WRITTEN TESTIMONY OF
HILLARY RODHAM CLINTON, SECRETARY
U.S. DEPARTMENT OF STATE

BEFORE THE
SENATE FOREIGN RELATIONS COMMITTEE
ON MAY 23, 2012

ACCESSION TO THE 1982 LAW OF THE SEA CONVENTION AND RATIFICATION OF THE 1994 AGREEMENT AMENDING PART XI OF THE LAW OF THE SEA CONVENTION

[Senate Treaty Document 103-39]

Mr. Chairman and Members of the Committee:

It is a great pleasure for me to testify today on the Law of the Sea Convention, which I regard as critical to the leadership and security of the United States. Joining the Convention and the 1994 Agreement that modifies its deep seabed mining provisions is a priority for the Department of State and for me personally.

U.S. interests are deeply tied to the oceans. No country is in a position to gain more from the Law of the Sea Convention than the United States:

- As the world's foremost maritime power, the United States benefits from the Convention's favorable freedom of navigation provisions. These are the provisions that enable our vessels to transit the maritime domain—including the high seas, international straits, and the exclusive economic zones and territorial seas of other countries.
- Our economy depends on international trade, and the United States benefits from the global mobility that those navigational provisions accord to commercial ships of all nations.

- We have the world's second longest coastline, so the United States benefits greatly from the Convention's favorable provisions on offshore natural resources. The treaty accords sovereign rights over natural resources within a 200-mile exclusive economic zone. The United States is further advantaged by provisions in the treaty that allow the continental shelf – and oil and gas rights – to extend beyond 200 miles in certain areas. Off the north shore of Alaska, our continental shelf could extend 600 miles into the Arctic.
- American companies are equipped and ready to engage in deep seabed mining. But the United States can only take advantage of the Convention's provisions that accord security of tenure to mine sites in areas beyond national jurisdiction as a party to this treaty. The Convention, which was modified to meet U.S. demands, accords the United States a guaranteed seat on the key decision-making body.

It is no wonder then that there is such a strong and wide-ranging coalition supporting U.S. accession. The U.S. military has consistently and unequivocally supported the Convention for its national security benefits. Affected U.S. industries, including shipping, fisheries, telecommunications, and energy, have consistently supported U.S. accession for its economic benefits. Non-governmental organizations concerned with the protection of natural resources have consistently supported U.S. accession. And both Republican and Democratic Presidents have supported U.S. accession. I have never seen another treaty with such intensive and broad support.

Furthermore, no treaty has been as thoroughly scrutinized by the Senate as the Law of the Sea Convention. This Committee has twice examined it and sent it to the full Senate. Four other Committees held hearings in 2004, including the Senate Armed

Services Committee, of which I was a member. In 2007, the Foreign Relations Committee held two additional hearings and another favorable vote. Every conceivable question has been asked and answered.

As President George W. Bush said in 2007, joining the Convention will serve the national security interests of the United States, secure U.S. sovereign rights over extensive marine areas, promote U.S. interests in the health of the oceans, and give the United States a seat at the table where rights essential to our interests are debated and interpreted. We need to get off the sidelines and start taking advantage of the great deal that the Convention offers the United States and our business community.

HISTORY

By looking at the history that led to the adoption of the Convention and the 1994 Agreement on deep seabed mining, we can see how beneficial the Convention is to American interests. The United States became party to a group of earlier law of the sea treaties in 1958. We are still bound by them today. A number of the provisions in the 1982 Convention are the same as the provisions in these 1958 treaties. But the 1958 treaties left some important issues unresolved, and some of their provisions are outdated and have been supplanted by more favorable provisions for the United States in the 1982 Convention.

For example, the 1982 Convention established for the first time a maximum breadth of the territorial sea, an issue of critical importance to U.S. freedom of navigation. The 1982 Convention provides for exclusive jurisdiction of coastal States over economic activities out to 200 miles from shore. It also sets forth a procedure for

providing legal certainty regarding the continental shelf. Both of these additions are critically important to U.S. economic interests in the oceans.

