

115TH CONGRESS
2D SESSION

S. RES. 598

Calling upon the United States Senate to give its advice and consent to the ratification of the United Nations Convention on the Law of the Sea.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2018

Ms. HIRONO (for herself and Ms. MURKOWSKI) submitted the following resolution; which was referred to the Committee on Foreign Relations

RESOLUTION

Calling upon the United States Senate to give its advice and consent to the ratification of the United Nations Convention on the Law of the Sea.

Whereas the United Nations Convention on the Law of the Sea (UNCLOS) was adopted by Third United Nations Conference on the Law of the Sea in December 1982, and entered into force in November 1994 to establish a treaty regime to govern activities on, over, and under the world's oceans;

Whereas UNCLOS builds on four 1958 law of the sea conventions to which the United States is a party, including the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on the Continental Shelf, and the Convention on Fishing

and Conservation of the Living Resources of the High Seas;

Whereas the treaty and an associated 1994 agreement relating to implementation of the treaty were transmitted to the Senate on October 6, 1994, and, in the absence of Senate advice and consent to adherence, the United States is not a party to the convention and the associated 1994 agreement;

Whereas the convention has been ratified by 167 parties, which includes 166 states and the European Union, but not the United States;

Whereas the United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their Exclusive Economic Zones (EEZs), but do not have the right to regulate foreign military activities in their EEZs;

Whereas the treaty's provisions relating to navigational rights, including those in EEZs, reflect the United States diplomatic position on the issue dating back to UNCLOS's adoption in 1982;

Whereas becoming a party to the treaty would reinforce the United States perspective into permanent international law;

Whereas becoming a party to the treaty would give the United States standing to participate in discussions relating to the treaty and thereby improve the United States ability to intervene as a full party to disputes relating to navigational rights, and to defend United States interpretations of the treaty's provisions, including those relating to whether coastal states have a right under UNCLOS to regulate foreign military activities in their EEZs;

Whereas relying on customary international norms to defend United States interests in these issues is not sufficient, because it is not universally accepted and is subject to change over time based on state practice;

Whereas relying on other nations to assert claims on behalf of the United States at the Hague Convention is woefully insufficient to defend and uphold United States sovereign rights and interests;

Whereas the Permanent Court of Arbitration, in their July 12, 2016, ruling on the case *In the Matter of the South China Sea Arbitration*, stated that “the Tribunal forwarded to the Parties for their comment a Note Verbale from the Embassy of the United States of America, requesting to send a representative to observe the hearing” and “the Tribunal communicated to the Parties and the U.S. Embassy that it had decided that ‘only interested States parties to the United Nations Convention on the Law of the Sea will be admitted as observers’ and thus could not accede to the U.S. request”;

Whereas the past Chief of Naval Operations, Admiral Jonathan Greenert, stated “as a party to UNCLOS, we will be in a better position to counter the efforts of coastal nations to restrict freedom of the seas” on February 16, 2012, before the Committee on Armed Services of the Senate;

Whereas the Secretary of the Navy, the Honorable Ray Mabus, stated that “the UNCLOS treaty guarantees rights such as innocent passage through territorial seas; transit passage through, under and over international straits; and the laying and maintaining of submarine cables,” and that “the convention has been approved by nearly every maritime power and all the permanent mem-

bers of the UN Security Council, except the United States” on February 16, 2012, before the Committee on Armed Services of the Senate;

Whereas the Secretary of the Navy, the Honorable Ray Mabus, further stated that “[o]ur notable absence as a signatory weakens our position with other nations, allowing the introduction of expansive definitions of sovereignty on the high seas that undermine our ability to defend our mineral rights along our own continental shelf and in the Arctic,” and that “the Department strongly supports the accession to UNCLOS, an action consistently recommended by my predecessors of both parties” on February 16, 2012, before the Committee on Armed Services of the Senate;

Whereas the President and the Chief Executive Officer of the United States Chamber of Commerce, Thomas J. Donahue, stated that the Chamber “supports joining the Convention because it is in our national interest—both in our national security and our economic interests,” that “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,” and that “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” on June 28, 2012, before the Committee on Foreign Relations of the Senate;

Whereas Mr. Donahue further stated that “the benefits of joining cut across many important industries including telecommunications, mining, shipping, and oil and natural gas,” and “joining the Convention will provide the

U.S. a critical voice on maritime issues—from mineral claims in the Arctic to how International Seabed Authority (ISA) funds are distributed” on June 28, 2012, before the Committee on Foreign Relations of the Senate;

Whereas the past Commander of United States Pacific Command, Admiral Samuel J. Locklear, stated that UNCLOS is “widely accepted after a lot of years of deliberation by many, many countries, most countries in my Area of Responsibility (AOR)” and that “when we’re not a signatory, it reduces our overall credibility when we bring it up as a choice of how you might solve a dispute of any kind” on April 16, 2015, before the Committee on Armed Services of the Senate;

Whereas the Commandant of the United States Coast Guard, Admiral Paul Zukunft, stated on February 12, 2016, that “[w]ith the receding of the icepack, the Arctic Ocean has become the focus of international interest,” that “[a]ll Arctic states agree that the Law of the Sea Convention is the governing legal regime for the Arctic Ocean . . . yet, we remain the only Arctic nation that has not ratified the very instrument that provides this accepted legal framework governing the Arctic Ocean and its seabed,” and that “[r]atification of the Law of the Sea Convention supports our economic interests, environmental protection, and safety of life at sea, especially in the Arctic Ocean”;

