

Committee Statement of Senator Lugar

UN Convention on the Law of the Sea

Wednesday, May 23, 2012

I join in welcoming Secretary Clinton, Secretary Panetta, and General Dempsey. We are very pleased that they have joined us today.

Nine years ago, the Foreign Relations Committee began consideration of the Law of the Sea Convention after it was designated by President George W. Bush as one of five “urgent” treaties deserving of ratification. The Foreign Relations Committee took up all five of those 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. Six Bush Administration Cabinet departments participated in the interagency group that helped write the resolution of advice and consent accompanying the treaty.

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. During the more than four months of consideration of this Treaty, the Committee received only one negative communication related to the Treaty, and that was from a private individual. None of the 19 members of the Committee requested additional witnesses or hearings, and the Resolution of Ratification passed on February 25, 2004, without a dissenting vote. Despite the unanimous vote in the Foreign Relations Committee, Senator Bill Frist, then Majority Leader declined to bring the Convention up in the Senate.

In 2007, the Committee undertook an even lengthier process resulting in a 17-4 vote to refer the Convention to the full Senate. By that time, Senator Harry Reid had become Majority Leader, and he, too, declined to bring Law of the Sea before the full Senate.

In 2009 and 2010, though discussions occurred on Law of the Sea within the Obama Administration, passing the Convention was not accorded a high priority. There was no concerted effort on the part of the Administration to move Law of the Sea as there had been under the Bush Administration. The Obama Administration’s 2009 Treaty Priority List indicated no special emphasis on passing Law of the Sea, listing it among a general group of 17 treaties on which action was supported. To my knowledge, the only official mention of Law of the Sea by the President during his first two years was one line in his Executive Order covering ocean policy, which was not issued until July 19, 2010.

Clearly, the enthusiasm for Law of the Sea has increased within the Administration during this Congress. The presence of the distinguished panel before us underscores this. The substantive case for Law of the Sea is even stronger today than it was in 2004 when I brought it up as Chairman of this Committee.

Every year that goes by without the U.S. joining the Convention results in deepening our country's submission to ocean laws and practices determined by foreign governments without U.S. input. Our Navy and our ocean industries operate every day in a maritime environment that is increasingly dominated by foreign decision-making. In almost any other context, the Senate would be outraged at subjecting Americans to foreign controls without U.S. input.

What many observers fail to understand about Law of the Sea is that the Convention already forms the basis of maritime law regardless of whether the United States is a party. International decisions related to resource exploitation, navigation rights, and other matters will be made in the context of the Convention whether we join or not. Because of this, there is virtual unanimity in favor of this treaty among people who actually deal with oceans on a daily basis and invest their money in job-creating activities on the oceans.

By not joining the treaty, we are abetting Russian ambitions in the Arctic. We are making the job of our Navy more difficult, despite the longstanding and nearly unanimous pleas of Navy leaders that U.S. participation in Law of the Sea will help them maintain navigational rights more effectively and with less risk to the men and women they command. We are turning our backs on the requests of important American industries that use the oceans and must abide by rules established under this Convention. We are diminishing our chances for energy independence by making U.S. oil and gas exploration in international waters less likely. 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.

We will feel these costs most keenly in the Arctic, which is why successive Alaskan Governors and Senators of both parties have supported this treaty. In 2007, Mr. Paul Kelly, testifying on behalf of the oil and gas industry, underscored how much we have to lose in the Arctic 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?"

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 in 2007: "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 patrol every strait, protect every economic interest, or assert every navigational right. Attempting to do so would be prohibitively expensive and destructively confrontational.

The decision before this Committee is whether the Senate should 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. The Senate should enthusiastically affirm the leadership of the United States in this vital area of international relations by giving advice and consent to the Law of the Sea Convention.

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