

Senate Foreign Relations Committee
Senator Richard G. Lugar
Statement for Business Meeting to Consider
UN Convention on the Law of the Sea
October 31, 2007

I thank the Chairman for bringing the Law of the Sea Convention and other measures to a vote.

The United States faces intensifying national security and economic costs if we continue to absent ourselves from the Law of the Sea. 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. Our ability to claim exclusive right to the vast extended continental shelf will be seriously impeded. We will also be 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 energy companies to explore beyond the 200-mile limit. In time of war, we will be dismissing more than a decade of impassioned advocacy from fleet commanders, CNOs, and the Joint Chiefs who have told us that U.S. participation in the Treaty will help them operate on the oceans and maintain navigational rights more effectively and with less risk to the men and women they command. We will be rejecting the reports of the Navy and others in the Administration who tell us that they are having difficulty attracting critical Proliferation Security Initiative partners because of our absence from the Treaty. And we will not even be able to participate in the amendment process to this treaty, which is far more likely to impose new requirements on our Navy and ocean industries if the U.S. is absent from negotiations.

Deliberately imposing a posture of U.S. impotence relative to our rivals in ocean affairs would be an extraordinary choice for the Senate to make, particularly when there is no credible alternative to the Law of the Sea. Unlike some treaties, such as the Kyoto Agreement and the Comprehensive Test Ban Treaty, where U.S. non-participation renders the treaty virtually irrelevant or inoperable, the Law of the Sea will continue to form the basis of maritime law regardless of whether the U.S. is a party. International decisions related to resource exploitation, navigation rights, and other matters will be made in the context of the treaty whether we join or not.

In trying to insulate the United States from the Convention's mandatory dispute resolution system, opponents are achieving the perverse outcome of deepening the American submission to ocean laws and practices determined by foreign governments without U.S. input. Our Navy, our shippers, our fisherman, our telecommunications companies, and others will have to continue to operate every day in a maritime environment that is increasingly dominated by foreign decision making. I have compared this conscious absence from international deliberations to the self-inflicted wound suffered by the Soviets when they boycotted the U.N. during consideration of the Korean War resolutions.

In the short term, we are likely to feel these costs most keenly in the Arctic. Senator Menendez and I were the only Senators to remain for the industry panel at our October 4th hearing, but I am hopeful other Senators took the time to review the compelling testimony. Mr. Paul Kelly, testifying on behalf of the oil and gas industry, underscored how much we have to lose by remaining outside the treaty. He noted that under the Law of the Sea, the United States would have the opportunity to expand its economic sovereignty over more than 291,000 square miles of extended continental shelf. Much of

this is in the Arctic, which holds one quarter of the world's undiscovered oil and natural gas, according to the U.S. Geological Survey. Mr. Kelly said, "By some estimates, in the years ahead we could see a historic dividing up of many millions of square kilometers of offshore territory with management rights to all its living and non-living marine resources....How much longer can the United States afford to be a laggard in joining this process?"

Opponents of the treaty have bemoaned the binding arbitration involved in this Convention as if it were the first time they have ever encountered it. Yet, binding dispute resolution mechanisms are a common feature of many of our international agreements, and virtually every sitting Senator has voted for or acceded to the passage of treaties and agreements that have included it. In fact, two of the tax treaties on the agenda today include binding dispute resolution. Republicans, in particular, have voted overwhelmingly for multilateral trade arrangements such as NAFTA and the WTO that include mandatory dispute resolution. Of the 21 current Senate Republicans who cast a vote on NAFTA and the WTO in the 103rd Congress, 17 voted for both. Last Congress our Committee unanimously passed two Treaties with binding dispute settlement mechanisms. In the 108th Congress our Committee unanimously passed numerous bilateral investment treaty protocols containing mandatory dispute resolution provisions.

It is useful to American interests to be able to resolve disputes in this manner, and ocean industries have confirmed their desire to have access to this mechanism. Suggestions that somehow our maritime interests can be asserted solely through robust naval power are not relevant to the real world. The overwhelming majority of ocean disputes do not involve enemies or issues that warrant military action. As Admiral Patrick Walsh testified at our first hearing, "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..., 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.

The vote today is about whether the Senate will continue to consign the United States to a position of self-imposed weakness in our ability to influence ocean affairs, despite the fact that no other nation has a greater interest in navigational freedoms, a larger Exclusive Economic Zone, or a more advanced technological capacity to exploit ocean resources. I urge my colleagues to vote yes.

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