

NOT FOR PUBLICATION  
UNTIL RELEASED BY THE  
SENATE COMMITTEE ON  
FOREIGN RELATIONS

STATEMENT OF  
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BEFORE THE  
SENATE COMMITTEE ON FOREIGN RELATIONS  
HEARING ON THE LAW OF THE SEA CONVENTION  
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Chairman Biden, Senator Lugar, Members of the Committee on Foreign Relations, good afternoon. I would like to thank you for this opportunity to testify in support of the United States joining the Law of the Sea Convention.

As Deputy Secretary Negroponte and Deputy Secretary England have stated, accession to the Convention is an important priority for the Administration. Statements supporting accession have been made by the President, senior cabinet officials, the Joint Chiefs of Staff, Commandant of the Coast Guard, a host of former legal advisors for the Department of State, our current and former Secretaries of the Navy, and former Chiefs of Naval Operations. Their statements outline the compelling reasons for accession. Instead of trying to improve upon them, I want to take this opportunity to focus on why I support accession.

I support accession because it helps our Soldiers, Sailors, Marines, Airmen, and Coast Guardsmen do their job.

Our Sailors' job is to make sure that fully trained and combat-ready naval forces are available to deter our adversaries and defeat our enemies, 24 hours a day, 7 days a week, 365 days a year. Our Sailors' job is to ensure the uninterrupted delivery of vast quantities of materiel necessary for the sustainment of our combat troops overseas. Their job is to ensure that the sea lines of

communication, which underpin global trade and our domestic economic prosperity, remain open and reliable. Our Sailors' job is to execute our National Security Strategy by:

- 1 interdicting terrorists and preventing them from gaining weapons of mass destruction,
- 2 gathering and analyzing critical intelligence,
- 3 helping our friends to secure critical economic infrastructure, and
- 4 expanding and strengthening global maritime coalitions dedicated to dealing with the full spectrum of 21<sup>st</sup> century security challenges.

Our Navy can better protect the United States and the American people if we join the Law of the Sea Convention.

The Law of the Sea Convention is the bedrock legal instrument for public order in the world's oceans. It codifies, in a manner that only binding treaty law can, the navigation and overflight rights, and high seas freedoms that are essential for the global strategic mobility of our Armed Forces, including:

- 1 The Right of Innocent Passage, which allows ships to transit through foreign territorial seas without providing the coastal State prior notification or gaining the coastal State's prior permission.

- 2 The Right of Transit Passage, which allows ships, aircraft, and submarines to transit through, over, and under straits used for international navigation and the approaches to those straits.
- 3 The Right of Archipelagic Sealanes Passage, which, like transit passage, allows transit by ships and aircraft through, over, and under normal passage routes in archipelagic states, such as Indonesia.
- 4 The right of high seas freedoms, including overflight and transit within the Exclusive Economic Zone.

Innocent Passage, Transit Passage, and Archipelagic Sealanes Passage are the crown jewels of navigation and overflight. These rights are vital not just to our Navy, but also to our Army, Air Force, Marine Corps, and Coast Guard. They make it possible to move vast quantities of war materiel through the Straits of Gibraltar, Singapore, Malacca, and Hormuz and into the Arabian Gulf to Soldiers, Sailors, Airmen, and Marines in Iraq. These rights permit us to move our submarine fleet through choke points to conduct all missions. They permit the United States Air Force to conduct global missions without requirement to overfly foreign national airspace. And they ensure the uninterrupted flow of commerce to and from our shores.