Whereas former Chief of Naval Operations, Admiral Jonathan Greenert, further stated that “remaining outside Law of the Sea Convention (LOSC) is inconsistent with our principles, our national security strategy and our leadership in commerce and trade” and that “virtually every major ally of the U.S. is a party to LOSC, as are

all other permanent members of the U.N. Security Council and all other Arctic nations” on June 14, 2012, before the Committee on Armed Services of the Senate;

Whereas Admiral Greenert further stated that “our absence [from LOSC] could provide an excuse for nations to selectively choose among Convention provisions or abandon it altogether, thereby eroding the navigational freedoms we enjoy today” and that “accession would enhance multilateral operations with our partners and demonstrate a clear commitment to the rule of law for the oceans” on June 14, 2012, before the Committee on Armed Services of the Senate;

Whereas the United States Special Representative of State for the Arctic and former Commandant of the Coast Guard, Admiral Robert Papp, Jr., stated that “as a non-party to the Law of the Sea Convention, the U.S. is at a significant disadvantage relative to the other Arctic Ocean coastal States,” that “those States are parties to the Convention, and are well along the path to obtaining legal certainty and international recognition of their Arctic extended continental shelf,” and that “becoming a Party to the Law of the Sea Convention would allow the United States to fully secure its rights to the continental shelf off the coast of Alaska, which is likely to extend out to more than 600 nautical miles” on December 10, 2014, before the Subcommittee on Europe, Eurasia and Emerging Threats of the Committee on Foreign Affairs of the House of Representatives;

Whereas the Chairman of the Joints Chiefs of Staff, General Joseph F. Dunford, stated that “[t]he Convention provides legal certainty in the world’s largest maneuver space,” that “access would strengthen the legal founda-

tion for our ability to transit through international straits and archipelagic waters; preserve our right to conduct military activities in other countries' Exclusive Economic Zones (EEZs) without notice or permission; reaffirm the sovereign immunity of warships; provide a framework to counter excessive maritime claims; and preserve or operations and intelligence-collection activities,” and that “joining the Convention would also demonstrate our commitment to the rule of law, strengthen our credibility among those nations that are already party to the Convention, and allow us to bring the full force of our influence in challenging excessive maritime claims” on July 9, 2015, before the Committee on Armed Services of the Senate;

Whereas Chairman of the Joints Chiefs of Staff General Dunford further stated that “by remaining outside the Convention, the United States remains in scarce company with Iran, Venezuela, North Korea, and Syria” and that “by failing to join the Convention, some countries may come to doubt our commitment to act in accordance with international law” on July 9, 2015, before the Committee on Armed Services of the Senate;

Whereas the Chief of Naval Operations, Admiral John M. Richardson, stated that “acceding to the Convention would strengthen our credibility and strategic position” and that “we undermine our leverage by not signing up to the same rule book by which we are asking other countries to accept” on July 30, 2015, before the Committee on Armed Services of the Senate;

Whereas Admiral Richardson further stated that “becoming a part of [UNCLOS] would give us a great deal of credibility, and particularly as it pertains to the unfolding op-

portunities in the Arctic” and that “this provides a framework to adjudicate disputes” on July 30, 2015, before the Committee on Armed Services of the Senate;

Whereas the Assistant Secretary of Defense for Asian and Pacific Security Affairs, the Honorable David Shear, stated that “while the United States operates consistent with the United Nations convention on the law of the sea, we’ve seen positive momentum in promoting shared rules of the road” and that “our efforts would be greatly strengthened by Senate ratification of UNCLOS” on September 17, 2015, before the Committee on Armed Services of the Senate;

Whereas the Commander of the United States Pacific Command, Admiral Harry B. Harris, stated that “all maritime claims must be derived from land features in accordance with international law as reflected in the Law of the Sea Convention, and any disputes should be settled peacefully and in accordance with international law” and that “our efforts would be greatly strengthened by Senate ratification of UNCLOS” on September 17, 2015, before the Committee on Armed Services of the Senate;

Whereas Admiral Harris further stated that “I think that by not signing onto it that we lose the creditability for the very same thing that we’re arguing for . . . which is the following—accepting rules and norms in the international arena. The United States is a beacon—we’re a beacon on a hill but I think that light is brighter if we sign on to UNCLOS” on February 23, 2016, at a hearing before the Committee on Armed Services of the Senate; and

Whereas former Commander of United States Pacific Command, retired Admiral Dennis Blair, stated that “if we want to focus on the Asia-Pacific going forward, we’re

going to have to find a way to pass the Law of the Sea because it does hurt us and it is striking to us that the Chinese have signed and they're obligated but don't want to do it," and that "we have not signed but want them to do it, right? So it's ironical to many in the region" on July 13, 2016, before the Subcommittee on East Asia, the Pacific, and International Cyber Security of the Committee on Foreign Services of the Senate: Now, therefore, be it

1 *Resolved*, That the Senate—

2 (1) affirms that it is in the national interest for
3 the United States to become a formal signatory of
4 the United Nations Convention of the Law of the
5 Sea;

6 (2) urges the Senate to give its advice and con-
7 sent to the ratification of the United Nations Con-
8 vention of the Law of the Sea (UNCLOS); and

9 (3) recommends the ratification of UNCLOS
10 remain a top priority for the administration, having
11 received bipartisan support from every President
12 since 1994, and having most recently been under-
13 scored by the strategic challenges the United States
14 faces in the Asia-Pacific region and more specifically
15 in the South China Sea.

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