Question 2. What preparations have been made for the implementation of Article 1 of the Protocol by the Office of the Secretary of Defense and the military services? Can you outline how you anticipate that it will be implemented?

Answer. Should the United States ratify the Protocol, the Services will promulgate implementation plans, as approved by the Secretary of Defense, that both fulfill U.S. commitments under the Protocol and ensure there is no adverse affect on each Service's military readiness. The Protocol gives the Services sufficient leeway to assign 17-year-olds (once they are fully trained) to their units and to then deploy these personnel on a wide variety of operational assignments, so long as we take "all feasible measures" to ensure these personnel do not take "a direct part in hostilities."

Question 3. During the negotiations, the U.S. delegation made a statement about its understanding of the obligation under Article 1. Did other delegations respond to this statement, and if so, how?

Answer. No other delegation disputed the U.S. understanding of the obligation contained in Article 1 of the Protocol. Some other delegations expressed disappointment that the Protocol did not bar "indirect" participation in hostilities and that the discretionary power granted to States through use of the term "feasible measures" weakened the Protocol. The Russian delegation acknowledged that since States were not required to prohibit participation, but only called on to take "all feasible measures" to prevent such participation, the Protocol left States open to the possibility in any emergency of involving persons under 18 years of age in hostilities. We agree with the Russian interpretation. When it signed the Protocol, the United Kingdom stated the following declaration:

> The United Kingdom understands that article 1 of the Optional Protocol would not exclude the deployment of members of its armed forces under the age of 18 to take a direct part in hostilities where: (a) there is a genuine military need to deploy the unit or ship to an area in which hostilities are taking place; and (b) by reason of the nature and urgency of the situation: (i) it is not practicable to withdraw such persons before deployment; or (ii) to do so would undermine the operational effectiveness of their ship or unit, and thereby put at risk the successful completion of the military mission and/or the safety of other personnel.

This understanding is consistent with the U.S. view discussed in the administration's submittal letter.

Question 4. Are there any regulations or Department (or service) directives with regard to the provisions of Section 505(a) of Title 10?

Answer. In addition to Section 505(a) of the U.S. Code establishing the minimum and maximum age for voluntary enlistment, there also is a DOD Directive, a Military Entrance Processing Command directive, a Joint regulation, and Service Directives that set forth the age requirements (minimum and maximum) for enlistment.

Question 5. The proposed understanding related to Article 3(2) indicates that each person recruited into the military "receives a comprehensive briefing and must sign an enlistment contract which, together specify the duties involved in military service." Please summarize the nature of the briefing and the contract and information contained therein.

Answer. The Military Entrance Processing Command (MEPCOM) gives each applicant a briefing that outlines Title 10, applicable regulations, and the enlistment form (DD Form 4). This briefing is outlined in MEPCOM Regulation 601-23, and the regulation also includes a list of questions that each applicant must be asked (e.g., you understand that you are joining the Army for 6 years). The briefing also defines fraudulent enlistments and its associated penalties.

Question 6. The proposed understanding related to Article 3(2) states that "[a]ll recruits must provide reliable proof of age before their entry into the military service." What measures are taken to ensure that proof of age presented is reliable? Is this requirement made of "all recruits" or only those who appear to be around age 18 or younger?

Answer. The Military Entrance Processing Command (MEPCOM) has programs that check to ensure that the date of birth entered by a recruiter falls into the age window outlined by Title 10, MEPCOM regulations, and other joint regulations. Additionally, each recruiter is required to obtain an original (or certified) government document that states an individual's age. Typically, this is an original birth certificate. If the individual is 17 years old, the recruiter is required to witness both parents' signatures. If a parent is divorced, then only one signature is required provided the custodial parent can produce the original (raised seal) divorce decree.

Question 7. What is the scope of the obligation under Article 6(2)?

Answer. Article 6(2) provides that States Parties "undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike." The provision is phrased generally, and States Parties do not assume detailed "obligations" under the protocol with respect to Article 6(2). If the Senate provides advice and consent to ratification, the administration intends to take appropriate measures to ensure that the provisions of the Protocol become widely known. Additionally, the Department of Defense would issue appropriate internal directives providing implementation guidance relating to the Protocol's provisions.

RESPONSES OF THE DEPARTMENT OF STATE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

Question 8. What is the scope of the obligation under Article 7?

