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TITLE: EXECUTIVE REPORT OF COMMITTEE

TEXT: [\*S5453]

The following executive report of committee was submitted:

By Mr. BIDEN, from the Committee on Foreign Relations:

Treaty Doc. 106-37(B) Optional Protocol No. 2 to Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Exec. S. Rpt. 107-4)

Text of the Committee-Recommended Resolution of Advice and Consent

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 Nations 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).

Treaty Doc. 106-37(A) Optional Protocol No. 1 to Convention on Rights of the Child on Involvement of Children in Armed Conflict (Exec. S. Rpt. 107-4)

Text of the Committee-Recommended Resolution of Advice and Consent

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 [\*S5454] 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 nongovernmental 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 therefore.