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THE LAW OF THE SEA CONVENTION (TREATY DOC. 103–39)

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MAY 23, JUNE 14, AND JUNE 28, 2012

Printed for the use of the Committee on Foreign Relations

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THE LAW OF THE SEA CONVENTION (TREATY DOC. 103–39): THE U.S. NATIONAL SECURITY AND STRATEGIC IMPERATIVES FOR RATIFICATION

WEDNESDAY, MAY 23, 2012

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

The committee met, pursuant to notice, at 10:04 a.m., in room SH–216, Hart Senate Office Building, Hon. John F. Kerry (chairman of the committee) presiding.

Present: Senators Kerry, Boxer, Menendez, Cardin, Webb, Shaheen, Coons, Durbin, Udall, Lugar, Corker, Risch, Inhofe, DeMint, Isakson, Barrasso, and Lee.

OPENING STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

The CHAIRMAN. The hearing will come to order.

Thank you all very much for being here with us today.

Secretary Clinton, Secretary Panetta, and General Dempsey, welcome. We are particularly privileged to have you here today, and we thank you for joining us.

It is really a rare occasion, I think, in any committee, but it is a rare occasion in this committee when we have simultaneously a panel of witnesses that brings together America's top diplomat, our country's top defense official, and our Nation's top military officer. Your presence here all together powerfully underscores the importance that you put on this issue.

Our committee shares this sense of importance, which is why, I hope without respect to party or ideology, we will begin an open, honest, and comprehensive discussion about whether the United States of America should join the Law of the Sea Convention.

I want to underscore the word "comprehensive." I have heard from countless military and business leaders for some period of time who believe it is urgent that we ratify this treaty. And I have also spoken with Senators and some groups who oppose the treaty.

I intend to make certain that the committee does its job properly and thoroughly. We will hear from all sides, and we will ask all the questions as we begin the process of educational hearings on this issue, the first since 2007.

The Senate has seen a fair number of new members elected since then from both sides of the aisle, and our committee also has new

members. So I think a thorough examination of the treaty is especially timely and relevant.

Some of us have had the opportunity in the past to evaluate this treaty and even to vote on it in this committee. I am personally deeply supportive of it, and I believe it is now more urgent than ever that we ratify it because to remain outside of it is fundamentally directly counter to the best interests of our country.

I am convinced beyond any doubt that joining the other 160 nations that are party to the treaty will protect America's economic interests and our strategic security interests. And I believe the evaluation we make over these next weeks will document that beyond any doubt.

I promise the committee and the Senate that, notwithstanding my support, we will conduct exhaustive and fair hearings to examine all of the arguments, pro and con.

Now some may ask why now? Why consider a treaty that has been untouched by the Senate for the last 5 years and been hanging around for more than 25?

Well, I think the real question is why we wouldn't have this discussion now when, today, we have the worst of all worlds? We have effectively lived by the terms of the treaty for 30 years, but as a nonparty, we are on the outside looking in. We live by the rules, but we don't shape the rules.

It couldn't be more clear. Without joining the Law of the Sea, we are deprived of critical benefits and protections under the treaty. A few quick examples.

Ratifying the treaty will lock in the favorable navigational rights that our military and shipping interests depend on every single day. It will strengthen our hand against China and others who stake out claims in the Pacific, the Arctic, or elsewhere. It will give our oil and gas companies the certainty that they need to make crucial investments to secure our energy future. It will put our telecommunications companies on an equal footing with their foreign competitors, and it will help secure access to rare earth minerals, which we need for weapon systems, computers, cell phones, and the like.

It will also address issues of military effectiveness. As our national security focus shifts toward the Asia-Pacific region, it is more important than ever that we are part of this treaty. China and other countries are staking out illegal claims in the South China Sea and elsewhere. Becoming a party to the treaty would give an immediate boost to U.S. credibility as we push back against excessive maritime claims and illegal restrictions on our warships or commercial vessels.

There is no doubt in my mind it would help resolve maritime issues to the benefit of the United States and our regional allies and partners, and we will hear from every single former Chief of Naval Operations and Commandant of the Coast Guard to that effect.

The treaty is also about energy security. While we sit on the sidelines, Russia and other countries are carving up the Arctic and laying claims to the oil and gas riches in that region. We, on the other hand, can't even access the treaty body that provides international legitimacy for these types of Arctic claims.

Instead of taking every possible step to ensure our stake in this resource-rich area, we are watching others assert their claims and doing nothing about it because we have no legal recourse.

This treaty is also about rare earth minerals. China currently controls the production of rare earth minerals. Ninety percent of the world's supply, we are dependent on from China. There is no way that enhances American security. We need this for cell phones, computers, weapon systems. U.S. industry is poised to secure these minerals from the deep seabed, but they cannot do so through the United States as it is because we are not a party to the treaty.

Don't take my word for it. Listen to our top companies. Just last week, Bob Stevens, the CEO of Lockheed Martin, wrote to me urging that the Senate pass the Law of the Sea Treaty. I want to just take a minute to read from his letter.

He said, "The multibillion dollar investments needed to establish an ocean-based resource development business must be predicated upon clear legal rights established and protected under the treaty-based framework of the Law of the Sea Convention, including the International Seabed Authority. Other international players recognize this same reality and are acting upon it. Countries, including China and Russia, are moving forward aggressively within the treaty framework, and several of these countries currently hold exploration licenses from the International Seabed Authority.

"Unfortunately, without ratifying the Convention, the United States cannot sponsor claims with or shape the deep seabed rules of the ISA. Yet that is the critical path forward if the United States intends to expand and ensure access for both U.S. commercial and Government interests to new sources of strategic mineral resources."

And without objection, I will place the full letter into the record.

I also would just point out quickly that today there is a full-page ad in the Wall Street Journal, placed by the U.S. Chamber of Commerce. The U.S. Chamber of Commerce states three reasons, the first of which is pure economics—jobs. The United States economy depends on the passage of this.

So whether it is rare earth minerals, the Arctic, or illegal maritime claims, China is moving the ball over the goal line while we are sitting on the sidelines. To oppose this treaty is actually to enable China and Russia to continue to utilize the treaty to their benefit and to our disadvantage. How does that make sense for American economic or strategic security?

And the treaty is also about telecommunications. The treaty provides a legal framework to lay and protect submarine cables. I don't need to tell most people about how critical the Internet is to our economy and national security.

We need to put ourselves on the best footing possible to protect those cables through which the Internet flows, and the treaty does that. And that is why AT&T, Verizon, Level 3, and others support this treaty.

Again, don't take my word for it. In a recent letter, AT&T explained, "Submarine cables provide the backbone of international transmission facilities for the global Internet, electronic commerce, and other international voice and data communication services that are major drivers of the 21st century global information-based

economy. It has never been more important to our U.S. economic infrastructure and our participation in the global economy to strengthen the protection and reliability of international submarine cables. "The Law of the Sea Convention, particularly as assisted by the enforcement mechanisms available to parties under article 297, is a critical element of this protection."

I would like to enter this letter into the record as well.

Now let me say a last thing about the process and timing for consideration of this treaty, and I think that it is important what I am going to say. Obviously, this is a Presidential election year, and it is one that has already proven difficult, if not, at times, toxic.

I do not want this treaty to become a victim to that race or to the politics of the moment. A number of colleagues on and off the committee have been very candid and suggested that they would be more comfortable if we can avoid pushing this deliberative process into the middle of an election. I would like to see this treaty stay out of the hurly-burly Presidential politics.

So heeding that advice and preferring that we encourage the kind of evaluative and educational process which does justice to this committee and justice to the United States Senate ratification process, I announce today that I do not currently intend to bring the treaty to a vote before the November elections. We will have extensive hearings. We will do our due diligence. We will prepare for a vote.

But unless somehow the dynamic were to shift or change, we will wait until the passions of the election have subsided before we vote. My hope and expectation is that everyone will exhaust all avenues of inquiry and carefully consider the arguments on both sides.

The contentious political season will now give us a chance to do what this committee has historically done best, which is not to politicize, but to spend serious, thoughtful time deliberating and debating all of the questions of substance.

I am pleased to see that the Internet is already beginning to buzz with some discussion of this. But I will say up front there is a lot of misinformation, and there is a certain amount of mythology.

So I look forward to the process of clearing up that misinformation and the mythology. As my friend Senator Moynihan used to say, "Everyone is entitled to his own opinion, but not to his own facts."

There are facts with respect to this treaty, and I look forward to this committee establishing what they are. Ultimately, this issue needs to be decided by the members of the committee asking tough questions of the witnesses and not by the outside groups.

So I am pleased that we are going to have an opportunity over the next several weeks, the next couple of months, to hear from multiple witnesses, and we begin today with our top national security leaders. They will be followed by military commanders, including those who are in charge of our operations; by top business leaders, the Chamber of Commerce, others; by treaty experts; and by opponents.

Once again, I simply ask that everybody work hard to find out what is factual and what the realities are with respect to how this works.

And so, with that, I would like to welcome today's distinguished witnesses. As Secretary of State, Hillary Clinton has worked tirelessly to advance our security and economic interests abroad and, I think everyone agrees, has done a tremendous job of doing so.

Secretary of Defense Leon Panetta has served with great distinction across four decades in government. He has earned broad respect from Democrats and Republicans for his pragmatic and thoughtful approach to national security.

And General Martin Dempsey, the Chairman of the Joint Chiefs of Staff, has done a tremendous job in his stewardship of our military during a time of extraordinary challenge and transition.

Senator Lugar.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

Senator LUGAR. Mr. Chairman, I join you in welcoming Secretary Clinton, Secretary Panetta, and General Dempsey. We are very pleased and honored that you have joined us today.

Nine years ago, the Foreign Relations Committee began consideration of the Law of the Sea Convention after it was designated by President George W. Bush as one of five "urgent" treaties deserving of ratification. The Foreign Relations Committee took up all five of those treaties during the 108th Congress, and all but the Law of the Sea eventually gained the advice and consent of the Senate.

Our committee held two public hearings and four briefings to examine the Law of the Sea Convention. Six Bush administration Cabinet departments participated in the interagency group that helped write the resolution of advice and consent accompanying the treaty.

In the private sector, every major ocean industry, including shipping, fishing, oil and natural gas, drilling contractors, shipbuilders, and telecommunications companies that use underwater cables, supported U.S. accession to the Law of the Sea and lobbied in favor of it.

During the more than 4 months of consideration of this treaty, the committee received only one negative communication related to the treaty, and that was from a private individual. None of the 19 members of the committee requested additional witnesses or hearings, and the resolution of ratification passed on February 25, 2004, without a dissenting vote.

Despite the unanimous vote in the Foreign Relations Committee, Senator Bill Frist, then the majority leader, declined to bring the Convention up in the Senate. In 2007 the committee undertook an even lengthier process resulting in a 17–4 vote to refer the Convention to the full Senate. By that time, Senator Harry Reid had become majority leader, and he, too, declined to bring Law of the Sea before the full Senate.

In 2009 and 2010, though discussions occurred on Law of the Sea within the Obama administration, passing the Convention was not accorded a high priority. There was no concerted effort on the part

of the administration to move Law of the Sea as there had been under the Bush administration.

The Obama administration's 2009 treaty priority list indicated no special emphasis on passing Law of the Sea, listing it among a general group of 17 treaties on which action was supported. To my knowledge, the only official mention of Law of the Sea by the President during his first 2 years was one line in his Executive order covering ocean policy, which was not issued until July 19, 2010.

Clearly, the enthusiasm for Law of the Sea has increased within the administration during this Congress. The presence of the distinguished panel before us today surely underscores this. The substantive case for Law of the Sea is even stronger today than it was in 2004 when I brought it up as chairman of this committee.

Every year that goes by without the United States joining the Convention results in deepening our country's submission to ocean laws and practices determined by foreign governments without U.S. input. Our Navy and our ocean industries operate every day in a maritime environment that is increasingly dominated by foreign decisionmaking. In almost any other context, the Senate would be outraged at subjecting Americans to foreign controls without U.S. input.

What many observers fail to understand about Law of the Sea is that the Convention already forms the basis of maritime law regardless of whether the United States is a party. International decisions related to resource exploitation, navigation rights, and other matters will be made in the context of the Convention whether we join or not. Because of this, there is virtual unanimity in favor of this treaty among people who actually deal with oceans on a daily basis and invest their money in job-creating activities on the oceans.

By not joining the treaty, we are abetting Russian ambitions in the Arctic. We are making the job of our Navy more difficult, despite the longstanding and nearly unanimous pleas of Navy leaders that U.S. participation in Law of the Sea will help them maintain navigational rights more effectively and with less risk to the men and women they command.

We are turning our backs on the requests of important American industries that use the oceans and must abide by rules established under this Convention. We are diminishing our chances for energy independence by making U.S. oil and gas exploration in international waters less likely.

And we will not even be able to participate in the amendment process to this treaty, which is far more likely to impose new requirements on our Navy and ocean industries if the United States is absent. We will feel these costs most keenly in the Arctic, which is why successive Alaskan Governors and Senators of both parties have supported this treaty.

In 2007, Mr. Paul Kelly, testifying on behalf of the oil and gas industry, underscored how much we have to lose in the Arctic by remaining outside the treaty. He noted that under the Law of the Sea, the United States would have the opportunity to expand its economic sovereignty over more than 291,000 square miles of Extended Continental Shelf. Much of this is in the Arctic, which

holds one quarter of the world's undiscovered oil and natural gas, according to the U.S. Geological Survey.

Mr. Kelly said, "By some estimates, in the years ahead we could see a historic dividing up of many millions of square kilometers of offshore territory with management rights to all its living and nonliving marine resources . . . How much longer can the United States afford to be a laggard in joining this process?"

Suggestions that somehow our maritime interests can be asserted solely through robust naval power are not relevant to the real world. The overwhelming majority of ocean disputes do not involve enemies or issues that warrant military action.

As ADM Patrick Walsh testified at our first hearing in 2007, "Many of the partners that we have in the Global War on Terror who have put life, limb, and national treasure on the line are some of the same ones where we have disagreements on what they view as their economic zone or their environmental laws.

"It does not seem to me to be wise to now conduct Freedom of Navigation operations against those very partners that . . . are in our headquarters trying to pursue a more difficult challenge ahead of us . . . a Global War on Terror."

Even a mythical 1,000-ship U.S. Navy could not patrol every strait, protect every economic interest, or assert every navigational right. Attempting to do so would be prohibitively expensive and destructively confrontational.

The decision before this committee is whether the Senate should continue to consign the United States to a position of self-imposed weakness in our ability to influence ocean affairs, despite the fact that no other nation has a greater interest in navigational freedoms, a larger Exclusive Economic Zone, or a more advanced technological capacity to exploit ocean resources.

The Senate should enthusiastically affirm the leadership of the United States in this vital area of international relations by giving advice and consent to the Law of the Sea Convention.

I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Lugar. I appreciate that very much.

Madam Secretary, if you would lead off? Secretary Panetta second, and General Dempsey, if you would bat cleanup? Thank you.

STATEMENT OF HON. HILLARY RODHAM CLINTON, SECRETARY OF STATE, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Secretary CLINTON. Thank you very much, Mr. Chairman, Senator Lugar.

After both of your opening comments, I think you have made the case, both eloquently and persuasively, for anyone who is willing to look at the facts. I am well aware that this treaty does have determined opposition: Limited, but nevertheless quite vociferous. And it is unfortunate because it is opposition based in ideology and mythology, not in facts, evidence, or the consequences of our continuing failure to accede to the treaty.

So I think you will hear from both Secretary Panetta and General Dempsey, as well as myself, further statements and informa-

tion that really reinforces the very strong points that both of you have made.

We believe that it is imperative to act now. No country is better served by this Convention than the United States. As the world's foremost maritime power, we benefit from the Convention's favorable freedom of navigation provisions.

As the country with the world's second-longest coastline, we benefit from its provisions on offshore natural resources. As a country with an exceptionally large area of sea floor, we benefit from the ability to extend our Continental Shelf and the oil and gas rights on that shelf.

As a global trading power, we benefit from the mobility that the Convention accords to all commercial ships. And as the only country under this treaty that was given a permanent seat on the group that will make decisions about deep seabed mining, we will be in a unique position to promote our interests.

Now the many benefits of this Convention have attracted a wide-ranging coalition of supporters. Obviously, as we heard from both Senator Kerry and Senator Lugar, Republican and Democratic Presidents have supported U.S. accession. Military leaders see the benefits for our national security. American businesses, including strongly the U.S. Chamber of Commerce, see the economic benefits.

It has the support of every affected industry, including shipping, fisheries, telecommunications, energy, and environmental groups as well. We have a coalition of environmental, conservation, business, industry, and security groups all in support of this Convention.

And I would ask that my longer written statement, along with the letters that I have received in support of the treaty be entered into the record.

The CHAIRMAN. Without objection.

Secretary CLINTON. Now, one could argue that 20 years ago, 10 years ago, maybe even 5 years ago, joining the Convention was important, but not urgent. That is no longer the case today. Four new developments make our participation a matter of utmost security and economic urgency.

First, for years, American oil and gas companies were not technologically ready to take advantage of the Convention's provisions regarding the Extended U.S. Continental Shelf. Now they are.

The Convention allows countries to claim sovereignty over their Continental Shelf far out into the ocean beyond 200 nautical miles from shore. The relevant area for the United States is probably more than 1.5 times the size of Texas. In fact, we believe it could be considerably larger.

U.S. oil and gas companies are now ready, willing, and able to explore this area. But they have made it clear to us that they need the maximum level of international legal certainty before they will or could make the substantial investments—and, we believe, create many jobs in doing so—needed to extract these far-offshore resources.

If we were a party to the Convention, we would gain international recognition of our sovereign rights, including by using the Convention's procedures, and therefore be able to give our oil and gas companies this legal certainty. Staying outside the Convention, we simply cannot.

The second development concerns deep seabed mining, which takes place in that part of the ocean floor that is beyond any country's jurisdiction. Now for years, technological challenges meant that deep seabed mining was only theoretical. Today's advances make it very real.

But it is also very expensive. And before any company will explore a mine site, it will naturally insist on having a secure title to the site and the minerals that it will recover. The Convention offers the only effective mechanism for gaining this title, but only a party to the Convention can use this mechanism on behalf of its companies.

So as long as the United States is outside the Convention, our companies are left with two bad choices—either take their deep sea mining business to another country or give up on the idea. Meanwhile, as you heard from Senator Kerry and Senator Lugar, China, Russia, and many other countries are already securing their licenses under the Convention to begin mining for valuable metals and rare earth elements.

As you know, rare earth elements are essential for manufacturing high-tech products like cell phones and flat-screen televisions. They are currently in tight supply and produced almost exclusively by China.

So while we are challenging China's export restrictions on these critical materials, we also need American companies to develop other sources for these materials. But as it stands today, they will only do that if they have the secure rights that can only be provided under this Convention. If we expect to be able to manage our own energy future and our need for rare earth minerals, we must be a party to the Law of the Sea Convention.

The third development that is now urgent is the emerging opportunities in the Arctic. As the area gets warmer, it is opening up to new activities, such as fishing, oil and gas exploration, shipping, and tourism. This Convention provides the international framework to deal with these new opportunities. We are the only Arctic nation outside the Convention.

Russia and the other Arctic States are advancing their Continental Shelf claims in the Arctic while we are on the outside looking in. As a party to the Convention, we would have a much stronger basis to assert our interests throughout the entire Arctic region.

The fourth development is that the Convention's bodies are now up and running. The body that makes recommendations regarding countries' Continental Shelves beyond 200 nautical miles is actively considering submissions from over 40 countries without the participation of a U.S. commissioner.

The body addressing deep seabed mining is now drawing up the rules to govern the extraction of minerals of great interest to the United States and American industry. It simply should not be acceptable to us that the United States will be absent from either of those discussions.

Our negotiators obtained a permanent U.S. seat on the key decisionmaking body for deep seabed mining. I know of no other international body that accords one country and one country alone, us,

a permanent seat on its decisionmaking body. But until we join, that reserved seat remains empty.

So those are the stakes for our economy, and you will hear from Secretary Panetta and General Dempsey that our security interests are intrinsically linked to freedom of navigation. We have much more to gain from legal certainty and public order in the world's oceans than any other country.

U.S. Armed Forces rely on the navigational rights and freedoms reflected in the Convention for worldwide access to get to combat areas, sustain our forces during conflict, and return home safely, all without permission from other countries.

Now as a nonparty to the Convention, we have to rely on what is called customary international law as a legal basis for invoking and enforcing these norms. But in no other situation in which our security interests are so much at stake do we consider customary international law good enough to protect rights that are vital to the operation of the United States military.

So far, we have been fortunate. But our navigational rights and our ability to challenge other countries' behavior should stand on the firmest and most persuasive legal footing available, including in critical areas such as the South China Sea.

I am sure you have followed the claims countries are making in the South China Sea. Although we do not have territory there, we have vital interests—particularly freedom of navigation. And I can report from the diplomatic trenches that, as a party to the Convention, we would have greater credibility in invoking the Convention's rules and a greater ability to enforce them.

Now I know a number of you have heard arguments opposing the Convention, and let me just address those head on. Critics claim we would surrender U.S. sovereignty under this treaty, but in fact, it is exactly the opposite. We would secure sovereign rights over vast new areas and resources, including our 200-mile Exclusive Economic Zone and vast Continental Shelf areas extending off our coasts and at least 600 miles off Alaska.

I know some are concerned that the treaty's provisions for binding dispute settlement would impinge on our sovereignty. We are no stranger to similar provisions, including in the World Trade Organization, which have allowed us to bring trade cases, many of them currently pending, against abusers around the world. As with the WTO, the United States has much more to gain than lose by being able to hold others accountable under clear and transparent rules.

Some critics invoke the concern we would be submitting to mandatory technology transfer and cite this and President Reagan's other initial objections to the treaty. You know, those concerns might have been relevant decades ago, but today, they are not.

In 1994, negotiators made modifications specifically to address each of President Reagan's objections, including mandatory technology transfer, which is why President Reagan's own Secretary of State, George Shultz, has since written that we should join the Convention in light of those modifications having been made.

Now some continue to assert we do not need to join the Convention for U.S. companies to drill beyond 200 miles or to engage in deep seabed mining. That is not what the companies say. So I find

it quite ironic—in fact, somewhat bewildering—that a group, an organization, an individual would make a claim that is refuted by every major company in every major sector of the economy that stands to benefit from this treaty.

Under current circumstances, the companies are very clear. They will not take on the costs and risk these activities under uncertain legal frameworks. They need the indisputable, internationally recognized rights available under the treaty. So, please, listen to these companies, not to those who have other reasons or claims that are not based on the facts.

These companies are refuting the critics who say, "Go ahead. You will be fine." But they are not the ones, the critics, being asked to invest tens of millions of dollars without the legal certainty that comes with joining the Convention.

Now some mischaracterize the payments for benefit of resource rights beyond 200 miles as "a U.N. tax"—and this is my personal favorite of the arguments against the treaty—that will be used to support state sponsors of terrorism. Honestly, I don't know where these people make these things up. But anyway, the Convention does not contain or authorize any such taxes.

Any royalty fee does not go to the United Nations. It goes into a fund for distribution to parties of the Convention, and we, were we actually to join the Convention, would have a permanent veto power over how the funds are distributed. And we could prevent them from going anywhere we did not want them to go.

I just want to underscore this is simple arithmetic. If we don't join the Convention, our companies will miss out on opportunities to explore vast areas of Continental Shelf and deep seabed. If we do join the Convention, we unlock economic opportunities worth potentially hundreds of billions of dollars for a small-percentage royalty a few years down the line.

I have also heard we should not join this Convention because "it is a U.N. treaty," and of course, that means the black helicopters are on their way. Well, the fact that a treaty was negotiated under the auspices of the United Nations, which is, after all, a convenient gathering place for the countries of the world, has not stopped us from joining agreements that are in our interests.

We are party to dozens of agreements negotiated under the U.N. auspices on everything from counterterrorism and law enforcement to health, commerce, and aviation. And we often pay fees under those treaties, recognizing the benefits we get dwarf those minimal fees.

And on the national security front, some argue we would be handing power over the U.S. Navy to an international body. This is patently untrue and, obviously, absolutely contrary to any history or law governing our Navy. None of us would be sitting here if there were even a chance that you could make the most absurd argument that could possibly lead to that conclusion.

Disputes concerning U.S. military activities are clearly excluded from dispute settlement under the Convention. And neither is it true that the Convention would prohibit intelligence activities. The intelligence community has once again in 2012, as it did in 2007, as it did in 2003, confirmed that is absolutely not true.

So whatever arguments may have existed for delaying U.S. accession no longer exist and truly cannot be even taken with a straight face. The benefits of joining have always been significant. But today, the costs of not joining are increasing.

So much is at stake, and I, therefore, urge the committee to listen to the experts, listen to our businesses, listen to the Chamber of Commerce, listen to our military, and please give advice and consent to this treaty before the end of this year.

Thank you, Mr. Chairman.

[The prepared statement of Secretary Clinton follows:]

PREPARED STATEMENT OF SECRETARY OF STATE HILLARY RODHAM CLINTON

Mr. Chairman and members of the committee, it is a great pleasure for me to testify today on the Law of the Sea Convention, which I regard as critical to the leadership and security of the United States. Joining the Convention and the 1994 Agreement that modifies its deep seabed mining provisions is a priority for the Department of State and for me personally.

U.S. interests are deeply tied to the oceans. No country is in a position to gain more from the Law of the Sea Convention than the United States:

- As the world's foremost maritime power, the United States benefits from the Convention's favorable freedom of navigation provisions. These are the provisions that enable our vessels to transit the maritime domain—including the high seas, international straits, and the exclusive economic zones and territorial seas of other countries.
- Our economy depends on international trade, and the United States benefits from the global mobility that those navigational provisions accord to commercial ships of all nations.
- We have the world's second-longest coastline, so the United States benefits greatly from the Convention's favorable provisions on offshore natural resources. The treaty accords sovereign rights over natural resources within a 200-mile Exclusive Economic Zone. The United States is further advantaged by provisions in the treaty that allow the Continental Shelf—and oil and gas rights—to extend beyond 200 miles in certain areas. Off the north shore of Alaska, our Continental Shelf could extend 600 miles into the Arctic.
- American companies are equipped and ready to engage in deep seabed mining. But the United States can only take advantage of the Convention's provisions that accord security of tenure to mine sites in areas beyond national jurisdiction as a party to this treaty. The Convention, which was modified to meet U.S. demands, accords the United States a guaranteed seat on the key decision-making body.

It is no wonder then that there is such a strong and wide-ranging coalition supporting U.S. accession. The U.S. military has consistently and unequivocally supported the Convention for its national security benefits. Affected U.S. industries, including shipping, fisheries, telecommunications, and energy, have consistently supported U.S. accession for its economic benefits. Nongovernmental organizations concerned with the protection of natural resources have consistently supported U.S. accession. And both Republican and Democratic Presidents have supported U.S. accession. I have never seen another treaty with such intensive and broad support.

Furthermore, no treaty has been as thoroughly scrutinized by the Senate as the Law of the Sea Convention. This committee has twice examined it and sent it to the full Senate. Four other committees held hearings in 2004, including the Senate Armed Services Committee, of which I was a member. In 2007, the Foreign Relations Committee held two additional hearings and another favorable vote. Every conceivable question has been asked and answered.

As President George W. Bush said in 2007, joining the Convention will serve the national security interests of the United States, secure U.S. sovereign rights over extensive marine areas, promote U.S. interests in the health of the oceans, and give the United States a seat at the table where rights essential to our interests are debated and interpreted. We need to get off the sidelines and start taking advantage of the great deal that the Convention offers the United States and our business community.

HISTORY

By looking at the history that led to the adoption of the Convention and the 1994 Agreement on deep seabed mining, we can see how beneficial the Convention is to American interests. The United States became party to a group of earlier law of the sea treaties in 1958. We are still bound by them today. A number of the provisions in the 1982 Convention are the same as the provisions in these 1958 treaties. But the 1958 treaties left some important issues unresolved, and some of their provisions are outdated and have been supplanted by more favorable provisions for the United States in the 1982 Convention.

For example, the 1982 Convention established for the first time a maximum breadth of the territorial sea, an issue of critical importance to U.S. freedom of navigation. The 1982 Convention provides for exclusive jurisdiction of coastal States over economic activities out to 200 miles from shore. It also sets forth a procedure for providing legal certainty regarding the Continental Shelf. Both of these additions are critically important to U.S. economic interests in the oceans.

These and other benefits of the 1982 Convention came about because the United States played a prominent role in negotiating this treaty, beginning in the Nixon administration. The Law of the Sea Convention, as adopted in 1982, represented a victory for U.S. navigational, economic, and other interests. Only one important issue area was flawed—deep seabed mining—and that one area is why President Reagan decided not to sign the 1982 Convention. I will discuss these flaws in greater depth below.

All the other aspects of the treaty were so favorable that President Reagan announced in 1983 that the United States accepted, and would act in accordance with, the Convention's balance of interests relating to traditional uses of the oceans—everything but deep seabed mining. He instructed the entire United States Government to abide by the commitments, to exercise the rights set forth in the Convention and to encourage other countries to do likewise.

President Reagan believed that the deep seabed mining chapter of the 1982 Convention would deter future development of deep seabed mining; establish a decision-making process that would not reflect or protect American interests; allow amendments to enter into force without U.S. approval; require mandatory transfers of technology; allow national liberation movements to share in the benefits of deep seabed mining and not assure access of future qualified miners.

President Reagan's concerns were well placed and shared by many of our allies. Like the United States, many industrialized countries declined to become party to the Convention as originally adopted. President Reagan did not oppose all international regulation of mining in the portion of the seabed beyond national jurisdiction. Indeed, U.S. policy extending back to President Nixon has taken the view that such mining should be subject to international administration, primarily to enable companies to obtain secure title to mine sites in the deep ocean. U.S. law, specifically the Deep Seabed Hard Mineral Resources Act of 1980 (Public Law 96–283), also reflects that approach.

With the end of the cold war, international support grew for a more efficient and market-oriented system. This spurred an initiative by the administration of President George H.W. Bush in the early 1990s to undertake a new round of negotiations with the aim of fundamentally overhauling the deep seabed mining provisions of the 1982 Convention.

President Bush's efforts succeeded. The Part XI Agreement, adopted in 1994, modifies the Convention so as to satisfy each of President Reagan's objections. As a result, the present, modified Convention:

- Ensures that market-oriented approaches are taken to the management of deep seabed minerals (e.g., by eliminating production controls);
- Scales back the structure of the organization that administers deep seabed mining;
- Provides the United States, once it becomes a party, with a guaranteed, permanent seat on the Seabed Council—which would ensure that U.S. approval would be necessary for any decision that would result in a substantive obligation on the United States, or that would have financial or budgetary implications;
- Ensures that the United States, once it becomes a party, could veto and block the adoption of any amendment to the deep seabed mining provisions that it opposes;
- Deletes the objectionable provisions on mandatory technology transfer;
- Ensures that the United States, once it becomes a party, would be able to veto any decision relating to the sharing of benefits; and
- Provides assured access for any future qualified U.S. mining companies.

The United States signed the Agreement on the deep seabed mining provisions in 1994. As George P. Shultz, Secretary of State to President Reagan, said in a letter to Senator Lugar in 2007: "The treaty has been changed in such a way with respect to the deep sea-beds that it is now acceptable, in my judgment. Under these circumstances, and given the many desirable aspects of the treaty on other grounds, I believe it is time to proceed with ratification." Indeed, every former Secretary of State since Secretary Shultz, Democrat and Republican alike, has called for the United States to secure and advance our national interests by joining the Convention.

The Convention, as modified by the 1994 Agreement, came into force in 1994, and since has been joined by the industrialized countries that shared U.S. objections to the initial deep seabed mining chapter. There are now 162 parties to the Convention, including almost all of our traditional allies.

The administration of George W. Bush strongly supported the modified Convention in testimony before this committee in 2003 and 2007. Bush administration officials worked closely with the committee to develop a proposed Resolution of Advice and Consent, which this administration continues to support.

BENEFITS

What are the benefits to joining the Law of the Sea Convention? To put it plainly, joining this Convention will bolster U.S. national security and provide economic benefits, including the creation of American jobs. U.S. companies, business groups, labor unions, the U.S. Navy, the U.S. Coast Guard, the Joint Chiefs of Staff, and a host of others support joining the Convention now.

I'd like to take a few minutes to talk about the national security benefits. As the world's foremost maritime power, our security interests are intrinsically linked to freedom of navigation. We have more to gain from legal certainty and public order in the world's oceans than any other country. Our forces are deployed throughout the world and need guaranteed mobility on, over, and under the world's oceans. U.S. Armed Forces rely on the navigational rights and freedoms reflected in the Convention for worldwide access to get to combat areas, sustain our forces during conflict, and return home safely, without permission from other countries.

In this regard, the Convention secures the rights we need for U.S. military ships, and the commercial ships that support our forces, to meet national security requirements in four major ways:

- By limiting coastal States' territorial seas to 12 nautical miles;
- By affording our military and commercial vessels and aircraft necessary passage rights, not requiring permission, through other countries' territorial seas and archipelagoes, as well as through straits used for international navigation (such as the critical right of submarines to transit submerged through such straits);
- By setting forth maximum navigational rights and freedoms for our vessels and aircraft in the Exclusive Economic Zones of other countries and in the high seas; and
- By affirming the authority of U.S. warships and government ships to board stateless vessels on the high seas, which is vital to our maritime security, counternarcotic, and counterproliferation efforts and operations, including the Proliferation Security Initiative.

As a nonparty to the Convention, the United States must rely on customary international law as a legal basis for invoking and enforcing these norms. But it is risky to assume that customary law will preserve these norms forever. There are increasing pressures from some coastal States to augment their control over the activities of other nations' vessels off their coasts in a manner that would alter the balance of interests struck in the Convention.

Joining the Convention would secure our navigational rights and our ability to challenge other countries' behavior on the firmest and most persuasive legal footing, including in critical areas such as the South China Sea and the Arctic. Only as a party to the Convention can the United States best protect the navigational freedoms enshrined in the Convention and exert the level of influence that reflects our status as the world's foremost maritime power.

The highest levels of our Nation's military have expressed their solid and unwavering support for joining this Convention over and over again.

Now I'd like to focus on economic benefits. Joining the Convention would advance U.S. economic and resource interests in ocean waters and seabed. For example,

- The Convention is the foundation on which rules for sustainable international fisheries are based. For that reason, the U.S. fishing industry supports U.S. accession.

- The Convention secures the rights for commercial ships to export U.S. commodities and protects the tanker routes through which half of the world's oil moves. For that reason, the U.S. shipping industry supports accession.
- The Convention's provisions protect the laying and maintaining of fiber optic cables through which the modern world communicates, for both commercial and military purposes. For that reason, the U.S. telecommunications industry supports accession.

There are two additional areas of economic benefits that deserve special mention: the provisions related to mineral resources in the seabed of our Continental Shelf and resources in the seabed beyond any country's Continental Shelf.

The Convention provides for an Extended Continental Shelf, beyond 200 nautical miles from shore, if certain criteria are met. A coastal State can exercise sovereign rights over its Extended Continental Shelf, including exploration, exploitation, conservation, and management of nonliving resources, such as oil, gas, and other energy and mineral resources, and of living, "sedentary" species, such as clams, crabs, and sponges. The size of the U.S. Continental Shelf—just the portion beyond 200 miles from shore—is probably more than one and one-half times the size of Texas, and could be considerably larger than that. For this reason, the U.S. oil and gas industry, including the American Petroleum Institute, are in favor of joining the Convention.

Much is at stake in the vast areas of Continental Shelf beyond 200 nautical miles from shore, and the Convention's procedures enable Parties—and only Parties—to fully secure their sovereign rights therein.

Unlike the 1958 law of the sea treaty on the Continental Shelf, this Convention contains a detailed definition of the Continental Shelf and well-defined procedures for a country to establish the outer limits of its Continental Shelf. Specifically, Parties to the Convention enjoy access to the expert body whose technical recommendations provide the needed international recognition and legal certainty regarding Continental Shelf areas beyond 200 nautical miles.

The ability to gain international recognition of a coastal State's sovereignty over the Continental Shelf resources beyond 200 miles from shore was a major achievement in the 1982 Convention for the United States and for other coastal States with an Extended Continental Shelf. International recognition is necessary for the legal certainty that will allow oil and gas companies to attract the substantial investments needed—and create the many jobs—to extract these far-offshore resources.

More than 40 countries have made submissions regarding their Continental Shelves beyond 200 nautical miles to the expert Commission. Sixteen States, including Russia, Brazil, Australia, France, Indonesia, and Mexico, have received recommendations from the Commission and are proceeding to establish the outer limits of their Continental Shelves. As a nonparty, the United States is sitting on the sidelines while this happens.

The second economic benefit I would like to highlight relates to mining in the deep seabed areas beyond any country's jurisdiction. Only as a party to the Convention could the United States sponsor U.S. companies like Lockheed Martin to mine the deep seabed for valuable metals and rare earth elements.

These rare earth elements—essential for cell phones, flat-screen televisions, electric car batteries, and other high-tech products—are currently in tight supply and produced almost exclusively by China. While we challenge China's export restrictions, we must also make it possible for U.S. companies to develop other sources of these critical materials. They can only do this if they can obtain secure rights to deep seabed mine sites and indisputable title to minerals recovered. While we sit on the sidelines, companies in China, India, Russia, and elsewhere are securing their rights, moving ahead with deep seabed resource exploration, and taking the lead in this emerging market.

I want to make two additional points about deep seabed mining. First, we cannot rely on customary international law here. For companies to obtain security of tenure to deep seabed mining sites, they must be sponsored by a party to the Convention. And without such security of tenure, industry has told us that it will not risk the significant investment needed to extract these valuable resources. I want to be clear that there is no means for the United States to support its domestic deep seabed mining industry as a nonparty.

Second, once the United States becomes a party, we would have an unprecedented ability to influence deep seabed mining activities worldwide. In revising the Convention's deep seabed provisions in the 1994 Agreement, our negotiators obtained a permanent U.S. seat on the seabed Council. This is the key decisionmaking body established by the Convention on deep seabed matters. I know of no other international body that accords one country, and one country only—the United States—a permanent seat on its decisionmaking body. In this way, the Convention's institutions pro-

vide the United States with a level of influence commensurate with our interests and global standing.

Until we join, however, our reserved seat remains empty. As a result, we have limited ability to shape the rules and no ability to help U.S. companies pursue their job-creating initiatives to exploit deep seabed resources.

Other Benefits

We should also join the Convention now to steer its implementation. The Convention's institutions are up and running, and we—the country with the most to gain or lose on law of the sea issues—are sitting on the sidelines. As I mentioned, the Commission on the Limits of the Continental Shelf has received submissions from over 40 countries without the participation of a U.S. commissioner. Recommendations made in that body could create precedents, positive and negative, on the future outer limit of the U.S. shelf. We need to be on the inside to protect and advance our interests. Moreover, in fora outside the Convention, the provisions of the Convention are also being actively applied. Only as a party can we exert the level of influence that reflects our status as the world's foremost maritime power.

Are there any serious drawbacks to joining this Convention? Opponents of the treaty believe there are, but they are mistaken.

- Some critics assert that joining the Convention would impinge upon U.S. sovereignty. On the contrary, joining the Convention will increase and strengthen our sovereignty. The Convention secures the United States an expansive Exclusive Economic Zone and Extended Continental Shelf, with vast resources in each. U.S. accession would lock-in our rights to all of this maritime space.
- Some say that the Convention's dispute resolution provisions are not in the U.S. interest. On the contrary, these procedures—which the United States sought—help protect rather than harm U.S. interests. As in many other treaties, including free trade agreements, such procedures provide the United States with an important tool to help ensure that other countries live up to their obligations. And U.S. military activities will never be subject to any form of dispute resolution.
- Other critics have suggested that the Convention gives the United Nations the authority to levy some kind of global tax. This is also untrue. There are no taxes on any individuals, corporations, or anyone else under the Convention.

CONCLUSION

As Senator Lugar has said, to oppose this Convention on economic grounds requires one to believe that U.S. industries as diverse as oil and gas, fishing, shipping, seabed mining, and telecommunications do not understand how best to grow their businesses, create jobs, and protect their bottom lines.

And to oppose this Convention on national security grounds requires one to believe that the Departments of Defense and Homeland Security do not understand how best to protect U.S. national security.

The United States is long past due in joining this Convention. Our global leadership on maritime issues is at stake. I therefore urge the committee to give its swift approval for U.S. accession to the Law of the Sea Convention and ratification of the 1994 Agreement, and urge the Senate to give its advice and consent before the end of this year.

The CHAIRMAN. Well, Madam Secretary, thank you for very important testimony. And I particularly appreciate the detail that you went into. I think it was very helpful.

Mr. Secretary.

STATEMENT OF HON. LEON E. PANETTA, SECRETARY OF DEFENSE, U.S. DEPARTMENT OF DEFENSE, WASHINGTON, DC

Secretary PANETTA. Chairman Kerry, Senator Lugar, distinguished members, I want to thank you for the opportunity to appear here as the first Secretary of Defense to testify in support of the United States accession to the Law of the Sea Convention.

I have been involved with ocean issues most of my career, and I strongly believe that accession to this treaty is absolutely essential not only to our economic interests, our diplomatic interests, but

I am here to say that it is extremely important to our national security interests as well.

I join a lot of the military voices of the past and present that have spoken so strongly in support of this treaty. The fundamental point is clear. If the United States is to assert its historical role as a global maritime power—and we have without question the strongest navy in the world. But if we are going to continue to assert our role as a maritime power, it is essential that we accede to this important Convention.

Being here with Secretary Clinton, Chairman Dempsey, their presence alone is a testament to the conviction of our diplomatic and military leadership that this Convention is absolutely essential to strengthening our position in the world. Let me outline some of the critical arguments with regards to U.S. national security and why it is time to move forward with this issue.

First of all, as has been pointed out, as the world's strongest preeminent maritime power, we are a country that has one of the longest coastlines and one of the largest Extended Continental Shelves in the world. We have more to gain by approving this Convention than almost any other country.

There are 161 countries that have approved. We are the only industrial power that has failed to do that, and as a result, we don't have a seat at the table.

If we are sitting at this international table of nations, we can defend our interests. We can defend our claims. We can lead the discussion in trying to influence treaty bodies that develop and interpret the Law of the Sea. We are not there. And as a result, they are the ones that are developing the interpretation of this very important treaty.

In that way, we would ensure that our rights are not whittled away by the excessive claims and erroneous interpretations of others who would give us the power and authority to support and promote the peaceful resolution of disputes within a rules-based order.

Second, we would secure our navigational freedoms and global access for military and commercial ships, aircraft, and undersea fiber optic cables. Treaty law remains the firmest legal foundation upon which to base our global presence, as the Secretary has pointed out. And it is true on, above, and below the seas. By joining the Convention, we would help lock in rules that are favorable to our freedom of navigation in our global mobility.

Third, accession would help secure a truly massive increase in our country's resource and economic jurisdiction. Not only to 200 nautical miles off our coast, but to a broad, Extended Continental Shelf beyond that zone, adding almost another third to our Nation in terms of jurisdiction.

Fourth, accession would ensure our ability to reap the benefits, again as the Secretary has pointed out, of the opening of the Arctic. Joining the Convention would maximize international recognition and acceptance of our substantial Extended Continental Shelf claims in the Arctic. And, as again pointed out, we are the only Arctic nation that is not a party to this Convention.

More importantly, from our navigation and military point of view, accession would secure our freedom of navigation, our freedom of overflight rights throughout the Arctic. And it would

strengthen the freedom of navigation arguments with respect to the northern sea route in the Northwest Passage.

And finally, let me say that we at the Defense Department have gone through an effort to develop a defense strategy for the future. A defense strategy not only for now, but into the future as well. And it emphasizes the strategically vital arc that extends from the Western Pacific and Eastern Asia into the Indian Ocean region and South Asia on to the Middle East.

By not acceding, we undercut our credibility in a number of focused multilateral venues that involve that arc I just defined. We are pushing, for example, for a rules-based order in the region and the peaceful resolution of maritime and territorial disputes in the South China Sea, in the Strait of Hormuz and elsewhere. How can we argue—how can we argue that other nations must abide by international rules when we haven't joined the very treaty that codifies those rules?

We would also help strengthen worldwide transit passage rights under international law, and we would further isolate Iran as one of the few remaining nonparties to the Convention. These are the key reasons from a national security point of view for accession, reasons that are critical to our sovereignty, critical to our national security.

Again, as the Secretary pointed out, I understand the arguments that have been made on the other side. But at the same time, I don't understand the logic of those arguments. The myth that somehow this would surrender U.S. sovereignty, nothing could be further from the truth.

Not since we acquired the lands of the American West and Alaska have we had such an opportunity to expand U.S. sovereignty. The estimated Extended Continental Shelf is said to encompass at least 385,000 square miles, 385,000 square miles of seabed. As the Secretary pointed out, it is 1.5 times the size of Texas that would be added to our sovereignty, that would be added to our jurisdiction.

Some claim that joining the Convention would restrict our military operations and activities or limit our ability to collect intelligence in territorial seas. Nothing could be further from the truth.

The Convention in no way harms our intelligence collection activities. In no way does it constrain our military operations. On the contrary, U.S. accession to the Convention secures our freedom of navigation and overflight rights as bedrock treaty law.

Some allege that the Convention would subject us to the jurisdiction of international courts and that this represents a surrendering of our sovereignty. Once again, this is not the case. The Convention provides that a party may declare it does not accept any dispute resolution procedures for disputes concerning military activities, and we would do the same, as so many other nations have chosen likewise to do. Moreover, it would be up to the United States to decide precisely what constitutes a military activity, not others.

Others argue that our maritime interdiction operations would be constrained, and again, this is simply not the case. The United States and our partners routinely conduct a range of interdiction operations based on U.N. Security Council resolutions.

On treaties, on port state control measures, and on the inherent right of self-defense, the United States would be able to continue conducting the full range of maritime interdiction operations. In short, the Law of the Sea Convention provides a stable, recognized legal regime that we need in order to conduct our global operations today and in the future. Frankly, I don't think this is a close call.

The Law of the Sea Convention is supported, as pointed out, by major U.S. industries, by the Chamber of Commerce, by our energy, oil, shipbuilding, shipping, and communications companies, by our fishing interests, and by environmental organizations, along with past and present Republican and Democratic administrations, strong bipartisan majorities of this committee, and the entire national security leadership.

By finally acceding to the Convention, we help make our Nation more secure and more prosperous for generations to come.

America is the strongest power in the world. We have the strongest navy. And make no mistake, we have the ability to defend our interests anytime, anywhere. But we are strong precisely because we play by the rules—because we play by the rules.

For too long, the United States has failed to act on this treaty. For too long, we have undermined our moral and diplomatic authority to fight for our rights and our maritime interests. And for too long, we have allowed our inability to act to impair our national security.

For that reason the time is now for the Senate to do what others have failed to do, join the Law of the Sea Convention and help us remain the strongest maritime power in the world.

Thank you.

[The prepared statement of Secretary Panetta follows:]

PREPARED STATEMENT OF SECRETARY OF DEFENSE LEON E. PANETTA

Chairman Kerry, Senator Lugar, distinguished members. I want to thank you for the opportunity to testify in support of United States accession to the Law of the Sea Convention.

I'm pleased to be here with Secretary Clinton and Chairman Dempsey—their presence here is a testament to the conviction of our diplomatic and military leadership that accession to this Convention will greatly strengthen America's position around the world.

As many of you know, I've long been passionate about oceans policy, and the need to develop and protect our maritime resources for this country, for ourselves, for our children and for future generations. One of my proudest accomplishments as a Member of Congress was establishing the Monterey Bay National Marine Sanctuary. Recently, before I took the jobs in this administration, I had the honor to chair the Pew Oceans Commission, and later cochaired a Joint Oceans Commission Initiative with Adm. Jim Watkins—both commissions confirmed the importance of our oceans—but more importantly both strongly supported accession to the Law of the Sea Convention.

For nearly two decades, the Department of Defense's civilian and military leadership has shown sustained, consistent, unequivocal support for the Law of the Sea Convention. And I am pleased to be the first Secretary of Defense to convey such support in hearing testimony. Today, I join the Department's many voices past and present that have spoken so strongly in support. The fundamental point is clear: if the United States is to fully assert its historic role as a global leader, it must accede to this important Convention.

The Law of the Sea Convention is the bedrock legal instrument underpinning public order across the maritime domain. We are the only permanent member of the U.N. Security Council that is not a party to it. This puts us at a distinct disadvantage when it comes to disputes over maritime rights and responsibilities with the 162 parties to the Convention, several of which are rising powers.

The basic idea of the Convention is to establish some basic rules of the road—to define what can be done, where, in the world's oceans. More precisely, it provides for:

- The legal divisions of maritime space and accompanying rights of innocent passage through territorial waters;
- Transit passage through vital international straits;
- High seas freedoms of navigation, and overflight, and other internationally lawful uses of the sea related to those freedoms in the Exclusive Economic Zone, and beyond; and
- Sovereign immunity to warships, naval auxiliaries and other government vessels and aircraft.

In other words, it reflects what has been the longstanding practice of our military and gives the United States the international foundation to promote, project and protect its global role as the world's leading maritime power.

Let me further outline why I believe this Convention is critical to U.S. national security in today's strategic context, why it is time to move forward, and why the longer we delay, the more we undermine our national security interests.

The United States is at a strategic turning point after a decade of war. Yet, even as these wars recede, we face a challenging and complex global security environment. We confront multiple transnational threats including violent extremism, the destabilizing behavior of nations like Iran and North Korea, military modernization across the Asia-Pacific, and turmoil in the Middle East and North Africa. At the same time, we are dealing with the changing nature of warfare, the proliferation of nuclear, biological, and chemical weapons and technology, and the growing threat of cyber intrusion.

The fact is that these real and growing challenges are beyond the ability of any single nation to resolve alone. That is why a key part of our new defense strategy is to meet these challenges by modernizing our network of defense and security partnerships across the globe, and supporting a rules-based international order that promotes stability. And that is also why the United States should be exerting a leadership role in the development and interpretation of the rules that determine legal certainty on the world's oceans.

Let me give you five important reasons as to why joining this Convention would provide enhanced national security.

First, as the world's preeminent maritime power, and the country with one of the longest coastlines and largest Extended Continental Shelf, we have more to gain from accession to the Convention than any other country.

If we are not at the table, then who will defend our interests? Who will lead the discussion to influence the further development and interpretation of the Law of the Sea? It is only by being there to protect our rights that we would ensure that our sovereignty is not whittled away by the excessive claims and erroneous interpretations of others. It would give us the power and credibility to support and promote the peaceful resolution of disputes within a rules-based order.

Second, by joining the Convention, we can secure our navigational freedoms and global access for military and commercial ships, aircraft, and undersea fiber optic cables. As it currently stands, we are forced to assert our rights to freedom of navigation through customary international law, which can change to our detriment. Treaty law remains the firmest legal foundation upon which to base our global presence, on, above, and below the seas. By joining the Convention, we would help lock in rules favorable to freedom of navigation and our global mobility.

Third, accession would bring legal certainty to a truly massive increase in our country's resource and economic jurisdiction, not only to 200 nautical miles off our coasts, but to a broad Extended Continental Shelf beyond that zone.

Fourth, accession would ensure our ability to reap the benefits of the opening of the Arctic—a region of increasingly important maritime security and economic interest. We already see countries testing new shipping routes and exploring for natural resources as Arctic ice cover recedes. Joining the Convention would maximize international recognition and acceptance of our substantial Extended Continental Shelf claims in the Arctic. As we are the only Arctic nation that is not a party to the Convention, we are at a serious disadvantage in this respect. Accession would also secure our navigation and overflight rights throughout the Arctic, and strengthen our arguments for freedom of navigation through the Northwest Passage and Northern Sea Route.

Fifth, and finally, our new defense strategy emphasizes the strategically vital arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia. Becoming a party to the Convention would strengthen our position in this key area. For example, numerous countries sit astride critical trade and supply

routes and propose restrictions on access for military vessels in the Indian Ocean, Persian Gulf, and the South China Sea. The United States has long declared our interests and respect for international law, freedom of navigation, and peaceful resolution of disputes. We have demonstrated our commitment to those interests through our consistent presence and engagement in these critical maritime regions.

By not acceding to the Convention, we give up the strongest legal footing for our actions. We undercut our credibility in a number of Asia-focused multilateral venues—just as we're pushing for a rules-based order in the region and the peaceful resolution of maritime and territorial disputes in the South China Sea and elsewhere. How can we argue that other nations must abide by international rules when we haven't joined the treaty that codifies those rules?

At the other end of this arc sits the Strait of Hormuz, a vital sea lane of communication to us and our partners. We are determined to preserve freedom of transit there despite Iranian threats to impose a blockade. U.S. accession to the Convention would help strengthen worldwide transit passage rights under international law and help to further isolate Iran as one of the few remaining nonparties to the Convention.

These are the key reasons for accession, which is critical to our sovereignty and our national security. That is why I fail to understand the arguments opposed to the treaty.

First, some have put forward the myth that the Law of the Sea Convention would force us to surrender U.S. sovereignty. Nothing could be further from the truth. Not since we acquired the lands of the American West and Alaska have we had such an opportunity to expand U.S. sovereignty.

Second, there are some who claim that accession to the Convention will restrict our military's operations and activities, or limit our ability to collect intelligence in territorial seas. Quite simply, they are wrong. The Convention in no way harms our intelligence collection activities or constrains our military operations. On the contrary, U.S. accession to the Convention secures our freedom of navigation and overflight rights as bedrock treaty law.

Third, some allege that in joining, our military would be subject to the jurisdiction of international courts—and that this represents a surrendering of U.S. sovereignty. But once again, this is not the case. The Convention provides that a party may declare it does not accept any dispute resolution procedures for disputes concerning military activities. This election has been made by 20 other nations that have joined the Convention, and the United States would do the same. The bottom line is that neither U.S. military activities nor a U.S. decision as to what constitutes a U.S. military activity would be subject to review by any international court or tribunal.

Fourth, some argue that certain military activities—specifically, our ability to conduct maritime interdiction operations—will be constrained because the Convention only recognizes the right of warships to board ships suspected of engaging in piracy, the slave trade or being stateless. Again, this is simply not the case. The United States and our partners routinely conduct a range of interdiction operations at sea based on U.N. Security Council Resolutions, treaties, port state control measures and the inherent right of self-defense. Further, the Convention expands the range of interdiction authorities found in the 1958 Law of the Sea Conventions we've already joined. In short, the United States would be able to continue conducting the full range of maritime interdiction operations.

In closing, our new defense strategy recognizes our return to our maritime roots, and the importance to our military of freedom of navigation and global mobility.

Freedom of navigation is essential for any global power, but equally applies to all maritime states—everywhere. This Convention helps ensure that this freedom is preserved and secured through reasoned, deliberate, international rules which are fully in accord with the freedom of navigation asserted by the United States around the world for decades. It provides the stable, recognized legal regime we need to conduct our global operations today, and in the future.

This Convention is supported by major U.S. industries, the Chamber of Commerce, our energy, shipbuilding, shipping, and communications companies, fishing, and environmental organizations—along with past and present Republican and Democratic administrations, and the entire national security leadership.

By finally acceding to the Convention, we help make our Nation more secure and more prosperous for generations to come. America is the strongest power in the world. We are strong precisely because we play by the rules. For too long, the United States has failed to act on this treaty. For too long, we have undermined our moral and diplomatic authority to fight for our rights and our maritime interests. For too long, we have allowed our inability to act to impair our national security. The time is now, for this Senate to do what others have failed to do: ratify the Law of the Sea Convention.

The CHAIRMAN. Mr. Secretary, thank you. Again, also very important testimony, and we appreciate it very much and respect the fact you are the first Secretary of Defense to testify in favor of this treaty.

General Dempsey.

STATEMENT OF GEN MARTIN E. DEMPSEY, CHAIRMAN, JOINT CHIEFS OF STAFF, WASHINGTON, DC

General DEMPSEY. Thank you, Mr. Chairman, Senator Lugar, and other distinguished members of the committee.

I join Secretary Clinton and Secretary Panetta in offering my support for the Law of the Sea Convention. My voice joins past and present senior defense leaders to include our Joint Chiefs of Staff. It echoes every Chairman of the Joint Chiefs of Staff since the Convention was sent to the Senate in 1994.

This support has been so consistent because of what the Convention does for our Armed Forces and for our national security. Joining the Convention would strengthen our ability to apply sea power. It codifies the navigational rights and freedoms necessary to project and sustain our military force.

These include the right of transit through international straits, the right to exercise high seas freedoms in foreign Exclusive Economic Zones, and the right of innocent passage through foreign territorial seas. And it reinforces the sovereign immunity of our warships as they conduct operations.

By contrast, we currently rely on customary international law and assert it through our physical presence. This plays into the hands of foreign states that seek to bend the customary international law to restrict movement on the oceans, and it puts our warships and aircraft on point to constantly challenge claims.

We can defend our interests, and we will do that with military force, if necessary. But the force of arms does not have to be and should not be our only national security instrument. Joining the Convention would provide us another way to stave off conflict with less risk of escalation.

The Convention also offers us an opportunity to exercise global leadership. Over 160 nations are party to it, as you have heard, including every permanent member of the U.N. Security Council and every Arctic nation. Our absence separates us from our partners and allies. It limits our ability to build coalitions and work cooperatively to solve these pressing security problems that face us.

Although the terms of the Convention are favorable to the United States interests, we are not positioned to further guide its interpretation nor its implementation. We need to join it in order to strengthen our leadership role in global maritime affairs.

To close, America is a maritime nation, both militarily and economically. Our prosperity and security depend on the bounty of and access to the world's oceans. By joining the Convention, our forces would enjoy a firmer legal standing for operations on, over, and under the world's waters, and it would provide us an additional tool for navigating an increasingly complex and competitive security environment.

I look forward to your questions. Thank you.

[The prepared statement of General Dempsey follows:]

PREPARED STATEMENT OF GEN MARTIN E. DEMPSEY

Mr. Chairman, Senator Lugar, and distinguished members of the committee, I appreciate this opportunity to discuss the military and security implications of the Law of the Sea Convention.

The United States is a maritime nation—militarily and economically. We have the world's largest Exclusive Economic Zone and the world's largest and most capable navy. We stand to benefit from the additional legal certainty and public order this treaty would provide. Moreover, this certainty will become increasingly important as the global security environment becomes more competitive and more complex.

It is with this in mind that I join Secretary Clinton, Secretary Panetta, the Joint Chiefs, and every Chairman of the Joint Chiefs of Staff and every Chief of Naval Operations since the Convention was submitted to the Senate in 1994 in offering my unqualified support for this treaty.

There are many reasons for this support. I would like to highlight three.

First, joining the Convention would give our day-to-day maritime operations a firmer, codified legal foundation. It would enable and strengthen our military efforts, not limit them.

We currently rely on customary international law and physical presence to secure global freedom of access. But there is risk in this approach. Tradition is a shaky basis upon which to rest our national security and the protection of our forces. Customs can be disputed, and they can change.

Joining the Convention would provide legal certainty to our navigational freedoms and legitimacy to our maritime operations that customary law simply cannot. It would affirm critical navigational freedoms and reinforce the sovereign immunity of our warships as they conduct these operations. These include the right of transit through international straits, the right to exercise high seas freedoms in foreign Exclusive Economic Zones, and the right of innocent passage through foreign territorial seas. The Convention would also provide a stronger legal basis for some important activities such as stopping and boarding stateless vessels—ships often used by pirates, traffickers, and terrorists.

Second, joining the Convention would provide a consistent and effective legal framework for opposing challenges to the rules-based international order in the maritime domain. Around the globe we are witnessing nations expanding their naval capabilities. We are also seeing countries expand their maritime claims—in the direction of restricting movement on the oceans. Illegitimate expansionism could become particularly problematic in the Pacific and the Arctic, two regions whose importance to our security and our economic prosperity will only increase over the next several decades. The Convention would provide us an important tool to help stave off jurisdictional creep in these areas and to resolve future conflicts peacefully and with less risk of escalation.

Last, being a member of the Convention would better allow the United States to exercise global security leadership—a critical component of our global strategy. Our absence from the Convention separates us from our Partners and allies. It places us in the company of those who disdain the rule of international law. We are the only permanent member of the U.N. Security Council and the only Arctic nation that is not a party to the Convention. As a result, there are limits to our ability to build coalitions for important international security efforts.

From the beginning, U.S. negotiators have been involved in the development of the Convention and have ensured it would both serve and protect our interests. Not joining the Convention limits our ability to shape its implementation and interpretation. We will need that influence if we intend to continue to lead in global maritime affairs.

Now is the time for the United States to join the Convention. We should not wait. The global security environment is changing. The Pacific and the Arctic are becoming increasingly important. And some nations appear increasingly willing to assert themselves and to push the boundaries of custom and tradition in a negative direction.

This treaty has been thoroughly debated and vetted, and it has consistently received support from senior defense leaders. We should become party to the Law of the Sea Convention now and demonstrate our global maritime leadership.

The CHAIRMAN. Thank you very much, General.

As I mentioned earlier, we will be having Chief of Naval Operations, the Commandant of the Coast Guard, and the Commanders of the various forces, all of whom are affected by this, come in and be able to answer questions for Senators.

But General Dempsey, if I could ask you, opponents of the Convention have argued that U.S. accession is somehow going to lead to an unacceptable restriction on the U.S. military—Secretary Panetta addressed this a little bit—suggesting it would harm our national security. This has been a refrain repeated in a number of editorials and elsewhere.

I want to ask you some questions about that, if I may? First of all, do they know something that you don't know? [Laughter.]

General DEMPSEY. Well, I can't speak for them, but I know what I know. And I know that it will not do any of the things you just suggested.

The CHAIRMAN. None?

General DEMPSEY. None.

The CHAIRMAN. And you are certain of that?

General DEMPSEY. I am certain of that.

The CHAIRMAN. And that is shared by every commander of the various combatant forces?

General DEMPSEY. It is, sir. You have probably noticed that I am not exactly dressed exactly as someone who would speak with authority on the issue of maritime operations. But I am a student and, in fact, prior to my testimony and even before, I have made it a point to consult with those who are experts on this and have become, to the best of my ability, an expert as well.

The CHAIRMAN. President Reagan decided in 1983 that the Convention's provisions relating to the traditional uses of the oceans generally confirmed existing maritime law in practice and fairly balanced the interests of all states. He, therefore, announced that the United States, including the U.S. military, will act in accordance with those provisions, notwithstanding we hadn't ratified it.

Has that policy ever changed since President Reagan first made the announcement in 1983?

General DEMPSEY. It has not changed for the United States military. No, sir.

The CHAIRMAN. So in light of the fact, and I ask this of both the Secretary of Defense and you, as Chairman of the Joint Chiefs, that we are already following the Convention, would joining it require the military to make any change in existing policy or procedure with respect to use of the oceans?

General DEMPSEY. It would not.

The CHAIRMAN. Would it place any restraint whatsoever on any of our strategic goals?

General DEMPSEY. It would not.

The CHAIRMAN. As Chairman of the Joint Chiefs of Staff, do you believe that joining the Convention would harm the U.S. military in any way?

General DEMPSEY. I believe it would not harm us in any way.

The CHAIRMAN. And haven't you expressed, and I think, Mr. Secretary, you have said that rather than harm us, it would, in fact, enhance our strategic goals and our interests.

Secretary PANETTA. It would. It would give us—it would give us the opportunity to be able to engage when it comes to navigational freedoms and navigational rights. We can argue for those now. We can do what we do. But very frankly, we have undermined our

moral authority by not having a seat at the table with these nations to make the arguments for these rights.

The CHAIRMAN. I have a letter here from Director of National Intelligence Clapper, dated May 16, 2012, in which he confirms that the Convention would not prohibit intelligence activities in any way. This is another one of those myths that get thrown out there.

I want to enter that letter into the record.

But the intelligence community made the same confirmation to this committee during the Bush administration, did it not, in 2003 and 2007?

Secretary PANETTA. That is correct.

The CHAIRMAN. So, General Dempsey and Secretary Panetta, I ask you each the same question. Do you have any concern or any belief whatsoever that joining this Convention would harm the U.S. military's ability to collect intelligence?

Secretary PANETTA. Having served in a key intelligence position and now as Secretary of Defense, this would in no way inhibit our ability to conduct intelligence operations.

The CHAIRMAN. General Dempsey.

General DEMPSEY. It would not affect our intelligence operations.

The CHAIRMAN. And is it not accurate that the Russians are about to send their fifth mission up to the Arctic this summer, and the Chinese are currently laying claims that may, in fact, impinge on U.S. interests and claims?

Mr. Secretary.

Secretary PANETTA. That is correct.

The CHAIRMAN. General Dempsey.

General DEMPSEY. Yes, sir.

The CHAIRMAN. And our ability to affect that is, in fact, enhanced by joining the treaty, is it not?

General DEMPSEY. As I said, sir, acceding to the Convention would allow us to have another instrument with which to engage any nation that would potentially threaten our interests.

The CHAIRMAN. Now, Secretary Panetta, we have heard arguments also that the military doesn't need the treaty because customary international law gives us the rights we will need. You addressed this to some degree, the whole issue of codifying a preference for gunboat diplomacy by not embracing this treaty.

Can you speak, General Dempsey and Mr. Secretary, since you are the direct line commanders for sending people into conflict, how you react to the notion that we should just leave aside a legal regimen and rely on the fact that we have the strongest navy and our military force?

Secretary PANETTA. Well, look, first and foremost, there is no question that we have the strongest navy in the world. But if we are going to engage in gunboat diplomacy everywhere we go in order to assert our rights, then the end result of that is going to be conflict, and it could very well jeopardize our national security if we resort to that as our primary means of asserting our rights, you know, sending the destroyers in, sending the carriers in, in order to do that.

The better approach is to have those carriers, have those destroyers, make very clear the power we have. But then sit down and

engage these other countries in a rules-based format that allows us to make the kinds of arguments that we have to make when we engage with 160 other nations as to navigational rights.

I mean, that is the way we do it. We are strong because we play by the rules, not because we go against those rules.

The CHAIRMAN. And Madam Secretary, I have certainly run into this in discussions with people, and I think you and I have discussed. That the lack of our presence in the treaty is, in fact, thrown at us by various countries today. And they almost needle us about our inability to assert our rights.

I partly put that in this context. Some opponents of the Convention say we don't need it in order to get the legal certainty on the Extended Continental Shelf. We can just get it by a series of bilateral agreements like Mexico and Russia and so forth. Could you speak to that?

Secretary CLINTON. Well, first, we have not been able to realize all the potential benefits, because we are not a party to the treaty. We cannot fully secure our sovereign rights to the vast resources of our Continental Shelf beyond 200 nautical miles. We cannot sponsor U.S. companies to mine the deep seabed for valuable metals and rare earth elements.

We cannot count on what is called customary international law, that it won't change or it won't be subject to either being ignored or undermined over time that we cannot control because we are not taking our seat at the table. We only get future stability in what the legal framework is if we are a party to the Convention, and you know, many of the provisions enshrined in the Convention are very favorable to us.

And finally, to your point directly, Chairman Kerry, we do find, and I certainly personally find, that when I am, for example, working on claims in the South China Sea that affect our treaty allies like the Philippines or Japan or others, the fact that we are not a party really undermines our position.

And I would bet that there are many in the world who hope we never are a party, and they can go on and plot the way forward, set the rules, enforce them as they choose, putting us further and further at a disadvantage.

The CHAIRMAN. Thank you very much.

Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

Each of you has been covering the ground that I am about to cover again. But let me just say that again and again during testimony in 2004, 2007, we had the thought that the opposition was not being heard, not being understood. So let me introduce some of the opposition today so that we have the benefit.

For instance, on the editorial page or B4 of the Washington Times of Tuesday, May 22, 2012, Frank Gaffney writes about the situation. He says, "If, on the other hand, the members of the U.S. Senate trouble themselves to study, or at least read, the text of the Law of the Sea Treaty, they would immediately see it for what it really is: a diplomatic dinosaur, a throwback to a bygone era when U.N. negotiations were dominated by Communists of the Soviet Union and their fellow travelers in the Third World.

"These adversaries' agenda was transparent and wholly inimical to American equities. They sought to: establish control over 70 percent of the world's surface; create an international governing institution that would serve as a model for bringing national states like ours to heel; and redistribute the planet's wealth and technology from the developed world to themselves. LOST codifies such arrangements—and would subject us to mandatory dispute resolution to enforce them via stacked-deck adjudication panels.

"And I would suggest even then Senators will not read the treaty, nor perhaps other national leaders. So I suggest that Dick Morris and his wife, Eileen, have just published an important book that addresses, among other outrages, LOST as a prime example of the title: 'Screwed! How Foreign Countries Are Ripping Off America and Plundering Our Economy and How Our Leaders Help Them Do it,'" and so forth.

Now over on the next page, Ed Feulner writes, "Without LOST, we are told, we will not be able to develop the hydrocarbon resources beneath the Extended Continental Shelf. Sounds pretty dire at a time of fluctuating prices for gasoline and other forms of fuel. Fortunately, it is not true. Under international law and longstanding U.S. policy, we already have access to these areas.

"Presidents dating back to Harry Truman have issued proclamations—and Congress has passed laws—establishing America's maritime laws and boundaries, and no one has challenged them."

Now, as you pointed out, we do have a navy, and perhaps opponents of the treaty would say why get involved in all of this nonsense? Send the fleet out. Shoot it up. If, in fact, you have got a problem, what is this navy for?

Now I tried to mention this briefly in my comments, that even at a 1,000-ship level, the United States cannot cover all the disputes of the world.

What we ought to have then maybe is an additional hearing on how many more ships, how much more military spending, and how much more infrastructure we will need to do it our way and to say let the rest fly by themselves.

I take your time to listen to all of this because, essentially, you have presented a very strong case, and people from industry are going to present a strong case. And they will be pilloried as capitalists who are looking after their own stockholders, looking after their own interests once again without regard to our sovereignty and our ability to address disputes militarily if pressed to do so.

And I don't know who else will come in. Perhaps we will have some who will say that peace in the world is important and that this treaty is an important means to strengthen international cooperation. But I am afraid they are going to get short shrift.

How, Secretary Panetta, would you begin to describe the military problem here? In other words, we do have the Navy, we are not going to stand by, and we are worried about the South China Sea. And all of our Asian allies are coming, and we are placing Marines in Australia, and we are pivoting, as you described the policy.

But what are the limitations, if there are any, to our ability to shoot it out?

Secretary PANETTA. Well, Senator Lugar, again, I think it is a question of looking at the facts that we are dealing with. The fact

is that we are dealing with a world in which there are myriad threats that we confront now. This is—you know, we are not just dealing with the Soviet Union. We are dealing with myriad threats.

In the South China Sea with rising powers, in the Pacific with North Korea, with Iran, with transit in the Strait of Hormuz, with turmoil in the Middle East, with a whole series of challenges, not to mention war, not to mention terrorism. All of those are the threats that we confront.

And the reality is that we are now in a world in which, frankly, in order to be able to deal with that myriad challenges, it isn't enough for the United States Navy to go wandering around the world asserting its strength as a way to solve that myriad problems and threats I just defined.

The only way we are going to do this in today's world is to engage in alliances and partnerships, work with other countries to develop some kind of rules-based approach to dealing with those threats so that other countries as well understand the threats they confront and can react to those threats. That is the kind of world we are part of. That is the kind of world we live in.

And it is for that reason that the Law of the Seas becomes important because it is one of those vehicles in which to engage the world. One hundred sixty nations have acceded to it, and we say the hell with them, we are not going to participate in that. Then 160 nations are going to determine what happens in terms of the Law of the Sea, and we won't be there.

So that is the reason from a national security point of view, from a very practical point of view, from the point of view of what is in the best interests of the United States, that we have to accede to this Convention so that we are part of a rules-based international order.

We say that every time we go—we argue with Iran. Every time we argue with North Korea, we argue on the basis that they are not abiding by international rules. They are not abiding by the international standards that we have established.

And here we are, trying to make the same argument with regards to navigation, and we aren't even a member of the Convention. That is the reason we need to accede to this Convention.

Senator LUGAR. Thank you.

The CHAIRMAN. Let me just say, since there are a few seconds left, Senator Lugar, that neither President Truman's proclamation nor any act of Congress has ever delineated the outer edge of the Extended Continental Shelf of the United States. And currently, other countries can prohibit the United States from coming into an ECS. We can't because we are not a party to the treaty.

So the only way to protect that outside of this is to accede to the treaty. And finally, no company is going to put millions of dollars into the effort to go out and do the mining or do the drilling if they don't have the legal certainty protection of the treaty.

So there are further reasons in answer to Mr. Feulner. But we will have Mr. Feulner in here, and we will have others who oppose it and have a chance to explore this.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman, for beginning this series of hearings, which I think are incredibly important.

A couple of years ago, I chaired the beginning of one of these on your behalf, and I think it is even more important today than it was then. And I appreciate all of our distinguished witnesses and their service to our country.

General Dempsey, when you took an oath as the Chairman of the Joint Chiefs of Staff and when you took an oath to the service that you originally joined from which you come, you took an oath to protect the United States of America. Is that not correct?

General DEMPSEY. I did, sir.

Senator MENENDEZ. And is there anything in this treaty that you believe undermines the oath that you took both in your service, as well as the Chairman of the Joint Chiefs of Staff?

General DEMPSEY. There is not.

Senator MENENDEZ. So you believe that the treaty clearly continues to allow for you, on behalf of all of those of the different services who serve this country, to protect and defend the United States of America and doesn't undermine any of those abilities?

General DEMPSEY. It protects our ability to do what we need to do for this country.

Senator MENENDEZ. Thank you very much.

Secretary Panetta, do you have any concerns that this treaty would impinge on either the rights or ability of you, as the Secretary of Defense, to protect the air, sea, or land territory of the United States? Or conversely, would the treaty impact the ability of the Department of Defense or the service branches to navigate or engage in freedom of navigation operations?

Secretary PANETTA. No, it would not. It would enhance our ability to be able to navigate because we would be able to be at the table to protect our interests and protect our claims.

Senator MENENDEZ. In fact, doesn't this treaty, if we were to ratify it, give us the wherewithal to extend our reach to a third more than the territory that we have beyond the 200 miles Exclusive Economic Zone? Is that a correct statement?

Secretary PANETTA. That is absolutely correct.

Senator MENENDEZ. In recent months, as I am sure many of you know, I have been following Iran with a laser-like focus. In these past few months, we have heard Iran threaten to close the Strait of Hormuz in response to United States and European Union sanctions.

Beyond our own ability to respond in the national interest and security of the United States, which the administration made very clear at the time when that threat took place, my understanding of the treaty is that such an action by Iran would have violated the treaty because of the treaty's guarantee of the right of innocent passage even in a nation's territorial waters and even for United States military vehicles—vessels, I should say. Is that a correct statement?

Secretary PANETTA. That is a correct statement.

Senator MENENDEZ. The other thing that I focus a great deal on in our subcommittee role is proliferation of narcotics trafficking, as well as the proliferation of weapons of mass destruction. What benefits would the United States derive from joining the treaty with respect to countering and interdicting narcotics and the prolifera-

tion of weapons of mass destruction to and from state and nonstate actors of proliferation concern, such as Iran and Syria?

For example, would joining the treaty advance interdiction efforts under the Proliferation Security Initiative, such as providing a basis for taking action against vessels suspected of engaging in proliferation activities?

General DEMPSEY. Right now, sir, as you know, we use customary international law to assert our right to visit. This would be documented in the Convention of the Law of the Sea and preserve the right of visit, which would enhance our use of the Proliferation Security Initiative.

Senator MENENDEZ. Do we believe that joining the treaty would help our efforts to bring countries into the Proliferation Security Initiative and further undertake our efforts in needed interdiction efforts?

Secretary CLINTON. I believe it would, Senator. I think joining the Convention would likely strengthen the PSI by attracting new cooperative partners.

Senator MENENDEZ. Now, finally, this treaty has allowed for us, on a provisional basis, to participate and influence the work of various entities, such as the Commission on the Limits on the Continental Shelf and the International Seabed Authority, the body that regulates the exploration, development, exploration of international areas beyond national jurisdiction, such as oil, gas, and nonliving resources under the seabed and subsoil.

However, because we have not ratified the treaty, we have been relegated to observer status on the Commission. What impact has the failure to ratify had on our ability to influence the actions on the Continental Shelf Commission and the international seabed activity?

Secretary CLINTON. Well, Senator, first of all, there are a number of observers who actually view this Convention as a huge win for the United States. In fact, it is called by some "the U.S. land grab" because of what it would mean for our ability to extend jurisdiction far beyond our shores.

But unfortunately, our failure to accede to it limits our capacity to do so. We believe the seabed mining body's action on rules for mining, coming up in 2013, is something that we would heavily influence and would certainly influence in favor of our interests and our companies, if we were to accede by then.

So the Convention bodies that are determining the rules are proceeding without us, and we are on the sidelines and do not have the authority needed to do much more than try to wave our arms and get attention to make points. But we would have direct influence and we would have, as I said in my testimony, what amounts to a veto because of the consensus rules if we were actually present.

Senator MENENDEZ. So, clearly, because a gift of God allows us access to the Atlantic, Pacific, Arctic, and gulf territorial waters, it is in our security interests, our energy interests and private sector interests to ratify this treaty. Is that a fair statement?

Secretary CLINTON. That is an absolutely fair statement.

Senator MENENDEZ. Thank you very much.

The CHAIRMAN. And if I could just augment that by saying, Senator, that because of Guam, because of the Hawaiian Islands, because of the Aleutians, we have an extraordinary reach, which is why there is such a breadth here to what is available to us, which is unique.

No other country in the world has as significant an extended zone as we do, and we are not taking advantage of that.

Senator Corker.

Senator CORKER. Thank you, Mr. Chairman.

And thank each of you for your testimony and service to our country.

And Secretary Clinton, I noticed you enjoyed your testimony more than most. I don't know if it is because January is just around the corner or not, but you seem very happy today, and I am glad to have you here.

You know, I have been around here a while now, and this is sort of a Lazarus moment. This thing has been around for 30 years. We are in the middle of a pretty contentious Presidential race, and we have a treaty that is coming up that both majority leaders on the Democratic side and Republican side have not wanted to bring to the floor.

So I have my antenna up slightly. I do want everybody to know that I begin in a neutral place. I, too, want to make my decision on this treaty based on facts and not myths and certainly plan to go about learning as much as I can about the facts of where this treaty places our Nation.

So I listened to the testimony, and again, I enjoyed all three of you. I am listening to cases being made about oil. And at the depths of exploration we are talking about, we are talking about really big oil. And I just find it interesting. I don't think this is a pejorative comment. The administration has not particularly been a great fan of big oil.

As a matter of fact, we have restricted our own lands to their access in many ways. So I just find it an interesting point that is being made by an administration that has been anything but "friendly" to big oil, why all of a sudden on this particular treaty, such a big deal is being made out of that? And if you could just answer me briefly, Secretary Clinton, I would appreciate it.

Secretary CLINTON. Well, Senator Corker, I am always happy when I am appearing before this committee and back in the Senate. So thank you for the warm welcome.

You know, I really believe that the United States has an opportunity in developing our natural resources, which we are currently doing, particularly with unconventional gas and the steps and progress that we are making in that arena, which are extremely important to our future.

Yes, there are discussions and debates over where to do it, in whose backyard and the like. But we are making progress, and for the first time in many years, we actually are a net exporter. And as someone who spends a lot of my time promoting American jobs around the world and finding how interested people are in perhaps being able to import from us, I think that is all to the good.

It is also important that we take advantage—that we have the opportunity to take advantage of what may be possible in the

future. I don't want to close the door on anything. And that is what I fear we are doing. It is the opportunity cost of not acceding to the Convention now.

I am not an expert in oil and gas exploration and drilling. But what the oil and gas industry tells us is that they are now in a position to take advantage of this; actually, our majors are among the very limited number of such companies anywhere in the world.

And to shut the door on their ability to do that I just don't think is economically smart. So I think if you look at the whole picture, we are positioned well, and I want us to continue to be so in the future.

Senator CORKER. So second point, I know the administration has tried to push legislation relating to carbon, and I know cap and trade was discussed for a while. And that obviously didn't pass muster here in the Senate, and so the EPA has taken steps to, in many ways, make pieces of that happen through regulation.

One of the things that the treaty does do is regulate pollution in the ocean from land-based sources, and one of the things you didn't mention in the comments about some of the negativity toward the treaty is a lot of people believe—and again, I am asking the question after reading, and I am not saying I am one of those. But a lot of people believe that the administration—my antenna is up—that the administration wants to use this treaty as a way to get America into a regime relating to carbon since it has been unsuccessful doing so domestically. And I wonder if you might respond to that?

And if the treaty, in your opinion, does put us in a situation either to respond to international regimes or to be subject to lawsuits from people because of carbon that is emitted from the United States affecting the ocean bed?

Secretary CLINTON. Senator, I know some have been concerned, and I appreciate your raising it that somehow the Convention is a backdoor Kyoto protocol. It is our legal assessment that there is nothing in the Convention that commits the United States to implement any commitments on greenhouse gases under any regime.

And it contains no obligations to implement any particular climate change policies. It doesn't require adherence to any specific emission policies, and we would be glad to present for the record a legal analysis to that effect.

Senator CORKER. How do we exit this treaty? Is there a way to—you know, typically treaties have ways of exiting. And again, briefly, I want to ask one other question. How would one exit this treaty if we became a party to it?

Secretary CLINTON. Again, I will submit it to the record, but it is my understanding that just as we accede to certain treaties, we can end our accession or our membership. There is no continuing obligation to be a member of a treaty that you freely joined.

[The written response from the State Department follows:]

During Secretary Clinton's May 23, 2012 testimony before the Senate Committee on Foreign Relations, you asked for more information on the Law of the Sea Convention's provisions that permit a party to withdraw from the Convention. You also asked about the relationship between the Convention and U.S. climate change policy. Please find our analysis below on both of these issues.

WITHDRAWAL FROM THE LAW OF THE SEA CONVENTION

Withdrawal by a State party from the Law of the Sea Convention is governed by Article 317, entitled "Denunciation."

Article 317 provides that a State party may withdraw from the Convention at any time. It is not necessary to indicate a reason for denunciation. Denunciation takes effect 1 year after providing written notification.

Article 317 is similar to withdrawal provisions found in other treaties to which the United States is a party.

CLIMATE CHANGE

The Law of the Sea Convention is an oceans treaty, not a climate treaty. Joining the Convention would not require the United States to implement the Kyoto Protocol or any other particular climate change laws or policies, and the Convention's provisions could not legitimately be argued to create such a requirement.

Part XII of the Convention addresses the marine environment. "Pollution of the marine environment" is defined in Article 1, paragraph 4. Even if one assumed, for the sake of argument, that (1) Part XII applied to the issue of climate change; (2) "pollution of the marine environment" existed within the meaning of Article 1(4); (3) there was a causal link between a Party's GHG emissions and such pollution; and (4) other requirements were satisfied, Part XII would still not require a Party to adopt particular climate laws or policies.

Part XII's arguably relevant provisions are either extremely general (e.g., Article 194) or expressly do not require a Party to implement any particular standards.

- Articles 207 and 212 call on Parties merely to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures."
- Articles 213 and 222, which are the "enforcement" analogues to Articles 207 and 212, would likewise not require the United States to adopt or enforce particular standards related to climate change. The "enforcement" section of Part XII allocates responsibilities among flag States, coastal States, and port States, depending upon the source/type of marine pollution in question. Adoption and enforcement of laws in relation to Articles 207 and 212 fall within the domain of the State concerned. However, even if these articles applied to climate change, they would not require adoption/enforcement of Kyoto or other climate rules or standards. There are simply no such international rules and standards relating to climate change applicable to the United States.

The Convention would also not provide a forum for challenging U.S. climate change policies.

- Domestically, the Convention could not be invoked in court; it does not create rights of action or other enforceable individual legal rights in U.S. courts. (See declaration 24 of the draft resolution of advice and consent and the Committee Report of December 19, 2007, at page 18.)
- Internationally, dispute resolution is not open to individuals or groups, only States Parties. Were a State Party to seek to challenge U.S. climate policies under the guise of a "marine environment" dispute, the Convention's dispute settlement procedures would not be available.
    - Because of the sensitivities of coastal States concerning their land-based (and certain other) activities, the Convention sets forth limitations on the obligations related to marine pollution that could be subject to dispute resolution.
    - Specifically, Article 297(1)(c) sets out the exclusive bases upon which a coastal State would be subject to dispute resolution for pollution of the marine environment.
    - Among other things, there would need to be a "specified" international rule or standard "applicable" to the coastal State. As noted, no provision of the Convention "applies" international rules or standards to the United States in this area, much less a "specified" one. As such, it would not be possible to invoke the dispute resolution procedures to challenge the United States in relation to climate change.
    - Were a State Party to seek to invoke the Framework Convention on Climate Change (to which the United States is a Party) as the basis for a challenge under the LOS Convention, Articles 280 and 281 of the Convention would further preclude recourse to the Law of the Sea Convention's dispute resolution procedures. (These Articles provide that Parties can choose to resolve disputes by means of their own choosing, including through other agreements. The Framework Convention on Climate Change already contains provisions for dispute settlement, and those provisions do

not entail any legally binding procedures between Parties unless the Parties agree on such procedures.)

Thus, the Convention would not obligate the United States to have in place any particular climate laws or policies, and it would not subject U.S. climate change approaches to dispute resolution.

U.S. agencies, including the Coast Guard, EPA, and the Justice Department, have been acting in accordance with Part XII of the Convention since President Reagan directed the U.S. Government to abide by the bulk of the Convention's provisions. Were the United States to become a Party to the Convention, U.S. agencies would implement Part XII under existing laws, regulations, and practices. This was confirmed in a March 1, 2004, letter to Chairman Lugar from William H. Taft IV, the State Department's Legal Adviser during the Bush administration. The letter provided, in pertinent part: "The United States, as a Party, would be able to implement the Convention through existing laws, regulations, and practices (including enforcement practices), which are consistent with the Convention and which would not need to change in order for the United States to meet its Convention obligations."

We stand by the Taft letter.

Senator CORKER. And then, last, is this treaty subject to the typical resolution of ratification that happens in the Senate when treaties are—that is correct?

Secretary CLINTON. Yes, that is correct.

Senator CORKER. There is some language that stipulates no changes. But you are saying the Senate has the ability to put stipulations upon our entrance?

Secretary CLINTON. We always have a resolution for ratification that is prepared. I think there was one prepared in past times when it didn't get to the floor, but it was certainly part of the preparation work leading up to a potential vote.

Senator CORKER. OK. And on that note, and this is not directed at you in any way. We did have a resolution of ratification under the START Treaty, and I know we have had some conversations about this in the past. And I know that there are pieces of this that are outside the jurisdiction of the State Department.

But I will say that I think the gentlemen on either side of you, I know the gentleman to your left, mentioned many times that the modernization of our nuclear armaments is very important to our Nation, especially if we are going to be reducing the numbers of those. And I want to say one more time in every public setting that I can, and I know this is not the State Department, but that resolution has not been honored.

And for what it is worth, it is not a really good way to build trust with folks on future treaty resolution. So, again, none of this is directed at you, but the types of modernizations at Sandia and Los Alamos and Pantex and other places have been waiting for, and military leaders and civilian military leaders have said is very important, has not occurred, per the resolution of ratification.

Not directed at you, but just to say that it is not the kind of thing that builds a lot of faith in those resolutions.

Secretary CLINTON. If I could respond, Senator, because I know this is a continuing concern of yours. And for the record, I just want to state that in FY12, the administration did live up to the obligations that we agreed on by requesting $7.629 billion for NNSA weapons activities.

Congress did not appropriate that full amount, instead appropriating only $7.214 billion. That did create a shortfall. So, in FY 2013, we continued to honor our commitments by requesting $7.6

billion. That is $363 million, or 5 percent, above the amount appropriated by Congress for FY12.

It is one of the very few accounts in the entire Government to receive an increase of this size. And we would like to work with Congress to be able to have everybody on the same page concerning this.

Senator CORKER. Well, I will close with that if it is OK. I appreciate that. And yet, this year, that request was not made. And I want to say that the resolution states that if those funding requirements are not met, it is incumbent upon the administration to come forth with a report showing how that affects the overall process.

That has not happened. And again, none of that is directed at you. It is directed overall at the administration. But it does creation problems as it relates to overall trust issues.

I thank you all for your testimony and look forward to the future hearings.

Secretary CLINTON. And Senator, I take very seriously this concern of yours. We will be submitting the 9(b) report shortly.

The CHAIRMAN. Thank you, Senator Corker.

Senator Cardin.

Senator CARDIN. Well, Mr. Chairman, let me thank all of our witnesses. I found your presentations to be as comprehensive a presentation that I have ever received on the treaty, and I thank you for that. I thank you for particularly addressing the criticisms that have been made about this treaty, but of course, it is typical of any treaty that we hear some of these complaints.

I want to go into an issue that I think, Secretary Clinton, you alluded to. And that is that this is not a static situation. It is changing, changing all the time. And there are now groups that are meeting that will affect U.S. interests that we are not a party to. We don't have our representative there.

The Law of the Sea is changing because of the treaty. And there is now discussion as to what should be the appropriate use of sealanes, and where should the mineral rights in the future go, what should be the international regime for dealing with some of these issues? And the United States, of course, is perhaps the most significant player in these issues, and yet our interests are not being represented as these types of changes are being debated.

Can you just elaborate a little bit more as to what type of discussions are currently taking place that we truly are not part of, we are not involved, as far as having our representative at the table during these discussions, that could very much affect U.S. companies, could affect the commercial operations, could affect all the interests that you have mentioned?

Secretary CLINTON. Well, Senator, you are absolutely right with respect to demarcating, claiming, and asserting sovereign jurisdiction over the Continental Shelf, that is ongoing. Countries are doing that. As has been already said, we stand to gain more than any country in the world, and we have not done so.

Going beyond the Extended Continental Shelf, which is of great importance to us, are the rules on deep seabed mining that will influence whether a number of the supporters of the treaty—Senator Kerry mentioned one, Lockheed Martin—who are interested in the

rare earth minerals, can participate. Because in the absence of setting the right rules and then being a party to the treaty, it may or may not be as advantageous to us as it should be.

We have a seat on that body, and we are not filling it.

So we will really only have ourselves to hold responsible if the bodies that are now gearing up and working under this Convention begin to make decisions that are not in our interest.

And I think Secretary Panetta made a great comment. You know, we like to use our military power to promote our national security. We have a lot of economic interests at stake here that will be very hard for us to exercise, even with the largest, most professional military in the world, if we don't get in under the Convention's rules. And we have a chance still to shape those rules.

Senator CARDIN. Normally, on these international treaties and organizations, the U.S. participation is looked upon internationally with great importance, because it adds to the comprehensive nature of the organization. You mentioned the Arctic area. Without having the United States, you're missing one of the key players in the Arctic. So I know that there are strong international interests for us to become a party to the treaty.

But I would expect that there is some interest in other countries that are saying, we hope you don't ratify this treaty. After all, it gives our companies a better edge on some of these issues and puts us in a stronger position on some of the economic and legal issues, as it affects U.S. operations.

Am I correct? I assume that there is strong international support for U.S. interests, but in some respects, they may be saying, if you don't want to take advantage of it, we will fill the void.

Secretary CLINTON. Well, the United States was certainly among the relatively small group of nations that drove the treaty in the first place, and then led the modifications in 1994 to make sure that nothing in the treaty would be adverse to our interests.

And so we have a lot at stake. We have already invested a lot in it. I think most of the world wants to see us accede, because they know that with the United States as the principal driver of a rules-based international system, our being inside, helping to devise and execute those rules, is in their interests as well.

But I have to agree with you, Senator, that there are nations who would be perfectly happy to be in the driver's seat instead of us, and we're letting them be in the driver's seat, by our failure to be party to the Convention.

Senator CARDIN. We just had the NATO summit in Chicago, and one of the issues that was raised pretty vocally by this committee is that we want our NATO partners to carry out their responsibility. The responsibility for international security should rest with all of our partners, not just principally with one country, the United States.

And, Secretary Panetta, it seems to me that our allies have to have some concern about the U.S. participation in this treaty, as it relates to the coordination of our security issues, as it relates to the sea.

Secretary PANETTA. That's absolutely correct. We sit down with these countries. We develop strategies. We develop plans. We

develop military operations. We develop naval operations, working with them as well.

And if we are not operating based on the same rules, it puts us at a disadvantage.

I am sure this is true for Secretary Clinton, but I can't tell you—I've been in meetings with both those that are considered our allies as well as those that are considered our competitors, and make the argument with regards to navigational rights, make the argument with regards to our ability to exercise rights in the open seas.

And they have said in these meetings, how can you even assert that when you are not even—have acceded to the Law of the Seas Convention? That has been thrown right in our face.

And I am sure they would love to continue to have that argument. That is the concern.

Senator CARDIN. It does make our arguments for parity that much more difficult, particularly when there really is, as you have all pointed out, it is hard to defend an argument as to why we have taken so long and why we have not, in fact, ratified the treaty.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator.

Senator Risch.

Senator RISCH. Thank you, Mr. Chairman.

Secretary Clinton, in your opening statement, you addressed the people who oppose the ratification of the treaty, and particularly spoke to the ideology and the philosophical opposition that some people have to this. And I hope you weren't scoffing at us. I am one of those who fall into that category, because I have some deep-seated reservations on that basis.

Indeed, most wars we have fought have been fought over ideology and philosophy. Indeed, our country was founded on that, because we had a difference with Great Britain over that.

So I consider that an important point. And to get this down even narrower, my problem is with sovereignty. There are 288 pages here. And as you read it, there is some good stuff in here. But if we give up one scintilla of sovereignty that this country has fought, has bled for, have given up our treasure, and the best that America has, I can't vote for it.

So I want to talk about a couple of those, and focus on those, if we can.

First of all, with all due respect, you defended the opposition, or you challenged the opposition. You said that there is nothing in here that requires that we do certain things regarding the Kyoto protocols and environmental-type things. If you look at article 222, and I am going to quote from that article, which says that signatories to this treaty, "shall adopt laws and regulations, and take other measures necessary, to implement applicable international rules and standards established to competent international organizations or diplomatic conference to prevent, reduce, and control pollution of the marine environment from or through the atmosphere."

That has got Kyoto written all over it.

And what it's got written all over it is any time the U.N. calls a conference or what have you, they all get together, they all sign onto it, and even though we disagree, by adopting this treaty, we

have said that we will adopt it, even though we don't agree with that particular treaty.

So with all due respect to the legal interpretations you say you have, and I have read thousands of pieces of legislation, this is written in plain English. And I don't know how you can argue that, after this is adopted by Congress or by the Senate, if it is, how we're going to get around the fact that we have agreed that we will adopt these laws and regulations.

Secretary CLINTON. Well, Senator, I join you in being absolutely, 100 percent, supportive and protective of American sovereignty. I've spent much of my adult life, in whatever role I have found myself in, defending and arguing on behalf of our country and our rights, and I will continue to do so.

But I would strongly argue that, No. 1, our sovereignty will be considerably enhanced by joining this treaty. And No. 2, with the specific to the question you asked, our reading of that, and the information about the meaning of it goes back to the very beginning of the treaty, because we have had American negotiators at the table from the very beginning, is that there is nothing in what you read that requires any particular standards. There is nothing that requires this subject to be put to dispute settlement. It calls on parties to participate in discussions, conferences, and the like, concerning environmental issues that might come to impact the oceans.

