



100 Years Standing Up for American Enterprise
U.S. CHAMBER OF COMMERCE

Statement of the U.S. Chamber of Commerce

ON: Hearing on the United Nations Law of the Sea Convention
TO: United States Senate Committee on Foreign Relations
DATE: June 28, 2012

The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business manufacturing, retailing, services, construction, wholesaling, and finance — is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 115 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

**BEFORE THE COMMITTEE ON FOREIGN RELATIONS
OF THE UNITED STATES SENATE**

Hearing on the United Nations Convention on the Law of the Sea

**Testimony of Thomas J. Donohue
President and Chief Executive Officer
U.S. Chamber of Commerce**

June 28, 2012

Good morning, Chairman Kerry, Ranking Member Lugar, and members of the Committee on Foreign Relations. My name is Thomas J. Donohue and I am President and Chief Executive Officer of the U.S. Chamber of Commerce. The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. I am pleased to appear before you today to affirm the Chamber's strong support for U.S. accession to the Law of the Sea (LOS) Convention.

Key Points

I want to stress a few critical points to this Committee:

- We support joining the Convention because it is in our national interest – both in our national security and our economic interests. The Chamber has a long and proud history of supporting America's national security interests including playing an instrumental role in mobilizing America's industrial might to fight and win World Wars I and II. It is in this tradition that we support approving the Law of the Sea Treaty.
- Becoming a party to the Treaty benefits the U.S. economically by providing American companies the legal certainty and stability they need to hire and invest. Companies will be hesitant to take on the investment risk and cost to explore and develop the resources of the sea – particularly on the extended continental shelf (ECS) – without the legal certainty and stability accession to LOS provides. The benefits of joining cut across many important industries including telecommunications, mining, shipping, and oil and natural gas.

- LOS will continue to form the basis of maritime law with or without our accession. Our national interests are best protected by being an active participant in this process. Joining the Convention will provide the U.S. a critical voice on maritime issues – from mineral claims in the Arctic to how International Seabed Authority (ISA) funds are distributed.
- Many opponents present a false option to LOS that does not exist: that the U.S. can enjoy the benefits of LOS without joining it. In reality, only by joining can the U.S. reap the full economic and national security benefits of the Convention. Like any agreement, LOS isn't perfect. But its benefits far outweigh the costs of continuing to stand on the sidelines. The Chamber and the business community do not fear adverse rulings under the Convention so much as we fear being left behind by our global competitors.
- Contrary to some opponents' claims, joining the Treaty promotes American sovereignty. LOS strengthens our sovereignty by codifying our property claims in the Arctic and on our ECS. Remaining outside of the Convention undercuts our sovereignty by not allowing us to advance and protect our property claims through the process utilized by every other major global power.

The Chamber's Support for the Law of the Sea Convention

The Chamber has a long history of supporting the Law of the Sea Convention before this Committee. The Chamber remains steadfast in its belief that the Senate should expeditiously approve the Convention because of the tremendous benefits it will provide for American enterprise. The Convention has the enthusiastic backing of every industry it impacts, including energy, telecom, shipping, mining, fishing and biotech. Earlier this month, the Chamber and eleven diverse trade associations wrote to this Committee, submitting a letter strongly urging accession to the Convention. This is because the Convention is overwhelmingly favorable for U.S. business interests: it would codify U.S. legal rights to use international shipping lanes, to lay and service submarine cables, and to develop vast amounts of oil, natural gas, and minerals off the U.S. coasts and on the deep seabed. Our letter emphasized that now that “new technologies and changed conditions have made it cheaper and easier to access the potential wealth beneath the oceans, the business community simply cannot afford to have the U.S. remain on the sidelines.”

In addition to a 12-mile territorial sea, the Convention provides for a 200-mile exclusive economic zone, over which a coastal state has exclusive resource management rights. If certain geological criteria are met, the Convention also

provides sovereign rights to seabed resources on the continental shelf beyond 200 nautical miles. The U.S. has the world's second longest coastline and likely has an extended continental shelf in at least six different locations, including off of the Eastern seaboard and up to 600 miles off the coast of Alaska. In total, the Convention would confer a resource jurisdiction larger than that of any other nation in the world – an additional 4.1 million square miles of ocean floor, greater than the area of the contiguous 48 states. Securing international recognition for U.S. rights in these areas – and defending against the outsized claims of other nations – is vital to the economic prosperity of our nation.