## National Security/Defense Benefits

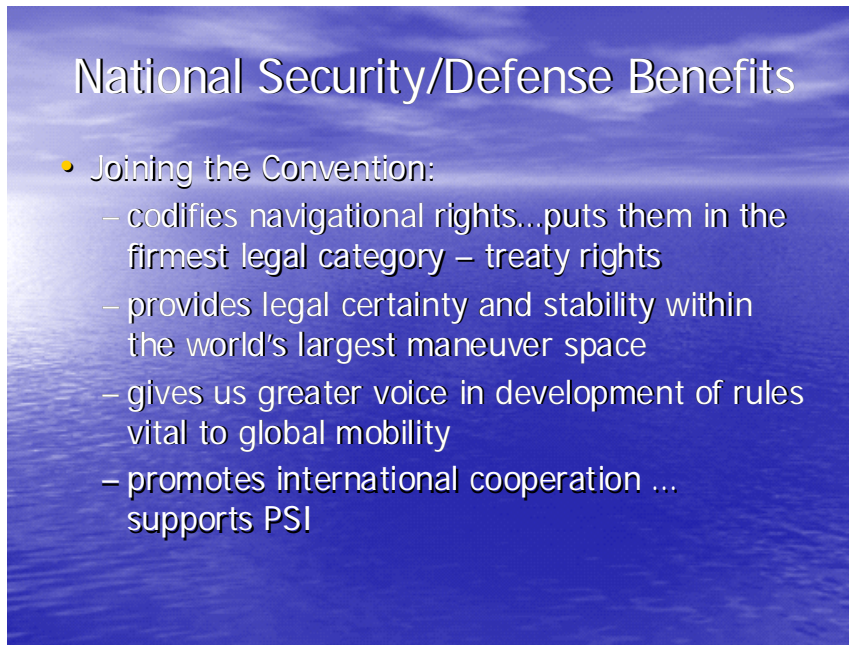
- Convention extremely favorable to U.S.
  - Limits breadth of territorial sea
  - Innocent passage
  - Transit passage through international straits
  - Archipelagic sealanes passage
  - Freedom of navigation and overflight in EEZs
  - Unrestricted military activities in high seas
  - Right of approach and visit
  - Legitimate coastal state authority in territorial sea and contiguous zones

The Convention also allows us to exercise high seas freedoms in foreign exclusive economic zones, including conducting military activities without coastal state interference. And this is important---the single most contentious issue in oceans law and policy today is the attempt by some foreign coastal States to treat the exclusive economic zone – or EEZ — like a territorial sea. The Convention makes clear that coastal States enjoy resource rights within the EEZ, but they do not enjoy and may not assert full sovereignty within the EEZ.

Because we are not a Party to the Law of the Sea Convention today, we must assert that our navigation and overflight rights and high seas freedoms are based upon customary international law. However, that approach plays directly into the hands of those foreign coastal States that want to move beyond the

Convention. They too cite customary international law as the basis for their developing claims of coastal State sovereignty in the EEZ and in international straits.

We need to lock in the navigation and overflight rights and high seas freedoms contained in the Convention while we can. Then, acting from within the Convention, we can exercise effective leadership, and in conjunction with our freedom of navigation program, ensure that those rights and freedoms are not whittled away by foreign States.



Joining the Convention will also strengthen maritime coalitions and further important national security initiatives such as the Proliferation Security Initiative. Over 150 nations are Parties to the Law of the Sea Convention, including the vast

majority of our PSI partners and members of the coalition fighting the global war on terror.

Our Maritime Security Strategy is founded upon the basic truth that nations with common interests in international commerce, safety, and security can work together to address common challenges. While the Armed Forces of the United States will always enjoy the capability to unilaterally conduct military operations wherever and whenever necessary, we also know that global security depends upon a partnership of maritime nations sharing common goals and values.

Global maritime security is undergoing significant transformation today, and as the world's foremost maritime power, the United States is both expected and required to lead that transformation. We must lead and manage a maritime security domain in which friendly navies, coast guards, and industry develop common interoperability protocols and information sharing frameworks. In turn, these arrangements must enable distributed maritime operations appropriately scaled to address the full range of 21<sup>st</sup> Century maritime security challenges, including proliferation of WMD, terrorism, piracy, and transnational criminal activities such as narcotics and human trafficking.

Joining the Law of the Sea Convention is critical to the success of our Maritime Security Strategy. By joining the Convention the United States will be

able to effectively develop and lead an association of maritime partners dedicated to ensuring public order in the world's oceans.

