March 19, 2004

Senators James M. Inhofe
U.S. Senate
Washington, D.C.

Senator James M. Jeffords
U.S. Senate
Washington, D.C.

Dear Senators Inhofe and Jeffords:

The American Petroleum Institute (API), the International Association of Drilling Contractors (IADC) and the National Ocean Industries Association (NOIA), are pleased to provide for the Senate Environmental and Public Works Committee a copy of our statement in support of U.S. ratification of the United Nations Law of the Sea (LOS) Convention. The statement was delivered during an October 2003 hearing before the Senate Foreign Relations Committee. We would ask that our statement be made part of your committee's record for the March 23, 2004 hearing on the LOS.

Thank you for considering the views expressed in this statement.

American Petroleum Institute

International Association of Drilling Contractors

National Ocean Industries Association

CHAMBER OF SHIPPING
OF AMERICA

19 March 2004

The Honorable James M. Inhofe
Chairman, Senate Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable James M. Jeffords
Ranking Member, Senate Environment and Public Works Committee
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Ranking Member:

Thank you for holding a hearing on the UN Law of the Sea Treaty. The purpose of this letter is to advise that the Chamber of Shipping of America very strongly supports ratification of the United Nations Law of the Sea Convention (UNCLOS) as it is in the best interests of the United States to do so.

The Chamber of Shipping of America represents 22 American companies that own, operate or charter ships used in the domestic and international trades of the United States. We represent all types of ships including container ships, tankers, ocean-going tug/barges vessels, roll-on roll-off ships and bulk ships. We were founded in 1917 to coordinate U.S. shipowner positions at the initial deliberations leading to the Safety of Life at Sea Convention. Today, we represent our members on safety, environmental and security issues addressed domestically and at the international fora including the International Maritime Organization and the International Labor Organization.

UNCLOS is the codification of the traditional law of the sea and protects, inter alia, our rights of innocent passage and freedom of navigation. We are concerned that our status as a non-ratifying party places us in a dangerous position when the treaty comes open for amendment in October of this year. It is simply in our sovereign interest to ensure that we are at the international negotiating table in the strongest possible position. The U.S. should not ignore the potential for treaty amendments that could have large negative impacts on our interests and we have no vote.

I enclose here a copy of testimony I gave before the Senate Foreign Relations Committee on October 21, 2003 wherein I explain some of the potential problem areas where amendments may limit our navigation freedoms. I request that my letter and enclosure be made part of this hearing record. If you or your staff has any questions, please feel free to contact me.

Sincerely,

Joseph J. Cox
President

1730 M Street, NW ▪ Suite 407 ▪ Washington, DC 20036-4517
Voice: 202.775.4399 ▪ Fax: 202.659.3795

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

18 Mar 04

Dear Senator Jeffords,

I write to express my strong support for United States accession to the Law of the Sea Convention. It has been the consistent, longstanding position of the Navy that accession to the Convention will benefit the United States by advancing our national security interests and ensuring continued U.S. leadership in the development and interpretation of the law of the sea.

The Law of the Sea Convention helps assure access to the largest maneuver space on the planet - the sea - under authority of widely recognized and accepted law and not the threat of force. The Convention protects military mobility by codifying favorable transit rights that support our ability to operate around the globe, anytime, anywhere, allowing the Navy to project power where and when needed. The Convention also provides important safeguards for protecting the marine environment while preserving operational freedoms.

Although the Convention was drafted over 20 years ago, the Convention supports U.S. efforts in the war on terrorism by providing important stability and codifying navigational and overflight freedoms, while leaving unaffected intelligence collection activities. Future threats will likely emerge in places and in ways that are not yet known. For these and other as yet unknown operational challenges, we must be able to take maximum advantage of the established navigational rights codified in the Law of the Sea Convention to get us to the fight rapidly. The diversity of challenges to our national security combined with a more dynamic force structure makes strategic mobility more important than ever. The oceans are fundamental to that maneuverability and, by joining the Convention, we further ensure the freedom to get to the fight, twenty-four hours a day and seven days a week, without a permission slip.

I appreciate your continued strong support of the Law of the Sea Convention and the Navy.

Sincerely,

VERN CLARK
Admiral, U.S. Navy

The Honorable James M. Jeffords
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

DATE: May 17, 2007 16:54:26 EST
Document Number: 234

FOR IMMEDIATE RELEASE

Office of Public Affairs
U.S. Coast Guard

U.S. Department of Homeland Security
United States Coast Guard

Press Release

Date: May 17, 2007

Contact: Cmdr. Jeff Carter
(202) 372-4635

STATEMENT BY ADM. THAD ALLEN, COMMANDANT OF THE COAST GUARD, ON THE CONVENTION ON THE LAW OF THE SEA

WASHINGTON – Adm. Thad Allen, commandant of the U.S. Coast Guard, issued the following statement today reiterating long-standing Coast Guard support for joining the Convention on the Law of the Sea.

"Becoming a party to the 1982 United Nations Convention on the Law of the Sea would greatly enhance our global position in maritime affairs. Because of our maritime security and law enforcement 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 greatly enhances our ability to protect the American public as well as our efforts to protect and manage fishery resources and to protect the marine environment. From the Coast Guard's perspective, we can best maintain a public order of the oceans through a universally accepted law of the sea treaty that preserves and promotes critical U.S. national interests.

"The convention strikes the appropriate balance between the interests of countries in controlling activities off their coasts with the interests of all countries in protecting freedom of navigation. The convention provides the framework under which the Coast Guard is able to interdict illicit drug traffickers and illegal immigrants far beyond our own waters. The convention also gives the coastal state the right to protect its marine environment, manage its fisheries and off-shore oil and gas resources within the 200-nautical mile exclusive economic zone, and secure sovereign rights over resources of the continental shelf beyond 200 nautical miles.

"U.S. military forces, including Coast Guard units, already rely heavily on the freedom of navigation principles codified in the convention. These principles allow the use of the world's oceans to meet changing national security requirements, including those necessary to fight the global war on terrorism. Becoming a party to the convention will enhance our ability to carry out the many maritime missions of the Coast Guard, refute excessive maritime claims, and participate in interpreting and applying the convention to day-to-day realities."

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The U.S. Coast Guard is a military, maritime, multi-mission service within the Department of Homeland Security dedicated to protecting the safety and security of America.

printer friendly

SARAH PALIN
GOVERNOR
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

September 13, 2007

The Honorable Ted Stevens
United States Senate
522 Hart Senate Building
Washington, DC 20510

The Honorable Lisa Murkowski
United States Senate
709 Hart Senate Building
Washington, DC 20510

Dear Senator Stevens and Senator Murkowski:

It is my understanding that the U.S. Senate may consider the United Nations Convention on the Law of the Sea in the fall. With this in mind, I am writing to express my strong support for Senate ratification of the convention. In my opinion, the convention would be beneficial to the U.S. and Alaska in various ways, but I want to focus on one aspect in this correspondence.

