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Rhonda J. McMillion
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September 20, 2007

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the American Bar Association, I write regarding a group of treaties relating to the laws of armed conflict that are awaiting Senate advice and consent and are now before your Committee. While we have previously expressed support for one of the treaties under consideration, the *Convention on the Protection of Cultural Property in the Event of Armed Conflict*, we are now pleased to be able to communicate official ABA support for the entire package. The ABA House of Delegates last month adopted the enclosed resolution urging prompt U.S. ratification of the pending Amendment and Protocols to the *UN 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 treaties in question merit prompt and favorable Committee action, as well as floor consideration, so that ratification can be completed as quickly as possible. We would be pleased to assist with any of those steps. If you or your staff have any questions or would like further information, please do not hesitate to contact Kristi Gaines in the Governmental Affairs Office at 202-662-1763 or gainesk@staff.abanet.org.

Sincerely,



Denise A. Cardman
Acting Director

cc: Hon. Richard Lugar, Ranking Member
Hon. Harry Reid, Senate Majority Leader
Hon. Mitch McConnell, Senate Minority Leader

**AMERICAN BAR ASSOCIATION
ADOPTED BY THE HOUSE OF DELEGATES**

August 13-14, 2007

RECOMMENDATION

RESOLVED, That the American Bar Association urges that the United States ratify the following Amendment and Protocols to the United Nations 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:

- 1) Amendment of Article 1, done at Geneva December 21, 2001 (Treaty Doc. 109-10), submitted to the Senate June 20, 2006;
- 2) Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), done at Geneva October 10, 1980 (Treaty Doc. 105-1), submitted to the Senate January 7, 1997;
- 3) Protocol on Blinding Laser Weapons (Protocol IV), done at Vienna October 13, 1995 (Treaty Doc 105-1), submitted to the Senate January 7, 1997; and
- 4) Protocol on Explosive Remnants of War (Protocol V), done at Geneva November 28, 2003 (Treaty Doc. 109-10), submitted to the Senate June 20, 2006.

REPORT

INTRODUCTION

This Report and Recommendation expands the ABA's policy platform with respect to the law of armed conflict.

In May 2007, the Section of International Law learned of plans to move six international instruments in this area forward, as a package, for advice and consent in the Senate. The ABA has existing policy on two of the six – the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at the Hague on May 14, 1954, and its Protocol.¹

The other four items in the proposed package are:

- Amendment of Article 1 of the UN 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, done at Geneva December 21, 2001 (Treaty Doc.: 109-10); submitted to Senate June 20, 2006.
- Protocol on prohibitions or restrictions on the use of Incendiary Weapons (Protocol III) additional to the UN Convention of October 10, 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, done at Geneva October 10, 1980 (Treaty Doc.: 105-1); submitted to Senate January 7, 1997.
- Protocol on Blinding Laser Weapons (Protocol IV) additional to the UN Convention on October 10, 1980 on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, done at Vienna October 13, 1995 (Treaty Doc.: 105-1); submitted to Senate January 7, 1997.
- Protocol on Explosive Remnants of War (Protocol V) to UN 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, done at Geneva November 28, 2003 (Treaty Doc.: 109-10); submitted to Senate June 20, 2006.

A review by interested Section members and ABA staff revealed these four items to be meritorious and deserving of ABA support. All four items have the support of President Bush and his administration and supports Senate action at this time. Approval of this

¹ See <http://www.abanet.org/intlaw/policy/armscontrol/conventionculturalproperty.pdf>.

Report and Recommendation would enable the ABA to advocate favorable Senate action on the entire package.

DISCUSSION

Following the atrocities of World War II, the Geneva Conventions were formulated to reduce the human suffering caused by war. The four conventions provide for the amelioration of the conditions of the wounded and sick in armed forces in the field; amelioration of the conditions of the wounded, sick, and shipwrecked members of armed forces at sea; humane treatment of prisoners of war; and the protection of the civilian persons in time of war. These conventions set basic standards of international law applicable in situations of armed conflict.

As an annex to the Geneva Conventions, the UN Convention on Certain Conventional Weapons (CCW), which entered into force in December 1983, seeks to prohibit or limit the use of certain conventional weapons that are deemed excessively injurious or have indiscriminate effects. The CCW provides rules for the protection of military personnel and civilians from injury by means of fragments that cannot readily be detected in the human body by x-rays, landmines and booby traps, and incendiary weapons and blinding laser weapons. The CCW itself has five protocols: Protocol I, prohibiting the use of fragmentation weapons; Protocol II, restricting the use of landmines, booby-traps and certain other devices; Protocol III, regulating the use of incendiary weapons; Protocol IV, prohibiting the use of blinding laser weapons; and Protocol V, addressing the post-conflict threat of explosive remnants to civilians.

The United States has signed and ratified Protocol I, Protocol II, and amended Protocol II. The Bush Administration has requested the Senate's advice and consent on an Amendment of Article 1, as well as on Protocols III, IV, and V.

Amendment of Article 1: Article 1 of the CCW as adopted in 1980 limited the treaty's scope of application to international armed conflict and wars of national liberation. In 1999, the United States proposed expanding the scope of the CCW as a whole to non-international armed conflicts, thus according civilian populations the same protections against the indiscriminate use of landmines and certain other conventional weapons regardless of the type of conflict. The amendment to Article 1, adopted in Geneva on December 21, 2001, eliminates the distinction between international and non-international armed conflict for the purposes of the rules governing the prohibitions and restrictions on the use of certain conventional weapons. It does not change the legal status of rebel or insurgent groups into that of protected or privileged belligerents.

Protocol III: Protocol III of the CCW, as adopted in 1980, allows the use of incendiary weapons to attack military targets located near concentrations of civilians only when the military target is clearly separated from the concentration of civilians and all feasible precautions are taken to minimize civilian casualties and collateral damage. While incendiary weapons have significant potential military value, particularly with respect to

flammable military targets that cannot as readily be destroyed with conventional explosives, these weapons can be misused in a manner that could cause heavy civilian casualties. Protocol III prohibits the use of air-delivered incendiary weapons against targets located in a city, town, village, or other concentration of civilians, a practice that has caused very heavy civilian casualties in past conflicts. The United States would reserve the right to use incendiaries against military objectives located in concentrations of civilians where it is judged that such use would cause fewer casualties and less collateral damage than alternative weapons.

Protocol IV: Protocol IV of the CCW as adopted in 1980 completely prohibits the use of laser weapons primarily used for causing permanent blindness to combatants. The Protocol aims to reduce risk of widespread development, proliferation, and use of blinding laser weapons; it also clarifies the legitimacy of other types and uses of battlefield lasers.

Protocol V: Protocol V of the CCW as adopted in 2003, addresses the post-conflict threats generated by conventional munitions such as unexploded or abandoned mortar shells, grenades, artillery rounds, and bombs. It recognizes the threat that these munitions pose to civilians and to post-conflict reconstruction. The Protocol provides for the marking, clearance, removal, and destruction of such remnants by the party in control of the territory in which the munitions are located.

CONCLUSION

The Amendment and Protocols summarized above seek to minimize, and with full participation (including ratification) by signatories will improve the CCW's efficacy in reducing, civilian casualties both during and following situations of armed conflict.

U.S. ratification would further the United States' humanitarian objectives without compromising the appropriate use of important military technologies.

Respectfully Submitted,

Deborah Enix-Ross
Chair
August 2007