

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
SENATE ARMED SERVICES
COMMITTEE

STATEMENT OF
ADMIRAL VERN CLARK, U.S. NAVY
CHIEF OF NAVAL OPERATIONS
BEFORE THE
SENATE ARMED SERVICES COMMITTEE
On the Law of the Sea Convention
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Chairman Warner, Senator Levin, members of the Committee on Armed Services, good morning. Thank you for the opportunity to testify today in support of the Law of the Sea Convention.

I have been before this committee many times to talk to you about your Navy. At nearly every one of these opportunities, I've said that your Navy is built to take persistent, credible combat power to the far corners of the earth, extending the influence of the United States of America as may be necessary, anywhere and at anytime we choose to do so. It is our ability to operate freely across the vast expanse of the world's oceans that makes this combat power possible.

The Advantage of Sea Power 21

Sea Shield

- **Exploits U.S. asymmetric strengths**
 - ✓ **Information superiority**
 - ✓ **Mobility, reach and speed**
- **Fully leverages the vast domain of the sea**

Sea Strike

Sea Basing

Law of the Sea preserves our options

In my view, the Law of the Sea Convention supports our ability to operate in this manner under the authority of widely recognized and accepted law. For that reason, **I strongly support the Law of the Sea Convention** as many of my predecessors did.

I: Projecting Decisive Joint Power Across the Globe

Today's military operations – from Operation Enduring Freedom to Operation Iraqi Freedom to the Global War on Terrorism – place a premium on our strategic mobility and

operational maneuver. U.S. Forces are forward deployed worldwide to deter threats to our national security and can surge to respond rapidly to protect U.S. interests, either as part of a coalition or, if necessary, acting independently.

In addition to Operations Enduring Freedom and Iraqi Freedom, our ships and aircraft have been and are deployed overseas to interdict terrorists across the globe. They have also been deployed to the Pacific and Indian Oceans to ensure security in vital sea lines of communication in Southeast Asia, and are conducting operations in the waters off Central and South America to interdict the flow of illicit drug traffic from that region.

We are also laying the groundwork for further implementation of the President's Proliferation Security Initiative (PSI). The international partners assembled as part of the President's initiative are all parties to the Law of the Sea Convention. In fact, the PSI is intended to be consistent with international law and frameworks. This includes relevant provisions of the Law of the Sea Convention. I am convinced our work with these partners will help disrupt the flow of weapons of mass destruction, their delivery systems, and related materials throughout the world.

As we look to the future, Sea Power 21 will provide sea basing from which to project joint forces and joint fires. It will provide joint logistics and project defensive power in an environment where access to land bases is denied by foreign governments or put increasingly at risk by asymmetric threats. These capabilities are important to us because they will result in a leaner footprint for joint forces ashore and will minimize the vulnerabilities tied to foreign bases and access rights. The Convention will help preserve our ability to provide these capabilities wherever and whenever needed well into the future.

II: Preserving Our Freedoms

The basic tenets of the Law of the Sea Convention are clear. It codifies the right to transit through essential international straits and archipelagic waters. It reaffirms the sovereign immunity of our warships and other public vessels. It provides a framework to counter

excessive claims of states that seek illegally to expand their maritime jurisdiction and restrict the movement of vessels of other States in international and other waters. And it preserves our right to conduct military activities and operations in exclusive economic zones without the need for permission or prior notice.

Law of the Sea Benefits

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- A world map showing the continents and oceans, serving as a background for the list of benefits.
- **Preserves our freedom of navigation**
 - **Helps counter excessive maritime claims**
 - **Preserves our ops and intelligence activities**
 - **Positions us to influence future developments**

Most importantly, the entry into force of the Law of the Sea Convention for the United States will support both the worldwide mobility of our forces and our traditional leadership role in maritime matters. The customary international law we've relied upon for our navigation freedoms is under challenge, and in some respects so is the Law of the Sea Convention itself. Our participation in the Convention will better position us to initiate and influence future developments in the law of sea.

I know this committee is concerned about whether the Law of the Sea Convention prohibits our naval operations, including the boarding and search of ships and our maritime intelligence activities. It does not. The Convention's rules in this regard do not change the rules the Navy has operated under for over 40 years under the predecessor 1958 treaties to which the United States is a party, governing the territorial sea and high seas. We would not, for example, need permission from the United Nations to board

and search ships. Likewise, the Convention does not prohibit our intelligence collection activities.

Last year, before the Senate Foreign Relations Committee, Administration officials expressed their serious concerns about whether the Convention's dispute resolution process could possibly affect U.S. military activities. A review was conducted within the Executive Branch on whether a Law of the Sea tribunal could question whether U.S. activities are indeed "military" for purposes of the Convention's military activities exception clause. Based on the Administration's internal review, it is clear that whether an activity is "military" is for each State party to determine for itself. The declaration contained in the current Resolution of Ratification, stating the U.S. understanding that each Party has the exclusive right to determine which of its activities are "military activities" and that such determinations are not subject to review, has appropriately addressed this issue.

Mr. Chairman, since 1983, the Navy has conducted its activities in accordance with President Reagan's Oceans Policy statement to operate consistent with the Convention's provisions on navigational freedoms. If the U.S. becomes a party to the Law of the Sea Convention, we would continue to operate as we have since 1983, and would gain support for our leadership role in law of the sea matters. I am convinced that joining the Law of the Sea Convention will have no adverse effect on our operations or intelligence activities, but rather, will support and enhance ongoing U.S. military operations, including the continued prosecution of the global war on terrorism.

III: Conclusion

Future threats will likely emerge in places and in ways that are not yet fully clear. For these and other undefined future operational challenges, we must be able to take maximum advantage of the established and widely accepted navigational rights the Law of the Sea Convention codifies to get us to the fight rapidly.

Strategic mobility is more important than ever. The oceans are fundamental to that maneuverability; joining the Convention supports the freedom to get to the fight, twenty-four hours a day and seven days a week, without a permission slip.

The Convention provides a stable and predictable legal regime within which to conduct our operations today, and realize our vision for the future. It will allow us to take a leading role in future developments in the law to ensure they are compatible with our vision.

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