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LAW OF THE SEA CONVENTION – SUBMITTED STATEMENT  
SENATE FOREIGN RELATIONS COMMITTEE  
WEDNESDAY, MAY 23, 2012**

Chairman Kerry, Senator Lugar, distinguished members. I want to thank you for the opportunity to testify in support of United States accession to the Law of the Sea Convention.

I'm pleased to be here with Secretary Clinton and Chairman Dempsey – their presence here is a testament to the conviction of our diplomatic and military leadership that accession to this Convention will greatly strengthen America's position around the world.

As many of you know, I've long been passionate about oceans policy, and the need to develop and protect our maritime resources for this country, for ourselves, for our children and for future generations. One of my proudest accomplishments as a member of Congress was establishing the Monterey Bay National Marine Sanctuary. Recently, before I took the jobs in this administration, I had the honor to chair the Pew Oceans Commission, and later co-chaired a Joint Oceans Commission Initiative with Admiral Jim Watkins – both commissions confirmed the importance of our oceans – but more importantly both strongly supported accession to the Law of the Sea Convention.

For nearly two decades, the Department of Defense's civilian and military leadership has shown sustained, consistent, unequivocal support for the Law of the Sea Convention. And I am pleased to be the first Secretary of Defense to convey such support in hearing testimony. Today, I join the Department's many voices past and present that have spoken so strongly in support. The fundamental point is clear: if the United States is to fully assert its historic role as a global leader, it must accede to this important Convention.

The Law of the Sea Convention is the bedrock legal instrument underpinning public order across the maritime domain. We are the only permanent member of the U.N. Security Council that is not a party to it. This puts us at a distinct disadvantage when it comes to disputes over maritime rights and responsibilities with the 162 parties to the Convention, several of which are rising powers.

The basic idea of the Convention is to establish some basic rules of the road – to define what can be done, where, in the world's oceans. More precisely, it provides for:

- The legal divisions of maritime space and accompanying rights of innocent passage through territorial waters;
- Transit passage through vital international straits;
- High seas freedoms of navigation, and over-flight, and other internationally lawful uses of the sea related to those freedoms in the exclusive economic zone, and beyond; and
- Sovereign immunity to warships, naval auxiliaries and other government vessels and aircraft.

In other words, it reflects what has been the longstanding practice of our military and gives the United States the international foundation to promote, project and protect its global role as the world's leading maritime power.

Let me further outline why I believe this Convention is critical to U.S. national security in today's strategic context, why it is time to move forward, and why the longer we delay, the more we undermine our national security interests.

The United States is at a strategic turning point after a decade of war. Yet, even as these wars recede, we face a challenging and complex global security environment. We confront

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multiple transnational threats including violent extremism, the destabilizing behavior of nations like Iran and North Korea, military modernization across the Asia-Pacific, and turmoil in the Middle East and North Africa. At the same time, we are dealing with the changing nature of warfare, the proliferation of nuclear, biological and chemical weapons and technology, and the growing threat of cyber intrusion.

The fact is that these real and growing challenges are beyond the ability of any single nation to resolve alone. That is why a key part of our new defense strategy is to meet these challenges by modernizing our network of defense and security partnerships across the globe, and supporting a rules-based international order that promotes stability. And that is also why the United States should be exerting a leadership role in the development and interpretation of the rules that determine legal certainty on the world's oceans.

Let me give you five important reasons as to why joining this Convention would provide enhanced national security.

First, as the world's pre-eminent maritime power, and the country with one of the longest coastlines and largest extended continental shelf, we have more to gain from accession to the Convention than any other country.

If we are not at the table, then who will defend our interests? Who will lead the discussion to influence the further development and interpretation of the Law of the Sea? It is only by being there to protect our rights that we would ensure that our sovereignty is not whittled away by the excessive claims and erroneous interpretations of others. It would give us the power and credibility to support and promote the peaceful resolution of disputes within a rules-based order.

Second, by joining the Convention, we can secure our navigational freedoms and global access for military and commercial ships, aircraft, and undersea fiber optic cables. As it currently stands, we are forced to assert our rights to freedom of navigation through customary international law, which can change to our detriment. Treaty law remains the firmest legal foundation upon which to base our global presence, on, above, and below the seas. By joining the Convention, we would help lock in rules favorable to freedom of navigation and our global mobility.

Third, accession would bring legal certainty to a truly massive increase in our country's resource and economic jurisdiction, not only to 200 nautical miles off our coasts, but to a broad extended continental shelf beyond that zone.