These and other benefits of the 1982 Convention came about because the United States played a prominent role in negotiating this treaty, beginning in the Nixon Administration. The Law of the Sea Convention, as adopted in 1982, represented a victory for U.S. navigational, economic, and other interests. Only one important issue area was flawed – deep seabed mining – and that one area is why President Reagan decided not to sign the 1982 convention. I will discuss these flaws in greater depth below.

All the other aspects of the treaty were so favorable that President Reagan announced in 1983 that the United States accepted, and would act in accordance with, the Convention's balance of interests relating to traditional uses of the oceans – everything but deep seabed mining. He instructed the entire United States Government to abide by the commitments, to exercise the rights set forth in the Convention and to encourage other countries to do likewise.

President Reagan believed that the deep seabed mining chapter of the 1982 Convention would deter future development of deep seabed mining; establish a decision-making process that would not reflect or protect American interests; allow amendments to enter into force without U.S. approval; require mandatory transfers of technology; allow national liberation movements to share in the benefits of deep seabed mining and not assure access of future qualified miners.

President Reagan's concerns were well placed and shared by many of our allies. Like the United States, many industrialized countries declined to become party to the Convention as originally adopted. President Reagan did not oppose *all* international regulation of mining in the portion of the seabed beyond national jurisdiction. Indeed, U.S. policy extending back to President Nixon has taken the view that such mining should be subject to international administration, primarily to enable companies to obtain secure title to mine sites in the deep ocean. U.S. law, specifically the Deep Seabed Hard Mineral Resources Act of 1980 (Pub. L. 96-283), also reflects that approach.

With the end of the Cold War, international support grew for a more efficient and market-oriented system. This spurred an initiative by the Administration of President George H. W. Bush in the early 1990s to undertake a new round of negotiations with the aim of fundamentally overhauling the deep seabed mining provisions of the 1982 Convention.

President Bush's efforts succeeded. The Part XI Agreement, adopted in 1994, modifies the Convention so as to satisfy each of President Reagan's objections. As a result, the present, modified Convention:

- ensures that market-oriented approaches are taken to the management of deep seabed minerals (e.g., by eliminating production controls);
- scales back the structure of the organization that administers deep seabed mining;
- provides the United States, once it becomes a Party, with a guaranteed, permanent seat on the seabed Council – which would ensure that U.S. approval would be

necessary for any decision that would result in a substantive obligation on the United States, or that would have financial or budgetary implications;

- ensures that the United States, once it becomes a Party, could veto and block the adoption of any amendment to the deep seabed mining provisions that it opposes;
- deletes the objectionable provisions on mandatory technology transfer;
- ensures that the United States, once it becomes a Party, would be able to veto any decision relating to the sharing of benefits; and
- provides assured access for any future qualified U.S. mining companies.

The United States signed the Agreement on the deep seabed mining provisions in 1994. As George P. Shultz, Secretary of State to President Reagan, said in a letter to Senator Lugar in 2007: "The treaty has been changed in such a way with respect to the deep sea-beds that it is now acceptable, in my judgment. Under these circumstances, and given the many desirable aspects of the treaty on other grounds, I believe it is time to proceed with ratification." Indeed, every former Secretary of State since Secretary Shultz, Democrat and Republican alike, has called for the United States to secure and advance our national interests by joining the Convention.

The Convention, as modified by the 1994 Agreement, came into force in 1994, and since has been joined by the industrialized countries that shared U.S. objections to the initial deep seabed mining chapter. There are now 162 parties to the Convention, including almost all of our traditional allies.

The Administration of George W. Bush strongly supported the modified Convention in testimony before this Committee in 2003 and 2007. Bush Administration

officials worked closely with the Committee to develop a proposed Resolution of Advice and Consent, which this Administration continues to support.

BENEFITS

What are the benefits to joining the Law of the Sea Convention? To put it plainly, joining this Convention will bolster U.S. national security and provide economic benefits, including the creation of American jobs. U.S. companies, business groups, labor unions, the U.S. Navy, the U.S. Coast Guard, the Joint Chiefs of Staff, and a host of others support joining the Convention now.