As you know, several Arctic nations have recently asserted claims to submerged lands off their coasts. The Convention on the Law of the Sea establishes the framework for these assertions. To date, 155 nations, including Canada and Russia, have approved the convention. If the U.S. does not ratify the convention, the opportunity to pursue our own claims to offshore areas in the Arctic Ocean might well be lost.

As a consequence, our rightful claims to hydrocarbons, minerals, and other natural resources could be ignored. In this regard, geologists have prognosticated that billions of barrels of crude oil and vast quantities of natural gas, not to mention various hard rock minerals, might be present in the Arctic. In the absence of affirmative action by the Senate, these resources could become the property of nations with less valid claims.

It is my understanding that the Bush administration and many senators, both republicans and democrats, have expressed support for Senate ratification of the

convention. However, as you know, ratification has been thwarted by a small group of senators who are concerned about the perceived loss of U.S. sovereignty. I believe that quite the contrary is the case. If the U.S. does not ratify the convention, we will be denied access to the forum established by the international community to adjudicate claims to submerged lands in the Arctic.

I also urge Congress to authorize the programs and funds necessary for the U.S. to assert its sovereign rights. The assertion of such rights requires significant research and information gathering. Other Arctic nations have recently begun this process, and I understand that the U.S. is moving in this direction as well.

I believe that you have previously supported Senate ratification of the convention. With this letter, I want to put my administration on record in support of the convention as the predicate for asserting sovereign rights that will be of benefit to Alaska and the nation. Hopefully, this letter will assist you in articulating Alaska's position to your colleagues in the Senate.

Thank you for considering my views.

Sincerely,

Sarah Palin
Governor

Western
Pacific
Regional
Fishery
Management
Council

March 18, 2004

Hon. Daniel K. Akaka
US Senator
SH-141 Hart Senate Office Building
Washington, DC
20510-1103

Dear Senator Akaka:

I would like to express the support of Western Pacific Fishery Management Council for the ratification of the United Nations Convention on the Law of the Sea by the United States. This Council, by virtue of its geography, is the most internationally focused of the eight Regional Fishery Management Councils in the USA, and international fishery management is an integral part of our Pelagic Fishery Management Plan. Thus, the provisions of UNCLOS as they apply to the exploitation of natural resources are of key interest to the Council, quite apart from the important security aspects and key rights of navigation enshrined within the treaty.

Many of the provisions of UNCLOS, and international instruments that have stemmed therefrom, have been incorporated into this Council's management of highly migratory pelagic fish. In the 1980s, even before the UN ban, the Western Pacific Council was aware of the controversy surrounding this gear and banned its use within the EEZ of the US Flag Pacific Islands. This Council was also among those agencies and individuals who supported you and your colleagues in having tuna included within the Magnuson Act, an initiative which recognized the rights of individual countries to manage pelagic fishery resources within their EEZs as outlined within UNCLOS.

More recently, the Western Pacific Council has actively supported the development of an international convention for managing tuna fisheries in the Central and Western Pacific, hosting four out of the seven seminal meetings through which this new management initiative was crafted. This new fishery commission developed by the convention will come into force some time in 2004. This is the first international fishery management arrangement that fully incorporates UNCLOS principles in the articles of the convention, and will assume responsibility for the largest tuna fishery grounds on the globe. Such a development is timely due to the need to limit unconstrained expansion of fishing effort on these important shared economic resources.

As pointed out by your colleagues Senator Lugar and Senator Stevens in recent correspondence with Senate members, the failure to ratify UNCLOS would mean that the US would be unable to participate in the amendment to the Convention and safeguard aspects of concern to this country, including international fishery agreements such as the new fishery commission in the Central and Western Pacific. Naturally this is of paramount concern to this Council, embedded as it is within Micronesia and Polynesia, and with economies reliant to a large degree on ocean resources. The Council therefore hopes that the Senate will recognize the importance of ratifying UNCLOS, both from a strategic and security perspective, and also from our perspective in the US Pacific Islands, where the US voice needs to be heard in the management of shared fishery resources in the Pacific.

Sincerely,

Kitty M. Simonds

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

April 6, 2004

Dear Senator Warner:

During recent briefings of Senate staff by officials from the Department of State, the Department of Defense, and other relevant agencies on the Law of the Sea Convention, the question was raised whether the Convention would prohibit or otherwise adversely affect U.S. intelligence activities. I would like to take this opportunity to respond to that question. I have coordinated this response with the Department of Defense and those other relevant agencies.

U.S. accession to the Convention would support ongoing U.S. military operations, including the continued prosecution of the war on terrorism. The Convention reinforces our military's ability to move – without hindrance and under authority of law – forces, weapons, and materiel to the fight, which is critical to our accomplishing national security objectives. The Convention does not prohibit U.S. intelligence activities; nor would we recognize any restrictions on those activities.

Since President Reagan's 1983 Ocean Policy Statement, the United States has conducted its activities consistent with the non-deep seabed provisions of the Convention. Further, the Convention's "innocent passage" provisions are actually more favorable to U.S. military and navigational interests than those in the 1958 Convention on the Territorial Sea and the Contiguous Zone, to which the United States is a party. Not

The Honorable
John Warner,
Chairman,
Committee on Armed Services,
United States Senate.

only is the Convention's list of non-innocent activities an exhaustive one, but it generally uses objective, rather than subjective, criteria in the listing of activities.

Sincerely,

William H. Taft

William H. Taft, IV

cc: Sen. Carl Levin
Sen. Richard G. Lugar
Sen. Joseph R. Biden
Sen. Pat Roberts
Sen. John D. Rockefeller, IV
Sen. James M. Inhofe
Sen. James M. Jeffords
Congressman Porter J. Goss
Congresswoman Jane Harman

R. Reed Harrison III
Vice President/Chief Information and Investment Officer
Network and Computing Services
Room 4C107
900 Route 202/206
P.O. Box 752
Bedminster, NJ 07921-0752
908 234-5200, FAX 908 234-8414

Dear Senator Helms:

AT&T depends upon undersea fiber optic cables to carry the bulk of our international telecommunications traffic. We enclose for your reference an information packet describing AT&T's submarine cable network. We believe this information underscores the critical commercial significance of that network. We hope it also helps to acquaint you with AT&T's interest in the use of the seabed for its provision of global telecommunications services over that network.

It is essential that we protect that undersea cable network from damage and disruption. The main purpose of this letter, therefore, is to urge the United States Senate to give its advice and consent to accede to the Law of the Sea Convention. and to ratify the Agreement relating to the Implementation of Part Xl of the Convention. The requested action by the Senate will enable us to better protect our cables and recover for damage to the cables. AT&T respectfully asks that this advice and consent be given at the earliest opportunity.

