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Mr. Chairman, members of the Committee, I am pleased to appear before you today to testify in support of five treaties being considered by the Committee:

- extradition treaties with Kosovo and Serbia,
- maritime boundary delimitation treaties with Kiribati and the Federated States of Micronesia, and
- the United Nations Convention on the Assignment of Receivables in International Trade.

The Administration appreciates the Committee's prioritization of these treaties. Individually and collectively, these treaties advance U.S. interests. The extradition treaties will enhance our ability to combat transborder criminal activity. The maritime boundary treaties will improve our ability to explore, benefit from, conserve, and manage the natural resources of our maritime areas. And the Receivables Convention will help U.S. businesses gain access to capital. The Administration supports each of these treaties, and urges the Senate to provide its advice and consent to their ratification. During the remainder of my testimony, I will discuss the five treaties in additional detail.

Extradition Treaties with Kosovo and Serbia

The two extradition treaties pending before the Committee will update our existing treaty relationships with two important law enforcement partners – Kosovo and Serbia. The continuing growth in transborder crime, including terrorism, other forms of violent crime, drug trafficking, cybercrime, and the laundering of the proceeds of criminal activity, underscores the need for increased international law enforcement cooperation. Extradition treaties are essential tools in that effort.

The U.S. extradition relationships with Kosovo and Serbia are currently governed by the Treaty Between the United States of America and the Kingdom of Servia for the Mutual Extradition of Fugitives from Justice, signed on October 25, 1901 ("the 1901 Treaty"). We have found that this treaty is not as effective as the modern treaties we have in force with other countries in ensuring that fugitives may be brought to justice. The two treaties now before the Committee would establish modern extradition relationships with both countries, thereby allowing us to engage in closer and more effective law enforcement cooperation.

Replacing outdated extradition treaties with modern ones (as well as negotiating extradition treaties with new partners where appropriate) is necessary to create a seamless web of mutual obligations to facilitate the prompt location, arrest and extradition of international fugitives. As a result, these treaties are an important part of the Administration's efforts to ensure that those who commit crimes against American victims will face justice in the United States.

Both new treaties contain several important provisions that will substantially serve our law enforcement objectives:

First, these treaties define extraditable offenses to include conduct that is punishable by imprisonment or deprivation of liberty for a period of one year or more in both states. This is the so-called "dual criminality" approach. Our older treaties, including the 1901 Treaty, provide for extradition only for offenses appearing on a list contained in the instrument. The problem with this approach is that, as time passes, the lists grow increasingly out of date. The dual criminality approach eliminates the need to renegotiate treaties to cover new offenses in instances in which both states pass laws to address new types of criminal activity. By way of illustration, so called "list Treaties" from the beginning of the 20th century do not cover various forms of cybercrime or money laundering. The new treaties with Kosovo and Serbia would fix this problem.

Second, these treaties address one of the most difficult and important issues in our extradition treaty negotiations – the extradition of nationals. As a matter of long-standing policy, the U.S. Government extradites United States nationals and strongly encourages other countries to extradite their nationals. Both of the treaties before the Committee contemplate the unrestricted extradition of nationals by providing that nationality is not a basis for denying extradition. This provision is particularly important in the context of Kosovo and Serbia because of certain provisions in their domestic law. Kosovo's Supreme Court has ruled that its new constitution only permits the extradition of Kosovo nationals where required by international agreement. Kosovo has been clear that this provision in the treaty will overcome that obstacle, allowing them to extradite their nationals to the United States. Similarly, Serbia has domestic legislation that also permits extradition of nationals only pursuant to an obligation of a treaty to which Serbia is a party. Similarly, they have been clear that the provision on extradition of nationals in the new treaty overcomes this obstacle.

Third, the treaties include a modern "political offense" exception that states that extradition shall not be granted if the offense for which extradition is requested is a political offense, but establishes a number of categories of offenses that shall not be considered political offenses. These categories of offenses cover a range of violent crimes, including murder, kidnapping and hostage taking, and the use of various kinds of explosive devices. These categories of offenses, which did not exist in earlier extradition treaties, constitute exceptions to the political offense exception and align with a major longstanding priority of the United States to ensure that an overbroad definition of "political offense" does not impede the extradition of terrorists.

Fourth, unlike the 1901 Treaty, these new treaties contain a provision that permits the temporary surrender of a fugitive to the Requesting State when that person is facing prosecution for, or serving a sentence on, charges within the Requested State. This provision can be important to the Requesting State (and in some cases the fugitive) so that, for example: (1) charges pending against the person can be resolved earlier while evidence is fresh, or (2) where the person sought is part of a criminal enterprise, he can be made available for assistance in the investigation and prosecution of other participants in the enterprise.