And for the record, I will give you a longer written response, because I really do want to put your mind at ease, as much as I am able to, because I believe so vehemently that acceding to this treaty is in America's sovereign interests, or I would not be sitting here.

[The written response from the State Department follows:]

During Secretary Clinton's May 23, 2012, testimony before the Senate Committee on Foreign Relations, you discussed the relationship between the Law of the Sea Convention and climate change. Please find our analysis below on this issue.

CLIMATE CHANGE

The Law of the Sea Convention is an oceans treaty, not a climate treaty. Joining the Convention would not require the United States to implement the Kyoto Protocol or any other particular climate change laws or policies, and the Convention's provisions could not legitimately be argued to create such a requirement.

Part XII of the Convention addresses the marine environment. "Pollution of the marine environment" is defined in Article 1, paragraph 4. Even if one assumed, for the sake of argument, that (1) Part XII applied to the issue of climate change; (2) "pollution of the marine environment" existed within the meaning of Article 1(4); (3) there was a causal link between a Party's GHG emissions and such pollution; and (4) other requirements were satisfied, Part XII would still not require a Party to adopt particular climate laws or policies.

Part XII's arguably relevant provisions are either extremely general (e.g., Article 194) or expressly do not require a Party to implement any particular standards.

- Articles 207 and 212 call on Parties merely to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures."
- Articles 213 and 222, which are the "enforcement" analogues to Articles 207 and 212, would likewise not require the United States to adopt or enforce particular standards related to climate change. The "enforcement" section of Part XII allocates responsibilities among flag States, coastal States, and port States, depending upon the source/type of marine pollution in question. Adoption and enforcement of laws in relation to Articles 207 and 212 fall within the domain of the State concerned. However, even if these articles applied to climate change, they would not require adoption/enforcement of Kyoto or other climate rules or standards. There are simply no such international rules and standards relating to climate change applicable to the United States.

The Convention would also not provide a forum for challenging U.S. climate change policies.

- Domestically, the Convention could not be invoked in court; it does not create rights of action or other enforceable individual legal rights in U.S. courts. (See declaration 24 of the draft resolution of advice and consent and the Committee Report of December 19, 2007, at page 18.)
- Internationally, dispute resolution is not open to individuals or groups, only States Parties. Were a State Party to seek to challenge U.S. climate policies under the guise of a "marine environment" dispute, the Convention's dispute settlement procedures would not be available.
  - Because of the sensitivities of coastal States concerning their land-based (and certain other) activities, the Convention sets forth limitations on the obligations related to marine pollution that could be subject to dispute resolution.
  - Specifically, Article 297(l)(c) sets out the exclusive bases upon which a coastal State would be subject to dispute resolution for pollution of the marine environment.
  - Among other things, there would need to be a "specified" international rule or standard "applicable" to the coastal State. As noted, no provision of the Convention "applies" international rules or standards to the United States in this area, much less a "specified" one. As such, it would not be possible to invoke the dispute resolution procedures to challenge the United States in relation to climate change.
  - Were a State Party to seek to invoke the Framework Convention on Climate Change (to which the United States is a Party) as the basis for a challenge under the LOS Convention, Articles 280 and 281 of the Convention would further preclude recourse to the Law of the Sea Convention's dispute resolution procedures. (These Articles provide that Parties can choose to resolve disputes by means of their own choosing, including through other agreements. The Framework Convention on Climate Change already contains provisions for dispute settlement, and those provisions do not entail any legally binding procedures between Parties unless the Parties agree on such procedures.)

Thus, the Convention would not obligate the United States to have in place any particular climate laws or policies, and it would not subject U.S. climate change approaches to dispute resolution.

U.S. agencies, including the Coast Guard, EPA, and the Justice Department, have been acting in accordance with Part XII of the Convention since President Reagan directed the U.S. Government to abide by the bulk of the Convention's provisions. Were the United States to become a Party to the Convention, U.S. agencies would implement Part XII under existing laws, regulations, and practices. This was confirmed in a March I, 2004, letter to Chairman Lugar from William H. Taft IV, the State Department's Legal Adviser during the Bush Administration. The letter provided, in pertinent part: "The United States, as a Party, would be able to implement the Convention through existing laws, regulations, and practices (including enforcement practices), which are consistent with the Convention and which would not need to change in order for the United States to meet its Convention obligations."

We stand by the Taft letter.

Senator RISCH. Thank you, and I want to see the additional explanation. I am open-minded on it.

But I tell you, this language is just so black and white and so straightforward that says America shall adopt laws and regulations that are in conformance with anything adopted by a competent international organization.

Well, let's turn to another provision that I have real difficulty with. As I understand it, since 1776, we have never ceded our authority, as far as taxing American people or American companies are concerned. If you read article 82, subsection 4, it talks about—well, start with article 82. It talks about us taxing or us requiring a tax of these companies that operate out in the waters, mining or pumping or what have you.

Section 4 says the payments or contributions shall be made through the authority, which shall distribute them to states parties

to this Convention on the basis of equitable sharing criteria, taking into account the interests and needs of developing states, particularly the least-developed and landlocked among them.

Why oh why oh why, as we as Americans, give up our taxing authority, handing money over to the United Nations to develop some kind of a formula that we have no idea what it is going to say, and allowing them to distribute our tax money according to some formula that is very vaguely set out here? Why would we do that?

Secretary CLINTON. Well, Senator, we're not doing it. And I can tell you that without fear of contradiction. The Convention does not provide for or authorize taxation of individuals, corporations, or otherwise.

There is a royalty arrangement that kicks in after 5 years of drilling and extraction from the ocean. Payments that would be related to the Continental Shelf beyond 200 nautical miles go through, not to, one of the Convention bodies, the Seabed Authority. They are held there until agreement is reached on disbursement of the funds, if agreement is ever reached.

The distribution formula has to be agreed to. The United States, with its permanent seat, would have to agree to it. And the payments would mean that we were actually extracting valuable resources from the Extended Continental Shelf. This is supported by the American oil and gas industry, because it only applies to such areas beyond 200 nautical miles.

And I would note, too, Senator, there is nothing unprecedented about payment being made under treaties for various benefits, because here the benefit is being absolutely, legally assured of sovereign rights over a vast area of common ocean, and the legal certainty that comes with that.

And we already make payments to the International Telecommunications Union, for example, because it helps to regulate the use of spectrum and associated orbital slots to protect U.S. radio communications from harmful interference.

So there are precedents that demonstrate why this is in our interest. Nothing is agreed to, unless everybody in the Convention agrees to it.

Now standing on the outside, there may be something agreed to which will later be something we don't like, but we will not have been able to veto it, which we could if we were on the inside.

Senator RISCH. My time is up. Thank you, Mr. Chairman.

I would just say that I find very little comfort in taking this seat, as Secretary Panetta talks about, in a group of 160 countries, most of whom don't like us, many of whom hate us. And us having one vote amongst 160, I think we're going have a really tough time.

Secretary CLINTON. But, Senator, it is a consensus, which means it has to be unanimous, so our 1 vote counts as much as 159 other votes. And not every country will be represented on this body, but the United States will be.

Senator RISCH. On this particular provision, but there are others in here that there is not—we don't have a veto throughout everything that the conference does.

The CHAIRMAN. But the point, Senator, is that there is a veto with respect to the distribution of any money whatsoever. And I think, as we go forward in this, we will have the legal experts in

who will define precisely how that works. But I think you will come to see——

Senator RISCH. I look forward to that.

The CHAIRMAN. We have protected that.

But the other thing I was going to say is the application of the section that you raised with respect to the "shall apply" is only with respect to if you have already signed up to an international law that applies with respect to that.

So, in fact, it's not an ad hoc provision that says you have to go out and adopt this. It is if you have already signed an international agreement, and we haven't.

Senator RISCH. That's not what it says, Mr. Chairman.

The CHAIRMAN. Again, I will have a panel of experts who will come in and clearly define that, because it's very important.

Senator RISCH. No question about that.

The CHAIRMAN. And we obviously want you to understand that. And we want you to be satisfied with respect to that, and I believe you will be.

But I think it's important to have that done that way.

Senator Boxer is back.

Thank you.

Senator BOXER. Thank you. Forgive me, please, I had to go deal with the transportation bill, and that's moving ahead very well, I will tell my colleagues on both sides.

Well, Mr. Chairman and Senator Lugar, thank you so much for this important hearing.

And I want to say to the panel what an honor it is to be in the same room with you all. You give every day to your country, 24/7, and we all appreciate it so much.

This is a very important issue, and I thanked the chairman privately, because we're just late in the game with this, so we need to make up for lost time.

And Senator Lugar went through the history. I well remember in 2007, when we voted 17-to-4 to report the Convention to the full Senate. And as rightly pointed out, it wasn't taken up because there were threats of filibusters and everything else. And when you are the majority leader, you want to go to something you can get done.

So I am hopeful this time we are going to get it done, because of everything that was said.

The Convention has the unequivocal support of our national security community, the business community, the tech community, the oil and gas companies, and environmental groups.

Now, I tell you, it's tough to find that kind of coalition, but we've got it here.

And here's the puzzling part to me, I say to my colleagues, that this Convention should bring us together, not tear us apart.

My chairman has said it's his best opinion that we go for this after the election. So be it. But I find that kind of shocking, since, again, I'm confounded that with so much support, Senators consider this so controversial.

U.S. accession would help give the U.S. Navy maximum navigational rights in a dangerous world, help protect U.S. rights in the Arctic, afford greater flexibility to U.S. tech companies to lay their

fiber optic cables under the sea. The Convention provides mechanisms for peaceful resolution of disputes.

So the Law of the Sea protects U.S. national interests, and joining is the right thing to do.

And it brings me to my question for you, Madam Secretary, and it has to do with China. And we have a little map here, if people will bear with me. It tells the story.

China has made aggressive claims to a massive portion of the South China Sea, one of the world's busiest shipping lanes.

The blue lines show a 200-nautical-mile maritime area that each respective country, such as Vietnam or the Philippines, is entitled to under the Law of the Sea Convention. It is called, as was referred to, the Exclusive Economic Zone.

The red line shows what China is claiming for itself. As you see, it goes far beyond China's own 200-mile Exclusive Economic Zone. It reaches far into other nation's zones, a significant territorial grab that comes very close to the land borders of countries in the region.

Now this dispute has already led to confrontation on more than one occasion. In fact, just last month, the Chinese Navy sent surveillance ships to block the efforts of a Philippine Coast Guard cutter that was trying to stop activities of Chinese fishermen who were within 200 miles of the Philippine coastline.

Now, Secretary Clinton, I understand that you have been personally involved in trying to help resolve territorial disputes within the South China Sea. And I would ask you this question: Has the United States failure to join the Convention had an impact on your efforts to resolve disputes in the South China Sea? And if you could explain to us why and how.

And I thank you. You did a great job up there.

Secretary CLINTON. Well, thank you very much, Senator Boxer, for raising this issue, because you are right. I am personally engaged in many bilateral and multilateral discussions on South China Sea issues.

And the claims that China has made, and I'm not saying anything other than what I have said repeatedly to the Chinese themselves, are, in our view, beyond what is permitted under the Law of the Sea. We are working to try to help to resolve these disputes peacefully, and particularly to give support to the countries that are being threatened by these claims.

Yet, as a nonparty to the Convention, we are forced to advance our interests from a position of weakness, not strength. As a nonparty, we cede the legal high ground to China. We put ourselves on the defensive. We're not as strong an advocate for our friends and allies in the region as I would like us to be. And I don't think that's anyplace for the world's preeminent maritime power to find ourselves.

So the common thread, and this is something that Secretary Panetta stressed, is when I make an argument to the Chinese about resolving these disputes, I premise it on a rules-based order in the region, that they cannot have a Chinese rule, they have to be bound by the treaty obligations and the legal framework set forth in the Convention. And our credibility and our strategic position would be strengthened were we a member.

Senator BOXER. Thank you.

My last question I would give to Secretary Panetta. And I know you spoke about Iranian threats to close the Strait of Hormuz. You alluded to that. But I have a specific question.

According to the U.S. Energy Information Administration, they said, "Hormuz is by far the world's most important chokepoint due to its daily oil flow with approximately 20 percent of the world's oil traveling through the strait." Furthermore, energy analysts say that, "even a partial blockage of the strait could raise the world price of oil by $50 a barrel within days."

So would you elaborate more on how U.S. accession to the Law of the Sea Convention could help us address such threats from Iran?

Secretary PANETTA. Senator, for those that have not had a chance to look at the Strait of Hormuz, it is a very tight area that is located there. And it is under the Law of the Sea, there is an international passageway that is allowed, so that ships can carry oil through the strait.

And it gives us the argument that we absolutely have to have, which is that we need, in order to protect the world's oil supply, which goes through the Strait of Hormuz, we have to do it based on the international rules provided through the Law of the Sea that allows for transit in that area.

And if Iran were to engage in efforts to block the Strait of Hormuz, that is the very reason we have made clear that that is a redline that we would not tolerate. We have to keep that strait open.

Senator BOXER. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Boxer.

As I recognize Senator Inhofe, let me just say, Senator Risch, we are already working on and will work, and we want to work closely with Senators, Senator Inhofe and others, who may have questions about this, or reservations about it, to specifically adopt in the resolution of ratification appropriate reservations and/or understandings and declarations, and we're working on some of them now.

And I think as this hearing process goes on, and things are fleshed out where there may be those issues, we are ready to work with you to do that.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

And also, thank you for our conversation we had on the floor a couple days ago, where you did agree to hold a hearing with those who are in opposition to the ratification of the Law of the Sea Treaty, which I am. So I appreciate that very much.

And I remember so well back in 2004, when this committee passed out the ratification. I believe it was 16 to nothing. It was unanimous. We looked at it, and at that time, and still today, I'm a senior member of both the Armed Service Committee and the Environment and Public Works Committee, and so we had hearings. And in these hearings, we had witnesses that totally changed this around, so I really believe that's important. And I appreciate the fact that you're going to be doing that.

Now in the limited time that we have, I'm going to really quickly go over two items, then I have a question for Secretary Panetta and General Dempsey.

First of all, I know you talked about this in my absence before I came in, because I was watching part of it. If the United States approves the Law of the Sea Treaty, it would be forced to transfer billions of dollars in royalties generated from oil and gas production on the U.S. Extended Continental Shelf to the U.N. International Seabed Authority for redistribution to the developing world.

Now, I grant you, in terms of the EEZ, the Exclusive Economic Zone, this treaty doesn't affect that. And that would be something we could continue to do.

But outside the 200 nautical miles, allows the ECS—over which the United States currently enjoys total sovereignty and has been for as long as I can remember, and, thus, has the right to exploit all of its natural resources. So the problem isn't there.

The problem is outside of the 200-nautical-mile radius. We have appointed, and I have read the work of the U.S. Interagency Extended Continental Shelf Task Force, that the resources there may be—talking about how to quantify the amount of money that we would be losing, whether we say it is an arrangement or a tax. I think it's a tax if it costs money.

And they have said it would be somewhere between billions and trillions of dollars that we would not have in the United States and would be transferred in accordance with the U.N. International Seabed Authority.

Now the way we arrive at this, and to put this in context, I would say that between 12 and 18 percent of royalties is about as much as they are going to allow and still continue to develop those resources. So the United States would receive in that area, according to this task force, somewhere between 12.5 percent and 18.75 percent in royalties.

Now the problem with this is, under article 82, the Law of the Sea Treaty would require the United State to give up, after a period of time, between 7 and 12 years, about 7 percent of this. And so if we take the conservative side of what the task force has said and say just $1 trillion, $1 trillion would equate to $70 billion that would be royalties that would be paid to the ISA as opposed to the United States. And of course, they would go to the organization in Kingston, Jamaica, for redistribution to the developing world.

And this is the first time in history that an international organization, the U.N. in this case, would possess taxing authority over this country.

Now, I've heard the veto argument. And I think that was discussed by one of the other members here. I think it Senator Risch.

It is really not too important to discuss that, because there are two entities that would make that determination. You have the Council, the 36-member Council. You have the Assembly that would ultimately make these decisions.

But the point is, under article 160, it is going to cost us—well, let's see—yes, under article 82, the payments and contributions shall be made annually with respect to all production at a site after this period of time. So what we're saying is, it is going to be paid

regardless of where you think it should go or where you think it is going to go.

The second thing that I want to cover is the environmental end. You know, we, for 10 years now, have rejected in both the House and the Senate, but primarily in the Senate, because it started with the Kyoto treaty, rejecting the cap and trade that would amount to a tax on the American people of somewhere between $300 billion and $400 billion. We have rejected this over and over and over again. There may be, at most, 25 Senators who would vote for a cap-and-trade bill now.

So what they are attempting to do is to do what they couldn't do through legislation under this treaty. Under this treaty, any country could sue the United States in the international tribunal Law of the Sea, not in the United States courts, I might add, or take the United State before binding arbitration.

I only say this because already people are out there planning their lawsuits, and I would also quote from article 212, "adopt laws and regulations to prevent, reduce, and control pollution of the maritime environment from or through the atmosphere," if applicable.

Now, what we're talking about there is what they would use as the basis for the lawsuit. Under the treaty, it says, "States are responsible for the fulfillment of their international obligations."

Well, we know what would happen. In fact, we have statements by lawyers, trial lawyers around the country, saying that one of them here is from William C.G. Burns, citing that the lawsuits would come forth. He named the United States as the, "the most logical state to bring action against," given—to us.

Now with that, it's understandable why groups such as Greenpeace and the Natural Resources Defense Council, Environmental Defense Fund, all have this as their top priority.

So let's get back to the $70 billion. And the question I would have would be for Secretary Panetta and for General Dempsey.

If we are talking about $70 billion, would it be better to have the $70 billion go to Kingston, Jamaica, to bail out some of the developing nations, or the following list: The Ohio-class ballistic missile submarine, which they have been wanting, that's $3 billion; to maintain the Navy's ship and aircraft and ground modernization program is $12 billion; eliminate the Navy's gap by providing 240 F–35 fighters, that's $3 billion; eliminate the gap in the Ford-class carrier, $11 billion. And again, I say all five of these meet the Navy's request for six more Aegis ships, that's $12 billion. It adds up to $70 billion.

General Dempsey, do you think it serves our national defense better to give that $70 billion to the ISA in Kingston, Jamaica, or to accomplish these programs?

General DEMPSEY. Senator, I'm not going to comment on the hypothetical use of money we don't have. I will tell you that the budget we submitted supports the strategy we have developed.

Senator INHOFE. No, what I'm saying is, this is money that I've documented pretty well, General Dempsey, that would be there and would be lost through this process.

Now, on these five issues, you are very familiar with all of them. You know that they have been requested. You know that there is a gap.

And my question again, is fulfilling those five gaps in the best interest of our national defense, or sending the money to Kingston, Jamaica?

General DEMPSEY. Senator, I will only comment that I support this Convention on the Law of the Sea because it enhances my ability to provide security of the maritime domain.

Senator INHOFE. Secretary Panetta.

Secretary PANETTA. You know, I share, obviously, the chairman's viewpoint with regard to why we consider this important.

But I guess what I would ask, Senator, I know you've come up with the $70 million.

Senator INHOFE. It's billion.

Secretary PANETTA. Or billion. But what about the literally billions of dollars in economic benefit that would flow from these companies providing energy and being able to go at our seabed and provide that part of the economic benefit.

I mean, that's what you have to focus on, is that, yes, there may be $70 billion that may be paid in royalties, but what about the economic benefit that these companies would render to the United States?

Senator INHOFE. The economic benefit, in answer to your question, Mr. Secretary, would be coming from companies that are already in this area, the controversial area that I described, I think in a very exact way.

So if we've been doing it before, but with bilateral treaties with China, bilateral treaties with Russia, we can continue to do it, and there would be no loss there. The loss would be $7 billion, and that would affect our national security.

And I'm looking forward, Mr. Chairman, to the hearing where we have those in opposition.

The CHAIRMAN. Well, I promised you that, and we'll have plenty of people here to do that.

But let me just say to you, Senator, with all due respect, there is no way to contemplate what you just contemplated in terms of the number, because, first of all, there is no drilling in the extended shelf.

The royalties only come from extended shelf. They only come after a certain period of time, and they are in a range of 1 percent up to the high-end, depending on how much you extract. And there's no way to tell today how much has been extracted.

Senator INHOFE. But the task force has come up with a figure, and I'm using their figure.

The CHAIRMAN. I understand, and we will examine the premise of it and the nature of the task force and the interests of the task force and all of those kinds of things. We will look at all of that.

But the fundamental premise here still remains this: Ronald Reagan renegotiated this with the oil companies and gas companies at the table, and they signed on to these royalties, which are far less than the royalties that they pay today to us in the Gulf of Mexico or elsewhere. And they pay them into an international

entity that we will have a veto over as to where or how it may be spent.

Senator INHOFE. And Ronald Reagan opposed this in this last effort, as you well know.

The CHAIRMAN. Well, we'll hear from George Schultz, we'll hear from some of these people. But I think what is important here is to recognize you're here protecting companies from paying a royalty that they want to pay. You're here protecting companies from being able to drill where they can't drill without this. So they'd rather have 93 percent of something than 0 percent of nothing.

Senator INHOFE. But they currently are producing and they're currently able to do that through bilateral treaties.

Anyway, this will be a subject at the next hearing.

The CHAIRMAN. We're going to go through this. They can't do it, because there is no bilateral treaty that can apply to the extended shelf. It is only through the international rules that come through the Law of the Sea that you can do that.

So unless you have this in place, no company is going to drill. And you will sit here and say why are we importing it from other places, why are we buying it from other countries and not drilling it ourselves?

So we are going to have this thoroughly vetted in the course of the next 2 months. This will be coming out of everybody's ears and people will be tired of it, and they will understand it. But we will look at every aspect of that, I promise you.

And those companies will come in here and themselves tell you why they are not prepared to invest millions of dollars and put it at risk without the certainty of the claims that come through this treaty.

So we'll look forward to that debate.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

And thank you for holding this hearing, you and Ranking Member Lugar.

And thank you all for being here.

General Dempsey, at an Atlantic Council forum earlier this month, you said that the Convention, "gives us the framework to counter excessive claims by states seeking to illegally restrict movement of vessels and aircraft."

I wonder if you could elaborate a little bit on that and tell us specifically where we've seen these excessive claims and how they affect our ability to freely move around in our seas?

General DEMPSEY. If I could, Senator, if we were here 20 years ago, we would have all been predicting that growing world population, the rise of regional powers like China and India, would place extraordinarily challenging demands for resources, and that that could become destabilizing. And here we are, 20 years later, and it's playing out.

So the reason I'm supportive of the Convention on Law of the Sea is that it provides clarity on the definition of maritime zones, it provides clarity on navigational rights. And from that clarity comes stability.

And as we now begin to rebalance our security interest into the Pacific, this becomes very important.

Senator SHAHEEN. So I appreciate that it's a sensitive topic to speak to some of those excessive claims, and Senator Boxer had an interesting map to show what China is looking at versus other countries in the region, but are we seeing, in fact, those kinds of claims from China and other countries in the Pacific that are affecting our freedom of movement in those areas or that we are concerned might in the future?

General DEMPSEY. Let me go to "might in the future," as I said, the demand on resources or the competition for resources is becoming far more pronounced and could potentially become far more dangerous. And that is true not just in the South China Sea, but it's also true in the Arctic.

And I think that being part of a Convention that would help manage that as another instrument for our use, recognizing we always have sovereign interests and a military, and a Navy in particular, that will protect those, I do think that is wise at this point.

Senator SHAHEEN. You know, I know we have heard some objections from some of our colleagues, and I'm sure we are all getting letters reflecting different perspectives on the treaty. But I want to read to you something from a letter that I got from a constituent, and ask you if you could respond to it.

It says, and I'm quoting from the letter, "Even the freedom of navigation provisions add nothing to the existing customary international law of the sea that seafaring nations, including United States, have observed for centuries."

Given that we haven't to date had any major disruptions at sea, can you respond to that and talk about why the sense now is that it's imperative to ratify the treaty?

General DEMPSEY. I can. The customary international law evolves, and I can give you an example of something on the land domain in a moment, but it evolves, and it is subject to individual interpretations.

So threading this back to my earlier answer, the rise of new nations competing for resources, Brazil, Russia, India, China, and the list goes on and on, puts us in a position where, unless we have this Convention with which to form a basis to have the conversation about resources of the sort you are talking about, does cause us to be increasingly at risk to instability.

Now that's my job, instability. The Secretary can speak eloquently about the economic issues, but I'm speaking about the security issues.

And so that is what has changed. And I'll give you the example of the land domain made that I mentioned. We are party to the Geneva Convention from which we derive our law of armed conflict. There were plenty of customary international laws related to the use of force, but we consciously and deliberately signed on to the Geneva Convention as a mechanism by which to have this conversation among a community of nations.

And that is what's different today than was different 20 years ago, this competition for resources, which is migrating increasingly into the maritime domain.

Senator SHAHEEN. And thank you, General Dempsey.

As you pointed out, Secretary Clinton, you were very eloquent in talking about the economic urgency of ratifying the treaty. And one

of the areas you mentioned was the Arctic, we're the only Arctic nation that hasn't ratified the treaty.

I would point out that there were a lot of people when we acquired Alaska, which gives us access to the Arctic, there were a lot of people in this country who thought that was folly, Seward's Folly, as we remember. And history has shown very differently.

But can you talk about where we are with respect to the other countries who have ratified the treaty, who border the Arctic, and where they are in terms of exploration and any other activities they may be doing in the Arctic? And how we compare to that and how much, to what extent we might be left behind if we don't ratify the treaty?

Secretary CLINTON. Well, thank you for that, Senator, because I actually think that the Arctic is one of these areas where potential instability as well as economic competition are going to be played out. The largest single portion of the U.S. Extended Continental Shelf is in the Arctic, and other Arctic coastal nations—Russia, Canada, Norway, Denmark/Greenland—are all in the process of establishing the outer limits of their Continental Shelves in the Arctic, using the provisions of the Convention.

I think we all remember Russia going down and planting a flag under the water, claiming the Arctic. You know, we don't think that has any force of law, certainly, but it demonstrates the intense interests in staking a claim in the Arctic.

Further, as the Arctic warms and frees up shipping routes, it is more important that we put our navigational rights on a treaty footing and have a larger voice in the interpretation and development of the rules, because it won't just be the five Arctic nations.

You'll see China, India, Brazil, you name it, all vying for navigational rights and routes through the Arctic. And the framework that we should establish and support is the one based in the Convention that will help us deal with expanding human activity in the Arctic, which is why I think that the time is so pressing for us to make this decision.

Senator SHAHEEN. Thank you.

Secretary Panetta, did you want to add to that at all?

Secretary PANETTA. No, she did it.

Senator SHAHEEN. OK, thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Shaheen.

I think it's an appropriate moment to place in the record, since we're putting a record together here, a letter from the commander of the United States Northern Command, General Jacoby, to Senator Lugar and myself.

And the commander states: "National security is dependent on cooperative partnerships, and peaceful opening of Arctic waters is in the interests of the community of Arctic nations. The United States is the only Arctic nation that has not acceded to the Convention. Consequently, the Nation risks being excluded from strategic discussions for advancing the Convention with our maritime partners and for resolving sovereignty, sea boundary, and natural resource issues. Future defense and civil support scenarios in the maritime domain will require closely coordinated, multinational military operations to include the formation of coalition task forces.

Our Nation's accession to the Convention will set the conditions for partnership and cooperation."

It goes on and says further things, but I place that in the record.

Senator DeMint.

Senator DEMINT. Thank you, Mr. Chairman.

And thank you for beginning a process of hearings. I appreciate the panelists and their testimony today.

The fact is that most of the testimony today dealt with navigation issues and things that affect the Navy on the waters around the world. That is about 10 pages of the treaty.

And certainly, we need to deal with this. There are a lot of theoretical advantages that I think that have been discussed. As has been mentioned, I think by the General, the United States plays by the rules, and the idea that we get into a rules-based system with other nations that establish some international rules of engagement, theoretically, I think we could have some honest debate on how we come out on that. It doesn't always come out OK.

I know we brought China into the WTO, because we thought if we could get them in a rules-based system, then we would have a fairer system. It hasn't worked out that way.

Only a few months ago, a lot of us here on the panel were squealing about China manipulating their currency and not playing by the rules. We know when we try to deal with the U.N. on sanctions against Iran, not all of the members play by the rules. They're not always that effective.

And of course, we have a history of arms treaties, when we go back and find that the other players are not playing by the rules.

So we could have a reasonable debate that there is a possibility that when we enter into an agreement with other nations that don't play by the rules, we could put ourselves at a disadvantage. We could talk about that later.

The concern I have is almost 300 other pages of the treaty that has really not been dealt with much today. And just for a few clarifications, we don't have a veto in the Assembly of this Convention. We can have a veto in the Council, just a Sudan has, one of the world's leading sponsors of terror, but we cannot have a veto in what the Assembly decides as a whole.

And also, the oil companies don't pay the royalties. The United States does. The treaty specifically says that the State Members pay that, and the taxpayer will ultimately pay it.

I just want to make a few points, ask a short question.

Of course, 160 other nations want us in this thing. We need to think that through, because as has been said, maybe we have a lot to gain, but we will pay more than any other nation that is part of this agreement, because of the royalties that have been discussed.

Of course, they want us in this. They also get to help define the rules of engagement for the U.S. Navy all over the world. And that may be, theoretically, a good idea, but there's been a lot of testimony that the international rules of engagement on the ground for our troops in Afghanistan have put our folks in harm's way. So we do need to debate that.

And we do know from the treaty that it very clearly subjects our states, our electric utilities, our businesses, to environmental law-

suits that will be arbitrated by panels that could be slanted against us. Because it's very clear from the treaty, if we have a dispute with another nation, we appoint two arbitrators, they appoint two arbitrators, and the Secretary General of the United Nations appoints the fifth. Those aren't odds I want to deal with when it comes to doing business in America.

And I would just ask, and we talked about this already, and it may be directed to the General, because I certainly respect his advocacy for what he feels like is important to the Navy, but this treaty is much bigger than that, involves a lot of other things. And given the fact American oil companies already leased a lot of land 200 miles out in the gulf to begin development of that, and we've done that without the Law of the Sea Treaty.

And we can keep the strait open, and we have committed to do that whether we are in this treaty or not.

But, General, how is it in the interests of the United States to turn the royalties over to an unaccountable international bureaucracy?

And I know Senator Inhofe asked this, but given the fact that we are facing billions of dollars in shortfalls and cuts in our military, and this is something that is real money, that is going to be paid to an international body at a time our country is almost hopelessly in debt, and it will be distributed to countries that may be our enemies, like Sudan, again, I respect your advocacy for the naval aspect of this, the navigation aspect, but what we're trying to deal with is the whole treaty, and what it might do as far as cost to the American taxpayer, cost to American business, and just our ability to operate freely around the world.

And I know that's a loaded question, but maybe you have an opinion you would like to swing back at me.

General DEMPSEY. Well, what I would like to say, sir, is that the economics of it, I will leave to the economic experts.

But from the security perspective, I would want to have a further conversation about where in the treaty you see our rules of engagement or our activities limited, because they're not limited in any way.

And by the way, sir, we never cede the rules of engagement on the ground, to include in Afghanistan, to any other nation on the face of the Earth or any other international organization.

Senator DEMINT. Well, I appreciate that answer, because, on one hand, I think we're arguing that, hey, we need this for our military to operate freely around the world in a rules-based system, and then I hear the treaty allows us, on a military or defense front, to completely opt out of this thing anytime we want.

So why do we need to get into all of this in order to be able to operate our Navy as we have for years around the world?

General DEMPSEY. Well, I will take a shot at it and maybe pass it off to either of the Secretaries.

But right now our freedoms of navigation, right now the description of maritime zones and the freedoms of navigation, or the rights of navigation, are codified in international customary law. I'm not comfortable with that any longer, because of the reasons that I gave to Senator Shaheen, on the way that the security in the maritime domain is being challenged by some of the rising powers,

by the opening of the Arctic and other areas around the world, where that customary international law is now being subjected to individual's interpretation. So I think it is in our benefit to become part of that conversation.

Senator DEMINT. General, just as a followup, some of those countries that are interpreting the law are already parties to the Law of the Sea Treaty. They're not following the rules, or at least they are arbitrarily interpreting them.

What is going to be different that we are in it? Are they going to now abide by the rules the way we see them?

My concern is we will abide, but they're already violating the rules that they have ascribed to. I don't know how this creates a system of rules that we can count on.

General DEMPSEY. Go ahead, sir.

Secretary PANETTA. Senator, I think the question you have to ask yourself is whether or not acceding to this Convention gives us the best of both worlds. It gives us the ability to protect or military activities. It gives us the ability to conduct what we have to do in terms of our ability to operate in the seas. It gives us the ability to avoid any kind of dispute resolution with regards to military activities.

So it does give us the ability to opt out of that with which we don't want to participate in.

But at the same time, it gives us the ability to engage when we have to engage. I mean, better to have a seat at the table than not at the table, when they're dealing with issues that affect our claims, that affect our economy, that affect our rights. That is the key here.

Senator DEMINT. Mr. Secretary, is there any table in the world that we're not sitting at right now?

Secretary CLINTON. Well, yes, we're not sitting in the seat that's reserved for us at the deep seabed mining table.

And to be clear, Senator, any Assembly decision, because you referenced that, has to go through the Council. We have a permanent seat on the Council; other members rotate.

But I really want to do everything I can, and I know my colleagues feel the same way, to try to explain over the next months, in the process that Chairman Kerry has started, why we do think, as Secretary Panetta said, this is in our interests, and it is, for us, the best of all worlds. Because otherwise, we will put our economic interests and our economic players in a disadvantageous, uncompetitive position.

And I think what you're hearing from both General Dempsey and Secretary Panetta is that when we are now facing new threats that largely arise out of the incredible race for natural resources that will be primarily based in the oceans, we need to be able to play any card at our disposal. And we think we will have more cards if we are member than if we are not a member.

Senator DEMINT. Thank you. Thanks to you all.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

And I'd just point out to the Senator, we'll go into this further, but the veto, you are correct, is not within the Assembly. But there is a restriction specifically defined within the treaty as to what can

go to the Assembly. And the royalties are specifically reserved to the Council to send, and that has to be by consensus.

Consensus is specifically defined as requiring, any form of objection.

Senator DEMINT. I'd like to get into that, because it begs two questions. First of all, Sudan is on the Council. If we have a veto, they have a veto. Their interest is very different than ours.

Is there a question about whether they are on the Council or not?

Secretary CLINTON. They are a member. They have acceded to the Convention.

Senator DEMINT. And they are on the Council of International Seabed.

Secretary CLINTON. Well, you know, a lot of Member States, over 160 of them, are technically within an all-member body, but all the important decisions are made by the Council, and there's absolutely nothing in this Convention which says that——

Senator DEMINT. I'm speaking of the Council. I'm looking at the list of members right now, and Sudan is on it.

And so if we have a veto, they have a veto. And so it's just something we need to look into.

Again, the devil is in the details. We talked about some theoretical advantages that might address some navigation issues, but that only assumes if other countries are playing by the rules. There's very little indication within the Treaty Convention of the members already that that is happening or that we can count on it in the international community as we go forward.

But again, I want to thank all of the——

The CHAIRMAN. Let me just say to the Senator, for the period of time that Sudan is on the Council, it is possible, hypothetically, that they could veto something, and therefore, you could wind up with gridlock and they would look like the United States Senate or Congress. [Laughter.]

But the fact is, they're not a permanent member of the Council. We are.

In fact, I think we are the only permanent member. So we stand in a very special status that we are not currently able to exercise.

And I think with respect to the Senator's fears, and other fears, what you're trying to protect is something that would go against the interests of our country. That's what we need to be able to protect. If Sudan votes to do something or blocks us from doing something that we're interested in doing, then there are plenty of other avenues of recourse for that, too.

But if you're dealing with the oceans and dealing with this question of royalties and other things, the fact that we would preserve the right to protect our interests, I think what the Senator and others have raised as an issue is they don't want money going to dictators, they don't want money going to bad-actor countries. We can block that. We can block that until the cows come home.

And so I think we can be protected.

So again, we will go into that. And while the veto word is not used, it's also not used, incidentally, in the Constitution of the United States, but no one doubts the President has it.

So we have the ability to be able to do it through the language that is there. That will become, I think, more clear as we go forward.

Senator Coons.

Senator COONS. Thank you, Chairman Kerry. I'm very glad that we're having this hearing today, and I appreciate all of you for being here.

Senator Webb and I sent Chairman Kerry and Ranking Member Lugar a letter back in April, urging that we move forward to consideration of the Law of the Sea Treaty, and I'm grateful to your broad and searching and supportive testimony here today.

When I was brand new to the Senate, one of the earlier meetings I took was with the then-outgoing Chief of Naval Operations, Adm. Gary Roughead. And when I asked him, what is the single most important thing we can do to help the Navy over the next decade, he said, without hesitation, ratify the Law of the Sea Treaty. I was taken aback by that, given very urgent shipbuilding needs, other budgetary priorities, other staffing issues, operational issues.

As it turned out, Admiral Roughead's estimation, his assessment of the importance of this treaty, is shared, as I understand, by every living Chief of Naval Operations, not to mention every living Secretary of State and Secretary of Defense, and, of course, strongly supported by both and by Chairman Dempsey here today.

I note that Senator Warner, former Senator Warner, a former chairman of the Armed Services Committee, former Secretary of the Navy, is with us here today. And I have a copy of a letter that he submitted to then-Chairman Biden and Ranking Member Lugar, commenting on incoming Chief of Naval Operations Admiral Roughead and how he had given very strong testimony in support of this treaty in 2007.

My concern, Mr. Chairman, members of the panel, is that this is the treaty that time forgot, that we are locked in a debate that is literally decades out of date.

And I understand some of the concerns raised by members of this committee. There were some flaws and some issues in this treaty when first negotiated in 1982. Many of them hammered out, resolved by 1994, by amendments, certainly by the time this was previously considered several times by this committee during your service here, Senator, now Secretary.

I believe it is well past the time when the questions and concerns raised here today were compelling. And if I have to face questions about whether this is a critical firefight in the defense of American sovereignty, or a self-inflicted wound in a rapidly emerging global theater where our competitors are taking advantage of our absence, that empty seat at the table, then I would rather take my naval strategic advice from the Chief of Naval Operations, and the Chairman of the Joint Chiefs of Staff, and the Secretary of the Navy, than from the editorial pages of the Washington Times.

So frankly, if I could, I have a few questions I would like to ask you. But I think what you've laid out here today is an overwhelming response to the question, Is the ratification of this treaty in the best interests of the United States?

Senator Menendez before me asked, in sort of rapid-fire succession, a series of questions. Does this in any way put the security

of the United States at threat? Does this in any way compromise the sovereignty of the United States? Does this in any way compromise our intelligence-gathering ability? And my recollection was, you all said no.

Let me put it in the opposite: Does failure to ratify this treaty, General Dempsey, in any way compromise the ability of the United States to project force around the world, to support and sustain our allies, and to meet the threats within the constraints that we have, in a balanced and responsible way? Are we at risk as a result of failure to ratify this treaty?

General DEMPSEY. Based on our current application of customary international law, we will, of course, assert our sovereignty and our ability to navigate.

However, what it does do—and, therefore, it won't deteriorate, our ability to project force will not deteriorate.

What it could cause, if we do not ratify over time, what could happen is that we put ourselves at risk of confrontation with others who are interpreting customary international law to their benefit. So the risk of confrontation goes up. Our ability to project power is unaffected.

Senator COONS. So failure to ratify puts us at some greater risk of conflict. You are confident we continue to have the resources to meet that, but we are, as it were, unilaterally choosing not to use one potential tool for our national defense.

General DEMPSEY. I would agree with that phraseology.

The CHAIRMAN. Secretary Panetta, do you want to——

Senator COONS. If I might, Secretary Panetta, I have the same question for you.

Secretary PANETTA. Senator, let me just make the point, it does put us at risk, and the risk is this, that if we face a situation that involves navigational rights, if we are not a party to this treaty and can't deal with it at the table, then we have to deal with it at sea with our naval power. And once that happens, we clearly increase the risk of confrontation.

Senator COONS. And if I might, Secretary Panetta, given the Pacific pivot, given the aggressive, expansive actions that others have referred to in the South China Sea by China and others, in your view, does this put our allies at any risk, in terms of their confidence about our willingness and ability to fight for their territorial issues, to fight for their freedom of navigation of the seas?

Secretary PANETTA. Well, the majority of our allies are signatories. They have acceded to this Convention. They are part of it. And they have a difficult time understanding why we aren't there at the table alongside of them, making the arguments we need to make.

Sure, they know we are a strong naval power. They know that we can exert ourselves militarily wherever we want to. But they also know that, in today's world, they are dealing at the table trying to negotiate resolutions to conflicts in a rules-based manner. That is the way to deal with issues like that.

And somehow, they are concerned, and I think rightly so, that a great power like the United States is not there alongside of them.

Senator COONS. Secretary Clinton, if I might, in 2007, during a previous consideration or debate over this treaty, Senator Mur-

kowski voted for the Convention. Then-Governor Sarah Palin endorsed the Convention. You referenced earlier that this would extend our reach from 200 miles to 600 miles, and provide some predictability for investment for oil and gas extraction, for transoceanic cables, for seabed mining, a whole variety of things that are newly emergent opportunities.

And in the Arctic, if we remain the only Arctic nation not to accede to the treaty, not ratify the treaty, puts us at some risk, both in terms defending shipping lanes and commercial opportunities for our own country.

What challenges is the State Department facing in protecting U.S. interests in the Northwest Passage in the Arctic? And in your view, are we at some risk if we fail to ratify this treaty?

Secretary CLINTON. Well, I think one of the reasons there has been such strong bipartisan support coming from Alaska over the last decades is because they are truly on the front lines. We know there are natural resources there that are likely to be exploitable if we have the opportunity to do so.

And so, I think, Senator, the fact that we are an Arctic nation, we are the only Arctic nation that has not taken the step of acceding to the Convention and, thereby, being able to demarcate our Continental Shelf and our Extended Continental Shelf, is seen in Alaska as a missed opportunity and a strategic disadvantage that is increasingly going to make us vulnerable as the waters and the weather warms. And there are going to be ships from all over the world exploring, exploiting, fishing—taking advantage of what rightly should be American sovereign territory. And nobody wants to see that happen.

Senator COONS. Well, Madam Secretary, Mr. Secretary, Mr. Chairman of the Joint Chiefs, I am grateful for your testimony today.

I'm struck, Mr. Chairman, in listening to this testimony, in reading the background materials and reflecting on it, how a fight over some of the details of this treaty that was largely resolved in our favor in 1994, remains frozen in time. And I conclude, from what I've heard so far today, that the real risk we face is that we are letting others draw boundaries, we are letting others set rules, we are leaving our economic interests out of the fight, and we are putting our national security interests at risk by failing to ratify this treaty.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator. I appreciate it.

Senator Lee.

Senator LEE. Thank you, Mr. Chairman. I thank each of the witnesses for joining us today.

I am one of the people who have some concerns with this treaty, and I assure you that my concerns are rooted in something more than mythology. They're rooted in something more than an editorial page. They are rooted, first and foremost, in America's national sovereignty. And I think that is not something that is to be discounted here.

One of the exchanges that I have appreciated during the course of our discussion this morning has surrounded what has been de-

scribed at times as a veto on the Council. I want to drill down on that issue a little bit and make sure I understand it correctly.

My reading of article 158 of the treaty is that it creates three basic bodies. It creates the Assembly, it creates the Council, and it creates the Secretariat, as outlined in section 1 of article 158.

Now in article 160, we have a basic definition of the purpose of the Assembly, and it describes that purpose as follows, it says that the Assembly shall be considered the supreme organ of the authority, meaning the International Seabed Authority based in Kingston, Jamaica.

Then we move to article 162, which describes the purpose of the Council. This is the 36-member body, not to be confused with the 160-plus-member body that is the Assembly.

The Council, as I understand it, is empowered to do a number of things, including to exercise the power outlined in section 2 of article 162, subsection o(i), which is to recommend to the Assembly rules, regulations, and procedures on the equitable sharing of financial and other economic benefits derived from activities in the area, and the payments and contributions made pursuant to article 82.

So these are the royalties we are talking about, the escalating royalties that begin at 1 percent 5 years into the operation of the treaty, escalate gradually up until they get to 7 percent, where they remain thereafter, once they achieve that level.

It appears to me, based on my reading of article 162, that the power of the Council, this body on which the United States has a seat and has what you described as veto power, is a recommending body.

And it appears also to me, as I look back at 160, section 160, subsection 2(g), that it is up to the Assembly and not to the Council to decide upon the equitable sharing of financial and other economic benefits from activities in the area.

So, Secretary Clinton, I was wondering if you could help me understand, is my reading correct or am I missing something?

Secretary CLINTON. Senator, the Assembly cannot take up an issue unless recommended by the Council. Any decision that would impose any obligations on the United States or otherwise deal with substance must go through the Council. The Secretariat has no decisionmaking authority.

So in effect, the practical consequences of this is that the United States would have the right to reject or, in our parlance, veto any decision that would result in a substantive obligation on the United States or that would have financial and budgetary implications. And that is due to the fact that the United States is unique in having a permanent seat on the Council of the International Seabed Authority, which is its main decisionmaking body, and that important decisions must be made by consensus.

So it is our very strong conviction that, as a party, the United States would have an unprecedented ability to influence deep seabed mining activities worldwide.

There is no other international organization that gives one country, and one country only, a permanent membership on a key decisionmaking body.

So as examples of decisions subject to U.S. approval would be any rules, regulations, or procedures implementing the seabed mining regime or amendments thereto; any decisions relating to the distribution of payments for oil and gas production on the Continental Shelf beyond 200 nautical miles; adoption of any amendments to the seabed mining regime.

And just, finally, I think it is worth saying, and this really echoes something that the chairman said: royalties under this Convention are not a net loss to the United States, but a net gain, because companies will not drill that far out, so there is no money that would be coming to the Treasury or to the profit of the companies. And if we are a party, we gain from both domestic royalties and oil production.

So I know that there is, with any written document, and I am a recovering lawyer, so I have been in this position in my past life, there is a way to, you know, raise questions about where the comma is placed or where the parenthesis occurs, but this debate over this Convention has now gone on for 20 years. And when you look at the people from Jim Baker to Condi Rice to George Schultz to Michael Chertoff to Stephen Hadley, who have supported this in both administrations, Republican and Democratic, I just don't think we are all missing something, Senator.

I think that we are trying our best to make a case that the United States will be advantaged and that, in fact, our sovereignty will be advanced.

Senator LEE. Thank you, Secretary Clinton. And I appreciate your analysis on that. I appreciate the fact that that is your position, that it is the position of the administration.

As I read, as I, too, am a recovering lawyer, we have to call ourselves recovering rather than cured or ex-lawyer.

As I read this, I see the fact that the Assembly shall be considered the supreme organ, and I also see that the Assembly and not the Council has ultimate power to decide upon the equitable sharing of financial and other benefits.

And so, that causes me to ask the question, what if those who serve on the Assembly disagree with your interpretation? I understand it is your interpretation and that of the administration. I also understand that it is your interpretation of that of the administration, that of the United States of America, I suppose you could say, that the treaty does not, as you point out, adopt any framework to tie the United States into a climate change control regime or any kind of system that could limit the emission of greenhouse gases.

But in that context, the climate change context, and in this context, what happens if the Assembly takes a different position? And in the climate change context, could not the Assembly reach a different conclusion and read several provisions of the treaty, including articles 207 and 212, coupled with the dispute resolution provisions of annex VI, could it not take that interpretation and conclude differently from the conclusions that you have reached today?

Secretary CLINTON. We do not believe that that they could, on either the plain reading or the intent of the Convention. But we also believe, Senator, that concerns such as these are not only

going to be properly vetted in this series of hearings, but certainly can be taken into account with the resolution of ratification.

You know, there is no obligation that the United States, in the area of climate change, would be forced to accept or adopt anything done by the Assembly under the Convention of the Law of the Sea.

But, as an abundance of caution, that could certainly be clarified and insisted upon in ratification resolution language.

Senator LEE. I see my time has expired, Mr. Chairman.

As I close, I would just like to point out that there is not just the Assembly. We could get hauled into a tribunal called for under the annex. And at that point, if this is a ratified treaty, arguably, our courts would be bound to enforce the judgments of an international tribunal convened under the authority.

Thank you.

The CHAIRMAN. Senator Lee, I'm just checking in on that, and it's my understanding that we would not be subject to that, because we would be able to choose arbitration, and arbitration is actually limited.

But I see you're ready to leap.

Senator LEE. Yes, so arbitration, so we get to choose two arbitrators, and the other side gets to choose two. And if we can't come to an agreement as to the fifth, then that person is chosen, I believe, by the Secretary General.

The CHAIRMAN. But it's limited as to what it is.

We will go through this. We're going to go through this. We will clarify it.

And as the Secretary just said, this exercise is not to diminish our sovereignty. It's to grow our sovereignty. And we believe this treaty, in its whole, will grow the sovereignty. And we hope we can persuade you of that in the end.

And so we have the ability, through the ratification process, to be able to clarify some of that.

But second, I believe it will be clarified. If you look at, I think it's 160(g) that you referred to, about the rules and regulations, they are only able to make that decision in the Assembly, "consistent with the Convention and the rules and regulations and procedures of the authority." The rules and regulations and procedures of authority are specifically set by the Council. And that is how it has worked, and that is how it does work.

So in the end, the Assembly is simply implementing what has been put forward. And we have a veto over what that rule or regulation will be that they are implementing.

So again, this will be clarified appropriately, and we will have the experts here who can make that clear.

In fact, I would like to ask, I think it would be helpful, Madam Secretary and Mr. Secretary, if your legal teams would put their heads together, and I'm going to leave the record open for a week, if you could submit your formal legal understanding of that, to answer the Senator's question, I think that would be particularly helpful to the record.

Secretary PANETTA. We would be happy to, Senator.

[The written response from the State Department follows:]

During Secretary Clinton's May 23, 2012, testimony before the Senate Committee on Foreign Relations, you discussed whether the United States, as a party to the

Law of the Sea Convention, would be able to veto decisions on distribution of royalty payments. You also discussed the relationship between the Convention and climate change. Please find herein further information on both of these issues.

LEGAL BASIS FOR U.S.VETO OVER INTERNATIONAL SEABED AUTHORITY DECISIONS ON DISTRIBUTION OF ROYALTY PAYMENTS

As a party to the Law the Sea Convention, as modified by the 1994 Agreement, the United States would have the ability to veto any decision related to the distribution of payments resulting from production on the Continental Shelf beyond 200 nautical miles (Article 82).

Summary:

- Decisions on the distribution of any payments resulting from production on the Continental Shelf beyond 200 nautical miles are made by the Assembly of the Seabed Authority.
- However, the Assembly can only make such decisions "upon the recommendation of the Council" of the Seabed Authority.
- Any Council recommendation on this matter would need to be by consensus, which is defined as the absence of any formal objection.
- As a Party, the United States—and no other country—is guaranteed a permanent seat on the Council.
- Thus, as a Party and member of the Council, the United States could formally object to (and thereby block consensus) any Council recommendation on this matter.
- There would then be no Council recommendation, which would preclude any decision by the Assembly.

Detailed explanation:

- Royalty payments are made "through"—not "to"—the International Seabed Authority. They are held there for distribution to States Parties to the Convention. Article 82(4).
- The rules and procedures for distributing royalty payments are to be decided by the International Seabed Authority's Assembly (comprising all States Parties) only upon the recommendation of the Seabed Authority's Council (comprising 36 States Parties).
  - Article 162(2)(o)(i) provides that the Council "shall . . . recommend to the Assembly rules, regulations and procedures on the equitable sharing of . . . the payments and contributions made pursuant to article 82 . . . ."
  - Article 160(2)(f)(i) provides that the Assembly "shall . . . consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of payments and contributions made pursuant to article 82."
  - Thus, the Council is not a merely a "recommending body" in the sense that its recommendations are merely advisory. Assembly decisions must be "upon the recommendation" of the Council.
  - Article 160(2)(f)(i) provides further that "If the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in light of the views expressed by the Assembly."
- Any Council recommendation to the Assembly on this matter must be taken by consensus.
  - Article 161(8)(d) provides that decisions arising under Article 162(2)(o) "shall be taken by consensus." As noted above, Article 162(2)(o) pertains to Council recommendations on benefit sharing.
  - Article 161(8)(e) provides that "'consensus' means the absence of any formal objection."
- The 1994 Agreement guarantees the United States, and only the United States, a permanent seat on the Council.
  - Section 3, paragraph 15 of the Annex to the 1994 Agreement provides that "The Council shall consist of 36 members [including]: (a) Four members from among those States Parties which, during the last five years for which statistics are available, have either [met certain consumption/imports criteria for seabed minerals], provided that the four members shall include . . . *the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product,* if such States wish to be represented in this group" (emphasis added);

- The United States had the largest economy in terms of GDP at the time of entry into force in 1994.

Thus, as a Party and member of the Council, any formal objection by the United States would preclude consensus and therefore block any Council recommendation to the Assembly on this matter. Without a recommendation, the Assembly has no authority to take a decision on the matter.

Furthermore, if the United States were to agree to a Council recommendation but the Assembly did not support it, the matter would have to be returned to the Council for reconsideration. Therefore, the Assembly could not change a recommendation of the Council without the Council's approval.

Finally, as a Party, the United States would have a veto over far more deep seabed mining matters than just those on the distribution of royalty payments. The Convention, as modified by the 1994 Agreement, is structured to ensure consensus decisionmaking not just for distributing royalty payments but for any decision that would result in a substantive obligation on the United States or that would have financial and budgetary implications. For instance, the United States could block a decision on any rules, regulations and procedures implementing the seabed mining regime or amendments thereto.

CLIMATE CHANGE

The Law of the Sea Convention is an oceans treaty, not a climate treaty. Joining the Convention would not require the United States to implement the Kyoto Protocol or any other particular climate change laws or policies, and the Convention's provisions could not legitimately be argued to create such a requirement.

Part XII of the Convention addresses the marine environment. "Pollution of the marine environment" is defined in Article 1, paragraph 4. Even if one assumed, for the sake of argument, that (1) Part XII applied to the issue of climate change; (2) "pollution of the marine environment" existed within the meaning of Article 1(4); (3) there was a causal link between a Party's GHG emissions and such pollution; and (4) other requirements were satisfied, Part XII would still not require a Party to adopt particular climate laws or policies.

Part XII's arguably relevant provisions are either extremely general (e.g., Article 194) or expressly do not require a Party to implement any particular standards.

- Articles 207 and 212 call on Parties merely to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures."
- Articles 213 and 222, which are the "enforcement" analogues to Articles 207 and 212, would likewise not require the United States to adopt or enforce particular standards related to climate change. The "enforcement" section of Part XII allocates responsibilities among flag States, coastal States, and port States, depending upon the source/type of marine pollution in question. Adoption and enforcement of laws in relation to Articles 207 and 212 fall within the domain of the State concerned. However, even if these articles applied to climate change, they would not require adoption/enforcement of Kyoto or other climate rules or standards. There are simply no such international rules and standards relating to climate change applicable to the United States.

The Convention would also not provide a forum for challenging U.S. climate change policies.

- Domestically, the Convention could not be invoked in court; it does not create rights of action or other enforceable individual legal rights in U.S. courts. (See declaration 24 of the draft resolution of advice and consent and the Committee Report of December 19, 2007, at page 18.)
- Internationally, dispute resolution is not open to individuals or groups, only States Parties. Were a State Party to seek to challenge U.S. climate policies under the guise of a "marine environment" dispute, the Convention's dispute settlement procedures would not be available.
  - Because of the sensitivities of coastal States concerning their land-based (and certain other) activities, the Convention sets forth limitations on the obligations related to marine pollution that could be subject to dispute resolution.
  - Specifically, Article 297(1)(c) sets out the exclusive bases upon which a coastal State would be subject to dispute resolution for pollution of the marine environment.
  - Among other things, there would need to be a "specified" international rule or standard "applicable" to the coastal State. As noted, no provision of the Convention "applies" international rules or standards to the United States in this area, much less a "specified" one. As such, it would not be possible

to invoke the dispute resolution procedures to challenge the United States in relation to climate change.

- Were a State Party to seek to invoke the Framework Convention on Climate Change (to which the United States is a Party) as the basis for a challenge under the LOS Convention, Articles 280 and 281 of the Convention would further preclude recourse to the Law of the Sea Convention's dispute resolution procedures. (These Articles provide that Parties can choose to resolve disputes by means of their own choosing, including through other agreements. The Framework Convention on Climate Change already contains provisions for dispute settlement, and those provisions do not entail any legally binding procedures between Parties unless the Parties agree on such procedures.)

Thus, the Convention would not obligate the United States to have in place any particular climate laws or policies, and it would not subject U.S. climate change approaches to dispute resolution.

U.S. agencies, including the Coast Guard, EPA, and the Justice Department, have been acting in accordance with Part XII of the Convention since President Reagan directed the U.S. Government to abide by the bulk of the Convention's provisions. Were the United States to become a Party to the Convention, U.S. agencies would implement Part XII under existing laws, regulations, and practices. This was confirmed in a March 1, 2004, letter to Chairman Lugar from William H. Taft IV, the State Department's Legal Adviser during the Bush administration. The letter provided, in pertinent part: "The United States, as a Party, would be able to implement the Convention through existing laws, regulations, and practices (including enforcement practices), which are consistent with the Convention and which would not need to change in order for the United States to meet its Convention obligations."

We stand by the Taft letter.

The CHAIRMAN. Senator Lugar, do you have additional questions?

On that basis, let me just thank all of you. I think this has been a terrific opening engagement. I appreciate, obviously, the focus of everybody on it.

I'm confident that these questions are going to be answered as we go forward. There is going to be plenty of opportunity.

We will have more of the active commanders of each of the areas of concern, who will speak to their experience in the field. We will have the businesses themselves come forward. We will have some other groups and entities who are concerned. And we'll have plenty of opportunity to be able to vet this as we go forward.

I think your testimony today was excellent and a terrific beginning to this process. We're going to build the most extensive, exhaustive record that has yet been on this, and I think provide our colleagues in the Senate with ample opportunity to be able to make a sound decision.

So with that, we thank you very, very much for joining us today. And we thank you for the jobs you are doing, all of you. Appreciate it very much.

We stand adjourned.

[Whereupon, at 12:55 p.m., the hearing was adjourned.]

LETTERS AND ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES OF SECRETARY OF STATE HILLARY RODHAM CLINTON TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Questions 1a-1g. Some have expressed concerns that the Law of the Sea Convention would require the United States to accede to, or otherwise comply, with international climate change agreements, such as the Kyoto protocol. Among other things, they point to article 212 of the Convention, which provides, inter alia, that states parties shall "adopt laws and regulations to prevent, reduce, and control pollution of the marine environment from or through the atmosphere, applicable to the air space under their sovereignty and to vessels flying their flag or vessels or air-

craft of their registry, taking into account internationally agreed rules, standards and recommended practices and procedures and the safety of air navigation." They also point to article 222 of the Convention, which provides, inter alia, that states parties to the Convention "shall adopt laws and regulations and take measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conferences to prevent, reduce, and control pollution of the marine environment from or through the atmosphere, in conformity with all relevant international rules and standards concerning the safety of air navigation."

- (1a). Would United States accession to the Law of the Sea Convention require the United States to sign or accede to the Kyoto protocol or to sign, ratify, or accede to any other international agreement, legally binding or otherwise, concerning climate change?

Answer. No. The Law of the Sea Convention is an oceans treaty, not a climate treaty. Joining the Convention would not require the United States to implement the Kyoto Protocol or any other particular climate change laws or policies, and the Convention's provisions could not legitimately be argued to create such a requirement.

- (1b). Would United States accession to the Law of the Sea Convention require the United States to adopt any new laws or regulations to implement rules or standards related to climate change established by international organizations or at diplomatic conferences?

Answer. No. The Convention would not obligate the United States to adopt any such laws or regulations.

- (1c). If your response to questions 1(a) and/or 1(b) is "no," please explain in detail why the Convention, including Articles 207, 212 or 222, would not require such action by the United States.

Answer. These articles appear in Part XII of the Convention, which addresses the marine environment. "Pollution of the marine environment" is defined in Article 1, paragraph 4. Even if one assumed, for the sake of argument, that (1) Part XII applied to the issue of climate change; (2) "pollution of the marine environment" existed within the meaning of Article 1(4); (3) there was a causal link between a Party's GHG emissions and such pollution; and (4) other requirements were satisfied, Part XII would still not require a Party to adopt particular climate laws or policies.

Part XII's arguably relevant provisions are either extremely general (e.g., Article 194) or expressly do not require a Party to implement any particular standards.

- Articles 207 and 212 call on Parties merely to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures."
- Articles 213 and 222, which are the "enforcement" analogues to Articles 207 and 212, would likewise not require the United States to adopt or enforce particular standards related to climate change. The "enforcement" section of Part XII allocates responsibilities among flag States, coastal States, and port States, depending upon the source/type of marine pollution in question. Adoption and enforcement of laws in relation to Articles 207 and 212 fall within the domain of the State concerned. However, even if these articles applied to climate change, they would not require adoption or enforcement of Kyoto or other climate rules or standards. There are simply no such international rules and standards relating to climate change applicable to the United States.

- (1d). Has any dispute resolution proceeding been instituted under the Convention against a country alleging failure to adopt or implement the Kyoto protocol or another international climate change agreement or climate change rules and standards established by international organizations or at diplomatic conferences?

Answer. No. In the 18 years since the Convention has been in force, climate change has not been the subject of any dispute settlement proceedings.

- (1e). Would United States accession to the Law of the Sea Convention require the United States to adopt "cap and trade" legislation or regulations?

Answer. No. The Convention would not require the United States to adopt "cap and trade" legislation or regulations or any other particular climate laws or policies.

- (1f). If your response to question 1(f) is "no," please describe in detail why the Convention, including Articles 207, 212 or 222, would not require the United States to adopt "cap and trade" legislation or regulations.

Answer. See Answer (1c) above.

- (1g). Has any dispute resolution proceeding been instituted under the Convention against a country alleging failure to adopt or enforce "cap and trade" legislation or regulations?

Answer. No. Climate change has not been the subject of any dispute settlement proceedings.

Questions 2a-2c. Some have expressed concerns that United States accession to the Law of the Sea Convention will expose the United States to baseless environmental lawsuits, including lawsuits relating to land-based sources of pollution of the marine environment.

- (2a). Are there any environmental provisions of the Law of the Sea Convention that the United States does not already follow as a matter of domestic law and regulation?

Answer. No. U.S. agencies, including the Coast Guard, EPA, and the Justice Department, have been acting in accordance with the Convention since President Reagan directed the U.S. Government to abide by the bulk of the Convention's provisions in 1983. Were the United States to become a Party to the Convention, U.S. agencies would implement its "marine environment" provisions under existing laws, regulations, and practices. This was confirmed in a March 1, 2004, letter to Chairman Lugar from William H. Taft IV, the State Department's Legal Adviser during the Bush administration. The letter provided, in pertinent part: "The United States, as a Party, would be able to implement the Convention through existing laws, regulations, and practices (including enforcement practices), which are consistent with the Convention and which would not need to change in order for the United States to meet its Convention obligations." We stand by the Taft letter.

- (2b). Would United States accession to the Convention require the United States to adopt new or different environmental laws or regulations?

Answer. No. As discussed in Answer (2a), the United States would be able to implement the Convention through existing laws and regulations, including those related to the marine environment.

- (2c). Has any dispute resolution proceeding been instituted under the Convention against a country for failing to adopt or enforce environmental standards or rules contained in international agreements to which that country was not a Party, or that were adopted by international organizations or diplomatic conferences over that country's objection?

Answer. No. In the 18 years since the Convention has been in force, no such proceeding has been instituted.

Question 3. Article 309 of the Convention states that no reservations or exceptions are permitted unless they are expressly permitted by other articles of the Convention. Article 310 of the Convention states that a State acceding to the Convention may make declarations or statements concerning the Convention "provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Convention in their application to that State." In 2007 the Senate Foreign Relations Committee recommended that the following declaration be included in a resolution of advice and consent for the Convention: "The United States further declares that its consent to accession to the Convention is conditioned upon the understanding that, under article 298(1)(b), each State Party has the exclusive right to determine whether its activities are or were 'military activities' and that such determinations are not subject to review."

- Has any court or arbitration tribunal established under the Convention contradicted a State Party's exclusive right to determine whether its activities are or were "military activities"?

Answer. No State Party has challenged and no court or arbitration established under the Convention has contradicted a State Party's exclusive right to determine whether its activities are or were "military activities."

The exemption of U.S. "military activities" from dispute settlement procedures is consistent with the terms of the Convention. If a tribunal were nevertheless to second-guess a U.S. judgment as to what constitutes a U.S. "military activity," the United States would view that judgment as lacking a legal basis and invalid, and it would therefore have no legal effect on the United States.

Questions 4a-4e. The Law of the Sea Convention contains several provisions relating to the Extended Continental Shelf—the area of a coastal State's Continental Shelf that extends beyond 200 nautical miles from the coast—including that a coastal State's establishment of the outer limits of its Continental Shelf on the basis of

recommendations from the Commission on the Limits of the Continental Shelf "shall be final and binding" on all State Parties to the Convention.

- (4a). Has the United States of America issued any oil or gas leases relating to the U.S. Extended Continental Shelf?

Answer. Yes, the Department of Interior has issued leases in the "western gap," a small high seas area in the Gulf of Mexico, beneath which is Extended Continental Shelf of the United States and Mexico.

- (4b). If the answer to question 7(a) is "yes," are any of these lease areas currently in the production stage—i.e., are resources actually being extracted at this time?

Answer. According to the Department of Interior, it has not received any exploration plans for these areas and no exploratory drilling has taken place in the leased areas.

- (4c). If the answer to question 7(a) is "yes," please explain why accession to the Law of the Sea Convention remains necessary.

Answer. The best way to achieve international recognition of our Continental Shelf is as a Party to the Convention. The U.S. Chamber of Commerce, the American Petroleum Institute, and the companies that would potentially be involved in resource development on the Continental Shelf all support accession to the Convention because they desire such international legal recognition and certainty.

A key element of achieving this legal certainty and international recognition is access to the Commission of technical experts set up under the Convention. If the United States remains a nonparty, and attempts to establish its Continental Shelf limits without a review by the expert Commission, it is unlikely the international community would give those limits the same sort of recognition and acceptance that Parties to the Convention will enjoy.

- (4d). Rather than acceding to the Law of the Sea Convention, could the United States achieve the same level of legal certainty for drilling activities on the U.S. Extended Continental Shelf by negotiating bilateral agreements with neighboring countries? To fully replicate the Extended Continental Shelf protections of the Convention, how many agreements would the United States need to conclude?

Answer. No. Two countries can agree on how to divide their own maritime claims, but they cannot decide what is, and what is not, Continental Shelf that extends beyond their Exclusive Economic Zone limits. That is a matter that concerns all countries. As such, a series of bilateral agreements, assuming other countries were even willing to negotiate such agreements and agree to U.S. terms, would not be the equivalent of joining the Convention and using its mechanisms to get binding international recognition of our shelf beyond 200 nautical miles from the over 160 States Parties to the Convention.

In short, we cannot gain the certainty and security over our Continental Shelf that our industry needs to be prepared to make the substantial investments necessary to exploit it by negotiating bilateral agreements with individual nations. The way to secure our Continental Shelf rights is to become a Party to the Convention.

- (4e). How are foreign governments likely to react if the United States were to approach them and ask that they sign a separate deal that replicates the protection for Extended Continental Shelf activity that is contained in the Convention?

Answer. It is not clear how other countries would react and whether, if they agreed to such negotiations, they would be prepared to conclude agreements on terms favorable to the United States. At present, the United States has 17 unresolved maritime boundaries with various neighbors. The process of addressing those disputes and concluding them pursuant to a mutually acceptable agreement is challenging and time-consuming, and it is important that the United States not conclude such agreements unless they are on terms favorable to the United States. Even neighboring countries that may be interested in negotiating boundary agreements with us understand that such agreements cannot "replicate" the Convention in regards to the Continental Shelf.

Questions 5a-5b. In your testimony you noted that the International Seabed Authority may begin as early as 2013 the process of developing rules governing mining in the deep seabed.

- (5a). As a nonparty to the Convention, what ability will the United States have to shape those rules in ways favorable to U.S. interests or to block attempts by other states to shape the rules in ways contrary to U.S. interests?

Answer. As a nonparty, the United States participates as an observer to the International Seabed Authority. As an observer, without a vote or formal voice, the United States has very limited ability to shape deep seabed mining rules in its interests. For instance, the United States has no ability as an observer to block proposals by members of the Seabed Authority's Council, including proposals by members related to deep seabed mining rules and proposals for the distribution of payments made for oil and gas production on the Continental Shelf beyond 200 nautical miles.

- (5b). How would this change if the United States were to become a Party to the Convention this year? What provisions of the Convention support your conclusions in this regard?

Answer. As a Party, the United States would have an unprecedented and unparalleled ability to influence deep seabed mining activities worldwide. No other international organization gives one country, and one country only—the United States—permanent membership on its key decisionmaking body. If the United States acceded to the Convention this year, it would be able to fill this seat at the Seabed Authority's meeting in 2013.

The 1994 Agreement guarantees the United States, and only the United States, a permanent seat on the 36-member Council. Specifically, Section 3(15) of the Annex to the Agreement provides that Council membership shall include the State having the largest gross domestic product at the time of entry into force of the Convention, which was 1994. That country was the United States.

Furthermore, the Convention, as modified by the 1994 Agreement, is structured to require consensus decisionmaking for any decision that would result in a substantive obligation on the United States or that would have financial and budgetary implications. For instance, the United States could use its permanent seat to block a decision on any rules, regulations, and procedures implementing the seabed mining regime or amendments thereto.

Questions 6a-6b. In your testimony you made repeated references to the fact that the United States would, upon its accession to the Convention, have an effective veto over the way that the International Seabed Authority distributes any royalties or fees that it receives with respect to exploitation in the Extended Continental Shelf or the deep seabed.

- (6a). Please describe in detail the provisions of the Convention that support this conclusion.

Answer. As a Party to the Law the Sea Convention, as modified by the 1994 Agreement, the United States would have the ability to veto any decision related to the distribution of payments resulting from production on the Continental Shelf beyond 200 nautical miles (Article 82).

Summary of Convention provisions supporting this conclusion:

- Decisions on the distribution of any payments resulting from production on the Continental Shelf beyond 200 nautical miles are made by the Assembly of the Seabed Authority.
- However, the Assembly can only make such decisions "upon the recommendation of the Council" of the Seabed Authority.
- Any Council recommendation on this matter would need to be by consensus, which is defined as the absence of any formal objection.
- As a Party, the United States—and no other country—is guaranteed a permanent seat on the Council.
- Thus, as a Party and member of the Council, the United States could formally object to (and thereby block consensus on) any Council recommendation on this matter.
- There would then be no Council recommendation, which would preclude any decision by the Assembly.

Detailed explanation of Convention provisions supporting this conclusion:

- Royalty payments are made "through"—not "to"—the International Seabed Authority. They are held there for distribution to States Parties to the Convention. Article 82(4).
- The rules and procedures for distributing royalty payments are to be decided by the International Seabed Authority's Assembly (comprising all States Parties) only upon the recommendation of the Seabed Authority's Council.
  - Article 162, paragraph (2)(o)(i) provides that the Council "shall . . . recommend to the Assembly rules, regulations and procedures on the equitable sharing of . . . the payments and contributions made pursuant to article 82 . . . ."

- Article 160, paragraph (2)(f)(i) provides that the Assembly "shall . . . consider and approve, upon the recommendation of the Council, the rules, regulations and procedures on the equitable sharing of payments and contributions made pursuant to article 82."
- Thus, the Council is not a merely a "recommending body" in the sense that its recommendations are merely advisory. Assembly decisions must be "upon the recommendation" of the Council.
- Article 160, paragraph (2)(f)(i) provides further that "[i]f the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration in light of the views express by the Assembly."

○ Any Council recommendation to the Assembly on this matter must be taken by consensus.

- Article 161, paragraph (8)(d) provides that decisions arising under Article 162, paragraph (2)(o) "shall be taken by consensus." As noted above, Article, paragraph 162(2)(o) pertains to Council recommendations on benefit sharing.
- Article 161, paragraph (8)(e) provides that "'consensus' means the absence of any formal objection."

○ The 1994 Agreement guarantees the United States, and only the United States, a permanent seat on the Council.

- Section 3, paragraph 15 of the Annex to the 1994 Agreement provides that "The Council shall consist of 36 members [including]: (a) Four members from among those States Parties which, during the last five years for which statistics are available, have either [met certain consumption/imports criteria for seabed minerals], provided that the four members shall include . . . the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product, if such States wish to be represented in this group;"
- The United States had the largest economy in terms of GDP at the time of entry into force in 1994.

Thus, as a Party and member of the Council, any formal objection by the United States would preclude consensus and therefore block any Council recommendation to the Assembly on this matter. Without a recommendation, the Assembly has no authority to take a decision on the matter.

Furthermore, if the United States were to agree to a Council recommendation but the Assembly did not support it, the matter would have to be returned to the Council for reconsideration. Therefore, the Assembly could not change a recommendation of the Council without the Council's approval.

Finally, as a Party, the United States would have a veto over far more deep seabed mining matters than just the distribution of royalty payments. For instance, the United States could block a decision on any rules, regulations, and procedures implementing the seabed mining regime or amendments thereto. As explained in the answer to question 7, this includes rules, regulations, and procedures relating to any royalties relating to deep seabed mining.

- (6b). How many other countries are guaranteed a permanent seat on the Council of the International Seabed Authority?

Answer. None. No countries other than the United States have a permanent seat on the Council of the International Seabed Authority.

Questions 7a-7c. What payments, if any, must Parties to the Convention or companies that they sponsor pay to the International Seabed Authority in connection with exploitation of the deep seabed? To the extent that the rules or regulations concerning such payments are not yet in place, please describe:

- (7a). The process by which the amount of such payments will be determined.

Answer. With the exception of an application fee, described below, there are presently no payments that Parties or companies must make for exploitation of the deep seabed.

Prior to the 1994 Agreement, the Convention contained extensive provisions on payments related to deep seabed mining. These problematic provisions were eliminated by the 1994 Agreement, which takes a "cost-effective" and "evolutionary approach." (Agreement, Annex, Sections 1 and 8) Specifically, in lieu of the Convention's original provisions, the Agreement provides a set of principles that provide the basis for establishing future rules, regulations, and procedures for financial payments related to deep seabed mining. (Agreement, Section 8) For instance, the Agreement provides that the system of payments:

○ "Shall be fair to both the contractor and to the Authority";

- "Shall . . . avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage" relative to land-based mineral producers; and
- "should not be complicated and should not impose major administrative costs on the Authority or on a contractor." (Agreement, Section 8(1))

These provisions reflect market principles and are a fundamental change from the original Convention. They also reflect the cost-effective and evolutionary approach adopted in the Agreement; rather than decide on financial matters in advance, the Agreement provides that rulemaking within the Seabed Authority be undertaken "at various stages of the development of activities in the area." (Agreement, Annex, Section 1) Since activities in the Area presently remain at the exploration (rather than exploitation) phase, the Seabed Authority has not yet developed any rules for payments related to exploitation.

The Agreement provides for a fee of US$250,000 "for processing applications" of either exploration or exploitation. (Agreement, Section 8(3)) The amount of that fee is to be "reviewed from time to time by the Council in order to ensure that it covers the administrative cost incurred. If such administrative cost incurred by the Authority in processing the application is less than the fixed amount, the Authority shall refund the difference to the applicant." (Convention, Annex III, Article 13(2))

Finally, it is important to note that the purpose of payments to the Seabed Authority is to cover its expenses and enable it to be a financially self-sufficient entity. When the Seabed Authority is able to meet its administrative expenses from funds received in connection with mining activities, it will no longer request assessed contributions from Parties.

- (7b). [To the extent that the rules or regulations concerning such payments are not yet in place, please describe:] the extent to which the United States, as a nonparty to the Convention, would have the ability to influence the rules and regulations relating to such payments; and

Answer. As a nonparty, the United States participates as an observer to the International Seabed Authority. As an observer, without a vote or formal voice, the United States has very limited ability to influence rules and regulations relating to payments from deep seabed mining, and no ability to block objectionable proposals on payments related to deep seabed mining. Thus, it is particularly important that the United States accede to the Convention prior to key decisions by the Seabed Authority on this and other deep seabed mining issues.

- (7c). [To the extent that the rules or regulations concerning such payments are not yet in place, please describe:] the extent to which the United States, as a Party to the Convention, would have the ability to influence the rules and regulations relating to such payments.

Please explain the provisions of the Convention that support your conclusions in this regard.

Answer. As a Party to the Convention, the United States would have an unprecedented and unparalleled ability to influence deep seabed mining activities worldwide, including with respect to rules and regulations relating to such payments. As a Party, decisions on the rules, regulations, and procedures implementing the seabed mining regime could not be adopted without approval of the United States. This is provided for in the following provisions:

- Article 160, paragraph (2)(f)(ii), on Assembly approval,
- Article 162, paragraph (2)(o)(ii), on powers of the Council, and
- Article 161, paragraph (8)(d), on consensus decisionmaking in the Council.
- 1994 Agreement, Annex, Section 3(15)(a), providing the United States with a permanent seat on the Council.

Questions 8a-8e. Article 160, Subsection 2(g) of the Convention states that a duty of the Assembly of the International Seabed Authority is to "decide upon the equitable sharing of financial and other economic benefits derived from activities in the [Deep Seabed] Area, consistent with this Convention and the rules, regulations and procedures of the Authority."

- (8a). What are the "rules, regulations and procedures" referenced in this provision?

Answer. The reference to "rules, regulations and procedures" in Article 160, paragraph 2(g) refers to all rules, regulations, and procedures of the Seabed Authority.

Of particular relevance would be any "rules, regulations and procedures" adopted relating to the "sharing of financial and other economic benefits" derived from activities in the deep seabed area. (Article 160, paragraph (2)(f)(i)) to date, however, no such rules, regulations, and procedures have been adopted.

- (8b). Which body or bodies of the International Seabed Authority promulgates them?

Answer. Decisions on "rules, regulations and procedures" that relate to "sharing of financial and other economic benefits" derived from activities in the deep seabed area are made by the Assembly of the Seabed Authority. However, the Assembly can only make such decisions "upon the recommendation of the Council" of the Seabed Authority, and such decisions must be taken by consensus. Along the same lines as detailed in the response to Question 6a, this is provided for in Articles:

- 160, paragraph (2)(f)(i), on Assembly approval,
- 162, paragraph (2)(o)(i), on powers of the Council, and
- 161, paragraph (8)(d), on consensus decisionmaking in the Council.

As a Party, the United States would have a permanent seat on the Council (1994 Agreement, Annex, Section 3(15)(a)) and, therefore, the United States would have the ability to veto any proposed decision on this matter at any time.

- (8c). Can the Assembly take a decision under Article 160, Subsection 2(g) of the Convention that contravenes these rules, regulations and procedures?

Answer. No. Article 160, paragraph 2(g) itself states that such decisions must be "consistent with this Convention and the rules, regulations, and procedures of the Authority."

Furthermore, the Assembly may not take a decision on those "rules, regulations, and procedures" unless it is "upon the recommendation of the Council." Specifically, Article 160, paragraph (2)(f)(i) states that "[i]f the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration . . . ." Thus, if the United States were to agree to a Council recommendation, but the Assembly did not support it, the matter would have to be returned to the Council for reconsideration. The Assembly could not change a recommendation of the Council without the Council's approval.

Thus, the Council is not a merely a "recommending body" in the sense that its recommendations are merely advisory. Assembly decisions must be "upon the recommendation" of the Council.

- (8d). Can the Assembly take such a decision without first receiving a recommendation from the Council?

Answer. As discussed above, decision on any rules, regulations, and procedures related to "sharing of financial and other economic benefits" must be upon the recommendation of the Council, and no such decision or recommendation has been made.

Whether the Assembly can ultimately take decision under Article 160, paragraph 2(g) without first receiving a recommendation from the Council will depend upon the rules, regulations, and procedures decided upon by the Council itself. To date, no such rules, regulations, and procedures have been adopted. As a Party, the United States could ensure—through the development of the rules, regulations, and procedures—that any Assembly decision under Article 160, paragraph 2(g) is made only on the basis of a prior Council decision.

In addition, the Convention as modified by the 1994 Agreement already provides that any actions taken by the Assembly under Article 160, paragraph 2(g) need to first go through the Finance Committee. Specifically, the Agreement provides that decisions by the Assembly (and the Council) on "[r]ules, regulations and procedures on the equitable sharing of financial and other economic benefits derived from activities in the Area and the decisions to be made thereon" shall take into account recommendations of the Finance Committee. (Agreement, Annex, Section 9(7)) Thus, the Assembly could not act in the absence of a prior recommendation of the Finance Committee. The Agreement further provides that the United States is guaranteed a seat on the Finance Committee (until such time as the Seabed Authority is financially self-sufficient) and that decisions by the Finance Committee on any question of substance shall be taken by consensus. (Agreement, Annex, Section 9)

- (8e). Can the Assembly take such a decision contrary to the Council's recommendation?

Answer. As discussed above, the Assembly may not take a decision on rules, regulations, and procedures that relate to "sharing of financial and other economic benefits" unless it is "upon the recommendation of the Council." Article 160, paragraph (2)(f)(i) states that "[i]f the Assembly does not approve the recommendations of the Council, the Assembly shall return them to the Council for reconsideration . . . ."

As discussed above, whether the Assembly can ultimately take an action under Article 160, paragraph 2(g) without first receiving a recommendation from the Council will depend upon the rules, regulations, and procedures adopted by the

Council itself and subsequently approved by the Assembly. As a Party, the United States could ensure—through the development of the rules, regulations, and procedures—that the Assembly can take no such a decision contrary to a prior decision of the Council.

RESPONSES OF SECRETARY LEON E. PANETTA TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

*Question.*Freedom of Navigation Operations.—It is absolutely imperative that we retain the capability to protect our access to the skies, the high seas, the straits, and even the territorial waters of other nations with respect to innocent passage. The U.S. Navy has run, and will continue to run, multiple Freedom of Navigation operations every year in areas—including the South China Sea—where countries try to place unlawful restrictions on the freedom of navigation, to ensure that we and the international community do not accept as a precedent these unlawful claims.

- Is it correct to say that these operations are going to continue apace whether we're a party to the treaty or not?

Answer. Yes, regardless of whether the United States is a party to the Law of the Sea Convention, U.S. Military assets will continue to conduct operational assertions under the U.S. Freedom of Navigation Program. It remains our primary operational means to challenge excessive maritime claims and excessive assertions of jurisdiction by coastal States.

- Would being a party to the Convention help our forces when they're out there trying to get countries to drop their spurious restrictions on freedom of navigation? If so, how?

Answer. Yes. I believe strongly that joining the Convention would assist U.S. efforts to get countries with excessive maritime claims to drop their spurious restrictions on freedom of navigation. Joining the Convention would reinforce our position as a global maritime leader in shaping the discussion interpreting the Law of the Sea; and being a party would certainly afford us increased authority in the conduct of our operational assertions.

- Would being a party to the Convention help you enlist support from other countries to get the offending countries to drop their spurious claims? If so, how?

Answer. Yes. I believe that being a party to the Convention would help enlist support from other countries to get offending countries to drop their spurious claims. Much of our defense strategy is based upon modernizing our network of defense and security partnerships and supporting a rules-based order that promotes stability. In joining the Convention, we would be demonstrating, actively, our commitment to such an order and to working with others in support of the rule of law.

- Does the fact that the United States is not now a party to the Convention hamper our ability to push back against these spurious claims?

Answer. Yes. The fact that the United States is not a party to Convention complicates our ability now to challenge spurious claims. At present, the United States is unable to participate fully in some of the Convention's key institutions and meetings where these very issues are being discussed and shaped. Without a full seat at the table, we're unable to participate in these important discussions, defend our interests, and shape the outcome.

Question. Dispute Resolution Mechanism.—Based on the treaty text and on how it is already being implemented, do you have any concern whatsoever over whether the United States will be able to exclude disputes concerning military activities from the Convention's dispute resolution mechanism, and that the United States will be able to decide for itself whether an activity is a "military" one for the purposes of the Convention?

Answer. No, I have no concerns about U.S. ability to exclude military related disputes from the Convention's dispute resolution mechanism, should we accede to the Convention. Article 298 of the Convention expressly allows States to exclude "disputes concerning military activities" from dispute resolution mechanisms and procedures; if the United States accedes to the Convention, we would invoke that exception. This exception has been invoked by numerous States that are already parties to the Convention, including Russia, China, the United Kingdom, and France. Moreover, the United States would retain the right to determine what activities constitute "military activities"—and would not be subject to review by an international tribunal or court.

Question. Mandatory Technology Transfer.—Some have asserted that the Convention provides for mandatory technology transfer and would require the United States to equip adversaries with sensitive technology, such as antisubmarine warfare technology. Do you agree with this assertion?

Answer. No, I do not agree with this assertion. There is absolutely no provision in the Convention that would require the United States to equip adversaries with sensitive technology. When the Convention was originally negotiated, there was a provision providing for mandatory technology transfer relating to deep seabed mining technology, but this provision was superseded by the 1994 Agreement relating to the Implementation of Part XI, which has no mandate for technology transfer.

Question. Use or Threat of Military Force.—Some have asserted that because certain articles of the Convention such as Articles 88, 141, and 301 state that the high seas and the deep seabed should be reserved for "peaceful purposes" that U.S. accession to the Convention will impose new restrictions on the United States with respect to the use or threat of military force. Do you agree with this assertion?

Answer. No. I do not agree with this assertion; the Convention's "peaceful purposes" provisions would not impose any new restrictions with regard to the United States use or threat of military force and would not impair the inherent right of individual or collective self-defense or rights during armed conflict. In fact, U.S. military operations and activities would not be inhibited or constrained in any manner if the United States became a party to the Convention. The "peaceful purposes" provisions merely repeat the same obligations under the United Nations Charter to which the United States has been obligated since 1945. This has not kept the United States from responding to an attack or protecting our national interests.

Question. Size of the U.S. Navy.—Some have characterized the Law of the Sea Convention as a way to shrink the U.S. military—and in particular the U.S. Navy—by allowing the United States to rely on a treaty instead of military force. They argue that instead of joining the Convention, the United States should increase the size of the U.S. Navy.

- Is your support for United States accession to the Law of the Sea Convention motivated by a desire to shrink the size of the U.S. Navy and its fleet?

Answer. No. My strong and unwavering support for U.S. accession to the Law of the Sea Convention is not at all motivated by a desire to shrink the size of the U.S. Navy and its fleet; my support is not linked in any way whatsoever to the size of the U.S. Navy or the size of DOD forces. Instead, my support is based on a fundamental belief that joining promotes U.S. national security interests, for several reasons. Joining the Convention preserves and protects our navigational freedoms and global access for military and commercial ships, aircraft, and undersea fiber optic cables. We depend on the navigational provisions for global access to train our forces, get them to the fights, sustain them and then return them home—all without a "permission slip" from other countries. Although we have succeeded to date in preserving and protecting our navigational freedoms through reliance on customary international law, joining the Convention places our national security on firmer footing. Customary international law changes over time, subject to state practice. Treaty law remains the firmest legal foundation upon which to base our global presence—that is precisely why I support U.S. accession.

- If the United States Naval fleet were doubled or tripled in size, would you still support immediate U.S. accession to the Convention?

Answer. Yes. If the U.S. Navy fleet were doubled or tripled in size, I would continue to support unequivocally U.S. accession to the Convention. As noted earlier, I support U.S. accession regardless of the size of our fleet.

Question. U.S. Maritime Interdiction Efforts.—Some have asserted that U.S. accession to the Convention would hurt U.S. maritime interdiction efforts under the Proliferation Security Initiative (PSI). Do you agree?

Answer. No. U.S. accession to the Convention would not hurt U.S. maritime interdiction efforts under the Proliferation Security Initiative (PSI). It is important to note that the United States ability to conduct the full range of maritime interdiction operations would not be hampered at all by joining the Convention. In the Defense Strategic Guidance issued earlier this year, countering weapons of mass destruction remains a primary mission set for U.S. forces. PSI is a key tool in our arsenal for executing this mission across the maritime domain. To this end, joining the Convention would not interfere with U.S. participation in PSI; to the contrary, it would reinforce our long-held position that PSI is entirely consistent and compatible with the Convention. In fact, PSI's Statement of Interdiction Principles states that inter-

diction activities under PSI will be conducted "consistent with national legal authorities and relevant international law frameworks." Rather, U.S. accession could encourage other States to join PSI as it would convey our commitment to the rule of law for the oceans to the same degree they are already committed.

RESPONSES OF GEN. MARTIN E. DEMPSEY TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. Freedom of Navigation Operations.—It is absolutely imperative that we retain the capability to protect our access to the skies, the high seas, the straits, and even the territorial waters of other nations with respect to innocent passage. The U.S. Navy has run, and will continue to run, multiple Freedom of Navigation operations every year in areas—including the South China Sea—where countries try to place unlawful restrictions on the freedom of navigation, to ensure that we and the international community do not accept as a precedent these unlawful claims.

- Is it correct to say that these operations are going to continue apace whether we're a party to the treaty or not?

Answer. Yes. U.S. forces will continue to conduct operational assertions against excessive maritime claims as part of the Freedom of Navigation Program.

- Would being a party to the Convention help our forces when they're out there trying to get countries to drop their spurious restrictions on freedom of navigation? If so, how?

Answer. Yes. The rules of the Convention that guarantee the freedom of navigation are favorable to our interests. Being a party to Convention would enhance the credibility of our operational assertions and diplomatic challenges against excessive maritime claims throughout the world.

- Would being a party to the Convention help you enlist support from other countries to get the offending countries to drop their spurious claims? If so, how?

Answer. Yes. Being a party to the Convention would demonstrate U.S. commitment to the rules based international order and strengthen the foundation for partnerships with countries that share our national interest in preserving the navigational rights that are codified in the Convention.

- Does the fact that the United States is not now a party to the Convention hamper our ability to push back against these spurious claims?

Answer. Yes, our status as a nonparty does hamper our ability to push back against spurious claims. Joining the Convention would allow us to bring the full force of our influence as the world's foremost maritime power to bear against countries with excessive maritime claims.

Question. Dispute Resolution Mechanism.—Based on the treaty text and on how it is already being implemented, do you have any concern whatsoever over whether the United States will be able to exclude disputes concerning military activities from the Convention's dispute resolution mechanism, and that the United States will be able to decide for itself whether an activity is a "military" one for the purposes of the Convention?

Answer. No, I do not have the concerns you mentioned. The United States has the right to forgo participation in any of the Convention's dispute resolution mechanisms for disputes concerning military activities. Other nations, including China, France, Russia, and the United Kingdom have exempted their military activities. This right is not subject to review.

Question. Mandatory Technology Transfer.—Some have asserted that the Convention provides for mandatory technology transfer and would require the United States to equip adversaries with sensitive technology, such as antisubmarine warfare technology. Do you agree with this assertion?

Answer. I do not agree with this assertion. Although mandatory technology transfer was one of the objectionable provisions related to deep seabed mining in the original 1982 Convention, the 1994 Agreement eliminated that provision. In addition, the Convention expressly provides that nothing in it shall be deemed to require a party to disclose information contrary to the essential interests of its security.

Question. Use or Threat of Military Force.—Some have asserted that because certain articles of the Convention such as Articles 88, 141, and 301 state that the high seas and the deep seabed should be reserved for "peaceful purposes" that U.S. acces-

sion to the Convention will impose new restrictions on the United States with respect to the use or threat of military force. Do you agree with this assertion?

Answer. I do not agree with this assertion. Those provisions simply incorporate into the Convention the same obligations that the United States already has under the U.N. Charter.

Question. Size of the U.S. Navy.—Some have characterized the Law of the Sea Convention as a way to shrink the U.S. military—and in particular the U.S. Navy—by allowing the United States to rely on a treaty instead of military force. They argue that instead of joining the Convention, the United States should increase the size of the U.S. Navy.

- Is your support for United States accession to the Law of the Sea Convention motivated by a desire to shrink the size of the U.S. Navy and its fleet?

Answer. No. My support for the Convention is not motivated by a desire to shrink the U.S. Navy. The Convention codifies rules that are very favorable to U.S. national security interests. Joining the Convention would give the men and women of our Armed Forces another tool to accomplish the mission.

- If the United States naval fleet were doubled or tripled in size, would you still support immediate U.S. accession to the Convention?

Answer. Yes. Joining the Convention would strengthen our military operations by preserving essential navigation and overflight rights and providing legal certainty to the world's largest maneuver space.

Question. U.S. Maritime Interdiction Efforts.—Some have asserted that U.S. accession to the Convention would hurt U.S. maritime interdiction efforts under the Proliferation Security Initiative (PSI). Do you agree?

Answer. No, U.S. accession to the Convention would not hurt U.S. maritime interdiction efforts. The PSI specifically requires participating countries to act consistently with international law, which includes the law reflected in the Convention. Most PSI partners are parties to the Convention. Further, joining the Convention is likely to strengthen PSI by attracting new cooperative partners.

Question. Customary International Law.—In your testimony you stated that you were not now comfortable relying solely upon customary international law with regard to rights of navigation because of, among other things, the fact that customary international law evolves and may be subject to individual interpretation by countries attempting to interpret customary law to their benefit. Some of those countries—like China, for example—are parties to the Convention. If these parties to the Convention already interpret both customary international law and the Convention in ways that are inimical to U.S. interests, why would United States accession to the Convention matter?

Answer. U.S. accession would increase our credibility and influence in defending the Convention's existing norms that enable the access, mobility, and sustainment of our military forces and commercial fleet. Our nonparty status detracts from our ability to lead developments in the maritime domain, and enables emerging powers to advance their contrary interpretations of the Convention. As the global security environment changes, it will become increasingly important for the United States to use all elements of national power.

LETTERS SUBMITTED BY SENATOR JOHN F. KERRY

Lockheed Martin Corporation
6801 Rockledge Drive Bethesda, MD 20817
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LOCKHEED MARTIN

Robert J. Stevens
Chairman and Chief Executive Officer

May 17, 2012

The Honorable John Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510-6225

Dear Chairman Kerry:

I am writing to express Lockheed Martin Corporation's strong support for speedy ratification of the Law of the Sea (LOS) Treaty. Ratification is now critical to the important U.S. economic and national security interests advanced by access to the vast mineral and rare earth metals resources on the ocean floor. These mineral resources are vital to a wide array of defense and high-tech manufacturing products and systems – computers, mobile phones, lasers, aircraft engines, specialty glass, and missile guidance systems are just a few of the many products that contain rare earth metals. Considerable financial investment is required to access these mineral reserves and ensure that the U.S. has a reliable long-term source of supply that cannot be interrupted, monopolized, or otherwise controlled by foreign governments. That investment is only going to be secured for rights clearly recognized and protected within the established treaty-based framework.

Lockheed Martin has maintained U.S.-licensed deep seabed claims since the 1980s. These are currently the only active U.S.-based claims. While we had made considerable investment in exploratory activities, market conditions did not support additional investment – until now. Based on Lockheed Martin's analysis, the poly-metallic nodules on the deep seabed floor are composed of manganese, nickel, copper, cobalt, and other minerals, to include rare earth elements. The increased value of the mineral resources in our claim sites, the improvements in technologies for accessing them, and the need to develop new sources of such minerals – for rare earth metals in particular – have now produced a favorable business environment in which to exploit these claims. However, the multi-billion dollar investments needed to establish an ocean-based resource development business must be predicated upon clear legal rights established and protected under the treaty-based framework of the LOS Convention, including the International Seabed Authority (ISA).