AT&T's concern is straightforward. AT&T and other U. S. owners of such undersea telecommunications facilities become involved in matters of international law in their efforts to recover their losses from parties whose vessels have damaged their undersea cables. AT&T's efforts against such offending vessel owners and their underwriters have had limited success. Over the past 17 years, we have achieved some recovery in cases involving only 13 such cable failures. The scope of the problem is o evident when one considers that, since 1990, almost half of the 134 reported failures of international submarine cable were caused by third party vessels.

The recovery of damages in these cases reduces the operating expense of the cable owners and enables them, in turn, to benefit their customers in the form of lower rates for international telecommunications. services News of a significant damage recovery also provides a deterrent against careless or uncaring vessel owners. As indicated, however, AT&T and other U. S. cable owners have been frustrated in their cable protection and damage recovery efforts by serious shortcomings in existing submarine cable law. Illustrations of this problem are readily available.

In the typical case of damage by third party vessels, repairing damaged undersea cable and restoring service to telecommunications users costs in excess of $2 million. Yet our existing federal statute (47 U.S.C., Section 21) imposes a maximum criminal penalty of only $5,000 upon those who violate submarine cable laws and cause this level of damage to undersea cables.

Under these circumstances it is not surprising that, in February 1996, the U. S. Attorney in Florida declined to prosecute a vessel owner caught intentionally destroying an undersea telephone cable. And on several other occasions, the U. S. Coast Guard has declined to enforce obligations imposed on vessels and their owners under international law Despite Strong evidence against the violators in each of these cases, these agencies evidently determined that there would be insufficient return on their resource investment to support the assignment of full time legal and investigative personnel to an incident carrying such an Insignificant maximum criminal penalty.

These examples make clear that if we are to have any meaningful protection, we must have in place a level of fines that considers and reflects the level of damage inflicted by such criminal violations. In addition we need legal framework that establishes clear jurisdiction in cable damage cases, and that provides specific

authority to award damages. When nearly half of the 134 failures in intonational submarine cable since 1990 have been externally inflicted as previously noted, the need for increased legal protection is clear.

Many of the shortcomings in existing law are addressed and corrected in the U N. Convention on the Law of the Sea (UNCLOS,). UNCLOS expands the right to lay submarine cable in the oceans of the world and expands international protection for those cables. Articles 79 and 112 of UNCLOS have established the rights of nations and private parties to lay cable on the continental shelf (subject to reasonable review by the adjoining coastal state) and in the bed of the high seas. Universal codification of these rights would inhibit any single such coastal state from attempting unilaterally and unreasonably to thwart such rights.

Article 113 requires that all states must adopt laws that make damage to submarine cable, done willfully or through negligence - including behavior likely to result in cable damage - a punishable offense. Article 114 provides that if owners of a submarine cable, in landing or repairing their cables damage the cable of another, they must bear the cost of repairs. Article 115 provides that vessel owners who can prove they sacrificed an anchor or fishing gear to avoid damaging a cable, can recover their loss against the cable owner, provided that the vessel took reasonable precautionary measures beforehand.

To take full advantage of UNCLOS, the United States must become party and implement its provisions through legislation. This requirement is readily satisfied by much needed updating of the Submarine Cable Act of 1888. This law can and should be amended to conform to UNCLOS. We would be pleased to provide additional information and suggested amendments to your Committee.

Ratification of UNCLOS is of extreme importance to all U.S. providers of intonational telecommunications services. Beyond the obvious matters of national security associated with the protection of our undersea facilities, there are economic impact issues. The U. S. companies whose undersea facilities are at stake here are major U. S. enterprises and significant source of revenue, jobs and economic wellbeing for American citizens and businesses, at home and abroad.

Due to the rapid globalization of business, fiber optic capacity will have increased some 3000% from 1989 to the year 2000. With the explosion of data traffic on the information superhighway, fueled by greater use of the Internet, multimedia services and video conferencing, it has never been more important to our U. S. economic infrastructure to assure the protection and reliability of international submarine cables. UNCLOS will enable us to achieve that goal and maintain that protection.

We have attempted In this letter. Mr. Chairman, to outline the salient points of UNCLOS as they very positively affect U. S. owners and operators of Intonational submarine cables. I would be more than happy, at your convenience, to brief you or any of your staff in person with regard to any of the matters raised in this letter. In addition, AT&T remains ready and willing to appear and testify at any hearings that your Committee may schedule on this subject.

We remain most grateful, Mr. Chairman, for your attention to this matter.

Very truly yours,

R. Reed Harrison III
Vice President
Chief Information and Investment Officer
Network & Computing Services

Copy to: Mr. James W. Nance
Staff Director
Senate Committee on Foreign Relations
403 Dirksen Senate Office Building
Washington D.C. 20510

May 2004

President's Message

Law of the Sea Convention is Essential to U.S. Naval Power

The sea services of our nation must maintain their leading role in shaping global rules and policies that affect our freedom of navigation and maritime mobility, two essential elements of U.S. naval power. That is why it is now time for Congress to ratify the Law of the Sea Convention and thereby strengthen our national security.

The Convention codifies access and transit rights for our ships and enhances the nation's prosecution of the global war on terrorism. Our nation has much to gain and nothing to lose by becoming a party to the Convention, which is a comprehensive international legal framework governing the world's oceans. The United States should now join 145 nations that use the Convention as a means to assure access to the oceans. In November, the Convention will be opened for amendment. As a party to the Convention, the United States would have a major role in shaping changes to come.

The Law of the Sea Convention is a complex document that touches on wide range of U.S. maritime concerns. Since it was finalized in 1982, a primary U.S. interest in the Convention has been to preserve essential navigational freedoms and thereby enhance the mobility of U.S. naval power. That is why every chief of naval operations (CNO), the Joint Chiefs of Staff and the Department of Defense have consistently and strongly supported U.S. ratification.

Our current CNO, Adm. Vern Clark, said in a March 18 letter to Sen. Richard G. Lugar, R-Ind., chairman of the Senate Committee on Foreign Relations, that accession to the Convention will support "our ability to operate around the globe, anytime, anywhere, allowing the Navy to project power where and when needed."

The Convention guarantees, for example, that ships and aircraft may transit straits that otherwise may have been closed by the territorial claims of nearby states. More than 135 straits are affected, including the Strait of Hormuz, entryway to the Persian Gulf, and the Strait of Malacca, the main sea route between the Indian and Pacific oceans.

In fact, the United States' interest as a global naval power was behind its initial participation in talks on the Convention as the United Nations conducted negotiations from 1973 to 1982. Our policy makers were concerned that transit and access rights of U.S. warships could be restricted by the rising number of claims from other nations over territorial seas, fishing zones and offshore high seas areas. Today, Adm. Clark wants the United States to join because, he said, "the Law of the Sea Convention helps assure access to the largest maneuver space on the planet — the sea — under authority of widely recognized and accepted law and not the threat of force."