Fifth, both of these treaties incorporate a number of procedural improvements over the 1901 Treaty, including direct transmission of provisional arrest requests through Justice Department

channels, waiver and consent to extradition, and clear statements of the required materials to be included in a formal extradition request.

For all these reasons, U.S. ratification of the extradition treaties with Kosovo and Serbia will help us and our colleagues at the Justice Department further develop two important law enforcement relationships and advance our objective of combatting transnational crime.

Maritime Boundary Treaties with Kiribati and the Federated States of Micronesia

In an area where more than one country has maritime entitlements under international law, maritime boundaries are needed to clarify where each country may exercise its sovereignty, sovereign rights, and jurisdiction as a coastal State. In this connection, it is often noted that "good fences make good neighbors." Delimited boundaries also provide legal certainty that enhances our ability to explore, benefit from, conserve, and manage the natural resources of our maritime areas, including with respect to our fisheries. Resolving the outstanding maritime boundaries of the United States around the world remains an ongoing project, with about a dozen such boundaries yet to be fully agreed with our neighbors.

These two treaties delimit the exclusive economic zone (or "EEZ") and continental shelf between the United States and Kiribati, and between the United States and the Federated States of Micronesia (FSM), on the basis of equidistance. (Every point on an equidistance line is equal in distance from the nearest point on the coastline of each country.) This approach is wholly in line with international law and practice, and moreover serves to formalize the longstanding status quo regarding each side's asserted rights and jurisdiction in these maritime areas. Accordingly, with appropriate technical adjustments, each treaty formalizes boundaries that have been informally adhered to by the Parties, and that are very similar to the existing limit lines of the EEZ asserted by the United States for decades and published in the Federal Register. Because of improved calculation methodologies and minor coastline changes, the four new maritime boundaries in these two treaties will result in a small net gain, primarily with respect to the Kiribati boundaries, of United States EEZ and continental shelf area relative to the existing limit lines of our EEZ.

The treaty with FSM establishes a single maritime boundary between Guam and several FSM islands. The boundary is approximately 447 nautical miles with 16 turning and terminal points. The treaty with Kiribati establishes three maritime boundaries in the Pacific with respect to the EEZ and continental shelf generated by various Kiribati islands and by each of the U.S. islands of Palmyra Atoll, Kingman Reef, Jarvis Island, and Baker Island. Specifically, the treaty with Kiribati defines three distinct boundary lines: for the boundary line between the United States' Baker Island and the Kiribati Phoenix Islands group, six points are connected by geodesic lines that measure 332 nautical miles in total; for the boundary line between the United States' Jarvis Island and the Kiribati Line Islands group, ten points are connected by geodesic lines that measure 548 nautical miles in total; and for the boundary line between the U.S. islands of Palmyra Atoll and Kingman Reef and the Kiribati Line Islands group, five points are connected by geodesic lines that measure 383 nautical miles in total.

The form and content of the two treaties are very similar to each other, and to previous maritime boundary treaties between the United States and other Pacific island countries that have entered into force after receiving the Senate's advice and consent. Each of the two treaties consists of seven articles, which set out the purpose of each treaty; the technical parameters; the geographic location of the boundary lines; standard language indicating the agreement of the Parties that, on the opposite side of each maritime boundary, each Party will not "claim or exercise for any purpose sovereignty, sovereign rights, or jurisdiction with respect to the waters or seabed or subsoil"; a clause that the establishment of the boundaries will not affect or prejudice either side's position with respect to the rules of international law relating to the law of the sea; a provision for dispute settlement by negotiation or other peaceful means agreed upon by the Parties; and a provision that entry into force would follow an exchange of notes indicating that each side has completed its internal procedures. For the purpose of illustration only, the boundaries are depicted on maps attached to the treaties.

The treaties do not limit how we may choose to manage, conserve, explore, or develop the U.S. EEZ and continental shelf consistent with international law; they merely clarify the geographic scope of our sovereign rights and jurisdiction consistent with international law and with longstanding unilateral U.S. practice, and they reinforce other countries' recognition of the U.S. EEZ and continental shelf entitlements around the U.S. islands in question.

United Nations Convention on the Assignment of Receivables in International Trade

The United Nations Convention on the Assignment of Receivables in International Trade establishes uniform international rules governing a form of financing widely used in the United States involving the assignment of receivables. Expanded access to receivables financing in international trade, which the Convention would promote, will provide American businesses an additional source of capital at no cost to the U.S. taxpayer and require no material change to existing U.S. laws. This should particularly benefit small and medium-sized businesses that use receivables financing.