Other international players recognize this same reality and are acting upon it. Countries (including China and Russia) are moving forward aggressively within the Treaty framework, and several of these countries currently hold exploration licenses from the International Seabed Authority. As has been widely reported, China already holds a monopoly on available land-based rare earth metals, and now holds one of the four deep seabed exploration licenses issued over the past year. Countries have also asked the ISA to begin development of rules for harvesting ocean minerals. Unfortunately, without ratifying the LOS, the United States cannot

sponsor claims with, or shape the deep seabed rules of, the ISA. Yet, that is the critical path forward if the United States intends to expand and ensure access – for both U.S. commercial and government interests – to new sources of strategic mineral resources.

We are committed to supporting the effort to ratify the Law of the Sea Treaty this year so that the United States can assume a leadership role in, and protect its rights through, the International Seabed Authority.

Sincerely,

Robert J. Stevens

Bill Smith
President
AT&T Network Operations

AT&T Services Inc.
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November 7, 2011
The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary:

As a major U.S. user of the international seabed in relation to our ownership of submarine cable systems, AT&T Inc. ("AT&T") supports U.S. accession to the Law of the Sea Convention. We do so because the Convention improves protections for international submarine cables, provides compulsory dispute resolution procedures concerning these cables, and expands the right to lay and maintain them. This is important to the U.S. economy given the rapid growth of global trade and the central role of telecommunications in today's global economy.

Like other U.S. telecommunications providers, AT&T uses international submarine cables to carry virtually all its Internet and voice and data telecommunications traffic outside North America. AT&T, through its affiliates, owns interests in over 80 international submarine cable systems covering more than 425,000 fiber route miles and operates an advanced global backbone network that serves customers around the world and carries more than 18.7 petabytes of data per average business day.

As the result of massive, fast-increasing Internet usage and the rapid globalization of business, total U.S. submarine cable circuit capacity grew from 429,000 circuits to over 270 million circuits from 1995 through 2009 – an increase of more than 63,000 percent. These submarine cables provide backbone international transmission facilities for the global Internet, electronic commerce and other international voice and data communications services that are major drivers of the 21st Century global information-based economy.

Submarine cables are vulnerable to damage by ship anchors, commercial fishing activities, natural events such as earthquakes, and other causes, resulting in approximately 200 outages each year on submarine cables throughout the world. The broad impact of some recent outages underscores the importance of taking all appropriate measures to protect these critically important global network facilities from damage and disruption. In February 2008, breaks in four cables in the Mediterranean and Persian Gulf caused Internet outages across the Middle East, cut bandwidth capacity to India by half and seriously affected India's outsourcing business. A similar event impacting the Middle East and India occurred once again in December 2008. In December 2006, an earthquake damaged nine submarine cables in the Strait of Luzon between Taiwan and the Philippines, disrupting Internet traffic and financial markets in South East Asia. As these incidents demonstrate, in the age of globalization and the free flow of cross-border data traffic, the reliability of submarine cables is more important than ever before.

The Law of the Sea Convention significantly improves legal protections for international submarine cables, and in so doing, protects the interests of U.S. owners of submarine cable systems such as AT&T. Indeed, in the negotiation of the Convention in the early 1980's, the U.S. was a major proponent of expanding protections for submarine cables because of the concerns of the U.S. telecom industry. These expanded rights apply regardless of whether submarine cables are used in communications, science, power, or military applications.

The Convention expands the right to lay and maintain submarine cables in the oceans of the world. Articles 58, 79 and 112 establish the rights of nations and private parties to lay and maintain submarine cables on the continental shelf, in the Exclusive Economic Zone (EEZ) and on the bed of the high seas. These articles – when supplemented by the compulsory dispute resolution procedures available to parties to the Convention under Article 297 – provide important recourse for AT&T and other U.S. submarine cable operators against onerous and unreasonable permitting requirements by coastal states that may impede the timely repair and maintenance of undersea cables, or delay the construction of new cables.

Articles 58, 100 and 101 require states to cooperate to the fullest extent possible in the repression of piracy, including acts of depredation against property, such as submarine cables, in the EEZ and on the high seas. Article 113 requires that all states must adopt laws that make damage to submarine cable, done willfully or through culpable negligence, and conduct likely to cause such harm, a punishable offense. Article 114 requires submarine cable owners that damage other cables in laying or repairing their cables to bear the cost of repairs. Article 115 provides that vessel owners, who can prove they sacrificed an anchor or fishing gear to avoid damaging a cable, can recover their loss against the cable owner, provided the vessel took reasonable precautionary measures beforehand.

Additionally, Article 297 provides parties to the Treaty with compulsory dispute resolution procedures for the provisions concerning submarine cables. Having rights to this dispute resolution process is a key benefit of U.S. accession to the Convention, and one that does not exist for the U.S. presently. Although the U.S. already benefits to some extent from aspects of the Convention as customary international law, it cannot take action under the important dispute resolution provisions until the U.S. accedes to the Convention.

In conclusion, it has never been more important to our U.S. economic infrastructure, and our participation in the global economy, to strengthen the protection and reliability of international submarine cables. The Law of the Sea Convention, particularly as assisted by the enforcement mechanisms available to parties under Article 297, is a critical element of this protection. AT&T therefore supports U.S. Senate ratification of the Law of the Sea Convention at the earliest opportunity.

We would be pleased to answer any questions that you or your staff may have.

Sincerely,

Bill Smith

Bill Smith
President-AT&T Network Operations

cc: The Honorable John F. Kerry, Chairman, Committee on Foreign Relations, U.S. Senate
The Honorable Richard G. Lugar, Ranking Minority Member, Committee on Foreign Relations, U.S. Senate

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

MAY 1 6 2012

The Honorable John Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member Lugar:

It is my understanding that the Committee on Foreign Relations will soon be holding hearings to consider the Law of the Sea Convention. I am writing to confirm that the testimony provided at the June 8, 2004, Select Committee on Intelligence closed hearing on the intelligence implications of the United States accession to the Law of the Sea Convention represents this Administration's position about the intelligence impact of the Convention. This is a long-held position among national security leaders across administrations and was last affirmed by then Director of National Intelligence McConnell in a 2007 letter to the Select Committee on Intelligence.

At the 2004 hearing, Rear Admiral Richard B. Porterfield, then Director of Naval Intelligence, delivered classified testimony that the Department of Defense advised could be shared in an unclassified form:

> "I realize that this Committee is concerned about whether the Convention prohibits our naval operations, in particular our maritime intelligence activities. I can say without hesitation that it does not....
>
> [T]he Convention is, if anything, more favorable to our navigation and security interests than are the 1958 treaties. Bottom line: Acceding to the Convention will not change the legal regime under which our intelligence operations have been conducted for decades.
>
> Mr. Chairman, since 1983 the Navy has conducted its activities in accordance with President Reagan's Oceans Policy statement, to operate in a manner consistent with the Convention's navigational freedoms provisions. If the U.S. accedes to the Convention, we would continue to operate as we have done since 1983...."

In addition, Mr. Charles Allen, then Assistant Director of Central Intelligence for Collection, presented the following unclassified testimony:

"First, the overwhelming opinion of Law of the Sea experts and legal advisors is that the Law of the Sea Convention simply does not regulate intelligence activities nor was it intended to....

Second, the Convention provides that a party may exclude military activities from jurisdiction of the Convention's dispute settlement procedures...the term 'military activities' includes intelligence activities.

Third, the definition of 'innocent passage' in the 1982 Convention seems to provide a small advantage over the 1958 Convention, which the U.S. ratified and [under] which we currently operate....

Fourth, the 1982 Convention explicitly recognizes an additional right of passage through international straits, a recognition that is absent from the 1958 Convention. This right of transit passage through one part of the high seas to another further reinforces the freedom of navigation of U.S. vessels and may thereby facilitate national security activities.

Fifth, regardless of any party's attempt to bring forth a claim under the Convention, the Convention makes clear that parties shall not be required, in the course of any dispute settlement, to disclose information that may be contrary to the party's essential interests of security. This protection against compulsory disclosure is not in the current 1958 Convention to which the U.S. is a party."

Finally, William H. Taft IV, then Legal Advisor at the Department of State, provided unclassified testimony that may be used in its entirety.

"We also would call your attention to the Report of the Committee on Foreign Relations in the Senate of the 108th Congress (Executive Report 108-10 date March 11, 2004), and in particular to Part VI, which discusses Committee recommendations and comments. The points of understanding that the Committee noted with respect to military activities and innocent passage are particularity relevant."

The 2004 testimony continues to represent the views of the Intelligence Community.

If you have any questions regarding this matter, please contact the Director of Legislative Affairs, Kathleen Turner, who can be reached at 703-275-2473.

Sincerely,

James R. Clapper

cc: The Honorable Dianne Feinstein
The Honorable Saxby Chambliss

UNITED STATES NORTHERN COMMAND

General Charles H. Jacoby, Jr.
250 Vandenberg Street, Suite B016
Peterson AFB CO 80914-3801

MAY 09 2012

The Honorable John Kerry
Chairman, Committee on Foreign Relations
United States Senate
Washington DC 20510

Dear Mr. Chairman

Thank you for the opportunity to articulate my position on the Law of the Sea Convention. I completely support our Nation's accession to the Convention. This would formalize our nation's standing where our vital interests are at stake and provide an internationally recognized legal framework for supporting national security and securing U.S. rights over extensive marine areas.

National security is dependent on cooperative partnerships and peaceful opening of Arctic waters is in the interest of the community of Arctic nations. The United States is the only Arctic nation that has not acceded to the Convention. Consequently, the Nation risks being excluded from strategic discussions for advancing the Convention with our maritime partners and for resolving sovereignty, sea boundary, and natural resource issues. Future defense and civil support scenarios in the maritime domain will require closely coordinated, multinational, military operations, to include the formation of coalition task forces. Our Nation's accession to the Convention will set the conditions for partnership and cooperation.

I support the Administration's effort to become a Party to the Convention. Joining the Convention will protect and advance a broad range of significant economic and national security interests, and ultimately contribute to the peaceful opening of the Arctic in a manner that strengthens international cooperation.

A similar letter has been sent to Ranking Member Lugar.

Sincerely

CHARLES H. JACOBY, JR.
General, U.S. Army
Commander

DETER PREVENT DEFEAT

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

November 3, 2011

The Honorable John F. Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Chairman Kerry and Ranking Member Lugar:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, supports U.S. accession to the United Nations Convention on the Law of the Sea (the "Law of the Sea Convention" or "Convention"). Accession would provide American businesses certainty and legal equality to the largest of the Exclusive Economic Zones ("EEZ") available under the Law of the Sea Convention, and the corresponding natural resources and shipping rights of way. Accession would also provide much-needed certainty and predictability to claims of control over territory in the Arctic, enhancing our national security.

The Law of the Sea Convention secures each coastal nation's sovereign rights over living and non-living resources and the marine environment of the 200-mile EEZ. The Convention also provides favorable conditions for securing access to the continental shelf beyond 200 nautical miles. Given that Alaska's continental shelf may extend as far as 600 nautical miles, proper delineation of the extended continental shelf could bring an additional 4.1 million square miles of ocean under U.S. sovereign rights—an area larger than the entire lass mass of the lower 48 states. The Convention also provides a mechanism for U.S. companies to obtain access to minerals contained under the deep seabed in areas beyond national jurisdiction.

The Chamber remains concerned with the Convention's vague, overbroad environmental provisions, which could be interpreted in a way that conflicts with our nation's environmental statutes, such as the Clean Air Act and Clean Water Act. To combat this problem, the Chamber urges the Senate, in its advice and consent, to state clearly that the Convention's environmental provisions are not self-executing, and that U.S. accession to the Convention does not create private rights of action or domestic legal rights against the U.S. government or its nationals.

Accession to the Law of the Sea Convention would protect U.S. claims to the vast natural resources contained on the ocean floor, and would ensure that ships sailing under the American flag travel safely and securely through international waters.

The U.S. Chamber supports U.S. accession to the United Nations Convention on the Law of the Sea and urges members to concur in U.S. accession to the Convention.

Sincerely,

R. Bruce Josten

cc: Members of the Senate Committee on Foreign Relations

LETTERS SUBMITTED BY SECRETARY OF STATE HILLARY RODHAM CLINTON

MARITIME TRADES DEPARTMENT

AMERICAN FEDERATION OF LABOR and CONGRESS OF INDUSTRIAL ORGANIZATIONS

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PRESIDENT

SCOTT A. WINTER
VICE PRESIDENT

DANIEL W. DUNCAN
EXECUTIVE SECRETARY-TREASURER

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Communications Workers of America
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International Union of Operating Engineers
International Association of Fire Fighters
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International Longshoremen's Association, AFL-CIO
International Association of Machinists and Aerospace Workers
Marine Engineers' Beneficial Association
United Mine Workers of America
International Union of Allied, Novelty and Production Workers, AFL-CIO
Office and Professional Employees International Union
International Union of Painters and Allied Trades of the United States and Canada
Operative Plasterers' and Cement Masons' International Association of the United States and Canada
United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada
Seafarers International Union of North America
Sheet Metal Workers International Association
American Federation of State, County and Municipal Employees
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union
Transportation • Communications Union, IAM

September 21, 2011

The Honorable Hillary Rodham Clinton
Secretary of State
2201 C Street, NW
Washington, DC 20520

Dear Secretary Clinton:

The Maritime Trades Department, AFL-CIO is composed of 23 international unions representing more than 5 million workers involved in various aspects of the U.S.-flag maritime industry.

The MTD stands with its brothers and sisters from around the world in support of passage of the Law of the Sea Convention. In November 2008, the London-based International Transport Workers' Federation (to which many MTD affiliates belong) joined with the International Chamber of Shipping and others calling on nations to ratify the convention because it "places an obligation on its signatories to do everything in their power to preserve the High Seas for innocent use." We firmly believe that the United States should be a signatory to this convention.

As a signatory nation to the Law of the Sea Convention, the United States would secure rights needed for U.S.-flag merchant ships to export U.S. commodities. It also would protect tanker routes through which half the world's oil is moved.

In addition to its benefits to our nation's economy, being aboard the Law of the Sea Convention helps our national security interests by providing substantive rules that would ensure worldwide access for U.S. military and commercial vessels.

We thank you for your consideration of this matter and look forward to working with you to secure the ratification by the United States of the Law of the Sea Convention.

Sincerely

Michael Sacco
President

SIU

Seafarers International Union of North America, AFL-CIO

David Heindel
Secretary-Treasurer

5201 Auth Way
Camp Springs, MD
20746
301-899-0675
FAX: 301-899-7355

October 6, 2011

Re: UNCLOS

The United Nations Convention of the Law of the Sea established the legal framework of all aspects of the oceans and has been ratified by 162 countries. It is a balanced instrument and has been adhered to by the United States for many years. It ensures the freedom of navigation and the right of innocent passage and, as such, it safeguards many things which are important to the United States. It also sets out the duties and responsibilities of flags States, port States and coastal States.

The maritime unions of the United States strongly support its ratification. We also note that the United States has ratified the Agreement relating to the implementation of Part XI of the Convention (1982) and the Agreement for the implementation of the provisions of the Convention of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

We believe that there are strong economic and strategic reasons for the United States to ratify it now. Not least of which is the current claims to extend the continental shelf up to 300 miles, which are being made by a number of countries. Being a State Party would enable the United States to make such claims and for us to be better placed to defend our economic interests.

Fraternally,

David Heindel
Executive Vice President/
Secretary-Treasurer

American Federation of Labor and Congress of Industrial Organizations

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Veda Shook
Lorretta Johnson

February 16, 2012

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Clinton:

I write regarding the United Nations Convention on the Law of the Sea (also known as "UNCLOS" or the "Law of the Sea Treaty"). The Law of the Sea Treaty establishes a legal framework for all aspects of the oceans, ensuring the freedom of navigation and the right of innocent passage. As such, it safeguards the transport of people and goods, including goods critical to the U.S. economy. It also sets out the duties and responsibilities of flag states, port states, and coastal states.

The oceans and the rules governing them will only become more important as the economy continues to globalize. Ratification of the Law of the Sea Treaty would "lock in" the Convention's favorable set of rules as treaty rights, including fully secured legal rights to our continental shelf. By putting our legal rights on the firmest footing possible through ratification of the Law of the Sea Treaty, the U.S. can promote new investment—and, more importantly, new jobs for American workers.

By joining 162 other nations around the world in ratifying the Law of the Sea Treaty, the U.S. can help create a more predictable legal environment that will encourage commerce and create jobs, while also protecting the environment and promoting wise use of the ocean's abundant natural resources.

There are strong economic and strategic reasons for the U.S. to ratify the Law of the Sea Treaty now. Being a State Party to the Law of the Sea Treaty would better enable the U.S. to defend our economic interests worldwide. That is why, as part of our ongoing efforts to create new opportunities for American workers, the AFL-CIO joins with its brothers and sisters in the Seafarers International Union and the Maritime Trades Department to strongly support ratification of the Law of the Sea Treaty.

Sincerely,

Richard L. Trumka
President

Defenders of Wildlife • Environmental Defense Fund • International Union for Conservation of Nature • Marine Conservation Institute • Natural Resource Defense Council • The Nature Conservancy • Oceana • Ocean Conservancy • World Wildlife Fund US

The Honorable Hillary Rodham Clinton
Secretary of State
Harry S. Truman Building, Room 7226
2201 C Street NW
Washington, DC 20520

October 31, 2011

Dear Madam Secretary:

On behalf of our organizations and our millions of members across the country, we want to express our appreciation for your hard work and diligence to advance U.S. accession to the United Nations Convention on the Law of the Sea. U.S. accession to this Convention has been a longstanding priority for our organizations. We therefore hope that the Administration will work to ensure that the Convention is brought to the Senate floor for advice and consent during this Session of the Congress.

U.S. accession to the Convention is important to ensure effective participation and leadership by the United States in key discussions and decisions affecting the marine environment, including those related to fisheries, biodiversity conservation, marine science and mining. As you well know, accession also has critical implications for our national security interests and maritime mobility and will provide the United States with a mechanism to protect our sovereign rights over our extensive continental shelf and its resources. Only through accession and full participation in the bodies established under the Convention can the United States fully enjoy rights that would allow us to work for the conservation and management of the marine environment in areas that may soon be subject to international attention or discord.

The importance of the Convention is clearly reflected in the breadth and depth of stakeholder support. Not only is it supported by the conservation community, but major U.S. industries and constituencies that support U.S. accession also include the U.S. Chamber of Commerce, the American Petroleum Institute, American Chemistry Council, International Association of Drilling Contractors, National Oceans Industries Association, National Marine Manufacturers Association, a variety of individual telecommunications companies, the Joint Ocean Commission Initiative, and academic and research institutions. It is also of note that 162 States have become Party to the Convention, including almost all of our allies and every major industrialized country with the exception of the United States. A small but vocal opposition has prevented the United States from moving forward in the past; we are hopeful that we can work together this year to advance U.S. interests by obtaining Senate advice and consent to accession.

Thank you again for all of your efforts to advance U.S. accession to the Convention on the Law of the Sea. We look forward to working with you to achieve this important goal.

Sincerely,

Nancy Gloman
Vice President, Field Conservation Program
Defenders of Wildlife

Amanda Leland
Vice President, Oceans
Environmental Defense Fund

Mary Beth West
Director
IUCN Washington, D.C. Office

William Chandler
Vice President, Government Affairs
Marine Conservation Institute

Lisa Speer
Director, International Oceans Program
Natural Resources Defense Council

Kameran Onley
Director, U.S. Marine Policy
The Nature Conservancy

Corry Westbrook
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Oceana

Emily Woglom
Director, Government Relations
Ocean Conservancy

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World Wildlife Fund US

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October 31, 2011

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary.

I am writing to express the American Petroleum Institute's support for U.S. accession to the Law of the Sea Convention. The API is a national trade association that represents over 480 members involved in all aspects of the oil and natural gas industry, including the exploration and production of both onshore and offshore federal resources.

We agree that U.S. participation in the Convention is vital at this time. The Convention provides legal certainty and equality among parties by securing each coastal nation's exclusive rights to the living and non-living resources of the 200-mile exclusive economic zone (EEZ) and establishes clear, objective means of determining the outer limit of the shelf. Accession will provide greater energy security by securing the United States' exclusive rights for oil and gas production in the extended continental shelf.

It is estimated that proper delineation of the extended continental shelf would bring an additional 4.1 million square miles of ocean under U.S. sovereign rights. New technologies are enabling the industry to extend its search for new sources for oil and gas out to and beyond 200 miles for the first time. Accession to the Convention would further spur development of such technologies and encourage investment in these areas by U.S. oil and gas operators.

Many countries are actively working through the Convention to secure access to define the outer limits of their extended shelf areas – particular countries such as Russia, Denmark and Norway who border the Arctic where it is estimated that one quarter of the world's undiscovered oil and natural gas lies. Joining the Convention would enable the U.S. to place experts on the select treaty bodies dealing with these issues.

We believe that it is now time for action on the Law of the Sea. The U.S. can no longer afford to wait to secure access to the vital resources that lie within them. API appreciates the opportunity to express its support for ratification of the Convention, and I look forward to meeting with you personally where we can discuss the issue in more detail. If you have any questions, please contact me at (202) 682-8500.

Sincerely,

Jack N. Gerard
President and Chief Executive Officer

THE LAW OF THE SEA CONVENTION (TREATY DOC. 103–39): PERSPECTIVES FROM THE U.S. MILITARY

THURSDAY, JUNE 14, 2012 (a.m.)

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

The committee met, pursuant to notice, at 10:06 a.m., in room SH–216, Hart Senate Office Building, Hon. John Kerry (chairman of the committee) presiding.

Present: Senators Kerry, Cardin, Webb, Coons, Udall, Lugar, Corker, Risch, Inhofe, DeMint, Isakson, Barrasso, and Lee.

OPENING STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

The CHAIRMAN. The hearing will come to order.

Thank you all very much for being here with us today. This is the second hearing on the Law of the Sea Convention and we are very pleased to welcome six individuals with long and remarkably distinguished careers in defense of America's security. ADM James A. Winnefeld, Jr., is the Vice Chairman of the Joint Chiefs of Staff. ADM Jonathan Greenert is Chief of Naval Operations. ADM Robert J. Papp, Jr., is Commandant of the U.S. Coast Guard. Gen. William M. Fraser III is Commander of U.S. Transportation Command. GEN Charles H. Jacoby, Jr., is the Commander of U.S. Northern Command, and ADM Samuel J. Locklear III is Commander of the U.S. Pacific Command.

I cannot think of any time, certainly not since I have been here and I doubt even before that, that we have had so many top military leaders come before the Senate Foreign Relations Committee at one time, and I thank you all for being here.

I want to make clear why the committee is so interested in this testimony and why it is so important.

There are many people—there are some people who raise questions about the treaty inevitably as they have about any treaty that we have ever passed. But this treaty particularly has two components that those of us who support it believe are important for the country.

One is, above all, the economic component. And we will have a hearing shortly with major leaders from American industry, the mining industry, oil and gas, communications, others, transportation, who are deeply concerned about the legality of their claims, should they capitalize and spend millions of dollars exploiting

resources from the ocean seabed, and that is worth enormous competitive advantage to the United States of America and it is worth enormous numbers of jobs.

But second, there is a very significant national security component to this. And we have asked as many of the different commanders to come here because each of them in their own way will have an ability to be able to share with America their individual reasons. And there are individual reasons. They differ in some cases of what is most important to them about the passage of this treaty. And in its sum total, it is a compelling rationale for why this is in America's interest. And the committee this afternoon will have another hearing. We will have some opponents to the treaty there and we will have others who want to come in and oppose it because we think it is very, very important. Senator Lugar and I are committed to hear from everybody so that the Senate can build the strongest record possible and then act in its, hopeful, wisdom based on facts and based on that record that is compiled here.

We have heard from Secretary of State Hillary Clinton. We have heard from Secretary of Defense Leon Panetta, and we have heard from the Chairman of the Joint Chiefs of Staff, GEN Martin Dempsey.

In addition to support from the witnesses here today, we have letters that have urged ratification of the treaty from General Mattis, the Commander of the U.S. Central Command; General Fraser, Commander of the U.S. Southern Command; Admiral Stavridis, Commander of the U.S. European Command; Admiral McRaven, Commander of U.S. Special Operations Command; and General Kehler, Commander of the U.S. Strategic Command. And I will place each of those letters in the record so that people can read them in full.

The CHAIRMAN. We do want to have an open and honest discussion regarding this. I think that is the important thing in building a record regarding this treaty. But today we are going to focus on the national security component, and at the appropriate time, probably after the election, we will have a full Senate classified briefing because there is classified material that needs to be digested by Members of the Senate, but I think the appropriate time would be sometime after the election.

As the world's foremost maritime power, our national security interests are intrinsically linked to freedom of navigation. There is a reason that every living Chief of Naval Operations has supported the U.S. accession to the Law of the Sea during the time that they were serving as Chief of Naval Operations. They know that the United States needs the treaty's navigational bill of rights for worldwide access to get our troops to the fight, to sustain them during the fight, to get back home without the permission of other countries or without the diversion of having to force one's way into those passages and have a secondary struggle apart from the primary conflict that one might be engaged in.

Now, critics say that these navigational provisions are nothing new because they are already protected under customary international law. But most legal experts and most practical analysts of our security will tell you that relying on customary international law puts the legal basis for our actions outside of our ultimate con-

trol. By joining, we would maximize U.S. influence on the treaty bodies that play a role in interpreting, applying, and developing the Law of the Sea.

Former Secretaries of State, Henry Kissinger, George Shultz, James Baker, Colin Powell, and Condoleezza Rice recently wrote an op-ed driving this point home, and I just want to quote it. "Some say it's good enough to protect our navigational interests through customary international law, and if that approach fails, then we can use force or threaten to do so. But customary law is vague and doesn't provide a strong foundation for critical national security rights. What's more, the use of force can be risky and costly. Joining the Convention would put our vital rights on a firmer legal basis, gaining legal certainty and legitimacy as we operate in the world's largest international zone."

I would call everybody's attention to a full-page advertisement in today's Wall Street Journal featuring the five Secretaries, all of whom cite these reasons for why they believe we should ratify this treaty.

The bottom line is this. Do we really want to entrust our national security to an unwritten set of rules where our security would be enhanced by having clarity ahead of time? Is there any other area in which we choose to leave important matters of national security simply to customary law where we have an option not to? And the answer to both questions is "No." Just look at the numbers of treaties we have engaged in with respect to nuclear weapons, chemical weapons, and other issues.

We need to join the treaty to ensure critical navigational rights and high seas freedoms are protected. Nowhere is the nexus between our national security and this treaty more clear than in the South China Sea. Becoming a party would give an immediate boost to U.S. credibility as we push back against excessive maritime claims and illegal restrictions on our warships and commercial vessels and those of our allies. There is no doubt in my mind that it would help resolve maritime issues to the benefit of the United States and our regional allies and partners, and I believe if our colleagues have the opportunity to hear the classified briefing, which they will, and also the testimony here, I think they will come to that conclusion.

It is true that the United States has used diplomatic and military assets to refute excessive maritime claims, and I am sure we will continue in the future. These freedoms of navigation of operations efforts on our behalf will continue for sure. But they entail a degree of risk and our Navy cannot be everywhere at once no matter what the size of our fleet.

As leaders and citizens, we owe it to our men and women in uniform to provide them with every available means at our disposal to perform their dangerous mission. Let me be clear. I am not advocating that our military take a step backward, and I am not advocating that we replace a strong military with a piece of paper. I would never do that, nor would anybody who advocates this. What I am advocating is common sense and giving the military all of the tools that it needs.

General Dempsey said it best. This treaty would "provide us an additional tool for navigating an increasingly complex and competitive security environment."

Ratification would also give the United States greater credibility and legitimacy as we seek to hold others to the treaty's terms. It would demonstrate by deed, not just by words, America's commitment to the rule of law and strengthen the foundation for the alliances and partnerships that are critical to U.S. national security and global stability.

So you do not have to take my word for that, but let me quote our current Secretary of Defense. Secretary Panetta said: "We are pushing for a rules-based order in the region and the peaceful resolution of maritime and territorial disputes in the South China Sea, in the Strait of Hormuz, and elsewhere. How can we argue that other nations must abide by international rules when we haven't joined the very treaty that codifies those rules?" I think that is exactly right. The Law of the Sea ensures and secures the rights that we need for our military and commercial ships to meet our core national security requirements.

Now, some will say that perhaps we should not bother joining the treaty because China and some other countries that are parties do not always follow the rules. Well, it is true that they do not always, but it does not make sense not to join the treaty to have a tool to be able to try to force them to or hold them accountable. And I will tell you—and we will hear the testimony—that there are occasions when our Secretaries have raised this issue with the Chinese at various meetings from ASEAN to elsewhere, and the Chinese look at us and say you are not even a party to the treaty. Who are you to tell us?

The United States is the greatest maritime power in the world, the greatest maritime power the world has ever seen. We have the strongest navy, and our economy relies heavily on our imports and exports that move by sea. As a result, we have an enormous stake in ensuring a stable and predictable set of rules for the oceans. Joining the treaty helps us do this.

So with that, I welcome our distinguished witnesses again. Thank you for bringing your expertise to this committee at this important moment. We look forward to hearing your insights.

Senator Lugar.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

Senator LUGAR. Thank you, Mr. Chairman. I join you in welcoming our distinguished military panel to the Foreign Relations Committee.

I want to underscore for my colleagues a fundamental starting point for this hearing. The Commander in Chief, the Joint Chiefs of Staff, the United States Navy, the United States Coast Guard, and individual combatant commanders are asking the Senate to give its advice and consent to the Law of the Sea Convention. Our uniformed commanders are telling us, unanimously, that U.S. accession to this treaty would help them do their job in a time of considerable international threat.

We have charged the United States Navy with maintaining sea-lanes and defending our Nation's interests on the high seas. They do this every day, and even in peacetime these operations carry considerable risk. The Navy is telling us that U.S. membership in the Law of the Sea Convention is a tool that they need to maximize their ability to protect United States national security with the least risk to the men and women charged with this task.

This request is not the result of a recent reassessment by Navy authorities or the enthusiasm of a few leaders. The support of the military and the Navy for this treaty has been consistent, sustained, and unequivocal. All the members of the Joint Chiefs support advice and consent. Their predecessors likewise supported the Convention. As seven CNOs wrote in a joint letter back in 1998, "there are no downsides to this treaty—it contains expansive terms, which we use to maintain forward presence and preserve U.S. maritime superiority. It also has vitally important provisions which guard against the dilution of our navigational freedoms and prevent the growth of new forms of excessive maritime claims."

The military is not always right. But the overwhelming presumption in the United States Senate has been that if military leaders ask us for something to help them do their job we do our best to provide them with that tool within the constraints of law and responsible budgeting. Articles and statements opposing the Convention often avoid mentioning the military's longstanding support for Law of the Sea. This is because to oppose the Convention on national security grounds requires one to say that military leaders who have commanded fleets in times of war and peace and who have devoted their lives to naval and military studies have illegitimate opinions.

Those critics who do mention the military's support sometimes spin theories as to why the military would back this treaty. One explanation that was offered in 2007 was that somehow military commanders had been misled by their service lawyers. As a former Navy officer who served as an intelligence briefer to CNO ADM Arleigh Burke, I can attest that CNOs are not easy to deceive. These are some of the most talented and politically adept individuals to serve our Nation. The suggestion that CNOs, service chiefs, and other military leaders are blithely allowing themselves to be led astray by Defense Department lawyers is nonsense.

Other critics have suggested that military support for the Convention is simply a function of top uniformed officers taking orders from Presidents and Secretaries of Defense. But this theory relies on a simplistic understanding of how military decisions are made, and it fails to explain why Navy leaders have continued to support the Law of the Sea Convention long after they have left active service.

Still other critics suggest that the Navy's expression that it will be able to maintain freedom of navigation with or without U.S. ratification of Law of the Sea means that accession is unnecessary or even undesirable. But the Navy's assertion that it will protect sea-lanes under any circumstance does not relieve us of the responsibility to give them tools to make their job less arduous, less expensive, and less complex. The Navy will always have a "can do" attitude regarding its freedom of navigation mission, but that

should not make us cavalier about the seriousness of their request for Law of the Sea. Navy leaders are not looking for a substitute for naval power, they are hoping for a tool that will help resolve navigation disputes with all types of nations, including allies. They are hoping for a tool that will allow them to reduce the share of naval assets that must be devoted to freedom of navigation missions.

The ongoing delay in ratifying the Convention would be just an interesting political science case study if the United States were not facing serious consequences because of our nonparticipation. As a nonparty we have little say in amendments that could roll back navigational rights that we fought hard to achieve. In addition, as a nonparty, our ability to influence the decisions of the Commission on the limits of the Continental Shelf is severely constrained. Every year that goes by without the United States joining the Convention deepens our country's submission to ocean laws and practices determined by foreign governments without U.S. input.

I thank once again our distinguished panel for joining us today. We certainly look forward to their testimony.

And I thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Lugar. I appreciate it.

Senator Corker and, I think, Senator Risch, I do not think you were here when I mentioned it. You may have been, Senator Risch, but we will have a classified briefing at the appropriate time down the road, and I think Senators will be interested in that and I am asking just to withhold judgment in a sense till then.

I want to recognize that our former colleague and former Secretary of the Navy, John Warner, is here, and we are delighted to have him as part of the proceedings, and I think he has a number of friendly admirals, retired, who are here with him, and we appreciate their interest in this.

I neglected to mention I think today is the Army's birthday. Is that correct? Happy Birthday to all of the members of the United States Army. And I think it is your birthday, General Jacoby, tomorrow. So I wish you many happy returns, sir.

We will begin in this order, if we will: Vice Chairman Winnefeld and then Chief of Naval Operations Greenert, Coast Guard Commandant Papp, General Fraser, General Jacoby, and Admiral Locklear. Admiral thank you for being with us. Appreciate it.

STATEMENT OF ADM JAMES A. WINNEFELD, JR., VICE CHAIRMAN, JOINT CHIEFS OF STAFF, WASHINGTON, DC

Admiral WINNEFELD. Mr. Chairman, Senator Lugar, distinguished members of the Foreign Relations Committee, good morning and thank you for the opportunity to appear before you on this topic.

I appear today as a career sailor, a former combatant commander, and in my current position, all assignments that have informed my perspectives on the Law of the Sea Convention.

It is also a privilege to appear alongside another generation of military leaders as we join in sharing the view that now is the time for the United States to join the Law of the Sea Convention.

I have come to my own judgment on this, not informed by lawyers—or actually informed, but not influenced by lawyers—that joining this treaty will have positive implications for our operations across the maritime domain. The Convention improves on previous agreements, including the 1958 Geneva Convention. It will further protect our access to the maritime domain. It will fortify our credibility as the world's leading naval power and allow us to bring to bear the full force of our influence on maritime disputes. In short, it preserves what we have and it gives us yet another tool to engage any nation that would threaten our maritime interests.

We have listened very closely over the many years to the rationale for why we should not accede to the Convention, including a number of items in public debate, and we take these concerns very seriously. We read this and we study it and we want to understand it.

But I would say that some say that joining the Convention would result in the loss of sovereignty for the United States. I believe just the opposite to be true. Some of these op-eds and the like would say that joining the Convention will open U.S. Navy operations to the jurisdiction of international courts. We know this is not true. The 2007 proposed Senate declarations and understandings specifically express our right to exempt military activities from the Convention. Many other nations that have acceded have already exempted their military activities from the treaty without dispute.

Some say that joining the Convention will require us to surrender our sovereignty over our warships and other military vessels. I can assure you that we will not let this happen and the Convention does not require it. If anything, it further protects our sovereignty in this regard well before we would have to resort to any use of force.

Others say that it will cause us to have to alter our rules of engagement. This is also false. I can tell you that joining the Convention would not require any change whatsoever in the rules of engagement that we employ today, including and especially our right to self-defense.

Still others say that it means our naval activities will be restricted in or beyond areas in which we now operate. Rather, if we do not join the Convention, we are at more risk than ever of nations attempting to impose such limitations under evolving interpretations of customary international law. That body of law is not static. Joining the Convention will protect us from ongoing and persistent efforts on the part of a number of nations, including those with growing economic and military power to advance their national laws and set precedents that could restrict our maritime activities particularly within the bounds of their Exclusive Economic Zones.

We attach the term "lawfare" to these efforts to erode the protections of customary international law. It is a trend that is real and pressing and that could place your Navy at legal disadvantage unless we join the Convention. And the nations that would challenge us in this and other ways are, frankly, delighted that we are not a party to the Convention.

Joining will also give us a stronger moral standing to support partners who are being intimidated over questions of sovereignty

that should be resolved peacefully and voluntarily under the Convention. Candidly, I join my boss, Secretary Panetta, and Marty Dempsey in finding it awkward to suggest that other nations should follow rules that we have not yet agreed to ourselves.

And joining will give us the ability to influence key decisions that could affect our sovereign rights and those of our partners and friends in the Arctic and elsewhere, and this grows more important each day.

The real question to me is whether our country will choose to lead in the maritime environment from the inside or will follow from the outside.

Senator, you know, I tell my sons that there are three kinds of people in this world: those who make things happen, those who watch what happens, and those who wonder what happened. I do not want to see the United States or our Navy or Coast Guard wondering what happened when key decisions, potentially detrimental to our sovereignty, are made in our absence by the 161 members of the treaty.

Our recommendations to join reflect nearly 2 decades of military leaders who have studied this problem closely and arrived at the same conclusion that ratification is in our best interests. Today I join these officers, including every chairman of the Joint Chiefs since 1994, in giving my support to the Law of the Sea Convention and in asking for your advice and consent.

I thank you for the opportunity appear this morning, and I look forward to your questions. I thank you, sir.

[The prepared statement of Admiral Winnefeld follows:]

PREPARED STATEMENT OF ADM JAMES A. WINNEFELD , JR.

Mr. Chairman, Senator Lugar, distinguished members of the Foreign Relations Committee, thank you for the opportunity to appear before you this morning.

I appear here today as a career Sailor, as a former Commander of United States Northern Command, and in my current position—all assignments that have informed my perspectives on the Law of the Sea Convention.

It is a privilege to appear alongside so many uniquely qualified leaders, each with their own unique perspectives, to join in sharing our view that it is time for the United States to join the Law of the Sea Convention.

Joining this treaty will strengthen our posture and operations across the maritime domain, including in the Arctic, the Asia-Pacific region, the Strait of Hormuz, and the global shipping lanes at the heart of our military sealift capabilities.

Joining will solidify our global maritime leadership, enhance our credibility, and, as the world's foremost naval power, allow us to bring to bear the full force of our influence on maritime disputes.

We've listened closely over many years to the rationale for why we should not join, and take these concerns very seriously.

Some say that joining will result in a loss of sovereignty for the United States. I believe the opposite to be true.

Some say joining the Convention will open U.S. Navy operations to the jurisdiction of international courts. This is not true, as was specifically declared in the 2007 proposed Senate declarations and understandings. Many other nations who have joined have exempted their military activities from the treaty.

Some say it will require us to surrender our sovereignty over our warships. This is erroneous. We will not let this happen, and the Convention does not require it.

Others say it will cause us to have to alter our rules of engagement. This is also false—joining the Convention would not require any change whatsoever to our rules of engagement

Still others say it means our naval activities will be restricted in or beyond areas in which we now operate. This is false as well. In fact, if we do not join the Convention, we are more at risk than ever of nations attempting to impose such limitations under evolving interpretations of customary international law.

Customary international law is not static and joining the Convention will protect us from persistent attempts to erode the protection of customary international law, as a number of states, including those with growing economic and military power, advance national laws that attempt to restrict our maritime activities, particularly within the bounds of their Exclusive Economic Zones. This is contrary to the Convention, but is a trend that is real and pressing and that could place your Navy at an enormous legal disadvantage. Joining will allow us to go on the offensive against such self-serving "lawfare" activity that runs counter to our vital interests. Nations that would challenge us in the maritime domain are delighted that we have not joined. Meanwhile, there are other nations—such as North Korea, Iran, Syria, and Venezuela—in whose company I believe it is not in our interest to remain as nonparties to the Convention.

Joining will also give us stronger standing to advance treaty arguments in support of partners who are being intimidated over disputes that should be resolved peacefully and voluntarily under the Convention. Candidly, I find it awkward to suggest that other nations should follow rules that we haven't even formally agreed to ourselves.

And joining will give us a seat at the table when key decisions are being made that could affect our sovereign rights and those of our partners and friends in the Arctic—this is more timely than it has ever been in the history of the Convention.

Our recommendation to join reflects nearly two decades of military leaders who have studied this problem and who have continued to come to the clear conclusion that ratification is in our best interests.

Today, I join those officers, including every Chairman of the Joint Chiefs since 1994 when this was first submitted, in giving my unwavering support to the Law of the Sea Convention and in asking for your advice and consent.

The CHAIRMAN. Thank you very much. Appreciate it.

Admiral Greenert, proceed.

STATEMENT OF ADM JONATHAN W. GREENERT, CHIEF OF NAVAL OPERATIONS, U.S. NAVY, WASHINGTON, DC

Admiral GREENERT. Thank you, Chairman Kerry, Ranking Member Lugar, distinguished members of the committee. I am honored to appear before you to discuss the Law of the Sea Convention. You will have to excuse me. I have a little bit of laryngitis, but I will get through this.

This morning I would like to make three points, if I may.

No. 1, the Law of the Sea Convention will help ensure the access that the Navy needs to operate forward, and Senator, operating forward is what we are about. That is where we are at our best. That is where we serve the Nation best. That is the key to our effectiveness.

No. 2, the Convention will provide a formal and consistent framework with legal certainty to peacefully settle maritime disputes.

And No. 3, the Convention will help ensure we remain consistent with our principles and will enhance our multilateral cooperation. That I have found in spades as I have interfaced with heads of navy around the world.

As the world's preeminent maritime power, the U.S. Navy will benefit from the support the Convention provides our operations, especially the broad navigational rights that are guaranteed on the high seas and inside Exclusive Economic Zones of the other nations. For example, in the past several years, some nations in the Middle East and the Asia-Pacific region have complained about U.S. Navy survey ships operating within their Exclusive Economic Zones. Commanders have consistently responded by asserting our rights under the Convention and customary international law. However, our argument would carry much more weight if the United States were a party to the Convention. Joining the Conven-

tion would give our day-to-day maritime operations a firmer, codified legal foundation. It would enable and strengthen our military efforts. It will not limit them.

The Convention provides a formal and consistent framework for peaceful resolution of maritime disputes. The Convention defines the extent of control that nations can legally assert at sea and prescribes procedures to peacefully resolve differences. It is an important element in preventing disagreements from escalating into a confrontation or potentially conflict.

Recent interference with our operations in the western Pacific and some rhetoric by Iran about closing the Strait of Hormuz underscore the need to be able to use the Convention to clearly identify and respond to violations of international law that might attempt to constrain our access. As a member of the Convention, our ability to press the rule of law and to peacefully deter conflict will certainly be enhanced.

Remaining outside the Convention is just inconsistent with our principles, our national security strategy, and our leading position in maritime affairs. For example, our forces in the U.S. Fifth Fleet in the Arabian Gulf lead a coalition maritime force that enforces maritime security in the greater Middle East. Out of the 26 nations that serve in this coalition, only 3, including the United States, are not a party to the Convention. This coalition asserts rights on a daily basis under the Convention to visit vessels, counter piracy, and render assistance to vessels in danger. However, America's status as a nonparty to the Convention is sometimes questioned by our coalition partners. Acceding to the Convention will enhance our position as a leader of that coalition and a leader in the world of maritime nations in the Middle East and elsewhere.

In closing, aided by the framework provided by the Convention, your Navy will continue to be critical to our Nation's security and prosperity.

I appreciate the committee's longstanding support of the men and women of the Navy, and I look forward to continuing to work with you as we address these challenges. Thank you, Senator.

[The prepared statement of Admiral Greenert follows:]

PREPARED STATEMENT OF ADM JONATHAN W. GREENERT

Chairman Kerry, Senator Lugar, and members of the committee, thank you for the opportunity to testify in support of the United States joining the Law of the Sea Convention (LOSC). I join my predecessors in supporting the Convention and I believe it is important to our ability to reduce our reliance on customary international law, provide a mechanism to resolve disputes, assure our access across the maritime domain, and protect our Nation's security and prosperity. I appreciate your continued support of our 625,000 Sailors and civilians and look forward to working together in pursuing our national security objectives.

As the world's preeminent maritime power, the United States will benefit from the support LOSC provides to our operations. Our ability to deter aggression, contain conflict, and fight and win our Nation's wars depends upon our ability to freely navigate the world's oceans. The rules inherent in LOSC support worldwide access for military and commercial ships and aircraft without requiring permission of other countries, such as in the archipelagic waters of countries like Indonesia, or in the Arctic where receding ice is opening new routes for transit. The Convention affords our submarines the right to transit submerged and aviation-capable ships to transit while conducting flight operations through international straits; establishes broad navigational rights and freedoms for our ships and aircraft in the exclusive economic zones of other nations and on the high seas; and reinforces the sovereign status of our vessels. The Convention affords navigational rights for ships without

regard to cargo or means of propulsion, an extremely important right given our extensive use of nuclear power.

LOSC provides a formal and consistent framework for the peaceful resolution of maritime disputes. It defines the extent of control nations can legally assert at sea and prescribes procedures to counter excessive maritime claims. Acceding to LOSC will increase our credibility in invoking and enforcing the treaty's provisions and maximize our influence in the interpretation and application of the law of the sea. Recent interference with our operations in the Western Pacific and rhetoric by Iran to close the Strait of Hormuz underscore the need to use the Convention to clearly identify and respond to violations of international law that seek to constrain access to international waters. As a party to the Convention, we will bolster our position to press the rule of law and maintain the freedom to conduct military activities in these areas.

Remaining outside LOSC is inconsistent with our principles, our national security strategy and our leadership in commerce and trade. Virtually every major ally of the United States is a party to LOSC, as are all other permanent members of the U.N. Security Council and all other Arctic nations. Our absence could provide an excuse for nations to selectively choose among Convention provisions or abandon it altogether, thereby eroding the navigational freedoms we enjoy today. Accession would enhance multilateral operations with our partners and demonstrate a clear commitment to the rule of law for the oceans. For example, under the Convention, warships are authorized to stop and board vessels if they are suspected to be without nationality or engaged in piracy. By joining LOSC, we would "lock in" these authorities as a matter of treaty law and thus strengthen our ability to conduct counterpiracy operations across the globe and provides an important tool to support counterproliferation efforts, and maritime interdiction of terrorists and illegal traffickers tied to terrorism.

LOSC supports the operations of our military forces. Under the Convention we retain the right to define what constitutes our own military activities, which are excluded from dispute resolution procedures. Moreover, the Convention does not limit our ability to use force in self-defense. I would not support LOSC if I thought it limited our Nation's military options.

The Navy's ability to retain access across the maritime domain and adjacent airspace, especially the strategic maritime crossroads, would be enhanced by accession to LOSC. As the world's preeminent maritime power, the United States has much to gain from the legal certainty and global order brought by LOSC. As a party to LOSC, we will be in a better position to counter the efforts of nations to restrict freedom of the seas. The United States should not rely on customs and traditions for the legal basis of our military and commercial activity when we can instead use this Convention. It is an important element of protecting our Nation's security and prosperity.

The CHAIRMAN. Thank you very much, sir. We appreciate it.

Commandant.

STATEMENT OF ADM ROBERT J. PAPP, JR., COMMANDANT, U.S. COAST GUARD, U.S. DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, DC

Admiral PAPP. Good morning, Chairman Kerry, Senator Lugar, and the distinguished members of the committee.

It is my privilege to testify before you here today on how the United States should accede to the Law of the Sea Convention because it will enhance the Coast Guard's operations and maritime leadership. Like six previous commandants, I urge you to accede to the Convention without further delay.

Having served on six Coast Guard cutters, commanding four of them, I view things through a sailor's eye. My fictional hero, Captain Jack Aubrey of Patrick O'Brian's "Master and Commander" book series always positioned his ship in battle so that he could hold the weather gauge. The ship with the weather gauge is upwind and has greater ability to maneuver relative to other ships and it maintains its position of advantage and is able to dictate the terms of engagement. I can think of no better analogy to describe

the Law of the Sea Convention than providing the Coast Guard with the weather gauge to protect Americans on the sea, protect America from threats from the sea, and to protect the sea itself.

Since the founding of our Nation, American prosperity has depended upon having safe, reliable, and secure maritime trade. Today the Convention's provisions set forth the global maritime framework, among other things. The Convention's provisions contain internationally recognized sovereign maritime boundaries. It is this framework that we rely upon every day to aid mariners in distress, to protect our fish stocks, to intercept illicit traffickers attempting to deliver drugs, persons, and other illegal cargos to our shores, and to preserve our maritime sovereignty, navigational rights, and freedoms. Indeed, our many bilateral and multilateral law enforcement agreements that we rely upon to stop drug smugglers, interdict human traffickers, and protect our oceans are predicated upon the Convention. These agreements, which have been described as the fabric of the Law of the Sea, are concluded, interpreted, and enforced under the Convention's framework.

The Convention also provides us with the largest Exclusive Economic Zone, or EEZ, of any coastal State. Our EEZ contains vast fisheries, energy, and other resources. Beyond the EEZ lies the Extended Continental Shelf, or ECS. Its seabed, particularly off Alaska, is a new frontier that contains 20 to 30 percent of the world's untapped fossil fuel resources. And it is the Convention that contains the mechanisms to seek and ensure international recognition of our sovereign ECS rights. Joining the Convention will not only put these sovereign rights on the strongest legal footing, it will also bolster our ability to ensure stewardship of our ECS resources.

There is no better example of this than the emerging Arctic. Our ability to effectively plan and allocate Arctic resources depends in part upon the delineation of maritime boundaries, sovereign rights, privileges, and navigational freedoms. Yet, as we work alongside our partner Arctic nations on issues of governance such as cooperative search and rescue agreements, oil spill prevention, and response protocols and delineation of maritime claims, we remain the only Arctic nation that is not a party to the Convention.

Being a nonparty detracts from our ability to best provide for the safety, security, and stewardship of our vast resource-rich maritime and emerging Arctic domains. The Convention contains an established legal framework for the oceans. Unlike customary international law which can change, the Convention codifies this framework and we follow this framework. We demand others do so. Yet, we remain outside of it.

In sailors' terms, this puts us downwind and it forces us to tack up into the wind when we should be leading on maritime issues. That is why I am urging you today to seize the weather gauge and to accede to the Convention.

Thank you for this opportunity to testify and I look forward to answering your questions.

[The prepared statement of Admiral Papp follows:]

PREPARED STATEMENT OF ADM ROBERT J. PAPP, JR.

Good morning, Chairman Kerry, Ranking Member Lugar, distinguished members of the committee, I am pleased to have the opportunity to discuss how United States accession to the Law of the Sea Convention would enhance Coast Guard operations and advance our global leadership. Like the six commandants before me, I am firmly convinced that the legal certainty and stability accorded by the Convention will strengthen Coast Guard efforts in: (1) sustaining mission excellence as America's maritime first responder; (2) protecting American prosperity; and (3) ensuring America's Arctic future.

The United States is a maritime and Arctic nation. We have one of the world's longest coastlines, measuring more than 95,000 miles, and the world's largest Exclusive Economic Zone (EEZ), responsible for over $122 billion in revenue annually. The U.S. maritime transportation system is comprised of 361 ports and thousands of miles of maritime thoroughfares that support 95 percent of U.S. foreign trade. Most of that trade is transported on over 7,500 vessels that make more than 60,000 visits to U.S. ports annually. The need to secure our maritime rights and interests, including ocean resources, is paramount. To this end, the Coast Guard maintains a persistent maritime presence to protect Americans on the sea, to protect America from threats delivered by sea, and to protect the sea itself.

SUSTAINING MISSION EXCELLENCE AS AMERICA'S MARITIME FIRST RESPONDER

As one of the five armed services of the United States, the Coast Guard provides support to the geographic combatant commanders and U.S. naval presence around the world to ensure the Nation's national security. The ability to navigate freely in international waters, engage in innocent and transit passage, and enjoy high seas freedoms are critical rights under international law, which the Convention codifies. These rights allow our cutters and aircraft to move without the permission of or need to provide advance notice to other coastal nations. I add my voice to the other armed services in urging that we "lock in" these crucial rights through the Convention to protect them from erosion.

We currently assert navigational rights and freedoms based on customary international law, and we will continue to do so if necessary to fulfill the responsibilities the Nation entrusts to us. But customary international law can evolve over time and is subject to change and erosion. By becoming a party to the Convention we will secure these favorable rules on the strongest legal footing and better position the Coast Guard to exercise these rights to sustain operations. For the Coast Guard, one of the Convention's most important provisions is the stabilization of territorial sea claims to 12 nautical miles. Joining the Convention strengthens our position to contest and curtail foreign excessive territorial sea claims.

Although we do not recognize excessive territorial sea claims made by some other nations, they nevertheless impact our mobility and can interfere with our drug interdiction and other law enforcement activities. By limiting territorial sea claims to 12 nautical miles, the Convention secures vital boarding rights for the Coast Guard outside this zone. Similarly, the Convention secures the important rights of approach and visit to determine vessel nationality. Where vessel nationality is not properly established, the Convention provides the process for concluding that a vessel is stateless and allowing the enforcement of U.S. laws. These provisions are particularly important to our efforts to interdict and prosecute smugglers using stateless vessels for illicit activity, including semi- and fully submersible vessels. Last year, the Coast Guard interdicted 40 vessels and six semisubmersibles engaged in drug trafficking, assimilating many of those vessels to stateless vessels.

For many of the laws the Coast Guard enforces, especially those involving drug trafficking, illegal immigration, and counterterrorism, we leverage international partnerships to monitor, interdict, and prosecute those who threaten our Nation's security. Our international partners are overwhelmingly parties to the Law of the Sea Convention. Our status as a nonparty presents an unnecessary obstacle to gaining their cooperation. Accession to the Convention would most effectively cement a common cooperative framework, language, and operating procedures used in securing expeditious boarding, search, enforcement, and disposition decisions, thereby enabling on-scene personnel, cutters, and maritime patrol aircraft to pursue further mission tasking.

We also must cooperate and engage with our international partners to advance global and regional security priorities. Strengthening these relationships is crucial for sustaining our international leadership. Acceding to the Convention is an important step to achieving these goals. Frequently, the Coast Guard works internationally to train other nations' navies. These navies more closely resemble the Coast Guard in authority and activity, uniquely positioning us to expand important mari-

time partnerships. The Convention serves as our guiding framework in helping these navies develop domestic law, protocols, and strategies. The Coast Guard needs the Convention to better promote United States security interests through capacity-building. Building this capacity is an important force multiplier for the Coast Guard that further secures stability of the oceans, promotes efficient maritime commerce, and aids us in achieving strategic objectives regarding safety, security, and environmental protection.

PROTECTING AMERICAN PROSPERITY

Joining the Convention will enhance the Coast Guard's ability to protect America's prosperity by facilitating commerce and preserving ocean resources. Commercial ships, which are the engines that drive the international supply chain, rely on the same navigational rights as our cutters to traverse the oceans. Joining the Convention guarantees that commercial ships will continue to enjoy these same rights and navigation freedoms, assuring that maritime shipping remains the most cost-efficient mode of transportation. America needs the Convention to secure stability in maritime trade, boost economic confidence, and open the door to exploitation of deep seabed resources by U.S. industry.

Vibrant and safe U.S. ports are also vital to a healthy and thriving economy. The safety of U.S. ports, and the vessels that call on them, is a function of U.S. port state control. The Coast Guard maintains a comprehensive port state control program, including vessel inspections, assuring the proficiency of mariners, and monitoring port activity to ensure compliance with the highest standards of maritime safety, security, and environmental protection. Uniform international standards, negotiated and adopted through the International Maritime Organization (IMO), are the foundations of this program. These standards, accepted by the international community, are the linchpin of a transportation system that depends on speed—inconsistent and misunderstood standards only lead to expensive delay and mishaps.

In international maritime shipping, where a ship may be flagged by one jurisdiction, owned by a party in another jurisdiction, chartered by a party in yet another jurisdiction, sail through the coastal zones of several jurisdictions, and call in the ports of many other jurisdictions, uniformity of standards is key. The concept of port state control recognizes responsibility through the hierarchy of a ship's affiliations (including owner, ship classification society, and flag state) to comply with these internationally agreed standards, which should result in compliance wherever a ship is located, including when it sails through waters of the United States but is not calling on a U.S. port (and thus not subject to our port state jurisdiction).

The shipping standards negotiated at the IMO are the fabric of the port state control regime that is underpinned by the Convention. It is the Convention that sets forth the responsibilities of flag states, port states, and coastal states for shipping, and the Convention is the agreement that holds nations accountable for adhering to those responsibilities. Because of the currently anomalous situation where the United States is a party to the substantive IMO standards, but not the underlying legal framework of the Convention, our ability to ensure comprehensive global accountability demanded by the port state control framework is weakened. Acceding to the Convention would strengthen Coast Guard negotiation efforts at the IMO, where we lead in the continued development of these important international standards. Although other countries look to us for leadership, there is growing skepticism for certain U.S. negotiating positions because the United States is not a party to the Convention. Becoming party to the Convention would increase the Coast Guard's credibility as a leader at IMO and result in greater effectiveness in ensuring that U.S. interests are reflected in the standards that are ultimately adopted. The Coast Guard needs the Convention to better promote United States safety, security, and environmental interests at the IMO.

The Convention also maximizes legal certainty for United States sovereign rights over ocean resources in the largest EEZ in the world, as well as energy and mineral and other resources on our Extended Continental Shelf. The Convention provides the mechanism to assure international recognition of additional United States sovereign rights on an Extended Continental Shelf. Moreover, due to overfished and depleted fish populations, effective management of migratory fish stocks and fisheries will continue to be a contentious issue for the foreseeable future. The Convention is widely accepted as the legal framework under which all international fisheries are regulated and enforced. The Convention imposes responsibilities on the coastal states to manage their fishery resources responsibly and provides a process for resolving conflicts between competing users. The Coast Guard defends United States sovereign rights by protecting our precious ocean resources from poaching, unlawful

incursion, and illegal exploitation. Joining the Convention places these sovereign rights on a firmer legal foundation, bolstering the Coast Guard's continued ability to ensure our Nation's sovereign rights are respected.

In particular, becoming a party to the Convention will give the Coast Guard greater leverage in our efforts to eliminate illegal, unreported, and unregulated fishing. American fishermen are currently abiding by standards contemplated by the Convention and further detailed in the related U.N. Fish Stocks Agreement. They are adversely affected by foreign fishermen who illegally harvest highly migratory fish stocks. In another anomalous situation, the United States is a party to the U.N. Fish Stocks Agreement, which is directly related to the legal regime of the Law of the Sea Convention, even though we have not joined the underlying Convention. As a party to the Convention, we would be in a stronger position to persuade other nations to abide by the U.N. Fish Stocks Agreement and other modern international standards of fisheries management and thus advance our Nation's interests in this field.

The Convention also provides a framework for the United States, as a coastal state, to address marine pollution from foreign sources at the international level. The Convention's environmental provisions support the Coast Guard's strategic goal and statutory mission to enforce existing U.S. environmental laws relating to the oceans. Even spills far offshore can have devastating impacts to the economic well-being of Americans whose livelihoods depend on the oceans. The Coast Guard is the Nation's first responder for any oil spill on the ocean. We need the strongest legal footing possible to confront any crisis on the ocean, particularly in the case of transboundary pollution. As other nations increase their offshore energy production and exploration efforts in areas close to our shores, it is imperative that the Coast Guard work cooperatively with those nations to prevent and respond to incidents. The Convention provides a primary basis of cooperation, but unlike all our neighboring nations, the United States is not a party. Joining the Convention will give the Coast Guard a much-needed additional tool to reduce the risk of marine pollution from foreign nations and vessels from reaching our waters and shores.

ENSURING AMERICA'S ARCTIC FUTURE

As the ice pack in the Arctic recedes, more use will be made of those waters, greatly increasing American economic interests in the region. Melting ice in the Arctic also raises the significance of issues such as rights of navigation and offshore resource exploration and extraction and environmental preservation and protection. The Coast Guard has robust statutory authority to protect U.S. interests in the Arctic. The Coast Guard has been operating in the Arctic since Alaska was a territory, and our responsibilities will continue to expand with America's interests. As an example, the United States is in the midst of implementing a comprehensive maritime search and rescue agreement with other Arctic nations, yet the United States is the only Arctic nation not a party to the Convention. Additionally, we are negotiating a new agreement with our Arctic neighbors on oil pollution preparedness and response in the region. The Convention is also the "umbrella" for those discussions. Our negotiation position would be much stronger if the United States were a party to the Convention.

Arctic nations are using the Convention's provisions in article 76 to file Extended Continental Shelf submissions with the Commission on the Limits of the Continental Shelf to perfect their claims to areas over which they have exclusive rights to resources on and beneath the Arctic seabed. A United States submission to the Continental Shelf Commission could help perfect U.S. claims to major additional seabed resources out to 600 miles from the Alaska coast, far beyond the 200 mile EEZ. This area implicates many of the Coast Guard's missions, including protection of the marine environment.

We must continue to seek out opportunities with our Arctic neighbors and the global community to address the critical issues of governance, sovereign rights, environmental protection, and security in the Arctic. While there are many challenges, the increasingly wet Arctic Ocean presents unique opportunities. The Convention provides the key legal framework we need to take advantage of these opportunities. The Coast Guard needs the Convention to ensure America's Arctic future.

WHY ACCEDE NOW?

The Convention and the subsequent 1994 Agreement on implementing Part XI were diplomatic triumphs for the United States. These documents preserve and protect our interests by codifying international law that is highly favorable to the United States as both a coastal state and preeminent maritime power. In order for

the Coast Guard to most effectively use the Convention's provisions, the United States must become party.

For decades, we have largely acted in accordance with a treaty that we have no ability to shape and without the additional benefits that come from being a party. We need to lock in the favorable navigational rights that our military and shipping interests depend on. We need to be a party as the best way to secure international recognition of our sovereign rights over our Extended Continental Shelf. We need to be a party to influence and lead the further development of the international rules governing the oceans. Too much is at stake to rely on the inherently changeable nature of customary international law to protect our Nation's economic and security interests. Joining the Convention will best position us to protect the rights accorded by the Convention and to defend against any attempt to erode those rights.

CONCLUSION

The Coast Guard needs a comprehensive legal framework that addresses activities on, over, and under the world's oceans to further its statutory missions. We also need a solid legal framework that customary international law cannot provide as it remains subject to change based on state practice—whether at the local, regional, or global level. The Convention is this certain framework. The Convention was, and still is, a resounding success for U.S. diplomacy. Acceding to the Convention will strengthen the Coast Guard's ability to protect U.S. maritime interests. The Convention is widely accepted; there are currently 162 parties. Of the eight Arctic nations, only the United States is not a party to the Convention.

I can see no downside to the Coast Guard in the United States acceding to the Law of the Sea Convention. To the contrary, joining the Law of the Sea Convention will immensely enhance the Coast Guard's ability to address emerging threats that challenge our Nation and safeguard the American people, our environment, and ocean resources that benefit all Americans.

The CHAIRMAN. Thank you very much, sir. We appreciate it.

General Fraser.

STATEMENT OF GEN. WILLIAM M. FRASER III, COMMANDER, U.S. TRANSPORTATION COMMAND, SCOTT AIR FORCE BASE, IL

General FRASER. Chairman Kerry, Ranking Member Lugar, and distinguished members of this committee, it is indeed my distinct privilege to be here with you today representing the United States Transportation Command. I appreciate this opportunity to testify concerning the Law of the Sea Convention, and I join an array of other senior military officers, both past and present, which support the Law of the Sea Convention.

The United States Transportation Command is the Department of Defense's distribution process owner and global distribution synchronizer responsible for planning global deployment and distribution operations. USTRANSCOM relies on unfettered global mobility, unimpeded flow of cargo by air and sea through strategic chokepoints and unchallenged access to the world's navigation lanes by our military assets and our commercial industry partners to support our forces around the globe. On any given day, USTRANSCOM has approximately 30 ships loading, unloading, or underway, and we have a mobility aircraft taking off and landing every 90 seconds. These assets are operated by our military components and our commercial partners. It is vital that we maintain freedom of the high seas and international overflight routes for our military and our commercial operations as these freedoms are essential to our Nation's strategic mobility.

Our military conducts activities and operations across air, ocean, and sea-lanes. Unobstructed passage through these lanes is paramount for the United States Transportation Command as we provide support and sustainment to our warfighters around the world.

For example, our civilian air carriers and transporters transport almost all of our military passengers and much of our air cargo over the ocean and sea-lanes. Unhindered overflight of these transports is crucial to our mission's success. Moreover, the vast majority of our military equipment and supplies are transported around the world through ocean and sea-lanes by our commercial partners. They conduct these movements typically without escort or onboard security teams.

In today's environment, we assess our navigation and overflight rights through customary international law. To better secure our global access, joining the Law of the Sea Convention would provide a solid legal foundation to our military and commercial partners that transport the lifeline of supplies and equipment to our warfighters around the globe. Specifically, accession to the Law of the Sea Convention secures navigation and overflight rights for the vessels and aircraft operated by both our military and our commercial partners.

The Law of the Sea Convention protects our military mobility by legally binding, favorable transit rights that support our ability to operate around the globe anytime and anywhere. Our sealift industry partners will be internationally protected as they transit the strategic chokepoints from the Strait of Gibraltar to the Straits of Malacca and Hormuz. As we move forward and look to the future challenges, support of the Law of the Sea Convention is essential to our national strategy and security.

Chairman Kerry, Ranking Member Lugar, and all the members of this committee, I want to thank you for your continued support of United States Transportation Command, and to all of our men and women in uniform and especially to their families. I am grateful for this opportunity to be here today with my distinguished colleagues at this table, and I ask that my written statement be submitted for the record. I look forward to your questions. Thank you.

[The prepared statement of General Fraser follows:]

PREPARED STATEMENT OF GEN. WILLIAM M. FRASER III

Chairman Kerry, Senator Lugar, and distinguished members of the committee, it is my privilege as the Commander of the United States Transportation Command (USTRANSCOM) to testify today on the Law of the Sea Convention. As the Department of Defense's Distribution Process Owner and Global Distribution Synchronizer, USTRANSCOM relies on unfettered global mobility, unimpeded flow of cargo by air and sea through strategic chokepoints, and unchallenged access to the world's navigational lanes by our military assets and our commercial industry partners to support our forces around the globe. I believe that a comprehensive, globally accepted, and stable legal basis for navigating and overflying the world's oceans is essential to support our forces worldwide and to ensure our national security.

Joining this Convention would codify several important recognized rights of navigation into a binding legal foundation. It supports our national security interests by defining the rights of U.S. military and civilian vessels as they meet our mission requirements, reaffirms the sovereign immunity of our warships and other vessels owned by the United States and used for government noncommercial service, and preserves our right to conduct military activities and operations in exclusive economic zones. As the defense strategy places greater demands on our ability to mobilize forces, guaranteed access to shipping and overflight lanes becomes increasingly important to support our forces overseas.

Currently, the United States relies upon customary international law as the primary legal basis to secure global freedom of access. However, as emerging powers around the world grow and modernize, states may seek to redefine or reinterpret customary international law in ways that directly conflict with our interests, including freedom of navigation and overflight, potentially challenging our global mobility

needs. This Convention represents the best guarantee against erosion of essential navigation and overflight freedoms that we take for granted through reliance on customary international law. Accession will give the United States leverage to counter efforts by other nations seeking to reshape current internationally accepted rules we depend on for transporting cargo and passengers.

USTRANSCOM's military and commercial partners operate across every portion of the globe in defense of our national interests. Before we send them into harm's way, it is important for our sailors and airmen to know they have the backing and authority of U.S. accession to the Convention on the Law of the Sea rather than depending on customary international law which some nations attempt to ignore or challenge. This is especially true for strategic chokepoints such as the Bab Al Mandeb, the Gulf of Aden, and the Strait of Hormuz. Iran's recent challenge to freedom of navigation through the Strait of Hormuz for a military exercise is an example of threats to international law and our ability to move critical supplies through that region. Acceding to the Convention would provide U.S. forces and commercial partners the strongest legal footing for countering an Iranian antiaccess attempt to close the strait to international shipping.

Being a member of the Convention will help to simplify this complex maritime environment both for our military forces as well as our commercial partners who have played a critical role in developing new routes for transporting DOD cargo and in enabling access to a vast global infrastructure for transport of DOD cargo. More than 90 percent of all military supplies and equipment are transported around the world by sea, much of it by commercial vessels. This Convention provides important legal support for our commercial partners who transport our cargo, unescorted by U.S. warships, under the legal regimes of the Law of The Sea Convention. Without codification of those rights, our commercial partners are at greater risk.

Likewise, the Convention will provide important legal support to our civil air carrier partners who transport nearly all military passengers and a significant amount of DOD air cargo over the sea. As we continue to improve efficiency in air transportation, unimpeded overflight access to the world's oceans and sea-lanes will remain a necessary component to conducting our mission.

The Convention would also support freedom of navigation and overflight in emerging areas of strategic importance including the South China Sea and the Arctic. The defense strategy requires continued and future access to navigational routes throughout Asia, particularly in the South China Sea, in order to sustain our forces in that region. As the Arctic becomes increasingly important for mobility, the interpretation of the navigational provisions will become even more critical. We need U.S. leadership as a party to the Convention to influence and lead this discussion. In both regions, the Convention will help defend our rights to transport cargo and personnel against nations attempting to assert extended territorial claims.

The United States has a rich history as a maritime and aviation leader in the international community. We must continue to lead in ensuring access rights to shipping lanes and overflight routes. Accession to the Law of the Sea Convention allows the United States to continue to have a leadership role in developing and influencing the Law of the Sea as a leader among sovereign nations. I strongly support U.S. accession to the Convention.

The CHAIRMAN. Thank you very much, General.

Let me just say that all written testimonies will be placed in the record in full as if delivered in full, and we look forward to having them part of the record.

General Jacoby.

STATEMENT OF GEN CHARLES H. JACOBY, JR., COMMANDER, U.S. NORTHERN COMMAND, PETERSON AIR FORCE BASE, CO

General JACOBY. Chairman Kerry, Senator Lugar, distinguished members of the committee, thank you for the opportunity to appear today.

As Commander of U.S. Northern Command, I am assigned responsibility for military defense of our continental United States homeland and nearby waters. As Commander of North American Aerospace Defense Command, I am assigned responsibility for maritime and aerospace warning and for aerospace control to the Governments of the United States and Canada.

Based on my command responsibilities, principally in the Arctic, my experience, and our changing operating environment, I believe there is a compelling reason for the United States to accede to the Law of the Sea Convention for the safety and security of our homeland. In the maritime environment, our military defensive operations are best served by a clear, stable, rules-based, cooperative international framework that helps our friends and allies work with us, helping us be the security partner of choice.

Now, Arctic cooperative security is one of the five lines of operation delineated in U.S. Northern Command's theater campaign plan. U.S. accession to the Convention, joining all the other seven Arctic nations, would be helpful in supporting peaceful opening of the Arctic, which is my mission, and in dealing with non-Arctic States that have shown an interest in engaging in the Arctic and in resolving sovereignty, natural resource, infrastructure, communication, navigation, military presence, and public safety issues in the Arctic as human activity increases.

For our maritime warning mission, accession to the Convention will help us establish the global operational relationships that are critical to information-sharing, recognition of patterns of activity, and quick identification of safety, security, and defense issues.

We are grateful for everything the members of the committee have done to ensure our ability to defend our citizens here at home. I am honored to be here, and I look forward to your questions.

[The prepared statement of General Jacoby follows:]

PREPARED STATEMENT OF GEN CHARLES H. JACOBY, JR.

Chairman Kerry, Senator Lugar, distinguished members of the committee, I appreciate this opportunity to provide my position on the Law of the Sea Convention. As a combatant commander with mission responsibilities for homeland defense and civil support in the maritime approaches to the homeland with an increasingly accessible Arctic Ocean, I fully support our Nation's accession to the Convention. From an Arctic perspective, our accession to the Convention is important to encouraging cooperative relationships among Arctic states and securing Continental Shelf limits and natural resources in the Arctic as human activity increases. From a global perspective, with the overwhelming majority of countries being party to the Convention, it is the internationally recognized legal framework that will formalize our Nation's standing and leadership where our vital interests are at stake, secure U.S. rights over extensive marine resources, promote freedom of navigation and overflight, and support our national security interests in the maritime domain.

Acceding to the Convention will reinforce our leadership role in shaping international maritime policy and overseeing peaceful economic activity on and under our world's seas and oceans. Greater access to the Arctic Ocean highlighted by Shell's exploratory drilling this summer and the increasing trend in commercial shipping through the Bering Strait are new circumstances that highlight the benefits the United States can access through the Convention for continued economic progress, freedom of maneuver, conservation of offshore resources, and protection of the sensitive maritime environment. Joining the Convention would help our Nation in each of these respects.

Cooperative partnerships are essential for our national security. As human activity in the Arctic region increases, a cooperative and peaceful opening of Arctic waters is in the interest of the global community and in particular the Arctic nations. Accordingly, Arctic Cooperative Security is one of the five lines of operation delineated in U.S. Northern Command's Theater Campaign Plan. However, the United States is the only Arctic nation that has not acceded to the Convention, which could impede international cooperation and eventually limit the development of cooperative partnerships with the other members of the Arctic Council, Canada, Denmark, Finland, Iceland, Norway, Sweden, and Russia. Future defense and civil support scenarios in the Arctic maritime domain will require closely coordinated, multinational operations in this expansive and resource rich region. Therefore, U.S. accession to the Convention will set the conditions for partnership and cooperation,

resulting in more efficient and effective multinational command and control and operations in the maritime domain.

I support the current and past administrations' position, as well as that of my primary interagency partner in the maritime domain, the U.S. Coast Guard, to become a Party to the Convention. Joining the Convention will protect and advance a broad range of significant economic and national security interests, and ultimately contribute to the peaceful opening of the Arctic in a manner that strengthens the United States and international cooperation.

We are grateful for everything the members of this committee have done to ensure our ability to defend the homeland. We appreciate your support of our Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, and of their families for their efforts to defend our Nation at home and abroad. With your help, North America will be even safer tomorrow than it is today.

The CHAIRMAN. Thank you, sir. Thank you, General.

Admiral Locklear.

STATEMENT OF ADM SAMUEL J. LOCKLEAR III, COMMANDER, U.S. PACIFIC COMMAND, CAMP H.M. SMITH, HI

Admiral LOCKLEAR. Chairman Kerry, Senator Lugar, and members of the committee, thank you for this opportunity to appear before you to discuss the subject of strategic importance and how it relates to the Asia-Pacific region.

As the Commander of United States Pacific Command, I join my colleagues and my other combatant commanders in recommending that the United States accede to the Law of the Sea Convention. After careful reflection, I am fully confident that our accession to the Convention will advance U.S. national security interests in the Pacific Command area of responsibility.

As you know, this region is predominantly maritime. It covers half the planet. It is home to three dozen nations, over 3.6 billion people, the world's largest economies, a significant part of our national economy, the world's largest militaries, as well as some of the most important sea and air lines of communication. As the United States military executes our rebalance to the Pacific, acceding to the Convention is essential to locking in a stable, legal framework for the maritime domain that is favorable to our national interests and preserves our access to this critical region. And as a Pacific power, the United States must continue to lead the effort to maintain security in the region which has defended freedom, enabled prosperity, and protected peace there in that area for more than six decades.

Joining the Convention will reinforce United States international leadership in the maritime domain. The Convention specifically codifies the rights, the freedoms, and the uses of the sea that are critical for our forces to transit through and operate in the waters of the Asia-Pacific region.

As the populations and the economies of the Asia-Pacific region continue to grow, competing claims in the maritime domain by some coastal states are becoming more numerous and contentious. Some of these claims, if left unchallenged, will put us at risk for our operational rights and our freedoms in key areas of the Asia-Pacific. Nowhere is this more prevalent than in the South China Sea where claimants have asserted broad territorial and sovereignty rights over land features, sea space, and resources in the area. The Convention is an important component of a rules-based approach that encourages peaceful resolution of these maritime dis-

putes. Moreover, the Convention codifies an effective balance of coastal state and maritime state rights, a stable legal framework that we help to negotiate that is favorable to our interests and that we should leverage as a check on states that attempt to assert excessive maritime claims.

Currently the United States is forced to rely on customary international law as the basis for asserting our rights and freedoms in the maritime domain and because we are not a party of the Convention, our challenges are less credible than they might otherwise be. By joining the Convention, we place ourselves in a much stronger position to demand adherence to the rules contained in it; rules that we have been protecting from the outside since the 1980s and before.

Thank you for the opportunity to testify on this important Convention as it relates to this critical region. I look forward to your questions. Thank you.

[The prepared statement of Admiral Locklear follows:]

PREPARED STATEMENT OF ADM SAMUEL J. LOCKLEAR III

Mr. Chairman and members of the committee, thank you for the opportunity to testify before the committee today on this subject of strategic importance.

As the Commander of U.S. Pacific Command (PACOM), I join Secretary Clinton, Secretary Panetta, Chairman Dempsey, my fellow Combatant Commanders, and numerous other current and former leaders within the Department of Defense and United States Government in recommending that the United States accede to the Law of the Sea Convention. After careful reflection, I am fully confident that our accession to this Convention would advance U.S. national security interests in the PACOM area of responsibility (AOR). Specifically, the Convention sets forth and locks in a rules-based order that protects military activities which are vital to our operations in defense of the Nation, as well as our allies and partners.

As you know, the United States is refocusing on the Pacific after more than 10 years of war. As noted by Secretary Panetta, "We continue to face a challenging and complex global security environment, with multiple transnational threats including violent extremism, the destabilizing behavior of nations like Iran and North Korea, military modernization across the Asia-Pacific, and turmoil in the Middle East and North Africa." All of the foregoing challenges must be viewed against the backdrop of the world's increasing dependence on trade and commerce to and from the Asia-Pacific region.

It is critical for the United States to maintain its leadership role in the Pacific in order to best protect our vital security interests. As the Secretary of Defense stated in his testimony, a key component of our strategy is to reenergize and strengthen our network of defense and security partnerships throughout the Asia Pacific region. An area of universal interest among our allies and partners is protection of the rights and freedoms that underpin all nations' access to and uses of the world's oceans. Joining the Convention will ensure seamless integration of international legal authorities between our forces and those of our partners and will place the United States in the best possible position to continue to lead international efforts in the maritime domain.

Most important to me as the Commander of U.S. Pacific Command are the protections contained in the Convention for our navigational rights and freedoms, overflight rights and freedoms, military activities, and our rights to transit international straits and choke points without impediment. With more than half the world's ocean area within my AOR, forces assigned to me rely on these basic rights, freedoms, and uses daily to accomplish their mission. All of the foregoing rights and freedoms are specifically protected by the Convention.

As we look into the future, our status as a nonparty will increasingly disadvantage the United States. Presently, the United States is forced to rely on customary international law as the basis for asserting our rights and freedoms in the maritime domain. In situations where coastal states assert maritime claims that exceed the rights afforded to them by the Convention, USPACOM challenges such claims through a variety of means including the U.S. Freedom of Navigation program, military-to-military communications, and diplomatic protests issued through the State Department. When challenging such excessive claims through military-to-military or

diplomatic exchanges, the United States typically cites customary international law and the relevant provisions of the Convention. Unfortunately, because we are not a party to the Convention, our challenges are less credible than they would otherwise be. Other States are less persuaded to accept our demand that they comply with the rules set forth in the Convention, given that we have not joined the Convention ourselves.

In addition, as you know, customary international law depends in part on State practice and is subject to change over time. This is less so in the case of treaty or convention-based international law, which comes from written and agreed-upon terms and conditions that are contained in such treaties or conventions. Ironically, by not being a party to the Convention and relying on customary international law, our rights within the maritime domain are less well defined than the rights enjoyed by virtually all of the other nations within the PACOM AOR, and around the world with over 160 nations as parties. Moreover, by remaining outside the Convention, we leave ourselves potentially in a situation where other nations feel they can ignore the Convention's provisions when dealing with the United States, in favor of what they may view as less clear and more subjective obligations that may exist in customary international law.

As the Asia Pacific region continues to rise, competing claims and counter claims in the maritime domain are becoming more prominent. Nowhere is this more prevalent than in the South China Sea. Numerous claimants have asserted broad territorial and sovereignty rights over land features, sea space, and resources in the area. The United States has consistently encouraged all parties to resolve their disputes peacefully through a rules-based approach. The Convention is an important component of this rules-based approach and encourages the peaceful resolution of maritime disputes. Here again though, the effectiveness of the U.S. message is somewhat less credible than it might otherwise be, due to the fact that we are not a party to the Convention.

Some States in the USPACOM AOR have adopted deliberate strategies vis-a-vis the United States to try to manipulate international law to achieve desired ends. Such strategies are infinitely more achievable when working within the customary international law realm, versus the realm of treaty-based law. By joining the Convention, we greatly reduce this interpretive maneuver space of others and we place ourselves in a much stronger position to demand adherence by others to the rules contained in the Convention—rules that we have been following, protecting, and promoting from the outside for many decades.

Additionally, while Convention or treaty-based international law is less subject to change and interpretation, it is not immune from change. Parties can collectively agree to change the rule-set in a treaty or adopt particular interpretations of its provisions, in accordance with the terms of the treaty. Given that over 160 nations are currently parties to the Convention, if the rule-set were to change, we might no longer be able to argue that the existing, favorable set of rules under the Convention reflects customary international law. We would be forced to either accept the new rule-set or act as a persistent objector, either of which would come with its own risks. Moreover, our continued status as a nonparty allows states an enhanced ability to co-opt the existing text of the Convention and attempt to re-interpret its rules contrary to the original intent that we and other maritime powers helped to negotiate. It would be much more beneficial for the United States to lead the international community in this crucial area of international law from within the Convention, rather than from the outside.

In the past, questions have been raised about whether U.S. accession would harm or otherwise undermine our security interests. It is important to answer these questions directly and factually. Questions include the following:

Will accession to the Convention force us to surrender U.S. jurisdiction over military vessels? The answer is "No." The Convention specifically preserves the sovereign immunity of warships and exempts them from the exercise of foreign jurisdiction. Given that the Convention is clear on this point, exclusive U.S. jurisdiction over our warships would be better protected through accession than is currently the case.

Will accession restrict U.S. military operations and activities? Here again, the answer is "No." The Convention in no way restricts our ability or legal right to conduct military activities in the maritime domain. As stated by the Secretary of Defense, "U.S. accession to the Convention preserves our freedom of navigation and overflight rights as bedrock treaty law—the firmest possible legal foundation for these activities."

Will accession subject the U.S. military to the jurisdiction of international courts? Again, the answer is "No." The Convention specifically permits nations to exempt from international dispute resolution, "disputes concerning military activities, in-

cluding military activities by government vessels and aircraft." State Parties individually determine what constitute "military activities." Current and former leadership within the U.S. Government have given repeated assurances that the United States would take full advantage of this clause in its accession documents to exempt U.S. military activities and protect them from the jurisdiction of international courts and tribunals. In fact, this is specifically outlined in this Committee's Draft Resolution of Advice and Consent of 2007 and continues to be supported by the current administration.

Will accession hamper our ability to conduct maritime interdiction operations, outside the piracy realm? The answer here is "No," as well. The United States conducts a wide range of maritime interdiction and related operations with our allies and partners, virtually all of whom are parties to the Convention. We rely on a broad range of legal authorities to conduct such operations, including the Convention, U.N. Security Council Resolutions, other treaties, port state control measures, flag state authorities, and if necessary, the inherent right of self-defense. Accession would strengthen our ability to conduct such operations by eliminating any question of our right to avail ourselves of the legal authorities contained in the Convention and by ensuring that we share the same international legal authorities as our partners and allies.

In conclusion, the United States is currently in a situation where we operate outside of a treaty that we were largely responsible for negotiating through which we obtained all our stated objectives, and that has been joined over 160 other nations, including virtually all of our allies and key partners. We conduct our actions consistent with many of its terms, which we regard as customary international law, but we do not obtain the benefits of the Convention available only to parties. Now more than ever, the United States must be a leader in preserving the rights, freedoms, and uses of the oceans that enable us to protect our vital security interests in the maritime domain around the globe. The diminishing group of countries outside the Convention includes land-locked nations such as Uzbekistan, Tajikistan, Afghanistan, and Bhutan, as well as rogue nations such as North Korea and Iran. To best protect our vital national security interests in the years to come, now is the time for the United States to lock in a stable legal framework for the maritime domain, and send a clear message to other nations in the PACOM AOR that the maritime freedoms codified in the Convention are worth preserving and the Convention's rule of law is worth upholding.

The CHAIRMAN. Thank you very much, Admiral. Thank you to all of you for your testimony.

Let me begin. I want to try to clear up something and pick up on a theme that Senator Lugar opened up in his opening comments.

Some in our very diverse media platforms that we have today, whether it is an editorial or a blog or whatever, have tried to suggest, oh, you know, these guys from the military are just coming there because the administration has told them to come there and they are going to say what they have to say, but we can sort of discount it. So I want to get right at that right up front if I can.

Are each of you—I believe when you are confirmed, you agree before the Senate that you will live up to sort of individual advice and do what is in your conscience and so forth. But are you appearing today—any of you—under any kind of sort of order or coercion, or are you here because you believe in this treaty and you are expressing your personal view to the Senate as the best advice that you can give to the Senate to perform our function?

Do you want to begin, Admiral Winnefeld?

Admiral WINNEFELD. I would invite my colleagues to speak up as well, but nobody twisted my arm in any way to be here today. I am here because I believe we should ratify the treaty. Yes, sir.

The CHAIRMAN. And the reasons you have given for the treaty are reasons you believe in?

Admiral WINNEFELD. Yes, sir.

The CHAIRMAN. Can we just run through the list in the order that you testified or however you want to do it.

Admiral GREENERT. Yes, sir, Senator. I am here to give you my best professional and military advice on the treaty, and I support the treaty fully.

Admiral PAPP. Yes, sir. I fully believe in this. As I said in my opening comments, as a practitioner, as a person that has been out there operating on the seas for nearly four decades, I believe in this, and more than anything else, I believe in it because we have young lieutenants that are commanding patrol boats. We have boatswain mates who are making law enforcement boardings. And they need the clarity and the continuity and the predictability that this Convention provides in terms of making determinations on a daily basis on jurisdictional issues and other things.

General FRASER. Chairman, I am here because I want to be. I want to be especially because of not only the extensive career that I have had and been on the receiving end of certainly the support that an operation like TRANSCOM has provided but also because of my study of this Convention and engaging our commercial partners in the need for us to be able to deploy, sustain, and then return home our warfighters whether they are supporting humanitarian operations or responding to another type of crisis. I will provide you my honest assessment.

General JACOBY. Chairman Kerry, I am here to support the Law of the Sea based on my professional responsibilities, my experiences as a commander in every theater, and I am fully committed to this approach. Thank you.

Admiral LOCKLEAR. Senator Kerry, the men and women of Pacific Command—they live this issue every day. They are confronted with the aspects of ambiguities of not being a part of this treaty. I am here because I support this treaty. I support the framework it gives the military commanders, and those that work under me, our ability to make decisions that will be in the best interest of this Nation, that will be in the best interest of ensuring that we can follow the rule of law and not have miscalculations that lead us in directions that we would not want to go as a nation. So I am here to support this treaty, and I both professionally and personally support it.

The CHAIRMAN. Well, I thank each of you. I had no doubt, but I thought it was important to have those statements on the record and I appreciate your candid answers.

Admiral Winnefeld, you made a statement in the beginning of your testimony in which you talked about the misplacing of this notion about giving up our sovereignty in any way. In fact, you said it is the opposite. We would be growing our sovereignty.

Preliminary studies indicate that the Extended Continental Shelf—it is not fully defined yet, and part of the reason for joining this treaty, as I understand it, is to have that clarity about our Extended Continental Shelf. But right now, the estimates are that the Continental Shelf that we would have exclusive rights to could conceivably be as high as 1 million square kilometers, an area about twice the size of California, nearly half of the Louisiana Purchase. So what we are looking at here, are we not, is the opportunity for us to, in fact, gain exclusivity and gain clarity with

respect to the exploitative rights over this vast area of additional land mass to the United States? Is that accurate?

Admiral WINNEFELD. Yes, sir.

The CHAIRMAN. And can you sort of explain? Some people say, well, what the heck. You know, we got the strongest Navy in the world. We are paying a lot of money for it. Nobody is going to stand up to us. We will just go out and do what we want to do and need to do, and if somebody gets in our way, we will enforce it. What is wrong with that?

Admiral WINNEFELD. Well, there are a couple things. Specifically related to the Continental Shelf, notwithstanding the potential economic benefits, which I think would be covered in a different setting for the committee, we would have much more control over, as you point out, the Extended Continental Shelf. I think as of today, theoretically, absent a clear delineation of that shelf, somebody could come in and potentially prospect for resources at the 201 mile point away from our coastline which, if the Extended Continental Shelf is defined the way we think it ought to be defined under the Convention, they would not be able to do. And now there comes into question with Admiral Papp and how he would have to enforce that under existing customary law or whether he would have the full force of the Convention behind him.

The CHAIRMAN. Well, what is wrong with the approach of people who say we will go just in and kick them out? What the heck?

Admiral WINNEFELD. Well, if the President tells us to do that, we certainly would be ready and willing and able to do it, but I think we would rather apply a legal approach and a stepped forum before we got to the potential use of force.

The CHAIRMAN. Admiral Papp, can you speak to this question of sort of added sovereignty?

Admiral PAPP. Absolutely, sir. And while most of us and the theme of this is looking at national defense, I would suggest that national security—only part of that is defense. There is also economic security, environmental security, and energy security, and others that come into the whole equation of national security. And when we are talking about the Extended Continental Shelf and making determinations on where it might be, we need that clarity.

And I have a slightly more nuanced view perhaps than my colleagues because the Coast Guard is the one of the five armed services that has the responsibility for law enforcement of U.S. laws on our waters and on the high seas. So we look at it from a law enforcement perspective. Use of force is one of our last resorts and abiding through the rule of law. And so we have to think on a daily basis how we conduct our law enforcement operations and we need the predictability and stability of what those determinations are based upon which the Convention gives us.

The CHAIRMAN. Senator Lugar.

Senator LUGAR. Gentlemen, you have discussed two areas that I want to touch upon in these questions. One of them was the growing complexity of the Arctic situation. This may, in part, be because of the melting of ice flows or the ambitions of other countries to create sea-lanes to have commerce in the Arctic well beyond that which we have had before. It does raise the points which you have made that it is not really clear just in terms of law enforcement,

in other words simply how and by whom indiscretions of various people are addressed or rescue missions for people who get caught in a situation are carried out.

I am hopeful that one or more of you are doing some scholarly work that is going to be of help to each of us to explain what the circumstances are for a sea which either expands or constricts or so forth quite apart from what the claims may be in terms of sovereignty of all of the boundaries.

But I want to dwell specifically on the Pacific because we had an interesting visit last week. Some of us visited with the President of the Philippines. It is a very good time in terms of our relations with the Philippines because of their growing economy. President Aquino is a straightforward, honest President of the Philippines. And furthermore, the Philippines, having rejected our fleet from Subic and various other places in recent years, now is very concerned about the definition of where the rights are for the Chinese. The Philippines would join Vietnam, Indonesia, and other countries in wondering precisely who is going to enforce what for a variety of reasons, in part because of these Law of the Sea questions, which have come into the orbit of our diplomacy in a way that we have not seen in the last decade.

Let me just ask any one of you, How are we going to work to define who owns or governs or commands what in the South China Sea? In that large area between China and the Philippines in which there are extraordinary resources and certainly very little definition of who does what and for the moment, a great deal of reliance upon the United States fleet to bring some definition to this. If we do not have Law of the Sea the question is, How do we define it? What are we prepared to do and what are the American people prepared to do? It is one thing to talk about enforcing this and, in essence, going to war over it, but at least in the old days, a declaration of war was required and people really wanted to know if it was worth the sacrifice of individual human beings.

Can anyone give me some idea of where we are headed in the Pacific and the South China Sea particularly?

Admiral LOCKLEAR. Yes, sir, I can. In the South China Sea, you have, I think, a great example of how the Law of the Sea should play out if done correctly. Because of globalization, the things that move in the oceans that move through the South China Sea—half the energy supplies in the world move through there daily. A third of our economy moves through there daily, you know, all the things we talked about. So there are competing claims from the various coastal states in there. We have a tendency to want to talk about China, but there are a number of countries that have excessive claims, and they are in two areas. One is in territorial disputes and the other is in maritime disputes.

So what the Law of the Sea would give us—it gives a framework on territorial disputes which the United States takes no position on territorial disputes between the Philippines and the Chinese or any other excessive territorial claim. But the Law of the Sea would give a framework for them to be able to have that dialogue in a peaceful way. Our perspective is that we do not want coercion. We want things done peacefully. We want them done in a framework that allows that to happen. And my understanding is that there are

vehicles in the Law of the Sea, if applied properly that would allow them that vehicle and their desires of that in the ASEAN nations in particular.

The other side is excessive maritime claims, which are clearly laid out in the Law of the Sea of what can be there. And these are critical to us so that we can maintain our unimpeded access to those areas for the future that allows us to provide, if you want to call it, a security deterrent, that allows us to—we have seven allies in the world; five of them are in this region. And ensuring that our allies' perspectives are looked at properly through a rule of law that allows us to continue to operate freely with them is important. So this is why the Law of the Sea Convention is important to me.

Senator LUGAR. Yes, sir.

Admiral PAPP. Senator, there is one other nuance. I have been watching this. Admiral Locklear has the responsibility out there, but the Coast Guard has responsibilities in the Pacific as well. And one of the things we have seen China doing as an indication that they are operating under the rule of law, they are, in fact, many times now keeping their maritime patrol vessels, more or less their coast guard vessels, which are less provocative rather than sending large navy ships out there, once again portraying themselves as following the rule of law and acting within the Convention. We have no means of disputing that unless we are parties to the Convention because I am involved with the Chinese in the North Pacific Coast Guard Forum and whenever we address issues like this, their first response is but you are not a party to the Convention, and it puts us in a difficult situation to deal with and it makes our work much harder.

Admiral GREENERT. Senator, if I may make a comment. This is one of the things I would like to pursue—and the South China Sea is just one part of the ocean. I organize, train, equip, and deliver the ships to Admiral Locklear and others. And we are looking forward to what I call a dependable, if you will, or predictive behavior by the elements in these maritime crossroads such as the South China Sea. If each interaction ends up a debate or a confrontation, it becomes unpredictable, and then you get unprepared, if you will, and then you get this in situ debate which is OK if everybody is agreed upon what the customary international law is. But it evolves and it becomes domestically derived in some locations. That is kind of what we have right now in the South China Sea.

So we say to ourselves, how do we preclude this? Well, we should talk and not have belligerent behavior. So we pursue things like the Military Maritime Consultative Agreement talks with China for an example, and there are others. I host heads of navies every 2 years in the International Sea Power Symposium. Having something like the Law of the Sea Convention as a book that we all have agreed to and we sit down and say, OK, let us talk about the protocols that we are all kind of going to agree to or what is the basis of the disagreement would be very helpful.