Much of our government's initial delay in ratification was linked to objections by many industrialized countries to sections related to deep seabed mining. However, changes to the Convention in 1994 remedied each of the U.S. objections.

Despite its advantages, the Law of the Sea Convention remains controversial because of widespread — and erroneous — belief that it would adversely affect U.S. sovereignty, inhibit our intelligence gathering activities or hamper the U.S. Proliferation Security Initiative (PSI) through which our forces seek to interdict shipments of weapons of mass destruction.

Critics point to the International Tribunal for the Law of the Sea, created to settle disputes, as a threat to U.S. sovereignty. However, parties to the Convention are free to agree on any method of dispute settlement they desire — and the U.S. will not select the Tribunal.

Fears that ratification would diminish our collection of intelligence are linked to a section of the Convention containing a list of activities that would deprive a vessel of the right of innocent passage through territorial seas. These activities include the collection of certain types of information and the requirement that submarines navigate on the surface. However, such activity is not a violation of the Convention. Intelligence-gathering activities are not prohibited nor adversely affected by the Convention.

The Bush Administration's PSI — potentially a major weapon in the global war on terrorism — seeks the support of all nations in international efforts to board and search

vessels suspected of transporting weapons of mass destruction. Adm. Michael G. Mullen, vice chief of naval operations, told Lugar's committee that being party to the Convention "would greatly strengthen" the Navy's ability to support the PSI by reinforcing freedom of navigation rights on which the service depends for its operational mobility.

We learned in Iraq that even allies sometimes will block access to key battle areas. Our freedom of navigation cannot be contingent on the approval of nations along global sea lanes. A legal regimen for the world's oceans will help guarantee worldwide mobility for our military.

The Law of the Sea Convention is good for our sea services. It strengthens our country. The time for ratification is at hand.

Sheila M. McNeill, National President

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CHAIRMAN OF THE JOINT CHIEFS OF STAFF
WASHINGTON, D.C. 20318-9999

7 April 2004

The Honorable Richard G. Lugar
Chairman, Committee on Foreign
Relations
United States Senate
Washington, D.C. 20510-6225

Dear Mr. Chairman,

The testimony of the Chief of Naval Operations, Admiral Vern Clark, to the Senate Armed Services Committee regarding the Law of the Sea Convention (LOSC) reflects the views of the combatant commanders and the Joint Chiefs. We strongly support US accession to LOSC.

The Convention remains a top national security priority. In today's fast changing world, it ensures the ability of the US Armed Forces to operate freely across the vast expanse of the world's oceans under the authority of widely recognized and accepted international law. It supports efforts in the War on Terrorism by providing much-needed stability and operational maneuver space, codifying essential navigational and overflight freedoms.

The rules under which US forces have operated for over 40 years to board and search ships or to conduct intelligence activities will not be affected. The LOSC does not require permission from the United Nations to conduct these searches and leaves US intelligence activities unaffected. Moreover, the Proliferation Security Initiative is designed to be consistent with international law and frameworks, including the LOSC. While the Administration previously raised a concern regarding dispute resolution, that has been satisfactorily addressed by the proposed Resolution on Advice and Consent. Accession will provide continued US leadership in the development and interpretation of the Law of the Sea and ensure changes are compatible with future military initiatives.

I appreciate your continued strong support of the LOSC and the US Armed Forces.

Sincerely,

RICHARD B. MYERS
Chairman
of the Joint Chiefs of Staff

THE WHITE HOUSE

WASHINGTON

February 8, 2007

Dear Mr. Chairman:

Recognizing the historic bipartisan support for the Law of the Sea Convention, I anticipate our shared interest in moving it forward. As the President believes, and many members of this Administration and others have stated, the Convention protects and advances the national security, economic, and environmental interests of the United States. In particular, the Convention supports navigational rights critical to military operations and essential to the formulation and implementation of the President's National Security Strategy, as well as the National Strategy for Maritime Security. I appreciate your efforts as Chairman in bringing this important Convention to the Senate for consideration and look forward to its approval as early as possible during the 110th Congress.

Sincerely,

Stephen J. Hadley
Assistant to the President
for National Security Affairs

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

RICE SAYS ADMINISTRATION SUPPORTS EARLY ACTION ON UN LAW OF SEA TREATY

January 25, 2004 -- During her nomination hearings on January 18-19, 2005, Dr. Condoleezza Rice asserted Administration support for "early Senate action" on the UN Convention on the Law of the Sea and urged the Foreign Relations Committee to report it to the floor again in the 109th Congress. Although the Senate Committee on Foreign Relations unanimously approved the treaty last year, the convention and implementing agreement must be re-reported for consideration in the new Congress. It is reported that the Committee may send the treaty to the floor for consideration as early as the first week of April.

In her testimony, Dr. Rice asserted that "Joining the Convention will advance the interests of the U.S. military," and that the U.S. "will gain economic and resource benefits from the Convention."

Full text of Dr. Rice's responses:

Questions from Senator Richard G. Lugar
Nomination Hearing for Dr. Condoleezza Rice
January 18 & 19, 2005

Law of the Sea: Ratification Efforts

Question #1:

The most recent Treaty Priority List submitted by the Administration to the Committee listed the Law of the Sea Convention as a treaty "for which there is an urgent need for Senate approval." How can we work together to make certain that the treaty is ratified on an urgent basis?

Answer:

The Administration supports early Senate action on the Convention.
The Administration urges the Senate Foreign Relations Committee to again favorably report out the Convention and Implementing Agreement, with the Resolution of Advice and Consent to Ratification as reported by the Committee last March.
The Administration will work with the Senate leadership to bring the Convention and Implementing Agreement to a floor vote in the 109th Congress.

Law of the Sea: Benefits for National Security

Question #2:

I was pleased to see in the U.S. Ocean Action Plan that he submitted to the Congress on December 17, the President states that "as a matter of national security, economic self-interest, and international leadership, the administration is strongly committed to U.S. accession to the UN Convention on the Law of the Sea." Can you cite specific benefits that accession will have for U.S. national security?

Answer:

Joining the Convention will advance the interests of the U.S. military.

As the world's leading maritime power, the United States benefits more than any other nation from the navigation provisions of the Convention. Those provisions, which establish international consensus on the extent of jurisdiction that States may exercise off their coasts, preserve and elaborate the rights of the U.S. military to use the world's oceans to meet national security requirements. They achieve this, among other things:
• by stabilizing the outer limit of the territorial sea at 12 nautical miles;
• by setting forth the navigation regime of innocent passage for all ships in the territorial sea, through an exhaustive and objective list of activities that are inconsistent with innocent passage – an improvement over the subjective language in the 1958 Convention on the Territorial Sea and Contiguous Zone;

- by protecting the right of passage for all ships and aircraft, through, under, and over straits used for international navigation, as well as archipelagoes;
- by reaffirming the traditional freedoms of navigation and overflight in the exclusive economic zone and the high seas beyond; and
- by providing for the laying and maintenance of submarine cables and pipelines.