The Convention, which is largely based on U.S. law, provides modern, uniform rules for transactions in which businesses either sell their rights to payments from their customers (known as "receivables") to a bank or other financial institution, or use their rights to these payments as collateral for a loan from a lender (the businesses selling or using their receivables as collateral are referred to as "assignors" and buyers and lenders are referred to as "assignees"). Such transactions enable businesses to obtain greater access to credit at lower cost and thereby expand their operations.

These so-called "assignments of receivables" transactions are well established in the United States as a method of obtaining low-cost credit, and are governed by Article 9 of the Uniform Commercial Code (UCC), which has been adopted by all U.S. States and the District of Columbia, Puerto Rico, and the Virgin Islands. The Convention provides economically-useful rules for cross-border transactions involving receivables typically generated in the exchange of goods or services for payment and from other commercial transactions.

The assignment of these types of receivables is common and relatively easy to effect in the United States when only domestic assignors and domestic receivables are involved. When these transactions cross international boundaries, however, determining whether U.S. law or the law of another country applies is fraught with uncertainty -- not only as to which country's laws apply but also the nature of those laws. In addition, even if one can determine which country's laws apply and what those laws say, those laws may not be very helpful for receivables financing. As The Convention addresses both aspects of these problems - the conflict of laws problem and substantive legal rules problem.

1. The Key Conflict of Laws Provision

The Convention governs assignments of receivables that have an international dimension. In particular, the Convention applies both to assignments of receivables when the assignor and the debtor on the receivables ("account debtor" for U.S. law purposes) are located in different countries and to the assignment of receivables when the assignor and the assignee of the receivables are located in different countries. In either case, without the benefit of the Convention, the fact that the transaction involves more than one country creates uncertainty as to which country's substantive law governs because the conflict of laws rules that would determine the answer vary significantly from one country to another. Even after determining which country's law governs, one must determine what that law is and how it applies to the transaction. This uncertainty adds significant risk to these international transactions, making credit based on them harder to obtain and more costly.

One of the most important aspects of the Convention is Article 22, which sets forth a clear rule as to which country's substantive law governs the priority of an assignee's interest in receivables as against competing claimants. Competing claimants may include other assignees of the same receivable, creditors of the assignor who have obtained rights in the receivable, or a bankruptcy trustee of the assignor. Article 22 provides that the law of the country in which the assignor of the receivable is located governs the priority of the assignment against competing claimants. This is critically important because assignees are unlikely to enter into receivables financing transactions on favorable credit terms if there is uncertainty as to the priority of their claim to the receivables.

2. Substantive Rules Governing the Assignment of Receivables

In addition to the conflict of laws rule, the Convention also provides a set of clear substantive rules governing important aspects of receivables financing, including practices that facilitate receivables financing and provide for a predictable resolution of issues that follows the general approach of UCC Article 9. Those Convention rules would override limitations in effect in many countries that restrict the usefulness of receivables financing (but not United States law under UCC Article 9, because the Convention rules are largely consistent with UCC Article 9). For example, Article 8 of the Convention, consistent with UCC Article 9, makes effective (1) the assignment of existing and future receivables to secure current and future advances, (2) the bulk assignment of receivables, and (3) the assignment of partial and undivided interests in receivables even if a country's internal law (unlike the United States) would otherwise restrict these transactions. It also reduces the need for excessive formality and documentation costs by

permitting the receivables that are assigned to be described generally in the contract of assignment, which is consistent with UCC Article 9.

For assignments within the scope of the Convention, Article 9 of the Convention, like Article 9 of the UCC, overrides certain contractual limitations on assignments of trade receivables. Consistent with UCC Article 9, the treaty provides that the assignment of such a receivable is effective notwithstanding any agreement between the account debtor (i.e. the debtor on the receivable) and the assignor (i.e. the account debtor's creditor) limiting the assignor's right to assign that receivable. This provision is particularly useful in transactions in which a business assigns a large number of its receivables created under a number of transactions because it avoids the otherwise hefty costs of the lender examining each contract creating a receivable to see if the contract limits assignment of the receivable.

The Convention also sets out certain rights and obligations of the assignor and assignee that flow from the assignment of the receivables. For example, under Article 13, the assignee may notify the debtor and request payment. Article 14 sets out the assignee's right as against the assignor to proceeds of receivables (such as cash payments when the receivable has been collected).