Answer. Article 7(2), like Article 10(4) of the Sale of Children Protocol, specifies that States Parties "in a position to do so" shall provide financial, technical or other assistance through existing multilateral, bilateral or other programs. This language was specifically designed to reserve to contributing States the determination of what specific assistance they might provide under the Protocol. The protocol will not create any financial obligation for U.S. taxpayers since the Protocol does not require States Parties to provide a specific type or amount of assistance.

Article 7 reflects the U.S. commitment to assist in bringing an end to the tragedy of child soldiers through international cooperation and assistance among concerned States Parties and relevant international organizations. The United States has contributed substantial resources to programs aimed at reintegrating child soldiers into society and is committed to continue to develop rehabilitation approaches that are effective in addressing this seriously difficult problem. The United States actively supports activities to assist children affected by war, including demobilization, rehabilitation and integration into civilian society. The Children in Armed Conflict Protocol should serve as a means for encouraging such programs and constitute an important tool for increasing assistance to children who are victims of armed conflict.

RESPONSES OF THE DEPARTMENTS OF STATE, DEFENSE AND JUSTICE TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

QUESTIONS FOR ALL FIRST PANEL WITNESSES

Question 1. Will this protocol have any impact on the United States Armed Forces ability to enlist 17-year-olds, or on the military's ability to recruit at high schools, sponsor JROTC programs, or participate in other activities involving Americans who are not yet eighteen?

Answer. No. As Deputy Assistant Secretary of Defense for Negotiations Policy, Marshall Billingslea, stated during his testimony, U.S. ratification of the Protocol would have no effect on U.S. military recruiting practices. The current U.S. military practice, which comports with U.S. law (10 U.S.C. § 505), sets 17 as the minimum

age for voluntary recruitment, provided parental consent is obtained. This would not change if the United States ratifies the Protocol.

Similarly, nothing in the Protocol would prohibit the U.S. military from continuing to recruit in high schools, sponsor JROTC programs, or participate in other activities involving Americans who are not yet 18. The JROTC programs and other activities entail no commitment of any kind to serve in the U.S. military, participants do not sign an enlistment contract, and participants are not members of the U.S. Armed Forces. Voluntary recruitment into the armed forces applies solely to an actual commitment to serve, such as signing an enlistment contract.

Question 2. A United Nations report on Child Soldiers, the preparation of which was assisted by Amnesty International, makes the following allegations against the United States:

1) Recruiters with the Delayed Entry Program (DEP) often harass, intimidate and threaten young people to enlist and or keep their DEP commitment. They cite a 1999 investigation by an Atlanta TV station for this evidence. (According to DOD statistics, in 1998 between 11 and 19 percent of DEP enlistees as to be released.)

2) Girls are vulnerable to sexual harassment by recruiters. In 1999, a Washington state school district banned recruitment in schools after allegations of sexual harassment by recruiters.

3) The report is extremely critical of military training programs and schools. They cite the Young Marines program (with participants as young as 8 years old), and JROTC. JROTC, although not an official recruiting tool, is accused by the report of engaging in this activity as well as promoting violence in schools. Furthermore, JROTC is criticized for its disproportionate number of minority participants and programs in poor schools.

Why should the United Stated sign up to a protocol whose chief sponsors and proponents make these misleading charges about our country, and attempt to make a comparison or link between the recruiting policies of countries such as the U.S., Canada, and Britain, and the forced conscription of 8 and 10-year-olds in Africa and East Asia?

Answer. It is our understanding that the referenced report was not prepared by the United Nations. It was instead prepared by a non-government organization, the Coalition to Stop the Use of Child Soldiers. We do not find the allegations in this report concerning the United States or other countries to be credible.

Question 3. The authors of this Protocol, as well as the U.N., understand the Protocol to read that 17-year-old soldiers functioning in a support role in a combat zone, such as driving a truck transporting supplies to the front, are "participating in hostilities." I am aware that the Pentagon has a different interpretation of this Article of the Protocol, but if the rest of the world reads it this way, then it is quite possible that the U.S. will be charged with violating the Protocol, and that U.S. Commanders will be held responsible. Would you agree?

Answer. As pointed out above, the Protocol does not contain any provision that would permit States to be charged with violating the Protocol. Nor does the Protocol authorize the trial of any person before an international criminal tribunal for a violation of the protocol or include any mechanism for cooperation in prosecution before international tribunals.