Senator LUGAR. I appreciate that. Each of you knows that we got briefings here about the so-called pivot of our national defense toward the South China Sea, toward the Pacific. So that is why it

is very crucial both in terms of what we are talking about today as well as our overall national defense and foreign policy.

Thank you very much.

The CHAIRMAN. Thank you, Senator Lugar.

Senator Cardin.

Senator CARDIN. Thank you very much, Mr. Chairman.

And let me thank all of you for your leadership and your service to our country.

You have all indicated that you support the ratification of the Law of the Sea Treaty. We have been, at least, in discussions of this for almost 20 years. So this has been an issue that has been around the United States Senate for a long time.

I would like to get from you an assessment as to whether this is just something that would be nice to get out of the way and done or whether this is an important issue as it relates to our national security.

Admiral WINNEFELD. I can start off, sir. I think it is an important issue related to our national security. Some have pointed out that there are no operations that we have been unable to conduct because we have not become a party to the Convention. And that, in fact, is true. But as we look to the future, which is what this is really about, and we see some of the erosions of customary international law that have been referred to by Admiral Locklear and Admiral Greenert and Admiral Papp, that is what we are really concerned about. And we would rather not wait until that becomes a crisis for us. We would rather get the treaty ratified now so we have got that fundamental basis in international treaty law for us to do what we need to do and to counter those who might be taking us on in a maritime environment. So we believe it is an issue for national security mostly in the future.

Senator CARDIN. Is there any disagreement on that or any further clarification?

Admiral GREENERT. If I may, Senator, the Arctic, as mentioned earlier by Senator Lugar, is a new area. I do not know what is customary up there, and we are going to be defining our behavior and our protocols up there. Therefore, I would say this is an opportunity.

Senator CARDIN. In regards to the Arctic—and that is an area that is emerging as to the issues. The issues that are currently being thought of were not 10 years ago. So it is an emerging area of great interest to the United States. As I understand it, we are the only country that borders the Arctic that is not a member of the—has not ratified the Law of the Sea. Explain a little bit more as to how that disadvantages us as these discussions are taking place?

General JACOBY. Senator, I am the Commander of Northern Command. It is in my area of responsibility. The Arctic is a fast-changing environment. It is harsh. There are few assets available. Working together is really at a premium. It is the opening of a new frontier, danger and uncertainty and also opportunity. So the idea that the strongest, the fastest, the most aggressive party can define the customary international law is not the approach that any of the eight Arctic nations desire to take. It would empower me, as I provide leadership on behalf of the United States in the Arctic, to start

with that rules-based framework, the firmness of treaty law, in order to start sorting through the uncertainty that we face up there. And as I said, there is a large premium on working together in the Arctic right now.

Senator CARDIN. Thank you for that.

I want to get back to China for one moment because I think back a decade ago when we were looking at China and say, gee, we certainly should be able to manage our trade issues with China. It was not going to be a major problem for America. And now we see how this has developed. The maritime interest of China seems to be expanding. They seem to be more bold than they have been in the past, some of which we believe are not appropriate under international law.

Can you tell us how ratification of the Law of the Sea would put us in a stronger position vis-a-vis China as it relates to its maritime ambitions?

Admiral WINNEFELD. I can start and then turn it over to Admiral Locklear.

One of the things, as we have talked about, is the concern about erosion of law. And one of the areas where China has been assertive is in writing national laws that would restrict maritime activity in their Exclusive Economic Zone. And some of that maritime activity is very important to us from a military sense, and perhaps in a classified briefing later in the year we can go over that. But without being a party to the Convention, we really do not have a leg to stand on if we try to invoke the Convention's clear rights in terms of our ability to operate in that Exclusive Economic Zone. So that is again a potential future source of friction. It is already a source of friction but it could get worse, and we would like to see the fundamental underpinning of accession to the treaty to back up our rights in the EEZ to do what we need to do from a military basis.

Over to Sam.

Admiral LOCKLEAR. I fully agree. It provides a solid, fixed, and a favorable legal framework for us, first, to protect U.S. navigation and overflight rights, as well as the sovereignty of our ships and aircraft. So that is the first thing it does.

You know, us being part of the Convention, it aligns our international legal authorities with those of our allies and our partners and our friends who are in that region, which is important. I think it would strengthen our standing to support our allies who are dealing with some of these issues particularly in the South China Sea. And they are trying to find a mechanism to align their maritime claims with international law, and so it would improve our overall support and our standing as we try to get them to resolve in an ever-increasingly complex environment. We have to look forward I think here, not in the rear view mirror.

The complexity of the maritime environment, because of the demand for resources, because of the amount of goods—10 years ago, the amount of things that float on the ocean across the sea lines—in that 10 years, it quadrupled because of the globalization of the economy. So we need to make sure that we are able to work through these disputes from a solid, fixed, favorable legal framework rather than resulting to every one of these issues being a

standoff that could potentially lead, I think, us down a path that we do not want to go.

Senator CARDIN. As I understand it, in the 1990s when this treaty was first brought to the Senate, there were concerns. Those concerns were shared by some of our allies. Modifications were made and our allies went ahead and ratified the treaty. The Senate has not followed suit.

From your testimony here today, am I correct to say that you believe today it is more important to ratify the treaty than it was a decade ago, that circumstances on the sea continue to present additional challenges that the Law of the Sea would help America in promoting its national interests and its national security? Is that a fair assessment, that it is even more important today than 10 years ago because of the emerging issues?

Admiral WINNEFELD. Absolutely. A decade ago, there were not as many nations who were asserting their claims into the maritime environment in the way they are as there are today, and those excessive claims continue to grow. So I would say definitely compared to 10 years ago, it is more important today than it was.

Senator CARDIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cardin.

Before I recognize Senator Corker, let me just quickly—on your question about the Arctic, I just wanted to comment.

I believe the Russians are sending their fifth mission into the Arctic to do plotting this summer, and the Chinese have been up there in a very significant way. Is that not accurate?

General JACOBY. Yes, Senator, that is.

The CHAIRMAN. Again, this will be part of our classified briefing for all the Members, but it is quite significant what is happening there without recourse in any legal way. Is that correct?

General JACOBY. That is correct, Senator.

The CHAIRMAN. Senator Corker.

Senator CORKER. Thank you, Mr. Chairman.

And thank each of you. And I do believe that each of you are here espousing your own views. I also know that sometimes we can have silos where one part of our Government wants something to happen and other parts may be jeopardized. And that is our role here is to balance all of those off. But we thank you very much for being here and certainly for your service.

Admiral Locklear, my friend and colleague, Senator Lugar, asked you about China and the Philippines. It looks to me like that it is just the opposite of what we just said, that those two countries are signatory to the Law of the Sea Treaty. There is a dispute and there is no resolution. It looks to me like that the Law of the Sea Treaty is not working as it should be with two countries having a dispute and both being signatory. I would like for you to explain why the Law of the Sea Treaty has not already resolved the conflict there and what is it about it that is failing.

Admiral LOCKLEAR. Yes, sir. I think your perspective is correct. It has failed them to some degree, but I think it has not been tried in some of these areas that are now emerging. And I believe that there is opportunity. And I get from all of our——

Senator CORKER. What do you mean it has not been tried? I mean, we have a conflict there. They are in dispute, and it looks

to me like China has basically said we are sorry. We are not going to adhere to the treaty document. So how is it working?

Admiral LOCKLEAR. Well, at this stage, my understanding is that the Chinese want to solve this in a bilateral relationship with the Philippines.

Senator CORKER. So the treaty is not working if they are doing it in a bilateral way. Is that correct? I mean, is there not a group——

Admiral LOCKLEAR. The treaty provides mechanisms should the Partner States choose to use it or the signatory States choose to use it. So our perspective in our dialogue with our allies and our partners, as well as the Chinese, is that we want them to resolve this using standard rules and to use those mechanisms that are outlined in the Convention rather than a bilateral way where you may end up having a coercive perspective from one party or the other that drives a decision in a direction that we would not want it to go.

Senator CORKER. Yes, but it sounds like China is saying we do not care what you think. We do not care that we are members of the treaty. We want to resolve it in a bilateral way. So, I would just say, to me it points to failure. We have a real-live example of a failure of this treaty.

Admiral Winnefeld, let me ask you this. You kept saying that this in no way affects our sovereignty. But then you kept saying that if we are not a member, key decisions are being made that affect our sovereign rights. How can both be true?

Admiral WINNEFELD. I would say, first of all, I want to add a little bit to what Sam Locklear said. One of the things that helps us in the South China Sea is that when we have the Association of Southeast Asian Nations—ASEAN—nations aligned together pushing against China, China tends to listen, and when they can cut out somebody from the herd and go bilateral, then they will tend to not go under treaty mechanisms.

So if we are a party to the Law of the Sea and we can put our political power, our diplomatic power behind that, it would tend to buttress the ASEAN nations into potentially supporting the Philippines and what have you. So the Law of the Sea is not a magic formula to resolve a dispute between China and the Philippines. Nobody is claiming that, but I think it would allow us to have a little more credibility in entering into that environment.

And then in terms of sovereignty piece, what we would like is we will be able, as a party to the Convention, to have direct influence over how the Convention is applied. We will be able to more fundamentally and with more credibility apply what is now customary international law that is embedded in the Convention.

Senator CORKER. But specific—I understand all those things. We are a member of the club and therefore we can influence the rules of the club.

But if key decisions are being made right now because we are not a party to the treaty that affect our sovereignty, how can you say that the treaty does not affect our sovereignty? It sounds like——

Admiral WINNEFELD. Because, Senator, we would be in the mechanisms of the treaty and able to counter those decisions.

Senator CORKER. Well, wait a minute. You cannot say on one hand that the treaty in no way affects our sovereignty and then say that decisions are being made that affect our sovereignty. You cannot say that and it be true.

Admiral WINNEFELD. What I am saying is by not being a party to the Convention, we lose the opportunity to preserve our sovereignty. So if we lose the opportunity——

Senator CORKER. By virtue of you saying that, you are saying the treaty then has pieces of it that affect our sovereignty.

Admiral WINNEFELD. It positively affects our sovereignty and avoids negative impact on our sovereignty. So, for example, the Extended Continental Shelf piece—we will not be able to assert that right unless we accede to the treaty. Nobody will pay attention to it. So theoretically somebody could come in to 201 miles off of our coast and explore for natural resources, and we do not have the power of the treaty behind us to say, sorry, you cannot do that.

Senator CORKER. You know, Admiral Papp, can you give me one example where us not being a party to this treaty has ever impacted your ability to board a ship or enforce U.S. law? One live example.

Admiral PAPP. Oh, absolutely, sir. We have countries within South and Central America that have excessive territorial sea claims, and oftentimes when you have these questions about jurisdiction, we may have intelligence or we may have a target which we believe is smuggling drugs or people and we cannot gain cooperation from these countries that are outside the Convention. We are outside the Convention. They have jurisdictional claims. We do not have the mechanism for disputing this. And on a routine basis, not only do we lose cases, but oftentimes we lose time—our cutters and crews—while we go through protracted negotiations on jurisdictional disputes between countries for, in particular, drug interdiction.

But I would add. You know, we are focused on some of the countries that are challenging us around the world on a day-to-day basis, and I think to buttress what Admiral Winnefeld is saying, even with our closest friends, we have disputes that only can be resolved within the Convention. Our border between Canada and Alaska is under dispute and we cannot negotiate with all the tools in our tool bag with Canada unless we are members of the Convention. We have waters in northern New England between Maine and Alaska where we have jurisdictional disputes in terms of transit that has prevented an LNG port to be developed in Passamaquoddy, ME, because Canada will not allow us to have free and unimpeded passage because—and I think they are on very loose footing here—we cannot negotiate because we are not members of the Convention.

So it is not just with countries that challenge us. It is also with our friends as well. And those can be played against us because we have not signed onto the Convention.

Senator CORKER. I find it hard to believe we could not reach a bilateral agreement with Canada. It sounds a little far-fetched, but I would love to talk to you more about it.

One last question. I get the impression that we feel like that if we were a party to the Law of the Sea Treaty that it would cause

us to have some savings as it relates to dealing with maritime issues throughout our Navy. Is that correct, Admiral?

Admiral WINNEFELD. I do not know that there is any influence on the——

Senator CORKER. Well, we are talking about the cost. We have a lot of cost because we are not part of the treaty. We have to do things in a very different way. I mean, it seems to me that I have heard that throughout the testimony here today.

Admiral WINNEFELD. I do not think any of us have expressed, Senator, that it would be more costly for us if we did not accede to the treaty in terms of financial terms. We are not going to have any different size of Navy if we do or do not accede to the treaty. It just gives us another tool in the toolbox to do business as a navy and as a nation.

Senator CORKER. Well, listen, I respect each of you. I will say that today's testimony—and I thank you very much for your public service. It to me has fogged things up more than it began. I very much appreciate it. I look forward to many one-on-one meetings as we hash this out. And I thank you very much for your service to our country.

The CHAIRMAN. Senator Webb.

Senator WEBB. Thank you, Mr. Chairman.

Let me begin by just offering an observation on the exchange that just took place. Without getting to the issue of sovereignty—and there are sovereignty issues involved clearly in what we are attempting to do in places like the South China Sea—I would just say, as an observation that treaties in and of their nature compel certain actions by our country. That is why we come together and undertake this process very carefully before we ratify a treaty. And they also cause an agreement among our governmental people to abide by certain standards that are in a treaty. That is what a treaty is about. That does mean that in a treaty, at least in my opinion, we are going to be giving up any of our sovereignty rights. Just let me start with that.

Before I get into my question, I would like to join the chairman in recognizing Senator John Warner for his presence here today. He has been working on this issue for a very long time from the time that he was in the Department of the Navy and I was a 25-year-old marine on his staff. That was a long time ago and it was a pleasure to follow Senator Warner as Secretary of the Navy and also to be able to serve with him here in the Senate as my senior partner. I have tremendous regard for all of his service and the work that he has done on this area.

I believe that the indisputable starting point in this discussion really is that the international rules of the road for security and also for commercial exploration have never been more complex. This affects the issues of freedom of navigation, as you have discussed several times this morning. Those are basically tactical questions. It also affects issues of sovereignty. Those are strategic questions. And following issues of sovereignty, in and of itself, it unavoidably involves commerce and how our Nation interacts in a lot of areas that right now are not clear in terms of who has those rights. That is apparent in the Arctic, as has been discussed. It is also clear in such areas as the Senkaku Islands where after a num-

ber of years of quiet dispute in 2010, Japan and China had a blow-up over sovereignty that could have involved our security treaty with Japan if it had gone further.

It is clearly apparent in the South China Sea. From our office, we initially offered a Senate resolution condemning the Chinese actions a couple of years ago involving the use of military force in the Philippines and off of the coast of Vietnam. We had a unanimous vote by the Senate that had two very important pieces in it, I think, in terms of the expression of the Senate. One was deploring the use of force by naval and maritime security vessels from China, and the other was calling on all parties to refrain from threatening the use of force and to continue efforts to facilitate multilateral peaceful processes as we address these issues.

And that to me is the most important component of what we are talking about today. We need to find the right forum to address disputes where claims can be resolved with the agreement of multiple claimants. And this is a key point when we are discussing the activities of China particularly to this point. Not only China. You go to the Spratlys, there are five claimants. You go to the Paracels, you have two. There are a lot of these that are potentially going to affect sovereignty rights and eventually commercial competition.

ASEAN has been mentioned. ASEAN is an evolving entity. It is a very important entity: 10 countries, 650 million people with widely varying governmental systems among them. They have been struggling for 10 years now to find rules of navigation in sovereignty to try to calm down the process in this part of the world. They have issued a proclamation in 2002 trying to lay down rules of the road. They issued another one recently.

We have not been totally successful with China. We all know that. But we have been attempting to develop a number of different ways to encourage China to come into the solutions process on a multilateral basis.

From our office, we have done the same thing with respect to the Mekong Delta where China does not recognize downstream water rights from the Mekong River with all the damming that it has done upstream. That makes it very difficult to bring China into a multilateral solutions process, and there is no place that it truer than when we look at the sovereignty rights and the future of the activities in commercial endeavors in the South China Sea.

For that reason, I think this is a format that will greatly assist us in the future, and I know that there are questions on the other side. I am sure all of you have seen the editorial in the Wall Street Journal yesterday that was written by former Secretary of Defense Rumsfeld where he said the treaty remains a sweeping power grab that could prove to be the largest mechanism for worldwide redistribution of wealth in human history. I know that is not necessarily in any of your portfolios, but I would like to hear from you.

What is the downside? What is the downside of this treaty? Is there, in your view, a downside, Admiral?

Admiral WINNEFELD. On the security side, I am not aware of any downsides that we can point to. In fact, the upsides are really why we are here today. As I mentioned, it very much improves the 1958 Geneva Conventions. It codifies in treaty law, not customary law, the things that we need to do day in and day out as a navy and

as a force. So on the security side, I know of no downside. I have explored the commercial side, and it is complex. But it seems to me as though this treaty was negotiated and modified in 1994 to our advantage, but I would leave the economic experts to discuss. But I see no downside on the security side.

Admiral GREENERT. Senator, if I were to think of a downside, it would be misinterpreting the advantages of what this will do for us. It is not going to solve everybody's problems, and you laid out some very clear issues that we have been dealing with for years and years from Senkaku, et cetera. I think feeling that the Law of the Sea Convention will solve unto itself, because it establishes law, is wrong. Now we need to roll up our sleeves and go use it as the instrument to now sit down with nations because we have a consistent instrument that we can use.

Senator WEBB. Admiral Locklear.

Admiral LOCKLEAR. Yes, sir. I see no downside from a security perspective. I see a downside on the status quo, though. One is it leaves us relying on customary international law, which I think is going to morph in a way that we cannot predict. It leaves us outside the full international legal framework that governs these rights and obligations and the actions of our allies, partners, and friends. It weakens our standing to object to inappropriate actions of other States that violate the Convention. I mean, 160 countries have signed up for this thing. They do not all follow it to the letter of the law, but we are not in there to be able to object to that. And I think it weakens our ability to shape potential changes to the Convention that we may want to see in the future.

Admiral PAPP. Senator, I find it interesting. You used the rules of the road in the beginning of your statement there. In fact, to me that is one of the greatest analogies here. The rules of the road for centuries were determined by customary international law. The challenge was, particularly as we went from sail to steam and vessels approached each other much more quickly, everybody had their own version of customary international law, and consequently collisions occurred. All countries agreed at a certain point to collision avoidance regs, or COLREGS, which standardized things across the entire world for mariners at sea. There is stability. There is continuity. There is predictability in those rules which sailors depend upon. And I think that is a perfect analogy for us. If we continue under customary international law, it changes and everybody has a different view of it. We have negotiated ourselves in a position where this is most favorable to us. It is almost like having a lottery ticket—a winning lottery ticket—that you do not cash in and you cannot use the proceeds.

Senator WEBB. Well, I would respectfully submit that the series of exchanges that we have had with China where they have insisted on only bilateral solutions is perhaps the strongest argument for us proceeding forward in this sort of way where we can continue to encourage multilateral solutions.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you, Senator Webb. That last point is a critical one. I am sorry Senator Corker is not still here to hear you say it, but I think we should probably chat with him about it.

But everyone, I think, has agreed—I mean, one of the reasons we have our presence, where we do in the Pacific, is because we are viewed by most nations out there as being the indispensable nation. And clearly China would love to just use its power to bilaterally leverage some other country. But if the United States is at the table or if ASEAN is at the table and there is a unity, there is a whole different equation the Chinese have to take into account.

So the virtue of it, in fact, advantages the Chinese for us to be out. And Secretary Clinton and others have told me personally that they have been ribbed and kind of—what is the word—you know, sort of made fun of in a jocular kind of way at various meetings when these subjects come up because we are not a member. And they sort of look at them and say, well, you are not a member. You do not have any standing to bring this up. So people need to weigh that as we go forward here.

Senator Risch.

Senator RISCH. Thank you, Mr. Chairman.

Admiral Papp, you know, we sit here every day and it is not very often our intelligence is insulted, but for you to come here and tell us that we cannot resolve a border dispute with Canada because we are not a member of this Law of the Sea Treaty really does that. And I am sorry that you chose to go down that route because I think those kinds of representations really undermine the statements and the logical arguments made by others who want to see this treaty authorized.

I was surprised, as all of you testified, that the South China Sea was not mentioned until we got to Admiral Locklear. I was going to go down the same route that Senator Corker did in that regard, and I guess I will touch on it at least some.

I would say that most people in America do not realize what a mess that the South China Sea is in, and the description that we have had here today has been very antiseptic. I have met with representatives of the governments, and it is not just the Philippines. It is other governments that are having the same kind of difficulties, and they are begging for help. Not one of them asked that we subscribe to the Law of the Sea Treaty. They wanted you guys to do something about it. They wanted me to urge the President to have you do something about it, which I am not inclined to do, by the way.

But Senator Corker made the point that this treaty was negotiated 30 years ago this coming December 12. It was adopted by the United Nations a couple of decades ago, and every one of the players in the mess in the South China Sea is a subscriber to this treaty. Yet, this treaty is just a piece of paper and is just flowery speeches like we have had here today until the gate opens and the rodeo starts. And the gate has opened and the rodeo has started, and this thing has not helped one bit to resolve the tension, the disputes, and the defugalties that are going on in the South China Sea. They are shooting at each other there. There have been munitions expended, and this thing has not done one thing to help as Senator Corker has pointed out.

Can any one of you point to me one thing that this treaty has done on a specific basis, people, places, and timing? Tell me one thing that this treaty has done to resolve the disputes and the ten-

sions that have taken place in the South China Sea. And I do not want to talk about the future. I do not want to talk about what a wonderful document it is. I want to know what one country did to use the provisions of this treaty to help itself in the mess that they are in the South China Sea. Who wants to try that?

Admiral WINNEFELD. We pointed out, Senator, already that the treaty is not a magical document that is going to cure the ills of the South China Sea. It is yet another tool. And I think that the nations there will feel more empowered to use whatever mechanisms are in or to insist that the mechanisms in the Law of the Sea Convention be used if we are a party——

Senator RISCH. But, Admiral, they have not.

Admiral WINNEFELD [continuing]. If we apply our political backing and our political power and our influence to do that. And it might not work. And if that is the case, there are other mechanisms.

Why should we leap right away to the use of force or something along that order when we have the opportunity to bring our influence to bear in the region? And the nations in that region will be a lot more comfortable if we are bringing our influence to bear with treaty law behind us than if we are on the outside looking in with no credibility to be able to—having not acceded to the treaty—to make statements about the treaty.

Senator RISCH. You know, I am not suggesting that you should jump in with force. I am not suggesting that at all. What I am suggesting is this has been an abject failure for the members who have signed this and who have been members for years and years and years. They are coming to us asking for help.

Can anybody answer my question? Give me one example of a tension or a difficulty that was resolved as a result of this treaty by the members who operate in the South China Sea. Give me one example. Can anybody do that?

[No response.]

Senator RISCH. I will take that as an answer.

Thank you, Mr. Chairman. I am done.

The CHAIRMAN. Well, let me give you an answer because it is important to know that the Philippines and Vietnam have both specifically asked us to join the Law of the Sea in order to be able to help them leverage a peaceful outcome to the disputes of the South China Sea because they cannot do it on their own because of China's power. And China, until we are in the Law of the Sea, does not listen to us either because we are not party to it.

So I will make sure those documents and those facts are made available to the Senator.

But you know, China wants a different outcome. China does not want to submit to the Law of the Sea right now, and it is going to take a different equation within the Law of the Sea for China to feel compelled to listen. But those nations are at a huge disadvantage. And if you look at the map at what China is claiming, it is clear why. So clearly, the Law of the Sea on its own is not going to resolve it.

Senator Coons.

Senator RISCH. Well——

The CHAIRMAN. Yes. Sorry. Go ahead.

Senator RISCH. Well, Mr. Chairman, you know, with all due respect, I do not understand that. You have these countries that have signed this agreement that is supposed to resolve these kinds of disputes. Whether we are in, or not in, should not make any difference whatsoever. There are 160-some countries that are in here. Supposedly this document is supposed to do something to create a mechanism by which they resolve this dispute, and it simply has not happened.

The CHAIRMAN. Senator, it does. It provides a forum with a set of rules, but if a party to any dispute—this is true anywhere in any country anytime. Here in the United States, if you have got two parties, you know, whether it is a sports figure negotiating with the franchise owner and they go to arbitration ultimately because they cannot come to agreement because one party does not want to agree. Or how about the United States Senate where we had a super committee where we could get no agreement, so we are going to have a sequester? There is a great example. So, I mean, there are plenty of examples where people cannot agree, and you need a structure to be able to get it to agree.

Senator RISCH. And it has not worked.

The CHAIRMAN. It has not worked with respect to the South China Sea. But the question is, Would the presence of the United States at the table, in conjunction with those other nations, be a precursor and lay the predicate to other options if you had to come to them? And the answer is according to, I think most experts, they would say absolutely. If you are going to go to war, you want to go to war with China over the South China Sea, you better lay the predicate, and the predicate better be that you have exhausted every opportunity peacefully before you ask the American people to do that.

Senator RISCH. I would certainly hope the United States does not give any consideration in going to war with China over the South China Sea. But this document was supposed to, long ago, have resolved this amongst the players in the South China Sea and not one person has been able to give me a specific example as to one of these tensions or one of these disputes that has been resolved.

The CHAIRMAN. With respect to the South China Sea, and I think it is for very obvious reasons. But we will have plenty of testimony that will show you the ways in which on an everyday basis countless decisions are made which create rules of the road—Admiral Papp has testified to that—which lay out the rules of the road which have assisted and avoided conflict, and there are dozens of examples where conflict is avoided or various thorny issues have been resolved by virtue of people being at the table.

You know, we have had arms control agreements between the United States and the former Soviet Union and we did not always have a resolution as a result of it. But ultimately we found a forum or a mechanism to try to move forward.

I guess it is a fundamental belief about whether you think it is better to have some structure within which you can work these things through or you want to do it on an absolutely ad hoc basis. But I do not think anything should diminish the veracity and the impact of the evidence that says from our commanders who are dealing with young officers and sailors and forces in various ways

on a daily basis who are put in harm's way trying to do a board and search or trying to stop a drug interdiction or whatever it is—they are advantaged, according to the testimony of these commanders, by the presence of this agreement. You may not agree, but these are the commanders who are telling us on a daily basis that those advantages are there.

With respect to the South China Sea, I would rather have the United States be at that table, and I will bet you if we are at the table within the confines of this, we can help resolve some of those issues.

Senator Coons.

Senator COONS. Thank you, Chairman Kerry, for holding another hearing on the Law of the Sea. And I am grateful to the panel for their testimony to us today.

As I expressed at our previous hearing, I am concerned that the debate over this treaty is locked in a framework that is decades out of date. All major questions about this treaty have been answered thoroughly, not once, but twice, by both Democratic and Republican administrations, and we are now in the process of thoroughly vetting them a third time.

In our last hearing, after listening to and asking questions of General Dempsey, Secretary Panetta, and Secretary Clinton, it was apparent to me that the real risk we face is letting others draw boundaries, set rules, and advance their economic interests without the United States having a seat at the table, all the while putting our national security interests at some risk by failing to ratify this treaty.

Based on what I have heard and read today and over the last few weeks, as well as the 30 years of commentary before that, there seem to be two schools of thought on this treaty's impact on our national security.

First, there are those who argue—and I would put many of today's witnesses in this camp—that the Law of the Sea is a treaty that contains vital provisions about navigation that would help our Armed Forces carry out their global mission. It also, as we will hear, includes benefits for American business.

There are others who believe that the Law of the Sea Convention is an agreement with only minimally important provisions on navigation which has little impact on our Armed Forces, and so we should focus our time on this International Seabed Authority, and picking apart the functioning of a group of international bookkeepers. I disagree. And in my view there are real benefits to the United States in terms of navigational rights I would like to focus on.

As many distinguished witnesses have testified to the strategic value of this treaty, I would like to focus narrowly on the question of sort of exactly how in the real world freedom of navigation operations are carried out and what potential benefit there might be as a result of accession to this. And since 9 out of 15 of the nations with excessive maritime claims in 2011 were challenged by our Armed Forces through PACOM, in PACOM's area of responsibility, I am going to focus my questions today on Admirals Greenert and Locklear with my apologies to the other fine witnesses who have also joined us today.

Now, Admiral Greenert, if I could start, just to reiterate what was covered in the last hearing for the sake of a starting point, is it correct that in navigational disputes, the United States currently asserts customary international law as defined by the Law of the Sea?

Admiral GREENERT. That is correct.

Senator COONS. And so when another nation, whether ally or competitor, claims customary international law does allow their claim in excess to those allowed by the Law of the Sea, is it correct the United States then performs a so-called freedom of navigation operation to reassert the real customary international law?

Admiral GREENERT. Well, when accosted, our commanders are directed to say we are operating in international waters. So in effect, you could say, "Yes." In situ, we do a freedom of navigation operation. But in addition, we do regularly scheduled freedom of navigation operations. Admiral Locklear manages those in the Pacific. They are well documented, transparent about the whole thing saying where we are going to go and why we are going to do it.

Senator COONS. If the United States did not contest an excessive claim through either routine or special freedom of navigation operations, are we at some risk that that would set a new precedent and that our competitors, allies, or others would suggest somehow the United States agreed that customary international law might allow their excessive claims?

Admiral GREENERT. I believe that is so. We are looked at very much as the ones that sort of set the standard not only in the Pacific but in the Arabian Gulf, the north Arabian Sea. I have seen it again and again. If we say that inland seas start at 75 miles, in other words, if our behavior is that, then others are going to assume we believe that, and that it is as we attest to.

Senator COONS. And Admiral Locklear, if I might. In a freedom of navigation operation, generally speaking—I am not asking about tactics, techniques, or procedures, but just generally speaking—is it correct that an aircraft or maritime vessel is placed into the contested area in order to prove customary international law is still in force and we are demonstrating real customary international law is in force because no one successfully intercepts, turns back, or fires on that aircraft or vessel?

Admiral LOCKLEAR. That is correct.

Senator COONS. So it sounds to me like this is a process that is not without cost and risk. Secretary Panetta said clearly at the last hearing we never give up our right to self-defense. And so when we insert men and women, aircraft, vessels into these situations, I presume there is some risk associated with that.

Admiral LOCKLEAR. That is correct.

Senator COONS. So when we have successfully reasserted customary international law and leave a contested area, do these other nations sometimes then reassert their excessive claim?

Admiral LOCKLEAR. They do.

Senator COONS. And we then have to conduct another freedom of navigation operation. This is a back and forth, routinely contested thing that is just part of your mission week in, week out, year in and year out.

Admiral LOCKLEAR. That is correct. We actually have a plan that we recognize where the contested areas are, and then we plan and get approval for freedom of navigation operations that do the same thing, do what you just said. They show that we are not abiding by that claim.

Senator COONS. And, Admiral Greenert, the annual report that the Pentagon provides to Congress on freedom of navigation shows the number of countries with excessive claims that the United States Armed Forces have actively engaged in challenging has actually tripled since 2006. The number of countries making these excessive claims and the number of incidents that have required a freedom of navigation operation have tripled since 2006. Would accession to the Convention eliminate the need altogether for freedom of navigation exercises?

Admiral GREENERT. I do not think it would eliminate altogether the need for it. Periodically we would—in order to establish what is codified in the Law of the Sea Convention, we would continue that. It is right and proper. We believe in it. But it would certainly reduce the need to, the requirement to do that because we feel compelled to do that for reasons you said. Our behavior helps our coalition allies and potential allies to see what the standards are. We are the standard bearer.

Senator COONS. So, Admiral, if I hear you right, would access to the Convention provide an alternative, nonlethal, less risky, less asset-consuming tool to assert navigation rights for the United States?

Admiral GREENERT. Yes, Senator, it would.

Senator COONS. And so my conclusion is that freedom of navigation operations, which are provocative to nations, some of which are our allies, some of which are our opponents, have steadily increased in number, in seriousness, in cost and complexity over recent years. And based on that testimony, it seems to me, Mr. Chairman, in conclusion, that what you and Senator Lugar have said for a long time is correct, that to avoid setting new precedents in customary international law, the United States has to continue to carry out increasingly large numbers of freedom of navigation operations, each of which is inherently life-threatening for our service members and consumes our limited assets and is also provocative to the nations whose claims we are contesting, whether hostile, friendly, or allied. And the entire dangerous, risky, and provocative process could be avoided in some circumstances by ratifying this treaty and being able to contest excessive claims in the ways it allows us to do. So this treaty makes a real difference for the average men and women who serve us on the high seas, in the air around the world, and in my view, contributes meaningfully to the national security of the United States.

Thank you for your testimony today.

The CHAIRMAN. Thank you very much, Senator Coons. Appreciate it.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman. I appreciate the opportunity to be here.

Let me, first of all, say all six of you—I know all about you. You are great guys and you have served your country, and I have the greatest respect for you. I do not envy you a bit.

You are put in a position—I know a little bit about chain of command because I was in a very lowly position, but I was in the United States Army. And my chain of command started with my master sergeant and on up to the lieutenants and the rest of them. Yours is the President of the United States. He is the Commander in Chief. So you are going to naturally reflect anything that comes from—you have to. You are military. And I understand that. I have been there.

What I would like to do is suggest that maybe after your retirement, you might change your mind. I am looking right now at 24 stars—I just had a few stripes—24 stars, and that is very, very impressive. And I have a letter here that is signed by 33 stars, but these guys have already retired.

On this letter—and I want to ask that this be made a part of the record—it says—I cannot read the whole letter. There is not time. "But we wish respectfully to challenge the perception that military personnel uniformly support this accord by expressing our strongly held belief that Law of the Sea ratification would prove inimical both to the national security interests and sovereignty of the United States." It goes back and gives the history of this thing. And they have very, very strong language. It is signed by nine of the top-level people who are in retirement.

Now, I asked that it be a part of the record.

The CHAIRMAN. Without objection.

Senator INHOFE. And I also want to make as a part of the record the Reserve Officers Association. This is a letter that we have here. It is actually a resolution. At the very end of the resolution, it says: "In conclusion, the Reserve Officers Association does not endorse ratification of the Law of the Sea Treaty. It actively advocates against it. Historically the United States has claimed that its right to territory was manifest. To agree to the Law of the Sea Treaty acknowledges that the United Nations has authority over the United States maritime territorial claims. The Reserve Offices Association's concern is that the Law of the Sea Treaty will become"—and it goes on and on. So I ask also that this be made a part of the record. These are all retired people, and I think that is significant.

Senator INHOFE. Now, I am going to have to quickly go through this. I assume that you all agree—and it can just be a yes-or-no answer because there is not time for more than a yes-or-no answer—that the not signing of this is not going to compromise in any way our ability to use force or to navigate. Is that true? Is that yes or no? Do you agree with that, starting with you, General Jacoby?

General JACOBY. Yes, Senator, I agree with that.

Senator INHOFE. All right. Do you agree?

Admiral PAPP. Yes, sir.

Admiral WINNEFELD. At the moment, it will not but in the future it could.

Senator INHOFE. OK.

Admiral GREENERT. I agree.

Senator INHOFE. OK, you all agree.

At the last hearing, here is a guy who is your boss. He is Chairman of the Joint Chiefs of Staff, General Dempsey. At the last hearing, he was asked a question as to whether or not this would have an effect. He said—whether failure to ratify the Law of the Sea Treaty would compromise our ability to project force around the world and his answer that the United States would continue to assert our ability to navigate and our ability to project force and it would not be deteriorated if we do not ratify this treaty. So I will not ask you whether you agree or disagree with your boss, but I agree with him.

When I talk to people in what I call the real world—that is outside of Washington—in Oklahoma and I say what do you think about a treaty that cedes our right and allows another entity to tax the United States for the first time or to sue in a court not in the United States, they find that this is a real sovereignty issue. We have talked about sovereignty up here, but we have not really gotten specific.

I do not think anyone is going to question the fact that this does give the Seabed Authority the right, the privilege, the authority to tax us. And it comes through royalties. Right now, the royalties on the area of the Extended Continental Shelf range between 12½ percent and 18¾ percent. And the reason that is a range is because the oil companies who would drill—they would say anything in excess of that range we would not be interested in doing. So we have to do it at that range.

This authority, according to the U.S. Interagency Extended Continental Shelf Task Force, talks about the resources out there are worth billions, if not trillions. Now, if you just merely take a trillion dollars and you apply this to it, at the end of 12 years, it would get up to 7 percent of these royalties that would otherwise go to the United States. Now, that amount would be around $70 billion.

I will not ask you the question I asked the last panel because I do not want to put you in that situation. But by doing this and having the authority to tax us in that amount—one of the questions I am going to ask at the end of this, does anyone know of any time in the history of this country that we have given, ceded our authority, taxing authority, to allow someone else to tax us.

And the second thing would be on the—which I think Senator Lee is going to—he certainly is in a much better position to talk about the fact that they would be able to sue us.

I would only want to read something to make sure it is in the record. When you talk about the people who are champing at the bit waiting for us to become a party of this treaty so they can sue the United States of America, one person that I would quote so it gets into the record would be the international tribunal—well, I do not have it right here.

But Andrew L. Strauss who—the forum was the Global Warming Emissions. He said the article proposed various forums for initiating lawsuits against the United States, including the Law of the Sea Treaty's compulsory dispute resolution, which I am sure that Senator Lee will be talking about, mechanisms. And he said, as the United States has not adhered to the Convention, however, a suit could not be brought unless we adhered to the Convention.

In the book that was written "Climate Change Damage and International Law," law professor Roda Verheyen said—she posed a comprehensive hypothetical case that could be brought against the United States for its alleged responsibility in melting glaciers, causing glacier outburst and floods.

The reason I am interested in this is we in the Senate and the House have refused to adhere to this and pass something that would put a limitation on anthropogenic gases and here we would be ceding that authority to someone else.

And the last thing I want to mention, Mr. Chairman, if you would allow me to do this—they keep talking about a seat at the table. I think my good friend to my right, Senator DeMint, is going to ask what table you are talking about because we already have a table out there and it is called the International Maritime Organization. They have had this since World War II. It says accomplished by passing and adopting implementing standards, maritime safety and security, efficiency of navigation, and prevention or control of pollution from ships, IMO is the source of approximately 60 legal instruments that guide the regulatory development of its Member States and improve the area of the sea.

So those questions I would ask are you really do not think that our sovereignty is impaired by ceding these authorities to some international group for suing the United States or taxing the United States. And then also, can you tell me of incidents where the IMO has not answered these problems that we have been talking about to your satisfaction?

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Inhofe. You put a lot on the table. Do you want to respond, Admiral?

Admiral WINNEFELD. There is an awful lot. First of all, it is great to see you again, Senator. I always enjoy our conversations.

There is an awful lot in that question.

Senator INHOFE. Up till now. [Laughter.]

Admiral WINNEFELD. Even now, sir. Even now, with respect.

There is an awful lot in your question, and I think that we would have to have, I think, a detailed one-on-one discussion because I am not sure that I would, for example, agree that it is a tax as opposed to a royalty.

I would also suggest—and again, I am not the economic expert or the industry person who might testify to this. But I think a lot of these guys are not investing in these areas because they are worried that they do not have the underpinning of treaty law to protect them. And so it is money that is not there because they are not drawing the natural resources from the Extended Continental Shelf that perhaps we as a nation would like to see them draw.

Senator INHOFE. If we did, of course, we would be able to get royalties in the range that I discussed, and of course, 7 percent would represent more than 50 percent of the royalties we would otherwise be entitled to.

Admiral WINNEFELD. Depending on the range.

Senator INHOFE. That is right.

Admiral WINNEFELD. If we took 18 and three-quarters and took 7 off of that, we would be down to certainly 11 and three-quarters,

which at the moment that money does not exist. I mean, we could have a detailed discussion there.

Another example would be the Reserve Officers Association letter, which I read for the first time this morning, which I found—after I read it, I felt like these guys ought to go get better advice because there are a number of statements in there that I think are incorrect or misleading. For example, they talk about territorial seas, that the 1958 Geneva Convention established territorial seas. That is just not true.

It talks about, sort of cleverly, that that Convention defined international straits, but what it did not do, but what the Law of the Sea does, is to define what transit passage is through those areas. That is not in the Geneva Convention and it is in the Law of the Sea Convention.

Very importantly to me—and I would want to go into a classified session to discuss this—is that the Law of the Sea Convention defines a stateless vessel. That is incredibly important to us in the counterterrorism world and the counterproliferation world.

So there are some inaccuracies in that letter that I would love to sit down and walk through, even though they are a great bunch of guys who obviously mean the best for our country.

So, again, as I said, I always enjoy our conversations and I look forward to the potential to have one on this very important subject, sir.

The CHAIRMAN. Thank you very much, Admiral.

Yes, Admiral Papp.

Admiral PAPP. And, Senator, I lead the U.S. delegation to the International Maritime Organization. I went to my first general Assembly this fall, and in every discussion, bilateral and multilateral, every conversation starts off with the other country questioning and wondering why the United States is not asserting leadership by joining the Convention because every negotiation that is done, whether it has to do with piracy, whether it has to do with marine casualty, overseas, everything is formed on the basis of the treaty, and with us being an outsider, oftentimes just because of who we are, because of the United States, we can influence it and we can still get things done, but it makes it more difficult for us to get these things done.

We are looking at this and how are we are going to operate in the future, what tools are we going to have to use in the future. And customary international law, countries' influences—they ebb and flow. They rise, they fall. This is something that assures because it is the basic underpinning of all these treaties, all these agreements that we come to at IMO.

Senator INHOFE. My question was where has this not worked in the past. It has been working since World War II.

Admiral PAPP. Well, I can give you one right now, sir, and it is dealing with the Arctic. I personally requested a meeting with all the other Arctic representatives there so that we can continue our negotiations in terms of coming up with the details of the search and rescue agreements for the Arctic, for pollution response in the Arctic——

Senator INHOFE. They did not meet with you? Is this what you are asserting here?

Admiral PAPP. They did meet with me, sir, because we are the United States. We still have influence.

Senator INHOFE. Exactly.

Admiral PAPP. But will that influence continue forever?

The shifting politics, shifting strengths of countries.

What I can tell you is that each and every one of those countries looks to the United States for leadership and setting an example under the rule of law and being in a leadership position. And we are not quite in that leadership position given the current stance that we have.

Senator INHOFE. Do you think in the future if we do give this opportunity for them to take funds, royalties or otherwise, which I would have to say, Admiral, that is a tax because that is money, to be redistributed by some organization that we do not even have a voice in—do you think that is in our best national security interest?

Admiral PAPP. Well, sir, I think it is all speculative at this point because nobody is willing to drill on the Extended Continental Shelf because they do not have the legal assurances that are given by the Convention. And if we are a member of the Convention, we do have a seat at the table. Somebody asked what table do we have a seat at. The International Seabed Authority where we would have the one permanent seat and veto power.

Senator INHOFE. The same veto power that other countries like Sudan might have. We have veto power. First of all, you are talking about two entities. One is an advisory and the other is making a decision. And you are saying that we have a different veto power than the other countries have?

Admiral WINNEFELD. If any country has the veto power, then that would nullify the ability to distribute any of those funds.

Senator INHOFE. That is right.

Admiral WINNEFELD. So the deal would be that if the group does not come up with what seems to be a fair and equitable distribution of those funds, then we would veto it.

Senator INHOFE. On distributing the funds, yes. But the funds would already be there. The tax, the royalty would already be in effect. They would have the control over those funds that came from our efforts that otherwise would be coming to the United States. So that does not affect that. They would have that authority. It is just that you are saying that we could direct which countries they go to, but they would not be coming to ours.

Admiral WINNEFELD. Some of them could be coming to ours, but you are correct. Whatever the——

Senator INHOFE. For the record, I want you to send me a scenario by which any of that would come to the United States.

The CHAIRMAN. Well, I am going to intervene here just for a second.

Senator INHOFE. Yes. You are the chairman.

The CHAIRMAN. Well, no, no, but I have given you well more than double the amount of time of any other Senator because I really want any opponent to be able to have an opportunity to grill people.

Senator INHOFE. And I appreciate it.

The CHAIRMAN. I think that is really important, and I want to get all these issues out on the table.

But I do think it is important, as we do that, that we try to establish what is fact and what is not. There is no power and no right of taxation in this document. And we will have an understanding and a declaration that makes it clear in the resolution of ratification that the United States of America will never accede to any other country's tax, that there is no tax in here, and it will be properly defined.

Senator INHOFE. Mr. Chairman, we are saying that they will have a percentage of the royalties that we would otherwise——

The CHAIRMAN. A royalty. A royalty is not a tax.

Senator INHOFE. Is not a tax?

The CHAIRMAN. That is correct. A royalty is a bargain. It is an agreement. A royalty is not a tax. No government authority has issued a tax in any kind of way that constitutes taxation. It is a royalty where the companies who are at the table during the negotiation—Ronald Reagan set that in place. And in fact, we will have testimony from John Negroponte and others who have been part of these negotiations over a long period of time as to exactly what was agreed on and how. There is a royalty scheme.

Why is there a royalty scheme? Because three-quarters of the planet Earth is ocean. Three-quarters of the planet. And a whole bunch of countries are landlocked. And if the ones with the border on the ocean have the right to extend their shelf way out into the ocean, you could have very few nations claiming all the resources of the Earth to the exclusion of everybody else. So what was agreed on is really quite minimal. It is far less than the oil companies pay to drill off the coast of Louisiana. Far less. And it is scaled according to how much mining and how much resources you take out of the ocean.

Now, Lockheed Martin and a whole bunch of other companies decided, wow, you know what?—97 percent of something is a heck of a lot better than 0 percent of nothing. And they want 97 percent. They want their 93 percent. And so they have agreed there will be a scale of some amount that will go to the landlocked nations in compensation for the rights of other countries to exploit the seabed of the Earth.

We have over a million acres of land out there that we can claim for America, more than any other nation on the face of the planet because we have Guam, because of the Marianas, because of Hawaii, because of the Aleutians and so forth. We have the most extensive—and I will bring a map in of it one day. It is extraordinary. To sit here and think that we are not going to take advantage of that and stake our claim and have our claims legitimate so our companies can go out would be just astonishing. The companies want this. They are ready to pay the royalty because they want the profits that come from the other 93 percent.

Senator INHOFE. They establish the royalties. I just have to say—and I am afraid you will cut me off before I respond to your statement——

The CHAIRMAN. No, I will not. I have never cut you off, Senator.

Senator INHOFE [continuing]. About a tax. Money that would be coming to the United States, that by virtue of this treaty, would

not come to the United States—I call that a tax. Most people outside of Washington would call that a tax.

The CHAIRMAN. Well, Senator, you are entitled to—we will, as I said, make it crystal clear in the ratification document.

And I think the companies will be quite upset that you are protecting them from earning the profit that they would like to earn. It is sort of remarkable to me, but so be it.

I also think it is important here to deal with facts. General Dempsey, indeed, said we would not reduce our force.

Senator INHOFE. Force power.

The CHAIRMAN. Force power. Of course, the United States of America is not going to reduce its force power. But every one of these gentlemen at this table, who have the responsibility of sending people into combat conceivably at some point in time, have said they would rather have a tool at their disposal to try to resolve things peacefully first. And what General Dempsey said, if you quote him completely, which you did not do—he went on to say that the failure to ratify puts ourselves at risk of confrontation with others who are interpreting customary international law to their benefit. So the risk of confrontation goes up. So our force capacity will not go down, but the risk of having it used in a confrontation you do not want goes up. And that is what every one of these leaders have said is not advisable.

Senator INHOFE. No, I understand and we talked about that. So you would agree then that not going into this treaty would not in any way compromise our ability to project force or to navigate. You would agree with that.

The CHAIRMAN. Not necessarily navigate but project force I would agree. We will project force, but it is not necessarily going to affect those rights. If you want to have the confrontation without having a tool to resolve it properly, that is a choice every Senator will face when we get to it.

But I have taken up Senators' time, but I just want to also—I think it is important—and Admiral, maybe you want to comment on this. The Reserve Officers' letter—and I respect them completely and they are entitled and we will welcome those kinds of comments here. But once again, we have to deal with facts.

A lot of people are working off of the 1982 treaty, and for them and for some people, things have not moved since then. But the negotiation has and the status of the treaty has changed since then. And so we are dealing with a very different set of facts here. And, Admiral Winnefeld, I think you would agree that there is an assertion that has been made here that every provision of the Convention is already codified in previous treaties to which we are a party, and I think that is a misunderstanding. It reflects a confusion about what was in customary law as opposed to the older treaties.

For example, the 1958 Convention, Senator, did not specify any limit on the territorial sea, and some countries were taking advantage of that loophole to extend their territorial seas. Article 3 of the 1982 Convention explicitly set a 12-mile limit according to U.S. policy. The 1958 Convention did not include a codification of the right of transit passage through straits used for international navigation

that had developed in customary international law. And there are other examples of that.

So I would just very quickly ask you, Admiral Winnefeld, is that correct.

Senator DEMINT. Mr. Chairman, I do not mean to be rude and do not want to interrupt, but we have a vote at 12:30.

The CHAIRMAN. Fair enough.

Senator DEMINT. A number have been waiting a long time——

The CHAIRMAN. Let us come back to this. We will come back to this at the appropriate time. We are certainly going to leave the record open, and we are going to building a longer record anyway. So we will draw this out so people understand the distinction between the 1982 and where we are now, what is in customary and what the relationship is to the treaty.

Senator Udall, thanks so much for your patience.

Senator UDALL. Thank you, Senator Kerry. And let me just thank you again for approaching this treaty in a very, very thorough way and having these fine servicemembers before us that are giving us their personal opinions.

I think there was some suggestion here that your opinions—I know Senator Kerry asked you at the beginning, are you here giving us the best of your experience and the best of your personal opinions, and I think everyone said yes. And so I think we should put to rest this issue of the idea that the Commander in Chief has ordered you to testify in a certain way. Is that the case, that these are your personal opinions here and based on your experience? Yes? I see everybody nodding.

Admiral GREENERT. That is correct.

Admiral WINNEFELD. That is correct, Senator.

Senator UDALL. Let the record reflect. OK. Thank you.

There was also a suggestion that on the letter with the retired officers—and you all are active military—that somehow there is a split. Do you any of you all have a sense? I mean, I know Senator Warner was here earlier. He was a captain in the Marines. He is in support. Do you any of you have a sense of how it comes down in terms of retired military versus active military on this or the various associations or anything? And if you do not know it off the top of your head, you can get us the information. But please.

Admiral GREENERT. All of the colleagues that I have spoken to—Chiefs of Naval Operations—the conversation centered around maritime security. That is what I am conveyed to take care of. And there has not been a split. And those retired who were not Chiefs of Naval Operations—the issue has been consistent in that the elements in the Law of the Sea Convention that enhance maritime security, which the entire Convention that I see does, there has not been a split. There have been some who are retired that I have spoken to who said, well, I am not so sure, and it involved a lot of the details of the economics and the ability to control. That has been my experience, Senator.

Senator UDALL. Do any of you—would any of the others like to comment on that?

Admiral WINNEFELD. I am aware of a 2007 letter written by the Military Officers Association that is supportive of the treaty. So that is why I was sort of surprised to see this morning the other

letter which again had some inaccuracies. But I give them credit for the courage and the strength of their convictions, but I think they just had some things inaccurately stated.

Senator UDALL. The Navy and the Coast Guard's ability to conduct maritime interdiction is an important tool to stop drug trafficking and conduct counterproliferation operations. And while some have asserted that the Law of the Sea Treaty puts shackles on our maritime forces, I agree with the assessment of the Navy JAG that article 110 pertaining to the right of visit actually strengthens our ability to conduct maritime interdictions.

Can you go into details about how our Armed Forces will be enabled to conduct their mission by article 110 and why it is important that the Navy and the Coast Guard have the backing of an international treaty to conduct operations they can already conduct via force if needed?

Admiral PAPP. Well, sir, being in the service that is involved in maritime interdictions on almost a daily basis, I can tell you that prior to the Convention, we tried to work out bilateral or multilateral agreements with other countries that enable us to operate close to their waters, sometimes even in their territorial seas because we are able to come to these agreements, whether we use ship riders or other things. It helps us to interdict drugs, migrants, and perhaps other things far offshore in the transit zone, sometimes in the departure zone.

Prior to the Convention and the 1994 revision, we had about a dozen countries that we were able to get into agreements with. After the 1994 Convention, which had language in there talking about cooperation between countries particularly as it relates to interdicting drugs and because we comply with the Convention, even though we have not acceded to it, we have built that up to about 45 countries that we have agreements with around the world.

However, administrations change. Other people are elected in. These constructs that we have come to are on a foundation of shifting sand, and we cannot always rely upon each country to live up to its agreement because things will change. We have some countries that have excessive territorial sea claims that we have to respect.

But having the assurance of the underpinning of a solid foundation of the Convention would help us in negotiating those things into the future and give us greater predictability.

Senator UDALL. Thank you very much.

Admiral GREENERT. The elements that describe freedom of navigation, for example, Exclusive Economic Zones, territorial seas, and all that, transit passage, archipelagic passage—that all enhances our ability to conduct maritime intercept operations because it clarifies where we can operate.

But also what section 110 does is it provides clarity on unauthorized broadcasting, drug trafficking, piracy, and unflagged nations as the Vice Chairman mentioned earlier. But it also says that powers confirmed by other treaties, in other words, United Nations resolutions and all that, that is very clearly laid out and gives us those mandates that enhance our ability to, especially in a coalition operations, bring it all together to do maritime intercept.

Senator UDALL. Any of the other panelists have a comment on that?

[No response.]

Senator UDALL. Thank you very much for your answers and thank you for your service.

The CHAIRMAN. Thanks so much, Senator Udall.

And, Senator DeMint, thanks for your patience. Appreciate it.

Senator DEMINT. Thank you, Mr. Chairman.

And I want to thank all of the folks here today. You and the men and women who serve with you make us proud to be Americans.

And I appreciate your being here to advocate for the treaty. I mean, there are 10 pages in this treaty dealing with navigation that would have a lot of theoretical benefits to our military, to particularly our Navy. I do not refute that at all, although some of the things I have heard today would make me even concerned about that part of it.

As has been pointed out, where it has really been tested in the South China Sea with China violating the rules, with numerous countries affected, there has been no enforcement based on the treaty, and numerous countries that are part of this treaty.

And the implication I have heard from some of you today maybe worries me more than anything else, is that by joining, we, in effect, become the enforcers of this around the world. And I know that is not what you said, but that we add our weight. But I am afraid that these other countries are part of this treaty. It is not being enforced, and if we become part of it—they want us to become part of it for numerous reasons, but one is to help enforce it. That worries me.

But I would like to take just a second to explain why I oppose the treaty as a whole, not necessarily the pages you are talking about, and instead of ask a question, yield to Senator Lee because I know he has studied this a lot and I would like to give him a chance to ask questions before we run out of time.

But you have explained that the up side of this treaty is that it might give you an additional tool to deal with issues out in the future. And I respect that. But the down-side risks for us seem much greater than that potential benefit that we might have that is clearly theoretical, not working now. The hope is if we get involved, our weight might make it work. But the 300 pages is primarily a document, I would say, at least in large part with environmental issues, and that may affect us much more than any navigation part of this.

In fact, all the research I have done—there is not a table in Jamaica where the naval powers around the world, except for us, are meeting at a table making decisions about navigation. That is not happening. That is not what they are dealing with now. Perhaps our joining the Convention could change that, but that is not what the Convention is doing now.

But the language in this treaty that worries us is particularly that that deals with environmental issues and the ability of this Convention to enforce that with signatories of the treaty. And it is clear that the United States is the largest economic power. We are the largest producer, the largest consumer. We also have the largest military in the world. And if you put all that together, we are

by far the largest emitters of carbon, and that is an issue around the world.

This is not a theoretical issue. Europe is already going to charge us taxes for our commercial planes to land there because of emissions. And it is clear from this that the United States is going to be subject to complaints and suits from all over the world dealing with climate change, issues like cap and trade. There will be suits for us to pay for pollution credits where we sail our ships and where we fly our military aircraft. And the arbitration or the dispute resolution part of this is out of our control. We appoint two. The complainant appoints two, and the United Nations Secretary General will be the deciding vote.

And so while a lot of us who are against this treaty are mocked, in effect, for not having the good sense to understand what is in it, I am afraid that you are looking at a section of this that might benefit our military long-term, but the other issues that are in the other 300 pages are very serious and subject the United States to a high cost. We will pay more for being in this Convention, just like we do the United Nations, than any other nation. The royalties that come from it will largely come from us. That is why other countries want in it. We will probably be paying for pollution credits very quickly, and we will pay for countless lawsuits that are going come against us that are not theoretical but I think very real.

So we have concerns not necessarily disagreements of what you are talking about. And again, I appreciate your advocacy of trying to bring us and the rest of the world into the rule of law. This treaty is not doing it now. I do not think it is going to do it when we join it.

But I will yield to Senator Lee.

Senator LEE. Am I recognized?

The CHAIRMAN. Yes, absolutely.

Senator LEE. Thank you.

Thank you all for being with us today. It is an impressive site to have 24 stars here in front of us with only six officials, and I am honored by your service to our country.

I too have some concerns with this proposed treaty, concerns that relate ultimately to sovereignty concerns. The discussion we had a few minutes ago regarding the difference between a tax and a royalty is, I think, a legitimate one. There is a legitimate point to be made there.

My concerns would not, however, be resolved merely if we could conclude that what we are talking about under article 82 is a royalty rather than a tax. The reason that developers will pay a royalty to the United States Government in the American submerged lands offshore has to do with the fact that there is a recognition there of a sovereign interest vested in the United States of America. That is why the royalty gets paid when it is on Federal lands, whether it is onshore or offshore. The idea of paying a royalty to any international body tends to imbue that international body with a degree of sovereignty. That by itself raises significant concerns in my mind.

Now, of course, the primary reason why the six of you are before this committee today is to talk about our maritime interests, our navigational rights as a country. And I understand that. But I do

have to ask the question. I am happy to ask it to any or all of you who are willing to answer this question. Why is it necessary? Let us assume for purposes of this discussion that you may be right, that it could be a good thing to protect our navigational, our maritime rights through some kind of a treaty. Why is it necessary to join that together with a separate part of the same treaty that also deals with exploitation of the seabed extending beyond our Outer Continental Shelf?

General Jacoby, you are closest to me. Why do you not take a stab at that?

General JACOBY. I would be happy to, Senator.

In my area of operations, my concern about the Law of the Sea Treaty, my support is generated by the opening of the Arctic. It is one of those things where you have got to be in favor of what is going to happen. For whatever reason, human activity is increasing at a fast pace. Since 2008, double the number of vessels heading through the Bering Strait. This summer right now Shell Oil is bringing two platforms to work in the Beaufort Sea. And this is increasing. Economic activity inevitably is followed with security and perhaps later safety and defense concerns. And so we have to pace that and make sure that we stay ahead of that.

Senator LEE. Would that necessarily include then—I mean, to the extent that there are some benefits of joining those two things, is there any reason why it would have to include a royalty paid to an international sovereign body, which I assume you would agree, by the way, this would be unprecedented? I mean, it is really the first time we would, as a country, be vesting an international body with real incidents of sovereign authority.

General JACOBY. Senator, I am going to stick with the operational aspects of that, if I may. This increasing competitiveness that is generated by increased human activity and economic activity really opens up a whole new world of friction points. So for an operational commander, it is where are you going to pick your fights and what tools are in your tool bag. Harsh environment, few assets, little infrastructure, economic activity outpacing that ability.

So having this framework, this starting point with all the other Arctic nations but not just the nations, in my case the chiefs of defense, the chiefs of security, the folks responsible for safety, that allows us to build shared situational awareness, common interests, common framework so that we are going to avoid—my job—avoid these frictions the best that I can as this pace of activity——

Senator LEE. So is the common framework that you are referring to—would that be established by the International Seabed Authority? Is that the table, the metaphorical table that we keep talking about?

General JACOBY. I am going to stick with just the operational aspects of it. I think the seabed questions and the Continental Shelf questions, of course, are the things that are the uncertainty that is accompanying increased economic activity. The Law of the Sea does allow us a starting point of certainty in our discussions and in our coordination and cooperation as we try to resolve what is really an opportunity to have a boon in an activity in the Arctic. And so for me it is just allowing us to get ahead of this. It is about

the future, and it is about how can we contribute to the peaceful opening of the Arctic, reduce potential friction points, and this is a good, solid framework which all the Arctic countries and the chiefs of defense start with when we begin those discussions.

Senator LEE. OK.

Admiral Papp, I heard you mention a few minutes ago that we have had some difficulty negotiating with Canada on an issue that you described. You said that Canada was standing on what you regarded as, I think, weak footing or words to that effect. You also indicated that although it was on a weak footing, the objections that Canada was raising were based on the fact that the United States has not yet ratified this treaty. Do you want to explain to us why that is the case and why ratification of the treaty would necessarily resolve that?

Admiral PAPP. Yes, sir. And getting back to Senator Risch's comment, if I insulted anybody's intelligence, we will be happy to have staffs come up and brief specifics of the cases that I cited.

The one that I will give you is because I have been personally involved as the Atlantic Area Commander, my previous job. Part of the Coast Guard's responsibility is the permitting process. We are a law enforcement and regulatory agency. So when people for commerce purposes seek to build oil facilities, gas facilities, et cetera, New England has a need for more LNG facilities—there was a proposal to put one up in northern Maine. Canada objected because of—and claiming that it was internal waters and that they would have control over the weather. There were transits through that area.

There is also a dispute as to our border between western Canada and the eastern edge of Alaska.

More importantly and more significantly, a large issue is the Northwest Passage, whether that is internal waters to Canada or whether it is archipelagic where there should be a transit——

Senator LEE. Are these all issues that—and I apologize for interrupting, but we have got very little time here before we have got to go to vote. Are these all issues that are not adequately addressed by customary international law that would be resolved by the treaty, were it ratified?

Admiral PAPP. If we were operating only under customary international law, perhaps. But Canada is a signatory to the Convention. They fall back on the fact that they are a signatory to the Convention and we are not. So we are not a party and do not have any standing to dispute their claims.

Senator LEE. And so they would regard that aspect of customary international law as nonbinding to them and they are excused now from that aspect of customary international law?

Admiral PAPP. Well, sir, as I said earlier, in regards to the collision regulations, collision avoidance regulations, when we operated under customary international law, customary international law is in the eyes of the beholder. Everybody has slightly different variations of customary international law.

Senator LEE. And that was an example, was it not, of how countries were able to come together and establish international regulatory standards without vesting sovereign authority in an international body?

Admiral PAPP. I would say that is correct, yes, sir.

Senator LEE. And also one in which we were able to establish those international standards, those international norms, which have helped facilitate maritime traffic without subjecting the United States to lawsuits to be decided by a tribunal that would be weighted in many instances by what would likely be the tie-breaking arbitrator being chosen by the Secretary General of the United States.

Admiral PAPP. I cannot really comment on that, sir, and I would be delighted to bring my lawyers up to discuss that. I am looking at it from an operational commander's point of view where I like to have all the tools possible in order to negotiate agreements on the broad range of things that Coast Guard does in terms of assuring safe, secure, and environmentally sound commerce into our country, out of our country, through our waters, and concluding agreements in the Arctic which we are constrained because we are not a party to the Convention.

Senator LEE. OK. Thank you all very much for your testimony.

Just in closing, to wrap up, I just want to comment that I respect your judgment greatly, and if there is a need to codify certain aspects of currently existing, extant, customary international law, either in a treaty or in the U.S. Code or in some combination of the two, I am more than open to discussing that idea. I have, nonetheless, grave concerns, concerns that have not been resolved in any hearing to this point or in any reading of the treaty that I have undertaken so far that what we are doing is not just that, but we are going far beyond that and creating an international body that would be imbued with many of the incidents of sovereignty and doing so in a way that is completely unprecedented in U.S. history.

Thank you very much.

The CHAIRMAN. Senator Lee, I appreciate your questions and those of Senator DeMint. Obviously, part of what we would love to try to do here is be able to address your concerns and your fears about this.

There really are some significant mistaken interpretations, and I do mean mistaken. For instance, Senator DeMint and I will sit down and talk about this one on one, but there is no ability to have an environmental lawsuit that would have any standing—I mean, somebody can bring a suit that they want tried, but it is not going to go anywhere. It cannot go anywhere because the specific language of the treaty says that no one is accountable to any environmental standard that you have not signed up for internationally. The United States of America has not signed up to any international environmental agreement. So literally—and I know the Senator is a good lawyer and he understands standing—there would be zero standing under the direct, overt language of this treaty. There is no ability to bring an environmental suit against us. No. 1.

No. 2, with respect to this concern about the Seabed Authority, the United States of America is the only country that has a permanent seat on it. Kudos to Ronald Reagan and the folks who negotiated this. And we will hear from some of the negotiators this afternoon. The others are rotating on a 4-year basis. So Sudan may be there today. Who knows where they will be in the future? But

the bottom line is that Sudan is on a lot of bodies that we currently work with, and it has not impeded our ability to assert our values or our interests.

Moreover, if we do not accede to this treaty, our major mining companies and other exploitative, undersea entities, gas, oil, et cetera, whatever, will not drill, will not exploit. In fact, it is very interesting. Lockheed Martin has asked the British Government and joined into a British consortium in order to be able to access someplace because the United States of America will not stand up for it and represent it through this process to legalize its claims. So here we are sending our companies to other countries to have them stand up for their interests. Lockheed Martin will not drill and put millions of dollars into an undersea exploitation unless they know they have legality to their claim.

That is for the Extended Shelf. The Extended Shelf we have available to us here is bigger than any other country in the world. Now, are we going to sit here and say it is smart for the United States not to help our companies have legal assurance so they can go out there and exploit those resources?

There is going to be a competition for resources. I mean, look at what China is doing now in Africa. Look at what they are doing in Afghanistan. We are fighting and putting people on the line, and they are there trying to exploit copper. I mean, we got to start thinking about our long-term economic strategic interests here, and if we do not sign up, we have a chance other countries can take us to the cleaners and you will see this in the classified briefing, the degree to which other countries are staking claims and we are just sitting here.

Now, we have a permanent seat. We have a veto to boot. Nothing can happen through the Seabed Authority that we do not agree to. So no money is going to be sent to some—I have heard people say we are going to send money to dictators through this. No; we are not. It cannot happen because we, if we are on it, can prevent it. If you want it to happen, it can happen through all the exploitation that is going to take place without us on it, and then they may decide to go do those things. So, in fact, there is a reverse argument. There is a much greater interest for us to be here to protect against those kinds of distributions.

The final thing I would just call to the attention of the Senator, article 82, which sets up this entity and the distribution. You know, for the first 5 years of production at a site, you do not pay any royalty at all. Nothing. And then for the 6th year, you pay about 1 percent of the value of production at the site. One percent of the total value of production at the site. That rate increases by 1 percent for each subsequent year until the 12th year. Only at the 12th year do you get to a 7-percent. If we are lucky enough to hit mining or oil, gas where that lasts for the 12 years, you may get 7 percent, much less than we pay on any of those oil rigs down in the gulf.

And finally, if you are a net importer of the minerals that you are producing out there, you do not pay anything at all. Zero royalty. If you are the importer because you are using it, this negotiation had the judgment to say that is your use that is your deal. It

is if you are exporting it and selling it, then you have to pay the party.

And finally, the payments are not made to the Seabed Authority. They are distinctly isolated and they go through the Seabed Authority. And that language is very specific, and it is only in an agreement by the parties at the table as to how they would be distributed to where. We are not at that table. So whatever is exploited in the world now is going to be distributed without the input of the United States. We are far better off sitting there and influencing that distribution and vetoing it if it is against our interests than we are watching it go by.

So I think we ought to have this conversation.

Senator LEE. If I could just respond very briefly to a couple of those points.

The CHAIRMAN. Yes, please, absolutely.

Senator LEE. First of all, I appreciate your insight, Mr. Chairman. This is an issue that you have lived with and worked with for many years, and I do appreciate your insights. I would observe, however, a couple of points.

First, the International Seabed Authority is governed——

The CHAIRMAN. Well, let me just ask how much time we have on the vote. I am not trying to cut you off. We have 5 minutes. We have time. We have time.

Senator LEE. In that case, I will try to finish up in 1 minute.

The International Seabed Authority is governed ultimately by the Assembly. The Assembly is that 160-plus member entity which is the supreme organ, the supreme lawmaking body, of the Authority.

The chairman is absolutely right to point out that the Council, this smaller body on which the United States does have a seat and has what can, I think, fairly be described in some limited context as veto authority because in some areas it requires consensus. The Council does have the authority to propose the rules and regulations governing the article 82 distribution, but ultimately the distribution itself, the determination of how those rules are implemented and the allocation itself is made by the Assembly and not by the Council.

As to the lawsuit, I understand your point about a lawsuit, but let us take into account the fact that let us suppose we, the United States, get hauled into an arbitration pursuant to Annex 8 and we find ourselves, having chosen two of our arbitrators, our opponent having chosen two, and the fifth having been chosen by the Secretary General of the United Nations. You could easily count to three among the arbitrators who might interpret the laws to which we have acceded, the environmental provisions to which we have agreed to be bound, differently that a U.S. court might, differently that you and I might, and that does present us with some risk.

The CHAIRMAN. Actually it does not, Senator, for this reason. If we were to agree to an international agreement with respect to the environment and we agreed to a dispute resolution process within that treaty, that treaty would govern and you could specifically, in fact, preclude—and I am confident we would—in the negotiation any jurisdiction of Law of the Sea over that particular issue. So in fact, we would be well protected if we were to get there.

I wish this really were a threat that the United States was about to enter into an agreement on international climate change, but I think it is a long way away given where we are. But I am willing, certainly, to provide for that. And we could do something in the resolution of ratification that addresses that concern, and I am perfectly happy to work with the Senator to do that.

Senator LEE. Thank you.

The CHAIRMAN. Thank you very much.

Gentlemen, I think everybody here has said it. We are enormously grateful to you for not just being here today but for your service, for your careers, for what you represent, and really it is, I think, important to have had these 24 stars here. We are grateful for your testimony and most importantly for what you do every single day. We thank you on behalf of the country. Thanks for being here today.

And again, Happy Birthday to the United States Army. Thank you.

We stand adjourned.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]

LETTERS AND ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES OF ADM JONATHAN W. GREENERT TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. If we had a larger Navy would you still be a proponent of the Convention? Why?

Answer. Yes. The Convention supports the legal basis for global access and mobility of U.S. military forces. However, this access is not a substitute for a capable fleet that can prevent wars and prevail in war when prevention fails. We need both a robust fleet and the benefits of the Convention to ensure our national economic and security interests are met in the maritime domain.

Question. How would being a party to the Convention further U.S. national security?

Answer. It is by joining the Convention that we can best secure our navigational freedoms and global access for military and commercial ships, aircraft, and undersea fiber optic cables. As it currently stands, we are forced to assert our rights to freedom of navigation through customary international law, which can change, to our detriment. Treaty law remains the firmest legal foundation upon which to base our global presence, on, above, and below the seas.

Additionally, our new defense strategy emphasizes the strategically vital area extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia. Several countries in the region border on and use critically important trade and supply routes. Further, some have proposed restrictions on access for military vessels in the Indian Ocean, Persian Gulf, and the South China Sea. The United States has continually expressed that it is in our vital interest to preserve the freedom of the seas and our respect for international law, freedom of navigation, and peaceful resolution of disputes. We continue to demonstrate our commitment to those interests by our continuing presence and engagement in these critical maritime regions. By not acceding to the Convention, we forgo the best and strongest legal footing for our actions.

U.S. accession to the Convention would help strengthen worldwide transit passage rights under international law and help to further isolate Iran as one of the few remaining nonparties to the Convention. For our friends and adversaries alike, it is difficult to understand how we argue that other nations must abide by international rules when we have not joined the treaty that codifies those rules.

Question. How would being a party to the Convention help U.S. naval forces in their efforts to resist attempts to impose illegitimate restrictions on freedom of navigation by other countries? Would you provide examples of such restrictions?

Answer. The Convention provides a formal and consistent framework for peaceful resolution of maritime disputes. It defines the extent of control that countries can legally assert at sea and prescribes procedures to peacefully resolve differences. When we confront another country over their illegitimate restrictions it would be beneficial to be able to point to a legally binding document as our reference rather than the nebulous concept of customary international law. Joining the Convention is an important element in preventing disagreements from escalating into confrontations or conflicts.

Recent interference with our operations in the western Pacific and Indian Ocean, as well as rhetoric by Iran about closing the Strait of Hormuz, underscore the need to be able to use the Convention to identify and respond to violations of international law that might attempt to constrain our access.

Question. It has been suggested that by acceding to the treaty we are turning the keys of our Navy over to an international organization. Would joining the treaty cause us to turn over any authority to an international organization regarding our rules of engagement or give any international organization control or veto power over our military operations?

Answer. No. Becoming a party to the treaty would not cause the United States to turn over any authority to an international organization regarding our rules of engagement nor would we be relinquishing any control or power over our military operations.

RESPONSES OF ADM ROBERT J. PAPP, JR. TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. If you had more ships in the Coast Guard, would you still support ratification of the Convention?

Answer. Yes. The crucial navigation rights and freedoms that would be "locked-in" by the United States becoming party to the Law of the Sea Convention are important for Coast Guard mission execution regardless of how many cutters the Coast Guard operates.

Question. How would the Convention impact your efforts to work with your foreign counterparts, including during the conduct of interdiction operations?

Answer. The Coast Guard's international partnerships are vital to Coast Guard mission execution. The Convention would greatly enhance these international partnerships, including strengthening our efforts to:

- Monitor, interdict, and prosecute those who threaten our Nation's security;
- Advance global and regional security priorities;
- Lead, develop, and negotiate global shipping standards at the International Maritime Organization for safe, secure, and clean ships;
- Combat illegal, unreported, and unregulated fishing; and,
- Prevent environmental damage and natural resource degradation associated with maritime activities.

In particular, bilateral agreements are important for successful and efficient interdiction operations. The Convention provides the cooperative framework, language, and operating procedures to negotiate these bilateral agreements and thus would facilitate our negotiation process. Under the status quo, the negotiation process often slows down due to nonparty status.

RESPONSES OF ADM JAMES WINNEFELD, JR., TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. Some claim that the United States does not need to be a party to the Convention—that because most of the rest of the world has come to view the 1982 Convention as "customary international law," the vital international norms that provide access to the seas and the airways above them are indefinitely protected.

- (a) Are you comfortable with relying indefinitely on customary international law?

Answer. Relying on customary international law is not in the United States best long-term interest. Treaty law remains the firmest legal foundation upon which to base our operational posture.

- (b) Does reliance on customary international law leave the United States vulnerable to the other countries that might push alternative interpretations of the

treaty text? Could such interpretations leave the U.S. military in a more tenuous position?

Answer. Unlike treaty law, customary international law can change subject to State practice at the local, regional or global level. As States seek to interpret treaty provisions in a manner that restricts freedom of navigation, U.S. reliance on customary international law becomes far more vulnerable and needlessly places our forces in a more tenuous position when conducting military activities.

- (c) Please provide some examples of provisions in the Convention that you'd like to see locked in?

Answer. The provisions on transit passage and archipelagic sea-lanes passage—which were created pursuant to the Convention's negotiations—are vital to the global mobility of our forces. Additionally, provisions related to the limits of territorial seas and innocent passage, the right to exercise the full range of high-seas freedoms of navigation and overflight in the Exclusive Economic Zone, and the right of warships and other government vessels to visit suspected stateless vessels are key provisions that help ensure our global force posture.

Question. Would acceding to the Convention provide you with another tool—a force multiplier—that would aid the U.S. military in its mission?

- (a) How will the Convention support our operations?
- (b) Will the U.S. military still conduct freedom of navigation exercises?

Answer. Yes. U.S. accession would comprise another important tool in our operators' toolkit. Having every available instrument of national power at our disposal is essential to address a range of challenges in an increasingly complex and diverse global security environment.

(a) Becoming a party to the Convention supports operations by protecting our navigational freedoms and global access for military and commercial ships, aircraft, and undersea fiber optic cables. It would also enhance our credibility and leadership in maritime affairs, reinforce our commitment to the rule of law, and provide an effective tool to counter interpretations of the Convention that seek to limit military operations.

(b) Yes. U.S. military forces will continue to use operational assertions to challenge excessive maritime claims under the U.S. Freedom of Navigation Program. Becoming a party to the Convention would strengthen the legitimacy of our operational assertions.

Question. If we accede to the Convention will our military operations be in any way restricted?

Answer. No. For nearly 30 years, we have conducted all U.S. military operations and activities in strict conformity with the Convention's navigational provisions; U.S. accession will not change the manner in which we operate. It will have no effect on our rules of engagement or our exercise of self-defense.

Question. Article 298 of the Convention expressly allows States to exclude "disputes concerning military activities" from dispute resolution. If we join this treaty, we will invoke that exception.

- Based on the treaty text and on how it is already being implemented, do you have any concern whatsoever over whether the United States will be able to exclude disputes concerning military activities from the Convention's dispute resolution mechanism, and that the United States will be able to decide for itself whether an activity is a "military" one for the purposes of the Convention?

Answer. No. I am confident that if the United States accedes to the Convention, we would invoke this exception and exclude U.S. military activities from any form of dispute resolution mechanisms or procedures. I am equally confident that the United States will be able to decide for itself what constitutes a military activity for purposes of the Convention. Many other State Parties to the Convention, including the other four permanent members of the U.N. Security Council, have submitted declarations exempting their military activities from dispute resolution. Each State Party retains the right to determine what activities constitute "military activities."

RESPONSES OF GEN. WILLIAM FRASER III, TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. In your role as the Commander of U.S. Transportation Command, and also as an aviator, would you address how the treaty aids the unimpeded flow of sealift and airlift through strategic chokepoints?

Answer. Unimpeded movement of our strategic sealift vessels and airlift aircraft through the world's strategic chokepoints remains essential to global mobility. Currently, the U.S. relies upon customary international law as the primary legal basis to secure global freedom of access. However, some countries may seek to redefine or reinterpret customary international law in ways that directly conflict with our interests. The Law of the Sea Convention provides legal support against erosion of essential navigation and overflight freedoms. Accession will give the U.S. leverage against countries seeking to reshape current internationally accepted rules we depend upon to transport our cargo and passengers.

Question. Does the Convention support your efforts to maintain global mobility and partner with private industry to ensure the delivery of troops, equipment, and supplies to and from the fight?

Answer. Yes, it does. The Law of the Sea Convention supports our national security interests by defining the rights of U.S. military and civilian vessels as they meet our mission requirements, reaffirms the sovereign immunity of our vessels owned by the U.S. as well as those used for government noncommercial service, and preserves our right to conduct military activities and operations in Exclusive Economic Zones. The Convention will help to simplify the complex maritime environment for our military forces and our commercial partners who play a critical role in developing new routes for transporting DOD cargo and in enabling access to a vast global infrastructure used for the transport of DOD cargo. This Convention provides important legal support for our commercial partners who transport our cargo, unescorted by U.S. warships, under the legal regimes of the Law of The Sea Convention. It also supports our civil air carrier partners who transport nearly all our military passengers and a significant amount of DOD air cargo.

Question. What are the impacts to USTRANSCOM should the United States fail to ratify the Convention?

Answer. There are no immediate impacts to U.S. military ships and commercial partners carrying DOD cargo. Over time, however, customary international law may be interpreted in different ways, particularly by emerging powers such as China, which may attempt to exert influence in areas traditionally accepted as international passageways. Ratifying the Convention will help to counter those interpretations and ensure our rights to navigate through coastal areas, international straits and Archipelagic Sea Lanes. The Law of the Sea Convention codifies, among other things, the Rights of Innocent Passage, Transit Passage and Archipelagic Sea Lanes Passage, reducing the risk of such challenges by Convention signatories. The Convention also supports the right of passage through and operations within foreign Exclusive Economic Zones, which some nations currently attempt to treat as areas of coastal state sovereignty.

Question. Please explain how the Law of the Sea Convention enhances USTRANSCOM's ability to traverse through the Arctic region.

Answer. Currently, little surface transit takes place through the Arctic, but we do exercise Arctic overflight while enroute to the CENTCOM AOR. As Arctic ice melts and the region increases in importance as a navigable area both on the sea and for overflight, it will become increasingly important for USTRANSCOM to traverse the region freely as more nations claim and secure extended Continental Shelf rights. As Arctic transit becomes practicable, the Law of the Sea Convention will define the regional international straits and determine the rights of vessels transiting those straits. Becoming a Party would guarantee that right by treaty law, vice reliance upon evolving interpretations of customary international law.

Question. How does the Law of the Sea Convention support commercial partners who are carrying cargo for U.S. forces?

Answer. More than 90 percent of all U.S. military supplies and equipment are transported by sea in DOD and U.S.-flagged charter and liner ships. The Law of the Sea Convention provides a legal basis for the sovereign immune status of DOD vessels and U.S.-flag long-term charters, and also provides important legal protection for U.S.-flag liner shipping used for the transport of DOD cargo. Liner shipping, U.S.-flagged vessels conducting commercial business while carrying DOD cargo, would be afforded the same protections as any flagged ship under the Convention even though they do not enjoy sovereign immune status.

RESPONSE OF GEN CHARLES JACOBY, JR., TO QUESTION SUBMITTED BY SENATOR JOHN F. KERRY

Question. Would a rule-based international framework such as Law of the Sea Convention aid you in your efforts to maintain stability and secure U.S. interests in the Arctic?

Answer. Yes. Use of diplomacy and the framework provided by the Law of the Sea Convention would facilitate military cooperation in the Arctic and would enhance my leadership position for building military partnerships in the region as a combatant commander. A rule-based framework aligns with my responsibility to support the peaceful opening of the Arctic in a manner that strengthens international cooperation. The Convention provides a crucial roadmap for resolving friction that may arise as the Arctic opens, allowing conflict to be resolved diplomatically, without coercion.

RESPONSE OF GEN WILLIAM FRASER III, GEN CHARLES JACOBY, JR., AND ADM SAMUEL LOCKLEAR III TO QUESTION SUBMITTED BY SENATOR JOHN F. KERRY

Question. As a combatant commander, if you had all of the material resources you could possibly ask for at your disposal, would you still support the Convention?

Answer. Yes. The Law of the Sea Convention provides an internationally recognized legal framework to support our freedom of navigation and overflight rights. It gives the United States a stronger diplomatic and legal position to assert our rights where the alternative might be to rely on my capabilities as a combatant commander to ensure access and mobility in the maritime domain.

RESPONSES OF ADM SAMUEL LOCKLEAR TO QUESTIONS SUBMITTED BY SENATOR JOHN F. KERRY

Question. As a combatant commander, if you had all of the material resources you could possible ask for at your disposal, would you still support the Convention?

Answer. Yes. As a combatant commander, regardless of the level of available resources, I would still support the Convention.

Question. How has the Convention helped to resolve disputes in the South China Sea? Please provide specific examples.

Answer. The Convention provides a legal framework for nations to resolve maritime and boundary disputes, including many of the disputes in the South China Sea. Generally, Article 279 of the Convention states that Parties "shall settle any dispute concerning the interpretation or application of this Convention by peaceful means. . . ." The Convention recognizes several methods of dispute resolution, and does not mandate a particular method. Specifically, Article 280 states that Parties may "agree at any time to settle a dispute between them concerning the interpretation or application of this Convention by any peaceful means of their own choice." These means include "negotiation" (Article 283), "conciliation," (Article 284), "arbitration" (Article 287), or decision by the International Tribunal for the Law of the Sea (Article 287) or the International Court of Justice (Article 287).

An example of how the Convention helped to resolve a dispute in the South China Sea is the maritime boundary between Vietnam and the People's Republic of China in the Gulf of Tonkin (Beibu Gulf in Chinese and Bac Bo Gulf in Vietnamese). Both Vietnam and China are parties to the Convention: Vietnam signed it in December 1982, and ratified it in July 1994; China signed it in December 1982, and ratified it in June 1996. The process of dispute resolution in the Gulf of Tonkin between the two nations had three stages: (i) brief negotiations in 1974, (ii) negotiations between October 1977 and June 1978, (iii) and negotiations between 1992 and 2000. In 1993, the two nations reached a general agreement on the basic principles to be applied to settle the dispute, including "applying the International Law of the Sea." On December 25, 2000, the two nations signed an Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones, and Continental Shelves. Article 1, Section 1 of the Agreement acknowledged, "*The Parties have determined the demarcation line for the territorial seas, exclusive economic zones and continental shelves of the two countries in the Beibu Gulf in accordance with the 1982 United Nations Convention on the Law of the Sea,* generally accepted principles of international law and international practice, based on the full consideration of all relevant circumstances of the Beibu Gulf and on the equitable principle, and through friendly consultation." (Emphasis added.)

An example of how the Convention has helped to resolve a dispute elsewhere in the Asia-Pacific region, similar to some of the disputes in the South China Sea, includes the March 2012 case between Bangladesh and Burma before the International Tribunal for the Law of the Sea concerning their maritime boundary. That case demonstrates that, if the Parties to a particular dispute have the political will to utilize the Convention's methods of dispute resolution, the Convention provides an effective legal framework for resolving maritime and boundary disputes.

Question. In your dealings with military officials in the region, does our non-party status to this Convention have an impact on your mission?

Answer. Yes. In the Asia-Pacific region, the United States has national interests in security and stability, freedom of navigation and open access to the maritime domain, respect for international law, and unimpeded commerce and economic development. We can best protect our national security and our leadership role in the Pacific by acceding to the Convention. As the Secretary of Defense stated in his May 23 testimony, a key component of our strategy is to reenergize and strengthen our network of defense and security partnerships throughout the Asia-Pacific region. An area of universal interests among our allies and partners is protection of the rights, freedoms, and uses of the sea that underpin all nations' access to the world's oceans. Joining the Convention will enhance seamless integration of international legal authorities between our forces and those of our partners and will place the United States in the best position to lead international efforts in the maritime domain.

As we look into the future, our status as a non-Party will increasingly disadvantage the United States. Presently, the United States is forced to rely on customary international law as the basis for asserting our rights and freedoms in the maritime domain. In situations when coastal States assert maritime claims that exceed the rights afforded to them by the Convention, U.S. Pacific Command challenges such claims through a variety of means including Freedom of Navigation operations, military-to-military communications, and diplomatic protests through the State Department. When challenging such excessive claims through military-to-military or diplomatic exchanges, the United States typically cites customary international law and the relevant provisions of the Convention. Unfortunately, because we are not a party to the Convention, our challenges are less credible than they would otherwise be. Other States are less persuaded to accept our demand that they comply with the rules set forth in the Convention, given that we have not joined the Convention.

Question. How does not being a party to the Convention hamper you when you push back against spurious territorial claims and restrictions on U.S. military activity?

Answer. The United States, as well as our allies and partners, face various attempts from particular coastal States to limit military activities in large areas of the ocean. The Convention provides a stable legal framework of rights, freedoms, and uses of the sea, as well as a robust negotiating history, upon which U.S. Pacific Command could rely to challenge such coastal States. As a non-party to the Convention, however, we are not able to effectively, credibly rely on the Convention as a source of law to protect our interests and challenge excessive maritime claims of coastal States.

RESPONSE OF ADM JAMES WINNEFELD, JR., TO QUESTION SUBMITTED BY SENATOR ROBERT P. CASEY, JR.

Question. The United States has declined membership in the United Nations Convention on the Law of the Sea for three decades. Why should joining the Convention on the Law of the Sea be a priority for the United States at this time? From the perspective of the U.S. military, what are the expected advantages of membership in the Convention on the Law of the Sea? What are the possible drawbacks?

Answer. Joining the Convention now is a priority because the global environment has changed since the Convention's negotiation and entry into force. From the perspective of the U.S. Armed Forces, joining the Convention is essential to protecting navigational freedoms and U.S. national security interests while positioning our forces for the future as we confront an increasingly complex security environment. Through internal legislation and their own efforts to interpret the Convention, rising powers seek to erode the favorable navigational provisions that are essential to the global mobility of U.S. forces. As a preeminent maritime power, we must operate inside of the Convention to influence and lead in manner that prevents this erosion and locks in vital navigational provisions. As we rebalance toward the Asia-Pacific region, our status as a Party to the Convention will position the U.S. Armed Forces

to exercise more influence and leadership as tensions and disputes arise in the maritime domain. As the Arctic becomes available for increased navigation and use, the U.S. Armed Forces will be better postured to promote and protect U.S. national security interests and effectively interact with the other seven Arctic Council nations who are parties to the Convention. From my perspective, there are no drawbacks to joining the Convention.

RESPONSE OF ADM JONATHAN W. GREENERT TO QUESTION SUBMITTED BY SENATOR ROBERT P. CASEY, JR.

Question. Some observers have argued that U.S. membership in the United Nations Convention on the Law of the Sea will restrict the U.S. Navy's ability to navigate the seas and conduct maritime operations freely.

- What is the possible negative impact, if any, of U.S. accession to the Convention on the Law of the Sea on the freedom of U.S. Navy operations?
- Are there specific provisions within the Convention that protect U.S. freedom to conduct maritime military operations?

Answer. U.S. Navy operations have been conducted consistent with the navigational provisions of the Convention for the past 30 years specifically because those provisions reinforce our sovereign and security interests. Accession to the Convention will have no negative impact on the freedom of U.S. Navy operations. The Convention's provisions protect U.S. freedom to conduct maritime military operations. Specifically, Articles 58 and 87 preserve the right to exercise high-seas freedoms in foreign exclusive economic zones, Article 17 provides the right to exercise innocent passage through foreign territorial seas without discrimination based on cargo or means of propulsion, Article 38 provides the right of navigation and overflight through international straits in the normal mode of operation, and Article 95 provides warships on the high seas with complete immunity from the jurisdiction of foreign nations. The Convention's navigational provisions were designed to ensure continued protection of sovereign rights and enable naval forces to engage in unimpeded free navigation of the high seas to defend Member States' security and economic interests in the maritime domain.

RESPONSE OF ADM SAMUEL LOCKLEAR TO QUESTION SUBMITTED BY SENATOR ROBERT P. CASEY, JR.

Question. The United States has significant national security and economic interests in the Asia-Pacific maritime region. The Department of Defense's announcement of plans to shift additional forces to the Pacific indicates that this region is an increasingly high priority for the U.S. military.

- Has the United States status as a nonmember of the United Nations Convention of the Law of the Sea hampered our ability to protect and promote our interests in this critical maritime region up to this point? If so, how?
- How will accession to the Convention improve our ability to pursue these interests?

Answer. Not being a party to the U.N. Convention on the Law of the Sea (UNCLOS) is used against the U.S. when we challenge—diplomatically or operationally—excessive maritime claims of nations in the Asia-Pacific region. Most States in that area are parties to the Convention and cite its language as legal authority for their claims. Some of these countries state the U.S. invocation of the UNCLOS language is disingenuous as a non-party since the U.S.'s legal foundation is based in customary international law as opposed to treaty law. The United States asserts the Convention embodies customary international law, which is binding on all nations regardless of their status with respect to the Convention. However, customary international law is created by state practice over time. States' claims and actions create and alter customary international law. It is not necessarily static. However, the Convention binds the parties to the language of the Convention and that language only changes through a formal amendment process. By acceding to the Convention, the United States will be in a better position to interpret and control that language.

LETTERS SUBMITTED FOR THE RECORD BY SENATOR JOHN F. KERRY

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RECEIVED
12 JUN -8 PM 4:
SENATE COMMITTEE
FOREIGN RELATIONS

6 June 2012

The Honorable John F. Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr Chairman:

Thank you for the opportunity to share my views on the United Nations Convention on the Law of the Sea. Like the Secretary of Defense and Chairman of the Joint Chiefs of Staff, I support U.S. accession to the Convention.

The Convention supports our efforts in the United States Central Command region by ensuring transit rights under, through and over international waters and airspace as well as through critical choke points like the Strait of Hormuz, which Iran has threatened to block. I agree with Secretary Panetta that acceding to the Convention strengthens our transit passage rights under international law and helps isolate Iran as one of the few remaining non-parties to the Convention. The Convention also ensures the right to board stateless vessels on the high seas which is a critically important element of maritime security operations. The Convention does not in any way restrict our operations or limit our intelligence collection activities.

We owe our Soldiers, Sailors, Airmen, Marines and Coast Guardsmen fixed treaty-based rights instead of relying on the threat of force or customary international law (which is too easily disputed and changed). I echo Chairman Dempsey's opinion that now is the time to lay out rules and order that can lead to peaceful resolutions in future maritime and territorial disputes.

Thank you for your efforts to support the Convention and as always, I appreciate your continued support to the men and women serving in the United States Central Command area of responsibility.

Sincerely,

JAMES N. MATTIS
General, U.S. Marines

Copy to:
The Honorable Richard G. Lugar
Ranking Member

DEPARTMENT OF DEFENSE
UNITED STATES SOUTHERN COMMAND
OFFICE OF THE COMMANDER
9301 NW 33rd STREET
DORAL, FL 33172-1202

REPLY TO THE ATTENTION OF

May 17, 2012

Commander

Honorable John Kerry
Chairman, Committee on Foreign Relations
United States Senate
Washington, D.C. 20510-6225

Dear Mr. Chairman,

United States Southern Command believes the U.S. should accede to the United Nations Convention on the Law of the Sea. As a signatory, we would demonstrate our commitment to international maritime law and will strengthen our relations with our partner nations.

In our area of responsibility, most countries are signatories to the Law of the Sea Convention. The significant number of signatories, coupled with the importance of the maritime environment to the security and economic prosperity of the Western Hemisphere, highlights the importance of having a common agreement.

We thank you and Senator Lugar for your efforts to bring up the Convention to the Senate for consideration.

Sincerely,

Douglas M. Fraser
General, U.S. Air Force
Commander

COMMANDER
UNITED STATES EUROPEAN COMMAND

May 11, 2012

The Honorable John Kerry
Chairman, Committee on Foreign Relations
United States Senate
Washington, DC 20510-6225

Dear Mr. Chairman:

As the largest maritime power in the world and one of the greatest beneficiaries of the international rule of law structure, the United States should accede to the Law of the Sea Convention.

Freedom of navigation is a cornerstone of U.S. naval and economic strategy. Our prosperity and national strength, the source of our power, depend on the oceans and our activities upon them. The maritime global commons are important to the U.S. and to our Allies and friends around the world. The Law of the Sea Convention helps to provide for order in these vital global commons.

In the 21st Century, we face challenges from both state and non-state actors. We are faced with disputes in areas of geostrategic importance including the Arctic, Strait of Hormuz, and South China Sea; as well as threats from piracy and terrorism. The Law of the Sea Convention supports the rule of law, the bedrock foundation that provides economic and legal certainty for ocean usage, a formal and consistent process for the peaceful resolution of maritime disputes, and a framework for tackling transnational crime. This international legal structure is of tremendous importance, and provides the U.S. with significant advantages when interacting with other global actors. As we have not acceded to the Convention, we are at a disadvantage in certain international negotiations, particularly in regard to Arctic and extended continental shelf claims.

We must continue to demonstrate leadership in the international community. Until we accede to the Convention, we effectively limit our ability to influence these discussions and provide enforcement across these global commons at a time when this discussion is more important than it has been for the last hundred years.

As the world's foremost maritime power, the U.S. will benefit substantially from the legal certainty and order that the Law of the Sea Convention provides. Accession is consistent with the U.S. national security strategy and America's enduring leadership role for international security and stability in an increasing multilateral world.

