U.S. Senate Committee on Foreign Relations
Senator Richard G. Lugar
Opening Statement for Hearing on the
UN Convention on the Law of the Sea
October 4, 2007

I thank the Chairman and welcome our witnesses.

At the first hearing on the Law of the Sea one week ago, we heard unequivocal testimony from the State Department, the Defense Department, and the Navy in support of U.S. accession to the Convention. It was clear from this testimony, as well as from President Bush's statement on the Law of the Sea, and communications from the Joint Chiefs of Staff and Homeland Security Secretary Chertoff, that the U.S. national security leadership is strongly united in favor of this treaty. As Admiral Patrick Walsh, the Vice Chief of Naval Operations and former commander of the Fifth Fleet, testified: "Right now, where I sit, we have a deficiency, by not being party to the Law of the Sea Convention, and it is one that we must correct. This Convention is valuable to our soldiers, sailors, airmen, Marines, and coast Guardsmen and it's time we joined the Convention, and we owe it to them."

The Commander-in-Chief, the Joint Chiefs of Staff, and the United States Navy, in time of war, are asking the Senate to give its advice and consent to this treaty. Our uniformed commanders and civilian national security leadership are telling us that the Law of the Sea Convention is a tool that they need to maximize their ability to protect U.S. national security with the least risk to the men and women charged with this task.

I noted in our previous hearing that, historically, the overwhelming presumption in the United States Senate has been that if our Armed Forces ask us for something to help them achieve a military mission, we do our best to provide them with that tool. It would be ironic, if just weeks removed from defending the role, expertise, and integrity of General Petraeus as he pursues his mission in Iraq, Senators disregarded the unanimous and sustained views of our military on this treaty.

I would offer a historical reference for our discussion today. In 1950, the Soviet Union was boycotting the United Nations over the issue of designating the Communist government of China as the legitimate representative of the Chinese people. During this boycott, North Korea invaded South Korea. The Truman administration quickly introduced and passed resolutions at the Security Council to condemn the invasion and authorize the use of force to resist it. Because they were absent, the Soviets could not exercise their veto in the Security Council. Soviet interests, as they perceived them, clearly were not served by their boycott.

In absenting ourselves from the Law of the Sea Convention, we are risking making the same type of mistake that the Soviets made in 1950. Opponents seem to think that if the U.S. declines to ratify the Law of the Sea, the United States can avoid any multi-lateral responsibilities or entanglements related to the oceans. But unlike some treaties, such as the Kyoto Agreement and the Comprehensive Test Ban Treaty, where U.S. non-participation renders the treaty virtually inoperable, the Law of the Sea will continue to form the basis of maritime law *regardless of whether the U.S. is a party*. Consequently, the United States cannot insulate itself from the Convention merely by declining to ratify.

If we fail to ratify this treaty, we are allowing decisions that will affect our Navy, our ship operators, our off-shore industries, and other maritime interests to be made without U.S. representation. If the United States does not ratify this treaty, our ability to claim the vast extended continental shelf off Alaska will be seriously impeded. We will also put ourselves in a position of self-imposed weakness as we are forced to rely on other nations to oppose excessive claims to Arctic territory by Russia and perhaps others. Further, in an era when our growing energy vulnerability exposes us to the machinations of oil-rich states, we will be constraining the

opportunities of our own oil companies to explore beyond the 200-mile limit, by perpetuating legal uncertainty that is likely to prevent the large-scale investments that are required. We will be complicating the job of the Navy in asserting navigational rights and weakening our ability to constrain negative drift in customary international law. And we will not even be able to participate in the amendment process to this treaty, which is likely to dominate the evolution of accepted ocean law. This is a partial list of the costs of not joining the Convention, but it should illuminate for members that we do not have a free pass on this treaty. If the Senate does not give its advice and consent, we will be incurring tangible costs in both the short and long term on issues of vital importance to our economy and national security.

As I have listened to the arguments critics have made, some are simply false, others are highly speculative or sensationalist claims that are sharply contradicted by our national security leadership, including President Bush. But other objections can be traced to baseline philosophical objections to the *fundamental idea* of a multi-lateral treaty that delineates rights and responsibilities of member states. As I mentioned in the first hearing, these philosophical objections often have been connected to the wish for a U.S. ocean policy that relies on power projection to protect U.S. interests. But as Admiral Walsh testified, this is not a practical solution in the real world. He pointed out that "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, which is a Global War, a Global War on Terror." Even a mythical 1,000 ship U.S. Navy could not come close to patrolling every strait, protecting every economic interest, or asserting every navigational right. Attempting to do so would be prohibitively expensive and destructively confrontational.