Furthermore, there is no legitimate basis for challenging the U.S. proposed understanding concerning "direct participation in hostilities" as used in Article 1. That understanding is based upon the well understood meaning of the term in the law of armed conflict. The term "direct" has been understood in the context of treaties relating to such law of armed conflict (including International Committee of the Red Cross ("ICRC")) commentaries on the meaning of the provisions of Protocol I to the Geneva Conventions) to mean a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where the activity takes place. The standard recognizes that there is no prohibition concerning indirect participation in hostilities or forward deployment.

Throughout negotiations with respect to Article 77(2) of Protocol I to the Geneva Conventions, Article 38(2) of the Convention on the Rights of the Child, and Article 1 of the Children in Armed Conflict Protocol (which all use the same terminology—"direct participation in hostilities"), various delegations, as well as the ICRC, repeatedly attempted to remove the reference to "direct." However, other delegations, including the United States, insisted that there should be no deviation from existing treaties using the same terminology. For example, during negotiation of the Convention on the Rights of the Child, the ICRC explained its position in the Working Group as follows:

> Likewise, the Working Group could have strengthened protection by removing the word "direct." The ICRC suggested this too during the Diplo-

matic Conference but the proposal was not approved. This being the case, it can reasonably be inferred from the present Article 20 of the Draft Convention that indirect participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision.

At the conclusion of the Children in Armed Conflict Protocol negotiations, a number of delegations expressed disappointment that the Protocol did not bar "indirect" participation in hostilities. However, we consider crucial the fact that the Protocol explicitly applies only to "direct" participation in hostilities.

Question 4. The U.N. and proponents of this Protocol, such as Amnesty International, contend that any 17-year-old soldier deployed to a combat zone regardless of whether he or she is in a combat unit, or in the front or rear, would constitute a violation of the Protocol. They argue that the Geneva Convention and its additional protocols define combatants, under International Law, as members of a nation's armed forces. And as such, they can lawfully kill or be killed. Therefore, putting a minor in a situation in which they can be lawfully killed—even if they are not in a situation where they will likely be engaged in combat—would constitute a violation of the Protocol. What are your thoughts on this matter?

Answer. The Protocol places no geographical limits on where 17-year-old servicemembers may be deployed. It simply requires that parties take all feasible measures to ensure that servicemembers under 18 do not take a direct part in hostilities. This standard does not prohibit 17-year-old servicemembers from being forward deployed, from taking an indirect part in hostilities, or from taking a direct part in hostilities under exceptional circumstances.

During the Protocol negotiations, a number of states and NGOs took the position that states should ensure that participation in armed conflict did not occur below the age of 18. The United States and other delegations pointed out that if individuals under the age of 18 were permitted to enter the military, from a practical and logical standpoint states could not ensure that they would not take part in hostilities, since during the time of war, members of the armed forces are lawful subjects of attack no matter where they are located. Ultimately, the compromise reached requires that States Parties take "all feasible measures to ensure that members of their armed forces under the age of eighteen do not take a direct part in hostilities."

The understandings recommended by the administration in the transmittal package adequately describe the U.S. interpretation of what the phrases "all feasible measures" and "direct part in hostilities" entail. Furthermore, the U.S. interpretations of these terms correspond with the meanings attributed to them under the law of armed conflict, as the U.S. delegation so stated without contradiction during the negotiations.

Question 5. Should there be an additional understanding regarding the meaning of our Article I obligations that "direct participation" does not include situations of self defense, such as the U.S. may face in a peacekeeping operation, routine duty, or active patrol in the case of a naval vessel?

Answer. There is no need for this. The declaration and understandings recommended by the administration in the transmittal package are adequate to protect U.S. interests under the Protocol. Specifically, the Protocol's "all feasible measures" formula provides U.S. commanders with the necessary flexibility they need to address self-defense and other exceptional situations that might arise. The Protocol in no way limits the U.S. inherent right of self-defense.

Question 6. Based on the views of some human rights groups have written, a 17-year-old in uniform constitutes a legitimate target (a combatant). And because under the Geneva convention combatants can be legally killed, the U.S. would be in violation of the Protocol for placing a 17-year-old in such a situation. Should, therefore, there be an understanding that the U.S. is not in violation of the Protocol if 17-year-olds are physically in a theater of operations or war zone and killed or harmed by the enemy not as a result of "direct combat?"