U.S. Armed Forces rely on these navigation and overflight rights daily, and their protection is of paramount importance to U.S. national security.

Becoming a party to the Convention would strengthen our ability to deflect potential proposals that would be inconsistent with U.S. national security interests, including those affecting freedom of navigation.

Law of the Sea: Economic Benefits

Question #3:

Support for U.S. accession to the Law of the Sea Convention has been expressed by U.S. companies and industry groups whose businesses depend on the oceans. These include the American Petroleum Institute, the U.S. Oil and Gas Association, the Chamber of Shipping of America, the U.S. Tuna

Foundation, the American Chemistry Council, the National Oceans Industries Association, and the U.S. Council for International Business. Do you agree with these U.S. companies that acceding to the Law of the Sea Convention will advance U.S. economic interests and benefit American businesses?

Answer:

Yes. The United States, as the country with the longest coastline and the largest exclusive economic zone, will gain economic and resource benefits from the Convention:

- The Convention accords the coastal State sovereign rights over non-living resources, including oil and gas, found in the seabed and subsoil of its continental shelf.
- The Convention improves on the 1958 Continental Shelf Convention, to which the United States is a party, in several ways:

by replacing the "exploitability" standard with an automatic♣ continental shelf out to 200 nautical miles, regardless of geology;
by♣ allowing for extension of the shelf beyond 200 miles if it meets certain geological criteria; and
by establishing an institution that can promote♣ the legal certainty sought by U.S. companies concerning the outer limits of the continental shelf.

Concerning mineral resources beyond national jurisdiction, i.e., not subject to the sovereignty of the United States or any other country, the 1994 Agreement meets our goal of guaranteed access by U.S. industry on the basis of reasonable terms and conditions.

Joining the Convention would facilitate deep seabed mining activities of U.S. companies, which require legal certainty to carry out such activities in areas beyond U.S. jurisdiction.

The Convention also accords the coastal State sovereign rights over living marine resources, including fisheries, in its exclusive economic zone, i.e., out to 200 nautical miles from shore.

The Convention protects the freedom to lay submarine cables and pipelines, whether military, commercial, or research.

In addition, the Convention establishes a legal framework for the protection and preservation of the marine environment from a variety of sources, including pollution from vessels, seabed activities, and ocean dumping.

The provisions effectively balance the interests of States in protecting the environment and natural resources with their interests in freedom of navigation and communication.

With the majority of American living in coastal areas, and U.S. coastal areas and EEZ generating vital economic activities, the United States has a strong interest in these aspects of the Convention.

Law of the Sea: Military Operations

Question#4:

It is my understanding that it has been U.S. policy since President Reagan's 1983 Statement of Ocean Policy that the United States, including the U.S. military, will act in accordance with the Law of the Sea Convention's provisions relating to the traditional uses of the oceans. Would acceding to the Law of the Sea Convention require the United States military to make any changes in its existing policies or procedures with respect to the use of the oceans to conduct military operations?

Answer:

No.

As the Chief of Naval Operations, Admiral Vern Clark, testified before the Senate Armed Services Committee on April 8, 2004, "I am convinced that joining the Law of the Sea Convention will have no adverse effect on our operations ..., but rather, will support and enhance ongoing U.S. military operations, including continued prosecution of the global war on terrorism."
The Vice Chief of Naval Operations, Admiral Mike Mullen, testified before the House International Relations Committee on May 12, 2004, that the Navy "currently operate[s] – willingly because it is our national security interests – within the provisions of the Law of the Sea Convention in every area related to navigation. We would never recommend an international commitment that would require us to get a permission slip – from anyone – to conduct our operations." Admiral Mullen concluded his oral statement by emphasizing, "Simply, the Convention does not require a permission slip or prohibit these activities; we would continue operating our military forces as we do today."

Law of the Sea: Weapons Of Mass Destruction

Question #5:

Some commentators have asserted that acceding to the Law of the Sea Convention would prevent the United States from taking action necessary to stop the transportation of weapons of mass destruction across the oceans. I note,

however, that State Department Legal Adviser William Taft testified before the House International Relations Committee that "the Convention will not affect applicable maritime law or policy regarding interdiction of weapons of mass destruction, their means of delivery and related materials." Do you believe that acceding to the Law of the Sea Convention will in any way diminish the ability of the United States to take necessary action to prevent the transport of weapons of mass destruction?

Answer:

No.

The Convention's navigation provisions derive from the 1958 law of the sea conventions, to which the United States is a party, and also reflect customary international law accepted by the United States.
As such, the Convention will not affect applicable maritime law or policy regarding interdiction of weapons of mass destruction.
Like the 1958 conventions, the LOS Convention recognizes numerous legal bases for taking enforcement action against vessels and aircraft suspected of engaging in proliferation of weapons of mass destruction:

- exclusive port and coastal State jurisdiction in internal waters and national airspace;
- coastal State jurisdiction in the territorial sea and contiguous zone;
- exclusive flag State jurisdiction over vessels on the high seas (which the flag State may, either by general agreement in advance or approval in response to a specific request, waive in favor of other States); and
- universal jurisdiction over stateless vessels.

Nothing in the Convention impairs the inherent right of individual or collective self-defense (a point which is reaffirmed in the Resolution of Advice and Consent proposed in the last Congress).

Law of the Sea: Proliferation Security Initiative

Question #6:

Some commentators have asserted that acceding to the Law of the Sea Convention would prevent or inhibit the United States from implementing the Proliferation Security Initiative. I note, however, that State Department Legal Adviser William Taft testified before our Committee that the PSI is consistent with the Law of the Sea Convention, and that the obligations under the Convention do not present any difficulties for successfully carrying out this important initiative. Chief of Naval Operations Admiral Vern Clark gave similar testimony before the Senate Armed Services Committee. I also note that all of the other countries that are partners with the United States in PSI are themselves parties to the Law of

the Sea Convention. In your view, will acceding to the Convention inhibit the United States and its partners from successfully pursuing the PSI?

Answer:

No.

PSI requires participating countries to act consistent with national legal authorities and "relevant international law and frameworks," which includes the law reflected in the Law of the Sea Convention.
The Convention's navigation provisions derive from the 1958 law of the sea conventions, to which the United States is a party, and also reflect customary international law accepted by the United States.
As such, the Convention will not affect applicable maritime law or policy regarding interdiction of weapons of mass destruction, their means of delivery, and related materials.

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- universal jurisdiction over stateless vessels.

Nothing in the Convention impairs the inherent right of individual or collective self-defense (a point which is reaffirmed in the Resolution of Advice and Consent proposed in the last Congress).

Law of the Sea: Role of the UN

Question #7:

Some commentators have asserted that the Law of the Sea Convention gives the United Nations the power to regulate the use of the oceans and that U.S. accession to the Convention would allow the United Nations to veto uses of the ocean by the United States, including by the U.S. military. It is my understanding that, under the Convention, the United Nations has no decision-making role with respect to any uses of the oceans. Please explain what role, if any, the United Nations would have in regulating uses of the oceans by the United States if the United States were to accede to the Law of the Sea Convention.

