

UN Convention on the Law of the Sea

Senator Richard G. Lugar

Opening Statement

September 27, 2007

I thank the Chairman for holding this important hearing on the United Nations Convention on the Law of the Sea. I welcome our distinguished panel and appreciate the strong position taken by the President and his Administration in support of this Treaty.

Four years ago, the Foreign Relations Committee began consideration of the Law of the Sea Convention after it was designated by the Bush Administration as one of five “urgent” treaties deserving of ratification. The Foreign Relations Committee took up all five of these treaties during the 108th Congress, and all but the Law of the Sea eventually gained the advice and consent of the Senate.

Our Committee held two public hearings and four briefings to examine the Law of the Sea Convention. Representatives from the Department of State, the Office of the Secretary of Defense, the U.S. Navy, the U.S. Coast Guard, and the Commerce Department testified in support of the Convention at various Congressional hearings. Six Bush Administration Cabinet departments participated in the interagency group that helped write the resolution of advice and consent accompanying the treaty. And the U.S. Commission on Ocean Policy, appointed by President Bush, strongly endorsed U.S. accession to the Law of the Sea.

In the private sector, every major ocean industry, including shipping, fishing, oil and natural gas, drilling contractors, ship builders, and telecommunications companies that use underwater cables, supported U.S. accession to the Law of the Sea and lobbied in favor of it. The National Foreign Trade Council, representing hundreds of exporting companies, also supported ratification. Moreover, a long list of environmental and ocean groups endorsed the treaty because it protects and preserves the marine environment and establishes a framework for further international action to combat pollution.

On February 25, 2004, after more than four months of consideration, the Committee approved the resolution of advice and consent by a unanimous 19-0 vote. This vote came almost ten years after the Convention was first submitted to the Senate.

Today, as we return to this treaty, the coalition in favor of it has grown and the urgency of completing Senate consideration has intensified. As the world’s preeminent maritime power, the largest importer and exporter, the leader in the war on terrorism, and the owner of the largest Exclusive Economic Zone off our shores, the United States has more to gain than any other country from the establishment of order with respect to the oceans. This treaty is important to an expansive array of American economic, environmental, and security interests.

But I want to underscore for my colleagues a fundamental starting point for our hearings. 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, unanimously and without qualification, that U.S. accession to this treaty would help them do their job.

We have charged the U.S. Navy with maintaining sea lanes and defending our nation’s interests on the high seas. They do this every day, and even in peacetime these operations carry considerable risk. The Navy is telling us that U.S. membership in 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.

This request is not the result of an idiosyncratic Chief of Naval Operations or a recent reassessment by Navy authorities. The support of the military and Navy for this treaty has been consistent, sustained, and unequivocal. All the members of the Joint Chiefs have written us a letter supporting advice and consent. Their predecessors likewise supported this convention. As seven CNOs wrote in a joint letter back in 1998, “There are no downsides to this treaty – it contains expansive terms, which we use to maintain forward presence and preserve U.S. maritime superiority. It also has vitally important provisions, which guard against the dilution of our navigational freedoms and prevent the growth of new forms of excessive maritime claims.”

Mr. Chairman, the military is not always right. But the overwhelming presumption in the United States Senate has been that if our Armed Forces and our entire National Security apparatus ask us for something to help them achieve a military mission, we do our best to provide them with that tool within the constraints of law and responsible budgeting.

In recent weeks we have heard a great deal of advocacy about the necessity of heeding the advice of our military leaders as they seek to carry out the missions we have given them. Senators rose to declare that General Petraeus, an acknowledged counterinsurgency expert, was better positioned and trained to assess our progress in Iraq than critics in Congress. In the coming debate on Law of the Sea, we should be similarly respectful of the expertise of military commanders.

Articles and statements opposing the Convention often avoid mentioning the fact of the military’s longstanding and vocal support for Law of the Sea. This is because to oppose the Convention on national security grounds requires one to say that military leaders who have commanded fleets in times of war and peace and who have devoted their lives to naval and military studies have illegitimate opinions. Those critics who do mention the military’s support struggle to spin conspiracy theories as to why the military would back this treaty. One explanation that has been offered is that somehow military commanders have been misled by their service lawyers. As a former Navy officer who served as a briefer to Admiral Arleigh Burke, I can say with confidence that CNOs are not easy to deceive. These are some of the most talented, learned, and politically adept individuals ever to serve our nation. The suggestion that CNOs, service chiefs, and other military leaders are blithely allowing themselves to be led astray by Defense Department lawyers is nonsense.

Opponents are similarly reluctant to mention the unanimous support of affected U.S. industries. To oppose the treaty on economic grounds requires opponents to say that the oil, natural gas, shipping, fishing, boat manufacturing, exporting, and telecommunications industries do not understand their own bottom lines. It requires opponents to say that this diverse set of industries is spending money and time supporting an outcome that will be disadvantageous to their own interests.

The ongoing delay in ratifying the Convention would be just an interesting political science case study if the United States were not facing serious consequences because of our non-participation. As a non-party we do not have a seat at the table to prevent proposed amendments that would roll back Convention rights we fought hard to achieve. In addition, as a non-party, our ability to influence the decisions of the Commission on the Limits of the Continental Shelf is severely constrained. Russia is already making excessive claims in the Arctic. Until we become a party to the Convention, we will be in a weakened position to protect our national interests in these discussions.

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 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 national claims on continental shelves beyond 200 miles from our shore, resource exploitation in the open ocean, navigation rights, and other matters will be made in the context of the treaty whether we join or not.

Consequently, the United States cannot insulate itself from the Convention merely by declining to ratify. The Convention is the accepted standard in international maritime law. Americans who use the ocean and interact with other nations on the ocean, including the Navy, shipping interests, and fisherman, have told me that they already have to contend with provisions of the Law of the Sea on a daily basis. They want the United States to participate in the structures of Law of the Sea to defend their interests and to make sure that other nations respect our rights and claims.

Given that the United States has been abiding by all but one provision of the Treaty since President Reagan's 1983 Statement of Oceans Policy and that we have been a party to a less advantageous international convention on ocean law since 1958, dire predictions about the hazards to our sovereignty of joining the Law of the Sea ring particularly hollow.

It is irresponsible for us to wait to ratify the Law of the Sea until we feel the negative consequences of our absence from the Convention. The Senate should ratify the Law of the Sea Convention now in the interest of U.S. national security, the U.S. economy, and the American people.

###