Sincerely,

J. STAVRIDIS
Admiral, U.S. Navy

UNITED STATES SPECIAL OPERATIONS COMMAND
OFFICE OF THE COMMANDER
7701 TAMPA POINT BLVD.
MACDILL AIR FORCE BASE, FLORIDA 33621-5323

June 12, 2011

The Honorable John F. Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Mr. Chairman

Thank you for the opportunity to provide the United States Special Operations Command's position on the Law of the Sea Convention. I support the Chairman of the Joint Chiefs of Staff's view that accession to the Convention is prudent to meet the increasingly complex security challenges of the 21st Century.

Codification of the customary international uses of the world's oceans will preclude rogue nations from redefining these terms in a manner harmful to the interests of the United States and the international community. Special Operations Forces must continue to have unimpeded navigation and access on the high seas and through strategic choke points for global operational reach and sustainment of our forces. This operational imperative, coupled with the United States' demonstrated commitment to the international law of the sea, will serve to strengthen our international partnerships.

Thank you for your continued support to Special Operations and our men and women in uniform.

Sincerely,

William H. McRaven
Admiral, U.S. Navy
Commander

DEPARTMENT OF DEFENSE
UNITED STATES STRATEGIC COMMAND

12 JUN -1 PM 4:46

Reply To:
USSTRATCOM/J0CC
901 SAC BLVD STE 2A1
OFFUTT AFB NE 68113

22 May 2012
SM# 1050-12

The Honorable John Kerry
Chairman, Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman

I strongly endorse immediate ratification of the Law of the Sea Convention. The Convention affirms navigation and overflight rights and high seas freedoms which are vital to our national security interests.

As the world's premier military power, the United States depends upon global access. The Convention codifies customary international law, providing an enduring legal basis for the freedom of movement at sea and in the air necessary to sustain our forward deployed forces, to project power around the globe, to deter our potential enemies, and to assure our allies.

For all of these reasons, it is important that the United States become a Party to the Law of the Sea Convention. It is also important that we remain a leading player in the future development of the law of the sea. We cannot afford to be on the sidelines, while our potential adversaries advocate changes in international norms and in the convention that would undermine our national security.

Thank you for your efforts to bring this important matter to the Senate for consideration.

Sincerely

C. ROBERT KEHLER
General, USAF
Commander

Copy to:
Secretary of Defense
The Honorable Richard Lugar
Chairman of the Joint Chiefs of Staff

LETTERS SUBMITTED FOR THE RECORD BY SENATOR JAMES M. INHOFE

COALITION TO PRESERVE AMERICAN SOVEREIGNTY

June 14, 2012

Hon. John Kerry
Chairman, Senate Foreign Relations Committee
444 Dirksen Senate Office Building
Washington, DC 20510-0802

Dear Chairman Kerry:

Much is being made at the moment of the support of the U.S. military for the UN Convention on the Law of the Sea, which is better known as the Law of the Sea Treaty (LOST). In your Foreign Relations Committee hearings to date, you have invited testimony from the Chairman of the Joint Chiefs of Staff and six other serving four-star commanders. We wish respectfully to challenge the perception that military personnel uniformly support this accord by expressing our strongly held belief that LOST's ratification would prove inimical both to the national security interests and sovereignty of the United States.

This conclusion is ineluctable given five facts about the Law of the Sea Treaty:

1. President Ronald Reagan recognized that the terms and institutional arrangements inherent in the treaty—including, but not limited to, seabed mining—were adverse to this country insofar as they were intended and designed to establish and empower a supranational government. For these reasons, he refused to sign this accord. And, as his Counselor and Attorney General, Edwin Meese, has observed, those defects continue to afflict LOST—despite suggestions to the contrary, based on false claims that a separate agreement signed by some *but not all* LOST signatories satisfactorily addressed Mr. Reagan's concerns.

2. There is already ample reason for Americans—in and out of uniform—to be leery of entrusting more power and authority to the United Nations. Yet, our membership in LOST would *dangerously empower* that organization. After all, this treaty creates an executive, legislature and judiciary that are supposed to govern seventy-percent of the world's surface. And LOST's institutions are intertwined with the UN system and would be capable of raising revenues. Given the UN track record of corruption and hostility to America and its allies, it would be reckless to endorse such arrangements, let alone subject ourselves to them.

3. Of particular concern is the obligation under LOST to submit any and all disputes to binding arbitration or judicial action by entities that are inherently rigged against us. The treaty's expansive mandate is so broad—involving virtually anything affecting the world's oceans—that it is an invitation to UN and other nations' interference in our affairs on an unprecedented scale.

4. That prospect has particular implications for the national security were the United States to become a party to the Law of the Sea Treaty. As such, we would be required to make myriad commitments at odds with our military practices and national interests. These include agreeing to reserve the oceans exclusively for "peaceful purposes." Contentions that we need not worry about such formal commitments because we, as a maritime nation with a powerful navy, are not expected to be bound by them will surely prove unfounded.

5. The same is certain to apply to assurances that the exemption of "military activities" will preclude LOST from having harmful effects on our armed forces and their necessary operations on, over, under and from the seas. Since the treaty does not include an agreed definition of what constitutes such activities, disputes are sure to

arise—disputes we will be obliged to resolve through one LOST mechanism or another. [In the attachment, Judge Advocate General Captain Vince Averna (USN, Ret.) lays out a number of the treaty's provisions that may invite such challenges.]

One example of how untenable such assurances will prove can be found in the area of anti-submarine warfare (ASW). Of necessity, ASW training to be effective must necessarily replicate actual combat operations and thus involve the periodic use of high-power sonars and explosives. Unfortunately, some assert that these training activities cause harm to ocean wildlife, like dolphins and whales, and have sought to use judicial means to restrict or preclude them.

We must, therefore, recall that, during the Clinton administration, Secretary of State Warren Christopher called LOST "the strongest comprehensive environmental treaty now in existence or likely to emerge for quite some time." That being the case, the U.S. armed forces must reckon with the prospect that what they consider to be essential and exempted military activities will be treated under LOST as environmental predation very much within the jurisdiction of its Tribunal and arbitration panels. The effect of adverse rulings, especially if enforced by federal judges, could prove devastating to our power projection and other defense capabilities.

For all these reasons (among others), it is our considered professional military judgment that the United States should remain unencumbered by state-party status in the UN Convention on the Law of the Sea—free to observe those provisions we chose to and unencumbered by the others. We have demonstrated in the three decades since President Reagan refused to sign LOST that as a non-party great power we can exercise great and essential influence on matters involving the oceans without being relegated to one vote among 160-plus, obliged to abide by the will and whims of a generally hostile majority without the benefit of a veto to protect American national interests. There is no basis for contending

that we will be better off if we have a so-called "seat at the table" under such circumstances.

We hope our insights and conclusions will be made part of the record of your Committee's deliberations on this matter and would welcome an opportunity to participate in such deliberations if that would be helpful to you and your colleagues.

Sincerely,

LT. GEN. WILLIAM G. "JERRY" BOYKIN, USA (Ret.)
Former Commanding General, U.S. Army Special Forces Command;
Former Deputy Undersecretary of Defense for Intelligence

ADM. THOMAS B. HAYWARD, USN (Ret.)
Former Chief of Naval Operations

ADM. G.E.R. KINNEAR II, USN (Ret.)
Former U.S. Member of the NATO Military Committee

GEN. RICHARD L. LAWSON, USAF (Ret.) *Former Deputy Commander-in Chief, Headquarters U.S. European Command*

ADM. JAMES "ACE" LYONS, JR., USN (Ret.)
Former Commander-in-Chief, U.S. Pacific Fleet

LT. GEN. THOMAS G. MCINERNEY, USAF (Ret.)
Former Assistant Vice Chief of Staff, USAF

VICE ADM. ROBERT MONROE, USN (Ret.)
Former Director of Navy Research, Development Testing and Evaluation

GEN. CARL E. MUNDY, JR., USMC (Ret.)
Former Commandant, U.S. Marine Corps

ADM. LEIGHTON "SNUFFY" SMITH, USN (Ret.)
Former Commander-in-Chief, U.S. Navy Forces Europe and
NATO Allied Forces Southern Europe

RESERVE OFFICERS ASSOCIATION

ONE CONSTITUTION AVENUE, NE
WASHINGTON, DC 20002
LOCAL: 202.479.2200
TOLL-FREE: 800.809.9448
FAX: 202.479.0416

13 June 2011

The Honorable John F. Kerry
SR-218 Russell Office Building
Washington, D.C. 20510-2102

The Honorable Richard G. Lugar
SH-306 Hart Senate Office Building
Washington D.C. 2050-1401

Dear Senators Kerry and Lugar:

On behalf of the 57,000 members of the Reserve Officer Association (ROA), I am writing to express the Association's opposition to ratification of the Law of the Sea Treaty (LOST). ROA is chartered by Congress to advocate for national security, which would be impacted greatly if LOST was ratified.

ROA has taken a position independent of the Departments of Defense and State as stated in ROA's resolution 10-04: Non-ratification of the Law of the Sea Treaty (attached). The Law of the Sea Treaty is not needed to codify the international laws of the sea.

Resolution 10-4 has been in effect for the last eight years, having last been renewed at the 2010 National Convention. It states that "the treaty does not introduce any new protections for safe navigation on the high seas, but can introduce new risks that could impact the sovereignty over and the economy supported by the sea."

ROA has concerns that the Law of the Sea Treaty presents more risks than gains. LOST is too complex. It includes articles that impact the economy and the environment with the treaty covering seabed mining, navigation, fishing, ocean pollution, marine research, economic zones and in turn national security. Provisions in the treaty will even impact the sovereignty of the United States.

ROA disagrees with ratifying the treaty because it duplicates existing treaties, risks nullifying U.S. claims to areas of the continental shelf, places U.S. interests under the authority of international agencies, jeopardizes the safety of ships and crews, and weakens national security.

ROA does not oppose further codification sought by the naval services, but LOST is not the instrument. ROA supports the suggestion by Senator Kyl (R-Ariz.) that legislation could provide an alternative method to achieve codification. This would accomplish the goals of the Navy and the Coast Guard without subjecting the United States to the inherent risks written into the Law of the Sea Treaty.

CC to:

Sen. John A. Barrasso	Sen. Richard Durbin	Sen. James E. Risch
Sen. Barbara Boxer	Sen. James W. DeMint	Sen. Marco Rubio
Sen. Benjamin L. Cardin	Sen. James M. Inhofe	Sen. Jeanne Shaheen
Sen. Robert P. Casey	Sen. Johnny H. Isakson	Sen. Thomas S. Udall
Sen. Bob Corker	Sen. Michael S. Lee	Sen. James H. Webb
Sen. Christopher A. Coons	Sen. Robert Menendez	

State." The agreement was ratified by the U.S. on April 12, 1961. Entry into force on 30 September 1962.

*** Transit passage in international straits and their approaches;**
An international strait was legally defined in 1949 by the International Court of Justice in the Corfu Channel case and subsequently codified in the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, as any strait connecting two portions of the high seas. The U.S. ratified the 1958 accord on April 12, 1961.

*** High seas freedoms in exclusive economic zones (EEZs).**
Historically, the exclusive jurisdiction over marine resources beyond the territorial sea is credited to the United States of America in the Truman Proclamation of 28 September 1945 claiming sovereignty of the continental shelf and coastal fisheries. The Latin American declaration of Santo Domingo of 9 June 1972 is considered the precursor to the definition of exclusive economic zones at 200 miles. Since 1972, under the Magnuson Fishery Conservation and Management Act, the United States has exercised management and conservation authority over fisheries resources within 200 nautical miles of the coasts. In 1983, President Ronald Reagan confirmed U.S. sovereign rights and control over the living and non-living natural resources on, below or above seabed on the continental shelf.

The one exception to existing treaty protection is transit passage of archipelagic waters that is protected through other legal norms. The United States has always contended that such passage is covered by customary law, and continues to exercise its navigation rights by ships' movements of the Navy. LOST actually removes navigation freedoms, yielding authority to the International Maritime Organization as an agency that determines transit lanes.

*** Archipelagic sea lanes passage through island nations;**
In 1982, the U.N. Conference on the Law of the Sea (UNCLOS) recognized archipelagic states. Until an archipelagic state has completely designated its archipelagic sea lanes, vessels can exercise passage through all routes normally used for international navigation. But under LOST, once a complete archipelagic sea lane designation has been made, vessels are restricted to exercising the right of archipelagic sea lanes passage not traditional lanes, and can only conduct innocent passage through the remaining archipelagic waters not designated as archipelagic sea lanes.

LOSS OF U.S. TERRITORY

LOST goes far beyond navigation rules of the road, and as a broader convention includes articles that affect national security and control of the seabed on and beyond the continental shelf.

The Sea Law Convention created several institutions to carry out its provisions: the International Tribunal for the Law of the Sea to resolve border disputes, the Commission on the Limits of the Continental Shelf to determine maritime boundaries, and the International Sea Bed Authority to regulate mineral prospecting in the deep seabed.

The International Sea Bed Authority (ISBA), under the treaty has authority to control sea-bottom resources and levy application and annual fees, as well as collect a percentage of the profits on countries whose companies are "mining" the sea beds beyond the 200-mile exclusive economic zone (EEZ). Technology permits exploration out into the continental shelf beyond the 200-mile EEZ.

The rush has already started, with China reasserting historical claims over all the islets, including the Paracel and Spratly archipelagos, and 80 percent of the South China Sea. Sand cays, reefs and rocks that often lie below tidal waters are recognized as land under the treaty and are being built up and manned by Chinese military to bolster territorial claims. A prime example is Mischief Reef, which is within the waters claimed by the Philippines, where China has built permanent, multistory structures on concrete platforms above the reef. By connecting the dots China will be emboldened to extend its territorial claim based on the Law of the Sea Treaty and a loose interpretation of the Exclusive Economic Zone to much of the South China Sea.

The Republic of the Philippines also claims the Spratly islands based on proximity, as many of the islands are within the 200 mile Exclusive Economic Zone of the Philippines. China counters the Philippine's claim to the Spratlys by noting that LOST does not mention "proximity" mentioned in the LOST. As this example illustrates, nations aren't necessarily going to abide by the LOST provisions the way the U.S. interprets them.

RESTRICTIVE DISPUTE RESOLUTION

The treaty also mandates dispute resolution between treaty signers. These would be compulsory procedures. Should a dispute arise, the parties can present their case before a conciliation commission whose report will be non-binding. A state may also choose one of the following means of dispute settlement: the International Tribunal for the Law of the Sea; the International Court of Justice (ICJ); an arbitral tribunal; or a special arbitral tribunal for one or more of the dispute categories specified in the treaty. The legal complexity is worrisome.

While military officers who served as members on the U.S. delegation that negotiated the convention on the law of the sea contend that military activities are exempt from mandatory dispute resolution, this is not necessarily ironclad. The "opt out" clause in Article 298 neither mentions nor defines military or intelligence operations. If there is a disagreement over what is or is not a military activity, LOST requires the matter to be resolved by an international agency.

The Navy has suggested that the president and the Senate can reject the International Court of Justice and the International Tribunal Law of the Sea, but instead choose arbitration. But, if the parties in dispute cannot agree on the arbitration panel, the U.N. Secretary-General will chose the arbitrators who may not be sympathetic to the United States.

SEAT AT THE TABLE?

It is being argued that while we abide by the treaty we lose leverage by not being a party to the treaty. Secretary of State Clinton expressed at a recent hearing that "becoming a treaty member would give the U.S. another tool with which to engage other nations, especially given a race for maritime energy resources, such as in the Arctic region."

Dr. Peter Leitner of George Mason University and author *of Reforming the Law of the Sea Treaty* disagrees. Dr. Leitner said that, "the current slogan being echoed by treaty supporters that we need to have a seat at the table to influence developments. Somehow supporters ignore the math of one seat among approximate 150 seats, the power of the one-nation/one-vote principle and the overwhelming anti-American agenda of at least 120 of the 150 seats that we are going to be sitting with."

The math works against the United States, which is one more reason for ROA to advocate against ratification of the theory. The United States does not even need a seat at the table with the U.S. having

Non-ratification of the Law of the Sea Treaty
Resolution No. 10-04

WHEREAS, there are valuable provisions in the Law of the Sea Treaty, there are also many provisions that cause concern; it is not enough to highlight the benefits of the treaty without weighing the commitments that would be the price for full American participation in this system;

WHEREAS, the Law of the Sea Treaty is a broad agreement including articles that affect the economy and the environment with the treaty covering seabed mining, navigation, fishing, ocean pollution, marine research, economic zones and in turn national security; and

WHEREAS, a fundamental premise of the treaty is that all un-owned resources on the ocean's floor belong to the people of the world, and the treaty creates levels of paid bureaucracy and an International Seabed Authority (ISA) to control these resources; and

WHEREAS, the ISA will regulate deep seabed mining and redistribute income from the industrialized West to developing countries through arbitrary, excessive application fees, annual fees and royalties; costs of access to raw materials are likely to inhibit development, depress productivity, increase costs, and discourage innovation; and

WHEREAS, many activists view the treaty as a far reaching environmental accord; setting a global standard and providing enforcement mechanisms so that all countries are legally bound to protect the marine environment, protect fish stocks and prevent pollution; and

WHEREAS, ratification of the treaty may subject US Naval forces, and will subject U.S. maritime and coastal industry to international tribunal or arbitration during disputes predicated on the treaty as geo-politics differs from law; and

WHEREAS, the treaty does not introduce any new protections for safe navigation on the high seas, but can introduce new risks that could impact the sovereignty over and the economy supported by the sea; and

WHEREAS, the Constitution of the United States provides in Article VI that "All treaties made, or which shall be made, under the authority of the United States shall be the supreme law of the land" ratification may lead to international jurisdiction over U.S. interests;

NOW, THEREFORE, BE IT RESOLVED, that the Reserve Officers Association of the United States, chartered by Congress, urges the United States Senate, to deny ratification of the Law of the Sea Treaty.

Renewed by the ROA National Convention, 10 February 2010
Adopted by the ROA National Council, 13 February 2008
Source: ROA Department of Texas, Dec. 2007

THE LAW OF THE SEA CONVENTION (TREATY DOC. 103–39)

THURSDAY, JUNE 14, 2012 (p.m.)

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

The committee met, pursuant to notice, at 2:36 p.m., in room SD–419, Dirksen Senate Office Building, Hon. John F. Kerry (chairman of the committee) presiding.

Present: Senators Kerry, Shaheen, Coons, Lugar, Corker, Risch, Inhofe, DeMint, Isakson, Barrasso, and Lee.

OPENING STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

The CHAIRMAN. The hearing will come to order.

Thank you all for being here. I am sorry we are late.

Let me begin. At the outset, let me say to people that I apologize that we are back in the smaller hearing room here. We tried a month ago to reserve Hart 219 for this afternoon, and we simply were not able. Somebody else had it for this time.

So we are here, and I know there are a bunch of people outside who would have liked to have come in. And I am sorry that we are not able to accommodate that, but it is not for any other reason. We are going to try and have our hearings there because we know there is interest, and it is just easier for everybody. But that is why we are back in here this afternoon.

This is our third hearing on the Law of the Sea. We are going to have some more after this, no doubt. And I am particularly looking forward to this afternoon because what I like about it is that we have folks with different points of view on the same panel and an opportunity to really dig in, which I hope we will do. And I think that will be useful to everybody here.

Senator Inhofe, along with a number of other colleagues, requested that I invite four witnesses to testify, and so we did. We invited all four. Two of them, Secretary Rumsfeld and Steven Groves, agreed to join us today, along with two other distinguished witnesses. And I am really happy that all of you could take the time to be here with us.

Donald Rumsfeld, everybody knows, is currently president of the Rumsfeld Foundation; has held various very senior positions in previous administrations, most recently serving as Secretary of Defense under President George W. Bush.

He is joined by John Negroponte, a veteran also of multiple administrations. Most recently, Mr. Negroponte served as our first

Director of National Intelligence and then as Deputy Secretary of State in the George W. Bush administration. And he is currently vice chairman at McLarty Associates.

We are also pleased to have John Bellinger. From 2001 to 2005, he served in the White House as the associate counsel to President George W. Bush, and then as the Legal Adviser to the National Security Council. And from 2005 to 2009, he was the Legal Adviser to the State Department. He is now a partner at the law firm Arnold & Porter.

And finally, rounding out the panel is Steven Groves, the Bernard and Barbara Lomas Fellow at the Heritage Foundation, and Mr. Groves was previously senior counsel to the Senate Permanent Subcommittee on Investigations.

So welcome to all of you.

Now this morning, we heard a panel from some of our most senior operational commanders, along with the Vice Chairman of the Joint Chiefs and the top officers in the Navy and the Coast Guard, and they added their voices to that of Chairman of the Joint Chiefs and the Secretary of Defense and the Secretary of State, calling for ratification of the treaty.

We have also here heard and we have introduced into the record letters from other combatant commanders, all of whom strongly support joining the Law of the Sea Convention.

I think it is my understanding, drawing on the two hearings we have had, that even the critics of the Law of the Sea are beginning to join the consensus that the navigational bill of rights provided for in the treaty and which our military and our shippers rely on every day are beneficial to the United States.

As I see it—and just listening, I hope I am not mischaracterizing it—I think the bulk of the debate is really not focused on the navigational provisions, but rather on other aspects of the treaty. And I believe personally—I am not going to go into this at length because I don't think that would be fair in terms of my chairmanship. But I do think that there are a lot of criticisms that are inaccurate, and what I want to try to do is separate what is accurate, what is not, so that the committee can, hopefully, in the resolution of ratification deal with those things that we think we need to deal with.

But let me give you an example of that. The International Seabed Authority has been accused of being, but is not, some bloated U.N. bureaucracy. It is totally separate from the United Nations and has a staff of less than 40. Nothing in its 13-year history suggests that it is an organization that is out of control or is somehow going to act inconsistent with our interests. Or that in joining it, we would not be able to effectively use our veto in the ISA Council to advance U.S. interests.

Other criticisms have focused on the royalty provisions, other things. But I think we need to dig into facts, and I am going to just sort of let that happen.

The one thing I do want to put out here is it is clear that the original provisions of the 1982 Convention were not fully consistent with free market principles and would have disadvantaged our businesses. If I were looking strictly at the four corners in the 1982

Convention, I would have had problems, as Ronald Reagan did and others did.

But those problems, I think in most people's judgment, have been addressed in full. Bob Stevens, the CEO of Lockheed Martin, recently wrote to me urging that we pass this Convention. And this is what he said.

"The multibillion dollar investments needed to establish an ocean-based resource development business must be predicated upon clear legal rights established and protected under the treaty-based framework of the Law of the Sea Convention, including the International Seabed Authority. Other international players recognize this same reality and are acting upon it. Countries, including China and Russia, are moving forward aggressively within the treaty framework, and several of these countries currently hold exploration licenses from the International Seabed Authority.

"Unfortunately, without ratifying the Convention, the United States cannot sponsor claims with or shape the deep seabed rules of the ISA. Yet that is the critical path forward if the United States intends to expand and ensure access for both U.S. commercial and Government interests to new sources of strategic mineral resources."

I might add that Lockheed is not alone. I recently received a letter from Rex Tillerson, the head of ExxonMobil. He expressed ExxonMobil's support for ratification and said this.

"As an American company engaged in the global market for energy development, ExxonMobil is interested in exploring for oil and gas resources that may exist under the vast new areas that are recognized for sovereignty purposes under the Law of the Sea. The exploration and development of offshore resources is complicated and costly, and operating in the extended areas addressed under the Law of the Sea will be even more so. Before undertaking such immense investments, legal certainty in the property rights being explored and developed is essential."

I think our businesses have overwhelmingly made that point, including the Chamber of Commerce, the American Petroleum Institute, the telecommunications industry, and the Chamber of Shipping of America, who just wrote to me in support of the treaty. And I would like to enter each of those letters in the record.

So this is part of the area we will be going forward. In a few weeks, we will have many of these people here to testify, to talk about the economic realities.

But today, we have experts who really understand the negotiation of the treaty and so forth and have examined it.

And we look forward to a very healthy dialogue and, hopefully, very productive results for the committee.

Senator Lugar.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

Senator LUGAR. Thank you, Mr. Chairman.

This morning the Foreign Relations Committee heard unequivocal testimony from our uniformed military leadership in support of the Law of the Sea Convention. At an upcoming hearing, the com-

mittee will hear from a broad spectrum of ocean-related businesses that strongly support this treaty.

When the Convention was before this committee in 2003 and 2007, military and business support for the Law of the Sea was similarly overwhelming. This underscores that Americans who are involved in the oceans professionally on a daily basis—those who defend our country's interests on the seas and those who invest their money and create jobs related to ocean enterprises—want this Convention ratified.

Unlike some treaties, such as the Kyoto agreement or the Comprehensive Test Ban Treaty, where United States nonparticipation renders the treaty virtually irrelevant or inoperable, the Law of the Sea will continue to form the basis of maritime law regardless of whether the United States is a party. International decisions related to national claims on Continental Shelves beyond 200 miles from our shore, resource exploitation in the open ocean, navigation rights, and other matters will be made in the context of the treaty whether we join it or not.

Consequently, the United States cannot insulate itself from the Convention merely by declining to ratify. It is the accepted standard in international maritime law and the dominant forum for the evolution of international ocean policy. Americans who use the ocean and interact with other nations on the ocean have to contend with the Law of the Sea on a daily basis.

They want the United States to participate in the structures of Law of the Sea to defend their interests and to make sure that other nations respect our rights and our claims. Among the questions addressed by Law of the Sea is how should resources in the deep seabed or on a nation's Extended Continental Shelf beyond the 200-mile limit be exploited?

The treaty makes it possible for a mining or drilling company to stake an unequivocal legal claim on the ocean floor and have it recognized under international law. Some have argued that the United States accession to the Law of the Sea Convention is unnecessary to secure the legal basis for companies to fully exploit oil, natural gas, and mineral wealth on the ocean floor. But that is not the opinion of the American companies that might invest their resources in this activity.

They are in favor of the treaty, because without the certainty of title provided by the Law of the Sea Convention, they would not go forward with many projects requiring large investments. Their concern is that after doing the expensive exploration, research, testing, and construction necessary to exploit a site, they have to be certain that another entity won't be able to free-ride off their investment or challenge their claim in international courts.

The oil drilling and mining companies prefer to pay a small royalty beginning in the 6th year of production in return for an international system that gives them undisputed claim to the resources produced. This royalty provision of the Convention was negotiated with the participation of extraction companies. They judged that it is reasonable given the legal certainty it secures and the value of what might be produced, especially since the first 5 years of production will not be subject to any royalty.

This is why Law of the Sea is endorsed by the United States Chamber of Commerce, the American Petroleum Institute, and every industry that has a stake in the deep seabed mining and drilling. In other words, our resource extractors are telling us that if we want them to move forward with large-scale development of ocean floor resources that could contribute significantly to United States energy and national security and create jobs, we need to ratify Law of the Sea.

I have been especially critical of President Obama and the State Department for failing to approve the Keystone XL pipeline because it provides clear long-term benefits to job creation and energy security. In that case, the President's delay is unnecessarily disadvantaging the United States economy over concerns that have largely been resolved.

If the U.S. Senate declines to ratify Law of the Sea, I believe we will be doing the same thing. During this Congress few topics have been more central to Senate deliberations than job creation, energy security, and the needs of our military. The Law of the Sea Convention is the rare initiative that would contribute to all three objectives.

I welcome, as you have, Mr. Chairman, our distinguished witnesses and look forward to their testimony.

The CHAIRMAN. Senator Lugar, thank you very much.

So we will proceed. Mr. Secretary Rumsfeld, if you would lead off, sir, I would appreciate it. And then Secretary Negroponte, Counselor Bellinger, and Mr. Groves.

STATEMENT OF HON. DONALD RUMSFELD, FORMER U.S. SECRETARY OF DEFENSE, THE RUMSFELD FOUNDATION, WASHINGTON, DC

Mr. RUMSFELD. Mr. Chairman and members of the committee, thank you for your invitation.

I have submitted some brief prepared remarks, and I will try to adjust them down to 5 minutes.

The CHAIRMAN. Without objection, all of the testimonies will be placed in the record in full as if read in full.

Mr. RUMSFELD. It is a pleasure to appear with these experts on this subject. I am 30 years away from it, but I am pleased to be here.

It was 30 years ago that President Reagan asked me to meet with world leaders to represent the United States in opposition to the Law of the Sea Treaty. Our efforts soon found a persuasive supporter in British Prime Minister Margaret Thatcher. Today, as the U.S. Senate again considers approving this agreement, the reasons for their opposition, I believe, remain as persuasive.

When I met with Mrs. Thatcher in 1982, she promptly grasped the issues at stake. Her conclusion on the treaty was unforgettable. She said what this treaty proposes is nothing less than the international nationalization of roughly two-thirds of the Earth's surface. And then referring to her battles dismantling Britain's state-owned mining and utility companies, she added, "And you know how I feel about nationalization."

The major idea underlying the Law of the Sea Treaty is that the riches of the oceans beyond national boundaries are the common

heritage of mankind and, thus, supposedly owned by all people, which means they are unowned.

This idea of ownership, which is encompassed in the treaty, requires that anyone who finds a way to make use of such riches by applying their labor or their technology or their risk-taking are required to pay royalties of unknown amounts, potentially billions—possibly even tens of billions—over an extended period, an ill-defined period of time, to the new International Seabed Authority for distribution to less developed countries.

This, in my view, is a new idea of enormous consequence. It establishes a way of looking at industry investment, talent, risk, and good fortune that argues in favor of distributing a significant portion of the value of the minerals in the deep seabeds to developing countries. I suppose it is also conceivable that it could become a precedent for the resources of outer space.

The principle that advanced countries, when they make use of resources that previously belonged to no one, owe royalties to less developed countries is a novel principle that has, in my view, no clear limits. I know of no other treaty that follows that pattern.

The idea is fundamental and integral to the Law of the Sea Treaty. It is the major reason I believe that treaty should not be ratified.

I don't argue against developed countries providing financial and other forms of aid to poor countries. There are moral and practical arguments in favor of such aid. But the decision to provide such aid is, has been, and probably should be a sovereign choice for each nation.

In the case of our country, it is a choice of our citizens and you, their elected representatives. Very simply, I do not believe the United States should endorse a treaty that makes it a legal obligation for productive countries to pay royalties to less productive countries based on rhetoric about "common heritage of mankind."

The wealth distribution idea incorporated in the Law of the Sea Treaty is especially objectionable because the mechanism for the redistribution is poorly designed. It uses a newly created multinational Seabed Authority, which is effectively a U.N. agency, instead of the U.S. Congress through our foreign aid programs, or through the World Bank of which we and others are members.

If the treaty were to be ratified, the United States apparently would receive a permanent seat on the Council of the Authority. Even so, the Authority would not be effectively accountable to the American people any more than any other U.N. agency is accountable. And it must be acknowledged that the United Nations has a poor record in administering its programs. For example, the U.N. Oil for Food Programme was a multibillion dollar scandal.

Some businesses, as the chairman and the ranking member have indicated, have expressed support for the treaty in that it would provide greater certainty, which I agree could be helpful. I was in business for 20 years, and there is no question but that they make that argument and it is a valid one. And it needs to be considered and weighed.

The most persuasive argument for the Law of the Sea Treaty, in my view, is the U.S. Navy's desire to "lock in" some navigation rights. It is correct that the treaty would provide some benefits,

clarifying some principles, and perhaps making it easier to resolve certain disputes. But the U.S. Navy has done quite well without this treaty for the past 200 years and certainly during the 20 or so years since the treaty has been in effect, relying often on customary international law to assert navigation rights.

In my view, the Law of the Sea Treaty would not make a large enough additional contribution regarding navigation rights or business certainty to counterbalance the problems it would create. As Members of the Senate carefully read each of the 208 pages of this document, the 320 articles, and also the 1994 Agreement, I think they will appreciate the basis for those concerns and uncertainties.

I respect the concerns raised by the Navy, by the military, and by some in the business community. But the fundamental objections raised by Mrs. Thatcher in her 1982 objection to effectively nationalizing the world's oceans through a new, multinational bureaucracy I believe outweigh the advantages and make the treaty, on balance, a net loss for U.S. interests.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Rumsfeld follows:]

PREPARED STATEMENT OF HON. DONALD RUMSFELD

Mr. Chairman and members of the committee, 30 years ago President Ronald Reagan asked me to meet with world leaders to represent the United States in opposition to the Law of the Sea Treaty. Our efforts soon found a persuasive supporter in British Prime Minister Margaret Thatcher. Today, as the U.S. Senate again considers approving this flawed agreement, the reasons for President Reagan and Mrs. Thatcher's opposition remain every bit as persuasive.

When I met with Mrs. Thatcher in 1982, she promptly grasped the issues at stake. Her conclusion on the treaty was unforgettable: "What this treaty proposes is nothing less than the international nationalization of roughly two-thirds of the Earth's surface." Then, referring to her battles dismantling Britain's state-owned mining and utility companies, she added, "And you know how I feel about nationalization. Tell Ronnie I'm with him."

President Reagan, for his part, had just been elected to office. The treaty had been presented to him as a done deal requiring only his signature and U.S. Senate consent to its ratification. Then as now, most of the world's nations had already approved it. The Nixon, Ford, and Carter administrations had all gone along with it. American diplomats generally supported the treaty and were shocked when Reagan changed America's policy. Puzzled by their reaction, the President was said to have responded, "But isn't that what the election was all about?"

Yet, as the man known as the Gipper might say, here we go again. An impressive, if unlikely, coalition is now arrayed in support of U.S. ratification of the United Nations Law of the Sea Treaty. As during the Reagan years, dozens of diplomats and national security officials, including every living former Secretary of State have endorsed the Obama administration's goal of ratification. The U.S. Navy wants to "lock in" existing and widely accepted rules of high-seas navigation. Business groups say the treaty could help them by creating somewhat more certainty.

Can so many people, organizations, and countries be mistaken? The answer, I believe, is "Yes." Various proponents have their particular considerations, each valid, but none, in my view, has made a compelling case that the treaty would, on balance, benefit America as a whole.

Though modest "fixes" were made in 1994 in a separate agreement signed by some, but not all, of the treaty's parties in the hope of addressing some of the flaws identified in the Reagan-era version of the treaty, its most serious defect is unaltered: the Law of the Sea Treaty remains a sweeping power grab that could prove to be the largest mechanism for the worldwide redistribution of wealth in human history.

The treaty proposes to create a new global governance institution that would regulate American citizens and businesses, but which would not be accountable politically to the American people. Some of the Law of the Sea Treaty's proponents pay little attention to constitutional concerns about democratic legislative processes and

principles of self-government, but I believe the American people take seriously threats to these foundations of our Nation.

The treaty creates a United Nations-style body called the "International Seabed Authority." "The Authority," as U.N. bureaucrats call it in Orwellian shorthand, would be involved in all commercial activity such as mining and oil and gas production in international waters. It is to this entity that the United States, pursuant to the treaty's article 82, would be required to transfer a significant share of all royalties generated by American companies—royalties that would otherwise go to the U.S. Treasury for the benefit of the American people.

Over time, hundreds of billions of dollars could flow through the "Authority" with little oversight. The United States could not control how those revenues are spent. Under the treaty, the Authority is empowered to redistribute these so-called "international royalties" to developing and landlocked nations with no role in exploring or extracting those resources. It would constitute a massive form of global welfare, courtesy of the American taxpayer. It would be as if fishermen who exerted themselves to catch fish on the high seas were required, on the principle that those fish belonged to all people everywhere, to give a share of their take to countries that had nothing to do with their costly, dangerous, and arduous efforts.

Worse still, these sizable "royalties" could go to corrupt dictatorships and state sponsors of terrorism. For example, as a treaty signatory and a member of the "Authority's" executive council, the Government of Sudan—which has harbored terrorists and conducted a mass extermination campaign against its own people—would have just as much say as the United States on issues to be decided by the "Authority." Disagreements among treaty signatories are to be decided through mandatory dispute resolution processes of uncertain integrity. Americans should be uncomfortable with unelected and unaccountable tribunals appointed by the Secretary General of the United Nations serving as the final arbiter of such disagreements.

Even if one were to agree with the principle of global wealth redistribution from the United States to other nations, other U.N. bodies have proven notably unskilled at financial management. The U.N. Oil-for-Food Programme in Iraq, for instance, resulted in hundreds of millions of dollars in corruption and graft that directly benefited Saddam Hussein and those nations friendly to Iraq. The Law of the Sea Treaty is another grand opportunity for scandal on an even larger scale.

The most persuasive argument for the Law of the Sea Treaty is the U.S. Navy's desire to shore up international navigation rights. It is true that the treaty might produce some benefits, clarifying some principles and perhaps making it easier to resolve certain disputes. But our Navy has done quite well without this treaty for the past 200 years, relying often on centuries-old, well-established customary international law to assert navigational rights. Ultimately, it is our naval power that protects international freedom of navigation. The Law of the Sea Treaty would not make a large enough additional contribution to counterbalance the problems it would create.

In his farewell address to the Nation in 1988, President Reagan, advised the country: "Don't be afraid to see what you see." If the Members of the U.S. Senate fulfill their responsibilities, actually read the Law of the Sea Treaty and consider it carefully, I believe they will come to the conclusion, as I have, that the treaty's costs to our security and sovereignty would far exceed any benefits for the United States.

The CHAIRMAN. Thank you, Mr. Secretary. Appreciate it.

Secretary Negroponte.

STATEMENT OF HON. JOHN NEGROPONTE, FORMER U.S. DEPUTY SECRETARY OF STATE, WASHINGTON, DC

Ambassador NEGROPONTE. Thank you, Mr. Chairman and members of the committee, for this opportunity to appear before this committee to discuss the Law of the Sea Convention.

Let me say at the outset and as unequivocally as possible that I believe the United States should accede to this treaty. As you have heard recently from the Secretaries of State and Defense, the Chairman of the JCS, and our maritime service chiefs, there are real costs to remaining outside the treaty. For the benefit of our country, I hope this is the year that we finally become party to the Law of the Sea.

My involvement with this treaty dates back to 1970 when I was a member of the National Security Council staff. I was given the assignment of helping coordinate the preparation of President Nixon's first directive on the Law of the Sea, and I have worked on this issue on and off in the ensuing years, although I would not claim to be an expert.

In the Reagan administration, I served as an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs at the State Department, and then as President Reagan's Deputy National Security Adviser. And then in the George W. Bush administration, as Director of National Intelligence and, finally, as Deputy Secretary of State.

These experiences have only strengthened my support for the treaty. And as you will recall, Senator, I was the lead administration witness in the last administration when we appeared before the committee in 2007.

The United States has consistently sought to balance the interests of countries in controlling activities off their coasts and the interests of all countries in protecting freedom of navigation. The United States joined a group of Law of the Sea treaties in 1958 by which it is still bound. But those treaties left open some important issues.

For example, they did not set forth the maximum breadth of the territorial sea, an issue of critical importance to freedom of navigation. And they did not elaborate a procedure for providing legal certainty as regards the Continental Shelf.

Under President Nixon, the United States proposed the concept of a treaty that would address these concerns, and it was President Nixon, by the way, who first introduced the notion of a U.S. policy supporting this concept of the common heritage of mankind. I think what we have been debating in the ensuing years is exactly how you define that in ways with which we can live.

Formal negotiations were launched a little over 3 years later, and the Convention was finalized in 1982. The United States supported the 1982 Convention, with the exception of the deep seabed provisions. And in 1983, President Reagan issued a statement explaining that because of certain concerns with these provisions, the United States would not sign the Convention.

He affirmed, however—and I think this is the very important—that the United States would voluntarily follow the bulk of the treaty. Negotiations began during the George Herbert Walker Bush administration to rewrite the deep seabed mining provisions. An implementing agreement was signed in 1994, which dealt with each of the problems identified by President Reagan.

The Clinton administration submitted the Convention and the 1994 Agreement to the Senate in July 1994, and President George W. Bush urged approval of the Convention, both in 2004 and in 2007, arguing that, "Joining will serve the national security interests of the United States and secure U.S. sovereign rights over extensive marine areas including the valuable natural resources they contain."

Why is it important for the United States to join the Convention now? To begin, the United States would gain legal protection for its sovereignty, sovereign rights and jurisdiction in offshore zones,

the freedom of maneuver and action for its military forces, and protection for economic and marine research interests at sea.

U.S. firms would be able to obtain essential internationally recognized and exclusive rights to explore and exploit deposits of strategic minerals on the ocean floor beyond national jurisdiction and secure recognized title to the recovered resources. The Convention, as revised by the 1994 Agreement on Implementation, provides the commercial regime needed for private industry, and it fully satisfies the criteria articulated in 1982 by President Reagan.

Allow me to cite a few specific practical reasons of how remaining outside the Convention damages U.S. national interests. These are not academic or philosophical points, but real world examples of how we are undercutting our national interests by failing to join.

First, the Convention is now open for amendment and could be changed in ways that adversely impact the navigational rights and high seas freedoms on which our military depends for global mobility. If we join now, our rights are protected in two ways.

First, it will allow us to shape the interpretation, application, and development of specific amendments to the nonseabed parts of the Convention. If we delay joining until after an amendment is adopted, we could choose only to accept or reject another party's amended version.

In addition, once the United States takes its permanent seat at the International Seabed Authority, it will have a veto over any amendments related to the seabed parts of the Convention.

Second, as tensions flair in critical regions like the Persian Gulf and South China Sea, it is important that the United States provide its men and women in uniform with every means available to protect the navigational rights enshrined in the treaty. Right now, the United States has two ways to defend its maritime interests. We can initiate a diplomatic process to lodge a complaint with a state that denies us free passage, or we can assert our right to passage by putting our vessel in harm's way.

The freedom of navigation program is an important tool in our military's arsenal, but it does carry a risk of escalation. Law of the Sea is an additional tool we can use, and it is one the Navy and the Coast Guard have asked us repeatedly to provide them.

Third, by not joining the treaty the United States is limited in its leadership ability to resolve maritime disputes between its allies, such as Japan and Korea, and in strategically important regions, such as the Gulf of Aden or the South China Sea.

Fourth, by remaining on the outside, we have created self-imposed obstacles to securing the most widespread possible cooperation in our counterproliferation and counternarcotics operations at sea. The United States refusal to join the Convention undermines the confidence of other countries, and they do bring this up, in our willingness to abide by the accepted rules of the road when conducting interdiction activities.

Fifth, and critically important, our failure to join the Convention to date is negatively impacting our businesses. At least one U.S. company, Lockheed Martin, as has been mentioned, is prepared to harvest critical rare earth minerals on the deep seabed—and I personally spoke to representatives of Lockheed about this—minerals that are used in our weapon systems, cell phones, and automobiles.

But as a nonparty to the treaty, the United States cannot sponsor Lockheed to go out and get these minerals from the seabed. While the United States watches, 17 countries have approved exploration claims for deep seabed mining.

Five new applications will be considered this summer at the annual session of the International Seabed Authority. The United Kingdom and Belgium are joining China, India, Germany, France, Japan, South Korea, and seven other nations in commercial exploration of strategic minerals while the United States watches from ashore.

Similarly, our energy companies are less likely to invest the billions of dollars necessary to exploit oil and gas reserves in the Arctic and elsewhere because of the legal uncertainty surrounding the outer limit of the United States Continental Shelf. The only way to give the companies the clear, internationally recognized title that they need before investing this type of money is to join the treaty and work through its Continental Shelf process.

Last, Mr. Chairman, one other point I would like to make with respect to the diplomatic aspect of this question and one which I think is important as a person who was a diplomatic practitioner for more than 40 years. And that was the unprecedented nature, I felt, of the concession by the rest of the international community in its willingness to reopen this Convention because of the objections that the United States raised when President Reagan said he would not sign the treaty.

And after learning of our objections, they came to us and invited us and said we are prepared to reopen this part 11 of the Law of the Sea Treaty to try and meet your objections so that you will feel more comfortable coming onboard. We did that. We held these talks.

Twelve years later, we reached agreement on the revised part 11. And I think, as a matter of diplomatic practice and in terms of credibility in relationships with the countries with which we deal, the idea that they accommodated our concerns and reopened the treaty and modified that chapter and for us again to reject this Convention now that those concerns have been met, I would say would be tantamount to a diplomatic slap in the face, if not more.

Mr. Chairman, I am confident that the committee will agree to—that United States accession to the treaty is the best way to secure essential navigational and economic rights related to the ocean.

Thank you.

[The prepared statement of Ambassador Negroponte follows:]

PREPARED STATEMENT OF AMBASSADOR JOHN NEGROPONTE

Mr. Chairman, thank you for the opportunity to appear before this committee to discuss the 1982 U.N. Convention on the Law of the Sea.

Let me say at the beginning of my testimony and as unequivocally as possible that I believe the United States should accede to this treaty. As you have heard recently from the Secretaries of State and Defense, and the Chairman of the Joint Chiefs of Staff as well as our maritime service chiefs, there is strong consensus that it is in our national interests to do so, and, as I will elaborate in my remarks, there are real costs of remaining outside the Convention.

For the benefit of our country, I hope this is the year we finally become party to the Law of the Sea.

There is broad and bipartisan consensus from our Nation's military, political, and business leadership to join the treaty because, as the world's greatest maritime

power with a host of maritime interests, merely treating the Convention as customary law is not good enough.

As the committee has heard hours of previous testimony, I hope not to repeat general points here about why the United States should sign on to the treaty which I wholeheartedly support, but rather I will cite specific practical reasons of how remaining outside the Convention damages U.S. national interests. These are not academic or philosophical points, but real world examples of how we are undermining our national interests by not officially joining.

First, the Convention is now open for amendment and could be changed in ways counter to our interests in navigational freedoms or access to seabed resources. If we join now, however, our rights are protected in two ways: first, by the Convention's requirement that amendments to the nonseabed parts of the Convention only apply to those countries that ratify them. Even countries that join the Convention after it is amended must deal with those that have not ratified an amendment according to the terms of the unamended Convention. If we delay until after an amendment is adopted, we could only choose the amended version. Regarding amendments to the seabed parts of the Convention, once the United States takes its permanent seat at the International Seabed Authority it will have a veto over any amendments related to that part.

Second, the United States cannot currently participate in the Commission on the Limits of the Continental Shelf (CLCS) which oversees ocean delineation on the outer limits of the Extended Continental Shelf (Outer Continental Shelf). Even though it is collecting scientific evidence to support eventual claims off its Atlantic, Gulf, and Alaskan coasts, the United States, without becoming party to the Convention, has no standing in the CLCS.

This not only precludes it from making a submission claiming the sovereign rights over the resources of potentially more than 1 million square kilometers of the OCS, it also denies the United States any right to review or contest other claims that appear to be overly expansive. This is becoming especially urgent with each passing year as the Commission is reviewing an influx of claims.

Third, and especially acute as it relates to current tensions in the Persian Gulf or naval mobility in the Pacific, the United States today forfeits legal authority to other states, some of them less than friendly to U.S. interests, that seek to restrict rights enshrined in the Law of the Sea central to American national security strategy, such as the freedom of navigation.

Relatedly, the United States also puts its sailors in unneeded jeopardy when carrying out the Freedom of Navigation (FON) program to contest Law of the Sea abuses.

Fourth, the United States is limited in its leadership ability to act within the Convention to help mitigate maritime disputes between strategic allies, such as Japan and Korea, and in strategically important regions, such as the Gulf of Aden or the South China Sea.

Fifth, the United States is frustrated in expanding the Proliferation Security Initiative (PSI) and gaining greater cooperation in counterpiracy, counternarcotics, and counterterrorism operations at sea. Although our allies are supportive of our efforts on these fronts, they understandably indicate that U.S. refusal to join the Convention has eroded their confidence that the United States will abide by international law when conducting interdiction activities.

Sixth, U.S. firms and citizens cannot take advantage of the arbitration processes established within the Convention to defend their rights against foreign encroachment or abuse.

Seventh, the United States is unable to nominate a candidate for election to the Law of the Sea Tribunal and thus is deprived of the opportunity to shape directly the interpretation and application of the Convention.

Eighth, American energy and deep seabed companies are at a disadvantage in making investments in the OCS due to the legal uncertainty over the outer limit of the U.S. Continental Shelf, nor can they obtain international recognition, and, as a result, financing for mine sites or title to recovered minerals on the deep seabed beyond national jurisdiction. As a result, our once-lead in ocean technologies has atrophied and we have now fallen behind other countries in critical areas such as deep seabed mining.

Potential U.S. developers of deep seabed minerals are falling farther and farther behind international competitors for deep seabed minerals. While lack of international recognition of U.S. claims to areas beyond national jurisdiction is keeping the sole U.S. claimant on shore, 17 countries have 12 approved mine site claims and five new applications will be considered this summer at the annual session of the International Seabed Authority. The U.K. and Belgium are joining Germany, France, Japan, South Korea, India, China, and seven other nations in commercial

exploration of seabed critical and strategic minerals while the United States watches from shore.

Ninth, and as referenced before, the United States is unable to fill its permanent seat on the International Seabed Authority and therefore is unable to influence this body's work overseeing minerals development in the deep seabed beyond national jurisdiction.

Last, and really a point of clarification rather than a specific cost, let me be clear as the first Director of National Intelligence that joining the Convention in no way hinders our intelligence gathering to include not impairing in anyway our submarine activities.

I would now like to focus specifically on the Arctic, a region of particular interest to me, and how not being a state party to the treaty is undermining our interests in this increasingly important region of the world.

In 2008, I led a U.S. delegation to Ilulissat, Greenland, for an international conference of Arctic Foreign Ministers to discuss emerging regional issues. The United States is the only Arctic nation not to have joined the treaty and our nonparty status diminished our voice in this forum.

Furthermore, the United States is in a weaker legal position in the opening of the Arctic to police new shipping along the Alaskan coast such as greater regulatory authority afforded under article 234 and to apply internationally developed rules and standards to foreign shipping, to contest disputed boundary claims and to press our own under article 76, and to challenge Canada's assertion that the Northwest Passage falls within its internal waters.

Why is it imperative for the United States to join the Convention now?

For starters, the United States would gain legal protection for its sovereignty, sovereign rights and jurisdiction in offshore zones, the freedom of maneuver and action for its military forces, protection for economic, environmental, and marine research interests at sea while seizing an extraordinary opportunity to restore the mantle of international leadership on, over and under nearly three-quarters of the earth.

U.S. firms would be able to obtain essential internationally recognized exclusive rights to explore and exploit deposits of critical and strategic minerals on the ocean floor beyond national jurisdiction and secure recognized title to the recovered resources. The Convention, as revised by the 1994 Agreement on Implementation, provides the commercial regime needed for private industry in full compliance with the criteria articulated in 1982 by President Reagan when he laid out his conditions for a convention he would sign.

More difficult to measure than the tangible benefits gained from U.S. accession is the diplomatic blight on America's reputation for rejecting a carefully negotiated accord that enjoys overwhelming international consensus and a treaty that was adjusted in unprecedented fashion to specifically meet the demands put forth by President Reagan. Remaining outside the Convention undermines U.S. credibility and limits our ability to achieve critical national security objectives.

The treaty was negotiated over decades during which American delegations scored important victories. To the dismay of the rest of the world that negotiated the Convention with the United States in good faith, after many years the Senate has yet to have an up-or-down vote. In my opinion, this is a constitutional abdication of congressional leadership.

Through inaction, the United States is forfeiting concrete interests while simultaneously undermining something more intangible, the legitimacy of U.S. leadership and its international reputation.

The United States should join the Law of the Sea Convention because it remains committed to the rule of law and its historic role as an architect and defender of a world order that benefits all nations, including and especially the United States of America.

Thank you, and I look forward to responding to your questions and expanding on any of the points in my testimony.

The CHAIRMAN. Thank you, Mr. Secretary.

Mr. Bellinger.

STATEMENT OF HON. JOHN B. BELLINGER III, FORMER LEGAL ADVISER, U.S. DEPARTMENT OF STATE, PARTNER, ARNOLD & PORTER, LLP, WASHINGTON, DC

Mr. BELLINGER. Thank you, Mr. Chairman and Ranking Member Lugar.

I don't go back quite as far with the treaty as either Secretary Rumsfeld or Secretary Negroponte, although I have spent a lot of time with both of them inside the White House. As you mentioned, I served for all 8 years in the Bush administration, first as the Legal Adviser for the National Security Council in the White House for the first term and then as the Legal Adviser for the State Department in the second term.

What I can do is explain why during those 8 years the Bush administration decided to support the Law of the Sea Convention because I started from the beginning there. And I do, let me say, appreciate very much the concerns that have been raised about the Convention, including by Senators on this committee, because the Bush administration carefully looked at almost all of these same issues before we ultimately decided to support the treaty.

And let me say President Bush did not decide to support the treaty out of a blind commitment to multilateralism. I don't think anyone has ever accused the Bush administration of an overabundance of enthusiasm for international organizations or multilateral treaties.

When we came into office in 2001, we decided not to support several of the treaties that had been supported by the Clinton administration, including the Comprehensive Test Ban Treaty and the Kyoto Protocol. Bush administration officials were similarly skeptical about the Law of the Sea Treaty. We remembered President Reagan's concerns.

But after a year-long interagency review, we concluded that the Convention strongly advanced U.S. national security, economic, and environmental interests. And in the administration's first treaty priority list in February 2002, we told this committee that there was "an urgent need for Senate approval of the Convention."

We reviewed the serious concerns that President Reagan had raised about the Convention in 1982. We concluded that these concerns had been satisfactorily addressed by the amendments to the Convention in 1994. The other Western countries that President Reagan and Secretary Rumsfeld had successfully persuaded not to sign the treaty, including Britain, Germany, and Japan, had all joined the treaty after the treaty was amended.

So between 2003 and 2009, senior Bush administration political appointees from the Departments of Defense, State, Commerce, Interior, Homeland Security testified and sent letters to this committee and other committees strongly endorsing the Convention. Defense Department appointees twice testified in favor of the treaty. President Bush himself issued statements in 2007 and 2009, urging the Senate to approve the Convention.

Let me end by addressing some of the concerns that have been raised because we did address some of those same concerns. First, reliance on customary international law alone does not give the United States important rights that are available only to parties of the Convention. Most important, U.S. companies would not have the legal certainty that they need before they are willing to invest billions in development in the Arctic or the deep seabed.

By not joining the Convention, the U.S. Government is preventing U.S. oil, gas, and mining companies from making investments that could produce enormous wealth and jobs for the U.S.

economy. Moreover, the United States would not be able to take its permanent seat on the Council of the International Seabed, which is currently making decisions that affect U.S. interests.

Second, the United States would only be required to pay royalties to the Deep Seabed Authority if it were actually developing resources on the U.S. Extended Continental Shelf. Moreover, U.S. oil and gas companies and the U.S. Treasury would be able to keep 100 percent of the value of the production at any site for the first 5 years and then between 99 and 93 percent of the value for the remaining years.

This would be an enormous net benefit, not a loss, for the U.S. Treasury. If these fees would actually cause the economic problems that are claimed by critics, then certainly other major industrial countries would not have agreed to pay them.

Third, the seabed authority only has limited authority to address mining activities on the deep seabed beyond the jurisdiction of any country. It has no authority to regulate activities in the world's oceans or on the U.S. Extended Continental Shelf.

If critics are seriously concerned about the potential actions of the ISA, then the most effective way to restrict its activities would be for the United States to become party to the Convention and take its permanent seat and effective veto power on the ISA Council.

Finally, joining the Convention does not, in my view, subject the United States to significant new environmental litigation risks. In fact, the litigation risk to the United States and U.S. companies would be much greater if U.S. companies were to try to exploit the resources on the U.S. Extended Continental Shelf or on the deep seabed contrary to the terms of the Convention.

Mr. Chairman, through determined diplomacy, including by Secretary Rumsfeld, the United States has been able to achieve all of its important objectives in the original 1982 Law of the Sea Convention and the 1994 amendments. After careful review, the Bush administration concluded that the amended Convention strongly serves U.S. military, economic, and environmental interests. And we concluded that important U.S. objectives, especially our goals to exploit the valuable resources on our Extended Continental Shelf in the Arctic and on the deep seabed and to participate in the Convention's decisionmaking bodies could not be achieved through other means.

For these reasons, President Bush decided to support the Law of the Sea Convention, and he urged the Senate to approve it rapidly.

Mr. Chairman and members of the committee, thank you for this opportunity to appear today.

[The prepared statement of Mr. Bellinger follows:]

PREPARED STATEMENT OF JOHN B. BELLINGER III

Mr. Chairman, Ranking Member Lugar, thank you for inviting me to appear before the committee today to discuss the Convention on the Law of the Sea. My last appearance before this committee was at this committee's last hearing on the Law of the Sea Convention in September 2007, when I appeared together with then-Deputy Secretary of State John Negroponte and then-Deputy Secretary of Defense Gordon England to support the Convention on behalf of the Bush administration.

I am now a partner in the international and national security law practices at Arnold & Porter LLP and an Adjunct Senior Fellow in International and National Security Law at the Council on Foreign Relations. Although I am advising several

clients on legal issues relating to the Law of the Sea Convention, I am appearing today in my personal capacity and not on behalf of any client.

I served for 8 years as a senior legal official in the administration of President George W. Bush, and I was actively involved in the administration's consideration of the Convention for all 8 years. During the first term, I served in the White House as Senior Associate Counsel to the President and Legal Adviser to the National Security Council from 2001–2005. I was in the White House Situation Room on September 11. Although I spent the vast majority of my time in this position focused on military, intelligence, and counterterrorism issues, I was also responsible for coordinating the Bush administration's treaty priorities and for reviewing all treaties transmitted to the Senate by the President.

In the second term, I served as the Legal Adviser for the Department of State from 2005–2009 under Secretary of State Condoleezza Rice, after a confirmation hearing before this committee in March 2005 and confirmation by the full Senate in April 2005. As Legal Adviser, I was the most senior international lawyer in the administration and was responsible, among other duties, for the negotiation and legal interpretation of treaties and for securing Senate approval and Presidential ratification of treaties supported by the administration. I also represented the United States before international tribunals.

Today, I would like to explain why the Bush administration decided, after a careful review, to support the Law of the Sea Convention. I will also address some of the concerns that have been raised by critics of the Convention.

Let me emphasize at the outset that I very much appreciate many of the concerns that have been raised about the Convention, including by Senators on this committee. I watched this committee's hearing on May 23 and listened to the concerns that were raised. During the Bush administration, we carefully examined many of these same issues before allowing administration witnesses to testify in favor of the treaty before this committee in 2003 and 2007. Although some of the criticisms of the Convention are inaccurate or based on outdated information, other criticisms raise legitimate concerns that the Bush administration reviewed before we decided to support the Convention.

When the Bush administration came into office in January 2001, we began a careful review of all of the treaties that had been submitted to the Senate by the Clinton administration to determine which treaties the Bush administration would support and would not support. The Bush administration did not support all of the treaties that had been supported by the prior administration. For example, the Bush administration did not support the Comprehensive Nuclear Test Ban Treaty, which had been strongly supported by the Clinton administration. We did not support the Kyoto Protocol, which had been signed by the Clinton administration. Many Bush administration officials were similarly skeptical of the Law of the Sea Convention because it was a multilateral treaty, and President Reagan had refused to sign it. However, after a year-long interagency review, the Bush administration concluded that the Convention was in the U.S. national interest and decided strongly to endorse the treaty. In February 2002, the administration submitted its first Treaty Priority List to this committee and listed the Law of the Sea Convention as a treaty for which there was an "urgent need for Senate approval."

Let me emphasize that the Bush administration did not decide to support the Law of the Sea Convention out of a blind commitment to multilateral treaties or international organizations. No one has ever accused the Bush administration of an overabundance of enthusiasm for the United Nations or multilateralism. Indeed, the Bush administration was especially skeptical of the United Nations and many U.N. bodies, such as the Human Rights Council. And the Bush administration was especially committed to defending U.S. sovereignty and international freedom of action, particularly after September 11.

The Bush administration decided to support the Law of the Sea Convention and to provide senior administration officials to testify in favor of the Convention only after weighing the Convention's benefits against its risks. We ultimately concluded that, on balance, the treaty was clearly in the U.S. national security, economic, and environmental interests.

First and foremost, the Bush administration concluded that the Convention was beneficial to the United States military, especially during a time of armed conflict, because it provided clear treaty-based navigational rights for our Navy, Coast Guard, and aircraft. This was especially important for the Bush administration as we asked our military to take on numerous new missions after the 9/11 attacks during the Global War on Terrorism; several countries had challenged U.S. military activities in their territorial waters, and the administration concluded that it was vital to have a treaty-based legal right to support our freedom of movement and activi-

ties. We also concluded that joining the Convention would support our Proliferation Security Initiative.

Second, the administration concluded that the Convention was in the U.S. commercial and economic interests because it codified U.S. rights to exploit the vast and valuable resources in the U.S. Exclusive Economic Zone—the largest in the world—and on its substantial Extended Continental Shelf (ECS), to lay and service submarine telecommunications cables, and to engage in mining in the deep seabed outside the sovereign jurisdiction of the United States. Later, as the melting Arctic ice opened up new commercial opportunities on the U.S. Extended Continental Shelf off of Alaska, the administration concluded that codifying U.S. rights in the Arctic and participating on the Continental Shelf Commission created by the Convention was even more important than before.

Third, the administration concluded that joining the Convention supported important U.S. environmental interests in the health of the world's oceans and the living resources in them.

The Bush administration reviewed the specific concerns that President Reagan had raised about the Convention, which focused on Part XI of the Convention, regarding deep seabed mining. We concluded that all of these concerns had been satisfactorily addressed by the amendments made to the Convention in 1994. For example, the provisions in the original Part XI requiring transfer of technology to less developed countries or mandating limits on deep seabed mining based on nonmarket factors had been eliminated. Moreover, the United States had been given a permanent seat on the Council of the International Seabed Authority and the power to veto all decisions of the International Seabed Authority relating to budgetary or financial matters. During our review, we noted that, in his January 1982 statement on "U.S. Policy and the Law of the Sea," President Reagan had stated that the "The United States remains committed to the multilateral treaty process for reaching agreement on the law of the sea." President Reagan had said that if U.S. concerns were addressed, "my administration will support ratification."

We also noted that after 1994, all of the major industrialized countries—including the United Kingdom, Japan, Italy and Germany—had decided to join the Convention. These were the countries that had followed President Reagan's lead and had refused to sign the 1982 Convention because they shared U.S. concerns about the Convention's deep seabed mining provisions, but then concluded that the 1994 amendments had fixed the original problems with the treaty. China and Russia—two members of the U.N. Security Council that also jealously protect their sovereignty and freedom of action—had also joined the Convention in 1996 and 1997, respectively.

As a result of its reviews of the Convention, the Bush administration did identify several concerns. The administration concluded, however, that these concerns could be adequately addressed through declarations and understandings that could be included with the Senate's Resolution of Advice and Consent to Ratification.

A broad array of senior Bush administration political appointees from a variety of agencies testified in favor of the Convention, and wrote letters supporting the Convention, between 2003 and 2009. In October 2003, Assistant Secretary of State John Turner, Legal Adviser William H. Taft IV, and Deputy Assistant Secretary of Defense Mark Esper testified before this committee in favor of the treaty. Dr. Esper, who had previously served as chief of staff at the Heritage Foundation, testified on behalf of the Department of Defense that the administration had "undertaken a review of the Law of the Sea Convention to ensure that it continues to meet U.S. needs in the current national security environment." Dr. Esper testified that the review "did not reveal particular problems affecting current U.S. operations." He stated that the administration "supports accession to the Convention because the Convention supports navigational rights critical to military operations."

Ambassador Taft testified on behalf of the Bush administration in favor of the Convention on several additional occasions before other Senate committees. Ambassador Taft had broad experience in defense matters, having served previously as General Counsel of the Department of Defense and later as Deputy Secretary of Defense and Acting Secretary of Defense during the Reagan administration, and as Ambassador to NATO in the administration of President George H.W. Bush.

In addition, in June 2004, the Senate Select Committee on Intelligence held a closed hearing on the intelligence implications of U.S. accession to the Convention. The Director of Naval Intelligence, the Assistant Director of Central Intelligence for Collection, and Ambassador Taft all expressed support for the Convention and stated that the Convention would not affect the conduct of U.S. intelligence activities.

In March 2004, this committee unanimously reported the Convention with a recommendation that the full Senate vote on it promptly. The full Senate, however, did not vote on the treaty in 2004.

In 2007, the Bush administration stepped up its efforts to urge the Senate to approve the Convention. On February 8, 2007, then-Assistant to the President for National Security Affairs, Stephen Hadley, wrote to this committee to urge the Senate to approve the Convention "as early as possible in the 110th Congress." Mr. Hadley stated that "As the President believes, and many members of this administration and others have stated, the Convention protects and advances the national security, economic, and environmental interests of the United States." On May 15, 2007, President Bush himself issued a statement on "Advancing U.S. Interests in the World's Oceans," in which he said "I urge the Senate to act favorably on U.S. accession to the United Nations Convention on the Law of the Sea Convention during this session of Congress."

In September 2007, senior administration witnesses again testified before this committee in favor of the Convention. This time, Deputy Secretary of State John Negroponte and Deputy Secretary of Defense (and former Secretary of the Navy) Gordon England testified. Secretary Negroponte had previously served as the Deputy National Security Adviser during the Reagan administration. I joined Deputy Secretary Negroponte, and Deputy Secretary England was joined by Admiral Patrick Walsh, the Vice Chief of Naval Operations, and Admiral Bruce MacDonald, the Judge Advocate General of the Navy.

Shortly before the hearing, on September 17, 2007, then-Governor of Alaska Sarah Palin wrote to the committee to "put my administration on record in support of the Convention as the predicate for asserting sovereign rights that will be of benefit to Alaska and the Nation." Governor Palin noted that Senate "ratification has been thwarted by a small group of Senators who are concerned about the perceived loss of U.S. sovereignty. I believe that quite the contrary is true."

Also before this committee's 2007 hearing, the Chairman of the Senate Intelligence Committee, Jay Rockefeller, and Vice Chairman Christopher Bond wrote a letter to this committee stating that "we concur in the assessment of the Intelligence Community, the Department of Defense, and the Department of State that the Law of the Sea Convention neither regulates intelligence activities nor subjects disputes over intelligence activities to settlement procedures under the Convention. It is therefore our judgment that accession to the Convention will not adversely affect U.S. intelligence collection or other intelligence activities."

After the September 2007 hearing, Secretary of Homeland Security Michael Chertoff, Secretary of the Interior Dirk Kempthorne, and Secretary of Commerce Carlos Gutierrez all submitted letters to the committee strongly endorsing the Convention.

In December 2007, this committee again favorably reported the treaty to the full Senate, but the full Senate again did not act on the treaty before the end of the 110th Congress.

The Bush administration, however, continued to support Senate approval of the treaty. On January 9, 2009, President Bush signed National Security Presidential Directive 66, relating to "Arctic Region Policy." In this directive, President Bush again called on the Senate promptly to act favorably on the Law of the Sea Convention.

I would now like to address some of the concerns that have been raised by critics of the Law of the Sea Convention.

Reliance on Customary International Law. Some have suggested that it is not necessary for the United States to join the Convention in order to enjoy its benefits because the main provisions of the treaty are now accepted as "customary international law." According to this argument, the United States can enjoy international freedom of navigation and exploit the resources on the U.S. Extended Continental Shelf and on the deep seabed, without having to assume any obligations ourselves under the treaty, because these provisions have become accepted as customary international law.

Reliance on customary international law to protect U.S. interests is insufficient for many reasons:

First, asserting customary international law does not give the United States important rights that are available only to parties to the Convention. For example, the U.S. may not take our permanent seat on the Council of the International Seabed Authority, or have a U.S. national elected to the Continental Shelf Commission, unless we are party to the Convention. These bodies are currently making important decisions that affect our interests without our participation. For example, the Continental Shelf Commission is reviewing the claims of Russia and other Arctic coastal states to their Continental Shelves in the Arctic, and we have no say in its deci-

sions. Similarly, the Council of the ISA is adopting rules relating to deep seabed mining without U.S. input. And the U.S. may not sponsor U.S. companies, such as Lockheed, to engage in mining on the deep seabed.

Second, it is not at all clear that all of the substantive provisions of the Convention are, in fact, recognized as customary international law. It could be extremely difficult for the U.S. to establish that there was general agreement by countries around the world that a country has a legal right to exploit the resources on its Extended Continental Shelf or on the deep seabed, without joining the Convention. Similarly, contrary to the claims of some, the U.S. does not have a clear right to its Extended Continental Shelf under the 1958 Convention on the Continental Shelf; the lack of clarity in the 1958 Convention is a principal reason why President Nixon endorsed the concept of a new Law of the Sea Convention.

Third, U.S. companies have been unwilling to begin costly exploration and extraction activities in reliance on theoretical and untested legal arguments that have not been accepted by other countries and that are flatly contrary to the terms of Law of the Sea Convention. Companies instead want the clear legal certainty provided by the Convention before making investments that could run into the billions of dollars. Critics of the Convention who are concerned about the possibility of international litigation should be much more concerned about the possibility of lawsuits against the United States or U.S. companies if the United States were to engage in resource extraction on the U.S. Extended Continental Shelf or on the deep seabed contrary to the terms of the Convention, than about possible environmental claims against the United States if the U.S. were to join the Convention. Moreover, a U.S. company that initiates deep seabed mining outside the Convention risks having a foreign company sponsored by a country that is party to the Convention jump on its claim after it has proven to be profitable. No U.S. company would want to take that legal risk.

Fourth, relying on customary international law does not guarantee that even the benefits we do currently enjoy are secure over the long term. Customary international law is not the most solid basis upon which to protect and assert U.S. navigational and economic rights. It is not universally accepted and may change over time based on State practice. We therefore cannot assume that customary law will always continue to mirror the Convention, and we need to lock in the Convention's rights as a matter of treaty law. Indeed, it is surprising that opponents of the Convention who are usually critical of the haziness and unpredictability of "customary international law" should urge the U.S. military and U.S. businesses to rely on it to protect their essential interests.

U.N. "Taxes"/Royalty Payments. Some have objected that the U.S. would be obligated to pay fees to the International Seabed Authority—which some have inaccurately called "U.N. taxes"—if the U.S. were to join the Convention and allow resource development on its Extended Continental Shelf. Some have suggested that these fees could result in the loss of billions of dollars to the U.S. Treasury. The Bush administration carefully considered these concerns and concluded that the licensing and fee structure established by the Convention was acceptable.

First, the fees are minimal in comparison to the enormous economic value that would be received, and the jobs that would be created, by the United States if its industry were to engage in oil, gas, and mineral development on the U.S. Extended Continental Shelf in the Arctic. The U.S. would be required to make no payments for the first 5 years of production at any site, and then to pay a fee of 1 percent per year starting in year 6, up to a maximum of 7 percent in year 12. Assuming the U.S. Government imposed, for example, a royalty fee of approximately 18 percent on the value of production on the U.S. Extended Continental Shelf, that would be 18 percent more than the U.S. would gain if we stayed outside the Convention. In other words, joining the Convention would attract substantial investment, and produce substantial revenues for the Treasury, that would not otherwise be produced. So, even when the Convention payment is at its highest rate of 7 percent, the U.S. Treasury would still be 11 percent better off with respect to each production site than it would be if the U.S. does not join the Convention. This would be an enormous benefit—not a loss—to the U.S. budget.

Second, these fees would only have to be paid by the United States if there is actually production on the U.S. Extended Continental Shelf.

Third, these fees were negotiated by U.S. negotiators in consultation with experts from the U.S. oil and gas industry, who deemed them to be acceptable.

Fourth, all of the Western industrialized countries, including our major allies, as well as Russia and China, have concluded that these fees are acceptable and have joined the treaty. If these fees would actually cause the economic woes claimed by critics, then certainly these other countries would not have been willing to agree to pay them. Instead, most of these countries are already busily surveying and staking

claims to their Extended Continental Shelves so that their oil, gas, and mining companies can exploit these resources. For example, Norway—which already has a sovereign wealth fund worth $700 billion, all of which has been derived from Arctic oil and gas profits—is preparing to make a claim to the oil and gas on its Extended Continental Shelf in the Arctic. Russia, Canada, and Denmark are all preparing to make similar claims in the Arctic using the provisions of the Convention, and they have agreed to pay royalties if they exploit the resources on their Extended Continental Shelves.

Finally, royalty fees would not be paid to the United Nations. They would be paid through the International Seabed Authority, and back to the Parties to the Convention under a distribution formula developed by the Seabed Authority's Council, where the U.S. would have a permanent seat and a decisive voice on how fees would be spent.

International Seabed Authority. Some have objected to the creation of, or to having the U.S. join, the International Seabed Authority created by the Convention. Critics claim that the ISA is a large U.N. bureaucracy that is hostile to American interests, that includes undemocratic governments, that would regulate U.S. activities over or under the world's oceans, and that would distribute money to rogue regimes. These claims are inaccurate or exaggerated.

First, the ISA is not part of the United Nations. It is an independent body that is not part of the U.N. Moreover, the ISA is very small. It has fewer than 50 employees.

Second, the ISA has already been in operation for 18 years. The United States cannot prevent its coming into existence or its operations by not joining the Convention.

Third, the U.S. is guaranteed a permanent seat on the Council of the ISA, with veto power over financial and substantive decisions of the ISA, but only if the U.S. joins the Convention. If critics are concerned about the potential actions of the ISA (including the potential distribution of fees to rogue states), the most effective way to restrict its activities would be for the U.S. to become party to the Convention and to exercise its veto rights over Council decisions. Indeed, if Russia, China, and other countries begin to pay fees to the ISA, the U.S. would be able to affect how these fees are distributed if it takes its guaranteed seat on the ISA Council.

Fourth, the ISA has authority only to regulate mining activities on the deep seabed beyond the jurisdiction of any country. It has no authority to regulate activities on the deep seabed unrelated to mining, or with respect to resource development on the Continental Shelf of the U.S. or other countries. Nor does the ISA have authority over activities of the United States or other countries in the world's oceans.

Finally, while the United States participates in numerous international organizations in which undemocratic countries are also members and even hold leadership positions, the International Seabed Authority is the only international organization where the U.S. alone is given a permanent seat and veto authority over its activities.

Environmental Obligations/Environmental Disputes. Some have argued that the Convention might obligate the U.S. to comply with international environmental agreements (such as the Kyoto Protocol) to which the U.S. is not a party, or subject the U.S. to mandatory dispute resolution for marine pollution (such as atmospheric pollution or pollution from land-based sources). I share the concerns of some critics of the Convention about the goals of some groups to embroil the U.S. in international litigation. As the State Department Legal Adviser during the Bush administration, I witnessed first-hand the efforts of many groups hostile to U.S. counterterrorism actions to wage "lawfare" against the United States. In my view, however, joining the Law of the Sea Convention does not subject the United States to significant new legal risks, especially when compared to the benefits of joining the Convention.

The terms of the Convention do not require Parties to comply with other international environmental treaties. With respect to land-based sources and pollution through the atmosphere, Part XII, Section 5 of the Convention requires Parties at most to adopt laws and regulations to prevent, reduce and control marine pollution, but in doing so, parties are required only to "tak[e] into account internationally agreed rules, standards and recommended practices and procedures." This does not impose an obligation to comply with Kyoto or any other environmental treaty or standard, including treaties to which the U.S. is not a party.

In addition, the U.S. would not be subject to dispute resolution for allegedly violating the Kyoto protocol or any other environmental treaty, including agreements governing pollution from land-based sources. The Convention's dispute settlement system applies only to disputes "concerning the interpretation or application" of the Convention itself, not to the alleged violation of other treaties. Articles 297 and 298

of the Convention further exclude certain potentially sensitive disputes from dispute settlement.

Finally, as I have noted previously, those who are rightly concerned about international litigation against the United States should be much more concerned about subjecting the United States and U.S. businesses to international claims if the United States were to try to claim the resources on its Extended Continental Shelf or on the deep seabed without becoming party to the Law of the Sea Convention. In my view, the risk of environmental litigation against the United States if it joins the Convention is low. The risk of international litigation against the United States if it were unilaterally to claim the resources on its Extended Continental Shelf or on the deep seabed, without becoming party to the Convention, is much higher.

In closing, I want to focus on the bigger picture. In deciding whether to accede to the Law of the Sea Convention, as with any treaty, the question for the President and the Senate is whether the treaty, on balance, is in the national interest of the United States. Do the advantages of the treaty outweigh its disadvantages? Can the disadvantages or risks be mitigated? Can the United States achieve its objectives in other ways?

No treaty the United States has ever joined has been 100 percent perfect from our point of view. And yet the U.S. Senate has approved and the United States has become party to thousands of treaties, including hundreds of multilateral treaties, over its history, which have benefited the United States greatly. Many of these treaties have required the United States to give up theoretical rights that we might otherwise have tried to assert, in order to persuade other countries to do the same. Many of these treaties have dispute resolution mechanisms in which the dispute bodies can rule, and even have ruled, against the United States, but they have also ruled in favor of the United States. This is all in the nature of treaties. Over the course of our history, numerous Presidents and Senators have concluded that entering into treaties with other countries is not a sign of weakness, but rather the most effective way for the United States to get other countries to do what we want them to do.

Through dogged diplomacy and the insistence of President Reagan, the United States has been able to achieve all of its important objectives in the original 1982 Convention and the 1994 amendments. The Bush administration concluded that the Convention, as amended, strongly serves U.S. military, economic and commercial, and environmental interests. We concluded that the concerns we did identify with the Convention could be addressed in our instrument of ratification. And we concluded that important U.S. objectives—especially our goals to develop the valuable resources on our Extended Continental Shelf in the Arctic and on the deep seabed and to participate in the Convention's decisionmaking bodies—could not be achieved through other means, for example, through reliance on customary international law alone. For these reasons, President Bush decided to support the Law of the Sea Convention and urged the Senate to approve it rapidly.

Mr. Chairman and members of the committee, thank you for this opportunity to appear before you today.

The CHAIRMAN. Thank you very much, Secretary Bellinger.

Mr. Groves.

STATEMENT OF STEVEN GROVES, BERNARD AND BARBARA LOMAS FELLOW, THE HERITAGE FOUNDATION, WASHINGTON, DC

Mr. GROVES. Thank you, Mr. Chairman, for inviting me to testify this afternoon regarding U.S. accession to the United Nations Convention on the Law of the Sea.

At a recent hearing, a prominent treaty proponent stated that opposition to UNCLOS is based on mythology and ideology. At the outset, allow me to ensure you that my concerns and the concerns of many others are not based in mythology or on strict adherence to ideology without regard for facts or evidence.

To the extent that treaty skeptics base their opposition on ideology, it is an ideology that places the protection of American sovereignty over the advancement of narrow commercial interests and over a misplaced desire to please the international community.

Joining UNCLOS would affect our sovereignty and national interests in several ways.

It would expose the United States to adverse judgments from international tribunals from which there are no appeals. It would obligate the United States to make an open-ended commitment to transfer an incalculable amount of royalty revenue to an international organization for redistribution to the developing world. And it would require the United States to seek permission to mine the deep seabed from a council of foreign countries that includes Sudan.

Ceding American sovereignty should not be done lightly since it was achieved and has been preserved through great sacrifice. When the Founding Fathers wrested sovereignty away from Great Britain and declared our independence, they stated their reasons for doing so. Among those reasons were the imposition of taxes from afar and for transporting us beyond the seas to be tried for pretended offenses.

More than 230 years later, the Senate is considering a treaty that would siphon off royalty revenue that belongs to the American people, but instead will be remitted to Kingston, Jamaica, to be spent in other countries. The treaty would also transport the United States to tribunals in Germany and the Netherlands to answer for pretended offenses.

The Founders had a deep respect for the law of nations and for the opinions of mankind, but I doubt that they could fathom that the United States would subject itself to such an arrangement.

But opposition to UNCLOS is, of course, based on more than ideology. Our skepticism is based on the available evidence, longstanding U.S. law and policy, customary international law, U.S. experiences in other international organizations, U.S. experiences in international tribunals, the provisions of the Convention itself, and, of course, the facts.

First, in regard to navigational rights and freedoms, we know the following facts. For more than 230 years, the U.S. Navy has successfully protected our maritime interests, regardless of the fact that the United States has not joined the Convention.

The Navy has never been successfully denied access to any international strait, archipelagic water, or territorial sea. Indeed, at the hearing on May 23, General Dempsey, the Chairman of the Joint Chiefs of Staff, admitted that failure to join UNCLOS would not compromise our ability to project force around the world.

In regard to developing the resources of the Extended Continental Shelf, we know the following facts. The United States currently exercises full jurisdiction and control over its Extended Continental Shelf and has successfully demarcated its limits in the Gulf of Mexico and the Arctic Ocean through treaties with Mexico and Russia.

Since August 2001, the United States has leased blocks of the Extended Continental Shelf in the Gulf of Mexico for development to United States companies, such as Chevron, as well as companies from Brazil, Denmark, France, Italy, Norway, and the United Kingdom.

Regarding the transfer of royalties to the International Seabed Authority under article 82, we know the following facts. This com-

mittee cannot know the amount of royalty revenue that the U.S. Treasury will forgo because no study has been conducted to determine the value of the hydrocarbon resources of the vast U.S. Extended Continental Shelf.

As such, if the United States accedes to the Convention, it will be making an open-ended commitment to transfer an incalculable sum of royalty revenue to the authority for redistribution to developing and landlocked countries.

Regarding the Convention's mandatory dispute resolution provisions, we know the following facts. That acceding to UNCLOS would expose the United States to baseless international lawsuits. That environmental activists, legal academics, and at least one member of the Convention have contemplated initiating climate change litigation against the United States. And that adverse judgments issued by UNCLOS tribunals are final, not subject to appeal, and are enforceable in the United States.

Finally, in regard to U.S. rights to mine the deep seabed, we know the following facts. That pursuant to U.S. law, longstanding U.S. policy, and customary international law, U.S. persons and corporations have the right to explore and exploit the deep seabed, regardless of whether or not the United States is a party to UNCLOS.

These are the facts. And collectively, they indicate that there are real costs and foreseeable risks that the United States will undertake if it joins the Convention.

Now, proponents of accession claim that there are no costs whatsoever, that the United States will only enjoy benefits from membership, and that if only the United States would join the Convention, everything would work out just fine. In light of the facts, I believe that it is the proponents' claims that are based in mythology and on blind faith.

Thank you again, Mr. Chairman, for inviting me to testify today, and I look forward to any questions that you have.

[The prepared statement of Mr. Groves follows:]

PREPARED STATEMENT OF STEVEN GROVES

Mr. Chairman and members of the committee, thank you for inviting me to testify before you today regarding the United Nations Convention on the Law of the Sea (UNCLOS).

UNCLOS, like any complex treaty or piece of legislation, should be thoroughly examined by the Committee to determine its costs as well as its benefits. At bottom, the disagreement between those who favor U.S. accession to the Convention and those who oppose boils down to a disagreement regarding whether the benefits of membership are outweighed by the costs.

By its nature, no treaty comes without costs. As with comprehensive legislation, there are often provisions of a treaty that are uncontroversial and attractive in themselves. Likewise, there are other provisions that are controversial and divisive. This rule generally holds true for all treaties, including those involving arms control, human rights, the environment, international courts, and others. UNCLOS is no exception.

However, unlike most other treaties, the terms of UNCLOS prevent the United States from exempting itself from its more controversial provisions. Specifically, pursuant to article 309, UNCLOS forbids states parties from submitting reservations or exceptions that would otherwise allow the United States to disregard provisions that do not comport with the U.S. Constitution or longstanding U.S. law and policy.

My testimony today focuses on the costs associated with U.S. accession to UNCLOS and whether the benefits of accession are such that the costs are outweighed. The costs of accession are not imaginary. Nor is opposition to U.S. accession based on purist ideology, but rather on the available evidence, current U.S. law

and policy, customary international law, U.S. experience in other international organizations, the U.S. record in international tribunals, and of course the provisions of the convention itself.

In summary:

- If the U.S. accedes to UNCLOS, it will be required by article 82 to transfer royalties generated from hydrocarbon production of the U.S. "Extended Continental Shelf" (ECS) to the International Seabed Authority for redistribution to developing and landlocked countries. Since the value of the hydrocarbon resources lying beneath the U.S. ECS may be worth trillions of dollars, the amount of royalties that the U.S. Treasury would be required to transfer to the Authority would be substantial. In any event, U.S. accession would amount to an open-ended commitment to forgo an incalculable amount of royalty revenue for no appreciable benefit.
- U.S. accession to UNCLOS is not necessary to develop or secure title to the hydrocarbon resources of the ECS. Under international law and longstanding U.S. policy and practice, the U.S. has established full jurisdiction and control over its ECS and is in the process of delimiting its ECS boundaries on a worldwide basis. The successful delimitation of areas of U.S. ECS and subsequent leasing of those areas in the Gulf of Mexico to U.S. and foreign oil exploration companies demonstrate that the United States does not need to achieve universal international recognition of its ECS to provide "certainty" to oil exploration companies.
- Proponents of U.S. accession to UNCLOS contend that by failing to join the Convention the United States is forbidden from mining the deep seabed—the ocean floor lying beyond the ECS and designated as "the Area." However, no legal barriers prevent U.S. access, exploration, and exploitation of the resources of the deep seabed. The United States has long held that U.S. corporations and citizens have the right to develop the resources of the deep seabed and may do so whether or not the United States accedes to UNCLOS.
- U.S. accession to UNCLOS would expose the U.S. to lawsuits regarding virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or through the atmosphere. Regardless of the lack of merits of such a case, the U.S. would be forced to defend itself against every such lawsuit at great expense to U.S. taxpayers. Any adverse judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.
- Finally, it is not essential or even necessary for the United States to accede to UNCLOS to protect and preserve its navigational rights and freedoms. The navigational and maritime boundary provisions of the Convention either codify customary international law that existed well before the Convention was adopted in 1982 or "refine and elaborate" navigational rights and regimes that are now widely accepted as binding international law.

ARTICLE 82 AND THE COSTS OF COMPLIANCE

Proponents of U.S. accession to UNCLOS extol the supposed benefits of joining the Convention but are reluctant to discuss its very real costs.

One area where the U.S. can expect to experience significant costs—with no appreciable benefit—is in its compliance with article 82 of the Convention: "Payments and contributions with respect to the exploitation of the Continental Shelf beyond 200 nautical miles."

If the U.S. accedes to UNCLOS, it will be required pursuant to article 82 to transfer royalties generated on the U.S. Continental Shelf beyond 200 nautical miles (nm)—an area known as the "Extended Continental Shelf" (ECS)—to the International Seabed Authority. These royalties will likely total tens or even hundreds of billions of dollars over time. Instead of benefiting the American people, the royalties will be distributed by the Authority to developing and landlocked nations, including some that are corrupt, undemocratic, or even state sponsors of terrorism such as Cuba and Sudan.

Article 82 of UNCLOS requires member states to "share" a portion of their royalty revenue for all oil, gas, or other mineral resources extracted from the ECS:

> The coastal State shall make payments or contributions in kind in respect of the exploitation of the nonliving resources of the Continental Shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

These payments are to be made to the Authority on an annual basis by the states parties, and are based on the value of production at the particular site—in most

cases, an offshore drilling platform extracting oil or natural gas from the ECS. According to a recent study conducted for the Authority, such payments are considered "international royalties."

The potential size of the U.S. ECS worldwide is significant. The value of the hydrocarbon deposits lying beneath the U.S. ECS is difficult to estimate, but it is likely substantial. According to the U.S. Extended Continental Shelf Task Force, "Given the size of the U.S. Continental Shelf, the resources we might find there may be worth many billions if not trillions of dollars."

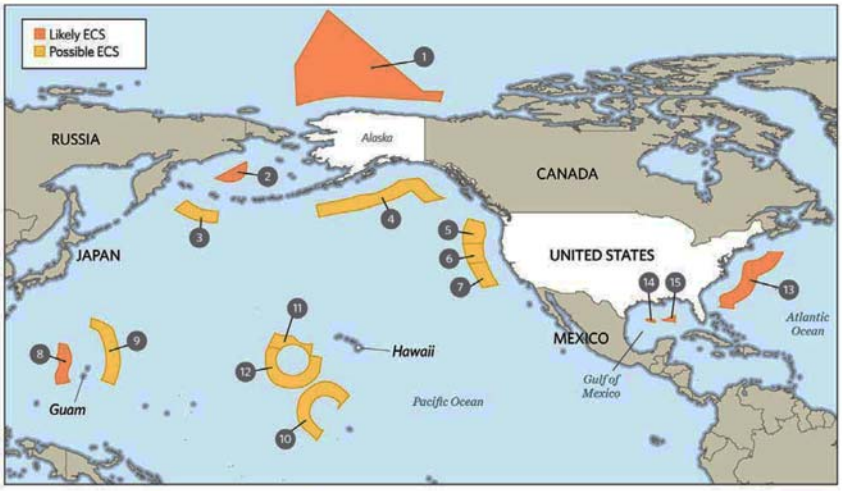
Member states begin to pay these "international royalties" during the 6th year of production at the drilling site. Starting with the 6th year of production, UNCLOS members must pay 1 percent of the value of the total production at that site to the Authority. Thereafter, the royalty rate increases in increments of 1 percentage point per year until the 12th year of production, when it reaches 7 percent. The rate remains at 7 percent until production ceases at the site.

As such, if the United States accedes to UNCLOS it would be obligated to transfer to the Authority a considerable portion of the royalties generated on the U.S. ECS that would otherwise be deposited in the U.S. Treasury for the benefit of the American people. For example, the royalty rate of the majority of blocks currently under an active lease on the U.S. ECS is 12.5 percent. Beginning in the 12th year of production on such an ECS block the U.S. would be required to transfer 7 percent—more than half—of its royalty revenue to the Authority and do so each year until production ends on that lease. The remaining 5.5 percent of the royalty would be retained by the Treasury.

Given that resources of the U.S. ECS "may be worth many billions if not trillions of dollars," this would amount to a substantial sum over time.

MAP 1

U.S. Extended Continental Shelf (ECS)



Source: U.S. Extended Continental Shelf Project, "Establishing the Full Extent of the Continental Shelf of the United States," http://continentalshelf.gov/media/ECSposterDec2010.pdf (accessed May 8, 2012).

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But there is the rub. There has been no comprehensive study to determine the value of the oil and natural gas that lies beneath the U.S. ECS. The total area of the U.S. ECS is reportedly twice the size of California and stretches from the U.S. east coast to the South Pacific and up to the Arctic Ocean. How can this committee

be expected to conduct a proper assessment of the financial impact of U.S. accession to UNCLOS if the value of the natural resources on the U.S. ECS is unknown? If the value of U.S. hydrocarbons on the ECS is unknown then so too is the amount of royalty revenue that the United States will ultimately forgo if it accedes to the Convention.

As such, by acceding to UNCLOS the United States will be making an open-ended international commitment to transfer an indefinite sum of royalty revenue (indefinite, but likely in the tens if not hundreds of billions of dollars) to the Authority for redistribution to developing and landlocked nations.

DETERMINING THE EXTENT OF THE U.S. EXTENDED CONTINENTAL SHELF

Some proponents of U.S. accession to UNCLOS claim that U.S. oil companies cannot achieve the "certainty" they require to develop the hydrocarbon resources on the ECS unless the United States accedes to the Convention and receives the approval of the Commission on the Limits of the Continental Shelf—an international committee of geologists and hydrographers located at U.N. headquarters in New York City. For example, in 2007, former Deputy Secretary of State John Negroponte stated, "In the absence of such international recognition and legal certainty, U.S. companies are unlikely to secure the necessary financing and insurance to exploit energy resources on the extended shelf."

However, pursuant to longstanding law and policy the United States already enjoys and exercises full jurisdiction and control over its ECS. In addition to the 1945 Truman Proclamation, in which President Harry S Truman declared that the United States "regards the natural resources of the subsoil and seabed of the Continental Shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control," in 1953 Congress passed the Outer Continental Shelf Lands Act, which defined the outer Continental Shelf as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters . . . and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control."

After the adoption of UNCLOS in 1982, the U.S. affirmed its jurisdiction over its entire Continental Shelf, including the ECS. Specifically, in November 1987 a U.S. Government interagency group issued a policy statement declaring its intent to delimit the U.S. ECS in conformity with article 76 of UNCLOS (which provides a formula for measuring the extent of a coastal state's ECS). That statement read, in pertinent part, "The United States has exercised and shall continue to exercise jurisdiction over its Continental Shelf in accordance with and to the full extent permitted by international law as reflected in Article 76, paragraphs (1), (2) and (3)."

Indeed, the United States has already demarcated areas of its ECS in the Gulf of Mexico, the Bering Sea, and the Arctic Ocean via bilateral treaties with Mexico and Russia. In the Gulf, for example, the U.S. and Mexico have negotiated a series of treaties to delimit their maritime and Continental Shelf boundaries, including areas of abutting ECS:

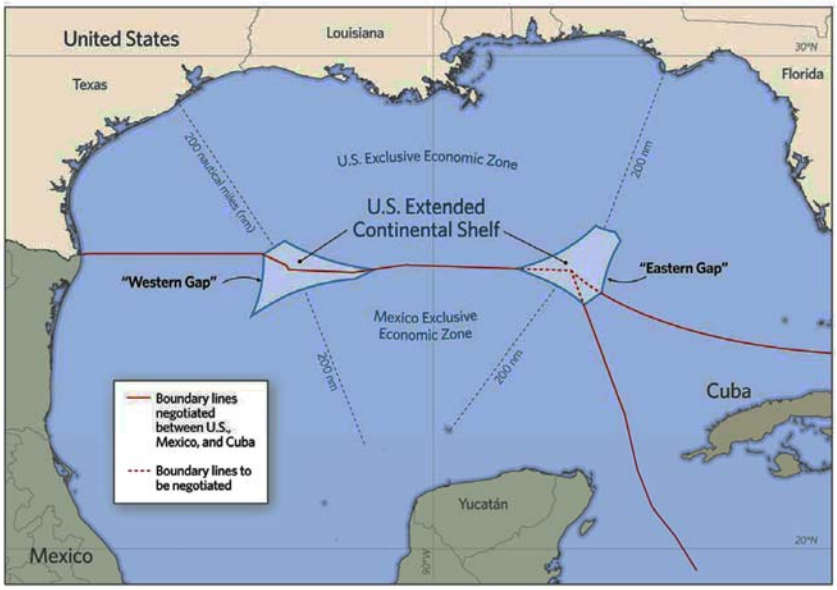
- In November 1970, the U.S. and Mexico signed a treaty to maintain the Rio Grande and Colorado River as the agreed international boundary between the two nations. As part of the treaty, the two nations demarcated their maritime boundaries in the Gulf of Mexico and the Pacific Ocean out to 12 nm.
- In May 1978, building on the 1970 treaty, the two nations signed a treaty delimiting their maritime boundaries in the Gulf and in the Pacific out to 200 nm. The treaty demarcated boundary lines in the Gulf where their respective 200 nm Exclusive Economic Zones (EEZ) abutted, leaving a "doughnut hole" of approximately 5,092 square nm (now known as the "western gap") where their 200 nm boundary lines did not meet. A second doughnut hole was created in the eastern Gulf where the EEZ of the U.S., Mexico, and Cuba fail to intersect (the "eastern gap").
- In June 2000, the U.S. and Mexico signed a treaty dividing the area of ECS within the western gap. Of the 5,092 square nm of ECS in the western gap, 1,913 (38 percent) went to the United States and 3,179 (62 percent) went to Mexico. The treaty established a drilling moratorium over a narrow strip along the boundary within the western gap due to the possibility that transboundary hydrocarbon reservoirs are located along the boundary.
- In February 2012, the U.S. and Mexico signed a treaty regarding the exploitation of transboundary reservoirs located along the Continental Shelf boundary shared by the two nations in the Gulf, including along the ECS boundary within the western gap. The treaty has not yet been transmitted to the U.S. Senate for its advice and consent.