Answer:

The United Nations has no decision-making role under the Convention in regulating uses of the oceans by any State Party to the Convention. Commentators who have made this assertion have argued that the International Seabed Authority (ISA) somehow has regulatory power over all activities in the oceans.
The authority of the ISA is limited to administering the exploration and exploitation of minerals in areas of deep seabed beyond national jurisdiction, generally more than 200 miles from shore. The ISA has no other role and has no general regulatory authority over the uses of the oceans, including freedom of navigation and oversight.

Law of the Sea: Taxation by International Seabed Authority

Question #8:

Some commentators have asserted that acceding to the Law of the Sea Convention would involve giving the International Seabed Authority the power to impose taxes on U.S. citizens. State Department Legal Adviser William Taft has testified before Congress that the International Seabed Authority has no ability or authority to levy taxes. In your view, is there any basis for concern that U.S. accession to the Law of the Sea Convention will result in U.S. citizens being subject to taxation by the International Seabed Authority?

Answer:

No. The Convention does not provide for or authorize taxation of individuals or corporations.

Law of the Sea: Technology Transfer

Question #9:

Some commentators have asserted that the United States would be required to transfer sensitive technology, including technology with military applications, to developing countries if it acceded to the Law of the Sea Convention. It is my understanding, however, that provisions of the Law of the Sea Convention containing mandatory technology transfer requirements were eliminated by the 1994 Agreement addressing the Convention's deep seabed mining regime. Do you believe there is any reason for concern that acceding to the Convention would require the United States to transfer any technology to developing countries?

Answer:

No, technology transfers are not required by the Convention.

Law of the Sea: U.S. Sovereignty over Ocean Resources

Question #10:

Some commentators have asserted that acceding to the Law of the Sea Convention will involve ceding to the International Seabed Authority sovereignty currently enjoyed by the United States over ocean resources. It is my understanding, however, that the jurisdiction of the International Seabed Authority addresses only mining of minerals in areas of the deep seabed beyond the jurisdiction of any country, and that the United States has never asserted sovereignty over such areas. Do you believe that acceding to the Convention would involve any surrender of existing United States claims to sovereignty over ocean resources?

Answer:

No, the United States has never claimed sovereignty over areas or resources of the deep seabed.

The Convention's provisions on the exclusive economic zone and continental shelf preserve and expand U.S. sovereign rights over the living and non-living ocean resources located within, and with regard to the continental shelf beyond, 200 miles of our coastline.

Law of the Sea: Effect of 1994 Implementing Agreement

Question #11:

Some commentators have asserted that there is uncertainty as to the legal status of the 1994 Agreement Relating to the Implementation of Part XI of the Law of the Sea Convention, which addresses the Convention's deep seabed mining regime. I have received a letter from eight former Legal Advisers to the Department of State from both Republican and Democratic Administrations stating that the 1994 Agreement "has binding legal effect in its modification of the LOS Convention." Do you believe there is any basis for questioning the legal effect of the 1994 Agreement?

Answer:

No. My understanding is that the notion that the 1994 Agreement has no legal effect is incorrect.

Last updated:

Statement of Senator Lisa Murkowski
Senate Foreign Relations Committee
Hearing on the UN Convention on the Law of the Sea
September 27, 2007

Mr. Chairman – thank you for holding this hearing and the opportunity to comment on a treaty that is of particular importance to Alaska.

Some of my colleagues may not be aware, but over half of the United States' coastline is in Alaska. Likewise, the Arctic Ocean covers only 3% of the earth's surface, yet it accounts for over 25% of the world's continental shelf area. So when we are considering a Treaty that governs the planet's oceans and the ocean floor, the people of Alaska have a very strong interest.

There are some who do not see the point in joining the rest of the world in ratifying the Convention on the Law of the Sea. They say that the U.S. already enjoys the benefits of the Treaty even though we are not a member – that by not becoming a party to the Treaty we can pick and choose which sections of the Treaty we abide by while not subjecting our actions to international review.

But I would point out, while the situation is favorable now, that may not always be the case. The Treaty opened to amendment in 2004. Do we want a seat at the table to ensure our voice is heard, or do we place our interests in the hands of other nations?

I will give one example. When the U.S. declined to sign the Law of the Sea Treaty in 1982 out of concern over deep sea-bed mining provisions in Part XI, one of the objections was that the United States was not guaranteed a seat on the executive council of the international seabed authority. With the renegotiation in the 1994 agreement, the U.S. is essentially assured a seat on the 36-member State Council by virtue of the "largest economy" provision within the Implementation Agreement.

And I would note that while some decisions by the Council are subject to majority vote if a consensus cannot be formed, there are circumstances where decisions must be made by consensus – including the adoption of rules concerning sea-bed mining, and the adoption of amendments to Part XI of the Treaty. As a party to the Law of the Sea, the U.S. can promote rules and regulations based on market principles and investment protection. But if we do not ratify this Treaty, the Senate will have capitulated the United States' ability to block unfavorable rules and amendments – including potential amendments that could revoke the United States' guarantee of a seat in the Council.

The U.S. waged a global campaign in the developed world to hold off ratifying the Treaty until the sea-bed mining provisions were changed. We got what we wanted, but still we have declined to ratify the Law of the Sea. How can we expect parties in the future to take the U.S. seriously when we negotiate treaties or agreements if we are not willing to follow through in this instance? I believe it is very important for the U.S. to be a party to

this Treaty and be a player in the process, rather than an outsider hoping our interests are not damaged.

Now, there are several topics I would like to comment on relating to the Treaty and its potential impact on Alaska. The first being claims over the continental shelf.

In the 1958 Convention on the Continental Shelf, which the U.S. is a party to, the issue of limitations on the continental shelf was not resolved due to lack of information about the continental shelf. With technological advances and greater knowledge the Law of the Sea provides that a coastal state's continental shelf can extend for 200 nautical miles, with the potential to extend that claim even further.

Russia has submitted a number of claims to the Commission on the Limits of the Continental Shelf that would grant them 45% of the Arctic Ocean's bottom resources – first in 2002 and of course the most recent when Russia placed a flag on the ocean bottom earlier this year. We are fortunate that the Commission so far has withheld its approval of Russia's claim.

According to the U.S. Arctic Research Commission, if we were to become a party to the Treaty, the U.S. stands to lay claim to an area in the Arctic of about 450,000 square kilometers – or approximately the size of California.

But if we do not become a party to the Treaty our opportunity to make this claim, and have the international community respect it, diminishes considerably – as does our ability to prevent claims like Russia's from coming to fruition.

