

Committee Statement of Senator Lugar

UN Convention on the Law of the Sea

Thursday, June 14, 2012

I join in welcoming our distinguished military panel to the Foreign Relations Committee. I want to underscore for my colleagues a fundamental starting point for this hearing. The Commander-in-Chief, the Joint Chiefs of Staff, the United States Navy, the United States Coast Guard, and individual combatant commanders are asking the Senate to give its advice and consent to the Law of the Sea Convention. Our uniformed commanders are telling us, unanimously, that U.S. accession to this treaty would help them do their job in a time of considerable international threat.

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 a recent reassessment by Navy authorities or the enthusiasm of a few leaders. The support of the military and the Navy for this treaty has been consistent, sustained, and unequivocal. All the members of the Joint Chiefs support advice and consent. Their predecessors likewise supported the 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."

The military is not always right. But the overwhelming presumption in the U.S. Senate has been that if military leaders ask us for something to help them do their job we do our best to provide them with that tool within the constraints of law and responsible budgeting.

Articles and statements opposing the Convention often avoid mentioning the military's longstanding 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 sometimes spin theories as to why the military would back this treaty. One explanation that was offered in 2007 was that somehow military commanders had been misled by their service lawyers. As a former Navy officer who served as an intelligence briefer to CNO Admiral Arleigh Burke, I can attest that CNOs are not easy to deceive. These are some of the most talented and politically adept individuals 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. Other critics

have suggested that military support for the Convention is simply a function of top uniformed officers taking orders from Presidents and Secretaries of Defense. But this theory relies on a simplistic understanding of how military decisions are made, and it fails to explain why Navy leaders have continued to support the Law of the Sea Convention long after they have left active service.

Still other critics suggest that the Navy's expression that it will be able to maintain freedom of navigation with or without U.S. ratification of Law of the Sea means that accession is unnecessary or even undesirable. But the Navy's assertion that it will protect sea lanes under any circumstance does not relieve us of the responsibility to give them tools to make their job less arduous, less expensive, and less complex. The Navy will always have a "can-do" attitude regarding its freedom of navigation mission, but that should not make us cavalier about the seriousness of their request for Law of the Sea. Navy leaders are not looking for a substitute for naval power, they are hoping for a tool that will help resolve navigation disputes with all types of nations, including allies. They are hoping for a tool that will allow them to reduce the share of naval assets that must be devoted to freedom of navigation missions.

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 have little say in amendments that could roll back navigational rights that 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. Every year that goes by without the U.S. joining the Convention deepens our country's submission to ocean laws and practices determined by foreign governments without U.S. input.

I thank our distinguished panel for joining us today and look forward to their testimony.

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