

**Joint Chiefs of Staff**  
**Statement of Admiral Michael G. Mullen, U.S. Navy,**  
**Vice Chief of Naval Operations**  
**Before the Senate Committee on Foreign Relations**  
**On the Law of the Sea Convention**  
**21 October 2003**

Chairman Lugar, Senator Biden, Members of the Committee on Foreign Relations, good morning. I would like to thank you for this opportunity to testify here today. I am Admiral Mike Mullen, U.S. Navy, the Vice Chief of Naval Operations for the Department of the Navy.

Although I am presently the Vice Chief of Naval Operations, I previously commanded the Navy's Second Fleet and NATO's Striking Force Atlantic, was privileged to command the George Washington Carrier Battle Group, and was commanding officer on and served aboard a number of cruisers, destroyers and other ships in our Fleet. The Administration, including the Military Departments, the Joint Chiefs of Staff and the Combatant Commanders, strongly support U.S. accession to the Convention. Entry into force for the United States will enhance the worldwide

mobility our forces require and our traditional leadership role in maritime matters, as well as position us better to initiate and influence future developments in the law of sea.

The Administration has identified three areas of serious concern, one of which could have a direct impact on U.S. military activities. The Administration believes, however, that we can resolve these problems by working closely with the Senate.

Military operations since September 11—from Operation Enduring Freedom to Operation Iraqi Freedom to the Global War on Terrorism—have dramatically increased our global military requirements. U.S. Forces are continuously forward deployed worldwide to deter threats to our national security and are in position to respond rapidly to protect U.S. interests, either as part of a coalition or, if necessary, acting independently. U.S. military strategy envisions rapid deployment and mobility of forces overseas anytime, anywhere. A leaner, more agile force with a smaller overseas footprint places a premium on mobility and independent operational maneuver. Our mobility requirements have never been greater.

Future threats will likely emerge in places and in ways that are not yet fully clear. For these and other undefined future operational challenges, U.S. naval and air forces must take maximum advantage of the customary, established navigational rights that the Law of the Sea Convention codifies. Sustaining our overseas presence, responding to complex emergencies, prosecuting the global war on terrorism, and conducting operations far from our shores are only possible if military forces and military and civilian logistic supply ships and aircraft are able to make unencumbered use of the sea and air lines of communication. This is an enduring principle that has been in place since the founding of our country.

In addition to Operations Enduring Freedom and Iraqi Freedom, our ships and aircraft have been deployed overseas to intercept terrorists in the Mediterranean Sea, the Pacific Ocean and the Arabian Sea. They have also been deployed to the Pacific and Indian Oceans to ensure security in vital lines of communication in Southeast Asia, as well as to the waters off Central and South America to interdict the flow of illicit traffic from that region. Our forces are now engaged in laying the groundwork for implementation of the President's Proliferation Security Initiative. The international coalition assembled as part of the President's

initiative will work together to disrupt the flow of weapons of mass destruction, their delivery systems, and related materials throughout the world.

The navigation and overflight freedoms we require through customary international law are better served by being a party to the Convention that codifies those freedoms. Being a party to the Convention is even more important because the trend among some coastal states is toward limiting historical navigational and overflight freedoms. Would-be adversaries, or nations that do not support the particular missions or activities we undertake, will be less likely to dispute our lawful use of the sea and air lanes if we are parties to the Convention. We support the Convention because it protects military mobility by codifying favorable transit rights in key international straits, archipelagic waters, and waters adjacent to coastal states where our forces must be able to operate freely.

The Law of the Sea Convention serves some very important U.S. military interests. Specifically, the Convention, codifies:

- High seas freedoms of overflight and vessel navigation without discriminating against military exercises, military

- surveys, research and development activities, ordnance testing, and space and telecommunications activities;
- Limitation of territorial seas to 12 nm in the face of increasing pressure by some coastal states to expand those seas well beyond that limit, and to assert other claims that have the practical effect of extending coastal state control over the U.S. military's legitimate uses of those seas;
  - Unimpeded overflight and passage rights through critical international straits such as the Straits of Hormuz, Gibraltar and Malacca;
  - Unimpeded overflight and passage rights through archipelagic states such as Indonesia and the Philippines under a balanced regime of archipelagic sea lanes;
  - The right of innocent passage of ships through the territorial seas of coastal states, without prior notification or permission;
  - Limitation of the jurisdiction of coastal states in their exclusive economic zones (EEZ) to legitimate resource-related concerns, while preserving high seas freedoms for other states;
  - The right to conduct hydrographic and military surveys on the high seas and within foreign EEZs.

In addition to the rights that I just mentioned, the Convention guarantees the right to conduct transits through international straits in “normal modes,” which means that submarines may stay submerged and air-capable ships may launch, recover, and operate aircraft. It further means that ships may steam in formation. This right to conduct transit in “normal modes,” which is frequently challenged, is particularly important to our naval units because it ensures their ability to maintain appropriate readiness and defensive postures through many of the most important choke points in the world.

