

116TH CONGRESS
1ST SESSION

S. RES. 284

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 25, 2019

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 the 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 countries 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 countries 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, “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, on November 25, 2018, the Russian Federation violated international norms and binding agreements, including the United Nations Convention on the Law of the Sea, in firing upon, ramming, and seizing Ukrainian vessels and crews attempting to pass through the Kerch Strait;

Whereas, on May 25, 2019, the International Tribunal for the Law of the Sea ruled in a vote of 19–1 that “the Russian Federation shall immediately release the Ukrainian naval vessels Berdyansk, Nikopol and Yani Kapu, and return them to the custody of Ukraine,” and that “the Russian Federation shall immediately release the 24 detained Ukrainian servicemen and allow them to return

to Ukraine,” demonstrating the Tribunal’s rejection of Russia’s arguments in this matter in relation to the Law of the Sea;

Whereas, despite the Tribunal’s ruling aligning with the United States Government’s position on the incident, the United States continued nonparticipation in UNCLOS limits the United States ability to effectively respond to Russia’s actions in the November 25, 2018, incident, as well as to any potential future violations by the Russian Federation and any other signatory of UNCLOS;

Whereas the confirmed nominee and future Chief of Naval Operations, Admiral Bill Moran, stated that “becoming a party to the Convention would reinforce freedom of the seas and the navigational rights vital to our global force posture in the world’s largest maneuver space. Joining the Convention would also demonstrate our commitment to the rule of law, and strengthen our credibility with other Convention parties,” in response to advance policy questions on April 30, 2019, before the Committee on Armed Services of the Senate;

Whereas the past Secretary of the Navy, the Honorable Ray Mabus, stated, “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 “the convention has been approved by nearly every maritime power and all the permanent members of the UN Security Council, except the United States”, on February 16, 2012, before the Committee on Armed Services of the Senate;

Whereas the past Secretary of the Navy, the Honorable Ray Mabus, further stated, “Our notable absence as a signa-

tory 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 “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 past President and current Chief Executive Officer of the United States Chamber of Commerce, Mr. Thomas J. Donahue, stated, “we support joining the Convention because it is in our national interest—both in our national security and our economic interests”, and, “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, “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 the past President and current Chief Executive Officer of the United States Chamber of Commerce, Mr. Thomas J. Donahue, further stated, “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, “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 past Commandant of the United States Coast Guard, retired Admiral Paul Zukunft, stated on February 12, 2016, “With the receding of the icepack, the Arctic Ocean has become the focus of international interest.”, and “All 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 “Ratification 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 the past Chief of Naval Operations, Admiral Jonathan Greenert, further stated, “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, “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 the past Chief of Naval Operations, Admiral Jonathan Greenert, further stated, “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, “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, “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”, and, “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, “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, “The Convention provides legal certainty in the world’s largest maneuver space.”, and, “access would strengthen the legal foundation 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, "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 the Chairman of the Joints Chief of Staff, General Joseph F. Dunford, further stated, "by remaining outside the Convention, the United States remains in scarce company with Iran, Venezuela, North Korea, and Syria", and, "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, "acceding to the Convention would strengthen our credibility and strategic position", and, "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, in his nomination hearing before the Committee on Armed Services of the Senate;

Whereas the Chief of Naval Operations, Admiral John M. 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 opportunities

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

Whereas the past 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, “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 United States Indo-Pacific Command, Admiral Philip S. Davidson, stated “our accession to the UNCLOS would help our position legally across the globe and would do nothing to limit our military operations in the manner in which we’re conducting them now”, on April 17, 2018, before the Committee on Armed Services of the Senate;

Whereas the past Commander of United States Pacific Command, retired Admiral Harry B. Harris, stated “I believe that UNCLOS gives Russia the potential to, quote, unquote ‘own’ almost half of the Arctic Circle, and we will not have that opportunity because of, we’re not a signatory to UNCLOS,” on March 15, 2018, before the Committee on Armed Services of the Senate; and

Whereas the past Commander of United States Pacific Command, Admiral Harry B. Harris, stated “I think that by not signing onto it that we lose the creditability for the very same thing that we’re arguing for”, and “which is the following—accepting rules and norms in the inter-

national 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: 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 on the Law of the
5 Sea;

6 (2) urges the United States Senate to give its
7 advice and consent to the ratification of the United
8 Nations Convention on the Law of the Sea
9 (UNCLOS); and

10 (3) recommends the ratification of UNCLOS
11 remain a top priority for the Administration, having
12 received bipartisan support from every President
13 since 1994, and having most recently been under-
14 scored by the strategic challenges the United States
15 faces in the Asia-Pacific, the Arctic, and the Black
16 Sea regions.

○