Collectively, these treaties between the United States and Mexico, particularly the June 2000 ECS delimitation treaty, demarcated an area of U.S. ECS—the 1,913 square nm of submerged Continental Shelf in the northern portion of the western gap. There is no evidence that the "international community" does not, or will not, recognize the ECS in the northern portion of the western gap and its resources as being subject to the jurisdiction and control of the United States.

MAP 2

U.S. Extended Continental Shelf in Gulf of Mexico

The Gulf of Mexico contains two areas of submerged continental shelf that extend beyond the 200-nautical-mile exclusive economic zones (EEZ) of Mexico and the United States—the "western gap" and the "eastern gap." The U.S. and Mexico signed a treaty in June 2000 that divides the area of extended continental shelf within the "western gap" between the two nations.



Sources: U.S. Department of the Interior, Bureau of Ocean Energy Management, "Treaty on Maritime Boundaries Between the United Mexican States and the United States of America," May 4, 1978, http://www.boem.gov/uploadedFiles/BOEM/Regulations/Treaties/1978_0504-Treaty-MaritimeBoundariesMexicoandUS.pdf (accessed April 17, 2012); U.S. State Department, "Maritime Boundary Agreement Between the United States of America and the Republic of Cuba," December 16, 1977, http://www.state.gov/documents/organization/125389.pdf (accessed May 8, 2012); and United Nations, "Executive Summary: A Partial Submission of Data and Information on the Outer Limits of the Continental Shelf of the United Mexican States Pursuant to Part VI of and Annex II to the United Nations Convention on the Law of the Sea," December 2007, http://www.un.org/depts/los/clcs_new/submissions_files/mex07/part_i_executive_summary.pdf (accessed May 8, 2012).

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The United States exercises jurisdiction and control over its ECS as evidenced by the fact that the Department of the Interior has made the western gap in the Gulf of Mexico available for hydrocarbon development since August 2001. Specifically, the Bureau of Ocean Energy Management (BOEM) offered the northern portion of the western gap for lease almost immediately after the 2000 U.S.-Mexico ECS delimitation treaty was ratified. That treaty entered into force on January 17, 2001. Seven months later, on August 22, BOEM offered the area of U.S. ECS in the western gap in Lease Sale 180. In that lease sale, three U.S. companies (Texaco, Hess, and Burlington Resources Offshore) and one foreign company (Petrobras) submitted bids totaling more than $2 million for seven lease blocks in the western gap.

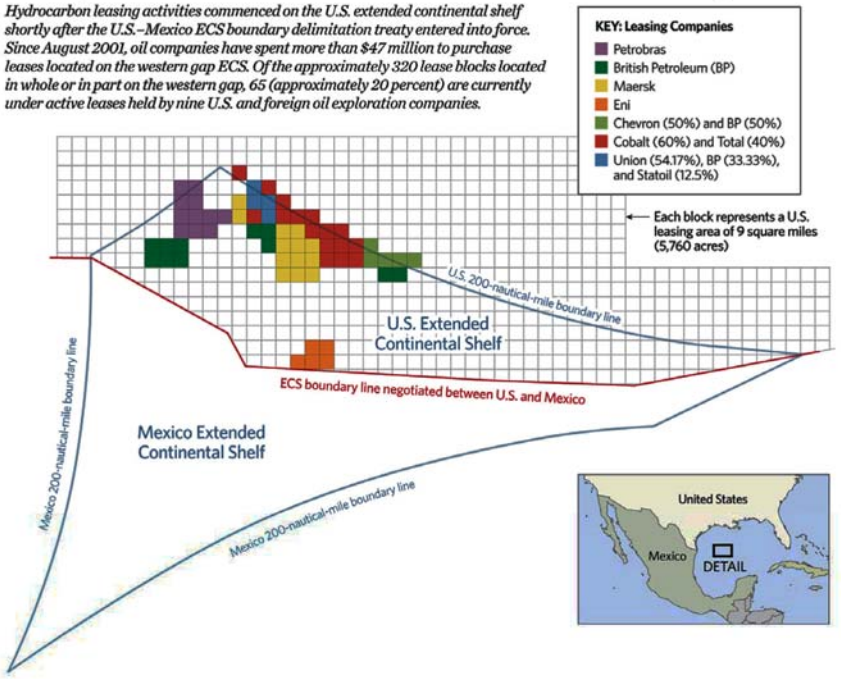
BOEM has offered western gap ECS blocks in 19 lease sales between 2001 and 2010. Seven U.S. companies (Burlington, Chevron, Devon Energy, Hess, Mariner Energy, NARCA Corporation, and Texaco) submitted bids to lease ECS blocks in the western gap. Five foreign companies—BP, Eni Petroleum (Italy), Maersk Oil (Denmark), Petrobras, and Total (France)—also bid on western gap ECS blocks during those sales. BOEM collected more than $47 million in bonus bids in connection with

lease sales on those ECS blocks. Of the approximate 320 blocks located in whole or in part on the western gap ECS, 65 (approximately 20 percent) are currently held under active leases by nine U.S. and foreign oil exploration companies.

MAP 3

Active Hydrocarbon Leases on U.S. Extended Continental Shelf in the "Western Gap"

Hydrocarbon leasing activities commenced on the U.S. extended continental shelf shortly after the U.S.–Mexico ECS boundary delimitation treaty entered into force. Since August 2001, oil companies have spent more than $47 million to purchase leases located on the western gap ECS. Of the approximately 320 lease blocks located in whole or in part on the western gap, 65 (approximately 20 percent) are currently under active leases held by nine U.S. and foreign oil exploration companies.



Sources: U.S. Department of the Interior, Bureau of Ocean Energy Management, "Lease Sale Information," http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/GOMR-Historical-Lease-Sale-Information.aspx (accessed April 17, 2012), and "Treaty Between the Government of the United States of America and the Government of the United Mexican States on the Delimitation of the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles," June 9, 2000, http://www.boem.gov/uploadedFiles/BOEM/Regulations/Treaties/2000_0609-Treaty-OCSinWGOMbeyond200nm.pdf (accessed April 17, 2012).

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The successful delimitation and subsequent leasing of ECS areas in the Gulf of Mexico demonstrate that the United States does not need to achieve universal international recognition of its ECS. The United States identified and demarcated areas of ECS in the western gap in cooperation with the only other relevant nation, Mexico, and that area was subsequently offered for development to U.S. and foreign oil and gas companies. All of this was achieved without U.S. accession to UNCLOS or the approval of the Commission on the Limits of the Continental Shelf.

Even though approximately 20 percent of the only area of U.S. ECS that has been made available for lease by BOEM is currently under an active lease, the U.S. oil and gas industry has supported and will likely continue to support U.S. accession to UNCLOS in order to achieve even greater "certainty." That is their prerogative, of course, and achieving a maximum amount of certainty is a legitimate and desirable goal for a capital-intensive commercial enterprise. However, the successful delimitation of the ECS in the western gap and the U.S. Government's continuing lease sales of ECS blocks would appear to have provided the certainty necessary for several major U.S. and foreign oil exploration companies to secure leases for the development of the U.S. ECS.

U.S. RIGHTS TO DEEP SEABED MINERALS

Proponents of U.S. accession to UNCLOS contend that by failing to join the Convention the United States is forbidden from mining the deep seabed—the ocean floor lying beyond the ECS and designated as "the Area." However, no legal barriers

block U.S. access, exploration, and exploitation of the resources of the deep seabed. The United States has long held that U.S. corporations and citizens have the right to explore and exploit the resources of the deep seabed and may do so whether or not the United States accedes to UNCLOS.

The United States made its position on its right to engage in deep seabed mining very clear in March 1983 during the final days of the Third U.N. Conference on the Law of the Sea. Specifically, in response to statements from other U.N. member states that UNCLOS nonparties would not have the right to engage in deep seabed mining, the U.S. stated the following:

> Some speakers asserted that existing principles of international law, or the Convention, prohibit any State, including a nonparty, from exploring for and exploiting the mineral resources of the deep sea-bed except in accordance with the Convention. The United States does not believe that such assertions have any merit. The deep sea-bed mining regime of the Convention adopted by the Conference is purely contractual in character. The United States and other nonparties do not incur the obligations provided for therein to which they object.
>
> Article 137 of the Convention [forbidding claims of sovereignty over the deep sea-bed or its resources] may not as a matter of law prohibit sea-bed mining activities by nonparties to the Convention; nor may it relieve a party from the duty to respect the exercise of high seas freedoms, including the exploration for and exploitation of deep sea-bed minerals, by nonparties. Mining of the sea-bed is a lawful use of the high seas open to all States . . . . The practice of the United States and the other States principally interested in sea-bed mining makes it clear that sea-bed mining continues to be a lawful use of the high seas within the traditional meaning of the freedom of the high seas.

The U.S. legal position set forth in 1983 on deep seabed mining remains the same today. According to the "Restatement of the Law, Third, of the Foreign Relations Law of the United States," the United States may engage in deep seabed mining activities even if it does not accede to UNCLOS, provided that such activities are conducted without claiming sovereignty over any part of the deep seabed and as long as the mining activities are conducted with due regard to the rights of other nations to engage in mining. As related by the Restatement, "like the fish of the high seas the minerals of the deep sea-bed are open to anyone to take."

The U.S. position is also reflected in the Deep Seabed Hard Mineral Resources Act of 1980, which Congress enacted 2 years before the adoption of UNCLOS to provide a framework for U.S. corporations to conduct deep seabed mining until such time as the United States joins an acceptable convention on the law of the sea. The DSHMRA states the U.S. position on the legality of deep seabed mining as follows:

> [I]t is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas subject to a duty of reasonable regard to the interests of other states in their exercise of those and other freedoms recognized by general principles of international law.

In sum, the long-held position of the United States, both domestically and internationally, is that U.S. citizens and corporations have the right to explore and exploit the deep seabed regardless of whether or not the United States is a party to UNCLOS.

EXPOSURE TO BASELESS INTERNATIONAL LAWSUITS

> "The possibility that a small island state, or another injured party, would bring a liability claim against states responsible for climate change no longer is a topic for fiction or a theoretical prospect. There is a rise in plans for litigation worldwide for consequences of global warming."—International law professors Michael Faure and Andre Nollkaemper

Part XV of UNCLOS addresses the settlement of maritime disputes between parties to the Convention. Part XV contemplates that UNCLOS states parties, in accordance with the U.N. Charter, will attempt to resolve maritime disputes peacefully without resort to the Convention's compulsory procedures. When a dispute arises between two UNCLOS members, they are obligated to "proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means." States parties may also resort to a nonbinding "conciliation procedure" under Annex V of the Convention.

But if a maritime dispute cannot be settled in a voluntary manner, any UNCLOS state party may compel another state party to defend itself in one of four forums: the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), an arbitral tribunal organized under Annex VII, or a "special" arbitral tribunal organized under Annex VIII. Within ITLOS, a special tribunal, the Seabed Disputes Chamber (SDC), was established to resolve disputes about activities on the seabed floor beyond the limits of national jurisdiction, known as "the Area."

Acceding to UNCLOS would expose the U.S. to lawsuits on virtually any maritime activity, such as alleged pollution of the marine environment from a land-based source or through the atmosphere. Regardless of the merits, the U.S. would be forced to defend itself against every such lawsuit at great expense to U.S. taxpayers. Any judgment rendered by an UNCLOS tribunal would be final, could not be appealed, and would be enforceable in U.S. territory.

Unlike a resolution passed by the U.N. General Assembly or a recommendation made by a human rights treaty committee, judgments issued by UNCLOS tribunals are legally enforceable upon members of the Convention. Article 296 of the Convention, titled "Finality and binding force of decisions," states, "Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute."

Judgments made by UNCLOS tribunals are enforceable in the same manner that a judgment from a U.S. domestic court would be. For example, Article 39 of Annex VI states that "The decisions of the [Seabed Disputes] Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought." In other words, if the United States accedes to the Convention, the U.S. Government will be required to enforce and comply with SDC judgments in the same manner as it would enforce and comply with a judgment of the U.S. Supreme Court. In other words, the U.S. court system will serve not as an avenue for appeal from UNCLOS tribunals, but rather as an enforcement mechanism for their judgments.

The domestic enforceability of UNCLOS tribunal judgments was confirmed by U.S. Supreme Court Justice John Paul Stevens in the landmark 2008 case, *Medellin* v. *Texas*. In *Medellin*, Justice Stevens, writing a concurring opinion, cited Article 39 of Annex VI for the proposition that UNCLOS members—presumably including the United States if it accedes to the Convention—are obligated to comply with the judgments of the Convention's tribunals.

U.S. accession to the Convention would provide an opportunity and legal forum for other UNCLOS members to initiate lawsuits against the U.S. challenging the adequacy of its efforts to protect the marine environment. Although current U.S. law may satisfy many of the general environmental obligations set forth in the Convention, the U.S. might nevertheless be forced to defend itself in a costly and politically embarrassing lawsuit challenging the sufficiency and enforcement of U.S. domestic environmental laws and regulations. One such lawsuit—the *MOX Plant Case* (*Ireland* v. *United Kingdom*)—has already been litigated in UNCLOS tribunals.

Acceding to UNCLOS would commit the U.S. to controlling its pollutants, including alleged "harmful substances" such as carbon emissions and other greenhouse gases (GHG), in such a way that they do not negatively impact the marine environment. The U.S. would also be obligated to adopt laws and regulations to prevent the pollution of the marine environment from the atmosphere and could be liable under international law for failing to enact legislation necessary to prevent atmospheric pollution. Moreover, such domestic laws and regulations "shall" take into account "internationally agreed rules, standards and recommended practices and procedures." The "internationally agreed rules, standards and recommended practices" that could be invoked by UNCLOS litigants may include instruments such as the U.N. Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol.

A consensus has emerged within the international environmental and legal community that the United States is the best target for an international climate change lawsuit. One law professor has characterized the United States as a likely target because it is a developed nation with high per capita and total GHG emissions, adding that the "higher the overall historic and present contribution to global emissions by the defending party, arguably the better the chance of a successful outcome."

Over the past decade, there has been a steady drumbeat to initiate an international climate change lawsuit against the United States, and UNCLOS tribunals have featured prominently among the potential forums identified as a venue for such a case.

- In 2002, the Prime Minister of Tuvalu, a Pacific island nation consisting of a chain of nine coral atolls, stated his intention to initiate a climate change lawsuit against the United States because of its failure to adopt the Kyoto Protocol.

That year, at the World Summit for Sustainable Development held in Johannesburg, Tuvalu's Government lobbied other small island nations to join them in such a suit at the International Court of Justice.

- In 2003, the Washington, DC-based Environmental Law Institute published "The Legal Option: Suing the United States in International Forums for Global Warming Emissions" by law professor Andrew L. Strauss. According to Strauss, the U.S. rejection of the Kyoto Protocol "makes the United States the most logical first country target of a global warming lawsuit in an international forum." The article proposed various forums for initiating a lawsuit against the United States, including UNCLOS tribunals, but Strauss lamented, "As the United States has not adhered to the Convention, however, a suit could not be brought directly against it under the Convention."
- In her 2005 book "Climate Change Damage and International Law," law professor Roda Verheyen posed a hypothetical case that could be brought against the United States for its alleged responsibility in melting glaciers and causing glacial outburst floods in the Himalayas. The claim would include compensation for flood damages as well as additional funds to monitor glacial lakes and prevent future floods. Verheyen based liability for such damages on the U.S.'s alleged violation of its commitments under the UNFCCC and failure to ratify the Kyoto Protocol.
- In December 2005, the Inuit Circumpolar Council, an international nongovernmental organization representing Inuit peoples in Alaska, Canada, Greenland, and Russia, filed a petition against the United States at the Inter-American Commission on Human Rights (IACHR), a human rights body operating within the Organization of American States. The petition requested that the IACHR direct the United States to adopt mandatory measures to limit its emissions and to provide assistance to help the Inuit adapt to the impacts of climate change.
- In 2006, the "International Journal of Sustainable Development Law & Policy" published "Potential Causes of Action for Climate Change Damages in International Fora: The Law of the Sea Convention," in which law professor, William C. G. Burns, cited UNCLOS's marine pollution provisions as a basis for a cause of action for rising sea levels and changes in ocean acidity. Burns named the United States as "the most logical State to bring an action against given its status as the leading producer of anthropogenic greenhouse gas emissions, as well as its failure to ratify Kyoto," but noted that the U.S. "is not currently a Party to the Convention."
- In a September 2011 speech to the U.N. General Assembly, Johnson Toribiong, President of the Pacific island nation of Palau, called upon the General Assembly to seek an advisory opinion from the International Court of Justice "on the responsibilities of States under international law to ensure that activities carried out under their jurisdiction or control that emit greenhouse gases do not damage other States."

In sum, the United States would be at the top of the list of potential defendants in an UNCLOS climate change lawsuit, if the U.S. accedes to the Convention. Thus far, the United States has denied potential climate change claimants their day in international court by refusing to accede to UNCLOS. Clearly, accession to the Convention would open the door to these litigants as well as to their advocates in the international academic, environmental, and nongovernmental organization communities.

NAVIGATIONAL RIGHTS AND FREEDOMS

In 1993, the Department of Defense issued an Ocean Policy Review Paper on "the currency and adequacy of U.S. oceans policy, from the strategic standpoint, to support the national defense strategy." The paper concluded that U.S. national security interests in the oceans have been protected even though the U.S. is not party to UNCLOS:

> U.S. security interests in the oceans have been adequately protected to date by current U.S. ocean policy and implementing strategy. U.S. reliance on arguments that customary international law, as articulated in the nondeep seabed mining provisions of the 1982 Law of the Sea Convention, and as supplemented by diplomatic protests and assertion of rights under the Freedom of Navigation Program, have served so far to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost and effort.

Almost 20 years later, there is no evidence that suggests a change in circumstances such that U.S. accession to UNCLOS has become essential to the successful execution of the U.S. Navy's global mission.

Throughout its history, the United States has successfully protected its maritime interests despite not being an UNCLOS member. The reason is simple; Enjoyment of the Convention's navigational provisions is not restricted to UNCLOS members. Those provisions represent widely accepted customary international law, some of which has been recognized as such for centuries. UNCLOS members and nonmembers alike are bound by the Convention's navigational provisions.

The body of international law known as the "law of the sea" was not invented in 1982 when UNCLOS was adopted, but rather "has its origins in the customary practice of nations spanning several centuries." It developed as customary international law, which is "that body of rules that nations consider binding in their relations with one another. It derives from the practice of nations in the international arena and from their international agreements." Although not a party to UNCLOS, the United States is bound by and acts in accordance with the customary international law of the sea and considers the UNCLOS navigational provisions as reflecting international law.

Most of the UNCLOS navigational provisions have long been recognized as customary international law. The Convention's articles on navigation on the high seas (Articles 86–115, generally) and passage through territorial waters (Articles 2–32, generally) were copied almost verbatim from the Convention on the High Seas and the Convention on the Territorial Sea and the Contiguous Zone, both of which were adopted in 1958. The United States is party to both Conventions, which are considered to be codifications of widely accepted customary international law.

Similar to other multilateral conventions, such as the Vienna Convention on Diplomatic Relations, UNCLOS is said to "have codified settled customary international law or to have 'crystallized' emerging customary international law." UNCLOS codified customary law relating to navigation on the high seas and through territorial waters and "crystallized" emerging customary law, such as the concepts of "transit passage" through international straits and "archipelagic sea-lanes passage." As summarized by Defense Department official John McNeill in 1994, UNCLOS "contains a comprehensive codification of long-recognized tenets of customary international law which reflect a fair balance of traditional ocean uses." In short, the Convention's navigational provisions have attained such a status that all nations—UNCLOS members and nonmembers alike—are expected to adhere to them.

One way to determine the extent to which UNCLOS's navigational provisions have achieved the status of binding international law is to study the behavior of nations. Behavior in conformity with the Convention—known as "state practice"—is additional evidence that its navigational provisions reflect international law. Indications that a state is acting in conformity with international law may be found in states' "legislation, the decisions of their courts, and the statements of their official government and diplomatic representatives." A nation's inaction regarding a particular navigational provision may also be viewed as state practice because it can be deemed to be acquiescence.

The consistent practice of states—maritime states, coastal states, UNCLOS members, and nonmembers—indicates that the UNCLOS navigational provisions are almost universally accepted law. The "Restatement of the Law, Third, of the Foreign Relations Law of the United States" notes:

> [B]y express or tacit agreement accompanied by consistent practice, the United States, and states generally, have accepted the substantive provisions of the Convention, other than those addressing deep sea-bed mining, as statements of customary law binding upon them apart from the Convention.

This has long been the U.S. position. Since the Reagan administration, the official U.S. policy has been that the UNCLOS provisions on the traditional uses of the oceans, including the provisions on navigation and overflight, confirm international law and practice. Specifically, in March 1983, President Ronald Reagan announced the U.S. oceans policy in light of his decision not to sign UNCLOS. Reagan announced that "the United States is prepared to accept and act in accordance with the balance of interests relating to traditional uses of the oceans—such as navigation and overflight" and "will recognize the rights of other states in the waters off their coasts, as reflected in the Convention, so long as the rights and freedoms of the United States and others under international law are recognized by such coastal states."

Reagan's 1983 oceans policy statement confirmed what was already widely recognized: that the navigational provisions of UNCLOS generally reflect customary international law and as such must be respected by all nations.

Yet proponents of U.S. accession to UNCLOS maintain that the United States cannot fully benefit from these navigational rights unless it is a party to the Convention, which "provides" and "preserves" these rights. This is simply incorrect. The United States enjoys the same navigational rights as UNCLOS parties enjoy.

At the December 1982 final plenary meeting of the Third United Nations Conference on the Law of the Sea, some nations took the opposite position, contending that any nation that chose not to join the Convention would forgo all of these rights. On March 8, 1983, the United States, exercising its right to reply, expressly rejected that position:

> Some speakers discussed the legal question of the rights and duties of States which do not become party to the Convention adopted by the Conference. Some of these speakers alleged that such States must either accept the provisions of the Convention as a "package deal" or forgo all of the rights referred to in the Convention. This supposed election is without foundation or precedent in international law. It is a basic principle of law that parties may not, by agreement among themselves, impair the rights of third parties or their obligations to third parties. Neither the Conference nor the States indicating an intention to become parties to the Convention have been granted global legislative power . . . .
>
> The United States will continue to exercise its rights and fulfill its duties in a manner consistent with international law, including those aspects of the Convention which either codify customary international law or refine and elaborate concepts which represent an accommodation of the interests of all States and form part of international law.

In sum, it is not essential or even necessary for the United States to accede to UNCLOS to benefit from the certainty and stability provided by its navigational provisions. Those provisions either codify customary international law that existed well before the Convention was adopted in 1982 or "refine and elaborate" navigational rights that are now almost universally accepted as binding international law.

One prominent proponent of U.S. accession to UNCLOS recently stated that opposition to the Convention was not based on "facts" or "evidence" but rather on "ideology and mythology." The facts and evidence, however, are as follows:

- The U.S. already has full jurisdiction and control over its entire Continental Shelf—including its "Extended" Continental Shelf. Through Presidential proclamations, acts of Congress, and bilateral treaties with neighboring countries, the United States has successfully demarcated the limits of its maritime boundaries and key areas of its ECS;
- The U.S. has clear title to all hydrocarbon resources lying under the ECS and currently enjoys the rights to any and all royalty revenue generated from the exploitation of such resources;
- The U.S. has demonstrably exercised jurisdiction and control over its ECS, as evidenced by the fact that it has been leasing blocks for development to U.S. and foreign oil exploration companies since August 2001;
- The "western gap" in the Gulf of Mexico is the only area of ECS that has been offered for development by the United States, and 20 percent of that area is currently under lease. U.S. companies such as Chevron and companies from Brazil, Denmark, France, Italy, Norway, and the United Kingdom hold active leases on the western gap ECS;
- No comprehensive study has been conducted to determine the value of the hydrocarbon resources that lie beneath the vast U.S. ECS that is likely twice the size of California;
- The U.S. Extended Continental Shelf Task Force estimates that the U.S. ECS resources "may be worth many billions if not trillions of dollars";
- If the U.S. accedes to UNCLOS it will be making an open-ended commitment to transfer an incalculable sum of royalty revenue from the U.S. Treasury to the International Seabed Authority for redistribution to developing and landlocked nations;
- The policy and law of the United States, both domestically (i.e., the Deep Seabed Hard Mineral Resources Act) and internationally, is that U.S. citizens and corporations have the right to explore and exploit the deep seabed regardless of whether or not the United States is a party to UNCLOS;

- Acceding to UNCLOS would expose the United States to international lawsuits, including baseless environmental cases and suits based on alleged U.S. contributions to global climate change;
- Certain UNCLOS states parties, environmental activists, and international legal academics are actively exploring the potential of using international litigation against the United States in an UNCLOS tribunal to advance their climate change agenda;
- An adverse judgment in a climate change lawsuit initiated under UNCLOS would be final, not subject to appeal, and enforceable in the United States. Such a judgment would impose massive regulatory burdens on U.S. companies, which would pass the costs on to American consumers;
- For more than 200 years before UNCLOS was adopted in 1982 and for 30 years since then, the U.S. Navy has successfully protected U.S. maritime interests regardless of the fact that the U.S. has not joined the Convention;
- The U.S. Navy has never been successfully denied access to any international strait or archipelagic water and regularly exercises its freedom of navigation and overflight rights on the high seas and "innocent passage" through territorial waters;
- The U.S. Navy's "Commander's Handbook on the Law of Naval Operations" is the preeminent operational manual regarding navigational rights and is considered the gold standard by maritime nations worldwide, many of which have adopted it for use by their own navies; and,
- The United States is a member of the International Maritime Organization and a founding member of the Arctic Council—organizations in which it actually means something to have a "seat at the table."

All of these facts collectively represent compelling evidence that the United States need not accede to UNCLOS in order to advance its maritime and national security interests. Indeed, the evidence suggests that there are real costs involved in accession that outweigh the supposed benefits, which are dubious and insubstantial.

UNCLOS is a controversial and fatally flawed treaty. Accession to the Convention would result in a dangerous loss of American sovereignty. It would require the U.S. Treasury to transfer billions of dollars to an unaccountable international organization in Jamaica, which in turn is empowered to redistribute those American dollars to countries with interests that are inimical to the United States. The Convention's mandatory dispute mechanisms will result ultimately in troublesome and costly lawsuits and adverse judgments if the United States is deemed to have "violated" the Convention—most likely when the United States has acted in its own best interests.

The U.S. Navy's support for the navigational rights enshrined in UNCLOS is far outweighed by the Convention's nonnavigational provisions. The practices of the Navy and the navies of other major maritime powers created the very customary international law upon which the navigational provisions of UNCLOS are based. The Navy enjoys those same navigational rights and freedoms despite nonaccession to the treaty. The Navy's insistence that a failure to join UNCLOS will hinder its ability to conduct its global mission successfully is belied by the facts and demonstrably disproved by history.

The CHAIRMAN. Thank you very much, Mr. Groves.

I really appreciate it, and that is a good, articulate summary of the position. I think it helps us really join the discussion here, which I am thrilled to be able to tell you I am very happy is between Republicans. [Laughter.]

So I am going to look to you guys to thrash it through. It is sort of interesting to me that this treaty——

Mr. RUMSFELD. Mr. Chairman, in defense of John Negroponte, he is a career diplomat.

The CHAIRMAN. Career diplomat, with no party affiliation. [Laughter.]

John, is that true?

Mr. RUMSFELD. I wouldn't want him tarnished.

The CHAIRMAN. Don't tarnish him. Fine. Mr. Secretary, thank you for saving him from perdition.

Let me just say to all of you that it is sort of interesting to me that this Democratic chairman is working very hard to get some-

thing done which President Nixon conceived of, President Reagan fixed and supported and pushed, President George Herbert Walker Bush refined, and President George W. Bush, with whom I had many disagreements, obviously——

[Laughter.]

The CHAIRMAN [continuing]. Saw fit to send to the Senate. And I don't think that is inconsequential. I don't think it is inconsequential that today five former Republican Secretaries of State, beginning with Henry Kissinger, all said we have got to do this. So let us explore it.

I want to explore it. And I am going to ask you guys to sort of engage in a lot of this dialogue, if I can.

But Mr. Groves, let me just sort of follow through a little bit, if I can. You, in your testimony, your written testimony, say that there is no legal barrier. I think you repeated it just at the end of your testimony now. There is no legal barrier to prevent U.S. access, exploration, and exploitation of the resources of the deep seabed. So we can go out there and we can go ahead and dig.

And the United States, as part of your position, has long held that U.S. corporations and citizens have the right to go out and develop the resources of the deep seabed, whether or not the United States accedes to UNCLOS. Is that a fair statement? You believe that?

Mr. GROVES. Yes, Mr. Chairman.

The CHAIRMAN. OK. Now, if that is true, is it your general point that under international law, there is no legal right, except by a treaty, to exclude another nation from mining in the deep seabed because it is out on the high seas?

Mr. GROVES. Correct. Correct. Another country couldn't unreasonably interfere——

The CHAIRMAN. They can't interfere with us?

Mr. GROVES. Correct.

The CHAIRMAN. OK. But that works both ways, doesn't it?

Mr. GROVES. Yes, we can't unreasonably interfere with other countries' claims as well.

The CHAIRMAN. So if the United States, without joining the treaty, decides to do some deep seabed mining, under international law, we couldn't prevent the Chinese or the Russians from piggybacking half a mile away from our mining claim or 200 yards away, could we?

Mr. GROVES. No. As long as it didn't unreasonably interfere with our own claim.

The CHAIRMAN. Well, what would be the legal—where would be the legal recourse for that?

Mr. GROVES. You mean if they did——

The CHAIRMAN. What is to back up our claim? We don't have a claim. We are out in the deep sea without any legal instrument because we are not a party to the treaty. Where would our claim be?

Mr. GROVES. The only claims that exist right now on the U.S. side are those held by Lockheed Martin. Those are actually legacy claims——

The CHAIRMAN. No, no, no. I am talking broader here.

What would be—by what mechanism would—particularly, let us say Russia and China, which are signatories to this treaty, get the legal claim 100 yards from where we are, and we are not party to it. If you can find a company that is dumb enough and go drill without being party to the treaty, but let us presume, for the purposes of your argument, you say go to it. Go dig.

What is the mechanism by which they are going to assert any right?

Mr. GROVES. Well, if the Russian—in your hypothetical, Mr. Chairman——

The CHAIRMAN. Well, it is not a hypothetical. It is real under your regimen. Under your regimen, it is real. You are saying don't join the treaty. Go out and dig. That is your theory, and you just agreed.

Mr. GROVES. No, but your hypothetical was that there is a Chinese or Russian claim within a couple of hundred yards of an existing United States claim.

The CHAIRMAN. Or let us say it is right on the same spot. But the Law of the Sea folks have acceded to that because they are the members, and we are not. And they say, "Screw you, U.S. These guys are part of it, and we are giving them the claim."

Mr. GROVES. Well, two things would happen, Mr. Chairman. If Russia or China or any other country interferes with a claim that has been made under the auspices of U.S. law, particularly the Deep Seabed Hard Mineral Resources Act, then this would be a bilateral problem between the United States and whichever other country was doing that.

They would be infringing on our claim. And so, the relief——

The CHAIRMAN. We don't have a claim. There is no claim. What are you doing? Claiming into the thin air? Claiming to God? Who are you claiming to?

Mr. GROVES. No, there is a U.S. statute and regulatory framework called the Deep Seabed Hard Mineral Resources Act that allows U.S. companies to apply for licenses from the Administrator of NOAA to make a claim in the deep seabed, and countries can move under those statutes and those regulations to make claims and engage in deep seabed mining.

So there is a claim.

The CHAIRMAN. Now, Mr. Bellinger and Secretary Negroponte, isn't that precisely what brought—the kind of thing that brought the Bush administration to say that the only way as a lawyer you could conceivably say to Lockheed Martin or another company go drill is to know that you have certainty with respect to the claim. And you wouldn't have certainty, would you not, under the structure that Mr. Groves has described?

Mr. BELLINGER. Thanks, Mr. Chairman.

As you know, a cardinal feature of the Bush administration was, in fact, to preserve our freedom of action and our sovereignty. So we were not quick to sign up to obligations that would tie us down.

But in looking at the best way for U.S. business, particularly as new technologies became available that would allow us to mine in the deep seabed or with the melting Arctic ice to exploit oil/gas resources in the Arctic, that the best way to allow companies to do

that was to have the legal certainty that was provided under the Convention.

We did look at customary international law, which, in fact, the Navy does rely on successfully for their naval activities. Although we thought again that the Convention would be better. But we saw that the only way that U.S. business could, in fact, engage in deep seabed mining or oil and gas exploitation in the Arctic was through the treaty.

The CHAIRMAN. Well, I mean, isn't it accurate that if 161 nations have signed up for the treaty and that is the agreed-upon international mechanism for legitimizing claims under the ocean, would the United States be advantaged or disadvantaged in just staking its claim outside of that regimen relative to somebody who had a legitimized claim under it?

Mr. BELLINGER. The companies told us and they continue to tell you that that would be very risky, and these are companies who would want to invest literally billions of dollars out in the deep seabed or the Extended Continental Shelf. They would not want to invest that kind of money based on a risky claim. They would prefer the certainty that the treaty provides.

The CHAIRMAN. I would like to ask both of you, if you would, I thought that Mr. Groves did an excellent job of kind of laying out the case, so to speak. But I think we need to examine that now, and I want to try and do that.

He suggested that there would be an invitation to adverse judgments. There are three big reasons. Adverse judgments. Second, the transfer of an unbelievable amount of royalty. And third, that we would have to request permission to mine from Sudan.

Can you, both of you, speak to those, if you would, and give us a sense of what the committee ought to think about that? Just—go ahead.

Ambassador NEGROPONTE. I mean, maybe we can share these, John. On the question of royalties, I think one of the really important points that I am not sure we have mentioned this afternoon is that if you look at the original part 11 that was negotiated and concluded in 1982, the fees were very high and very costly. And that was one of the things, I think, that threw people off.

In the amended version now of part 11 in the annex there, it says that those fees and that fee structure does not apply, and it leaves it to subsequent determination by a council of which if we acceded to the treaty, we would be a member and if we ratified this amendment to the treaty. We would be a member of that council, and the procedure for making decisions on that kind of issue would be by consensus.

So we would be in a very advantageous position to protect our interests. So I think as far as distribution of fees, decisionmaking process, and these new arrangements, I think our interests would be very well protected.

The other point was already made about how from year zero to year five, there would be no royalties in the case of oil and then up to 7 percent beyond that. But again, that is in the case of actually——

The CHAIRMAN. Well, I think it is important to recognize that—I think this is important because the companies will tell you this.

One of the reasons everybody got happy about this is that it is 1 percent for the first 5 years. It is an additional percent for the next year, an additional percent each year up. So you are really looking at 6 percent, 7 percent, 8 percent, up until you get to 12 years.

So the top amount is 7 percent. So you are going up very slowly. The top amount is 7 percent. But many of those companies believe that with modern technology, they have an ability to exploit well within that period, and they are not looking at these enormous amounts of royalties.

I mean, that is——

Ambassador NEGROPONTE. Right.

The CHAIRMAN. But would you come back for a moment to the adverse judgments? There is a fear here that——

Ambassador NEGROPONTE. I will defer to John on that.

Mr. BELLINGER. Sure. I think it is much more likely that there would be an adverse judgment or certainly litigation against a U.S. company that tried to engage in deep seabed mining or mining on the U.S. Extended Continental Shelf outside the treaty. I think anybody could see that.

To rely on a speculative legal argument accepted by no country in the world, that is flatly contrary to the terms of a Convention that has existed for 30 years, for ExxonMobil or Lockheed to spend billions of dollars relying on an academic theory suggested by a think tank, I think that is something that would create great legal risk for it. It is not surprising to me that their CEOs have written to say their preference is to rely on the terms of the treaty.

With respect to other litigation, environmental litigation, I think the risk is relatively low. We have not seen other countries, and as you point out, there are lots of major industrial countries, including Japan and the U.K. and others, who are potential targets for environmental litigation. They have not been sued for climate change.

And so, let me—the last thing I will say is I suffered under lawfare, along with Secretary Rumsfeld, as the legal adviser for the Bush administration. There were lots of unfounded claims relating to terrorism against us. So I have seen these.

But I think in respect to environmental litigation, I just don't see that joining the treaty is going to open us up to significant new claims.

The CHAIRMAN. I resisted saying that, well, you should have suffered, but——

[Laughter.]

Mr. BELLINGER. Mr. Chairman, if I could just——

The CHAIRMAN. Only joking. Only joking.

If I can come back for a minute, just one thing, and then I am going to turn to Senator Lugar. Isn't it a fact, though, that no environmental suit would be allowed unless we were a party to an international agreement?

Mr. BELLINGER. That is exactly the point, Mr. Chairman.

The CHAIRMAN. OK. Senator Lugar.

Senator LUGAR. Mr. Chairman, I am prepared to come after Senator Risch.

The CHAIRMAN. Oh, Senator Risch, he has a conflict. So I am happy to recognize him.

Senator RISCH. Thank you, Mr. Chairman.

I will try to be brief. First of all, I would like to place in the record, without objection, a letter addressed to the chairman and ranking member and the committee, dated June 14, 2012, and it is on Heritage Action stationery. It is by numerous former Government officials, including, obviously, Mr. Rumsfeld, John Bolton, Edwin Meese, many, many others, who reach a very, very different conclusion than two of the witnesses here today. I ask it be placed in the record.

The CHAIRMAN. Absolutely. Without objection, that will be made part of the record.

Senator RISCH. I have got—there are so many parts to this. I am going to focus on just one, and it is going to pick up right where you left off, Mr. Bellinger. I have your testimony in front of me, and this caught my eye. So I am going to focus on it.

And on the fourth paragraph on page 10, you state, "Some have argued that the Convention might obligate the United States to comply with international environmental agreements, such as Kyoto Protocol, to which the United States is not a party." You stated that.

I am one of those people, except you understated it. I don't believe that it might. I believe it will.

The first sentence of the next paragraph, you state conclusory, "The terms of the Convention do not require parties to comply with other international environmental treaties." That was your conclusion. Then you quote a real small portion of one sentence to reach that conclusion.

I know you are familiar with this, but I wish you would take the treaty in front of you there and open with me to article 212, subsection 1. It is on page 175. Have you got that in front of you? Pardon?

Mr. BELLINGER. I have it here.

Senator RISCH. OK. Great. The very first part of the sentence says, "States shall adopt laws and regulations to prevent, reduce, and control pollution." Nothing wrong with that. The United States has already done that. There is no sideboards on it. It doesn't say exactly what we have to do, as long as we enact some kind of laws. Don't have any difficulty with that.

But then, when you turn to article 222 and if you will go down to the middle of the first paragraph, if you read what we just read. I am sorry. Article 222, page 180.

Mr. BELLINGER. Page what?

Senator RISCH. Page 180. It is about the middle of the page, and the treaty goes on to state that the signatories "shall"—again, the word "shall." "Shall adopt laws and regulations and take other measures necessary to implement applicable international rules and standards established through competent international organizations or diplomatic conference to prevent, reduce, and control pollution."

That is going to be the law of the land if we accede to this treaty. How long do you think it is going to take a Federal judge to find Kyoto or any one of the other conventions that they have as being

a competent international organization, which has set standards and rules which by this language we have acceded to?

I mean, you are going to find a gaggle of judges tripping over each other to force the EPA and other organizations in the United States to say you shall, just as the Congress or the U.S. Senate has said, you shall adopt these rules and regulations. That doesn't trouble you at all?

Mr. BELLINGER. Well, Senator, I really do appreciate your concerns because these were exactly some of the issues that we looked at in the Bush administration. You will recall in our first year, one of the treaties that we rejected was, in fact, the Kyoto Protocol. So the Bush administration was very concerned about that.

Senator RISCH. And that is good, but we want to focus on this language, which is black and white——

Mr. BELLINGER. I just want to emphasize that we were approaching this from a perspective that I think is sympathetic to your position.

With respect to 212, and then I will go on to 222, it says we shall adopt laws and regulations to prevent, reduce, and control pollution, but then only taking into account internationally agreed rules.

Senator RISCH. Sure.

Mr. BELLINGER. So we don't have to enact Kyoto.

Senator RISCH. Nothing wrong with that.

Mr. BELLINGER. 222 says that we shall enforce those laws that have been adopted in accordance with article 212, paragraph 1. So it says we have to enforce our own laws.

Senator RISCH. Nothing wrong with that. But after what you just read, the next word is "and." "And with other provisions of this Convention and shall adopt laws and regulations and take other measures necessary to implement," et cetera.

Mr. BELLINGER. And the key word there, Senator, is "applicable." Applicable international rules and standards.

If we haven't signed it, it is not applicable to us.

Senator RISCH. Well, Mr. Bellinger, I would greatly disagree with that reading of it. It doesn't say that at all. If it did say that, you would say that in plain English.

What they mean by "applicable," by the word "applicable," is applicable rules to the situation at hand.

Mr. BELLINGER. Well, I can—I understand your reading the plain text of it. It is very difficult to read, as all of us have pointed out, language like this. And I agree with you. That is why it took us in the Bush administration a considerable amount of time to work our way through these.

All I can tell you, Senator, is you raise a legitimate concern. But the longstanding view of the Bush administration and of the, I understand, the new administration is to say applicable international rule means it has to apply to you. Treaties that have been negotiated by other people to which we are not party don't apply to us.

And Secretary Rumsfeld I think would probably agree there were lots of international human rights rules that people said we ought to abide by that we were not party to, and we would say those are not applicable to us because we have not become party to them.

Senator RISCH. And you are willing to take the chance that that torture—that tortured interpretation will be accepted by a United States District Court in the United States?

Mr. BELLINGER. Again, sir, I am with you on this in that you raise concerns. I have seen lots of lawfare brought by groups, by other countries, by people who were upset with the United States. I think it is fair to raise that as a concern. That is the view of the U.S. Government about the meaning of those terms, and I think then, on balance, even if this is a fair concern, you have to take into account the cost versus the benefit.

And with respect to U.S. companies, there is a false choice to suggest that U.S. companies, if we don't join the treaty, can still go ahead and mine. And so, we are basically denying them the opportunity, even if you have a fair point on environmental litigation, the benefits of the treaty to U.S. businesses and to the U.S. Treasury and to the U.S. Navy outweigh what may well be a fair concern to raise.

Senator RISCH. Appreciate your judgment in that regard, and thank you, Mr. Bellinger.

And thank you, Mr. Chairman, for your——

The CHAIRMAN. Senator, as you are taking off or going home, whatever it is, article 297. I would direct you to take a moment to read that in your travels.

Senator RISCH. I have read 297.

The CHAIRMAN. Paragraph C, which is pretty clear that the only way in which anything regarding the environment would apply to us is where it is applicable to us because we have signed up to it or we are part of it, and I think that is exactly what Mr. Bellinger is saying.

So, in fact, within the four corners of this agreement is a dispensation against any state, the United States or anybody else, who hasn't signed up to the international law. So there is no standing. There is no exposure.

Senator RISCH. I don't read it that way. But thank you, Mr. Chairman.

The CHAIRMAN. Well that is the language. It is hard not to read the language that way because that is what it says.

Senator RISCH. I couldn't agree with you more that the language is black and white.

The CHAIRMAN. If you only take one section, you can read it your way. But if you apply the entire law, it is different.

Mr. BELLINGER. And Senator Risch, and I know you need to leave, I want to simply say from—I don't want that to be an argument between us. I think it is a completely fair point reading that language and a fair question to ask. And there is an argument on the other side.

I have given you what is the view, I think, of both the Bush administration, which looked at these things very seriously and was very concerned about environmental litigation and ultimately felt that that was the better interpretation of that provision. And even counterbalancing those risks, still overall the benefits of the treaty would still counterbalance against the risks that you have raised.

So I understand and support those concerns.

Senator RISCH. Appreciate it.

The CHAIRMAN. Thanks, Senator Risch.

Senator Coons.

Senator COONS. Thank you, Chairman Kerry.

And thank you for an opportunity to join you again in our second hearing today on the Law of the Sea.

This morning, as others have noted, we had six four-star officers testify that ratifying the Law of the Sea Convention would substantially improve the flexibility and capability of the United States and their ability to fulfill their respective missions. Now they are not alone in doing so. Since 1994, their predecessors have almost unanimously made the same claim.

Now that means that those who oppose this treaty need to convincingly explain why the preponderance of admirals and generals who have claimed the treaty is of value are wrong. Opponents have made a strong effort to do so for almost 20 years, but leaders of our military continue to maintain their claim that not ratifying makes the jobs of the men and women who serve under them harder and more dangerous.

I want to be clear. I am grateful Secretary Rumsfeld, Mr. Groves have come to testify about something on which they feel strongly. The questions they raise about the treaty, especially questions on the impact of sovereignty, are well worth considering and answering, and I believe they have been answered.

I hope we can answer them again today. And I hope we can do it in a way that makes it clear to everyone this treaty is not a threat to the American way of life, but at least in these areas around navigation we have discussed earlier today are a real benefit to the men and women who serve us in our Armed Forces.

Ambassador Negroponte, if I might? This morning, I had an exchange with Admiral Greenert, the Chief of Naval Operations, in charge of giving his best advice to the President, and to Admiral Locklear, Commander of Pacific Command. And we discussed what freedom of navigation operations mean, how they work, and what opponents of the treaty would have us entirely rely on, and what that instead means for the men and women who serve.

We have talked a lot about strategy. But I think it is important to remember that, at the end of the day, there are sons and daughters, mothers and fathers, who serve, and we put them at times, I think, needlessly in harm's way because of our refusal to ratify.

You said in your testimony, and I quote, that the "United States puts its sailors in unneeded jeopardy when carrying out freedom of navigation programs to contest Law of the Sea abuses." Could you elaborate on how men and women in uniform actually out there in contested areas in the seas or in the air are put in unneeded jeopardy?

Ambassador NEGROPONTE. Well, and I repeated that earlier this afternoon before you arrived, Senator, as well.

I think that there is an element——

Senator COONS. Well, forgive my late arrival.

Ambassador NEGROPONTE [continuing]. Of risk involved in this, and I am trying to think of specific examples. And I think I would go back quite a ways here because I recall a time at which I was working in the Bureau of Oceans, Environment, and Science, and

we had this challenge program, where we identify maritime claims that we think are not supported by international law and where we feel our navigational interests are affected.

And if I remember correctly—and John will correct me if I am wrong, or perhaps Secretary Rumsfeld—the Gulf of Libya was one of those because the Libyans had a rather restrictive interpretation of freedom of the seas in that gulf there. And so, we would deliberately sail into what they considered waters over which they had greater jurisdiction than we recognized. And that always, especially when you are dealing with a regime that was not exactly predictable, entailed a certain amount of risk for those forces that were undertaking those exercises.

So I don't think that you can say that the Law of the Sea is a substitute for the exercise of our navigational rights. We are always going to exercise them. But I think it does reduce the level of risk.

Senator COONS. Well, thank you, Ambassador.

One of the things I would welcome your expounding on a little bit further, that some have seized upon comments made in a previous panel by General Dempsey and some of the folks testified today who suggested the Law of the Sea Treaty, this Convention, if ratified, would not, in any way, help with force projection, that a failure to ratify doesn't put our Nation at greater risk.

But to be clearer, how would supporting this Law of the Sea Treaty provide additional tools that would help our military more safely conduct their missions?

Ambassador NEGROPONTE. Well, I think another area, and speaking as former Director of National Intelligence, I think the fact that you have an internationally recognized freedoms of navigation between the 12-mile outer limit of the territorial sea and the 200-mile resource zone, and the fact that this Convention now—not if it is modified someday by somebody—but now recognizes the right of freedom of navigation, that inherently protects certain intelligence equities that we have as well.

Senator COONS. Mr. Groves, if I might, in your testimony, you reference a Department of Defense issued ocean policy review paper—I think it is from 1993—which states the freedom of navigation program has served to preserve fundamental freedoms of navigation and overflight with acceptable risk, cost, and effort.

And I just have to question your assertion that 20 years later, there is no evidence that suggest a change in circumstances, such that U.S. accession to the Convention has become essential to the successful execution of the Navy's global mission. Over the past 5 years, as I mentioned in a previous panel this morning, the actual number of countries which the United States has challenged under this freedom of navigation program has tripled.

It can't be without risk, without cost, and without effort. I suppose perhaps we might differ about whether it is acceptable. Do you see any change in the past 20 years that might cause you to reconsider whether the freedom of navigation program would have an additional valuable tool if we were to accede to the treaty?

Mr. GROVES. Thank you for the question, Senator.

You know, our Navy has had challenges throughout its history. We managed a couple of world wars. We made it through the cold

war, the bulk of which or a great deal of which happened after the Convention on the Law of the Sea was signed. We have had bumping incidents with the Soviets. We have had EP–3 incidents with China.

The challenges are always going to be there. The question is whether joining the Convention is of such significance that these challenges will either somehow go away or that we have additional tools to address them. And my view is that due to the other costs that are involved with the treaty, what I believe to be a marginal effect of joining the Convention is greatly outweighed.

That said, the Navy will continue to project force and will continue to engage in freedom of navigation operations.

And as you heard from General Dempsey, our ability to project force isn't based on the treaty. Thank God. It is based on continuing to have a strong navy.

And so, it is just our view or my view that when you do the cost-benefit analysis, whatever marginal benefit the Navy may experience by joining the Convention is outweighed by the other provisions that have those very real costs and risks.

Senator COONS. So if I hear you right, not to put words in your mouth. But if I hear you right——

Mr. GROVES. You can put words in my mouth. That is fine.

Senator COONS. You would agree, as we heard unanimously, uniformly, from the generals, the admirals who testified this morning—and General Dempsey and others who have consistently testified—that there would be a benefit to the freedom of navigation operations. There would be a benefit to our Armed Forces in having another tool and having the opportunity to pursue binding arbitration, for example, with allies, with whom we do sometimes have to engage in these costly, risky exercises.

You just view the overall costs of the treaty as exceeding that real benefit, as being greater than that benefit?

Mr. GROVES. I want to agree with our men and women in uniform that there would be an actual benefit. But when I have studied it, what has come clear to me is that nothing changes operationally. We still do diplomatic protests and demarches in the exact same way. I have read them when we protest a country for an excessive maritime claim.

If we are going to do a freedom of navigation operation, we would steam through in the same way, giving the same notice. So what I have searched for, and what I have met with people over at the Department of Defense for hours in an attempt to find out, is what would exactly change operationally? Give me a reason to believe that there is a tangible and real benefit for the Navy here.

I haven't been satisfied on that front. And so, when you weigh that against the other costs, I come down on the side of skepticism.

Senator COONS. Well, Mr. Groves, I appreciate your testimony. I would like to thank the whole panel for your testimony today.

Part of what got me interested in this, as I mentioned at our previous hearing, was a personal meeting with the former Chief of Naval Operations, who, analyzing that same fact pattern, came out in exactly the opposite place and saying that there would be operations that would not need to be conducted, that could instead be resolved through the mechanisms of this treaty, and that that

would reduce risk and cost and exposure on duty and allow us to focus those very valuable resources on areas where we genuinely needed to continue on these freedom of navigation operations.

So thank you, Mr. Chairman. And thank you for the opportunity.

The CHAIRMAN. Thank you very much, Senator.

Before I recognize Senator Lugar—are you taking off?—let me just remind, I do think, Mr. Groves, I would just call your attention to this fact because I went through their testimony very carefully.

In the six four-stars who testified today, I really wanted to see what they were specifically saying and see if I could pin it down the way you did, too. And I came up with 16 advantages that they specifically define in their testimony, and I commend it to my colleagues, 16 positive differentials that come by virtue of signing onto this.

One of them was very clearly articulated in detail by Commandant of the Coast Guard Papp, who talked about the advantage in terms of their interdictions of narcotics, their boarding and search in the Caribbean and elsewhere. There are a whole series of very specific rules of the road, in a sense, that relieve pressure cooker.

And here is what—you need to have the full statement of General Dempsey. General Dempsey did say we wouldn't lose our force, but he didn't say that there aren't additional risks, et cetera. We are not going to lose our force because, hopefully, the U.S. Congress and whoever is President is always going to remain committed to have the strongest force possible, and we will be able to protect our interests.

That is not the issue here, though. The issue is what General Dempsey said in the rest of his statement, and I just read it to you very quickly. He said, "The failure to ratify puts ourselves at risk of confrontation with others who are interpreting customary international law to their benefit and the risk of confrontation goes up."

And what all of the commanders said today, and I think this is a very important subtext to their testimony, was that the world is changing very rapidly. Other nations are pressing for resources in ways they have not ever been before. China, all over the world, we know that. Resource-oriented policy beyond anybody else.

And given that pressure for resources and that we are going to become a planet of going from 7 billion to 9 billion in the next 30, 40 years, that is only going to increase. What they are saying, all of them, is that this provides an orderly process for how to manage your way through that increased pressure and tension, and that is part of what increases the urgency.

The second thing they cited, and I think it is very important for every member to realize this—and this is why I said we will have a classified briefing—our intel community will make it very clear that there are actors right now who are behaving in ways that challenge us, where the Law of the Sea would, in fact, have an ability to be able to address those concerns. And that will be raised in the course of our classified briefing.

So I do want to make sure the record is clear about both what General Dempsey has said, what the four-stars said today, and sort of where we are. You will have a chance to address this if you want.

But let me get to Senator Lugar, and then we will come back and finish up because I know there are a couple of colleagues under pressure.

Senator LUGAR. Well, thank you, Mr. Chairman.

I found the testimony very important just in terms of the historical record of the evolution of this issue before previous administrations and the Congress. Specifically, I would mention testimony today that indicated that the Bush administration made Law of the Sea a primary treaty objective, beginning in 2002.

Now I remember that period because I had the privilege of serving again as chairman of the Foreign Relations Committee as Republicans got a majority, and we took seriously that list of treaties and, as a matter of fact, were able to ratify a good number. They came off the shelf and we had good debate. Law of the Sea was among those, as we took that up in 2003 and, ultimately, in 2004 the committee voted unanimously in favor of the treaty.

Unfortunately, Senator Bill Frist, who was the Republican majority leader, decided there were other priorities. And as a result, we did not have floor debate, and that opportunity passed.

Republicans lost the majority. Senator Biden became chairman of the committee. He took it up again in 2007. Once again, the Bush administration testified very strongly in support of the treaty. On that occasion, as I recall, the treaty received four negative votes in committee, but it went to the floor with a pretty good majority. And Senator Harry Reid, now the Democratic majority leader, did not find it convenient to take up the treaty.

The question that was raised by Secretary Rumsfeld and in a way by both you, Mr. Bellinger, and Ambassador Negroponte, is an interesting philosophical one that I made note of. On the one hand, and this really is not only President Reagan's viewpoint, the statute was quoted by Secretary Rumsfeld.

Essentially, the question is, Is there such a thing as the internationalization of the seas? Is this something that belongs to all mankind? Suppose maybe someone might stretch this some day and argue that the atmosphere belongs to all mankind.

On the other hand, I received a letter, which maybe other members of the committee have, from Mr. Bob Stevens over at Lockheed Martin. I quote this part. It says, "The multibillion dollar investments needed to establish an ocean-based resource development business must be predicated on clear legal rights established and protected under the treaty-based framework of the Law of the Sea Convention, including the International Seabed Authority."

So, on the one hand, you could take a position that the ocean, whether it is close to our shorelines, 200 miles or not, is nobody's business. In essence, there is no idea of internationalization. Nobody owns it. It is just simply a question of whether you want to go out and drill or not and take your chances.

But what Mr. Stevens is saying is that as a practical matter in terms of American businesses, very few such drillings are going to occur that involve hundreds of millions of dollars, if not more, without some legal basis, some assurance, some treaty, as a matter of fact, that protects their ability to do so. We can talk about all of those mineral resources being out there until we are blue in the face, but the facts are that there is very little drilling for them

without people feeling very precarious about it. And American businesses among them are saying if we are serious about energy resources, energy independence, and our own security, then we need this framework.

It is a legitimate argument as to whether anybody owns anything here. All I am saying is the treaty provides a practical means by which we might proceed in this world and particularly in this country, given the resources and the investments that we have.

I come back to this with questions to those of you who have been testifying about this. I think it is a central issue in this. I would say, Secretary Rumsfeld, you have been I think fairly even-handed in discussing philosophically the question. But how do you come down on the question of Mr. Stevens' letter?

Why would Lockheed Martin proceed without there being at least the assurances provided by Law of the Sea?

Mr. RUMSFELD. Well, I don't know if they would proceed. But it seems to me that a businessman makes a cost and a benefit and risk analysis. They want as much certainty as they can get. And there is no question, but it is perfectly logical for businesses in this instance to prefer certainty.

On the other hand, businesses all the time enter into uncertain investments. And, at some point, they decide that the risk is realistic for the investment and they go right ahead because there is nothing preventing them from doing that.

Second, I haven't thought about this, but having been in business, seems to me the easiest thing in the world if somebody really wanted to do it, the American companies have the technology. They are skillful. They have resources. And they can always do a joint venture with another company that is a member of the Law of the Sea. I don't know why they couldn't. Maybe they can't.

Maybe they wouldn't get a license if it was a joint venture. But I don't know the answer to that question. But there is nothing that I have seen that legally in any way prevents them, other than their assessment, as the chairman said, of what the risk is. And that is fair.

Senator LUGAR. Well, of course, that is a good statement. But the point is that companies are not taking the risk. We keep asking American investors to find more energy and to at least deliver us from the reliance we have had on Middle Eastern oil, for example, or other situations.

And businesses could take that risk.

It is an interesting equation that perhaps you tie up with somebody who is a Law of the Sea Treaty person. But this then really does legitimize in a way the Law of the Sea. You are using the Law of the Sea once again to make possible the lack of risk for an American business and sharing whatever profits there may be. Already objection has come that the sharing of royalties is not in our interest even though that has been downsized over the course of time.

But how did the Bush administration come in 2002 to the thought that this should be the prime treaty? Why was there a change of view at that point?

Mr. BELLINGER. I guess that would go to me. My job, one of my responsibilities as NSC legal adviser—although after 9/11 we were mostly focused on other things, like terrorism—was, in fact, to look

at all of the treaties that we had inherited from the Clinton administration that were before the committee here and decide which ones were our priorities.

And we took a really good scrub at it. Any administration does. They are not confident in the priorities of the last administration, and we knocked a number of things off the list.

The Law of the Sea Treaty we were particularly skeptical of. There were lots of people in our administration, and we had a lot of internal differences about whether this really was the right thing. And it took us close to a year, until February 2002, to move it to the top of the list.

I wouldn't say it was the administration's top treaty priority. We didn't rank them 1 to 100. But we said that this was a treaty that was a priority that the Senate should act on.

And just to summarize, there were the military advantages, particularly after 9/11, when we were asking our military to do more with less, and it was easier to rely on a legal right. And I think Secretary Rumsfeld acknowledges that part. But the economic and business advantages were things that just could not be gotten in other ways.

If there was another way to do it, I think it would not have been—that would not have been a good argument. But we couldn't see another way for American companies, particularly as the Arctic opened up and enormous advantages were there for us, and we were watching Canada, Russia, Denmark, Norway, all making billions of dollars.

Norway has a sovereign wealth petroleum fund of $700 billion that it has gotten for its people from oil and gas up in the Arctic. And so, we see what they have been doing up there and said for our companies to be able to do this, we need to become party to the treaty.

So that was an additional benefit. And then there were environmental benefits as well for the health of the world's oceans.

Senator LUGAR. Thank you very much.

The CHAIRMAN. Thank you, Senator Lugar.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

I won't go into what I did this morning when we had the generals there. I say to you, Secretary Rumsfeld, I commented from my experience in the military that we have a chain of command, and it is kind of interesting all of these people, and this morning we had actually 24 stars before us. And yet I submitted a letter of 33 stars who are retired.

It seems like once they retire, things kind of change. And I always suspected that was a little bit had to do with the chain of command. Of course, President Obama is the—and before him, of course, President Bush was commander in chief.

The CHAIRMAN. Can I just say to you, Senator—no, I will give you your time. I am not going to invade your time. But you are impugning the integrity of their testimony this morning.

Senator INHOFE. No. No, I am not.

The CHAIRMAN. Each of them said they were there personally. It was their personal belief. No one twisted their arm, and no one requested them otherwise. And to suggest otherwise——

Senator INHOFE. OK.

The CHAIRMAN [continuing]. Is not to believe——

Senator INHOFE. Not suggesting otherwise. I know the chain of command. That is all.

I would ask you, Secretary Rumsfeld, how does it serve our national security interests to send nonappropriated, essentially entitlement spending to an international organization from payments that would go to countries but would come from us? Is there any way you can see somehow that enhances our national security?

Mr. RUMSFELD. No, Senator. I think what the admirals and generals testified to was narrowly their interests that relate to the Department of Defense.

Senator INHOFE. OK.

Mr. RUMSFELD. And they clearly did not get into anything that is broader——

Senator INHOFE. Yes. In fact, I wasn't surprised that they wouldn't want to get into that.

Mr. RUMSFELD. Right.

Senator INHOFE. But I would like to ask you, Mr. Groves, I presented the case on two of these hearings now that I am still waiting to see if anyone really disagrees with it, and that is under our royalties currently, the royalty percentage ranges between 12.5 and 18.75 percent. That varies because of the point at which a company is not willing to go in and risk its capital to go after. That is the main reason we have a range instead of a specific amount.

The 7 percent, granted, it wouldn't happen for 12 years. But at that point, it would. And while you said in your testimony, Mr. Groves, that there is no way to try to predict exactly what that would be, the U.S. Interagency Extended Continental Shelf Task Force said it would be billions, if not trillions.

So I felt that maybe a trillion dollars as an example would not be unrealistic. Would you like to comment in terms of that, the amount of money that we could be talking about here?

Mr. RUMSFELD. It sounds to me like we may have mixed the royalties that relate to the 200-miles area, as opposed to the deep seas.

Senator INHOFE. No, I am talking about the Extended Continental Shelf.

Mr. RUMSFELD. Right.

Senator INHOFE. Yes, because I——

Mr. RUMSFELD. As I understand it, the other hasn't even been set, has it?

Senator INHOFE. But the reason I am asking the question is many are saying here, and they have said at both of these hearings, that without this we can't get in and develop the Extended Continental Shelf. That is a question I would like to have you address.

Mr. GROVES. Right. The major take-away you should have here is that we don't know how much money is really at stake.

Senator INHOFE. That is right.

Mr. GROVES. I mean, there has been no study about the value of the hydrocarbon resources that are on the U.S. ECS, which is vast. It is twice the size of California. Starts on the east coast, goes to the west, up to Alaska, and down in the South Pacific.

And yet we can sit here today and have no idea how much oil and natural gas is out there, and yet pledge to sign on to a treaty that would commit us to paying between a 1-percent and a 7-percent royalty on those hydrocarbons forevermore. So that doesn't sound to me like a very fiscally responsible thing to do when we don't even have the first clue about how much is out there.

Now the ECS Task Force has put the only number out there that I have ever found, which, as they said, could be trillions of dollars. Trillions, with a "T" and plural. So we know, at least from a gross estimation, that we are talking about a significant amount of money.

But until that study is done, until we have even the slightest idea of how much money we could be giving up for this treaty, I don't think it is very responsible or prudent to accede to it.

Senator INHOFE. I would agree with that. A lot of discussion has been on the—talking about a place at the table. I contended this morning that I am not sure where the table is. I mean, we have the IMO, and apparently, it has performed well.

What I would like to have you do, Mr. Groves, is talk a little bit about the differences between the Council and the Assembly and how veto works in this respect.

Mr. GROVES. Sure. The International Seabed Authority, or it is called "The Authority," is made up of a Secretariat, it is made up of a Council of 36 countries, and it is made up of the Assembly of 162 countries, and that is called the "supreme organ" of the Authority.

Now there are a couple of narrow questions. Narrow, but important questions that the Council can make recommendations on that the Assembly must consider. One of those is the distribution of these article 82 royalties. But what has been—what is basically the ability to block consensus has been kind of transmogrified by proponents of the Convention into this blanket veto power that the United States would have over the entire operations of the authority, when, in fact, it is a very narrow ability.

And if we have the ability to block consensus on the Council, so do the other 35 members, including my favorite member, Sudan. But between the two bodies, when you have got a council that is making recommendations about the distribution of article 82 royalty and you have got an assembly, which is the supreme organ making the final decisions about the distribution of those royalties, we know in the end who is going to win that discussion, regardless of whether there is some balance of authority between the two bodies.

We know that because we've studied other international organizations in a multitude of contexts.

Senator INHOFE. Well, it would seem to me that it is kind of not all that significant to be talking about that anyway. The big issue is they have the power to extract that money that otherwise would be royalties to the United States.

Mr. GROVES. Yes, sure. Before we are talking about this supposed veto, we have already committed to make all of those article 82 royalty payments to the Authority for redistribution. So, for me, I think the horse is already out of the pen.

Senator INHOFE. I noticed during the previous—yes?

Mr. RUMSFELD. A comment. The word "veto," I think, is a little confusing in the sense that it leaves the impression like our Constitution where a President can veto something, or it leaves the impression that like the United Nations, where we and other countries have a veto in the Security Council.

In this instance, it is much more like our role in NATO, where I served as Ambassador I guess 40 years ago, where it is operated by consensus. And watching how that works is really quite different from our Constitution or even different from the U.N. Security Council.

A second point on the military issue that you raise. Again, I am no expert, but I read this about the military activity exemption. My impression is there is no definition of the so-called "military activity exemption" and that the structure—the executive, legislative, and judicial structure that Mr. Groves described—would be where the definition of that phase would eventually be decided.

And, if you think about it, a military activity can simultaneously be an economic activity and an environmental activity. I can remember we had lawsuits against us when I was serving as Secretary of Defense the second time because SONAR was adversely affecting whales.

And you can end up with a series of problems where people contest this because of the lack of a definition, it would seem to me. And frankly, I don't think I am smart enough to know what that definition could be without leaving enormous areas of ambiguity.

Senator INHOFE. Yes. I do remember that discussion. And Mr. Groves, I noticed you were making some notes and had some comments on responses from some of the witnesses. Is there anything that you would like to add right now in this time that might be helpful to us?

Mr. GROVES. Oh, boy. Such a great open-ended question. Well, I think I would just like to debunk the idea that there are oil companies that are waiting for us to join this treaty in order to engage in exploration of our Extended Continental Shelf.

There is a chart in my testimony—I have got it, the one that looks like this—that indicates all of the areas of the Extended Continental Shelf in the Gulf of Mexico that the United States has already leased out to American and foreign oil exploration companies. So the idea that this is going to be some great prohibition on this development is something that I don't agree with.

These companies have made the business decision to buy multimillion dollar leases from the U.S. Government to go out on the Extended Continental Shelf, regardless that we are not a party to this treaty and whatever international certainty that comes along with it.

So if there was one thing I would add, I would just add that.

Senator INHOFE. I appreciate that. And Mr. Chairman, I appreciate the time. But one last thing, Are there any frailties that you can think of in the IMO, something that hasn't worked in the past that would be corrected by this?

Mr. GROVES. The IMO is the forum where all of the things that the proponents allege are being discussed at the Law of the Sea meetings are actually being discussed.

Senator INHOFE. That is the real table when you say a place at the table?

Mr. GROVES. That is correct. That is where they are drawing the traffic separation schemes and the archipelagic sea-lanes through Indonesia and discussing treaties and other environmental obligations. That is where actual multilateral decisions are made, in that forum.

Senator INHOFE. Thank you, Mr. Chairman.

The CHAIRMAN. Before I recognize Senator Isakson, I just think it would be helpful for the record. Mr. Bellinger, do you have any comment with respect to the argument on the Outer Continental Shelf?

Mr. BELLINGER. This is the point on Mexico?

The CHAIRMAN. The argument that Mr. Groves just made with respect to the ability to exploit and the royalties issue.

Mr. BELLINGER. Yes, well, I think this is perhaps the most important question for the Senate really is the suggestion is that if we don't join the Convention, then we still get all the benefits. And so, it is a choice between joining a flawed Convention or not joining the Convention, and then U.S. companies still get to do all those things and they don't have to pay anything.

But that seems to me a false choice, at least based on what companies have been saying to us. It is not, do the royalties flow to the ISA or to the Treasury? Of course, if I had that choice, I would much prefer to have all of the royalties paid to the Treasury.

But the choice seems to be companies will either mine in the deep seabed and in the Extended Continental Shelf and are willing to pay a small amount of royalties after 5 years or allow the U.S. Government to do it, or they won't do it at all. So the choice is either lots of royalties for the Treasury and lots and lots of money for U.S. companies and some small amount that goes to the ISA, or nothing at all. That seems to be the choice that is confronting us.

The CHAIRMAN. I see you were taking a deep breath. Were you about to—did you want to add to that, sir?

Ambassador NEGROPONTE. I would say that this argument is particularly pertinent with respect to the Arctic, and I represented Secretary Rice at one of the Arctic Circle conferences with the Russians, the Danes, the Norwegians, and the Canadians. And it was clear that this is one area where our companies do feel inhibited from exploring and exploiting beyond 200, where we may have Continental Shelf that extends as far out as 600 miles in the Arctic Ocean.

So I think it is important that that issue be resolved, I believe, for our——

The CHAIRMAN. We will come back to that. I want to come back to that when we get into the second round.

I would just say to Mr. Groves, you are right. They are buying some leases, and they are very smart to do so. But there is a huge gulf between buying the lease and sitting on it. There are a whole bunch of leases down in the gulf that have been owned for years, but they don't exploit them. They are not buying them and drilling.

And the differential is the capitalization that it requires to exploit, and that is really where the nub of this is. But we will come back to that. I want to come back to that if we can.

Senator Isakson.

Senator ISAKSON. Thank you, Mr. Chairman.

And I apologize that I am late, and I apologize to the panel that I am late. I really have a compliment and then one question that is, I think, significant.

But I want to thank Secretary Rumsfeld and Ambassador Negroponte for their service to the country. I remember Secretary Rumsfeld's transformation of our military and how well it prepared us for the unseen events of the last decade. I saw John Negroponte in Baghdad in the most difficult days of our conflict there, and both of you deserve tremendous credit for your service to the country.

My question is to Mr. Bellinger and Mr. Groves. I am not an attorney. I love listening to attorneys going back and forth. But I have a University of Virginia law school student who is an intern for the summer. So I posed to him this question of the veto. I said, "I want you to research this thing and read this thing, and I want to talk about the veto for a second because some people say we have got a veto, and some people says, well, now you see it and now you don't."

He did a beautiful paper for me, and I want to read two quotes from the treaty, and then I would like both of you to comment on it as it relates to this question of do we have a veto or do we not?

One is that the veto is the absence of any—I mean, the consensus, as defined by the treaty, is the absence of any negative objection or formal objection from the members. Is that correct? Which means if there was a proposal before either the Council or the Assembly, as long as nobody objected, then they had consensus and they could move forward.

But if one member of the 35-member Council objected, then what do you do? And I want to read this sentence. "If all efforts to reach a decision by consensus," which is nobody objecting, "have been exhausted, decisions on questions of procedure in the Assembly shall be taken by a majority of the members present and voting, and decisions on questions of substance shall be taken by two-thirds majority of members present and voting."

That says to me that we may have a veto to stop something from move because we can stop consensus, but the veto can be overridden by a two-thirds vote of the full Aassembly or by a majority vote of those voting in the Council. And I just would like both of you to comment on am I right or is my law student right, or am I wrong or is my law student wrong?

The CHAIRMAN. Before—can I help your law student a little bit?

Senator ISAKSON. I am not mentioning his name. I don't want to get him in trouble. [Laughter.]

The CHAIRMAN. Well, I don't want to get him in trouble either. But he is actually taking that from the 1982 original agreement and not from the agreement as amended.

Senator ISAKSON. Well, good. That is the kind of information I am looking for. So I would like to hear from both of you.

Mr. BELLINGER. Well, I have the greatest respect for the University of Virginia, where I have my own master's degree from. So,

and I love University of Virginia law students. But I would say that the longstanding position of both administrations, in fact, multiple administrations, on this very point is that we fixed the problem in the Council voting to give the United States the predominant voice.

One, we are a permanent member of the Council. So we are the only country that is a permanent member of the Council. And two, the Council has to be the one to make decisions on administrative, budget, or financial matters. And on the sentence that you just read where ultimately there is not agreement and it gets referred back, you did not mention the clause that says—and this is in section 3, paragraph 5, "Except where the Convention provides for decisions by consensus in the Council."

And so, the United States is always in the Council. We are always the permanent member. Section 3, paragraph 2 says the decisionmakings and the organs of the Authority should be by consensus. The clause there says that except where the Convention provides for decisions by consensus in the Council, which refers to administrative, budgetary, or financial matters.

So the United States would have a veto over any decision relating to administrative, budgetary, or financial matters, which would include the distribution of fees. So that is why we believe, the Bush administration, which looked at this, believes the United States would have the critical role in deciding where any of the fees went.

And I believe that Mr. Groves conceded that point. But even if he didn't, that is our interpretation. And I can see this is why you love lawyers.

Mr. GROVES. I am a lawyer, and I don't concede anything, John. Actually, I am a recovering lawyer.

Now there is no doubt what the treaty says in the black letter law of the treaty when consensus can't be reached, and I would concede that if the United States was a party of the treaty and on the Council that it could muddy that up and block consensus on some important issues.

The important part is what the treaty is silent about, which is what happens where no consensus can be reached on the Council at all. Let us say, hypothetically, because the United States is putting its foot down on something regarding royalties.

And from the silence of the treaty, the only rational explanation is that the Assembly could act by passing a resolution without the recommendations of the Council. You see, at the end of the day, article 82 royalty distributions, the Council only makes recommendations to the Assembly, and it is the Assembly that makes the final decision.

And the reason why we know this to be true is that further on in the article in the 1994 Agreement, it says that the Council's decisions on financial matters shall be based on the recommendations of the Finance Committee. So if the Council has to be basing their recommendations on the recommendations of the Finance Committee, then it goes all the way down the line.

At one point or another, someone is going to make a decision. We see this in international organizations all the time. And from my view, especially with the silence of the treaty, it is going to be the

supreme organ of the Authority, the 162-member Assembly, that makes that decision.

Senator ISAKSON. Mr. Chairman. Mr. Chairman, you were commenting about the 1994 Agreement, and I think that you are talking about the title or part 11, which was the subsequent amendments the United States proposed. Is that correct?

The CHAIRMAN. That, but also I think in 1994—on page 272, section 3, decisionmaking, it actually gave us protection. I will read it to you. "Decisions of the Assembly"—and this goes to Mr. Groves' deep concern about the Assembly and what the Assembly might do. The achievements, what we achieved in 1994 through the implementing agreement, which is very important, made clear that the Assembly is not permitted to take action on any matter within the competence of the Council unless the Council has first recommended that the Assembly do so. So the Council controls the agenda.

Now let me read right out of it. "Decisions of the Assembly on any matter for which the Council also has competence," and that is laid out, and that is the distribution revenue and a whole bunch of other things. So the competence is in the Council. "Any decision for which the Council has competence or on any administrative, budgetary, or financial matter shall be based on the recommendations of the Council. If the Assembly does not accept the recommendation of the Council on any matter, it shall return the matter to the Council for further consideration. The Council shall reconsider the matter in the light of the views expressed by the Assembly."

In other words, it is a round robin. Council has the final say. Council has the original say, has to go back to the Council. There are serious limitations on it. And the Assembly effectively does not have this fearful power to come in and do something that you might be concerned about.

Now I might also add if you don't like what it is doing—I mean, we can come back to this. But let us say you get your businesses out there, and suddenly, the royalties are being produced. And all of a sudden, it is a bonanza, and you get a trillion dollars. And we can come back to that in a minute.

Article 317, page 208, "A state party may, by written notification addressed to the Secretary General of the United Nations denounce this Convention and may indicate its reasons. The denunciation shall take effect one year after the date of receipt of the notification."

In other words, you can just get out of it. You are not bound to trillions of dollars. You are not locked in for a lifetime. Just leave. If you don't like what it is doing and it is acting against our interests, you get out of it.

So, I mean, this is really not as complicated as it is being made, but we ought to continue to go at it.

Mr. GROVES. If I may just comment briefly, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. GROVES. First, on the Council issue. Yes, the language says that any of these administrative, budgetary, and financial matters shall be based on the recommendations of the Council. But just three paragraphs later, it says decisions by the Assembly of the

Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee.

So if it is——

The CHAIRMAN. That is correct. We are a member of the Finance Committee.

Mr. GROVES. But we can't block consensus on the Finance Committee.

The CHAIRMAN. I believe we can. You want to speak to that?

Mr. BELLINGER. We are also a permanent member of the Finance Committee, and we can block or control the Finance Committee. These were really the great changes that the United States made.

The CHAIRMAN. It is also stated——

Mr. BELLINGER. Let me just add one thing, if I could, Senator? Two things, really, for Senator Isakson. It is really quite useful.

A paper was done by one of our negotiators, which I would encourage your staff to look at—Bernie Oxman, back in 1994—that described how all of President Reagan's concerns were fixed by U.S. negotiators and how they ended up giving the U.S. enormous influence over every one of these issues, including the permanent seat on the Council and the effective veto. And I will ask that that could be put into the record.

Mr. BELLINGER. One of the most interesting things about that, for both of you, is that Russia was so concerned that the United States was given so much influence in the Council that they refused to sign on and actually abstained from the vote over the 1994 amendments because they felt that they discriminated in favor of the United States.

Mr. RUMSFELD. Mr. Chairman, may I make a comment on this?

The CHAIRMAN. Absolutely. Yes, sir, Mr. Secretary.

Mr. RUMSFELD. As a law school dropout, I am glad I wasn't asked to comment. But I have a question about the 1994 amendments. They have been mentioned repeatedly, and I don't have any idea what their standing is, given the fact that a number of countries have not signed onto them.

Second, one of the big issues for President Reagan was technology transfer, and that was addressed in the amendment. And as I recall, it went from mandatory technology transfer to a recommendation that technology transfer occur from the developed countries to the developing countries. I forget the precise language, but it is something like that.

It seems to be that it is entirely possible, and I would be happy to hear the experts on the subject, that in applying for licenses, the decisions with respect to licenses could be dependent on the degree of accommodation a company is willing to make with respect to technology transfer.

So when we say that the Reagan concerns were fixed, they were addressed for sure and in some instances fixed. But I think in some instances, we punted.

The CHAIRMAN. I would let the experts speak to that, the people who were there during that time. I think that is important.

Mr. BELLINGER. I will take a stab at that. Again, these issues are addressed at length in Professor Oxman's article, which describes all of the 1994 changes. The tech transfer requirements, of course,

were dropped. The production limitations were dropped. The barriers to access to deep seabed mining were dropped.

And the idea that the authority could actually decide who could get mining rights and who couldn't, which was really one of our concerns that we would have this group of countries that would look at U.S. mining companies and say, "Well, we don't really like you" was also dropped. And U.S. companies were actually grandfathered in so they would not have to make some of the same showings that other companies around the world would have to show. That was one of the reasons for the Soviet protest.

Mr. GROVES. It is another reason why Lockheed has little objection to the treaty.

Mr. BELLINGER. And in addition, there would not be an evaluation of the technical qualifications of applicants. It would be based on a first-come, first-served basis as long as people met basic financial qualifications.

Senator ISAKSON. Mr. Chairman.

The CHAIRMAN. Yes, sir.

Senator ISAKSON. I stirred up far too much of a hornet's nest.

The CHAIRMAN. On the contrary, I think, actually, you have helped clarify significantly some very important areas. And if I could just take 30 seconds to add so that it is in the record, I really want it to be in the record in this part.

Page 279, section 9, subsection 8, says, "Decisions in the Finance Committee on questions of procedure shall be taken by a majority of members present and voting. Decisions on questions of substance shall be taken by consensus."

I can't think of an agreement, I can't think of an international treaty in which the United States of America has the only permanent seat and the ability to block anything and protect our interests and, if we don't like it, can get out of it. So I think it is important to have that in its proper context.

Senator ISAKSON. I will just take 1 minute. This is a very critical question, which is why I asked it, and I appreciate my UVA law student doing such a good job. He got everybody engaged.

But everybody has to remember they are communicating with a University of Georgia Business School graduate when they are talking to me, and I would like to ask Mr. Groves and Mr. Bellinger, if you wouldn't mind, to try to give me a one-pager that addresses this issue of consensus and veto and majority of the members present voting to override or two-thirds to override. If you could do that and how it applies, understanding the 1994 amendments that may have taken place.

And one other question, Mr. Chairman, and don't respond to this because I know it will drag it out. But I was reading paragraph 4 as you were reading it. But paragraph 5 is still in this book, and I need to know if the 1994 treaty extracted paragraph 5, which refers to the majority of those voting, present voting, and refers to the two-thirds majority.

We won't get into that debate now, but I would like to know that.

The CHAIRMAN. Fair enough.

Senator ISAKSON. I apologize.

The CHAIRMAN. No, I think it is a terrific request, Senator Isakson. I think it is very important, and we will look for that full

explanation. I think it would be very helpful to the committee, indeed.

Mr. GROVES. To the extent that anything in Law of the Sea can be distilled to one page, we will do our best. [Laughter.]

The CHAIRMAN. Thank you.

Senator Lee. Thanks for your patience.

Senator LEE. Thank you, Mr. Chairman.

And thanks to all of you for your service today to this committee and for your service to our country.

Mr. Bellinger, I wanted to start just by asking a basic, fundamental question about something this treaty does. By creating a royalty obligation as to the exploitation of minerals from the seabed outside of the 200 nautical mile range, aren't we creating a construct that recognizes ownership or at least a degree of sovereignty in an international organization? Isn't that what the word "royalty" implies?

If somebody can charge a royalty for the exploitation of minerals on any property, doesn't that imply that they own that land or at least that they possess the sovereign, the incidence of sovereignty with respect to that land?

Mr. BELLINGER. I wouldn't say so. I think I would just see that as a fee that the United States has agreed to, to mine in that area.

Senator LEE. So if you own land, and ExxonMobil wants to develop oil on that land, and I say I am going to charge you a royalty for exploiting this resource on Mr. Bellinger's land, wouldn't I be implying that I have some sort of ownership or sovereign right with respect to that land?

Mr. BELLINGER. Well, again, not necessarily. I think that it is something that was agreed to in the treaty without a broad philosophical construct of the significance of what it meant for a royalty provision. I mean, as you know—because I know you have a long legal pedigree—that property rights and bundles of sticks can get to be very complicated as far as what is actually a property right, and it can be used in different contexts and different things.

And it is the same with respect to treaties. So simply that we agree to pay something here does not mean that we are conceding that the international community owns the Extended Continental Shelf.

Senator LEE. OK. But we are creating an interest, a financial interest of one sort or another. One that could be construed as a property interest.

I appreciated your acknowledgment with regard to Senator Risch's comments on article 222, that as I believe you acknowledged there was at least an ambiguity there as to the meaning of the word "applicable" and the phrase "implement applicable international rules."

If there is at least an ambiguity there, wouldn't that suggest that an international arbitration panel, perhaps one convened pursuant to annex 8 under the treaty, could also conclude that there is an ambiguity there, and they could decide that issue one way or the other?

Mr. BELLINGER. I guess I would say on that, Senator, I would think not. I mean, I think it is a good question for someone who is reading that provision. But I can tell you as someone who spent

a lot of time reading treaties, particularly ones that were allegedly—I mean, honestly, this was my job for 4 years as legal adviser, to defend against other countries who claimed that certain things were applicable to the United States.

And applicable means that we are legally bound by it, not——

Senator LEE. If we get a good arbitration panel, if we get at least three who are well trained, who are doing it right, doing it the way that we would like it to be done, your position would be that they are going to reach the right conclusion?

Mr. BELLINGER. I certainly think it is pretty clear that "applicable" international obligation means something that is we are legally bound by.

Senator LEE. OK. Thank you.

Secretary Rumsfeld, I recently had a retired Navy commander in my office. He made the following statement regarding this treaty. He said we should not in any way restrict the ability of the U.S. Navy to serve its primary purpose—protecting the Constitution of the United States of America against all enemies, foreign and domestic.

Ratifying the U.N. Convention on the Law of the Sea will expose the U.S. Navy to unnecessary, counterproductive, and extraconstitutional bureaucratic and regulatory oversight. Do you tend to sympathize with that statement?

Mr. RUMSFELD. Well, I have to confess I can't look around all those corners, but we have seen an explosion of litigation in the world. I don't know how many lawsuits have been filed.

But every time anyone in the U.S. Government turns around, they get lawyered up. There is something like 10,000 lawyers in the Department of Defense today. And I don't doubt for a minute that that could happen.

It seems to me that the—I watched some of the military panel this morning. And they are wonderful people, and they are talented. As they said things, I did not hear a lot of instances as to why we believe that with this, the Chinese or the Iranians, for example, will alter their behavior notably. I just didn't.

The Law of the Sea has been around. They haven't solved some of the problems in the South China Sea. China and the neighboring countries are members. And in terms of dispute resolution, I haven't seen it.

In direct answer to your question, it seems to me that anything that they said that they believe this treaty could or should do that would benefit us—and there is no doubt in my mind but there is certainly some things that it would with respect to the military—the question is what is their weight against some other aspects of it, the disadvantages?

It seems to me then the United States of America ought to pursue those on a bilateral or a multilateral basis if they are as important as they say. And I don't doubt for a minute that the very credible military officers were making points that were valid that could be pursued bilaterally or multilaterally.

Senator LEE. And at the end of the day, Mr. Secretary, any legal rights, legal protections that we have, to the extent they have to be enforced, would have to be enforced through our own military might, would they not?

Mr. RUMSFELD. Regardless of whether you are in the treaty or not.

Senator LEE. In the treaty or not. OK.

Mr. Groves, would you agree with that assertion? In the treaty or not, legal rights, legal protections that we have, whether we draw them exclusively from customary international law, as we would were we not to ratify this treaty, or if we were also to draw additional rights or perhaps same set of rights from the treaty. Don't those have to be enforced, to the extent they have to be enforced, by our military?

Mr. GROVES. I would agree with that, and I think that the members of this morning's panel would agree with that. They have said, in no uncertain terms, that when push comes to shove, we are going to assert our rights. We are going to assert our power. We are going to project our power.

And we hope that they will do so whether or not they are in any treaty or not to protect American national security interests. Their only argument is that somehow being inside the treaty will enhance their abilities to do so. I just haven't seen where that enhancement lies.

Their diplomatic protests would be the same. The same language. Their operational assertions would be the same. None of those things would change. But somehow they are making a claim that I just haven't found the substantiation for yet that it enhances their ability to perform their mission.

Senator LEE. Thank you. Let me follow up with an additional question I wanted to ask of you, Mr. Groves.

Let us suppose that we get into an international arbitration, pursuant to, say, annex 8. We choose two arbitrators. Our opponents choose two arbitrators. We can't agree on the fifth arbitrator. So the fifth is chosen by the U.N. Secretary General.

At the end of the day, three of the five arbitrators rule against us. They rule against us on a theory that we think is legally deficit. We think is wrong. It is against us. We don't like it.

Is that judgment—notwithstanding our objections to it, notwithstanding the errors that we see in it—is it enforceable in U.S. courts?

Mr. GROVES. It is enforceable on U.S. territory because that is what the treaty says it is. And we have got at least one Supreme Court Justice who says so in dicta in the *Medellin* case. He discussed how decisions made by UNCLOS tribunals would be enforceable in U.S. territory.

Senator LEE. Referring to Justice Stevens' opinion in *Medellin*. Is there anything about our rescission from the treaty, from the Convention, which couldn't become effective until a year after we have provided notice anyway? But is there anything about our withdrawal from the treaty, from the Convention, that would affect the validity and the impact of such a judgment after the fact?

Mr. GROVES. Under international law, no. And we are actually dealing with that issue right now in the *Avena* case, regarding the Mexican death penalty cases that was litigated through our system as *Medellin* v. *Texas*.

We withdrew, the Bush administration withdrew from the optional protocol to the Vienna Convention on Consular Relations

after they got a really bad judgment from them. But the judgment of the International Court of Justice in that case is still pending. It still has legal force and effect because we were under its jurisdiction when they made the judgment, regardless of our subsequent withdrawal.

Senator LEE. Almost 30 years ago.

Mr. GROVES. The *Avena* case was during the Bush administration. You might be thinking of the *Nicaragua* case during the Reagan administration.

Senator LEE. Indeed. Thank you very much. I see my time has expired.

The CHAIRMAN. Thanks, Senator. I appreciate it.

Senator Lee, you might be interested to know that the U.S. Senate has already approved a treaty that has the exact same procedure in it, and that is the—we gave our advice and consent to it in 1996. And not only does it subject the United States to arbitration, but in fact, it subjects us to arbitration under the Law of the Sea Convention.

Senator LEE. May the Senate not err twice.

The CHAIRMAN. Ratified. It seems to be working pretty well without problems. That, incidentally, was passed out under Chairman Jesse Helms. So——

Yes, Mr. Negroponte.

Ambassador NEGROPONTE. Senator, I just had one point that I wanted to make with respect to how adhering to the treaty might be helpful in some circumstances with respect to our naval activities and operations and Coast Guard. And clearly, when you boil it down to a polar choice between the use of force and the application of law, well, the application of American military force is likely to win every time. I don't question that.

But let us take the Proliferation Security Initiative, for example. There are instances where countries, friendly countries, have either had reservations and may even in some instances have declined to cooperate with us on a particular PSI mission because we are not party to the Law of the Sea. So that is an example of where I think the cooperative atmosphere on an issue of real security importance to the United States could improve if we accede to the treaty.

The case of China and their exaggerated claims to the South China Sea, they are out of sync and out of line with the Law of the Sea because of the way they draw their baselines and their historical interpretation of their jurisdiction over those seas. And the best arguments are that they are not applying the principles that are embodied in the Law of the Sea.

Well, we are disadvantaged in making that argument to them and along with other countries in Southeast Asia because we are not parties to the Convention. So, I mean, I can think of a number of instances where the application——

And then the last one I guess I would cite is the passage, free passage through straits. I think we got—I mean, that was a really major accomplishment in the Law of the Sea Treaty. Think of the complications we might have if we developed an antagonistic relationship with a particular country that decided it wanted to make it difficult for the free navigation through straits for either surface or other kinds of vessels.

So those are three examples I can think of where the treaty—and I don't think it is wrong for Mr. Groves to use the word "enhance." But diplomacy has its limitations, but it can still be positive. "Enhance" is a positive word.

Senator LEE. Thank you.

The CHAIRMAN. Well, let me wrap this up a little bit, if I can, because we are under certain time constraint here.

First of all, you all have been terrific, and I mean everybody. I think it has been very, very helpful to have this kind of back and forth.

I would just say to Senator Lee and some of the others and Mr. Groves that you are operating on the principle that the United States has already established full jurisdiction and control over the Extended Continental Shelf. And I see you nodding to say that. And you point to the 1945 proclamation by Harry Truman regarding the Outer Continental Shelf Lands Act.

The problem is that nowhere in that proclamation or anywhere else has President Truman or anyone else set out the longitude and latitude markers of the outer edge of our Continental Shelf. And the only way we can achieve certainty with respect to those demarcations is through an international agreement of some kind.

Now we are not going to go on at length about that. I do want to pursue this, and we may well have some of you back or all of you back at some point in time here to—when we get this paper and we get people's answers and we get the answer on the record.

I am concerned, Secretary Rumsfeld, about a recommendation for United States businesses to have to joint venture with another country to exploit our resources or what might be our resources. That really concerns me. I mean, if you want to talk about American sovereignty and American interests, I don't want to share it with another country.

And under this treaty, if you import what you exploit, you don't have to pay any royalty. Royalty free if you are importing it to your country.

So that is an extraordinary offering, and it comes to the real nub of this choice that we face, which I think Mr. Bellinger put his finger on, which is this is not a choice between sort of a flawed treaty and what the impact might be, and do you take some benefits in exchange for that? Or if you don't do it, you go out and get the same benefits.

I think one of you suggested we ought to be doing these programs of distribution to these countries through our aid program. I don't know if you have been following the budget lately, but we ain't growing our aid programs. We are shrinking them.

Our influence in the Middle East significantly reduced by our inability to be able to effect things, our ability to do counterterrorism, our ability to bring 60 percent of the populations of some Arab countries out of destitute poverty because of the absence of anything remotely resembling a Marshall Plan or anything like it in modern context is palpable.

Sixty percent of these populations under the age of 25; 50 percent under the age of 21; 40 percent under the age of 18. Some countries have 4 and 5 percent of their population at 4 years old. And the question is, What are we all going to do about that?

The idea that there may be some resources coming from something like this that goes to some of these countries may be a saving grace. And Senator Lugar has raised this question about sort of do you maybe get a trillion dollars or whatever you might get out of it. If you are seeing an untoward distribution of that, you do have this ability to get out of it, as I have said.

But the bottom line is this, if we don't do it, there are no royalties, and there is no guarantee that anybody is going to drill. And the only reason I can say that to you is that the CEOs and legal departments of these companies are telling us that.

Now you can choose not to believe Fortune 500 CEOs and their stock value interests and all the rest of it. It would be the first time I have known the Republican Party not to put some credibility in what they are saying.

But you know, that is the choice here. It seems to me we have to keep this framed properly. So we will have additional hearings, and we will continue to explore this.

You all have been enormously helpful in fleshing out a number of these considerations. The record is getting stronger as a result in terms of people's ability to make judgments, and that is what we want to do.

So I am very grateful to all of you for coming. And to both the Secretaries, we are really pleased to see you continuing to dig in and to contribute, and we are delighted to have you here today. Thank you all very, very much.

We stand adjourned.

The record will stay open for a week, as it will from this morning's hearing, and we will be building the record in a written fashion also.

Thank you.

[Whereupon, at 4:55 p.m., the hearing was adjourned.]

Letters and Additional Material Submitted for the Record

Letters Submitted by Senator John F. Kerry

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Robert J. Stevens
Chairman and Chief Executive Officer

May 17, 2012

The Honorable John Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510-6225

Dear Chairman Kerry:

I am writing to express Lockheed Martin Corporation's strong support for speedy ratification of the Law of the Sea (LOS) Treaty. Ratification is now critical to the important U.S. economic and national security interests advanced by access to the vast mineral and rare earth metals resources on the ocean floor. These mineral resources are vital to a wide array of defense and high-tech manufacturing products and systems – computers, mobile phones, lasers, aircraft engines, specialty glass, and missile guidance systems are just a few of the many products that contain rare earth metals. Considerable financial investment is required to access these mineral reserves and ensure that the U.S. has a reliable long-term source of supply that cannot be interrupted, monopolized, or otherwise controlled by foreign governments. That investment is only going to be secured for rights clearly recognized and protected within the established treaty-based framework.

Lockheed Martin has maintained U.S.-licensed deep seabed claims since the 1980s. These are currently the only active U.S.-based claims. While we had made considerable investment in exploratory activities, market conditions did not support additional investment – until now. Based on Lockheed Martin's analysis, the poly-metallic nodules on the deep seabed floor are composed of manganese, nickel, copper, cobalt, and other minerals, to include rare earth elements. The increased value of the mineral resources in our claim sites, the improvements in technologies for accessing them, and the need to develop new sources of such minerals – for rare earth metals in particular – have now produced a favorable business environment in which to exploit these claims. However, the multi-billion dollar investments needed to establish an ocean-based resource development business must be predicated upon clear legal rights established and protected under the treaty-based framework of the LOS Convention, including the International Seabed Authority (ISA).

