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United States
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DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

STATEMENT OF

REAR ADMIRAL JOHN E. CROWLEY JR.

ON UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

U. S. SENATE

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Good Morning Mr. Chairman and distinguished members of the Committee. I am Rear Admiral John E. Crowley, Chief Counsel and Judge Advocate General of the U.S. Coast Guard. It is a pleasure to appear before you today to discuss the United Nations Convention on the Law of the Sea.

I have previously served as the Assistant to the Secretary of Transportation's Representative to the United Nations Law of the Sea Conference in 1979-80, where I acquired an appreciation for the breadth of Law of the Sea issues. I also have served on five cutters, twice as commanding officer. My sea duty has encompassed all of the Coast Guard's Deepwater missions, including service as the Chief Staff Officer of the Joint Task Force responding to the 1994 Haitian and Cuban mass migrations. I have more recently served as the Special Assistant to the Secretary of Homeland Security and the interim Director of the Homeland Security Center. These assignments allow me to provide comments from the operator's point of view as well. Following these remarks, I am prepared to answer any questions you may have concerning the potential effects of this Convention on the U.S. Coast Guard's missions.

Although the 1982 UN Convention on the Law of the Sea (LOS) entered into force in 1994, the U.S. has continued to rely upon customary international law as reflected in the Convention to advance our oceans policy. While reliance upon customary international law has, in fact, served us well for many years, becoming a party to the LOS Convention will enhance our position in maritime affairs. The first UN effort at codifying the Law of the Sea took place in 1958, when the first UN Conference on the Law of the Sea concluded four separate conventions dealing with the Law of the Sea. These four conventions represented, in the main, codifications of customary international law at the time. However, it must be remembered that at the time, pollution of the world's oceans was not considered an important issue; fish stocks were thought to be inexhaustible, and the need for maritime domain awareness was not present. Beginning in the 1960's, the world, in general, and the oceans, in particular, began experiencing significant change in such areas as pollution standards and fisheries management. This led to the Third United Nations Conference on the Law of the Sea (UNCLOS III), which developed the 1982 UN Convention on the Law of the Sea. With 143 states party to the 1982 UN Convention on the Law of the Sea, the Convention will play a central role in resolving such issues in the future. It will also serve as a foundation upon which future oceans agreements will be based. For these reasons, it is particularly important for the United States to become a party to the Convention.

On November 16, 1994, the LOS Convention entered into force. That event represented a milestone in the United States' efforts to achieve a widely ratified, comprehensive law of the sea treaty that protects and promotes a wide range of U.S. ocean interests, many of which affect the U.S. Coast Guard. Because of our law enforcement and national security missions, the Coast Guard has long been a proponent of achieving a comprehensive and stable regime with respect to traditional uses of

the oceans. The Convention aids our interests by stabilizing the trend towards expansion of national jurisdiction over coastal waters, while furthering our efforts to protect and manage fishery resources and to protect the marine environment. From the Coast Guard perspective, public order of the oceans is best established and maintained by a stable, universally accepted law of the sea treaty reflective of U.S. national interest.

One of the bedrock underpinnings of the Convention was codification of rights and responsibilities of states as port states, flag states and coastal states. During the LOS Convention negotiations, the U.S. aggressively sought both clarification and delimitation of seaward territorial claims by coastal states in order to ensure navigational freedoms while at the same time recognizing the U.S.'s interest as a coastal state with sovereignty to protect its living and non-living marine resources. The result was a limit nations could claim as a territorial sea of no more than 12 nautical miles. Our fishery conservation management interests, as reflected in the Magnuson-Stevens Fishery Conservation Management Act, were instrumental in the international development of the 200 nautical mile Exclusive Economic Zone (EEZ). In the EEZ, all nations enjoy freedoms of navigation, while the coastal state possesses sovereign rights to protect and exploit the living and non-living marine resources. Following the *Amoco Cadiz* and subsequent vessel oil spill incidents, marine pollution was also addressed in the 1982 UN Convention on the Law of the Sea with provisions that have been described as a far-reaching environmental accord. The Convention struck the appropriate balance of competing claims, so that all nations could engage in high seas freedoms, including non-resource related law enforcement in other nation's EEZ waters, and the coastal state enjoyed the right to protect its marine environment, including damage from oil spills by vessels, fisheries conservation and enforcement of domestic laws designed to conserve and protect the living marine resources in their EEZ. The Convention also recognized a port state regime adequate to ensure their interests were protected when vessels voluntarily entered their ports or places subject to their jurisdiction.

The Coast Guard and other U.S. military forces already rely heavily on the elemental navigation freedoms codified in the Law of the Sea Convention. These protections allow the use of the world's oceans to meet changing national security requirements. The Convention limits a nation's territorial sea to no more than 12 nautical miles, beyond which all nations enjoy a high seas navigation regime that includes the freedom to engage in law enforcement activities. The Convention codifies the right to operate freely beyond a nation's territorial sea and protects this right by limiting excessive maritime claims that often have the effect of creating maritime safe havens for drug traffickers and other criminals. In fiscal year 2003, the Coast Guard maritime interdiction operations occurring on international waters resulted in the seizure of over 135,000 pounds of cocaine, 56 vessels, and 207 arrests. In keeping with our aggressive international crime control strategy, most of these seizures took place on distant maritime transit routes far from our shores. However, during bi-lateral negotiations, several nations have, in the past, questioned our authority to contest certain of their excessive maritime claims simply because we have yet to ratify the treaty. Becoming a party to the Convention will enhance our ability to conduct such interdiction operations and to refute excessive maritime claims. Rather than only basing our law enforcement operations on customary international law, the United States should become a conspicuous and leading party to the treaty that codifies these important navigational rights.