Moreover, the Convention also recognizes the right of ships to navigate in international waters and through territorial seas without regard to cargo or means of propulsion. Since many of the Navy’s major combatants are nuclear powered, the importance of this right cannot be overemphasized as a component of strengthening the military’s ability to respond globally.

The right of transit passage through international straits and the related regime of archipelagic sea lanes passage are particularly important. More than 150 international straits are overlapped by 12 nm territorial seas. Of these, we consider approximately a dozen to be “strategic” for commercial and military purposes.

Among these strategic straits are the Straits of Hormuz, Bab el Mandeb, Malacca, Gibraltar, and Dover, plus the strategic sea lanes through the Philippine and Indonesian archipelagoes.

These straits have been critical to U.S. operations in the past. For example, during the raid on Libya in 1986, U.S. Air Force FB-111 fighter-bombers relied on free passage through the Strait of Gibraltar to accomplish their mission. Also, assured access for the enormous flow of forces and logistics to the Arabian Gulf during Operations Desert Shield/Desert Storm in 1990 and 1991 through Bab el Mandeb and Hormuz was a critical element of coalition success, as was again the case in Operation Enduring Freedom and Operation Iraqi Freedom. Afterwards, the United States used these straits continually throughout twelve years of enforcing U.N. sanctions against Iraq. Finally, since September 11, our forces have relied, to their advantage, upon all of these key routes in conducting Operation Enduring Freedom and Operation Iraqi Freedom as we prosecute the global war on terrorism.

Notwithstanding the fact that the navigational freedoms and transit rights we currently enjoy are embodied in customary international law, as a party to the Convention, the United States would, however, be in a stronger leadership position to assert its

rights to use the oceans for navigation and overflight. For example, in making excessive claims, some coastal states contend that the navigational and overflight rights contained in the Convention are available only to those states that also accept the responsibilities set forth in the Convention by becoming parties to it. By becoming a party to the Convention we can deprive those states of this argument. This is not to suggest that countries' attempts to restrict navigation will cease once the United States becomes a party to the Law of the Sea Convention. Coastal states make excessive claims for a variety of reasons— because they believe such claims to be in their national interest; because they feed domestic politics; and, because they believe they can enforce those claims or that other nations will, for lack of resources and capability, acquiesce in those claims. The Administration believes, however, that with the United States as a party, fewer states are likely to view such claims as sustainable. As a party, our diplomatic and operational challenges to excessive claims will carry greater weight.

Although accession to the Convention will benefit the United States, the Administration has some concerns. As previously mentioned, three serious issues have been identified, one of which

involves the military activities exception to the dispute settlement provisions.

With respect to the dispute settlement provisions, the Administration intends to exempt military activities from those provisions. Notwithstanding our exemption, it is conceivable that a tribunal could assert it has jurisdiction over what we believe is a military activity, such as military surveys. If a tribunal did so, and if it issued an adverse ruling, then such a ruling could have an impact on operational planning and activities, and our security. The extent of that impact will depend on the circumstances. It could be major, it could be minor or it could have no impact whatsoever. The point is, we cannot predict the future with certainty. We believe that whether an activity is “military” is for each party to determine for itself. We will work with the Senate to ensure that our declaration on accession contains solid language to address this issue.

Because the global context for the Convention is rapidly and continually changing, a way needs to be found to ensure that the Convention continues to serve U.S. interests over time. We must ensure that, in obtaining the stability that comes with joining the Convention, we nonetheless retain sufficient flexibility to protect U.S. interests. After U.S. accession, the Executive Branch

will conduct biennial reviews of how the Convention is being implemented and will seek to identify any changes in U.S. and/or international implementation that may be required to improve implementation and to better adapt the Convention changes in the global environment. After ten years, the Executive Branch will conduct a more comprehensive evaluation to determine whether the Convention continues to serve U.S. interests. The results of these reviews will be shared with the Senate. Another option that the Administration considered is that of a sunset provision, i.e., limiting the length of time that the United States is a party to the Convention, which has disadvantages as well as advantages. Needless to say, the United States could, of course, withdraw from the treaty if U.S. interests were seriously threatened.

In conclusion, from an operational perspective, two fundamental points support accession to the Convention: First, the diversity of challenges to our national security combined with a more dynamic force structure make strategic mobility more important than ever. Second, the oceans are fundamental to that maneuverability and, by joining the Convention, we further assure the freedom to get to the fight, twenty-four hours a day and seven days a week, as necessary in the national security interests of the United States.

Again, I wish to thank the Committee for offering me the opportunity to appear before you here today. I am happy to answer any questions that you may have.