The Convention provides stability, predictability, and clear legal rights, which are essential for American investment in our oceans, and therefore to sustaining and creating American jobs. The oceans, which comprise 70 percent of the earth's surface, are integral to global commerce. Ships carry virtually all goods passing in international trade, and submarine cables – not satellites – relay virtually all modern communications. Oceans also promise enormous frontiers of untapped resources. Development of hydrocarbon resources on the U.S. ECS in the Arctic and elsewhere would create thousands of new jobs for Americans, generate billions of dollars in new economic activity, and increase our energy security. Similarly, mining on the U.S. ECS and the deep seabed presents vast new opportunities to tap into deposits of manganese, nickel, cobalt, copper, and vital rare earth minerals.

Because of our status as a non-party, the U.S. is not represented on the Council of the International Seabed Authority, nor are we able to nominate an expert to sit on the Continental Shelf Commission, which determines whether seabed qualifies as continental shelf. Other industrial nations – all members of the G8 included – joined the Convention following the 1994 deep seabed mining reforms. Today, 161 countries and the European Union are party. The U.S. is the only notable outlier. The Convention's institutions are now up and running, and it is open to amendment. As a party, we would be in a position to lead from within and advance and protect our interests. And in institutions outside the Convention, such as the International Maritime Organization, joining the Convention would increase our credibility and authority to cite and interpret Convention provisions in defense of our interests.

Because the Convention's governing bodies are active, the Senate's continued inaction on the Law of the Sea has relegated the United States to an observer status. Since 1982, the U.S. has voluntarily complied with the Convention's rules. The U.S. must now become party to the Convention in order to lock in the treaty's favorable rights and reassert U.S. leadership in the maritime sphere. Focusing on four key U.S. industries – oil and natural gas, shipping, mining and telecom – I will elaborate on the reasons why the Senate should approve the Law of the Sea Convention in 2012.

The Business Case for Accession to the Law of the Sea Convention

A. Oil and Natural Gas

Accession to the Law of the Sea Convention would provide oil and natural gas companies with legal certainty as they explore and develop the vast energy deposits off the coasts of the United States. As I have mentioned, the U.S. benefits from a broad continental margin, especially off of Alaska's coast, where the U.S. continental shelf likely extends more than 600 miles into the Arctic Ocean. The U.S. Geological Survey estimates that the Arctic contains one quarter of the world's undiscovered oil and natural gas, including nearly 100 billion barrels of oil and trillions of cubic feet of gas. The U.S. ECS seaward of Alaska encompasses a large portion of this Arctic Circle area. And, while much is yet unknown regarding Alaska's offshore, a Department of Interior report estimates that just the area within 200 miles of shore holds 27 billion barrels of oil and 132 trillion cubic feet of natural gas. The U.S. offshore in the Gulf of Mexico has a similarly impressive total endowment which, including quantities already pumped to surface, is estimated to contain 45 billion barrels of oil and 232 trillion cubic feet of natural gas.

Clearly, the hydrocarbon potential of these offshore areas is enormous. Offshore oil volumes already account for about 30 percent of all U.S. production. Successful development will grow the U.S. economy, create jobs, and significantly reduce American reliance on foreign oil. The U.S. Government should enable such development, not hinder it. But that is precisely what the Senate's failure to approve the Law of the Sea Convention has done, because the U.S. cannot secure international recognition of its continental shelf beyond 200 miles without joining the Convention.

Offshore operations are capital-intensive, requiring significant financing and insurance. Oil and natural gas companies do not want to undertake these massive expenditures if their lease sites may be subject to territorial dispute. They operate transnationally, and need to know that the title to the petroleum resources will be respected worldwide and not just in the United States. Availability of clear legal title is crucial to realizing the potential of U.S. offshore areas both now and in the future, as drilling technology continues to advance and make new projects feasible. As ExxonMobil emphasized in its recent letter to this Committee, before it undertakes the immense investments required to explore and develop resources beyond 200 miles, "legal certainty in the property rights being explored and developed is essential."