Other international players recognize this same reality and are acting upon it. Countries (including China and Russia) are moving forward aggressively within the Treaty framework, and several of these countries currently hold exploration licenses from the International Seabed Authority. As has been widely reported, China already holds a monopoly on available land-based rare earth metals, and now holds one of the four deep seabed exploration licenses issued over the past year. Countries have also asked the ISA to begin development of rules for harvesting ocean minerals. Unfortunately, without ratifying the LOS, the United States cannot

sponsor claims with, or shape the deep seabed rules of, the ISA. Yet, that is the critical path forward if the United States intends to expand and ensure access – for both U.S. commercial and government interests – to new sources of strategic mineral resources.

We are committed to supporting the effort to ratify the Law of the Sea Treaty this year so that the United States can assume a leadership role in, and protect its rights through, the International Seabed Authority.

Sincerely,

Robert J. Stevens

Bill Smith
President
AT&T Network Operations

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November 7, 2011
The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary:

As a major U.S. user of the international seabed in relation to our ownership of submarine cable systems, AT&T Inc. ("AT&T") supports U.S. accession to the Law of the Sea Convention. We do so because the Convention improves protections for international submarine cables, provides compulsory dispute resolution procedures concerning these cables, and expands the right to lay and maintain them. This is important to the U.S. economy given the rapid growth of global trade and the central role of telecommunications in today's global economy.

Like other U.S. telecommunications providers, AT&T uses international submarine cables to carry virtually all its Internet and voice and data telecommunications traffic outside North America. AT&T, through its affiliates, owns interests in over 80 international submarine cable systems covering more than 425,000 fiber route miles and operates an advanced global backbone network that serves customers around the world and carries more than 18.7 petabytes of data per average business day.

As the result of massive, fast-increasing Internet usage and the rapid globalization of business, total U.S. submarine cable circuit capacity grew from 429,000 circuits to over 270 million circuits from 1995 through 2009 – an increase of more than 63,000 percent. These submarine cables provide backbone international transmission facilities for the global Internet, electronic commerce and other international voice and data communications services that are major drivers of the 21st Century global information-based economy.

Submarine cables are vulnerable to damage by ship anchors, commercial fishing activities, natural events such as earthquakes, and other causes, resulting in approximately 200 outages each year on submarine cables throughout the world. The broad impact of some recent outages underscores the importance of taking all appropriate measures to protect these critically important global network facilities from damage and disruption. In February 2008, breaks in four cables in the Mediterranean and Persian Gulf caused Internet outages across the Middle East, cut bandwidth capacity to India by half and seriously affected India's outsourcing business. A similar event impacting the Middle East and India occurred once again in December 2008. In December 2006, an earthquake damaged nine submarine cables in the Strait of Luzon between Taiwan and the Philippines, disrupting Internet traffic and financial markets in South East Asia. As these incidents demonstrate, in the age of globalization and the free flow of cross-border data traffic, the reliability of submarine cables is more important than ever before.

The Law of the Sea Convention significantly improves legal protections for international submarine cables, and in so doing, protects the interests of U.S. owners of submarine cable systems such as AT&T. Indeed, in the negotiation of the Convention in the early 1980's, the U.S. was a major proponent of expanding protections for submarine cables because of the concerns of the U.S. telecom industry. These expanded rights apply regardless of whether submarine cables are used in communications, science, power, or military applications.

The Convention expands the right to lay and maintain submarine cables in the oceans of the world. Articles 58, 79 and 112 establish the rights of nations and private parties to lay and maintain submarine cables on the continental shelf, in the Exclusive Economic Zone (EEZ) and on the bed of the high seas. These articles – when supplemented by the compulsory dispute resolution procedures available to parties to the Convention under Article 297 – provide important recourse for AT&T and other U.S. submarine cable operators against onerous and unreasonable permitting requirements by coastal states that may impede the timely repair and maintenance of undersea cables, or delay the construction of new cables.

Articles 58, 100 and 101 require states to cooperate to the fullest extent possible in the repression of piracy, including acts of depredation against property, such as submarine cables, in the EEZ and on the high seas. Article 113 requires that all states must adopt laws that make damage to submarine cable, done willfully or through culpable negligence, and conduct likely to cause such harm, a punishable offense. Article 114 requires submarine cable owners that damage other cables in laying or repairing their cables to bear the cost of repairs. Article 115 provides that vessel owners, who can prove they sacrificed an anchor or fishing gear to avoid damaging a cable, can recover their loss against the cable owner, provided the vessel took reasonable precautionary measures beforehand.

Additionally, Article 297 provides parties to the Treaty with compulsory dispute resolution procedures for the provisions concerning submarine cables. Having rights to this dispute resolution process is a key benefit of U.S. accession to the Convention, and one that does not exist for the U.S. presently. Although the U.S. already benefits to some extent from aspects of the Convention as customary international law, it cannot take action under the important dispute resolution provisions until the U.S. accedes to the Convention.

In conclusion, it has never been more important to our U.S. economic infrastructure, and our participation in the global economy, to strengthen the protection and reliability of international submarine cables. The Law of the Sea Convention, particularly as assisted by the enforcement mechanisms available to parties under Article 297, is a critical element of this protection. AT&T therefore supports U.S. Senate ratification of the Law of the Sea Convention at the earliest opportunity.

We would be pleased to answer any questions that you or your staff may have.

Sincerely,

Bill Smith

Bill Smith
President-AT&T Network Operations

cc: The Honorable John F. Kerry, Chairman, Committee on Foreign Relations, U.S. Senate
The Honorable Richard G. Lugar, Ranking Minority Member, Committee on Foreign Relations, U.S. Senate

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

November 3, 2011

The Honorable John F. Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Chairman Kerry and Ranking Member Lugar:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, supports U.S. accession to the United Nations Convention on the Law of the Sea (the "Law of the Sea Convention" or "Convention"). Accession would provide American businesses certainty and legal equality to the largest of the Exclusive Economic Zones ("EEZ") available under the Law of the Sea Convention, and the corresponding natural resources and shipping rights of way. Accession would also provide much-needed certainty and predictability to claims of control over territory in the Arctic, enhancing our national security.

The Law of the Sea Convention secures each coastal nation's sovereign rights over living and non-living resources and the marine environment of the 200-mile EEZ. The Convention also provides favorable conditions for securing access to the continental shelf beyond 200 nautical miles. Given that Alaska's continental shelf may extend as far as 600 nautical miles, proper delineation of the extended continental shelf could bring an additional 4.1 million square miles of ocean under U.S. sovereign rights—an area larger than the entire lass mass of the lower 48 states. The Convention also provides a mechanism for U.S. companies to obtain access to minerals contained under the deep seabed in areas beyond national jurisdiction.

The Chamber remains concerned with the Convention's vague, overbroad environmental provisions, which could be interpreted in a way that conflicts with our nation's environmental statutes, such as the Clean Air Act and Clean Water Act. To combat this problem, the Chamber urges the Senate, in its advice and consent, to state clearly that the Convention's environmental provisions are not self-executing, and that U.S. accession to the Convention does not create private rights of action or domestic legal rights against the U.S. government or its nationals.

Accession to the Law of the Sea Convention would protect U.S. claims to the vast natural resources contained on the ocean floor, and would ensure that ships sailing under the American flag travel safely and securely through international waters.

The U.S. Chamber supports U.S. accession to the United Nations Convention on the Law of the Sea and urges members to concur in U.S. accession to the Convention.

Sincerely,

R. Bruce Josten

cc: Members of the Senate Committee on Foreign Relations

Jack N. Gerard
President and Chief Executive Officer

1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8500
Fax 202-682-8110
Email gerardj@api.org
www.api.org

October 31, 2011

The Honorable Hillary Rodham Clinton
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Dear Madam Secretary.

I am writing to express the American Petroleum Institute's support for U.S. accession to the Law of the Sea Convention. The API is a national trade association that represents over 480 members involved in all aspects of the oil and natural gas industry, including the exploration and production of both onshore and offshore federal resources.

We agree that U.S. participation in the Convention is vital at this time. The Convention provides legal certainty and equality among parties by securing each coastal nation's exclusive rights to the living and non-living resources of the 200-mile exclusive economic zone (EEZ) and establishes clear, objective means of determining the outer limit of the shelf. Accession will provide greater energy security by securing the United States' exclusive rights for oil and gas production in the extended continental shelf.

It is estimated that proper delineation of the extended continental shelf would bring an additional 4.1 million square miles of ocean under U.S. sovereign rights. New technologies are enabling the industry to extend its search for new sources for oil and gas out to and beyond 200 miles for the first time. Accession to the Convention would further spur development of such technologies and encourage investment in these areas by U.S. oil and gas operators.

Many countries are actively working through the Convention to secure access to define the outer limits of their extended shelf areas – particular countries such as Russia, Denmark and Norway who border the Arctic where it is estimated that one quarter of the world's undiscovered oil and natural gas lies. Joining the Convention would enable the U.S. to place experts on the select treaty bodies dealing with these issues.

We believe that it is now time for action on the Law of the Sea. The U.S. can no longer afford to wait to secure access to the vital resources that lie within them. API appreciates the opportunity to express its support for ratification of the Convention, and I look forward to meeting with you personally where we can discuss the issue in more detail. If you have any questions, please contact me at (202) 682-8500.

Sincerely,

Jack N. Gerard
President and Chief Executive Officer

ExxonMobil

June 8, 2012

The Honorable John Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

The Honorable Richard Lugar
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Chairman Kerry and Ranking Member Lugar:

Thank you for renewing the Senate's consideration of U.S. accession to the United Nations Convention on the Law of the Sea (UNCLOS). ExxonMobil supports the U.S. Senate's consent to ratification of the UNCLOS.

As an American company engaged in the global market for energy development, ExxonMobil is interested in exploring for oil and gas resources that may exist under the vast new areas that are recognized for sovereignty purposes under the UNCLOS. The exploration and development of offshore resources is complicated and costly, and operating in the extended areas addressed under UNCLOS will be even more so. Before undertaking such immense investments, legal certainty in the property rights being explored and developed is essential.

Perhaps the best example of the need for certainty in an area with great unexplored potential involves the Arctic Ocean. The harsh and unique geographical attributes of the Arctic make responsible exploration and development extremely ambitious. Several countries, including the United States, are provided with a claim to extended exploitation rights under the application of UNCLOS in the Arctic. The legal basis of claims is an important element to the stability of property rights. With this basis established, there are often competing claims after the proper application of UNCLOS. These overlapping claims exist in the Arctic. UNCLOS can provide an efficient, comprehensive legal basis for the settlement of these conflicting claims, thus providing the stability necessary to support expensive exploration and development.

For ExxonMobil, delay in U.S. accession adds two layers of uncertainty. The first involves the international status of the United States' own claims, and the second involves the claims of other countries that — absent U.S. accession — may someday be challenged by the United States. In both instances, whether we may be developing extended U.S. resources or those of another Arctic nation, the lack of legal certainty unnecessarily clouds our investment motivation. It also could cause American

companies like ours, who act in compliance with international law, to be disengaged and potentially disadvantaged in regard to such areas over the longer-term in the global energy marketplace.

ExxonMobil understands the issues being raised against the UNCLOS, and we have great respect for those who have strong countervailing opinions. As a private enterprise, it is not our role or intention to debate the extent to which a measure of sovereignty may be lost under this treaty as compared to others, or the manner in which royalties may be spent once we make our payments to a national government as required. We do want to express, however, why U.S. accession is important to our company — and arguably to America's energy security — as we make multi-billion dollar decisions on behalf of our shareholders, and why we support positive Senate action on UNCLOS in 2012.

Again, thank you for your efforts to move forward on the Senate's consideration of the UNCLOS.

Sincerely,

c: The Honorable Hillary Clinton
U.S. Secretary of State
The Honorable Leon Panetta
U.S. Secretary of Defense

June 13, 2012

The Honorable John F. Kerry
Chairman
Committee on Foreign Relations
United States Senate
Washington, DC 20510

The Honorable Richard G. Lugar
Ranking Member
Committee on Foreign Relations
United States Senate
Washington, DC 20510

Dear Chairman Kerry and Ranking Member Lugar:

The undersigned organizations strongly support U.S. accession to the United Nations Convention on the Law of the Sea (the "Law of the Sea Convention" or "Convention"). Accession would provide American businesses certainty and legal equality to the largest of the Exclusive Economic Zones ("EEZ") available under the Law of the Sea Convention, and the corresponding natural resources and shipping rights of way. Accession would also provide much-needed certainty and predictability to claims of control over territory in the Arctic, enhancing our national security.

Now that new technologies and changed conditions have made it cheaper and easier to access the potential wealth beneath the oceans, the business community simply cannot afford to have the U.S. remain on the sidelines. Energy companies need the certainty the Convention provides in order to explore beyond 200 miles and to place experts on international bodies that will delineate claims in the Arctic. The telecommunications industry needs the Convention to expand the right to lay and maintain submarine cables in the oceans of the world and provide stronger protections for cables against damage by other parties. A wide range of domestic industries, including aerospace, defense, and consumer electronics, need the Convention to enable access to a new source of mineral resources, including rare earth minerals, which lie in massive deposits on and beneath the deep seabed floor.

The Law of the Sea Convention secures each coastal nation's sovereign rights over living and non-living resources and the marine environment of the 200-mile EEZ. The Convention also provides favorable conditions for securing access to the continental shelf beyond 200 nautical miles, which is important given that Alaska's shelf may extend as far as 600 nautical miles. Proper delineation of the extended continental shelf could bring an additional 4.1 million square miles of ocean under U.S. sovereign rights—an area larger than the lower 48 states. The Convention also provides a mechanism for U.S. companies to obtain access to minerals of the deep seabed in areas beyond national jurisdiction.

Accession to the Law of the Sea Convention is the only means to protect and advance the claims of U.S. entities to the vast mineral resources contained on the deep seabed floor, and would ensure that ships flying American flags travel safely and securely through international waters. To date, 161 countries and the European Community have signed and ratified the Convention. Despite bipartisan support, the United States remains the primary industrialized nation not to have ratified the Convention. Any remaining concerns—such as the Convention's

broad, vague environmental provisions—can and should be addressed by the Senate during its advice and consent.

The undersigned organizations strongly urge accession to the Convention on the Law of the Sea.

Sincerely,

American Petroleum Institute
Chamber of Shipping of America
Financial Services Roundtable
International Association of Drilling Contractors
Marine Retailers Association of the Americas
National Association of Manufacturers
National Marine Manufacturers Association
North American Submarine Cable Association
RARE, The Association for Rare Earth
TechAmerica
Telecommunications Industry Association
U.S. Chamber of Commerce

cc: The Members of the United States Senate

LETTER FROM HERITAGE SUBMITTED FOR THE RECORD BY SENATOR JAMES E. RISCH

June 14, 2012

Senator John Kerry
Chairman
Senator Richard Lugar
Ranking Member
Senate Foreign Relations Committee
SR-201 Russell Senate Office Building
Washington, DC 20510-0802

Dear Senator Kerry:

As former government officials with significant national security experience, we write in opposition to U.S. accession to the United Nations Convention on the Law of the Sea, also known as the Law of the Sea Treaty (LOST).

Contrary to the claims of many treaty proponents, the treaty is not something we have "always honored in practice." Instead, it represents a radically new comprehensive legal regime for international management of oceanic resources, including the deep seabed. The deeply flawed treaty deserves serious consideration and close scrutiny on every single element, not finely calibrated congressional testimonies that ignore the treaty's most dangerous provisions.

Most of the proponents' rhetoric and testimony centers on the navigational provisions of the treaty. Proponents will note the Navy's support for LOST without mentioning that its focus is almost exclusively on the navigational rights and freedoms contained within the convention, which are coincidentally its least controversial provisions.

Senators must understand that U.S. membership in the treaty would not confer any maritime right or freedom that the U.S. does not already enjoy. In fact, General Martin E. Dempsey, the current chairman of the Joint Chiefs of Staff, testified on May 23 that if the treaty remains unratified, the United States "will, of course, assert our sovereignty and our ability to navigate" and "our ability to project force will not deteriorate."

Navigational rights and freedoms enjoyed by the United States and the Navy are guaranteed not by membership in a treaty, but rather through a combination of long-standing principles of customary international law and persistent naval operations. Indeed, for more than 200 years the United States has successfully preserved and protected its navigational rights and freedoms by relying on naval operations, diplomacy, and customary international law.

While America has little to gain through accession, it has much to lose within the new comprehensive legal regime.

Nearly all of the concerns surrounding the treaty stem from the creation of the International Seabed Authority (ISA). Based in Kingston, Jamaica, the new, U.N.-style bureaucracy is supposed to make decisions by consensus; however, nothing prevents the rest of the "international community" from consistently voting against our national interest, as regularly occurs in similar U.N. bodies such as the General Assembly.

Additionally, the treaty contains compulsory dispute resolution mechanisms, and the impact of adverse judgments against the United States is a concern. Article 296 of the convention, titled "Finality

and binding force of decisions," states, "Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute."

Alarmingly, no comprehensive study of the potential legal, economic, political, and military consequences of adverse judgments stemming from these tribunals has been conducted. What is clear, though, is that America could be exposed to countless baseless environmental lawsuits designed to injure U.S. interests and limit U.S. freedom.

Through such suits and subsequent judgments, activists within the United States and abroad could accomplish through international litigation what they could not achieve through the democratic processes established by the U.S. Constitution. Such scenarios threaten America's economic prosperity and, more broadly, pose an existential threat to America's representative democracy.

The treaty would also negate U.S. law, which currently states that mineral resources on and below the surface of the continental shelf are held by the federal government for the benefit of the American people. Article 82 of the treaty takes a significant portion of the current flow of royalties into the U.S. Treasury from recovery of natural resources from the U.S. extended continental shelf and diverts it to the ISA, which then would redistribute that American money among other countries that are parties to the treaty.

Finally, Senators should understand that President Reagan if he were alive today would undoubtedly still reject the treaty.

The 1994 revisions negotiated during the Clinton administration failed to address several critical flaws. For example, the 1994 agreement failed to address, much less fix, provisions guaranteeing "national liberation movements" full rights and benefits under the treaty. President Reagan was also repelled by the existence and structure of the ISA. In 1978, he declared that "no national interest of ours could justify handing sovereign control of two-thirds of the earth's surface to the Third World."

For these reasons, and many others, we urge the Senate to continue to reject the United Nations Convention on the Law of the Sea.

Sincerely,

The Honorable Donald Rumsfeld*	Secretary of Defense (Ford, Bush-43)
Ambassador John Bolton	Assistant Attorney General, Department of Justice (Reagan); Assistant Secretary of State for International Organization Affairs (Bush-41); Under Secretary of State for Arms Control and International Security and U.S. Permanent Representative to the United Nations (Bush-43)
The Honorable Edwin Meese	Attorney General (Reagan)
Rear Admiral James Lyons (Ret.)	Commander-in-Chief of the U.S. Pacific Fleet; Senior U.S. military representative to the United Nations (Reagan)
Rear Admiral James J. Carey (Ret.)	Chairman of the U.S. Federal Maritime Commission (Reagan)
Admiral J. William Middendorf II	Secretary of the Navy (Ford)
The Honorable Tidal W. McCoy	Acting Secretary of the Air Force and Assistant Secretary of the Air Force (Reagan)
Frank J. Gaffney, Jr.	Assistant Secretary of Defense (Acting) (Reagan)

Col. Larry T. Wortzel (Ret.)	Commissioner, U.S.-China Security Review Commission
The Honorable James Talent	U.S. Senator from Missouri; Vice Chairman, Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism
Douglas Feith	Deputy Under Secretary of Defense for Policy (Bush-43); Middle East specialist on the National Security Council; Deputy Assistant Secretary of Defense for Negotiations Policy (Reagan)
Becky Norton Dunlop	Deputy Assistant to President (Reagan)
Ambassador Robert G. Joseph	Under Secretary of State for Arms Control and International Security Affairs (Bush-43)
John Yoo	Deputy Assistant Attorney General, U.S. Department of Justice (Bush-43); General Counsel, Senate Judiciary Committee (1995-96)
Ambassador Henry Cooper	Chief Negotiator, Geneva Defense and Space Talks; Assistant Director, Arms Control and Disarmament Agency; and Deputy Assistant Air Force Secretary (Reagan); SDI Director (Bush-41)
Lieutenant General Edward L. Rowny (Ret.)	Chief U.S. Negotiator, Arms Control and Disarmament Agency (Reagan)
Michelle Van Cleave	National Counterintelligence Executive (Bush-43); Assistant Director & General Counsel, White House Science Office (Reagan, Bush-41)
Kim R. Holmes	Assistant Secretary of State for International Organization Affairs (Bush-43)
David B. Rivkin, Jr.	Deputy Director, Office of Legal Policy, Department of Justice; Associate General Counsel, Department of Energy (Bush-41)
Lee A. Casey	Attorney-Advisor, Office of Legal Policy and Office of Legal Counsel, Department of Justice (Bush-41)
General John L. Piotrowsky, USAF(Ret.)	Commander in Chief, North American Aerospace Defense Command (NORAD) and U.S. Space Command (Reagan)
William R. Van Cleave	Director, Department of Defense transition team (Reagan)
George S. Dunlop	Principal Deputy Assistant Secretary of the Army, 2001-2009
Dominic Izzo	Principal Deputy Assistant Secretary of the Army, 2001-2002
Joshua Gilder	Principal Deputy Assistant Secretary of Human Rights and Humanitarian Affairs, Department of State, (Bush-41)
Kenneth deGraffenreid	Special Assistant to the President for National Security Affairs and Senior Director for Intelligence Programs, National Security Council (Reagan)

*Titles are former government positions, unless otherwise noted

PAPER BY BERNIE OXMAN SUBMITTED FOR THE RECORD
BY HON. JOHN B. BELLINGER III

LAW OF THE SEA FORUM: THE 1994 AGREEMENT ON IMPLEMENTATION OF THE SEABED PROVISIONS OF THE CONVENTION ON THE LAW OF THE SEA

THE 1994 AGREEMENT AND THE CONVENTION

In June 1994, some twelve years after the conclusion of the Third UN Conference on the Law of the Sea, the UN Secretary-General reported to the General Assembly that informal consultations had led to agreements that appeared to have removed the obstacles to general adherence to the 1982 UN Convention on the Law of the Sea.[1]

The history of the Convention since 1982 is widely known. In 1982 President Reagan declared that the United States would not sign the Convention because of objections to Part XI, the proposed regime for deep seabed mining. Most other industrialized states signed but withheld ratification while work proceeded in the Preparatory Commission. Most developing states signed the Convention and the number of ratifications increased slowly.

In July 1990, UN Secretary-General Javier Pérez de Cuéllar initiated informal consultations to attempt to meet the objections of the industrialized states. His successor, Boutros Boutros-Ghali, continued those consultations and saw them to conclusion. A new sense of urgency was introduced into the consultations in 1993 when it became apparent that the Convention would receive the number of ratifications necessary for entry into force before the end of 1994.

As reported by the Secretary-General, the consultations resulted in:

> — a draft "Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982"; and
>
> — a draft resolution by which the UN General Assembly would adopt the Agreement and urge states to adhere to it and to the Convention.[2]

The resolution was adopted by the General Assembly at a resumed forty-eighth session on July 28, 1994, by a vote of 121 in favor, none against, and 7 abstentions.[3] The Agreement was opened for signature the next day. Over fifty states have already signed the Agreement, including the United States and virtually all other industrialized states.

THE AGREEMENT, THE CONVENTION AND U.S. POLICY

The 1994 Agreement provides, in Article 2, that it is to be interpreted and applied together with Part XI of the Convention as a single instrument; in the

[1] United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, UN Doc. A/CONF.62/122 (1982), *reprinted in* UNITED NATIONS, OFFICIAL TEXT OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH ANNEXES AND INDEX, UN Sales No. E.83.V.5 (1983) [hereinafter LOS Convention].

[2] UN Doc. A/48/950 (1994).

[3] GA Res. 48/263 (July 28, 1994). The new Agreement is annexed to the resolution, and is hereinafter cited as the Agreement. Russia abstained in the vote to adopt the resolution and Agreement on the grounds that the new provisions regarding pioneer investors discriminate in favor of the United States. The same objection to different provisions was proffered to explain the Soviet abstention in the vote in 1982 on adoption of the Convention by the Law of the Sea Conference.

event of inconsistency between them, the Agreement will prevail. It may take some time before states that have not yet ratified the Convention become party to the Convention and the 1994 Agreement.[4] More than sixty states, however, have already ratified the Convention, which enters into force for them on November 16, 1994; it would have been unrealistic to expect that before that date all of them would become party to the new Agreement as well. The Agreement therefore contains liberal terms for its provisional application by all, and affords states several years to become party to both the Agreement and the Convention.[5] With a large number of states, including industrial states, accepting provisional application, one may expect that Part XI will be implemented from the outset in accordance with the new Agreement and with representative participation in decision-making organs.

The purpose of the 1994 Agreement is to enhance the prospects for widespread ratification of the Convention by responding to problems with the deep seabed mining regime in Part XI, particularly those that troubled industrial states, including the United States. The Agreement is designed also to respond to developments in the decade since Part XI was completed, specifically "the growing concern for the global environment," and "political and economic changes, including in particular a growing reliance on market principles."

It may be instructive to consider how the 1994 Agreement responds to the problems identified and the concerns expressed by the United States when it sought, without success, to change Part XI in 1982.

U.S. policy regarding the 1982 Convention, as enunciated by the Reagan administration,[6] may be summarized as follows. "While most provisions of the draft convention are acceptable and consistent with U.S. interests, some major elements of the deep seabed mining regime are not acceptable."[7] The United States "has a strong interest in an effective and fair Law of the Sea treaty which includes a viable seabed mining regime."[8] It was "not seeking to change the basic structure

[4] Article 4 of the Agreement provides:

> 1. After the adoption of this Agreement, any instrument of ratification or formal confirmation of or accession to the Convention shall also represent consent to be bound by this Agreement.
>
> 2. No State or entity may establish its consent to be bound by this Agreement unless it has previously established or establishes at the same time its consent to be bound by the Convention.

Paragraph 5 of the resolution adopting the Agreement contains essentially the same language.

[5] Pursuant to Article 7, pending entry into force of the Agreement, and absent written notification to the contrary by the state concerned, states that either consented to adoption of the Agreement in the General Assembly, or sign or adhere to the Agreement, or consent in writing to its provisional application "shall apply this Agreement provisionally in accordance with their national laws and regulations, with effect from 16 November 1994" or such later date as this obligation is applicable to them. Should the Agreement enter into force before November 16, 1998, provision is made for grace periods extending up to that date for states that have not completed the ratification process. Agreement, annex, sec. 1, para. 12.

[6] The Reagan administration's statements quoted hereinafter appear in the following documents: Statement by the President, *U.S. Policy and the Law of the Sea*, Jan. 29, 1982, DEPT. ST. BULL., Mar. 1982, at 54; White House Fact Sheet [accompanying Presidential Statement], Jan. 29, 1982, *id.* at 54–55; Statement by Ambassador James L. Malone, Special Representative of the President, before the House Merchant Marine and Fisheries Committee, Feb. 23, 1982, *id.*, May 1982, at 61–63; Statement by the President, July 9, 1982, *id.*, Aug. 1982, at 71; Statement by Ambassador James L. Malone, Special Representative of the President, before the House Foreign Affairs Committee, Aug. 12, 1982, *id.*, Oct. 1982, at 48–50.

[7] Statement by the President, Jan. 29, 1982, note 6 *supra*.

[8] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.

of the treaty" or "to destroy the system" but "to make it work for the benefit of all nations to enhance, not resist, seabed resource development."[9] If negotiations could fulfill six key objectives with respect to the deep seabed mining regime, the "Administration will support ratification" of the Convention.[10] It was the administration's "judgment that, if the President's objectives as outlined are satisfied, the Senate would approve the Law of the Sea treaty."[11]

The six objectives identified by President Reagan required a deep seabed mining regime that would:

- Not deter development of any deep seabed mineral resources to meet national and world demand;
- Assure national access to these resources by current and future qualified entities to enhance U.S. security of supply, to avoid monopolization of the resources by the operating arm of the international authority, and to promote the economic development of the resources;
- Provide a decisionmaking role in the deep seabed regime that fairly reflects and effectively protects the political and economic interests and financial contributions of participating states;
- Not allow for amendments to come into force without approval of the participating states, including, in our case, the advice and consent of the Senate;
- Not set other undesirable precedents for international organizations; and
- Be likely to receive the advice and consent of the Senate. In this regard, the convention should not contain provisions for the mandatory transfer of private technology and participation by and funding for national liberation movements.[12]

How the 1994 Agreement responds to U.S. objections and U.S. requirements may be considered under several headings.

Decision Making

Like many international organizations, the International Sea-Bed Authority established by the Convention will have an Assembly in which all parties are represented, a Council of limited membership, and specialized elected organs also of limited membership.

1982 text: While all specific regulatory powers with regard to deep seabed mining are reposed exclusively or concurrently in the Council, Article 160 gives the Assembly "the power to establish general policies."

Problem: "Policymaking in the seabed authority would be carried out by a one-nation, one-vote assembly."[13]

Response: The 1994 Agreement qualifies the general policy-making powers of the Assembly by requiring the collaboration of the Council. It also provides: "Decisions of the Assembly on any matter for which the Council also has competence or on any administrative, budgetary or financial matter shall be based on the

[9] Statement by the Special Representative of the President, Aug. 12, 1982, note 6 *supra*.

[10] Statement by the President, Jan. 29, 1982, note 6 *supra*.

[11] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.

[12] Statement by the President, Jan. 29, 1982, note 6 *supra*. The White House Fact Sheet accompanying the President's announcement of the six objectives in January 1982, and congressional testimony by the President's special representative later that year, identified the elements in the Part XI regime that related to one or more of those objectives. Note 6 *supra*.

[13] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.

recommendations of the Council."[14] The Assembly may either approve the recommendations or return them.[15]

Problem: "The executive council which would make the day-to-day decisions affecting access of U.S. miners to deep seabed minerals would not have permanent or guaranteed representation by the United States."[16]

Response: The new Agreement guarantees a seat on the Council for "the State, on the date of entry into force of the Convention, having the largest economy in terms of gross domestic product."[17] That state is the United States.

1982 text: Consensus on the thirty-six-member Council is required for such matters as proposing treaty amendments; adopting rules, regulations and procedures; and distributing financial benefits and economic adjustment assistance.[18] Other substantive Council decisions require either a two-thirds or three-quarters vote.[19]

Problem: The "United States would not have influence on the council commensurate with its economic and political interests."[20] "The decisionmaking system should provide that, on issues of highest importance to a nation, that nation will have affirmative influence on the outcome. Conversely, nations with major economic interests should be secure in the knowledge that they can prevent decisions adverse to their interests."[21]

Response: The new Agreement establishes "chambers" of states with particular interests.[22] Two four-member chambers of the Council are likely to be effectively controlled by major industrial states, including the United States (which is guaranteed a seat in one of those chambers).[23] The Agreement provides that "decisions on questions of substance, except where the Convention provides for decisions by consensus in the Council, shall be taken by a two-thirds majority of members present and voting, provided that such decisions are not opposed by a majority in any one of the chambers."[24] Any three states in either four-member chamber may therefore block a substantive decision for which consensus is not required.

The Agreement further specifies: "Decisions by the Assembly or the Council having financial or budgetary implications shall be based on the recommendations of the Finance Committee."[25] The United States and other major contributors to the administrative budget are guaranteed seats on the Finance Committee, and the committee functions by consensus.[26]

This approach to voting enables interested states (including the United States) to block undesirable decisions. Because blocking power encourages negotiation of

[14] Agreement, annex, sec. 3, paras. 1, 4.

[15] *Id.*, para. 4. Rules, regulations and procedures adopted by the Council on prospecting, exploration and exploitation and the financial and internal management of the Authority remain in effect provisionally until approved by the Assembly or amended by the Council in light of the Assembly's views. LOS Convention, Art. 162, para. 2(o)(ii).

[16] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.

[17] Agreement, annex, sec. 3, para. 15(a).

[18] LOS Convention, Art. 161, para. 8(d).

[19] *Id.*, para. 8(b), (c).

[20] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.

[21] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.

[22] Agreement, annex, sec. 3, paras. 9, 10, 15.

[23] *Id.*, paras. 10, 15(a), (b). Major land-based producers and exporters of relevant minerals, such as Canada and Chile, would be represented in their own four-member chamber. *Id.*, para. 15(c).

[24] *Id.*, para. 5.

[25] *Id.*, para. 7.

[26] *Id.*, sec. 9, paras. 3, 8.

decisions desired by and acceptable to the states principally affected, it enhances affirmative as well as negative influence.

Production Limitation

Problem: "The United States believes that its interests . . . will best be served by developing the resources of the deep seabed as market conditions warrant. We have a consumer-oriented philosophy. The draft treaty, in our judgment, reflects a protectionist bias which would deter the development of deep seabed mineral resources."[27] Specifically, the "treaty would impose artificial limitations on seabed mineral production"[28] and "would permit discretionary and discriminatory decisions by the Authority if there is competition for limited production allocations."[29] The production ceiling is undesirable as a matter of principle and precedent,[30] and the process for allocating production authorizations is a significant source of uncertainty and discriminatory treatment impeding guaranteed access to minerals by qualified miners.[31]

Response: The new Agreement specifies that the provisions regarding the production ceiling, production limitations, participation in commodity agreements, production authorizations and selection among applicants "shall not apply."[32] In their place, the Agreement incorporates the market-oriented GATT restrictions on subsidies.[33] It prohibits "discrimination between minerals derived from the [deep seabeds] and from other sources,"[34] and specifies that the rates of payments by miners to the Authority "shall be within the range of those prevailing in respect of land-based mining of the same or similar minerals in order to avoid giving deep seabed miners an artificial competitive advantage or imposing on them a competitive disadvantage."[35]

Technology Transfer

Problem: "Private deep seabed miners would be subject to a mandatory requirement for the transfer of technology to the Enterprise and to developing countries."[36] This provision was considered burdensome, prejudicial to intellectual property rights, and objectionable as a matter of principle and precedent.[37]

Response: The new Agreement declares that the provisions on mandatory transfer of technology "shall not apply."[38] It substitutes a general duty of cooperation by sponsoring states to facilitate the acquisition of deep seabed mining technology, "consistent with the effective protection of intellectual property rights," if the Enterprise (the operating arm of the Sea-Bed Authority) or developing countries are unable to obtain such technology on the open market or through joint-venture arrangements.[39]

[27] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.
[28] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.
[29] Statement by the Special Representative of the President, Aug. 12, 1982, note 6 *supra*.
[30] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.
[31] Statement by the Special Representative of the President, Aug. 12, 1982, note 6 *supra*.
[32] Agreement, annex, sec. 6, para. 7.
[33] *Id.*, paras. 1(b), (c), 3.
[34] *Id.*, para. 1(d).
[35] Agreement, annex, sec. 8, para. 1(b).
[36] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.
[37] Statement by the Special Representative of the President, Aug. 12, 1982, note 6 *supra*.
[38] Agreement, annex, sec. 5, para. 2.
[39] *Id.*, para. 1(b).

Access

Problem: "The draft treaty provides no assurance that qualified private applicants sponsored by the U.S. Government will be awarded contracts. It is our strong view that all qualified applicants should be granted contracts and that the decision whether to grant a contract should be tied exclusively to the question of whether an applicant has satisfied objective qualification standards."[40]

Response: The new Agreement eliminates the provisions for choice among qualified applicants.[41] Access will be on a first-come, first-served basis. The qualification standards for mining applicants are to be set forth in rules, regulations and procedures adopted by the Council by consensus and "shall relate to the financial and technical capabilities of the applicant and his performance under any previous contracts."[42] If the applicant is qualified; if the application fee is paid; if procedural and environmental requirements are met; if the area applied for is not the subject of a prior contract or application; and if the sponsoring state would not thereby exceed maximum limits specified in the Convention, "the Authority shall approve" the application.[43] Its failure to do so will be subject to arbitration or adjudication.[44]

The new Agreement contains special voting rules that facilitate a decision to approve an application to explore or exploit minerals. In the Legal and Technical Commission, only a simple majority is required for recommending approval.[45] When that recommendation reaches the Council, the application is deemed approved unless disapproved within a prescribed period (normally sixty days) by the same vote required for substantive decisions.[46] Thus, any three industrial states in a four-member chamber may prevent disapproval.

The new Agreement accords important "grandfather" rights to the U.S. consortia that already have made investments under the U.S. Deep Seabed Hard Mineral Resources Act.[47] They are deemed to have met the necessary financial and technical qualifications if the U.S. Government, as the sponsoring state, certifies that they have made the necessary expenditures.[48] They are also entitled to arrangements "similar to and no less favourable than" those accorded investors of other countries that registered as pioneers with the Preparatory Commission prior to entry into force of the Convention.[49]

Problem: U.S. objectives "would not be satisfied if minerals other than manganese nodules could be developed only after a decision was taken to promulgate rules and regulations to allow the exploitation of such minerals."[50]

Response: The new Agreement requires the Council of the Authority to adopt necessary rules, regulations and procedures within two years of a request by a state whose national intends to apply for the right to exploit a mine site.[51] This

[40] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.

[41] Agreement, annex, sec. 6, para. 7.

[42] LOS Convention, Art. 161, para. 8(d), Art. 162, para. 2(o)(ii); Ann. III, Art. 4, paras. 1, 2, Art. 17, para. 1(b)(xiv).

[43] LOS Convention, Art. 162, para. 2(x); Ann. III, Art. 6, paras. 1–4, Art. 10; Agreement, annex, sec. 1, paras. 7, 13.

[44] LOS Convention, Arts. 187, 188, 286–88, 290; Agreement, annex, sec. 3, para. 12.

[45] Agreement, annex, sec. 3, para. 13; *see* LOS Convention, Arts. 163, 165.

[46] Agreement, annex, sec. 3, para. 11(a).

[47] 30 U.S.C. §§1401–1473 (1988 & Supp. IV 1992).

[48] Agreement, annex, sec. 1, para. 6(a)(i).

[49] *Id.*, para. 6(a)(iii).

[50] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.

[51] Agreement, annex, sec. 1, para. 15(b).

applies to manganese nodules or any other mineral resource. If the Council fails to complete the work on time, it must give provisional approval to an application based on the Convention and the new Agreement, notwithstanding the fact that the rules and regulations have not been adopted.[52]

The Enterprise

Problem: "The treaty would give substantial competitive advantages to a supranational mining company—the Enterprise."[53] It "creates a system of privileges which discriminates against the private side of the parallel system. Rational private companies would, therefore, have little option but to enter joint ventures or other similar ventures either with the operating arm of the Authority, the Enterprise, or with developing countries. Not only would this deny the United States access to deep seabed minerals through its private companies because the private access system would be uncompetitive but, under some scenarios, the Enterprise could establish a monopoly over deep seabed mineral resources."[54]

Response: The new Agreement provides: "The obligations applicable to contractors [private miners] shall apply to the Enterprise."[55] It requires the Enterprise to conduct its initial operations through joint ventures "that accord with sound commercial principles," and delays the independent functioning of the Enterprise until the Council decides that those criteria have been met.[56] The Agreement does not exclude the Enterprise either from the principle that mining "shall take place in accordance with sound commercial principles" or from its prohibitions on subsidies.[57] It specifies that the "obligation of States Parties to fund one mine site of the Enterprise . . . shall not apply and States Parties shall be under no obligation to finance any of the operations in any mine site of the Enterprise or under its joint-venture arrangements."[58] The Agreement also eliminates mandatory transfer of technology to the Enterprise and the potentially discriminatory system for issuing production authorizations.[59]

The Agreement makes clear that a private miner may contribute the requisite "reserved area" to the Enterprise at the time the miner receives its own exclusive exploration rights to a specific area (thus minimizing its risk and investment).[60] That miner has "the right of first refusal to enter into a joint-venture arrangement with the Enterprise for exploration and exploitation of" the reserved area, and has priority rights to the reserved area if the Enterprise itself does not apply for exploration or exploitation rights to the reserved area within a specified period.[61]

Finance

Problem: "The treaty would impose large financial burdens on industrialized countries whose nationals are engaged in deep seabed mining and financial terms and conditions which would significantly increase the costs of mineral production."[62]

[52] *Id.*, para. 15(c).
[53] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.
[54] Statement by the Special Representative of the President, Feb. 23, 1982, note 6 *supra*.
[55] Agreement, annex, sec. 2, para. 4.
[56] *Id.*, para. 2.
[57] Agreement, annex, sec. 2, para. 4, sec. 6, paras. 1(a)–(c), 3.
[58] *Id.*, sec. 2, para. 3.
[59] *See* notes 32, 38 *supra*.
[60] Agreement, annex, sec. 1, para. 10.
[61] *Id.*, sec. 2, para. 5.
[62] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.

Response: The new Agreement halves the application fee for either exploration or exploitation to $250,000 (subject to refund to the extent the fee exceeds the actual costs of processing an application), and eliminates the detailed financial obligations of miners set forth in the 1982 text, including the million-dollar annual fee.[63] Financial details would be supplied, when needed, by rules, regulations and procedures adopted by the Council by consensus, on the basis of general criteria that, for example, would link the rates to those prevailing for mining on land, and prohibit discrimination or rate increases for existing contracts.[64]

With respect to state parties, in addition to eliminating any requirement that states contribute funds to finance the Enterprise or provide economic adjustment assistance to developing countries,[65] the new Agreement provides for streamlining and phasing in the organs and functions of the Authority as needed, and for minimizing costs and meetings.[66] Budgets and assessments for administrative expenses are subject to consensus procedures in the Finance Committee and approval by both the Council and the Assembly.[67]

Regulatory Burdens

Problem: "The new international organization would have discretion to interfere unreasonably with the conduct of mining operations, and it could impose potentially burdensome regulations on an infant industry."[68]

Response: The substantive changes set forth in the new Agreement, including the elimination of production limitations, production authorizations and forced transfer of technology, and the relaxation of diligence requirements, substantially narrow the area of potential abuse.[69] The new procedural provisions, including voting arrangements in the Council and the Finance Committee, and restrictions on the Assembly, decrease the risk of unreasonable regulatory decisions.[70] As indicated in its Preamble and in the General Assembly resolution adopting it, the new Agreement is the product of a marked shift, throughout the world, from statist and interventionist economic philosophies toward more market-oriented policies. Taken together, the new provisions and new attitudes give reason to expect the system to operate in accordance with the provisions of the Convention and the Agreement guaranteeing the miner exclusive rights to a mine site, security of tenure, stability of expectations and title to minerals extracted, and according the miner and its sponsoring state extensive judicial and arbitral remedies to protect those rights.[71]

What cannot be supplied in advance by any blueprint for a deep seabed mining regime is the measure of confidence born of experience with a system in operation.

[63] Agreement, annex, sec. 8, paras. 2, 3; LOS Convention, Ann. III, Art. 13, para. 2.

[64] Agreement, annex, sec. 3, para. 7, sec. 8, para. 1, sec. 9, paras. 7, 8; LOS Convention, Art. 161, para. 8(d), Art. 162, para. 2(o)(ii).

[65] Agreement, annex, sec. 2, para. 3, sec. 7, para. 1(a); *see* LOS Convention, Art. 173.

[66] Agreement, annex, sec. 1, paras. 2–5, sec. 2, paras. 1–2.

[67] *Id.*, sec. 3, paras. 4, 7, sec. 9, para. 8.

[68] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.

[69] Agreement, annex, sec. 1, para. 9; *see* notes 32, 38 *supra*.

[70] *See* notes 14, 15, 17, 22–26 *supra*.

[71] LOS Convention, Art. 153, para. 6, Arts. 187–88; Ann. III, Arts. 1, 10, 16, 18(3), 19(2), 21; Agreement, annex, sec. 1, para. 13.

Distribution of Revenues

1982 text: The Convention authorizes the equitable sharing of surplus revenues from mining, "taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status."[72]

Problem: "The convention would allow funding for national liberation groups, such as the Palestine Liberation Organization and the South West Africa People's Organization."[73]

Response: Political developments in Africa and the Middle East have mitigated this problem. Moreover, distribution to such groups would be a practical impossibility unless the Sea-Bed Authority's revenues from miners and from the Enterprise exceeded both its administrative expenses and its assistance to adversely affected land-based producers, and would be possible then only if the Council decided by consensus to include such groups in the distribution of surplus revenues. A decision on distribution of surplus funds would also be subject, under the new Agreement, to a consensus in the Finance Committee.[74]

Review Conference

Problem: "A review conference would have the power to impose treaty amendments on the United States without its consent."[75]

Response: The new Agreement declares that the provisions in Part XI relating to the review conference "shall not apply."[76] Amendments to the deep seabed mining regime could not be adopted without U.S. consent.[77]

CONCLUSION

The 1994 Agreement substantially accommodates the objections of the United States and other industrial states to the deep seabed mining provisions of the Law of the Sea Convention. The Agreement embraces market-oriented policies and eliminates provisions identified as posing significant problems of principle and precedent, such as those dealing with production limitations, mandatory transfer of technology, and the review conference. It increases the influence of the United States and other industrial states in the Sea-Bed Authority, and reflects their longstanding preference for emphasizing interests, not merely numbers, in the structure and voting arrangements of international organizations. Detail that is objectionable or premature is eliminated or qualified. The Sea-Bed Authority is streamlined and its regulatory discretion curtailed. The role of its operating arm —the Enterprise—is delayed and sharply confined. Deep cuts are made in the financial obligations of states and private companies.

United States accession to the Convention and ratification of the new Agreement will promote widespread adherence by states generally. This will protect not

[72] LOS Convention, Art. 160, para. 2(f)(i), Art. 172, para. 2(o)(i).

[73] Statement by the Special Representative of the President, Aug. 12, 1982, note 6 *supra*.

[74] LOS Convention, Art. 161, para. 8(d), Art. 173; Agreement, annex, sec. 3, para. 7, sec. 9, paras. 7(f), 8.

[75] White House Fact Sheet, Jan. 29, 1982, note 6 *supra*.

[76] Agreement, annex, sec. 4.

[77] LOS Convention, Art. 161, para. 8(d), Art. 314, para. 1.

only deep seabed mining but many other important interests in the oceans.[78] In the meantime, provisional application of the Agreement by the United States and by a substantial number of other states will help ensure that Part XI will not be implemented in unmodified form, that the full range of affected interests will be represented during the early stages of organization when important precedents and procedures are established, and that these precedents and procedures will facilitate widespread ratification of the Convention and the Agreement.

BERNARD H. OXMAN*

[78] *See* John R. Stevenson & Bernard H. Oxman, *The Future of the United Nations Convention on the Law of the Sea,* 88 AJIL 488 (1994) and papers cited in note 3 thereof.

* Of the Board of Editors. This essay was commissioned by the Panel on the Law of Ocean Uses of the Council on Ocean Law.

[1] Draft Resolution and Draft Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, UN Doc. SG/LOS/CRP.1/Rev.1 (June 3, 1994) (English version of six-language text) [hereinafter Agreement].

THE LAW OF THE SEA CONVENTION (TREATY DOC. 103–39): PERSPECTIVES FROM BUSINESS AND INDUSTRY

THURSDAY, JUNE 28, 2012

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

The committee met, pursuant to notice, at 9:33 a.m., in room SH–216, Hart Senate Office Building, Hon. John F. Kerry (chairman of the committee) presiding.

Present: Senators Kerry, Casey, Webb, Shaheen, Coons, Lugar, Corker, and Isakson.

OPENING STATEMENT OF HON. JOHN F. KERRY, U.S. SENATOR FROM MASSACHUSETTS

The CHAIRMAN. Hearing will come to order.

Thank you very much for being here this morning. Needless to say, Capitol Hill is filled with a little bit of anticipation about the Supreme Court decision shortly, and we are going to prove that we can continue to do the Nation's business, notwithstanding that anticipation.

I am delighted to have this very significant panel of business leaders here this morning to further help us evaluate and think about the Law of the Sea Treaty. And I want to just say a couple of words at the beginning to put in perspective sort of what really brought this about, why we are here.

I have been accused of many different reasons. I just read something the other day in the papers about why this treaty is sort of here and what it represents, et cetera. And I think everybody has kind of got it wrong so far.

I was actually out to dinner with Tom Donohue maybe a year and a half ago or so, and we were talking about a number of things on the agenda, but particularly energy policy. And at the very end of the dinner, Tom turned to me, and he said, "By the way, when are you going to get this Law of the Sea Treaty done?"

And I was completely taken aback. It was the last thing I expected to hear about at the dinner, and I said, "Why are you bringing that up? Why is that a concern?" He said, "Are you kidding? I have got a bunch of members who are desperate to get this thing done so they can go out and explore and mine, do what is necessary to produce energy for America."

And so, that is what really flagged it for me, and I came back and talked to my staff. And I promised Tom that I would, in fact,

look into it and give it a good faith effort. And that is what really brought us here because I met with various representatives of those industries and became convinced that American competitiveness and American jobs were at stake.

We are not here because of any political agenda. We are not here because the administration decided this was the moment. This is really coming from America's business community, and I think people will hear that very powerfully here this morning. I think there is an urgency to it, and that is what we will examine today.

We have heard already from our Nation's top military leaders. The Secretary of Defense, the first sitting Secretary of Defense testified in favor of it. We have heard from the Secretary of State and from every past Secretary of State, Republican and Democrat alike, who have together signed an op-ed that they wrote, which has been reproduced in national newspapers, regarding this treaty. We have heard from treaty experts and opponents, and we will hear from more still. We are not finished on that score.

Our military leaders have consistently supported the accession to this treaty for more than two decades now, and some have argued that we should prefer to rely on customary international law to protect our navigational freedom. But most of the national security community completely disagrees with that and does not believe that we should leave our national security to an unwritten set of rules, subject to change by other countries and subject to change at any point in time.

That capacity to have things subject to change also provides uncertainty to the business community. And as we hear again and again up here, nothing is more damaging to long-term business plans and investments, capital formation, job creation than a lack of certainty about what the rules of the road are.

So, today, we shift away our focus from the military to our energy and economic security, and we are going to hear directly from top business and industry leaders who, combined, represent millions of businesses and jobs. Our companies want this treaty quite simply, bottom line, because it affects their bottom lines.

Joining the Law of the Sea will provide benefits to U.S. business and industry that are not available through any other means. Just a quick few examples.

Telecommunications industry. As we will hear shortly, we have vast undersea cable networks, and they provide a backbone for the world's voice and data networks. When there is a problem, if a country were to seek to block a company from laying a cable or impeding the repair of damaged cables, the Law of the Sea provides redress.

A party to the treaty can bring suit on behalf of its companies within the context of the Law of the Sea agreement. But since the United States is on the outside of that agreement today, we cannot take advantage of this legal roadmap. Our companies have to piggyback on efforts by governments that are party to the Convention.

So instead of standing up for our companies when they need our help, our failure to join the treaty actually forces them to look elsewhere—greater expense, greater uncertainty, lack of protection of American sovereignty. The status quo is simply not acceptable.

Lowell McAdam of Verizon, CEO of Verizon, who I am very pleased is here today, will go into some of the detail regarding that. And all you have to do is listen to AT&T, the telecommunications industry, Verizon, others, all of whom urge accession to this treaty.

On energy security, people come to the same conclusion. The United States is blessed with hundreds of thousands of square miles of Extended Continental Shelf. We can double the size of the United States, in effect, from what is undersea and available to us for exclusive jurisdiction, and that will be critical to our energy security for years to come.

The only way to maximize the legal certainty and establish clear title over the extended shelf is through recognition by the Continental Shelf Commission. As a nonparty to the treaty, we are shut out from this process. We are shutting ourselves out.

This makes a critical difference to our energy companies, as we will hear. They want and need certainty to invest the billions of dollars required to develop energy in the extended shelf, especially in the Arctic where the Chinese and the Russians are already laying claims. Instead of doing what we can do to encourage environmentally sound energy exploration in those areas, our failure to join the Law of the Sea is deterring it.

We are pleased to have Jack Gerard here today to speak on behalf of the American Petroleum Institute and explain exactly why what I have just said is the case. Mr. Gerard is not alone. You can listen to Rex Tillerson, the respected head of ExxonMobil, who recently wrote to Senator Lugar and myself urging ratification of the treaty.

Or listen to Marvin Odum, the head of Shell Oil Company, which employs over 22,000 people in this country and strongly supports joining the Law of the Sea. Marvin was, unfortunately, unable to join us today, but he has submitted testimony for the record. And his full testimony will be placed in the record as if read here in full.

[The prepared statement of Mr. Odum follows:]

PREPARED STATEMENT OF MARVIN E. ODUM, PRESIDENT, SHELL OIL COMPANY

As President of Shell Oil Company, I am pleased to have an opportunity to provide the Senate Foreign Relations Committee with Shell's views on United States accession to the Law of the Sea Convention and provide information, specific to the United States, about potential benefits of additional oil and gas production under the Convention.

Shell Oil Company is the U.S.-based subsidiary of Royal Dutch Shell, headquartered in Houston, Texas. Shell employs approximately 22,000 people in the United States.

Shell's support for the Law of the Sea Convention is based on three points.

First, enormous oil and gas resources are estimated to lie in the U.S. "Extended Continental Shelf," an area that begins at 200 miles from shore and runs out to the outer edge of the continental margin of the United States. The U.S. Extended Continental Shelf off the coast of Alaska has been estimated by the U.S. Government to be at least 1 million square kilometers, or twice the size of California. The U.S. Geological Survey estimates that the area north of the Arctic Circle contains nearly a hundred billion barrels of oil and trillions of cubic feet of natural gas, a vast untapped resource.

Second, the Convention establishes a process through which Parties to the treaty can establish internationally-recognized claims over the resources in their extended continental shelf. Without this high degree of legal certainty, any future claims to oil and gas resources of the extended shelf would be vulnerable to legal challenge or subject to dispute. The resulting uncertainty would discourage the type of private sector investment needed to develop the resources.

Third, the royalty rates set forth in the Convention are workable and acceptable to our company.

IMPORTANCE OF THE ENERGY RESOURCES GUARANTEED BY THE LAW OF THE SEA CONVENTION

Under the Law of the Sea Convention, all coastal states have rights to the resources, such as fish, oil, natural gas, and minerals, in or under the oceans within 200 miles of their coasts. This is the area known in the Convention as the Exclusive Economic Zone, or EEZ.

The Convention also provides for exclusive rights to resources on the seabed and subsoil beyond the EEZ, if a coastal state is a party to the Convention and demonstrates to the Commission on the Limits of the Continental Shelf established by the Convention that the area meets the geological criteria of an extended continental shelf. The Extended Continental Shelf of the U.S. likely extends more than 600 miles into the Arctic Ocean off the coast of Alaska, encompassing a vast portion of the Arctic Circle.

The U.S. Geological Survey (USGS) estimates that the area north of the Arctic Circle contains nearly a hundred billion barrels of oil and trillions of cubic feet of natural gas. The USGS estimates that this constitutes one-quarter of the world's undiscovered reserves, as well as extensive deposits of valuable minerals. Conservative estimates from the Bureau of Ocean and Energy Management place roughly 27 billion barrels of oil and over 120 trillion cubic feet of gas in Alaska's offshore without factoring in the massive U.S. Extended Continental Shelf.

Shell has decades of experience in Arctic oil and gas development. This summer we plan to execute an exploration program on leases off the coast of Alaska. With an investment of more than $4 billion and a program that meets and exceeds regulatory requirements, we are confident that this is the first step to developing world-class resources there. To be clear, these existing leases are within the EEZ of the U.S., and production would come on line in the early to mid-2020s. But this work would tap a fraction of the resources within the geological formations off the coast of Alaska. Estimates from all experts say that the area beyond 200 miles into the U.S. Extended Continental Shelf is resource-rich.

Although development in these extended shelf areas of the Arctic has not yet occurred, other countries bordering the Arctic Ocean—Russia, Canada, Norway, and Denmark—have ratified the Convention and are proceeding under its process at the Continental Shelf Commission to delineate their Extended Continental Shelves in the Arctic and secure their right to vast additional oil and gas resources. Although the United States is undertaking Continental Shelf mapping activities, any U.S. claims to oil and gas resources in the extended shelf would not have the international recognition that is afforded to Convention members. Moreover, until the United States ratifies the Convention, it has no opportunity to sit on the Commission and participate in decisions—including the review of other countries' claims—that affect its interests, including in the Arctic.

The benefits of developing Alaska's offshore oil and gas resources are many. Offshore leasing and development—whether in the U.S. EEZ or the Extended Continental Shelf—encourages economic activity in the United States, leads to more domestic supply and an improved balance of trade, and increases government revenue.

THE NEED FOR LEGAL CERTAINTY FOR INVESTMENTS IN THE EXTENDED CONTINENTAL SHELF

More than 160 countries are currently Parties to the Convention, including all of the major maritime powers and all of the major industrial countries, and they can benefit from the legal certainty over resource development that the Convention provides. If the United States were to become a party to the Convention, it could participate in the internationally recognized process for claiming its Extended Continental Shelf and its rights over oil and gas, which would provide legal certainty for accessing and developing these energy resources. Without this clear claim, our company would not find investment conditions favorable.

Legal certainty, as would be facilitated under the Convention, is essential. Companies make multibillion dollar investment decisions based in part on confidence that the investment will not be undermined by legal challenge. Considering that substantial investments will be required for safe and responsible exploration and development on the Extended Continental Shelf in the Arctic, we do not envision pursuing activities in these areas unless the claims of Arctic nations, including the United States, have been approved by the Continental Shelf Commission. Until this

legal risk and uncertainty is minimized, the oil and gas resources of the Extended Continental Shelf in the Arctic may be considered to be stranded.

THE ROYALTY RATES OF THE CONVENTION ARE ACCEPTABLE TO SHELL

Under the Convention member nations can secure exclusive rights to extract resources in their Extended Continental Shelf—areas not previously subject to clear jurisdiction. The Convention also requires member nations extracting oil and gas resources from their Extended Continental Shelves to make payments to the International Seabed Authority based on the value of production. If the United States ratified the Convention, Shell expects that the U.S. Government would collect the fees it would be obligated to pay to the Authority from those companies that produce oil and gas in the extended shelf, along with royalties it collects for the U.S. Treasury.

The royalty rates the United States would pay to the Authority were negotiated with input from industry. The royalties set in the Convention would begin at 1 percent of the value of production in the 6th year of production at a production site, rising 1 percent per year to a maximum of 7 percent in the 12th year and following years. While the overall royalty rate (that going to the U.S. Treasury and that going to the Authority) would be part of the economic calculations we make in determining whether or not to proceed with investment, Shell finds the Convention's royalty rates to be reasonable and acceptable.

Thank you for the opportunity to express our support for Senate approval of the Law of the Sea Convention. We welcome and encourage any actions the Senate may make to reduce investment risk, increase legal certainty, and facilitate oil and gas development.

The CHAIRMAN. A short excerpt. This is Marvin Odum. "If the United States were to become a party to the Convention, it could participate in the internationally recognized process for claiming its Extended Continental Shelf and its rights over oil and gas, which would provide legal certainty for accessing and developing those energy resources. Without this clear claim, our company would not find investment conditions favorable."

So, finally, we turn to manufacturing. As many of you know, rare earth minerals are critical to a large part of modern manufacturing. Rare earth minerals are an essential component of our communication systems, of our defense control systems, missile defense control technology, and other weapons systems.

It includes—the breadth or sort of the scope of rare earth mineral use is in electronics. It is in computers, cell phones, and all of the advanced weapons systems, some of which I have named.

Today, my friends, China controls about 97 percent of the production market for these minerals. Can anybody in their right mind suggest that the United States is safer and our companies are advantaged sitting in a situation where you can't invest because you can't be safe and you can't be legally protected, and we are sitting on the outside? We cannot secure international recognition for deep sea mining claims that our companies want in order to invest billions of dollars unless we are part of this treaty.

So, on rare earth minerals, on oil and gas, on whatever unknown minerals and/or products may be findable under the ocean, we have a choice. We can either join the major industrial nations that have already joined up and are already using this to their advantage and secure the benefits of the sea for Law of the Sea, as well as the sea, for our businesses and industries, or we can remain on the outside, deprive our companies of the legal investment and operational security they seek, cede American competitive advantage, and watch while other countries take the spoils.

I think the choice is clear. Today, we have people who can speak with much more authority than I can because it is their livelihood. It is their life endeavor, and I think we need to listen to them.

Thomas Donohue, president and CEO of the U.S. Chamber of Commerce, representing broadly many of these industries. Jack Gerard, president and CEO of the American Petroleum Institute, of which all of our major producers are partners. Jay Timmons, president and CEO of the National Association of Manufacturers. And Lowell McAdam, chairman and CEO of Verizon.

So, gentlemen, welcome today. Thank you for being with us.

Senator Lugar.

OPENING STATEMENT OF HON. RICHARD G. LUGAR, U.S. SENATOR FROM INDIANA

Senator LUGAR. Thank you, Mr. Chairman.

I join you in welcoming our distinguished panel of industry leaders. I appreciate especially their efforts on behalf of the Law of the Sea and their willingness to explain how the Convention will help them create private sector jobs and contribute to the growth of the U.S. economy.

Every major ocean industry—including shipping, fishing, telecommunications, oil and natural gas, drilling contractors, shipbuilders—support United States accession to the Law of the Sea Treaty. This is not a recent development. Ocean industry support for the Convention has been virtually unanimous going back to 2003 when the Foreign Relations Committee first took it up and initiated a process that resulted in a unanimous committee vote to report Law of the Sea favorably to the whole Senate on that occasion.

A few years later at a Foreign Relations Committee hearing on October 4, 2007, a business panel testified in favor of the Convention. Only Senator Menendez and I were present for that powerful, unequivocal testimony. But then, as now, every major ocean industry backed the Convention and appealed for ratification.

With good reason, Americans are intensely interested in job creation and the pace of United States economic activity. In my State of Indiana, this is the paramount issue among voters. There are innumerable threats to the United States economy, including the phenomenon over which we have minimal control, such as the European debt situation.

Moreover, because of our own national debt, we have few stimulus options to combat a future economic downturn. These factors increase the importance of a jobs creating impact, of technological innovation, and our own natural resources. As we will hear today, U.S. ratification of Law of the Sea would support job creating investment and open new resources to our industries at a critical time for our economy.

The Law of the Sea already forms the basis of maritime law regardless of whether the United States is a party. International decisions related to resource exploitation, navigation rights, and other matters will be made in the context of the Convention whether we join or not. And we will not even be able to participate in the amendment process to this treaty, which is far more likely

to impose new requirements on our Navy and ocean industries if the United States is absent.

Because of these factors, the people who actually deal with oceans on a daily basis and invest their money in job creating activities on the oceans want this Convention ratified. They do not want to be at a competitive disadvantage to foreign industries.

By not joining the Law of the Sea, we also are diminishing the potential scope of our domestic energy production. Some have argued that United States accession to the Law of the Sea Convention is unnecessary to secure the legal basis for companies to fully exploit oil, natural gas, and mineral wealth on the ocean floor, but that is not the opinion of American companies that might invest their resources in this activity.

They tell us that without the certainty of title provided by Law of the Sea Convention, they would not go forward with many projects requiring large investments. Their concern is that after doing the expensive exploration, research, testing, and construction necessary to exploit a site, they have to be certain that another entity won't be able to free-ride on their investment or challenge their claim in international courts.

The drilling and mining companies prefer to pay a small royalty beginning in the sixth year of production in return for an international system that gives them undisputed claim for the resources produced. This royalty provision of the Convention was negotiated with the participation of extraction companies.

They judged that it is reasonable, given the legal certainty it secures and the value of what might be produced, especially since the first 5 years of production will not be subject to any royalty.

Our resource extractors are telling us that if we want them to move forward with scale development of ocean floor resources that could contribute significantly to United States energy security and create jobs, we need to ratify the Law of the Sea.

I thank the chairman for this hearing, and we look forward to our discussions.

The CHAIRMAN. Thank you, Senator Lugar.

I am reminded by your testimony, as I don't need to be reminded by it. But it flagged it that this is ground that this committee has been over before. And Senator Lugar has previously led that effort and has had a longtime association with and stake in this effort, and I just want to acknowledge that and thank him for his laying that groundwork and record that we have to date.

Mr. Donohue, if you would lead off, and Mr. Gerard second, Mr. Timmons third, and Mr. McAdam, if you would bat cleanup? Thanks.

STATEMENT OF THOMAS J. DONOHUE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, U.S. CHAMBER OF COMMERCE, WASHINGTON, DC

Mr. DONOHUE. Thank you, Mr. Chairman and Ranking Member Lugar and all the members of the committee who are here or will be here. We appreciate this opportunity to testify today.

I am pleased to express the U.S. Chamber of Commerce's strong support for approval of the Law of the Sea Treaty. This morning, I will focus my remarks on why the treaty is in our economic inter-

est, our national security interest, and why it is essential to America's global leadership.

On the economic side, the treaty would be a boon to U.S. economic growth by providing American companies with the legal certainty and stability that they need to hire and invest. It would codify the U.S. legal rights to use international shipping lanes to lay and service underwater cables and to develop vast amounts of oil, natural gas, and minerals off the U.S. coast and in the deepwater seabed.

The treaty would benefit several industries key to economic growth, job creation, and U.S. competitiveness. It would benefit the energy industry by providing sovereign rights to seabed resources 200 miles off our coast. If certain geological criteria are met, the zone of sovereignty could extend to 600 miles, or the so-called Extended Continental Shelf.

Proper delineation of the Extended Continental Shelf could bring an additional 4.1 million square miles of ocean floor under U.S. sovereign rights, an area larger than the lower 48 States. The treaty would also allow the United States to have a U.S. expert elected to the international body that determines the claims in the Arctic, and there are going to be a lot of them.

Securing international recognition for U.S. rights in these areas and defending against the unreasonable claims of other nations is vital to the economic prosperity of our Nation. The telecommunications industry needs the treaty to codify the right to lay and maintain underwater cables in the oceans of the world. It also needs them to provide stronger protections for cables against damages by other parties.

A wide range of domestic industries, including aerospace, defense, and consumer electronics, need the treaty to enable access to new sources of mineral resources, including rare earth minerals, as the Senator indicated, which lie in massive deposits on or beneath the deep seabed floor.

Companies need the legal certainty and the stability provided by the treaty in order to minimize the investment risks and cost to developing these resources in the U.S. Extended Continental Shelf and the area beyond that, the deep seabed. That is why the treaty's approval is so important to sustaining and creating American jobs and protecting American interests close to our mainland.

Now let me say a word about national security. The treaty clearly is essential to America's national security.

The U.S. Chamber has a long and proud history of supporting America's national security interests.

For example, we played an instrumental role in mobilizing America's industrial might to fight and win World Wars I and II. I put that in there, if I might say, Mr. Chairman, because we just celebrated our 100th anniversary, and we took the time to read about why the Chamber was founded and what its basic principles were, which were to represent the American business community and to represent it at the highest level with the greatest service our country and its needs.

We have long supported a robust national defense, and we have recently launched a major effort called Hiring Our Heroes to employ veterans by matching them with employers all around the

country. It is in this tradition that we support approval of the Law of the Sea as it relates to national security.

At any given time, hundreds of U.S. flagged ships and ships owned by U.S. companies rely on the freedom of navigation rights codified in the treaty while crossing the world's oceans. In fact, seafaring vessels transport more than 95 percent of all goods imported to or exported from the United States, including essential commodities like oil.

While we can always rely on the U.S. Navy to ensure lawful passage of U.S. flagged and owned ships, the Chamber strongly supports the Navy's desire to codify rights to freedom of navigation in the treaty rather than rely on the customary international law or a strong navy.

Let me say a word about a seat at the table. The treaty is critical to America's global leadership. As the world's preeminent maritime power with one of the largest Continental Shelves, the United States has more than any other country to gain, or to lose, based on how the treaty's terms are interpreted, applied, or changed.

The Law of the Sea Treaty will continue to form the basis of maritime law with or without our approval. Our Nation's interests are best protected by being an active participant.

Another side comment. There is a lot of comment and suggestion that this organization set up in Jamaica is going to run our lives. It clearly is not. But what a mistake we make if we don't join the treaty and put our representative there, who would have the absolute power to veto any action suggested by the organization.

Now let me say a word about our critics of the treaty, who I have a lot of respect for. But I would like to rebut two of the chief criticisms that we hear.

The first is that it erodes American sovereignty. This couldn't be further from the truth. This treaty promotes our sovereignty by codifying our property rights in the Arctic and on our Extended Continental Shelf. It will be ours. People will know it is ours, and we have every right to defend it.

The second is opposition to a small portion of royalties from development that would be going to the International Seabed Authority. My response to that is simple. The U.S. Treasury will lose billions of dollars in royalty revenue by not providing companies the legal certainty and stability to develop its Extended Continental Shelf.

It is a simple balance. We get most of the money under that system. The treaty provides that certainty, which will encourage companies to explore and develop these areas and produce potentially billions and billions of dollars in royalties going to the Government.

And finally, like any agreement, this treaty is not perfect, but we are better off sitting at the table. Today, the benefits far outweigh the costs, and we must protect those benefits.

For all of these reasons, the U.S. Chamber urges the Senate to give its advice and consent to the Law of the Sea Treaty. The treaty has the enthusiastic backing of every industry it impacts, including energy, telecom, shipping, mining, fishing, biotech, et cetera. It enjoys the support of every living Secretary of State and the Joint Chiefs.

Senate approval is imperative to expand U.S. territory beneath the oceans to protect vital national security interests, to develop new commercial interests, and to create jobs.

So I thank you for allowing me to share these obvious comments. I am sure the discussion will get more specific, but the bottom line is very simple. The benefits are all to accrue to this country and to our economy, and we ought to move forward on it.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Donohue follows:]

PREPARED STATEMENT OF THOMAS J. DONOHUE

Good morning, Chairman Kerry, Ranking Member Lugar, and members of the Committee on Foreign Relations. My name is Thomas J. Donohue and I am President and Chief Executive Officer of the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. I am pleased to appear before you today to affirm the Chamber's strong support for U.S. accession to the Law of the Sea (LOS) Convention.

KEY POINTS

I want to stress a few critical points to this committee:

- We support joining the Convention because it is in our national interest—both in our national security and our economic interests. The Chamber has a long and proud history of supporting America's national security interests including playing an instrumental role in mobilizing America's industrial might to fight and win World Wars I and II. It is in this tradition that we support approving the Law of the Sea Treaty.
- Becoming a party to the Treaty benefits the U.S. economically by providing American companies the legal certainty and stability they need to hire and invest. Companies will be hesitant to take on the investment risk and cost to explore and develop the resources of the sea—particularly on the Extended Continental Shelf (ECS)—without the legal certainty and stability accession to LOS provides. The benefits of joining cut across many important industries including telecommunications, mining, shipping, and oil and natural gas.
- LOS will continue to form the basis of maritime law with or without our accession. Our national interests are best protected by being an active participant in this process. Joining the Convention will provide the United States a critical voice on maritime issues—from mineral claims in the Arctic to how International Seabed Authority (ISA) funds are distributed.
- Many opponents present a false option to LOS that does not exist: that the United States can enjoy the benefits of LOS without joining it. In reality, only by joining can the U.S. reap the full economic and national security benefits of the Convention. Like any agreement, LOS isn't perfect. But its benefits far outweigh the costs of continuing to stand on the sidelines. The Chamber and the business community do not fear adverse rulings under the Convention so much as we fear being left behind by our global competitors.
- Contrary to some opponents' claims, joining the treaty promotes American sovereignty. LOS strengthens our sovereignty by codifying our property claims in the Arctic and on our ECS. Remaining outside of the Convention undercuts our sovereignty by not allowing us to advance and protect our property claims through the process utilized by every other major global power.

THE CHAMBER'S SUPPORT FOR THE LAW OF THE SEA CONVENTION

The Chamber has a long history of supporting the Law of the Sea Convention before this committee. The Chamber remains steadfast in its belief that the Senate should expeditiously approve the Convention because of the tremendous benefits it will provide for American enterprise. The Convention has the enthusiastic backing of every industry it impacts, including energy, telecom, shipping, mining, fishing and biotech. Earlier this month, the Chamber and 11 diverse trade associations wrote to this committee, submitting a letter strongly urging accession to the Convention. This is because the Convention is overwhelmingly favorable for U.S. business interests: it would codify U.S. legal rights to use international shipping lanes, to lay and service submarine cables, and to develop vast amounts of oil, natural gas,

and minerals off the U.S. coasts and on the deep seabed. Our letter emphasized that now that "new technologies and changed conditions have made it cheaper and easier to access the potential wealth beneath the oceans, the business community simply cannot afford to have the U.S. remain on the sidelines."

In addition to a 12-mile territorial sea, the Convention provides for a 200-mile Exclusive Economic Zone, over which a coastal state has exclusive resource management rights. If certain geological criteria are met, the Convention also provides sovereign rights to seabed resources on the Continental Shelf beyond 200 nautical miles. The United States has the world's second-longest coastline and likely has an Extended Continental Shelf in at least six different locations, including off of the Eastern seaboard and up to 600 miles off the coast of Alaska. In total, the Convention would confer a resource jurisdiction larger than that of any other nation in the world—an additional 4.1 million square miles of ocean floor, greater than the area of the contiguous 48 States. Securing international recognition for U.S. rights in these areas—and defending against the outsized claims of other nations—is vital to the economic prosperity of our Nation.

The Convention provides stability, predictability, and clear legal rights, which are essential for American investment in our oceans, and therefore to sustaining and creating American jobs. The oceans, which comprise 70 percent of the earth's surface, are integral to global commerce. Ships carry virtually all goods passing in international trade, and submarine cables—not satellites—relay virtually all modern communications. Oceans also promise enormous frontiers of untapped resources. Development of hydrocarbon resources on the U.S. ECS in the Arctic and elsewhere would create thousands of new jobs for Americans, generate billions of dollars in new economic activity, and increase our energy security. Similarly, mining on the U.S. ECS and the deep seabed presents vast new opportunities to tap into deposits of manganese, nickel, cobalt, copper, and vital rare earth minerals.

Because of our status as a non-party, the United States is not represented on the Council of the International Seabed Authority, nor are we able to nominate an expert to sit on the Continental Shelf Commission, which determines whether seabed qualifies as Continental Shelf. Other industrial nations—all members of the G8 included—joined the Convention following the 1994 deep seabed mining reforms. Today, 161 countries and the European Union are party. The U.S. is the only notable outlier. The Convention's institutions are now up and running, and it is open to amendment. As a party, we would be in a position to lead from within and advance and protect our interests. And in institutions outside the Convention, such as the International Maritime Organization, joining the Convention would increase our credibility and authority to cite and interpret Convention provisions in defense of our interests.

Because the Convention's governing bodies are active, the Senate's continued inaction on the Law of the Sea has relegated the United States to an observer status. Since 1982, the U.S. has voluntarily complied with the Convention's rules. The U.S. must now become party to the Convention in order to lock in the treaty's favorable rights and reassert U.S. leadership in the maritime sphere. Focusing on four key U.S. industries—oil and natural gas, shipping, mining and telecom—I will elaborate on the reasons why the Senate should approve the Law of the Sea Convention in 2012.

THE BUSINESS CASE FOR ACCESSION TO THE LAW OF THE SEA CONVENTION

A . Oil and Natural Gas

Accession to the Law of the Sea Convention would provide oil and natural gas companies with legal certainty as they explore and develop the vast energy deposits off the coasts of the United States. As I have mentioned, the U.S. benefits from a broad continental margin, especially off of Alaska's coast, where the U.S. Continental Shelf likely extends more than 600 miles into the Arctic Ocean. The U.S. Geological Survey estimates that the Arctic contains one-quarter of the world's undiscovered oil and natural gas, including nearly 100 billion barrels of oil and trillions of cubic feet of gas. The U.S. ECS seaward of Alaska encompasses a large portion of this Arctic Circle area. And, while much is yet unknown regarding Alaska's offshore, a Department of Interior report estimates that just the area within 200 miles of shore holds 27 billion barrels of oil and 132 trillion cubic feet of natural gas. The U.S. offshore in the Gulf of Mexico has a similarly impressive total endowment which, including quantities already pumped to surface, is estimated to contain 45 billion barrels of oil and 232 trillion cubic feet of natural gas.

Clearly, the hydrocarbon potential of these offshore areas is enormous. Offshore oil volumes already account for about 30 percent of all U.S. production. Successful development will grow the U.S. economy, create jobs, and significantly reduce Amer-

ican reliance on foreign oil. The U.S. Government should enable such development, not hinder it. But that is precisely what the Senate's failure to approve the Law of the Sea Convention has done, because the U.S. cannot secure international recognition of its Continental Shelf beyond 200 miles without joining the Convention.

Offshore operations are capital-intensive, requiring significant financing and insurance. Oil and natural gas companies do not want to undertake these massive expenditures if their lease sites may be subject to territorial dispute. They operate transnationally, and need to know that the title to the petroleum resources will be respected worldwide and not just in the United States. Availability of clear legal title is crucial to realizing the potential of U.S. offshore areas both now and in the future, as drilling technology continues to advance and make new projects feasible. As ExxonMobil emphasized in its recent letter to this committee, before it undertakes the immense investments required to explore and develop resources beyond 200 miles, "legal certainty in the property rights being explored and developed is essential."

Under the Convention, parties can secure international recognition of the limits of their Continental Shelves by demonstrating to a body of scientific experts, the Continental Shelf Commission, that its seabed meets certain geological criteria. Over 40 nations—including every other Arctic nation—are already taking actions to stake their claims before this Commission. As a non-party, the U.S. is not able to stake our own claims, nor have an expert sit on the Commission and participate in discussions affecting its interests.

Opponents of the Convention often cite its imposition of royalties on ECS production as an important reason to reject the Convention. Under the Convention, parties must make payments to the ISA based on the value of resources extracted from sites on their Extended Continental Shelves. Production companies would be able to keep the entire value of production at each site for the first 5 years, subject to any licensing fees imposed by the U.S. Government. Payments to the Seabed Authority would begin at 1 percent of the value of production in the 6th year of exploitation at a site and rise 1 percent per year to a maximum of 7 percent in the 12th year and following years. These royalty rates were negotiated by the U.S. Government with extensive input from U.S. oil and natural gas interests. As oil and natural gas companies have recognized, the royalties are reasonable in view of the immense value of the resources that would be made subject to the United States exclusive sovereign jurisdiction. The oil and natural gas companies—and the U.S. Treasury—would be able to retain much more than the U.S. would be required to pay to the Seabed Authority. Notwithstanding the required payments to the Seabed Authority, joining the Convention would be overwhelmingly beneficial to U.S. economy and the U.S. Treasury.

B. Mining

Mining, like oil and natural gas, represents a field where the U.S. will damage its own interests and those of U.S. industry by remaining outside the Law of the Sea Convention. Only by joining the Convention will the U.S. secure its rights to vast mineral deposits on the U.S. ECS, and perhaps even more important, be able to sponsor companies to mine the deep seabed in the area beyond any national jurisdiction. Beneath the oceans are troves of valuable metals and rare earth elements richer than any found on land, including deposits of manganese, nickel, cobalt, copper, lead and other metals commonly used in modern manufacturing.

Several recent developments make access to deep seabed mining sites an urgent matter. Due to technological progress, our ability to mine the deep seabed has improved dramatically, while at the same time prices for various metals have increased. Today, deep seabed mining presents an attractive business proposition. China, Russia, India, and other countries have responded, sponsoring mining ventureswhich have licensed their respective sites with the ISA. These countries have obviously concluded that the fees are worth paying to secure legal title to deep seabed mining sites.

The importance and relative scarcity of rare earth minerals is another factor requiring urgent access to the deep seabed. Rare earth minerals have a wide range of critical technology and defense applications. China has a virtual monopoly on the land-based supply of these elements, a reality that is of great concern for U.S.governmental and commercial interests. The U.S. suffers from a competitive and strategic disadvantage because, as a non-party to the Convention, it cannot sponsor U.S. companies to engage in deep seabed mining.

Lockheed Martin, the only U.S. company with active claims to deep seabed sites under a U.S. law predating the Law of the Sea Convention, recently wrote to this committee urging the Senate to approve the Convention. Lockheed has invested hundreds of millions of dollars on research and development related to deep seabed

mining over the past 40 years. The company's letter made clear that the multibillion dollar investments now required to launch an ocean-based resource development business will only occur if it can obtain the security of tenure and clear legal rights offered under the Convention. With Lockheed and potentially other U.S. companies poised to expand their operations and create new jobs, Senate accession to this treaty would allow investor dollars to stay here.

Equally important to U.S. companies contemplating deep seabed mining activities is U.S. leadership in the ISA. The next several years will be formative for the nascent deep seabed mining industry. As I mentioned earlier, the Convention's deep seabed mining regime was overhauled in 1994, resulting in a system that is uniquely favorable to American interests. Those reforms included a permanent U.S. seat on the Council of the ISA. But the U.S. has not assumed that seat, and cannot guide the development of new rules pertinent to deep seabed mining activities while outside the Convention.

C. Shipping

The U.S. shipping industry depends heavily on the rights enshrined in the Law of the Sea Convention. At any given time, hundreds of U.S. flag ships and ships owned by U.S. companies rely on the freedom of navigation rights codified in the Convention while in transit through the world's oceans. Unsurprisingly, U.S. shipping companies have long been ardent supporters of accession to the Convention. The Chamber of Shipping of America has been a longtime supporter of the Convention and has testified and written letters to this committee urging the Senate to approve the treaty.

The Convention guarantees rights of innocent passage through territorial seas, transit passage through straits and archipelagoes, and freedom of all vessels on the high seas. Seafaring vessels, such as container ships, crude oil tankers, and bulk carriers, carry over 95 percent of all goods imported to, or exported from, the United States. Guaranteeing their free movement is both an economic and a national security concern, as these ships transport the majority of this country's oil and other crucial commodities and goods.

The Convention's detractors argue that U.S. ships can rely on customary international law to ensure their mobility. But customary international law is not well-suited to the needs of business. By definition, it is hard to find and apply customary law because it does not exist in one place. Its rules can and will shift over time. Shipping companies benefit from a set of stable, written rules that they can easily reference during a dispute. The Law of the Sea Convention serves this function by codifying key navigational rights in a single, central Authority.

Furthermore, robust U.S. leadership on maritime issues is just as important as a set of treaty-based rules. Without U.S. participation, there is a greater likelihood that countries will successfully assert divergent views on the application of the Convention's navigational rules. As a non-party, the U.S. lacks credibility to enforce the consistent application of norms embodied in the Convention. The shipping industry—and industry in general—will benefit from a strong, treaty-based rule of law guided by the United States.

D. Telecommunications

The rights codified in the Law of the Sea Convention are likewise of paramount importance to the daily operations of U.S. telecommunications companies. The Convention was negotiated with extensive input from the U.S. telecommunications industry and represents a quantum leap forward in law applicable to underwater cables. It provides rights to lay, maintain, and repair submarine cables outside territorial seas, certain protections to prevent damage to cables, and avenues for legal recourse when these various provisions are violated.

Submarine cables represent critical communications infrastructure, as they form the backbone of the Internet and global e-commerce. Such cables, typically consisting of optical fibers laid along the ocean floor in a bundle no larger than a garden hose, carry over 95 percent of transoceanic voice and data communication. U.S. telecom companies have worked rapidly to meet exploding consumer appetite for data, increasing the total circuit capacity of transoceanic cables landing in the U.S. by more than 1,000 fold since 1995.

There is no substitute for these underwater cables in case of damage. The earth's satellites can carry no more than 7 percent of U.S. international voice and data traffic. But worldwide, nearly 100 cable outages occur each year. The vast majority of cable outages are caused by bottom trawling fishing, dredging, and ship anchoring. Occasionally, cables are taken in an act of piracy, as occurred in 2007 when individuals in commercial vessels from Vietnam stole over 100 miles of cables on the high

seas. Cable outages may disrupt governments, financial markets, and business operations and require costly repairs.

Accession to the Law of the Sea Convention would better protect U.S. companies' existing cable systems and foster additional investments. Companies would benefit from the legal certainty provided by treaty-based rights to lay, maintain, and repair cables, and conduct surveys incident to laying cables. Like shipping companies, telecom interests emphasize that they cannot merely rely on customary international law because of the threat of encroachments by coastal states. Russia's attempt to delineate cable routes on its continental margin in the Arctic proves that fears of encroachment are not theoretical. As a non-party, the U.S. loses more than just credibility to lodge diplomatic protests to such actions because, with respect to its submarine cable provisions, the Convention permits parties to invoke its meaningful dispute resolution procedures. U.S. telecom companies have repeatedly emphasized that they are comfortable with, and want to rely on, the compulsory dispute resolution provisions in the Convention.

Because the U.S. remains on the sidelines, it puts its telecom companies at a competitive disadvantage and fails to provide them important legal rights. They do not benefit from the legal certainty and dispute resolution options that companies based in other countries enjoy. In order to support its telecom companies and protect vital communications infrastructure, the U.S. should join the Law of the Sea Convention.

CONCLUSION

The U.S. Chamber urges the Senate to give its advice and consent to the Law of the Sea Convention. The Convention has the resounding support of every industry it impacts. It codifies legal rights on which U.S. businesses rely on a daily basis and provides access and clear legal title to new frontiers of hydrocarbon and mineral resources. Consequently, accession will lay the groundwork for investment that boosts the U.S. economy and creates new jobs. Now that new technologies and changed conditions have made it cheaper and easier to access the wealth beneath the oceans, the United States simply cannot afford not to join the Convention.

The CHAIRMAN. Thank you very much, Mr. Donohue, for very clear testimony. We appreciate it.

Mr. Gerard.

STATEMENT OF JACK N. GERARD, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN PETROLEUM INSTITUTE, WASHINGTON, DC

Mr. GERARD. Thank you, Mr. Chairman and Ranking Member Lugar, and Senators Webb and Corker and Isakson. It is a pleasure to be here with you today.

And in light of your statement, Mr. Chairman, as you started, I guess we need to thank Tom for this opportunity as well. Is that right?

The CHAIRMAN. That is right.

Mr. GERARD. It is always good to be here with him at the table, and the others.

On behalf of the 500 member companies, along with the 9.2 million Americans, men and women who work in the U.S. oil and natural gas industry, we appreciate the opportunity to be here today to testify in support of accession to the Law of the Sea Treaty.

We agree with Secretary of State Hillary Clinton, with former Secretary of State Condoleezza Rice, and with the other Secretaries of State before her, as well as Presidents of both political parties who have urged accession, that joining the Law of the Sea Convention is truly in the best interests of the United States.

Today, the United States relies on oil and natural gas for over 60 percent of all the energy we consume. Recent economic projections by our own Department of Energy in the Obama administration show that 30 years from now, 57 percent of all the energy we

consume in the United States will continue to be oil and natural gas.

Other projections show the demand for world global energy led by oil and natural gas will increase by over 50 percent in the next 20 to 30 years. Energy is a very serious issue, particularly to our global economy. Companies spend billions of dollars annually looking for and producing oil and natural gas around the world.

To give you some insight, from just 2009 to 2011, the industry spent over $700 billion just in the United States drilling and exploring for additional opportunities. Just last week at the lease sale conducted the central Gulf of Mexico, the U.S. oil and gas industry paid $1.7 billion in bonus bids to the Federal Government to secure rights to develop those resources in the Gulf of Mexico.

Preliminary studies estimate that the U.S. Extended Continental Shelf as a result of accession to the Law of the Sea Treaty likely totals 1 million additional square kilometers and could contain resources worth billions, if not trillions, of dollars to our U.S. economy.

The Convention provides a clear objective means of asserting U.S. authority and gaining international recognition of that authority, reducing the potential for jurisdictional conflicts between nations. This provides certainty for business planning so that companies can manage their financial risk over the lifetime of their investment.

I might add that when we in the oil and gas business look for investment opportunities, we are not looking quarter by quarter, year by year. We look 10, 20, 30, at 40-year horizons when we are talking about multibillion dollar investments.

This certainty will increase the likelihood of companies investing in the Extended Continental Shelf. This, in turn, will result in more U.S. jobs, more U.S. revenue to our Federal and State governments and many other benefits.

The Convention also broadens the definition of the Continental Shelf in a way that would significantly favor the United States. As Tom touched on earlier, it would secure an additional 4.1 million square miles of ocean under U.S. jurisdiction and provides a mechanism for laying claim to vitally needed natural resources in the Arctic and other areas where other countries—Russia, for instance—have already laid claim, will protect our navigation rights and freedoms for our vessels.

We understand that there are legitimate concerns about certain aspects of the Convention. We greatly appreciate the attention by members to ensure that this Convention is truly in the best interests of the United States.

While I am here today to express to you the benefits of the Convention for the oil and natural gas industry, our expectation is that the administration and the Congress will continue to work to ensure that U.S. interests are protected as they represent the Nation in the implementation of the Law of the Sea Treaty.

In short, the Law of the Sea Convention will advance and protect America's energy interests. It will mean a level playing field and new opportunity for marine sources development all around the world.

Thank you again, Mr. Chairman and members of the committee. And I look forward to your questions.

[The prepared statement of Mr. Gerard follows:]

PREPARED STATEMENT OF JACK N. GERARD

Thank you, Chairman Kerry, Ranking Member Lugar and members of the committee. My name is Jack N. Gerard and I am the president and CEO of the American Petroleum Institute.

API is a national trade association representing more than 500 member companies in the oil and natural gas industry. On behalf of our members and the more than 9.2 million American men and women whose jobs are supported by the U.S. oil and natural gas industry, I want to express my appreciation for the invitation to appear before you today to speak on this very important issue.

It is an issue that is important to the our member companies, to the millions of employees whose jobs these companies support, directly or indirectly, and the thousands of communities in every state of the union where these companies—and the companies that provide them goods and services—have a presence.

We agree with Secretary of State Hillary Clinton that no country is better served by this Convention than the United States. And we agree with former Secretary of State Condoleezza Rice and other Secretaries of State before her—as well as Presidents of both parties who have urged accession—that joining the Law of the Sea Convention will advance America's interests.

Experts, both within the government and outside, agree that America will need more energy of all types in order to grow and to meet its growing energy demand. Today, the U.S. relies on oil and natural gas for over 60 percent of the energy it consumes.

Since 2000, our industry has invested nearly $2.3 trillion in U.S. capital projects to meet ourcountry's growing demand for energy. The significant investments made here in the United States not only support the 9.2 million jobs mentioned above, but also support millions of America's retirees through pension funds, IRAs, 401ks and other investments. At a time when millions of Americans are unemployed, the oil and natural gas industry has been a key driver of job creation and economic activity.

It also supports 7.7 percent of U.S. gross domestic product, and has provided $86 million a day in revenues to the Federal Government in taxes, royalties, rental payments, and other production fees. That's more than $30 billion per year. And with the right policies to access more domestic oil and natural gas, there will be more jobs, and more revenue for State and Federal treasuries: more than $800 billion by 2030.

According to the Energy Information Administration, projections for 2035 show oil and natural gas will still provide nearly 57 percent of growing U.S. energy consumption—even with significant increases in renewable energy use.

So the question isn't whether we will need more oil and natural gas, but where will we get it? Will we use our own vast energy resources or will we rely on others? Our Nation has the resources, and one of the key areas with great potential for energy production is our Continental Shelf.

Just last week, the Department of Interior conducted a lease sale in the Central Gulf of Mexico where 56 oil and gas companies submitted bids on 454 lease tracts and paid a total of $1.7 billion to the U.S. Treasury to secure their rights to those lease tracts. This was in an area where there has already been plenty of production, and companies are committed in investing in this key U.S. offshore area.

Preliminary studies estimate that the U.S. Extended Continental Shelf likely totals 1 million square kilometers and could contain resources worth billions—if not trillions—of dollars.

The U.S. Geological Survey estimates that about one quarter of the world's undiscovered oil and natural gas lies beneath Arctic waters alone, and there is also the possibility of high yields of oil and gas in the Extended Continental Shelf off of our Atlantic and Pacific coasts. Modern technology makes it possible today to access these resources. With the right leadership and vision, we can take control of our energy future.

The Law of the Sea Convention provides the certainty that companies need to invest the billions required and offers the potential of greatly and definitively broadening the offshore areas from which we can access new resources to meet our Nation's growing energy needs. It will lead us to a greater energy future, with more jobs, more economic growth, higher government revenues, and enhanced energy security.

Companies spend billions annually looking for and producing oil and natural gas around the world. From 2009 to 2011, the industry spent over $600 billion in U.S. drilling and exploration activities. They make these substantial investment decisions by weighing carefully the level of risk against the potential for returns on investment.

Because the industry must plan, invest and operate under long lead times, it is crucial that government policies including our tax framework encourage investment and provide certainty for business planning so that companies can manage their financial risk over the lifetime of the investment.

The Convention provides a clear, objective means of asserting U.S. authority and gaining international recognition of that authority, reducing the potential for jurisdictional conflicts between nations.

With greater certainty and the predictability provided by the Law of the Sea Convention, industry will have greater incentive to fully take advantage of the significant advances in technology that allow us to extend operations into areas once considered out of reach or uneconomical. Indeed, the Convention would provide a significant incentive for industry to continue to develop the technology to push into even deeper waters in frontier areas.

Given the rapid economic and political changes sweeping the world, the U.S. can no longer afford to be left out of the process. U.S. accession would ensure that American companies that are engaged in offshore energy production remain competitive in the global market. And, as companies that take their responsibility to their shareholders seriously, they are more likely to invest in projects they believe have the greatest certainty in their operations and the highest returns possible.

As advances in technology push us further from our shores and into areas of harsher climates, the potential for conflicts with other nations' territorial claims inevitably increases. As such, there is a more pressing need for certainty and stability in the delineation of boundaries. Accession to the Convention would fulfill this need.

In addition, it will give the United States a seat at the table as the Commission on the Limits of the Continental Shelf continues the process of dividing up millions of square miles of offshore territory and assigning management rights to all of the world's marine resources—a process that has been described as "probably the last big shift in ownership of territory in the history of the Earth."

Today there is no American official, no American geoscientist, sitting at the table while this important work progresses. We can't emphasize strongly enough that the United States cannot afford to be left out of this process.

The Convention broadens the definition of the Continental Shelf in a way that significantly favors the United States with its broad continental margins, particularly in the North Atlantic, Gulf of Mexico, the Bering Sea, and the Arctic Ocean. In the case of the United States, this secures an additional 4.1 million square miles of ocean under U.S. jurisdiction. That's more than 3 billion acres—an area that is larger than the U.S. land area.

It should come as no surprise that our companies are interested in taking advantage of the resources in those areas beyond 200 miles—again, on behalf of their shareholders and the millions of jobs they support—in ways that continue to demonstrate environmentally sound drilling development and production technologies. Offshore petroleum production is a major technological triumph.

We now have development projects located in water depth in the Gulf of Mexico that not too long ago few thought possible.

New technologies are allowing oil explorers to extend their search for new resources of oil and gas out to and beyond 200 miles for the first time, providing the potential for the largest discoveries in a generation to be made in field sizes not even imagined before.

We need to get on with the mapping work and other analyses and measurements required to substantiate the extent of our shelf, and some of the best technology for accomplishing this resides in the United States. Establishing the continental margin beyond 200 miles is particularly important in the Arctic, where there are already a number of countries vying to expand their offshore jurisdictional claims.