Because the Convention contains rules reflecting modern receivables financing practices consistent with those in UCC Article 9, widespread ratification of the Convention will help countries outside the United States modernize their receivables financing laws and enable this type of access to credit for companies engaged in cross-border trade without causing disruption to businesses in the United States that rely on, and have mastered, the rules in UCC Article 9.

3. Relationship to U.S. Law

There is a strong correspondence between the Convention and U.S. law. Negotiation of the Convention was supported by the leadership of the Uniform Law Commission (ULC) and members of the American Law Institute (ALI) (the ULC's partner in developing the UCC). Members of both organizations participated in the U.S. delegation to the United Nations Commission on International Trade (UNCITRAL) as the Convention was being negotiated. In fact, the timing of the Convention coincided with the domestic revision of UCC Article 9, and many of the participants in the U.S. law reform project also participated in the preparation of the Convention.

After the Convention was adopted, a ULC Committee, along with experts from the ALI, reviewed the Convention for the purpose of determining its suitability for ratification by the United States. They issued a committee report, which was approved by the ULC, proposing formulations for declarations and understandings, aimed at assuring consistency with practice under UCC Article 9 and facilitating application of the Convention in the United States. As reflected in the treaty transmittal package, the executive branch has proposed declarations and understandings to accompany the Senate's advice and consent to the Convention. These proposed declarations and understandings are consistent with the recommendations of the ULC and ALI committee of experts. They would provide additional clarity about how the United States will implement the Convention domestically and facilitate its application in a manner consistent with existing practice in the United States under UCC Article 9. Proposed

understandings address the scope of the Convention (including its inapplicability to securities and to rights other than contractual rights to payment under intellectual property licenses), the ability of states to provide additional rights to an assignee with respect to the proceeds of a receivable beyond the minimum level of rights required by the Convention, and the meanings of certain terms used in the Convention. Proposed declarations address how the Convention will apply in the context of certain insolvency proceedings, how it will apply to certain contracts entered into by governmental entities or other entities constituted for a public purpose, and rules for determining which U.S. state laws will apply in circumstances where the Convention requires reference to applicable U.S. law. In addition, a proposed declaration provides that the United States will not be bound by optional provisions of the Convention addressing choice of law rules. These proposed understandings and declarations are discussed in detail in the treaty transmittal package.

The treaty would be self-executing, which is consistent with the recommendation of the ULC Committee. There is no need for federal or state implementing legislation.
Ratification of the Convention would not change U.S. practice in this area in any material respect. The Convention's rules are largely based on U.S. law and will produce substantially the same results as those under the UCC Article 9.

4. Benefits of U.S. Ratification

Widespread ratification of the Convention would help businesses in the United States gain access to capital to conduct international trade. The importance of these benefits is underscored by the support the Convention has received from the U.S. business community. Industry associations that have written to the Committee to express their support for the Convention include the Financial Services Roundtable, the U.S. Chamber of Commerce, the Bankers Association for Trade and Finance, the Commercial Finance Association, the Equipment Leasing and Finance Association, and the U.S. Council for International Business. The American Bar Association and the Uniform Law Commission have also expressed their support for the Convention.

Because the Convention is based on U.S. law, and because of the leading role the United States has played in receivables financing, other countries will be less likely to join the Convention if the United States declines to ratify it. Currently, one country – Liberia – has ratified the Convention. Five countries must ratify it in order for it to enter into force. U.S. ratification could have a particularly important leadership impact in this regard. There are currently a number of regional initiatives underway focused on reforming the law of secured transactions, including in Latin America, Africa, and the Asia-Pacific region. Expanded ratification of the Convention in the near term has the potential to influence these initiatives and to expand the acceptance and use of the Convention's framework for receivables financing in these regions. In addition, the European Union (EU) is currently involved in an effort to develop an internal legal framework concerning the law applicable to third party effects of the assignment of receivables. While there is significant support in the EU for the approach taken in the Convention (and thus under U.S. law), there is also some support for alternative choice of law rules in some cases that would be inconsistent with the Convention and would thus introduce uncertainty into receivables financing governed by the alternative rules. U.S. ratification could helpfully influence the EU

process to ensure that the framework adopted is consistent with the Convention (and therefore U.S. law).

In summary, ratification of the Convention is an important step to providing American businesses a significant additional source of capital at no cost to the U.S. taxpayer and no material change to existing U.S. laws. These benefits will be particularly important for small and medium sized businesses that use receivables financing. Widespread ratification of the Convention would give American businesses an additional advantage in international transactions as the Convention mirrors American law and practices.

The Administration urges the Senate to provide advice and consent to their ratification.