It is this recognition, coupled with the understanding of the limits of customary international law, that have impelled a succession of seven Presidents to move the concept behind this treaty toward realization. The last seven administrations have understood that treaty law is the best option for gaining maximum leverage for U.S. ocean interests. If anyone doubts that President Reagan did not act to legitimize the concept of the Law of the Sea treaty, I would refer them to President Reagan's two fundamental presidential statements on ocean policy. The first was issued on January 29, 1982. The President said: "Last March, I announced that my administration would undertake a thorough review of the current draft and the degree to which it met United States interests in the navigation, overflight, fisheries, environmental, deep seabed mining, and other areas covered by that convention. Our review has concluded that while most provisions of the draft convention are acceptable and consistent with the United States interests, some major elements of the deep seabed mining regime are not acceptable. I am announcing today that the United States will return to those negotiations and work with other countries to achieve an acceptable treaty."

President Reagan then enumerated the problems with the deep seabed mining provisions. After doing so he continued: "The United States remains committed to the multilateral treaty process for reaching agreement on Law of the Sea. If working together at the Conference we can find ways to fulfill these key objectives, my administration will support ratification."

The following year, President Reagan issued a statement declaring that the United States would abide by all provisions of the Law of the Sea except the deep seabed mining provision.

By explicitly endorsing the multi-lateral treaty process, objecting only to deep seabed mining provisions, delineating precisely the steps needed to fix those provisions, announcing that his administration would support ratification if they were fixed, and, finally, declaring that the U.S. would abide by all other provisions of the treaty, President Reagan conferred *enormous* validity on the basic purposes, concepts, and provisions of the Law of the Sea.

The January 1982 statement was not a casual document. It was the deliberate and carefully-considered culmination of a thorough, nine-month study of the treaty by the Reagan Administration. It is telling that the President did not raise any objection to any provision of the Convention outside the deep seabed mining section. President Reagan made no demands for any other changes in the treaty.

It was perfectly within President Reagan's power to say that Presidents Nixon, Ford, and Carter were wrong to have engaged in negotiations on the Law of the Sea. He could have withdrawn the United States from further consideration of the treaty. He could have announced that the United States regarded the Law of the Sea as an illegitimate exercise and would not recognize the treaty's validity to bind any U.S. interests. That would have been real repudiation.

Instead, his actions preserved American engagement with the treaty. In 1990, President George H.W. Bush initiated further negotiations to resolve U.S. objections to the deep seabed mining regime. Under President Clinton, these talks culminated in a 1994 agreement that comprehensively revised the regime to address the problems President Reagan identified in 1982.

To illustrate how far away from a repudiation President Reagan's actions were, we need only to compare his actions with the actions of President George W. Bush on a different treaty. Less than 16 months into his first term, after a similar treaty review, President Bush formally renounced U.S obligations as a signatory to the 1998 Rome Statute to establish an International Criminal Court. The Bush Administration went so far as to promote passage of the American Servicemen's Protection Act (ASPA), which prohibits U.S. cooperation with the Court and even restricts U.S. military aid to countries that refuse to sign an agreement pledging to shield U.S. troops on their territory from ICC prosecution.

Imagine instead that President Bush had said "I am not going to ask the Senate to ratify the International Criminal Court because it has one flawed section that needs to be fixed, but I hereby declare that the United States will abide by all but that one provision. Further, I am defining the set of requirements for fixing that flawed provision and sending my negotiators back to the table." Such an action obviously would not have been seen as a repudiation of the treaty. It would have been a fundamental endorsement of most of the provisions of the treaty, and more importantly, the underlying principle of an international criminal court.

Finally, we should not miss the irony that in 2002, the year that President Bush decisively repudiated the Rome Statute, he also sent a treaty priority list to the Foreign Relations Committee designating the Law of the Sea as one of just five "urgent" treaties requiring action. President Bush has not been regarded as an enthusiast for multi-lateral agreements. Yet he understands what his six predecessors understood – that the Law of the Sea Convention is our best opportunity to bolster international law related to the oceans in a way that benefits U.S. interests.

I thank the Chair and look forward to our discussion.

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