



**TESTIMONY OF
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**ON ACCESSION TO THE
1982 LAW OF THE SEA CONVENTION**

BEFORE THE SENATE COMMITTEE ON FOREIGN RELATIONS

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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 semi-submersibles 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 non-party 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 maritime 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 UN 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 UN 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 UN 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 pre-eminent 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 U.S. 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.

Thank you for the opportunity to testify today. I look forward to your questions.