Under the Convention, parties can secure international recognition of the limits of their continental shelves by demonstrating to a body of scientific experts, the Continental Shelf Commission, that its seabed meets certain geological criteria. Over

40 nations – including every other Arctic nation – are already taking actions to stake their claims before this Commission. As a non-party, the U.S. is not able to stake our own claims, nor have an expert sit on the Commission and participate in discussions affecting its interests.

Opponents of the Convention often cite its imposition of royalties on ECS production as an important reason to reject the Convention. Under the Convention, parties must make payments to the ISA based on the value of resources extracted from sites on their extended continental shelves. Production companies would be able to keep the entire value of production at each site for the first five years, subject to any licensing fees imposed by the U.S. Government. Payments to the Seabed Authority would begin at 1% of the value of production in the 6th year of exploitation at a site and rise 1% per year to a maximum of 7% in the 12th year and following years. These royalty rates were negotiated by the U.S. Government with extensive input from U.S. oil and natural gas interests. As oil and natural gas companies have recognized, the royalties are reasonable in view of the immense value of the resources that would be made subject to the United States' exclusive sovereign jurisdiction. The oil and natural gas companies – and the U.S. Treasury – would be able to retain much more than the U.S. would be required to pay to the Seabed Authority. Notwithstanding the required payments to the Seabed Authority, joining the Convention would be overwhelmingly beneficial to U.S. economy and the U.S. Treasury.

B. Mining

Mining, like oil and natural gas, represents a field where the U.S. will damage its own interests and those of U.S. industry by remaining outside the Law of the Sea Convention. Only by joining the Convention will the U.S. secure its rights to vast mineral deposits on the U.S. ECS, and perhaps even more important, be able to sponsor companies to mine the deep seabed in the area beyond any national jurisdiction. Beneath the oceans are troves of valuable metals and rare earth elements richer than any found on land, including deposits of manganese, nickel, cobalt, copper, lead and other metals commonly used in modern manufacturing.

Several recent developments make access to deep seabed mining sites an urgent matter. Due to technological progress, our ability to mine the deep seabed has improved dramatically, while at the same time prices for various metals have increased. Today, deep seabed mining presents an attractive business proposition. China, Russia, India, and other countries have responded, sponsoring mining ventures which have licensed their respective sites with the ISA. These countries have obviously concluded that the fees are worth paying to secure legal title to deep seabed mining sites.

The importance and relative scarcity of rare earth minerals is another factor requiring urgent access to the deep seabed. Rare earth minerals have a wide range of critical technology and defense applications. China has a virtual monopoly on the land-based supply of these elements, a reality that is of great concern for U.S. governmental and commercial interests. The U.S. suffers from a competitive and strategic disadvantage because, as a non-Party to the Convention, it cannot sponsor U.S. companies to engage in deep seabed mining.

Lockheed Martin, the only U.S. company with active claims to deep seabed sites under a U.S. law predating the Law of the Sea Convention, recently wrote to this Committee urging the Senate to approve the Convention. Lockheed has invested hundreds of millions of dollars on research and development related to deep seabed mining over the past 40 years. The company's letter made clear that the multibillion dollar investments now required to launch an ocean-based resource development business will only occur if it can obtain the security of tenure and clear legal rights offered under the Convention. With Lockheed and potentially other U.S. companies poised to expand their operations and create new jobs, Senate accession to this treaty would allow investor dollars to stay here.

Equally important to U.S. companies contemplating deep seabed mining activities is U.S. leadership in the ISA. The next several years will be formative for the nascent deep seabed mining industry. As I mentioned earlier, the Convention's deep seabed mining regime was overhauled in 1994, resulting in a system that is uniquely favorable to American interests. Those reforms included a permanent U.S. seat on the Council of the ISA. But the U.S. has not assumed that seat, and cannot guide the development of new rules pertinent to deep seabed mining activities while outside the Convention.

C. Shipping

The U.S. shipping industry depends heavily on the rights enshrined in the Law of the Sea Convention. At any given time, hundreds of U.S. flag ships and ships owned by U.S. companies rely on the freedom of navigation rights codified in the Convention while in transit through the world's oceans. Unsurprisingly, U.S. shipping companies have long been ardent supporters of accession to the Convention. The Chamber of Shipping of America has been a longtime supporter of the Convention and has testified and written letters to this Committee urging the Senate to approve the Treaty.