The Convention also contains provisions that enhance our ability to interdict foreign flagged vessels off our own coasts. The Convention codifies a coastal nation's right to establish a contiguous zone not to exceed 24 nautical miles where it may enforce its customs, immigration, fiscal, and sanitary

laws. Adoption by the U.S. of an expanded contiguous zone has doubled the area where we can exercise these increased authorities. The benefits of the contiguous zone against traffickers surreptitiously shipping their illicit products to U.S. shores are clear.

Article 108 of the Convention requires international cooperation in the suppression of the transport of illegal drugs. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) is a fine example of this. The United States has been at the forefront. We have aggressively pursued bilateral agreements with many nations that border drug transit zones as well as States with large registries to facilitate the effective interdiction of vessels suspected of transporting illegal drugs and the eventual prosecution of the drug traffickers. During discussions with these nations, we emphasize the Convention's call for cooperation and premise each agreement on concepts codified within the Convention; becoming a party to the Convention will improve our position during these negotiations.

The Convention contains numerous provisions that advance the economic interests of the United States as a coastal state. By codifying the 200-nautical mile EEZ, the Convention confirms U.S. exclusive jurisdiction over all the living and non-living resources in the zone. Experts agree that the problems associated with the management of fish stocks will continue as a contentious issue for states that rely on fishing to feed their population. The Convention provides a legal baseline that sanctions the actions of regional fishing organizations to deal with such conservation issues. Indeed, the Convention imposes responsibilities on the coastal states to manage their fishery resources responsibly, and provides the best structural framework for resolving conflicts between competing users. The Convention's provisions regarding the exclusive economic zone are fully in accord with our fisheries policies and interest. Similarly, the Convention makes provision for a wider continental shelf. This is important to our oil and gas interests because they need the certainty of established continental shelf boundaries before they begin exploration.

The Convention is also an environmental accord that provides a comprehensive framework for the prevention, reduction, and control of maritime pollution. The Coast Guard conducts a wide-ranging port state control program to purge our waters of substandard ships and is assisting other nations in doing the same. This initiative will be enhanced through the consistent application of the Convention's broad enforcement mechanisms. Additionally, the Convention carefully balances the rights of coastal states to adopt certain measures to protect the marine environment adjacent to their shores and the general right of a flag state to set and enforce standards and requirements concerning the operation of its vessels. Becoming a party to the Law of the Sea Convention will strengthen the international credibility of the U.S. and our efforts to guide the development of internationally accepted vessel standards, thereby improving marine safety and protection of the marine environment.

The Convention calls for international cooperation among states in preserving the world's high seas fisheries. This provision on cooperation supports the UN ban on high seas drift net fishing.

As the lead Federal agency for maritime security, the Coast Guard believes that acceding to the 1982 UN Convention on the Law of the Sea will benefit the Coast Guard in our efforts to ensure maritime homeland security, and ensure that our maritime borders are secure, as well. In that regard, in the Maritime Transportation Security Act, the Congress found that, "it is in the best interests of the United States to implement new international instruments that establish [the IMO International Ship and Port Facility Security Code and amend SOLAS to include maritime security as well as safety among its provisions]."

The Convention recognizes that various UN subsidiary bodies may serve as competent international organizations for the further Conventional development of the law of the sea. IMO has always been the recognized competent international organization for maritime safety and marine environmental protection. It has now assumed a similar role in port facility and vessel security. Acceding to the Convention will enhance Coast Guard efforts to work in the international community through the International Maritime Organization, the International Labor Organization and other UN subsidiary bodies to improve our security measures and to project our maritime domain awareness, consistent with the Convention's balance of states' rights to the uses of the oceans. Specifically, we are working now at IMO to build upon the successes achieved by the United States in that body at the December 2002 diplomatic conference. As you know, that diplomatic conference resulted in the landmark amendments to the SOLAS Convention for vessel and port facility security contained in Chapter XI and the International Ship and Port Facility Security Code. We have on-going efforts in respect of Conference Resolution 10 to enhance our maritime domain awareness through Long Range Tracking of vessels bound for our ports and waters. These negotiations are taking place in the context of the overwhelming number of nations at IMO being parties to the Law of the Sea Convention. Because of this fact, the Law of the Sea Convention provides the framework for the discussions and agreements. Although we have enjoyed success in the international security agreements so far, those negotiations have not always been easy. Further progress will not be as easy to achieve as our past successes. Frankly, the fact that the United States is not a party to the Law of the Sea Convention, when the overwhelming number of our international partners are parties, has occasionally put us in a difficult negotiating position at IMO. It is our judgment that accession to the Convention will put us in a stronger position at the IMO than we currently enjoy.

In the view of the Department of Homeland Security and the Coast Guard, accession to the LOS Convention helps safeguard United States security and economic interests. The LOS Convention contains provisions that go beyond codifying existing customary international law. The LOS Convention contains both customary international law and the provisions allowing for the progressive development of law. Becoming a party to the Convention will help us preserve the significant concessions we obtained during the negotiations of the Convention in the area of navigational freedoms, and help us in the development of the law of the sea as it evolves.

It is our understanding that the Administration has, however, identified certain serious concerns regarding accession to the Convention, but which we believe can be resolved. Those issues will be addressed by the State Department and the Department of Defense.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.