I'd like to take a few minutes to talk about the **national security benefits.** As the world's foremost maritime power, our security interests are intrinsically linked to freedom of navigation. We have more to gain from legal certainty and public order in the world's oceans than any other country. Our forces are deployed throughout the world and need guaranteed mobility on, over and under the world's oceans. U.S. Armed Forces rely on the navigational rights and freedoms reflected in the Convention for worldwide access to get to combat areas, sustain our forces during conflict, and return home safely, without permission from other countries.

In this regard, the Convention secures the rights we need for U.S. military ships, and the commercial ships that support our forces, to meet national security requirements in four major ways:

- by limiting coastal States' territorial seas to 12 nautical miles;
- by affording our military and commercial vessels and aircraft necessary passage rights, not requiring permission, through other countries' territorial seas and

archipelagoes, as well as through straits used for international navigation (such as the critical right of submarines to transit submerged through such straits);

- by setting forth maximum navigational rights and freedoms for our vessels and aircraft in the exclusive economic zones of other countries and in the high seas; and
- by affirming the authority of U.S. warships and government ships to board stateless vessels on the high seas, which is vital to our maritime security, counter-narcotic, and counter-proliferation efforts and operations, including the Proliferation Security Initiative.

As a non-party to the Convention, the United States must rely on customary international law as a legal basis for invoking and enforcing these norms. But it is risky to assume that customary law will preserve these norms forever. There are increasing pressures from some coastal States to augment their control over the activities of other nation's vessels off their coasts in a manner that would alter the balance of interests struck in the Convention.

Joining the Convention would secure our navigational rights and our ability to challenge other countries' behavior on the firmest and most persuasive legal footing, including in critical areas such as the South China Sea and the Arctic. Only as a Party to the Convention can the United States best protect the navigational freedoms enshrined in the Convention and exert the level of influence that reflects our status as the world's foremost maritime power.

The highest levels of our Nation's military have expressed their solid and unwavering support for joining this Convention over and over again.

Now I'd like to focus on **economic benefits.** Joining the Convention would advance U.S. economic and resource interests in ocean waters and seabed. For example,

- The Convention is the foundation on which rules for sustainable international fisheries are based. For that reason, the U.S. fishing industry supports U.S. accession.
- The Convention secures the rights for commercial ships to export U.S. commodities and protects the tanker routes through which half of the world's oil moves. For that reason, the U.S. shipping industry supports accession.
- The Convention's provisions protect the laying and maintaining of fiber optic cables through which the modern world communicates, for both commercial and military purposes. For that reason, the U.S. telecommunications industry supports accession.

There are two additional areas of economic benefits that deserve special mention: the provisions related to mineral resources in the seabed of our continental shelf and resources in the seabed beyond any country's continental shelf.

The Convention provides for an extended continental shelf, beyond 200 nautical miles from shore, if certain criteria are met. A coastal State can exercise sovereign rights over its extended continental shelf, including exploration, exploitation, conservation, and management of non-living resources, such as oil, gas, and other energy and mineral resources, and of living, "sedentary" species, such as clams, crabs, and sponges. The size of the U.S. continental shelf – just the portion beyond 200 miles from shore – is probably more than one and one-half times the size of Texas, and could be considerably larger than

that. For this reason, the U.S. oil and gas industry, including the American Petroleum Institute, are in favor of joining the Convention.

Much is at stake in the vast areas of continental shelf beyond 200 nautical miles from shore, and the Convention's procedures enable Parties – and only Parties – to fully secure their sovereign rights therein.

Unlike the 1958 law of the sea treaty on the continental shelf, this Convention contains a detailed definition of the continental shelf and well-defined procedures for a country to establish the outer limits of its continental shelf. Specifically, Parties to the Convention enjoy access to the expert body whose technical recommendations provide the needed international recognition and legal certainty regarding continental shelf areas beyond 200 nautical miles.

The ability to gain international recognition of a coastal State's sovereignty over the continental shelf resources beyond 200 miles from shore was a major achievement in the 1982 Convention for the United States and for other coastal States with an extended continental shelf. International recognition is necessary for the legal certainty that will allow oil and gas companies to attract the substantial investments needed – and create the many jobs – to extract these far-offshore resources.

More than 40 countries have made submissions regarding their continental shelves beyond 200 nautical miles to the expert Commission. Sixteen States, including Russia, Brazil, Australia, France, Indonesia, and Mexico, have received recommendations from the Commission and are proceeding to establish the outer limits of their continental shelves. As a non-party, the United States is sitting on the sidelines while this happens.