Answer. There is no need for this. As stated more fully in the response provided by Mr. Billingslea to a similar question, the Protocol places no geographical limits on where 17-year-old servicemembers may be deployed. It simply requires that States Parties take all feasible measures, to ensure that servicemembers under 18 do not take a direct part in hostilities. The understandings recommended by the administration in the transmittal package adequately describe the U.S. interpretation of what the phrases "all feasible measures" and "direct part in hostilities" entail. Accordingly, an additional understanding is not necessary. That said, the Protocol

does not prohibit the deployment of 17-year-olds under the circumstances you have listed.

RESPONSES OF AMB. E. MICHAEL SOUTHWICK AND JOHN G. MALCOLM TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JESSE HELMS

Question 1. The Child Trafficking Protocol, if brought into force for the United States, would affect areas which are traditionally the province of state and local governments. Is it your judgment that state and local statutes and practices, coupled with recent federal legislation on trafficking, is not already more than adequate to achieve the goals set out in the Protocol? If not, why not?

On the other hand, if you conclude that our domestic legal infrastructure is adequate, what possible concrete benefit to victims will flow from subjecting state and local law enforcement and victim assistance providers to scrutiny and criticism from an international body of dubious credibility and no intelligent understanding of the challenges they face?

Please coordinate your response with the U.S. Department of Justice.

Answer. With the adoption of the conditions to ratification that have been proposed, existing U.S. law, at the state, local and federal level, would enable the United States to comply with the obligations that the United States would assume as a Party to the Protocol.

Ratification of this Protocol could provide U.S. victims of the offenses concerned concrete benefits. Most importantly, the Protocol, by requiring that the offenses covered be included as extraditable offenses in all bilateral extradition treaties, would help ensure the prosecution of offenders who commit crimes in the United States and flee to other countries. The Protocol also requires States parties to offer the greatest measure of assistance in obtaining evidence for investigation and prosecution of these crimes, which could facilitate U.S. prosecution of those who victimize children in the United States.

In addition, to the extent that the crimes covered by the Protocol may be perpetrated against U.S. citizens overseas, the Protocol provides an enhanced legal framework for other States Parties to take action against such offenses and to provide protection to victims.

The Administration is not concerned about explaining our state, local and federal laws and practices in this area to the UN Committee on the Rights of the Child. To the contrary, the Administrations welcomes the opportunity to present the extensive law enforcement measures and assistance practices that are present in the United States.

Ratification of this Protocol will also give us standing to address—and if necessary, to challenge—opinions of the Committee on the Rights of the Child that interpret the Protocol in manners with which we disagree. We would lack such standing if we were not a State Party.

Question 2. Your response to Question #1 (which I submitted previously) on the Child Soldier Protocol did not address the first part of the question. How will United States participation in this agreement halt the conscription of "child soldiers" in those areas of Asia and Africa where this practice still exists?

Answer. Ratification of the Protocol on Children in Armed Conflict will empower us to speak—and be heard—as a full participant in a regime to end the scourge of the use and abuse of underage combatants. This will have a positive effect.

As a witness before the Committee stated:

> (1) The protocol has already made a difference. . . . Even before the protocol was finalized, some countries began to change their practices. In Colombia, thousands of children were demobilized from the Colombian armed forces. In June of 2000, President Kabila of the Democratic Republic of Congo issued a decree calling for the demobilization of child soldiers from the Congolese army, and is cooperating with UNICEF to put rehabilitation programs into place. . . .
>
> (2) The protocol can influence non-governmental forces. . . . Last February, over 2500 children between the ages of 13 and 18 were demobilized from the Sudan People's Liberation Army. From May to November over 1500 children were demobolized from the Revolutionary United Front in Sierra Leone. In these and other cases, non-state forces can be persuaded to comply with international standards to enhance their own credibility.

As our prior response to this question noted, several countries in Africa and Asia, namely Bangladesh, the Democratic Republic of Congo, Kenya, Sri Lanka and Vietnam, have already ratified this Protocol. If the United States ratifies this Protocol

it will encourage those States to give effect to the commitments they have undertaken and encourage other States to do the same.

Question 3. Your response to Question #3 (which I submitted previously) on the Child Soldier Protocol states that the Protocol does not "authorize the trial of any person before an international criminal tribunal for a violation of the protocol." Is it the position of the administration that a violation of any provision of the Protocol would not form a basis for prosecution before an international criminal tribunal?