The Convention guarantees rights of innocent passage through territorial seas, transit passage through straits and archipelagoes, and freedom of all vessels on the

high seas. Seafaring vessels, such as container ships, crude oil tankers, and bulk carriers, carry over 95 percent of all goods imported to or exported from the United States. Guaranteeing their free movement is both an economic and a national security concern, as these ships transport the majority of this country's oil and other crucial commodities and goods.

The Convention's detractors argue that U.S. ships can rely on customary international law to ensure their mobility. But customary international law is not well-suited to the needs of business. By definition, it is hard to find and apply customary law because it does not exist in one place. Its rules can and will shift over time. Shipping companies benefit from a set of stable, written rules that they can easily reference during a dispute. The Law of the Sea Convention serves this function by codifying key navigational rights in a single, central authority.

Furthermore, robust U.S. leadership on maritime issues is just as important as a set of treaty-based rules. Without U.S. participation, there is a greater likelihood that countries will successfully assert divergent views on the application of the Convention's navigational rules. As a non-party, the U.S. lacks credibility to enforce the consistent application of norms embodied in the Convention. The shipping industry – and industry in general – will benefit from a strong, treaty-based rule of law guided by the United States.

D. Telecommunications

The rights codified in the Law of the Sea Convention are likewise of paramount importance to the daily operations of U.S. telecommunications companies. The Convention was negotiated with extensive input from the U.S. telecommunications industry and represents a quantum leap forward in law applicable to underwater cables. It provides rights to lay, maintain, and repair submarine cables outside territorial seas, certain protections to prevent damage to cables, and avenues for legal recourse when these various provisions are violated.

Submarine cables represent critical communications infrastructure, as they form the backbone of the Internet and global e-commerce. Such cables, typically consisting of optical fibers laid along the ocean floor in a bundle no larger than a garden hose, carry over 95 percent of transoceanic voice and data communication. U.S. telecom companies have worked rapidly to meet exploding consumer appetite for data, increasing the total circuit capacity of transoceanic cables landing in the U.S. by more than 1,000 fold since 1995.

There is no substitute for these underwater cables in case of damage. The earth's satellites can carry no more than seven percent of U.S. international voice and

data traffic. But worldwide, nearly 100 cable outages occur each year. The vast majority of cable outages are caused by bottom trawling fishing, dredging, and ship anchoring. Occasionally, cables are taken in an act of piracy, as occurred in 2007 when individuals in commercial vessels from Vietnam stole over 100 miles of cables on the high seas. Cable outages may disrupt governments, financial markets, and business operations and require costly repairs.

Accession to the Law of the Sea Convention would better protect U.S. companies' existing cable systems and foster additional investments. Companies would benefit from the legal certainty provided by treaty-based rights to lay, maintain, and repair cables, and conduct surveys incident to laying cables. Like shipping companies, telecom interests emphasize that they cannot merely rely on customary international law because of the threat of encroachments by coastal states. Russia's attempt to delineate cable routes on its continental margin in the Arctic proves that fears of encroachment are not theoretical. As a non-party, the U.S. loses more than just credibility to lodge diplomatic protests to such actions because, with respect to its submarine cable provisions, the Convention permits parties to invoke its meaningful dispute resolution procedures. U.S. telecom companies have repeatedly emphasized that they are comfortable with, and want to rely on, the compulsory dispute resolution provisions in the Convention.

Because the U.S. remains on the sidelines, it puts its telecom companies at a competitive disadvantage and fails to provide them important legal rights. They do not benefit from the legal certainty and dispute resolution options that companies based in other countries enjoy. In order to support its telecom companies and protect vital communications infrastructure, the U.S. should join the Law of the Sea Convention.

Conclusion

The U.S. Chamber urges the Senate to give its advice and consent to the Law of the Sea Convention. The Convention has the resounding support of every industry it impacts. It codifies legal rights on which U.S. businesses rely on a daily basis and provides access and clear legal title to new frontiers of hydrocarbon and mineral resources. Consequently, accession will lay the groundwork for investment that boosts the U.S. economy and creates new jobs. Now that new technologies and changed conditions have made it cheaper and easier to access the wealth beneath the oceans, the United States simply cannot afford not to join the Convention.