Not only is that a negligent forfeiture of valuable oil, gas, and mineral deposits, but also the ability to perform critical scientific research. The Arctic Ocean is the most poorly understood ocean on the planet. Now is the time to be studying the thinning of the polar cap and its potential impact on the global climate, as well as potential economic activity in the area – not the least of which is the opening of polar routes for maritime commerce.

Also in relation to the Arctic Ocean – and the potential thinning of the polar cap – is the opening of polar routes for maritime commerce. There are predictions that the Arctic Ocean will be ice free for ninety days or more in the summer by the year 2050 – which in turn translates into greater access, and greater utilization.

By utilizing a polar route, the distance between Asia and Europe is 40% shorter than current routes via the Suez or Panama Canals – and is in a much more stable part of the world.

But with greater usage comes greater responsibility. A number of nations have Arctic research programs. Alaska's coastline on the Arctic Ocean is over 1,000 nautical miles. The U.S. can either exercise sea control and protection in this area of the world, or cede that role to whichever nation is willing to assume it. As a party to the Law of the Sea, the

United States' ability to enforce our territorial waters and our Exclusive Economic Zone (EEZ) in the Arctic Ocean is strengthened even further.

Mr. Chairman, the Convention on the Law of the Sea also provides a basis for several international treaties with great relevance to our nation's most productive fisheries, which occur off the coast of Alaska and are of significant value to the economies of Alaska and other Pacific Northwest states.

The Convention on Straddling and Highly Migratory stocks provides both access to, and protections for fish stocks which migrate through the high seas and the jurisdictions of other countries. Among the stocks for which this agreement is of paramount significance is the Bering Sea stock of Alaska pollock, which is the basis for this country's largest single fishery.

The Convention on Fisheries in the Central Bering Sea is another critical piece, which allows us an unprecedented degree of control over the activities of other fishing nations in the central portion of the Bering Sea, beyond both the U.S. and the Russian Exclusive Economic Zones. Without the influence of the Law of the Sea, neither of these important fishing agreements would likely have come into being.

Also, Mr. Chairman, let me note the importance – and the somewhat fragile status of – our maritime boundary agreement with Russia. As you may know, this agreement delineates a specific boundary between our two countries. It is necessary because the agreement under which the United States acquired what is now the State of Alaska was interpreted differently by the two parties.

Both the boundary agreement, and the fisheries enforcement mechanisms that stem from it, are critical to the conduct of fisheries policy in the U.S. and Russian EEZs in the Bering Sea. Although the United States ratified the maritime boundary agreement shortly after it was presented to the Senate, the Russian government has yet to do so, under pressure both from nationalist political interests and Russian Far East economic interests. While observing the provisions of the boundary treaty, the Russian government also has attempted to persuade the U.S. to make a number of significant concessions regarding Russian access to U.S. fishery resources, suggesting meanwhile that such concessions would improve the atmosphere for Russian ratification.

The terms of the boundary treaty are widely regarded as highly favorable to the United States, and are themselves consistent with the Law of the Sea. However, rejection of the latter by the United States could trigger similar rejection by the Russian Duma of the boundary treaty. If that were to occur, it would extremely difficult to renegotiate the boundary agreement with similar positive results for the United States.

The United States and Alaska have tremendous interests in the Arctic Ocean. Our technological capabilities in calculating the extent of the continental shelf are welcomed by other nations. As a party to the Law of the Sea Treaty, we have the opportunity to

stake our claim to a significant chunk of real estate that has the potential for impact on our economy and our national security.

We also have the opportunity to further U.S. leadership in the international community on maritime issues and ensure the continuation of those provisions in the Convention that are so vital to the United States' fisheries industries.

The Convention on the Law of the Sea has my strong support and I look forward to its consideration on the Senate floor.

INFORMATION MEMO
SENATOR MURKOWSKI
From: Isaac
Date: December 10, 2007

RE: Law of the Sea: Myths v. Fact

Below are three of the most common arguments in opposition to the Law of the Sea Treaty and what the text of the Convention actually says.

United Nations:
Myth: This is an abrogation of our sovereignty and hands over control of the United States' waters and seabed to the United Nations.

Reality: The only connection the United Nations Convention on the Law of the Sea has with the United Nations is its title.* Although negotiated under the auspices of the United Nations, the U.N. has no role in the governance of the Treaty nor in the commissions set up by the Treaty. The Treaty establishes several international bodies, most notably the Commission on the Limits of the Continental Shelf and the International Seabed Authority.

The Continental Shelf Commission is composed of 21 members who are "experts in the fields of geology, geophysics, or hydrography" and are nationals of Parties to the Law of the Sea Treaty. This means that unless the United States is a party to the Treaty, no one from the U.S. can serve on the Commission and we will have no say on whether other nations' extended continental shelf claims are internationally recognized. This takes on increased significance with Russia's latest claim to a large portion of the Arctic Ocean. We will not have the opportunity to receive international recognition for our own claims in the Arctic, or refute Russian and other nation's claims, without ratifying the Treaty.

The International Seabed Authority is composed of all parties to the Law of the Sea Treaty. Within the Seabed Authority, a 36-member Council is set up which functions as the executive power of the Seabed Authority. Based on election criteria, the United States would be guaranteed a permanent seat on the Council if we ratify the Treaty. As a result, because most of the Council's substantive decisions are made on a consensus basis, the United States would be able to prevent action against our interests from being adopted.

The Seabed Authority only has jurisdiction over the ocean floor outside of each nation's Exclusive Economic Zone (EEZ). The Law of the Sea grants a nation the exclusive rights over all living and non-living resources within its Exclusive Economic Zone, which extends 200 nautical miles from the shoreline. That includes all fisheries and mineral deposits. No nation may exploit the natural resources within the United States' EEZ without our permission.

* The United Nations does provide a forum for parties to the Treaty to elect members to the Continental Shelf Commission, and funds a secretariat to the Continental Shelf Commission, but plays no other role.

Military:

Myth: The United States Navy's ability to continue its current operations around the world will be subject to an international tribunal. Certain articles in the Treaty prevent military activity, or allow a nation to prevent military passage, in that nation's territorial sea (out to 12 miles from shore). For example, Article 19 says innocent passage is not innocent if a foreign ship undertakes any exercise or practice with weapons of any kind, launches or lands any aircraft, or launches, lands, or takes on board any military device. Article 20 says a submarine must travel on the surface in a nation's territorial sea. Article 30 says that if a warship does not comply with the coastal state's laws, it can be forced to leave. Opponents also say that the exception provided under Article 298 is not clear (more on that below) and would subject U.S. military action to international arbitration or international court.

Reality: A nation has complete sovereignty in its territorial waters and it is understandable that a nation would not want U.S. or any other nation's warships moving through their waters without permission, just as we would not want foreign warships in U.S. waters without abiding by our laws. There are two provisions that refute the opponents arguments.