Your response also included a quote from the ICRC delegation to the Working Group that appeared to define the term "indirect participation" in the context of Article 20 of the Protocol. Does the administration accept this definition of "indirect participation" and is the definition complete without reference to forward deployments?

Answer. An alleged violation of a provision of the Protocol cannot form a basis for prosecution before an international criminal tribunal. Historically, international criminal tribunals, e.g., the Nuremberg Tribunal, the International Criminal Tribunal for Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court, provide for the prosecution of offenses specified in the respective statutes establishing those tribunals. None of these tribunals provides for the prosecution of any alleged violation of this protocol.

The ICRC statement cited in our response by its own terms is not exhaustive in describing the forms of "indirect participation." The ICRC said ". . . it can reasonably be inferred from the present Article 20 of the Draft Convention that indirect participation, for example gathering and transmitting military information, transporting weapons, munitions and other supplies is not affected by the provision." (emphasis supplied) We believe that the Protocol permits forward deployment of military personnel under 18 years of age so long as all feasible measures are taken to ensure that they do not take a direct part in hostilities.

Ambassador Southwick, Mr. Billingslea and Mr. Malcolm concur in this response.

Question 4. Is your response to Question #3 (which was submitted previously) by Senator Biden on the Child Trafficking Protocol affected by the recent Supreme Court decision in *Ashcroft* v. *Free Speech Coalition,* No. 00–795, 535 U.S. (2002), decided April 16, 2002?

Answer. No, the answer remains the same. Free Speech explicitly recognizes the authority of the Justice Department to prosecute child pornography cases in which actual children are depicted, and that is the only type of child pornography that must be criminalized under the Protocol.

Question 5. Do the Departments of Justice and State concur with the responses of Mr. Billingslea to Questions #1 through 8 by Senator Helms (which I submitted previously) and to Questions #1 and 2 of Senator Boxer (also submitted previously) on the Child Soldier Protocol?

Answer. Yes.

RESPONSES OF AMB. E. MICHAEL SOUTHWICK AND JOHN G. MALCOLM TO ADDITIONAL QUESTIONS FOR THE RECORD SUBMITTED BY SENATOR JOSEPH R. BIDEN, JR.

Question 1. Biden question #2 (which I submitted previously) on the Child Soldiers Protocol is unresponsive. The question posed was:

What preparations have been made for the implementation of Article 1 of the Protocol by the Office of the Secretary of Defense and the military services? Can you outline how you anticipate that it will be implemented?

Supplemental Answer. The Department of Defense is currently reviewing how it would implement the Child Soldiers Protocol in the event that the Senate elects to provide its advice and consent to ratification of the treaty. Once the Department finalizes its review, we would be pleased to brief the Committees on Foreign Relations and Armed Services of the Senate.

Question 2. Biden question #4 (which I submitted previously) on the Child Soldiers Protocol asked about DOD regulation and directives related to Section 505(a) of Title 10 of the U.S. Code. The question also asked for copies of these regulations, etc. Those copies were not provided. The question as retyped by you folks omits that part of the Biden question.

Answer. In addition to Section 505(a) of the U.S. Code establishing the minimum and maximum age for voluntary enlistment, there also is a DOD Directive, a Military Entrance Processing Command directive, a Joint regulation, and Service Directives that set forth the age requirements (minimum and maximum) for enlistment.

Supplemental response:

Copies of the following documents are attached [These documents are in the Committee's files]:

1. Department of Defense Directive 1304.26 dated December 21, 1993, entitled "Qualification Standards for Enlistment, Appointment and Induction"

2. United States Military Entrance Processing Command Regulation No. 601-23 dated May 13, 1997, entitled "Personnel Procurement, Enlistment Processing"

3. Army Regulation 601-270, Air Force Regulation 33-7, Marine Corps Order P1100.75A dated November 20, 1999, entitled "Military Entrance Processing Station (MEPS)"

4. Army Regulation 601-210 dated February 28, 1995, entitled "Regular Army and Army Reserve Enlistment Program"

5. Commander, Navy Recruiting Command Instruction 1130.8F dated February 28, 2000, entitled "Navy Recruiting Manual-Enlisted" (Title page and Chapter 2)

6. Air Force Instruction 36-2002 dated April 7, 1999, entitled "Regular Air Force and Special Category Accessions"

7. Marine Corps Order P1100.72B dated December 10, 1997, entitled "Military Personnel Procurement Manual, Volume 2, Enlisted Procurement" (Short Title: MPPM ENLPROC)