Statement of
Ambassador John Negroponte
Before the Foreign Relations Committee
US Senate
Washington, DC
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Mr. Chairman:

Thank you for the opportunity to appear before this committee to discuss the 1982 UN Convention on the Law of the Sea.

Let me say at the beginning of my testimony and as unequivocally as possible that I believe the US should accede to this treaty. As you have heard recently from the Secretaries of State and Defense, and the Chairman of the Joint Chiefs of Staff as well as our maritime service chiefs, there is strong consensus that it is in our national interests to do so, and, as I will elaborate in my remarks, there are real costs of remaining outside the convention.

For the benefit of our country, I hope this is the year we finally become party to the Law of the Sea.

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There is broad and bipartisan consensus from our nation's military, political and business leadership to join the treaty because, as the world's greatest maritime power with a host of maritime interests, merely treating the convention as customary law is not good enough.

As the committee has heard hours of previous testimony, I hope not to repeat general points here about why the US should sign on to the treaty which I wholeheartedly support, but rather I will cite specific practical reasons of how remaining outside the convention damages US national interests. These are not academic or philosophical points, but real world examples of how we are undermining our national interests by not officially joining.

First, the convention is now open for amendment and could be changed in ways counter to our interests in navigational freedoms or access to seabed resources. If we join now, however, our rights are protected in two ways: first, by the convention's requirement that amendments to the non-seabed parts of the convention only apply to those countries that ratify them. Even countries that join the convention after it is amended must deal with those that have not ratified an amendment according to the terms of the unamended convention. If we delay until after an amendment is adopted, we could only choose the amended version.

Regarding amendments to the seabed parts of the convention, once the US takes its permanent seat at the International Seabed Authority it will have a veto over any amendments related to that part.

Second, the United States cannot currently participate in the Commission on the Limits of the Continental Shelf (CLCS) which oversees ocean delineation on the outer limits of the extended continental shelf (Outer Continental Shelf). Even though it is collecting scientific evidence to support eventual claims off its Atlantic, Gulf, and Alaskan coasts, the United States, without becoming party to the convention, has no standing in the CLCS.

This not only precludes it from making a submission claiming the sovereign rights over the resources of potentially more than one million square kilometers of the OCS, it also denies the United States any right to review or contest other claims that appear to be overly expansive. This is becoming especially urgent with each passing year as the commission is reviewing an influx of claims.

Third, and especially acute as it relates to current tensions in the Persian Gulf or naval mobility in the Pacific, the United States today forfeits legal authority to other states, some of them less than friendly to US interests, that seek to restrict rights enshrined in the Law of the Sea central to American national security strategy, such as the freedom of navigation.

Relatedly, the United States also puts its sailors in unneeded jeopardy when carrying out the Freedom of Navigation (FON) program to contest Law of the Sea abuses.

Fourth, the Unites States is limited in its leadership ability to act within the convention to help mitigate maritime disputes between strategic allies, such as Japan and Korea, and in strategically important regions, such as the Gulf of Aden or the South China Sea.

Fifth, the United States is frustrated in expanding the Proliferation Security Initiative (PSI) and gaining greater cooperation in counter-piracy, counter-narcotics, and counter-terrorism operations at sea. Although our allies are supportive of our efforts on these fronts, they understandably indicate that US refusal to join the convention has eroded their confidence that the United States will abide by international law when conducting interdiction activities.

Sixth, US firms and citizens cannot take advantage of the arbitration processes established within the convention to defend their rights against foreign encroachment or abuse.

Seventh, the United States is unable to nominate a candidate for election to the Law of the Sea Tribunal and thus is deprived of the opportunity to shape directly the interpretation and application of the convention.

Eighth, American energy and deep-seabed companies are at a disadvantage in making investments in the OCS due to the legal uncertainty over the outer limit of the US continental shelf, nor can they obtain international recognition, and, as a result, financing for mine sites or title to recovered minerals on the deep-seabed beyond national jurisdiction. As a result, our once lead in ocean technologies has atrophied and we have now fallen behind other countries in critical areas such as deep seabed mining.

Potential US developers of deep-seabed minerals are falling farther and farther behind international competitors for deep-seabed minerals. While lack of international recognition of US claims to areas beyond national jurisdiction is keeping the sole US claimant on shore, 17 countries have 12 approved mine site claims and five new applications will be considered this summer at the annual session of the International Seabed Authority. The UK and Belgium are joining Germany, France, Japan, South Korea, India, China and seven other nations in commercial exploration of seabed critical and strategic minerals while the US watches from shore.

Ninth, and as referenced before, the United States is unable to fill its permanent seat on the International Seabed Authority and therefore is unable to influence this body's work overseeing minerals development in the deep-seabed beyond national jurisdiction.

Lastly, and really a point of clarification rather than a specific cost, let me be clear as the first Director of National Intelligence that joining the convention in no way hinders our intelligence gathering to include not impairing in anyway our submarine activities.

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I would now like to focus specifically on the Arctic, a region of particular interest to me, and how not being a state party to the treaty is undermining our interests in this increasingly important region of the world.

In 2008, I led a US delegation to Ilulissat, Greenland for an international conference of Arctic foreign ministers to discuss emerging regional issues. The US is the only Arctic nation not to have joined the treaty and our non-party status diminished our voice in this forum.

Furthermore, the United States is in a weaker legal position in the opening of the Arctic to police new shipping along the Alaskan coast such as greater regulatory authority afforded under article 234 and to apply internationally developed rules and standards to foreign shipping, to contest disputed boundary claims and to press our own under article 76, and to challenge Canada's assertion that the Northwest Passage falls within its internal waters.

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Why is it imperative for the United States to join the convention now?

For starters, the United States would gain legal protection for its sovereignty, sovereign rights and jurisdiction in offshore zones, the freedom of maneuver and action for its military forces, protection for economic, environmental and marine research interests at sea while seizing an extraordinary opportunity to restore the mantle of international leadership on, over and under nearly three-quarters of the earth.

US firms would be able to obtain essential internationally recognized exclusive rights to explore and exploit deposits of critical and strategic minerals on the ocean floor beyond national jurisdiction and secure recognized title to the recovered resources. The convention, as revised by the 1994 Agreement on Implementation, provides the commercial regime needed for private industry in full compliance with the criteria articulated in 1982 by President Reagan when he laid out his conditions for a convention he would sign.

More difficult to measure than the tangible benefits gained from US accession is the diplomatic blight on America's reputation for rejecting a carefully negotiated accord that enjoys overwhelming international consensus and a treaty that was adjusted in unprecedented fashion to specifically meet the demands put forth by President Reagan. Remaining outside the convention undermines US credibility and limits our ability to achieve critical national security objectives.

The treaty was negotiated over decades during which American delegations scored important victories. To the dismay of the rest of the world that negotiated the convention with the United States in good faith, after many years the Senate has yet to have an up or down vote. In my opinion, this is a constitutional abdication of congressional leadership.

Through inaction, the United States is forfeiting concrete interests while simultaneously undermining something more intangible, the legitimacy of US leadership and its international reputation.

The US should join the Law of the Sea Convention because it remains committed to the rule of law and its historic role as an architect and defender of a world order that benefits all nations, including and especially the United States of America.

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Thank you, and I look forward to responding to your questions and expanding on any of the points in my testimony.