On this specific point, it is worth looking at the example of the President's Proliferation Security Initiative, or PSI. PSI began in May 2003, when 10 like-minded countries joined the United States to prevent the proliferation of weapons of mass destruction, their delivery systems, and related materials. Those 11 countries endorsed a series of PSI founding principles, including two essential principles from an operational perspective: One, that all States have broad domestic authorities to act against proliferators and, two, that acting cooperatively, they can use those authorities and international law---including the Law of the Sea Convention--- to prevent proliferation. The Law of the Sea Convention recognizes numerous legal bases for taking action against vessels suspected of engaging in proliferation activities, including port State control measures, flag State authority, and the right of warships to approach and visit commercial vessels.

In just four years, PSI has expanded from its original 11 partner-nations to almost 90, and we have had specific operational successes in preventing the proliferation of weapons of mass destruction under PSI. However, our failure to be a Party to the Law of the Sea Convention is limiting further expansion of PSI. Critically important democratic Pacific countries have indicated a desire to support our counter-proliferation efforts, but they tell us that so long as we are not a Party to the Law of the Sea Convention, they will not be able to convince their



legislatures to endorse PSI. How, they ask us, can they convince their legislatures that PSI interdiction activities will only occur in accordance with international law including the Law of the Sea Convention, when the leading PSI nation, the United States, refuses to become a party to the Convention?

Another example of the future of maritime security operations is Task Force 150 in the Central Command area of Operations. Task Force 150, a multinational task force comprised of naval and coast guard forces, is responsible for maritime security in the Gulf of Oman, Northern Arabian Sea, part of the Indian Ocean, Gulf of Aden, and Red Sea. The Task Force is responsible for helping secure the approaches to three of the world's most important choke points: the Suez Canal, Bab el-Mandeb, and Strait of Hormuz. The Task Force's mission includes interdicting terrorists and WMD material, supporting local countries in developing their maritime capabilities, and addressing the full spectrum of 21<sup>st</sup> Century security challenges, including narcotics trafficking and piracy. The Task Force is typically commanded by a Flag officer from a foreign navy, such as Pakistan, the United Kingdom, Germany, the Netherlands, or France. The United States contributes forces at the tactical level and acts as the overarching coordinating authority through the Combined Force Maritime Component Command headquarters in Bahrain, which is co-located with the U.S. Fifth Fleet headquarters.

One of the most important aspects of strengthening the effectiveness of a

maritime coalition, like TF 150, is to craft operations that take full advantage of the various capabilities that each country brings to the fight, while respecting their respective national political authorities and limitations. Although some differences are inevitable, for example in classification disclosure policies, others can and should be eliminated when possible. One such difference that should be eliminated is our non-party status under the Law of the Sea Convention. When we operate with coalition partners in challenging environments, we need to use the same playbook, and the Law of the Sea Convention is a critically important part of the playbook.

Before closing, I would also like to point out that the Law of the Sea Convention directly supports our Homeland Defense and domestic maritime law enforcement interests. In addition to permitting the United States to expand its territorial sea from 3 nautical miles to 12 and claim an adjacent contiguous zone with a 24 nautical mile limit, the Convention is the legal instrument underpinning maritime port state control measures and the authority of Flag states to consent to the interdiction of vessels. Initiatives relating to container security, maritime domain awareness, counter-narcotics and counter-proliferation are all based on the legal regimes established in the Convention. This is why the Commandant of the Coast Guard supports immediate U.S. accession to the treaty.

In closing, I would like to note that I have been responsible for leading the young men and women of our country in combat. I led strike missions over Iraq

in Desert Storm, and as the recent Commander of the United States Fifth Fleet, I led Marines, Sailors, and Coast Guardsmen during Operation Enduring Freedom and Operation Iraqi Freedom. It is my deeply held belief that military leaders have a sacred duty to ensure that the men and women under their command have the tools and training necessary to execute the demanding tasks placed upon them. Right now, as I sit before you, we have an identified deficiency ---not being a Party to the Law of the Sea Convention--- but thankfully it is one that we can easily correct. It is time that we join the Convention. We owe it to them.

Thank you and I am happy to answer any questions that you may have.