Fourth, accession would ensure our ability to reap the benefits of the opening of the Arctic – a region of increasingly important maritime security and economic interest. We already see countries testing new shipping routes and exploring for natural resources as Arctic ice cover recedes. Joining the Convention would maximize international recognition and acceptance of our substantial extended continental shelf claims in the Arctic. As we are the only Arctic nation that is not a party to the Convention, we are at a serious disadvantage in this respect. Accession would also secure our navigation and over-flight rights throughout the Arctic, and strengthen our arguments for freedom of navigation through the Northwest Passage and Northern Sea Route.

Fifth, and finally, our new defense strategy emphasizes the strategically vital arc extending from the Western Pacific and East Asia into the Indian Ocean region and South Asia. Becoming a party to the Convention would strengthen our position in this key area. For example, numerous countries sit astride critical trade and supply routes and propose restrictions on access for military vessels in the Indian Ocean, Persian Gulf, and the South China Sea. The

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United States has long declared our interests and respect for international law, freedom of navigation, and peaceful resolution of disputes. We have demonstrated our commitment to those interests through our consistent presence and engagement in these critical maritime regions.

By not acceding to the Convention, we give up the strongest legal footing for our actions. We undercut our credibility in a number of Asia-focused multilateral venues – just as we're pushing for a rules-based order in the region and the peaceful resolution of maritime and territorial disputes in the South China Sea and elsewhere. How can we argue that other nations must abide by international rules when we haven't joined the treaty that codifies those rules?

At the other end of this arc sits the Strait of Hormuz, a vital sea lane of communication to us and our partners. We are determined to preserve freedom of transit there despite Iranian threats to impose a blockade. U.S. accession to the Convention would help strengthen worldwide transit passage rights under international law and help to further isolate Iran as one of the few remaining non-parties to the Convention.

These are the key reasons for accession, which is critical to our sovereignty and our national security. That is why I fail to understand the arguments opposed to the treaty.

First, some have put forward the myth that the Law of the Sea Convention would force us to surrender U.S. sovereignty. Nothing could be further from the truth. Not since we acquired the lands of the American West and Alaska have we had such an opportunity to expand U.S. sovereignty.

Second, there are some who claim that accession to the Convention will restrict our military's operations and activities, or limit our ability to collect intelligence in territorial seas. Quite simply, they are wrong. The Convention in no way harms our intelligence collection activities or constrains our military operations. On the contrary, U.S. accession to the Convention secures our freedom of navigation and over-flight rights as bedrock treaty law.

Third, some allege that in joining, our military would be subject to the jurisdiction of international courts – and that this represents a surrendering of U.S. sovereignty. But once again, this is not the case. The Convention provides that a party may declare it does not accept any dispute resolution procedures for disputes concerning military activities. This election has been made by 20 other nations that have joined the Convention, and the United States would do the same. The bottom line is that neither U.S. military activities nor a U.S. decision as to what constitutes a U.S. military activity would be subject to review by any international court or tribunal.

Fourth, some argue that certain military activities – specifically, our ability to conduct maritime interdiction operations – will be constrained because the Convention only recognizes the right of warships to board ships suspected of engaging in piracy, the slave trade or being stateless. Again, this is simply not the case. The U.S. and our partners routinely conduct a range of interdiction operations at sea based on UN Security Council Resolutions, treaties, port state control measures and the inherent right of self-defense. Further, the Convention expands the range of interdiction authorities found in the 1958 Law of the Sea Conventions we've already joined. In short, the U.S. would be able to continue conducting the full range of maritime interdiction operations.

In closing, our new defense strategy recognizes our return to our maritime roots, and the importance to our military of freedom of navigation and global mobility.

Freedom of navigation is essential for any global power, but equally applies to all maritime states – everywhere. This Convention helps ensure that this freedom is preserved and secured through reasoned, deliberate, international rules which are fully in accord with the

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freedom of navigation asserted by the United States around the world for decades. It provides the stable, recognized legal regime we need to conduct our global operations today, and in the future.

This Convention is supported by major U.S. industries, the Chamber of Commerce, our energy, shipbuilding, shipping, and communications companies, fishing, and environmental organizations – along with past and present Republican and Democratic administrations, and the entire national security leadership.

By finally acceding to the Convention, we help make our nation more secure and more prosperous for generations to come. America is the strongest power in the world. We are strong precisely because we play by the rules. For too long, the United States has failed to act on this treaty. For too long, we have undermined our moral and diplomatic authority to fight for our rights and our maritime interests. For too long, we have allowed our inability to act to impair our national security. The time is now, for this Senate to do what others have failed to do: ratify the Law of the Sea Convention.

Thank you, I look forward to your questions.

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