Such features as the Chukchi Plateau and component elevations, situated to the north of Alaska, could be claimed by the U.S. under the provisions stated in the Law of the Sea Convention. U.S. companies have a clear interest in setting international precedents by being the first to operate in these frontier areas—and to continue demonstrating environmentally sound drilling development and production technologies.

The Convention will increase certainty in a significant manner and will in turn make it much easier to decide to invest billions of dollars in future operations.

One other important consideration is our international oil trade. U.S. companies are leading participants in the global oil market, and, in 2010, about 44 percent of

U.S. maritime commerce consists of petroleum and petroleum products. Trading routes are secured by provisions in the Convention combining customary rules of international law with new rights of passage through straits and archipelagoes.

Accession to the Convention would put us in a much better position to invoke such rules and rights. Steady growth in the demand for petroleum throughout the world means increases in crude oil and product shipments in all directions throughout the globe. The Convention can provide protection of navigational rights and freedoms in all these areas through which tankers will be transporting larger volumes of oil and natural gas.

From an energy perspective, we see potential future pressures building in terms of both marine boundary and Continental Shelf delineations and in marine transportation.

The Law of the Sea Convention will provide the necessary certainty and predictability to ensure we have access to another significant potential energy resource.

I know there is considerable concern about royalties and whether, as a result of accession to this treaty, our companies would be paying royalties to the United Nations or another international organization.

While it is true that some royalties (7 percent at most) would ultimately be shared with the International Seabed Authority (ISA)—an independent intergovernmental body established by the Convention, and not part of the U.N.—the U.S. would still retain all bonus bids, annual rental fees, and most of the royalties from these leases. A company would make all payments to the U.S. Government and then it would be the responsibility of the U.S. Government to share this royalty with the ISA beginning in the sixth year of production.

Over the last 10 years, oil and natural gas companies have paid to the U.S. Treasury more than $70 billion to conduct offshore exploration and production activities. They have paid $15 billion in bonus bids, $2.2 billion in rentals, and $54 billion in royalties. As I mentioned earlier, just last week, at the lease sale conducted in the Central Gulf of Mexico, the U.S. oil and gas industry paid $1.7 billion in bonus bids to the U.S. Government in order to secure rights to develop those resources.

If that lease sale had been conducted on our Extended Continental Shelf after U.S. accession to the Convention, the U.S. would still receive all of those bonus bids in addition to all annual rental payments prior to production and all royalties from the first 5 years of production. It is only in the sixth year of production that the U.S. would begin to share a small portion of its royalties with the International Seabed Authority.

We recognize that the royalty sharing provision is a tradeoff for the certainty that the Convention will provide and the vast economic returns that the U.S. will realize through development of its Extended Continental Shelf. But without the certainty provided through the Convention, the likelihood of companies investing will decrease, and the United States would likely collect little to no bonus bids, rentals, or royalties at all with regard to the Extended Continental Shelf.

Our industry also understands that there are concerns with regard to the development of the implementation policies and procedures for the Convention, particularly with regard to how the International Seabed Authority might spend the royalties it receives. But we believe that is precisely why the Senate must approve this treaty.

Accession to the Convention now would allow the United States to participate in the drafting of these procedures and provide a leading voice in how the royalty funds are used. We cannot influence the process and ensure that our concerns are addressed if we are not sitting at the table.

Once the policies and procedures of the ISA have been established, the U.S. would have a permanent seat on the ISA Council with the power to block adoption or modification of all major rules, regulations and procedures. Specifically, this would include the distribution of funds, the development of economic adjustment programs, and amendments to the seabed mining provisions of the Convention. In short, no money could be spent without the complete and total agreement of the United States. The implementation details are being hashed out today, and the negotiations are being conducted without us.

Without accession to the Convention, the United States cannot be a part of those discussions, and if we're not part of those discussions, we have no input on how the Convention will be implemented and we have no say on how the royalty funds are used, including royalties paid on production from other nations' Extended Continental Shelf.

In short, with a seat at the table of the International Seabed Authority's Council, the United States would not only be able to exercise leadership in the expenditure of this money, it would also have veto power to block expenditures it disagrees with. We believe the Law of the Sea Convention offers the United States the chance to

exercise needed leadership in addressing these pressures and protecting the many vital U.S. ocean interests.

If the United States were not to become a party to the Convention, it could negatively affect opportunities to lay claim to vitally needed natural resources in the Arctic and areas where other countries—Russia, for instance—have already made submissions with respect to the outer limit of their Continental Shelf.

Today, the United States does not participate—even as an observer—in the Commission on the Limits of the Continental Shelf. We are watching from the outside as the guidelines and protocols for conduct on the world's oceans are developed and as certain provisions of the Convention are implemented.

Over the past few years, our industry has made great strides in providing more of the energy our Nation's consumers and our Nation's economy need. As our economy improves, we will need even more energy from all sources. We are a technology-driven industry that has been able to create jobs throughout the economic downturn. Greater access to dependable, domestic resources for exploration and production is the cornerstone of our energy future.

Accessing the resources in the Extended Continental Shelf would be available to us under this Convention would also mean more money in the Federal Treasury through royalties, leases, bonus bids and tax revenue. With certainty of access to additional offshore areas, our government could see much more in revenue and our economy would see more jobs and more growth.

Ultimately, these are components that collectively will lead to greater national security.

The oil and natural gas industry has been a bright spot in our troubled economy, accounting for 3 percent of all jobs created since 2009, while boosting America's manufacturing industries and revitalizing communities.

As an industry, we have looked at the Convention from a business perspective and supported it through the past several administrations—under both Republicans and Democrats. Our position is one that we have held for over 15 years.

The American oil and natural gas industry is ready to step up to the plate, but in order for it to succeed, it must be allowed to play on a level international playing field.

The Law of the Sea Convention will go a great distance to provide us that level playing field.

It is good for our Nation, and we urge this committee and the Senate to give its approval.

The CHAIRMAN. Thanks very much, Mr. Gerard.

And Mr. Timmons, just before you do start, let me just say in response to your expressed hope that the Congress is going to—that the Senate is going to make sure that we protect and address any of those concerns that exist, I want to again say to my colleagues that we will have a set of specific declarations and understandings that clarify some of the concerns that have been raised by people as we have gone along here.

So there will be crystal clarity with respect to issues raised about tax or jurisdiction, et cetera, and that will be taken care of in this.

Mr. Timmons.

STATEMENT OF JAY TIMMONS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION OF MANUFACTURERS, WASHINGTON, DC

Mr. TIMMONS. Well, thank you very much, Mr. Chairman, Senator Lugar, and members of the committee, for the opportunity to speak about the Law of the Sea Treaty, which is vital for both our national security, as well as our economic security.

The National Association of Manufacturers is the Nation's largest manufacturing trade association, and we represent 12,000 manufacturers of all sizes across our country. I am pleased to add the voice of manufacturers in support of the adoption of the Law of the Sea Treaty because its approval is absolutely critical for manufacturers' ability to compete and succeed in the global marketplace.

One key to manufacturing growth and competitiveness is exports. Ninety-five percent of the world's consumers live outside of the United States. So reaching these potential customers is absolutely necessary for manufacturing competitiveness.

Most significantly, it is 20 percent—20 percent—more expensive to manufacture in the United States than it is among our major trading partners, and that is after you remove the cost of labor. This treaty will help reduce the cost of manufacturing in two very important ways.

First, it will provide new opportunities, as you have heard from my colleagues here, for energy exploration. Secure and reliable sources of energy are a significant concern for manufacturers, which consume one-third of our Nation's energy output.

And second, it will open up access to critical inputs for many manufacturing applications. If you use a cell phone or a computer or drive a hybrid car, chances are that components of that product contain what are known as rare earth minerals. Rare earths are the basic inputs in the production process for many items, such as renewable energy products, defense products, consumer electronics, and others.

Today, as was noted by the chairman, China produces upward of 95 percent of the world's supply of rare earth minerals. Brazil, India, Malaysia, and Canada are the remaining sources. And while China uses 60 percent of the rare earths that it mines today, there is no doubt that it will likely use all of that that it produces eventually.

Now, if that happens, that is going to jeopardize manufacturers' access to these materials. Costs will rise, as they have been, not only on manufacturers, but also on consumers. The economy will suffer, and more jobs will be in jeopardy.

The United States has an opportunity to tap a new source of rare earths and avoid this scenario, but first we need to ratify the Law of the Sea Treaty. The development of resources in and on the deep seabed is incredibly expensive, as you might imagine. Companies in the United States are unlikely to invest heavily in deep seabed mining because of the risk of legal challenges to their activities.

Today, many U.S. companies have the means to explore and develop these resources and minerals, but they will only do so if there is a structure in place that contains internationally recognized agreements. Ratification of the treaty will give companies the certainty that they need to begin to develop these resources.

Foreign mining companies whose governments have joined the Convention have access to the international bodies that grant the legal claims to operate in the deep seabed area. U.S. companies are currently excluded from those bodies simply because we have not adopted the treaty.

Manufacturers cannot afford for the United States to sit on the sidelines when it comes to the Law of the Sea Treaty. We are in a global economy, and countries are working feverishly to take away our mantle of economic leadership. To strengthen manufacturing in the United States and maintain our economic position, we need to adopt policies that promote long-term and sustained economic growth.

Manufacturing in the United States employs over 12 million Americans with high-paying jobs, and the sector supports 5 million more jobs in this country. No doubt everyone in this hearing room would like to see those numbers grow. A strong and prosperous country needs a strong manufacturing sector, and this treaty will strengthen manufacturing, and it will strengthen our Nation.

Thank you again for the opportunity to speak with you today.

[The prepared statement of Mr. Timmons follows:]

PREPARED STATEMENT OF JAY TIMMONS

Thank you, Chairman Kerry and Ranking Member Lugar, for holding this hearing and including the business community in your deliberations on an issue that is vital to our national security and our global economic competitiveness.

I am pleased to appear before this committee to discuss the U.N. Convention on Law of the Sea and its importance for America's manufacturers. I am Jay Timmons, president and CEO of the National Association of Manufacturers (NAM). The NAM is the Nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 States. Our membership includes both large multinational corporations and small and medium-sized manufacturers.

Our charge at the NAM is to promote policies that make the United States the best place in the world to manufacture.

It's no surprise then that ratification of the Law of the Sea Treaty is a priority for many of the NAM's members. Its adoption is critical for manufacturing competitiveness in the United States.

While my testimony will focus primarily on mineral development on the deep seabed, that is not the only reason for the urgency in adopting this treaty.

In today's global economy, exports are more important than ever. Ninety-five percent of the world's consumers live outside the United States, so reaching these potential customers is critical for manufacturing competitiveness.

This treaty will secure international lanes of commerce and ensure that manufacturers can export their products efficiently. It protects our sovereign interests and promotes international commerce.

Secure shipping lanes are a priority for NAM members. Last year, cargo ships and other ocean liners carried $570 billion of U.S. exports. Discounting our exports to Mexico and Canada, which travel by rail and truck, this total accounts for more than 50 percent of our exports by value and more than 90 percent of our exports by weight.

And, with global commerce comes the need for global communication. The telecommunications industry needs the Convention to expand the right to lay and maintain submarine cables in the oceans of the world and provide stronger protections for cables against damage by other parties.

We can also strengthen manufacturing by ensuring that manufacturing in the United States is cost competitive. Currently, it is 20 percent more expensive to manufacture in the United States than it is among our major trading partners.

This treaty will help reduce the cost of manufacturing in two important ways.

First, it will provide new opportunities for energy exploration. Secure and reliable sources of energy are a significant concern for manufacturers, which consume one-third of the energy produced in the United States.

Energy companies need the certainty the Convention provides in order to explore beyond 200 miles and to place experts on international bodies that will delineate claims in the Arctic.

And next, it will help reduce manufacturing costs by opening up access to critical inputs used in many manufacturing applications.

RARE EARTH MINERALS ARE VITAL TO MANUFACTURING

Manufacturers in the United States require access to basic inputs for the production process in order to become and remain competitive in the global economy. As manufacturing grows more high tech, "rare earth" minerals are becoming increasingly important to manufacturers and their supply chains. Rare earth minerals consist of 17 elements that are important for numerous manufacturing applications, including in the production of chemicals, defense products, consumer electronics, wind turbines, hybrid car batteries and other renewable energy products. They are also used as catalysts for petroleum refining.

Until a decade ago, the United States was 100 percent self-reliant for rare earth production, with domestic companies producing enough to supply U.S. manufacturers. Over time, however, U.S. production was halted as it became economically and environmentally cost prohibitive.

Companies in various countries—including the United States—are looking at reopening closed mines and developing new deposits, but these efforts could take a number of years to fully come on line.

The deep seabed offers a new opportunity for the United States to gain steady access to these vital rare earth minerals. Polymetallic nodules are located on the deep ocean floor. These nodules typically contain manganese, nickel, copper, cobalt and rare earth minerals. However, U.S. companies cannot actively pursue claims in the areas where these nodules are dense unless the United States ratifies the Law of the Sea Treaty.

DEEP SEABED DEVELOPMENT

There is no doubt the world is very different today. We are a global economy, and countries are working feverishly to take our mantle of economic leadership away from us.

Deep seabed mining is an emerging global industry and, indeed, a key ingredient to economic growth and competitiveness. We have companies in the United States with the means to explore and develop the resources and minerals on and in the seabeds of international waters, but they will only do so if there is a structure that contains internationally recognized agreements in place. This treaty will institute that legal framework upon which companies—and countries—can rely.

U.S. multinational companies expect other countries to abide by international standards and rules in other areas, such as intellectual property, counterfeiting, dumping, and international financing. So do we. It, therefore, is logical that we would expect the same when determining our ability to access the resources of the seabed.

The Law of the Sea Convention provides the only internationally recognized legal regime for extracting mineral resources from the ocean floor in the deep seabed, an area over which no country has sovereign rights. The International Seabed Authority (ISA) develops the rules, regulations, and procedures relating to the deep seabed. The Convention guarantees the United States, and only the United States, a permanent seat on the decisionmaking Council of the ISA—with an effective veto over decisions impacting U.S. interests.

The development of deep seabed claims is incredibly expensive. Companies in the United States are reluctant to invest heavily in deep seabed mining because of the risk that their activities would not withstand a legal challenge since the U.S. is not a party to the Convention. Conversely, foreign companies, because their governments have joined the Convention, have access to the international bodies that grant the legal claims to operate in the deep seabed area. The U.S. cannot represent the interests of its companies in those bodies.

Lockheed Martin, for example, has two deep seabed claims that predate the Law of the Sea Convention. It has continued to extend its licenses through the National Oceanic and Atmospheric Administration (NOAA). These claims will be instantly recognized by the International Seabed Authority (ISA) if the U.S. joins the Convention. However, without the U.S. becoming a party to the Convention, Lockheed Martin is unable to secure U.S. sponsorship of these claims at the ISA.

CHINA'S DOMINANCE OF RARE EARTHS

Our Nation's ability to access rare earth minerals may be the most pressing economic security issue we face.

Today, a single country—China—holds a virtual monopoly on the mining and production of rare earth elements. China produces more than 90 percent of the world's supply and also consumes roughly 60 percent of that supply. Brazil, India, Malaysia, and Canada are the other sources of the remaining paltry supply of rare earths.

China recently imposed significant export restrictions on its rare earth production. In 2010, it announced it would cut exports of rare earth minerals by 40 percent by 2012. Just last week, Chinese officials released a white paper defending the country's export control restrictions on rare earths. Earlier this year, the United States joined with Japan and the European Union to file complaints with the World Trade Organization (WTO) over China's export policies on rare earths. Experts believe China may eventually consume 100 percent of the rare earth minerals that it produces, jeopardizing U.S. manufacturers' access to these materials and, at the very least, significantly driving up costs for companies that use these minerals. These increased costs would impose significant and detrimental costs on the many millions

of consumers who use these products and could have a profound negative impact on U.S. national security.

At the same time, the Chinese are accelerating their own deep seabed mining efforts. They have increased government funding for seabed mining, and the government announced a $75 million national deep sea technology base in 2010. China is also expanding its engagement with the ISA, where it secured one of the four ISA exploration licenses issued in 2011. The Chinese can boast more than 20 years of sustained technical and political efforts to develop the deep seabed, funded by the government.

A close look at the map of claims in the Clarion Clipperton Zone (CCZ), a location in the Pacific Ocean that is rich with rare earths, shows active claims by China, Japan, and Russia "planting their flags," so to speak. Recently published reports have indicated that the Chinese are actively surveying other claim areas in the CCZ, including those of the United States. Russia, Tonga, and Nauru were also granted deep seabed mining licenses by the ISA last year. At last count, the ISA has 17 pending or completed applications for exploration—up from just 8 in 2010.

Only ratification of the Law of the Sea Convention and engagement with the ISA will provide a sufficient mechanism to secure international recognition of U.S.-based claims and rights. Manufacturers and consumers will benefit from a more diverse and competitive market for rare earths, and deep seabed mining is an opportunity for the U.S. to quickly diversify its rare earth sources.

CONCLUSION

Manufacturing in the United States employs 12 million Americans with good-paying jobs. The sector supports 5 million more jobs in this country. Everyone in this hearing room would like to see those numbers grow. A strong and prosperous country needs a strong manufacturing sector.

To strengthen manufacturing in the United States, we need to adopt policies that make our country more competitive in the global marketplace by reducing the cost differential we face with our economic competitors. Other nations are actively seeking to knock us from our mantle of economic leadership, yet, too often, we remain on the sidelines. Manufacturers can't afford for the United States to sit on the sidelines when it comes to the Law of the Sea Convention.

The CHAIRMAN. No, thank you very much, Mr. Timmons. We appreciate it.

Mr. McAdam.

STATEMENT OF LOWELL C. MCADAM, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, VERIZON COMMUNICATIONS, INC., NEW YORK, NY

Mr. MCADAM. Thank you, Mr. Chairman, Ranking Member Lugar, and members of the committee. Thank you for the invitation to speak before the committee today.

I would ask that my full remarks be entered into the record.

The CHAIRMAN. Without objection, they will be.

Mr. MCADAM. So far today, you have heard a broad perspective from my esteemed colleagues on the Law of the Sea. What I would like to do is discuss ways that the Convention will strengthen protection for a global undersea cable network operator. My views are based on more than 20 years in the telecommunications industry, during which time I have helped build both fixed and mobile networks domestically and internationally.

As a major communications company utilizing the international seabed to provide voice, video, Internet, and data services over a network of more than 80 submarine cables, Verizon supports the U.S. ratification of the Law of the Sea Convention. Fiber optic submarine cables are the lifeblood of U.S. carriers' global business and the digital trade route of the 21st century.

Aside from our land-based connections with Canada and Mexico, more than 95 percent of international communications traffic

travels over 38 submarine cables, each roughly the diameter of a garden hose. Without these cables, current satellite capacity could carry only 7 percent of the total U.S. international traffic.

Any disruption to the global submarine network can have a significant effect on the flow of digital information around the world, as well as an impact on the world economy. As one official from the Federal Reserve noted in referring to submarine cable networks, "when communications networks go down, the financial sector does not grind to a halt. It snaps to a halt."

There must be an appropriate legal framework based upon global cooperation and the rule of law to protect submarine cables. The Convention provides this necessary framework in 10 provisions applicable to submarine cables. These provisions go beyond existing international law to provide a comprehensive international legal regime for submarine cables wherever they are deployed.

Several incidents recently underscore the urgent need for a clear and unambiguous framework protecting this vital communications infrastructure. First, some nations have attempted to encroach on the ability of U.S. operators to deploy, maintain, and repair undersea cables. This is in violation of the Convention. With a seat at the table, the United States can more effectively oppose these types of foreign encroachments on restrictions and enforce the Convention's freedoms to lay, maintain, and repair undersea cables.

Second, ratification of the Convention will help U.S. companies better contend with disruptions to undersea cables. For example, in March 2007, large sections of two active international cable systems in Southeast Asia were heavily damaged by commercial vessels from Vietnam and taken out of service for about 3 months.

More than 106 miles of cable were removed from the seabed and repaired at a significant cost. It would have been very helpful if the United States, as well as affected U.S. companies, including Verizon, had been able to use the Convention to compensate cable owners, arbitrate disputes over service disruptions, and deter future violations.

Finally, the Convention will help the U.S. Government and affected companies respond when countries attempt unlawfully to require licenses or permits before submarine cables can be laid or repaired. As an example, Verizon is a co-owner of the Europe-India Gateway submarine cable system, which passes over the Continental Shelf claimed by Malta but never enters Malta's territorial seas.

Even though the Convention allows for such transit without interference by coastal nations, Malta's resources authority has threatened legal action if the cable operators do not obtain a license and pay a significant fee. Not only do these fees add unforeseeable cost on existing undersea cable systems, they raise the specter of coastal nations imposing similar requirements for the sole purpose of raising revenue at the expense of the cable operators and owners.

By signing on to the Convention, the United States will have an enhanced ability to effectively support American parties to such disputes and enforce the treaty's expressly stated freedom to lay and maintain submarine cables in international waters without tolls, taxation, or fees levied by coastal states.

Once the United States is party to the Convention, Verizon and other U.S. telecommunications companies can work with the appropriate U.S. agencies to enforce the freedoms to lay and repair cables, saving millions of dollars over the life of a cable system. This Convention will improve the reliability of our critical infrastructure and put U.S. companies on a level playing field for operating international cable systems.

In conclusion, Senate ratification of the Convention will provide confidence to U.S. companies that their undersea submarine cable investments are protected by more specific and reliable international law. The Convention will provide tangible benefits to the United States through specific new protections for critical submarine cable infrastructure. Verizon urges the Senate to ratify the Convention.

Thank you, Mr. Chairman.

[The prepared statement of Mr. McAdam follows:]

PREPARED STATEMENT OF LOWELL C. MCADAM

Mr. Chairman and members of the committee, it is an honor to appear before you today to discuss the United Nations Convention on the Law of the Sea. I will discuss the ways that the Convention will strengthen protection for the global undersea cable networks on which our economy and national security rely.

My views are based on my more than 20 years in the telecommunications industry, during which I have helped build fixed and mobile networks in the United States and other regions of the world.

As a major communications company utilizing the international seabed, Verizon supports the U.S. ratification of the Law of the Sea Convention.

Verizon is a global leader in delivering broadband and other wireless and wireline communications services to consumer, business, government and wholesale customers in more than 150 countries and for all of the Fortune 500 Companies. We deliver these services over a network circling the globe and supported by more than 80 submarine cable systems.

Fiber-optic submarine cables are the lifeblood of U.S. carriers' global business. Aside from our land-based connections with Canada and Mexico, more than 95 percent of U.S. international traffic—voice, video, Internet and data—travels over 38 submarine cables, each the diameter of a garden hose. Without these cables, current satellite capacity could carry only 7 percent of the total U.S. international traffic.

Fiber-optic submarine cables are the international digital trade routes of the 21st century. And thus, any disruptions to the submarine cable global network can have significant impact on the flow of digital information around the world, with severe consequences for the world economy. As one official from the Federal Reserve noted in referring to submarine cable networks, "When the communication networks go down, the financial sector does not grind to a halt, it snaps to a halt." [1]

Given their importance to global networks and the world economy, there must be an appropriate legal framework based upon global cooperation and the rule of law to protect submarine cables. The Convention provides this necessary framework in 10 provisions applicable to submarine cables, going beyond existing international law to provide a comprehensive international legal regime for submarine cables wherever they are—whether in territorial seas, in Exclusive Economic Zones (or "EEZ"), on Continental Shelves, or on the high seas. Once the Convention is ratified, the United States Government will be able to insist on compliance by other nations with these protections. Several recent events underscore the urgent need for a clear and unambiguous framework for protecting this vital communications infrastructure.

First, some nations have attempted to encroach on the ability of U.S. operators to participate effectively in the deployment, maintenance, and repair of undersea cables. To oppose these types of foreign encroachments or restrictions effectively, the United States must have a seat at the table where it can enforce the Convention's freedoms to lay, maintain, and repair undersea cables.

Second, ratification of the Convention will also help U.S. companies better contend with disruptions to undersea cable service. For example, in March 2007, large

[1] Stephen Malphrus, "Keynote Address," ROGUCCI Summit, Dubai, U.A.E., October 19, 2009.

sections of two active international cable systems in Southeast Asia were heavily damaged by commercial vessels from Vietnam and taken out of service for about 3 months. More than 106 miles of cable were removed from the seabed and repaired, at a cost of more than $7 million. It would have been very helpful if the United States, Verizon, and other affected U.S. companies had been able to use the Convention to compensate cable owners, arbitrate disputes over service disruptions, and deter future violations.

Third, the Convention will also help the United States Government and international companies respond when countries attempt to unlawfully require licenses or permits before submarine cables can be laid or repaired. As an example, Verizon is one of the co-owners of the Europe India Gateway submarine cable system, which passes over the Continental Shelf claimed by Malta but never enters Malta's territorial seas. Even though the Convention allows for such transit without interference by coastal nations, Malta's Resources Authority has threatened legal action if the submarine cable operators do not obtain a license and pay a fee. Not only do these fees add unforeseeable costs on existing undersea cable systems, they raise the specter of coastal nations imposing similar requirements for the sole purpose of raising revenue at the expense of the cable owners. By signing on to the Convention, the U.S. will have the discretion to add its diplomatic efforts in the ongoing dispute with Malta and enforce the treaty's expressly stated freedom to lay and maintain submarine cables in international waters without tolls, taxation or fees levied by coastal States.

Finally, the Government of India imposes onerous requirements on cable ships outside its territorial seas, including submarine cable repair ships. India requires cable ships to enter one of its ports for a security inspection, which triggers a customs bond against the value of the ship and any cable being carried. Although the bond may be repaid at the end of the repair, other fees are not. Getting a permit can take more than 3 months. The net result: India has become one of the most expensive places to maintain and repair submarine cables, with unnecessary costs running to the millions of dollars.

Once the United States is a party to the Convention, Verizon, and other U.S. telecommunications companies can work with the appropriate U.S. agencies to enforce, when necessary, the freedoms to lay and repair cables on the Continental Shelf and the EEZ—saving millions of dollars over the life of a cable system, improving the reliability of our critical infrastructure, and putting U.S. companies on a level playing field for operating international cable systems.

If the Congress fails to act to ratify the Convention, U.S. companies will continue to operate at a disadvantage vis-a-vis our global counterparts, indeed having to work through our international providers and their respective governments to seek protection of their submarine cable infrastructure under the Convention.

In conclusion, Senate ratification of the Convention will provide confidence to U.S. companies that their undersea submarine cable investments are protected by more specific and reliable international law. The Convention provides tangible benefits to the United States through specific new protections for critical submarine cable infrastructure. Verizon urges the Senate to ratify the Convention.

The CHAIRMAN. Well, thank you very much, Mr. McAdam. I really appreciate that.

I apologize for having had to step out just for a minute. I think you will be able to tell your grandchildren that while you were speaking, history was being made. It is just that it wasn't exactly your speech that made it. [Laughter.]

Mr. MCADAM. Wouldn't be the first time.

The CHAIRMAN. But it is my understanding—I don't have the full story here. I think Tom also got a message, if I am correct. But I think the entire ACA was upheld, with the exception of the Federal Government's power to terminate Medicaid funds. That was very narrowly drawn.

But otherwise, that is what I understood. Is that what you understood, Tom?

Mr. DONOHUE. Yes. This is very complicated. First of all, the individual mandate was found to be a tax. And it appears, and I have very little information—we had talked about this—that the Chief Justice moved to the other side so that he could write the opinion,

and I think the opinion is going to be very interesting to read. And so, we probably none of us want to say anything for the next half hour.

The CHAIRMAN. I think that is pretty accurate. We will wait and get a readout at the appropriate time.

But let me come back, if we can, to the importance of what is being said here. And I think your statement today, Mr. McAdam, actually is a very, very important one because I don't think a lot of people have focused on the extent to which an entire society—defense industry, finance, banking, all of this—is wrapped up in the movement of information and the degree to which the ability to protect that is obviously very, very significant.

And to have rights with respect to it that are clear is obviously critical with respect to any kind of dispute and/or intervention by someone, by a terrorist group or by a nation state. And obviously, one could envision any such intervention taking place in the world we are living in today. So I appreciate what you have said.

And it raises the larger question that I want to ask all four of you. Some of the folks who have raised questions about the treaty—and we don't challenge anybody's right to do that. Obviously, there are different opinions here about these things. But they have argued that companies, that there is nothing to bar you from just going out. Just to go out and do what you want to do.

They argue that you can drill for oil and gas in the extended shelf, that you can mine the deep seabed, you can fix your cables. Just go do it, and if there are any problems, we will just use the U.S. Navy and U.S. military power to protect those operations.

Now I am not going to go into any of the questions raised about war powers resolution, the politics of war, any of that. Just give us the practicalities. What does that approach do for your ability to, in fact, go out and do it, if anything? Could each of you respond to that?

Maybe you want to start, Mr. Gerard?

Mr. GERARD. Surely. I think in simple terms, Senator, the thing to remember is the word "certainty." And as you quoted earlier, Marvin Odum, chairman of Shell in the United States, made a simple comment. And he said without certainty, the risk is too high.

And fundamentally, from an oil and gas perspective, that is what we looked at. We go through political calculation, risk calculation on every project. And if there is question as to who has that right or who owns that land or who has access, we might be able to have a theoretical conversation about what the U.S. Navy can or cannot do, but we are talking billions of dollars of investment.

One quick anecdote, Senator, that you might appreciate. Shell Oil is moving, hopefully, to the Arctic, even as we speak. A few days ago, they just released two of their vessels from the Seattle region, headed up to the Arctic.

They are in the fifth year of a permit. They have invested $4 billion. That is a "B," $4 billion. And hopefully, this summer, they will get their first permit for their first drill hole.

So when we talk about investments, we are talking about multibillion dollar efforts here. So unless we have certainty and know who has got the right claim, who controls that area, our money will

not go there, and I think Marv Odum made that quite clear in his statement.

The CHAIRMAN. Yes. Mr. Donohu.

Mr. DONOHUE. Let me state for 1 minute, Mr. Chairman, on the issue of capital that it takes—whether it is to dig up rare earth minerals or whether it is to go for oil and gas or whether it is to make other advances, capital doesn't come if it isn't safe. Money goes where it is safe, where it can be profitable, and where it is protected.

And so, when we are talking about certainty, we are talking about a form of protection that we know we can get the permits, we can do our business. And by the way, of course, we can always say we have a great Navy, even though we are shrinking the size of the Navy and we haven't done sequestration yet and all of that sort of thing.

I think it is a lot cheaper. I think it is a lot smarter. I think it is a lot more credible in the courts of the world to be a party to this treaty. And I think we must keep sight of the fact that when you are on the inside, you can do something about it. When you are on the outside, are you just going to tell them we have great massive Navy power, and we are going to go do what we want to do?

If it ever came to that, of course we can. But I think it is important. We are going to have competition for these areas. If we don't lay a claim to these extended areas, there are lots of other people. As you mentioned, I think it was you, in the Arctic, we have got the Russians. We have got—the Chinese will be there. Everybody is up there. Everybody wants to get in on the deal.

Well, why don't we just put our footprint there? All we have to do is put this treaty in place with the adjustments that should be made, put our people there, and lay claim to what is rightly the resources of this country.

The CHAIRMAN. Anybody else want to? You don't need to. Yes, Mr. Timmons.

Mr. TIMMONS. Well, 161 other countries would likely not recognize our claims if we are not a part of the treaty and they are. The world is a very different place today than it was 40 years ago. We are a global economy. We compete internationally. We are competing for those 95 percent of consumers who live outside of the borders of the United States.

Many of the companies that would be able to invest and take advantage of the resources of the deep seabed are international in nature, and they have operations in other countries. And through commitments and treaties, they rely on other countries to follow the rules. Whether it be in areas like dumping or IP protection or financing, these other countries—or these companies will want to follow the rules as well, or they simply will not invest.

The CHAIRMAN. Now let me ask you one other question with respect to this. That we are hearing from some people—we are hearing from some people that this may be a back door way of enforcing the climate change treaty, something like the Kyoto Protocol.

Now I know we have had many discussions, Mr. Donohue, about that. We have worked together on some energy stuff. I know the

Chamber's and other people's concerns about costs being dumped on you that you can't handle and make you noncompetitive. And that has been a major issue as we wrestle with how to deal with these things.

So I will ask each of you the very same question. Do you have any concern that joining the Law of the Sea is going to require the United States to somehow be mandated into the Kyoto or any other climate change agreement?

Mr. Donohue.

Mr. DONOHUE. Well, if you read what seems to be the treaty's environmental interests, we have met all of them. All of them, period. And if we were a party to the treaty and inordinate or particularly inappropriate climate demands were made on us, we would have the ability to veto it. Veto it. It takes one veto.

The CHAIRMAN. Let me ask you—yes, Mr. Timmon.

Mr. DONOHUE. You tell me how you think that is wrong, and I will be happy to discuss it with you.

Mr. TIMMONS. I think that is a very important point that Mr. Donohue has just made. We would have the only permanent seat on the Seabed Authority, and we would have the right to object to any provisions that are put forward.

That said, there is nothing in the treaty that I have read that indicates that we would have to join Kyoto or any other treaty of that type. And that is coming from an organization that does not support Kyoto and has serious reservations about a cap-and-trade regime.

The CHAIRMAN. Some critics have additionally argued that if the U.S. joins the Convention, we are going to lose jobs. Does the Chamber of Commerce agree with that?

Mr. DONOHUE. No. If you expand the economy, if you—and many of our jobs in the future are going to come from mining, from energy, from trade, and this clearly is a treaty that will enhance that, not detract from it. And I believe, as we have said publicly not only about this treaty, but about energy, mining, and other industries, these are where a lot of the jobs of the future are.

I think it would create jobs.

The CHAIRMAN. Anybody else want to comment on that?

Mr. Gerard.

Mr. GERARD. I would just say, Senator, clearly it will be a job creator.

Let me just add one other anecdote, and I know I am raising a touchy issue here—Keystone XL pipeline. A lot of people don't realize the Keystone XL pipeline has 2,400 U.S. companies involved in its development from 49 different States. We have only not found someone in the State of Hawaii that is involved in the Keystone XL pipeline development.

So when you look at energy infrastructure, energy investments, they are huge job creators, and they occur places that you least expect. The multiplier effects in energy, particularly in oil and natural gas, are very significant.

And so, we see nothing but upside through ratification, through the accession process to secure those rights, hopefully so we can secure the opportunities to develop that resource, and it will flow clear across this country in a variety of different ways.

The CHAIRMAN. Thank you.

Yes, Mr. McAdam.

Mr. MCADAM. Yes, Mr. Chairman, I would just point out in our industry, telecommunications, the buzz word, No. 1 word is "reliability." And we invest as a company $16 billion to $17 billion a year into our networks.

And we in the undersea cable area in particular invest in mesh networks so that we can avoid issues with large storms or earthquakes off the coast of Japan. So we invest to get a level of certainty for our customers.

When a nation takes a unilateral action like I referred to in my testimony, you can't counter that with another investment. So this treaty allows us to have certainty around those sorts of unilateral actions and the belief that we can resolve any conflict amicably and quickly.

And so, my view is it will help us with our certainty around investments. We will make more investments, and that, in turn, will create more jobs.

The CHAIRMAN. My time is up. Let me come back another round.

Senator Lugar.

Senator LUGAR. Thank you, Mr. Chairman.

I want to pursue some more of the certainty argument. This was made by others in earlier hearings of the committee, and yet we pursued this during the last hearing with former Secretary of Defense Don Rumsfeld, who testified against the treaty.

So I raised the question with Secretary Rumsfeld how he would deal with the situation in which American companies were testifying, as you have today, that without certainty they would not be prepared to invest the billions of dollars that are required. Thus, there would not be the creation of the jobs nor the degree of energy independence or the other attributes.

Now his response, and I hope I do justice to it, he observed that while businesses always prefer greater certainty, they enter into uncertain investments all the time when they believe the potential benefits justify the risks. On that basis, he suggested United States companies that saw potential benefits from deep seabed activities would go right ahead and make those investments even if the United States did not ratify the Convention because as a practical matter, there is no impediment to their doing so outside the Convention rules.

And second, he observed U.S. companies might consider entering into joint ventures with companies from countries that are parties to the Law of the Sea Convention. They could, therefore, secure rights under the Convention in that way without the United States needing to join the Convention ourselves.

Now these were supporting comments in terms of not ratifying, and the basic thoughts of the opponents were that we are forfeiting sovereignty. We are forfeiting money through the royalties and those aspects.

And finally, that there simply is no reason why we should not proceed anyway. We have the greatest fleet on earth. And if we are challenged, we have the ability to rebut whoever is challenging us.

So this is repetitious. But nevertheless, these arguments have been strongly made. That is the reason we are going through these

hearings for the third time, not having had ratification, starting from 2003 onward.

How do you respond to Secretary Rumsfeld suggesting that after all is said and done, you like certainty, but you take risks all the time. And you have to sort of consider what the profit may be and proceed, given our fleet and given our general stature in the world.

Mr. Gerard, do you have a thought about that?

Mr. GERARD. I do. There is risk, and then there is risk, Senator Lugar. In this case, there is risk, everyday business risk associated with doing business and making risk assessments and judgments. Very fundamental to that risk assessment is property right—who has right, who doesn't have right. This is a very fundamental issue.

When you go out in the open waters beyond our 200-mile nautical mile border today, the risk goes up very significantly. I would suggest if the return is that great, then there would be people there today, and there aren't.

To the second point that he has raised is probably correct. What will eventually happen is U.S. companies will be forced to partner with other nations who have acceded to the treaty—the 161, I believe, that were mentioned earlier—to find opportunities around the globe because they cannot find certainty or protect their own interests through U.S. law, through U.S. practice. And so, we would find them teaming up with the Russians, with the Chinese, and others where their preference would be to take the lead and to go alone or to find others as their junior partners in assessing and managing this risk.

Senator LUGAR. By definition of these partnerships, we already divide up the profits, leaving aside the royalties in the sixth year.

Mr. GERARD. Well, that is right. And plus, you are at the behest of others in looking for those partners. We have, I might say, the best companies in the world, the most technologically advanced. We are on the cutting edge of the abilities to go out in these deep waters and produce these energy resources.

Wide open risk without any limitation is a clear detriment, and as you have heard the people making those decisions in the boardrooms, the risk is too high.

Senator LUGAR. How do we deal with this second proposition that is being offered? And that is that after all we do have the largest fleet, the only fleet that is everywhere. This is too bald a statement, but the idea is if there is a problem with somebody, you just shoot them up. You just plow right on through.

That people recognize might and so forth. Therefore, all this quibbling over the royalties and so forth, we are just simply as a nation losing our sense of sovereignty, our sense of our ability, really, to manage things. Why doesn't that work really in the real world?

Mr. DONOHUE. You know, Senator, we are a party to many agreements around the world, and there was a lot of opposition to them. A lot of people were upset that we went into the WTO.

What we have found, a single important thing we have found it was a way to adjudicate differences between countries. And most of the time, the United States has won. On occasions, we have lost, and even then, we have ignored some of those things to our own detriment.

But I happen to think—while I have great confidence in the military, I happen to think it would be better if we could avoid most of the need to confront militarily by joining an organization that 161 countries are already in, couldn't all be wrong, and having a way to participate vigorously in the process.

Clearly, the amount of money that you are going to pay in some sort of royalties or fees is a fraction of what the Government is going to make on this deal. And clearly, it would be much, much better to find a way to explore these tremendous resources without having to do it under the protection of naval power.

I mean, under that argument, we could sail across any—go anywhere in the world and pull up with our Navy and say, by the way, we are going to dig right here, and maybe your—and those people may be claimants to that property because of their participation in the treaty. I wouldn't know. But I just think the argument that we are the toughest guys on the block is too simple. We will just go in there and do what we want is probably not the best argument for us to make.

Mr. MCADAM. Senator, if I could just, a couple comments on both of your questions here. While we certainly do accept risk and we balance that in all of our investments, it is very prudent for us to look for opportunities to lower risk wherever we can. And this seems like a very reasonable way to do that.

We do partner with many different companies to do these large undersea cable networks that I talked about. And in some of the disputes that I have mentioned, we have had to go to countries like the U.K. and France and ask them, frankly, to carry our water for us. And it seems almost an assault on our sovereignty that we have to go do that because we don't have a seat at the table.

For me to try to convince the Navy to go dispatch a destroyer to fight over a garden-hose-size cable going into another country seems to be a bit of overkill.

Senator LUGAR. Thank you very much.

The CHAIRMAN. Senator Corker.

Senator CORKER. Thank you, Mr. Chairman. Thanks for having this hearing and your diligence in having many of these.

And thank you, as witnesses, for being here. I know most of you well, and I appreciate you being here.

And I will say that it is a little bit of an out-of-body experience to have especially you, Mr. Gerard, in here talking about something the administration is doing to help the oil industry. I think it is not a pejorative statement to say that they have done everything they can to hurt the oil industry.

The Keystone pipeline that you talked about is a great example of this administration basically trying to keep something that is in the interest of Americans and American jobs from happening, very—it looks like for political reasons. And yet, you know, we have had members up here, people up here many times talking about this being good for the oil industry.

So Secretary Clinton was up here talking about the same thing. So, as you can imagine, I am sitting up here, it is a little bit of an extraordinary experience. And I wonder if you could explain to me why you think the administration is working so hard to help

the oil industry with this treaty, and yet domestically doing everything they can to damage it and keep it from being productive?

Mr. GERARD. Well, I appreciate the question, Senator. And the irony wasn't lost on me either when I was invited to testify.

But let me just say this. Let me step back, and let us take a broader world U.S. view. What we are talking about here is the future of the country and where we will stand in that global economy and our potential opportunities.

And so, in our mind, we separate, if you will, those current domestic challenges or, in our view, inadequacies in terms of allowing us to produce our own domestic oil and natural gas. I think what you are alluding to, Senator, is 85 percent of our domestic outer Continental Shelf is off limits today, as a result of U.S. policy where we do have sovereign rights currently.

We are frustrated by that. Our views on that have not changed. But we look to the future, particularly in the Arctic. And under the Expanded Continental Shelf, we have the potential to move that 200-mile radius or limit out to 600 miles.

Senator CORKER. But let me ask you this question.

Mr. GERARD. We think it is a big deal moving forward.

Senator CORKER. Right. And I understand. I appreciate you being here, and I appreciate you experiencing the irony, too. So you would be better off——

The CHAIRMAN. We want you to appreciate his full answer, though, too.

Senator CORKER. Well, I had a feeling it might last a long time. [Laughter.]

The CHAIRMAN. There is a lot to say. You have got to stand up to these things.

Mr. GERARD. I will be brief. Go ahead, Senator.

Senator CORKER. The 200-mile piece, though, is probably easier gotten to by U.S. companies, is it not, and the extended piece is deeper and more difficult to explore, is it not?

Mr. GERARD. Yes and no. To oversimplify it, in some places in the Arctic, the water is relatively shallow. In some areas off the Pacific coast, it goes deeper quicker. The Atlantic a little shallow. So it just varies in the area around the world.

Senator CORKER. You can understand the perplexing nature of having Secretary Clinton and others up here advocating for the petroleum industry when what we see here domestically is something very different. But I know that everybody——

Mr. GERARD. I understand.

Senator CORKER. Yes, thank you so much.

Mr. McAdam, I heard you talking about laying cable on the seabed, and I know you have companies that operate in the U.K. As matter of fact, you have a major base of operations there, and I know that the U.K. is signatory to this treaty. So I guess I am confused.

If you had issues, and I know you operate on a global basis, and most of the companies that the Chamber represents that care about this treaty operate all around the world. I mean, these are not companies that operate in Soddy-Daisy, Tennessee. I don't understand why you can't adjudicate these claims through the U.K. if we are not signatory. It doesn't make any sense to me that all

of this is riding upon the United States, us being signatory to this treaty.

Mr. MCADAM. Well, Senator, I just feel that we would be much more effective having a seat at the table and having that discussion. To go to the folks in the U.K., who are good partners certainly, and try to convince them to carry our water in talking to another country I think is difficult for them. They have to balance that with all their priorities, and I think that one step removed makes us less effective.

Senator CORKER. So, in each case, a company—let me make sure I understand correctly. A company doesn't have the ability to try to make claims itself. It has to have a country representing them in the process. Is that the way it works?

Mr. MCADAM. Well, we would certainly be active with our legal folks and with our operations on the ground. But our opportunity to be backstopped by the Federal Government is important to us and I believe will make us more effective.

Senator CORKER. But to answer the question, clearly, you have the ability to make claims directly, do you not? You don't have to come and ask permission of the U.S. Government to do so.

Mr. MCADAM. Certainly. We would use existing legal frameworks.

Senator CORKER. So to say—so to say that our country has to be signatory to these treaties—to this treaty when, basically, every one of these companies operates on a global basis and has other outlets through which to make claims is not a true statement, is it not?

Mr. MCADAM. Well, obviously, we have operated for years without the treaty. But our point is today merely we would be more effective if we had it.

Senator CORKER. And tell me how you would be more effective. Because I would assume that the many people that work for you in the U.K. believe that they have a very effective government that they work with, and I am sure when you are there before their governing bodies, you are telling them how effective they are.

So tell me why that would make you more effective. I am having a hard time understanding that.

Mr. MCADAM. Well, I think the issue is that you have many countries around the world, like the example of Malta that I used, that can take this sort of unilateral action, and there isn't a framework for redress. So this gives us the ability to not only work with Malta directly ourselves, but also to bring in the State Department or other Federal Government rather than having to go a circuitous route through the U.K.

Senator CORKER. Yes. Now the issue of Malta is not one of those issues where there is even a veto process, is there? I mean, we can weigh in. But just to cite your Malta issue, that is not something where the U.S. Government would have a veto process. That is one where we would have a voice among many other nations in trying to cause that to be successfully agreed to. Is that correct?

Mr. MCADAM. I would have to look at the specific terms of the agreement and get our legal experts to weigh in on that. I am, frankly, not competent to offer the answer to that. If you would like, I will get that for the record, though.

Senator CORKER. So, look, I appreciate all of you being here, and I don't know whether you are being here as good soldiers or whether this is something that you are passionate about. But you certainly are people that I respect. And I am very neutral on this. I am here to learn. I have been to every one of these hearings, and certainly, there are people in the audience, Senator Warner and others, that I respect greatly in addition to all of you.

I do want to say to you, Mr. Donohue, who I know well and certainly have worked closely with, your comment regarding the veto on the climate issue is categorically incorrect. And I would like for the record for your legal person to give us an opinion to that statement because I don't think that is correct.

And I know that you are here, and you don't know every word of the treaty, as I don't. but I think you are mixing apples with oranges. And on the issue of the climate issue, we do not have a veto process in place for our own country.

So if you could have your legal folks tell me differently as part of the official record or tell me that I am right, I would greatly appreciate it. But I think you are very wrong on that, and you can respond.

Mr. DONOHUE. Well, Senator, it wouldn't be the first time I am wrong, but I am very enthusiastic. I am not here on behalf of anybody else. As the Senator indicated, I was the one that was pushing him to do this.

I will be very happy to have our legal guys do that. I think they are probably very involved for the next 24 hours or so on what just came out of the Supreme Court. But by early next week, we would be very happy to do it. And I will come up, now that I understand that you are neutral on this and trying very hard to, as we all did for a long time, to get a good grasp on it, I will make it my business to come and talk to you about it.

Senator CORKER. You might bring that legal opinion with you.

Mr. DONOHUE. No, I will send it beforehand so you have a chance to look at it.

Senator CORKER. And I say to all of you, look, I hope that what we will do—I do want to make the right decision on this treaty, and as in every issue, I really want to understand the details. But I hope that the responses will be deep and not rhetorical. I mean, I think there are a lot of details that many of us are concerned about, especially as it relates to the climate issue.

But other issues that really matter to us, and some of the sovereignty issues really matter to us. And again, I respect all four of you. I know that there is no way that you could possibly know the details of this. You are here because you are the leaders of your organizations, and you have people in the bowels of your organizations that do know the details. But I do look forward to future conversations and very much thank you for being here, and I will see, I am sure, very, very soon.

Mr. DONOHUE. Senator, just one point for the record. You know that the Chamber is perhaps the most aggressive organization in the city on climate issues that affect adversely this country and our economy. And talk about something I am really worried about is the climate decisions that were made just 2 days ago by the District Court. That is a real problem.

So we have very good people on this. I will be very happy to get you an answer to your question. And I just want you to know I looked at this as a worrisome issue until I believe I have been carefully advised that we are OK here. But I will get that and come and see you.

[A written response from Mr. Donohue to the question follows:]

Two separate issues were under discussion at the hearing. One involved the United States veto over the important actions of the International Seabed Authority (ISA), and the second involved the concern that the United States approval of the Treaty would obligate the United States to comply with the Kyoto Protocol or other international environmental agreements that the United States has not approved.

UNITED STATES INFLUENCE WITHIN THE ISA

LOS's 1994 Agreement provides the United States a guaranteed permanent seat on the ISA's 36-member Council. We are the only nation afforded this position. The 1994 agreement also requires that Council actions must be by consensus on issues such as rules, regulations, and procedures involving the ISA's deep seabed mining royalties. Because "consensus" is defined as the absence of any formal objection, the United States enjoys a veto on important matters—including royalty distribution—decided by the ISA. Furthermore, the ISA's structure makes the Council the key decisionmaking body of the ISA. The rules and procedures for distributing the ISA's royalty payments require the Council's recommendation in order for the ISA's Assembly to act. Thus the United States role in the ISA is properly recognized as a veto.

UNITED STATES ENVIRONMENTAL OBLIGATIONS UNDER LOS

As you know, no organization has been more adamantly opposed to the Kyoto Protocol than the Chamber. As a result, we are extremely concerned by efforts to impose Kyoto onto the United States and American businesses.

The Chamber is not concerned that United States approval of LOS would impose any new environmental requirements on the United States and American business primarily for two reasons. First, LOS does not require parties to comply with other international environmental treaties. Thus, the Kyoto Protocol does not apply to the United States because we are not party to it.

Second, the United States already is in compliance with any LOS environmental provisions. Therefore, the United States would not be required to adopt additional environmental laws, regulations, or policies that might affect American business. Specifically, Article 212 of the LOS Treaty requires states to "adopt laws and regulations to prevent, reduce and control pollution of the marine environment from the atmosphere." The United States has strong atmospheric pollution laws and is already in compliance with this provision.

Senator CORKER. And if you could, since—and I thank the chairman for giving me an extra minute or two.

Mr. McAdam, I would love it if somebody from your government relations office would share with me truly, since you operate around the world in most of these companies that Mr. Timmons and Mr. Donohue and Mr. Gerard represent do, I really would like to know for a fact why it enhances a company's ability to make claims when they can easily make it through any other country that they operate in.

I would really like to know that. If you would send that to me, I would appreciate it. And again, I ask these questions with great respect.

[The written information requested from Mr. McAdam follows:]

Under the treaty, it is the State Parties who can best protect their constituents from unlawful incursions against domestic companies' submarine cable interests. If the United States were a party to the treaty, it could act on behalf of United States companies to protect U.S. interests in undersea cables. Without this protection, United States companies are forced to seek out the protection of foreign governments to help safeguard U.S. investments.

Although these nations may make claims on behalf of foreign companies in their discretion, in practice obtaining such assistance may not be straight forward or timely. While U.S. companies in some instances in the past have been able to join with foreign companies who can appeal to their governments, there is no guarantee that such collaboration will be available in the future.

The CHAIRMAN. Can I take a moment? I want to add—Senator Corker, if I could, just for a minute? First of all, you know how much I appreciate the due diligence you do on this stuff, and I really am grateful to you for taking the time and looking at this without all the external influences and kind of working through it.

But let me just say to you with respect to the dispute resolution—and we will get this for the record. You have asked it of Mr. McAdam, but we will also have our own counsel add in, which is important, and we can spend some time with you on it.

You cannot—only a country has access to dispute resolution, not an individual company. So it is irrelevant that they may have a company working here or there. They have to get the country to represent them. And that is where we are disadvantaged is that the United States can't bring that on behalf of our own company. You would have to persuade another country, not the company within the country.

So they don't have some sort of ability because they have affiliates around the world to just use the affiliate to advantage their interest. That is No. 1.

No. 2, with respect to the veto, there is sort of a split decision here. It is correct that the ISA, which is the larger group of the representative countries, doesn't have a veto. The Council has a veto. Mr. Donohue is absolutely correct with respect to the Council and the issues within the Council. And there are specific issues limited to the council.

Senator CORKER. But climate is not one of those.

The CHAIRMAN. Let me just finish. You are correct. Climate is not one of those. But—and here is the critical "but" for you.

Senator CORKER. OK.

The CHAIRMAN. There is a section which specifically states that you cannot be held accountable to any international law regarding climate or anything else unless you, as a nation, have signed up to it, and the U.S. Senate has never ratified anything. So under this treaty, in fact, we are completely protected as to any environmental effort because, one, it can't come through the Council where we have the veto, and two, it is specifically stated within the confines of the treaty that you only are subject to something if you have signed up to it.

And nobody can come through the back door to make you sign up to it. So I think when you see that, I think you are going to feel completely comfortable.

Final question, let me just ask you. I want to just get this on the record. Is any one of you here because you are a good soldier, or are you here because you are representing your industries and you are expressing the views of the people you represent?

Mr. Timmons.

Mr. TIMMONS. The latter, Mr. Chairman.

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. I asked you first to please get busy on the deal, and you did, and I thank you very much.

We will talk some more, Senator. This is a very serious issue in so many ways. And I think this is a vigorous discussion. And Mr. Chairman, thank you for resolving all that issue. My lawyers will get it done a lot faster now.

The CHAIRMAN. Thank you.

Mr. Gerard.

Mr. GERARD. Until the question was asked, I didn't view it as being here in support of the administration. Our view transcends political party and administrations. Our view, regardless of who is in the White House, we look at the substance of the treaty, and that is our focus.

The CHAIRMAN. And I want to emphasize again that the administration did not ask us to bring this treaty out now. We went to the administration and said, "What do you think about it?"

Again, it is clear on the record here, and Mr. Donohue has made it clear that he made the request for us to be here at this time initially, and that is what got us going.

Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman.

And thank you all for being here. I apologize for missing your testimony. I was at an energy hearing. So I am actually going to start with that, Mr. Gerard—energy.

And I wonder if you could talk about why this treaty is important to the energy security of the United States. In your letter to the committee, you stated that accession will provide greater energy security by securing the United States exclusive rights for oil and gas production. So could you elaborate on that and why; talk about why it is important?

Mr. GERARD. Surely. It gives us expanded opportunity with the extended outer Continental Shelf, the extended resource to develop those resources under the guise and direction of the United States and U.S. law. What we are focused on more specifically right now, which is talked about regularly, is the Arctic. It is estimated that the Arctic has one-quarter of the world's oil and gas reserves.

That is a big number.

And right now, as we look at it, we will be limited in our ability to go beyond our 200-mile Exclusive Economic Zone unless we become parties to the treaty and, thus, can claim the Extended Continental Shelf. It is estimated our claim up there could go as far as 600 miles. It would give us a very significant footprint.

And coming back to the fundamental issues I talked about earlier before you got here, Senator, certainty is the key. If we have knowledge, understanding, and confidence into who has the rights, who controls, what law controls, it is much more likely the investment will flow. If the risk is too high, the investment will occur, but it will go elsewhere in the world.

The world continues to shrink as to our ability to produce these resources. With modern technologies today, we can do things we couldn't think of 30 years ago when the treaty was first written and talked about. So it is a very significant time for us on a global basis to look at the potential for oil and gas development.

Senator SHAHEEN. Thank you.

Mr. Donohue, in your opening remarks, you stated that companies will be hesitant to take those investment risks and which

echoes what Mr. Gerard just said. I wonder if you could talk specifically about any sector of the U.S. business community that opposes U.S. accession to this treaty? Have you heard from anybody who opposes it?

Mr. DONOHUE. There are a number of think tanks and others who are—represent some elements of the business community. There are, as Senator Corker indicated, people who are concerned about environmental issues.

But across the board, the people that we represent are concerned about the following issues. First, energy, which is the financial base on which we are going to fix this economy and give us more energy security.

Second issue is some legal certainty, when 161 other countries are involved in the process of basically divvying up the natural resources in the sea. Also a lot of very important issues here on navigation, on supply chain management, on the ability to get at rare earth minerals.

This, to me, this is very important, and it is an easy issue because you have all—you have many protections from any difficulties that might come from being a part of the treaty. You have many exclusions because you are not a part of the treaty.

And as everybody on the panel indicated, you obviously have the protection of our Armed Forces. But we can't sort of run around the world doing our business like that every day, although I would say that the Chamber is a vigorous supporter of our Armed Forces because you can't participate in a global economy without security.

And I think there is a very clear process in the Chamber that brings the great preponderance of our members to being in support of this. Senator, you might imagine, with more than 300,000 members and the ability to legally represent 3 million companies, I can never get everybody to agree on anything, including what day it is.

Senator SHAHEEN. But just to be clear, you haven't heard from the businesses that you represent any significant downsides to this country ratifying this treaty?

Mr. DONOHUE. Exactly. That is correct. And I am more comfortable myself after I have spent a good deal of time exploring that question with our own associates and with people around the city and with Members of the Congress. And I thank you for that question.

Senator SHAHEEN. Thank you.

Mr. Timmons, Mr. Donohue talked about the rare earth minerals from China just now, and you pointed out in your testimony that China is in the process of sharply reducing those exports and that they may eventually consume all of them within the country. Can you talk about what the impact might be on both what the advantages of our ratification of the treaty gives us as we are competing for those rare earth minerals, and then what would happen if China, in fact, did consume what it is currently exporting all within country and what impact that would have on consumers and on businesses and jobs in this country?

Mr. TIMMONS. Yes. If I could start with the latter question first? If we don't ratify the treaty and businesses don't make the investments necessary to take advantage of the rare earth nodules that exist on the seabed floor, and China does use all of its rare earth

materials, it would be devastating to the American economy, to manufacturing, and to jobs in this country.

The bottom line, as has been stated many times on this panel, is that businesses require certainty before they make multibillion dollar investments. Mining on the seabed floor is not an inexpensive proposition. It requires years of studying, planning, mapping, and significant investment to do so. And companies simply aren't going to do that without the certainty that the treaty provides.

One of the reasons that we have the strong military that we have all acknowledged and that we all admire is because we have economic might in this country. The rare earth debate is one that businesses have been quite aware of for a number of years, but it is rather new in the public dialogue. But it is one that will determine our ability to compete and succeed in the international marketplace and this global economy, and it is one that we simply cannot take for granted moving forward.

Senator SHAHEEN. And you talked about the importance of certainty before companies are going to be willing to invest large amounts of money that are required. Can you talk about the extent to which those investments are happening right now, or are those sitting on the sidelines waiting to see what happens with this debate?

Mr. TIMMONS. They are sitting on the sidelines for the most part, Senator. And I would say that it is not only in this realm. I think it is very important to remember that it is 20 percent more expensive to manufacture in this country than among our major trading partners after you take out the cost of labor.

And that is because of lots of different things—taxes, regulation, energy, where for the first time in many, many years we actually have a slight cost advantage. But this is another significant amount of uncertainty that will not allow capital to flow to those investments.

Senator SHAHEEN. Thank you.

Mr. DONOHUE. Senator, just one comment, and Jack Gerard may want to mention. While there aren't many companies down on the deep part of the shelf bringing up the rare earth materials, many companies are preparing to do it. You just don't go out there with a boat and throw something over the side. This is a huge, complicated technical issue, and there is a lot of money being invested by American companies and by consortiums of companies to figure out exactly where it is, exactly how to do it, and exactly how to do it in a safe and environmentally sensitive way.

Senator SHAHEEN. Thank you.

The CHAIRMAN. Thank you, Senator Shaheen.

Senator Isakson, thanks for your patience.

Senator ISAKSON. Thank you, Mr. Chairman.

Thank you all for coming. It is good to have you here today on what is a historic day.

I need to get a couple of clarifications. I wrote down some things. Mr. Gerard, you made a statement, I think it was with regard to Shell that invested $4 billion in the Arctic, and they had sent two ships recently out from Washington to go there to their first claim. Is that correct?

Mr. GERARD. Yes, they acquired the lease 5 years ago through the process of permitting and getting the ability to go out and actually start to drill a well. They have been in that process 5 years. It has cost them $4 billion to this point, and we hope they are going to get final approval to drill those first wells this summer during this summer season. But that is how long this process takes.

My simple point was these are long-term investments, and they are very significant. So we have got to know that we have got some rights intact before we commit to make those investments.

Senator ISAKSON. Who is granting that permit?

Mr. GERARD. The U.S. Government.

Senator ISAKSON. The U.S. Government. So it is on our current territorial waters?

Mr. GERARD. Yes, it is within the 200-mile Exclusive Economic Zone.

Senator ISAKSON. The extended seabed.

Mr. GERARD. Yes.

Senator ISAKSON. Thank you very much.

Mr. Timmons, you made a statement, and I wrote part of it down. I apologize again if this is wrong, but this is an important issue for me.

I am talking about the deep seabed. You talked about international bodies who have current authority to issue permits or issue permission on deep seabed. Did I miss that? Did I misunderstand you?

Mr. TIMMONS. I think so.

Senator ISAKSON. So, currently, if somebody was going to the deep seabed to try and mine rare earth minerals there is no current authority other than what authority might be under the Convention?

Mr. TIMMONS. ISA. That is right. Under the Convention.

Senator ISAKSON. And Mr. Donohue, the last time I brought this up, the chairman and I got into a 15-minute discussion. I blew up the whole meeting. But this veto thing is an issue of which there is a lot of conversation.

The chairman, in his response back to you, talked about the Council. In terms of the Council, I understand the definition of "veto" to be when a member objects creating an absence of consensus. But I also understand that a simple majority of those present and voting on the Council or a two-thirds vote of the Assembly can override that absence of consensus. Am I right or am I wrong?

Mr. DONOHUE. Senator, having watched the discussion here, committed to get some more detail for your colleagues, and not wanting to start another 15-minute harangue, I look forward to answering that question in specific detail.

Senator ISAKSON. I appreciate that, and so does the audience.

Mr. DONOHUE. Thank you.

Senator ISAKSON. Thank you very much.

Mr. McAdam, in your testimony, you refer to some nations have attempted to encroach on the ability of U.S. operators to effectively manage, deploy, or prepare maintenance and repairs on their lines. In your testimony, you cite Malta's attempt to assess a fee or a

license. You talked about a Vietnam carrier that had done 106 miles worth of damage to your cable.

Are those the two examples you are referring to in "some nations," or are there some other examples that come to mind?

Mr. McAdam. Yes, there are other examples, excuse me, for sure, Senator. Just one is in India. Even though we don't cross into their territory, they require the cable laying and maintaining ships to put into port, and they assess a fee against them. It is against the Convention, but they do that. And so, we have to take legal action or we just have to pay the fees.

So those are three examples.

Senator ISAKSON. So the Convention exempts you from having to pay a licensing fee or some type of arbitrary fee to maintain your cable or to lay your cable?

Mr. MCADAM. Right. That is all laid out in a framework that we can rely on versus having these unilateral actions that have occurred in many places.

Senator ISAKSON. Does the Seabed Authority, the Assembly, or the Council have to issue you a license to lay a cable?

Mr. MCADAM. I would have to look at the specific details of that, Senator. I don't know that off the top of my head.

Senator ISAKSON. Because I am sure we are laying cable now, and we are not a party to the treaty.

Mr. MCADAM. Right.

Senator ISAKSON. So my question would be if we are laying cable now and we are not a party to the treaty, would being a party to the treaty, from your testimony, only benefit us to the extent that it would exempt us from paying fees to the countries?

Mr. MCADAM. No, it is not the fees. We are in and out of these cables constantly, upgrading the technology, doing maintenance on the cables. And I think the concern that we have is the arbitrary nature of what happens today.

And if we can have greater certainty, we can predict our costs better and we can make those investments. That is my main point, Senator.

Senator ISAKSON. Thank you very much, Mr. Chairman. I have got to join a conference call so I will have to yield back the balance of my time.

The CHAIRMAN. Well, I appreciate that. Before you run out, Senator Isakson, let me just say to you quickly because you have raised an important question. The voting structure in the Council was significantly rewritten as part of the 1994 implementing agreement. And it was rewritten in a way that gives the United States a tremendous amount of influence, even in matters where the Council does not act by consensus.

So we do, in fact, do have a veto over every item that would be critical to us. Let me just be very specific quickly.

A Finance Committee was created. We insisted on this. It has to make recommendations on all financial and budgetary matters before the full Council can make its decisions. The Finance Committee operates by a consensus, and there are provisions making clear that the United States will be permanently on that committee. So we have an ability to prevent any counterbudgetary or fiscal matter from being contrary to our interests.

Then the Council, second, is divided into several chambers. For any other issue not decided by consensus, there is a rule stating that any chamber by majority vote can veto a matter, and the United States would be in the chamber with four members. So there, we would have to get two other members to agree with us, but we, again, could have a veto by virtue of that.

And third, and this is very important, section 3, paragraph 4 of the annex states that the ISA Assembly cannot take a decision on "any matter for which the Council also has competence or any administrative, budgetary, or financial matter unless it does so based upon a recommendation of the Council," where we have the veto.

So it can't change the recommendation of the Council. All it can do is accept it or send the matter back. So, in effect, because of our negotiations in 1994, which came out of President Reagan's questions about this, we have, in fact, negotiated a rather remarkable position for ourselves, which we are not able to exercise.

And so, we will get this fully properly articulated in the context of the record, but I wanted you to be aware of that.

Senator ISAKSON. Thank you, Mr. Chairman. Would you mind providing me with that from which you are reading?

The CHAIRMAN. We will give the entire thing to you. We will give you all the details.

Senator ISAKSON. Thank you, Mr. Chairman.

The CHAIRMAN. You got it.

Senator SHAHEEN. Mr. Chairman, can I ask that you share it with all of the members of the committee?

The CHAIRMAN. Everybody on the committee will get it.

Senator? Thank you, Senator Casey, for your patience.

Senator CASEY. Mr. Chairman, thank you, and thank you for calling this hearing. This is a vitally important issue, and we are spending time on a subject matter that I think we sometimes don't do enough on in Washington. And I am grateful to be part of this, and I am sorry I am late.

I'm running the risk of being redundant, but I would say that redundancy is important in Washington. Repeating important messages is important. So I might be plowing old ground.

But part of what I think hasn't been touched on with great detail yet, Mr. McAdam, are some of the statements in your testimony.

I am reading from the first page of your testimony labeled page 2. And you say in the second to last paragraph, and I am quoting, "Aside from our land-based connections with Canada and Mexico, more than 95 percent of U.S. international traffic—voice, video, Internet, and data—travels over 38 submarine cables, each the diameter of a garden hose. Without these cables, current satellite capacity could carry only 7 percent of the total U.S. international traffic."

With that as a predicate, I would ask you, what can you tell us about the importance of this treaty as it relates to our 95 percent dependence on that transmission?

Mr. MCADAM. Well, we invest a great deal, Senator, in making these cables as redundant as we can. We use the term "mesh networks." And if you think about it as a fence, you can cut certain pieces of it, but there are other pieces of the network that are redundant. And therefore, so we are the same as the Government

in some ways, I guess, to make sure that our customers can rely on that service.

That helps us when we have things like storms or earthquakes that sever the cables. But if a country takes some sort of a unilateral action, such as we have seen, and doesn't, frankly, support some of the repair operations that we had in Vietnam—and I referred to that in my testimony where it took many months to get those cables repaired—that really can impact global commerce.

And so, the framework that we will have in place with the treaty allows us to have an ongoing dialogue with the country. We have a set of rules that we can rely on. If there are disputes, we have arbitration we can go to. We can enlist the help of the Federal Government where our local team can't make the proper headway.

So it is a series of additional steps that give us greater certainty and allow us to make these sorts of investments.

Senator CASEY. Thank you.

I am going to go back to a question I know that Senator Shaheen raised, and I am sure others did as well, on manufacturing.

Mr. Timmons, I appreciate your testimony. I represent a State that has had a long and very substantial legacy and reputation for manufacturing. And we have had our challenges, as you and I have talked about. But we have had a bit of a resurgence, and I think we are, frankly, headed in the right direction in terms of being able to create and maintain manufacturing jobs.

If I were traveling across Pennsylvania this August when we are going to be home, and someone grabbed me on the street and said tell me in a few words why this treaty is important for manufacturing, in terms of having a general strategy for manufacturing and especially for maintaining those jobs, what should I say to them in a few sentences? If you can help me with that.

Mr. TIMMONS. Well, when you are looking at the issue of rare earth materials, it is a vital component of all manufacturing processes, particularly the chemical industry. You have a large preponderance of folks involved in the chemical industry. Without those rare earth materials, manufacturing simply will not be able to compete and succeed in the world marketplace.

Ten years ago, this country was able to produce 100 percent of the rare earth materials that we used in manufacturing. Today, we onshore produce none. And that is because of many factors—regulatory matters, permitting, and other factors. The bottom line is if we can't access rare earth materials on the floor of the sea, we are going to be put at a significant competitive disadvantage.

The manufacturing renaissance that you and I have spoken about will cease to exist, and it will harm our economy and cost jobs.

Senator CASEY. I hope I can be that articulate with the constituent.

Mr. TIMMONS. Well, I don't think that is a couple of sentences, unfortunately. But I will work on that and get back to you.

Mr. DONOHUE. But I would add one more sentence, and maybe you were going to say it. If we do this right, we will drive down the cost and increase the availability of fuels. And that is going to have a large, large effect on manufacturing and on your State's economy.

Senator CASEY. Thank you, Mr. Donohue.

Mr. GERARD. Senator, I was just going to add something that you already know. The answer, the other answer that is very significant in your State is natural gas. As you know, the price is down to the $2 to $3 range today; 83,000 new jobs in your State as a result of that resurgence.

And I think as Jay said earlier, that is primarily what is driving the manufacturing resurgence in the United States. We often forget that those chemical plants and others are primarily driven by the feedstock of natural gas, where they convert natural gas to all the products we consume every day and don't think about. So it is natural gas, low-cost, affordable, reliable energy that is driving those other benefits in our economy today.

Senator CASEY. I will submit some more questions for the record. I have got to run. But thank you so much for your testimony.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you very much.

Senator Shaheen, do you have any second round questions?

Senator SHAHEEN. I do have a couple, Mr. Chairman.

And I know that one of the issues that has been raised about the treaty and I heard some of that debate today has been what is the real authority of the International Seabed Authority, and how would our participation play in that?

And I wonder if you all have looked at the Authority to the extent that it is operated today and whether you have any views about countries like Russia and China and what their actions have been on the Authority in our absence and whether they are, in fact, taking advantage of our inability to ratify the treaty and participate on the Authority? What impact has it had to have the United States not to be part of that body?

Mr. GERARD. I will try, Senator. First is, to us, that is very significant. As Senator—Chairman Kerry mentioned earlier, the 1994 changes, the amendments were very significant in giving us additional power, a permanent seat on that Council in the Seabed Authority.

The reason we say that is twofold. No. 1, any other decisions that come out of there, we essentially have that veto right. We interpret it as such, and so I am anxious to hear others' legal opinions. We have gone to outside counsel, and we view that we have that right and that authority within the seabed Council.

But the other thing we shouldn't overlook, there has been talk about royalties and other things that come from oil and gas production beginning the 6th to the 12th year. Today, if those are produced any other place in the world, those dollars are going to go wherever that group that sits there are going to allow them to go. If we have the seat, the permanent seat in that Council, we have the ability to direct that to make sure those very significant resources aren't given to unfriendly nations around the world and aren't spent for purposes that are not in the best interests of the United States.

So we think it is twofold. No. 1, we need to be there to secure our own rights. But No. 2, by being there, having a seat at the table, we can influence and have some direct leverage over the other decisions the Seabed Authority is making.

Senator SHAHEEN. So, just to be clear, they are going to assess those rates from our companies whether we are a member of the treaty or not?

Mr. GERARD. Well, they apply only beyond 200 miles. My point is that others who are participants who might be paying into that fund today, those dollars go elsewhere without us having any say until we accede and participate and become part of the treaty process. Does that clarify it?

Senator SHAHEEN. Yes. Thank you.

The other thing that I wonder, and again, this may have been covered to some extent. But I haven't heard much discussion since I arrived about how we benefit in the Arctic. I mean, you talked about that a little bit, Mr. Gerard, in terms of our ability to have much more of an opportunity to access the minerals that may and the resources that may exist under the Arctic.

But can you also talk about how what is happening there with other countries, and are we lagging behind Russia and those other countries who may be also interested in the resources of the Arctic?

Mr. GERARD. Well, if you look at the way the Authority is set up and the commission on the limitation of the Continental Shelf, which determines how far those boundaries may go based on the definition of the Continental Shelf, those nations that are active in the Arctic or seek to be active—Russia, Denmark, Norway, Canada, and others—are all participants. And many of them have already filed or laid claim to those lands or those potential lands in the outer Continental Shelf. We stand here watching that happen.

We have a very, very significant interest in the Arctic. And as I mentioned earlier, Shell hopefully will start that again today. It is estimated that one-quarter of the world's oil and gas resources are under the Arctic. Why we would sit on the sidelines and watch the rest of the world develop that resource to us is somewhat mystifying, not to mention our own resources that we have within our own 200-mile Exclusive Economic Zone.

We are the only industrialized nation in the world that does not take full advantage of our outer Continental Shelf. We think it would be a big miss, a missed opportunity to sit today and watch and 30 years from now wonder why we missed out when those decisions were made in the Arctic, which is so important to global advancement and economic development.

Senator SHAHEEN. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Shaheen. Those were good questions and I think important part of the record. I appreciate it.

Let me just close out. Senator Lugar does not have additional questions. I just have one or two quickly that I just want to get the record complete here.

We will leave the record open, incidentally, for a week in case there are additional questions to submit in writing.

Mr. Timmons, at a hearing before the committee a couple of weeks ago, we heard from one of the think tank folks out here from the Heritage Foundation, analyst who said that U.S. companies are free to exploit the deep seabed right now, and they have all the

legal certainty necessary to support investments to drill in the deep seabed.

And the analogy drawn by that witness was just like fishing. You know, you go out. Nobody owns the fish. It is every person for themselves.

In light of the fact that you have got 161 nations and the European Union that are all parties to the Convention, it seems odd to sort of suggest an every person for themselves approach to this. And I wonder if you just—you have addressed it somewhat here, and you have talked about the certainty. I just want to be crystal clear whether that is an alternative. Is that viable?

Mr. TIMMONS. Well, Senator, Mr. Chairman, I would say it is an alternative, but I don't think it is viable. We could proceed as a nation—I think it is very important to recognize that the world today is extraordinarily different than it was 40 years ago. We are, again, a global economy. We have multinational companies that have the means to develop these resources, but they are simply unwilling to do so because of the risk that exists without ratification of this treaty.

If that theory were, in fact, accurate, you would see the development of these resources today, and it is simply not happening.

The CHAIRMAN. So I want to ask everybody this. Therefore, is it clear, are you saying here definitively today that the people you represent and the interests that you are here to advance will not be served by and that no one will invest, in fact, billions of dollars if you were to pursue that theory of every person for themselves?

Mr. TIMMONS. I think our country would not be served if the treaty is not ratified because companies simply will not invest or take the risks if they don't have the certainty provided in this treaty. That means from a manufacturing perspective that manufacturing suffers, which means the economy suffers, which means jobs suffer.

And so, it is in the long-term economic and national security interests of our country, in the view of manufacturers, that this treaty be ratified.

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. Senator, if we don't join this treaty, we may find people doing that without the protection, but they may be the Russians, they may be the Chinese, and they may be on our extended outer Continental Shelf. Obviously, the Arctic is more available than it was before because of thinning of the ice while it is thickening on the South Pole, you know, all this stuff going on.

But people are making plans and claims to establish themselves in the Arctic. And as Jack indicated, we are on the outside looking in, with all sorts of power. But as you know in your job, most of the most powerful things we can do, we can't do or we shouldn't do.

And I think the benefits of making this fundamental adjustment, taking a seat at the table with a lot of strength to protect our interests at least gives us a raison d'etre for whatever steps we have to take to represent and to help this country. So the answer is, I don't think you are going to see a lot of American firms—you can get a permission from the Federal Government—this is another

point—to access an area, but then they won't give you a permit to drill it.

And we have all of those problems, but the bottom line, we have been arguing this thing for so long. And when the old arguments run out, then we have some new arguments. And I respect the people that have that view, and I suppose you could find some of my members that have that view, but not very many of them. And we have got tens and tens of thousands of them that think it is about time to get on with it.

The CHAIRMAN. Final—yes?

Mr. GERARD. Senator, I would just add there is a lot of different opinions about this, but I would suggest you look closely at those opinions where it really matters. You cited one earlier, the chairman of Shell, Marvin Odum. Rex Tillerson has sent you a letter.

These are the individuals that are going to make those decisions, and they have been very clear and unequivocal saying they will not make those decisions. The risk is too high. There is too much at stake. They won't be able to convince boards and shareholders that that is the best use and the safest use of their money and their resource.

So I would hope we would look at those that have experience that are on the front line making those decisions and perhaps in fairness give that opinion a little more weight than others.

Mr. DONOHUE. And at the same time, to think about what the Joint Chiefs of Staff and our military leaders who are challenged to protect us in many ways, including in those areas, and you know they are not people easily convinced of joining committees.

The CHAIRMAN. Well, final question, last question, I promise. It seems to me, listening to your testimony, that if companies aren't going to invest, that if we are looking at a reduction of the availability of rare earth minerals and we could be mining rare earth minerals, sounds to me like that takes a lot of people to produce the equipment to be out there doing it. That if we are looking at increased ability to find more energy sources for the United States, it takes people to go out and do that. And if you are talking about providing cheaper energy for the United States over the long term, that affects our economy. Bottom line to everything here, it seems to me, is jobs.

This seems to me to be screaming at us that there is this availability of jobs for Americans out there if we were to do this, more than anything else. Would each of you comment? I mean, is that really what is fundamentally at stake here?

Mr. Donohue.

Mr. DONOHUE. The next great industry in this country is energy of every type, and that is going to create millions of jobs over time. We should not make this more difficult for us to access rare earth minerals, energy, and whatever else we might find while 161 other countries are out making their plans to do so. This is in the enlightened self-interest of this country and in the interest of our national security.

And I respectfully say to those that disagree, and by the way, we have tried to learn something from them, that the positive part of this treaty so overwhelms and outweighs those objections, which I

respect, that the plurality, as they would say up here, is highly significant.

The CHAIRMAN. Mr. Gerard.

Mr. GERARD. Senator, I was just going to add to that. Tom mentioned something that is very significant today. The energy opportunities of the United States today are of game-changing proportions. To put it in simple context, an economist just a few months ago said that within the next decade if the U.S. policy is done well, we will become the new Middle East for energy production.

That is how serious this discussion is if we, as a nation, are serious about producing our own energy. So I think there are two dimensions to this answer. The first one is we need to think long term. We have to look at things like the Law of the Sea and say how do we secure our energy future, not only the next 10 to 20 years, but the next 50 to 100 years?

Oil and natural gas will continue to be the foundation energy building block for many decades yet to come, even as we strive to move to alternative renewable forms and other less emitting forms of energy.

But the second dimension we shouldn't overlook, and it goes back to Senator Corker's point earlier. We have got to get our act together as a country in our own permitting processes, in our own political will, and ability to produce our own energy. We can secure the border. We can secure the long-term future through the Law of the Sea, but we have got to have processes within the United States where we say energy is a priority.

As Senator Casey pointed out earlier, in the last 18 months, we have created 83,000 jobs in the State of Pennsylvania producing clean-burning natural gas that saved the consumers of Pennsylvania close to a quarter of a billion dollars in 1 year because that supply drove the price of natural gas down to where it is today.

Now it can't stay there forever, but we have the same potential with oil. North Dakota, the No. 2 producer. Unemployment rate, 3 percent. Median wage in North Dakota in oil production, $90,000 a year. Median wage for everybody else, $42,000 a year.

We talk about jobs. We talk about energy security and revenue to the Government. We ought to think about energy particularly as we make this decision because it will be altering for this Nation for many years yet to come.

The CHAIRMAN. Mr. McAdam, do you want to add? You don't have to, but if you want to add anything.

Mr. MCADAM. No, I think the only thing I would add is that while we aren't out mining the seabed for rare earth minerals, we are putting these cables across that provide the infrastructure so that these companies can make the investments and run their businesses effectively. And I think we should do everything we can to eliminate the risks associated with this vital network.

The CHAIRMAN. Well, I want to thank all of you. I think your testimony has been extraordinarily significant, very, very thought out and thorough and, I think, important to this process. So we are very, very grateful to all of you for taking time here today.

We will, as I said, leave the record open for a week, and we look forward to continuing the discussion with you over the course of the next months. Appreciate it.

We stand adjourned. Thank you.
[Whereupon, at 11:32 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

RESPONSES OF THOMAS J. DONOHUE TO QUESTIONS SUBMITTED BY SENATOR JAMES E. RISCH

Question. If the United States accedes to the United Nations Convention on the Law of the Sea (UNCLOS), U.S. companies seeking to engage in exploratory or development activity in the deep seabed will be required to obtain permission from the International Seabed Authority. The 1994 Agreement relating to the Implementation of Part XI of UNCLOS changed the obligations of States Parties and their contractors in regard to the transfer of technology relating to the deep seabed. The relevant section of the 1994Agreement reads:

> SECTION 5. TRANSFER OF TECHNOLOGY
>
> 1. In addition to the provisions of article 144 of the Convention, transfer of technology for the purposes of Part XI shall be governed by the following principles:
>
> (a) The Enterprise, and developing States wishing to obtain deep seabed mining technology, shall seek to obtain such technology on fair and reasonable commercial terms and conditions on the open market, or through joint-venture arrangements;
>
> (b) If the Enterprise or developing States are unable to obtain deep seabed mining technology, the Authority may request all or any of the contractors and their respective sponsoring State or States to cooperate with it in facilitating the acquisition of deep seabed mining technology by the Enterprise or its joint venture, or by a developing State or States seeking to acquire such technology on fair and reasonable commercial terms and conditions, consistent with the effective protection of intellectual property rights. States Parties undertake to cooperate fully and effectively with the Authority for this purpose and to ensure that contractors sponsored by them also cooperate fully with the Authority;
>
> (c) As a general rule, States Parties shall promote international technical and scientific cooperation with regard to activities in the Area either between the parties concerned or by developing training, technical assistance and scientific cooperation programmes in marine science and technology and the protection and preservation of the marine environment.

- Does Section 5 of the Agreement give you and your members full confidence that, should they engage in exploratory or development activity in the deep seabed, they will not be compelled to share proprietary technology?
- How does the Chamber interpret the obligation to "cooperate fully and effectively with the Authority" for the purpose of sharing deep seabed mining technology with the Enterprise or developing States?
- What types of deep seabed technology is the Chamber and its members currently willing and able to transfer or otherwise share with the Enterprise or with developing States?

Answer. In his Oceans Policy Statement dated January 29, 1982, President Reagan objected to the provision in the draft Law of the Sea Convention that required transfer of technology by seabed mining companies to the International Seabed Authority (ISA) and to developing countries. President Reagan's concern was addressed in the 1994 Agreement. Section 5(2) of the Annex to the 1994 Agreement provides that the technology transfer provisions of the original 1982 Convention "shall not apply."

Instead, Section 5 of the 1994 Agreement provides that the ISA may "request" that a deep seabed mining contractor and its sponsoring State to "cooperate in facilitating the acquisition of deep seabed mining technology" by the Enterprise or by a developing State. The U.S. Chamber is not aware of any requests that have been made to potential U.S. seabed mining contractors or to the United States to acquire seabed technology.

Unlike the original 1982 Convention, Section 5 of the 1994 Agreement does not require a U.S. contractor or the United States to transfer any proprietary technology. Moreover, contractors and their sponsoring states are required only to facilitate the acquisition of mining technology "on fair and reasonable commercial terms and conditions" and "consistent with the effective protection of intellectual property

rights." Thus, if the ISA or the developing State requesting the technology is unwilling to acquire the technology on fair and reasonable commercial terms, or the contractor and sponsoring State believe that the transfer of the technology would not protect the intellectual property rights of the contractor, then there is no obligation whatsoever to facilitate the acquisition. These caveats give U.S. seabed mining contractors and the United States broad discretion to decline to facilitate inappropriate requests for seabed mining equipment.

Of course, in many cases U.S. companies may affirmatively want to sell deep seabed mining equipment or technology to other countries or their contractors, provided the terms are commercially reasonable and the U.S. companies' intellectual property rights are protected. U.S. equipment manufacturers will benefit economically by export sales of seabed mining equipment to other countries, just as U.S. companies already sell billions of dollars of on-land mining equipment, construction equipment, and other heavy machinery into other countries.

Question. In your written testimony you stated that the United States must join UNCLOS to ensure that U.S. companies such as Lockheed Martin may engage in deep seabed mining. You further stated that "other U.S. companies" are "poised to expand their operations and create new jobs" in the deep seabed mining industry, should the United States accede to the Convention.

- Please identify any and all members of the Chamber or any other U.S. company that, to your knowledge or in your opinion, are "poised" to engage in deep seabed mining in the event that the United States accedes to UNCLOS.
- Please identify all members of the Chamber or any other U.S. company that comprise the "nascent deep seabed mining industry" mentioned in your written testimony.
- Should the United States accede to UNCLOS before the end of the year, how long will it be before any such member(s) or companies will take steps to explore the deep seabed and/or engage in any form of deep seabed development activity through the Authority?

Besides the fact that the United States is not a party to UNCLOS, what legal, financial, commercial, or other factors, if any, are currently preventing U.S. companies from engaging in the development of the deep seabed?

Answer. In my written testimony, I stated, with respect to deep seabed mining, that "Lockheed and *potentially* other U.S. companies [are] poised to expand their operations and create new jobs." (Emphasis added.) In other words, U.S. companies other than Lockheed may be interested in engaging directly in deep seabed mining, now that the necessary technology is more readily available and the market for deep seabed minerals and rare earths is more favorable, provided they would be able to receive a license to engage in seabed mining.

Moreover, Lockheed or other potential mining contractors are not the only U.S. companies that would be able to create jobs and benefit economically from the start-up of a U.S. deep seabed mining industry. Numerous other U.S. companies in potentially dozens of States—such as engineering companies, consulting firms, exploration companies, exploration and mining equipment manufacturers, and mineral processing companies—would be able to assist or participate in aspects of the emerging deep seabed mining industry, with the potential addition of hundreds or thousands of jobs and tax dollars to the U.S. economy. By refusing to approve the Convention, the Senate is blocking the ability not only of Lockheed but also of a diverse group of U.S. companies in many States that could become part of a lucrative U.S.-based deep seabed industry.

The primary obstacle to the commencement of deep seabed mining by Lockheed and related U.S. companies is that the United States has not joined the Law of the Sea Convention. Lockheed has made clear that it is unwilling to invest the billions of dollars necessary to engage in deep seabed mining unless it has clear legal title to specific claim areas in international waters. If the United States joins the Convention this year, Lockheed or another U.S. mining contractor could apply for and receive a license at the next annual meeting of the ISA in July 2013.

Question. U.S. persons and companies, including Lockheed Martin, are currently permitted to engage in deep seabed exploration and mining pursuant to the Deep Seabed Hard Mineral Resources Act (DSHMRA; 30 U.S.C. §§ 1441 et seq.), which states in part that "it is the legal opinion of the United States that exploration for and commercial recovery of hard mineral resources of the deep seabed are freedoms of the high seas."

- Please identify any and all legal barriers that would prevent U.S. persons and companies from seeking licenses for exploration and permits for commercial recovery of deep seabed minerals pursuant to DSHMRA.

- Please explain why U.S. persons and companies are unable to engage in deep seabed mining pursuant to DSHMRA and its regulatory regime and why U.S. accession to UNCLOS is legally necessary to do so.

Regardless of U.S. accession to UNCLOS, do current U.S. laws, including DSHMRA, provide legitimate and sufficient legal authority and protections for U.S. companies to engage in exploratory or development activity in the deep seabed?

Answer. The Deep Seabed Hard Mineral Resources Act (DSHMRA) was not intended to serve as a unilateral U.S. substitute for the international legal authority provided by the Law of the Sea Convention. Rather, the DSHMRA was enacted by Congress "to establish, pending the ratification by, and entering into force with respect to, the United States of such a treaty, an *interim program* to regulate the exploration for and commercial recovery of hard mineral resources of the deep seabed by United States citizens." (Emphasis added.)

Indeed, section 1402 of the DSHMRA specifically states that the United States "does not thereby assert sovereignty or sovereign or exclusive rights or jurisdiction over, or the ownership of, any areas or resources in the deep seabed."

Accordingly, although the DSHMRA provides a U.S. domestic law framework for U.S. companies to seek licenses to engage in exploration and commercial recovery of deep seabed minerals, it does not provide the clear international legal title that U.S. companies—especially public companies that owe special obligations to public investors—require before investing billions of dollars in exploration and resource extraction.

Lockheed Martin has applied under the DSHMRA to the National Oceanic and Atmospheric Administration and has received an extension of its licenses to engage in deep seabed exploration. Lockheed has informed NOAA that it is prepared to engage in preparatory activities on land, but that it would not make the "substantial investment in at-sea exploration" until it has the "adequate assurance of security of tenure at the international level" that would be provided by U.S. ratification of the Law of the Sea Convention. See 77 Fed. Reg. 12445, 12446 (February 29, 2012).

Question. It is a fact that companies in the United States, including Lockheed Martin, may enter a joint venture or other arrangement with countries that are already party to UNCLOS for the purpose of engaging in deep seabed mining under the Convention. Indeed, there is already precedent for such an arrangement between a Canadian company (Nautilus Minerals Inc.) and the Kingdom of Tonga, which were awarded a 15-year contract by the Authority in January of this year under the name Tonga Offshore Mining Limited.

- Should the United States not accede to UNCLOS, does anything prevent U.S. companies that desire to engage in development activity in the deep seabed from partnering with a States Party (or a company therefrom) that can sponsor the endeavor before the International Seabed Authority?
- In fact, with almost all contemporary oil, gas, and other natural resource extraction and development enterprises horizontally integrated, would not a partnership be expected and even desired?

Answer. U.S. companies may not be sponsored for licenses to engage in deep seabed mining under the Law of the Sea Convention by countries other than the United States. Article 4 of Annex III to the Convention provides that "Each applicant [for a license] shall be sponsored by the State Party of which it is a national . . ." For applications by a partnership or consortium, each company must be sponsored by the country of its nationality.

A U.S. company could, of course, establish a foreign subsidiary that could be sponsored by another country for a license for the sole purpose of engaging in seabed mining. But this forced approach would have numerous commercial and economic disadvantages both for the company involved and for the United States, which would lose license and tax revenue and the jobs benefits.

Equally important, U.S. companies, while making substantial investments in deep seabed exploration or mining, would lose the benefit of U.S.-input into the development of the rules and regulations for the seabed mining industry. In contrast, if the United States joins the Convention, the United States will have a permanent seat on the Council of the ISA, which would give the United States a permanent and significant voice in the development of the rules and regulations for seabed mining and the institutional management of the ISA.

The ISA has now approved 17 applications by Parties to the Convention for contractors to engage in exploration for deep seabed minerals. At its most recent annual meeting, the ISA approved five licenses for seabed exploration of sulphides and polymetallic nodules, including applications by Korea, France, the United Kingdom, Kiribati, and Belgium. Clearly, the entities involved in these applications have

concluded that there is significant mineral wealth on the deep seabed. The United States, however, had no voice in reviewing these applications and will have no voice in the development of the rules and regulations that will regulate the international seabed mining industry, unless the United States becomes party to the Convention. U.S. companies are losing significant commercial opportunities, and the potential to create thousands of new jobs, because the United States is not party to the Convention.

RESPONSES OF LOWELL C. MCADAM TO QUESTIONS SUBMITTED BY SENATOR JIM DEMINT

Question. Verizon is currently fighting the FCC in court regarding two recently imposed regulations—net neutrality ("open Internet order") and data roaming mandates. The FCC is a 5-member tribunal of sorts that is a creature of the U.S. Congress and bounded in theory by the laws of this country. They often overstep these laws, however, and appeals to the U.S. judiciary are entered by affected private companies. One wonders why a company like Verizon, which has consistently been affected by and fought extra-legal FCC decisions, would work for the creation of a new tribunal—particularly one that operates under the far less transparent and consistent authority of international law.

Looking at the first case involving data roaming, the rules, which the FCC approved on a party-line 3–2 vote in April 2011, will require mobile broadband providers to provide data roaming on "commercially reasonable" terms and conditions. In essence this mandate requires that a company which has built its own network must offer that network to another company that, for whatever reason, has chosen not to build a network in the same geographic area. Here is Verizon's statement at the time of the order: "By forcing carriers that have invested in wireless infrastructure to make those networks available to competitors that avoid this investment, at a price ultimately determined by the FCC, today's order discourages network investment in less profitable areas," Tom Tauke, Verizon Communications' executive vice president of public affairs, policy and communications, said in a statement. "That is directly contrary to the interests of rural America and the development of facilities-based competition and potential job creation. Therefore, it is a defeat for both consumers and the innovation fostered by true competition."

- What do you believe will happen when dealing with an international body, with even less transparency or accountability to American companies and taxpayers?
- Do you believe that an international body with little to no accountability to the United States or industry will legislate in a more satisfactory way than the FCC?

Answer. We believe that the Convention would be helpful in dealing with the threat of expansion by coastal States. If the United States were a party to the treaty, it could act on behalf of U.S. companies to protect U.S. interests in undersea cables. Without this protection, U.S. companies are forced to seek out the protection of foreign governments to help safeguard U.S. investments. Thus, ratification of the Convention will help U.S. companies better contend with disruptions or threats to undersea cable service by giving them an avenue to work with the U.S. Government in a way that currently is not available. Once the United States is a party to the Convention, Verizon and other U.S. telecommunications companies can work with the appropriate U.S. agencies to enforce, when necessary, the freedoms to lay and repair cables on the Continental Shelf and the EEZ—saving millions of dollars over the life of a cable system, improving the reliability of our critical infrastructure, and putting U.S. companies on a level playing field for operating international cable systems.

Question. Second, regarding Net Neutrality, there was another 3–2 decision by the FCC in December 2010. The "open Internet" rules require wireline providers to be transparent in how they manage and operate their networks; prohibit the blocking of traffic on the Internet; and, prohibit wireline broadband providers from unreasonably discriminating against traffic on their network. Verizon accuses the FCC of overstepping its authority. And the company has said that because the FCC is trying to impose regulations it doesn't have authority to impose, it's creating uncertainty in the market that will ultimately harm innovation. Verizon's quote upon filing their legal challenge: "Verizon is fully committed to an open Internet," Michael E. Glover, Verizon senior vice president and deputy general counsel, said in a statement. "We are deeply concerned by the FCC's assertion of broad authority to impose potentially sweeping and unneeded regulations on broadband networks and services and on the Internet itself."

- How long do you think it will be before you will have to buy a lease or pay fees to the international body to lay cable?
- Are you prepared to pay for the additional fees, such as an environmental impact study when you lay cable on the ocean floor?

Answer. The Convention gives cable owners the explicit legal protection for the freedom to lay and maintain cables in international waters. If the United States ratifies the treaty, it will have the ability to work with U.S. companies and our allies to help protect U.S. interests in underseas cables, including in connection with assessing, and if appropriate, challenging, any fees or levies assessed.

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