Article 298 says that when signing, ratifying, or acceding to the Convention, or at any time thereafter, the State may declare that it does not accept any one or more of the procedures with respect to…

> (1)(b) disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service,

Opponents argue that there is no definition of military activity and another nation could challenge the United States' claim of military activity – thus subjecting our military activities to an international tribunal.

So far Argentina, Belarus, Canada, Cape Verde, Chile, China, France, Mexico, Portugal, South Korea, Russia, Slovenia, Tunisia, Ukraine, and the UK have made declarations opting out of dispute settlement provisions with respect to military activities. This includes every other member of the UN Security Council. In the Senate Resolution of Advice and Consent to the Treaty, the U.S. opts out of the dispute resolution mechanisms for disputes concerning military activities. Further, in the Senate Resolution, the U.S. further declares that "its consent to accession to the Convention is conditioned upon the understanding that, under Article 298(1)(b), each State Party has the exclusive right to determine whether its activities are or were military activities and that such determinations are not subject to review." This is a permissible declaration under the Convention.

Innocent Passage: Article 17 grants ships of all states the right of innocent passage through the territorial sea and archipelagic waters (ie: Indonesia). Based on this right, a U.S. warship will always be able to traverse a nation's territorial waters.

On a side note, it is worth pointing out that just about every Resolution on Advice and Consent that the Senate passes contains a RUD (Reservation, Understanding, or Declaration) and sometimes multiple RUDs. Treaties are purposefully written to be vague so that more nations will support them – the RUDs provide for the individual interpretation of the Treaty. By arguing that a certain item is not specifically spelled out (ie: definition of military activity) you're essentially saying that you don't support any treaty the U.S. has ever become a party to because a RUD is needed to clarify the text.

International Tribunal – Dispute Resolution:

Myth: The United States will be subjecting itself to mandatory international arbitration when we currently enjoy the benefits of the Law of the Sea Treaty without limiting our sovereignty.

Reality: Start with the fact that as a non-party to the Treaty, the U.S. enjoys Law of the Sea Treaty benefits at the pleasure of other nations – they have no obligation to recognize U.S. claims (12 mile territorial sea, 200 mile Exclusive Economic Zone, etc…).

Article 287 permits states to choose from a number of mechanisms for dispute resolution, including: the International Tribunal for the Law of the Sea; the International Court of Justice; an arbitral tribunal; or a special arbitral tribunal. Under the Senate's Resolution of Advice and Consent, the U.S. will choose arbitration. At present, the U.S. is party to 16 multilateral agreements, and a large number of bilateral agreements that require dispute settlement through arbitration. Not the least of these is the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks agreement which is based on the Law of the Sea dispute resolution mechanisms and is highly important to Alaska and the Pacific Northwest's fisheries. The Senate has ratified this Treaty.

Under the special arbitration process, which is principally chosen, both parties select two arbitrators and then those four arbitrators select a fifth and final arbitrator. If they are unable to agree on a fifth arbitrator, they can agree on a third party to select a fifth arbitrator. If still no agreement can be reached, the Secretary General of the U.N. appoints an arbitrator.

In a regular arbitration, each party selects one arbitrator, and then mutually agree on three other arbitrators. If there is no agreement, a third party may appoint the three remaining arbitrators.

Bottom line is that if an arbitration panel returns a decision that the United States strongly opposes, there is no true enforcement mechanism and the U.S. can veto and U.N. Security Council measure.

Law of the Sea Treaty crucial to U.S. - COMPASS: Points of view from the community

Anchorage Daily News (AK) - November 8, 2007

Author: *SEN. LISA MURKOWSKI ; Commentary*

It's ironic that an international treaty that can do much good for the nation, especially Alaska, is only now moving closer to Senate approval because of actions by Russia, Denmark and Canada. Steps taken by those three nations to strengthen or establish claims in the Arctic Ocean have highlighted for many Americans -- and many of my colleagues -- the need of the Senate to approve the Law of the Sea Treaty. Otherwise, we could be left standing on the shore, watching as other nations divvy up the wealth and scientific riches of the valuable Arctic seabed.

Without ratification, the U.S. will have no permanent seat on the decision-making body that would settle disputed claims.

Without ratification, the United States, with 1,000 miles of Arctic coast along Alaska, would be the only Arctic nation not party to the treaty. Currently, 155 nations have ratified the treaty, including all of our allies and the world's maritime powers.

International negotiators first approved the Convention on the Law of the Sea in 1982. President Ronald Reagan wisely saw a serious shortcoming in how the new treaty would deal with deep-seabed mining. Negotiators went back to work and, in 1994, presented an improved treaty.

U.S. Senate approval is required of all international treaties, and a Senate committee held hearings in 1994 but the full Senate never voted on the measure. Committee hearings resumed in 2003 and 2004, but still no vote.

The Senate Foreign Relations Committee, of which I am a member, again took up the treaty last month. I hope this is the year for final passage.

Several events of the past few months have pushed the treaty to the front of the agenda, including Russia's decision to send two small submarines into Arctic waters in August to plant their nation's flag under the North Pole. Russia believes its continental shelf extends that far into the Arctic. Like-minded Denmark has sent scientists to determine if a mountain ridge beneath the Arctic Ocean is connected to its territory of Greenland. And Canada, getting nervous at the thought of underwater flags and ice-free shipping lanes through the Northwest Passage, is talking about setting up military bases and expanding its fleet to patrol the waters.

The United States cannot sit by and watch as other nations draw their own maps.

Under the Law of the Sea Treaty, member nations can claim an exclusive economic zone out to 200 miles, with sovereign rights to explore, develop and manage the resources within that zone. Nations' claims can extend even farther if they can prove a real connection to their continental shelf. The U.S. Arctic Research Commission believes the United States could lay claim, beyond our 200 mile exclusive economic zone, to the northern seabed around Alaska equal in size to the state of California.

This isn't just about the oil, gas and mineral resources in the Arctic. It's also about managing the critical scientific research that is so important to Alaskans' way of life. It's about the United States defining and defending its rights on uses of the sea, rules of navigation,

economic development and environmental standards. This is about our future, for without Senate ratification of the treaty, the future of miles of ocean north of Alaska is in someone else's hands.

"We have more to gain from legal certainty and public order in the world's oceans than any other country," Deputy Secretary of State John Negroponte said in Senate committee hearings last month. Negroponte, who also has served as director of national intelligence and U.N. ambassador, said the treaty would not interfere with U.S. intelligence-gathering efforts or our Navy's navigational freedom.

Support for Senate ratification is coming from all sides of the political world, including the ranking Republican on the Foreign Relations Committee, Indiana Sen. Richard Lugar, and the Democratic chairman of the committee, Delaware Sen. Joseph Biden.

I urge Alaskans to join me in supporting the Law of the Sea Treaty. It's time the United States signed on the bottom line to protect our rights.

Republican Lisa Murkowski represents Alaska in the U.S. Senate.

Caption: Graphic 1: Lisa Murkowski BW_110807.eps

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