The second economic benefit I would like to highlight relates to mining in the deep seabed areas beyond any country's jurisdiction. Only as a Party to the Convention could the United States sponsor U.S. companies like Lockheed Martin to mine the deep seabed for valuable metals and rare earth elements.

These rare earth elements – essential for cell phones, flat-screen televisions, electric car batteries, and other high-tech products – are currently in tight supply and produced almost exclusively by China. While we challenge China's export restrictions, we must also make it possible for U.S. companies to develop other sources of these critical materials. They can only do this if they can obtain secure rights to deep seabed mine sites and indisputable title to minerals recovered. While we sit on the sidelines, companies in China, India, Russia, and elsewhere are securing their rights, moving ahead with deep seabed resource exploration, and taking the lead in this emerging market.

I want to make two additional points about deep seabed mining. First, we cannot rely on customary international law here. For companies to obtain security of tenure to deep seabed mining sites, they must be sponsored by a Party to the Convention. And without such security of tenure, industry has told us that it will not risk the significant investment needed to extract these valuable resources. I want to be clear that there is no means for the United States to support its domestic deep seabed mining industry as a non-Party.

Second, once the United States becomes a Party, we would have an unprecedented ability to influence deep seabed mining activities worldwide. In revising the Convention's deep seabed provisions in the 1994 Agreement, our negotiators obtained a permanent U.S. seat on the seabed Council. This is the key decision-making

body established by the Convention on deep seabed matters. I know of no other international body that accords one country, and one country only – the United States – a permanent seat on its decision making body. In this way, the Convention's institutions provide the United States with a level of influence commensurate with our interests and global standing.

Until we join, however, our reserved seat remains empty. As a result, we have limited ability to shape the rules and no ability to help U.S. companies pursue their job-creating initiatives to exploit deep seabed resources.

Other Benefits. We should also join the Convention now to steer its implementation. The Convention's institutions are up and running, and we – the country with the most to gain or lose on law of the sea issues – are sitting on the sidelines. As I mentioned, the Commission on the Limits of the Continental Shelf has received submissions from over 40 countries without the participation of a U.S. commissioner. Recommendations made in that body could create precedents, positive and negative, on the future outer limit of the U.S. shelf. We need to be on the inside to protect and advance our interests. Moreover, in fora outside the Convention, the provisions of the Convention are also being actively applied. Only as a party can we exert the level of influence that reflects our status as the world's foremost maritime power.

Are there any serious drawbacks to joining this Convention? Opponents of the treaty believe there are, but they are mistaken.

- Some critics assert that joining the Convention would impinge upon U.S. sovereignty. On the contrary, joining the Convention will increase and strengthen

our sovereignty. The Convention secures the United States an expansive exclusive economic zone and extended continental shelf, with vast resources in each. U.S. accession would lock-in our rights to all of this maritime space.

- Some say that the Convention's dispute resolution provisions are not in the U.S. interest. On the contrary, these procedures – which the United States sought – help protect rather than harm U.S. interests. As in many other treaties, including free trade agreements, such procedures provide the United States with an important tool to help ensure that other countries live up to their obligations. And U.S. military activities will never be subject to any form of dispute resolution.
- Other critics have suggested that the Convention gives the United Nations the authority to levy some kind of global tax. This is also untrue. There are no taxes on any individuals, corporations, or anyone else under the Convention.

CONCLUSION

As Senator Lugar has said, to oppose this Convention on economic grounds requires one to believe that U.S. industries as diverse as oil and gas, fishing, shipping, seabed mining, and telecommunications do not understand how best to grow their businesses, create jobs, and protect their bottom lines. And to oppose this Convention on national security grounds requires one to believe that the Departments of Defense and Homeland Security do not understand how best to protect U.S. national security.

The United States is long past due in joining this Convention. Our global leadership on maritime issues is at stake. I therefore urge the Committee to give its swift

approval for U.S. accession to the Law of the Sea Convention and ratification of the 1994 Agreement, and urge the Senate to give its advice and consent before the end of this year.